

# MULCAHY ANSWERS

for Community Associations

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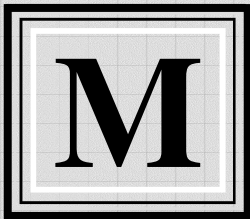
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## Governor Napolitano Signs Two New Bills Regarding Community Associations

by Beth Mulcahy

The Arizona legislature is in full swing and there are a number of bills regarding community associations that are moving swiftly through each chamber. As of May 7, 2007, only two bills regarding community associations have been passed by the legislature and signed by Governor Napolitano. These bills will become law ninety-one (91) days after the legislative session ends. Set forth below is a summary of the two bills:

### **HB2254: Homeowners Associations; Telecommunications Vehicles (amending A.R.S. Section 33-1809):**

Regardless of any provision in the community documents, an association shall not prohibit a resident from parking a motor vehicle on a street or driveway in the planned community if:

1. the vehicle is required to be available at designated periods at the person's residence as a condition of the person's employment;
2. the resident is employed by a public service corporation that is regulated by the corporation commission or a municipal utility;
3. the public service corporation or municipal utility is required to prepare for emergency deployments of personnel and equipment for repair or maintenance of natural gas, electrical, telecommunications (the transmission of information of the user's choosing between or among points specified by the user without change in the form or content of the information as sent and received – telecommunications does not include commercial mobile radio services) or water infrastructure;
4. the vehicle has a gross vehicle weight rating of twenty thousand pounds or less and is owned or operated by the public service corporation or a municipal utility and the vehicle bears an official emblem or other visible designation of that the public service corporation or municipal utility.

**Note:** This new law expands A.R.S. Section 33-1809 to include telecommunication vehicles.

This new law applies to planned communities only.

### **HB2503: Homeowner's Associations; Cautionary Signs (amending A.R.S. section 33-1803):**

Regardless of any provision in the community documents, an association shall not prohibit the use of cautionary signs regarding children if the signs are used and displayed as follows:

1. The signs are displayed in residential areas only;
2. The signs are removed within one hour of children ceasing to play; and
3. The signs are displayed only when children are actually present within fifty feet of the sign;
4. The temporary signs are no taller than three feet in height; and
5. The signs are professionally manufactured or produced.

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## Governor Napolitano Signs New Bills *continued*

In addition, notwithstanding any provision in the community documents, an association shall not prohibit children who reside in the planned community from engaging in recreational activity on residential roadways that are under the jurisdiction of the association and on which the posted speed limit is twenty-five miles per hour or less. This new law applies to planned communities only.

To obtain a copy of these bills, go to [www.azleg.state.az.us](http://www.azleg.state.az.us) at the top right hand corner of the web page, type the bill number in the box and click on "Bill # Search".

Answers

Our office is closely monitoring several additional bills regarding community associations which have not yet been signed into law. For a summary of the pending community association bills, go to [www.mulcahylawfirm.net](http://www.mulcahylawfirm.net) click on the "Answers & Cheat Sheets" button, and then on "Cheat Sheets" and scroll down to the document entitled "2007 Pending Bills Regarding Community Associations".

This document will be updated by our office every week until the legislative session ends.

Finally, we will provide a new Mulcahy Cheat Sheet © regarding community association bills that are signed into law with the July, 2006 *Answers* newsletter.

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## Smoke-Free Arizona Act *will* Impact Community Associations

by Beth Mulcahy

In November of 2006, Proposition 201, The Smoke-Free Arizona Act passed. The new law went into effect on May 1, 2007.

### **This landmark statute prohibits smoking in most indoor public places including (but not limited to):**

1. Restaurants, bars, gaming facilities such as bingo halls, billiard or pool halls, bowling centers, public buildings, grocery stores or any food service establishment.
2. Lobbies, elevators, restrooms, reception areas, hallways and any other common-use areas in public and private buildings, condominiums and other multiple-unit residential facilities.
3. Indoor sports arenas, gymnasiums and auditoriums.
4. Health care facilities, hospitals, health care clinics, doctor's offices and child day care facilities.
5. Common areas in hotels and motels, and no less than 50% of hotel or motel sleeping quarters rented to guests.
6. Any place of employment not exempted. (See exemptions).
7. Tribes are Sovereign Nations, and are exempt from the Smoke-Free Arizona Act.

The goal of the Smoke-Free Arizona Act is to protect Arizona's citizens from the dangers of secondhand smoke, however there are some specific public spaces where smoking will be allowed.

