PRESENTS

A SUMMARY OF
ARIZONA HOMEOWNER ASSOCIATION LAW

Authored and presented by

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The Firm was founded and continues to operate on the goal of promising and providing efficient, competent and quality legal services to its clients. Shaw & Lines, LLC, distinguishes itself by efficiently and effectively “doing better what is already being done.” Shaw & Lines, Arizona’s Counselors to Community Associations.
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I. WHAT IS A HOMEOWNER ASSOCIATION

A. General Definition

A homeowner or community association (hereafter “association”) is a common-interest community consisting of landowners living in a residential neighborhood that has restrictive covenants placed on the property. Homeowner associations are unique in that they usually have property, known as “Common Area,” which is entitled to be used by the members of the association. Arizona law divides associations into two basic types, which are Planned Communities and Condominiums.

B. Condominiums

A “Condominium,” under Arizona Revised Statutes § 33-1202, is defined as “real estate, portions of which are designated for separate ownership and the remainder, of which is designated for common ownership solely by the owners of the separate portions. Real estate is not a condominium unless the undivided interests are vested in the unit owners.” In essence, a Condominium is an association in which the individual member/owners own an undivided interest in the common area, the property to be equally enjoyed by the members of the association.

C. Planned Communities

A “Planned Community” under Arizona Revised Statutes § 33-1802, is defined as a “real estate development which includes real estate owned and operated by a nonprofit corporation, or unincorporated association of owners, created for the purpose of managing, maintaining or improving property, and in which the owners of separately owned lots, parcels or units are mandatory members and are required to pay assessments to the association for these purposes.”

In essence, a Planned Community is an association in which the common area, the property to be equally enjoyed by the members of the association, is owned by the association, rather than the members/owners.

D. Cooperative

A corporation owns the property that makes up the cooperative. This property is typically a building. The owner purchases a shared interest in the corporation. With that purchase they have the right to occupy a portion of the building. This portion is usually called an apartment. Anything outside the apartment becomes the common area maintained by the corporation.

1 Arizona Revised Statutes § 33-1801 et seq.
2 Arizona Revised Statutes § 33-1201 et seq.
E. Townhomes, Patio Homes, Cluster Housing

These are all marketing names for different types of housing products. In order to know what type of community exists, it is necessary to know how the common area is structured.

II. DOCUMENTS THAT GOVERN HOMEOWNER ASSOCIATIONS

A. Types of Governing Documents

Governing documents of homeowner associations are divided into two basic types, documents that restrict the use of the property or the behavior of residents concerning the property and documents that govern the corporate entity embodying the association. Association documents that restrict the use of the property or the behavior of owners concerning the property are:

1. The Declaration of Covenants, Conditions and Restrictions, commonly known as the “CC&Rs”;
2. The Rules and Regulations; and

Association documents that govern the corporate entity embodying the association are:

1. The Articles of Incorporation;
2. The Bylaws; and
3. Resolutions of the Board of Directors.

B. Declaration of Covenants, Conditions and Restrictions

The Declaration of Covenants, Conditions and Restrictions, commonly known as the “CC&Rs,” is a document that creates the scheme of enforceable covenants and restrictions that run with the property. As a document that places restrictions on property, the CC&Rs must be recorded with the applicable county recorder.

C. Rules and Regulations and Architectural Guidelines

Most association CC&Rs allow associations to draft reasonable Rules and Regulations that explain the restrictions found in the CC&Rs. Arizona Law allows associations to draft reasonable rules and regulations governing the common property only.3 The Rules and Regulations normally are developed by the association’s board of directors and have the same

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3 A condominium pursuant to A.R.S §33-1242(A) (Condominiums) and a planned community under § 6.7(3) of The Restatements (3rd) of Property: Servitudes, has the power to adopt reasonable rules and regulations regarding the common property. Under Wilson v. Playa de Serrano, 211 Ariz. 511, 123 P.3d 1148 (Ariz.App. Div. 2, 2005), Community Associations may not place restrictions on the use of units or lots via reasonable rules and regulations unless the Community Association’s CC&Rs provide the Community Association with the ability to develop rules that regulate activity on unit or lots.
enforceability as the CC&Rs, even though the Rules and Regulation, for the most part, are not recorded with the county recorder.

Rules and Regulations may only explain regulations found in the CC&Rs. Rules and Regulations may not contradict provisions of the CC&Rs, nor may they add restrictions to the property not found in the CC&Rs. If Rules and Regulations conflict with the CC&R’s, then they are generally unenforceable.

D. Architectural Guidelines

Architectural Guidelines also derive their authority from the CC&Rs of an association. The Architectural Guidelines usually provide a framework for the decision making process of the Architectural Committee. The Architectural Guidelines have the same enforceability as the CC&Rs, even though they, for the most part, are not recorded with the county recorder.

E. Articles of Incorporation

The Articles of Incorporation establish the association as a legal entity and must meet certain statutory criteria as found in the Arizona Nonprofit Corporation Act. The Articles of Incorporation constitute the corporate charter and are filed with the Arizona Nonprofit Corporation Commission.

F. Bylaws

The Bylaws of an association set out the procedures for the internal government and operation of the association. The Bylaws guide the association concerning how owners may vote regarding corporate issues. The Bylaws also regulate the conduct of the association’s board of directors as well as outline how an association’s board of directors is elected.

III. STATE STATUTES THAT GOVERN HOMEOWNER ASSOCIATIONS

A. Arizona Planned Community Statutes - A.R.S. §§ 33-1801 et seq. defines “planned community”, “association”, “community (governing) documents” and “declaration”. The planned community statutes also have provisions that deal with assessment increases, penalties, open meetings, disclosure of association records, resale disclosure and assessment liens.

B. Arizona Condominium Act – The Arizona Condominium Act, A.R.S. §§ 33-1201 et seq. is patterned after the Uniform Condominium Act and is more extensive in scope and detail than the planned community statutes. It deals with, among other things, the creation, alteration, management and termination of the condominium, the imposition of monetary penalties, resale disclosure, assessment liens and open meetings.

C. Arizona Nonprofit Corporations Act – All associations that are incorporated are subject to the Arizona Nonprofit Corporations Act, A.R.S. §§ 10-2301 through 10-2594. The
Arizona Nonprofit Corporations Act contains extensive provisions governing the formation and operation of nonprofit corporations.

IV. HOMEOWNER ASSOCIATION MEETINGS

There are four main types of homeowner association meetings; meetings of the association’s Board of Directors; meetings of committees of the association; annual meetings of the homeowners associations; and special membership meetings of the homeowners association.

All homeowner association meetings must be held within the State of Arizona. This means that the origin of the meeting must be in Arizona. Teleconferences are still allowed so long as the call originates in Arizona.

Also, except for limited circumstances that will be discussed below, association meetings are open to all members of the association or any person designated by a member in writing as the member's representative. Members and their designated representatives also have the right to speak at an appropriate time during the deliberations and proceedings of association meetings. The board may place reasonable time restrictions on those persons speaking during the meeting but must permit a member or a member's designated representative to speak once after the board has discussed a specific agenda item but before the board takes formal action on that item.

