MULCAHY
Answers
for Community Associations

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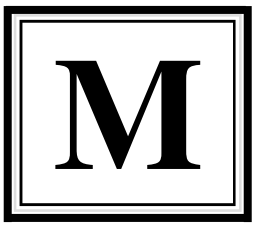

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New 2008 Community Association Legislation

by Beth Mulcahy

The Arizona legislature ended it's legislative session on June 27, 2008. This year, the legislature passed several new bills regarding community associations. The new legislation addresses the following areas: (1) all condominiums in the State of Arizona are subject to the Arizona Condominium Act (whether they were created before or after January 1, 1986) effective December 31, 2008; (2) associations can purchase from the board of supervisors common areas which have been previously foreclosed on due to delinquent property tax liens; and (3) Community associations and condominiums cannot prohibit but may reasonably regulate the circulation of political petitions on common areas within the association.

Inside this issue of Answers is our Mulcahy Cheat Sheet regarding the new 2008 community association legislation. You can obtain additional copies of this Cheat Sheet online at www.mulcahylawfirm.net (click on the "Answers & Cheat Sheet" tab and then on the "Cheat Sheets" tab on the left side of the page) or by contacting our office directly.

The new legislation will go into effect on September 26, 2008 (unless otherwise stated).

The Mulcahy Law Firm, P.C. will be offering *free* telephone Q & A regarding the new legislation between the hours of 1:00 p.m. and 4:00 p.m. September 26, 2008. Please contact our office with any questions during those hours on that date!

Open Pool Gates Create Liability for Associations

by Beth Mulcahy

Question: Residents of our association are constantly propping open the pool gate/fence to our association's common area pool when the residents are in the pool and sometimes when the residents leave the pool area. Is the association liable if there is a drowning in the common area pool due to the propping open of the pool gate/fence?

Answer: Under Arizona law, an association has a responsibility to maintain its common areas in a reasonably safe condition. This responsibility extends to unit owners, their tenants and their guests. In addition, an association has an affirmative duty to take reasonable measures to protect against foreseeable activities creating danger on the land it controls.

Your association has a duty to maintain the association's common area pool in a reasonably safe condition. The illegal and improper propping open of a pool gate/fence is clearly a dangerous condition. In addition, because it is common knowledge that home-owners in your association frequently prop open the pool gate/fence, it is my opinion that your association could be held liable if there is a drowning in the common area pool due to the propping open of the pool gate/fence.

Your association's board needs to immediately take a pro-active stance regarding the improper propping open of the gate/fence. First, if your association has rules in place, the board should start enforcing them. If your association has not already done this, pass a rule regarding pool safety to include one that states that propping open the pool

continued

Open Pool Gates Create Liability for Associations *continued*

gate/fence at any time is prohibited. The association should notify homeowners and also notify all vendors (i.e. pool companies/landscapers who might prop a gate open) of rules/policies in writing (i.e. letters, newsletters, etc.). I also suggest that you immediately post sign(s) at all pool gates and in the pool areas stating the safety rules including the rule that propping open the pool gate/fence at any time is prohibited; also state that these rule(s) were enacted to protect the health and safety of all residents/guests; and that violators will be fined after notice and an opportunity to be heard for a violation.

Pass rules regarding pool safety
Notify all residents
Post pool safety signs
Install gate alarms

If your association's CC&Rs allow the board to revoke residents' common area pool privileges for violations of the rules and regulations, I suggest that you revoke pool privileges for violations of pool safety rule(s). Additionally, I suggest that the board research an alternative to deter owners from propping open the pool gate. An effective method is to install a gate alarm. When attached to the gate, the alarm creates a loud beeping noise if the gate is propped open.

Finally, the association should make sure that pool accidents are covered under the association's insurance policy in case there is an accident. Answers

Monsoon Safety Tips

from the Phoenix Fire Department

Citizens need to take precautions and use common sense when the monsoon storms hit. Here are a few simple tips to help you stay safe:

Lightning

- Lightning is attracted to metal and water, and tends to strike the highest or tallest objects. You are in a strike zone if you hear thunder five seconds or less after you see lightning!
- Avoid wide, open areas such as fields and golf courses.
- Avoid metal objects such as golf carts and clubs, lawn mowers and pipes.
- Get to the lowest point of ground you can, and kneel or squat to minimize your contact points with the ground. Do not lie flat. This will make you a bigger target. If you're out on the water, get to land.
- If you're in a pool, get out.

