



Mulcahy Memo - June, 2015

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

by Beth Mulcahy, Esq.

Dear Clients and Friends,

Happy Summer to our clients and friends!

I love everything about this time of the year - brats and Italian sausages on the grill, ice cream and popsicles, swimming at night and fireworks on the 4th of July!

This time of the year is also a great time to catch up on association projects (like updating and amending association documents) that a board may not have time to do during busier times of the year. Our Memo this month (scroll all the way down for the article) is on our law firm's successful "five step plan" for amending documents. We hope that you will use the strategies in this article to help "clean up" your documents this summer!

As you may know, the changes to the Arizona laws pertaining to community associations will become effective on Friday, July 3, 2015. Set forth below is a link to our firm's 2015 Legislative Update.

[2015 Legislative Update](#)

To assist you with any questions you may have on the 2015 Arizona legislative changes, we will be conducting two free "call-ins" on Friday, June 5, 2015 and Friday, July 3, 2015 from 9 a.m. to 10:00 a.m. Please call our office (602.241.1093) during these times to have a question answered regarding the 2015 legislative changes or any legal issue pertaining to your association!

Don't Forget to Join us on Facebook!

Our firm is very active on Facebook. Please consider "liking" us on Facebook so that you can receive up-to-date information on a weekly basis about community association law and tips to run your association more effectively!

Happy 4th of July!

Since our next Mulcahy Memo will not be sent until after July 4, 2015, we wish you an early happy and safe 4th of July!

Sincerely,

Beth Mulcahy, Esq.

Founder and Senior Partner



Beth Mulcahy, Esq.

Our #2 Requested Topic!

Amending Association Documents

By Beth Mulcahy, Esq.

This spring, our law firm conducted a survey of over 150 board members and owners in associations to determine what topics they wanted to learn more about. Amending Association Documents was the #2 topic residents wanted more information about. Questions regarding this topic range from, "Should we amend our documents?" to "Do the recent legislative changes to association laws make it imperative that we amend our documents?"

Association business seems to slow down a bit during the summer months so it might be a good time for the association's board or a committee to take a closer look at the governing documents and determine if changes need to be made.

The most common reasons for amending association documents:

1. to delete or modify restrictions that are outdated, ambiguous or unreasonable;
2. to comply with changes in federal, state and local laws or ordinances;
3. to delete or modify provisions inconsistent with the management and operation of the association;
4. to delete provisions regarding the rights of the developer after the developer is no longer in control; and
5. to correct provisions that conflict with other governing documents (bylaws, articles of incorporation and rules and regulations).

There are several requirements which must be met prior to amending an association's documents. Therefore, an association should prepare a strategy for the amendment process to ensure that the needs of the association are met and that the documents are enforceable. Additionally, the association should consult with legal counsel in this process.

Our firm 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.

- The board of directors should check the specific language of the association's 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. Most documents require approval of membership to amend. In some rare cases, the association's board of directors can amend the documents without the approval of a percentage of the membership. However, the Condominium Act (A.R.S. Section 33-1227(A)) requires an approval of 67% of the votes within the condo association or any larger percentage if the declaration specifies to amend the CC&Rs.
- The rules and regulations can be promulgated and amended in most associations by a majority vote of the board. However, in some rare cases, some associations require a vote with approval by a percentage of the membership to amend the rules and regulations.
- The association should consult with legal counsel to assist with determining what is required to amend the documents.

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.
- The amendment committee should solicit the ideas of committee members, board members and owners regarding changes to the documents and draft the proposed changes.
- 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 proper and 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 legal counsel and final changes to the proposed amendments should be made at this time.

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

- The amendment committee and legal counsel should create strategic steps for completion (owner meeting/use of mail-in ballot) with a time line and proposed dates for voting. Ballots should be mailed to the owners and progress should be evaluated by the board every 30 days.

Step Five: Finalize and record the CC&Rs.

- Once the amendments to the CC&Rs have been approved as specified in the documents, the CC&R amendments must be placed into final form and recorded at the county recorder's office to become enforceable. The Condominium Act requires amendments to the CC&Rs to be recorded within 30 days from the date approved. 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.

Good Luck!

Please go to our [Mulcahy Cheat Sheet](#)©, [Amending Association Documents and Rental Restrictions](#), on our website to find complete information on the steps required to amend your association's documents.

Please contact [Mulcahy Law Firm, P.C.](#) for additional information and help with amending your association's documents.

Our Cheat Sheets© can be found on the Publications Tab of our Website at www.mulcahylawfirm.net.