

# Questions & Answers

for Community Associations

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## In This Inaugural Issue:

Collecting Delinquent Assessments

New Laws Affecting Associations

Successful Board Meetings

Meeting Minutes

Mulcahy Bulletin Board

Did you Know?

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## What are the Remedies for Delinquent Assessments?

by Beth Mulcahy, Esq.

Many community associations have problems in collecting unpaid assessments from homeowners. Most associations start the collection process by sending late notices, imposing late fees and recording notices of liens on lots/units. However, if these efforts are unsuccessful, the association may want to consider taking legal action to enforce its rights. Under most association's CC&Rs, the board has options to collect delinquent assessments: (1) obtain a personal judgment against the owner or (2) foreclose an assessment lien on the lot/unit.

The first option is to obtain a personal judgment against the delinquent owner. In order for the association to obtain a personal judgment against an owner, an association files a lawsuit against the delinquent owner in justice court or superior court (depending on the delinquent amount at issue) and obtains a judgment against the delinquent owner personally. With that judgment, the association can garnish the owner's wages, bank accounts or rent payments or levy and execute on other real or personal property of the owner.

The second option is to foreclose the assessment lien on the lot/unit. Most association CC&Rs and Arizona law give associations the right to record with the county recorder a notice of lien against a lot/unit for non-payment of assessments. Once recorded, this notice of lien has very serious implications. For example, an owner cannot sell or refinance his/her lot/unit without first paying the association and having the association release the lien. In addition, the lien is public notice to all prospective

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## What are the New Laws Affecting Associations?

by Beth Mulcahy, Esq.

In 2004 the Arizona legislature enacted several new laws that are now in effect for community associations.

Set forth below is a list of the new legislation:

**HB 2402:** Liens

**HB 2379:** Annual Audit

**SB 1125:** Requirement for Associations to Record Contact Information

**HB 2368:** Homestead Exemption

**SB 1137:** Challenging a Corporate Act

**HB 2177:** Inspection of Records by Members; Open Meetings; Association Financial and Other Records

**HB 2478:** Political Signs

**HB 2381:** Conflicts of Interest on Board of Directors

**HB 2492:** Parking; Public Service and Public Safety Vehicles

**SB 1311:** Construction Defects

**SB 2380:** Resale of Units/Lots; Information Required; Definition.

A summary of these laws can be obtained by e-mailing your name and address to [bmulcahy@mulcahylaw.net](mailto:bmulcahy@mulcahylaw.net).

## Collection of Delinquent Assessments *continued*

purchasers that there is a cloud on the title of the lot/unit and may limit the marketability of a home. Finally, the lien is the first step towards the association foreclosing on a lot/unit.

In a foreclosure action, an association records a lien on the lot/unit and then files a lawsuit in Superior Court to foreclose the lien. The association obtains a foreclosure judgment against the owner which orders a sheriff's sale of the lot/unit and a deficiency judgment against the owner to the extent the sheriff's sale proceeds do not cover the judgment amount. After the association obtains the judgment from superior court, the association files a writ of special execution with the sheriff's office and the sheriff sets a foreclosure sale date for the lot/unit within several months. At the sheriff's sale, the lot/unit is

either sold to a third party investor (for the amount that is owed to the association) or the property reverts to the association and the association becomes the record owner. After the sheriff's sale, the new owner or the association (depending on the circumstances) can petition the court to remove the former owner from the lot/unit.

It is important to note that when selecting the best remedy for the collection of delinquent assessments, associations should evaluate the amount of the delinquency, the financial condition of the delinquent owner and how much equity there is in the property prior to foreclosing.

-Answers-

*Under most association's CC&Rs, the board has options to collect delinquent assessments*

## How Can the Board Conduct a Successful Board Meeting?

by Beth Mulcahy, Esq.

Homeowners want to know that someone is listening

Unfortunately, disruptive and abusive homeowners are becoming common at association meetings. To move a potentially difficult meeting to a successful meeting, your association needs to devise a plan for dealing with difficult owners.

**Maintain Control:** The board meeting is a time for your board to conduct the business of the association. Do not allow the difficult owner to speak out of turn or raise irrelevant issues. Give owners an agenda of meeting topics and conduct a "homeowner forum" at the beginning of the the board meeting so that homeowners have the opportunity to talk about issues regarding the association.

