



# Mulcahy Memo – July, 2019

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

by Beth Mulcahy, Esq.



Dear Clients and Friends,

On behalf of everyone at Mulcahy Law Firm, P.C., we wish you a Happy 4th of July (a little early). We hope that you have a safe and fun holiday weekend.

**Quick reminder:** Due to the holiday weekend, our Firm's First Friday Free Call-In has been moved to Friday, July 12th.

Our temperatures are starting to rise! Once the temperature starts to hit triple digits, many of our board members head to cooler temperatures.

During the summer months, please don't forget that Arizona law allows board members to appear telephonically or via Skype at board meetings. Specifically, a quorum of the board (or any board member who cannot attend in person) may meet by telephone if there is a speaker phone or computer available in the meeting room that allows board members and unit/lot owners to hear all parties who are speaking during the meeting. Also, don't forget that even though board members can "dial in" to a board meeting, the board meeting must be held in Arizona.

## **New HOA/Condo Laws Going into Effect August 27, 2019**

It was an exciting year at the Arizona Legislature! There was a total of eight new laws pertaining to Arizona community associations that were signed by the Governor. The new laws will go into effect on August 27, 2019 unless otherwise specified by the new laws. The new bills cover the following topics: Recreational Centers, Renewal of Judgments, Assessments, Satisfaction of Judgments, Writ of Garnishments, Timeshares, Disclosures, Regulation of Vacation/ Short-Term Rentals, Terminations and Appraisals. Please click [here](#) to view our latest 2019 Legislative Update Summary.

## **Free Document Review Offered**

The upcoming summer months are a great time to consider amending your association's documents! Did you know that Mulcahy Law Firm, P.C. offers a complimentary review of an association's CC&Rs and bylaws to outline the amendment procedure(s) and determine what needs to be changed? If your board is interested in this complimentary review, please contact Beth Mulcahy, Esq. at 602.241.1093 or [bmulcahy@mulcahylawfirm.com](mailto:bmulcahy@mulcahylawfirm.com). For more information on this topic, please scroll down to the end of this article.

### **Board Member Boot Camps**

**A reminder!** Our firm is now offering board member boot camps. Many of our clients are taking advantage of this personal education time with our firm to answer their questions and help their boards be more effective. Each program is offered at an hourly rate and covers a variety of topics, including board of director duties, compliance with Arizona and federal laws, potential pitfalls and Q&A. The boot camp can be held at a location chosen by the board or at our office. We can tailor the session to fit your board's desires as we understand that each board is unique and has different needs. For more information, please contact Beth Mulcahy, at 602.241.1093 or [bmulcahy@mulcahylawfirm.com](mailto:bmulcahy@mulcahylawfirm.com).

Finally, don't forget to "like" and follow Mulcahy Law Firm, P.C. on [Facebook](#) so you don't miss any of our important updates on Arizona community association law.

Thank you!



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



## **Summer Time is a Great Time to Amend Association Documents!**

*By: Beth Mulcahy, Esq.*

Has it been over a decade since your association amended its governing documents (CC&Rs, articles of incorporation, bylaws and rules)? Are your association's governing documents hard to read, difficult to understand and do they contain outdated, antiquated language?

Summer months are a great time to work on projects like amendments to your association's governing documents. Association business seems to slow down during this time so it is a great 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 331227(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.