2016 CHANGES IN THE LAWS AFFECTING COMMUNITY ASSOCIATIONS
(LAWS TAKE EFFECT AUGUST 6, 2016)

AND

SUMMARY OF ARIZONA HOMEOWNER ASSOCIATION LAW

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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.
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I. INTRODUCTION TO THE 2016 CHANGES IN THE LAW.

This Community Association’s Guide to the 2016 Changes in the Laws Affecting Community Associations (“Guide”) is meant to provide a summary of the recent revisions to the Arizona Planned Community Act and Condominium Act. This Guide also contains tips to understand and abide by the new changes in the laws.

This Guide is available to download from our website at: http://www.shawlines.com.

II. REMOVAL OF DIRECTORS – SB 1496 – REVISED A.R.S. § 33-1243 CONDOMINIUMS – REVISED A.R.S. § 33-1813 PLANNED COMMUNITIES.

SB 1496 clears up confusion regarding certain provisions of A.R.S. § 33-1243 (Condominiums) and A.R.S. § 33-1813 (Planned Communities) regarding Board Member removal. Specifically, the A.R.S. § 33-1243 (Condominiums) and A.R.S. § 33-1813 (Planned Communities) now trump any language in the Association’s governing documents regarding Board Member removal.

Also, SB 1496 addresses what should occur if a Board Member is removed from the Board pursuant to the Statutes. If one or less than a majority of the Board is removed, the Member’s vacant seat shall be filled as provided in the Association’s documents. This means that prior to the removal meeting being effectuated, the Association must review the Association’s documents to determine how the Board seat(s) will be filled if the recall is successful and inform the owners of how the seat(s) will be filled.

If the community documents do not discuss how to replace a removed director, the procedures discussed below will apply.

If a majority of the Board Members or all of the Board of Directors (the “Board”) are removed, then the Association must elect their replacements at a duly called special meeting of the members. The special meeting of the members must be held no later than 30 days from the date of the recall meeting.

The Board shall retain all documents and other records relating to the removal and replacement of the member(s) of the Board for at least one year and shall permit members to inspect those documents and records.

Finally, a member of the Board who is removed is not eligible to serve on the Board again until after the original term has expired unless the governing documents require a longer period of time.
III. ENFORCEMENT PROVISIONS:

A. ENFORCEMENT GRACE PERIOD – HB 2106 – REVISED A.R.S. § 33-1242(B) AND REVISED A.R.S. § 33-1803(C) – INVOLVING ENFORCEMENT DEMAND PROCEDURES.

HB2106 affects the number of days an owner has to respond to an Association’s enforcement demand letter. HB2106 increased the owner’s response period from ten (10) business days to 21 calendar days.

HB2106 revises A.R.S. § 33-1242(B) and A.R.S. § 33-1803(C) by requiring that before the Association may take enforcement action other than sending an enforcement letter or “courtesy notice” (i.e. impose a fine or file an injunction lawsuit), the Association must inform any owner that he/she may provide the Association with a written response concerning the violation by sending a certified letter to the address referenced in the violation letter within 21-calendar days after the date of the initial violation letter.

B. NOTICE TO MEMBER OF VIOLATION – SB 1498 – REVISED § 33-1242(D) AND § 33-1803(E).

SB1498 revises A.R.S. § 33-1242(D) and A.R.S. § 33-1803(E) by requiring that an Association provide written notice to an owner of the owner’s option to petition for an administrative hearing on an enforcement action.

The language of SB1498 states that the owner has the option to petition the Department of Fire, Building and Life Safety for a hearing on an enforcement matters. SB1530, however, specifies that Arizona’s Real Estate Department will have jurisdiction to hear disputes under the Condominium Act and the Planned Communities Act.

Thus, in an enforcement action, an Association is required to notify an owner of the option to petition Arizona’s Real Estate Department for a hearing on the matter.

ASSOCIATION “BEST PRACTICES”
*HB2106 (A.R.S. § 33-1242(B) and A.R.S. § 33-1803(C)) & SB1498 (A.R.S. § 33-1242(D) and A.R.S. § 33-1803(E))

Shaw & Lines suggests that Associations, in their initial violation or “courtesy letter,” list the following information:
1. The provision, restriction, rule or regulation that has allegedly been violated;
2. The process in which the owner may dispute the alleged violation;
3. The date of the violation or the date first observed;
4. The first and last name of the person or people who observed the violation; and
5. The following statement:

   This letter serves as notice that you have the option to petition the Department of Fire, Building and Life Safety and/or the State Real Estate Department for an administrative hearing concerning the enforcement of alleged violation(s) pursuant to A.R.S § 32-2199.01. and/or A.R.S § 41-2198.01.

1 The State of Arizona is in the process of phasing out hearings before the Department of Fire, Building and Life Safety in favor of hearings before the State Real Estate Department. Therefore, this “Best Practice” may be revised.

SB 1350, the “Airbnb bill,” prevents cities, towns and counties from prohibiting vacation rentals or short-term rentals, such as those facilitated by Airbnb, based only on their classification, use or occupancy.

This affects Associations by reinforcing the provisions of A.R.S. § 33-1260.01 and A.R.S. § 33-1806.01, which state that restrictions regarding rental or leasing activity and the term of the lease (how long the property may be rented) must be expressly contained within the CC&Rs of the Association. Rental or leasing terms may not be created through Association Rules and Regulations unless the Association’s CC&Rs allow the Association to create Rules and Regulations regarding rental and leasing terms.

SB 1350 does not prohibit Associations who have valid rental and/or leasing CC&R provisions from restricting short term rentals or leases.

ASSOCIATION “BEST PRACTICES”

Associations should review their CC&Rs to determine what, if any, ability the Association has to restrict rental and leasing activity.

V. ARCHITECTURAL APPROVAL – PLANNED COMMUNITIES ONLY – HB 2172 – REVISED A.R.S. § 33-1817

HB2172 adds new section A.R.S. § 33-1817(3) and prohibits a planned community Association’s architectural review committee from “unreasonably” withholding the “approval of a construction project’s architectural designs, plans and amendments.”

ASSOCIATION “BEST PRACTICES”

One “best practice” to consider is to create policy and procedure for the receiving, the reviewing and the ruling on architectural plans and submittals. Creating such a policy and a procedure and adhering to it may be asserted as evidence that the Association is acting “reasonably” regarding its review pursuant to HB2172 (new section A.R.S. § 33-1817(3)).

HB2172 codifies 2007 case law which imposed upon the Association a “duty to ‘act reasonably in the exercise of its … design-control powers[.]’”

2 A.R.S. § 33-1817
VI. DECLARATION AMENDMENT – PLANNED COMMUNITIES ONLY – HB 2382 – REVISED A.R.S. § 33-1817

HB2382 amends § 33-1817 to allow for non-uniform amendments to CC&Rs. After the period of Declarant control, an Association may implement a non-uniform amendment to the CC&Rs if:

1. The amendment receives the affirmative vote or written consent of the number of owners or eligible votes specified in the Declaration; and
2. The amendment receives the affirmative vote or written consent of all of the owners of property to which the amendment applies.

Once the above requirements are met, the amendment must be recorded with the applicable county recorder within thirty (30) days. The amendment becomes effective and enforceable once the amendment is recorded.

HB2382 also adds new section § 33-1817(4) that seeks to address the “renewal period” problem, often referred to in legal terms as the Scholten problem.

Some Association CC&Rs state that the CC&Rs may only be amended at the completion of the CC&R term renewal period. New section § 33-1817(4) addresses this issue by stating that regardless of the CC&R renewal period, a valid amendment to the CC&Rs becomes effective and enforceable once the amendment is recorded in the applicable county recorder’s office.

ASSOCIATION “BEST PRACTICES”

It is always wise to consult with a qualified attorney before attempting to amend the CC&Rs to ensure that the amendment will be proper under applicable Arizona law.
VII. ELECTRONIC VOTING – HB 2592 – REVISED A.R.S. § 10-3708

HB2592 was added to the Arizona Nonprofit Corporation Act. HB2592 specifies that a nonprofit corporation may conduct a vote by electronic means, so long as:

1. The nonprofit corporation provides notice to members that the vote will be conducted by electronic means;
2. The notice includes a “reasonable” procedure for members to obtain and cast a ballot through some other form of delivery, including U.S. Mail and fax transmission; and
3. The online voting system meets all of the following requirements:
   a. Authenticates the member’s identity; and
   b. Authenticates the validity of each electronic vote to ensure that the vote is not altered in transit; and
   c. Transmits a receipt to each member who casts an electronic vote; and
   d. Stores electronic votes for recount, inspection and review purposes.

This addition to the Nonprofit Corporation Act does not alter an Association’s requirements under A.R.S. § 33-1250(C) and § 33-1812(A) to “provide for votes to be cast in person and by absentee ballot.” Also, the Association may not offer electronic voting in lieu of in-person and absentee ballots.

ASSOCIATION “BEST PRACTICES”

One “best practice” to consider when conducting a vote by electronic means is to mail a postcard to each member that does the following:

1. Provides notification of the upcoming electronic vote following the provisions of HB2592;
2. Explains the process for obtaining a paper ballot.

The Association may consider using the following statement on the postcard if the Association desires to engage in on-line voting:

This election will be conducted on-line. Please go to www.XXXX.com for more information on how to vote. If you desire a paper mail ballot, one will be sent to you free of charge. Please contact [enter name here] at [phone number] or send an email request to [enter e-mail address here] by no later than [time] on [date] and a paper ballot will be sent to you.

4 ARS § 10-3708.
5 SB1498 requires that election materials, including electronic ballots and non-ballot-related material, are retained and made available to owners for at least one year.
VIII. ELECTION BALLOTS; ELECTION RECORDS RETENTION – SB 1498
– REVISED A.R.S. § 33-1250(C) and REVISED A.R.S. § 33-1812(A).

SB1498 adds two additional requirements to the five existing ballot requirements set forth in § 33-1250(C) and § 33-1812(A). The change affects absentee ballots and ballots provided by “some other form of delivery,” including U.S. Mail, fax transmission or electronic voting.

The first additional requirement provides that the **completed ballot** and the **completed envelope** and **any non-ballot-related materials** must contain:
1. The member’s name;
2. The member’s address; and
3. Either the actual signature or the electronic signature of the person voting.

If the Association uses secret ballots, the envelope or non-ballot-related materials **must** contain:
1. The member’s name; and
2. The member’s address; and
3. Either the actual signature or the electronic signature of the person voting.

SB1498 also adds requirements to § 33-1250(C) and § 33-1812(A) by requiring Associations to retain ballots, envelopes and any related materials in either paper or electronic format for at least one year.

