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2019 Changes in the Law

The following changes will become effective August 27, 2019*

*Unless otherwise noted

LIEN FOR ASSESSMENTS (CONDOMINIUMS AND PLANNED COMMUNITIES):

SB 1531 amends various sections of A.R.S. §33-1256 and §33-1807. These amendments include extending the statutory lien to six years, a requirement to include a written notice to homeowners prior to placing the account with a collection agency or law firm, requirement that Associations provide a statement of account in lieu of a payment booklet, and clarification regarding fees/charges for payment processing.

How this affects community associations: Pursuant to the newly amended Arizona law, liens will now be effective for 6 years, instead of 3 years.

Further, Associations will now have the statutory requirement to send a written notice by certified mail, return receipt requested to owners at least 30 days prior to turning a file over to a collection agency or law firm to pursue collection activity. The written notice must include the contact information for the person the owner may contact to discuss payment. The following language must be included in **bold** type, all CAPS pursuant to this provision of the amended statutes:

“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.”

Next, commencing January 1, 2020, Associations must provide a *statement of account* in lieu of a payment booklet to every owner or member with the same frequency that assessments are provided for in the declaration. Statement of Accounts must include the account balance and

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immediately preceding ledger history. The Association may cease sending these statements of account if collection activity begins. Owners or members may opt-in to receive these statements of account electronically if available. Please note that the statement of account requirement does not apply to condominiums or planned communities with less than 50 units and that do not contract with a third-party to perform management services on behalf of the Association.

Lastly, the amendments clarify that no convenience fee is permitted for payment by cash, bank drafts, check, cashier's check or money orders. However, an agent for the Association may charge a convenience fee for other forms of payment in approximately the amount charged to the agent by a third-party service provider.

VACATION AND SHORT-TERM RENTALS (CONDOMINIUMS AND PLANNED COMMUNITIES):

HB 2672 amends A.R.S. §9-500.39, §11-269.17, §42-2001 and §42-2003, and adds §42-1125.02 and §42-5042. The amendment allows counties and municipalities to impose certain regulatory authority over vacation and short-term rentals.

How this affects community associations: Counties and municipalities may require contact information for the owner or the owner's designee who is responsible for timely responding to complaints, over the phone or by email at any time of day, to be provided prior to offering to rent or renting the vacation or short-term rental.

Counties and municipalities may pursue and impose on an owner a "verified violation", which includes monetary penalties (i.e. increasing penalty amounts per violation: \$500, \$1,000, and \$1,500).

Also, HB 2672 adds a provision clarifying that vacation and short-term rentals are prohibited from being used for nonresidential uses, including for a special event that would otherwise require a permit or license or for a retail, restaurant, banquet space or other similar use.

The amendment requires all online lodging operators to have a current transaction privilege tax license. The transaction privilege tax license number must be included on all online lodging operators' advertisements, including online lodging marketplace postings.

The amendment does not however change the legal ability for an Association to restrict vacation or short-term rentals if the Declaration has a minimum time period in which a unit can be rented.

CONDOMINIUMS; TERMINATION; APPRAISALS (CONDOMINIUMS):

HB 2687 amends A.R.S. §33-1228 by adding notification requirements and modification to the appraisal process.

How this affects community associations: Minimal. Condominiums are infrequently terminated. This will have a greater impact on an investor that purchases a condominium project. An investor will be required to produce documentation at an Association board meeting evidencing the requisite percentage of votes in the Association to terminate at least 30 days

before recording a termination agreement. The amendment also provides for an updated process for determining value in the event of conflicting valuations.

PLANNED COMMUNITIES; EXCEPTION (PLANNED COMMUNITIES):
Retroactively Effective July 16, 1994.

SB 1094 amends A.R.S. §33-1801 and §33-1802 by adding language that exempts certain communities or centers from the definition of a planned community.

How this affects community associations: Minimal. This amendment is narrow in scope to apply to a very specific group that expressly satisfies the elements described in the statute. Namely, the Planned Community Act will not apply to a non-profit corporation or unincorporated association created or incorporated before January 1, 1974, and that does not have the authority to enforce CC&R's related to use, occupancy, or appearance of the separately owned lots, parcels or units.

CONSTRUCTION DEFECT CLAIMS (CONDOMINIUMS AND PLANNED COMMUNITIES):

SB 1271 amends A.R.S. §12-1362, §12-1364 §32-1159.01 relating to purchaser dwelling actions.

How this affects community associations: The statute is amended with the intention to streamline the resolution process for construction defect claims. The amendment includes subcontractors in addition to contractors/developers. These construction professionals have the right to inspect, test and make repairs. The amendment provides for circumstances when reasonable attorneys' fees, costs, and expert fees may be recovered by a prevailing party

REGISTRAR OF CONTRACTORS (CONDOMINIUMS AND PLANNED COMMUNITIES):

SB 1397 amends many different Arizona statutes that relate to contractors.

How this affects community associations: The amendment, includes in part, the possibility for associations to recover from the Recovery Fund if, 1). the Developer transferred control to the association, and 2). a licensed residential contractor's failure to adequately build or improve a residential structure caused damage to the common elements within the complex. The recovery is limited to residential properties and capped at a maximum \$30,000.00 recovery.

WRIT OF GARNISHMENTS; SERVICE (CONDOMINIUMS AND PLANNED COMMUNITIES):

HB 2230 amends A.R.S. §12-1574 and §12-1577 implementing a more simplified garnishment process.

How this affects community associations: This amendment allows service by certified mail, return receipt requested. This amendment applies to both service on garnishees and service on

financial institutions for non-wage garnishments. If served by certified mail, the effective date of service is the date of receipt by the garnishee.

COUNTY RECORDER RECORDING FEES (CONDOMINIUMS AND PLANNED COMMUNITIES):
Effective July 1, 2019.

SB 1043 is an amendment from the 2018 legislative session set to take place next month. It amends A.R.S. §11-475, §11-475.01, §11-1132 and §27-208 by changing the amount charged by county recorders for recording fees to a flat fee schedule. New prices are as follows: \$30.00 for recording documents required by law; \$15.00 for recording documents requested by a government entity (instead of \$9.00 plus \$5.00 per page over five pages). Additional fees previously added by specific counties will now be included in the fee.

How this affects community associations: It will be more expensive for recordings of a few pages and less expensive to record documents with multiple pages (i.e., CC&Rs).

The summary contained herein is for reference only, is general in nature, and provided as a courtesy of Maxwell & Morgan, P.C. With respect to specific questions or legal issues, you should seek our advice and assistance or the advice of other competent community association legal counsel.