



2015 Legislative Update

4 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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2015 ARIZONA LEGISLATIVE UPDATE REGARDING COMMUNITY ASSOCIA-

The 2015 Arizona legislature adjourned on April 3, 2015. Although there was no new legislation, there were several changes to existing laws that affect planned communities and condominiums. Below is a summary of those bills.

These statutes become effective 91 days after the date of adjournment (unless otherwise noted) which is July 3, 2015.

SUMMARY OF SENATE BILL 1048

SB 1048 amends A.R.S. Section 12-302 and provides that a court may refuse to allow a deferment of court fees and costs if the civil lawsuit was brought by an unrepresented person who was previously declared to be a vexatious litigant by any court. A.R.S. Section 12-3201 provides that any party to the lawsuit may ask the court to determine that a person is a vexatious litigant, or the court on its own may make that determination. This bill amended that statute to add a provision allowing any party to a lawsuit to make an amended request to declare a person a vexatious litigant if the court previously refused to make that determination or never ruled on a previous request and the person making the request has new information or evidence that is relevant to that determination even if there is no pending litigation before the court.

This bill will become effective on December 31, 2015.

SUMMARY OF SENATE BILL 1064

SB 1064 amends A.R.S. Section 12-3251 as it pertains to service of a lawsuit and limits a process server to attempting service on a defendant to only one time daily. This bill also amends A.R.S. Section 28-1602 and allows service to be made by certified mail, with a copy mailed by regular mail and posted on the front door of a residence or business and a residents garage door, if accessible. Service is complete when the process server files the mailing receipt and proof of posting with the court. The effect of this change is that since proof of posting is required, the process server may sign an affidavit and include a photograph of the door with the summons posted on it.

SUMMARY OF SENATE BILL 1091

SB 1091 affects planned communities and condominiums. It amends A.R.S. Section 33-1243 (condominiums) and A.R.S. Section 33-1813 (planned communities). With regard to voting, the amendment clarifies that those members whose votes count for purposes of removing a director are those who are eligible to vote at the time of the meeting. Previously, these statutes provided the votes would be cast by the members entitled to vote. The effect of this legislation is that if Governing Documents provide that a member's right to vote is suspended during any time that he/she is delinquent in the payment of assessments or is in violation of any provision of the Governing documents, then that person is not eligible to vote.

SUMMARY OF HOUSE BILL 2032

HB 2032 A.R.S. Section 41-3019 established the Office of Administrative Hearings (OAH) in 1995. The OAH has jurisdiction to hear cases filed by an association member against an association alleging violations of the governing documents or statutes affecting such organizations. The OAH was slated for dissolution on July 1, 2015.

The bill amends A.R.S. Section 41-3019.05 to provide that the OAH terminates on July 1, 2019.

SUMMARY OF HOUSE BILL 2084

HB 2084 requires condominium and planned community associations to file contact information with the Arizona Corporation Commission (ACC) instead of recording that information with the county in which the association is located. A.R.S. Section 33-1256 (condominiums) and A.R.S. Section 33-1807 (planned communities) both require that the respective association record a notice with the county recorder that provides the name of the association, contact information for the designated agent or manager, as well as information on the recorded Declaration of Covenants, Conditions and Restrictions and amendments. These requirements in the two statutes are deleted and the nonprofit corporation statute is amended by adding a requirement in A.R.S. Section 10-11622 that similar information is included in a separate statement filed with the annual report submitted to the ACC. The information must include the name of the designated agent or management company, the association's address and telephone number, email address, website (if any) for the association or management company and fax number. If the information changes, then an amended statement must be filed with the ACC within 30 days of the change. Note that this requirement only pertains to associations that are corporations. then an amended statement must be filed with the ACC within 30 days of the change.

SUMMARY OF HOUSE BILL 2311

HB 2311 pertains to any judgments obtained in Arizona and would apply once the association has obtained a judgment against an owner for unpaid assessments or other sums due the association, including attorney fees or a judgment requiring compliance with the governing documents. A.R.S. Section 33-961 was amended to clarify the language making it clear that once a certified copy of a judgment is recorded, it becomes a lien on any real property located in that county. A.R.S. Section 33-962 which pertains only to judgments entered by a municipal or justice court was amended to require that the clerk of the justice court issue a certified copy of the judgment which is then recorded and can be enforced in the same manner as a judgment.

