

# MULCAHY ANSWERS

For Office Condominiums

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## New Office Condominium Association Legislation In Effect

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The Arizona legislature ended its legislative session in June, 2007. This year, several new bills which affect office condominiums were passed and went into effect on **September 19, 2007**.

Specifically, the new legislation addresses the following areas regarding office condominiums:

### For Sale Signs:

Amending A.R.S. Section 33-1261(c): Regardless of any provision in the office condominium's documents, an association shall not prohibit owners from the indoor or outdoor display of a for sale sign (and a sign rider) on that owner's property. Owners do not have the right to place for sale signs on common area property under this new legislation (unless the association's documents allow them to do so). In addition, owners cannot place for lease signs on their property or common area property (unless the association's documents allow them to do so). The size of a sign and sign rider offering a property for sale shall be in conformance with the industry standard. The sign shall not exceed eighteen by twenty-four inches and the sign rider shall not exceed six by twenty four inches.

### Condominium Recovery Fund:

Creating A.R.S. Section 32-2193.31 through 32-2193.43: A "condominium recovery fund" is established within the Arizona Department of Real Estate for the benefit of any buyer aggrieved by the failure of a sub-divider of an office condominium to complete the condominium project.

### Smoke-Free Arizona Act:

This landmark statute prohibits smoking in most indoor public places, specifically: lobbies, elevators, restrooms, reception areas, hallways and any other common-use areas in public and private buildings, condominiums, other multiple-unit residential facilities and any place of employment not exempted. Owners/tenants/guests can still smoke on outdoor patios (as long as the tobacco smoke does not enter areas where smoking is prohibited through entrances, windows, ventilation systems or other means). Office condominium associations may want to consider posting "no smoking" signs or decals in areas where smoking is prohibited. This law went into effect on May 1, 2007. You can review this act online at [www.mulcahylawfirm.net](http://www.mulcahylawfirm.net); select the Resources Tab, select Arizona Revised Statutes and enter "Smoke-free Arizona act" in the search window.

## Office Condominiums Must Conduct Open Meetings

By Beth Mulcahy, Esq.

Pursuant to Arizona law, notwithstanding any provision in the declaration, bylaws or other association documents to the contrary, all meetings of the association and board of directors are open to all members of the association or to any person designated by a member in writing as the member's representative. Association members or their representatives shall be permitted to attend and speak at an appropriate time during the deliberations and proceedings of all meetings of the association and the board of directors. However, the board may place reasonable time restrictions on those persons speaking during the meeting, but shall permit a member or a member's designated representative to speak before the board takes formal action on an item under discussion in addition to any other opportunities to speak. The board shall provide for a reasonable number of persons to speak on each side of an issue. All association meetings must be held in the State of Arizona. Finally, a meeting of the association shall be held at least once each year.

### **Associations must give 48 Hours Notice to the Membership of Board Meetings:**

Unless an association's documents provide otherwise, an association must give notice to its members of meetings of the board of directors by newsletter, conspicuous posting or any other reasonable means at least 48 hours in advance of the meeting. The notice must state the date, time and place of the meeting.

**Exception:** Emergency board meetings do not require 48 hours notice if emergency circumstances require action by the board before notice can be given.

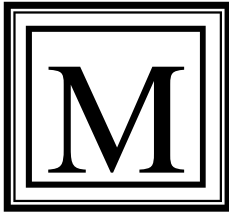
**Executive Session:** The board may close a portion of a meeting to go into executive session to consider one or more of the following subjects:

1. Legal advice from an attorney for the board or the association;
2. Pending or contemplated litigation;
3. Personal, health and financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association; and
4. Matters relating to the job performance, compensation, health records or specific complaints against an individual employee of the association, or an individual employee of a contractor of the association who works under the direction of the association.

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# Hot Topics & Legal Aspects of Office Condominiums

## MULCAHY Office Condo Association Cheat Sheet®

*Bringing Answers to  
Office Condominium  
Associations*

*This publication discusses significant  
points of law as they apply to office  
condominium associations and is not  
intended to offer specific legal advice  
or responses to individual  
circumstances or problems.*

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### OFFICE CONDOMINIUMS INTRODUCTION

Arizona has seen dramatic growth in the number of office condominiums over the past few years. It is estimated that there are over five hundred office condominiums in Arizona today. Each year, more and more business owners choose to purchase office condominiums for their operations and are then faced with the management responsibilities and challenges of running an office condominium association.

Set forth below are hot topics and legal aspects for office condominium associations. We encourage you to use this Cheat Sheet to help you effectively run the day to day legal affairs of your office condominium association. Please contact our office if you have any questions regarding these topics or any other office condominium topic.

### ARIZONA OPEN MEETING LAW

All meetings of the association and board of directors are open to all members of the association or to any person designated by a member in writing as the member's representative. Association members or their representatives shall be permitted to attend and speak at an appropriate time during the deliberations and proceedings of all meetings of the association and the board of directors. However, the board may place reasonable time restrictions on those persons speaking during the meeting, but shall permit a member or a member's designated representative to speak before the board takes formal action on an item under discussion in addition to any other opportunities to speak. The board shall provide for a reasonable number of persons to speak on each side of an issue. All association meetings must be held in the State of Arizona. A meeting of the association must be held at least once each year.

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**Executive Session:** The board may close a portion of a meeting to go into executive session to consider one or more of the following subjects:

1. Legal advice from an attorney for the board or the association;
2. Pending or contemplated litigation;
3. Personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association; and
4. Matters relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association, or an individual employee of a contractor of the association who works under the direction of the association.

