

**2014 LEGISLATIVE
UPDATE
WILL BECOME EFFECTIVE ON July 24, 2014**

SENATE BILL 1482: An Omnibus Bill that changes several provisions of the Planned Community Act, the Condominium Act, and several other statutes that affect community associations. We are addressing them in order of importance to our existing clients:

Voting by Email and Facsimile Delivery

1. SB1482 amends section 33-1250 of the Condominium Act and section 33-1812 of the Planned Community Act. SB1482 provides that in addition to providing for voting in person and by absentee ballot, the association may provide for voting by some other form of delivery, including the use of electronic mail and facsimile delivery.
2. Votes cast by absentee ballot or other form of delivery, including the use of electronic mail and facsimile delivery, are valid for the purpose of establishing a quorum.

PB&J: Associations *must* continue to provide for voting in person and by absentee ballot. The above provisions allow that an association *may* also provide for voting by other forms of delivery, including the use of electronic mail and facsimile delivery. We advise that the Association require Owners to fill out a form similar to the attached specifically authorizing use of a particular email address by the Association for contacts with the owner. We advise that if an association allows for voting by email, the association require the entire ballot be scanned and emailed to properly authenticate the ballot and for ease of disclosure in the event a Member asks to see the ballots. Also, it is not inconceivable that a person could log onto, or hack into, the voter's computer and vote by email. Voting by email may be cumbersome and not practical for large associations. It does however open the door to voting on a website. There are vendors who will set up a site with adequate measures to ensure authenticity and reliability of the votes.

Rental Property

1. SB1482 adds section 33-1260.01 to the Condominium Act and section 33-1806.01 to the Planned Community Act. SB 1482 places several new restrictions on community associations.
2. A property owner may use his or her property as a rental property unless prohibited by the Declaration. The property owner shall use the property in accordance with the Declaration's rental time period restrictions.

PB&J: If an association's Declaration does not prohibit rentals, and the association wishes to do so, the association must amend the Declaration. The association may not prohibit rentals

via resolution or rule.

3. A property owner may designate, in writing, a third party to act as the property owner's agent with respect to all association matters relating to the rental property. The designated agent may not vote at elections or serve on the Board. On delivery of the written designation, the association is authorized, but not obligated, to conduct association business with the designated agent. Any notice given to the designated agent constitutes notice to the property owner.

PB&J: If the property owner designates an agent in writing, the association *may* conduct association business with the designated agent. Associations are not obligated to do so, and may continue to deal directly with the property owner.

4. Associations are prohibited from requiring a property owner or designated agent to disclose any information regarding a tenant other than:
 - A. The name and contact information for any adults occupying the property;
 - B. The time period of the lease, including the beginning and ending dates of the tenancy;
 - C. A description and the license plate numbers of the tenants' vehicles; and
 - D. If the planned community is an age restricted community, a government issued identification that bears a photograph and that confirms that the tenant meets the community's age restrictions or requirements.
5. SB1482 provides that an association is prohibited from doing any of the following:
 - A. Requiring a copy of the tenant's rental application, credit report, lease agreement, rental contract, or other personal information;
 - (i) The association may acquire a credit report on a person in an attempt to collect a debt.
 - B. Requiring the tenant to sign a waiver or other document limiting the tenant's due process rights as a condition of the tenant's occupancy of the property;
 - C. Prohibiting or otherwise restricting the property owner from serving on the Board of Directors based on the property owner not being an occupant of the property;
 - D. Imposing a fine of more than fifteen dollars (\$15.00) for incomplete or late information requested pursuant to Section 4 above.
6. An association may not charge more than twenty-five dollars (\$25.00) as an administrative fee for each new tenancy, but not for the renewal of an existing lease. The administrative fee shall be paid within fifteen days of the postmarked request.
7. Except for the administrative fee, and fees related to the use of recreational facilities, the association may not assess, levy, or charge a fee or fine, or otherwise impose a requirement on a rental property any differently than on an owner-occupied property.
8. Any attempt by an association to charge a fee, penalty, assessment or charge other than the twenty-five dollar (\$25.00) administrative fee or the fifteen dollar (\$15.00) fine voids the

administrative fee and voids the requirement to provide information pursuant to Section 4 above.