### **Exemptions - Smokers will be allowed to smoke in the following places:**

1. Private residences (except when used as a licensed child care, adult day care or health care facility).
2. Hotel and motel rooms designated as smoking rooms (no more than fifty percent of rooms rented to guests in a hotel or motel are so designated).
3. Retail tobacco store (physically separated and independently ventilated so that smoke from retail tobacco stores does not infiltrate non-smoking areas).
4. Veterans and fraternal clubs when they are not open to the general public.
5. Smoking when associated with religious ceremony practiced pursuant to the American Indian Religious Freedom Act of 1978.
6. Outdoor patios so long as tobacco smoke does not enter areas where smoking is prohibited through entrances, windows, ventilation systems or other means.
7. Theatrical performance upon a stage or in the course of a film production or television production if the smoking is part of the performance of production.
8. Tribes and Sovereign Nations.

Continued

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This new law will have an impact on community associations. Smoking will not be allowed inside any common use areas, inside a clubhouse or other private

Community associations may want to consider posting "No Smoking" signs.

buildings of an association (such as a guard gate or guard house). In addition, smoking will be prohibited inside hallways of condominiums or other multiple use residential facilities. However, residents can still smoke inside their

private residences and on outdoor patios (as long as tobacco smoke does not enter areas where smoking is prohibited through entrances, windows, ventilation systems or other means). Finally, community associations may want to seriously consider posting "no smoking" signs or decals in areas where smoking is prohibited.

**To obtain a full copy of this new law, go to:**  
[http://www.azsos.gov/election/2006/General/BallotMeasureText/PROP%20X%20\(1-05-2006\).htm](http://www.azsos.gov/election/2006/General/BallotMeasureText/PROP%20X%20(1-05-2006).htm)

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**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, Strictly Legal newsletter, 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.

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**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 in general counsel matters, bankruptcy, collection of delinquent assessments and enforcement actions. Kristen also provides representation to office condominiums. Kristen is experienced in litigation and transactional law.

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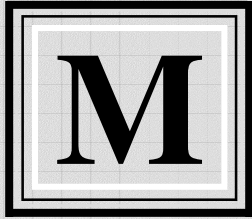
**Elizabeth "Libby" Shillito** is a native of Dayton, Ohio. Libby graduated from Indiana University with a Bachelor of Science degree in Sports Marketing and Management in May, 2003. While at Indiana, Libby was a student recruiting assistant for Indiana Football and had multiple internships with professional sports organizations including the Tampa Bay Devil Rays. Libby received her *Juris Doctor* and her Master of Business Administration from University of Toledo in May, 2006. Libby is licensed to practice law in the State of Arizona.

Libby is an associate attorney with Mulcahy Law Firm, P.C. and her practice focuses on the representation of community associations with an emphasis on litigation, enforcement of restrictive covenants and collection of delinquent assessments.

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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.

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# ANSWERS

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## Did You Know?

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### Tips to Deter Fraud in Community Associations

Arizona newspapers have been buzzing with stories about criminal fraud and theft charges which were recently filed against a valley management company president who allegedly misappropriated \$500,000 in association funds. Some warning signs for potential fraud are the following: missing bank statements and reconciliations, general ledgers that do not balance, missing and altered documents, photocopies rather than originals, unexplained cash shortages, unauthorized credits to receivable accounts, increased past due accounts, duplicate payments to vendors, unauthorized purchase transactions and payments for unspecified services. Our law firm suggests that boards have the following accounting and financial controls in place to prevent embezzlement and fraud in their association:

1. Keep association records up to date;
2. Assign the board control of all reserve funds;
3. Monthly financial reports should be prepared and made available for board review (include in the monthly report a balance sheet, a statement of revenues and expenses and a comparison of actual revenues and expenditures to budgeted amounts);
4. Require two signatures on all checks or transfers greater than a pre-designated amount;
5. Prior to signing checks, authorized check signers must review invoices and supporting documentation;
6. Review bank statements and reconciliations on a monthly basis;
7. Keep only a small amount of petty cash on hand and in a secure place;
8. Regularly review delinquent receivable balances;
9. Purchase adequate fidelity insurance to cover the volunteers and employees who handle funds. In addition, arrange for directors and officers coverage in the event the board is accused of financial mismanagement; and
10. Hire a CPA to conduct an independent annual review or audit.

If your board discovers that funds are missing from your association, remove the suspected fraud perpetrator from a position of control, put a stop on all bank account activity and check with your association attorney for advice on how to proceed.

*Author's Note:* The "Fraud Squad", Association Management, September, 2003 was used as a source for this article.

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