ASSOCIATION “BEST PRACTICES”

It may be wise for Associations to revise their policies and procedures regarding elections and have said procedures reviewed by the Association’s attorney.

IX. LATE CHARGES REGARDING ASSESSMENT PAYMENTS – SB 1498
– REVISED A.R.S. § 33-1803(A) and REVISED A.R.S. § 33-1242(A)(11).

SB1498 amends ARS § 33-1803(A) and ARS § 33-1242(A)(11) and requires Associations, before imposing late fees for the late payment of assessments, to either:

1. Provide notice that an assessment is overdue; or
2. Have provided notice that an assessment is considered overdue after a certain date.

ASSOCIATION “BEST PRACTICES”

If an Association provides coupon books for assessments, the Association can add the following language that would comply with SB1498 (revised ARS § 33-1803(A) and revised ARS § 33-1242(A)(11)).

This language may also be added to “courtesy notices” sent to remind owners to pay their assessments: **Association assessments are due on the ___ of the month. Association assessments are delinquent on the ___ of each month. A late fee of ___ will be applied to all Association assessments still due and owing on the ___ of the month.**
X.  POTLUCKS – HB 2341 – REVISED A.R.S. § 36-136 (H)(4)(a)

HB2341 specifies that food served at a “noncommercial social event, such as a potluck” and other noncommercial community events are exempt from food safety regulations and health department inspections. This bill clarifies that the exemption to food safety regulations and health department inspections extends beyond workplace potluck events and applies to all noncommercial social events.

ASSOCIATION “BEST PRACTICES”

While potlucks are now exempt from food safety regulations and Health Department inspections, Associations do not escape the responsibility to keep owners safe. Therefore, Association-sponsored potlucks still have the potential for legal liability. If an Association desires to sponsor a potluck, the Association should ensure that it has proper insurance coverage for such an event.
XI. 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. 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 Condominiums⁶ and Planned Communities.⁷

b. Condominiums

A Condominium under ARS § 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 in the common elements are vested in the unit owners.”

In essence, a Condominium is an Association in which the individual Members/Owners own an undivided interest in the common area, which is the property to be equally enjoyed by the Members of the Association.

c. Planned Communities

A Planned Community under ARS § 33-1802 is defined as a “real estate development that includes real estate owned and operated by […] a nonprofit corporation or unincorporated association of owners, that is created for the purpose of managing, maintaining or improving the 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 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, the owner has a right to occupy a portion of the building. This portion is generally called an apartment. Anything outside the apartment becomes the common area maintained by the corporation.

e. Townhomes, Patio Homes, Cluster Housing

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

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⁶ Arizona Revised Statutes (“ARS”) §§ 33-1201, et seq.
⁷ ARS §§ 33-1801, et seq.
XI. DOCUMENTS THAT GOVERN HOMEOWNER ASSOCIATIONS

a. Types of Governing Documents

Governing documents of homeowner associations are divided into two basic categories: (1) documents that restrict the use of the property or the behavior of residents concerning the property; and (2) 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. Resolution of the Board of Directors.

b. Declaration of Covenants, Conditions and Restrictions

The Declaration of Covenants, Conditions and Restrictions (hereafter, 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.8 The Rules and Regulations are usually developed by the Association’s Board of Directors and have the same enforceability as the CC&Rs, even though the Rules and Regulations 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 that are not found in the CC&Rs. If Rules and Regulations conflict with the CC&Rs, 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

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8 See ARS § 33-1242 (for Condominiums) and Restatement (Third) of Property (Servitudes) § 6.7(3) (2000) (for Planned Communities). Under Wilson v. Playa de Serrano, 211 Ariz. 511, 123 P.3d 1148 (Ariz. Ct. App. 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 Association with the ability to develop rules that regulate activity in units or on lots.
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 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.

XIII. STATE STATUTES THAT GOVERN HOMEOWNER ASSOCIATIONS


The Arizona Planned Communities Act defines “Planned Community,” “Association,” “Community Documents” and “Declaration.” The Planned Community statutes also include provisions that address assessment increases, penalties, open meetings, disclosure of Association records, resale disclosure and assessment liens.


The Arizona Condominium Act is patterned after the Uniform Condominium Act and is more extensive in scope and detail than the Arizona Planned Communities Act. 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.


All Associations that are incorporated are subject to the Arizona Nonprofit Corporations Act. The Arizona Nonprofit Corporations Act contains extensive provisions governing the formation and operation of nonprofit corporations.

XIV. HOMEOWNER ASSOCIATION MEETINGS

There are four main types of ASSOCIATION meetings: (1) meetings of the Association’s Board of Directors; (2) meetings of committees of the Association; (3) annual meetings of the Association; and (4) special membership meetings of the Association.

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9 ARS § 10-120, et seq.
10 ARS § 33-1802.
All Association meetings must be held in 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 or 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 limits restrictions on those persons speaking during the meeting but must permit a Member or the 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 ASSOCIATIONs also serve to establish the State Legislature’s public policy belief that ASSOCIATION meetings should be as open as possible to Association member attendance. The Arizona Planned Communities Act and the Arizona Condominium Act both state:

It is the policy of this state as reflected in this section that all meetings of a [planned community or condominium], whether meetings of the [members’ association or 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 [members or unit owners] of the matters to be discussed or decided and to ensure that [members or 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.

To implement its public policy beliefs, the Arizona Legislature has enacted a number of laws geared toward open Association meetings. The State’s Planned Community Act and Condominium Act each state that agendas must be made available to all Members prior to an Association’s Board of Directors meeting.

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 Members.

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11 ARS § 33-1804(B) (Planned Communities) and § 33-1248(B) (Condominiums).
12 ARS § 33-1804(B) (Planned Communities) and § 33-1248(B) (Condominiums).
13 ARS § 33-1804(A) (Planned Communities) and § 33-1248(A) (Condominiums).
14 ARS § 33-1804(A) (Planned Communities) and § 33-1248(A) (Condominiums).
15 ARS § 33-1804(E) (Planned Communities) and § 33-1248(E) (Condominiums).
16 ARS § 33-1804(D) (Planned Communities) and § 33-1248(D) (Condominiums).
17 ARS § 33-1804(A) (Planned Communities) and § 33-1248(A) (Condominiums).
Since there are a number of State Statutes that cover the various types of Association meetings, it is important to discuss each type in more detail.

A. Board Meetings

There are three types of Board of Director meetings: (1) Regular Board Meetings; (2) Executive Session Board Meetings; and (3) Emergency Board Meetings. The most common type of Board of Director meeting is the Regular Board Meeting.

B. Regular Board Meetings

Regular Board Meetings are those meetings in which the community Association conducts general “day-to-day” business of the Association. Regular Board Meetings are usually held once a month or once per quarter. A Regular Board Meeting occurs whenever a quorum of the Board meets either formally or informally to discuss Association business.18

Unless otherwise stated in the Association’s bylaws, the Association must provide at least 48-hours’ notice to owners of meetings of the Board.19 Said notice shall be by “newsletter, conspicuous posting or any other reasonable means as determined by the Board of directors.”20 Also, Regular Board Meetings are open to all Members of the Association or any person designated by the Member in writing as the Member’s representative.21

Agendas must be made available to all Members prior to the start of an Association Board meeting.22 Members or their designated representatives also have the right to speak at an appropriate time during the deliberations and proceedings of Regular Board Meetings.23 Also, attendees of Regular Board Meetings have the right, subject to reasonable Association rules, to audiotape or videotape those portions of the meetings that are open to the Members.24

C. Executive Session Board Meetings

Executive session Board of Director meetings are meetings of the Board that are exempt from the open meeting requirements. These meetings are closed to the Members. Executive Session Board Meetings are 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:25

1. Legal advice from an attorney for the Board or for the Association;
2. Pending or contemplated litigation;

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18 ARS § 33-1804(D) (Planned Communities) and § 33-1248(D) (Condominiums).
19 ARS § 33-1804(C) (Planned Communities) and § 33-1248(C) (Condominiums).
20 ARS § 33-1804(C) (Planned Communities) and § 33-1248(C) (Condominiums).
21 ARS § 33-1804(A) (Planned Communities) and § 33-1248(A) (Condominiums).
22 ARS § 33-1804(D) (Planned Communities) and § 33-1248(D) (Condominiums).
23 ARS § 33-1804(A) (Planned Communities) and § 33-1248(A) (Condominiums).
24 ARS § 33-1804(A) (Planned Communities) and § 33-1248(A) (Condominiums).
25 ARS § 33-1804(A) (Planned Communities) and § 33-1248(A) (Condominiums).
3. Personal, health or financial information about an individual Member of the Association, and 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 a contractor of the Association who works under the direction of the Association; and

5. Discussion of a Member’s appeal of any violation cited or penalty imposed by the Association except on request of the affected Member that the meeting be held in open session.

D. Emergency Board Meetings

Emergency Board Meetings are held when an imminent 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 Board Meeting shall be read and approved at the next regularly scheduled meeting of the Board.

E. 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.

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.

F. Annual Meetings of the Members

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

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26 ARS § 33-1804(C) (Planned Communities) and § 33-1248(C) (Condominiums).
27 ARS § 33-1804(D) (Planned Communities) and § 33-1248(D) (Condominiums).
28 ARS § 33-1804(B) (Planned Communities) and § 33-1248(B) (Condominiums).
29 ARS § 33-1804(A) (Planned Communities) and § 33-1248(A) (Condominiums).
30 ARS § 33-1804(B) (Planned Communities) and § 33-1248(B) (Condominiums).
Purpose of an Annual Meeting

Annual Meetings are meetings of the Members. Annual Meetings 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. Authorization 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.

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.31 Arizona law requires that Associations send ballots to all Members of the Association.32

When drafting an absentee ballot, the Association must keep Arizona’s statutory requirements in mind. Specifically, ARS § 33-1812 (A) sets out the ballot requirements for Planned Communities and ARS § 11-1250 sets out the ballot requirements for Condominiums.

In relevant part, the statutes state:

Any action taken at an Annual, Regular or Special Meeting of the Members shall comply with all of the following if absentee ballots are used:

1. The absentee ballot shall set forth each proposed action.
2. The absentee ballot shall provide an opportunity to vote for or against each proposed action.
3. The absentee ballot is valid only for one specified election or meeting of the members and expires automatically after the completion of the election or meeting.
4. The absentee ballot specifies the time and date by which the ballot must be delivered to the Board of directors in order to be counted, which shall be at least seven days after the date that the Board delivers the unvoted absentee ballot to the member.

31 ARS § 33-1812(A) (Planned Communities) and § 33-1250(A) (Condominiums).
32 ARS § 33-1812(A) (Planned Communities) and § 33-1250(A) (Condominiums).
5. The absentee ballot does not authorize another person to cast votes on behalf of the member.

