

MULCAHY ANSWERS

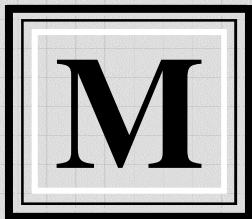
for Community Associations

February 2011
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The Association has Been Served with a Lawsuit ... Now What?



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Take the Worry Out of Annual Meetings

by Beth Mulcahy, Esq.

At this time of year our firm is asked a myriad of questions regarding annual meetings. Community associations are required by Arizona law to conduct an annual meeting of its membership at least once a year. Your annual meeting can be conducted successfully and with minimum angst with planning, organization and knowledge of the association's documents.

The annual meeting is conducted to elect directors and conduct other business as may properly be brought before the meeting such as election of officers, officer and committee reports, approval of an annual budget (if required), voting on increases in the assessment rate or special assessments or proposed amendments to the association's documents (if needed). The annual meeting is also a time for discussion and input by the members on various aspects of association life.

Conducting a successful annual meeting can be accomplished by following a few guidelines:

- Look to the association's bylaws to find the requirements of an annual meeting including the notice, quorum and voting.
- Establish a nominating committee and solicit candidates at least 75 days in advance of the annual meeting, vet the candidates and notify the association members.
- Unless otherwise provided in the articles or bylaws of an association, an association must provide written notice of the annual meeting to the membership not fewer than ten nor more than fifty days in advance of the meeting date. When you mail, also include mail-in ballots, last year's Annual Meeting Minutes. It is a good idea to consult with an attorney if there are any questions regarding the meeting notice or mail-in ballot requirements.
- Announce the date, time and location of the meeting well in advance of the meeting date through print and internet media.
- Establish a set up committee with enough people to complete the task in a reasonable period of time.
- Set up and print formal tally sheets for counting the ballots. Tally Sheets should have a place for the association name, meeting date, candidate's names, results of the election, printed name and signatures of the inspector's recording the tally. Completed tally sheets should be retained as a part of the association's permanent records.
- Create a sign-in sheet that provides for an association member's printed name, signature, lot/unit number or address and date to log in mail-in ballots. Prior to the annual meeting, the management company or board member(s) should log all returned mail-in ballots on the sign in sheet to ensure an accurate quorum computation. Check governing documents to determine if the voting process should be held in secret and plan accordingly.
- Set up registration tables and make signs that assign a portion of the alphabet to each table (for example, A-H, I-O, P-Z). A registrar should be assigned to each table and the member rosters should be divided according to the tables so that the registrars only work with those names that are in their section of the alphabet. Eligibility to vote status and ballots can be included at the registration table.
- Under Arizona law, an association has a duty to keep an accurate roster of owners and their current addresses. This membership list should be updated and complete for the annual meeting. It is also a good idea to bring a laptop with internet access to provide the most up-to-date ownership information when members are registering.

continued

Please visit our website located at www.mulcahylawfirm.net

Take the Worry Out of Annual Meetings continued

- Publicize and conduct registration 30 to 60 minutes prior to the start of the meeting and request that owner(s) come early to register and vote.
- Have a greeter at the door to welcome and direct members.
- Have association governing documents available.
- Appoint a troubleshooter to take care of unexpected events and handle anything out of the ordinary.
- Determine what registration materials are needed (roster, sign-in sheets, handouts, pens, pencils and ballots), prepare in advance. If you have several things to hand out, creating a packet of materials that can easily be handed to people as they check in assures that each person gets all of the necessary materials.
- Review governing documents to determine if cumulative voting is allowed.
- The board should appoint several “inspectors of election” to oversee the voting and elections. The inspectors’ duties are to tabulate and record the votes on the formal tally sheets created for the expressed purpose of capturing the votes. At least one of the inspectors should be from the opposing side if there are factions at the annual meeting. However, no one should be an inspector who may have an interest in the election results (such as candidates, candidates spouses, current officers, directors or the management company). Count ballots with one group of inspectors and re-count with a different group. If the association’s attorney is present, the attorney also helps oversee this process.
- The meeting can begin after a quorum is established. A quorum is almost always indicated in the association bylaws. Arizona law provides a default quorum of ten percent if the association’s documents are silent regarding a quorum.
- Look to your governing documents to determine if nominations can be taken from the floor.
- It is the responsibility of the president to: 1) start the annual meeting promptly at the designated time; 2) conduct the meeting by following the agenda and in a business like manner, 3) use parliamentary procedure to ensure that the meeting moves along quickly.
- Consider a homeowners forum at the end of the meeting or when the ballots are being counted by the inspectors of election. This allows time for homeowners to comment on aspects of association life. Limit homeowner comment time to 1-3 minutes per owner depending on the number in attendance. Good Luck with your annual meeting.

