



SHAW & LINES, LLC

HOA & CONDO LAWYERS

Attorneys

Augustus H. Shaw IV*†

Mark E. Lines**†

Patrick J. Whelan***

*Also Licensed in Nebraska

**Also Licensed in Utah

***Also Licensed in Florida

† Member, College of Community Association Law

Address

4523 E. Broadway Rd.

Phoenix, Arizona 85040

Phone/Fax/Web

p 480-456-1500

f 480-456-1515

www.shawlines.com

Going Paperless

The Legal Requirements of HOA Digital Record Keeping

By Augustus H. Shaw IV, Esq., CCAL

As Arizona community associations become older, an interesting issue arises; what does a community association do with the boxes and boxes of association records it accumulates over the years?

In today's litigious community association climate, it is difficult to advise that community associations destroy older records. Moreover, the storage of large quantities of community association records could begin to take a financial toll on community associations and the companies that manage them.

Because of the records storage dilemma, many community associations and management companies are moving toward or desire to investigate the implementation of a paperless or electronic record keeping system. This article will discuss what laws apply to paperless or electronic record keeping and issues community associations and management companies should consider when investigating moving toward a paperless or electronic record keeping system.

Paperless or electronic record keeping requires original paper records be “digitized” for electronic storage. Once “digitized,” the records may then be stored on a server, stored on a DVD, stored on thumb drive or stored on a normal computer.

While in today’s digital age it is an easy proposition to store records electronically, the key question is does the law allow community association records to be stored electronically?

For those community associations that are non-profit corporations (the vast majority of community associations are non-profit corporations), the Arizona Non-Profit Corporations Act will shed some light on a community association’s ability to store records electronically. Arizona Revised Statutes (A.R.S.) §10-11601(D), a provision of the Arizona Non-Profit Corporations Act states:

A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

Therefore, pursuant to A.R.S. §10-11601(D), so long as a community association can take records stored electronically and convert them back to paper form “within a reasonable time,” a community association may store records electronically.

Two final important points. First, the requirement of A.R.S. §10-11601(D) to convert electronic records back to paper form “within a reasonable time” may be easily determined. The Planned Communities Act (at A.R.S. §33-1805(A)) and the Condominium Act (at A.R.S. §33-1258(A)) provides community associations with a ten (10) business day timeframe to have records available for an owner’s review. So long as electronic records may be converted back to paper form in time to abide by the above statutes, the Association will meet the provisions of A.R.S. §10-11601(D).

Second, it is extremely important to have a full-proof electronic storage system for the electronic records. It is advisable to have several backups for the medium in which you will be saving the electronic records. Remember, if a community association cannot convert the electronic records back to paper form within a reasonable time due to a file storage error, the Association may be in violation of A.R.S. §10-11601(D) and possibly A.R.S. §33-1805 (Planned Communities) and A.R.S. §33-1258 (Condominiums).

An electronic record keeping system could save a community association and its manager time and money and storage space. So long as the proper precautions are observed and respected, I see electronic record keeping as the wave of the future.

Augustus H. Shaw IV, Esq., CCAL is the Founding Partner of Shaw & Lines, LLC. A lecturer for many municipal HOA Academies and continuing legal education seminars, Augustus is a member of the prestigious CAI College of Community Association Lawyers.