

# MULCAHY ANSWERS

for Community Associations

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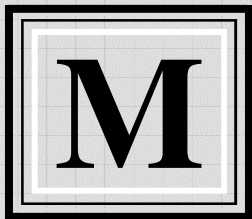
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## SB 1149, Disclosure Fees & Transfer Fees Defined

by Beth Mulcahy, Esq.

**Senate Bill 1149** was passed by the Arizona Legislature in the Spring of 2011 and has an effective date from and after December 31, 2011. Our office continues to receive phone calls that demonstrate confusion regarding this new law, disclosure fees and transfer fees. A review of the new law and further explanation of disclosure fees and transfer fees follows:

**Associations now have ten days to provide a written payoff to an owner of amounts owed to the association by the owner upon written request.** SB1149 reduces the number of days the association has to provide a statement of amounts due the association upon written request from an owner, lien holder or escrow agent from fifteen (15) to ten (10) calendar days. Failure to provide the statement within ten (10) calendar days results in the association's lien for unpaid assessments then due being extinguished against that property.

**The mode of delivery of the resale disclosure statement has changed.** SB1149 permits the association to deliver the resale disclosure statement, in either paper or electronic format, to either the purchaser or the purchaser's authorized agent.

### **Cap on Resale Disclosure Fee, Rush fee and Document Update Fee.**

SB1149 amends A.R.S. Sections 33-1260 and 33-1806 by placing a cap on the resale disclosure fee at an aggregate of \$400. In addition, the association may charge a rush fee of no more than \$100 if the rush services are required within 72 hours of the request. Finally, the association may charge a document update fee of no more than \$50 if at least 30 days have passed since the date of the original disclosure statement or documents were delivered.

It is important to note that associations cannot charge \$400 for the resale disclosure fee if the fee on January 1, 2010 was less than \$400. However, the fee can increase up to 20% per year to the cap of \$400.

These fees shall be collected no earlier than at the close of escrow and may only be charged once to a unit/lot owner for that transaction between the parties. An association that charges or collects fees in violation of Sections 33-1260 and 33-1806 is subject to a civil penalty of no more than \$1,200.

### **An additional document is now required for inclusion with the disclosure statement.**

SB1149 requires the following additional document to be included in the disclosure statement: a statement summarizing any pending lawsuits, except those relating to the collection of assessments owed by unit/lot owners other than the selling unit/lot owner, in which the association is a named party, including the amount of any money claimed.

**Associations face a stiff penalty if they charge a fee for the use/placement of for sale signs.** SB1149 prohibits associations from charging a fee for the use/placement of for sale signs and would penalize associations for charging such fee by forfeiting the association's lien rights on that property for 6 consecutive months after the date of violation.

continued

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## SB 1149, Disclosure Fees and Transfer Fees Defined continued

It is the opinion of the Mulcahy Law Firm, P.C. that there is a difference under Arizona law between a “disclosure fee” and a “transfer fee” at the time of the transfer of a lot/unit to a new owner.

The association may charge a “**disclosure fee**” to compensate the association for the costs incurred in the preparation of a disclosure statement furnished by the association pursuant to A.R.S. Section 33-1806 (planned community)/33-1260 (condo). A brief summary of the requirements for a disclosure statement pursuant to these sections follows:

For planned communities or condos with fewer than fifty units, a member shall mail or deliver to a purchaser within ten days after receipt of a written notice of a pending sale of the unit, and for planned communities with fifty or more units, the association shall mail or deliver to a purchaser within ten days after receipt of a written notice of a pending sale all of the following:

- a) A copy of the declaration, bylaws and the rules of the association and a copy of the current operating budget of the association, most recent annual financial report of the association and the most recent reserve study of the association, if any.
- b) A dated statement containing:
  - ◆ The telephone number and address of a principal contact for the association, which may be an association manager, an association management company, an officer of the association or any other person designated by the board of directors.
  - ◆ The amount of the common regular assessment and the unpaid common regular assessment, special assessment or other assessment, fee or charge currently due and payable from the selling member.
  - ◆ Whether a portion of the unit is covered by insurance maintained by the association.
  - ◆ The total amount of money held by the association as reserves.
  - ◆ Whether the records of the association reflect any alterations or improvements to the lot/unit that violate the declaration.
  - ◆ Case names and case numbers for pending litigation with respect to the lot/unit filed by the association against the member or filed by the member against the association.
  - ◆ A statement that the purchaser must sign and return to the association within fourteen calendar days that says: "I hereby acknowledge that the declaration, bylaws and rules of the association constitute a contract between the association and me (the purchaser). By signing this statement, I acknowledge that I have read and understand the association' contract with me (the purchaser). I also understand that as a matter of Arizona law, if I fail to pay my association assessments, the association may foreclose on my property."

