



# MULCAHY ANSWERS

For Office Condominiums

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### COMING SOON TO YOUR OFFICE CONDOMINIUM ASSOCIATION...

#### Medical Marijuana Dispensaries

by Kristen L. Rosenbeck

Proposition 203, titled "Arizona Medical Marijuana Act" ("Act") and approved by Arizona voters in the 2010 general election, legalized medical marijuana for use by people with certain "chronic or debilitating" diseases, by adding Arizona Revised Statutes ("A.R.S.") Sections 36-2801 through -2819 and amended A.R.S. Section 43-1201. The Act became effective on **April 14, 2011**; and Arizona Department of Health Services ("ADHS") published its Final Rules on the Act on March 28, 2011.

Since the approval of Prop 203, I have received numerous inquiries from office condominium associations inquiring on the implications and whether the association must permit the occupancy of dispensaries within the office condominium association.

**DISPENSARIES** The Act permits non-profit clinics, which obtain the requisite registration set forth under the Act, to dispense marijuana to registered qualifying patients. Further, the Act permits non-profit entities the ability to acquire, possess, cultivate, manufacture, deliver, transfer, transport, supply, sell or dispense marijuana or related supplies and educational materials to qualified card holders. ADHS will begin accepting applications for dispensary registration certificates on **May 1, 2011**.

**GROWING MEDICAL MARIJUANA** Dispensaries may obtain marijuana from their own cultivation, other dispensaries, registered qualifying patients or designated caregivers so long as the patient or caregiver is not compensated for the marijuana. If dispensaries cultivate their own medical marijuana either at the dispensary location or at an alternative offsite location, the marijuana must be cultivated in an enclosed, locked facility.

**LOCATION OF DISPENSARIES** and/or alternative cultivation locations may not be located within 500 feet of a private or public school that was in existence before the date of the dispensaries' application. At least one dispensary per county is permitted. No more than one dispensary for every 10 pharmacies may be permitted. Further, pursuant to the proposed ADHS Rules, for the first year, only one dispensary will be issued per Community Health Analysis Area ("CHAA"). (CHAAs were developed in 2005 as relatively small, community-based geographic units with a large enough population base on which to do statistical analysis.)

After the first year, the ADHS will review the current valid dispensary registration certificates to determine if additional dispensaries can be approved. Draft rules also require a dispensary to employ or contract with a physician to be the dispensary's medical director. Additionally, cities, towns and counties have the authority to enact reasonable zoning regulations that may limit the use and location of land permitted for registered non-profit medical marijuana dispensaries. The Act further requires specific security requirements be established for the location of the dispensary. Qualifying patients that live more than 25 miles from a dispensary, may be permitted to grow up to 12 plants for personal use.

**FEDERAL LAW** Please be advised that despite Arizona's adoption of the Act, Federal law still prohibits the manufacture, distribution or possession with intent to distribute marijuana. Therefore, although permitted uses of marijuana may be authorized as set forth under the Arizona law, such use remains illegal under Federal law and is subject to the penalties set forth under Federal law.

**ASSOCIATION RESTRICTIONS** As dispensaries become qualified and obtain certificates, I anticipate many will seek occupancy for dispensary or cultivation location use within office condominiums. It is my opinion that unless the association's governing documents restrict such a use, the association may be required to permit such a use within the association.

The association may have potential enforcement authority over a dispensary if such power is provided for in the governing documents. Those powers extend to violations of the rules and regulations and any specific uses allowed or prohibited in the CC&Rs. However, if the association's CC&Rs are written to prohibit the use, occupancy, business traffic or other use conformities specific to the medical marijuana dispensaries, associations may be able to restrict the presence and/or activities of dispensaries within the association.

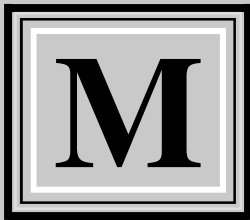
Permissible occupancy and use of dispensaries within office condominiums should be evaluated on a case-by-case basis subject to the specific governing documents of each office condominium association. Please contact me at Mulcahy Law Firm, P.C. for an evaluation of your office condominium association's permitted uses and/or if your association would like to consider amending the CC&Rs to include additional restrictions. Additionally, I recommend associations seek legal advice regarding the implications of the conflict between federal and state law and how that may affect the association.

Sources: [www.mulcahylawfirm.com](http://www.mulcahylawfirm.com), [www.azdhs.gov/prop203](http://www.azdhs.gov/prop203).

# ANSWERS

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Call our office the first Friday of every month between the hours of 9 - 10a.m. to have your office condominium question answered by an attorney ...*for free!*

## MULCAHY LAW FIRM, P.C.

**Beth Mulcahy** is the founding attorney and partner of the Mulcahy Law Firm, P.C. Beth's legal practice focuses exclusively on the legal representation of over eight hundred (800) community associations throughout the State of Arizona.

After receiving a Bachelor of Arts degree in Political Science from Marquette University in Milwaukee, Wisconsin, Beth earned her *Juris Doctor* degree from Marquette University Law School where she was on the Dean's List and a member of the Marquette University Law Review. A native of Wisconsin, Beth is licensed to practice law in the State of Wisconsin and the State of Arizona.

Beth has published numerous articles regarding community association law and frequently lectures on community association issues for seminars, conferences and workshops at state and national levels. Beth is a member of the National and the Central Arizona Chapter of Community Association Institute (CAI), a nonprofit organization supporting the interests of community associations and the Arizona Association of Community Managers (AACM). Beth is also member of CAI's prestigious College of Community Association Lawyers.

Beth is a lifetime member on the Board of Esperanca, Inc. a nonprofit charity that provides disease prevention, education and treatment to the poorest communities of the world.

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**Kristen L. Rosenbeck** graduated from Valparaiso University with a Bachelor of Arts degree in Biology where she actively supported her school as the Student Body President. Kristen graduated in the top third of her law class receiving her *Juris Doctor* degree from Marquette University in Milwaukee, Wisconsin in 2001. She maintains licenses to practice law in both the State of Wisconsin and the State of Arizona.

Kristen's legal practice focuses on the representation of office condominium associations and residential community associations throughout the State of Arizona. Kristen is a regular contributing writer for Strictly Legal, a CAI magazine for community managers. She has contributed to the national publication HOA Leader and for CAI's national publication, Common Ground. Kristen regularly teaches classes for community associations, the Arizona Association of Community Managers, municipalities and local organizations. Kristen has also taught for the Arizona State Bar's Real Property Section.

Kristen is a member of the National and the Central Arizona Chapter of Community Association Institute (CAI). Kristen is also a member of Arizona Association of Community Managers (AACM) where she is a member of the Educational Committee.

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If legal advice is required, please consult individually with the MULCAHY LAW FIRM, P.C.

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Questions may be directed to **Beth Mulcahy, Esq.** or **Kristen L. Rosenbeck, Esq.**

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