Downed Power Lines

- Stay at least 100 feet away if the power line has fallen on your car while you're in it, don't touch anything metal in the car and stay inside until professional help arrives.
- Never try to help someone trapped by a power line. You endanger your own safety. Instead, call 911 immediately.

Indoor Safety

- Stay away from windows during strong winds. Tree limbs and other wind-borne objects can be a hazard.
- Electrical wiring attracts lightning. Avoid using the telephone, except for emergencies.
- Lighting can move through a home's plumbing, attracted to the metal or water. Avoid using sinks and showers.
- Disconnect computers, TV's and other delicate electronic equipment. Consider attaching surge protectors to such equipment.

Driving Safety In Dust

- Don't enter a dust storm if you can avoid it.
- Turn headlights on and slow to a prudent speed.
- If you pull off the road, get as far to the right as possible. Turn off the car and headlights, and set the parking brake. Keep your foot off the brake pedal - other drivers may think you're a car in motion.

Driving Safely in Rain

- Rain reduces traction and causes tires to hydroplane. Slow your speed accordingly.
- Water on roads may be deeper than it looks. Watch for vehicles traveling too fast that throw blinding sheets of water.
- Don't cross rain-swollen washes. You can be caught in a flash flood that can sweep your vehicle and its contents away.
- Pay attention to hazard signs and roadblocks. Ignoring them threatens life and property, and can result in enforcement action by police.

Stuck in a Wash

Control of a vehicle is lost in 6 inches of water.
Most vehicles will begin to float in 2 feet of water.

- If you have a phone, call 911.
- If you can, climb onto the roof and wait to be rescued.
- If the water is still low and you can wade to safety, do so, but beware of floating debris.

Emergency Meetings

Pursuant to A.R.S. Sections 33-1804(c) and 33-1248(c) notice to unit/lot owners of a board meeting is not required if emergency circumstances require action before notice can be given.

What is considered an "emergency circumstance"? An emergency circumstance is a generally an unexpected occurrence that would increase the association's liability and/or cause increased damage if left unattended. A good example would be monsoon damage, such as a large tree falling on the clubhouse during a storm. In this situation the board may conduct an emergency meeting and forego the forty-eight hour notice requirement because circumstances dictate that an immediate decision must be made to limit the association's liability and prevent further damage.

The board should re-affirm what was done at the emergency board meeting at the next regular meeting of the board of directors.

Answers

Is it Legal to Hold Association Meetings in Another State?

by Beth Mulcahy

Question: Our association has five board members. Four of the five board members are snow birds and live in Wisconsin during the summer months. Can the four board members conduct board meetings in Wisconsin during the summer months? Can a board member appear telephonically at a board meeting?

Answer: Under the Arizona open meetings law (A.R.S. Sections 33-1804 and 33-1248), all meetings of an association and board of directors are open to all members of the association and all members so desiring shall be permitted to attend and speak at an appropriate time during the deliberations and proceedings. In addition, all meetings of the association and the board must be held in the State of Arizona.

As such, the directors in your association *cannot* conduct board meetings in Wisconsin at any time.

Many of our clients have a problem obtaining a quorum of the board to conduct board meetings during the summer months. One creative solution is for the association to have at least one board member or manager physically present at the board meeting in Arizona (to comply with the above mentioned law) and then have the out-of-town board members appear telephonically (via the use of a conference call and a speaker phone) at the board meeting. It is important to note that a quorum of the board members (whether they appear in person or via conference call) must be present for the entire meeting in order for business to be conducted (i.e. the board members can't just "phone in" for quorum purposes and then hang up). Another alternative is to consider suspending one or two board meetings over the summer months (if your documents do not require monthly board meetings).

Answers

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BULLETIN BOARD

Would you like to receive *Answers* Newsletter in an e-mail format?

We are compiling our e-newsletter list.

Please send your name and e-mail address to: info@mulcahylaw.net

Save the Date!

A Legal Seminar for *Condominiums*

October 22, 2008
Phoenix Public Library
1:30 p.m. - 3:30 p.m.

Beth Mulcahy is the founding attorney and partner of the Mulcahy Law Firm, P.C. Beth's legal practice focuses exclusively on the legal representation of over eight hundred (800) community associations throughout the State of Arizona.

