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.

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COMMUNITY ASSOCIATIONS

It is estimated that there are over 10,000 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.

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).

Cooperative: In a cooperative, a corporation owns the real property and the improvements (i.e. the building). The corporation is owned by the lessees of apartments or spaces in the project. Each apartment is subject to a long term lease giving the lessee exclusive use of the apartment.

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 of the association.

Bylaws: The bylaws are used for the internal government and operation of the association. The bylaws typically define composition and election of the board of directors, notice and quorum requirements for meetings, administrative procedures and rules for the association.

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 or areas not generally covered by the community association's CC&Rs. If rules and regulations conflict with the CC&Rs or bylaws, the rules and regulations are unenforceable. Rules and regulations must be reasonable, easy to understand and efficient.

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.

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 the groups 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 prepares 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

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;
- 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;
- 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 cast a vote in the election of the board of directors;
- To participate in the community association;
- 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 to owners.

VOLUNTEERS

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