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## What are the Disclosure Requirements for an HOA?

by Beth Mulcahy, Esq.

Under Arizona law, within ten days upon receipt of a written notice of a pending sale (typically from a title company), an association is required to mail or deliver to a purchaser all of the following information (called a disclosure packet): a copy of the association's CC&Rs, bylaws, rules and regulations, current operating budget, most recent annual financial report (or a summary of the report if it is over ten pages) and the most recent reserve study (if any).

The association must also provide the purchaser a dated statement containing:

1. The telephone number and address of a principal contact for the association;
2. The amount of the assessment for each lot/unit and the amount of any unpaid regular assessments, special assessments or any other assessments, fee or charge currently due and payable from the selling lot/unit owner;
3. A statement as to whether a portion of the lot/unit is covered by insurance maintained by the association;
4. The total amount of money held by the association as reserves;
5. A statement as to whether the records of the association reflect any alterations or improvements to the lot/unit that violate the CC&Rs;
6. A statement of the case names and case numbers for pending litigation

with respect to the lot/unit filed by the association against the lot/unit or filed by the lot/unit owner against the association.

In August of 2004, the Arizona legislature added the requirement for the signature of the purchaser on the following resale discloser statement: "I hereby acknowledge that the declaration, bylaws and rules of the association constitute a contract between the association and me (the purchaser). By signing this statement, I acknowledge that I have read and understand the association's contract with me (the purchaser). I also understand that by accepting this contract, I may be giving up my rights to the homestead exemption protection regarding a lien of the association." The statement and signature must be returned to the association within fourteen calendar days.

The association may charge the lot/unit owner a reasonable fee to compensate the association for the costs incurred in the preparation of the disclosure statements. It is important to note that this law only applies to a resale of a lot or unit in a community. The association is only responsible to provide this disclosure information if the association has fifty (50) or more lots/units. If the association has less than fifty lots or units, the burden to provide this disclosure information shifts to the seller.

-Answers-

# What is the Procedure for Amending Association Documents?

by Beth Mulcahy, Esq.

In order to amend an association's documents, several requirements must be met.

To begin the process I suggest that the board determine the reasons why it would be beneficial to amend and update the association's documents.

The most common reasons for amending association documents are the following: to delete or modify restrictions that are outdated, ambiguous or unreasonable; to comply with changes in federal, state and local laws or ordinances; to delete or modify provisions inconsistent with the management and operation of the association; to delete provision regarding the rights of the developer after the developer is no longer in control; and to correct provisions that conflict with other governing documents (bylaws, articles of incorporation and rules and regulations).

Once it is determined that amendments are necessary, a plan will increase the likelihood of success.

**Set forth below is a summary of a five-step plan for amending CC&Rs and other association documents.**

**Step One: Determine what is required to amend the documents.**

I suggest that you check the specific language of your association's documents. Typically, the CC&Rs and bylaws have a provision in the document, which outlines the proper procedures to amend the CC&Rs, bylaws and rules and regulations. Most documents require a vote of the membership and in many associations a percentage of the membership is required to approve the amendment. However, in some *rare* cases, the association's board of directors can amend the CC&Rs and bylaws without the approval of a percentage of the membership.

The rules and regulations can be promulgated and amended in most associations by a majority of the board. However, again in some *rare* cases, some associations require a vote with approval by a percentage of the membership to amend the rules and regulations.

**Step Two: Review the documents for changes and draft the proposed changes.**

I suggest that the board form a committee to research and prepare possible amendments to the association's documents.

Solicit the ideas and help of committee members, board members and owners in this process. Remember that amendments must not conflict with the association's

CC&Rs, articles of incorporation or bylaws.

The association's legal counsel should review the documents and assist in the drafting of proposed changes.

**Step Three: Educate and solicit community support of the proposed changes.**

Use informational meetings, homeowner input forums and/or newsletters and other printed materials to educate and inform the membership of potential changes.

**Step Four: Develop a plan and a reasonable time frame for obtaining approval of the proposed amendments.**

**Step Five: Finalize and record the CC&Rs.**

Once the amendments have been approved as specified in the documents they must be recorded at the county recorders office to be a legal document. Bylaws do not need to be recorded, but should be maintained with the official records of the association.

-Answers-

## Reminders!

The association's legal counsel should review the documents and assist in the drafting of proposed changes.

Amended CC&Rs must be recorded with the country recorder's office to be enforceable.

CC&Rs recorded after September 1991 may be found online at:  
[www.recorder.maricopa.gov](http://www.recorder.maricopa.gov).

You may search by association name or document number.