If an Association provides for absentee ballots or ballots provided by some other form of delivery, the completed ballot and envelope and any related materials must contain the name, address and signature of the person voting, unless the Association documents permit secret ballots, in which case only the envelope must contain that information. The ballots, envelopes and related materials must be retained and made available for unit owner or member inspection for at least one year after completion of the election.

If an Association chooses to permit electronic voting in addition to providing for votes to be cast in person and by absentee ballot, the Association must comply with the following:

1. The Association must provide notice to members that the vote will be conducted by electronic means;
2. The notice must include a “reasonable” procedure for members to obtain and cast a ballot through some other form of delivery, including U.S. Mail and fax transmission.
3. The online voting system must meet all of the following requirements:
   a. Authenticates the member’s identity; and
   b. Authenticates the validity of each electronic vote to ensure that the vote is not altered in transit; and
   c. Transmits a receipt to each member who casts an electronic vote; and
   d. Stores electronic votes for recount, inspection and review purposes.33

To Allow Members to Address their Association

It is very important to remember that the Annual Meeting is a meeting of the Members, which means that the Members should be provided with the 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 is to let all Members who wish to speak have the opportunity to speak but limit how long they may speak. The Firm usually suggests no more than 5 minutes per person, but this timeframe may be less depending on the number of Members who desire to speak. We further suggest that, where a meeting becomes very adversarial, the Association strictly comply with all time limits, even bringing a stopwatch or other timer if necessary.

G. SPECIAL MEETINGS OF THE MEMBERS

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

33 A.R.S § 33-1812(A) (planned communities) and § 33-1250(C) (condominiums) require that election materials, including electronic ballots and nonballot-related material, are retained and made available to owners for at least one year.
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 requires that special meetings of the members may be called by the 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.34

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 ARS §33-1812 (Planned Communities) and ARS § 33-1250 (Condominiums).

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. ARS § 33-1813 (Planned Communities) and ARS § 33-1243 (Condominiums) now trump any language in the Association’s governing documents regarding Board Member removal, and the statutes provide 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 ARS § 33-1813 and ARS § 33-1243. It is equally important that the association carefully study Arizona Revised Statutes §33-1243 and Arizona Revised Statutes §33-1813 in order to abide by its provisions.

34 See A.R.S. §33-1804(B) (Planned Communities) and A.R.S. §33-1248(B) (Condominiums).
If one or less than a majority of the Board is removed, the Member(s) vacant seat shall be filled as provided in the Association’s documents. This means that prior to the removal meeting being effectuated, the Association must review the Association’s documents to determine how the Board seat(s) will be filled if the recall is successful and inform the owners of how the seat(s) will be filled.

If the community documents do not discuss how to replace a removed director, the procedures discussed below will apply.

If a majority of the Board Members or all of the Board of Directors are removed, then the Association must elect their replacements and a duly called special meeting of the members. The special meeting of the members must be held no later than 30 days from the date of the recall meeting.

The Board of Directors shall retain all documents and other records relating to the removal and replacement of the member(s) of the Board of directors for at least one year and shall permit members to inspect those documents and records.

Finally, a member of the Board of Directors who is removed is not eligible to serve on the Board again until after her original term has expired unless the governing documents require a longer period of time.

**XV. 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: (1) the duty of care; and (2) 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, the Association Board of Directors, 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.  

The above concept is also discussed in the “business judgment rule,” which is found both in Arizona common law and in ARS § 10-3830 of the Arizona Nonprofit Corporations Act. 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.”

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36 See *Kitchukov*, 165 P.3d at 178, 216 Ariz. at 204.
37 If the Community Association is a non-profit corporation.
38 See A.R.S. §10-3830 (Non-Profit Corporations Act).
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.” 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.

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.

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).

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 outvoted 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.

39 Arizona Revised Statutes §10-3830(B) and Arizona Revised Statutes §10-3830(D).
40 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 [section/subsection] is void and unenforceable.”
41 See A.R.S. §33-1811 (Planned Communities) and A.R.S. §33-1243(C) (Condominiums).
How to Handle the Rogue Board Member

Every community association (or almost) has experienced 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 section 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. 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, liable, 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 liable 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. 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.

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42 See A.R.S. §10-3830 (Planned Communities)
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.

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 community 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.
XVI. PRIMARY FUNCTIONS OF THE HOMEOWNER ASSOCIATION.

One of the primary duties of a homeowners association is to enforce the restrictions in the association’s governing documents.\(^{43}\) 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.”

In selecting any one of these options, an association should rely on three main questions guiding the 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

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\(^{43}\) See *Tierra Ranchos Homeowners Ass’n v. Kitchukov*, 165 P.3d 173, 216 Ariz. 195 (Ariz. Ct. App. 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.
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 by remedying 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 unusually 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 Statute, 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 for charges for late payment of those assessments,” and “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. Ct. 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.44

Collection of Association Assessments - Enforcement of Association Liens.

When an owner in a community association fails to pay 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.

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 agent) 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 percent 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.

44 See A.R.S. §33-1256(C) and A.R.S. §33-1807(C).
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 estate. In 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 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

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45 See, A.R.S. § 33-1256 and A.R.S. § 33-1807. Also see, Cypress on Sunland Homeowners Ass’n v. Orlandini. 227 Ariz. 228 (Ct. App. 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.”
paying the total amount of the sale price, plus interest and a 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.**

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 (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 and Arizona Case Law 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.
EXHIBIT A
(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 9, chapter 4, article 8, Arizona Revised Statutes, is
amended by adding section 9-500.38, to read:

9-500.38. Limitations on regulation of vacation rentals and
short-term rentals; state preemption; definitions
A. A CITY OR TOWN MAY NOT PROHIBIT VACATION RENTALS OR SHORT-TERM
RENTALS.
B. A CITY OR TOWN MAY NOT RESTRICT THE USE OF OR REGULATE VACATION
RENTALS OR SHORT-TERM RENTALS BASED ON THEIR CLASSIFICATION, USE OR
OCCUPANCY. A CITY OR TOWN MAY REGULATE VACATION RENTALS OR SHORT-TERM
RENTALS FOR THE FOLLOWING PURPOSES:
1. PROTECTION OF THE PUBLIC'S HEALTH AND SAFETY, INCLUDING RULES AND
REGULATIONS RELATED TO FIRE AND BUILDING CODES, HEALTH AND SANITATION,
TRANSPORTATION OR TRAFFIC CONTROL, SOLID OR HAZARDOUS WASTE AND POLLUTION
CONTROL, AND DESIGNATION OF AN EMERGENCY POINT OF CONTACT, IF THE CITY OR
TOWN DEMONSTRATES THAT THE RULE OR REGULATION IS FOR THE PRIMARY PURPOSE OF
PROTECTING THE PUBLIC'S HEALTH AND SAFETY.
2. ADOPTING AND ENFORCING RESIDENTIAL USE AND ZONING ORDINANCES,
INCLUDING ORDINANCES RELATED TO NOISE, PROTECTION OF WELFARE, PROPERTY
MAINTENANCE AND OTHER NUISANCE ISSUES, IF THE ORDINANCE IS APPLIED IN THE
SAME MANNER AS OTHER PROPERTY CLASSIFIED UNDER SECTIONS 42-12003 AND
42-12004.
3. LIMITING OR PROHIBITING THE USE OF A VACATION RENTAL OR SHORT-TERM
RENTAL FOR THE PURPOSES OF HOUSING SEX OFFENDERS, OPERATING OR MAINTAINING A
STRUCTURED SOBER LIVING HOME, SELLING ILLEGAL DRUGS, LIQUOR CONTROL OR
PORNOGRAPHY, OBSCENITY, NUDE OR TOPLESS DANCING AND OTHER ADULT-ORIENTED
BUSINESSES.
C. THIS SECTION DOES NOT EXEMPT AN OWNER OF A RESIDENTIAL RENTAL
PROPERTY, AS DEFINED IN SECTION 33-1901, FROM MAINTAINING WITH THE ASSESSOR
OF THE COUNTY IN WHICH THE PROPERTY IS LOCATED INFORMATION REQUIRED UNDER
TITLE 33, CHAPTER 17, ARTICLE 1.
D. FOR THE PURPOSES OF THIS SECTION:
1. "TRANSIENT" HAS THE SAME MEANING PRESCRIBED IN SECTION 42-5070.
2. "VACATION RENTAL" OR "SHORT-TERM RENTAL" MEANS ANY INDIVIDUALLY OR
COLLECTIVELY OWNED SINGLE-FAMILY OR ONE-TO-FOUR-FAMILY HOUSE OR DWELLING UNIT
OR ANY UNIT OR GROUP OF UNITS IN A CONDOMINIUM, COOPERATIVE OR TIMESHARE,
THAT IS ALSO A TRANSIENT PUBLIC LODGING ESTABLISHMENT OR OWNER-OCUPIED
RESIDENTIAL HOME OFFERED FOR TRANSIENT USE IF THE ACCOMMODATIONS ARE NOT
CLASSIFIED FOR PROPERTY TAXATION UNDER SECTION 42-12001. VACATION RENTAL AND
SHORT-TERM RENTAL DO NOT INCLUDE A UNIT THAT IS USED FOR ANY NONRESIDENTIAL
USE, INCLUDING RETAIL, RESTAURANT, BANQUET SPACE, EVENT CENTER OR ANOTHER
SIMILAR USE.
Sec. 2. Title 11, chapter 2, article 4, Arizona Revised Statutes, is amended by adding section 11-269.15, to read:

**11-269.15. Limitations on regulation of vacation rentals and short-term rentals; state preemption; definitions**

**A.** A COUNTY MAY NOT PROHIBIT VACATION RENTALS OR SHORT-TERM RENTALS.

**B.** A COUNTY MAY NOT RESTRICT THE USE OF OR REGULATE VACATION RENTALS OR SHORT-TERM RENTALS BASED ON THEIR CLASSIFICATION, USE OR OCCUPANCY. A COUNTY MAY REGULATE VACATION RENTALS OR SHORT-TERM RENTALS FOR THE FOLLOWING PURPOSES:

1. PROTECTION OF THE PUBLIC’S HEALTH AND SAFETY, INCLUDING RULES AND REGULATIONS RELATED TO FIRE AND BUILDING CODES, HEALTH AND SANITATION, TRANSPORTATION OR TRAFFIC CONTROL, SOLID OR HAZARDOUS WASTE AND POLLUTION CONTROL, AND DESIGNATION OF AN EMERGENCY POINT OF CONTACT, IF THE COUNTY DEMONSTRATES THAT THE RULE OR REGULATION IS FOR THE PRIMARY PURPOSE OF PROTECTING THE PUBLIC’S HEALTH AND SAFETY.