After receiving a Bachelor of Arts degree in Political Science from Marquette University in Milwaukee, Wisconsin, Beth earned her *Juris Doctor* degree from Marquette University Law School where she was on the Dean's List and a member of the Marquette University Law Review. A native of Wisconsin, Beth is licensed to practice law in the State of Wisconsin and the State of Arizona.

As the former editor/author of a weekly question and answer column in The Arizona Republic, Beth addressed hundreds of questions on association governance. In her three years with the paper, she became known for providing information and answers that communicate a clear understanding of the subject matter. Beth's *Answers* publication and periodic legal seminars on community associations continue to provide education and information for the industry. She has also published articles in Managers Report magazine, Community Association Institute's (CAI) Journal of Community Association Law, Strictly Legal newsletter, Common Ground magazine and Arizona Community Association Journal. Beth is a member of the National and the Central Arizona Chapter of CAI, a nonprofit organization supporting the interests of community associations and the Arizona Association of Community Managers. Beth regularly speaks on the topic of community associations for seminars, conferences and workshops at state and national levels.

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Kristen L. Rosenbeck graduated from Valparaiso University with a Bachelor of Arts degree in Biology where she actively supported her school as the Student Body President. Kristen graduated in the top third of her law class receiving her *Juris Doctor* degree from Marquette University in Milwaukee, Wisconsin in 2001. She maintains licenses to practice law in both the State of Wisconsin and the State of Arizona.

Kristen's legal practice focuses on the interpretation and enforcement of association documents and guidance on state and federal laws. She represents associations in general counsel matters, bankruptcy, collection of delinquent assessments and enforcement actions. Kristen also provides representation to office condominiums. Kristen is experienced in litigation and transactional law.

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Elizabeth "Libby" Shillito is a native of Dayton, Ohio. Libby graduated from Indiana University with a Bachelor of Science degree in Sports Marketing and Management in May, 2003. While at Indiana, Libby was a student recruiting assistant for Indiana Football and had multiple internships with professional sports organizations including the Tampa Bay Devil Rays. Libby received her Juris Doctor and her Master of Business Administration from University of Toledo in May, 2006. Libby is licensed to practice law in the State of Arizona.

Libby is an associate attorney with Mulcahy Law Firm, P.C. and her practice focuses on the representation of community associations with an emphasis on litigation, enforcement of restrictive covenants and collection of delinquent assessments.

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Answers is not intended to offer specific legal advice or responses to individual circumstances or problems. If legal advice is required, please consult individually with the Mulcahy Law Firm, P.C.

Questions may be directed to Beth Mulcahy, Esq.
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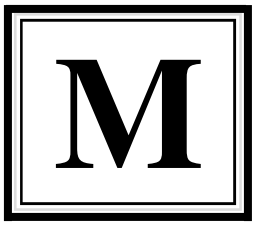

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New 2008 Legislative Update Cheat Sheet Enclosed!

Answers for Community Associations

MULCAHY LAW FIRM, P.C.

Did You Know?

MULCAHY LAW FIRM, P. C.

The Executive Session Board Meeting

When is an executive session board meeting necessary?
Under Arizona law, any portion of a meeting may be closed ***only*** if that closed portion of the meeting is limited to consideration of one or more of the following subjects: 1) legal advice from an attorney for the board or the association; 2) pending or contemplated litigation; 3) personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association; and 4) matters relating to the job performance of, compensation of, heath records or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association.

Who may attend an executive session board meeting?
Only board members are regular attendees, and *upon invitation* the attorney who represents the association, the manager, and for specific business an employee, contractor or individual member of the association may be asked to attend an executive board meeting.

Executive Board Meeting Minutes: Clear concise minutes should be taken of the actions taken at the executive board meeting. Executive board minutes are not published for distribution and should be separated from the regular minutes and maintained in a separate folder. Executive meeting minutes should not be provided to the general membership for review.

Suggestion: Plan to go into executive session prior to or after the meeting so members do not have to wait. In addition, explain to the members that under Arizona law, the board is entitled to meet in executive session and explain why you are going into executive session (to discuss matters that fall under one or more of the previously listed reasons).

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2008 Legislative Update

MULCAHY

Community Association Cheat Sheet©

BRINGING ANSWERS TO COMMUNITY ASSOCIATIONS

This publication discusses significant points of law as they apply to community associations and is not intended to offer specific legal advice or responses to individual circumstances or problems.

