

# MULCAHY ANSWERS

for Community Associations

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An invitation from  
Beth Mulcahy

2005 Legislative  
Summary

Legal Seminar for  
Community Associations  
September 8th, 2005  
Invitation &  
Registration Form

Did You Know?\*

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Dear Readers,

As you may know, the Arizona legislature was very busy in 2005 with the introduction of over 20 bills regarding community associations. Several new bills regarding community associations passed this year and will go into effect on August 12, 2005. The new legislation makes sweeping changes to how associations conduct annual meetings, use mail-in ballots, remove directors from office and collect delinquent assessments. Due to the importance of this legislation, this issue of Answers focuses on a summary of the new legislation.

Every year, our law firm conducts a "Legal Seminar for Community Associations". This year, our seminar will be held on Thursday, September 8, 2005 from 9:30 a.m. to 11:30 a.m. at the Phoenix Public Library Auditorium. Board members, property managers and homeowners are all invited to attend this very special event. The seminar will address the following topics: new changes to Arizona law regarding community associations, tips on how to effectively and efficiently run board meetings and duties and responsibilities of board members and property managers. A new feature at the seminar will be an opportunity to have individual questions answered on a one on one basis by a team of attorneys from the Mulcahy Law Firm, P.C.

An invitation to this seminar is enclosed with this newsletter. Our seminar always draws a crowd of over 200 people and has been "sold out" for the past three years, so please complete and mail the registration form as soon as possible if you would like to attend this event.

Best wishes to you for a happy and healthy Summer!

Sincerely,  
Beth Mulcahy

## Removal of Directors

The legislature has adopted a new procedure for removing board members from office. This procedure does not apply to board members appointed by the developer. This procedure supersedes any other provisions in the Association's documents pertaining to removal of board members:

### 1. Petition for Removal of Director Requirements:

(a) Associations with 1,000 or Fewer Members: If a petition is presented to the board for removal of a director that is signed by the number of persons who are entitled to cast at least 25% of the votes in the association or one hundred votes in the association, whichever is less.

(b) Associations with over 1,000 Members: If a petition is presented to the board for removal of a director that is signed by the number of persons who are entitled to cast at least 10% of the votes in the association or one thousand votes in the association, whichever is less.

2. Special Meeting: The special meeting shall be called, noticed and held within 30 days after receipt of the petition for removal.

continued on next page

## Removal of Directors *continued*

3. Quorum: A quorum for the removal meeting purpose is met if at least 20% of the votes, or one thousand votes, whichever is less, are present at the meeting in person or as otherwise permitted by law.
4. Percentage Required to Remove Director: A member of the board can be removed from office with or without cause by a majority vote of the members entitled to vote and voting on the matter at a meeting of the members called for the removal purpose. A quorum must be present.
5. Attorneys' Fees in the Event of a Lawsuit: If a civil action is filed regarding the removal of a board member, the prevailing party in the civil action shall be awarded its reasonable attorneys fees and costs.
6. Retention of Documents: The board must retain

documents related to proposed removal for at least one year after the special meeting and shall permit inspection of these records by members.

7. Only One Removal Attempt Per Term: A petition for removal of the same member of the board shall not be submitted more than once during each term of office for that member.

8. Voting Districts: For an association in which board members are elected from separately designated voting districts, a member of the board, other than one appointed by developer, may be removed only by vote of members of that voting district, and only the members from that voting district are eligible to vote on the matter or be counted for purposes of determining a quorum.

### Proxy Voting

The new legislation allows proxy voting only while the association is under developer control (time during which the developer may elect or appoint the board of directors). After termination of developer control, proxy voting is prohibited. Votes may now be cast in person AND by mail-in ballot.

**There are several requirements for mail-in ballots:**

1. The mail-in ballot must set forth each proposed action;
2. The mail-in ballot must provide an opportunity to vote for or against each proposed action;
3. The mail-in ballot is valid only for one specified election or meeting of the members and expires automatically after the completion of the election or meeting;
4. The mail-in ballot must specify the time and date by which the ballot must be delivered to the board of directors in order to be counted (which must be at least seven days after the date the board delivers the un-voted mail-in ballot to the member);
5. The mail-in ballot must specify how many ballots must be returned to achieve a quorum AND what percentage of approval is required to approve the action (other than for an election of directors); and the mail-in ballot does not authorize another person to cast votes on behalf of the member.

### Collection Costs

Reasonable collection costs (for example, costs charged by a management company, certified legal document preparer or the association for liens, demand letters, etc.) can now be included in an assessment lien.

