



This is the inaugural issue of our revamped e-newsletter program. We are excited to restart this program and will send out subsequent issues on the first Tuesday of each month. We can always produce new content that we think is interesting or important, but we would love to hear from community managers and board members regarding potential topics for upcoming issues. What topics do you want to read about or see discussed? Please contact attorney Greg Stein at (480) 427-2843 or greg@carpenterhazlewood.com with any suggested topics for upcoming issues.

Sign up for our upcoming seminars!

Feb. 11 - Hoarding and Nuisances (Tucson)

Feb. 28 - Vendors (Prescott)

Mar. 3 - Parking, Parking and More Parking (Tempe)

Please visit our [website](#) to register for any of our upcoming seminars.

We also offer in-house training for new managers and board members.

For more information contact Andrea Rizen at 480.427.2880 or andrea.rizen@carpenterhazlewood.com



explores what associations can expect from the 2020 Census, and what challenges might arise.

Wednesday, April 1, 2020 is Census Day. Around Census Day, every home will receive an invitation to participate in the 2020 Census by responding online, by phone, or by mail. We believe that the lion's share of Census responses will come around Census Day through one of these means. Also in April, 2020, Census workers will begin visiting "people living in senior centers, and others who live among large groups of people," according to the U.S. Census Website, at www.2020census.gov.

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So There's a Test? – Ensuring Compliance with Federal Law for the 2020 Census

by [Ed O'Brien, Esq.](#)

Happy New Year, Arizona! 2020 will bring our recurring encounter with Census workers. Condominium and planned community associations are especially likely to encounter Census workers as their members participate in our national headcount. This article

Records Requests: Ten Suggested Tips

by [Greg Stein, Esq.](#)

Complying with records requests submitted by owners pursuant to A.R.S.

§§ 33-1805 and 33-1258 can be time-consuming and frustrating, especially when submitted over-and-over by the same owner(s). The most burdensome records requests can cause board members and community managers alike to throw up their hands in frustration.

Although there is never a "one-size-fits-all approach" to complying with records requests, we have compiled ten suggested tips and strategies to make the process easier.

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IN OTHER NEWS:

Important information for associations and their members who serve alcohol at parties and social gatherings - "As a New Year's party host, are you liable for accidents when guests drink?" - AZ Central [READ STORY](#)
Please join us on May 5, 2020, as attorneys Javier Delgado and Mark Sahl present an informative seminar (The HOA Today Show "Cinco de Drinko" Edition) on alcohol issues within community associations.

Could housing rules be next? – "New rules could bump emotional-support animals from planes" - AP News [READ STORY](#)
Please join us for attorney Lydia Linsmeier's upcoming seminar focusing on emotional support animals. Date and time TBD.

"Legal Disclaimer: The information contained in this newsletter is provided for informational purposes only, and should not be construed as legal advice on any subject matter. You should not act or refrain from acting on the basis of any content included in this newsletter without seeking legal or other professional advice."

So There's a Test? – Ensuring Compliance with Federal Law for the 2020 Census

Cont.

In May 2020, Census workers will begin visiting the homes that have not respond to the Census online, by phone, or by mail. This means that from April 2020 until December 2020, Census workers may be visiting associations across Arizona to complete their work. They may visit all sorts of communities, from rural "POAs" to high-rise condominiums.

All associations, but especially those associations that control access to their communities, should prepare for the arrival of these Census workers. In 2010, our firm spoke with numerous gated communities or condominiums that questioned the timing and approach of Census workers. The law that allows these Census workers to enter has not changed since then. In fact, Congress made it the "duty" of Americans to assist in the Census, by adopting 13 U.S.C. § 223 in 1954 ("Refusal, by owners, proprietors, etc., to assist census employees"), which provides:

Whoever, being the owner, proprietor, manager, superintendent, or agent of any hotel, apartment house, boarding or lodging house, tenement, or other building, refuses or willfully neglects, when requested by the Secretary or by any other officer or employee of the Department of Commerce or bureau or agency thereof, acting under the instructions of the Secretary, to furnish the names of the occupants of such premises, or to give free ingress thereto and egress

therefrom to any duly accredited representative of such Department or bureau or agency thereof, so as to permit the collection of statistics with respect to any census provided for in subchapters I and II of chapter 5 of this title, or any survey authorized by subchapter IV or V of such chapter insofar as such survey relates to any of the subjects for which censuses are provided by such subchapters I and II, including, when relevant to the census or survey being taken or made, the proper and correct enumeration of all persons having their usual place of abode in such premises, shall be fined not more than \$500.

