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**THE COMMUNITY ASSOCIATION LAW
LUNCH & LEARN LECTURE SERIES
DESK REFERENCE SET**

VOLUME 2:

How to Run a Legal, Smooth and Successful Annual or Special Meeting

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I. ANNUAL MEETINGS OF THE MEMBERS.

Probably the most important meeting a homeowners association (hereafter, “HOA”) is required to conduct is the Annual Meeting of the Members.

Not only do most HOA Governing Documents require HOAs to conduct Annual Meetings, Arizona law, at Arizona Revised Statutes §10-3701, requires HOAs to conduct an Annual Meeting at least once per year.

a. How Often Should Annual Meetings Be Held?

Pursuant to Arizona Revised Statutes §10-3701, HOAs must hold an Annual Meeting at least once a year. Many HOA Bylaws also contain requirements for conducting an Annual Meeting. As a rule of thumb, a HOA should hold an Annual Meeting no less than 15 months subsequent to the HOA's last Annual Meeting.

b. What Are the Notice Requirements for an Annual Meeting?

Annual Meeting notice requirements are usually discussed in the HOA's Bylaws. If the HOA's Bylaws are silent concerning notice requirements for Annual Meetings, Arizona Revised Statutes §10-3705 states that an HOA must provide at least ten (10) days notice of an Annual Meeting to the Membership.

c. Purpose of an Annual Meeting.

Annual Meetings are meetings of the Members. They are held to conduct the "business" of the Membership and allow the Membership to address their HOA. In most HOAs, Annual Meetings are conducted for three main purposes of, said purposes being:

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.

1. Conduct Member "Business".

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

- a. Approval of the previous year's Annual Meeting Minutes (see the Section on Annual Meeting Minutes below);
- b. Amendment of the Association Documents; and
- c. Authorizing Increases in the Annual Assessments of Special Assessments.

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

2. To Elect Members to the Board of Directors.

By far the most important purpose of an Annual Meeting is to elect Members to the HOA's Board of Directors. Effectuating an election to the Board of Directors takes a great deal of forethought, especially in light of recent changes in the laws affecting HOAs found at Arizona Revised Statutes §33-1250 (Condominiums) and Arizona Revised Statutes §33-1812 (Planned Communities).

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 of Arizona Revised Statutes §33-1250 (Condominiums) and Arizona Revised Statutes §33-1812 (Planned Communities). The Statutes require that the HOA send absentee ballots to all Members of the HOA. The Statutes state, in relevant part:

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 may provide for voting by some other form of delivery.

The difficulty in complying with Arizona Revised Statutes §33-1250 (Condominiums) and Arizona Revised Statutes §33-1812 (Planned Communities) and effectuating an election to the Board of Directors lies in the dilemma of producing the required absentee ballot. This is why it is important to begin the planning process for an Annual Meeting at least sixty (60) days prior to the Annual Meeting.

Effective planning of an election to the Board of Directors begins sixty (60) days from the date of the Annual Meeting with the production and sending of a "Board Member Nomination Form" to all members. The Board Member Nomination Form requests that Members nominate themselves or other Members to run for the Board of Directors. The Board Member Nomination Form also provides the Member with an opportunity to provide qualifications concerning their election to the Board. A SAMPLE Board Member Nomination Form is attached to this Volume as **Exhibit A**.

The Board Member Nomination Forms should require that the Forms be returned by no later than thirty (30) days from the date they are sent. Also, all names returned on the Board Member Nomination Forms should be included

on the absentee ballot and the Board Member Nomination Forms should be sent with the absentee ballot.

Once the return time for the Board Member Nomination Forms has expired, the absentee ballot may be drafted. As stated above, the Board Member Nomination Forms should be sent with the absentee ballots in order to provide as much information concerning the candidates as possible.

When drafting an absentee ballot, you must keep the requirements of Arizona Revised Statutes §33-1250 (Condominiums) and Arizona Revised Statutes §33-1812 (Planned Communities) in mind. 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 for only 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.
5. The absentee ballot does not authorize another person to cast votes on behalf of the member.

The above requirement can be daunting. For your convenience, we have attached as Exhibit B to this Volume a SAMPLE Board Meeting absentee

ballot that complies with the requirements of Arizona Revised Statutes §33-1250 (Condominiums) and Arizona Revised Statutes §33-1812 (Planned Communities).

The absentee ballots should state that they may be either returned to the Association one business day prior to the Annual Meeting or the absentee ballot may be brought to the Annual Meeting of the Members.

One other important thing to remember concerning absentee ballots is that the Association may only accept an absentee ballot from a particular owner. The Association may not accept a group of absentee ballots submitted by a single owner.

3. To Allow Members to Address Their Association.

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

Many HOAs attempt to limit who may speak at an Annual Meeting. A good policy to have is to let all Members who wish to speak have the opportunity to speak but limit how long they may speak. I usually suggest no more than 5 minutes per person but this timeframe may be less depending on the number of Members who desire to speak.

d. Annual Meeting Do's and Don'ts.

Conducting an Annual Meeting can be a daunting task. If, however, the HOA is prepared, conducting an effective Annual Meeting can be relatively easy. Below are a few Do's and Don'ts concerning Annual Meetings.

