

October 2005
Volume 2, Issue 1

In This Issue:

What Can an Association
Do if a Convicted Sex
Offender Moves into the
Neighborhood?

Suggestions to Eliminate
Speeding in Associations

How to Limit Dog
Barking in an
Association

Did You Know?



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What Can an Association Do if a Convicted Sex Offender Moves into the Neighborhood?

by Beth Mulcahy

The national movement to inform residents of sex offenders living in their neighborhoods was spurred by the 1994 sexual assault and murder of seven-year-old Megan Kanka by a neighbor who had been recently released from prison for sexual offenses. As a result, the federal government enacted a community notification law, commonly referred to as "Megan's Law".

On June 1, 1996, the Arizona legislature adopted the Arizona Sex Offenders Community Notification Statutes (A.R.S. Sections 13-3821 to 13-3828). Under this law, once a convicted sex offender is released from jail after serving time and/or intends to enter and remain in a county in Arizona, the sex offender must register with the sheriff of the county. Convictions of the following offenses require registration: unlawful imprisonment or kidnapping of a person under the age of 18, sexual conduct with a minor, child prostitution, sexual exploitation of a minor, sex trafficking of a minor, sexual abuse of a person under the age of 18, sexual assault, molestation of a child and continuous sexual abuse of a child and a second or subsequent violation of indecent exposure or public sexual indecency to a person under the age of 15.

Community notification depends on the level of risk assigned to the offender. Prior to release, an offender is assigned to a risk category. The level of risk is used to predict whether an offender will commit another similar offense. Community notification regarding offenders placed into either Level 2 (intermediate risk) or Level 3 (high risk) is statutorily required. However, for offenders assigned to Level 1 (low risk), community notification is discretionary.

Arizona imposes a zero tolerance approach regarding harassment and vigilantism by concerned residents against a known sex offender. The only right a resident has is the right to information regarding the sex offender's status, criminal history and place of residence. A resident may not harass or otherwise intrude upon the offender's privacy. Such acts would create criminal liability for the resident.

As such, community associations cannot discriminate or otherwise harass a known sex offender in an effort to prevent the offender from residing within the community association or neighboring areas. However, a community association has the right and, in my opinion, the obligation to notify its residents of any registered sex offenders residing within the association or in the neighboring areas.

Information regarding Arizona's Sex Offender Community Notification Statute may be found on the State of Arizona Department of Public Safety web page; <http://www.azsexoffender.org> This site allows users to enter either a specific residential address or a zip code to locate registered sex offenders residing nearby. Some associations print the information obtained from this website and post it in common areas or distribute to the residents. Full reports are available for a fee. Please contact our office if you have any questions regarding this law.

Answers

Suggestions to Eliminate Speeding in Associations

by Beth Mulcahy

Over the past few years, I have heard horror stories from association boards and residents regarding owners, residents and vendors speeding and/or failing to obey traffic signals on association streets.

Drivers who do not obey the speed limit within an association are a growing problem for community associations. Association residents want to feel safe in their front yards or while they are walking in their neighborhood. Traffic speed limits are designed to keep association members safe by posting maximum vehicular speeds. Factors such as street location, street size and number of vehicles per day are all used to determine the safest speed vehicles should travel.

It is important to note that under Arizona law, associations have a duty to maintain the common areas in a reasonably safe condition. This responsibility extends to unit owners, their tenants and their guests. In addition, an association has a duty to take reasonable measures to protect against foreseeable activities that create a danger on the land it controls. As such, if the speeding problem is creating danger within the association, it is my opinion that the association has a duty to take reasonable measures to protect its residents.

Set forth below are several suggestions for associations with speeding problems in their associations:

1. Create a **"traffic safety committee"** to research the speeding problem and provide solutions to reduce or eliminate speeding in the association.

2. Check with your city/town to find out if they have a **speed awareness, speed reduction program** or any other ways they might support the association with a speeding problem. The type of support from your municipality will depend if your streets are public or privately owned.

3. **Educate and enlist the help of your membership.**

Use your newsletter, web site, bulletin boards and any other means to communicate the dangers of speeding in the association.

4. **Obtain and place a speed awareness trailer** on streets where there is a speeding concern. Solar powered trailers are equipped with a radar unit that tracks and displays a motorist's speed and remain in a neighborhood for several days. Your municipality may be able to help you obtain a trailer.

5. **Use a radar tracking device.** Residents and/or police use a hand held radar unit to monitor traffic speed and record vital motorist information. Speeding motorists are sent a letter informing them of the violation and requesting that they obey neighborhood posted speed limits.

6. **Post signs in the community** regarding speed limits and children at play. Check with your city/town to determine if they can post signs or request specific requirements for the signs if the association posts them.

