



Associations and COVID-19: A Plan for Reopening of HOA and Condo Common Areas

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

E-mail:

bmulcahy@mulcahylawfirm.com
www.mulcahylawfirm.com

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ASSOCIATIONS AND COVID-19: A PLAN FOR REOPENING OF HOA AND CONDO COMMON AREAS (RELEASED: MAY 13, 2020)

Hot off the press and within hours of the ink drying on Governor Ducey's most recent Executive Order, this Mulcahy Cheat Sheet will:

1. simplify and make Governor Ducey's recent Executive Order easy to understand;
2. help your association make the best possible decisions as you re-open (or chose to not reopen) common areas; and
3. limit the liability of the board and your association during these unprecedented times.

QUICK RECAP OF GOVERNOR DUCEY'S EXECUTIVE ORDERS ON COVID-19 (2020)

On March 11, 2020, Governor Ducey issued a Declaration of a Public Health State of Emergency due to the spread of COVID-19.

On March 30, 2020, Governor Ducey issued a Stay at Home Order requiring all residents to limit their time away from home except to participate in essential activities or essential functions.

Since April 29, 2020, Governor Ducey has been slowly and strategically loosening some restrictions on the "Stay at Home" Order in Arizona since Arizona has satisfied the gating criteria outlined by the Centers for Disease Control and Prevention ("CDC") and the White House. On May 4, 2020, retailers, cosmetologists and barbers were able to open for customers with certain restrictions. Then, on May 11, 2020, dine-in services were permitted to reopen with certain restrictions.

On May 12, 2020, Governor Doug Ducey made several large announcements regarding the reopening of the Arizona economy: (1) the "Stay at Home" Order will end at 11:59 p.m. on Friday, May 15, 2020; (2) a new Executive Order entitled "Stay Healthy, Return Smarter, Return Stronger" will go into effect on Saturday, May 16, 2020; and (3) the Arizona Department of Health Services ("ADHS") released written guidance which allows for the reopening of pools and gyms/fitness providers on May 13, 2020 with physical distancing and enhanced sanitation requirements.

WHAT DOES THE MAY 12, 2020 "STAY HEALTHY, RETURN SMARTER, RETURN STRONGER" ORDER MEAN FOR ARIZONA HOAS AND CONDOS?

- (a) The "Stay Healthy, Return Smarter, Return Stronger" Order calls for physical distancing, social connectedness and allows for businesses to gradually and safely reopen in compliance with federal guidelines.
- (b) All vulnerable individuals, including the elderly and individuals with underlying health conditions, should continue to limit their time away from their home.
- (c) All individuals, when in public areas, should maximize physical distance from others and avoid social settings where appropriate physical distancing is not practical (unless precautionary measures are observed and CDC guidelines are followed).
- (d) HOAs and condos must develop, establish and implement policies based upon guidance from the CDC, Department of Labor, Occupational Safety and Health Administration ("OSHA") and the Arizona Department of Health Services ("ADHS") to limit and mitigate the spread of COVID-19. Policies include promoting healthy hygiene practices; intensifying cleaning, disinfection and ventilation practices; (continued on next page)

**WHAT DOES THE MAY 12, 2020 “STAY HEALTHY, RETURN SMARTER, RETURN STRONGER”
ORDER MEAN FOR ARIZONA HOAs AND CONDOS? (CONTINUED)**

(d) monitoring for sickness; ensuring social distancing; providing necessary protective equipment; allowing for and encouraging teleworking where feasible; providing plans, where possible to work in phases; and limiting the congregation of groups of no more than 10 persons when feasible and in relation to the size of the location.

(e) **Despite the loosening of some restrictions by the State of Arizona, Mulcahy Law Firm, P.C. still recommends that associations continue conducting regular and annual “virtual” meetings due to the difficulty of social distancing during regular and annual meetings. Click [HERE](#) to view our new Cheat Sheet on “Tips for Conducting Virtual**

**ADHS ISSUES GUIDANCE ON THE REOPENING OF POOLS, GYMS AND FITNESS PROVIDERS
ON MAY 12, 2020**

On May 12, 2020, the Arizona Department of Health Services (“ADHS”) released written guidance which allows for the reopening of pools and gyms/fitness providers on May 13, 2020 with physical distancing and enhanced sanitation requirements.

To obtain a copy of the written guidance for the reopening of pools, go to: https://azgovernor.gov/sites/default/files/guidance_for_pools.pdf.

To obtain a copy of the written guidance for the reopening of gyms/fitness centers, go to: https://azgovernor.gov/sites/default/files/guidance_for_gyms_fitness_providers.pdf.

