

Questions & ANSWERS

for Community Associations

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Beth Mulcahy

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Introduced

Did You Know?



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HAPPY NEW YEAR!

Dear Readers,

I am pleased to start 2005 by bringing you our firm's second issue of Answers. While working with association boards and managers over the years, I have been asked the questions of who, what, when, where, why and how concerning the legalities of community associations. Answers is our way of addressing these questions and helping our clients and friends. The newsletter gives us the opportunity to inform you of developments in community association law, answer your questions and provide you with cutting edge information. Our goal is to assist community associations.

I hope that you will find Answers informative and helpful, and I look forward to your questions.

Thank you for your support and Best Wishes for a happy and healthy 2005.

Sincerely,
Beth Mulcahy

What Is The Purpose Of An Annual Meeting?

by Beth Mulcahy, Esq.

Under Arizona law, an association must conduct an annual meeting of its membership at least once a year. I have attended hundreds of annual meetings, some of which have been outstanding and some of which have been horrendous. It is my opinion that conducting a successful annual meeting requires knowledge of the association's documents, planning, organization, preparation and execution of the plan.

Typically, an association's bylaws will set forth the requirements of an annual meeting including the notice,

quorum and voting. The purpose of the annual meeting is to elect directors and conduct other business as may properly be brought before the meeting such as officer and committee reports, approval of an annual budget (if required), voting on increases in the assessment rate or special assessments or proposed amendments to the association's documents (if needed). The annual meeting is also a time for discussion by the members on various aspects of association life (parking issues, pet problems, how association money is spent, etc.).

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Annual Meetings *continued*

Set forth below are some suggestions on how to run successful, efficient and productive annual meetings:

Notice: Under Arizona law, unless otherwise provided in the articles or bylaws of an association, an association must provide written notice of an annual meeting to the membership not fewer than ten nor more than fifty days in advance of any annual meeting. The board of directors and property manager should carefully review the association's bylaws well in advance of the meeting date to determine when the notice must be sent, required details of the notice and the method of providing notice. It is a good idea to consult with an attorney if there are any questions regarding the meeting notice requirements. ►

Associations often find it difficult to obtain good attendance at the annual meeting, but there are strategies that will help:

- ◆ Announce the annual meeting time and place according to association documents
- ◆ Use newsletters, bulletin boards, web site and sandwich boards, to announce well in advance of the meeting date
- ◆ Plan a social event after or before the meeting and include food
- ◆ Give away door prizes
- ◆ Conduct a raffle
- ◆ Give away awards for best lawn, flowers, best holiday decorations, etc.
- ◆ Propose a discussion on hot topics such as crime or common area improvements
- ◆ Aggressively pursue proxies
- ◆ Arrange for special guests or guest speakers
- ◆ Conduct all association meetings using an agenda and in a businesslike manner
- ◆ Acknowledge all of the volunteer work association members have contributed

Increase Attendance

have an interest in the election results (such as candidates, candidates spouses, current officers, directors or the management company). The association should set up procedures (formal tally sheets) for counting the ballots before the meeting so that all the inspectors need to do is tabulate and record the votes. I usually suggest that all ballots are counted by one group of inspectors and then re-counted by a second group of inspectors to ensure accuracy. The completed tally sheets should reflect the association name, meeting date, names of the candidates, results of the election and signatures of the inspectors. The tally sheets should be retained as a permanent record.

Conducting the Meeting: An association must first obtain a quorum (a minimum number of owners present in person or by proxy) to lawfully conduct business at an annual or special meeting. The number of members needed to constitute a quorum is almost always indicated in the association bylaws. Arizona law provides a default quorum amount of ten percent if the association's documents are silent regarding a quorum.

Associations need to set up an efficient registration system for the member's arrival at the meeting. Under Arizona law, an association has a duty to keep an accurate roster of owners and their current addresses. This membership list should be updated and complete for the annual meeting. I have attended many meetings where the meeting starts 30 to 45 minutes late because the registration line is long at the designated meeting start time. I suggest that associations publicize and conduct registration 30 to 60 minutes in advance of the meeting and request that owners (especially those with a large number of proxies) come early to register. Another suggestion to alleviate long registration lines is to set up an appropriate number of registration tables and make signs that assign a portion of the alphabet to each table (for example, A-H, I-O, P-Z). The member rosters should be divided according to the tables so that the registrars will only work with those names that are in their section of the alphabet.

There will always be unexpected events during registration at an annual meeting. Therefore, a trouble-shooter (with no other responsibilities) should be designated by the board to handle anything out of the ordinary (such as questions about ownership, right to vote, validity of a proxy and delinquent owners). Finally, associations should have ample registration materials (roster, check in sheets, hand-outs and ballots) prepared in advance to distribute in an orderly fashion to each member as they check in.

The association's president should start the annual meeting promptly at the designated time, follow the agenda and use parliamentary procedure to ensure that the meeting moves along quickly. Often, the board will conduct the first part of the annual meeting and then allow the homeowners time to comment during the owner forum at the end of the meeting.

Conducting the Vote: I suggest that the board appoint several "inspectors of elections" to oversee the voting and elections. At least one of the inspectors should be from the opposing side if there are factions at the annual meeting. However, no one should be an inspector who may

I hope this information will help you have a successful annual meeting.

-Answers-

What Role Does Communication Play In The Association?

by Beth Mulcahy, Esq.

It is my opinion that effective and successful associations have outstanding communication between the association and its owners. Some suggestions for improving communications in your association are:

1) Give members an opportunity to speak or ask questions for a set period of time at the beginning or end of board meetings; 2) distribute, mail, publish or post notice of board meetings, meeting minutes or financial statements; 3) conduct town meetings where members can submit questions for the board to answer or the board can meet with residents in an informal oral Q & A setting; 4) have social events around holidays where board members can interact with neighbors in a relaxed environment;

5) respond to member inquiries in a timely fashion; 6) give all owners the name and telephone number of the contact person for the association; 7) conduct member surveys to obtain information from residents and publish the results; 8) form member advisory committees and consider their input; 9) publish or distribute newsletters; 10) form a "welcome to the neighborhood" committee and welcome new members; 11) create a web site and post newsletters, regular meeting minutes, budgets, annual reports and association documents and forms on-line; and 12) give members a self addressed and stamped postcard or comment card annually that they can send to the association with comments, ideas and/or feedback. -Answers-

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BULLETIN BOARD

In early January 2005, the Arizona legislature convened. Since that date, the following bills, which affect community associations, have been introduced:

HB2104: Municipal Street Maintenance

HB2144: Penalties; Notice; Hearing

HB2148: Open Meetings

HB2154: Proxies

HB2209: Authority

HB2210: Condominiums;

Homestead Exemption

HB2214: Planned Community Board

HB2256: Audits

HB2258: Disclosure

HB2314: Drought Declarations; Lawns

To obtain a summary of these bills, go to www.azleg.state.az.us and type in the bill number. Please note that future newsletters and seminars will provide periodic updates regarding the new legislation.

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.

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 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.

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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Did You Know?

***New Arizona Legislation for Planned Communities and Condominiums:
A.R.S. § 33-1810 (planned communities) and 33-1243 (I): Annual Audits***

Unless any provision in the association's documents requires an annual audit by a certified public accountant, the board of directors shall provide for an annual financial audit, review or compilation of the association. The audit, review or compilation shall be completed no later than 180 days after the end of the association's fiscal year and shall be made available upon request to the members within 30 days of its completion. This new law went into effect January 1, 2005. All associations will need to comply with this legislation by June 30, 2005.

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