

MULCAHY ANSWERS

for Community Associations

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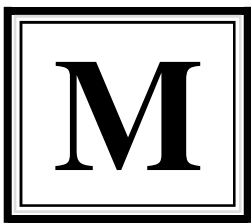
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Mulcahy Cheat Sheet®
2006 Legislative Update



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New Community Association Legislation Goes Into Effect September 21, 2006!

The Arizona legislature ended its legislative session on Wednesday, June 21, 2006. This year, the legislature passed several new bills regarding community associations. Specifically, the new legislation addresses the following areas: examination of books and records by members, foreclosure limitations, hoops an association must jump through before enforcing its documents, display of flags in associations, parking of vehicles by municipal utilities in associations and a new procedure for resolving disputes between owners and associations through the use of administrative law judges.

Inside this issue of **Answers** is our Mulcahy Cheat Sheet® regarding the new 2006 community association legislation. You can obtain additional copies of this Cheat Sheet online at www.mulcahylawfirm.net (click on the "Answers & Cheat Sheet" button) or by contacting our office directly.

The new legislation will go into effect on Thursday, September 21, 2006.

ANSWERS
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The Mulcahy Law Firm, P.C. will be offering *free* telephone Q & A regarding the new legislation between the hours of 1:00 p.m. and 5:00 p.m. on Wednesday, September 20, 2006 (the day before the legislation goes into effect). Please contact our office with any questions during those hours on that date!

Tips for Associations When Selecting and Working with a Contractor

by Beth Mulcahy

Community associations regularly hire contractors to assist associations with maintaining and improving the association's common areas. In most instances, these projects are completed by the contractors in a timely and satisfactory manner. However, our law firm has noticed a dramatic increase in the number of problems that associations are having with contractors, before, during and after the project is completed.

Unfortunately, contractor "horror stories" are becoming common for community associations. Associations need to protect themselves when selecting and working with contractors. **Set forth below is a list of tips for associations to use when selecting and working with contractors:**

1. Define the association's project, set the parameters and scope of work for the project and choose a representative to interface with the contractor;
2. Develop a list of potential contractors to complete the project (use reliable referrals and rely on a contractor's reputation);
3. Use licensed and bonded contractors (All contractors who perform residential or commercial construction, remodeling or repair must be licensed. An exception to this is for work performed where the labor and materials total less than \$750, there is no building permit required and work is not part of a larger project);

continued on next page

We invite you to join us on-line at www.mulcahylawfirm.net

Tips for Selecting and Working with a Contractor *continued*

4. Interview potential contractors (obtain the contractor's name, the correct spelling of the company name(s), physical address and telephone number of contractor and their 5 or 6 digit contractor's license number or identification from the contractor's license) and obtain bids from at least 3 contractors;

5. Check the status of contractor's license and bond with the Arizona Registrar of Contractor's Office. If a contractor has had a complaint filed or disciplinary action in the past 3 years it is not a good sign;

Registrar of Contractor's Office
602.542.1525 or www.rc.state.az.us

6. Check with the Arizona Better Business Bureau to determine if the contractor is in good standing;

Better Business Bureau
602.264.1721 or www.phoenix.bbb.org

7. Ask the contractor how long he/she has been in business (5 years or more shows stability);

8. Ask the contractor if the type of work required for the project is the contractor's primary business or if the contractor specializes in the type of work the association wants performed;

9. Ask for and check the contractor's references (request local references for the same type of work). Ask the references; if the contractor was on schedule and abided by the contract terms, did the contractor listen when there was a problem, was the contractor concerned about resolving problems, and did the contractor willingly make the necessary corrections. In addition, physically inspect (if possible) projects the contractor has in progress and projects that have been completed;

10. Obtain proof that the contractor has adequate insurance (ask for current proof of insurance certificates for worker's compensation insurance and general liability insurance);

11. Ask the contractor if their workforce is capable of completing the project in a specified time frame (get specified start and completion dates in writing). Ask for the name, contact information and qualifications of the person supervising the project;

12. Agree on a scope of work for the contractor (the scope should define the work to be done, including prep work, protection of surrounding areas and daily clean up);

13. Require that the contractor place all verbal representations in writing including, but not limited to, warranties, completion date, quality, quantity of materials, price, etc.);

Important!
14. Do not pay more than 25 - 33% of the contract price upfront - final payment should not be required until the work is satisfactorily completed;

15. Ask for lien releases (if applicable) from the contractor for each subcontractor working on the project before the association makes a progress payment (verify the lien releases with the subcontractors); and

16. Have the association's attorney review the contract between association and contractor BEFORE the contract is executed (never sign anything that you do not understand and do not let a contractor pressure the association into signing anything that is unclear).

