

Mulcahy Memo - May 13, 2011

Governor Brewer Signs Seven Community Association Bills into Law

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The 2011 Arizona legislative session (50th Legislature, First Regular Session) was the most active session for bills regarding the community association industry in years. This year, the Arizona Legislature adjourned with Governor Brewer signing seven bills pertaining to community associations.

Six of these bills will become law on July 19, 2011; SB1149 is effective from and after December 31, 2011.

BILL #	SUMMARY	STATUS
SB1148	<p>Alternative Dispute Process: SB1148 amends A.R.S. Sections 41-2141, 41-2198.02, 41-2198.04 and re-enacts an alternative dispute process for planned communities, condominiums and owners, which was previously declared unconstitutional.</p> <p>SB1148 will allow the Department of Fire, Building and Life Safety, through its Hearing Officer Function, to apply and enforce statutes governing condominiums and planned communities, as well as interpret the governing documents of condominiums and planned communities as they relate to disputes between consumers (ie. owners) and associations. Unlike the prior law regarding this matter, any order issued by the administrative law judge is now subject to judicial review.</p>	Signed by Governor on 4/19/11
SB1326	<p>SB1326 applies to condominiums and planned communities and amends A.R.S. Sections 33-1261 and 33-1808.</p> <p>SB1326 modifies the way that Condominiums and planned communities can regulate the display of flags, by restricting condominiums and planned communities from prohibiting the display of the Gadsden Flag ("Don't Tread On Me").</p> <p>SB1326 also allows planned communities to limit the number of flags to two (2) flags being displayed at once and restricts the height of the flagpole to no more than the height of the rooftop of the member's home, but shall not prohibit the installation of a flagpole in the front yard or backyard of the member's property.</p>	Signed by Governor on 4/18/11