A time limit for the overall forum and a limit of two to three minutes per

homeowner should be established so that homeowners will have the opportunity to speak without taking over the entire meeting.

**Communicate:** Use websites, a newsletter, bulletin boards and letters to keep owners in the loop.

**Be Positive:** Try to turn the disgruntled owner into a contributor. Avoid personalizing the dispute. Do not respond with anger or trade insults with an owner. Allow the homeowner to vent. Remember, the board does not have to respond to, or rebut every comment of a homeowner.

**Get Legal:** As a last resort, consult with an attorney, document all dealings with the owner or contact the proper authorities if the board thinks the owner is dangerous.

By taking these steps, your association will be better able to increase the flow of information and communication between the board and homeowners.

-Answers-

## What Information Should Regular Board Meeting Minutes Contain?

by Beth Mulcahy, Esq.

The recording secretary is responsible for recording and keeping the minutes of all association meetings. The most important thing to remember is that meeting minutes are the associations' only official record of board, committee or membership decisions and actions. As such, it is imperative to remember that

meeting minutes must be accurate, precise and truthful. First, meeting minutes must reflect what the board decides not what its members say. Second, meeting minutes should be brief and contain the following elements:

- ◆ Type of Meeting
- ◆ Association Name

continued on next page

## Board Meeting Minutes continued

- ◆ Event Information
- ◆ Attendants' Names
- ◆ Approval of the Previous Meeting Minutes
- ◆ Officer and Committee Reports
- ◆ The Business of the Meeting
- ◆ Adjournment and Time
- ◆ Secretary's Signature

Remember that the meeting minutes are not official until they are approved by the board at a subsequent meeting. The minute book is the association's principal record. The records should be printed on quality paper and placed in an official binder.

-Answers-

### The Business of the Meeting

The minutes should follow the agenda, unless the assembly agrees to take a matter out of order. The motions and resolutions, exactly as made, seconded and passed, defeated, tabled, returned to committee, etc., should be grouped according to subject matter.

There is no reason to include the summary of debated, discussions, drafts and revisions of motions. None of this constitutes the official action of the association.

## MULCAHY LAW FIRM, P.C.

### Bulletin Board:

We are pleased to bring you the inaugural issue of Answers, a publication for clients and friends of the Mulcahy Law Firm, P. C..

Answers will be published periodically to provide information regarding the governance of Community Associations.

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Our September Legal Seminar for Community Associations was very Successful!  
Attendees learned about the new legislation regarding associations, Collecting Delinquent Assessments, How to Build Better Boards and Construction Defect Laws.  
Watch for Future Seminars!

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Please e-mail or send your name and address if you would like to be added to our mailing list

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**Beth Mulcahy** is the founding attorney and partner of the Mulcahy Law Firm, P.C..

The firm'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 sought and 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.

As an active participant in the industry, 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 State of Arizona.

Since joining the firm in February 2003, Kristen has focused on enforcement, collections and document interpretation and she provides general corporate advice for community associations and condominiums. Kristen is also experienced in litigation and transactional law.

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**Maura Abernethy** has been actively working in the community association industry since 2000. Maura joined the Mulcahy Law firm in March of 2004 and has focused her practice on enforcement and collection issues. She is well versed on document interpretation and provides advice on general corporate matters.

Maura holds a Bachelor of Science degree in Finance from Arizona State University and a *Juris Doctor* degree from Hamline University in St. Paul, Minnesota, where she was on the Dean's List. She is licensed to practice in the State of Arizona.

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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, at  
Phone: 602.241.1093, Facsimile: 602.264.4663,  
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# ANSWERS

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Inaugural Issue!

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## Did You Know?

Swimming pools operated by a neighborhood or community association (condominium or planned community) for the residents of the community and their guests are considered "semi-public" pools and are subject to new stringent requirements as outlined in the Environmental Health Code by the Department of Environmental Services. Portions of these new requirements became effective on March 18, 2004.

To obtain a summary of the new requirements, please e-mail your request with your name and address to [bmulcahy@mulcahylaw.net](mailto:bmulcahy@mulcahylaw.net).

*Happy Holidays and Best Wishes for 2005!*