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August, 2008

EFFECTIVE DATE OF 2008 COMMUNITY ASSOCIATION LEGISLATION

In 2008, the Arizona Legislature considered a number of bills pertaining to community associations. Set forth below is a brief summary of the 2008 Arizona legislation pertaining to community associations and the bills that will become law.

These bills will go into effect on September 26, 2008 unless otherwise stated.

POLITICAL PETITIONS HB2440

Quick Summary:

Regardless of what an associations' documents state, a condominium association or a planned community cannot prohibit, but may reasonably regulate, the circulation of political petitions on property dedicated to the public (i.e., public streets, parks) located within an association. A gated community (one that restricts vehicular or pedestrian access) is not required to comply with this law. Nothing in this law requires an association to make its common areas available for the circulation of political petitions to anyone who is not an owner or resident of the community.

Text of Bill:

Amending A.R.S. Sections 33-1261 (D) AND 33-1808 (G):
D. Notwithstanding any provision in the condominium or planned community documents, an association shall not prohibit but may reasonably regulate the circulation of political petitions, including candidate nomination petitions or petitions in support of our opposition to an initiative, referendum or recall or other political issue on property dedicated to the public within the association. A condominium or planned community is not required to comply with this section if the condominium or planned community restricts vehicular or pedestrian access to the condominium or planned community. Nothing in this section requires a condominium to make its common elements available for the circulation of political petitions to anyone who is not an owner or resident of the community.

APPLICABILITY OF CONDOMINIUM ACT HB2726

Quick Summary:

This bill applies the Condominium Act uniformly to all condominiums regardless of the date the condominium was created. Previously, statutes applied differently to condo associations formed prior to January 1, 1986. This bill is effective from and after December 31, 2008.

Text of Bill:

Amending A.R.S. Section 33-1201: Relating to Condominium Act. This chapter applies to all condominiums created within this state without regard to the date the condominium was created.

Impact of Bill:

All condominium associations created prior to January 1, 1986 need to become familiar with the new condominium act and its requirements. For example use of proxies will no longer be allowed for condominiums created before January 1, 1986 from and after December 31, 2008.

RELATING TO DELINQUENT PROPERTY TAX LIENS HB2523

Quick Summary:
This bill allows a community association to purchase property and the contiguous property offered for sale when certain criteria are met.

Text of the Bill:
HB2523 amending A.R.S. Section 42-18303 (E):
The Board of Supervisors may sell real property in the county held by the state by tax deed to the owner of contiguous real property that is used for residential purposes, and the board may accept an offer by the contiguous owner to purchase the property, if both of the following conditions apply:

1. Both the property offered for sale and the contiguous property were at one time under common ownership, or the property offered for sale is part of a common area maintained by a homeowners' association as determined by the county assessor.
2. The property offered for sale cannot be separately used for residential purposes pursuant to applicable building codes and ordinances of the jurisdiction in which the property is located due to its size, configuration or recorded common area restrictions.

ARIZONA REVISED STATUTES REGARDING COMMUNITY ASSOCIATIONS

www.azleg.state.az.us – To access Arizona Revised Statutes (A.R.S.) online.
When you have reached the home page, select "Statutes" at the top of the page then click on "Arizona Revised Statutes". Scroll down the new page to the title you want to search, select and click on the actual title (i.e. title 33) to have the title open. The chapters, articles and sections follow, each listed respectively in numerical order. Alternately, you can choose to do a phrase search by following the instructions on the page. You can also find A.R.S. information on the MULCAHY website located at www.mulcahylawfirm.net.

The following Arizona state statues may govern your community association:

Title: 10 Corporations and Associations
Chapter: 24 General Provisions – Non Profit Corporations, A.R.S. Sections 10-3101 - 10-11635
Operation and governance of non-profit corporations are detailed in this Act. The provisions of the Non-Profit Act apply only if the articles of incorporation or bylaws of the association are silent.

Title: 33 Property
Chapter: 9 Condominiums, A.R.S. Sections 33-1201 - 33-1270
Defines the creation, management and termination of the condominium, monetary penalties, resale disclosure, liens and open meetings, etc.
Chapter: 16 Planned Communities, A.R.S. Sections 33-1801 - 33-1814
Defines a planned community association, assessments, open meetings, disclosure of association records, and penalties, etc.

