

# MULCAHY ANSWERS

for Community Associations

*Published by Mulcahy Law Firm, P. C. for clients and friends.*

February 2010  
Volume 5, Issue 4

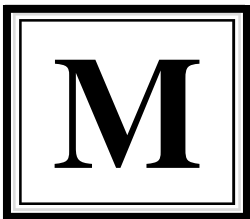
## In This Issue:

**Hiring Unlicensed  
Contractors May Cost More  
Than You Think!**

**Graffiti - A Community  
Menace**

**What Effect will the Arizona  
49th Legislative Session have  
on Community Associations?**

## **Did You Know?**



### **MULCAHY LAW FIRM, P.C.**

3001 East Camelback Road  
Suite 130  
Phoenix, Arizona 85016  
Phone: 602.241.1093  
Toll Free: 877.206.7164  
Fax: 602.264.4663  
[www.mulcahylawfirm.net](http://www.mulcahylawfirm.net)

Beth Mulcahy, Esq.  
Kristen L. Rosenbeck, Esq.  
Laura Pilar Mensah, Esq.

E-mail:

[bmulcahy@mulcahylaw.net](mailto:bmulcahy@mulcahylaw.net)  
[info@mulcahylaw.net](mailto:info@mulcahylaw.net)

## **Hiring Unlicensed Contractors May Cost More Than You Think!**

by Beth Mulcahy, Esq.

As the new year begins, many associations look to new projects and often those projects require hiring a contractor. It is important for the association to do its due diligence and be aware of potential problems when hiring contractors to prevent expensive problems later.

When an unlicensed contractor or the contractor's employee is injured while performing work, multiple employment relationships arise, resulting in multiple entities being liable for workers' compensation as employers. Both an unlicensed contractor and the person who hired the contractor could be considered employers and thereby responsible for workers' compensation.

One example of this arose when a property manager of an association hired an unlicensed contractor to install new rain gutters on the condominium building. The unlicensed contractor, who did not have workers' compensation insurance, hired a person to perform some of the work at a contracted daily amount. When a rain gutter came in contact with a high-voltage electrical wire, the worker was severely shocked and fell, sustaining serious injuries. This case eventually came before an appellate court to determine which entities were considered an "employer" for purposes of workers' compensation liability. The court determined that both the management company and the unlicensed contractor were employers of the injured man. Furthermore, the court found that the homeowners' association was also liable as an employer based on the management company's authorized actions in the association's behalf. In this case, the association was required to compensate the worker for the worker's medical bills, injuries and loss of income.

This case does have a moral - associations and property management companies should never hire unlicensed contractors! Both associations and property management companies may be deemed "employers" and subject to liability for workers' compensation benefits when an employee of an unlicensed and uninsured contractor is hired to work at an association.

It should be standard procedure for contractors who work for an association to provide proof of a contractor's license as well as proof of insurance prior to the start of work. The Arizona Registrar of Contractor's Office ([www.azroc.gov](http://www.azroc.gov) or 602-542-1525) is a user friendly website with a wealth of information. Check this site for license and bond information and for complaints or disciplinary action against a prospective contractor. Check with the Arizona Better Business Bureau to determine if the contractor is in good standing ([www.phoenix.bbb.org](http://www.phoenix.bbb.org) or 602-264-1721). A contractor must have a current and active license, showing he or she is qualified to perform the type of work required, before he or she can even bid on a project. Violation of this statute is a class 1 misdemeanor. The most frequently claimed exemption to the licensing requirements is that of the "handyman". Arizona statute allows individuals who perform minor repairs or installations to do so without being licensed. To qualify for this exemption two conditions must be met:

- 1) The work does not require a local building permit; AND
- 2) The total cost of the project, including labor, materials and all other items does not exceed \$1,000.00.

After collecting a least 3 bids, have the association's attorney review the contract between the association and contractor BEFORE the contract is executed. Do not let a contractor pressure you for a signature. Remember never sign anything that is unclear.

*Good luck with your projects!*

*Answers*

Please visit our website located at [www.mulcahylawfirm.net](http://www.mulcahylawfirm.net)

## Graffiti - A Community Menace

by Beth Mulcahy, Esq.

Graffiti is a sign of the times that needs attention. Graffiti advocates may call it art and cry out for free expression under First Amendment rights, but the vast majority of people recognize that graffiti is destroying the beauty of our communities. Moreover it's a crime and a social problem running rampant across our country. Communities that never had a graffiti problem suddenly do.