2. ADOPTING AND ENFORCING RESIDENTIAL USE AND ZONING ORDINANCES, INCLUDING ORDINANCES RELATED TO NOISE, PROTECTION OF WELFARE, PROPERTY MAINTENANCE AND OTHER NUISANCE ISSUES, IF THE ORDINANCE IS APPLIED IN THE SAME MANNER AS OTHER PROPERTY CLASSIFIED UNDER SECTIONS 42-12003 AND 42-12004.

3. LIMITING OR PROHIBITING THE USE OF A VACATION RENTAL OR SHORT-TERM RENTAL FOR THE PURPOSES OF HOUSING SEX OFFENDERS, OPERATING OR MAINTAINING A STRUCTURED SOBER LIVING HOME, SELLING ILLEGAL DRUGS, LIQUOR CONTROL OR PORNOGRAPHY, OBSCENITY, NUDE OR TOPLESS DANCING AND OTHER ADULT-ORIENTED BUSINESSES.

**C.** THIS SECTION DOES NOT EXEMPT AN OWNER OF A RESIDENTIAL RENTAL PROPERTY, AS DEFINED IN SECTION 33-1901, FROM MAINTAINING WITH THE ASSESSOR OF THE COUNTY IN WHICH THE PROPERTY IS LOCATED INFORMATION REQUIRED UNDER TITLE 33, CHAPTER 17, ARTICLE 1.

**D.** FOR THE PURPOSES OF THIS SECTION:

1. "TRANSIENT" HAS THE SAME MEANING PRESCRIBED IN SECTION 42-5070.

2. "VACATION RENTAL" OR "SHORT-TERM RENTAL" MEANS ANY INDIVIDUALLY OR COLLECTIVELY OWNED SINGLE-FAMILY OR ONE-TO-FOUR-FAMILY HOUSE OR DWELLING UNIT OR ANY UNIT OR GROUP OF UNITS IN A CONDOMINIUM, COOPERATIVE OR TIMESHARE, THAT IS ALSO A TRANSIENT PUBLIC LODGING ESTABLISHMENT OR OWNER-OCCUPIED RESIDENTIAL HOME OFFERED FOR TRANSIENT USE IF THE ACCOMMODATIONS ARE NOT CLASSIFIED FOR PROPERTY TAXATION UNDER SECTION 42-12001. VACATION RENTAL AND SHORT-TERM RENTAL DO NOT INCLUDE A UNIT THAT IS USED FOR ANY NONRESIDENTIAL USE, INCLUDING RETAIL, RESTAURANT, BANQUET SPACE, EVENT CENTER OR ANOTHER SIMILAR USE.
EXHIBIT B
State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 343

SENATE BILL 1496

AN ACT

AMENDING SECTIONS 33-1243 AND 33-1813, ARIZONA REVISED STATUTES; RELATING TO CONDOMINIUMS AND PLANNED COMMUNITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 33-1243, Arizona Revised Statutes, is amended to read:

33-1243. Board of directors and officers; conflict; powers; limitations; removal; annual audit; applicability

A. Except as provided in the declaration, the bylaws, subsection B of this section or other provisions of this chapter, the board of directors may act in all instances on behalf of the association.

B. The board of directors shall not act on behalf of the association to amend the declaration, terminate the condominium, elect members of the board of directors or determine the qualifications, powers and duties or terms of office of board of directors members. EXCEPT AS PROVIDED IN SUBSECTION H OF THIS SECTION, the board of directors may fill vacancies in its membership for the unexpired portion of any term.

C. 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.

D. Except as provided in the declaration, within thirty days after adoption of any proposed budget for the condominium, the board of directors shall provide a summary of the budget to all the unit owners. Unless the board of directors is expressly authorized in the declaration to adopt and amend budgets from time to time, any budget or amendment shall be ratified by the unit owners in accordance with the procedures set forth in this subsection. If ratification is required, the board of directors shall set a date for a meeting of the unit owners to consider ratification of the budget not fewer than fourteen nor more than thirty days after mailing of the summary. Unless at that meeting a majority of all the unit owners or any larger vote specified in the declaration rejects the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the unit owners shall be continued until such time as the unit owners ratify a subsequent budget proposed by the board of directors.

E. The declaration may provide for a period of declarant control of the association, during which period a declarant or persons designated by the declarant may appoint and remove the officers and members of the board of directors. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of:

1. Ninety days after conveyance of seventy-five percent of the units that may be created to unit owners other than a declarant.
2. Four years after all declarants have ceased to offer units for sale in the ordinary course of business.

F. A declarant may voluntarily surrender the right to appoint and remove officers and members of the board of directors before termination of the period prescribed in subsection E of this section, but in that event the declarant may require, for the duration of the period of declarant control, that specified actions of the association or board of directors, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

G. Not later than the termination of any period of declarant control the unit owners shall elect a board of directors of at least three members, at least a majority of whom must be unit owners. The board of directors shall elect the officers. The board members and officers shall take office on election.

H. Notwithstanding any provision of the declaration or bylaws to the contrary, ALL OF THE FOLLOWING APPLY TO A MEETING AT WHICH A MEMBER OF THE BOARD OF DIRECTORS, OTHER THAN A MEMBER APPOINTED BY THE DECLARANT, IS PROPOSED TO BE REMOVED FROM THE BOARD OF DIRECTORS:

1. The unit owners who are eligible to vote at the time of the meeting may remove any member of the board of directors, other than a member appointed by the declarant, by a majority vote of those voting on the matter at a meeting of the unit owners.

2. The meeting of the unit owners shall be called pursuant to this section and action may be taken only if a quorum is present.

3. The unit owners may remove any member of the board of directors with or without cause, other than a member appointed by the declarant.

4. For purposes of calling for removal of a member of the board of directors, other than a member appointed by the declarant, the following apply:

   (a) In an association with one thousand or fewer members, on receipt of a petition that calls for removal of a member of the board of directors and that is signed by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least twenty-five percent of the votes in the association or by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least one hundred votes in the association, whichever is less, the board shall call and provide written notice of a special meeting of the association as prescribed by section 33-1248, subsection B.

   (b) Notwithstanding section 33-1248, subsection B, in an association with more than one thousand members, on receipt of a petition that calls for removal of a member of the board of directors and that is signed by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least ten percent of the votes in the association or by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least one thousand votes in the association,
thousand votes in the association, whichever is less, the board shall call and provide written notice of a special meeting of the association. The board shall provide written notice of a special meeting as prescribed by section 33-1248, subsection B.

(c) The special meeting shall be called, noticed and held within thirty days after receipt of the petition.

(d) For purposes of a special meeting called pursuant to this subsection, a quorum is present if the number of owners who are eligible to vote in the association at the time the person attends the meeting equal to at least twenty percent of the votes of the association or the number of persons who are eligible to vote in the association at the time the person attends the meeting equal to at least one thousand votes, whichever is less, is present at the meeting in person or as otherwise permitted by law.

(e) If a civil action is filed regarding the removal of a board member, the prevailing party in the civil action shall be awarded its reasonable attorney fees and costs.

(f) The board of directors shall retain all documents and other records relating to the proposed removal of the member of the board of directors AND ANY ELECTION OR OTHER ACTION TAKEN FOR THAT DIRECTOR'S REPLACEMENT for at least one year after the date of the special meeting and shall permit members to inspect those documents and records pursuant to section 33-1258.

(g) A petition that calls for the removal of the same member of the board of directors shall not be submitted more than once during each term of office for that member.

5. ON REMOVAL OF AT LEAST ONE BUT FEWER THAN A MAJORITY OF THE MEMBERS OF THE BOARD OF DIRECTORS AT A SPECIAL MEETING OF THE MEMBERSHIP CALLED PURSUANT TO THIS SUBSECTION, THE VACANCIES SHALL BE FILLED AS PROVIDED IN THE CONDOMINIUM DOCUMENTS.


7. A MEMBER OF THE BOARD OF DIRECTORS WHO IS REMOVED PURSUANT TO THIS SUBSECTION IS NOT ELIGIBLE TO SERVE ON THE BOARD OF DIRECTORS AGAIN UNTIL AFTER THE EXPIRATION OF THE REMOVED BOARD MEMBER'S TERM OF OFFICE, UNLESS THE CONDOMINIUM DOCUMENTS SPECIFICALLY PROVIDE FOR A LONGER PERIOD OF INELIGIBILITY.

I. For an association in which board members are elected from separately designated voting districts, a member of the board of directors, other than a member appointed by the declarant, may be removed only by a vote of the members from that voting district, and only the members from that
voting district are eligible to vote on the matter or be counted for purposes of determining a quorum.

J. Unless any provision in the condominium documents requires an annual audit by a certified public accountant, the board of directors shall provide for an annual financial audit, review or compilation of the association. The audit, review or compilation shall be completed no later than one hundred eighty days after the end of the association’s fiscal year and shall be made available on request to the unit owners within thirty days after its completion.

K. This section does not apply to timeshare plans or associations, or the period of declarant control under timeshare instruments, that are subject to chapter 20 of this title.

Sec. 2. Section 33-1813, Arizona Revised Statutes, is amended to read:

33-1813. Removal of board member; special meeting

A. Notwithstanding any provision of the declaration or bylaws to the contrary, ALL OF THE FOLLOWING APPLY TO A MEETING AT WHICH A MEMBER OF THE BOARD OF DIRECTORS, OTHER THAN A MEMBER APPOINTED BY THE DECLARANT, IS PROPOSED TO BE REMOVED FROM THE BOARD OF DIRECTORS:

1. The members of the association who are eligible to vote at the time of the meeting may remove any member of the board of directors, other than a member appointed by the declarant, by a majority vote of those voting on the matter at a meeting of the members.

2. The meeting of the members shall be called pursuant to this section and action may be taken only if a quorum is present.

3. The members of the association may remove any member of the board of directors with or without cause, other than a member appointed by the declarant.

4. For purposes of calling for removal of a member of the board of directors, other than a member appointed by the declarant, the following apply:

   (a) In an association with one thousand or fewer members, on receipt of a petition that calls for removal of a member of the board of directors and that is signed by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least twenty-five percent of the votes in the association or by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least one hundred votes in the association, whichever is less, the board shall call and provide written notice of a special meeting of the association as prescribed by section 33-1804, subsection B.

