



2006 Legislative Update

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

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EFFECTIVE DATE OF 2006 COMMUNITY ASSOCIATION LEGISLATION

Set forth below is a brief summary of the 2006 community association legislation as passed by the legislature and signed by Governor Napolitano. *These new laws will go into effect on Thursday, September 21, 2006.*

REQUIREMENTS FOR ENFORCEMENT OF ASSOCIATION DOCUMENTS

Step One – Notice of Violation: The association sends the lot/unit owner written notice of the violation.

Step Two – Written Response by Unit/Lot Owner: A unit/lot owner who receives a written notice that the *condition of the property owned by the unit/lot owner is in violation of a requirement of the association's documents* may provide the association with a written response by sending the written response *by certified mail* to the association's address (as listed in the written notice OR on the notice of contact form recorded with the county recorder) within ten (10) business days after the date of the notice.

Step Three – Required Response from Association: If the association receives a written response from the unit/lot owner as specified above in step two, the association is then required to respond to the unit/lot owner within ten (10) business days (after receipt of the certified mail containing the response from the unit/lot owner) with a written explanation regarding the notice.

The written notice shall provide, at a minimum, the following information (if the Notice of Violation did not already include this information):

1. The provision of the association's documents that has allegedly been violated;
2. The date of the violation or the date the violation was observed;
3. The first and last name of the person(s) who observed the violation; and
4. The process the unit/lot owner must follow to contest the notice.

If the owner complies with the requirements of Step 2, the association **may not** proceed with any action to enforce the association's documents (including fines, self-help and the collection of attorneys' fees) until the requirements of Step 3 are met (exception: If Step 1 contains the requirements of Step 3).

Applies to planned communities and condominiums.

DISPLAY OF FLAGS IN ASSOCIATIONS

An association cannot prohibit the outdoor display of the American Flag or an official flag (or a replica) of the United States Army, Navy, Air Force, Marine Corps, Coast Guard by a unit/lot owner on that unit/lot owner's property if the American flag or military flag is displayed in a manner consistent with the Federal Flag Code.

Associations also cannot prohibit the outdoor display of the following:

1. POW/MIA flag;
2. Arizona State flag; and
3. The Arizona Indian Nations flag.

The Association can adopt reasonable rules and regulations regarding the placement and manner of display of the above-listed flags.

Applies to planned communities and condominiums.

FORECLOSURE LIMITATIONS

Associations can only foreclose if assessments are delinquent for a period of one (1) year or if the owner owes \$1,200 or more in assessments (whichever occurs first).

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. This agreement to convey must be evidenced by the execution of an agreement, or ratifications of the agreement, in the same manner as a deed and by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless previously recorded. The agreement and all ratifications of the agreement shall be recorded in each county in which a portion of the condominium is situated and are effective only on recordation.

Applies to condominiums only.

PARKING BY EMPLOYEES OF MUNICIPAL UTILITIES IN ASSOCIATIONS

Notwithstanding any provision in an association's documents, an association cannot prohibit a resident from parking a motor vehicle on a street or driveway if all of the following apply:

1. The vehicle is required to be available at designated periods at the person's residence as a condition of that person's employment;
2. The resident is employed by a municipal utility and is required to prepare for emergency deployments of personnel and equipment for repair or maintenance of natural gas, electric or water infrastructure;
3. The vehicle has a gross vehicle weight rating of 20,000 pounds or less and is owned by the municipal utility; and
4. The vehicle bears an official emblem or other visible designation of the corporation.

Note: A "municipal utility" is defined by the dictionary as utility service providers that are organized at functions of town, city, county and district government such as water and electric companies.

Applies to planned communities only.

INSPECTION OF ASSOCIATION BOOKS AND RECORDS BY MEMBERS

All financial and other records of the association shall be made reasonably available for examination by any member or any person designated by the member in writing as the member's representative. Books and records kept by or on behalf of the association and the board may be withheld from disclosure to the extent that the portion withheld relates to any of the following:

1. Privileged communication between an attorney for the association and the association;
2. Pending litigation;
3. Meeting minutes or other records of a session of an executive session board meeting;
4. Personal, health or financial records of an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association; and
5. Records relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association.

New legislation in 2006 *entitles* owners to see association books and records pertaining to "contemplated" litigation. An association cannot charge a member for making books and records available for review.

An association has ten (10) business days from submittal of a request by an owner or an owner's designated agent to make records available or copies of the requested records. The association can only charge 15 cents per page for copies of records.

ADMINISTRATIVE LAW JUDGES

Administrative law judges now have jurisdiction to 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 nonrefundable filing fee must be paid by the petitioner).

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.