



The Basics for Self-Managed Associations

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.

MULCAHY LAW FIRM, P.C.

3001 East Camelback Road
Suite 130

Phoenix, Arizona 85016

Phone: 602.241.1093

Toll Free: 877.206.7164

Facsimile: 602.264.4663

E-mail:

bmulcahy@mulcahylaw.net

www.mulcahylawfirm.net

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AN OVERVIEW OF THE SELF-MANAGED COMMUNITY ASSOCIATION

A community association is a nonprofit corporation, a business that is governed by federal law, nonprofit corporation law, Arizona State statutes and the governing documents of the association. The volunteer board of directors has fiduciary duties to the association and a responsibility to protect the assets of the association.

It is important to remember that self-managed and professionally managed community associations have to follow the same formalities, corporate behavior and governance as a large master planned association. Some self-managed associations tend to be lax about how they conduct business, getting together informally to talk about what they want to do, which is not proper corporate behavior. Meetings, notice and voting as set forth in the governing documents and state law must be followed because failure to do so may affect the legal status of the association and can create a liability, allowing exposure for a lawsuit.

GOVERNING DOCUMENTS & CORPORATE PROTOCOL

CC&Rs create use restrictions for the property.

Articles of Incorporation establish the association as a legal entity and are filed with the Arizona Corporation Commission.

Bylaws establish the procedures for the internal government and operation of the association. They are the operating guide for the association, not the property.

Rules and Regulations typically address resident behavior on association or common areas. The Rules and Regulations cannot conflict with the CC&Rs and other association documents or they are unenforceable.

Arizona Revised Statutes:

Title: 10 Corporations and Associations Chapter: 24 General Provisions; Nonprofit Corporations; A.R.S. Sections 10-3101 - 10 -111702

Title: 33 Property: Chapter: 9 Condominiums, A.R.S. Sections 33-1201 - 33-1270 Chapter: 16 Planned Communities; A.R.S. Section 33-1801 - 33-1818

Fiduciary Duties of the Community Association Board Member:

A fiduciary is one who holds something in trust for another. The duty of a fiduciary is to a duty of care and a duty of loyalty.

The Duty of Care:

Directors must make an honest effort to make an informed decision with respect to each issue that comes before the board of directors. If necessary, request the advice of competent experts or practitioners and listen to them.

The Duty of Loyalty:

Directors must refrain from taking actions that will benefit them or parties related to them to the detriment of the association.

Duty of Confidentiality:

In exercising the duty of confidentiality, I acknowledge that information may come into my possession as a board member that has proprietary, confidential or privileged status, whether the information is communicated in verbal or written form. I agree to maintain the confidentiality of all information provided to me and agree not to disclose proprietary, confidential or privileged information to anyone outside the board without the prior written authority or approval of the entire board of directors.

LAWS AND PROTOCOLS THAT SUPPORT SELF-MANAGED ASSOCIATIONS

Governing Documents: A copy of the CC&Rs, bylaws, articles of incorporation and rules and regulations should be maintained by the board of directors.

Operations Manual: The association history, governing documents, "need to know information" when kept in one place becomes the institutional history for the association.

All Meetings of the Association, Board and Regularly Scheduled Committee

Meetings: Should follow the Arizona Open Meeting Law, A.R.S. 33-1804 / Condo A.R.S. 33-1248.

Annual Meeting of the Members: Must be held at least once a year.

Board Packet with Agenda: Providing a board packet prior to the board meeting assists board members in having a prepared board ready to discuss business in a professional manner.

Minutes: Minutes of board meetings are taken, approved and made available to the membership. Minutes are the official record of the meeting and should include actions taken, not discussion.

LAWS, PROCEDURES AND PROTOCOLS THAT SUPPORT SELF-MANAGED ASSOCIATIONS

Closed Meetings/Executive Meetings: Regular board meetings may be closed to regular members for the following reasons:

1) Legal advice from an attorney for the board or association; 2) Pending or contemplated litigation; 3) Personal, health or financial matters about an individual association member, or an individual employee of a contractor of the association; 4) Matters relating to employee job performance, compensation, health records or complaints; and 5) discussion of a unit/lot owner's appeal of any violation cited or penalty imposed by the association, unless the owner specifically requests that the issue be discussed in open meeting.