### So what should a community do?

First and foremost is the recognition and acknowledgement that graffiti vandalism is a "serious" crime as opposed to a "trivial" crime. As Richard Romley, former County Attorney for Maricopa County, Arizona wrote in the New York Times article, *There Are No Civilized Crimes*, "Society seems to have grown dangerously accustomed to recognizing as deviant only the extreme abnormalities of human behavior". Romley said that Sen. Daniel Patrick Moynihan defined this trend as "defining deviancy down". Under this definition the graffiti that seems commonplace begins to seem like an acceptable example of "civilized crime". We make a grave mistake in thinking that this unlawful and willful destruction of private, public, and community property is in any way normal, civilized or beyond eradication.

The community cannot expect the police department alone to solve the graffiti problem. Community and Neighborhood Watch groups must assume the role in observing and reporting vandalism. Make it easy for police to do enforcement by getting good descriptions of suspects and suspect vehicles (make, model, and license plate numbers).

Help your community cope with graffiti by starting a volunteer group dedicated to abatement and community education.

Tag artists admit that if their graffiti is removed (painted over) as soon as possible (IMMEDIATELY) then the thrill is gone. They will give up and move on. Some communities have a 24 hour rule and associations should strive to remove graffiti within that time frame. Graffiti IS a community issue. Communities must vocalize their zero tolerance policy loudly and often. Remember that graffiti by definition is illegal and it is *not* a victimless crime. The entire community suffers the consequence of graffiti sprayed over walls and vegetation. Graffiti is destructive, lowers property values, is costly to remove and scares away people who might otherwise buy property and invest in the community. Economic health depends on social well being, therefore joining together to eradicate graffiti can have a major impact on a communities overall quality of life.

To put graffiti in perspective:

The City of Phoenix Graffiti Buster Program cleaned a record high 95,000 graffiti sites for the 2007- 08 fiscal year that cost the taxpayers \$2.3 million annually plus an additional \$4-5 million spent on behalf of other city departments, local utilities and governmental entities.

The valley has several Graffiti Buster Programs in effect that have online as well as telephone contacts to report graffiti. By "googling" Graffiti Busters Arizona, you will find information to help you report graffiti removal. Additionally, you can get help for graffiti removal by calling your neighborhood services division or police department. (See our "Resources Cheat Sheet" located on the [www.mulcahylawfirm.net](http://www.mulcahylawfirm.net) Resources tab for a list of Neighborhood Services phone numbers in the valley.)

Answers

## What effect will the 49th Arizona Legislative Session have on Community Associations?

by Beth Mulcahy, Esq.

The State of Arizona legislative session typically begins in January and lasts through the end of May. The 49th session was opened on Monday, January 11, 2010. State budget bills were the focus of last year's (2009) session, therefore only one "community association" bill passed. Passage of that bill, Senate Bill 1148, closed a loophole regarding the display of "for sale" signs in deed restricted communities that are not planned communities or condominiums.

Our firm expects the 2010 legislature to again focus on the budget bills. However, many community association bills that were introduced in the 2009 will likely be re-introduced in this legislative session.

As of January 25, 2010, the following bills were introduced in this legislative session.

**H2153:** Homeowners' associations in planned communities have no authority over any public roadways or easements.

**H2154:** Land attached to an easement and private right-of-ways must be maintained by the owners of the property either as provided in an agreement of the owners or, if there is no agreement, the cost shall be shared proportionally.

**HB2345:** Associations cannot charge a fee to unit owners for providing a statement for the owner to acknowledge a contract between the owner and the association, or for the transfer of inspection of an interest in a lot or unit.

**HB2355:** Associations cannot prohibit the installation and use of energy devices, but may adopt reasonable placement and color rules.

**HB2396:** Beginning January 1, 2011, associations must register with the Secretary of State.

**HB 2476:** Statutory prohibition against amendments to condo association documents changing the uses to which any unit is restricted, is deleted.

**SB1012:** Delinquent association members cannot be barred from signing a petition for the removal of board of director members. Language is added regarding the governing of board of director meetings.

**SB1127:** The value of the homestead exemption from attachment or forced sale in a bankruptcy is increased from \$150,000 to \$500,000.

continued

Share your copy of Answers with your association's board!

