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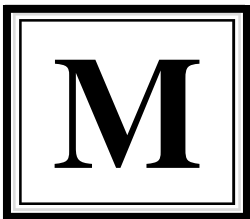
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Beth Mulcahy, Esq.,  
accepted into  
CAI's College of Lawyers

Upcoming Seminar:  
Attorneys with Answers  
October 20, 2009

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

## The 411 on Reserve Funding and Reserve Studies

by Beth Mulcahy, Esq.

It is budgeting time again and our firm is often asked about Reserves. Questions regarding the necessity of reserve funding and what repairs and maintenance should be paid from a reserve fund are asked.

Reserves are funds set aside by an association to pay for the replacement or repair of assets for which the community association is responsible. Assessments are typically divided between the association's operational budget and reserve budget, so a portion of each month's assessments goes to each, the operational budget and a reserve fund.

Reserve expenses are capital expenses and major expenses (other than annual expenses), which must be budgeted. Examples of reserve expenses may include roof replacement, painting of fences and buildings, replacement of pool furniture, re-plastering the pool, lighting replacement, etc.

Adequate reserve funding is in the best financial and aesthetic interest of the association and, in some states, it is the law. Reserve funding affects property values. Educated homebuyers may not invest in a community that is not maintained, has debt or no reserve fund. Additionally, lenders may not approve mortgage applications in such a community. Arizona does not require reserves or a reserve study, however, planned communities and condominiums in Arizona with fifty or more lots/units are required to disclose to purchasers the amount of money held in reserves and provide a copy of the most recent reserve study (if any) in a disclosure statement pursuant to A.R.S. Sections 33-1806, community associations and A.R.S. Section 33-1260, condominiums.

The following are commonly accepted reasons for maintaining a reserve fund:

- Reserve funding meets legal, fiduciary and professional requirements;
- The fund provides for the planned replacement of major items;
- It distributes the contributions of old and new owners. Every owner who lived under the roof shares replacement costs;
- It minimizes or negates the need for special assessments; and
- A reserve fund enhances resale values because associations must disclose information about their reserve funding policies.

A reserve study starts by taking an accurate inventory and determining the useful life of all the major components for which the association is responsible. With an inventory in hand it is possible to plan for replacements by creating a replacement and repair schedule on a time line. Upon completion of the reserve study, it will be necessary for the association to review the study as it applies to the budget and future funding to determine the necessary monetary assessments required to meet the time line. Typically, a percentage of assessments are placed in the reserve fund with each assessment period.

Experts recommend that reserve studies be reviewed or updated every one to five years which allows for the opportunity to adjust the funding requirements as needed.

Because of the technical details involved in development of a reserve study, the association should consider hiring a qualified reserve study professional. A professional reserve study will range between \$1,500 - \$3,000 depending on the size and amenities of the association. If the association cannot afford to hire a professional, "do-it-yourself" software programs and worksheets are available between \$250 and \$500.

By having a reserve study completed and implemented, your association can plan for efficient payment of major expenses, thereby offering your residents a fair distribution of payment responsibility over the life of the community.

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

## Should an Association Purchase a Tax Lien?

by Beth Mulcahy, Esq.

During these difficult economic times, associations are considering creative ways to generate funds. Recently, an article in The Arizona Republic discussed the benefits of associations purchasing a tax lien to recover delinquent assessments.

The greatest advantage of a tax lien is its superiority to a first mortgage. If the first mortgagee forecloses on a home and money is generated from the home's sale, a tax lien will not be wiped out. Therefore, the association has a chance at recouping some of the money owed them through the taxes owed. However, in my opinion, this is a very risky proposition for associations. It is important to note that before an association purchases a tax lien, it should look to its governing documents to determine if it can spend the association's funds for the purpose of purchasing a tax lien. If the association has discretion to purchase a tax lien, it should then carefully consider the following disadvantages of such a purchase:

1. A tax lien cannot be purchased until the homeowner is *one year* delinquent;
2. A tax lien cannot be foreclosed until *three years* after the tax lien is purchased;
3. A tax lien can be bought back by the owner of the property, including a subsequent owner, *at any time up until the day the court enters judgment on the foreclosure*. If the tax lien is redeemed, the association will receive an amount equal to the taxes owed, plus interest, and any fees paid by the association to purchase the tax lien;
4. The association will have to pay additional taxes as they become due on the property. If the association does not pay the taxes (and the owner is not paying) a third tax lien will be created. A third person can purchase the second tax lien and at that time the county treasurer may require that person to also purchase the association's tax lien. In this instance, the association would only receive an amount of money equal to the amount of taxes owed, plus interest and any fees paid by the association in purchasing the first tax lien.

