



MULCAHY ANSWERS

For Office Condominiums

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Delinquencies in a Tough Economy

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Our tough economy continues to have an affect on office condominiums, and how the association evaluates, responds to and pursues delinquencies must be re-evaluated often in order to secure collection success. Now, more than ever, it is important to look at each delinquent file on a case by case basis and make informed decisions balancing the debt owed with spending the association's assets pursuing collection. Prior to the association proceeding forward with collection, I recommend that the association research each individual file to determine legal remedies and consider the following:

Current Owners: The association has the right to pursue collection against current owners personally (e.g. monetary judgment) and/or through the right of foreclosure of the association's lien. The association should strictly follow the association's collection policy (contact, phone calls, letters, lien). If collection does not result in initial contact, the association should consider initiating a Justice Court action in which collection may be secured through remedies such as garnishment. However, if an owner does not have assets, is unemployed, has non-funded bank accounts, is on disability, lives out of state, is a defunct corporate entity and/or cannot be located, the association should consider foreclosure. The association's lien is inferior to the first deed of trust/mortgagee; therefore, before an association considers foreclosure, I recommend the association conduct an evaluation to determine loan value.

Former Owners: The association's pursuit of former owners may depend on the type of transfer of title. If the property was sold/transferred by means other than a Trustee's Sale, the new owner may have accepted the property with the lien attached, thereby securing the balance owed by the prior owner. The current owner may become liable to the association for the former owner's delinquencies. In addition, the former owner will also remain personally liable.

If the property is sold through a Trustee's Sale the new owner (bank or third party purchaser) will obtain title free and clear of liens; however, the former owner will remain personally liable for the debt owed.

If the former owner was an individual, the association may pursue the owner individually and enforce collection (once a judgment is obtained) against the individual's assets (e.g. bank, rent or wage garnishments). I recommend that the association have a credit evaluation performed and residency search conducted in order to properly evaluate whether the individual (former owner) is a credit risk for collection.

If the former owner is an entity an evaluation of the assets of the corporation, company, partnership, etc. should be conducted. The association may be able to seize the assets' of the company.

If the entity was a single asset entity (e.g. created for the sole purpose of owning the office condominium unit), the association may be limited in collection against the former owner. However, if an individual granted any personal guarantees to the defunct company, the association may have some success in collecting against the personal guarantees.

Occupancy: Looking at the occupancy of a unit may assist the association in collecting any debts owed. If the unit is not owner-occupied and has a tenant in the property, rent/income is being generated. Once the association obtains a judgment against the owner, the association may have the authority to file a garnishment against the rent, requesting that the court redirect the tenant to issue rental obligations (e.g. monthly rent payments) to the association in lieu of the owner.

If the property/unit is vacant, I recommend that the association research whether there is a trustee's sale (bank foreclosure) scheduled or a bankruptcy pending. Having the above information researched before proceeding forward with collection will give the association the tools necessary to make financially "smart" business decisions in a timely fashion.

Think "outside the box" when trying to collect! If an association's documents permit, an association may be able to restrict certain services or privileges provided by the association until the owner becomes current (e.g., voting rights or use of common areas – except for ingress/egress). Lack of privileges and/or services can be a great incentive to pay the balance in full. The association may also consider demand letters in the form of a door hanger or posted at the property. Our office has found success in posting a pre-foreclosure letter/notice at the property prior to commencement of foreclosure lawsuit.

In current economic times, becoming fully aware of your association's rights and available legal remedies is a priceless tool toward successful collection. I welcome the opportunity to evaluate your associations' collection policy and delinquencies to develop an effective collection policy.

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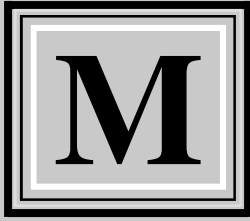
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2010 Arizona Legislative Update:

A simple to understand review of the new laws that effect your office condominium can be found on our Publications Tab – at www.mulcahylawfirm.net

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 Esperanza, 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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