Recent changes to Arizona Statutory Law applicable to homeowner associations also serve to establish the Arizona Legislature’s “public policy” belief that homeowner associations meetings should be as open as possible to association member attendance. Arizona Revised Statutes (A.R.S.) §33-1804(E) (Planned Communities) and A.R.S. §33-1248(E) (Condominiums) both state:

It is the policy of this state as reflected in this section that all meetings of a condominium, whether meetings of the unit owners' association or meetings of the board of directors of the association, be conducted openly and that notices and agendas be provided for those meetings that contain the information that is reasonably necessary to inform the unit owners of the matters to be discussed or decided and to ensure that unit owners have the ability to speak after discussion of agenda items, but before a vote of the board of directors is taken. Toward this end, any person or entity that is charged with the interpretation of these provisions shall take into account this declaration of policy and shall construe any provision of this section in favor of open meetings.

In order to implement its “public policy” beliefs, the Arizona Legislature has enacted a number of laws geared toward open homeowner association meetings. A.R.S. §33-1804(D) (Planned Communities) and A.R.S. §33-1248(D) (Condominiums) states that agendas must be made available to all members prior to the start of an association Board of Directors meeting. A.R.S. §33-1804(A) (Planned Communities) and A.R.S. §33-1248(A) (Condominiums) states

4 A.R.S. §33-1804(B) (Planned Communities) and A.R.S. §33-1248(B) (Condominiums).
5 A.R.S. §33-1804(B) (Planned Communities) and A.R.S. §33-1248(B) (Condominiums).
6 A.R.S. §33-1804(A) (Planned Communities) and A.R.S. §33-1248(A) (Condominiums).
that individuals attending association meetings have the right, subject to reasonable association rules, to audio tape or videotape those portions of the meetings that are open to the members.

Since there are a number of Arizona Statutes that cover the various types of association meetings, it is important to discuss, in more detail, each type of association meeting.

A. Board Meetings

There are three types of Board of Directors meetings; regular Board meetings, executive session Board Meetings; and emergency Board meetings. The most common type of Board of Directors meeting is the regular Board meeting.

Regular Board Meetings

Regular board meetings are those meetings in which the community association conducts the general “day-to-day” business of the association. Regular Board meetings are usually held once a month or once a quarter. A regular Board meeting occurs whenever a quorum of the Board of Directors meets either formally or informally to discuss association business.

Unless otherwise stated in the association’s Bylaws, the Association must provide at least 48 hours notice to owners of meetings of the Board of Directors. Said notice shall be by newsletter, conspicuous posting or any other reasonable means as determined by the Board of Directors.

Regular Board meetings must be held within the State of Arizona. Also, regular Board meetings are open to all members of the association or any person designated by a member in writing as the member’s representative.

Agendas must be made available to all members prior to the start of an association Board of Directors meeting. Members and their designative representatives also have the right to speak at an appropriate time during the deliberations and proceedings of regular Board meetings. Also, attendees of regular Board meetings have the right, subject to reasonable association rules, to audio tape or videotape those portions of the meetings that are open to the members.
Executive Session Board Meetings

Executive session Board of Director meetings are meetings of the Board that are closed to the members and held to discuss issues which, by statute, are not required to be discussed in a regular board meeting. These meetings occur “behind closed doors” or outside the presence of, and without participation from, the members. Executive session meetings do not have to be noticed to the members.

There are five issues that may be discussed in executive session:16

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, including records of the association directly related to the 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;
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; and
5. Discussion of a unit owner's appeal of any violation cited or penalty imposed by the association except on request of the affected unit owner that the meeting be held in an open session;

Emergency Board Meetings

Emergency Board meetings are held when an eminent threat to life or property exists and there is no time to provide proper notice to the members of a Board meeting. The minutes of the emergency Board meeting must state the reason necessitating the emergency meeting. Also, the minutes of the emergency meeting shall be read and approved at the next regularly scheduled meeting of the Board of Directors.17

B. ASSOCIATION COMMITTEE MEETINGS

Association Committees serve a vital function. They provide an opportunity for association members to serve their community in specialized areas. Committees also serve to aid the Board of Directors in governing the association. Association Committees are functions of the association’s Board of Directors. Committees can come in the form of an Architectural Control Committee, Landscaping Committee, Welcome Wagon Committee, etc.

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16 A.R.S. §33-1804(A) (Planned Communities) and A.R.S. §33-1248(A) (Condominiums).
17 A.R.S. §33-1804(D) (Planned Communities) and A.R.S. §33-1248(D) (Condominiums).
Most association Committees meet on a regular basis. If an association Committee meets on a regular basis, the Committee must meet in the State of Arizona. Also, association members or their designative representatives have the right to attend and speak at Committee meetings.

C. ANNUAL MEETINGS OF THE MEMBERS

Probably the most important meeting a homeowners association is required to conduct is the Annual Meeting of the Members. Not only do most Governing Documents require associations to conduct Annual Meetings, Arizona law requires associations to conduct an Annual Meeting at least once per year.

Purpose of an Annual Meeting

Annual Meetings are meetings of the Members. They are held to conduct the “business” of the Membership and allow the Membership to address their association. In most associations, Annual Meetings are conducted for three main purposes:

1. To Conduct Member “Business”;
2. To Elect Members to the Association’s Board of Directors; and
3. To Allow the Members to Address their Association.

Conduct Member “Business”

Annual Meetings are forums where Member business may be conducted. Member business can take many forms, including:

a. Approval of the previous year’s Annual Meeting Minutes (see the Section on Annual Meeting Minutes below);
b. Amendment of the Association Documents; and
c. Authorizing increases in the annual assessments or special assessments.

Arizona law and most association documents allow Member business at Annual Meetings. The challenge, however, lies in statutory requirements concerning absentee ballots, which will be discussed below.

To Elect Members to the Board of Directors

By far the most important purpose of an Annual Meeting is to elect Members to the association’s Board of Directors. Effectuating an election to the Board of Directors takes a great deal of forethought, especially in light of Arizona Law.

18 A.R.S. §33-1804(B) (Planned Communities) and A.R.S. §33-1248(B) (Condominiums).
19 A.R.S. §33-1804(A) (Planned Communities) and A.R.S. §33-1248(A) (Condominiums).
20 A.R.S. §33-1804(B) (Planned Communities) and A.R.S. §33-1248(B) (Condominiums).
A successful and legal election to the Board starts at least two (2) months prior to the Annual Meeting. This is due, in large part, to the requirements found in Arizona Law. Arizona Law requires that associations send absentee ballots to all Members of the association. In order to send an absentee ballot, an association must be able to place names on the absentee ballot, which, in turn, requires some sort of nominations procedure.

When drafting an absentee ballot, the association must keep the requirements of Arizona Revised Statutes §33-1250 (Condominiums) and Arizona Revised Statutes §33-1812 (Planned Communities) in mind. The absentee ballot should state that the absentee ballot may be either returned to the association one business day prior to the Annual Meeting or the absentee ballot may be hand-delivered to the Annual Meeting of the Members. One other important thing to remember concerning absentee ballots is that the Association may only accept an absentee ballot from a particular owner. The Association may not accept a group of absentee ballots submitted by a single owner. Similarly, the Association may not accept a single ballot delivered to the Annual Meeting by a party other than the Member who executed the ballot.

**To Allow Members to Address Their Association**

It is very important to remember that the Annual Meeting is a meeting of the Members; meaning that the Members should be provided with an opportunity to address their Board of Directors and other Members of the Association.

Many associations attempt to limit who may speak at an Annual Meeting. A good policy to have is to let all Members who wish to speak have the opportunity to speak but limit how long they may speak. I usually suggest no more that 5 minutes per person but this timeframe may be less depending on the number of Members who desire to speak. I further suggest that, where a meeting becomes very adversarial, the Association strictly comply with all time limits, even bringing a stop watch or other timer if necessary.

