

MULCAHY ANSWERS

for Community Associations

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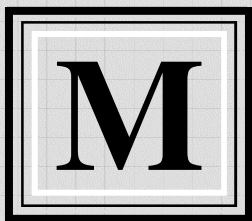
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**Please join us for
2011 Legislative Update on
May 10, 2011**

**Arizona Legislature
Adjourns Early—Passing Bills
that Spark Discussion**

DYK?



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Medical Marijuana A Complicated Issue

by Beth Mulcahy, Esq.

The state of Arizona has joined 14 other states and the District of Columbia in passing a medical marijuana law allowing those persons suffering from “debilitating medical conditions” to use cannabis when they have the recommendation of their physician. Proposition 203, titled “Arizona Medical Marijuana Act” (“Act”) legalized medical marijuana for use by people with certain “chronic or debilitating” diseases, by adding Arizona Revised Statutes (“A.R.S.”) Sections 36 - 2801 through -2819 and amended A.R.S. Section 43 -1201. The Act became effective on **April 14, 2011** and Arizona Department of Health Services (“ADHS”) published its Final Rules regarding the Act on March 28, 2011.

The approval of Arizona's Proposition 203 will allow 120 clinics (dispensaries) to dispense marijuana to registered patients with prescriptions and those patients who live more than 25 miles from a dispensary will be permitted to grow up to 12 plants for personal use. ADHS will begin accepting applications for dispensary registration certificates on May 1, 2011.

Strict rules apply to growing cannabis for dispensary distribution. However, a watchful eye on association community gardens and development of rules may be wise. Dispensaries may obtain marijuana from their own cultivation, other dispensaries, or a registered qualifying patient or designated caregiver, but the patient or caregiver may not be compensated for the marijuana. If dispensaries cultivate their own medical marijuana either at the dispensary location or at an alternative offside location, it must be cultivated in an enclosed, locked facility.

Proposition 203 prohibits marijuana smoking in public places and the final rules published March 28, 2011 define public places as “any location, facility, or venue that is not intended for the regular exclusive use of an individual or a specific group of individuals; includes, but not limited to,...common areas of apartment buildings, condominiums, or other multi-family housing facilities....” The position of Mulcahy Law Firm, P.C. is that condominiums do not have to pass rules, but, since planned communities common areas do not seem to be specifically addressed in the ruling it is a good idea for planned community boards to decide if they want to pass a rule prohibiting smoking of pot on common areas or not.

Shared walls in condominiums may be problematic regarding second hand smoke but, there are other ways to gain the benefits of cannabis that do not involve the nuisance of second-hand smoke. By ingesting marijuana legally registered users of marijuana can manage their disability without any special accommodation such as permission to smoke cannabis poolside, in the barbeque area, playground area, or in or near any other common area recreational facilities.

Disability accommodation requests to the association for use of marijuana should go through a standard procedure which would include a medical professional's outline of the patient's disability, prescription for medical marijuana and a detailed description of how a specific accommodation enhances the patient's daily life. As with all requests, the board must review on a case by case basis to avoid the legal repercussions of hasty decisions.

Of some concern to association boards should be their employees who have registered for use of medical marijuana. Most employers have a policy which prohibits employees from using illegal drugs. However, if an employee is registered for medical marijuana, then the drug is no longer considered illegal *in the state of Arizona*. The association should hold that an employee not be allowed to drive association vehicles or operate machinery while using the drug. If the employee is covered under the ADA (American Disability Act) then that employee may need to be re-assigned to another job as a disability accommodation. This complicated issue needs careful consideration and good legal counsel.

continued

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Medical Marijuana continued

The Act permits the non-profit dispensaries, which obtain the requisite registration set forth under the Act, to dispense marijuana to registered qualifying patients. Further, the Act permits non-profit entities the ability to acquire, possess, cultivate, manufacture, deliver, transfer, transport, supply, sell or dispense marijuana or related supplies and educational materials to qualified card holders.

