



## What is a Community Association?

# 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.*

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### COMMUNITY ASSOCIATIONS

It is estimated that there are over 10,000 community associations in Arizona today.

### CHARACTERISTICS OF A COMMUNITY ASSOCIATION

- All owners become members of a community association when they accept a deed to a lot/unit located in a community association.
- The governing documents (i.e. CC&Rs, articles of incorporation, bylaws and rules and regulations) create obligations on the part of the homeowners and the community association.
- Most community associations are set up as non-profit corporations and are subject to the laws affecting non-profit corporations.

### TYPES OF COMMUNITY ASSOCIATIONS

**Condominium:** In a condominium, the owner owns a separate interest in the unit or apartment together with an undivided interest in the common area. For example: If there are 50 units in a condominium association, each owner owns his/her individual unit (i.e. usually the airspace inside the four walls) plus 1/50<sup>th</sup> of the common areas.

**Planned Community:** An individual owns an interest separate from the other owners, usually called a lot, parcel or residence. In Arizona, the common areas in a planned community are owned by the association (not the owners).

**Cooperative:** In a cooperative, a corporation owns the real property and the improvements (i.e. the building). The corporation is owned by the lessees of apartments or spaces in the project. Each apartment is subject to a long term lease giving the lessee exclusive use of the apartment.

### THE LEGAL DOCUMENTS REGULATING COMMUNITY ASSOCIATIONS

The legal documents that regulate community associations have provisions that bind both the community association and the individual owner. The controlling legal documents for a community association are the plat, declaration of covenants, conditions and restrictions ("CC&Rs"), bylaws, articles of incorporation and rules and regulations.

**Plat:** All subdivisions require the preparation, approval and recording of a plat. The plat for a community association will identify the lots/units subject to separate ownership and the common area.

**Declaration of Covenants, Conditions and Restrictions ("CC&Rs"):** The CC&Rs are the enabling document that creates the covenants and restrictions that run with the land and are binding on all current and successive owners. This document is recorded with the county recorder's office before an owner purchases a lot/unit in a community association.

**Articles of Incorporation:** The articles of incorporation establish the association as a legal entity with the Arizona Corporation Commission. It is advisable to incorporate a community association to limit the liability of individual members for the acts of the association.

**Bylaws:** The bylaws are used for the internal government and operation of the association. The bylaws typically define composition and election of the board of directors, notice and quorum requirements for meetings, administrative procedures and rules for the association.

**Rules and Regulations:** The board is usually empowered in the CC&Rs or bylaws to adopt rules and regulations regarding the community association's common areas or areas not generally covered by the community association's CC&Rs. If rules and regulations conflict with the CC&Rs or bylaws, the rules and regulations are unenforceable. Rules and regulations must be reasonable, easy to understand and efficient.

**The hierarchy of the legal documents is as follows:** plat, CC&Rs, articles of incorporation, bylaws and rules and regulations. In the event of a conflict between the documents, the document earlier in the hierarchy prevails or trumps the other document.