



August 2006

Subject: Legislative Changes

Dear Board Members,

Here we are again! It seems like this is becoming an annual event where we, at Rossmar & Graham, as part of our function as advisors to our Board of Directors, need to explain the latest legislative changes that have been signed into law by the Arizona Governor. The laws covered in this letter are SB1007, SB1008, SB1005, SB1138, HB2205, HB2824 and become effective September 21, 2006. This letter is meant to advise and explain certain aspects of the new legislation. It is in no way an attempt to give legal advice. Any specific legal questions should be addressed to the association's attorney.

The topics that we are addressing in this letter are:

1. SB 1007- Notice of Violations
2. SB 1007/ SB 1008 Foreclosures
3. SB1007-Books and Records Inspection
4. SB 1007- Closed Meetings
5. HB 2205 Parking – Planned Communities Only
6. SB 1055- Flags
7. SB 1138 Conveyance of Real Property
8. HB 2824 Administrative Law Judges

- **Notice of Violations-** SB1007 and HB2824 modify ARS 33-1242 (Condominium Statutes) as well as ARS 33-1802 (Planned Community Statutes). Before an association can take action against the unit owner to enforce the provisions of the Association documents, regarding the *condition* of the *owner's* property, it must provide written notice. This obligates the association to provide written notice for ANY action, even if a fine is not imposed and includes self-help remedies. In most cases this is already being done so this is not a major problem. However, the new law now requires the following information to be provided to the owner:

1. The provision of the 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 persons who observed the violation; and
4. A description of the process the unit Owner must follow to contest the notice.

Because most associations have warning letters or friendly reminders (which are usually successful) as the first notice, the above information is not included in these letters. However, the law allows for the owner to respond to the violation notice by, sending a written response by certified mail within 10 business days after the date of the violation to the recorded address of the association or the address on the violation notice. Once the certified letter has been received by the association, they have 10 business days to respond to the owner with the above four (4) items in writing (certified letter is not required). During the original 10-day period, the association cannot pursue any actions until the 10 days lapse. Rossmar & Graham is presently composing a global response letter which will be utilized in the event of receipt of the certified letter from the homeowner. We are also developing a complaint form for members to utilize to report violations in the community in order to be compliant with these new laws.

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- **Foreclosures-** SB 1007 and SB 1008 modify ARS 33-1256 (Condominium Statutes) as well as ARS 33-1807 (Planned Community Statutes). The Association can foreclose upon a valid lien only if either:
 1. The owner has been delinquent in the payment of monies secured by the lien (excluding the collection fees, attorney fees and late charges) for at least one (1) year OR
 2. The amount of delinquent monies secured by the lien (excluding collection fees, attorney fees and late charges) is one-thousand two hundred dollars (\$1,200) or more,

Whichever occurs first.

Also, a community must foreclose if it ever chooses/opts to foreclose, within three years (3).

- **Books and Records Inspections-** SB1007 amends ARS 33-1258 (Arizona Condominium Act) and ARS 33-1805 (Planned Communities). The association cannot charge a member for making documents available for review. What this means is though the association may be charged a fee for this additional service, this charge cannot be passed on to the member. Also, the association can only charge \$.15 per copy per page and has 10 business days to provide the requested records.
- **Closed Meetings-** SB1007 Removes documents relating to "contemplated litigation" from being shielded from members. However Board of Directors can continue to meet in closed meetings to discuss "contemplated" litigation. Also, documents related to "pending" litigation can still be shielded.
- **Parking-** HB2205 amends ARS 33-1809 to include "municipal utility" vehicles used for repair or maintenance of electrical or water infrastructure to the list of vehicles that a planned community cannot prohibit from being parked on the streets or driveway if the vehicle is required to be available at designated periods at a person's residence as a condition of employment. The exception "only applies" if the resident is required to prepare for emergency deployments, the vehicle weight rating is 20,000 pounds or less, and the vehicle is owned by the municipal utility and bears the official emblem or other visible designation of the municipal utility.
- **Flags-** SB1055 amends ARS 33-1261 (Arizona Condominium Act) and ARS 33-1808 (planned communities) to include the following flags in addition to the American flag to the list that communities cannot prohibit for outdoor display: United States Army, Navy, Air Force, Marine Corps, Coast Guard, POW/MIA, Arizona State Flag and the Arizona Indian Nations Flag.
- **Conveyance of Real Property-** SB1138 adds a new section to ARS 33-1252.01 to the Arizona Condominium Act. This would require an 80% owner vote to convey or sell any real property owned by the association. This will have a very limited effect because it is rare for a condominium association to own real property. (In condominiums common elements are owned in common by the owners of units).
- **Administrative Law Judges-** HB2824 modifies ARS 41-2198 and applies to both Condominiums and planned communities. This bill allows for an owner or an association to request a hearing before an Administrative Law Judge concerning violations of the condominium or planned community documents or violations of state statutes that regulate these entities. This statute only applies to disputes between the owner and the association and not for disputes between owners, developers or other third parties. In order for an owner to have the ALJ hear a complaint, the process will be as follows:
 1. File a petition with the Arizona Department of Building and Fire Safety (Department)
 2. The Department will mail a certified copy of the petition along with a notice to the entity complained about (Respondent). The petition will be mailed to the community association, the board members individually, the officers, the manager, or the management company.
 3. The Respondent has 20 calendar days from the date the department mails the petition to the respondent, to respond or answer the allegations.
 4. Failure to respond or "answer" the petition is deemed admission of the allegations and the department shall issue a default judgment against the respondent.
 5. If the Department after review of the petition and response deems the matter meritorious, will refer the matter to the Office of Administrative Hearings (employs the ALJs that will hear the disputes).

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MAJOR CONCERNS ABOUT ALJ HEARINGS

- ❑ **Appeals-** You can appeal to the Superior Court however the Superior Court must defer to the ALJ unless the decision is "not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion."
- ❑ **Insurance-** A determination needs to be made whether to submit a claim to the association's insurance carrier. Failure to advise the carrier may result in loss of coverage or refusal to cover claim.
- ❑ **Indemnification-** Indemnity issues arise when a community association, board member or officer, manager, or management company is named in the petition. A determination must be made if the association is obligated to defend any of the above when the petition is received.
- ❑ **Representations-** Because of the Rules of the Supreme Court, Rule 76 governs the unauthorized practice of law, Rossmar and Graham will not represent any associations in any appeals. We recommend that all associations contact their General Counsel to determine who in fact should represent the association in these matters.

In discussing the new legislation and in consultation with several of the HOA attorneys we feel the major trouble spot is the Administrative Law Judge hearings. The timing issue will be a big concern. If a director should receive the notice and is on vacation or out of town for some reason, there are large repercussions.

We hope the above helps in understanding the new major requirements of the new legislation.

Should you have any questions please feel free to contact the Vice President for your Region.

Sincerely,

ROSSMAR & GRAHAM
Caring for Communities

Michael Kuzmin, West Valley,
Vice President

Lori Loch-Lee, South East Valley,
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Doug Austin, North East Valley
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