



**The
Top 10**
*Things You
Need To Know
About
Community
Association
Law*

MULCAHY
**Community
Association
Cheat Sheet®**

**BRINGING ANSWERS
TO COMMUNITY
ASSOCIATIONS**

This publication discusses significant points of law as they apply to community associations and is not intended to offer specific legal advice or responses to individual circumstances or problems.

MULCAHY LAW FIRM, P.C.

3001 East Camelback Road
Suite 130
Phoenix, Arizona 85016
Phone: 602.241.1093
Toll Free: 877.206.7164
Facsimile: 602.264.4663
E-mail:

bmulcahy@mulcahylaw.net
krosenbeck@mulcahylaw.net
www.mulcahylawfirm.net

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1. THE ARIZONA OPEN MEETING LAW A.R.S. 33-1804 / CONDO A.R.S. 33-1248

Pursuant to Arizona law, all meetings of an association, board of directors and regularly scheduled committee meetings are *required to be open to all association members* or their representatives (who have been designated as such in writing) and held in the State of Arizona.

Members or their designated representatives are allowed to attend and speak at an appropriate time during the deliberations and proceedings of all association meetings, board of directors and regularly scheduled committee meetings. *The board may place reasonable time restrictions.* However, *the board must permit a member or a member's designated representative to speak before the board takes formal action* on an item under discussion in addition to any other opportunities to speak. The board shall provide for a reasonable number of persons to speak on each side of an issue.

The board may close a portion of a meeting to the members and go into executive session to discuss any of the following subjects: **1.** legal advice from an attorney for the board or the association; **2.** pending or contemplated litigation; **3.** personal, health and financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association; **4.** matters relating to the job performance of, compensation of, health records or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association; and **5.** discussion of a unit owner's appeal of any violation cited or penalty imposed by the association except on request of the affected unit owner that the meeting be held in an open session.

Additionally, **A.** the agenda must be available to all owners attending any meeting; **B.** the reasons for an emergency meeting must be included in the meeting minutes and the meeting minutes must be read and approved at the next regular board meeting; **C.** a quorum of the board may meet by telephone conference if there is a speaker phone available in the meeting room that allows board members and unit/lot owners to hear all parties who are speaking during the meeting; **D.** any quorum of the board that meets informally to discuss association business, must comply with open meeting and notice provisions, regardless of whether any action is taken; and **E.** interpretation of the Open Meeting statute is to be construed in favor of open meetings.

Homeowners are permitted to tape and/or video record open board meetings, subject to reasonable rules and regulations adopted by the board.

2. RECORD CONTACT INFORMATION A.R.S. 33-1807(J) / CONDO 33-1256(J)

All associations are required to record in the office of the county recorder in the county in which the association is located, a notice stating the following: **1.** Name of the association; **2.** The name of the community; **3.** The name of the designated agent or management company for the association; **4.** The address and the telephone number of the association or its designated agent or management company; and **5.** The date of the recording and the recorded instrument number or book and page for the main document that constitutes the declaration. If an association's address, designated agent or management company changes, the association is required to record a new notice with updated information within 90 days after the change.

3. MAIL- IN BALLOTS/ABSENTEE BALLOTS A.R.S. 33-1812 / CONDO A.R.S. 33-1250

Proxy voting is *only* allowed while the association is under developer control (time during which the developer may elect or appoint the board of directors).

After termination of developer control, proxy voting is prohibited. Votes by members may now be cast in person AND by mail-in ballot or absentee ballot for special meetings and annual meetings of the membership.

There are several requirements for mail-in ballots/absentee ballots:

1. The ballot must set forth each proposed action; **2.** The ballot must provide an opportunity to vote for or against each proposed action; **3.** The ballot is valid only for one specified election or meeting of the members and expires automatically after the completion of the election or meeting; **4.** The ballot must specify the time and date by which the ballot must be delivered to the board of directors in order to be counted, which must be at least seven days after the date the board delivers the un-voted mail-in ballot to the member; and **5.** The ballot must specify how many ballots must be returned to achieve a quorum *and* what percentage of approval is required to approve the action, other than for an election of directors. The ballot cannot authorize another person to cast votes on behalf of the member. Votes cast by ballot are valid for purposes of a quorum.

4. ANNUAL AUDIT A.R.S. 33-1810 / CONDO A.R.S. 33-1243

A board of directors is required to conduct a financial audit, review or compilation of the association annually. The annual audit, review or compilation shall be completed no later than 180 days (6 months) after the end of *each* fiscal year and shall be made available upon request to the members within 30 days of its completion. If the association's documents require an annual audit by a certified public accountant, then the association must hire a certified public accountant to conduct the audit.

5. FORECLOSURE LIMITATIONS A.R.S. 33-1807 / CONDO A.R.S. 33-1256

Associations can only foreclose if assessments are delinquent for a period of one (1) year or if the owner owes \$1,200 or more in assessments (whichever occurs first).