A “**transfer fee**”, on the other hand, is paid to the association for a specified purpose, such as funding the association’s reserves or contributing to the association’s working capital fund. Transfer fees are sometimes also referred to as capital contribution fees, working capital fees, and/or reserve contribution fees. Pursuant to A.R.S. Section 33-442, an association can charge a transfer fee, capital contribution fee or reserve assessment fee that becomes due at a close of escrow when the following requirements are met:

- ◆ The governing documents (CC&Rs) grant authority for the fee and provides for a specific purpose for the fee;
- ◆ The fee being charged touches and concerns the land; and
- ◆ The fee does not go to a third party (such as a management company) or a developer unless the third party or developer is authorized in the governing documents (CC&Rs) to manage the real property within the association or was part of an approved development plan.

Further, an association can charge any fee or charge that is imposed by the document (CC&Rs) and that is payable to a non-profit corporation for the sole purpose of supporting recreational activities within the association.

Finally, pursuant to the Arizona Non-Profit Corporation Act [A.R.S. Section 10-3302(16)], an association can charge a transfer fee when the transfer fee is consistent with the cost to transfer the membership from one owner to another owner.

Our firm suggests that a transfer fee pursuant to this section [A.R.S. Section 10-3302(16)] not exceed \$500.

Answers

## Changes may Result in a “Greener” Association and a Better Bottom Line

by Beth Mulcahy, Esq.

With budget time here, more attention is being paid with regard to cutting expenses. Small steps may prove budget worthy and energy conscious. More and more people are paying attention to the green movement and community associations are also trying to find ways to reduce energy consumption, and “go green”. Here are a few changes that associations can take in a proactive approach toward creating or encouraging green initiatives and possibly decreasing the bottom line.

### Are your energy dollars being spent on a light bulb burning day and night?

There are some simple and inexpensive ways to reduce energy consumption at home or the clubhouse, such as installing weather stripping and programmable thermostats. Replace A/C filters on a regular basis. Common area light fixtures and lamps can be installed with compact fluorescent bulbs. Outdoor lighting can be controlled with photocells or a timing device; and solar panels are a great way to heat the community pool or possibly provide power to the clubhouse.

Share your copy of Answers with your association’s board!

## “Greener” Association and a Better Bottom Line continued

**Can your trash be recycled?** Many communities have curb side trash pick up, but condominiums often have a centralized dumpster. If you have centralized trash pickup and do not have recycling dumpsters, contact your trash removal company to see if they can provide a recycling option.

**Is your landscape consuming more water than it needs?** Many of our common areas in Arizona have been converted to xeriscaping, an alternative to grass that requires less water and is more drought tolerant. If your association does not have xeriscaping, ask a professional to talk to the board and residents regarding the attributes of xeriscaping. It does not have to be all cactus. Many xeriscapes appear lush with drought tolerant plants. The board could consider replacing high-water consumption plants with those that require less, and the landscaping committee may want to encourage

owners to install xeriscaping. Regardless of the landscape type, it is important to practice appropriate landscape water management. Hire professionals to do a water management assessment. The professional should have an understanding of plant water needs, soil types and irrigation systems. Most importantly, once the association has received the advice of a water management professional, follow it and apply the appropriate amount of water needed to maintain a healthy landscape. You can also consider installing smart controllers and rain sensors to detect when plants actually need water.

Taking small steps can have a positive impact on the association's carbon footprint and possibly the association budget.

*Answers*

## MULCAHY LAW FIRM, P.C.

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#### First Fridays

Call our firm between  
9 - 10 a.m.

on the first Friday of the  
month to receive your **free**  
consultation regarding  
community association law.

**November 4, 2011**

**December 2, 2011**

**January 6, 2012**

phone: 602.241.1093

#### Mulcahy Cheat Sheets©

online at:

[www.mulcahylawfirm.net](http://www.mulcahylawfirm.net)

Cheat Sheets cover  
everyday topics to help your  
association be successful!

Note:

**Lunch with Mulcahy**  
**2012**

Starting January 5, 2012 -  
We will offer four classes  
designed to inform  
and teach

community association  
boards and managers.

Register now!

Class schedule enclosed!