**D. SPECIAL MEETINGS OF THE MEMBERS**

Special Meetings of the Members are another form of Members meeting. Special Meetings of the Members are unique because they vary depending on the purpose of the Meeting of the Members.

**Who May Call A Special Meeting of the Members.**

The question of who may call a Special Meeting of the Members is usually answered in the Governing Documents of the association. If the association’s governing documents are silent, Arizona Statutory Law states that special meetings of the members may be called by the

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21 See A.R.S. §33-1812(A) (Planned Communities) and A.R.S. §33-1250 (Condominiums).

22 See A.R.S. §33-1812(A) (Planned Communities) and A.R.S. §33-1250 (Condominiums).
president, by a majority of the board of directors or by unit owners having at least twenty-five percent, or any lower percentage specified in the bylaws, of the votes in the association.23

Common Purposes for Special Meetings of the Members

Special Meetings of the Members may be called for a number of reasons, such as:

1. To authorize a special assessment or increase in the annual assessments.
2. To authorize amendment of the Association’s Governing Documents.
3. To remove members of the Association’s Board of Directors.
4. To vote on other issues pursuant to the Association’s Documents.

Special Meeting of the Members to Authorize a Special Assessment or Increase in the Annual Assessments

Generally, the association’s CC&R’s will dictate how Special Meetings of the Members may be called to vote on a special assessment or increase in the annual assessment of the association. Voting and quorum requirements concerning this type of Special Meeting of the Members will also generally be found in the association’s CC&R’s. Additionally, any Special Meetings of the Members must be conducted using absentee ballots pursuant to Arizona Revised Statutes §33-1250 (Condominiums) and Arizona Revised Statutes §33-1812 (Planned Communities).

Special Meeting of the Members to Amend the Association’s Governing Documents

Pursuant to most association Governing Documents, Special Meetings of the Members may be called to vote amending certain provisions of the association’s Governing Documents. Voting and quorum requirements concerning this type of Special Meetings of the Members should also be generally found in the specific association Governing Document that is being amended. Additionally, any Special Meetings of the Members must be conducted using absentee ballots pursuant to Arizona Revised Statutes §33-1250 (Condominiums) and Arizona Revised Statutes §33-1812 (Planned Communities).

Special Meeting of the Members to Remove Members of the Association’s Board of Directors

Recent changes in Arizona law have changed the way members of an association’s Board of Directors may be removed. Arizona Revised Statutes §33-1243 and Arizona Revised Statutes §33-1813 provides for the procedures concerning a Special Meeting of the Members to remove Members of the association’s Board of Directors.

It is important that an association follow the quorum requirements of Arizona Revised Statutes §33-1243 and Arizona Revised Statutes §33-1813. It is equally important that the

23 See A.R.S. §33-1804(B) (Planned Communities) and A.R.S. §33-1248(B) (Condominiums).
association carefully study Arizona Revised Statutes §33-1243 and Arizona Revised Statutes §33-1813 in order to abide by its provisions.

V. DUTIES AND OBLIGATIONS OF BOARD MEMBERS

Directors and officers of an association are charged with a “fiduciary duty” to the Association. The Board’s “fiduciary duty” may be broken down into two distinct duties; the duty of care and the duty of loyalty.

Directors have an obligation to exercise reasonable care in making decisions on behalf of the association. This obligation is referred to as the duty of care. When making decisions concerning association issues, community association boards, in order to meet their duty of care;

1. Must act in good faith, in a manner that he or she believes to be in the best interest of the Association and its members;
2. Must make decisions that any other reasonable director would make in the same situation or circumstances;
3. Must exercise discretion within the scope of their authority under relevant statutes, covenants and restrictions;
4. Must treat owners equally and fairly; and
5. Must maintain and repair the association’s common property.24

The above concept is also discussed in the “business judgment rule,” which found both in Arizona common law25 and in Arizona Revised Statutes §10-3830 of the Arizona Nonprofit Corporations Act.26 The business judgment rule states that a board member will have met his or her duties when he or she acts “in good faith[,] with the care an ordinarily prudent person in a like position would exercise under similar circumstances [and] in a manner the director reasonably believes to be in the best interests of the corporation.”27

This rule also protects board members from personal liability if they make their decision after relying on “information, opinions, reports or statements, including financial statements and other financial data,” received from “legal counsel, public accountants or other person as to matters the director reasonably believes, are within the person’s professional or expert competence.28” In other words, if the board’s decision ends with a bad result – even if the association suffers a financial loss as a result – the directors should be shielded from claims of personal liability if their decision was made on the advice of the association’s attorney.

26 If the Community Association is a non-profit corporation.
27 See A.R.S. §10-3830 (Planned Communities).
28 Arizona Revised Statutes §10-3830(B) and Arizona Revised Statutes §10-3830(D).
Another duty relating to the fiduciary responsibilities of a member of a community association board is a duty of loyalty. Directors should have undivided loyalty to the association. This duty prohibits directors from receiving a benefit for serving on the board at the expense of the association or its members. This duty of loyalty is breached when a board member acts in his or her own interest or with a conflicting interest.  

One example of board members breaching such a duty is if board members refuse to enforce the governing documents against other board members, or if the documents are enforced inconsistently.

Another example of a breach of the duty of loyalty is when a board member has a financial interest in a transaction or decision before the board and fails to properly follow Arizona Law.

Another example of breaching the duty of loyalty or fiduciary duty is to discuss with other members matters that are either protected by attorney/client privilege (i.e., correspondence, communications or advice from legal counsel) or matters that are reserved for executive session board meeting discussions provided in Arizona Statutes. To avoid breaching this duty of loyalty board members should consider the following:

1. Enforce the governing documents equally, not selectively, and without regard to whether the owner is a neighbor, friend or relative;
2. Fully disclose any potential conflict prior to any deliberations;
3. Ask to be dismissed and do not participate in the decision making process for any issues where a conflict may exist;
4. Maintain accurate records; and
5. Keep confidences (i.e., attorney/client communications and results from executive session meetings).

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29 A.R.S. §33-1811 (Planned Communities) and A.R.S. §33-1243(C) (Condominiums), which states: If any contract, decision or other action for compensation taken by or on behalf of the board of directors would benefit any member of the board of directors or any person who is a parent, grandparent, spouse, child or sibling of a member of the board of directors or a parent or spouse of any of those persons, that member of the board of directors shall declare a conflict of interest for that issue. The member shall declare the conflict in an open meeting of the board before the board discusses or takes action on that issue and that member may then vote on that issue. Any contract entered into in violation of this subsection is void and unenforceable.

30 Board members are not exempt from their obligations as homeowners and should receive no special treatment. See Tierra Ranchos Homeowners Ass’n. v. Kitchukov, 165 P.3d 173, 216 Ariz. 195 (2007).

31 A.R.S. §33-1811 (Planned Communities) and A.R.S. §33-1243(C) (Condominiums), which states: If any contract, decision or other action for compensation taken by or on behalf of the board of directors would benefit any member of the board of directors or any person who is a parent, grandparent, spouse, child or sibling of a member of the board of directors or a parent or spouse of any of those persons, that member of the board of directors shall declare a conflict of interest for that issue. The member shall declare the conflict in an open meeting of the board before the board discusses or takes action on that issue and that member may then vote on that issue. Any contract entered into in violation of this subsection is void and unenforceable.
Occasionally there will be factions and differences of opinions among members of the board. Diverse positions among board members can lead to progressive discussion and innovative administration. Board members, however, must understand that board decisions are made by majority vote. If the minority is out-voted on an issue, the minority should attempt to provide unified support, unless the action taken by the majority is unlawful. Since board members serve at the will of the members of each community, the general membership of each community has the ability to remove board members who the members believe are not taking action in accordance with the desires of the majority. As such, dissident board members should use caution when challenging a valid decision of the majority of the board.

