



2019 Legislative Update

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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2019 ARIZONA LEGISLATIVE UPDATE REGARDING COMMUNITY ASSOCIATIONS

The Arizona Legislature adjourned on May 28, 2019.
*The effective (or start) date for all bills signed by Governor Ducey is
August 27, 2019, unless otherwise specified.*

SUMMARY OF SENATE BILL 1531- *HOAs; Assessments; Costs*

This law amends ARS 33-1256 and ARS 33-1807 and therefore applies to both condominiums and planned communities. It makes the following changes:

The law increases the time to enforce a lien from three to six years. This means your association can foreclose an assessment lien on an owner for up to six years of unpaid assessments. This is a positive development as it allows the association the opportunity to collect more money through a foreclosure lawsuit.

For a delinquent account for unpaid assessments or charges related to unpaid assessments, the Association shall provide the following written notice to the owner at the owner's address as provided to the Association at least thirty days before authorizing an attorney, or a collection agency that is not acting as the Association's managing agent, to begin a collection action on behalf of the Association:

Your account is delinquent. If you do not bring your account current or make arrangements that are approved by the association to bring your account current within thirty days after the date of this notice, your account will be turned over for further collection proceedings. Such collection proceedings could include bringing a foreclosure action against your property.

The notice shall be in boldfaced type or all capital letters and shall include the contact information for the person that the owner may contact to discuss payment. The notice shall be sent by certified mail, return receipt requested, and may be included within other correspondence sent to the owner regarding the owner's delinquent account.

Beginning January 1, 2020, except for Condominiums/Planned Communities that have less than fifty units/lots and does not contract with a third party for management services on behalf of the Association, the Association shall provide a statement of account in lieu of a periodic payment book to the member with the same frequency that assessments are provided for in the declaration. The statement of account shall include the current balance due and immediately preceding ledger history. If the Association offers the Statement of account by electronic means, an owner may opt to receive the statement electronically. The Association may stop providing any further statements to a member if a collection activity begins regarding that member's unpaid account. After the collection activity begins, an owner may request statements of account by written request to the Attorney or collection agency. Any request by an owner for a statement of account after collection activity begins by an attorney or a collection agency that is not acting as the Association's managing agent must be fulfilled by the attorney or the collection agency responsible for the collection.

The statement of account provided by the attorney or collection agency responsible for the collection shall include all amounts claimed to be owing to resolve the delinquency through the date set forth in the statement, including attorney fees and costs, regardless of whether such amounts have been reduced to judgment.

SUMMARY OF SENATE BILL 1309- *Renewal of Judgments; Applicability*

In 2018, the legislature increased the amount of time to renew a judgment from five to ten years. This year, the legislature provided clarification. Any judgment entered after August 2, 2013 is valid for ten years from the date the judgment was entered. Any judgments entered prior to August 2, 2013, that were not renewed before August 2, 2018, are considered expired.

SUMMARY OF HOUSE BILL 2151- *Satisfaction of Judgement; Justice Courts*

This law mandates that a Satisfaction of Judgment be filed within forty (40) days of the judgment being satisfied. If the Satisfaction is not filed in that time period the opposing party may file a motion to compel a Satisfaction of Judgment. If the motion is granted the Judgment is deemed satisfied. A Judge may compel the moving party to post a bond with the court in the amount of the judgment. This law applies to small claims court, justice court and superior court judgments.

SUMMARY OF HOUSE BILL 2672- *Vacation Rentals; Short-Term Rentals; Regulation*

Over the past few years, there has been a dramatic increase in the number of rental properties, including short-term vacation rentals in Arizona. As background information, in 2016, the legislature adopted a law that prohibited cities, towns, and counties in Arizona from restricting short-term rentals with the exception of a few purposes such as the protection of the public's health or safety. However, the changes in the laws in 2016 did not prohibit an Association from regulating the use of short-term rentals. Many associations passed CCR amendments limiting or prohibiting short term rentals in response to this 2016 law.

The 2019 law adds a requirement that the owner of a short-term rental property provide the city or town and the county, with contact information for the owner or owner's designee who is responsible for responding to complaints in a timely manner before offering to rent the property. In addition, the 2019 law states that a short-term rental may not be used for non-residential uses including for special events or for a retail, restaurant, banquet space, event center or other similar use.

SUMMARY OF HOUSE BILL 2230- *Writ of Garnishment; Certified Mail*

This law amends ARS 12-1574 and ARS 12-1577 relating to bank garnishments.

It allows the judgment creditor to serve a bank garnishment certified mail, return receipt requested. The certified mail, return receipt requested, may be sent to the garnishee's regular place of business, or to the garnishee's statutory agent or at a location that is designated by the garnishee. If served by certified mail, the effective date of service is the date of receipt by the garnishee or the garnishee's statutory agent.