(Source: A.R.S. Section 33-1248)

### STANDARD OF CONDUCT FOR BOARD MEMBERS

A director must act in good faith and with the care that an ordinarily prudent person, in a like position, would exercise under similar circumstances and in a manner the director believes to be in the best interests of the association.

(Source: A.R.S. Section 10-3830)

### REQUIREMENT FOR ASSOCIATIONS TO RECORD CONTACT INFORMATION

The association shall record in the office of the county recorder in the county in which the association is located, a notice stating *the name of the association or designated agent or management company for the association, the address for the association and the telephone number of the association or its designated agent or management company*. The notice shall include: *the name of the office condominium, the date of the recording and the recorded instrument number or book and page for the main document that constitutes the declaration*.

If an association's address, designated agent or management company changes, the association shall amend its notice or record a new notice within ninety (90) days after the change.

[Source: A.R.S. Section 33-1256(J)]

## OFFICE CONDOMINIUMS MUST FILE AN ANNUAL REPORT

Most office condominium associations are incorporated as nonprofit corporations under Arizona law. Pursuant to Arizona law, all nonprofit corporations must prepare and file an annual report on a form provided by the Arizona Corporation Commission ("ACC") and pay a \$10.00 filing fee to the ACC each year on or before the due date assigned by the ACC.  
(Source: A.R.S. Section 10 -11622)

## ANNUAL AUDIT

The board of directors shall provide for an annual financial audit, review or compilation of the association. The audit, review or compilation shall be completed no later than 180 days (6 months) after the end of the association's fiscal year and shall be made available upon request to the members within 30 days of its completion. If the association's documents require an annual audit be completed by a certified public accountant, then an association must conduct an annual audit by a certified public accountant.  
(Source: A.R.S. Section 33 -1243)

## LATE FEES / FINES / LIENS

**Late Fees:** Under Arizona law, associations can charge late fees for delinquent assessment payments. For condominiums, there is no limitation on the amount of a late fee, unless the condominium's documents have a limitation on the amount of a late fee.

**Fines:** After notice and an opportunity to be heard, an association or board of directors may impose reasonable monetary penalties on members for violations of the declaration, bylaws and rules of the association. Associations no longer have the right to record a notice of lien for unpaid fines and penalties. Associations can enforce payment of these fines by: (1) filing a lawsuit against the owner; (2) obtaining a judgment against the owner; and (3) recording the judgment with the county recorder's office. After the judgment is recorded, the association will have a lien that is effective upon conveyance or paid at the time of the sale of the lot/unit. Alternatively, the association can collect the judgment through garnishment of wages or a bank account.

**Liens:** An association has the right to lien a lot/unit for unpaid assessments, late fees, attorneys' fees and collection costs.  
[Sources: A.R.S. Sections 33 -1242(A)(11) and 33 -1256]

## REQUESTS BY MEMBERS TO REVIEW THE ASSOCIATION'S RECORDS

All financial and other records of the association shall be made reasonably available for examination by any member or any person designated by the member in writing as the member's representative. Books and records kept by or on behalf of the association and the board may be withheld from disclosure to the extent that the portion withheld relates to any of the following:

1. Privileged communication between an attorney for the association and the association;
2. Pending litigation;
3. Meeting minutes or other records of a session or an executive session board meeting;
4. Personal, health and financial records of an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association; and
5. Records relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of a contractor of the association who works under the direction of the association.

Finally, it is important to note that the association is not required to disclose financial or other records of the association if the disclosure would violate any state or federal law.

Owners are now entitled to see association books and records pertaining to "contemplated" litigation. In addition, an association cannot charge a member for making books and records available for review. Further, an association has ten (10) business days from a request by an owner or an owner's designated agent to make records available or copies of requested records. Finally, the association can only charge 15 cents per page for copies of records.

(Source: A.R.S. Section 33-1258)

## RELOCATION OF UNIT BOUNDARIES / SUBDIVISION OF UNITS

Pursuant to A.R.S. Sections 33-1222 and 33-1223, if an association's CC&Rs expressly permit either: (1) the relocation of boundaries between or among adjoining units; or (2) the subdivision of units, the desiring owner(s) shall prepare an amendment to the CC&Rs and the plat with the specifications of the reallocation/subdivision of the unit(s). After the amendment is executed by the unit owners(s), it shall be submitted to the board of directors. The board will have thirty (30) days to consider the reasonableness of the amendment and make a written determination. If approved, an association shall execute its approval and record the amendment.

(Sources: A. R. S. Sections 33 -1222 and 33-1233)

## CONVEYANCE OF REAL PROPERTY

An office condominium association can convey certain real property that is an asset of the association and that is not held as a common element of the condominium if 80% of the votes in the association (or a larger percentage if the declaration specifies) agree to the sale of the real property.

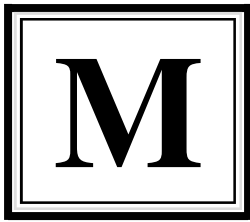
This agreement to convey must be evidenced by the execution of an agreement, or ratifications of the agreement, in the same manner as a deed and by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless previously recorded. Moreover, the agreement and all ratifications of the agreement shall be recorded in each county in which a portion of the condominium is situated and are effective only on recordation.

(Source: A. R. S. Section 33-1252.01)

# ANSWERS

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### *New Office Condo Cheat Sheet:*

Included with this issue of *Answers OC* is our *New Mulcahy Cheat Sheet*® regarding "Hot Topics and Legal Aspects for Office Condominiums". You can obtain additional copies of this Cheat Sheet online at [www.mulcahylawfirm.net](http://www.mulcahylawfirm.net) or by contacting our office directly.

## 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 and the Arizona Association of Community Managers (AACM).

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

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