



# Mulcahy Memo - Dec. 9, 2010

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

by Beth Mulcahy, Esq.

## Should you Amend your Association Documents?

The most common reasons for amending association documents are the following: to delete or modify restrictions that are outdated, ambiguous or unreasonable; to comply with changes in federal, state and local laws or ordinances; to delete or modify provisions inconsistent with the management and operation of the association; to delete provisions regarding the rights of the developer after the developer is no longer in control; and to correct provisions that conflict with other governing documents (bylaws, articles of incorporation and rules and regulations).

Because there are several requirements which must be met prior to amending an association's documents, an association should prepare a strategy for amending its documents to assure that they meet the needs of the association and are enforceable.

The MULCAHY LAW FIRM, P.C. has successfully assisted hundreds of associations in the process of amending documents using the following five step plan.

### **Step One: Determine what is required to amend the documents.**

Typically, there is a provision in each document which outlines the proper procedures to amend the CC&Rs, articles of incorporation, bylaws and rules and regulations. .

If the amendment procedures are ambiguous or difficult to understand, the association should consult with legal counsel.

### **Step Two: Review the documents for changes and draft the proposed changes.**

The board of directors should form a committee to research and prepare amendments to the association's documents.

It is important that the association's legal counsel review the documents and assist in the drafting of proposed changes during this step so that the documents are legally enforceable.

### **Step Three: Educate and solicit community support of the proposed changes.**

The board and/or amendment committee should use informational meetings, homeowner input forums, town hall meetings, coffees and/or newsletters and other printed materials to educate and inform the membership of potential changes.

The input and comments should be discussed by the board and/or amendment committee and final changes to the proposed amendments should be made at this time.

### **Step Four: Develop a plan and reasonable time frame for obtaining approval of the proposed amendments.**

The amendment committee should create strategic steps for completion (owner meeting/use of mail-in ballot) with a time line and proposed dates for voting. Legal counsel should assist with this process.

### **Step Five: Finalize and record the CC&Rs.**

Once the amendments have been approved as specified in the documents, the amendments must be recorded at the county recorder's office to become a legal document and enforceable. Bylaws and rules do not need to be recorded, but should be maintained with the official records of the association. Legal counsel should assist with this process.

You can find your documents at the County Recorders Office. Online at [www.recorder.maricopa.gov](http://www.recorder.maricopa.gov) - you can search for documents by going to the top of the page and clicking on "Recorded images are now available for viewing and purchase from 1871 forward." (note: records are available approximately 15 days after submittal.) From the search page you can search for your documents by inserting the requisite information on the form.

If you have questions or your documents need review it is important to contact a qualified community association attorney. The MULCAHY LAW FIRM, P.C. has successfully assisted hundreds of associations in the the amendment process. Please contact Beth Mulcahy or Kristen Rosenbeck for assistance with review and amending your community association documents.