Look for many of the community association bills that were introduced in the 2009 to be re-introduced in the 2010 legislative session. Some of the 2009 bills introduced included:

- The declarant's voting rights for members of the board;
- The association's authority over roadways, easements or other areas under the ownership of a legal entity;
- The association's inability to prohibit the installation or use of solar screens and shade structures;
- Unanimous voting for specific amendments to the association's declaration;
- Electronic filing with the Arizona Corporation Commission;
- Association registration with the secretary of state;
- The amendment process for a sub-community in a master community association;
- The process for initiative petitions;
- Accommodation of amateur radio station emergency

- communications antennae and structures;
- Installation and use of rainwater catchments or cistern systems;
- Installation and use of energy saving devices;
- The process in which a writ of garnishment is served;
- An owner's ability to opt out of the mandatory membership in the planned community; and
- The parameters under which a political sign can be placed outside of a unit.

*As in previous years, Mulcahy Law Firm, P.C. will once again be posting an easy to read update regarding the previous week's actions of the legislature. You can find our update by going to our website located at [www.mulcahylawfirm.net](http://www.mulcahylawfirm.net) and clicking on the "Publications" tab, scroll to find the legislative updates.*

Answers

## MULCAHY LAW FIRM, P.C.

### BULLETIN BOARD

#### *A Reminder:*

#### **First Fridays**

**Call our firm between  
9 - 10 a.m.**

on the first Friday of the month to receive your **free** consultation regarding community association law.

**March 5, 2010**

**April 9, 2010**

*(note: April's date has changed)*

**May 7, 2010**

phone: 602.241.1093

Your invitation is enclosed!

**March 16, 2010**

**Mulcahy Spring Seminar**

**Registration: 10:00 am**

**Seminar: 10:30 am -12:30 pm**

**Phoenix Public Library**

*Join us for:*

**An Overview of  
Arizona Community  
Association Law**

**How to Successfully  
Collect Delinquent  
Assessments**

**Hot Topics for Community  
Associations**

**Beth Mulcahy** is the founding attorney and partner of the Mulcahy Law Firm, P.C. Beth's legal practice focuses exclusively on the representation of over one thousand (1000) 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.

As the former editor/author of a weekly question and answer column in The Arizona Republic, Beth addressed hundreds of questions on association governance. In her three years with the paper, she became known for providing information and answers that communicate a clear understanding of the subject matter. Beth's Answers publication and periodic legal seminars on community associations continue to provide education and information for the industry. She has also published articles in Managers Report magazine, Community Association Institute's (CAI) Journal of Community Association Law, Strictly Legal newsletter, Common Ground magazine and Arizona Community Association Journal. Beth is a member of the National and the Central Arizona Chapters of CAI, CAI's prestigious College of Community Association Lawyers and the Arizona Association of Community Managers.

Beth regularly speaks on the topic of community associations for seminars, conferences and workshops at state and national levels.

E-mail: [bmulcahy@mulcahylaw.net](mailto:bmulcahy@mulcahylaw.net)

**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 interpretation and enforcement of association documents and guidance on state and federal laws. She represents associations in general counsel matters, bankruptcy, collection of delinquent assessments and enforcement actions. Kristen also provides representation to office condominiums. Kristen is experienced in litigation and transactional law.

Kristen is a member of the National and the Central Arizona Chapters of CAI, a nonprofit organization supporting the interests of community associations, and the Arizona Association of Community Managers.

E-mail: [krosenbeck@mulcahylaw.net](mailto:krosenbeck@mulcahylaw.net)

**Laura Pilar Mensah** graduated Magna Cum Laude with a Bachelors of Business Administration from the University of San Diego. She received her *Juris Doctor* degree from The University of Texas School of Law where she was an active member of several legal societies. Laura completed a graduate Portfolio Program in Dispute Resolution and is a certified mediator. Laura is licensed to practice law in the State of Arizona.

Laura is an associate attorney with Mulcahy Law Firm, P.C. and her practice focuses on the representation of community associations with an emphasis on litigation, enforcement of restrictive covenants and collection of delinquent assessments. Laura is experienced in arbitrations, litigation and transactional law.