**With thorough consideration of the advantages and disadvantages of purchasing a tax lien, it is our firm's opinion that such a purchase is *not* an effective way to recover delinquent assessments. Clearly, the disadvantages of a tax lien greatly outweigh the advantages.**

Answers

## 2009 Legislative Update

by Beth Mulcahy, Esq.

The only "community association related" bill that passed during the 2009 Arizona legislative session was Senate Bill 1148 (creating A.R.S. Section 33-441), which closed a loophole with regard to the display of "for sale" signs in deed restricted communities that are not planned communities or condominiums.

In 2007, the Arizona legislature enacted two new laws (A.R.S. Sections 33-1261 and 33-1808) which applied only to condominiums and planned communities. A.R.S. Sections 33-1261 and 33-1808 allowed owners in condominiums and planned communities to place a "for sale" sign (and a sign rider) on that owner's property after certain restrictions were met.

SB1148 mirrors these 2007 laws in many aspects, but it expands the right to display a "for sale" sign on deed restricted property that is neither a condominium nor a planned community. For example, many older associations in Arizona have deed restrictions, but they do not fall under the legal definition of a planned community or condominium. These older, deed-restricted associations were still able to prohibit the display of "for sale" signs despite the new laws implemented in 2007 since they were not technically, legally a condominium or a planned community. **The bottom line is, now, after the passage of SB 1148, all associations in Arizona (whether they are planned communities, condominiums or neither) with deed restrictions on their property must allow a "for sale" sign on that owner's property after certain restrictions are met.**

### Summary of Senate Bill 1148 creating A.R.S. Section 33-441

- 1) No covenant, restriction or condition contained in any deed, contract, security agreement or other instrument affecting the transfer or sale of any interest in real property shall be applied to prohibit the indoor or outdoor display of a for sale sign and a sign rider by a property owner on that person's property, including a sign that indicates the person is offering the property for sale by owner.
- 2) The size of a sign offering a property for sale shall be in conformance with the industry standard size sign, which shall not exceed eighteen by twenty-four inches, and the industry standard size sign rider, which shall not exceed six by twenty-four inches.

It is important to note that this new law applies to any covenant, restriction or condition without regard to the date the covenant; restriction or condition was created, signed or recorded. However, this law does not apply to timeshare property and timeshare interest as defined in A.R.S. Section 33-2202. Finally, this law does not apply to a covenant, restriction or condition in a deed, contract, security agreement or other instrument affecting the transfer or sale of an interest in real property that does not prohibit or restrict the display of a for sale sign or a sign rider on the real property.

Governor Brewer signed Senate Bill 1148 into law on July 10, 2009 and this new law will go into effect September 30, 2009. **To see a full copy of the text of this new law, go to [www.mulcahylaw.net](http://www.mulcahylaw.net) click on the publications tab and then under the "Legislative Updates" heading, click on Senate Bill 1148.**

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

## Lunch with Mulcahy

Education and Answers

Mulcahy Law Firm, P.C. is proud to announce a new series of five mini-seminars for board members and managers. "Lunch with Mulcahy" will be held monthly at our firm starting in January 2010 and continuing through May 2010. These small teaching venues allow for a more personalized education process in a relaxed setting. We will introduce a new topic each month. Clients of the firm may attend free of charge. We invite non-clients, as space allows, to attend for a fee of \$15.00. Seating is limited.

To join us for "Lunch with Mulcahy". Please CALL 602.241.1093 with your name and contact information. Please see the enclosed "Lunch with Mulcahy" seminar schedule and make your reservations today!

We are pleased to announce that Beth Mulcahy, Esq. has been accepted into Community Association Institute's College of Community Association Lawyers. Of the thousands of attorneys practicing community association law in the United States, fewer than 150 have been granted membership in CAI's College of Community Association Lawyers (CCAL). CAI acknowledges CAI-member attorneys who have distinguished themselves through contributions to the development of community association law. Their service is demonstrated by a commitment to educate and empower boards and residents. CCAL attorneys commit themselves to high standards of professional and ethical conduct and work to create a community of experienced legal professionals to advance community association law for the betterment of the communities they serve.