   (b) Notwithstanding section 33-1804, subsection B, in an association with more than one thousand members, on receipt of a petition that calls for removal of a member of the board of directors and that is signed by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least ten percent of the votes in the association or by the number of persons who are eligible to vote in the association as prescribed by section 33-1804, subsection B.
association at the time the person signs the petition equal to at least one thousand votes in the association, whichever is less, the board shall call and provide written notice of a special meeting of the association. The board shall provide written notice of a special meeting as prescribed by section 33-1804, subsection B.

(c) The special meeting shall be called, noticed and held within thirty days after receipt of the petition.

(d) For purposes of a special meeting called pursuant to this subsection, a quorum is present if the number of owners who are eligible to vote in the association at the time the person attends the meeting equal to at least twenty percent of the votes of the association or the number of persons who are eligible to vote in the association at the time the person attends the meeting equal to at least one thousand votes, whichever is less, is present at the meeting in person or as otherwise permitted by law.

(e) If a civil action is filed regarding the removal of a board member, the prevailing party in the civil action shall be awarded its reasonable attorney fees and costs.

(f) The board of directors shall retain all documents and other records relating to the proposed removal of the member of the board of directors AND ANY ELECTION OR OTHER ACTION TAKEN FOR THAT DIRECTOR'S REPLACEMENT for at least one year after the date of the special meeting and shall permit members to inspect those documents and records pursuant to section 33-1805.

(g) A petition that calls for the removal of the same member of the board of directors shall not be submitted more than once during each term of office for that member.

5. ON REMOVAL OF AT LEAST ONE BUT FEWER THAN A MAJORITY OF THE MEMBERS OF THE BOARD OF DIRECTORS AT A SPECIAL MEETING OF THE MEMBERSHIP CALLED PURSUANT TO THIS SUBSECTION, THE VACANCIES SHALL BE FILLED AS PROVIDED IN THE COMMUNITY DOCUMENTS.


7. A MEMBER OF THE BOARD OF DIRECTORS WHO IS REMOVED PURSUANT TO THIS SUBSECTION IS NOT ELIGIBLE TO SERVE ON THE BOARD OF DIRECTORS AGAIN UNTIL AFTER THE EXPIRATION OF THE REMOVED BOARD MEMBER'S TERM OF OFFICE, UNLESS THE COMMUNITY DOCUMENTS SPECIFICALLY PROVIDE FOR A LONGER PERIOD OF INELIGIBILITY.

8. For an association in which board members are elected from separately designated voting districts, a member of the board of directors, other than a member appointed by the declarant, may be removed only by a vote of the members from that voting district, and only the members from that
voting district are eligible to vote on the matter or be counted for purposes of determining a quorum.

APPROVED BY THE GOVERNOR MAY 18, 2016.

EXHIBIT C
State of Arizona  
Senate  
Fifty-second Legislature  
Second Regular Session  
2016

CHAPTER 172  
SENATE BILL 1498  

AN ACT  

AMENDING SECTIONS 33-1242, 33-1250, 33-1803 AND 33-1812, ARIZONA REVISED STATUTES; RELATING TO CONDOMINIUMS AND PLANNED COMMUNITIES.  

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 33-1242, Arizona Revised Statutes, is amended to read:

33-1242. Powers of unit owners' association; notice to unit owner of violation
A. Subject to the provisions of the declaration, the association may:
1. Adopt and amend bylaws and rules.
2. Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from unit owners.
3. Hire and discharge managing agents and other employees, agents and independent contractors.
4. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium.
5. Make contracts and incur liabilities.
6. Regulate the use, maintenance, repair, replacement and modification of common elements.
7. Cause additional improvements to be made as a part of the common elements.
8. Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, except that common elements may be conveyed or subjected to a security interest only pursuant to section 33-1252.
9. Grant easements, leases, licenses and concessions through or over the common elements.
10. Impose and receive any payments, fees or charges for the use, rental or operation of the common elements other than limited common elements described in section 33-1212, paragraphs 2 and 4 and for services provided to unit owners.
11. Impose charges for late payment of assessments AFTER THE ASSOCIATION HAS PROVIDED NOTICE THAT THE ASSESSMENT IS OVERDUE OR PROVIDED NOTICE THAT THE ASSESSMENT IS CONSIDERED OVERDUE AFTER A CERTAIN DATE and, after notice and an opportunity to be heard, impose reasonable monetary penalties upon unit owners for violations of the declaration, bylaws and rules of the association.
12. Impose reasonable charges for the preparation and recordation of amendments to the declaration or statements of unpaid assessments.
13. Provide for the indemnification of its officers and executive board of directors and maintain directors' and officers' liability insurance.
14. Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly provides.
15. Be a member of a master association or other entity owning, maintaining or governing in any respect any portion of the common elements or other property benefitting or related to the condominium or the unit owners in any respect.
1. Exercise any other powers conferred by the declaration or bylaws.
2. Exercise all other powers that may be exercised in this state by legal entities of the same type as the association.
3. Exercise any other powers necessary and proper for the governance and operation of the association.

B. A unit owner who receives a written notice that the condition of the property owned by the unit owner is in violation of a requirement of the condominium documents without regard to whether a monetary penalty is imposed by the notice may provide the association with a written response by sending the response by certified mail within ten business days after the date of the notice. The response shall be sent to the address identified in the notice.

C. Within ten business days after receipt of the certified mail containing the response from the unit owner, the association shall respond to the unit owner with a written explanation regarding the notice that shall provide at least the following information unless previously provided in the notice of violation:

1. The provision of the condominium documents that has allegedly been violated.
2. The date of the violation or the date the violation was observed.
3. The first and last name of the person or persons who observed the violation.
4. The process the unit owner must follow to contest the notice.

D. Unless the information required in subsection C, paragraph 4 of this section is provided in the notice of violation, the association shall not proceed with any action to enforce the condominium documents, including the collection of attorney fees, before or during the time prescribed by subsection C of this section regarding the exchange of information between the association and the unit owner AND SHALL GIVE THE UNIT OWNER WRITTEN NOTICE OF THE UNIT OWNER’S OPTION TO PETITION FOR AN ADMINISTRATIVE HEARING ON THE MATTER IN THE DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY PURSUANT TO SECTION 41-2198.01. At any time before or after completion of the exchange of information pursuant to this section, the unit owner may petition for a hearing pursuant to section 41-2198.01 if the dispute is within the jurisdiction of the department of fire, building and life safety as prescribed in section 41-2198.01, subsection B.

Sec. 2. Section 33-1250, Arizona Revised Statutes, is amended to read:

A. If only one of the multiple owners of a unit is present at a meeting of the association, the owner is entitled to cast all the votes allocated to that unit. If more than one of the multiple owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners unless the declaration expressly provides otherwise. There is majority agreement if any one of the multiple owners casts the votes allocated to that unit without
protest being made promptly to the person presiding over the meeting by any
of the other owners of the unit.

B. During the period of declarant control, votes allocated to a unit
may be cast pursuant to a proxy duly executed by a unit owner. If a unit is
owned by more than one person, each owner of the unit may vote or register
protest to the casting of votes by the other owners of the unit through a
duly executed proxy. A unit owner may not revoke a proxy given pursuant to
this section except by actual notice of revocation to the person presiding
over a meeting of the association. A proxy is void if it is not dated or
purports to be revocable without notice. The proxy is revoked on
presentation of a later dated proxy executed by the same unit owner. A proxy
terminates one year after its date, unless it specifies a shorter term or
unless it states that it is coupled with an interest and is irrevocable.

C. Notwithstanding any provision in the condominium documents, after
termination of the period of declarant control, votes allocated to a unit may
not be cast pursuant to a proxy. The association shall provide for votes to
be cast in person and by absentee ballot and, in addition, the association
may provide for voting by some other form of delivery, including the use of
e-mail and fax delivery. Notwithstanding section 10-3708 or the provisions
of the condominium documents, any action taken at an annual, regular or
special meeting of the members shall comply with all of the following if
absentee ballots or ballots provided by some other form of delivery are used:

1. The ballot shall set forth each proposed action.
2. The ballot shall provide an opportunity to vote for or against each
   proposed action.
3. The ballot is valid for only one specified election or meeting of
   the members and expires automatically after the completion of the election or
   meeting.
4. The ballot specifies the time and date by which the ballot must be
delivered to the board of directors in order to be counted, which shall be at
least seven days after the date that the board delivers the unvoted ballot to
the member.
5. The ballot does not authorize another person to cast votes on
   behalf of the member.

6. THE COMPLETED BALLOT AND ENVELOPE AND ANY RELATED MATERIALS SHALL
   CONTAIN THE NAME, ADDRESS AND EITHER THE ACTUAL OR ELECTRONIC SIGNATURE OF
   THE PERSON VOTING, EXCEPT THAT IF THE CONDOMINIUM DOCUMENTS PERMIT SECRET
   BALLOTS, ONLY THE ENVELOPE OR ANY NONBALLOT-RELATED MATERIALS SHALL CONTAIN
   THE NAME, ADDRESS AND EITHER THE ACTUAL OR ELECTRONIC SIGNATURE OF THE VOTER.
7. BALLOTS, ENVELOPES AND RELATED MATERIALS, INCLUDING SIGN-IN SHEETS
   IF USED, SHALL BE RETAINED IN ELECTRONIC OR PAPER FORMAT AND MADE AVAILABLE
   FOR UNIT OWNER INSPECTION FOR AT LEAST ONE YEAR AFTER COMPLETION OF THE
   ELECTION.

D. Votes cast by absentee ballot or other form of delivery, including
the use of e-mail and fax delivery, are valid for the purpose of establishing
a quorum.
E. Notwithstanding subsection C of this section, an association for a
timeshare plan as defined in section 32-2197 may permit votes by a proxy that
is duly executed by a unit owner.

F. If the declaration requires that votes on specified matters
affecting the condominium be cast by lessees rather than unit owners of
leased units all of the following apply:
1. The provisions of subsections A and B of this section apply to
lessees as if they were unit owners.
2. Unit owners who have leased their units to other persons shall not
cast votes on those specified matters.
3. Lessees are entitled to notice of meetings, access to records and
other rights respecting those matters as if they were unit owners. Unit
owners shall also be given notice, in the manner prescribed in section
33-1248, of all meetings at which lessees may be entitled to vote.

G. Unless the declaration provides otherwise, votes allocated to a
unit owned by the association shall not be cast.

H. This section does not apply to timeshare plans or associations that
are subject to chapter 20 of this title.

I. For the purposes of this section, "period of declarant control"
means the time during which the declarant or persons designated by the
declarant may elect or appoint the members of the board of directors pursuant
to the condominium documents or by virtue of superior voting power.

