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**COMMUNITY ASSOCIATION
GUIDE TO
THE 2011 CHANGES IN THE LAWS
AFFECTING COMMUNITY
ASSOCIATIONS**

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I. INTRODUCTION

This Community Association Guide to the 2011 Changes in the Laws Affecting Community Associations provides a summary of the recent revisions to the Arizona Planned Community Act, the Arizona Condominium Act and other relevant Statutes that affect Arizona Community Associations. This Guide is also available for download from our website www.shawlines.com.

PLEASE NOTE THAT THE BELOW CHANGES WILL TAKE EFFECT ON JULY 19, 2011.

Also, Shaw & Lines will be hosting our 2011 Changes in the Law Lunch and Learn Lecture at Noon (check in at 11:30) on Monday, May 23, 2011 at The Hilton Phoenix Airport - 2435 South 47th St., Phoenix, AZ (State Route 143 & University). All Community Association Managers and Board Members may attend at no charge. If you would like to attend, please call 480-456-1500 or e-mail mary@shawlines.com.

II. CHANGES IN THE LAWS REGARDING BOARD MEETINGS, COMMITTEE MEETINGS AND OTHER ASSOCIATION MEETINGS.

A. Changes in the law concerning the videotaping and audio taping of Board Member Meetings – HB 2245 Revised A.R.S. § 33-1804 (Planned Communities) and Revised A.R.S. § 33-1248 (Condominiums).

House Bill 2245 adds new provisions to A.R.S. §33-1804(A) (Planned Communities) and A.R.S. §33-1248(A) (Condominiums) regarding the audio taping and videotaping of Board Meetings. The new law states that individuals attending Board Meetings may audio tape or videotape those portions of the meetings of the Board of Directors and meetings of the members (such as annual meetings or special meetings of the members) that are open (meaning executive session meetings may not be recorded).

The Board of Directors of the Association may adopt reasonable rules governing the audio taping or videotaping of open portions of the above listed meetings; however, any rules created shall not preclude such audio taping or videotaping by those attending.

Thus, while the Association may create rules, the Association must keep in mind that if a rule is too intrusive, it may be struck down by a court. Reasonable Rules concerning audio taping or videotaping could include:

1. A Rule requiring that anyone desiring to record a meeting inform the Association at least 48 hours prior the meeting detailing whether they will audio tape or video tape the meeting;

2. A Rule requiring that owners provide the Association with a copy of the recording made within 48 hours of the meeting;
3. A Rule stating that the audio or video recording of a meeting may not be intrusive or otherwise interfere with the conducting of the meeting.

B. Changes in the law concerning the conducting of Association Meetings – HB 2609 - Revised A.R.S. § 33-1804 (Planned Communities) and Revised A.R.S. § 33-1248 (Condominiums).

House Bill 2609 adds several new provisions to A.R.S. §33-1804 (Planned Communities) and A.R.S. §33-1248 (Condominiums) as listed below.

i. Location of Association Meetings.

House Bill 2609 now requires that all Association meetings be held within the State of Arizona. This means that the origin of the meeting must be in Arizona. Teleconferences are still allowed so long as the call originates in Arizona.

ii. Committee Meetings Must Be Noticed, have an Agenda and Members must be allowed to attend and participate.

House Bill 2609 now requires that Associations provide members with notice of regularly scheduled committee meetings (i.e. architectural review committee, landscape committee, etc.) and provide members with the right to address the Committee after the Committee has discussed an item on the agenda for the meeting but prior to the Committee voting on the item.

iii. Prior to Board Meeting – The Requirement for an Agenda.

House Bill 2609 requires that an agenda be prepared prior to Board meetings and “shall be available to all owners attending.” The requirement to have an agenda also means that an Association must stick to the agenda and not deviate from it.

iv. During the Board Meeting - Members must be allowed to attend and participate.