**MULCAHY LAW FIRM, P.C.’S RECOMMENDATIONS FOR THE REOPENING
OF ASSOCIATION COMMON AREAS**

Every association has different amenities, so, it is difficult to give a “one size fits all” recommendation on the reopening of association common areas. However, we universally recommend that boards have a well-thought out plan in place PRIOR to reopening any common area amenities. Set forth below are recommendations for boards as they consider the reopening of association common areas:

- (a) **Communicate with Owners/Residents:** Pressure will be mounting on the board to reopen (or not reopen) common areas. Now, more than ever, is the time to stay in touch with your residents, listen to their thoughts on reopening or not reopening common areas and let them know what the board is doing on this important issue. It is my opinion that the Board will need to be flexible and should encourage residents to be flexible as things change. It will be important for the Board to continuously provide communications to the residents with updates, as they occur.
- (b) **Consult with Trusted Advisors:** Contact your management company (if you have one) and your attorney to get advice regarding reopening (or possibly not reopening) your association’s common areas so that the board makes good decisions and limits liability for the association.
- (c) **Determine Insurance Coverage:** Contact the association’s insurance agent to determine if there is a virus exclusion in the association’s insurance policy. Discuss with the association’s insurance agent what the policy says and means regarding coverage of possible future COVID-19 claims against the association. Ask the association’s insurance agent if the agent has recommendations on how the association can limit its liability when reopening association common areas. Ask the association’s insurance agent if having owners sign a release of liability form provides protections for the association. Keep detailed notes of this conversation. Get advice from your Trusted Advisors (see 4(b) above) if you need it after talking with your insurance agent.
- (d) **Consider an Owner Release of Liability Form:** Determine if the association is going to require owners/guests to sign a release of liability form to use association common areas (and if it is feasible to get owners/guests to sign a release of liability form). A release of liability form may limit the association’s liability in the event the association is sued for a resident or guest allegedly contracting COVID-19 from the association’s common areas. Please contact Beth Mulcahy, Esq. if you’d like our firm to write a release of liability form for your association.
- (e) **Re-evaluate When Necessary:** The suggestions in this Cheat Sheet are for the initial re-opening and may need to be re-evaluated as governmental orders change and restrictions are lifted or tightened.

PLAN FOR REOPENING A POOL:

- **Signage:** It is my opinion that an association should post a sign at the entry of the pool that includes a statement such as:
"When you enter the pool area, you acknowledge that you are using the pool and pool area at your own risk. COVID-19 may be present. Stay home if you are sick or a higher risk individual (adults 65 years of age or older or people of any age who have serious underlying medical conditions). Stay at least 6 feet away from other patrons who do not live in your household. Do not touch your eyes, nose or mouth. After leaving the pool, use hand sanitizer or wash your hands with soap and water for at least 20 seconds." The signage should also disclose what, if any, sanitation procedures are being taken by the association in the pool area. Further, if the association is going to have any other requirements in place (see considerations below), the association may consider adding those applicable to the signage as well.
- **Pool Reopening Considerations for the Board:**
 - ◇ Will the association require use of facemasks when in the pool areas but not in the pool, for anyone entering the pool area (residents and contractors)?
 - ◇ What sanitation protocols in the pool area will be instituted by the board? If so, how often and what will be cleaned? The board should write out a disinfection plan. Areas to consider needing cleaning: gates, latches, tables, chairs, furniture, tables, fountains, handrails, countertops, trashcans, shared restrooms, grills, and pool lifts.
 - ◇ Will the association remove any patio furniture to assist with physical distancing? The ADHS recommends that pool operators provide additional space between pool chairs at community pools to allow for appropriate physical distancing.
 - ◇ Will the association provide wipes and alcohol-based hand-sanitizer for residents to wipe down furniture?
 - ◇ Will the association provide access to soap and water for handwashing or an alcohol-based hand sanitizer at stations around the pool for use by employees and pool users?
 - ◇ Will the association have a written policy requiring employees or vendors to regularly wash hands for at least 20 seconds?
 - ◇ Will certain areas in the pool be open? Such as, water fountains or grills, if any?
 - ◇ Will the association allow guests or only residents? Is there any way for the association to enforce this?
 - ◇ Does the association want to place time restrictions on use of pool? Some associations are considering time-limits, however, this will be difficult to schedule and enforce.
 - ◇ Will the association operate with reduced occupancy and capacity at the pool?
 - ◇ Will there be a prohibition of parties or gatherings in the pool or in the pool area?
 - ◇ Does the association's budget need to be adjusted at all for any costs that were not expected at the beginning of year for pool expenses?
 - ◇ The association should have its pool maintenance company confirm that the pool chemistry is adequate as a pool safety check prior to re-opening the pool.
 - ◇ Proper operation and maintenance (including disinfection with chlorine and bromine) of the pool facilities should inactivate the virus in the pool water. Check with your pool company to make sure that the pool company is taking necessary precautions to ensure that the pool water is virus-free once the pool reopens.
 - ◇ Will symptom screening be implemented for employees or independent contractors entering the pool at the start of their shift or when entering the pool? (Ex: temperature check)
 - ◇ Consider whether aquatic programs, classes, swim schools, lessons, etc. will be allowed. If these types of activities are allowed, protocols should be established by the Board.