# Arizona Legislature Addresses New Bills

**The following bills are currently being addressed in the Arizona State Legislature:**

- SB1434: Removal Of Board Member; Special Meeting
- SB1298: Preference Of Liens Over Subsequent Encumbrances; Professional Services Liens
- SB1507: Parking; Public Service And Public Safety Vehicles
- SB1233: Flag Display; Political Signs
- SB1281: Amendment Of Declaration
- SB2486: Resale Of Units; Information Required; Definition
- HB2485: Lien For Assessments; Priority; Mechanics' And Materialmens' Liens
- HB2484: Lien For Assessments; Priority; Mechanics' And Materialmens' Liens
- HB2482: Association Financial And Other Records; Web Site
- HB2314: American Flag Display; Political Signs; Winter Lawns

- HB2258: Sale Of Units; Information Required; Definition
- HB2214: Hearing On Disputes; Planned Community Hearing Board
- HB2210: Lien For Assessments; Priority; Mechanics' And Materialmens' Liens
- HB2630: Lien For Assessments; Priority; Mechanics' And Materialmens' Liens
- HB2209: Assessments; Penalties Prohibited
- HB2154: Voting; Proxies; Voting By Mail; Definition
- HB2148: Open Meetings
- HB2144: Jurisdiction Of Civil Actions; Powers Of Unit Owners' Association; Hearings; Penalties
- HB2104: Homeowner Associations; Municipality As Contracting Agent; Definitions
- HB2722: Amendment Of Declaration
- HCR2052: Homeowner's Bill Of Rights

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### BULLETIN BOARD

To obtain a summary of bills being addressed by the Arizona State Legislature go to [www.azleg.state.az.us](http://www.azleg.state.az.us) and type in the bill number

If there is a topic you would like to see covered or a question answered e-mail us at:  
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Please e-mail or send your name and address if you would like to be added to our mailing list

Thank You for your continued support  
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**Beth Mulcahy** is the founding attorney and partner of the Mulcahy Law Firm, P.C. The firm's legal practice focuses exclusively on the representation of over eight hundred (800) community associations throughout the State of Arizona.

After receiving a Bachelor of Arts degree in Political Science from Marquette University in Milwaukee, Wisconsin, Beth sought and earned her *Juris Doctor* degree from Marquette University Law School where she was on the Dean's List and a member of the Marquette University Law Review. A native of Wisconsin, Beth is licensed to practice law in the State of Wisconsin and the State of Arizona.

As the former editor/author of a weekly question and answer column in *The Arizona Republic*, Beth addressed hundreds of questions on association governance. In her three years with the paper she became known for providing information and answers that communicate a clear understanding of the subject matter. Beth's *Answers* publication and periodic legal seminars on community associations continue to provide education and information for the industry. She has also published articles in *Managers Report Magazine*, *Community Association Institute's (CAI) Journal of Community Association Law*, *Common Ground Magazine* and *Arizona Community Association Journal*. Beth is a member of the National and the Central Arizona Chapter of CAI, a nonprofit organization supporting the interests of community associations.

As an active participant in the industry, Beth regularly speaks on the topic of community associations for seminars, conferences and workshops at state and national levels.

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**Kristen L. Rosenbeck** graduated from Valparaiso University with a Bachelor of Arts degree in Biology where she actively supported her school as the Student Body President. Kristen graduated in the top third of her law class receiving her *Juris Doctor* degree from Marquette University in Milwaukee, Wisconsin in 2001. She maintains licenses to practice law in both the State of Wisconsin and the State of Arizona.

Since joining the firm in February 2003, Kristen has focused on enforcement, collections and document interpretation and she provides general corporate advice for community associations and condominiums. Kristen is also experienced in litigation and transactional law.

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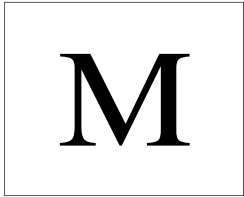
**Jennifer Spragins Harris** is a 1999 graduate of Southwestern Oklahoma State University having earned undergraduate degrees in Biology and Sociology. Jennifer continued her studies at the University of Oklahoma College of Law where she graduated in the top twenty-five percent of her class in 2003 with a *Juris Doctor* degree. She maintains licenses to practice law in the State of Oklahoma and the State of Arizona.

Jennifer brings experience in litigation and premises liability to her present position where her legal practice will focus on the representation of community associations with an emphasis on litigation, premises liability claims, enforcement of restrictive covenants and collection of delinquent assessments.

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*Answers* is not intended to offer specific legal advice or responses to individual circumstances or problems. If legal advice is required, please consult individually with the Mulcahy Law Firm, P.C.

**Questions may be directed to Beth Mulcahy, at  
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# ANSWERS for Community Associations

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## Did You Know?

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Maricopa County Attorney Andrew Thomas has announced that the county will use criminal prosecution and a possible fine [pursuant to A.R.S. §36-602(A)], in an attempt to cut down on mosquitoes who spread the West Nile Virus. A dirty pool can be the breeding ground for as many as one million mosquitoes. Birdbaths and old tires with stagnant water are also potential breeding grounds as the warmer spring temperatures speed up the annual mosquito hatch.

Private pools that are not cleaned and chlorinated could receive special law enforcement scrutiny from one of six inspectors who will give offenders 48 hours to clean their pools.

Maricopa County health officials have an aggressive public education campaign, telling people how to clean up even small amounts of standing water around their homes.

Call the County Environmental Services Hotline 602.506.6616 for more information.

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