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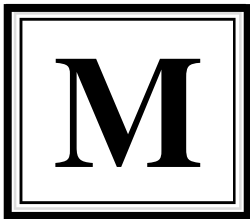
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Did You Know?



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New Community Association Legislation Goes Into Effect September 19, 2007!

by Beth Mulcahy

The Arizona legislature ended its legislative session on Wednesday, June 22, 2007. This year, the legislature passed several new bills regarding community associations. Specifically, the new legislation addresses the following areas: telecommunication vehicles, cautionary signs, establishment of a condominium recovery fund, for sale signs and use of solar energy devices in associations.

Inside this issue of **Answers** is our Mulcahy Cheat Sheet® regarding the new 2007 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 Wednesday, September 19, 2007.

Q&A!

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. on Wednesday, July 25, 2007. Please contact our office with any questions during those hours on that date!

Trustee's Sales Hit Record High in the Valley

by Beth Mulcahy

If an owner fails to pay his/her mortgage or first deed of trust, the mortgage or first deed of trust company will notice a trustee's sale of the owner's lot/unit. Unfortunately, the number of trustee's sales, the precursor to a foreclosure, has dramatically increased over the past year. In fact, an article in The Arizona Republic dated June 9, 2007, gives some startling statistics: through May 2007, 8,597 trustee's sales were noticed for homes in Maricopa County. That is the highest level since the real estate crash of the late 1980's (and there are more homes in the Valley today). At this rate, the article surmises that metro Phoenix would top 18,000 trustee' sales by the end of 2007. The article goes on to say that foreclosures are more than double what they were for all of last year.

What can the board do to protect the association?

Associations frequently become aware of a trustee's sale when they see the notice posted on the front door of an owner's unit/lot or when the association receives a copy of the notice in the mail. It is important to note that associations only receive a copy of a Notice of Trustee's sale if the association has recorded a lien on the lot/unit. Typically, if an owner isn't paying the mortgage, the owner is also not paying their dues to the association. Once an association receives notice of a pending trustee's sale, it is important for an association to monitor the trustee's sale to determine if:

Continued on next page

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Trustee's Sales *continued*

1. The owner brings the delinquent mortgage current;
2. The unit/lot reverts back to the bank; or
3. A third party purchases the unit/lot at the trustee's sale.

If the owner brings the delinquent mortgage current (this is a good sign that the owner is collectible), then, the board should attempt to collect the assessments owed.

If the unit/lot reverts back to the bank, the association's lien is wiped out. However, the association can still obtain a personal judgment against the owner for the amounts owed to the association. An analysis of the former owner's credit should be conducted to determine if he/she is collectible.

In order to get a personal judgment, the association files a legal action in Justice Court and obtains a judgment against the delinquent owner personally. With the judgment, the association can garnish the owner's wages, bank accounts or rent payments (from a tenant to the owner) or levy and execute on other real or personal property.

If a third party buys the lot/unit at a trustee's sale and excess proceeds (money) are generated, the association

can make a claim for the excess proceeds in an amount equal to the amount owed to the association for unpaid assessments, late fees, reasonable collection fees and attorneys' fees. New legislation in 2005 made it easier and more cost effective for associations to file a claim for excess proceeds after a trustee's sale. Under the 2005 legislation, the trustee may pay a claim by an association upon receipt of a written request. If the trustee does not pay the association after the written request and the association is required to file an application or response with the court to recover the excess proceeds, the association may request an award of attorneys' fees and costs. Finally, associations now have a higher priority in the distribution of excess proceeds.

It is important to immediately consult with an attorney to monitor trustee's sales, the results of trustee's sales and to assist the association in getting any excess proceeds distributed. By monitoring trustee's sales, associations can protect their legal interests and obtain any money owned to the association by the owner.

Answers

Suggestions for Enforcing CC&Rs

by Beth Mulcahy

One of the larger problems in community associations is obtaining owner compliance with association documents. Set forth below are some suggestions for enforcing CC&Rs:

Courtesy Reminder Letter

The first step in enforcing CC&Rs is for the board or management company to mail a courtesy letter or post a notice on the property noting the violation and giving an owner a certain period of time to correct the violation. This letter, in most cases, results in the owner addressing the problem immediately.

Formal Violation Letter / Fines / Self Help

In the event the violation is not corrected in a timely manner by the owner, the next step is for the board or the association's management company to send a formal violation letter. In some cases and depending on the nature of the violation, this letter may be sent by the association's attorney. Typically, this letter will threaten fines against the owner if the violation is not corrected within a certain period of time. Under Arizona law, after notice and an opportunity to be heard, an association or board of directors may impose reasonable monetary penalties on members for violations of the declaration, bylaws and rules and regulations of the association. Associations no longer have the right to record a notice of lien for unpaid fines and penalties, interest, late charges on fines and other fees and charges. Associations can now enforce payment of these fines by: 1. filing a lawsuit against the owner 2. obtaining a judgment against the owner; and

3. recording the judgment with the county recorder's office. After the judgment is recorded, the association will have a lien that is effective upon conveyance (or paid at the time of the sale of the unit/lot). In addition, associations may proceed forward with collection of the judgment through traditional collection means, such as a bank, wage or rent garnishment.