Review ADHS written guidance for the reopening of pools: https://azgovernor.gov/sites/default/files/guidance_for_pools.pdf

Review CDC written guidance on pools: <https://www.cdc.gov/coronavirus/2019-ncov/community/parks-rec/aquatic-venues.html>

Websites for additional public health guidance: www.azhealth.gov; www.dol.gov and www.osha.gov

PLAN FOR REOPENING A GYM OR FITNESS CENTER:

- **Signage:** It is my opinion that the association should post a sign at the entry of the gym or fitness center that includes a statement such as:
"When you enter the gym/fitness center area, you acknowledge that you are using the gym/fitness area at your own risk. COVID-19 may be present. Stay home if you are sick or a higher risk individual (adults 65 years of age or older or people of any age who have serious underlying medical conditions). Stay at least 6 feet away from other patrons who do not live in your household. Do not touch your eyes, nose or mouth. After leaving the gym/fitness center, use hand sanitizer or wash your hands with soap and water for at least 20 seconds."

PLAN FOR REOPENING A GYM OR FITNESS CENTER (CONTINUED):

- The signage should also disclose what, if any, sanitation procedures are being taken by the association in the gym/fitness center area. Further, if the association is going to have any other requirements in place (see considerations below), the association may consider adding those applicable to the signage as well.
- **Other considerations for the Board:**
 - ◊ If there are typically fitness classes, can the association ensure no groups larger than 10 and also require physical distancing? Is there space in the rooms for this many people and physical distancing?
 - ◊ If there are team/staff members who have face to face interaction with members/residents they should consider wearing masks/gloves.
 - ◊ Discuss what the cleaning/sanitation procedures will be. Will gym equipment, locker room, chairs, furniture, tables, counters, pens, hard surfaces, trash cans, water dispensers and bathrooms be wiped down, and, if so, how often?
 - ◊ Will residents be provided disposable disinfecting wipes, cleaner and/or spray so residents can wipe down frequently touched surfaces on gym equipment?
 - ◊ Discuss whether the association will provide hand sanitizer and/or wipes and or a hand-washing station in fitness center.
 - ◊ Should employees be required to wash hands for at least 20 seconds at the start of a shift (and how often thereafter)?
 - ◊ Will there be different hours of operation to allow for proper sanitization?
 - ◊ Is there any furniture/equipment that should be moved to be 6 feet apart?
 - ◊ Are there any portions that should be turned off or remain closed for now? For example, water fountains?
 - ◊ Should members be required to bring their own towels?
 - ◊ Do reservations need to be made to limit people in facility?
 - ◊ Should there be reduced occupancy and capacity in the facility?
 - ◊ Should areas where customers like to congregate be marked so that this doesn't happen?
 - ◊ If payments are accepted or made, should touchless payment be used?
 - ◊ Should employees be screened prior to starting a shift (temperature check)?
 - ◊ Should all employees be trained on safety actions?
 - ◊ Should there be contactless check-in?
 - ◊ Should there be online registration for fitness classes and limits on the size of classes to promote social distancing?
 - ◊ Should lockers be cleaned out by residents daily to facilitate overnight deep cleaning?

Review CDC written guidance: <https://www.cdc.gov/mrsa/community/environment/athletic-facilities.html> and <https://www.cdc.gov/coronavirus/2019-ncov/community/parks-rec/park-administrators.html>

Websites for additional public health guidance: www.azhealth.gov; www.dol.gov; www.osha.gov and https://azgovernor.gov/sites/default/files/guidance_for_pools.pdf.

PLAN FOR REOPENING TENNIS/PICKLEBALL COURTS (THIS ALSO COULD APPLY TO SHUFFLEBOARD, BOCCE BALL, HORSESHOE AREA TOO)

Even though ADHS did not issue specific guidance for the reopening of tennis courts/pickle ball courts, it is our opinion that according to Governor Ducey's new executive order, Associations are allowed to re-open these amenities as well and therefore we came up with some additional ideas for the Board to consider when re-opening these areas.