Sec. 3. Section 33-1803, Arizona Revised Statutes, is amended to read:
A. Unless limitations in the community documents would result in a
lower limit for the assessment, the association shall not impose a regular
assessment that is more than twenty percent greater than the immediately
preceding fiscal year's assessment without the approval of the majority of
the members of the association. Unless reserved to the members of the
association, the board of directors may impose reasonable charges for the
late payment of assessments. 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 percent of
the amount of the unpaid assessment AND MAY BE IMPOSED ONLY AFTER THE
ASSOCIATION HAS PROVIDED NOTICE THAT THE ASSESSMENT IS OVERDUE OR PROVIDED
NOTICE THAT THE ASSESSMENT IS CONSIDERED OVERDUE AFTER A CERTAIN DATE. Any
monies paid by the member for an unpaid assessment shall be applied first to
the principal amount unpaid and then to the interest accrued.

B. After notice and an opportunity to be heard, the board of directors
may impose reasonable monetary penalties on members for violations of the
declaration, bylaws and rules of the association. Notwithstanding any
provision in the community documents, the board of directors shall not impose
a charge for a late payment of a penalty that exceeds the greater of fifteen
dollars or ten percent of the amount of the unpaid penalty. A payment is
deemed late if it is unpaid fifteen or more days after its due date, unless
the declaration, bylaws or rules of the association provide for a longer
period. Any monies paid by a member for an unpaid penalty shall be applied
first to the principal amount unpaid and then to the interest accrued.
Notice pursuant to this subsection shall include information pertaining to
the manner in which the penalty shall be enforced.

C. A member who receives a written notice that the condition of the
property owned by the member is in violation of the community documents
without regard to whether a monetary penalty is imposed by the notice may
provide the association with a written response by sending the response by
certified mail within ten business days after the date of the notice. The
response shall be sent to the address identified in the notice.

D. Within ten business days after receipt of the certified mail
containing the response from the member, the association shall respond to the
member with a written explanation regarding the notice that shall provide at
least the following information unless previously provided in the notice of
violation:

1. The provision of the community documents that has allegedly been
violated.
2. The date of the violation or the date the violation was observed.
3. The first and last name of the person or persons who observed the
violation.
4. The process the member must follow to contest the notice.

E. Unless the information required in subsection D, paragraph 4 of
this section is provided in the notice of violation, the association shall
not proceed with any action to enforce the community documents, including the
collection of attorney fees, before or during the time prescribed by
subsection D of this section regarding the exchange of information between
the association and the member AND SHALL GIVE THE MEMBER WRITTEN NOTICE OF
THE MEMBER’S OPTION TO PETITION FOR AN ADMINISTRATIVE HEARING ON THE MATTER
IN THE DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY PURSUANT TO SECTION
41-2198.01. At any time before or after completion of the exchange of
information pursuant to this section, the member may petition for a hearing
pursuant to section 41-2198.01 if the dispute is within the jurisdiction of
the department of fire, building and life safety as prescribed in section
41-2198.01, subsection B.

Sec. 4. Section 33-1812, Arizona Revised Statutes, is amended to read:

33-1812. Proxies; absentee ballots; definition

A. Notwithstanding any provision in the community documents, after
termination of the period of declarant control, votes allocated to a unit may
not be cast pursuant to a proxy. The association shall provide for votes to
be cast in person and by absentee ballot and, in addition, the association
may provide for voting by some other form of delivery, including the use of
e-mail and fax delivery. Notwithstanding section 10-3708 or the provisions
of the community documents, any action taken at an annual, regular or special
meeting of the members shall comply with all of the following if absentee ballots or ballots provided by some other form of delivery are used:

1. The ballot shall set forth each proposed action.
2. The ballot shall provide an opportunity to vote for or against each proposed action.
3. The ballot is valid for only one specified election or meeting of the members and expires automatically after the completion of the election or meeting.
4. The ballot specifies the time and date by which the ballot must be delivered to the board of directors in order to be counted, which shall be at least seven days after the date that the board delivers the unvoted ballot to the member.
5. The ballot does not authorize another person to cast votes on behalf of the member.
7. BALLOTS, ENVELOPES AND RELATED MATERIALS, INCLUDING SIGN-IN SHEETS IF USED, SHALL BE RETAINED IN ELECTRONIC OR PAPER FORMAT AND MADE AVAILABLE FOR MEMBER INSPECTION FOR AT LEAST ONE YEAR AFTER COMPLETION OF THE ELECTION.
B. Votes cast by absentee ballot or other form of delivery, including the use of e-mail and fax delivery, are valid for the purpose of establishing a quorum.
C. Notwithstanding subsection A of this section, an association for a timeshare plan as defined in section 32-2197 may permit votes by a proxy that is duly executed by a unit owner.
D. For the purposes of this section, "period of declarant control" means the time during which the declarant or persons designated by the declarant may elect or appoint the members of the board of directors pursuant to the community documents or by virtue of superior voting power.

APPROVED BY THE GOVERNOR MAY 11, 2016.
STATE OF ARIZONA
SENATE
FIFTY-SECOND LEGISLATURE
SECOND REGULAR SESSION
2016

CHAPTER 128

SENATE BILL 1530

AN ACT

27-106, ARIZONA REVISED STATUTES; AMENDING SECTION 27-106, ARIZONA REVISED
STATUTES, AS AMENDED BY THIS ACT; AMENDING SECTION 27-107, ARIZONA REVISED
STATUTES; AMENDING SECTION 27-107, ARIZONA REVISED STATUTES, AS AMENDED BY
THIS ACT; AMENDING SECTION 27-108, ARIZONA REVISED STATUTES; REPEALING
SECTION 27-109, ARIZONA REVISED STATUTES; AMENDING SECTION 27-110, ARIZONA
REVISED STATUTES; PROVIDING FOR TRANSFERRING AND RENUMBERING; AMENDING
SECTION 27-111, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED;
REPEALING SECTION 27-112, ARIZONA REVISED STATUTES; AMENDING SECTIONS 27-515,
28-907, 28-1093, 28-1095, 28-1103 AND 28-2448, ARIZONA REVISED STATUTES;
AMENDING SECTION 28-2448, ARIZONA REVISED STATUTES, AS AMENDED BY THIS ACT;
AMENDING SECTIONS 28-4332, 28-4363, 30-801, 32-1121 AND 32-2117, ARIZONA
REVISED STATUTES; AMENDING SECTION 32-2117, ARIZONA REVISED STATUTES, AS
AMENDED BY THIS ACT; AMENDING SECTIONS 32-2199, 32-2199.01, 32-2199.02,
32-2199.04 AND 32-2199.05, ARIZONA REVISED STATUTES, AS TRANSFERRED AND
RENUMBERED; AMENDING SECTION 33-423, ARIZONA REVISED STATUTES; AMENDING
SECTION 33-423, ARIZONA REVISED STATUTES, AS AMENDED BY THIS ACT; AMENDING
SECTIONS 33-1242, 33-1407, 33-1409, 33-1417, 33-1432, 33-1476.01, 33-1476.02,
33-1476.04, 33-1476.05, 33-1485.01, 33-1803, 33-2102, 34-461, 35-192,
35-193.02, 36-1610, 36-1636, 36-1639 AND 36-1645, ARIZONA REVISED STATUTES;
AMENDING TITLE 37, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 9; AMENDING
SECTIONS 37-1303, 37-1305, 37-1307, 37-1381, 37-1382, 37-1383, 37-1388,
37-1422, 37-1423, 37-1424 AND 37-1425, ARIZONA REVISED STATUTES, AS
TRANSFERRED AND RENUMBERED; AMENDING SECTIONS 40-201, 41-511.04 AND 41-821,
ARIZONA REVISED STATUTES; AMENDING SECTION 41-821, ARIZONA REVISED STATUTES,
AS AMENDED BY THIS ACT; REPEALING SECTION 41-827, ARIZONA REVISED STATUTES;
AMENDING TITLE 41, CHAPTER 4.1, ARTICLE 1, ARIZONA REVISED STATUTES, BY
ADDDING A NEW SECTION 41-827; AMENDING SECTION 41-827.01, ARIZONA REVISED
Sec. 38. Section 33-1242, Arizona Revised Statutes, is amended to read:

33-1242. Powers of unit owners' association; notice to unit owner of violation

A. Subject to the provisions of the declaration, the association may:
1. Adopt and amend bylaws and rules.
2. Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from unit owners.
3. Hire and discharge managing agents and other employees, agents and independent contractors.
4. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium.
5. Make contracts and incur liabilities.
6. Regulate the use, maintenance, repair, replacement and modification of common elements.
7. Cause additional improvements to be made as a part of the common elements.
8. Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, except that common elements may be conveyed or subjected to a security interest only pursuant to section 33-1252.
9. Grant easements, leases, licenses and concessions through or over the common elements.
10. Impose and receive any payments, fees or charges for the use, rental or operation of the common elements other than limited common elements described in section 33-1212, paragraphs 2 and 4 and for services provided to unit owners.
11. Impose charges for late payment of assessments and, after notice and an opportunity to be heard, impose reasonable monetary penalties upon on unit owners for violations of the declaration, bylaws and rules of the association.
12. Impose reasonable charges for the preparation and recordation of amendments to the declaration or statements of unpaid assessments.
13. Provide for the indemnification of its officers and executive board of directors and maintain directors' and officers' liability insurance.
14. Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly provides.
15. Be a member of a master association or other entity owning, maintaining or governing in any respect any portion of the common elements or other property benefitting or related to the condominium or the unit owners in any respect.
16. Exercise any other powers conferred by the declaration or bylaws.
17. Exercise all other powers that may be exercised in this state by legal entities of the same type as the association.
18. Exercise any other powers necessary and proper for the governance
and operation of the association.

B. A unit owner who receives a written notice that the condition of
the property owned by the unit owner is in violation of a requirement of the
condominium documents without regard to whether a monetary penalty is imposed
by the notice may provide the association with a written response by sending
the response by certified mail within ten business days after the date of the
notice. The response shall be sent to the address identified in the notice.

C. Within ten business days after receipt of the certified mail
containing the response from the unit owner, the association shall respond to
the unit owner with a written explanation regarding the notice that shall
provide at least the following information unless previously provided in the
notice of violation:
   1. The provision of the condominium documents that has allegedly been
      violated.
   2. The date of the violation or the date the violation was observed.
   3. The first and last name of the person or persons who observed the
      violation.
   4. The process the unit owner must follow to contest the notice.

D. Unless the information required in subsection C, paragraph 4 of
this section is provided in the notice of violation, the association shall
not proceed with any action to enforce the condominium documents, including
the collection of attorney fees, before or during the time prescribed by
subsection C of this section regarding the exchange of information between
the association and the unit owner. At any time before or after completion
of the exchange of information pursuant to this section, the unit owner may
petition for a hearing pursuant to section 41-2198.01 32-2199.01 if the
dispute is within the jurisdiction of the STATE REAL ESTATE department of
fire, building and life safety as prescribed in section 41-2198.01,
subsection B 32-2199.01.