Some association documents also allow the association to correct a violation on a lot/unit if an owner fails to correct a violation in a timely manner (this is often referred to as "self help"), at the owner's cost and subject to specific notice requirements. In the event your association's documents allow the use of self help, it is important that the association specifically follow the procedures outlined in the association's documents prior to entering the lot/unit to rectify the violation.

Litigation

In some situations, litigation is the only alternative for an association to correct a violation on a lot/unit. An association has the right to file an equitable claim for relief with Superior Court, requesting an order for injunction which will require a person to cease from taking action or require a person to take action. In most cases, the judge will order that the violating owner cease from taking action or require the owner to take action and the association will be awarded its attorneys' fees and costs for filing the lawsuit.

Certified Letter - Response by Owner

It is important to note that under Arizona law if an owner sends a written letter by certified mail to the association

responding to a violation letter or a violation lawsuit, regarding the condition of their property the association may not proceed forward with any action to enforce the association's documents (including fines, self-help and or lawsuit) until the association responds in writing within 10 days to the owner with the following information:

1. The provision of association's document(s) that has allegedly been violated;
2. Date of the violation or the date the violation was observed;
3. First and last name of the person(s) who observed the violation; and
4. Process the unit/lot owner must follow to contest the notice.

Once the association provides this information to the owner, the association may proceed with any action to

enforce the association's documents (including fines, self-help and litigation).

Deed Enforcement Policy/Fine Policy and Notify

Associations should adopt a deed enforcement policy and notify residents of this policy. This policy should outline the steps the association will take to address a violation (such as reminder notices, demand letters, fines and penalties, self-help, referral to an attorney, corrective action, filing of a lawsuit, etc.), as well as any fines which may/shall result as the continuation of the violation. Associations should also consider placing reminders in the association's newsletters or mailings to the owners regarding common violations (such as parking violations) and request that all owners comply by a certain date. Hopefully, by providing this information to owners in advance they will more likely comply with the association's documents.

Answers

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www.mulcahylawfirm.net**

Click on our Newsletter and Cheat Sheet Tab where you will find up-to-date Cheat Sheets and other educational materials to help you stay current regarding Community Association issues:

The Top 10 Things You Need to Know about Community Association Law

Board Meetings

Transition from Developer to Homeowner Control

Community Association Resources

Amending Association Documents & Implementing Rental Restrictions

2005 Legislative Update
2006 Legislative Update

New!
2007 Legislative Update

Beth Mulcahy is the founding attorney and partner of the Mulcahy Law Firm, P.C. Beth's legal practice focuses exclusively on the 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.

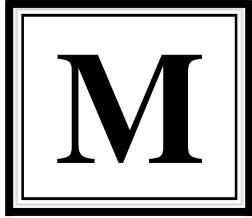
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Answers is not intended to offer specific legal advice or responses to individual circumstances or problems. If legal advice is required, please consult individually with the Mulcahy Law Firm, P.C.

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ANSWERS

for Community Associations

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A REMINDER!

Pools filled with algae, "green swimming pools", can breed mosquitoes that transmit diseases such as West Nile virus.

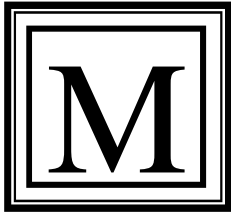
**Report a green pool to
Maricopa County
Environmental Services at:**

602.506.0700, or

www.maricopa.gov/wnv

Tips for keeping pools clean:

- ◆ Make sure the pool pump and filters are running every day to circulate water and chemicals.
- ◆ If you are going on vacation for more than two weeks, arrange for someone to maintain the pool.
 - ◆ If you have drained your pool, make sure it stays drained; do not allow any rainwater to collect in the bottom.



2007 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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July, 2007

EFFECTIVE DATE OF 2007 COMMUNITY ASSOCIATION LEGISLATION

In 2007, the Arizona Legislature considered a number of bills pertaining to community associations. Set forth below is a brief summary of the 2007 Arizona legislation pertaining to community associations.

These bills will go into effect on Wednesday, September 19, 2007.

REAL PROPERTY; SIGNAGE; AND SOLAR DEVICES SB1254

Quick Summary: This bill (which applies only to planned communities) states the following: (1) regardless of any provision in the community documents, an association shall not prohibit the installation or use of a solar energy device; however, an association may adopt reasonable rules regarding the placement of a solar energy device if those rules do not (a) prevent the installation, (b) impair the functioning of the device or (c) restrict its use or adversely affect the cost or efficiency of the device; (2) after an association approves a commercial sign, the association, including any subsequently elected board of directors, may not revoke or modify its approval of that sign if the owner or operator of the sign has received approval for the sign from the local or county governing body with jurisdiction over the sign.

