

MULCAHY

ANSWERS

for Community Associations

Published by Mulcahy Law Firm, P. C. for clients and friends.

January 2006
Volume 2, Issue 2

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Beth Mulcahy, Esq.

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Did You Know?



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Dear Readers,

Happy New Year!

2006 is a milestone anniversary year for Mulcahy Law Firm, P.C. Ten years ago this year, I started Mulcahy Law Firm, P.C. to focus exclusively on the representation of community associations. Our law firm's goals over the past ten years have been to provide cost-effective, timely and efficient legal representation of community associations. Today, our law firm remains committed to these goals and to providing outstanding legal services and educational opportunities for community associations throughout the State of Arizona.

On Tuesday, March 7, 2006, we will be hosting a "Legal Seminar for Community Associations" from 9:00 a.m. to 11:30 a.m. in the Auditorium at the Phoenix Public Library. Board members, community association managers and homeowners are invited to attend this event. An invitation is enclosed with this newsletter. Our seminars reach capacity quickly so if you would like to attend this event, please complete and send the registration form to our law firm by return mail or fax.

In addition, because we have received such positive feedback from readers, we will continue to publish our firm's quarterly newsletter entitled Answers covering subjects that are informative, useful and important to the community association industry. We will also bring in-depth coverage of *new* issues, hot topics and the basics to the industry through publishing our popular Mulcahy Cheat Sheets. You will find information about our newest cheat sheet "Transition from Developer to Homeowner Control" on the bulletin board inside this publication. Finally, this spring, Mulcahy Law Firm P.C. will be launching its much anticipated website. Our website will contain new information about community associations on a *weekly* basis and will have all back issues of this newsletter and the Mulcahy Cheat Sheets online. Information and the web address for our new website will be coming to you in our April newsletter.

Thank you for your support and best wishes for a happy and healthy 2006!

Sincerely,
Beth Mulcahy

What Should an Association Consider When Selecting a Management Company?

by Beth Mulcahy, Esq.

The selection of a good management company is crucial to the success of a community association. The typical reasons why management companies are hired are as follows: (1) to preserve the association's assets; (2) to maintain the association's value; (3) to establish continuity; and (4) to provide professional assistance in the management and finances of the association.

Associations use different processes to select management companies. Some associations create an ad hoc committee to assist the board in the selection process or designate several board members to serve this purpose. All associations should prepare contract specifications for the management company.

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Selecting a Management Company *continued*

The specifications should reflect an in-depth analysis and summary of what the board expects the management company to provide to the association (such as fiscal responsibilities, administrative responsibilities, building maintenance, grounds maintenance and other miscellaneous responsibilities).

Next, the association should identify three to five area management companies that, if available, could be potential managers for the association and contact the management companies to determine interest for submitting a bid. The association should send a request for a bid or proposal to all interested management companies. The request should include a copy of the proposed contract form and specifications and may include (if the board desires) governing documents, insurance policies, financial statements and the association's budget. The request should also give a timetable for the review and selection process. Finally, the request should require the companies to provide references from current clients and clients they have had over the past two years.

The association's board should interview the potential candidates in person and ask the candidates' questions about the contract specifications and general questions about the management company. Some typical questions usually asked by associations are:

- What** is the size of your management company?
- What** are the different sizes and types of associations you manage?
- What** is your philosophy of community association management?
- Who** would be our association's community manager?
- What** type of experience or professional designations does this community manager have?

What type of experience and qualifications do the personnel working in the accounting and financial departments of your company have?

How does your company handle after-hour emergencies?

How often does your company inspect the property?

Weekly? Monthly?

Do you provide building, grounds or maintenance reports?

How does your company communicate with the board? Vendors? Angry or upset homeowners?

Does your company manage associations in the same general vicinity of our association?

Does your company provide board packets for the monthly board meeting?

What type of insurance coverage does your company carry?

Where does your company bank?

Do you expect the association to change its bank accounts to your bank?

How does your company collect assessment payments (i.e. direct deposit, lockbox, etc.)?

How much is your monthly management fee?

What is the breakdown for all additional fees above and beyond the monthly fee?

The association should require and carefully check a reference list of the management company. Finally, after accumulating all of this information, the board should meet to discuss the candidates. The board should then make a recommendation and act on that recommendation at a regular board meet-

ing or a special board meeting. I suggest that you consider using an excellent resource entitled "Choosing a Management Company" which was used as background information for this answer. This pamphlet can be purchased online by going to: www.caionline.org, click on "Publications", click on "Bookstore", and then click on "Management".