<p>HB2717</p>	<p>HB2717 applies to planned communities and condominiums and amends A.R.S. Sections 33-1261 and 33-1808</p> <p>HB2717 states that notwithstanding any provision in the association’s documents, an association shall not prohibit <u>or charge a fee for the use or placement of</u> the indoor or outdoor display of a “for sale” sign and sign rider by a unit/lot owner on that owner’s property, including a sign that indicates the unit/lot owner is offering the property for sale by owner.</p> <p>HB2717 also forfeits and extinguishes an association’s lien rights as authorized under Sections 33-1256/33-1807 against that lot/unit for a period of six (6) consecutive months from the date of the violation if an association or managing agent violates an owner’s right to have the following:</p> <ol style="list-style-type: none"> 1. Temporary open house signs or a unit owner's for sale sign on that owner’s property. The association shall not require the use of particular signs indicating an open house or real property for sale and may not further regulate the use of temporary open house or for sale signs that are industry standard size and that are owned or used by the seller or the seller's agent. 2. Open house hours. The association may not limit the hours for an open house for real estate that is for sale in the condominium or planned community, except that the association may prohibit an open house being held before 8:00 a.m. or after 6:00 p.m. and may prohibit open house signs on the common elements of the condominium or common areas of the planned community. 3. An owner's or an owner's agent's for lease sign on that owner’s property unless an association's documents prohibit or restrict leasing of a unit/lot or units/lots. An association shall not further regulate a for lease sign or require the use of a particular for lease sign other than the for lease sign shall not be any larger than the industry standard size sign of eighteen by twenty-four inches and on or in the unit owner's property. If leasing of a unit/lot is allowed, the association may prohibit open house leasing being held before 8:00 a.m. or after 6:00 p.m. 	<p>Signed by Governor on 4/27/11</p>
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<p>HB2245</p>	<p>HB2245 applies to planned communities and condominiums and amends A.R.S. Sections 33-1248 and 33-1804.</p> <p>HB2245 permits owners attending a meeting to tape and/or video record open board meetings, subject to reasonable rules and regulations adopted by the board.</p> <p>It is my recommendation that associations adopt reasonable rules and regulations regarding a homeowners' ability to tape or video record open board meetings. In order to effectuate a smooth transition, I suggest that associations adopt and publicize the rules and regulations prior to July 19, 2011.</p> <p>In order to assist associations, I have developed the following proposed list of rules and regulations:</p> <ul style="list-style-type: none"> • Any owner intending to tape or video record a meeting must first provide the Association written notice 24 hours prior to the start of the meeting; • In order to prevent interruptions, all recording equipment must be in position 15 minutes prior to the start of the meeting; • Any recording equipment must not produce sound or distracting light emissions; • All owners utilizing recording equipment must set up the recording equipment in the place designated by the association; • All recording equipment is the responsibility of the owner, the association is not obligated to provide equipment; • If any recording equipment fails, the association will not stop the meeting while the equipment is reset; • Any owner recording a meeting must provide the association an unabridged copy of the recording within ten (10) days after the meeting; • Any recording shall not be disseminated to members outside of the association without the written consent of the board; • No recording of a meeting shall be posted, or otherwise made available on the internet without the written consent of the board; • A non-member is prohibited from recording the meeting without the prior written request and approval by the board. <p>Additionally, it is my opinion the association can require a homeowner to sign an acknowledgment form prior to recording a meeting which would acknowledge the following:</p> <ul style="list-style-type: none"> • A recording of a meeting is not the official record of the meeting, the approved meeting minutes are the official record of the meeting; • The association does not make any representations as to the authenticity of the recording; • Any recording shall not be disseminated to members outside of the association without the written consent of the board; • All rules and regulations adopted by the association will be adhered to during the recording of the meeting. <p>Also, in addition to permitting homeowners to tape and video record meetings, the association might also consider recording all meetings and then providing a copy to members for a fee.</p>	<p>Signed by Governor on 4/12/11</p>
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<p>HB2609</p>	<p>HB2609 applies to planned communities and condominiums and amends A.R.S. Sections 33-1248, 33-1261, 33-1804 and 33-1808.</p> <p><u>For Sale and For Rent Signs:</u> HB2609 will restrict condominiums and planned communities from prohibiting or charging a fee for the use or placement of commercially produced “For Rent” and “For Lease” signs that are in compliance with industry standards. This bill would penalize associations for violations of this section by extinguishing their lien rights for six (6) consecutive months after the date of the violation. An association may prohibit the use of signs that are not commercially produced.