



# 2016 Legislative Update

5 pages

## MULCAHY Community Association Cheat Sheet®

### BRINGING ANSWERS TO COMMUNITY ASSOCIATIONS

*This publication discusses significant points of law as they apply to community associations and is not intended to offer specific legal advice or responses to individual circumstances or problems.*

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## 2016 ARIZONA LEGISLATIVE UPDATE REGARDING COMMUNITY ASSOCIATIONS

The 2016 Arizona legislature adjourned on May 7, 2016.  
*The effective (or start) date for all bills signed by Governor Ducey is August 6, 2016, unless otherwise specified.*

### SUMMARY OF SENATE BILL 1350– *Short Term Rentals*

A city, town or county may not prohibit or restrict the use of/regulate (based on their classification, use or occupancy) vacation rentals or short-term rentals.

A city, town or county may regulate vacation rentals or short-term rentals for the following purposes:

- Protection of the public's health and safety, including rules and regulations related to fire and building codes, health and sanitation, transportation or traffic control, solid or hazardous waste and pollution control and designation of an emergency point of contract, if the city, town or county demonstrates that the rule/regulation is for the primary purpose of protecting the public's health and safety.
- Adopting and enforcing residential use and zoning ordinances, including ordinances related to noise, protection of welfare, property maintenance and other nuisance issues.
- Limiting or prohibiting the use of a vacation rental or short-term rental for the purposes of housing sex offenders, operating or maintaining a structured sober living home, selling illegal drugs, liquor control or pornography, obscenity, nude or topless dancing and other adult-oriented business.

“Vacation rental” or “short-term rental” means any individually or collectively owned single-family or one-to-four family house or dwelling unit or any unit or group of units in a condominium, cooperative or timeshare, that is also a transient public lodging establishment or owner-occupied residential home offered for transient use if the accommodations are not classified for property taxation under section 44-12001. Vacation rental and short-term rental do not include a unit that is used for any nonresidential use, including retail, restaurant, banquet space, event center or another similar use.”

#### Implication for Planned Communities and Condominiums:

Associations should consider amending the CC&Rs such as by adopting minimum rental provisions (such as 30 days minimum rental provisions for planned communities and condominiums, or eliminating rentals altogether for planned communities only) because associations will be unable to rely on city, town or municipal codes/ordinances to prohibit restrict or regulate vacation rentals or short term rentals.

SB1350 is effective January 1, 2017.

**SUMMARY OF SENATE BILL 1449– *Prohibited Operations; Unmanned Aircraft***

This bill makes it unlawful for a person to operate a model aircraft or a civil unmanned aircraft (drone) if the operation:

1. Is prohibited by a federal law or regulation that governs aeronautics, including federal aviation administration regulations.
2. Interferes with a law enforcement, firefighter or emergency services operation. (Violations of these two sections are a class 1 misdemeanor).

This bill also makes it unlawful for a person to operate or use an unmanned aircraft or unmanned aircraft system to intentionally photograph or loiter over or near a critical facility in the furtherance of any criminal offense. (A violation of this clause is a class 6 felony).

A city, town or county may not enact or adopt any ordinance or rule that relates to the ownership or operation of an unmanned aircraft or unmanned aircraft system. Any ordinance or rule that violates this is considered void.

This bill does not:

1. Apply to a person that is authorized by the Federal Aviation Administration to operate or use an unmanned aircraft system if that person complies with that authorization.
2. Prohibit a city, town or county from adopting ordinances or rules on the operation of a public unmanned aircraft that is owned by the city, town or county.
3. Prohibit a city, town or county from enacting or adopting ordinances or rules that regulate the takeoff or landing of a model aircraft in a park or preservation owned by the city, town or county if there are other parks available for model aircraft operation.
4. Apply to the operation of an unmanned aircraft by a first responder while acting in the first responder's official capacity.

“Civil Unmanned Aircraft” means an unmanned aircraft or unmanned aircraft system that is operated by a person for any purpose other than strictly for hobby or recreational purposes, including commercial purposes, or in furtherance of or incidental to any business or media service or agency.

“Unmanned Aircraft” means an aircraft, including an aircraft commonly known as a drone, that is operated without the possibility of direct human intervention from within or on the aircraft.

**SUMMARY OF SENATE BILL 1496– *Removal of Board Members***

The board of directors shall retain all documents and other records relating to the proposed removal of the member of the board of directors and any election or other action taken for that director's replacement for at least one year after the date of the special meeting and shall permit members to inspect those documents and records pursuant to section 33-1258.