I strongly suggest that associations review the Arizona Registrar of Contractor's website – the site has valuable information and many of the ideas for these tips came from this website. In conclusion, hiring and working with contractors is not an easy job. Hopefully, these tips will assist your association with this process. *Good luck!* Answers

Associations Should Evaluate Security Measures

by Beth Mulcahy

According to the United States Department of Justice, a property crime is committed every three seconds, a burglary takes place every twelve seconds, a motor vehicle is stolen every 20 seconds and a murder occurs every 23 minutes. **Over the past few weeks, local and national news media have widely publicized the recent crime spree in the Phoenix area by the "Baseline Killer" and the "Serial Shooter."**

Under Arizona law, an association has a responsibility to maintain its common areas in a reasonably safe

condition. This responsibility extends to unit owners, their tenants and their guests. In addition, an association has an affirmative duty to take reasonable measures to protect against foreseeable activities creating danger on the land it controls.

Based upon this increased crime trend, associations should evaluate their security measures to prevent crime and to limit liability in their association.

Several crime prevention recommendations and suggestions for associations follow:

continued on next page

Share your copy of Answers with your association's board!

On-Site Crime Prevention Suggestions

- Install a controlled entry system using guard gates, electronic gates and/or telephone entry systems.
- Implement a security patrol enforced by foot, bicycle and/or vehicle depending on the size and terrain of the property.
- Install surveillance cameras or closed circuit television.
- Install proper lighting in the association's common areas and consider using motion sensors to control outside lights in areas where extra security is needed.
- Screen all association employees for criminal records and prior work history.
- Reduce the size of shrubs, especially in front of windows, to eliminate hiding places for criminals.
- Remind owners to keep their garage doors closed when not in use.

Programs and Information

- Create neighborhood watch groups to detect suspicious activity and to deter crime.
- Send a bi-monthly or monthly newsletter informing

owners about neighborhood watch groups and crime in the association and surrounding areas.

- Once a year, contact the local police department or hire a security professional to speak to the association and the neighborhood watch program members regarding trends in crime and new crime prevention techniques.
- Advertise security measures by posting neighborhood watch signs and by placing security alarm stickers in windows.

Suggestions for Board of Directors

- Do not misrepresent the quality or level of security.
- If problems develop, implement additional security measures and notify residents that they must take steps to protect themselves.
- Do not reduce security without allowing members to vote on it and notify residents if security is reduced.
- Obtain adequate insurance for the association's common areas and for the directors and officers.

Hopefully, implementing some of these suggestions will decrease crime in your association and limit your association's liability.

Answers

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BULLETIN BOARD

The following
Mulcahy Cheat Sheets©

Board Meetings

Top 10 Things You Need to
Know about Community
Association Law

Transition From Developer to
Homeowner Control Checklist

Resources for Community
Associations

2006 Legislative Update

*are available in PDF format
at
www.mulcahylawfirm.net
or*

*by calling our office:
602.241.1093*

Questions?

Free telephone Q & A
regarding the new
legislation between the hours
of 1:00 p.m. and 5:00 p.m. on
Wednesday, September 20,
2006

Beth Mulcahy is the founding attorney and partner of the Mulcahy Law Firm, P.C. Beth'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 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 and the Arizona Association of Community Managers.

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.

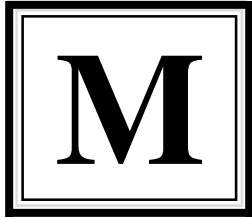
Kristen's legal practice focuses on the interpretation and enforcement of association documents and guidance on state and federal laws. She represents associations in bankruptcy, collection of delinquent assessments and enforcement actions. Kristen also provides representation to office condominiums. Kristen is 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, Esq.

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Return Service Requested

New Cheat Sheet Enclosed!

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Did You Know?

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Associations are Required to Record a "Notice of Contact Form" with the County Recorder's Office

Planned community and condominium associations are required to record a written "Notice of Contact Form" in the office of the county recorder in the county in which the association is located.

The "Notice of Contact Form" shall include the following information: the name of the community, the name of the association or designated agent or management company for the association, the address for the association, the telephone number of the association or its designated agent or management company, the date of the recording and the recorded instrument number or book and page number for the main document that constitutes the declaration.

If an association's address, designated agent or management company changes, the association is required to amend its notice or record a new notice (in the office of the county recorder in the county in which the association is located) within 90 days after the change. To obtain a sample "Notice of Contact Form", please go to our website located at www.mulcahylawfirm.net, click on "Answers & Cheat Sheets" and click on "Cheat Sheets". The sample "Notice of Contact" form is the last item listed.

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2006 Legislative Update

MULCAHY Community Association Cheat Sheet®

BRINGING ANSWERS
TO COMMUNITY
ASSOCIATIONS

This publication discusses significant points of law as they apply to community associations and is not intended to offer specific legal advice or responses to individual circumstances or problems.

