



# Community Association Records & Documents

## 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@mulcahylawfirm.com](mailto:bmulcahy@mulcahylawfirm.com)

[www.mulcahylawfirm.com](http://www.mulcahylawfirm.com)

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## COMMUNITY ASSOCIATION RECORDS AND DOCUMENTS

As a nonprofit corporation, the board of directors has a duty to maintain the association's books and records.

### **Pursuant to A.R.S. Section 10-11601, Corporate Records:**

1. A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, official recordings of all meetings if applicable, a record of all actions taken by the members or board of directors without a meeting and a record of all actions taken by a committee of the board of directors on behalf of the corporation.
2. A corporation shall maintain appropriate accounting records.
3. A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the names and addresses of all members and in alphabetical order by class of membership showing the number of votes each member is entitled to cast and the class of memberships held by each member.
4. A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.
5. A corporation shall keep a copy of all of the following records at its principal office, at its known place of business or at the office of its statutory agent:
  - a. Its articles or restated articles of incorporation and all amendments to them currently in effect;
  - b. Its bylaws or restated bylaws and all amendments to them currently in effect;
  - c. Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations and obligations of members or any class or category of members;
  - d. The minutes of all members' meetings and records of all actions taken by members without a meeting for the past three years;
  - e. All written communications to members generally within the past three years, including the financial statements furnished for the past three years under A.R.S. Section 10-11620;
  - f. A list of the names and business addresses of its current directors and officers; and
  - g. Its most recent annual report delivered to the Arizona corporation (among other things).

Arizona law, the association's governing documents and good business practices dictate which records the association must maintain and what documents and records are available for inspection and copying by its members.

## WHAT ARE THE ASSOCIATION'S DOCUMENTS?

All boards should review the association's documents: 1) know what documents are under the association's oversight; 2) know where the documents are kept; 3) know how documents pertain to the association; and 4) ascertain what documents may be missing and if it is necessary to find them. The association may have the following records and documents:

**Corporate Documents:** Articles of Incorporation, signed and filed with Arizona Corporation Commission, Bylaws kept with the association's records, CC&Rs (as amended) signed and recorded with county recorder's office.

**Association Documents:** Regular Board Meeting Minute Binder, Executive Board Meeting Minutes, Official recordings from Board meetings (if applicable), Rules and Regulations Adopted, Resolutions Passed by the Board, Board Member and Committee Rosters with Contact Information, Lot Files and current List of Owners/Members, All Association Correspondence.

**Financial Documents:** Financial Books, Records, Ledgers & Bank Statements, Federal and State Tax Returns, Annual Audit, Review or Compilation of Financial Records, Budgets.

**Rules and Policies:** Collection Policy, Enforcement Policy, Fine Policy, Association Rules and Regulations.

**Enforcement Files:** Rules and Restriction Enforcement Records, Violation Histories.

## WHERE ARE THE ASSOCIATION DOCUMENTS?, *CONTINUED*

**Architectural History:** Architectural Guidelines, Standards and Files, Architectural Submission Records (alternatively, records should be kept in each owner's file).

**Important Documents:** Reserve Study with date of completion, Existing Contracts: Pool, Management Co., Trash, Security, Legal, Landscape, etc., Insurance Policies to include—Director & Office, Workers Comp, Liability, Property, Fidelity, Earthquake, Flood, Non-Owned Auto, etc., Public Reports, Public Offering Statements and/or other Disclosure Documents, Deeds for common areas of the association (Planned Communities only), Plat Maps.

## WHAT DOCUMENTS SHOULD BE RETAINED AND FOR HOW LONG

### Corporate History is Important— Records to Keep Forever

Vital corporate records are part of the community's infrastructure and should be permanently retained. The association's governing documents — the CC&Rs (declaration of covenants, conditions and restrictions), articles of incorporation, bylaws, rules and regulations, deeds, architectural guidelines, easements, contracts, minutes and board resolutions fall into the retain forever" category. The historical perspective these documents provide is important because as the membership of a board changes, the association's collective memory remains intact with these documents. Additionally, new board members need a basis for understanding the policies and procedures established by former boards and long serving board members have a written record to remind them of the reasons for previous decisions.

### Financial Records

Financial records should be kept seven years because they help chart the community's financial history and because they could contain information that may have a bearing on current decisions. Records that might be subject to an IRS audit or to an accounting-related challenge should be kept at least seven years. Important financial documents, such as bank statements, deposit slips, budgets and petty cash vouchers should be kept at least four years.

### Additional Corporate Records

**Keep for at least 7 years:** 1. Records related to former employees, with the exception of their medical records, which, some experts say, should be retained for at least 30 years; 2. Expired contracts; 3. Old leases, 4. Insurance records; and 5. Accident reports and settled insurance claims.

**Unit Owner Files:** Corporate records relating to individual units or unit owners should be retained in separate unit owner's files. Decisions on the following requests and other documents related to them should become part of each unit's permanent record to provide the background information future owners will require: 1. General correspondence with unit owners; 2. Copies of work orders; 3. Complaints and violation notices; and 4. Requests and approvals/disapprovals for architectural modification.

**Storage and Recovery of Documents:** Boards should establish and adhere to procedures for ensuring the safe storage and rapid recovery of all vital association documents. Among other measures, boards should: 1. Regularly back up information contained in computer files; 2. Maintain duplicates of paper records and back up computer files and store in a safe, off-site location; and 3. Require all board members to be familiar with and able to implement the association's disaster recovery plan. 3. Digital copies of all documents make it easier to store, maintain and recover if necessary.

## Records Requests and Inspection of Association Books & Records

*A.R.S. 33-1805 (Planned Community)/ A.R.S. 33-1258 (Condo)*

All financial and other records of the association shall be made reasonably available for examination by any member or any person designated by the member in writing as the member's representative. Books and records kept by or on behalf of the association and the board may be *withheld from disclosure* to the extent that the portion withheld relates to any of the following: **1.** Privileged communication between an attorney for the association and the association; **2.** Pending litigation; **3.** Meeting minutes or other records of a session of an executive session board meeting; **4.** Personal, health or financial records of an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association; and **5.** Records relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association. Legislation enacted in 2006 *entitles* owners to see association books and records pertaining to "contemplated" litigation.

An association cannot charge a member for making books and records available for review. However, the association can charge 15 cents per page for copies of records. An association has ten (10) business days from submittal of a written request by an owner or an owner's designated agent to make records or copies of the requested records available.

If you are unsure what records can and cannot be released to association members contact Beth Mulcahy, Esq.