SUMMARY OF HOUSE BILL 2578

HB2578 makes amendments to the purchaser dwelling actions, which includes construction defects. Current law gives a seller the opportunity to repair or replace any alleged defects. A seller is defined as a person, corporation or other organization, including a construction professional that is engaged in the business of designing, constructing or selling dwellings. The current law requires a purchaser to notify the seller at least 90 days before filing a dwelling action by certified mail, return receipt requested, specifying in reasonable detail the basis of the dwelling action. After the seller receives notice, the seller may inspect the dwelling to determine what repairs or replacements are necessary to remedy the defects. Within 60 days after the seller receives this notice, the seller is required to send the purchaser a good faith written response to the purchaser's notice by certified mail, return receipt requested. The response may include an offer to repair or replace any alleged defects, to have the alleged defects repaired or replaced at the seller's expense or to provide monetary compensation to the purchaser. Under current law, if the seller fails to provide a written response to the purchaser's notice within 60 days, the purchaser may file a dwelling action.

A.R.S. Section 12-1361 was amended to add definitions of construction codes (the building, plumbing, electrical, etc. codes of the municipality having jurisdiction over the construction of the dwelling), construction defect (a material deficiency in the design, construction, manufacture, repair, alteration, remodeling or landscaping of a dwelling, resulting from a violation of the construction codes, the use of defective materials or a failure to adhere to generally accepted workmanship standards in the community), construction professional (an architect, contractor, subcontractor, developer, builder, builder vendor, supplier, engineer or inspector that furnishes the design, supervision, inspection, construction or observation of the construction of any improvement to real property), and material deficiency (a deficiency that impairs the structural integrity, the functionality or appearance of a dwelling at the time of a claim or one that is reasonably likely to actually impair the structural integrity, the functionality or appearance of the dwelling in the foreseeable future if not repaired or replaced).

The amendments to A.R.S. Section 12-1362 provide that once the seller receives the notice from the purchaser, the seller has the right to repair or replace any alleged construction defects after it sends or delivers written notice to the purchaser of its intent to repair or replace the alleged construction defects. The seller is not required to repair or replace all of the alleged construction defects. ***The emphasis of these amendments is to allow the seller to make these repairs and replacements before a purchaser can file an action and in fact, the purchaser is barred from filing a dwelling action until the seller completes all of the intended repairs and replacements.***

A.R.S. Section 12-1363 gives the seller 60 days to respond to the purchaser's notice of the alleged construction defects. The response can provide the purchaser with the notice of its intent to repair or replace any alleged construction defects or that it will provide the purchaser with monetary compensation. This written notice must describe, in reasonable detail, all of the repairs or replacements which the seller intends to perform and a reasonable estimate of the date by which the repairs or replacements will be made. The amendments to A.R.S. Section 12-1363 make it clear that the seller can offer monetary compensation or other consideration instead of or in addition to the repair or replacement. The purchaser can accept or reject an offer of monetary or other compensation, other than the repair or replacement and if it is reject-

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SUMMARY OF HOUSE BILL 2578, CONTINUED
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ed, the purchaser can proceed with a dwelling action at such time as the seller completes any repairs or replacements the seller intends to make. The parties can negotiate a release if an offer for compensation is accepted.

The statutes pertaining to dwelling actions were further amended to set out a procedure for the repair and replacement of the alleged defects and those amendments include various time lines for performance of that work. If the purchase does not give the seller the right to repair and/or replace the alleged defective items and proceeds with the lawsuit, then the seller has the right to have that case dismissed.

The statute includes provisions regarding the use of alternate dispute resolution procedures if set out in the purchase contract and prescribes requirements for those contractual provisions.

Amendments were also made to A.R.S. Section 33-2001, et. seq., pertaining to homeowners association dwelling actions by requiring that additional information is furnished to the owners by the association prior to filing any such action and by the association giving the seller the opportunity to repair and/or replace the alleged construction defects.

Due to the substantial amendments to these statutes, any association that believes it may have a potential construction defect case should contact this office for information on how to proceed.