

# MULCAHY ANSWERS

For Office Condominiums

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## Trustee's Sale

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If an owner within your office condominium becomes delinquent with their mortgage or deed of trust company, the mortgage or deed of trust company may initiate foreclosure proceedings on the owner's property by noticing a Trustee's Sale (a "Short Sale" is not necessarily a Trustee Sale). Having an understanding of terms and the Trustee's Sale process may help you secure your office condominium's rights.

#### Secure the association's interests by filing a lien

A lien places the Trustee on notice of the association's interests, so the association will receive notice of the Trustee's Sale and notice of excess proceeds generated at the Trustee's Sale, if any.

#### Notice of Trustee's Sale contains important information

Generally, the Notice of Trustee's Sale will include the following information: (1) the Trustee of the sale and information regarding the location and a phone number to contact for additional information; (2) description and address of the property subject to the Trustee's Sale; (3) name of the beneficiary - e.g. mortgage company or deed of trust; (4) the recording number of the mortgage or deed of trust subject to foreclosure; (5) the principal balance owed; (6) the Trustor - e.g. the owner of the lot; and (6) the date of the Trustee's Sale.

A Notice of Trustee's Sale will be recorded with the county recorder's office and posted at the property. The beneficiary (mortgage or deed of trust company) will assign a Trustee to manage the affairs of the Trustee's Sale. You may contact the Trustee for updated information regarding the status of the sale.

#### Events that may occur regarding the Trustee's Sale

Postponement of a Trustee's Sale: If the owner enters into a mutual agreeable payment arrangement to pay off the delinquent balance or if the owner files for bankruptcy, the Trustee's Sale may be postponed.

Cancellation: If an owner pays off the mortgage, brings the delinquent balance current or refinances the property the sale may be cancelled. If the owner refinances, the association may possibly be paid through the closing.

Revert back to the Beneficiary: If no one bids for the property at the Trustee's Sale, the property will revert back to the beneficiary (mortgage or deed of trust company). Accordingly, the owner will lose title/ownership of the unit/lot and the mortgage or deed of trust company will become the new owner. A Trustee's Deed will then be recorded showing transfer of ownership to the beneficiary.

Sale: The property may be sold to a third party. If the property is sold to a third party excess proceeds may be generated or the bid/purchase amount maybe so low that *no excess proceeds* are generated. A Trustee's Deed is recorded showing transfer of ownership to the third party purchaser for both sale scenarios.

#### After the Trustee's Sale

New Owner: Trustee's Sales are a unique sale of property in which the purchaser (either the beneficiary or a third party) takes title of the property *free and clear* of junior lien holders. The association lien is inferior to the First Deed of Trust/First Mortgage; thus, if the First Deed of Trust/First Mortgage is the foreclosing party, the association's lien shall be wiped out through the Trustee's Sale. The new owner will only be liable to the association for amounts due and owing *as of the date of the Trustee's Sale*. However, if the foreclosing party is the Second Deed of Trust/Second Mortgage, the association's lien shall remain pending against the lot/unit.

Former Owner: If excess proceeds are not generated, the former owner (e.g. owner that lost the property at the Trustee's Sale) remains *personally liable* to the association for past due amounts (unless a bankruptcy is involved). The association may pursue the owner personally for breach of contract; however, I recommend that the association run a credit check so as to determine whether the owner is collectible. In addition, if the lot/unit was the owner's residence, the association may also need to run an address search to find the new mailing address for the former owner. The association's attorney can assist with credit and address searches.

#### It is necessary to monitor pending Trustee's Sales

I recommend that the association have its attorney monitor Trustee's Sales. In a Trustee's Sale, events may require expeditious legal action; with an attorney monitoring, actions will be taken to give the association the best outcome.

#### Events that may requiring close monitoring:

1. The association may obtain information that the owner(s) filed for bankruptcy, transferred ownership (sale) or intends to sell the property.
2. If the property is sold at the Trustee's Sale and excess proceeds are generated, the association will need to *quickly* send a request for excess proceeds *directly* to the Trustee. (State law provides that the Trustee shall be discharged of liability by paying amounts owed the association from the proceeds in good faith. State law also provides that the association shall be paid first in line after the first deed of trust/first mortgage/and tax liens are paid off. Therefore, the association has a *very* strong probability of be paid by the Trustee with little cost to the association).
3. If the property is sold at the Trustee's Sale and excess proceeds are generated, but are deposited with the County Treasurer's Office, the association will need to file a timely Answer/Application for Release of Excess Proceeds in the case. If this occurs and an attorney was not monitoring the sale, I recommend that your association consult with an attorney.