Text of the Bill: A.R.S. Section 33-1816. Solar energy devices; reasonable restrictions:

(A) Notwithstanding any provision in the community documents, an association shall not prohibit the installation or use of a solar energy device as defined in section 44-1761.

(B) An association may adopt reasonable rules regarding the placement of a solar energy device if those rules do not prevent the installation, impair the functioning of the device or restrict its use or adversely affect the cost or efficiency of the device.

(C) Notwithstanding any provision of the community documents, the court shall award reasonable attorney fees and costs to any party who substantially prevails in an action against the board of directors of the association for a violation of this section.

Text of the Bill: A.R.S. 33-1815. Association authority; commercial signage:

Notwithstanding any provision in the community documents, after an association has approved a commercial sign, including its registered trademark that is located on properties zoned for commercial use in the planned community, the association, including any subsequently elected board of directors, may not revoke or modify its approval of that sign if the owner or operator of the sign has received approval for the sign from the local or county governing body with jurisdiction over the sign.

FOR SALE SIGNS SB1062

Quick Summary: This bill expands A.R.S. Sections 33-1261 and 33-1808 to allow owners in condominiums and planned communities to place a for sale sign (and a sign rider) on that owner's property.

Text of Bill: A.R.S. Sections 33-1261(C) and 33-1808 (C) . Flag display; for sale signs; applicability:

(C) Notwithstanding any provision in the planned community/condominium documents, an association shall not prohibit the indoor or outdoor display of a for sale sign and a sign rider by a association member/unit owner on that member's/owner's property, including a sign that indicates the member/unit owner is offering the property for sale by owner. The size of a sign offering a property for sale shall be in conformance with the industry standard size sign, which shall not exceed eighteen by twenty-four inches, and the industry standard size sign rider, which shall not exceed six by twenty four inches.

CAUTIONARY SIGNS HB2503

Quick Summary: This bill allows residents in a planned community to use cautionary signs when children are present within 50 feet of the sign and allows children who reside in the association to play on residential roadways in an association.

Text of Bill: A.R.S. Section 33-1808. Flag display; political signs; caution signs:

(D) Notwithstanding any provision in the community documents, an association shall not prohibit the use of cautionary signs regarding children if the signs are used and displayed as follows:

1. The signs are displayed in residential areas only.
2. The signs are removed within one (1) hour of children ceasing to play.
3. The signs are displayed only when children are actually present within fifty feet of the sign.
4. The temporary signs are no taller than three feet in height.
5. The signs are professionally manufactured or produced.

(E) Notwithstanding any provision in the community documents, an association shall not prohibit children who reside in the planned community from engaging in recreational activity on residential roadways that are under the jurisdiction of the association and on which the posted speed limit is twenty-five miles per hour or less.

TELECOMMUNICATION VEHICLES HB2254

Quick Summary: This bill (which applies only to planned communities) expands A.R.S. §33-1809, Parking; public service and public safety emergency vehicles; definition to include telecommunications vehicles and adds subsection (B), definition of telecommunications for the purpose of A.R.S. §33-1809.

Text of Bill: A.R.S. Section 33-1809. Parking; public service and public safety emergency vehicles; definition:

(A) Notwithstanding any provision in the community documents, an association shall not prohibit a resident from parking a motor vehicle on a street or driveway in a planned community if the vehicle is required to be available at designated periods at the person's residence as a condition of the person's employment and either of the following applies:

1. The resident is employed by a public service corporation that is regulated by the corporation commission or a municipal utility and that THE PUBLIC SERVICE CORPORATION OR MUNICIPAL UTILITY is required to prepare for emergency deployments of personnel and equipment for repair or maintenance of natural gas, electrical, TELECOMMUNICATIONS or water infrastructure, the vehicle has a gross vehicle weight rating of twenty thousand pounds or less and is owned or operated by the public service corporation or a municipal utility and the vehicle bears an official emblem or other visible designation of that THE PUBLIC SERVICE corporation or municipal utility.
2. The resident is employed by a public safety agency, including police or fire service for a federal, state, local or tribal agency or a private fire service provider or an ambulance service provider that is regulated pursuant to title 36, chapter 21.1, and the vehicle has a gross vehicle weight rating of ten thousand pounds or less and bears an official emblem or other visible designation of that agency.

(B) For the purposes of this section, "telecommunications" means the transmission of information of the user's choosing between or among points specified by the user without change in the form or content of the information as sent and received. Telecommunications does not include commercial mobile radio services.

CONDOMINIUM RECOVERY FUND SB1546

Quick Summary: This bill creates Article 5.1, Condominium Recovery Fund, A.R.S. Sections 32-2193.31 through 32-2193.43 and establishes a Condominium Recovery Fund within the Arizona Department of Real Estate for the benefit of any buyer aggrieved by the failure of a sub-divider of a condominium to complete the condominium project.