Good luck with the selection process!

WHO?
WHAT?
WHERE?
HOW?
ASK
QUESTIONS!

New Bills Regarding Associations Pending in Arizona Legislature

by Beth Mulcahy

The Arizona legislature has commenced the 2006 legislative session and a number of new bills affecting community associations have been introduced. Please note that these new bills have NOT been passed by the legislature and have NOT been signed by the Governor, so they are NOT Arizona law at this time.

Set forth below is a list of *pending* legislation and a brief summary of each bill:

SB 1100: Use of ombudsman to resolve disputes between owners and association.

SB 1008: Associations can only foreclose if the amount of the unpaid assessment is \$5,000 or more.

HB 2352: Clarifies that the homestead exemption protection applies against any lien of the association.

HB 2470: Limits the association's claim for attorneys' fees in assessment collection to ten percent of the amount due or determined to be owed.

HB 2246: Justices of the peace will have jurisdiction and shall provide for a hearing for persons contesting the imposition of a fine/penalty or claim for attorneys' fees (or both) in excess of \$250.

HB 2308: Associations are considered a public body (school board, municipality) and the open meeting rules for public bodies shall apply to associations.

SB 1138: A condominium 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.

HB 2205: Parking - 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 on a street or driveway.

SB 1055: Associations cannot prohibit the display of an official flag of the United States Army, Navy, Air Force, Marine Corps or Coast Guard as long as the flag is displayed in a manner consistent with the Federal Flag Code.

HB 2306: The board can chose to have audit, review or compilation done by any person selected by the board.

SB 1007: Executive sessions topics will no longer include "contemplated" litigation; Associations cannot charge

more than \$20 per hour for each hour incurred in making books and records available for review; Owners are entitled to see association books and records pertaining to "contemplated" litigation; The charges for a resale disclosure statement are limited to no more than 20 cents per page of material copied and \$20 per hour of labor incurred to compensate the association for the costs incurred in the preparation of a statement furnished by the association.

HB 2307: Associations with fewer than 50 units are required to mail or deliver a disclosure statement to purchasers. Associations in developer control are now required to mail or deliver a disclosure statement to purchasers.

Our office will continue to provide information on these bills as the legislative session progresses.

To obtain a copy of these bills go to:
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".

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BULLETIN BOARD

MAKE YOUR RESERVATIONS NOW!

A Legal Seminar for Community Associations

presented by the

MULCAHY LAW FIRM, P.C.

Tuesday
March 7, 2006

9:00 a.m. - 11:30 a.m.

Phoenix Public Library
Auditorium

Our Newest Cheat Sheet!

Transition from Developer to Homeowner Control

is available
in PDF format by contacting
info@mulcahylaw.net

or

by calling our office
602.241.1093

Effective January 30, 2006
Our New Office Address
will be:

3001 East Camelback Road
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Phoenix, Arizona 85016

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.

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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 representation of community associations with an emphasis on document interpretation, collection of delinquent assessments, bankruptcy and enforcement of restrictive covenants.

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Marischa 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. Marischa graduated in the top third of her law school class in December, 2004 from California Western School of Law. Marischa has passed the Arizona and the New York bar exams and is awaiting her bar admissions.

Marischa's legal 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.

Questions may be directed to Beth Mulcahy
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Arizona Court of Appeals Upholds Association's Right to Restrict Rentals in an Association

On December 22, 2005, the Arizona Court of Appeals made a landmark decision regarding an association's ability to restrict rental properties in a community association. In Vales v. Kings Hill Condominium Association, the Court upheld an association's amendment to its CC&Rs prohibiting an owner from renting his/her/their unit in the association as soon as the first of the following was to occur: 1) sale of the unit by the owner(s) of the unit at the time the amendment was recorded; 2) death of the owner(s); or 3) if the owner(s) at the time of adoption of the amendment ceases to rent or lease his/her/their unit for more than three consecutive months. Arizona law was previously silent regarding an association's ability to restrict or eliminate rental properties in an association.

To obtain a full copy of this case, go to www.cofad1.state.az.us/opinionfiles/CV/CV040816.pdf It is important to note that in most cases, in order to implement a rental restriction, an association will need to obtain the requisite approval of the membership to amend its CC&Rs. If your association is interested in learning more about implementing rental restrictions, please contact Beth Mulcahy at 602.241.1093 or bmulcahy@mulcahylawfirm.net.

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