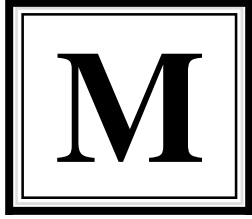
E-mail: [lmensah@mulcahylaw.net](mailto:lmensah@mulcahylaw.net)

Answers is not intended to offer specific legal advice or responses to individual circumstances or problems. If legal advice is required, please consult individually with the Mulcahy Law Firm, P.C.

**Questions may be directed to Beth Mulcahy, Esq.**

**Phone: 602.241.1093 ♦ Fax: 602.264.4663**

**E-mail: [bmulcahy@mulcahylaw.net](mailto:bmulcahy@mulcahylaw.net)**



Place Indicia here

MULCAHY LAW FIRM, P.C.

3001 East Camelback Road,  
Suite 130

Phoenix, Arizona 85016

Phone: 602.241.1093

Fax: 602.264.4663

Would you like to receive your *Answers* newsletter by e-mail?

Register online at: [www.mulcahylawfirm.net](http://www.mulcahylawfirm.net)

# ANSWERS

for Community Associations

MULCAHY LAW FIRM, P.C.

## Did You Know?

MULCAHY LAW FIRM, P. C.

### Association Websites Help Associations Get the Word Out!

Association websites have gained in popularity because they are so convenient and a lot of routine information can be found therein. Certain associations have created a general access section so that potential buyers or other interested parties can get a feel for the community. Another separate and private access section is available only to members via password. The required 48 hours member meeting notification can and should always be posted prominently on the site. In general, the type of records posted on the site should be limited to the governing documents, forms that can be downloaded and used by the members (architectural improvement request forms, change of address, suggestions/complaints), minutes of Board and member meetings, upcoming social or community events, newsletters, links to manager or other contact persons and the like. An association may also wish to use the website to conduct polling, allow owners to input pet and vehicle information, give links or provide a list of vendors (with appropriate disclaimers) or to reserve common area amenities such as the clubhouse.

Members may be entitled to other records, such as financial statements, but it is not recommended that these be posted on the site. The association website is the ideal vehicle for promoting trips and activities inside the community and also posting local theater and city sponsored events. Community associations which have created websites find them to be convenient and efficient since it allows homeowners the opportunity to access information from the comfort of their home, office or laptop. A well maintained community website promotes fellowship, community involvement and a sense of belonging.

MULCAHY LAW FIRM, P.C.  
Mulcahy Law Firm, P.C.

Mulcahy Law Firm, P. C.

MULCAHY LAW FIRM, P.C.

---

*Please join us for a*  
**Legal Seminar for Community Associations**

*presented by:*  
**Mulcahy Law Firm, P. C.**

---

**Tuesday, March 16, 2010**

**Registration: 10:00 a.m. - 10:30 a.m.**  
**Seminar: 10:30 a.m. - 12:00 p.m.**  
**Question and Answer: 12:00 p.m. - 12:30 p.m.**

**Phoenix Public Library Auditorium**  
**First Floor**  
**1221 N. Central Avenue**  
**Phoenix, Arizona 85004**  
*(map on reverse side)*

*There is no charge for this seminar. Seating is limited. To reserve a place, please R.S.V.P. by Tuesday, March 2, 2010 by e-mailing, faxing, mailing the completed attached registration. You may also register online at [www.mulcahylawfirm.net](http://www.mulcahylawfirm.net) by completing and submitting the form found on the seminar tab.*