This law makes interference with Census workers a federal violation, punishable by a \$500 fine. Our clients have asked us whether an association's restriction upon entry might violate this law. Although this discussion does not constitute legal advice, this 1954 law certainly suggests that associations should exercise caution when acting in a manner that could be deemed to interfere with Census workers when they are performing their lawful work.



A similar non-Census question that directors and managers of associations in gated communities frequently ask is whether process servers, police, or similar authorities on non-emergency business

have the absolute legal right to enter the property to locate or serve residents. The Arizona Supreme Court has protected government agents' entry into private property. See *State of Arizona v. Dugan*, 113 Ariz. 354, 555 P.2d 108 (1976). The Internal Revenue Service appears to have the same protected authority. See 26 U.S.C. § 7608. Although we do not have a specific case involving a community association and Census workers in Arizona, *Dugan* and 26 U.S.C. § 7608 provide persuasive legal authority that Census workers enjoy the same access privileges that law enforcement, process servers, and the I.R.S. enjoy under Arizona and federal law. Gated communities might face unique concerns if they have gates that only permit electronic access, i.e. they lack on-site personnel acting as a "gate keeper" for Census workers entering the communities. In cases like these, because the law is not crystal clear, we encourage those communities to obtain legal advice regarding their specific needs and concerns.

Federal law requires owners, managers, or agents to allow for ingress and egress to private property to any officer or employee acting under the Census Bureau and to furnish the names of occupants for the purpose of collecting Census statistics. See 13 U.S.C. § 223. On one hand, we see no duty for associations to take extraordinary or arduous steps to assist Census workers in their entry onto private property. For example, if a condominium manager is out sick, there is no duty to come into work because that is the day the Census workers arrived. On the other hand, an on-site manager who stops Census workers from using stairs/elevators to visit units might violate the law. On occasion, we receive questions from association managers regarding Census workers who might be acting outside the scope of their Census work. An example

might be a worker who takes a break on restricted association common area, and then violates association rules. These instances might go beyond the protection provided by 13 U.S.C. § 223. Associations do not have to suffer instances of bad behavior by people going beyond the scope of their work and we encourage Associations that face unique questions like this to contact their attorneys for guidance.

As 2020 Census workers begin to visit associations to perform their work, a general rule of thumb is that assisting their entry to complete their work is usually the most expedient way to avoid a legal issue. Census workers have broad rights to enter private property, but they also are expected to do their jobs in a reasonable way. Although most Census workers who enter associations complete their work in a positive and reasonable way, we are here to help any association that has questions, problems, or needs to make some kind of unique arrangements.



Ed O'Brien is an associate attorney who joined the firm in 2018. Ed practices in our Tempe office and is happy to answer any Census-

related (or any other legal) questions you may have. You can reach Ed at (480) 534-4421 or ed.obrien@carpenterhazlewood.com.

Records Requests: Ten Suggested Tips Cont.



1. Stay on top of the deadline

Both statutes provide that an "association shall have ten business days to fulfill a request for examination." Producing the requested records a few days late can provide an owner with an easy way to file an administrative petition against an association premised on a technical, statutory violation. Therefore, associations should begin considering the documents/records necessary for a response immediately upon receipt of an owner's request. Even if unable to produce all of the requested documents by the ten-business day deadline, an association should produce everything it can by the deadline and provide anything else as soon as possible thereafter.