*Please join the*  
**MULCAHY LAW FIRM, P.C.**

*for a discussion on*

***The Legal Aspects of Office Condominiums***

**Thursday, June 11, 2009**

Registration: 2:00 P.M.  
Seminar: 2:30 P.M. - 4:00 P.M.

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

3001 East Camelback Road, Suite 130  
Phoenix, Arizona 85016  
*(map on reverse side)*

*Light refreshments will be served*

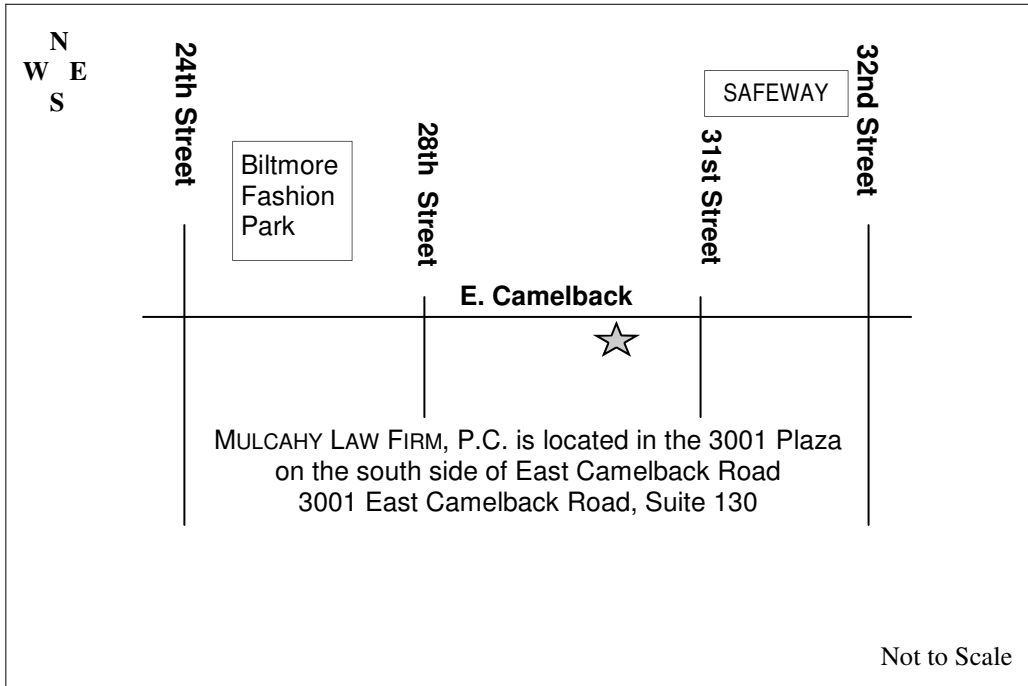
***Please R.S.V.P. by mailing, faxing or e-mailing the registration form found on the reverse side to Mulcahy Law Firm, P.C. on or before Thursday, June 4, 2009. Alternatively, you may respond to 602.241.1093.***

*There is no charge for this seminar.  
Seating is limited.*

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Registration Form on Reverse Side



Registration Form

Please complete the registration information for *each person attending* and mail, e-mail or fax the information on or *before Thursday, June 4, 2009* to the addresses or fax listed below.

If more than one person is attending, please add additional pages with the following information:

Name .....

Address .....

City ..... Zip .....

Association Name .....

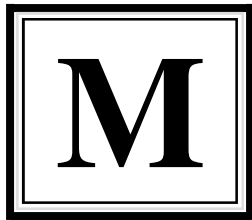
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# ANSWERS

*For Office Condominiums*

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*Receive your new Office Condo Cheat Sheet at our June 11th discussion!*

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Your invitation is enclosed!  
Save the date: June 11, 2009

*Please join the*  
**MULCAHY LAW FIRM, P.C.**  
*for a discussion on*  
**The Legal Aspects of Office Condominiums**  
**2:00p.m. June 11, 2009**

## 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 sits 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. She represents associations on interpretation and enforcement of documents, guidance on state and federal laws, collection of delinquent assessments and policy creation. Kristen is experienced in litigation and transactional law.

Kristen 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. She is a regular contributing writer for "Strictly Legal", a CAI magazine for Community Managers. 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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