**How to Handle the Rogue Board Member**

Every community association (or almost) has a Rogue Board Member, a member who refuses to keep confidential information, interrupts meetings or represents the Association without full Board approval. Rogue Board Members can cause a host of legal issues for an association, the Board and the Rogue Member. This document will discuss the legal liability facing community associations regarding Rogue Board Members and how community associations should address the situation and protect itself.

As a starting point, it is important to understand that not all Rogue Board Members have a nefarious intent. Most Rogue Board Members have a sincere desire to better the community association. Sometimes Rogue Board Members feel that their actions are in response to a perceived lack of action by the full Board of Directors. Most Rogue Board Members want to make their communities better but are simply not educated regarding the proper way to accomplish their goals.

So, while this document is meant to instruct community associations on how to identify and address a Rogue Board Member; this document may also serve as a reflection tool to Board Members so that they may ensure that they do not become a Rogue Board Member.

**What is a Rogue Board Member?**

A Rogue Board Member is a member of a community association Board of Directors who displays the following types of behavior:

1. Conducts himself or herself uncivilly at meetings of the Board of Directors;
2. Seeks to enforce the restrictive covenants on his or her own;
3. Fails to keep confidential information;
4. Talks badly about other Board Members; and
5. Fails to thoughtfully consider the advice of experts (i.e. the association’s manager, attorney or other professionals).

Rogue Board Members can cause a number of practical problems for the Board and the community association. Rogue Board Members can interrupt the flow of Board meetings and
make them more difficult to conduct. Additionally, Rogue Board Members can discourage other Members of the Association’s Board from fully participating in Board Meetings.

Association Liability Concerning the Rogue Board Member

While there are a number of practical reasons why Rogue Board Members are not good for community associations, there are more important legal reasons why Rogue Board Members should be addressed.

Rogue Board Members may be difficult to deal with, but they also create a wide range of legal issues for a community association. In order to fully discuss the different types of potential liability, it is important to revisit the actual behaviors.

Uncivil behavior at meetings of the Board of Directors

When a Rogue Board Member conducts himself or herself uncivilly at Board meetings, said behavior could disrupt the Board meeting and may lead to important issues not being fully discussed. In addition, other Board members may feel deeply offended or intimidated by the Rogue Board Member’s conduct.

The above could lead to legal liability in the form of a harassment lawsuit against the Rogue Board Members and a lawsuit against the community association for failing to address the Rogue Board Member’s conduct.

Enforcement of the restrictive covenants without Board Approval

When a Rogue Board Members seeks to enforce the restrictive covenants on their own, this activity could lead to breach of the community association’s policies on enforcement. When a Rogue Board Member takes enforcement action outside of the association’s normal enforcement policies and procedures, this could subject the Association to legal liability based on unequal enforcement and breach of the association’s own policies and procedures.

Failure to keep confidential information

Every community association board discusses information that, for a number of reasons, should be kept confidential. It is important for Board members to keep confidential information confidential. Failing to do so could lead to legal liability based on harassment, libel, slander and misrepresentation. Divulging confidential information could also lead to a breach of the attorney client privilege and negatively affect legal action involving the community association.

Speaking badly about other Board Members

Speaking badly about a fellow Board member can lead to ill feelings and resentment that can affect the efficient operation of the Board. Moreover, it could lead to libel and slander liability if the statements made by the Rogue Board Member are false or misleading.
Failure to thoughtfully consider the advice of experts (i.e. the association’s manager, attorney or other professionals)

Under Arizona Law, a Board member will be held to not breach their fiduciary duty if they thoughtfully consider the advice of experts.32 Rogue Board Members tend to believe that they are the expert in everything and hiring an expert is not needed. This type of behavior could lead to a host of liabilities depending on the area of expertise not sought.

How to Handle the Rogue Board Member

Addressing the behavior of a Rogue Board Member is a delicate matter. This is because, as stated above, the Rogue Board Member may not feel that their actions are harmful to the Association. Moreover, the Rogue Board Member may feel that they have no other choice but to engage in this type of behavior.

Prior to addressing a Rogue Board Member, it is important that the manager and other Board Members agree that the behavior of the Rogue Board Member is problematic. Also, the association may want to obtain legal advice regarding whether the activities of the rogue Board Member present an imminent danger to the association.

When formally addressing a Rogue Board Member, there are two main processes. There is the informal process and the formal process.

Informal Process

The first step of the informal process concerning the addressing of a Rogue Board would be, in an executive session meeting of the Board of Directors, to present the Rogue Board Member with a written list of the behaviors the Rogue Board Member is engaging in. This should be followed up with a discussion on how the behavior could harm the Association and ways to positively address the behavior.

If the Rogue Board Member continues to engage in damaging behavior, the next step would be to discuss the Rogue Board Member’s actions in an open meeting of the Board of Directors. A document should be drafted detailing the areas of concern and ways the Rogue Board Member can address the behavior.

Formal Process

If the Rogue Board Member continues his/her behavior after the informal process, then the next step would be to conduct the Formal Process. The Formal Process begins with an official letter of censure to the Rogue Board Member. The Censure Letter should list out the areas of concern and should also list the ramifications if the Rogue Board Member continues their behavior.

32 See A.R.S. §10-3830 (Planned Communities).
If the Rogue Board Member continues their activities after a formal Censure Letter has been issued, the Association has two remaining options:

1. The calling of a special meeting of the Association to discuss the removal of the Rogue Board Member from the Board of Directors; or
2. Filing a breach of fiduciary duty lawsuit.

The calling of a special meeting of the Association to discuss the removal of the Rogue Board Member from the Board of Directors

Most community association bylaws allow either the President of the association or a majority of the Board of Directors to call a special meeting of the members. This special meeting of the members could be held to discuss the removal of a member from the Association’s Board of directors.

Calling a removal meeting should only be done in extreme circumstances. It is always advisable that prior to calling the removal meeting, the Association seek the advice of its attorney.

Filing a breach of fiduciary duty lawsuit

This is the last option an association should take regarding a Rogue Board Member and the most drastic. Before considering this option, the association should consult with its attorney to determine whether this option may be effectuated.

VI. PRIMARY FUNCTIONS OF A HOMEOWNER ASSOCIATION

One of the primary duties of a homeowners association is to enforce the restrictions in the association’s governing documents. In some circumstances, associations may have an obligation to enforce the restrictions found in the association’s governing documents. It is important to understand how and when to properly enforce an association’s governing documents.

A. Enforcement of Restrictive Covenants

Restrictive covenants may be enforced in three basic ways:

1. Imposing fines;
2. Filing a lawsuit seeking injunctive relief; and
3. Exercising “Self-Help”.

33 See Tierra Ranchos Homeowners Ass’n v. Kitchukov, 165 P.3d 173, 216 Ariz. 195 (2007), which states that among other duties, the Restatement imposes upon the association the duty to act reasonably in exercise of its discretionary powers including rulemaking, enforcement, and design-control powers.
In selecting any one of these options, an association should rely on three main principles of enforcement:

1. What enforcement action is allowed by the association’s governing documents;
2. Which contemplated method of enforcement is likely to gain compliance; and
3. Which method of enforcement is reasonable under the circumstances.

These principles will help an association safely navigate the complexity involved with enforcement of the CC&Rs. The above principles, along with the enforcement actions, are discussed in greater detail below.

