



## **LANDSCAPING & COVENANT ENFORCEMENT**

With spring being in full force and summer being just around the corner, we wanted to remind all Associations regarding policies, covenant enforcement and good practices as it relates to landscaping. To that end, please note the following:

- **Landscaping Policies** – Please remember that single-family communities are now subject to SB23-178 that became effective August 7, 2023. The requirements not only include allowing at least 80% drought-tolerant plants, vegetable gardens in the front, side, and back yards & astroturf in the backyards, but also require that Associations adopt three pre-approved garden design plans either from their local municipality, from Colorado State University Plant selection website, or from another entity creating such designs such as a landscape architect. These pre-approved gardens shall be available on the Association’s website and Owners may use them without going through the Association’s architectural approval process. Owners may sue the Association if the Association is not compliant with this statute and recover at least \$500 after providing Notice and forty-five (45) days to cure to the Association. We strongly encourage all single-family communities to revise or adopt landscaping policies that would comply with all the SB23-178 requirements as soon as possible. As a reminder, Associations may still prohibit changes to existing grading or drainage and can still prohibit xeriscaping on property that is **maintained by the Association**, regardless of whether such property is owned by the Owner.
- **General Landscaping Policies** – Condominiums and Townhomes and other types of communities that are not single-family communities should also adopt general landscaping policies, especially related to use of the Common Areas for Owners’ and residents’ use in planting small vegetable gardens, flowers or installation of pavers, outdoor furniture, etc. The Board of Directors would need to clarify if these are allowed, and if so, who will be responsible for maintenance, repairs and replacement of the plant material or other items installed on the Common Area.
- **Covenant Enforcement** – Our office is receiving many questions regarding covenant enforcement and if it should still be performed given the convoluted HB22-1137 requirements. In short, Association should still perform inspections and follow their Covenant Enforcement Policies as this is the only protection an Association has in dealing with and ensuring that all covenant issues are resolved. While the process is cumbersome and stringent, failing to enforce the covenants can give rise to tensions in the community as well as open the Association up for liability from Owner legal actions against the Association for not meeting its obligations and even causing loss of value for the real estate that Owners own in the community. Our office is available to offer Boards educational sessions to understand the covenant enforcement process and its application.

**Have additional questions about these or other legal matters? We are here to help!**

Please contact us at [info@westernlawgroup.com](mailto:info@westernlawgroup.com)

**THIS IS NOT LEGAL ADVICE! FOR INFORMATIONAL PURPOSES ONLY!**