



Mulcahy Memo – April, 2018

Published for clients and friends of the Mulcahy Law Firm, P.C.

by Beth Mulcahy, Esq.



Dear Clients and Friends,

Spring is in the air! The flowers are blooming and the weather is perfect. It doesn't get any better than this!

This month, our Mulcahy Memo discusses the topic of guns in community associations, the relevant laws pertaining to this topic and how they may apply to community association restrictions. To read the complete memo, please scroll down to the end of this article.

Our firm is excited to announce that we are now offering board member orientations and boot camps! In our inaugural sessions, we have found that boards are loving the personal education time with our firm to answer questions and help their boards be more effective! Each program is offered at a reduced flat-rate fee and covers board of director duties, responsibilities, potential pitfalls and includes time for attorney Q&A. Programs are typically held on-site or at our office and morning or afternoon sessions are available. We can tailor the session to fit your boards desires as we understand that each board is unique and has different needs. For more information, please contact Yvonne Barron, ybarron@mulcahylaw.net.

A reminder! The Arizona Legislature is currently considering over 15 bills regarding community association law. While the legislature is in session, our firm prepares a weekly summary of these proposed bills and posts them to our website. For a listing and summary of the pending bills, please click [here](#) and scroll down to the "Legislative Updates" section.

Please join us! Our firm is offering 6 free educational classes for board members and managers around the valley in the next 60 days. Listed below is the schedule for this month:

APRIL:

4/12- 12:30- 2:30 p.m.

Chandler HOA Academy- Board Member and Future Board Member Boot Camp: Everything you Need to Know to Effectively Manage and Govern Your Association! And, Let's Set Some Goals for Our Community and Make them Happen!

4/19- 12:30- 2:30 p.m.

Chandler HOA Academy- Community Board and Owners: How Can we Get Along to Move Along? Understanding Yourself and Others

For registration information or to view a full listing of these classes, please visit our website by clicking [here](#). We hope that you can join us at our upcoming classes!

Also, please consider "liking" and following us on [Facebook](#) so you don't miss any of our important updates on Arizona community association law.

Thank you!



Sincerely,
Beth Mulcahy, Founder and Senior Partner
Mulcahy Law Firm, P.C.

Guns in Community Associations

By: Beth Mulcahy, Esq.

In April of 2000 a community association meeting in Maricopa County turned into a nightmare when a disgruntled former owner opened fire, tragically killing two people and wounding three others. While this worst-case scenario is not common, it should be considered when discussing gun control laws as they apply to community associations. What are a community association's rights regarding gun control within the community?

Relevant Laws

The Second Amendment of the U.S. Constitution provides that "[a] well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." Courts have interpreted the U.S. Constitution to constrain the federal government, state and local governments and state actors. It is clear that a community association is not considered part of the federal/state/local governments. As such, in order for the Second Amendment to apply to a community association, a court would have to determine that the community association is considered a state actor. There have been limited instances where courts have found a community association to be a state actor (e.g. a community association which attempted to enforce racially restrictive covenants), but never in the context of a community association's attempt to enforce gun control/restrictions.

In addition to considering constitutionality, several state courts have used Section 3.1, Restatement (Third) of Property (Servitudes), which provides "that a servitude is valid unless it is illegal, unconstitutional, or violates public policy" to test the validity of a community association's restrictive covenants.

Arizona has some of the least restrictive gun control laws in the Country, which include allowing a person over 21 years old to carry a concealed weapon, without a permit (subject to certain limitations and exceptions). Arizona law does, however, provide private property owners the right to prohibit the carrying of firearms on such private property, subject to reasonable notice.

How They May Apply to Community Association Restrictions

Although we do not yet have definitive guidance on these issues, the above-referenced laws inform us that an attempt by a community association to ban gun possession within a private home or ban the transporting of guns to and from a private home over common areas (e.g. common area roads) is very likely unenforceable; and, an attempt by a community association to ban gun possession on privately owned and controlled common areas (subject to certain notice/posting requirements and subject to certain exceptions) is likely enforceable. As such, if a community association holds its meeting on common areas, the community association can very likely prohibit firearms during the meeting, subject to reasonable notice (e.g. conspicuously posted signage).

If a community association holds a meeting off-site, then (1) depending on the location, firearm restrictions may apply (e.g. if the meeting is on or near school grounds); (2) if the off-site location is private property (e.g. a management company), the private property owner may prohibit firearms, subject to reasonable notice; and/or (3) if the community association is considered in lawful control over the private property during the meeting, the community association can likely prohibit firearms during the meeting, subject to reasonable notice.

Other Considerations

A common and oftentimes effective tool used by community associations to deter crime within the community is a neighborhood watch. I have been asked whether volunteers on a neighborhood watch can/should carry firearms. My opinion is that the neighborhood watch is intended to identify suspicious activity and deter crime, but not to proactively pursue individuals engaging in suspicious activity. As such, I would not recommend that neighborhood watch volunteers carry firearms.

I have also been asked whether board members can bring guns to membership or board meetings for security purposes. If the community association attempts to enforce a restriction on firearms within the common areas, it would be my opinion that such restriction would also prohibit a board member from bringing a firearm to a meeting. Even if no such restriction exists, I still recommend against bringing firearms to a meeting and I also recommend contacting the association's insurance carrier to discuss potential ramifications and liability issues. If a community has safety concerns regarding any membership or board meeting, it is my opinion that a better option is to hire an off-duty police officer to provide security at the meeting. Even in the circumstance of an off-duty police officer providing security at a meeting, I still recommend contacting the association's insurance carrier to discuss potential ramifications and/or liability issues if the off-duty officer brings a firearm to the meeting.

Finally, please keep in mind that legislation and case law regarding gun control are subject to change. With strongly opinionated advocates on both sides of this issue, gun control on public and private property will remain a controversial and hotly contested topic moving forward.

If your association has questions regarding guns in your associations, Mulcahy Law Firm, P.C. at 602.241.1093 to have an attorney assist you.