## MULCAHY LAW FIRM, P.C.

### BULLETIN BOARD

*Your invitation is enclosed*

*Join us for*

**"Attorneys with  
Answers"**

A free Q&A for  
Community Associations

**Tuesday,  
October 20, 2009**

Phoenix Public Library  
Registration: 10:00 a.m.  
Q & A: 10:30 a.m. - 12:30 p.m.

*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.

Phone: 602.241.1093

MULCAHY LAW FIRM, P.C.  
3100 East Camelback Road,  
Suite 130  
Phoenix, Arizona 85016

**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 CAI's College of Community Association Lawyers. She is also 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.

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

E-mail: 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

**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.

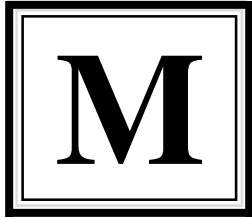
E-mail: lmensah@mulcahylaw.net

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**



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# ANSWERS

for Community Associations

MULCAHY LAW FIRM, P.C.

## Did You Know?

MULCAHY LAW FIRM, P. C.

### Mulcahy Law Firm, P.C. Next Step in "Bringing Answers" to Managers, Boards and Residents

Dear Clients and Friends,

A goal of the Mulcahy Law Firm is to bring associations the most relevant and current information regarding community associations. We have often been asked to send our newsletter *Answers* via e-mail. In an effort to best serve you, to reach you in an expeditious way and save paper resources, we will bring you the same informative *Answers* newsletter, quarterly as we have always done, in our new e-mail format as well as our paper format.

Additionally, those who choose to receive *Answers* via e-mail will also receive our new "Mulcahy Memos" sent periodically by e-mail. "Mulcahy Memos" will be information regarding community associations that will be educational, possibly time sensitive and always supportive of building successful communities.

We are aware that your time is valuable and will send education information that is relevant and timely to the community association industry. If for some reason you do not want to receive our E-newsletter(s) or Mulcahy Memos, the unsubscribe feature will be available at the bottom of every E-newsletter and, if selected, the person requesting unsubscribe will be placed on a do not mail list. Please note, we DO NOT share our list with anyone.

Board members, managers and friends wishing to receive our E-newsletter *Answers* can join by clicking on "join our mailing list" through our website or through the "join our mailing list" button shown with each E-newsletter.

If you have any questions please send them to our [info@mulcahylaw.net](mailto:info@mulcahylaw.net) address.

Thank you.

*Beth Mulcahy, Esq.*

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

Mulcahy Law Firm, P. C.

MULCAHY LAW FIRM, P.C.

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You are invited to  
**Answers for your Community Associations**  
presented by:  
Beth Mulcahy, Esq. & Kristen Rosenbeck, Esq.  
**MULCAHY LAW FIRM, P. C.**

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**Tuesday, October 20, 2009**

**Registration: 10 a.m. - 10:30 a.m.**  
***Attorneys with Answers: 10:30 a.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, October 6, 2009 by e-mailing, faxing or mailing the attached registration. You may also register online at [www.mulcahylawfirm.net](http://www.mulcahylawfirm.net) by submitting the form found on the seminar tab.*

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***“Attorneys with Answers®”***

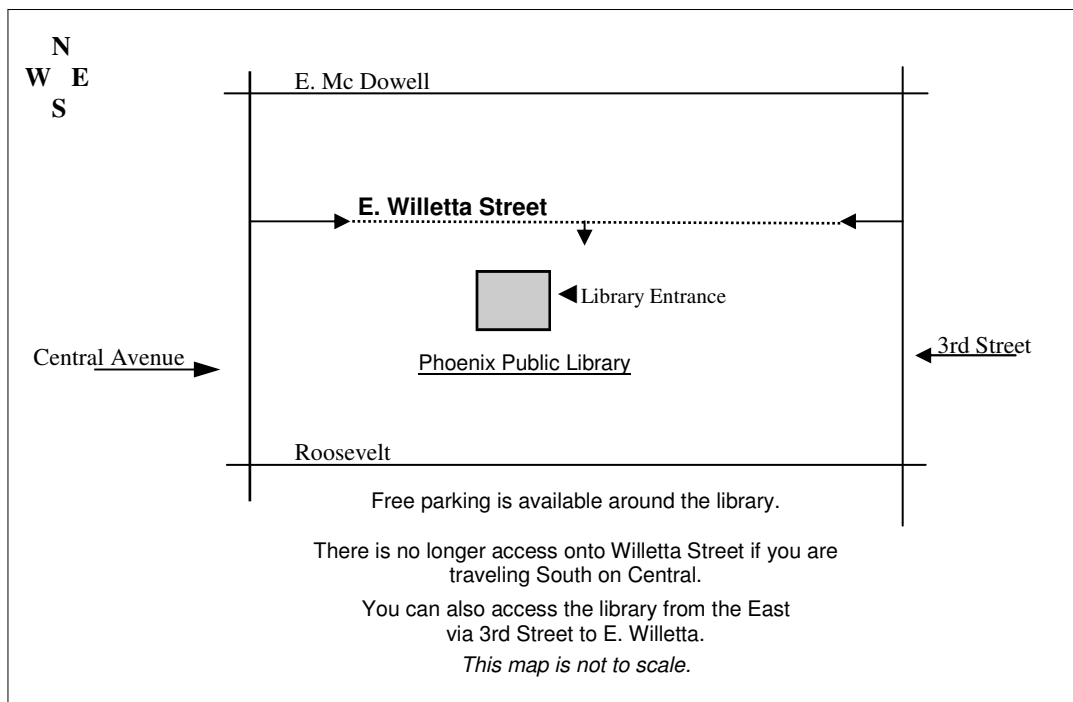
This will be a *free* Question and Answer session  
with a panel of attorneys answering your HOA questions.