- **Signage:** It is my opinion that the association should post a sign at the entry of the gym or fitness center that includes a statement such as:
"When you enter the [NAME AMENITY HERE] area, you acknowledge that you are using the [NAME AMENITY HERE] area at your own risk. COVID-19 may be present. Stay home if you are sick or a higher risk individual (adults 65 years of age or older or people of any age who have serious underlying medical conditions). Stay at least 6 feet away from other patrons who do not live in your household. Do not touch your eyes, nose or mouth. After leaving the [NAME AMENITY HERE] area, use hand sanitizer or wash your hands with soap and water for at least 20 seconds."
- The signage should also disclose what, if any, sanitation procedures are being taken by the association in the area. Further, if the association is going to have any other requirements in place (see considerations below), the association may consider adding those applicable to the signage as well.
- In addition, the Board may want to consider placing a sign with the USTA's statement on the safety of playing tennis at the tennis courts: <https://www.usta.com/en/home/stay-current/national/usta-statement-on-safety-of-playing-tennis-during-the-covid-19-v.html>

PLAN FOR REOPENING TENNIS/PICKLEBALL COURTS (THIS ALSO COULD APPLY TO SHUFFLEBOARD, BOCCE BALL, HORSESHOE AREA TOO) (CONTINUED)

- **Other considerations for the Board:**

- ◊ Verify with the county and city where association is located that tennis/pickleball courts (or other areas) may be reopened.
- ◊ Will guests be permitted to play on the tennis/pickleball courts? Or should use be limited to residents only?
- ◊ Consider moving chairs and benches 6 feet apart with a sign mandating that chairs and benches remain at least 6 feet apart.
- ◊ Will singles and doubles play be allowed?
- ◊ Discuss whether the association will provide hand sanitizer, disinfecting wipes and or a hand-washing station at the courts.
- ◊ Will players be required to wear face masks and gloves while playing?
- ◊ Will spectators (not playing tennis, just there to watch) be allowed on tennis/pickleball court area?
- ◊ How will court sign-ups be handled (electronically, paper)?
- ◊ Discuss what the cleaning/sanitation procedures will be. Will benches, trash cans, score cards, net posts, gates, night-lighting switches, water dispensers be sanitized and if so how often?
- ◊ Will classes and private instruction be allowed at the courts?
- ◊ Should signage at the courts state: do not share equipment, do not shake hands, do not congregate, wipe sweat with tissue or disposable wipe, wipe down equipment after play?

Review CDC written guidance for the reopening of athletic facilities: <https://www.cdc.gov/mrsa/community/environment/athletic-facilities.html>

PLAN FOR REOPENING CLUBHOUSE:

Even though ADHS did not issue specific guidance for the reopening of clubhouses, it is our opinion that according to Governor Ducey's new executive order, Associations are allowed to reopen these amenities as well, and, therefore, we came up with some additional ideas for the Board to consider when reopening a clubhouse.

- **Signage:** It is my opinion that an association should post a sign at all entrances to the clubhouse that includes a statement such as:
"When you enter the clubhouse, you acknowledge that you are using the clubhouse at your own risk. Covid-19 may be present. Stay home if you are sick or a higher risk individual (adults 65 years of age or older or people of any age who have serious underlying medical conditions). Stay at least 6 feet away from other patrons who do not live in your household. Do not touch your eyes, nose or mouth. After leaving the clubhouse, use hand sanitizer or wash your hands with soap and water for at least 20 seconds."
- The signage should also disclose what, if any, sanitation procedures are being taken by the association in the clubhouse. Further, if the association is going to have any other requirements in place (see considerations below), the association may consider adding those applicable to the signage as well.
- **Other considerations for the Board:**
 - ◊ Follow CDC recommendations and state recommendations regarding the size of gatherings.
 - ◊ If have restaurant or bar, are they following state requirements?
 - ◊ If there are team/staff members who have face to face interaction with members/residents should they wear masks/gloves.
 - ◊ Discuss what the cleaning/sanitation procedures will be.
 - ◊ Discuss whether the Association will provide hand sanitizer, wipes and/or a hand-sanitizing station in the building.
 - ◊ Will there be different hours of operation?
 - ◊ Will activities be allowed if there is proper social distancing (bridge, cards, bingo, exercise classes)?
 - ◊ Is there any furniture/equipment that should be moved to be 6 feet apart?
 - ◊ Are there any portions that should be turned off or remain closed for now? For example, water fountains?

Websites for additional public health guidance: www.azhealth.gov; www.dol.gov; www.osha.gov

As a general policy, the Associations should reference the CDC guidelines on cleaning and disinfecting and also follow any additional federal, state or local government guidelines: <https://www.cdc.gov/coronavirus/2019-ncov/community/reopen-guidance.html>

If you or your association has any questions on the contents of this cheat sheet or any other questions, please contact Beth Mulcahy, Esq. at bmulcahy@mulcahylawfirm.com.