

MULCAHY ANSWERS

for Community Associations

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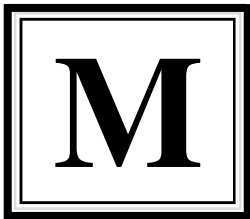
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Did You Know?



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Ten Steps to Simplify Budget Preparation

by Beth Mulcahy

Most community association documents require an associations' board of directors to adopt a budget for each fiscal year and early to late fall is typically the time of year devoted to that process. Because the management company is familiar with all aspects of the association, they usually prepare the budget for the board's approval. However, an association's finance committee should be encouraged to help with the process. Whether the manager, a committee or a combination thereof develops the budget, it requires time and research to complete the process.

The association budget is broken down into two documents: (1) operations and (2) reserves. The operations budget consists of daily and monthly expenditures such as landscape maintenance, insurance, legal fees, water, social programs, etc. The reserve budget is money reserved for large capital expenditures such as painting, roofs, common area improvements, etc. Both operations and reserves should be addressed annually and budgeted appropriately.

Listed below are 10 steps to help simplify the budget process and preparation:

- 1. Review last year's budget and records and compare the differences between what was budgeted and what was actually spent.** Review each line item in the budget. Is there a difference between what was budgeted and what was expended? Why is there a difference?
- 2. Evaluate the needs of the community for the upcoming year.** Does the annual assessment need to be raised because of an increase in delinquencies and cost of living? Are there new expenditures for any of the line items in the operational budget that will benefit the community?
- 3. Assess the needs of the community for the future.** What long term or capital projects need to be addressed in the reserve budget? When was the last reserve study conducted? Considering the cost of living increases, should a new reserve study be conducted? Does a larger percentage of the annual assessment need to be directed to the reserve budget?
- 4. Ask questions of the association's vendors.** Are there potential cost increases or added services a vendor might deem necessary for the association? Are proposed cost increases necessary?
- 5. Review and analyze the association's contracts.** Are changes in services needed that may require an increase or decrease in the contract amount? Does the association need to get three bids to determine value received?
- 6. Receive and analyze information from the vendors with regard to the budget.**
- 7. Plan for the miscellaneous.** Surprises are not fun in the operational budget. Consider including a line item for a reasonable amount of money to handle the unexpected.
- 8. Budget the line item amount taking all research and information gathered into account.**
- 9. Prepare for the budget presentation to the board and homeowners.** Have backup information available and reasons as to how and why each line item was established.
- 10. Present the budget to the board of directors for adoption and the homeowners for approval.** Be open and ready to answer questions.

continued

Please visit our website located at www.mulcahylawfirm.net

Ten Steps to Simplify Budget Preparation *continued*

In a planned community the budget must be approved by the board, but there is no requirement that the budget be approved by the membership prior to the start of the fiscal year (unless the governing documents require this, which in my experience would be unusual).

The Arizona Condominium Act (A.R.S. Section 33-1243) requires that the board of directors provide (typically by mail) a summary of the proposed condominium budget to all unit owners within thirty days after adoption. The unit owners in accordance with the procedures set forth in A.R.S. 33-1243 (D) shall ratify any budget or amendment, unless the board of directors is expressly authorized in the declaration to adopt and amend budgets from time to time. If ratification is required, the board of directors is required to set a date for a meeting of the unit owners (not fewer

than fourteen nor more than thirty days after mailing the summary) to consider ratification of the budget. The budget is ratified whether or not a quorum is present, unless a majority or any larger vote of the unit owners as specified in the declaration rejects it at that meeting. If the proposed budget is rejected, the periodic budget last ratified by the unit owners will be continued until such time as the unit owners ratify a subsequent budget proposed by the board of directors.

Looking at future needs, examining past expenditures, and planning for cost of living increases will be the basis for the development of the association's budget. A good comprehensive budget will address the board's duty to maintain and preserve the association by meeting the needs of the property as it ages and the welfare of the residents. *Answers*

Holidays are a Time to Build Community Spirit

by Beth Mulcahy

In my opinion, holidays are a time for associations to build community spirit. I am a fan of associations and owners who get involved and celebrate the season with decorations and holiday events. It is hard to believe that Halloween, Thanksgiving, Christmas and Hanukkah (to name a few holidays), are right around the corner, but they are and now is the time to plan.

It is not too soon to create a committee to help the association celebrate a holiday season free from the disputes that can sometimes occur.