</p> <p><u>Open Meeting Law:</u> HB2609 also amends the Arizona Open Meeting law by:</p> <ul style="list-style-type: none"> • requiring that all regularly scheduled committee meetings be open to all members; • requiring association boards to permit members to speak once after the board has discussed a specific agenda item at an open board meeting but before the board takes formal action on that item in addition to other opportunities to speak; • expanding the items that may be addressed in closed (executive) session to include discussion of a unit/lot owner’s appeal of any violation cited or penalty imposed by the association, unless the owner specifically requests that the issue be discussed in open meeting; • notwithstanding any provisions in the governing documents for board meetings, <ol style="list-style-type: none"> 1) the agenda shall be available to all owners attending any meeting; 2) an emergency meeting may be called to discuss business or take action that cannot be delayed until the next regularly scheduled board meeting, but the reasons for the emergency meeting must be included in the meeting minutes and the meeting minutes must be read and approved at the next regular board meeting; 3) a quorum of the board may meet by telephone conference if there is a speakerphone available in the meeting room that allows board members and unit/lot owners to hear all parties who are speaking during the meeting; 4) any quorum of the board that meets informally to discuss association business, including workshops, must comply with open meeting and notice provisions, regardless of whether any action is taken; and 5) interpretation of this statute is to be construed in favor of open meetings. <p><u>For Planned Communities Only Amending A.R.S. Section 33-1808:</u> HB2609 states that an association may prohibit the display of political signs earlier than 71 days before the day of an election and later than three (3) days after an election day. An association may regulate the size and number of political signs that may be placed on a member’s property if the association’s regulation <u>conforms</u> to any applicable city, town or county ordinance that regulates the size and number of political signs on residential property. If the city, town or county in which the property is located does not regulate the size and number of political signs on residential property, the association shall not limit the number of political signs, except that the maximum aggregate total dimensions of all political signs on a member’s property shall not exceed 9 square feet. This subsection applies only to a commercially produced sign and an association may prohibit the use of signs that are not commercially produced.</p>	<p>Signed by Governor on 4/18/11</p>
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<p>SB1149</p>	<p>SB1149 applies to condominiums and planned communities.</p> <p><u>Associations Have Ten Days to Provide Statement to Owner Upon Request:</u> SB1149 amends A.R.S. Sections 33-1256 and 33-1807 by reducing the number of days the association has to provide a statement of assessments upon written request from an owner, lien holder or escrow agent <u>from fifteen (15) to ten (10) days</u>. Failure to provide the statement within ten (10) days would result in the Association's lien for unpaid assessments being extinguished.</p> <p><u>Delivery of Resale Disclosure Fee:</u> SB1149 amends A.R.S. Sections 33-1260 and 33-1806 by permitting the association to deliver the resale disclosure statement, in either paper <u>or</u> electronic format, to either the purchaser <u>or</u> the purchaser's authorized agent. However, SB1149 fails to specify which party (association <u>or</u> purchaser) has the authority to decide whether the statement will be delivered in paper <u>or</u> electronic format; and whether the statement will be delivered to the purchaser <u>or</u> the purchaser's authorized agent.</p> <p><u>Cap on Resale Disclosure Fee, Initial or Forced Sale (Trustee's Sale) Fee, Rush Fee and Document Update Fee:</u> SB1149 amends A.R.S. Sections 33-1260 and 33-1806 by placing a cap on the resale disclosure fee at an aggregate of \$400. Further, the resale disclosure fee is capped at \$200 for an initial or forced sale (trustee's sale) without notice. In addition, the association may charge a rush fee of no more than \$100 if the rush services are required within 72 hours of the request. Finally, the association may charge a document update fee of no more than \$50 if at least 30 days have passed since the date of the original disclosure statement or documents were delivered.</p> <p>It is important to note that associations cannot charge \$400 for the resale disclosure fee if the fee on January 1, 2010 was less than \$400 except the fee can increase up to 20% per year to the cap of \$400.</p> <p>These fees shall be collected no earlier than at the close of escrow and may only be charged once to a unit/lot owner for that transaction between the parties. An association that charges or collects fees in violation of Sections 33-1260 and 33-1806 would be subject to a civil penalty of no more than \$1,200.</p> <p><u>Additional Documents Required for Disclosure Statement:</u> SB1149 amends A.R.S. Sections 33-1260 and 33-1806 and requires the following additional documents to be included in the disclosure statement: (1) a statement summarizing any pending lawsuits, except those relating to the collection of assessments owed by unit/lot owners other than the selling unit/lot owner, in which the association is a named party, including the amount of any money claimed.</p> <p><u>Prohibition of Fee for the Use/Placement of For Sale Signs:</u> SB1149 will amend A.R.S. Sections 33-1261 and 33-1808 by prohibiting associations from charging a fee for the use/placement of for sale signs and would penalize associations for charging such fee by forfeiting the association's lien rights for 6 consecutive months after the date of violation.</p> <p><u>Effective Date:</u> SB1149 This act is effective from and after December 31, 2011.</p>	<p>Signed by Governor on 4/12/11</p>
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<p>SB1540</p>	<p>SB1540 applies to condominiums and planned communities.</p> <p>SB1540 amends A.R.S. Section 16-1019 by making it a class 2 misdemeanor to knowingly remove, alter or deface any political printed materials of a candidate that are hand-delivered to a residence for the period commencing 45 days before a primary and ending seven (7) days after the general election.</p> <p>SB1540 also amends A.R.S. Sections 33-1261 and 33-1808.</p> <p>SB1540 prohibits condominiums and planned communities from restricting door-to-door political activities, except that the association may: (1) prohibit/restrict door-to-door activity regarding candidate and ballot issues between sunset to sunrise; (2) require prominent display of identification for those persons engaging in the door-to-door activities and prominent display of the candidate or issue they are supporting or opposing; (3) restrict activities on its common elements, other than roadways and sidewalks that are normally open to visitors. Associations are further restricted from making regulations regarding the number of candidates, public officers and propositions supported or opposed on a political sign.</p> <p>Finally, associations are prohibited from requiring political signs to be commercially or professionally manufactured and may not prohibit the utilization of both sides of a political sign.</p>	<p>Signed by Governor on 4/18/11</p>
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