APPROVED BY THE GOVERNOR MAY 10, 2016.

EXHIBIT E
State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 230

HOUSE BILL 2106

AN ACT

AMENDING SECTIONS 33-1242 AND 33-1803, ARIZONA REVISED STATUTES; RELATING TO
CONDOMINIUMS AND PLANNED COMMUNITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 33-1242, Arizona Revised Statutes, is amended to read:

33-1242. Powers of unit owners' association; notice to unit owner of violation

A. Subject to the provisions of the declaration, the association may:

1. Adopt and amend bylaws and rules.

2. Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from unit owners.

3. Hire and discharge managing agents and other employees, agents and independent contractors.

4. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium.

5. Make contracts and incur liabilities.

6. Regulate the use, maintenance, repair, replacement and modification of common elements.

7. Cause additional improvements to be made as a part of the common elements.

8. Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, except that common elements may be conveyed or subjected to a security interest only pursuant to section 33-1252.

9. Grant easements, leases, licenses and concessions through or over the common elements.

10. Impose and receive any payments, fees or charges for the use, rental or operation of the common elements other than limited common elements described in section 33-1212, paragraphs 2 and 4 and for services provided to unit owners.

11. Impose charges for late payment of assessments and, after notice and an opportunity to be heard, impose reasonable monetary penalties upon unit owners for violations of the declaration, bylaws and rules of the association.

12. Impose reasonable charges for the preparation and recordation of amendments to the declaration or statements of unpaid assessments.

13. Provide for the indemnification of its officers and executive board of directors and maintain directors' and officers' liability insurance.

14. Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly provides.

15. Be a member of a master association or other entity owning, maintaining or governing in any respect any portion of the common elements or other property benefitting or related to the condominium or the unit owners in any respect.

16. Exercise any other powers conferred by the declaration or bylaws.
17. Exercise all other powers that may be exercised in this state by legal entities of the same type as the association.

18. Exercise any other powers necessary and proper for the governance and operation of the association.

B. A unit owner who receives a written notice that the condition of the property owned by the unit owner is in violation of a requirement of the condominium documents without regard to whether a monetary penalty is imposed by the notice may provide the association with a written response by sending the response by certified mail within **ten-business TWENTY-ONE CALENDAR** days after the date of the notice. The response shall be sent to the address identified in the notice.

C. Within ten business days after receipt of the certified mail containing the response from the unit owner, the association shall respond to the unit owner with a written explanation regarding the notice that shall provide at least the following information unless previously provided in the notice of violation:

1. The provision of the condominium documents that has allegedly been violated.
2. The date of the violation or the date the violation was observed.
3. The first and last name of the person or persons who observed the violation.
4. The process the unit owner must follow to contest the notice.

D. Unless the information required in subsection C, paragraph 4 of this section is provided in the notice of violation, the association shall not proceed with any action to enforce the condominium documents, including the collection of attorney fees, before or during the time prescribed by subsection C of this section regarding the exchange of information between the association and the unit owner. At any time before or after completion of the exchange of information pursuant to this section, the unit owner may petition for a hearing pursuant to section 41-2198.01 if the dispute is within the jurisdiction of the department of fire, building and life safety as prescribed in section 41-2198.01, subsection B.

Sec. 2. Section 33-1803, Arizona Revised Statutes, is amended to read:

33-1803. **Assessment limitation; penalties; notice to member of violation**

A. Unless limitations in the community documents would result in a lower limit for the assessment, the association shall not impose a regular assessment that is more than twenty percent greater than the immediately preceding fiscal year's assessment without the approval of the majority of the members of the association. Unless reserved to the members of the association, the board of directors may impose reasonable charges for the late payment of assessments. 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 percent of the amount of the unpaid assessment. Any monies paid by the member for an
unpaid assessment shall be applied first to the principal amount unpaid and then to the interest accrued.

B. After notice and an opportunity to be heard, the board of directors may impose reasonable monetary penalties on members for violations of the declaration, bylaws and rules of the association. Notwithstanding any provision in the community documents, the board of directors shall not impose a charge for a late payment of a penalty that exceeds the greater of fifteen dollars or ten percent of the amount of the unpaid penalty. A payment is deemed late if it is unpaid fifteen or more days after its due date, unless the declaration, bylaws or rules of the association provide for a longer period. Any monies paid by a member for an unpaid penalty shall be applied first to the principal amount unpaid and then to the interest accrued. Notice pursuant to this subsection shall include information pertaining to the manner in which the penalty shall be enforced.

C. A member who receives a written notice that the condition of the property owned by the member is in violation of the community documents without regard to whether a monetary penalty is imposed by the notice may provide the association with a written response by sending the response by certified mail within twenty-one calendar days after the date of the notice. The response shall be sent to the address identified in the notice.

D. Within ten business days after receipt of the certified mail containing the response from the member, the association shall respond to the member with a written explanation regarding the notice that shall provide at least the following information unless previously provided in the notice of violation:

1. The provision of the community documents that has allegedly been violated.
2. The date of the violation or the date the violation was observed.
3. The first and last name of the person or persons who observed the violation.
4. The process the member must follow to contest the notice.

E. Unless the information required in subsection D, paragraph 4 of this section is provided in the notice of violation, the association shall not proceed with any action to enforce the community documents, including the collection of attorney fees, before or during the time prescribed by subsection D of this section regarding the exchange of information between the association and the member. At any time before or after completion of the exchange of information pursuant to this section, the member may petition for a hearing pursuant to section 41-2198.01 if the dispute is within the jurisdiction of the department of fire, building and life safety as prescribed in section 41-2198.01, subsection B.

APPROVED BY THE GOVERNOR MAY 12, 2016.

EXHIBIT F
State of Arizona  
House of Representatives  
Fifty-second Legislature  
Second Regular Session  
2016

CHAPTER 83

HOUSE BILL 2172

AN ACT

AMENDING SECTION 33-1817, ARIZONA REVISED STATUTES; RELATING TO PLANNED COMMUNITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 33-1817, Arizona Revised Statutes, is amended to read:

33-1817. Design, architectural committees; review

Notwithstanding any provision in the community documents:

1. Membership on a design review committee, an architectural committee or a committee that performs similar functions, however denominated, for the planned community shall include at least one member of the board of directors who shall serve as chairperson of the committee.

2. For new construction of the main residential structure on a lot or for rebuilds of the main residential structure on a lot and only in a planned community that has enacted design guidelines, architectural guidelines or other similar rules, however denominated, and if the association documents permit the association to charge the member a security deposit and the association requires the member to pay a security deposit to secure completion of the member's construction project or compliance with approved plans, all of the following apply:

   (a) The deposit shall be placed in a trust account with the following instructions:

      (i) The cost of the trust account shall be shared equally between the association and the member.
      (ii) If the construction project is abandoned, the board of directors may determine the appropriate use of any deposit monies.
      (iii) Any interest earned on the refundable security deposit shall become part of the security deposit.

   (b) The association or the design review committee must hold a final design approval meeting for the purpose of issuing approval of the plans, and the member or member's agent must have the opportunity to attend the meeting. If the plans are approved, the association's design review representative shall provide written acknowledgement that the approved plans, including any approved amendments, are in compliance with all rules and guidelines in effect at the time of the approval and that the refund of the deposit requires that construction be completed in accordance with those approved plans.

   (c) The association must provide for at least two on-site formal reviews during construction for the purpose of determining compliance with the approved plans. The member or member's agent shall be provided the opportunity to attend both formal reviews. Within five business days after the formal reviews, the association shall cause a written report to be provided to the member or member's agent specifying any deficiencies, violations or unapproved variations from the approved plans, as amended, that have come to the attention of the association.

   (d) Within thirty business days after the second formal review, the association shall provide to the member a copy of the written report specifying any deficiencies, violations or unapproved variations from the approved plans, as amended, that have come to the attention of the
association. If the written report does not specify any deficiencies, violations or unapproved variations from the approved plans, as amended, that have come to the attention of the association, the association shall promptly release the deposit monies to the member. If the report identifies any deficiencies, violations or unapproved variations from the approved plans, as amended, the association may hold the deposit for one hundred eighty days or until receipt of a subsequent report of construction compliance, whichever is less. If a report of construction compliance is received before the one hundred eightieth day, the association shall promptly release the deposit monies to the member. If a compliance report is not received within one hundred eighty days, the association shall release the deposit monies promptly from the trust account to the association.

(e) Neither the approval of the plans nor the approval of the actual construction by the association or the design review committee shall constitute a representation or warranty that the plans or construction comply with applicable governmental requirements or applicable engineering, design or safety standards. The association in its discretion may release all or any part of the deposit to the member before receiving a compliance report. Release of the deposit to the member does not constitute a representation or warranty from the association that the construction complies with the approved plans.

3. APPROVAL OF A CONSTRUCTION PROJECT'S ARCHITECTURAL DESIGNS, PLANS AND AMENDMENTS SHALL NOT UNREASONABLY BE WITHHELD.

APPROVED BY THE GOVERNOR MARCH 30, 2016.

EXHIBIT G
State of Arizona  
House of Representatives  
Fifty-second Legislature  
Second Regular Session  
2016

CHAPTER 54

HOUSE BILL 2341

AN ACT

AMENDING SECTION 36-136, ARIZONA REVISED STATUTES; RELATING TO THE REGULATION OF FOOD.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 36-136, Arizona Revised Statutes, is amended to read:

36-136. Powers and duties of director; compensation of personnel; rules

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of the state.

6. Exercise general supervision over all matters relating to sanitation and health throughout the state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of the state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of the state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of the state, the director may inspect any person or property in transportation through the state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.
C. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

D. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

E. The compensation of all personnel shall be as determined pursuant to section 38-611.

F. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

G. Notwithstanding subsection H, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

H. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and
regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures THAT ARE not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to assure ENSURE that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

   (a) Served at a noncommercial social event that takes place at a workplace, such as a potluck.

   (b) Prepared at a cooking school that is conducted in an owner-occupied home.

   (c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.

   (d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.

   (e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on site for immediate consumption.

   (f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

   (g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made in a facility for individuals with developmental disabilities, the label must
also disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler’s card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, “potentially hazardous” means baked and confectionary goods that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall
prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.

I. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

J. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or
instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

K. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

L. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

M. Until the department adopts exemptions by rule as required by subsection H, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection H of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

APPROVED BY THE GOVERNOR MARCH 18, 2016.

