



# MULCAHY ANSWERS

*For Office Condominiums*

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## **Suspending Voting Rights**

**By Kristen L. Rosenbeck, Esq.**

From time to time throughout the year, the board of directors will turn to its membership to vote on matters such as: the election of directors at an annual meeting; consideration of a special assessment; consideration of an amendment to the governing documents. In establishing voting requirements, association documents often set forth eligibility restrictions. Many association documents only permit "eligible members" to vote. Typically, an association's documents define an owner as "eligible" to vote if he or she is a member in "good standing". A member in "good standing" is often defined as the owner being current with amounts owed to the association and in compliance with the governing documents (e.g. not in violation of the association's use restrictions).

Additionally, many documents define a "record date" in which the association is bound to take a snap shot of the association records, prior to a vote consideration, in order to determine which members are in "good standing" and eligible to vote. The board is often given the ability to set a record date, but if the board does not select a date, the governing documents may establish a default date.

Whereas some governing documents require that only eligible owners may cast a vote, some association documents permit the board the flexibility to consider all votes or only those votes of members in "good standing".

Since voting eligibility is dependant on an association's governing documents, I recommend that each association carefully review its' documents before any meeting of the membership and any vote consideration of the membership.

## **Declarant Controlled Association Budget Deficiencies**

**By Kristen L. Rosenbeck, Esq.**

Today's economy is forcing many office condominium associations to face unprecedented circumstances regarding their budgets. One of the most important issues many office condominium associations are facing is "unpaid assessments" and the effect that has on the association's ability to cover the budgeted operating expenses.

For associations that are under declarant control, the declarant may have liability and the duty to cover the deficiencies of the association's budget. Documents for many associations relieve the declarant from paying any assessments or only require the declarant pay a small percentage of the regular assessment. However, this relief from paying assessments is often justified by a requirement in the governing documents that compels the declarant to pay for any deficiencies in the association budget in light of the association's actual expenses.

Having these requirements in the association's governing documents permits the association to cover all of the actual operating expenses, but relieves the declarant from paying regular assessments if the actual operating expenses are met. I recommend that associations under declarant control carefully review their governing documents for any budget deficiency requirements. The requirement compelling the declarant to pay for any deficiencies and actual expenses in the association budget may assist the association in meeting its operating expenses without requiring a special assessment from the membership.

## **Audit, Review or Compilation Must be Conducted Each Year**

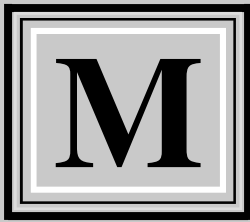
**By Beth Mulcahy, Esq.**

Pursuant to Arizona law (A.R.S. Section 33-1243), a board of directors is required to conduct a financial audit, review or compilation of the association annually. The annual audit, review or compilation shall be completed no later than 180 days (6 months) after the end of *each* fiscal year and shall be made available upon request to the members within 30 days of its completion. Most associations have a fiscal year end date of December 31 so their audit review or compilation must be completed by June 30, 2010. It is important to note that if the association's documents require an annual audit by a certified public accountant, then the association must hire a certified public accountant to conduct the audit.

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*Your invitation is enclosed:  
The Legal Aspects of Office Condominiums*

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*Wednesday, April 14, 2010*

*Registration: 2:00 p.m. Seminar: 2:30 - 3:30 p.m.*

## 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 a member of CAI's prestigious College of Community Association Lawyers.

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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ANSWERS OC 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.

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

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

*for a discussion on*

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

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**Wednesday, April 14, 2010**

Registration: 2:00 P.M.  
Seminar: 2:30 P.M. - 3:30 P.M.

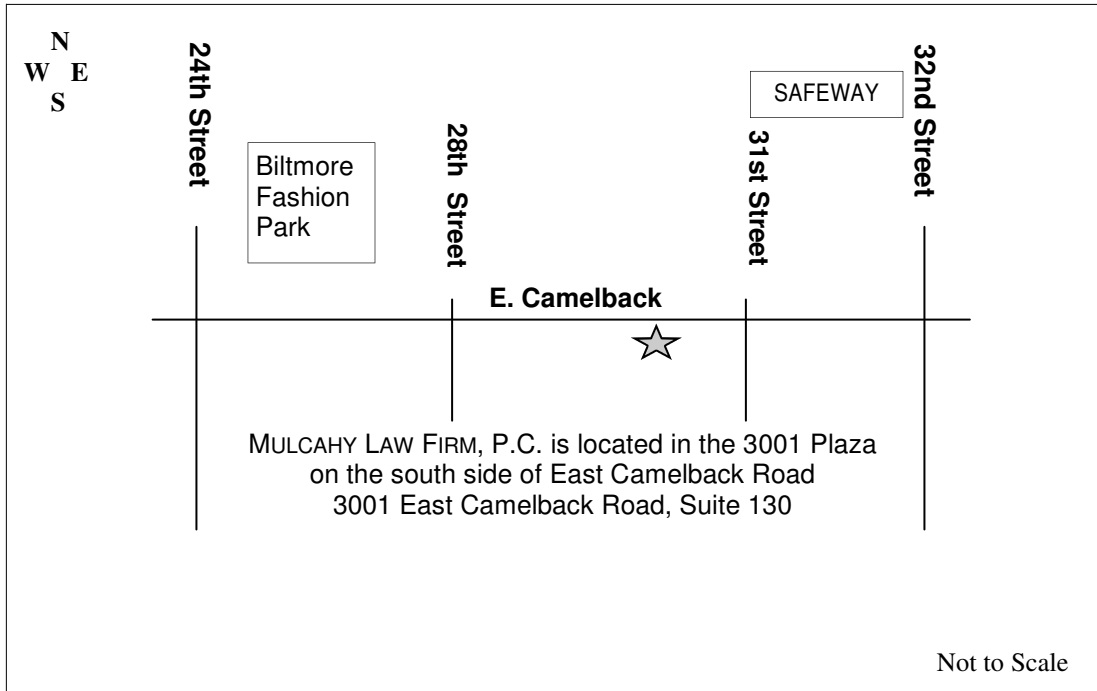
**MULCAHY LAW FIRM, P.C.**

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  
Monday, April 12, 2010. Alternatively, you may respond to 602.241.1093.***

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



Registration Form

Please complete the registration information for *each person attending* and mail, e-mail or fax the information on or *before Monday, April 12, 2010* 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 .....

Phone Number ..... E-mail Address .....

A Legal Seminar for Office Condominium Associations

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