9. SB 1482 does not prohibit an Owner from using a Crime Free Addendum as part of a lease. The new legislation directs Owners to abate criminal activity on the property.
10. The Association may lawfully enforce a provision in its governing documents that restricts the residency of persons who are classified as class two or three sex offenders.

PB&J: SB 1482 restricts the information that an association may require an *Owner* to provide about his or her tenants. SB 1482 does not put any limitations on information that an association may require from the *tenants* themselves. So, if an association asks for additional information from a tenant, such as number of pets, there is an argument that the request will not violate the new statute.

To assist our clients in complying with these new restrictions, we have attached a Tenant Information Form and Rental Rules that conform to the new legislation. The new restrictions will make it difficult for associations to participate in local crime free programs. The new legislation makes clear that an association may not require the Owner to provide a criminal background check. Associations that wish to prohibit certain criminals from renting must perform the checks themselves. Associations may restrict the residency of class two or three sex offenders, but only if the community documents contain that restriction.

Office of Administrative Hearings

1. SB 1482 amends the administrative hearing procedures provided for by A.R.S. §41.2198.01 concerning violations of the association's governing documents or violations of the statutes that govern condominiums or planned communities.
2. If a petition is dismissed at the request of a petitioner before a hearing is scheduled, the filing fee shall be refunded to the petitioner. If a petition is dismissed by stipulation of the parties before a hearing is scheduled, the filing fee shall be refunded to the petitioner.

PB&J: The filing fee for the administrative hearing process is high, and under current law, nonrefundable. A petitioner may be more willing to work with an association to resolve the dispute if they are aware that the filing fee will be refunded upon voluntary dismissal of the petition.

Political Signs in Condominiums

1. SB 1482 amends section 33-1261 of the Condominium Act. These provisions do not apply to planned communities.
2. A condominium association shall not prohibit the indoor or outdoor display of political signs on a Unit Owner's property, including any Limited Common Elements that touch the Unit, other than the roof, but including doors, walls, and patios.
3. A condominium association may continue to prohibit the display of political signs earlier than seventy-one (71) days before an election and later than three (3) days after an election.
4. A condominium association may regulate the size and number of political signs. However, the association may not be any more restrictive than any applicable city, town, or county ordinance that regulates the size and number of political signs on residential property. If there is no such

ordinance, the association shall not limit the number and size of political signs, except that the total aggregate dimensions shall not exceed nine square feet.

5. A political sign is defined as “a sign that attempts to influence the outcome of an election, including supporting or opposing the recall of a public officer or supporting or opposing the circulation of a petition for a ballot measure, question, or proposition or the recall of a public officer.”

PB&J: Please observe that a condominium association’s regulations may not be any more restrictive than any applicable local ordinance. If there is no applicable local ordinance, the condominium association *may not* regulate the number and size of political signs.

Small Claims Actions; Management Services

1. SB1482 amends A.R.S. §22-512 relating to small claims actions. The changes will apply to planned communities and condominiums that have contracted the management services of any lawfully formed entity.
2. SB1482 allows the employees of the association and the employees of the management company to act on behalf of the association by:
 - A. Recording a Notice of Lien or Notice of Claim of Lien of the association against an Owner’s property if:
 - i. The individual is specifically authorized in writing by the association to record liens on behalf of the association and is a certified document preparer;
 - ii. The association is the original party to the lien and the lien right is not the result of an assignment of rights; and
 - iii. The lien right exists by operation of law pursuant to A.R.S. §33-1256 or A.R.S. §33-1807 and is not the result of obtaining a final judgment in an action to which the association is a party.
 - B. Appearing on behalf of the association in a small claims action if:
 - i. The individual is specifically authorized in writing to appear on behalf of the association; and
 - ii. The association is an original party to the small claims action.

PB&J: Employees of an association or employees of a management company may lawfully record a Notice of Claim of Lien in a collection action and may lawfully appear in small claims court actions on behalf of the association.