### Excess Proceeds from Trustee's Sales

The new legislation will make it easier and more cost effective for associations to file a claim for excess proceeds after a trustee's sale. Under the new legislation, the trustee may pay a claim by an association upon receipt of a written request without liability. If the trustee does not pay the association after the written request and the association is required to file an application or response with the court to recover the excess proceeds, the association may request an award of attorneys' fees and costs. Finally, the new legislation gives the association a higher priority in the distribution of excess proceeds.

### Disclosure Language

Under the new law, an association is required to provide a purchaser with the following statement and a signature line: *"I hereby acknowledge that the declaration, bylaws and rules of the association constitute a contract between the association and me (the purchaser). By signing this statement, I acknowledge that I have read and understand the association's contract with me (the purchaser). I also understand that, as a matter of Arizona law, if I fail to pay my association assessments, the association may foreclose on my property. Signature: \_\_\_\_\_"*

This statement must be signed by the purchaser and returned to the association within fourteen calendar days of the purchaser's receipt of the resale disclosure statement.

It is important to note that if there are *fifty* or more lots/units in an association, the *association* is required to provide a disclosure statement to the purchaser. If there are *forty-nine* or fewer lots/units in an association, the *seller* is required to provide a disclosure statement to the purchaser.

These new laws will go into effect on August 12, 2005 and will apply to both planned communities and condominiums.

## Application of Payments

The new legislation specifies the order in which payments are to be applied to a member's account, unless the member specifies otherwise, they are as follows: (1) unpaid assessments; (2) unpaid late fees; (3) reasonable collection fees; (4) attorney fees and costs; (5) other unpaid fees, fines, and interest.

## New Federal Bankruptcy Law

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 was signed by President Bush on April 20, 2005, and will go into effect on October 17, 2005. Set forth below is a brief summary of the new Act:

◆ Courts will apply a means test against a debtor's income regarding whether they can pay back a percentage of their

debts. In application, more homeowners will be filing Chapter 13 Bankruptcy (payment plan over a period of years) rather than Chapter 7 (discharge of debt - personal liability).

◆ 11USCA 523(a)(16) (Bankruptcy Code) was amended to state that a homeowner's post-petition assessments are not dischargeable for as long as the debtor or trustee has legal, equitable or possessory ownership interest in such unit. Prior to the amendment Lot owners had to have possession of the Lot for the post-petition assessment to be non-dischargeable.

◆ Debtors will need to wait a longer period of time after receiving a bankruptcy discharge to re-file a new bankruptcy.

All legislative summaries contained within this newsletter were written by Beth Mulcahy, Esq.

# MULCAHY LAW FIRM, P.C.

## BULLETIN BOARD

**New!**

If you have questions please contact us at our new e-mail address: [info@mulcahylaw.net](mailto:info@mulcahylaw.net)

E-mail or send your name and address if you would like to be added to our mailing list

Effective and successful associations have outstanding communication between the association and its owners. Respond promptly to member inquiries and requests for information.

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**Beth Mulcahy** is the founding attorney and partner of the Mulcahy Law Firm, P.C. The firm'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 sought and 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.

As an active participant in the industry, 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.

Since joining the firm in February 2003, Kristen has focused on enforcement, collections and document interpretation. She provides general corporate advice for community associations and is also experienced in litigation and transactional law.

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**Jennifer Spragins Harris** is a 1999 graduate of Southwestern Oklahoma State University having earned undergraduate degrees in Biology and Sociology. Jennifer continued her studies at the University of Oklahoma College of Law where she graduated in the top twenty-five percent of her class in 2003 with a *Juris Doctor* degree. She maintains licenses to practice law in the State of Oklahoma and the State of Arizona.

Jennifer's legal practice focuses on the representation of community associations with an emphasis on litigation, premises liability claims, 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**, at  
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**Implementing Rental Restrictions**

A hot topic right now in the community association industry is an association's ability to restrict rentals in a community association. Some owners claim that renters do not take care of their property, do not follow the association's documents, pose security problems and ultimately lower property values. Other owners feel that restricting rentals limits an owner's ability to sell their lot/unit in the future and takes away personal property rights.

Courts around the country have upheld an association's right to impose restrictions on the leasing or rental of lots/units in a community association. In most cases, in order to implement a rental restriction, the association will need to obtain the requisite approval of the membership to amend its CC&Rs. Our law firm suggests that associations implementing rental restrictions grandfather all existing owners and impose rental restrictions on any new owners after the date the amendment to the CC&Rs is recorded. If your association is interested in implementing a rental restriction and would like to receive a free sample of rental restriction amendment language, please contact [info@mulcahylaw.net](mailto:info@mulcahylaw.net).

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