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July, 2006

EFFECTIVE DATE OF 2006 COMMUNITY ASSOCIATION LEGISLATION

Set forth below is a brief summary of the 2006 community association legislation as passed by the legislature and signed by Governor Napolitano. *These new laws will go into effect on Thursday, September 21, 2006.*

REQUIREMENTS FOR ENFORCEMENT OF ASSOCIATION DOCUMENTS

Step One – Notice of Violation: The association sends the lot/unit owner written notice of the violation.

Step Two – Written Response by Unit/Lot Owner: A unit/lot owner who receives a written notice that the *condition of the property owned by the unit/lot owner is in violation of a requirement of the association's documents* may provide the association with a written response by sending the written response *by certified mail* to the association's address (as listed in the written notice OR on the notice of contact form recorded with the county recorder) within ten (10) business days after the date of the notice.

Step Three – Required Response from Association: If the Association receives a written response from the unit/lot owner as specified above, the association is then required to respond to the unit/lot owner within ten (10) business days (after receipt of the certified mail containing the response from the unit/lot owner) with a written explanation regarding the notice.

The written notice shall provide, at a minimum, the following information (if the Notice of Violation did not already include this information):

1. The provision of the association's documents that has allegedly been violated;
2. The date of the violation or the date the violation was observed;
3. The first and last name of the person(s) who observed the violation; and
4. The process the unit/lot owner must follow to contest the notice.

If the owner complies with the requirements of Step 2, the association **cannot** proceed with any action to enforce the association's documents (including fines, self-help and the collection of attorneys' fees) until the requirements of Step 3 are met (exception: If Step 1 contains the requirements of Step 3).

DISPLAY OF FLAGS IN ASSOCIATIONS

An association cannot prohibit the outdoor display of the American Flag or an official flag (or a replica) of the United States Army, Navy, Air Force, Marine Corps, Coast Guard by a unit/lot owner on that unit/lot owner's property if the American flag or military flag is displayed in a manner consistent with the Federal Flag Code.

Associations also cannot prohibit the outdoor display of the following:

1. POW/MIA flag;
2. Arizona State flag; and
3. The Arizona Indian Nations flag.

The Association can adopt reasonable rules and regulations regarding the placement and manner of display of the above-listed flags.

Applies to planned communities and condominiums.

CONVEYANCE OF REAL PROPERTY

An association can convey certain real property that is an asset of the association and that is not held as a common element of the condominium if 80% of the votes in the association (or a larger percentage if the declaration specifies) agree to the sale of the real property. This agreement to convey must be evidenced by the execution of an agreement, or ratifications of the agreement, in the same manner as a deed and by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless previously recorded. The agreement and all ratifications of the agreement shall be recorded in each county in which a portion of the condominium is situated and are effective only on recordation.

Applies to condominiums only.

PARKING BY EMPLOYEES OF MUNICIPAL UTILITIES IN ASSOCIATIONS

Notwithstanding any provision in an association's documents, an association cannot prohibit a resident from parking a motor vehicle on a street or driveway if all of the following apply:

1. The vehicle is required to be available at designated periods at the person's residence as a condition of that person's employment;
2. The resident is employed by a municipal utility and is required to prepare for emergency deployments of personnel and equipment for repair or maintenance of natural gas, electric or water infrastructure
3. The vehicle has a gross vehicle weight rating of 20,000 pounds or less and is owned by the municipal utility; and
4. The vehicle bears an official emblem or other visible designation of the corporation.

Note: A “municipal utility” is defined by the dictionary as utility service providers that are organized at functions of town, city, county and district government such as water and electric companies.

Applies to planned communities only.

ASSOCIATION BOOKS AND RECORDS

Owners are now entitled to see association books and records pertaining to “contemplated” litigation. An association cannot charge a member for making books and records available for review. An association has ten (10) business days from a request by an owner or an owner’s designated agent to make records available or copies of requested records. The association can only charge 15 cents per page for copies of records.

Applies to planned communities and condominiums.

ADMINISTRATIVE LAW JUDGES

Administrative law judges now have jurisdiction to decide complaints between owners and associations. For a dispute between an owner and an association, the owner or association may petition for a hearing concerning a violation of the association documents or state law (a nonrefundable filing fee must be paid by the petitioner).

The administrative law judge may order any party to abide by Arizona law or the association’s documents and may levy a civil penalty on the basis of each violation.

Applies to planned communities and condominiums.

FORECLOSURE LIMITATIONS

Associations can only foreclose if assessments are delinquent for a period of one (1) year or if the owner owes \$1,200 or more in assessments (whichever occurs first).

Applies to planned communities and condominiums.

To obtain a copy of these bills: go to www.azleg.state.az.us at the top right hand corner of web page type the bill number in the box and click on “Bill # Search”.