Requirement of a Planned Community Prohibited

1. SB1482 enacts A.R.S. §9-461.14 and A.R.S. § 11-810 relating to municipalities and counties. SB 1482 prohibits any municipality or county from requiring a developer to establish a planned community. Developers cannot be penalized because a new development does not constitute or include a planned community.
2. A municipality or a county may require a developer to establish a planned community to maintain private, common, or community owned improvements that are approved and installed as part of the plat or development plan. The municipality or county shall not require that an association be formed or operated for any other purpose.
3. A developer is not prohibited from establishing a planned community pursuant to and under the authority of the Planned Community Act. Developers and associations are not prohibited from requesting and entering into maintenance agreements with municipalities or counties.

PB&J: These provisions demonstrate the Legislature's hostility toward planned communities, Architectural Control Committees, and use restrictions. Despite the new legislation, developers will continue to create planned communities that include use restrictions and Architectural Control Committees. We believe that quality developers prefer to build these types of planned communities and will continue to do so. If a community appears shabby because there is no architectural control or any use restrictions, the developer will have a hard time getting top dollar for its product. The legislation is frankly rather silly.

Nuisance Abatement

1. SB1482 amends A.R.S. § 12-991 to provide that if a planned community or a condominium association is affected by a nuisance, the association has standing to bring an action in superior court against the owner, the owner's managing agent, or any other party responsible for the property to abate and prevent the nuisance.
2. A.R.S. § 12-991(A) defines a nuisance as, "residential property that is regularly used in the commission of a crime is a nuisance, and the criminal activity causing the nuisance shall be enjoined, abated, and prevented."

PB&J: If a resident is engaging in criminal activity, an association may now bring an action against the owner of the property to require the owner to abate the criminal activity. This section provides associations with an additional option when dealing with high crime rates and problem tenants.

HOUSE BILL 2477: Amends section 33-1807 of the Planned Community Act and section 33-1260 of the Condominium Act.

1. A.R.S. §33-1807 and A.R.S. §33-1260 provide that associations must provide certain mandatory disclosures upon resale. Associations may charge certain fees for this disclosure. HB 2477 provides that certain transactions are exempt from these mandatory resale disclosures, including:
 - A. A sale in which a public report is issued for subdivided lands pursuant to A.R.S. §32-2183, and a sale in which a public report is issued for a timeshare pursuant to A.R.S. §32-2197.02; and

- B. When the transfer of title has only nominal actual consideration for the transfer of residential property between:
 - i. Husband and wife, or ancestor of the husband and wife; and
 - ii. Parent and child, including natural adopted children and their descendants; and
 - iii. Grandparent and grandchild; and
 - iv. Natural or adopted siblings.

- C. When the transfer of title is for no consideration or nominal consideration:
 - i. By a subsidiary to its parent or from a parent to a subsidiary; and
 - ii. Among commonly controlled entities; and
 - iii. From a member to its limited liability company or from a limited liability company to a member; and
 - iv. From a partner to its partnership, or a partnership to its partner; and
 - vi. From a joint venturer to its joint venture, or a joint venture to its joint venturer; and
 - vii. From a trust beneficiary to its trustee, or a trustee to its trust beneficiary; and
 - viii. From any of the above to a single purpose entity in order to obtain financing.

- D. On recordation of the deed, and at no additional charge, the new Owner shall provide the association with the changes in ownership, including the Member's name, billing address, and phone number. Failure to provide the information shall not prevent the member from qualifying for the exemption.

PB&J: New Owners will be required to notify the association of the change in ownership, which will help to eliminate confusion when family members or other entities use quit-claim deeds to transfer property among themselves. The Association will no longer be permitted to charge the disclosure fees in any of the above scenarios.

HOUSE BILL 2141: Amends A.R.S. §42-13404 relating to the taxation of Common Areas within planned communities. HB 2141 applies to planned communities only.

1. HB 2141 adds a new section to this statute that provides that a County Assessor must automatically consolidate common area parcels within the same taxing district for tax purposes.
2. If, after further review by the County Assessor, the parcel does not meet the definition of a Common Area, the County Assessor may revoke the valuation, and value the parcel according to standard appraisal techniques. If revoked, the association retains the right to request the common area valuation.

PB&J: Planned communities are no longer required to apply to the County Assessor for Common Area parcel consolidation. Planned communities may still request consolidation.

SENATE BILL 1184: Amends section 33-1802 of the Planned Community Act. SB 1184 does not apply to condominiums.

