

# MULCAHY ANSWERS

for Community Associations

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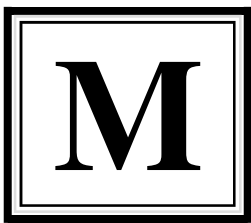
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## MULCAHY LAW FIRM, P.C.

3001 East Camelback Road  
Suite 130  
Phoenix, Arizona 85016  
Phone: 602.241.1093  
Toll Free: 877.206.7164  
Facsimile: 602.264.4663  
[www.mulcahylawfirm.net](http://www.mulcahylawfirm.net)

Beth Mulcahy, Esq.  
Kristen L. Rosenbeck, Esq.  
Marischa H. Gilla, Esq.  
Audrey K. Swenson, Esq.

E-mail:  
[bmulcahy@mulcahylaw.net](mailto:bmulcahy@mulcahylaw.net)

## Mulcahy Law Firm, P.C. Launches New Website

Mulcahy Law Firm is now bringing answers to community association questions through our new website located at [www.mulcahylawfirm.net](http://www.mulcahylawfirm.net). Many hours have gone into the creation of the site to ensure that it is user friendly and contains current information to assist homeowners, officers and directors, community managers and municipal neighborhood departments. The site is filled with educational information: our popular Mulcahy Cheat Sheets®, current and archived Answers newsletters, community contacts, resources for associations and the ability to register on-line for our educational seminars.

What makes this site different? In addition to the above mentioned educational and resource materials, you will find our *Did You Know?* section containing *new, cutting edge information* about community associations each week.

## Consolidating Common Area Tax Parcels Can Save Planned Communities Money

by Beth Mulcahy

Arizona planned community associations can take advantage of a law enacted in fiscal year 2000 that allows associations to have common area parcels combined and valued at \$500 per parcel. *The lower valuation will result in a significant tax savings for the associations.*

Almost all planned community associations qualify for this tax break. In order to qualify for a common area tax consolidation, the following must apply:

1. The association must be a planned community;
2. The common areas must be owned by a non-profit community association;
3. The association must be organized and operated to provide for the maintenance and management of the common area property;
4. All residential property owners in the association must be required to, and must actually be, members of the association or must be obligated to pay mandatory assessments to maintain and manage the common areas;
5. All members of the association, their immediate families and, if provided by the rules of the association, guests, must have a right to use and enjoy the common areas. This right must be appurtenant to and pass with title to each lot and parcel. The association may assess a fee for particular uses of individual common areas; and
6. The common areas must be deeded to the association.

Associations can obtain the tax consolidation form from the Maricopa County Assessor's Office at: [www.maricopa.gov/Assessor/common\\_area\\_form.aspx](http://www.maricopa.gov/Assessor/common_area_form.aspx). Please note that this law does not apply to common elements of a condominium, office condominiums or golf courses owned by an association.

Please contact our office if you would like us to assist your association with the consolidation of common area tax parcels.

Answers

We invite you to join us on-line at [www.mulcahylawfirm.net](http://www.mulcahylawfirm.net)

**UPDATE!****Bills Regarding Associations Pending in Arizona Legislature**

by Beth Mulcahy

The Arizona legislative session is in full swing and there are a number of bills regarding community associations that are moving quickly through each chamber.

Set forth below is a brief summary (as of April 11, 2006) of bills that have been passed by the legislature and were *signed by Governor Napolitano on April 10, 2006*. Please note that the general effective date for these bills will be 91 days after the legislative session is over.

**SB 1007:**

**Association Books and Records:** Owners are entitled to see association books and records pertaining to "contemplated" litigation. An association cannot charge members for making books and records available for review. An association has 10 business days from a request by an owner or an owner's designated agent to make records available or copies of requested records and the association can only charge 15 cents per page for copies of records

**Foreclosure Limitations:** Associations can only foreclose if assessments are delinquent for 1 year or if the owner owes \$1,200 or more in assessments. The provisions in SB 1007 regarding foreclosure limitations mirror the provisions of SB 1008. SB 1008 was also signed into law by the Governor on April 10, 2006.

