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THE COMMUNITY ASSOCIATION LAW
LUNCH & LEARN LECTURE SERIES
DESK REFERENCE SET

VOLUME 4:

**Association Record Keeping – What Records a HOA Has to
Keep, How Long They Must Keep Them and Owner Records
Requests.**

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INTRODUCTION

This booklet is designed to help homeowner associations (hereafter, “HOAs”) understand what HOA documents they must keep on file and how long said documents must be kept. This booklet and lecture is also designed to provide guidance to HOAs concerning how to honor the requests of Members to view HOA records and what records the HOA must provide to Members.

I. RECORDS THAT MUST BE KEPT BY A HOA

HOAs have the potential of generating large amounts of documents. These documents or records act as the official record of the HOA. HOA records are important and are necessary to properly run the HOA. This is why both Arizona Statutory Law and sometimes the Governing Documents of the HOA mandate that certain document or records be kept by the HOA.

A. Statutory Requirements concerning HOA record keeping.

Although the Planned Communities Act and the Condominium Act require HOAs to keep records and to produce certain records to owners (see A.R.S. §33-1258 and A.R.S. §33-1805), the Planned Communities Act and the Condominium Act do not specifically state what records a HOA must keep.

The Arizona Non-Profit Corporations Act, however, does provide guidance concerning what records a HOA that is a non-profit corporation should keep (HOAs that are not non-profit corporations should look toward their Governing Documents concerning what records to retain. If the Governing Documents are silent, the HOA may choose to follow the provisions of the Arizona Non-Profit Corporation Act).

A.R.S. §10-11601, a provision of the Arizona Non-Profit Corporations Act, provides a detailed list of documents a non-profit HOA should retain. These records may be broken down into the following categories:

1. Records that involve corporate governance;
2. Financial Records of the HOA;
3. Membership Lists; and
4. Governing Documents of the HOA

Each category will be discussed below.

1. Records that involve corporate governance

Records that involve corporate governance are those records that involve the day-to-day business operations of the HOA. These documents include:

- a. Minutes of all meetings of the Members and Board of Directors;
- b. All actions taken and decisions made at Member's meetings or Board Meetings;
- c. A record of all actions taken by the Members or Board of Directors without a meeting;
- d. A record of all actions taken by a committee of the Board of Directors on behalf of the corporation;
- e. Resolutions adopted by the Board of Directors relating to the characteristics, qualifications, rights, limitations and obligations of Members;
- f. All written communications to Members generally within the past three years, including the financial statements furnished for the past three years;
- g. An agreement among Members under A.R.S. §10-3732;

- h. The HOA's recent annual report delivered to the commission;
- i. A list of the names and business addresses of the HOAs current directors and officers.

2. Financial Records of the HOA

A.R.S. §10-11601 simply states that a non-profit HOA “shall maintain appropriate accounting records.” The Statute, however, does not provide guidance as to what documents are included in “appropriate accounting records.”

It is important for HOAs to keep in-dept financial records in order to insure transparency and Member trust. Once of the most common complaints concerning HOAs is that Members do not have a sense of “where the money is going.” Therefore, HOAs should keep as many records pertaining to its accounting and finances as possible. Some common financial records that should be kept are:

- a. Purchase receipts;
- b. Invoices from vendors;
- c. Vendor contracts;
- d. Banking statements;
- e. Check stubs; and
- f. Financial statements, audits, reviews or compilations performed by a competent accounting professional.

It is a good practice for a HOA to keep all documents concerning the finances of the HOA. The above list is just a sample of those documents. It is advisable that any document pertaining to the HOA's finances, no matter how insignificant, be retained by the HOA.

3. Membership Lists

A.R.S. §10-11601 states that non-profit HOAs “shall maintain a record of its Members in a form that permits preparation of a list of the names and addresses of all Members and in alphabetical order by class of Membership showing the number of votes each Member is entitled to cast and the class of Memberships held by each Member.”

The most common question concerning the requirement for a non-profit HOA to keep and produce Membership lists is whether a non-profit HOA may require or transmit the phone numbers or e-mail addresses of Members.

A.R.S. §10-11601 clearly states that only names and addresses are required. Phone numbers and e-mail addresses are not required under the Statute. A HOA may request that Members provide it with phone numbers and e-mail addresses. The HOA, however, should not transmit phone numbers and e-mail addresses to Members.

4. Governing Documents of the HOA

A.R.S. §10-11601 requires that the following governing documents be kept by the HOA:

- a. The HOA’s Articles of Incorporation and all amendments;
- b. The HOA’s Bylaws and all amendments;
- c. The HOA’s CC&Rs and all Amendments; and
- d. The HOA’s rules, regulation policies and procedures pertaining to enforcement, assessment collection or architectural control.

Finally, A.R.S. §10-11601 requires that all documents of a non-profit HOA be kept in “written form or in another form capable of conversion into written form within a reasonable time.” This means that non-profit HOA records may be kept electronically or on a CD/DVD so long as paper copies may be made.

II. HOW LONG SHOULD HOA DOCUMENTS BE KEPT

Another common question concerning HOA records is “how long should a HOA keep certain records?” A.R.S. §11-11601 states that financial records, minutes of and actions taken at Board and Member meetings and general communication between the HOA and Members should be kept for three (3) years. A.R.S. §11-11601 does not specify a timeframe for other HOA records.

It is, however, a good idea for HOAs to keep records for as long as financially practical; meaning, as long as you can store the records without a financial hardship being borne upon the HOA, the HOA should keep some records found in A.R.S §11-11601 past the 3 year requirement.

This is due, in part, to the way the Planned Communities Act and the Condominium Act handle records requests by Members of the HOA. Records requests by Members will be discussed below. Suffice it to say, it is a good idea for HOAs to keep their records as long as possible in order to avoid potential conflicts with Members concerning access to the HOA’s records.