1. SB 1184 amends the definition of a planned community to, “a real estate development that includes real estate owned and operated by *or real estate on which an easement to maintain roadways or a covenant to maintain roadways is held by* a nonprofit corporation or unincorporated association of owners, that is created for the purpose of managing, maintaining or improving the property and in which the owners of separately owned lots, parcels or units are mandatory members and are required to pay assessments to the association for these purposes. .

PB&J: SB 1184 expands the definition of a ‘planned community’ to include property owners’ associations that do not own any common areas but maintain the roadways within the community pursuant to an easement or a covenant. These types of associations will now be subject to all of the provisions contained in the Planned Community Act.

BROWN | OLCOTT
“PB&J”

KNOWING AND INTELLIGENT WAIVER

_____ (insert name) resides at _____

(insert address) within the _____

Homeowners Association ("Association"). The Association's Bylaws require the Association to send me notice of the annual meetings by United States mail. I would prefer to receive the notices via email. I hereby knowingly and intelligently waive my right to receive notice of the annual meeting by United States mail.

Signature

Date

Email address

The Board of Directors sets high standards for the community's appearance in * Association ("Association"). The goals for the appearance of the properties are well-maintained homes and common areas and to implement regulations to secure a crime free neighborhood for families and their guests. Residents in the Association take pride in their community. Customarily, investment properties are less attended to than owner occupied homes. Tenants do not always share the community's high standards created to improve and protect long term property values. In an effort to maintain these standards, the Board of Directors has implemented the following rules for rental units. Owners and their tenants shall comply with the Association's rules and other Community Documents. The Association shall impose monetary penalties assessed against the Owner's unit for violations of the Community Documents. Compliance with these Rental Rules and Community Documents is a vital part of the Association's success as a crime free neighborhood. Each Owner who rents a unit within the Association must comply with the Rental Rules and assist in our goal for a crime free neighborhood. The Association seeks everyone's cooperation in making the community a desirable place to live.

RENTAL RULES

1. All leases shall be for a period of not less than _____.
2. In no event may less than the entire Unit/Lot be rented.
3. Within fifteen (15) days of signing the lease, renewal, or revision, the Owner shall complete and return the attached Tenant Information Form, which includes the following information:
 - a. The names of the tenants;
 - b. Contact information for all adult occupants;
 - c. The time period of the lease including the beginning or ending dates of the tenancy;
 - d. A description of the tenants' vehicles;

- e. The license plate numbers of the tenants' vehicles; and
 - f. ***AGE RESTRICTED COMMUNITIES ONLY*** Government issued identification that bears a photograph and confirms that the tenants meet the community's age restriction.
4. If the Owner does not provide the information in Section 3 above within fifteen (15) days of signing the lease, the Owner shall be fined \$15.00 after notice and opportunity for a hearing.
 5. For each new tenancy, the Owner will be charged an administrative fee of \$25.00. The Owner shall not be charged an administrative fee for the renewal of an existing lease.
 6. Within fifteen (15) days of signing the lease, the Owner shall certify that the Owner has furnished the tenant with copies of the Community Documents; that the tenant has agreed to be bound by the Community Documents; and that the Owner accepts responsibility for the tenants' violations of the Community Documents. The Community Documents consist of the CC&Rs, the Bylaws, and Rules and Regulations.

**Tenant
Information
Form**
_____ **Association**

Member (Landlord) Name: _____ Unit #: _____

Member Mailing Address: _____

Name of Designated Agent (if applicable): _____

Address of Designated Agent: _____

Telephone Number of Designated Agent: _____

Length of Lease: _____ Beginning Date: _____ End Date: _____

Tenant Names: _____

Tenant's Telephone Number: _____

Vehicle No. 1: License #: _____ Make: _____ Color: _____

Vehicle No. 2: License #: _____ Make: _____ Color: _____

Date of Payment of Administrative Fee: _____

I (we), _____, at Unit/Lot No. _____ have received, read and agree to abide by the CC&Rs, By-Laws and Rules and Regulations of * Association (and as altered or amended) knowing that if they are not adhered to, I will ultimately be fined for violations.

Signature of Tenant

Date

Signature of Tenant

Date

Signature of Tenant

Date

Signature of Tenant

Date

Signature of Member or Designated Agent

Date

Please return this completed, signed and dated form to us using the enclosed self-addressed stamped envelope.