What is the best way to avoid disputes over holiday decorating? I suggest that associations balance a resident's right to celebrate and an association's right to institute architectural guidelines that preserve and protect the aesthetics and property values in the association. Associations need to be respectful and sensible when decorating an association's common areas. Religion is a very personal subject and some association members are more passionate about their faith than others. I suggest that associations incorporate all religious holidays into decorating association common areas OR restrict the decorating to seasonal and simple non-religious items. Owners can decorate in their own exclusive-use areas as

they see fit. However, it is a good idea for associations to pass reasonable, fair and equitable restrictions for exclusive use areas regarding holiday decorations.

Associations should consider forming a committee to research and draft a holiday decoration policy. This committee should poll the board and residents to determine prefer-

ences for holiday decorating which will serve as the foundation for developing a holiday decorations policy. It is also a good idea for associations to consult with their attorney to make sure that the policy is consistent with the association's documents and the law. Finally, after the committee has drafted the initial policy and the board has reviewed it, allow the residents to comment on the policy. Associations should distribute copies of the proposed policy and consider holding a special forum for discussion. If necessary, revisions to the policy can be made after this process. Once passed, distribute the policy to owners, post on the association's web site, bulletin board or place an article in the association's newsletter.

Set forth below are things to consider when developing your associa-

tion's holiday decorating policy:

1. Avoid a total ban on holiday decorations - most courts will consider a ban unreasonable;

Celebrate!

- ◆ Sponsor a holiday decorating contest and give prizes
- ◆ Form a committee and decorate your common areas
- ◆ Form a choral group and sing during the holidays
- ◆ Hold a community social, share traditional seasonal foods and goodies from all faiths

2. Survey the community or hold a public meeting to obtain resident's opinions about decorations before enacting restrictions;
3. Set time limits for decorations (for example, holiday decorations will be allowed from after Thanksgiving to January 8);
4. To avoid a risk of fire, ask residents to avoid overloading electrical circuits with holiday lighting;
5. Remind residents that electrical cords are dangerous and require that owners place the cords out of the reach of children;
6. Require that lights be rated for outdoor use with no exposed wiring and ask that lights be turned off by a certain hour every night, for example midnight;

7. Remind residents of the decorating policy and safety requirements in the association's newsletter, web site and bulletin board;
8. Form a committee to decorate the common areas (if necessary, residents can donate lights and decorations);
9. Sponsor a holiday decorating contest to build community spirit and offer donated prizes and/or recognition in a newsletter or web site to the winner; and
10. Create a policy on "Haunted Houses" or other holiday related events in homes which are open to the public.

The author wishes to acknowledge the use of the November/December, 2002 issue and other issues of *Common Ground* to assist in writing this article. Answers

MULCAHY LAW FIRM, P.C.

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Your invitation is enclosed for

A Legal Seminar on How to Effectively Collect Delinquent Assessments

**November 12, 2008
Phoenix Public Library
10:00 a.m. - 12:30 p.m.**

Make your reservations today through our on-line registration or
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602.241.1093

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

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.

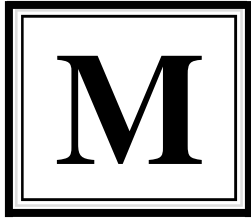
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Answers is not intended to offer specific legal advice or responses to individual circumstances or problems. If legal advice is required, please consult individually with the Mulcahy Law Firm, P.C.

**Questions may be directed to Beth Mulcahy, Esq.
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Your invitation is enclosed!

How to Effectively Collect Delinquent Assessments,
November 12, 2008!

ANSWERS

for Community Associations

Did You Know?

It is a sign of the times; our communities are filled with signs, "For Sale" signs, "For Sale by Owner" and a multitude of political signs covering all political parties. Community associations are asking for our advice on what is legal and what is not.

For Sale Signs: In 2007, the Arizona legislature passed into law A.R.S. sections 33-1261 and 33-1808, which gives an owner in a condominium or planned community the right to place an indoor or outdoor for sale sign and sign rider anywhere on that member's/owner's property without seeking permission of the association. The law also includes a sign that indicates the offering of property as "for sale by owner". Posting of signs on association common areas or common elements is not allowed unless the association approves it. Signs must be in conformance with the industry standard sign size, which shall not exceed eighteen by twenty-four inches. The sign rider must also conform to industry standards, which shall not exceed six by twenty-four inches. This law does not apply to "For Lease Signs". Some associations are trying to require owners to use "form signs" (signs created by the association). In my opinion this is contrary to the statute.