**Beth Mulcahy**, founding attorney and partner of the Mulcahy Law Firm, P.C. Beth's legal practice focuses exclusively on the representation of over one thousand (1000) 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 Chapters of CAI, CAI's prestigious College of Community Association Lawyers 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. **E-mail: [bmulcahy@mulcahylaw.net](mailto:bmulcahy@mulcahylaw.net)**

**Kristen L. Rosenbeck**, partner, graduated from Valparaiso University with a Bachelor of Arts degree in. 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.

Kristen regularly authors the column "Strictly Legal" in Community Association Institute's (CAI) national publication Community Manager. She has written articles for the national publication HOA Leader and for CAI's national publication, Common Ground. Kristen regularly teaches classes for community associations, the Arizona Association of Community Managers, municipalities and local organizations.

Kristen is a member of the National and the Central Arizona Chapter of CAI and Arizona Association of Community Managers. Kristen sits on the AACM Educational Committee and assists in the development of course material and curriculum. **E-mail: [krosenbeck@mulcahylaw.net](mailto:krosenbeck@mulcahylaw.net)**

**Erin E. McManis** received her Juris Doctorate, cum laude, from Creighton University School of Law where she was on the Dean's List and received the prestigious CALI Award for the highest grade in Pre-Trial Litigation. Erin is licensed to practice law in the State of Arizona. Erin is an associate attorney with Mulcahy Law Firm, P.C. **E-mail: [emcmanis@mulcahylaw.net](mailto:emcmanis@mulcahylaw.net)**

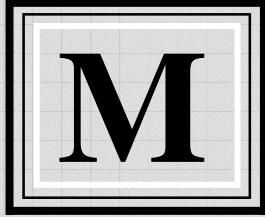
**Charlene A. Cruz** received her Juris Doctor Degree from Quinnipiac University School of Law, Hamden, Connecticut where she was a member of the Mock Trial Honor Society and active with the Tax Law Society. Charlene is licensed to practice law in the State of Arizona. Charlene is an associate attorney with Mulcahy Law Firm, P.C. **E-mail: [ccruz@mulcahylaw.net](mailto:ccruz@mulcahylaw.net)**

*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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Would you like to receive your *Answers* newsletter by e-mail?

Register online at: [www.mulcahylawfirm.net](http://www.mulcahylawfirm.net) or call our office.

# ANSWERS

*for Community Associations*

MULCAHY LAW FIRM, P.C.

## Did You Know?

MULCAHY LAW FIRM, P. C.

### **Before Signing a Contract Obtain a Qualified Review from Legal Counsel**

Once the association has selected a service provider or contractor for a capital improvement project and a contract is presented, the contract should be thoroughly reviewed. The language of any contract the association enters into should be read and understood by board members and reviewed by the association's legal counsel *prior to signing the contract*. Particular attention should be paid to termination and indemnification clauses and specifics regarding materials and deadlines for a capital improvements project. With certain contracts, the association may want to be able to terminate the services of the old company, with an appropriate lead time, by written notice delivered to the company. Contracts for landscaping should be clear regarding maintenance schedules and materials. The association's attorney can help explain terms, define specifics and determine what is best for the association. The time and expense for this review can save the association time, a multitude of problems and thousands of dollars.

*Please contact Mulcahy Law Firm, P.C. for contract review assistance  
prior to entering into a contract with a vendor.*

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*Lunch* with **MULCAHY**  
*Education and Answers*

**A goal of Mulcahy Law Firm, P.C. is to be an advocate for and educate associations** by providing the tools that board members and managers need to govern and manage successfully.

That is the impetus for our “**Lunch with Mulcahy**” series. “**Lunch with Mulcahy**” will offer board members and managers lunch in a relaxed setting and an informational mini-seminar on topics that help create successful associations.

**First Thursday of each month  
January - April 2012  
11:30 A.M. - 1:00 P.M.  
Mulcahy Law Firm Courtyard**

**Seating is limited. Please register online at [www.mulcahylawfirm.net](http://www.mulcahylawfirm.net), or call 602.241.1093 with your name, association and phone number, to reserve your lunch and educational materials.**

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**January 5, 2012 Open Meeting Law Changes...Boards, Committees and Use of Email**

Arizona's Open Meeting Law was re-vamped in the 2011 Legislative Session. Our seminar will give an overview of the new changes, including, but not limited to, recording of board meetings, use of email, executive sessions, open committee meetings and the requirement to have an agenda at every meeting. Join us for Answers and a picnic lunch in our courtyard. 11:30 A.M. - 1:00 P.M.