---

**Topics**

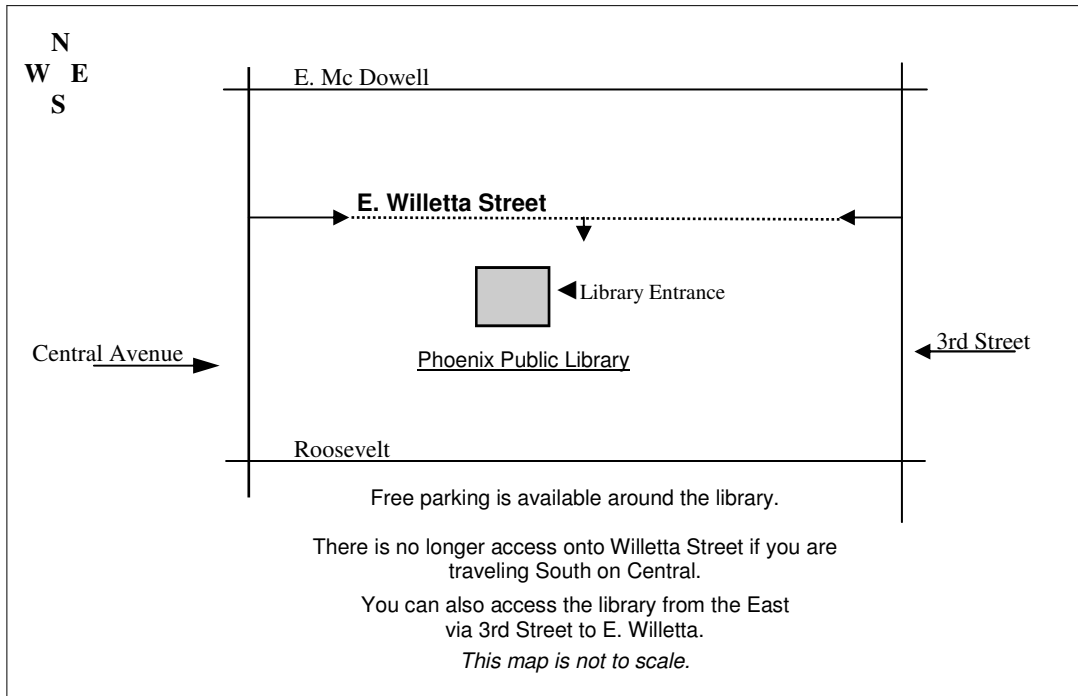
***An Overview of Arizona Community Association Law***  
***How to Successfully Collect Delinquent Assessments***  
***Hot Topics for Community Associations***

---

MULCAHY LAW FIRM, P.C. ♦ 3001 East Camelback Road, Suite 130 ♦ Phoenix, Arizona 85016  
Phone: 602.241.1093 ♦ Toll Free: 877.206.7164 ♦ Fax: 602.264.4663  
[info@mulcahylaw.net](mailto:info@mulcahylaw.net) ♦ [www.mulcahylawfirm.net](http://www.mulcahylawfirm.net)

*Registration form on reverse side*

Please direct all questions to Mulcahy Law Firm, P. C., Phone: 602.241.1093



## Registration Form

Please complete a registration form for each person attending (please copy the form below as needed) and fax, e-mail or mail by March 2, 2010 to the respective address listed below.

Alternatively, you can register online at [www.mulcahylawfirm.net](http://www.mulcahylawfirm.net) by submitting the registration form found on the seminar tab.

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ Zip \_\_\_\_\_

Association Name \_\_\_\_\_

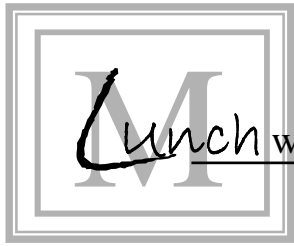
Phone Number \_\_\_\_\_ e-mail Address \_\_\_\_\_

**Please check yes to have your e-mail address placed on our E-newsletter list.**

MULCAHY LAW FIRM, P. C. ♦ 3001 East Camelback Road, Suite 130 ♦ Phoenix Arizona ♦ 85016 ♦ Phone: 602.241.1093  
Toll Free: 877.206.7164 ♦ Fax: 602.264.4663 ♦ [info@mulcahylaw.net](mailto:info@mulcahylaw.net) ♦ [www.mulcahylawfirm.net](http://www.mulcahylawfirm.net)

M

Please Print Clearly



**Lunch with MULCAHY**  
*Education and Answers*

**A goal of Mulcahy Law Firm, P.C. is to be an advocate for and educate associations** by providing the tools that board members and managers need to govern and manage successfully.

That is the impetus of our newest educational opportunity. “**Lunch with Mulcahy**” will offer board members and managers lunch in a relaxed setting and a mini-seminar regarding topics that will help create successful associations.

**11:30 a.m. - 1:00 p.m.**

**First Thursday of each month**

**January 2010—May 2010**

**Mulcahy Law Firm’s Courtyard**

**Please CALL 602.241.1093 to reserve your lunch and educational materials (seating is limited).**

**Sold Out!**

**January 7, 2010 To Amend or Not to Amend, that is the QUESTION!**

Learn a 5 step plan to successfully amend your association’s documents. Join us for Answers and a picnic in our courtyard. 11:30 a.m. - 1:00 p.m.