Political Signs: Pursuant to Arizona Law, A.R.S. 33-1808 (C), regardless of restrictions in an association's documents regarding political signs, a planned community *cannot prohibit* the indoor or outdoor display of a political sign(s) by an association member on that member's property.

However, a planned community may prohibit the display of political signs earlier than forty-five days before the day of an election and later than seven days after an election day. An association may also regulate the size and number of political signs that may be placed on a member's property if the association's regulation is not more restrictive than any applicable city, town or county ordinance that regulates the size and number of political signs on residential property. If the city, town or county in which the property is located does not regulate the size and number of political signs on residential property, the association shall permit at least one political sign with the maximum dimensions of twenty-four inches by twenty-four inches on a member's property. Political sign means a sign that attempts to influence the outcome of an election, including supporting or opposing the recall of a public officer or supporting or opposing the circulation of a petition for a ballot measure, question or proposition or the recall of a public officer.

To obtain a brief summary of your city, town or county ordinance that regulates the size and number of political signs on residential property, please go to our website located at www.mulcahylawfirm.net, click on "Answers and Cheat Sheets", click on "Cheat Sheets", the "Political Sign Table" is located near the bottom of the list.

Please consult with the Mulcahy Law Firm if your association requires assistance regarding signs.

Please join the
MULCAHY LAW FIRM, P.C.

for A Legal Seminar on

How to Effectively Collect Delinquent Assessments

THE MULCAHY LAW FIRM has created this special seminar to give your association the knowledge and tools to significantly reduce the number of delinquencies in your association.

Wednesday, November 12, 2008

Registration: 10:00 a.m. - 10:30 a.m.

Seminar: 10:30 a.m. - 11:30 a.m.

Extended Question and Answer: 11:30 a.m. - 12:30 p.m.

Phoenix Public Library Auditorium

First Floor

1221 N. Central Avenue

Phoenix, Arizona 85004

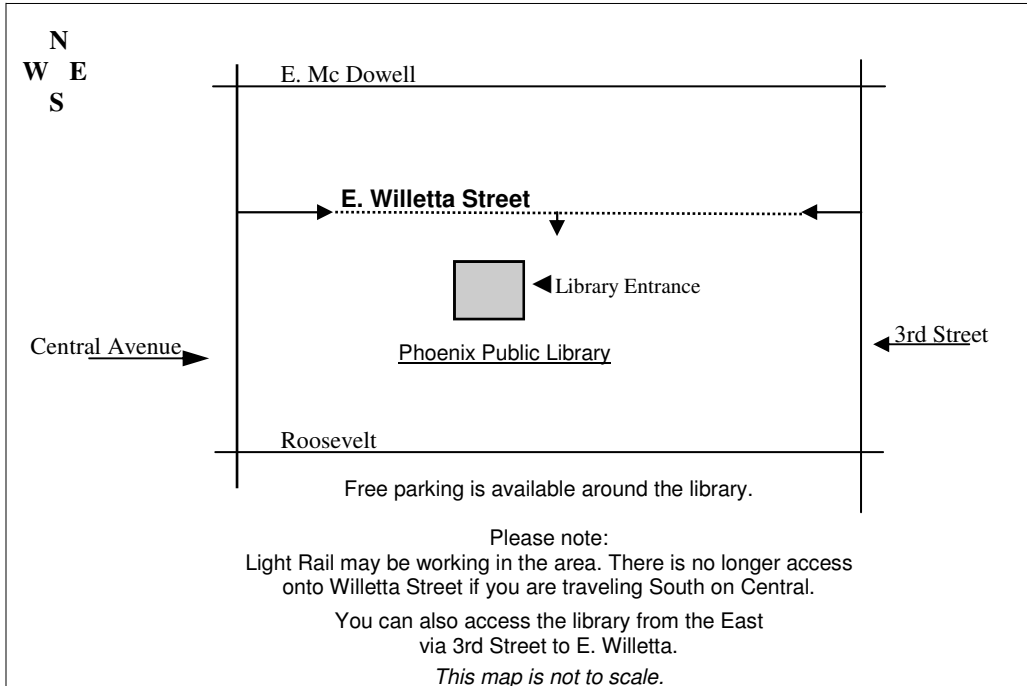
(map on reverse side)

There is no charge for this seminar. Seating is limited. To reserve a place, please R.S.V.P. by Friday, October 31, 2008 by e-mailing, faxing or mailing the completed attached registration. You may also register online at www.mulcahylawfirm.net

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Registration form on reverse side

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



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 31, 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 YES

Please check yes to have your e-mail address placed on our e-Answers newsletter list.

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