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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 October 6, 2009 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 \_\_\_\_\_

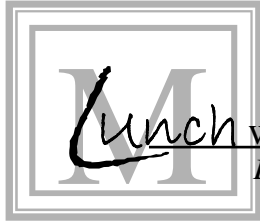
Phone Number \_\_\_\_\_ e-mail Address \_\_\_\_\_

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

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Toll Free: 877.206.7164 ♦ Fax: 602.264.4663 ♦ [info@mulcahylaw.net](mailto:info@mulcahylaw.net) ♦ [www.mulcahylawfirm.net](http://www.mulcahylawfirm.net)

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**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).**

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

Join us to learn a 5 step plan to successfully amend your association’s documents. Join us for Answers and a picnic in our courtyard.

**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.

**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.

**April 1, 2010 Got Delinquencies?**

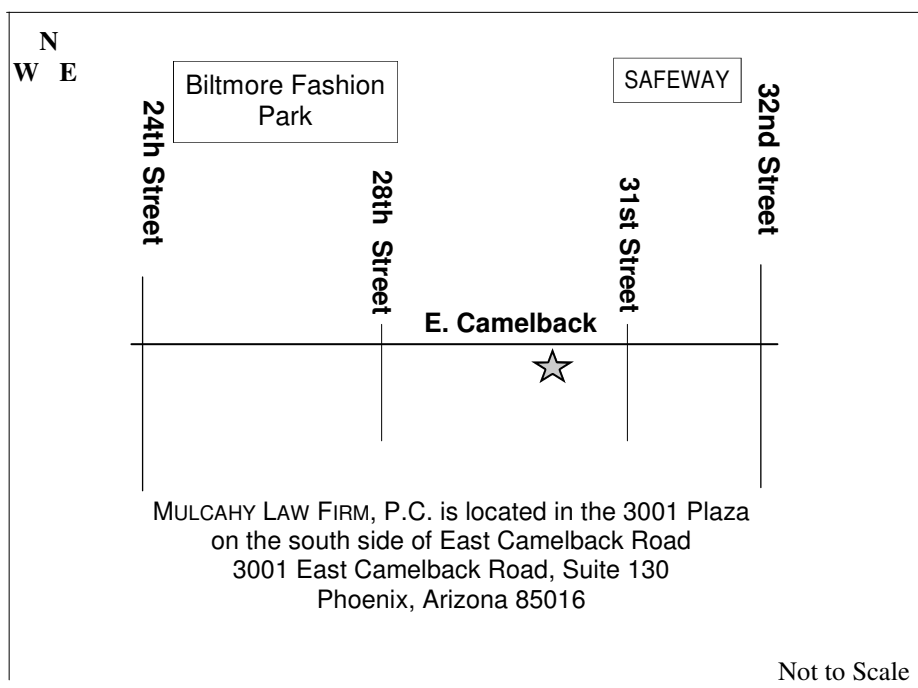
Get the Answers and processes that will help your board with collecting delinquent assessments. Join us for Answers and Sub Sandwiches in our courtyard.

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

Strictly question and answer. Join us as we answer your most pressing association questions and celebrate with a Mexican Fiesta in our courtyard.

**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 and managers, 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 \_\_\_\_\_

**Please let us know if you would like to have your name placed on our e-mail mailing list.**