7. **Use devices such as speed humps, traffic circles, plantings and traffic diverters.** Your city/town will have the requirements for these permanent speed reducers and must be contacted if you plan this type of calming device.

8. **Contact vendors** if you witness their employees speeding in the association.

9. **If you have private streets and posted speed limits which are incorporated into the association's documents, fine owners for speeding** in the association after notice of the violation and an opportunity to be heard. Associations with public streets may ask the police to monitor areas of concern.

Hopefully, these suggestions can be used to eliminate or greatly reduce speeding in your association. *Answers*

How to Limit Dog Barking in an Association

by Beth Mulcahy

Dog barking in associations and complaints by the surrounding owners are a common problem. According to experts, the most common causes of dog barking are the following: boredom; children or others teasing the dog; hostile neighbors; separation anxiety; changes to a dog's life or lifestyle; possible health issues (such as irritations or discomforts); distractions; lack of shade, food or water; and breeding.

First, I suggest that the complaining parties contact the dog's owner to make them aware of the problem.

In many instances, a dog is barking when the owner is away from the home and the owner may not be aware of the problem. A dog barking problem can be resolved informally with good communication.

Second, if contacting the neighbor doesn't work, I suggest that the complaining owner contact his/her association to request that the association intervene. If the association has a nuisance provision in its documents or a rule prohibiting dog barking, an association can send an owner a warning letter regarding the barking dog and notify the owner that

the barking dog is creating a nuisance in the association. If the dog owner fails to comply with the warning letter and the association's CC&Rs have a nuisance provision, the association has the right to impose a reasonable fine for a violation of its CC&Rs, bylaws and/or rules and regulations after notice of the violation and an opportunity to be heard is given to the owner.

Third, some owners/associations have contacted their city/town code enforcement or have resolved dog-barking conflicts through the use of city/town mediation programs. In addition, in extreme circumstances after repeated problems, some owners have called the police regarding the barking dogs.

Finally, other associations/owners have used the following techniques to stop or limit dog barking in the association: (1) "dog proof" a section of the house where a dog door leads (the dog may choose the option of being

inside rather than bark at neighbors); (2) limit the dog's stimulation by restricting its line of sight, i.e. through a gate or fence; (3) daycare for dogs two or three times a week; (4) hire a professional dog trainer; (5) citronella anti-bark collar (the collar sprays a light mist of citronella in front of the dog's nose when the dog barks—dogs do not like the hissing sound or the smell of the citronella); (6) anti-barking shock collars; (7) electric devices such as "Bark Free" (this system responds to a barking dog up to 50 feet away by emitting a high pitched tone that humans cannot hear and that dogs do not like); and (8) debarking surgery (dogs have a fold of tissue on each side of the larynx which must tighten and vibrate to bark—debarking surgery removes this tissue. After the operation, the dog only has a whispery bark. However, this procedure is *controversial* and some experts claim that some or all of the barking returns over time).

Answers

MULCAHY LAW FIRM, P.C.

BULLETIN BOARD

Over 250 board members and community managers gathered at the Phoenix Public Library on September 8th for the annual Legal Seminar for Community Associations presented by the MULCAHY LAW FIRM, P.C.

We enjoyed presenting this year's seminar and hope that you will join us for a future seminar!

Resource and contact information for community associations regarding the State of Arizona, Maricopa County and your municipality will be at your fingertips with **the new**

MULCAHY Cheat Sheet © entitled "Resources for Community Associations"

If you would like a PDF copy, please contact info@mulcahylaw.net or call our office to have a hard copy mailed to you

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, 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.

Since joining the firm in February 2003, Kristen has focused on enforcement, collections and document interpretation. Kristen also provides general corporate advice for community associations.

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Jennifer Spragins Harris is a 1999 graduate of Southwestern Oklahoma State University having earned undergraduate degrees in Biology and Sociology. Jennifer continued her studies at the University of Oklahoma College of Law where she graduated in the top twenty-five percent of her class in 2003 with a *Juris Doctor* degree. She maintains licenses to practice law in the State of Oklahoma and the State of Arizona.

Jennifer's legal practice focuses on the representation of community associations with an emphasis on litigation, premises liability claims, 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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Did You Know?

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Is the San Tan Beige paint color on your home really San Tan Beige?

When the association's ARC list of pre-approved paint colors is out of sync with the manufacturer's list of colors the result can be frustrating and costly. Paint formulations are changed about every ten years according to Dunn & Edwards Paints, who made the change last year.

We suggest that associations review paint selections periodically with a paint store to make sure the association's list of approved colors and the paint store's current name selection and formulation are the same. The ARC committee can assist association members with selection by making complete pre-approved color palettes available to the homeowners.

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