As 120 dispensaries become qualified and obtain certificates, our firm anticipates many will seek occupancy for dispensary or cultivation location use in the commercial space within the association. It is our firm's opinion that unless the association's governing documents restrict such a use, the association will be required to permit such a use within the association. This does not mean the association has no power; the association has enforcement power over a dispensary as set forth in the governing documents. Those powers extend to violations of the rules and regulations and any specific uses allowed in the CC&Rs. However, if the association's CC&Rs are written to prohibit the use, occupancy, business traffic or other use conformities specific to the medical marijuana dispensaries, associations may be able to restrict the presence and/or activities of dispensaries within the association.

Association boards would be wise to take time now to consider the possible ramifications of marijuana use in their communities. Arizona's new program should be fully functioning by summer of 2011. Since "severe pain" is enough to apply for medical marijuana, association board members may feel that medical users are really thinly disguised recreational users. This may be so, but there are those who do suffer and find marijuana use helps manage their discomfort. You can find a list of eligibility requirements on the Arizona Department of Health Service's website. As a precaution, the Act requires that patients and care givers be fingerprinted and required to sign a statement that they will not divert marijuana to non-patients.

It is important to remember that despite Arizona's adoption of the Act, Federal law still prohibits the manufacture, distribution or possession with intent to distribute marijuana. Therefore, although permitted uses of marijuana may be authorized as set forth under the Arizona law, such use remains illegal under Federal law and is subject to the penalties set forth under Federal law.

The mix of medical marijuana and community associations is complicated and will need to be evaluated on a case by case basis. Mulcahy Law Firm, P.C. is available for consultation to discuss options and risks regarding medical marijuana within associations. Please call us with your questions; Mulcahy Law Firm, P.C. 602-241-1093.

Answers

Find more information regarding Medical Marijuana on the following websites:

30 Facts About Arizona's New Medical Marijuana Law at

<http://blog.norml.org/2010/11/15/30-facts-about-arizonas-new-medical-marijuana-law>

Facts regarding the "Act" on the Arizona Department of Health Services website at www.azdhs.gov.

Please Join us for.....

The 2011 Legislative Update

New requirements for Open Meeting Laws...

Owners can now tape/video record open board meetings...

How will these new laws affect you?

2011 was the busiest year for community association legislation in years with seven bills being signed that will affect planned communities and condominiums. We will discuss each bill and how you will be required to work with the new laws.

Tuesday, May 10, 2011

Registration: 9:00 a.m.

Seminar: 9:30 a.m. - 10:30 a.m.

with question and answer following

MULCAHY LAW FIRM, P.C.
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Phoenix, Arizona 85016

**Seating is limited. To reserve your place, please call 602.241.1093
or email your name and phone number to info@mulcahylaw.net.**

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

Arizona Legislature Adjourns Early—Passing Bills that Spark Discussion

The 2011 Arizona legislative session (50th Legislature, First Regular Session) was the most active session for bills regarding the community association industry in years. Seven bills were passed that will affect planned communities and condominiums.

This year the legislative session was adjourned on April 20, 2011, earlier than in past years, therefore, **the bills passed by this legislature will become law on July 19, 2011.**

House Bill 2245 will permit owners to tape and/or video record open board meetings, subject to reasonable rules and regulations adopted by the board.

This new law has caused a great deal of discussion. What are reasonable rules and regulations? Should you contact an attorney before implementing new rules and regulations? What type of controls does the association have? How long should a video recording or tape be kept in records? Should the association also video record or tape the board meetings?

These and many other questions arising from the passage of House Bill 2245 will be discussed at our seminar on May 10th.

A portion of House Bill 2609 will amend the Arizona Open Meeting law in several ways, *for example:* requiring that all regularly scheduled committee meetings be open to all members, requiring association boards to permit members to speak once after the board has discussed a specific agenda item at an open board meeting and expanding the items that may be addressed in closed session. HB2609 also addresses additional changes to the open meeting law.