**Requirements for Enforcement of Association**

**Documents:** Before taking action to enforce the provisions of the association's documents regarding the condition of the unit/lot owner's property, the association shall provide the lot/unit owner with written notice of the violation of the association's documents and a description of the process the unit/lot owner must follow to contest the notice. A unit/lot owner who receives this written notice may provide the association with a written response by sending the response by certified mail to the association's address as listed on the notice of contact form within 10 business days after the date of the notice. Within 10 business days after receipt of the certified mail containing the response from the unit/lot owner, the association shall respond to the unit/lot owner with a written explanation regarding the notice. The written notice shall provide at least the following information:

1. The provision of the condominium documents that has allegedly been violated;
2. The date of the violation or the date the violation was observed; and
3. The first and last name of the person or persons who observed the violation.

The association cannot proceed with any action to enforce the association's documents (including the collection of attorneys' fees) before or during the time prescribed

described above. Note: All aspects of SB 1007 apply to planned communities and condominiums.

**SB 1055 Display of Flags in Associations:** Associations cannot prohibit the display of an official flag of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, POW/MIA flag, Arizona State flag, or the Arizona Indian Nations flag as long as the flag is displayed in a manner consistent with the Federal Flag Code. Applies to planned communities and condominiums.

**SB 1138 Conveyance of Real Property:**

An association can convey certain real property that is an asset of the association and that is not held as a common element of the condominium if 80% of the votes in the association (or a larger percentage if the declaration specifies) agree to the sale of the real property. Applies to condominiums only.

Set forth below is a list of the active bills still pending in the Arizona legislature as of April 10, 2006. These bills have not been passed by the legislature and have not been signed by the Governor, so they are not yet law at this time.

**HB 2205 Parking by Employees of Municipal Utility's in**

**Associations:** A resident (employed by a municipal utility that is required to prepare for emergency deployments of personnel and equipment for repair or maintenance of natural gas, electric or water infrastructure) can park a motor vehicle (the vehicle must meet certain requirements) on a street or driveway in an association. Applies to planned communities only.

**HB2824 Administrative Law Judges:** Administrative law judges shall decide complaints between owners and associations. For a dispute between an owner and an association, the owner or association may petition for a hearing concerning a violation of the association documents or state law (a filing fee must be paid by the petitioner). If an association's documents call for an arbitration process for the resolution of disputes, this law would not apply. The administrative law judge may order any party to abide by Arizona law or the association's documents and may levy a civil penalty on the basis of each violation. Applies to planned communities and condominiums.

**Our office will provide a MULCAHY Cheat Sheet® update on all bills that will be signed into law and an update in the July, 2006 Answers newsletter.**

**To obtain a copy of these bills:** go to  
www.azleg.state.az.us

at the top right hand corner of web page type the bill number in the box and click on "Bill # Search".

Answers

Share your copy of Answers with your association's board!

## Are Emergency Board Meetings Legal?

by Beth Mulcahy

Unless the association's documents provide otherwise, an association's board of directors (after termination of declarant control of the association) is required to give notice to unit/lot owners regarding meetings of the board of directors at least forty-eight hours in advance of the meeting by newsletter, conspicuous posting or any other reasonable means as determined by the association's board of directors. Any notice of a board meeting shall state the date, time and location of the meeting.

However, pursuant to A.R.S. Sections 33-1804(c) and 33-1248(c) notice to unit/lot owners is not required if emer-

gency circumstances require action before notice can be given. I have been asked on many occasions what is considered an "emergency circumstance". It is my opinion that an emergency circumstance is a generally unexpected occurrence that would increase the association's liability and/or cause increased damage if left unattended. A good example of an emergency circumstance would be a large pipe breaking in the association's common areas causing severe flooding in the association. As such, a board may conduct an emergency meeting and forego the forty-eight hour notice requirement if circumstances dictate that an immediate decision must be made by the board. *Answers*

*"I suggest that the board re-affirm what was done at the emergency board meeting at the next regular meeting of the board of directors."*

*Beth Mulcahy*

### MULCAHY LAW FIRM, P.C.

#### BULLETIN BOARD

Our March 9th Seminar was a huge success with over 250 people in attendance!

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All Mulcahy Cheat Sheets© are available in PDF format

at  
[info@mulcahylaw.net](mailto:info@mulcahylaw.net)  
 or  
[www.mulcahylawfirm.net](http://www.mulcahylawfirm.net)  
 or  
 by calling our office:  
**602.241.1093**

**Find your Legislator through the web address or the phone numbers listed below:**

[www.azleg.state.az.us](http://www.azleg.state.az.us)

**Arizona State House of Representatives**  
 Information Desk: 602.926.4221

**Arizona State Senate**  
 Information Desk: 602.926.3559

**Beth Mulcahy** is the founding attorney and partner of the Mulcahy Law Firm, P.C. Beth's legal practice focuses exclusively on the representation of over eight hundred (800) community associations throughout the State of Arizona.