The Association has been Served with a Lawsuit...now what?

by Beth Mulcahy, Esq.

Has your homeowners association suddenly found itself on the receiving end of a lawsuit? Despite your board’s best efforts to communicate, provide excellent customer service and practice good governance, lawsuits can occur. In order to proceed in a manner that shows the association acted in good faith and with due diligence, here are several suggestions that must be done in a timely manner.

Write it Down

From the onset keep meticulous records as to: who was the recipient off the lawsuit; the date and time of delivery place it was received; how it was delivered (certified letter, process server); make complete copies of all papers delivered; and, gather and manage the information on the case.

Consult with your Association Attorney

Time is of the essence, response deadlines are often measured from the date served, so immediately forward the lawsuit paperwork to your association’s legal counsel. Served lawsuit papers might include a scheduled court date *before* which the association must file a written response. Give your association’s counsel as much time as possible to prepare the case and give you the consultation you need for the best resolution of a potentially escalating problem.

Contact Your Insurance Agent

There is a good chance you are covered if your association has directors and officers (D&O) insurance. You may also have coverage under your association’s general liability policy. Most insurance documents provide for a legal defense on actions board members would normally be expected to take. Call your Insurance agent and send copies of the lawsuit. As mentioned above it’s also imperative that the association’s lawyer received the same notification and copies of the lawsuit.

Preserve the Evidence

By the time a disgruntled homeowner sues the association, board members are probably well acquainted with the problem and the parties involved. But your attorney will need to be informed of all past events and circumstances. Memories fade regarding email content, occurrence dates, letters sent and received and conversations. So take care to preserve this evidence and keep an accurate journal which will allow you to recreate the actions and events that are relevant to the case. Be aware of your association’s policies regarding destruction of files because the association has a legal obligation to keep documents for any property or issue that is in litigation.

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

Association Lawsuit (continued)

Resolution, Mediation or Litigation?

Can the association avoid going to court? Ask your attorney. One less costly suggestion is mediation, which offers a neutral atmosphere in which both sides discuss and determine a just outcome. Sometimes the disgruntled homeowner will be willing to drop the lawsuit if he and the association can come to an agreement on what he wants. Consider this: Is the homeowner's request reasonable?; Has the homeowner filing the lawsuit had the opportunity to have a face-to-face meeting for the express purpose of resolving the disagreement?; Is the issue or policy problematic for other residents too?

While the board has a duty to enforce the rules for the good of the community and to maintain the value of the property, money spent on lawsuits keeps the community from achieving their goals. In addition lawsuits can cause other homeowners to feel that the resources of the association are being misdirected or even squandered so it behooves the association to research all possibilities.

Do not let the threat of a lawsuit deter you from volunteering. Carry the necessary insurances. Adhere to your fiduciary duty, communicate, treat all members equally and fairly and know your governing documents and there will be less of a chance for suits. And if there is a lawsuit, your board and community may have some protection.

Stay Committed to Service

Volunteers who come forward and serve their communities are the foundation for the smooth operation and management of associations. Let the association's legal counsel help you with the best possible solution when your association is on the receiving end of a lawsuit. Please contact our office, Mulcahy Law Firm, at 602.241.1093 if you have been served with a lawsuit or have any further questions. *Answers*

MULCAHY LAW FIRM, P.C.

BULLETIN BOARD

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.

March 4, 2011

April 1, 2011

May 6, 2011

phone: 602.241.1093

Lunch with Mulcahy

March 3: Full- Insurance
(waiting list available)

**April 7: Presidents and Vice
Presidents**

Call 602.241.1093 or register
online at
www.mulcahylawfirm.net

Client Managers and Board
Members attend **free!** Non-client
manager and board members
are invited on a "as space allows"
basis for a fee of \$15.

Mulcahy Cheat Sheets©

online at:
www.mulcahylawfirm.net
Cheat Sheets cover
everyday topics to help your
association be successful!
2 New Cheat Sheets

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

Kristen L. Rosenbeck, partner, 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.

