



Mulcahy Memo – May, 2017

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

by Beth Mulcahy, Esq.



Dear Clients and Friends,

Summer is right around the corner! With the rising temperatures, it sometimes becomes difficult for boards to obtain a quorum for board meetings. If your association is in this predicament over the summer, consider having the out-of-town board member(s) appear telephonically via the use of a conference call or Skype at the board meeting. But, don't forget that the actual meeting must take place in Arizona under the law. Also, a friendly reminder that a quorum of the board members, whether they appear in person, via Skype or a conference call, must be present for the entire meeting in order for business to be conducted.

This slower 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 discusses 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!

A reminder! The Arizona legislature is currently considering over 15 bills regarding community associations. HB2411 was signed by the Governor on 4/28/17. This Bill makes changes to the Planned Communities Act and the Condominium Act regarding meetings, absentee/mail-in ballots and resale disclosure fees. While the legislature is in session, our firm prepares and posts a summary of these proposed bills, as they change, every week on our website. You can find the current summary on the "[Publications](#)" tab in the "Legislative Updates" section.

Please join us! As you may know, our firm is offering a free educational class in Phoenix on May 11th where we will be covering all you need to know about Board Member Roles and Responsibilities, The Basics for Self-Managed Associations, How to Conduct Successful Annual Meetings, Board Meetings and 2017 Pending Legislation. We hope that you can join us! For

more information, click [here](#). Also, don't forget to utilize our First Friday Free Call-In on the first Friday of each month.

Thank you!



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

Amending Association Documents

By: Beth Mulcahy, Esq.

Recently, 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 and the Planned Communities Act require 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](#), 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