**Gaining Compliance by Imposing Fines**

Imposing a fine for the violation of restrictive covenants is the most common means of gaining compliance in associations. Under A.R.S. §33-1803 (the Planned Community Statutes), an association may fine an owner who is in violation of the restrictions so long as the following criteria are met:

1. The fine is “reasonable”;
2. The fine is imposed after notice and an opportunity to be heard; and
3. The notice of the fine must contain a statement regarding how the fine will be enforced and collected.

**Violation Enforcement Through Filing a Lawsuit Seeking Injunctive Relief**

Restrictions found in association governing documents may also be enforced through the seeking of injunctive relief. Injunctive relief is the process in which an association petitions the Superior Court to issue an order requiring an owner who is in violation of the restrictions to comply with the restrictions. Because injunctive relief requires litigation, seeking injunctive relief is usually implemented in emergency situations or as a last resort.

Also, most association CC&Rs allow the association to recoup attorney’s fees spent in obtaining injunctive relief if the association is the prevailing party. Any attorney fees incurred may be awarded to the association by the Court in the injunction action, subject to the judge’s discretion; meaning a judge does not have to award the association all of its attorney’s fees.

**Exercising Self-Help**

Self-help is a mechanism by which the association seeks to address a continuing violation of the restrictions byremedying the violation itself. The most common example of self-help is when an association pays a landscaper to maintain the yard of an owner who has not been maintaining the yard in violation of the restrictions. Self-help is usually available under an association’s CC&Rs and the costs of self-help may usually be recouped by the association. Before exercising self-help, an association should carefully review its CC&Rs to make sure it is allowed to do so.
B. Collecting Assessments

The most important function of an association is the collection of special and annual assessments. Assessments are the financial life-blood of the association and without assessments, an association would be unable to function. An association’s rights and abilities to collect assessments are provided in both the association’s CC&Rs and Arizona Statutes.

By operation of law, community associations have automatic, statutory liens pursuant to A.R.S. §§ 33-1256(A) (condominiums) and 33-1807(A) (planned communities). They also have a lien under the restrictive covenants of the association.

The Statutory Lien

Arizona Revised Statutes §33-1256 (the Arizona Condominium Act) and A.R.S. §33-1807 (the Arizona Planned Community Act) define what charges constitute an association’s lien and its rights to foreclose. For example, A.R.S. §33-1807 of the Planned Community Act, which, in relevant part mirrors A.R.S. §33-1256 of the Condominium Act, provides:

The association has a lien on a unit for any assessment levied against that unit from the time the assessment becomes due. The association's lien for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments may be foreclosed in the same manner as a mortgage on real estate but may be foreclosed only if the owner has been delinquent in the payment of monies secured by the lien, excluding reasonable collection fees, reasonable attorney fees and charges for late payment of and costs incurred with respect to those assessments, for a period of one year or in the amount of one thousand two hundred dollars or more, whichever occurs first. Fees, charges, late charges, monetary penalties and interest charged pursuant to section 33-1803, other than charges for late payment of assessments are not enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment of the assessment becomes due. The association has a lien for fees, charges, late charges, other than charges for late payment of assessments, monetary penalties or interest charged pursuant to section 33-1803 after the entry of a judgment in a civil suit for those fees, charges, late charges, monetary penalties or interest from a court of competent jurisdiction and the recording of that judgment in the office of the county recorder as otherwise provided by law. The association's lien for monies other than for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments may not be
foreclosed and is effective only on conveyance of any interest in the real property.

There are several differing portions of this statute to consider regarding the association’s lien:

- The lien arises when “the assessment becomes due”. This does not necessarily coincide with when the delinquency arises. If you have an annual assessment “payable in installments, the full amount of the assessment is a lien from the time the first assessment installment becomes due.”

- The assessment lien includes “assessments, charges for late payment of those assessments, reasonable collection fees and reasonable attorney fees and costs incurred with respect to those assessments” incurred in connection with collecting on the unpaid lien. These charges all comprise the lien and are, therefore, subject to foreclosure.

- The assessment lien may only be foreclosed “if the owner has been delinquent in the payment of monies secured by the lien, excluding reasonable collection fees, reasonable attorney fees and charges for late payment of and costs incurred with respect to those assessments, for a period of one year or in the amount of one thousand two hundred dollars [$1,200] or more, whichever occurs first.”

- Subsection H of this statute mandates: “a judgment or decree in any action brought under this section shall include costs and reasonable attorney fees for the prevailing party.” A frequent argument raised by defendants is that attorney fees are not recoverable unless and until a principal amount owing is reduced to judgment. From a practical standpoint, this argument does not make sense because subsection A provides that reasonable attorney fees and costs are a part and portion of the lien, which may be foreclosed. The statute does not say that the lien amount must be first adjudicated and attorney fees may only be awarded upon receipt of a final judgment. Following that argument, an association would have no incentive or reason to conclude its foreclosure action short of securing a final judgment and would, therefore, be forced to incur additional attorney fees for which the homeowner would eventually be liable to pay, so long as such fees are reasonable. The apparent conflict between the language of these provisions seems to resolve in favor of a common sense understanding that fees are included in the lien without securing a
judgment, but the fees are limited by a reasonableness standard. Arizona case law identifies the factors for determining the reasonableness of attorney fees. *See Schweiger v. China Doll Restaurant, Inc.*, 673 P.2d 927, 138 Ariz. 183 (Ariz. App. 1983). In *China Doll*, specific guidelines are enumerated for courts considering attorney fee applications in cases where the parties have agreed, by contract, that the prevailing party is entitled to recover "reasonable" attorneys’ fees.

**The Contractual Lien**

In addition to the statutory lien, an association has a “consensual” or contractual lien pursuant to its CC&Rs. The CC&Rs are a contract under Arizona law, regardless of whether an owner reads or signs them. The contractual lien includes those fees and charges specifically listed in the CC&Rs. For example, fees and charges could include assessments, late fees, collections costs, attorney’s fees and costs of enforcement. Normally, one may determine what fees are included in the CC&Rs contractual lien by looking at the Assessments Section of the CC&Rs.

**Lien Priority**

In Arizona, an association’s lien is second in priority to the following liens:

1. Liens and encumbrances recorded prior to the recordation date of the CC&Rs;
2. Recorded first mortgages or contracts for sale;
3. Liens for real estate taxes and other governmental assessments directly related to the property; and
4. Property taxes.

Mechanics’ and materialmens’ liens and liens of other associations are exceptions from this priority scheme.34

**Collection of Association Assessments - Enforcement of Association Liens**

When an owner in a community association fails to pay their association assessments, the association has several means to effectuate collection of the delinquent assessment. Some collections options are based on the fact, as discussed above, that the association has a lien regarding the assessments.

There are several options concerning assessment collection.

34 See A.R.S. §33-1256(C) and A.R.S. §33-1807(C)
Initial Collection Demand Letter

The association, or the association’s managing agent, may send owners an initial collection demand letter when owners are delinquent in paying their assessments. Most associations send an initial collection demand letter when owners are more than thirty (30) days delinquent in paying their assessments. Please note that a collection demand letter is subject to the provisions of the Federal Fair Debt Collections Practices Act (“FDCPA”), and associations (or its counsel) should familiarize itself with the requirements of the FDCPA.

