



Mulcahy Memo - October 2015

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

Dear Clients and Friends,

There is finally a chill in the air and Halloween is around the corner. We hope you are enjoying the slight change of weather.

At the bottom of this email is our Mulcahy Memo article for October, 2015 on the Arizona Department of Fire Building and Life Safety. This memo will provide extensive background on how their office can help with hearing disputes between owners and associations.



Beth Mulcahy,
Esq.

Did you know that our firm is teaching 7 free community association law classes throughout the valley during the next 7 weeks? If you are interested in attending any of these classes, please visit our website, www.mulcahylawfirm.net and click on the link in the announcements section. Also, our 2015 Brunch with Mulcahy seminar is set to take place on February 8, 2016. Please save the date! We hope to see you there!

Finally, 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!

Please feel free to contact our office at 602.241.1093 any time to have your legal questions answered by our team!



Sincerely,

Beth Mulcahy, Esq.

Beth Mulcahy, Founder and Senior Partner
Mulcahy Law Firm, P.C.

Is it True that the Arizona Department of Fire Building and Life Safety Hears Disputes Between Owners and Associations?

By Beth Mulcahy, Esq.

Yes, it is true that the Arizona Department of Fire Building and Life Safety hears disputes between owners and Associations.

"In 2011, the Arizona Legislature passed legislation providing Arizona homeowners and condominium and planned community associations (HOA's) a venue for resolving disputes. These administrative procedures provide an alternative to the civil court system and do not limit the legal rights of the parties to further pursue matters. This legislation became law on July 20, 2011."

Here is a link to the Arizona Department of Fire Building and Life Safety Website:

<http://www.dfbls.az.gov/hoa.aspx>

According to the DFBLS, here are the Answers to frequent questions on this process:

"1. Who can request a hearing?

Pursuant to A.R.S. § 41-2198.01(B), only a homeowner, a condominium association or a planned community association may petition the Department for a hearing.

2. Who is the Petitioner?

Prior to a matter being referred to the Office of Administrative Hearings ("OAH") for a hearing, there can only be one Petitioner per petition. In the case of a homeowner, "Petitioner" refers to the owner(s) of an individual unit. Although two parties who co-own an individual unit may file a petition together, the owners of separate units cannot file one petition. Each must file an individual petition. In the case of a homeowner association, the Petitioner is the individual authorized to act on behalf of the condominium association or planned community association.

3. How do different Petitioners request to have their hearing consolidated?

After the matter is set for a hearing before OAH, a Petitioner may request to have one or more hearings consolidated by filing such a request with OAH and comply with OAH's procedures and rules.

4. Who can act as a representative of a party?

If a party is an individual, the person may represent himself/herself or arrange for legal counsel. If a party is a corporation, the party may be represented by an officer, employee or contractor of the corporation ("corporated representative") as long as the corporate representative meets the requirements of A.R.S. §41-2198.01(I) and the corporate representative's actions do not conflict with the requirements of Arizona Supreme Court Rule 31.

5. Who issues a default decision?

If a Respondent does not submit a response in answer to the petition within the statutorily allotted time frame a default hearing shall result. 2 Department staff will request a hearing date and time from OAH

and a Notice of Default Hearing will be issued.

6. Who issues the final decision?

The Director of the Department issues an order of dismissal if the case is settled before a hearing or an order on default if no response is received. If the matter proceeds to hearing, the Administrative Law Judge issues a recommendation. The Director of the Department issues the final order.

7. How was the filing fee set?

The legislation mandated that this program to be self-funded or self-sustaining. The legislation creating this program mandated that the program should not be a burden on the state taxpayers but be paid for by the persons that utilize this program. The filing fee is set according to the Department of Fire, Building and Life Safety and the Office of Administrative Hearings actual cost of providing the program's services to the parties who use it.

8. What types of issues can the Department accept complaints about?

The issues presented in the petition must allege a violation of Arizona Revised Statute title 33 chapter 9, chapter 16, and/or a violation of the CC&R's and/or Bylaws governing the operations of the planned community association or HOA."

1 Notwithstanding the representation provisions set forth in A.R.S. § 41-2198.01(I) and 41-2198.04(D), Arizona Supreme Court Rule 31 controls over representation issues before the OAH.

2 See A.R.S. § 41- 2198.01(F).

It is important to note the following information regarding complaints to the DFBLs:

* The filing fee for a single violation is \$750.

* The filing fee for multiple count violations is \$2,000.

* Filing fees are NON-REFUNDABLE, except when the petition is dismissed at the request of the Petitioner before a hearing is scheduled or by stipulation of the parties before a hearing is scheduled. A.R.S § 41-2198.01 (B).

**If you have questions and need answers on this topic,
please call our office at 602.241.1093.**