House Bill 2609 now requires the Association to provide members with the right to address the Board of Directors after the Board has discussed an item on the agenda for the meeting but prior to the Board voting on the item.

v. During the Board Meeting – Board quorum and what is a Board Meeting.

House Bill 2609 states any quorum of the board of directors that meets informally to discuss association business, including workshops, shall comply with the open meeting and notice rules without regard to whether the board votes or takes any action on any matter at that informal meeting.

Therefore, House Bill 2609 now defines any gathering of a quorum of Board members where Association business is discussed to be a Board Meeting that must be properly noticed and have an agenda prepared.

vi. During the Board Meeting - Executive Session Meetings – Addition of Executive Session Topic.

House Bill 2609 also adds an additional topic that may be discussed in executive session, which is a closed meeting of the Board. House Bill 2609 states that the following may be discussed in executive session:

Discussion of a unit owner’s appeal of any violation cited or penalty imposed by the association except on request of the affected unit owner that the meeting be held in an open session.

vii. During the Meeting – Emergency Board Meetings.

House Bill 2609 also provides new rules regarding emergency meetings of the Association. The new law states that an emergency meeting of the board of directors may be called to discuss business or take action that cannot be delayed until the next regularly scheduled board meeting. The minutes of the emergency meeting shall state the reason necessitating the emergency meeting. The minutes of the emergency meeting (yes, minutes must now be taken at emergency board meetings) shall be read and approved at the next regularly scheduled meeting of the board of directors.

viii Public Policy Regarding Open Board Meetings.

House Bill 2609 also outlines the Legislature’s “public policy” belief that an Association should err on the side of open meetings instead of closed meetings. This means that the Board of Directors must do all they can to ensure that they only meet in executive session or have an emergency meeting when the applicable statutory allowance is at play.

III. CHANGES IN THE LAWS REGARDING SIGNS IN THE ASSOCIATION.

A. HB 2609 – For Sale, For Rent and For Lease Signs – Revised A.R.S. § 33-1808 (Planned Communities) and Revised A.R.S. § 33-1261 (Condominiums).

HB 2609 now restricts Associations from charging a fee for the installation or placement of a for sale, a for lease, or a for rent sign. Additionally, failure by the Association or its managing agent to abide by all regulations regarding for sale, for lease and for rent signs would result in the Association potentially losing its Association lien on the affected property for six months. However, the Association may restrict the use of non-commercially produced for sale, for lease and for rent signs.

B. HB 2609 & SB 1540 (Caution, these new laws conflict) – Political Signs – Revised A.R.S. § 33-1808 (Planned Communities) and Revised A.R.S. § 33-1261 (Condominiums).

HB 2609 & SB 1540 both discuss political signs and have conflicting provisions. Therefore, we discuss the most conservative interpretation of the two new laws.

This new law states that Associations shall not prohibit the indoor or outdoor display of a political sign by an association member on that member's property, except that an association may prohibit the display of political signs earlier than seventy-one days before the day of an election and fifteen 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 conforms 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 nine square feet. All types of political signs, both commercially made and handmade, are allowed.

C. SB 1540 - Political Solicitation – Revised A.R.S. § 33-1808 (Planned Communities) and Revised A.R.S. § 33-1261 (Condominiums).

This new law allows for the door-to-door solicitation regarding political candidates and causes on property within the Association “normally open to visitors within the association,” except that an Association may:

1. Restrict or prohibit door to door political activity regarding candidates or ballot issues from sunset to sunrise.
2. Require the prominent display of an identification tag for each person engaged in the activity, along with the prominent identification of the candidate or ballot issue that is the subject of the support or opposition.

D. SB 1326 – Addition of Gadsden Flag to Allowed Flags – Limitation on Number of Flags and Flag Pole Height – Revised A.R.S. § 33-1808 (Planned Communities) and Revised A.R.S. § 33-1261 (Condominiums).