In addition to sending an initial collection demand letter, an association may also impose a late fee for late payment of assessments. Pursuant to A.R.S. §33-1803 (Planned Communities) “[a] payment by a member is deemed late if it is unpaid fifteen or more days after its due date, unless the community documents provide for a longer period. Charges for the late payment of assessments are limited to the greater of fifteen dollars or ten per cent of the amount of the unpaid assessment.” Regarding late fees for condominiums, A.R.S. §33-1242 provides an association with the ability to impose late fees but does not limit the amount of late fees. As such, condominiums must look toward their CC&Rs to determine the amount of the late fee.

Subsequent Collection Demand Letters

The association may send subsequent collection demand letters if it so desires. The association, however, must determine whether subsequent demand letters are effective versus other collections tools.

The Filing of a Notice of Claim of Lien

Although Arizona law does not require an association to record a lien or “Notice of Claim of Lien,” filing a “Notice of Claim of Lien” is nonetheless a widespread practice and an effective collections tool.

An association’s lien arises automatically and is deemed “recorded” as of the recording date of the CC&Rs. However, recording a “Notice of Claim of Lien” when a delinquency arises does not adversely affect the automatic lien and does provide some additional benefits. For instance, recording a “Notice of Claim of Lien” provides notice to title companies insuring transfers of title. Additionally, a recorded ensures that any payoff requests will be supplied to the proper address.

Some older CC&Rs require 30 days notice before acting to enforce a lien or may require the association to first send a “notice of intent to lien letter”. CC&Rs should be carefully examined for these procedural requirements before commencing with any lien enforcement action.
Personal Money Judgments Lawsuits

If the collection letter does not resolve the dispute, the association may seek to collect the debt through court action.

Under general CC&R provisions, an owner is personally liable for unpaid assessments and the association may file a lawsuit against the owner to collect the delinquency. For collection of relatively small delinquencies (i.e., less than $10,000.00), many associations choose to file personal judgment lawsuits in Justice Court. Justice Court can provide a less expensive and more efficient means of obtaining a personal money judgment against an owner, as opposed to the more costly route of filing in Superior Court.

Once the personal judgment lawsuit is filed and served, the defendant has twenty (20) days (or 30 days if served out of state) to file an answer. If the defendant fails to file an answer, the association may file an Application for Entry of Default. The defendant then has ten (10) business days from the date the Application for Default was filed to respond with an answer or responsive pleading. If no answer is filed within this timeframe, “default” is automatically entered in the case and the association may then request a default judgment in the association’s favor.

In the event of default, judgment can generally be obtained in as little as two to three months. If the defendant appears and contests the personal judgment lawsuit, the association can often prevail on a Motion for Summary Judgment. In rare circumstances, a trial may be necessary.

Personal judgment actions are generally less expensive than a foreclosure suit because of the differing level of complexity. With that said, an association is entitled to recover its reasonable attorney fees and costs in the case and therefore, an association should not rule out a foreclosure action based solely on increased legal expenses.

Once a judgment is obtained and recorded, it becomes a lien on any real property (not just the property located within the association) owned by the defendant in any county in Arizona where the judgment is recorded. This “judgment lien” may be subject to the statutory homestead exemption and is generally dischargeable in bankruptcy. An association may, however, utilize the money judgment to pursue wage garnishments and bank garnishments to collect on the judgment. Additionally, if the association finds its collection efforts on the money judgment unfruitful, it is not precluded from proceeding with foreclosure.

Foreclosure Lawsuits

As discussed above, unpaid assessments are secured by a lien against the owner’s property, which may be foreclosed upon in the same fashion as a mortgage on real estate35. In

35 See A.R.S. § 33-1256 and A.R.S. § 33-1807. Also see Cypress on Sunland Homeowners Ass’n v. Orlandi, 227 Ariz. 228 (Ariz.App.Div 1. 2011), which states “a lien may be foreclosed in the same manner as a mortgage on real estate but may be foreclosed only if the owner has been delinquent in the payment of monies secured by the lien”.
Arizona, associations do not have the “power of sale” to conduct foreclosures in the same way that mortgages are foreclosed (i.e., through a “trustee’s sale”). An association must proceed with “judicial foreclosure”. In other words, the association must file a lawsuit in Superior Court seeking a judgment on foreclosure.

Because the lawsuit affects title to the property, a “Notice of Lis Pendens” must be filed and recorded. This notice informs any potential buyer or transferee that he/she will take the property subject to the pending foreclosure lawsuit and any final judgment entered in that case, unless the litigation is satisfied and a “Release of Lis Pendens” is recorded. This also notifies title companies that may be handling a sale or refinance of the property that the lien must be cleared before transferring title.

Unlike a personal money judgment lawsuit, a foreclosure lawsuit may typically name several defendants, including the record title owners and any junior lien holders (i.e., a second mortgage, judgment liens, liens for unpaid income taxes, etc.). If the association has reason to believe that the record owners are deceased, the unknown heirs and devisees should also be named.

The association’s lawsuit would seek a judgment foreclosing all interests in the property that are junior to the association’s lien interest in the property. (See “lien priority” above.) It is not unusual for a junior lien holder with a sizable interest in the property (such as a second mortgage) to contact the association and pay the full balance of the delinquency, including attorney fees and costs, to protect its interest from the threat of foreclosure.

Similar to the money judgment lawsuit, a default judgment may be secured if the defendants fail to appear and contest the lawsuit. If a defendant appears and answers, the matter is generally resolved promptly on a Motion for Summary Judgment in the association’s favor. Very few cases require a trial and, therefore, associations generally secure judgments on foreclosure if the case is not resolved by payment in full or settlement. The judgment will generally include an award of the principal amount of unpaid assessments, together with the attorney fees and costs incurred and interest.

Once a judgment is obtained, the county Sheriff’s office may be instructed to sell the property to satisfy the judgment in order to recover the delinquency. A “writ of special execution” is issued by the Court instructing the Sheriff to conduct the sale. After posting and publishing notice of the sale, the property is auctioned off to the highest bidder at the Sheriff’s offices, or any other place designated in the notice. If no one bids on the property, the association will take title to the property for the amount of its bid. The association may then dispose of the property as it sees fit.

If a purchaser outbids the association at the auction, the purchaser must deliver cash or a cashier’s check to the Sheriff’s office within five (5) days from the sale. Upon receipt of the sale price, the Sheriff will issue payment to the association in the amount of its judgment, interest and costs incurred in connection with the sale. The association is also responsible for payment of a commission to the Sheriff for successfully selling the property and satisfying the delinquency.
After the sale, the owner’s interest is foreclosed, but he/she still has time to redeem the property. The owner has a statutory redemption period (generally six (6) months unless the property is abandoned, then thirty (30) days) in which the owner can redeem the property and regain full title to the property by paying the total amount of the sale price, plus interest and an 8% penalty. Following the owner’s redemption period, junior lien holders in their order of priority may also redeem the property and secure title by payment of the full redemption amount. The redemption payoff is generally provided by and handled through the Sheriff’s office that conducted the sale. If the property is redeemed within the redemption period, the owner takes back all rights and interest in the property as if the foreclosure and sale never occurred; however, the association is paid in full.

If the owner or any junior lien holder fails to redeem the property within the redemption period, the purchaser (including the association if it was the successful bidder at the sale) may then request and the Sheriff must issue a “Sheriff’s Deed” to the purchaser, subject to any liens that were not foreclosed through the foreclosure process or liens that may have attached during the redemption period. With a recorded Sheriff’s Deed in hand, the purchaser is generally considered to hold good and marketable legal title as owner of the property.