**Sold Out!**

**February 4, 2010 You Said Yes, Now What?**

New board member training. Start out on the right foot with proper board training. Join us for Answers and a B-B-Q in our courtyard. 11:30 a.m. - 1:00 p.m.

**March 4, 2010 Fast, Efficient & Effective Regular Board Meetings - It is Possible!**

You can have productive board meetings by following a few simple rules. Join us for Answers and “Hot-dogs with the Works” in our courtyard. 11:30 a.m. - 1:00 p.m.

**April 1, 2010 Got Delinquencies?**

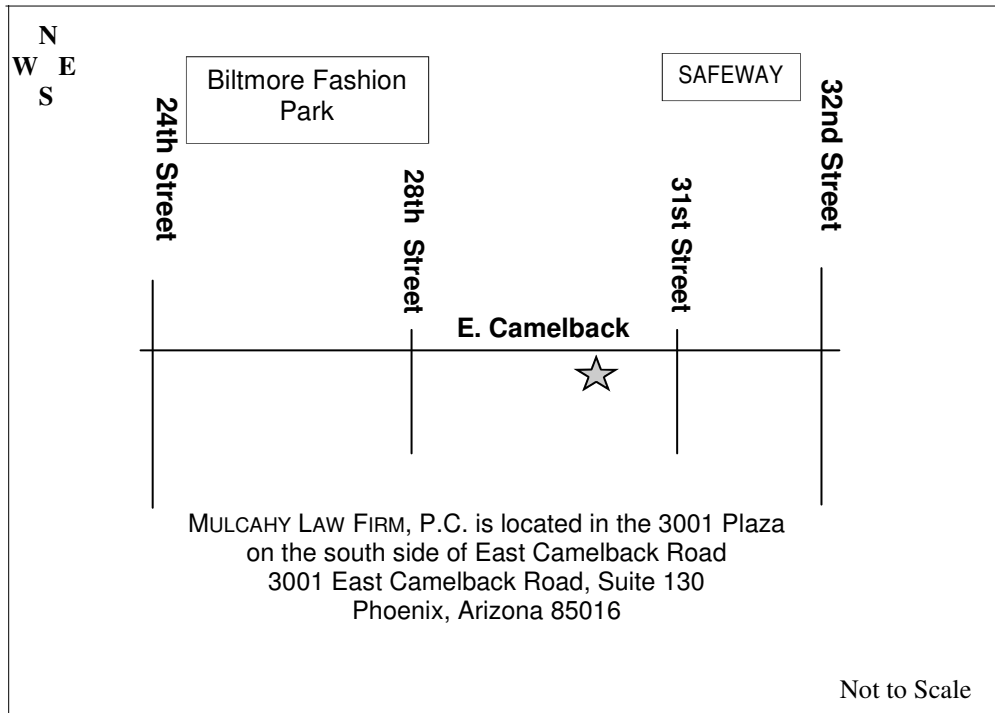
Get the Answers and processes that will help your board with collecting delinquent assessments. Join us for Answers and Sub Sandwiches in our courtyard. 11:30 a.m. - 1:00 p.m.

**May 6, 2010 Answers on the Spot**

Strictly question and answer. Join us as we answer your most pressing HOA questions and celebrate with a Mexican Fiesta in our courtyard. 11:30 a.m. - 1:00 p.m.

**MULCAHY LAW FIRM, P.C.**  
3001 East Camelback Road, Suite 130  
Phoenix, Arizona 85016  
**Phone: 602.241.1093**

“*Lunch with Mulcahy*”, Education and Answers mini-seminars are a free benefit to our client board members and managers. We invite non-client board members, as space allows, to attend for a fee of \$15. Please contact us at 602.241.1093 for more details and to register for “*Lunch with Mulcahy*”.



*Make your reservations for Lunch with Mulcahy today.  
Seating is limited!*

We request that you **CALL**, e-mail or fax the following information to register for *each* mini-seminar.  
**Please call 602.241.1093, fax 602 264.4663 or e-mail: [receptionist@mulcahylawfirm.net](mailto:receptionist@mulcahylawfirm.net).**

Class Title \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ Zip \_\_\_\_\_

Association Name \_\_\_\_\_

Phone Number \_\_\_\_\_

E-mail Address \_\_\_\_\_

YES!

**Please place my name on the Mulcahy Law Firm, P.C.'s mailing lists.  
We DO NOT share our list with anyone.**