EXHIBIT H
CHAPTER 254

HOUSE BILL 2382

AN ACT

AMENDING SECTIONS 33-440 AND 33-1817, ARIZONA REVISED STATUTES; RELATING TO REAL ESTATE COVENANTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 33-440, Arizona Revised Statutes, is amended to read:

33-440. Enforceability of private covenants; amendment of declaration; definitions

A. An owner of real property may enter into a private covenant regarding that real property and the private covenant is valid and enforceable according to its terms if all of the following apply:

1. The private covenant is not prohibited by any other existing private covenant or declaration affecting the real property and does not violate any statute governing the subject matter of the private covenant that is in effect before the effective date of this section SEPTEMBER 26, 2008.

2. The owner of the real property affected by the private covenant and any person on whom the private covenant imposes any liability or obligation have consented to the private covenant.

3. Any consent requirements contained in the express provisions of any existing private covenant or declaration affecting the real property have been met.

B. A private covenant is deemed not to constitute an amendment to any existing private covenant or declaration unless the private covenant expressly violates an express provision of the existing private covenant or declaration.

C. Except during the period of declarant control, or if during the period of declarant control with the written consent of the declarant in each instance, the following apply to an amendment to a declaration:

1. The declaration may be amended by the association, if any, or, if there is no association or board, the owners of the property that is subject to the declaration, by an affirmative vote or written consent of the number of owners or eligible voters specified in the declaration, including the assent of any individuals or entities that are specified in the declaration.

2. An amendment to a declaration may apply to fewer than all of the lots or less than all of the property that is bound by the declaration and an amendment is deemed to conform to the general design and plan of the community, if both of the following apply:

   (a) The amendment receives the affirmative vote or written consent of the number of owners or eligible voters specified in the declaration, including the assent of any individuals or entities that are specified in the declaration.

   (b) The amendment receives the affirmative vote or written consent of all of the owners of the lots or property to which the amendment applies.

3. Within thirty days after the adoption of any amendment pursuant to this subsection, the association or, if there is no association or board, a property owner that is authorized by the affirmative vote on or the written consent to the amendment shall prepare, execute and record a written instrument setting forth the amendment.
4. NOTWITHSTANDING ANY PROVISION IN THE DECLARATION THAT PROVIDES FOR PERIODIC RENEWAL OF THE DECLARATION, AN AMENDMENT TO THE DECLARATION IS EFFECTIVE IMMEDIATELY ON RECORDATION OF THE INSTRUMENT IN THE COUNTY IN WHICH THE PROPERTY IS LOCATED.

D. SUBSECTION C OF THIS SECTION DOES NOT APPLY TO A CONDOMINIUM AS DEFINED IN SECTION 33-1202 OR A TIMESHARE PLAN OR ASSOCIATION AS DEFINED IN SECTION 33-2202.

E. For the purposes of this section:
1. "Declaration" has the same meaning prescribed in section 33-1802.
2. "Private covenant" means any uniform or nonuniform covenant, restriction or condition regarding real property that is contained in any deed, contract, agreement or other recorded instrument affecting real property.

Sec. 2. Section 33-1817, Arizona Revised Statutes, is amended to read:

33-1817. Declaration amendment; design, architectural committees; review

A. EXCEPT DURING THE PERIOD OF DECLARANT CONTROL, OR IF DURING THE PERIOD OF DECLARANT CONTROL WITH THE WRITTEN CONSENT OF THE DECLARANT IN EACH INSTANCE, THE FOLLOWING APPLY TO AN AMENDMENT TO A DECLARATION:
1. THE DECLARATION MAY BE AMENDED BY THE ASSOCIATION, IF ANY, OR, IF THERE IS NO ASSOCIATION OR BOARD, THE OWNERS OF THE PROPERTY THAT IS SUBJECT TO THE DECLARATION, BY AN AFFIRMATIVE VOTE OR WRITTEN CONSENT OF THE NUMBER OF OWNERS OR ELIGIBLE VOTERS SPECIFIED IN THE DECLARATION, INCLUDING THE ASSENT OF ANY INDIVIDUALS OR ENTITIES THAT ARE SPECIFIED IN THE DECLARATION.
2. AN AMENDMENT TO A DECLARATION MAY APPLY TO FEWER THAN ALL OF THE LOTS OR LESS THAN ALL OF THE PROPERTY THAT IS BOUND BY THE DECLARATION AND AN AMENDMENT IS DEEMED TO CONFORM TO THE GENERAL DESIGN AND PLAN OF THE COMMUNITY, IF BOTH OF THE FOLLOWING APPLY:
   (a) THE AMENDMENT RECEIVES THE AFFIRMATIVE VOTE OR WRITTEN CONSENT OF THE NUMBER OF OWNERS OR ELIGIBLE VOTERS SPECIFIED IN THE DECLARATION, INCLUDING THE ASSENT OF ANY INDIVIDUALS OR ENTITIES THAT ARE SPECIFIED IN THE DECLARATION.
   (b) THE AMENDMENT RECEIVES THE AFFIRMATIVE VOTE OR WRITTEN CONSENT OF ALL OF THE OWNERS OF THE LOTS OR PROPERTY TO WHICH THE AMENDMENT APPLIES.
3. WITHIN THIRTY DAYS AFTER THE ADOPTION OF ANY AMENDMENT PURSUANT TO THIS SECTION, THE ASSOCIATION OR, IF THERE IS NO ASSOCIATION OR BOARD, AN OWNER THAT IS AUTHORIZED BY THE AFFIRMATIVE VOTE OR THE WRITTEN CONSENT TO THE AMENDMENT SHALL PREPARE, EXECUTE AND RECORD A WRITTEN INSTRUMENT SETTING FORTH THE AMENDMENT.
4. NOTWITHSTANDING ANY PROVISION IN THE DECLARATION THAT PROVIDES FOR PERIODIC RENEWAL OF THE DECLARATION, AN AMENDMENT TO THE DECLARATION IS EFFECTIVE IMMEDIATELY ON RECORDATION OF THE INSTRUMENT IN THE COUNTY IN WHICH THE PROPERTY IS LOCATED.

B. Notwithstanding any provision in the community documents:
1. Membership on a design review committee, an architectural committee or a committee that performs similar functions, however denominated, for the planned community shall include at least one member of the board of directors who shall serve as chairperson of the committee.

2. For new construction of the main residential structure on a lot or for rebuilds of the main residential structure on a lot and only in a planned community that has enacted design guidelines, architectural guidelines or other similar rules, however denominated, and if the association documents permit the association to charge the member a security deposit and the association requires the member to pay a security deposit to secure completion of the member's construction project or compliance with approved plans, all of the following apply:
   (a) The deposit shall be placed in a trust account with the following instructions:
      (i) The cost of the trust account shall be shared equally between the association and the member.
      (ii) If the construction project is abandoned, the board of directors may determine the appropriate use of any deposit monies.
      (iii) Any interest earned on the refundable security deposit shall become part of the security deposit.
   (b) The association or the design review committee must hold a final design approval meeting for the purpose of issuing approval of the plans, and the member or member's agent must have the opportunity to attend the meeting. If the plans are approved, the association's design review representative shall provide written acknowledgement that the approved plans, including any approved amendments, are in compliance with all rules and guidelines in effect at the time of the approval and that the refund of the deposit requires that construction be completed in accordance with those approved plans.
   (c) The association must provide for at least two on-site formal reviews during construction for the purpose of determining compliance with the approved plans. The member or member's agent shall be provided the opportunity to attend both formal reviews. Within five business days after the formal reviews, the association shall cause a written report to be provided to the member or member's agent specifying any deficiencies, violations or unapproved variations from the approved plans, as amended, that have come to the attention of the association.
   (d) Within thirty business days after the second formal review, the association shall provide to the member a copy of the written report specifying any deficiencies, violations or unapproved variations from the approved plans as amended that have come to the attention of the association. If the written report does not specify any deficiencies, violations or unapproved variations from the approved plans, as amended, that have come to the attention of the association, the association shall promptly release the deposit monies to the member. If the report identifies any deficiencies,
violations or unapproved variations from the approved plans, as amended, the association may hold the deposit for one hundred eighty days or until receipt of a subsequent report of construction compliance, whichever is less. If a report of construction compliance is received before the one hundred eightieth day, the association shall promptly release the deposit monies to the member. If a compliance report is not received within one hundred eighty days, the association shall release the deposit monies promptly from the trust account to the association.

(e) Neither the approval of the plans nor the approval of the actual construction by the association or the design review committee shall constitute a representation or warranty that the plans or construction comply with applicable governmental requirements or applicable engineering, design or safety standards. The association in its discretion may release all or any part of the deposit to the member before receiving a compliance report. Release of the deposit to the member does not constitute a representation or warranty from the association that the construction complies with the approved plans.

APPROVED BY THE GOVERNOR MAY 17, 2016.

EXHIBIT I
CHAPTER 204

HOUSE BILL 2592

AN ACT

AMENDING SECTION 10-3708, ARIZONA REVISED STATUTES; RELATING TO NONPROFIT CORPORATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 10-3708, Arizona Revised Statutes, is amended to read:

10-3708. Action by written ballot; online voting
A. Unless prohibited or limited by the articles of incorporation or bylaws, any action that the corporation may take at any annual, regular or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.
B. A written ballot shall:
1. Set forth each proposed action.
2. Provide an opportunity to vote for or against each proposed action.
C. Approval by written ballot pursuant to this section is valid only if both:
1. The number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.
2. The number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.
D. All solicitations for votes by written ballot shall:
1. Indicate the number of responses needed to meet the quorum requirements.
2. State the percentage of approvals necessary to approve each matter other than election of directors.
3. Specify the time by which a ballot must be delivered to the corporation in order to be counted, which time shall not be less than three days after the date that the corporation delivers the ballot.
E. Except as otherwise provided in the articles of incorporation or bylaws, a written ballot shall not be revoked.
F. After providing notice that complies with subsection G of this section to members that a vote shall be conducted by electronic means, a written ballot may be delivered through an online voting system that does all of the following:
1. Authenticates the member's identity.
2. Authenticates the validity of each electronic vote to ensure that the vote is not altered in transit.
3. Transmits a receipt to each member who casts an electronic vote.
4. Stores electronic votes for recount, inspection and review purposes.
G. The notice prescribed by subsection F of this section shall include a reasonable procedure by which a member may obtain and cast a ballot through some other form of delivery, including United States mail delivery and fax transmission.

APPROVED BY THE GOVERNOR MAY 11, 2016.

- 1 -
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.
Many firms limit their practice to HOA law. We focus on efficiency. By combining competence with innovation, we aim to provide superior legal services, more affordable prices and better results.

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