On removal of at least one but fewer than a majority of the members of the board of directors at a special meeting of the membership called pursuant to this subsection, the vacancies shall be filled as provided in the association’s documents.

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**SUMMARY OF SENATE BILL 1496 (CONTINUED)**

On removal of a majority of the members of the board of directors at a special meeting of the membership called pursuant to this subsection, or if the association documents do not provide a method for filling board vacancies, the association shall hold an election for the replacement of the removed directors at a separate meeting of the members of the association that is held not later than thirty days after the meeting at which the members of the board of directors were removed.

A member of the board of directors who is removed pursuant to this subsection is not eligible to serve on the board of directors again until after the expiration of the removed board member's term of office, unless the association's documents specifically provide for a longer period of ineligibility.

Applies to Planned Communities and Condominiums.

**SUMMARY OF SENATE BILL 1498— *Homeowners' Association; Fees; Hearings; Elections***

Late fees can only be charged after the association has provided notice to the owner that the assessment is overdue or provided notice that the assessment is considered overdue after a certain date.

A planned community and condominium must include the following language in the association's written response to an owner's certified mail letter in response to a notice of violation from the Association: "You have the option to petition for an administrative hearing on this matter in the Arizona Department of Real Estate pursuant to A.R.S. Section 32-2199.01 (this was formerly handled by the Department of Fire, Building and Life Safety)." See <http://www.re.state.az.us/HOA/HOA.aspx/>. It is Mulcahy Law Firm's position that it is "best practice" to include this quoted statement in any violation letter sent to an owner regarding the condition of an owner's property.

When using an absentee/mail-in ballot, the completed ballot and envelope and any related materials must contain the name, address and either the actual signature or electronic signature of the person voting, unless the association documents permit secret ballots to be used (in which case then only the envelopes and non-ballot related materials must have that information). This may require an amendment to the Bylaws for the Association.

Ballots, envelopes and related materials, including sign-in sheets if used, must be retained (in paper or electronic format) and made available for the unit owners or members to inspect for at least one year after the completion of the election.

Applies to Planned Communities and Condominiums.

**SUMMARY OF HOUSE BILL 2106**– *Homeowners’ Associations Enforcement Grace Period*

This bill increases an Owner’s right within which to contest a demand from an Association about the condition of the Owner’s Property from 10 days to 21 days.

This 21-day period is not significant so long as the Association provides the following information to the Owner in the original notice of violation. The information to be provided with each notice of demand regarding the condition of the Owner’s property is: 1) the provision of the condominium documents that has allegedly been violated; 2) the date of the violation or the date the violation was observed; 3) the first and last name of the person or person who observed the violation; 4) the process the unit owner must follow to contest the notice; and 5) The following statement: “You have the option to petition for an administrative hearing on this matter in the Arizona Department of Real Estate pursuant to A.R.S. Section 32-2199.01 (this was formerly handled by the Department of Fire, Building and Life Safety).”

See <http://www.re.state.az.us/HOA/HOA.aspx/>. Once the information is in the original demand, the Association does not need to wait 21 days before proceeding with any further action.

Applies to Planned Communities and Condominiums.

**SUMMARY OF HOUSE BILL 2172**– *Design; Architectural Committees; Review*

Approval of an association’s architectural designs, plans and amendments cannot be unreasonably withheld.

Applies to Planned Communities only.

**SUMMARY OF HOUSE BILL 2382**– *Amendment of Declaration*

After developer control, the declaration may be amended by the association, if any, or, if there is no association or board, the owners of the property that is subject to the Declaration, by an affirmative vote or written consent of the number of eligible voters as prescribed in the declaration.

An amendment to the declaration can apply to fewer than all the lots or less than all of the property that is bound by the declaration and the amendment is deemed to conform to the general design and plan of the community if both apply:

1. the amendment receives the affirmative vote or written consent of the number of eligible voters as prescribed in the declaration; and
2. the amendment receives the affirmative vote or written consent of all of the owners of the lots or property to which the amendment applies.

Amendments must be recorded within 30 days after adoption of the amendment.

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**SUMMARY OF HOUSE BILL 2382 (CONTINUED)**

Notwithstanding any provision in the declaration that provides for periodic renewal of the declaration, an amendment to the declaration is effective immediately on recordation of the approved instrument in the county in which the property is located. This provision supersedes a duration clause in the Association's Declaration and allows an amendment to become effective immediately upon recording.

Applies to Planned Communities only.