



# Mulcahy Memo – May, 2018

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

by Beth Mulcahy, Esq.



Dear Clients and Friends,

I hope you are enjoying this beautiful weather!

## **Free Document Review Offered**

The upcoming summer months are a great time to consider amending your association's documents! Did you know that Mulcahy Law Firm, P.C. offers a complimentary review of an association's CC&Rs and bylaws to outline the amendment procedure(s) and determine what needs to be changed? If your board is interested in this complimentary review, please contact Beth Mulcahy, Esq. at 602.241.1093 or [bmulcahy@mulcahylaw.net](mailto:bmulcahy@mulcahylaw.net). For more information on this topic, please scroll down to the end of this article.

## **Two New Arizona Cases on Community Association Law**

The Arizona Court of Appeals has been busy over the past 9 months issuing legal opinions that pertain to community associations! In April 2018, the Arizona Court of Appeals issued a common-sense decision regarding attorneys' fees incurred by an association when obtaining an injunction prohibiting harassment against an owner. In this case, the Court of Appeals stated that an association cannot charge an owner for the attorneys' fees incurred by the association in obtaining a justice court injunction prohibiting harassment against that owner when the association did not ask the court issuing the injunction for attorneys' fees and the court did not award attorneys' fees. If you'd like to read a more detailed summary of this case regarding attorneys' fees, please click on the link below:

**[Bocchino v. Fountain Shadows Homeowners Association](#)**

As a refresher, the Arizona Court of Appeals also issued an opinion in late October, 2017 that affects how fines are levied and collected. For a copy of our firm's new cheat sheet on this subject, please click on the link below:

**[Levying and Collecting Fines in a Community Association](#)**

**Board Member Boot Camps**

**A reminder!** Our firm is now offering board member boot camps. Many of our clients are taking advantage of this personal education time with our firm to answer their questions and help their boards be more effective. Each program is offered at hourly rate and covers a variety of topics, including board of director duties, compliance with Arizona and federal laws, potential pitfalls and Q&A. The boot camp can be held at a location chosen by the board or at our office. We can tailor the session to fit your board's desires as we understand that each board is unique and has different needs. For more information, please contact Beth Mulcahy, at 602.241.1093 or [bmulcahy@mulcahylaw.net](mailto:bmulcahy@mulcahylaw.net).

**Arizona Legislature is Still in Session**

The Arizona Legislature is still in session and currently considering several bills regarding community association law. With all the other issues facing the Arizona Legislature this year, it has thankfully been a very slow year for community association bills. 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. At the end of the legislative session, our firm will once again provide a legislative update regarding any important changes in the law that affect community associations.

**Save the Date!** Mulcahy Law Firm, P.C. will be hosting a special seminar for Self-Managed Boards on the morning of Saturday, June 2, 2018. Stay tuned for more details.

**Please join us!** Our firm is offering 3 free educational classes for board members and managers around the valley in the next 30 days. Listed below is the schedule for this month:

**May:**

**5/8- 1:00- 2:30 p.m.**

**Mesa HOA Academy-** *Is Your Association in Good Health?; Secrets to Successful Associations*

**5/8- 5:00- 6:30 p.m.**

**Phoenix Neighborhood College-** *How to Deal With the Media?*

**5/10- 1:00- 2:30 p.m.**

**Peoria HOA Academy-** *Emerging Trends in the Community Association Industry*

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.

## **Summer Time is a Great Time to Amend Association Documents!**

*By: Beth Mulcahy, Esq.*

Has it been over a decade since your association amended its governing documents (CC&Rs, articles of incorporation, bylaws and rules)? Are your association's governing documents hard to read, difficult to understand and do they contain outdated, antiquated language?

Summer months are a great time to work on projects like amendments to your association's governing documents. Association business seems to slow down during this time so it is a great time for the association's board or a committee to take a closer look at the governing documents and determine if changes need to be made.

The most common reasons for amending association documents:

1. to delete or modify restrictions that are outdated, ambiguous or unreasonable;
2. to comply with changes in federal, state and local laws or ordinances;
3. to delete or modify provisions inconsistent with the management and operation of the association;
4. to delete provisions regarding the rights of the developer after the developer is no longer in control; and
5. to correct provisions that conflict with other governing documents (bylaws, articles of incorporation and rules and regulations).

There are several requirements which must be met prior to amending an association's documents. Therefore, an association should prepare a strategy for the amendment process to ensure that the needs of the association are met and that the documents are enforceable. Additionally, the association should consult with legal counsel in this process. Our firm has successfully assisted hundreds of associations in the process of amending documents using the following five step plan.

### **Step One: Determine what is required to amend the documents.**

- The board of directors should check the specific language of the association's documents. Typically, there is a provision in each document which outlines the proper procedures to amend the CC&Rs, articles of incorporation, bylaws and rules and regulations. Most documents require approval of membership to amend. In some rare cases, the association's board of directors can amend the documents without the approval of a percentage of the membership. However, the Condominium Act (A.R.S. Section 33-1227(A)) requires an approval of 67% of the votes within the condo association or any larger percentage if the declaration specifies to amend the CC&Rs.
- The rules and regulations can be promulgated and amended in most associations by a majority vote of the board. However, in some rare cases, some associations require a vote with approval by a percentage of the membership to amend the rules and regulations.
- The association should consult with legal counsel to assist with determining what is required to amend the documents.

**Step Two: Review the documents for changes and draft the proposed changes.**

- The board of directors should form a committee to research and prepare amendments to the association's documents.
- The amendment committee should solicit the ideas of committee members, board members and owners regarding changes to the documents and draft the proposed changes.
- It is important that the association's legal counsel review the documents and assist in the drafting of proposed changes during this step so that the documents are legally proper and enforceable.

**Step Three: Educate and solicit community support of the proposed changes.**

- The board and/or amendment committee should use informational meetings, homeowner input forums, town hall meetings, coffees and/or newsletters and other printed materials to educate and inform the membership of potential changes.
- The input and comments should be discussed by the board and/or amendment committee and legal counsel and final changes to the proposed amendments should be made at this time

**Step Four: Develop a plan and a reasonable time frame for obtaining approval of the proposed amendments.**

- The amendment committee and legal counsel should create strategic steps for completion (owner meeting/use of mail-in ballot) with a time line and proposed dates for voting. Ballots should be mailed to the owners and progress should be evaluated by the board every 30 days.

**Step five: Finalize and record the CC&Rs.**

Once the amendments to the CC&Rs have been approved as specified in the documents, the CC&R amendments must be placed into final form and recorded at the county recorder's office to become enforceable. The Condominium Act and the Planned Communities Act require amendments to the CC&Rs to be recorded within 30 days from the date approved. Bylaws and rules do not need to be recorded, but should be maintained with the official records of the association. Legal counsel should assist with this process.

Good

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Please go to our Mulcahy Cheat Sheet©, [Amending Association Documents and Rental Restrictions](#), to find complete information on the steps required to amend your association's documents.

Please contact Mulcahy Law Firm, P.C. for additional information and help with amending your association's documents.