**Unforeseen Collections Issues**

**First Mortgage Holder Foreclosure**

As a result of the economic downturn, many community associations are experiencing an increased number of homes being foreclosed upon by banks and other holders of first mortgages. This phenomenon, unfortunately, is beginning to affect not only a community association’s ability to collect delinquent assessments, but the community association’s ability to provide vital services to its clients.

The first question that comes to mind concerning first mortgage holder foreclosures is “when does a community association know a house is being foreclosed by a first mortgage holder?” Pursuant to law, first mortgage holders, prior to conducting a trustee sale (which is where the property will be foreclosed and sold to remedy the delinquent mortgage), must send the community association a “Notice of Trustee Sale.” The Notice of Trustee Sale must also be recorded in the county where the property is located. The Notice of Trustee Sale must be sent to anyone who has a recorded interest or lien (such as a community association) in the property.

Once the association has received the Notice of Trustee Sale, the community association should determine whether the owner is delinquent in their assessments. If the owner is delinquent in their assessments, the community association may make a claim to the Trustee for any excess proceeds if the property is sold at a Trustee’s sale. Excess proceeds are monies obtained by selling a property at a Trustee Sale that are over and above the amount owed to the first mortgage holder. Since, in most cases, a community association’s lien for delinquent assessments is second in priority to that of the first mortgage holder, any excess proceeds should go to the community association to satisfy any delinquent assessments and other statutorily collectible amounts owed.
In order to secure excess proceeds, the community association, pursuant to A.R.S. §33-812 must make a written claim to the Trustee (whom is the person who will be holding the money once the Trustee Sale takes place) requesting that the Trustee release any excess proceeds gained to satisfy the owner’s delinquency with the community association. The letter should include:

1. The amount of the delinquency and proof of the delinquency (a customer ledger will usually suffice as proof of the delinquency);

2. A statement as to the community association’s lien priority;

3. A statement showing the association is entitled to excess proceeds and (reference to the CC&Rs or appropriate statute regarding the assessment lien of the association should suffice).

If the Trustee, after receipt of the above notice letter, fails to deliver any excess proceeds to the community association, the community association’s right to collect attorney’s fees should it have to institute legal action to collect the excess proceeds will be saved. It is because of this that the above notice letter is so important and should be sent upon receiving a Notice of Trustee sale.

In the event that there are no excess proceeds after the Trustee Sale and the property has reverted to a third party, then the association’s lien will be extinguished. Consequently, the association would not be entitled to collect any assessments or attorney fees incurred prior to the date of the Trustee Sale from the new owner. Nonetheless, the association may still pursue a money judgment in the hope that the homeowner will obtain future assets that the association could garnish in order to recover what it is owed.

**Bankruptcy**

Another unexpected collections issue occurs when an owner declares bankruptcy and ceases paying their assessments. Upon the receipt of a Notice of Petition for Bankruptcy (typically a Chapter 7 filing or a Chapter 13 filing), an association should prepare a statement of the declaring owner’s account. Once the statement has been prepared, it should be sent to the Association’s attorney.

At this point, the association’s attorney will intervene on behalf of the association by filing a Notice of Appearance with the Bankruptcy Court informing the Court that the attorney is representing the association. The attorney may also file a Proof of Claim with the Bankruptcy court that substantiates the debt owed by the owner to the association.

If the owner files a Chapter 7 bankruptcy and decides to keep their home, the association may petition to lift the bankruptcy stay of collections enforcement and foreclose on the property should the owner not pay the delinquent assessments.
If the owner files a Chapter 13 bankruptcy, the association may petition the court to include the association’s delinquency in the payment plan created by the bankruptcy court.

Bankruptcy is a complicated matter. Because of this, it is important that the Association rely on the advice of its attorney to aid in navigating the process.

C. Protect and Maintain the Common Property

Arizona Statutory Law\(^{36}\) and Arizona Case Law\(^{37}\) assert that community associations have a duty to protect and properly maintain the common property to which the association, either through ownership or through exclusive control, has the power to solely maintain or otherwise control. The duty to maintain the safety of common property applies not only to physical conditions on the land but also to dangerous activities on the land.\(^{38}\)

VII. 2014 CHANGES IN THE LAWS AFFECTING HOMEOWNER ASSOCIATIONS


What Community Associations May Do Regarding Rental Activity

Owners may rent their homes unless the CC&Rs expressly prohibit rental activity.

If an association’s CC&Rs has a rental restriction that contains a rental term limit, the owner must abide by the rental term limit.

An owner may designate, in writing, a third party to act as the owner’s agent with respect to association matters. The written designation must be signed by the owner and provided to the community association.

The designated representative, however, may not vote on behalf of the owner and may not serve on the Board of Directors.

On delivery of the written designation, the association is authorized to conduct all association business relating to the owner’s rental (except issues concerning community association voting) and any notice given by the community association to an owner’s designated agent constitutes notice to the unit owner.

\(^{36}\) A.R.S. §33-1247(A) (Condominiums) and A.R.S. §33-1802(1)(Planned Communities).


Notwithstanding any provision in the CC&Rs, the association shall not require an owner or the owner’s agent to disclose any information regarding a tenant other than; (1) the name and contact information for any adults occupying the unit; (2) the time period of the lease, including the beginning and ending dates of the tenancy, and (3) a description and the license plate numbers of the tenants’ vehicles. (Age Restricted Communities may ask for ID proving age).

Associations may charge a rental administration fee of no more than $25.00. No other fees are allowed.

So long as a community association CC&Rs contains the relevant language, community association may now ban sex offenders from renting within a community association.

CHANGES TO RENTAL RESTRICTIONS - SB 1482  REVISED A.R.S. § 33-1806, A.R.S. § 33-1260.

What Community Associations May Not Do Regarding Rental Activity

Notwithstanding any provision in the CC&Rs, the association is prohibited from doing any of the following:

1. Requiring a unit owner to provide the association with a copy of the tenant’s rental application, credit report, lease agreement or rental contact or other personal information except as prescribed by the Statute.

2. Requiring the tenant to sign a waiver or other document limiting the Tenant’s due process rights as a condition of the tenant’s occupancy of the rental unit.

3. Prohibiting or otherwise restricting an owner from serving on the board of directors based on the owner not being an occupant.

4. Imposing any fee, assessment, penalty or the charge in an amount greater than fifteen dollars ($15.00) for incomplete or late information regarding the information requested by the association.

Any attempt by an association to charge a fee, assessment, penalty or other charge that is not authorized by this section voids the fee authorized under this section and voids the requirement to provide the information to the association.

Owners may use a Crime Free Lease Addendum; however, community associations may not require the owner to do so.
Changes to Association Voting and Ballots - SB 1482 Revised A.R.S. § 33-1812 and A.R.S. § 33-1250(C).

This technical change allows associations to allow voting ballots to be returned via e-mail or fax. The technical change also removes the term “absentee” from the ballot.

Political Sign Placement - SB 1482 Revised A.R.S. §33-1261(E) – Condominiums Only.

An association shall not prohibit display of a political sign by an owner on the owner’s property. Unit owners may also place signs on doors, windows, patios, balconies and other limited common elements that directly touch the unit (the roof is excluded).

Associations may prohibit the display of political signs earlier than seventy-one days before the day of an election and later than three days after an election day.

An association may regulate the size of and number of political signs so long as the restriction is not more restrictive than any applicable city, town or county ordinance.

If the city, town, or county does not political signs, the maximum aggregate total dimensions of all political signs on a unit owner’s property shall not exceed nine square feet.

A “Political Sign” is a sign that supports or opposes the recall of a public officer or supports or opposes the circulation of a petition for a ballot measure, question or proposition or the recall of a public officer.