After receiving a Bachelor of Arts degree in Political Science from Marquette University in Milwaukee, Wisconsin, Beth earned her *Juris Doctor* degree from Marquette University Law School where she was on the Dean's List and a member of the Marquette University Law Review. A native of Wisconsin, Beth is licensed to practice law in the State of Wisconsin and the State of Arizona.

As the former editor/author of a weekly question and answer column in The Arizona Republic, Beth addressed hundreds of questions on association governance. In her three years with the paper, she became known for providing information and answers that communicate a clear understanding of the subject matter. Beth's Answers publication and periodic legal seminars on community associations continue to provide education and information for the industry. She has also published articles in Managers Report magazine, Community Association Institute's (CAI) Journal of Community Association Law, Common Ground magazine and Arizona Community Association Journal. Beth is a member of the National and the Central Arizona Chapter of CAI, a nonprofit organization supporting the interests of community associations and the Arizona Association of Community Managers.

Beth regularly speaks on the topic of community associations for seminars, conferences and workshops at state and national levels. E-mail: [bmulcahy@mulcahylaw.net](mailto:bmulcahy@mulcahylaw.net)

**Kristen L. Rosenbeck** graduated from Valparaiso University with a Bachelor of Arts degree in Biology where she actively supported her school as the Student Body President. Kristen graduated in the top third of her law class receiving her *Juris Doctor* degree from Marquette University in Milwaukee, Wisconsin in 2001. She maintains licenses to practice law in both the State of Wisconsin and the State of Arizona.

Kristen's legal practice focuses on the interpretation and enforcement of association documents and guidance on state and federal laws. She represents associations on issues of bankruptcy, collection of delinquent assessments, policy creation and she provides representation for office condominiums. Kristen is experienced in litigation and transactional law. E-mail: [krosenbeck@mulcahylaw.net](mailto:krosenbeck@mulcahylaw.net)

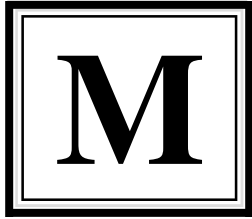
**Marischa H. Gilla** is a native Phoenician. She graduated from Xavier College Preparatory in 1997 and Northern Arizona University in 2001 with an extended Bachelor of Science degree in American Political Studies. She graduated in the top third of her law school class in December, 2004 from California Western School of Law. Marischa is licensed to practice law in the State of Arizona. E-mail: [mgilla@mulcahylaw.net](mailto:mgilla@mulcahylaw.net)

**Audrey K. Swenson** graduated Summa Cum Laude from Arizona State University with a degree in Justice Studies and a minor in Business. She received her *Juris* doctorate degree also from ASU in May, 2005. Audrey is licensed to practice law in the State of Arizona. E-mail: [aswenson@mulcahylaw.net](mailto:aswenson@mulcahylaw.net)

Marischa and Audrey are associate attorneys with the Mulcahy Law Firm and focus their legal practices on the representation of community associations with an emphasis on litigation, enforcement of restrictive covenants and collection of delinquent assessments.

Answers is not intended to offer specific legal advice or responses to individual circumstances or problems. If legal advice is required, please consult individually with the Mulcahy Law Firm, P.C.

**Questions may be directed to Beth Mulcahy**  
**Phone: 602.241.1093 ♦ Facsimile: 602.264.4663**  
**E-mail: [bmulcahy@mulcahylaw.net](mailto:bmulcahy@mulcahylaw.net)**



Return Service Requested

Please place  
indicia here

MULCAHY LAW FIRM, P.C.

3001 East Camelback Road  
Suite 130

Phoenix, Arizona 85016

Phone 602.241.1093

Facsimile 602.264.4663

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## Did You Know?

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### **Associations Must Appeal 2007 Property Valuations *Before April 27, 2006***

The 2007 Property Valuations were mailed to all property owners on February 27, 2006. Homeowners and associations can appeal the 2007 Property Valuations by petitioning the Maricopa County Assessor's Office in writing on or before April 27, 2006. A common reason for an association to appeal a property valuation is that the Assessor's Office failed to recognize a Common Area Parcel Consolidation (whereby all of the Association common areas are valued at \$500).

Please contact our office at 602.241.1093 if your association requires assistance with this process.

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