



Mulcahy Memo – December, 2017

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

by Beth Mulcahy, Esq.



Dear Clients and Friends,

The holidays are my favorite time of the year! Growing up in Wisconsin, I have great memories of searching for a fresh Christmas tree, ice skating, sledding and snowy/cold winter nights. My new memories (in a warmer climate) include decorating our tree, hanging twinkling lights outside and holiday baking with my kids.

Recently, the Arizona Court of Appeals issued a landmark ruling that will have a major impact on a community association's ability to validly assess and collect monetary penalties/fines. The Court ruled that an association (1) must promulgate a schedule of fines prior to imposing the fines and (2) has the burden of proving its damages in order to obtain a judgment for fines. This case, along with changes in the fines and penalties laws over the past decade, clearly indicate a desire to make it very difficult for associations to levy fines for violations of an association's documents. To read more about this topic and to obtain a link to our suggested fine schedule at no charge, please scroll to the bottom of this memo.

During the month of December, please tune in for our "virtual seminars" on hot topics via our [Facebook](#) page:

- **12/12-** What are the Board Member Roles and Responsibilities?
- **12/19-** The Proper Procedure to Remove Directors From the Board Under Arizona Law.
- **12/26-** Everything You Need to Know About Pets in Your Community Association (fair housing laws, dangerous breeds, dog bites, barking disputes and implementing restrictions to name a few).

We are in the final planning stages for our Spring Seminar Schedule. We will be teaching over 20 classes this spring and will be posting the final schedule on our website before the end of 2017.

Also, please consider "liking" and following us on [Facebook](#) so you don't miss any of our important updates on Arizona community association law.

On behalf of everyone at Mulcahy Law Firm, P.C., we wish you a very happy holiday season! We appreciate the opportunity to know and work with each of you and wish you all the best during the holidays and in 2018.

Merry Christmas and Happy Holidays!



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

EXTRA! EXTRA!
New 2017 Arizona Case Law Makes It Difficult to Levy and Collect Fines



Turtle Rock III Homeowners Association, Plaintiff/Appellee
vs.
Lynne A. Fisher, Defendant/Appellant

A recent Arizona Court of Appeals decision will have a major impact on a community associations' ability to validly assess and collect monetary penalties/fines. In this case, the Court found that (1) attempting to levy monetary penalties/fines without a properly adopted fine schedule, which demonstrates the fine amounts and appropriateness of those fines, is per se unreasonable; and (2) even if a community association has a validly adopted fine schedule, the community association still has the burden of proving its damages.

As such, a community association must now meet the following minimum requirements in order to validly assess monetary penalties/fines:

- (1) the owner (or occupant/guest) must be in violation of the declaration, bylaws and/or rules;
- (2) the community association must provide the homeowner with notice and opportunity to be heard prior to levying the monetary penalty/fine;
- (3) the monetary penalty/fine must be reasonable;
- (4) a valid monetary penalty/fine schedule must be properly adopted prior to imposition of the monetary penalty/fine; and
- (5) the community association must prove damages to obtain a judgment against the owner (note: it may be difficult for an association to prove that it has been "harmed" by the violation and thus is entitled to damages).

What are alternatives to fines to get owners to comply with documents?

This case, along with changes in the fines and penalties laws over the past decade, clearly indicate a desire to make it very difficult for associations to levy fines for violations of an association's documents. In light of this, I recommend associations consider all options to pursue enforcement of violations (not just fines):

- Self-help;
- Filing a complaint with the Arizona Department of Real Estate against the Owner;
- Filing a lawsuit seeking injunctive relief against the owner;
- Reaching out to the owner to discuss (open the lines of communication); and

- Mediation with the owner (many cities now offer free mediation programs)

To obtain a copy of this case, please click on the following link: [Case](#)

To obtain a copy of the Arizona state statutes for condos and planned communities pertaining to fines, please click the following links:

[Powers of unit owners' association; notice to unit owner of violation](#)

[Assessment limitation; penalties; notice to member of violation](#)

To obtain a free copy of a sample monetary penalty/fine schedule, please click on the following link: [Example Fine Policy](#)

If you have any questions and need answers on this topic, please contact
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