III. MEMBER REQUESTS FOR HOA RECORDS

Member records requests are one of the most important functions of a HOA as well as one of the most confusing. Rules concerning Member records requests may be found in the HOA’s Governing Documents as well as Arizona Statutes. Recently, however, Arizona Law changed to provide HOAs with definitive rules concerning the request of Members to view HOA records.

A.R.S. §33-1258 (condominiums) and A.R.S. §33-1805 (planned communities) discuss how HOAs should process Member records requests. These statutes also trump any applicable provisions of the HOA's Governing Documents.

A. What records must the HOA provide to Members

The first question many HOAs ask concerning Member records requests is what records the HOA must turn over. A.R.S. §33-1258 (condominiums) and A.R.S. §33-1805 (planned communities) provides guidance concerning this question.

A.R.S. §33-1258 (condominiums) and A.R.S. §33-1805 (planned communities) states:

[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.

Although the above is broad, there are some documents that may be withheld from Members who request to view them pursuant to A.R.S. §33-1258 (condominiums) and A.R.S. §33-1805 (planned communities). These records include:

1. Privileged communication between an attorney for the HOA and the HOA;
2. Pending litigation concerning the HOA;
3. Meeting minutes or other records of a session of a board meeting that is not required to be open to all Members;
4. Personal, health or financial records of an individual Member of the HOA, an individual employee of the HOA or an individual employee of a contractor for the HOA, including records of the HOA directly related to the personal, health or financial information about an individual Member of the HOA, an individual employee of the HOA or an individual employee of a contractor for the HOA; and

5. Records relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the HOA or an individual employee of a contractor of the HOA who works under the direction of the HOA.
All other records not covered by the above may be viewed by Members pursuant to a valid records request.

B. What process is involved concerning records requests

Now that we have discussed what records must be turned over to Members, we can now discuss the process of making records available to the Members. A.R.S. §33-1258 (condominiums) and A.R.S. §33-1805 (planned communities) states that when a Member makes a request to view HOA records:

1. The HOA has ten (10) business days to fulfill a request by an owner to view HOA records;
2. The HOA may not charge a Member or any person designated by the Member in writing for making records available for review, even if the HOA must spend money to prepare the records for review by the Member;
3. If a Member or his representative requests copies of documents, the HOA must provide copies of the requested records within ten (10) business days. A HOA may charge a fee for making copies of not more than fifteen cents per page. The HOA, however, is not required to mail copies to Member. HOAs are to simply prepare the copies for pick-up by the Member.

One of the most prevalent HOA questions concerning records requests is how members should submit their requests. Should the requests be in writing? Are e-mails or

telephone calls ok? Unfortunately, the Statutes do not provide clear guidance concerning how records requests should be submitted.

To aid in facilitating Member records requests, attached as Exhibit A please find a Records Request Form. This Records Request Form may be kept on file and used to help owners make proper requests to review HOA records.

CONCLUSION:

Honoring HOA record keeping and records requests can be a daunting task. This booklet was designed to assist HOAs in navigating the complexity of HOA record keeping and records request. Following the principles outlined in this booklet should aid HOAs in keeping appropriate records and providing Members access to said records.

EXHIBIT A

REQUEST TO REVIEW/INSPECT ASSOCIATION RECORDS

MAIL TO: _____ **Homeowners Association**

Name of owner/Member or designated representative making request:

Address and lot/unit number: _____

Phone number(s): _____

I request to review/inspect the following records of the Association (please check below records).

_____ I prefer to come by the Association/Management office on _____, at _____ ()m or another convenient day.

_____ I prefer to have documents mailed to me with all appropriate copy and mailing costs being placed on my account (Please see below).

_____ **Membership list with addresses (without Phone Numbers)**

_____ (initials) I avow that I

- will not use the list or any part for any purpose unrelated to a Member's interest as a Member
- will not use it to solicit money or property
- will not use it for any commercial purpose
- will not sell it to any person
- **MUST CHOOSE ONE OF THE FOLLOWING**
- _____ will use it solely for the purpose of communication with other Members for a scheduled Membership meeting on _____
- OR
- _____ will use it for the following proper purpose described with reasonable particularity (use must be directly connected to the stated purpose):

_____ **Other Records requiring showing of proper purpose:**

_____ Accounting records (specify): _____

_____ (Initials) I avow that I will use them for the following proper purpose described with reasonable particularity (use must be directly connected to the stated purpose):

_____ Most recent financial statements

_____ (Initials) I avow that I will use them for the following proper purpose described with reasonable particularity (use must be directly connected to the stated purpose):

_____ Minutes of Board meeting for _____

_____ Record of Board action without meeting (i.e., unanimous consent), related to: _____

_____ Minutes of Membership meetings older than three years (specify years) _____

_____ Record of Committee actions related to:

_____ (Initials) I avow that I will use them for the following proper purpose described with reasonable particularity (use must be directly connected to the stated purpose):

_____ **Other Documents (purpose not required)**

- _____ Articles of Incorporation
- _____ Bylaws
- _____ Board Resolutions relating to Member rights and obligations
- _____ Minutes of Members' meetings and records of actions taken without a meeting (past three years). Specify year _____
- _____ Written communications to the Members for past three years, including financial statements (except proper purpose needed for the latter)
- _____ List of names and business addresses of directors and officers (current)
- _____ List of names and addresses of Members of the Association
- _____ Most recent corporate annual report
- _____ Any other specific record of the Association, as listed

below:

CONSENT

I hereby acknowledge that the Association will charge me \$.15 per page for copies of any and all documents to which I request copies. If I wish documents to be mailed to me, I acknowledge that the Association will charge applicable mailing costs to my account.

Date: _____

Signature: _____