2. Request extensions if needed

Despite using best efforts, an association may not always be able to comply with an owner's records request within the ten-business day deadline. If compliance by the deadline appears unlikely, associations should seek an extension of time from the owner to produce the requested records. Oral extensions from an owner should always be confirmed in writing.

3. Clarify vague/ambiguous requests

Oftentimes, an owner's records request will contain one or more requests that are vague or ambiguous. The records request statutes do not require that the association attempt to guess as to the owner's actual (but not clearly stated) intent. If an owner's request is vague or ambiguous, associations should immediately demand that the owner further clarify the specific records requested. If the owner refuses to do so, an association should provide all documents/records the association considers reasonably related to the request within ten business days.

4. Acknowledge what isn't included in the response

Owners commonly request documents/records that an association does not have or that are in the possession of an unrelated third party. In these situations, an association should identify the specific documents/records requested that the association does not have, that no records are being produced in response to the owner's specific request, and, if applicable, that the owner is free to seek copies of the records in the possession of _____ (a third party).

5. Don't volunteer information

Frequently, owners will also demand that an association answer the owner's questions or create documents/records in response to their requests. It is important to remember that associations have no obligation under the records request statutes to answer an owner's questions or create documents/records not already in existence.

6. Hidden records requests

We have all received lengthy, rambling emails from disgruntled owners. Many times, it is the same owner or group of owners who repeatedly submit these emails. Be careful to avoid immediately

dismissing these emails as just another irrelevant communication. On occasion, owners may try to insert a “hidden” records request in the middle of a lengthy email in the hopes of imposing statutory liability if an association fails to identify the request.

7. Websites/member portals

One of the easiest ways to curb repeated and burdensome records requests from the same owner(s) is to set-up a website with a member portal and post as many association documents/records to the website as possible. Through this process, an association can avoid the unnecessary time and expense of responding to some records requests by simply stating, “Check the website.”

8. When in doubt, assume that the record should be disclosed

Similarly to closed or executive session board meetings (i.e. all association business should be discussed in an open session board meeting unless a specific statutory exemption applies), associations should assume that all records must be disclosed in response to an owner’s records request unless the specific statutory exemptions at A.R.S. §§ 33-1805(B)(1)-(5) or 33-1258(B)(1)-(5) apply. Importantly, however, associations should also give careful consideration to the process of determining what information and documents are actually part of the “association records” based on Arizona law and the governing documents. When questions arise, associations may want to contact their general counsel attorneys for guidance.

9. Redacted records

Both A.R.S. §§ 33-1805(B) and 33-1258(B) provide that certain records “may be withheld from disclosure to the extent that the portion withheld relates to [the items listed in subsections (1) through (5) of the statutes].” In many instances, documents/records will

include some items that an association can withhold from disclosure and other items that an association cannot withhold from disclosure. Instead of withholding the entire record, associations should seek to redact portions of these records while producing any remaining portions in an unredacted format.

10. “Contractor” vs. “Employees of a Contractor”

For privacy reasons, both records request statutes permit an association to withhold certain records related to “an individual employee of the association or an individual employee of a contractor for the association.” It is important to note that the statutes apply only to records related to “individual employees”—not to records related to a contractor as a whole or as an entity. For example, specific complaints against the foreman of an association’s landscaping company may be withheld from disclosure in accordance with the records request statutes. See A.R.S. §§ 33-1805(B)(5) and 33-1258(B)(5). By contrast, specific complaints against the association’s landscaping company as a whole or as an entity may not be withheld from disclosure based solely on § 33-1805(B)(5) or § 33-1258(B)(5) (though there may be some other basis for withholding the information based on the other statutory exemptions to disclosure).



Greg Stein is a partner who joined the firm in 2014. Greg practices in our Tempe office and is happy to answer any records request

(or any other legal) questions you may have. You can reach Greg at (480) 427-2843 or greg@carpenterhazlewood.com.



2020 CAN-Struction Event

Friday, March 20, 2020
El Zaribah Shrine Hall



[Register](#)