Title: 41 Executive Officers
Chapter: 16 Department of Fire, Building and Life Safety, Article 5: Administrative Hearings A.R.S. Sections 41-2198 - 41-2198.05
Defines procedures for administrative law judges to adjudicate complaints regarding condominiums and planned communities.

Not on-line?
Most libraries have computers and will help you with a search or they may have the Arizona Revised Statutes in bound editions. If you want to research the bound editions, please call the library you want to use to be sure that they are available. The Phoenix Public Library, located on Central Avenue has the current Arizona Revised Statutes.

MULCAHY LAW FIRM, P. C.

presents

A Legal Seminar for

Condominiums

A goal of the MULCAHY LAW FIRM, P.C. is to provide the tools board members and managers need to govern and manage successful community associations. Therefore, we offer this *exclusive* and *personalized* seminar (free of charge) to help board members, managers and residents of condominiums understand the legalities and responsibilities of running condominiums.

Please join us for this smaller, personalized seminar where you can develop a knowledge base that will allow for the potential to minimize and prevent legal problems for your condominium.

Wednesday, October 22, 2008

Registration: 1:30 P.M.
Seminar: 2:00 P.M. - 3:00 P.M.
Q & A: 3:00 P.M. - 3:30 P.M.

Phoenix Public Library Auditorium
First Floor
1221 N. Central Avenue
Phoenix, Arizona 85004

Seating is limited. To reserve your place, complete the registration form found on the back and e-mail or fax to the addresses listed. Alternatively, you may respond with the requested information by calling 602.241.1093.

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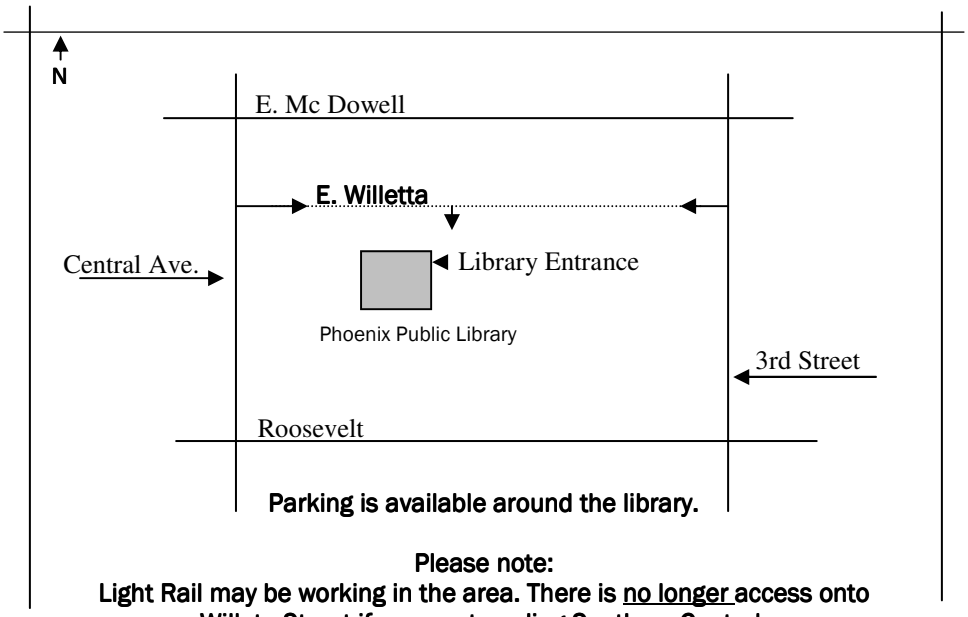
Registration Form on Reverse Side

Phoenix Public Library ♦ 1221 N. Central Avenue ♦ Phoenix, Arizona ♦ 85004

Please direct all questions to Mulcahy Law Firm, P. C., Phone: 602.241.1093



Parking is available around the library.

Please note:
Light Rail may be working in the area. There is no longer access onto Willeta Street if you are traveling South on Central.

You can also access the library from the East via 3rd. Street to E. Willetta.

This map is not to scale.

Registration Form

Please complete a registration form for each person attending (please copy the form below as needed) and fax, e-mail or mail by October 6, 2008 to the respective address listed below.

Alternatively, you can register online at www.mulcahylawfirm.net by submitting the registration form found on the seminar tab.

Name .....

Address .....

City ..... Zip .....

Association Name .....

Phone Number ..... E-mail Address .....

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