



What is a Community Association?

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

Copyright 2018
MULCAHY LAW FIRM, P.C.
All Rights Reserved

COMMUNITY ASSOCIATIONS

There are thousands of community associations in Arizona today.

CHARACTERISTICS OF A COMMUNITY ASSOCIATION

- All owners become members of a community association when they accept a deed to a lot/unit located in a community association.
- The governing documents (i.e. CC&Rs, articles of incorporation, bylaws and rules and regulations) create obligations on the part of the homeowners and the community association.
- Most community associations are set up as non-profit corporations and are subject to the laws affecting non-profit corporations, condominiums (if applicable), planned communities (if applicable) and federal laws.

TYPES OF COMMUNITY ASSOCIATIONS

Condominium: In a condominium, the owner owns a separate interest in the unit or apartment together with an undivided interest in the common area. For example: If there are 50 units in a condominium association, each owner owns his/her individual unit (i.e. usually the airspace inside the four walls) plus 1/50th of the common areas.

Planned Community: An individual owns an interest separate from the other owners, usually called a lot, parcel or residence. In Arizona, the common areas in a planned community are owned by the association (not the owners).

THE LEGAL DOCUMENTS REGULATING COMMUNITY ASSOCIATIONS

The legal documents that regulate community associations have provisions that bind both the community association and the individual owner. The controlling legal documents for a community association are the plat, declaration of covenants, conditions and restrictions ("CC&Rs"), bylaws, articles of incorporation and rules and regulations.

Plat: All subdivisions require the preparation, approval and recording of a plat. The plat for a community association will identify the lots/units subject to separate ownership and the common area.

Declaration of Covenants, Conditions and Restrictions ("CC&Rs"): The CC&Rs are the enabling document that creates the covenants and restrictions that run with the land and are binding on all current and successive owners. This document is recorded with the county recorder's office before an owner purchases a lot/unit in a community association.

Articles of Incorporation: The articles of incorporation establish the association as a legal entity with the Arizona Corporation Commission. It is advisable to incorporate a community association to limit the liability of individual members for the acts and liabilities of the association by incorporating.

Bylaws: The bylaws are used for the internal government and operation of the association. The bylaws typically define composition, election and appointment of the board of directors, and the "how to" run the association specifics.

Rules and Regulations: The board is usually empowered in the CC&Rs or bylaws to adopt rules and regulations regarding the community association's common areas and/or behavior by residents within the community. The rules and regulations cannot conflict with the CC&Rs or bylaws. Rules and regulations must be reasonable, easy to understand and consistent with the authority given regarding rule-making in the CCRs and/or Bylaws.

The hierarchy of the legal documents is as follows: plat, CC&Rs, articles of incorporation, bylaws and rules and regulations. In the event of a conflict between the documents, the document earlier in the hierarchy prevails or trumps the other document.

Know where to find the state statutes that govern the association or condominium and have a working knowledge of them: **Arizona Revised Statutes: www.azleg.gov**

To access Arizona Revised Statutes (A.R.S.) online: From the home page, select "Arizona Revised Statutes" located on the left side of the page under "General Information". Next, scroll down to the title you want to search, select and click on the actual title (i.e. title 33) to have the title open. The chapters, articles and sections follow, each listed respectively in numerical order.

A.R.S. information can also be found on the Mulcahy website at www.mulcahylawfirm.net.

The following Arizona state statutes may govern your community association:

Title: 10 Corporations and Associations

Chapter: 24 General Provisions – Non Profit Corporations

Title: 33 Property

Chapter: 9 Condominiums
Chapter: 16 Planned Communities

KEY FIGURES IN A COMMUNITY ASSOCIATION

Community associations are composed of different groups of people working together to manage the association. To effectively run a community association, association leaders must understand the roles and responsibilities of each group and how they interact. The key players in the administration of a community association are: the developer, board of directors, officers, owners, committee members and possibly the management company and manager.

THE DEVELOPER

The developer (also known as the declarant) is in control of the association during the early phases of the community. The developer oversees the preparation of the governing documents and creates structure for the community association. The developer is responsible for creating the original budget, basic administrative procedures, maintaining financial, legal and lot/unit owner's records, minutes of board meetings and all documents pertaining to the community association. The developer has a fiduciary responsibility to the association and the owners. Once a certain percentage of the lots/units are sold, the developer transfers control of the community association to the owners.

THE BOARD OF DIRECTORS

Owners elect the board of directors. The board of directors manages the community. The governing documents (and Arizona law) give the board the authority and obligation to act. Some examples of powers vested in the board are the following:

- Duty to enforce governing documents;
- Architectural control in conjunction with ACC;
- Duty to maintain and repair the property;
- Duty to insure;
- Duty to provide services and facilities to members;
- Duty to levy and collect assessments; and
- Duty to conduct annual meetings and regular board meetings.

The board has a **fiduciary duty** to act in good faith in the best interest of the community association and with such care that a reasonably prudent person would act in the same position under similar circumstances.

THE OFFICERS

The governing documents (usually the bylaws or articles of incorporation) have provisions which relate to officers. Officers of associations are usually elected by the board of directors. The board consists of the following officers: president, vice-president, secretary and treasurer.

ASSOCIATION MEMBERS - RIGHTS

Association members (owners) have rights and obligations while living in a community association.

Examples of an association member's **rights** are:

- To elect board members;
- To amend CC&Rs and raise assessments;
- To review records of the association as allowed by Arizona law;

ASSOCIATION MEMBERS - RIGHTS (CONTINUED)

- To be given reasonable notice of CC&R violations and an opportunity to respond prior to assessment of fines; and
- To ask questions.

ASSOCIATION MEMBERS - OBLIGATIONS

Examples of an association member's **obligations** are:

- To adhere to the community association's documents;
- To pay assessments on time;
- To maintain their homes; and
- To stay informed about community association activities.

COMMITTEES

The governing documents (usually the CC&Rs or bylaws) authorize standing committees and authorize the board to appoint committees. Committees assist the board in gathering information, making recommendations and they contribute valuable input on decisions by gathering members' views.

Examples of typical committees in a community association are:

- Architectural committee;
- Budget and finance committee;
- Elections or nominating committee;
- Maintenance committee;
- Social and recreational committee; and
- Newsletter committee.

THE MANAGEMENT COMPANY - MANAGER

The management company's/manager's duties for the association depend on the requirements of the association. Typically the management company will perform the following (but not limited to) duties with the help of a designated manager:

- Initial collection of assessments (one or two demand letters);
- Violations;
- Financials and budget;
- Maintenance of all records;
- Preparation for regular and annual meetings; and
- Correspondence with owners.

VOLUNTEERS

The board of directors, various standing committees and special committees are typically comprised of association member volunteers.