This new law allows members to fly the Gadsden flag in addition to the other flags allowed by the statute. Moreover, the Association’s rules may limit the member to displaying no more than two flags at once and may limit the height of the flagpole to no higher than the height of the rooftop of the member's home.

The Association may no longer prohibit the installation of a flagpole in the front yard or backyard of the member's property.

IV. CHANGES IN THE LAWS REGARDING RESALE AND DISCLOSURE STATEMENTS AND OTHER ASSOCIATION STATEMENTS.

A. SB 1149 – Requirement to provide status of owner account - Revised A.R.S. § 33-1807 (Planned Communities) and Revised A.R.S. § 33-1256 (Condominiums).

This new law requires the Association to process and respond to a request for an owner's statement of account within 10 days after receipt of a written request by an owner, his representative or a lien holder. **Failure to provide this information within 10 days will result in the lien being extinguished regarding the requesting property.** Any information is binding upon the Association. As such, it is important that the statement of account be accurate.

B. SB 1149 – Requirement regarding resale and disclosure statements- Revised A.R.S. § 33-1806 (Planned Communities) and Revised A.R.S. § 33-1260 (Condominiums).

This new law adds new requirements to the resale and disclosure process. The new law allows a purchaser or their authorized agent to engage in the resale and disclosure process. The new law also allows the Association to respond to a request in either paper or electronic format.

In addition to the current required resale and disclosure information, Associations must now also provide a statement summarizing any pending lawsuits, except those suits relating to the collection of assessments owed by members other than the selling member, in which the association is a named party, including the amount of any money claimed. This requirement would include enforcement actions.

Failure to provide the required resale and disclosure information within the 10 day timeframe will result in the extinguishing of any lien for any unpaid assessment then due against that property.

Also, the new law limits what may be charged to process a resale and disclosure request. The new law states that an Association may charge the member a fee of no more than an aggregate of four hundred dollars (\$400.00). An Association may charge a rush fee of no more than one hundred dollars (\$100.00) if the rush services are required to be performed within seventy-two hours after the request for rush services, and may charge a statement or other documents update fee of no more than fifty dollars (\$50.00) if thirty days or more have passed since the date of the original disclosure statement or documents were delivered.

Additionally, the new law states that if the aggregate resale and disclosure fee is less than four hundred dollars (\$400.00) on January 1, 2010, the fee may increase at a rate of no more than twenty per cent per year based on the immediately preceding fiscal year's amount not to exceed the four hundred dollar aggregate fee.

Finally, an association that charges or collects a fee in violation of this section is subject to a civil penalty of no more than one thousand two hundred dollars (\$1,200.00).

V. CHANGES IN THE LAW CONCERNING ADMINISTRATIVE LAW JUDGE HEARINGS – SB 1148 - REVISED A.R.S. § 44-2141.

Senate Bill 1148 purports to bring back the Administrative Law Judge procedures recently held unconstitutional. The new Arizona Law allows an owner or association to bring disputes concerning the association's governing documents or Arizona laws that apply to the association, before an Administrative Law Judge. The new change does not require disputes to be brought before an Administrative Law Judge. It simply provides an opportunity for an owner or the association to bring disputes before an Administrative Law Judge.

The new statutes also discuss the procedures required to file an action before an Administrative Law Judge and also provides the Judge with the power to set any applicable filing fee and impose penalties should the Judge determine a violation has occurred.

The new statutes allow an Association's manager or Board member to represent the association before the Administrative Law Judge. Also, if an Association chooses to use an attorney, the new statutes do not provide for the recouping of attorney's fees.

VI. CONCLUSION AND APPENDIX

Should you have any questions regarding the Guide, please feel free to attend our 2011 Changes in the Law Lunch and Learn Lecture or e-mail ashaw@shawlines.com or miles@shawlines.com.

<p>This document is intended to provide general information. It does not and cannot provide specific legal advice. For additional information or answers to questions, you may contact our office at 480-456-1500.</p>