Emergency Meetings: Are called only for true emergencies (i.e. storm damage, fire, water damage, etc.) Minutes must be taken and the vote to accept those actions must be accepted at the next board meeting and placed in the minutes.

Insurance: The association must have adequate insurance coverage with qualified carriers.

Compensation: Board members typically serve without compensation, unless association documents provide otherwise.

Fraud Prevention: Ensure that methods are in place to guard against embezzlement. 1) Bank reconciliations are reviewed and approved by the board of directors; 2) All reserve account checks require two signatures; 3) Checks are issued only with the board of directors' approval; 4) No checks are made payable to "Cash"; 5) No checks are pre-signed; and 6) Timely monthly financial reports are prepared, reviewed by the board and made available to owners.

Delinquencies: Boards should have a delinquency collection policy in place and delinquencies are pursued in a timely manner.

Enforcement: Boards should have a written enforcement policy in place. Boards have a duty to enforce rules and regulations in a fair, evenhanded and consistent manner.

Fines and Penalties: After notice and opportunity to be heard, the board of directors may impose reasonable monetary penalties per A.R.S. 33-1803(B) / Condo A.R.S. 33-1242.

Fillings: All filings for the association should be current, including Arizona Corporation Commission, IRS and state tax filings.

Reserves: The association should consider having a reserve study completed and a reserve account.

Annual Audit: A.R.S. 33-1810/Condo A.R.S. 33-1243 requires an annual audit, compilation or review once a year.

Annual Operating and Reserve Budget: A review is performed and the board formally adopts a new budget each year.

Records: Association records must be kept and maintained appropriately.

Access to Books and Records: A.R.S. 33-1805/Condo A.R.S. 33-1258. All records of the association shall be made reasonably available to the members of the association, with some exceptions.

Procedure for Emergencies: A written procedure for handling emergencies should be in place.

Communication: The association should send out regular association information via, newsletters, webpage, etc.

Consult with professionals when necessary: Some of the association technicalities require professional expertise;

THE 4TOP QUESTIONS ASKED BY SELF-MANAGED ASSOCIATIONS

1. What do you do when you cannot get board members? Work on volunteer recruitment skills, consult with a community association attorney for legal options.

2. What do you do when you cannot meet quorum requirements for the annual meeting? Close the meeting and spend time recruiting for a follow-up meeting. Use mail-in or absentee ballots to increase attendance.

3. Why do we need to be in good standing with Arizona Corporation Commission? Check www.azcc.gov to determine if your association is in good standing with ACC. It is important to maintain corporation status to limit liability for directors, officers and owners in the association.

4. Any hints for Self-Management? Promote a sense of community, focus on practical approaches, practice common sense, seek reasonable solutions, keep association business open to members, share the burden with committees, understand your governing documents and seek professional advice when needed.

RECRUIT, RESPECT, RECOGNIZE VOLUNTEERS—TIPS!

1. Provide social opportunities in the association where people get to know each other and have fun! People want to help people that they know personally.
2. The best way to get volunteers is to ASK!
3. Advertise for volunteers in as many different venues as possible. Repeated pleas will have an effect.
4. Volunteers want constructive meaningful work, write a job description.
5. Match the volunteer to the job; if someone hates bookkeeping do not ask him/her to do the budget or be treasurer.

6. Increase effectiveness by providing adequate preparation, training and tools.
7. Recognition should be meaningful and fair. If you reward volunteers who are not doing well you will de-motivate other volunteers.
8. Recognition does not have to cost money. Give a smile, and most importantly a "thank you". Certificates of appreciation at the annual meeting, a note of thanks upon completion of a project, a birthday card, etc.
9. It starts at the top, proactive motivators garner results.