6. REMOVAL OF DIRECTORS & BOARD MEMBERS A.R.S. 33-1813 / CONDO A.R.S. 33-1243

Removal of Directors from Office: This procedure does not apply to board members appointed by the developer and supersedes any other provisions in the association's documents pertaining to removal of board members:

1. Petition for Removal of Director Requirements: (a) Associations with 1,000 or Fewer Members: A petition must be presented to the board for removal of a director that is signed by the number of persons who are entitled to cast at least 25% of the votes in the association or one hundred votes in the association, whichever is less; (b) Associations with over 1,000 Members: A petition must be presented to the board for removal of a director that is signed by the number of persons who are entitled to cast at least 10% of the votes in the association or one thousand votes in the association, whichever is less; **2. Special Meeting:** The special meeting shall be called, noticed and held within 30 days after receipt of the petition for removal; **3. Quorum:** A quorum for the removal meeting purpose is met if at least 20% of the votes, or one thousand votes, whichever is less, are present at the meeting in person or as otherwise permitted by law; **4. Percentage Required to Remove Director:** A member of the board can be removed from office with or without cause by a majority vote of the members entitled to vote and voting on the matter at a meeting of the members called for the removal purpose. A quorum must be present; **5. Retention of Documents:** The board must retain documents related to proposed removal for at least one year after the special meeting and shall permit inspection of these records by members; **6. Only One Removal Attempt Per Term:** A petition for removal of the same member of the board shall not be submitted more than once during each term of office for that member.

7. DISPLAY OF THE AMERICAN FLAG A.R.S. 33-1808 (A) (B) / CONDO A.R.S. 33-1261

An association cannot prohibit the outdoor display of the American flag, or an official flag (or a replica) of the United States Army, Navy, Air Force, Marine Corps, Coast Guard by a unit/lot owner on that unit/lot owner's property if the American flag or military flag is displayed in a manner consistent with the Federal Flag Code. Associations also cannot prohibit the outdoor display of the following: **1.** POW/MIA flag; **2.** Arizona State flag; and **3.** The Arizona Indian Nations flag **4.** Gadsden flag ("Don't Tread on Me"). Finally, planned communities are allowed to limit the number of flags to two (2) flags being displayed at once and restricts the height of the flagpole to no more than the height of the rooftop of the member's home, but shall not prohibit the installation of a flagpole in the front yard or backyard of the member's property.

8. FINES & PENALTIES A.R.S. 33-1803 (B) A.S.S. 33-1807 / CONDO A.R. S. 33-1242

After notice and an opportunity to be heard, an association or board of directors may impose reasonable monetary penalties on members for violations of the declaration, bylaws and rules of the association. Associations no longer have the right to record a notice of lien for unpaid fines and penalties. Associations can enforce payment of these fines by: **1.** filing a lawsuit against the owner; **2.** obtaining a judgment against the owner; AND **3.** recording the judgment with the county recorder's office. After the judgment is recorded, the association will have a lien that is effective upon conveyance or paid at the time of the sale of the unit/lot. Alternately, the association can collect the judgment through garnishment of wages, rent or a bank account.

9. FOR SALE SIGNS A.R.S. 33-1808 / CONDO A.R.S. 33-1261

Notwithstanding any provision in the association's documents, an association shall not prohibit or charge a fee for the use or placement of the indoor or outdoor display of a "for sale" sign and sign rider by a unit/lot owner on that owner's property, including a sign that indicates the unit/lot owner is offering the property "for sale by owner."

An association or managing agent's lien rights as authorized under Sections 33-1256/33-1807, will be forfeited and extinguished against that unit /lot for a period of six (6) consecutive months from the date of the violation if an association or managing agent violates an owner's right to have the following:

- Temporary open house signs or a unit/lot owner's for sale sign on that owner's property. The association shall not require the use of particular signs indicating an open house or real property for sale and may not further regulate the use of temporary open house or for sale signs that are industry standard size and that are owned or used by the seller or the seller's agent.
- Open house hours. The association may not limit the hours for an open house for real estate that is for sale or lease in the condominium or planned community, except that the association may prohibit an open house being held before 8:00 a.m. or after 6:00 p.m. and may prohibit open house signs on the common elements of the condominium or common areas of the planned community.
- An owner's or an owner's agent's for lease sign on that owner's property unless an association's documents prohibit or restrict leasing of a lot/unit or lots/units. An association shall not further regulate a for lease sign or require the use of a particular for lease sign other than the for lease sign shall not be any larger than the industry standard size sign of eighteen by twenty-four inches and on or in the unit owner's property. If leasing of a unit/lot is allowed, the association may prohibit open house leasing being held before 8:00 a.m. or after 6:00 p.m.

10. INSPECTION OF ASSOCIATION BOOKS & RECORDS BY MEMBERS A.R.S. 33-1805 / CONDO A.R.S. 33-1258

All financial and other records of the association shall be made reasonably available for examination by any member or any person designated by the member in writing as the member's representative. Books and records kept by or on behalf of the association and the board may be withheld from disclosure to the extent that the portion withheld relates to any of the following:

1. Privileged communication between an attorney for the association and the association; **2.** Pending litigation; **3.** Meeting minutes or other records of a session of an executive session board meeting; **4.** Personal, health or financial records of an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association; and **5.** Records relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association.

New legislation in 2006 entitles owners to see association books and records pertaining to "contemplated" litigation. An association cannot charge a member for making books and records available for review. An association has ten (10) business days from submittal of a request by an owner or an owner's designated agent to make records available or copies of the requested records. The association can only charge 15 cents per page for copies of records.