**February 2, 2012 The Importance of Being Proactive with your Community Association Finances...Collecting Delinquent Assessments, Bankruptcy and Trustee Sales**

When should you pursue delinquent accounts? How should you handle bankruptcies and trustee sales? Learn how to work proactively within the guidelines of the law for the best outcome for your association. Join us for Answers and pizza & salad in our courtyard. 11:30 A.M. - 1:00 P.M.

**March 1, 2012 The Top 10 Things You Need to Know about Community Association Law**

This is one of our most popular seminars. The 10 most important Arizona laws will be discussed, including, but not limited to, use of mail-in/absentee ballots, audits, the Arizona Open Meeting Law, removing a board member from office, flags, for sale signs, fines and inspection of association records by members. Join us for Answers and sub-sandwiches in our courtyard. 11:30 A.M. - 1:00 P.M.

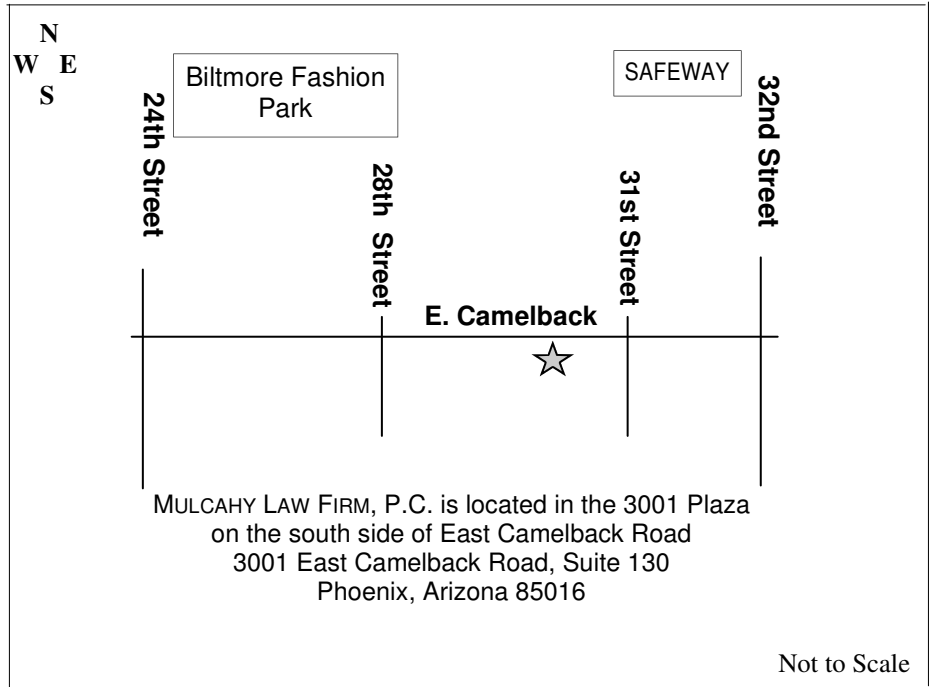
**April 5, 2012 Laws, Laws, Laws...Federal Laws...We make them Understandable**

Join us as we discuss the most important federal laws governing your association. The Fair Housing Act (55 and over communities, residents with disabilities, group homes) and the federal laws pertaining to satellite dishes and antennas will be evaluated and interpreted for attendees. Join us for Answers and a BBQ lunch in our courtyard. 11:30 A.M. - 1:00 P.M.

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3001 East Camelback Road, Suite 130  
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Phone: 602.241.1093**

*“Lunch with Mulcahy”*, Education and Answers mini-seminars are a free benefit to our client board members and managers. We invite non-client board members, as space allows, to attend for a fee of \$15.

Please contact us at 602.241.1093 for more details and to register for “*Lunch with Mulcahy*”.



*Make your reservations for Lunch with Mulcahy today.  
Seating is limited!*

We request that you call, e-mail or fax the following information to register for *each* mini-seminar.  
Please call 602.241.1093, fax 602 264.4663 or e-mail: [receptionist@mulcahylawfirm.net](mailto:receptionist@mulcahylawfirm.net).

**Class Title** \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ Zip \_\_\_\_\_

Association Name \_\_\_\_\_

Phone Number \_\_\_\_\_

E-mail Address (see statement below) \_\_\_\_\_

**If you include your email address, we will place your name on our e-mail mailing list.**  
**We DO NOT share our list with anyone.**