Kristen is a member of the National and the Central Arizona Chapters of CAI, a nonprofit organization supporting the interests of community associations, and the Arizona Association of Community Managers.

E-mail: krosenbeck@mulcahylaw.net

Erin E. McManis graduated *cum laude* with a Bachelor of Arts Degree in Political Science from Truman State University, Kirksville, Missouri. She 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 was a Deputy County Attorney with the Maricopa County Attorney's Office prior to joining Mulcahy Law Firm, P.C. In this capacity, Erin conducted numerous bench and jury trials in the Maricopa County Courts. Erin is licensed to practice law in the State of Arizona.

Erin 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.

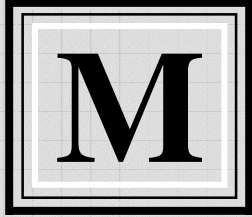
E-mail: emcmanis@mulcahylaw.net

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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E-mail: bmulcahy@mulcahylaw.net



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Register online at: www.mulcahylawfirm.net or call our office.

ANSWERS *for Community Associations*

MULCAHY LAW FIRM, P.C.

Did You Know?

MULCAHY LAW FIRM, P. C.

**Mulcahy Law Firm, P.C. will Present a
Weekly Summary of the Pending Community Association Bills in the Arizona State Legislature**

The 50th Arizona Legislature opened the first regular session of 2011 on January 10th. As in previous years, bills regarding Community Associations will be considered, albeit a few more bills have been introduced this year compared to 2010. To help you understand what is happening at our capitol, the Mulcahy Law firm will once again provide a summary of the pending bills "affecting" community associations and those pending bills "of interest" to community associations as they proceed through the legislative process. For those of you on our email mailing list we will provide a reminder email with a quick link to the latest information regarding changes in proposed legislation each week.

Please find the extended summary and weekly summaries of those House and Senate Bills introduced on our website www.mulcahylawfirm.net Publications page under the heading Legislative Updates.

If you are not on our mailing list and wish to receive the weekly updates, please subscribe to our Answers newsletter on our website.

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Please join us for a
Legal Seminar for Community Associations

presented by:
Mulcahy Law Firm, P. C.

Thursday, March 17, 2011

Registration: 1:00 p.m. - 1:30 p.m.
Seminar: 1:30 p.m. - 3:00 p.m.
Question and Answer: 3:00 p.m. - 3:30 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 Tuesday, March 11, 2011 by e-mailing, faxing, mailing the completed attached registration. You may also register online at www.mulcahylawfirm.net by completing and submitting the form found on the seminar tab.

Topics

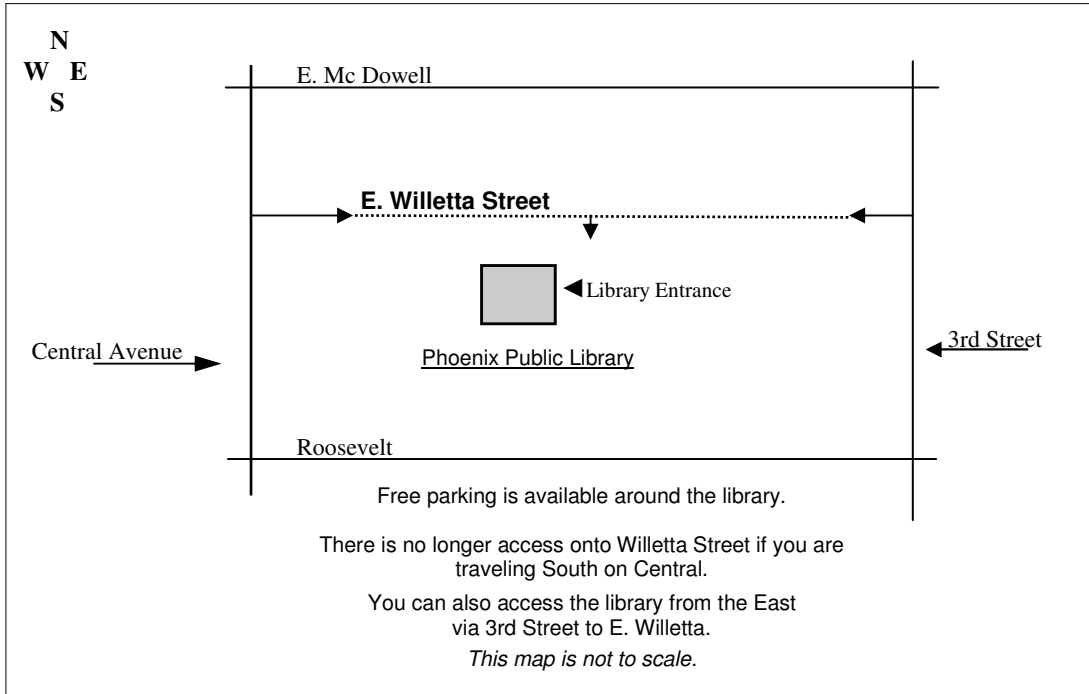
Secrets for Effective Collection of Delinquent Assessments
An Overview of Arizona Community Association Law
A Look at Bills Currently in the Arizona Legislature

