

Diana Cole

From: Cheryl Kaufman <ckaufman@ulsinc.com>
Sent: Wednesday, February 25, 2015 3:54 PM
To: 'JACKI HOAGLAND'; Richard Mocny; Rick Nelson; 'Richard Grady'; Diana Cole; azterritoryantiques@yahoo.com; Keith Peirce
Subject: Responses from Attorneys

All –

I received answers and legal advice from the Mulcahy Law Firm today with regards to recent issues and questions. The responses came from Charlene Cruz, Esq. and were affirmed and validated by Beth Mulcahy, Esq.

Some points are moot now considering the inadequate number of votes at the 2/17/15 BOD mtg to change the Bylaws; however, the questions were posed prior to that discovery.

Cheryl

- The ballot process and preparation for the AGM (deadline 1/31/15) began before the BOD voted to amend the Bylaws on 2/17/15 to ban serving on both the BOD and ACC. Are the new amended bylaws of 2/17 to be retroactive to the election process & candidate submissions that ended on 1/31/15?
No it is my legal opinion that their candidacy cannot be ruled out because the candidate submission was valid at the time it was submitted.
- Can candidates' edit their bios for the ballot after the Jan 31 deadline and prior to printing/mailing?
Yes unless prohibited by the Association's governing documents.
- Can a resident in an improvement association serve on both the BOD and ACC simultaneously? **Yes unless prohibited by the Association's governing documents.**
- If at a later date and if prohibited by future Bylaws that disallow service on BOD and ACC, could candidates run for both offices on the ballot? **It is my legal opinion that the candidates are not automatically eliminated for running for a position on the Board and the ACC just because they indicated they wanted to run for both positions. If elected, I recommend the candidate choose which position they accept.**
- Does ARS 33-1817.7 apply to Tonto Hills which is an improvement association that does not nor is allowed to own community property? **No.**
- What date did ARS 33-1817.7 go into effect in Arizona?
August 2, 2012.
- If ARS 33-1817.7 would apply to Tonto Hills, would our DoRs and Bylaws be in violation of AZ statutes?
ARS 33-1817.7 does not apply as the Association does not meet the definition of planned community.
- Are improvement associations so rare in AZ that they are included in other statutes by default, making decisions via legal advice in the absence of applicable statutes?
Yes, it is rare for associations to not own or have an interest in common areas; and these associations often seek direction from counsel in the absence of definitive statutes applicable only to improvement associations.
- What does "[n]otwithstanding any provision in the community documents..." mean? **It is like saying "despite what the community documents state"**