

E-Newsletter

New Statutes Do Not Make the Community Documents Better - Jason E. Smith, Esq.

Sometimes the legislature gives rights, and sometimes it takes them away. As we approach a new legislative season here in Arizona, remember that it is usually the latter. In the context of community association law, the Arizona Legislature seems to always be busy enacting laws that appear to restrict the rights of associations. For instance, over the last few years, the Legislature has regularly tinkered with parking prohibitions in planned community associations in A.R.S. Sec. 33-1809. This statute only applies to associations that have parking restrictions already in their governing documents. This law does not empower an association to prohibit or restrict parking of any vehicles not specifically exempted in the statute.

The same situation applies to the statutory exemptions on displaying flags, political signs, “for sale” or “for rent” signs, and other legislative muddling with community associations’ use restrictions. The point to be reinforced here is that CC&Rs should be the first document to consult in order to determine the rights and obligations of an association and its members. If the governing documents do not contain provisions that prohibit parking of certain vehicles, for instance, the parking statute does not give power to the association to restrict parking of all the vehicles not listed in the statute.

A community’s set of CC&Rs are only as strong as the provisions they contain. The parking statute and several others in the planned community and condominium statutes start with the phrase “Notwithstanding any provision in the community documents . . .” This can mean one of two things: (1) if your governing documents are as strict as can be conceived, then they must allow the exceptions listed in the statute and (2) if your governing documents do not already restrict the activity in the statute, then this statute is not giving your community’s CC&Rs any new authority.

It is unlikely that the Legislature will give additional rights to associations when it makes changes to the law this session. Consult the CC&Rs and other governing documents first before looking to the statutes for guidance. The statutes never make the association’s CC&Rs better.



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