Join us for an in depth discussion of all the new laws affecting community associations on May 10th at Mulcahy Law Firm, P.C., 9:00a.m. to 10:30a.m. with q & a following.

Please call 602.241.1093 to reserve your seat.

2011 Legislative Update Cheat Sheet is available online.

MULCAHY LAW FIRM, P.C.

BULLETIN BOARD

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.

May 6, 2011

June 3, 2011

July 1, 2011

phone: 602.241.1093

Mulcahy Cheat Sheets®

online at:

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Cheat Sheets cover everyday topics to help your association be successful!
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How to Conduct Successful Annual Meetings

How to Select a Management Company

Insurance, Protecting the Association and Board of Directors

Responsibilities of the President and Vice President

The Board of Directors Code of Conduct

2011 Legislative Update

Beth Mulcahy, 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 the National and the Central Arizona Chapters of CAI, CAI's prestigious College of Community Association Lawyers 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, partner, graduated from Valparaiso University with a Bachelor of Arts degree in. 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.

Kristen regularly authors the column "Strictly Legal" in Community Association Institute's (CAI) national publication Community Manager. She has written articles for the national publication HOA Leader and for CAI's national publication, Common Ground. Kristen regularly teaches classes for community associations, the Arizona Association of Community Managers, municipalities and local organizations.

Kristen is a member of the National and the Central Arizona Chapter of CAI and Arizona Association of Community Managers. Kristen sits on the AACM Educational Committee and assists in the development of course material and curriculum. **E-mail: krosenbeck@mulcahylaw.net**

Erin E. McManis graduated *cum laude* with a Bachelor of Arts Degree in Political Science from Truman State University, Kirksville, Missouri. She received her *Juris Doctorate*, *cum laude*, from Creighton University School of Law where she was on the Dean's List and received the prestigious CALI Award for the highest grade in Pre-Trial Litigation.

Erin was a Deputy County Attorney with the Maricopa County Attorney's Office prior to joining Mulcahy Law Firm, P.C. In this capacity, Erin conducted numerous bench and jury trials in the Maricopa County Courts. Erin is licensed to practice law in the State of Arizona.

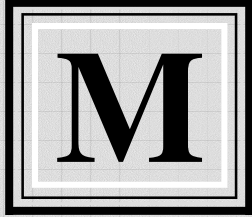
Erin is an associate attorney with Mulcahy Law Firm, P.C. and her practice focuses on the representation of community associations with an emphasis on litigation, enforcement of restrictive covenants and collection of delinquent assessments. **E-mail: emcmanis@mulcahylaw.net**

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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Please join us for 2011 Legislative Update Seminar - May 10, 2011

Would you like to receive your *Answers* newsletter by e-mail?

Register online at: www.mulcahylawfirm.net or call our office.

ANSWERS for Community Associations

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Did You Know?

10 Tips for Community Association Service

It is important to keep in mind that a community associations' service functions are performed for and by the membership under the auspices of the board of directors. The most successful association boards and community association managers place a priority on knowledge and service.

1. Place the need for continuity in management and fair application of the rules and regulations at the top of the list.
2. Adhere to good policy, goals and procedures.
3. Seek professional advice and counsel from well qualified professionals.
4. The board should set the example of high ethics and moral behavior.
5. Create a computerized volunteer database where residents are invited to register their availability and areas of interest.
6. Establish a comprehensive monthly (or as needed) new resident orientation program.
7. Establish a set of recurring, seasonal, community-wide events such as annual holiday party, Easter egg hunt, New Year's Eve party, St. Patrick's Day party, 4th of July picnic, Halloween party, etc.
8. Engage young people in community service, internships and mentoring assignments.
9. Create a rich variety of recreational opportunities.
10. Host frequent, informal social events designed to help newcomers meet neighbors and form new friendships and others to re-establish and support friendships.

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