SUMMARY OF HOUSE BILL 2639- *Timeshares; Disclosures*

This law has many changes and therefore if it is of interest, please check out the following link to see all of the changes https://apps.azsos.gov/apps/publicservices/LegislativeFilings/PDFs/2019/54th_Legislature_1st_Regular_Session/CH_2_45.pdf

A purchaser of a timeshare may rescind the purchase agreement without cause in a written notice by midnight of the tenth day after the day the purchaser executed the purchase agreement. This is an extension in the law from seven to ten days.

Before entering into an agreement or contract for the sale of a timeshare interest, the seller must provide the purchaser a separate document that discloses a number of things, including: the duration of the timeshare, if there is no set duration it must state that the agreement may extend through the course of the purchasers lifetime; A good faith estimate of the total potential financial obligation during the first year of ownership, including all potential assessments.

SUMMARY OF HOUSE BILL 2639- *Timeshares; Disclosures (continued)*

If the amount of the assessments is unknown it must disclose that the purchaser will be required to pay assessments in addition to the disclosed purchase payment and that the amount of those assessment is unknown; it should include a statement of the assessments levied for the previous three years if available and a good faith estimate based on the highest assessment listed during those three years; and a statement that there is no limit on the assessments that the purchaser may be charged in the first year of ownership and; a list of all fees including estimated taxes, utility fees, special assessments and regular assessments shall also be included.

The purchaser must sign the separate disclosure and verify that the purchaser has read and understands the separate disclosure. Both the seller and the purchaser shall have a copy of the separate disclosure.

SUMMARY OF HOUSE BILL 2687- *Condominiums; Terminations; Appraisals*

This law applies to the termination of a condominium pursuant to ARS 33-1228.

At least thirty days before recording a termination agreement, the board of directors of the association shall convene a regular or special meeting of the board of directors at which a person or entity that purports to have the agreement of at least eighty percent of the votes in the association, or any larger percentage if required, shall produce and make available to the unit owners copies of a signed notarized statement that the owner of a unit has executed a termination agreement. The person or entity shall produce copies of a statement for each unit owner who has agreed to the termination, or may produce the signed termination agreement that includes a sufficient number of unit owners. Any meeting called pursuant to this subsection shall be noticed as otherwise provided by law, except that the board may not take action by written consent or any other method that does not provide for an actual meeting that is open to all the unit owners. Any termination agreement that is recorded without full compliance with this subsection is invalid.

The respective interests of unit owners are the fair market values of their units, limited common elements and common element interests immediately before the termination, as determined by their pro rata share of any monies in the association's reserve fund and the operating account and an additional five percent of that total amount for relocation costs.

In order to determine total fair market values, the law also allows a unit owner to obtain a second independent appraisal at the unit owner's expense and, if the unit owner's independent appraisal amount differs from the association's independent appraisal amount by five percent or less, the higher appraisal is final. If the total amount of compensation owed as determined by the second appraiser is more than five percent higher than the amount determined by the association's appraiser, the unit owner shall submit to arbitration by an arbitrator affiliated with a national arbitration association and under the rules of that association at the association's expense and the arbitration amount is the final sale amount. As part of the arbitration process, the appraisers shall fully disclose their appraisal methodologies and shall disclose any other transaction occurring between the buyer and the sellers. An additional five percent of the final sale amount shall be added for relocation costs.

SUMMARY OF SENATE BILL 1094- *Planned Communities; Applicability Recreational Center*

This law amends ARS 33-1801 and ARS 33-1802 of the Planned Communities Act.

The new language in ARS 33-1801 provides that the Planned Communities Act does not apply to a nonprofit corporation or unincorporated association of owners that was created or incorporated before January 1, 1974 and that does not have the authority to enforce CC&Rs.

SUMMARY OF HOUSE BILL 1094- *Planned Communities; Applicability Recreational Center*
(continued)

If the foregoing two conditions are met, and if the nonprofit corporation or unincorporated association of owners has the power under recorded covenants to assess members for costs and expenses, then a majority of all of the members of such nonprofit corporation or unincorporated association of owners can elect in writing to subject the nonprofit corporation or unincorporated association of owners to the Planned Communities Act. The written approval of a majority of the members shall be recorded with the County Recorder in the County where the real estate development is located. The notice is effective the date that the notice is recorded.

The new language in ARS 33-1802 adds to the definition of “Association” as follows, “[a]ssociation does not include a nonprofit corporation or unincorporated association of owners that is created or incorporated before January 1, 1974 and that does not have the authority to enforce covenants, conditions or restrictions related to the use, occupancy or appearance of the separately owned Lots, Parcels or Units in a real estate development, unless the nonprofit corporation or unincorporated association of owner elects to be subject to this chapter pursuant to section 33-1801, subsection D.”