An association shall not require political signs to be commercially produced or professionally manufactured or prohibit the utilization of both sides of a political sign.


These new laws prohibit county and municipal entities and planning agencies from requiring developers of residential development to create planned communities for their residential developments. The law does not prohibit developers from requesting approval for creating planned community associations regarding their residential development projects. The laws only apply to communities platted after the effective date of the new laws.
NOTICE OF LIEN, CLAIM OF LIEN - SB 1482  REVISED A.R.S. § 22-512.

Employees, Officers and Managers of a community association may record Notices of Lien – Notices of Claim of Lien under this new statute if all of the following may apply:

(a) The Employee, Officer or Manager is specifically authorized in writing by the community association to record notices of lien or notices of claim of lien on behalf of the association and the Employee, Officer or Manager is a certified legal document preparer;

(b) The association is the original party to the lien and the lien right is not the result of an assignment of rights.

(c) The lien right exists by operation of law pursuant to section 33-1256 or 33-1807 and is not the result of obtaining a final judgment in an action to which the association is a party.

SMALL CLAIM COURT ACTION - SB 1482  REVISED A.R.S. § 22-512 – PLANNED COMMUNITIES AND CONDOMINIUMS.

Employees, Officers and Managers of associations appear on behalf of the association in a small claims action if all of the following apply:

(a) The employee of the association or the officer or employee of the management company is specifically authorized in writing by the association to appear on behalf of the association;

(b) The association is an original party to the small claims action.

CHANGES IN THE LAW CONCERNING ADMINISTRATIVE LAW JUDGE HEARINGS - SB 1482  REVISED A.R.S. § 44-2198.01.

Arizona Law allows an owner or association to bring disputes concerning the association’s governing documents or Arizona laws that apply to the association, before an Administrative Law Judge of the Department of Fire, Building and Life Safety. The new statute states that on dismissal of a petition at the request of the petitioner before a hearing is scheduled or by stipulation on the parties before a hearing is scheduled, the filing fee shall be refunded to the petitioner.
CRIMINAL ACTIVITY NUISANCE – SB 1482  REVISED A.R.S. §12-991.

This new law allows community associations to file suit against the owners of property where their property is used in the continuous commission of a crime and is therefore considered a nuisance.

SEMI-PUBLIC SWIMMING POOL BARRIER GATES - SB 1305 AMENDING SECTION 1, TITLE 9, CHAPTER 7, ARTICLE 1, A.R.S. BY ADDING §9-808 AND AMENDING A.R.S. §11-861.

Any new construction or major renovation of a semi-public swimming pool occurring on or after December 31, 2014 must meet the requirements of the applicable city or town code or ordinance regarding locking devices for pool barrier gates. This new section does not apply to a locking device for a pool barrier gate installed on a semi-public pool before January 1, 2015.


In civil cases, at the request of a party or on the court’s own motion, the presiding judge of the Superior Court or a designated judge may declare a pro se litigant to be vexatious.

A pro se who is designated as vexatious may not file new pleading, motion, other document without leave of the court.

A vexatious pro se engages in vexatious conduct, which includes the following:

1. Repeated filings solely or primarily for the purpose of harassment.
2. Unreasonably expanding or delaying court proceedings.
3. Bringing or defending court actions without substantial justification.
4. Engaging in abuse of discovery or conduct in discovery that results in sanctions against the pro se.
5. A pattern of making unreasonable, repetitive, and excessive requests for information.
6. Repeated filing of documents or requests for relief that have been the subject or previous rulings by the same court in the same litigation.

The following are exempt from A.R.S. §33-1260 and A.R.S. §33-1806:

1. A sale in which a public report is issued pursuant to Sections 32-2183 and 32-2197.02.
2. A sale pursuant to 32-2181.02.
3. Conveyance by recorded deed that bears an exemption listed in Section 11-1134, Subsection B, Paragraphs 3 or 7. On recordation of the deed, and for no additional charge, the Unit Owner shall provide the following information to the Association:
   a) Unit Owner’s name.
   b) Unit Owner’s billing address.
   c) Unit Owner’s phone number.

Failure of the Unit Owner to provide the above information does not eliminate the exemption under A.R.S. §33-1260 and A.R.S. §33-1806.


In an age-restricted community that is located in an unincorporated area of a county with a population of more than three million people, a person may drive a golf cart or neighborhood electric vehicle on a paved shoulder that is adjacent to a roadway or as close as practicable to the right hand curb or edge of a paved roadway if there is no delineated paved shoulder.

With the exception of motorcycles (A.R.S. §29-903), the driver may overtake and pass a golf cart or neighborhood electric vehicle even if the driver’s vehicle shares a lane with the golf cart or neighborhood electric vehicle when the overtaking and passing occur.

A person driving a golf cart or neighborhood electric vehicle shall yield the right-of-way to a vehicle that is traveling in the same direction and that is intending to turn right.

On commencement of changes to a common area, the County Assessor shall automatically consolidate the parcel combinations within the same taxing district.

If after review the parcel does not meet the requirement of a common area, the County Assessor may revoke the Section 42-13402 valuation and value the parcel using standard valuation techniques. An HOA retains the right to request a common area valuation.

DEFINITION OF A PLANNED COMMUNITY - SB 1148 AMENDING A.R.S. §33-1802.

The term “planned community” has been modified to now include a real estate development on which an easement to maintain roadways or a covenant to maintain roadways is held by a non-profit corporation or an unincorporated association of owners.

This document is intended to provide general information. It does not and cannot provide specific legal advice. For additional information or answers to questions, you may contact Augustus H. Shaw IV, Esq. of Shaw & Lines, LLC at 480-456-1500 or send questions to ashaw@shawlines.com.
LEGAL SERVICES

GENERAL CORPORATE COUNSEL
Advising developers and community associations on forming corporations, funding reserves, compliance issues, and other general counsel matters.

COLLECTING ASSESSMENTS
Applying efficient, fair and effective collection strategies proven to recoup unpaid assessments, including collection demand letters, litigation, overseeing payment agreements, recording liens, wage and bank garnishments and foreclosures.

ENFORCING RESTRICTIONS
Employing tactical approaches to remedy violations and enforce restrictions, including mediation efforts and enforcement litigation.

DRAFTING, INTERPRETING AND AMENDING DOCUMENTS
Our attorneys are experienced in drafting and amending association documents that are easy to read, understand and apply. We also assist you in analyzing and interpreting provisions of association documents to help you better understand their meaning and application.

LITIGATION AND BANKRUPTCY
Providing competent and assertive representation for community associations in court on matters typically involving assessment collection, enforcing restrictions, foreclosure, defending community associations in lawsuits and protecting rights in bankruptcy.

CONTRACT NEGOTIATION AND REVIEW
We help review, interpret and negotiate contracts between vendors.

PROPERTY TAXATION
Assisting planned community associations in reducing tax liability for common area property tax liens.

CONSTRUCTION AND LAND DEVELOPMENT
Advising developers of community associations concerning applicable city ordinances, planning restrictions and similar land use issues.

GENERAL REAL ESTATE LAW
A multifaceted real estate practice offering clients a wide range of services for issues pertaining to zoning regulations, ordinance violations, land use and other general real estate and legal matters.

INSURANCE DEFENSE
Representing Insurance Companies in defending claims against their insured.

EDUCATING COMMUNITIES
Offering the Lunch & Learn Lecture Series and the Community Association Desk Reference Set for community association professionals to “be in the know” concerning changes in the law and effectively managing community associations.
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