St. Patrick's Day snacks will be served

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info@mulcahylaw.net ♦ www.mulcahylawfirm.net

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 March 11, 2011 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 _____

If you include you e-mail address; we will place you on our E-newsletter list.

MULCAHY LAW FIRM, P. C. ♦ 3001 East Camelback Road, Suite 130 ♦ Phoenix Arizona ♦ 85016 ♦ Phone: 602.241.1093
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MULCAHY LAW FIRM, P. C.

presents

A Legal Seminar for Self-Managed Associations

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

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

Saturday, April 2, 2011

Registration: 9:00 a.m.
Seminar: 9:30 a.m. - 11:00 a.m.

MULCAHY LAW FIRM, P.C.
3001 East Camelback Road, Suite 130
Phoenix, Arizona 85016

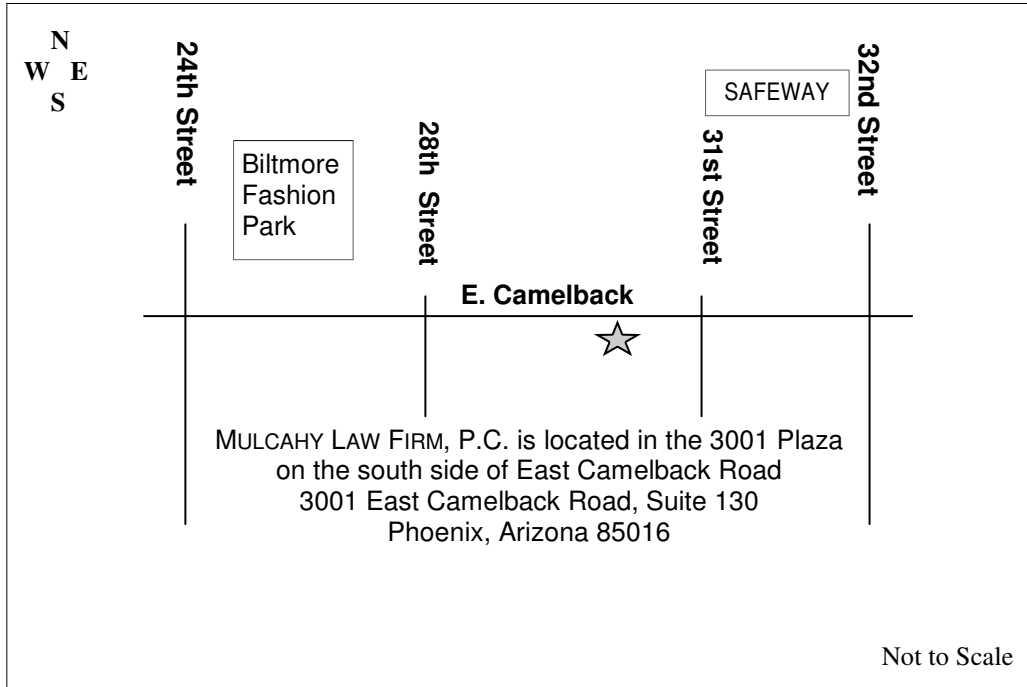
Brunch will be served

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 or registering on-line at www.mulcahylawfirm.net

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Registration Form on Reverse Side

Please direct all inquires to 602.241.1093



Registration Form

Please complete the registration information for *each person attending* and e-mail or fax the information on or *before Thursday, March 29, 2011* to the addresses or fax listed below. Alternatively, you may respond with the requested information by calling 602.241.1093.

If more than one person is attending, please add additional pages with the following information:

Name

Address

City..... Zip

Association Name

Phone Number..... E-mail Address

If you include your email address we will place you on our email mailing list.