1. Do Create An Annual Meeting Agenda.

Effective Annual Meetings start with the Annual Meeting Agenda. Annual Meeting agendas will vary depending on the HOA, but a standard Annual Meeting Agenda should contain the following:

- I. Call to Order;
- II. Approval of the Last Annual Meeting's Minutes;
- III. Introduction of the Board of Directors;
- IV. President's Report;
- V. Treasurer's Report;
- VI. Election of the Board of Directors;
- VII. Member Questions and Comments;
- VIII. Adjourn.

2. Do take and Ratify Annual Meeting Minutes.

Arizona Revised Statutes §10-11601 requires HOAs to make a record of and keep annual meeting minutes. As such, it is important that HOAs take Annual Meeting Minutes. This should be done by the Secretary of the Association, or any other designated officer for the Board.

It is equally important that HOAs ratify Annual Meeting Minutes. Annual Meeting Minutes may only be ratified by the Members of the HOA. As such, most Annual Meeting Minutes will be ratified at the next Annual Meeting of the Members.

3. Do not Restrict the Participation of Members at the Annual Meeting.

As stated above, the Members of the HOA have the right to address the HOA at the Annual Meeting. As such, it is important that time is reserved to allow the Members to address the HOA at the Annual Meeting.

4. Do Allow a Qualified Person to Conduct the Annual Meeting.

Whether it be the HOA President, HOA Manager or HOA Attorney, make sure that the Annual Meeting is conducted by someone who is qualified to conduct the Meeting. Annual Meetings are difficult to conduct and can get out of hand. Having someone who has conducted Annual Meetings in the past and who is well qualified to conduct the Annual Meeting will make the Annual Meeting run more smoothly.

II. SPECIAL MEETINGS OF THE MEMBERS.

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

a. 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 HOA. Usually, the Board of Directors or a certain number of Members may call a Special Meeting of the Members.

b. Notice Requirements for Special Meetings of the Members.

The notice requirements concerning a Special Meeting of the Members are usually found in the HOA's Governing Documents. If the HOA Bylaws are silent concerning notice requirements, Arizona Revised Statutes §10-3705 states that an HOA must provide at least ten (10) days notice of a Special Meeting of the Members to the Membership.

c. 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.

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

Generally, the HOA's CC&Rs 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 HOA. Voting and quorum requirements concerning this type of Special Meeting of the Members will also generally be found in the HOA's CC&Rs. 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) (A Sample absentee ballot is attached to this Volume as Exhibit C).

2. Special Meeting of the Members to Amend the Association's Governing Documents.

Pursuant to most HOA Governing Documents, Special Meetings of the Members may be called to vote amending certain provisions of the HOA's Governing Documents. Voting and quorum requirements concerning this type of Special Meetings of the Members should also be generally found in the specific HOA 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) (A Sample absentee ballot is attached to this Volume as Exhibit D).

3. 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 a HOA's Board of Directors may be removed. Arizona Revised Statutes §33-1243 and Arizona Revised Statutes §33-1813 provides for the procedures concerning a Special Meeting of the Members to remove Members of the HOA's Board of Directors.

It is important that a HOA follow the quorum requirements of Arizona Revised Statutes §33-1243 and Arizona Revised Statutes §33-1813. It is equally important that the HOA carefully study Arizona Revised Statutes §33-1243 and Arizona Revised Statutes §33-1813 in order to abide by its provisions. A copy of Arizona Revised Statutes §33-1243 and Arizona Revised Statutes §33-1813 are attached to this Volume as Exhibit E.

4. To Conduct Other Business of the Association.

See Mr. Lipson's handout.

VI. Conclusion.

Conducting a legal, smooth and successful Annual Meeting and Special Meeting of the Members takes time and practice. This Volume of the Community Association Law Lunch & Learn Desk Reference Set provides standard guidance for conducting said meetings. This Desk Reference Set, in conjunction with the experiences of a professional property manager, can go a long way in help your community association run legal, smooth and successful Annual and Special Meetings of the Members.

EXHIBIT A
SAMPLE BOARD MEMBER NOMINATION FORM

**BOARD OF DIRECTORS
CANDIDATE NOMINATION FORM
_____ HOMEOWNERS ASSOCIATION**

An election for the Board of Directors of the _____ Homeowners Association will be held on _____ at _____ ()M at _____ . Three seats will be elected at said meeting. If you would like to be considered for a vacancy on the Board of Directors, please fill out this application and mail or fax or mail it back to the below listed address and fax number. Applications must be received no later than _____ ()M on _____

PLEASE NOTE THAT THIS INFORMATION WILL BE SHARED WITH THE MEMBERSHIP IN ORDER FOR THEM TO MAKE AN INFORMED DECISION CONCERNING WHOM THEY WISH TO ELECT TO THE BOARD OF DIRECTORS. AS SUCH, PLEASE PRINT YOUR RESPONSES CLEARLY AND LEGIBLY.

NAME: _____ LOT #: _____

(1) Brief Biography: _____

(2) Board of Directors Experience: _____

(3) Business or Job Related Activity / Experience: _____

(4) Additionally, I believe I can serve the community because:

(5) I have been a Owner since ___/___/___

Signature

Date

Please Return this Application to:

**EXHIBIT B
SAMPLE BOARD ELECTION BALLOT**

**MAIL BALLOT TO ELECT THE BOARD OF DIRECTORS
_____ ASSOCIATION**

The _____ Association (the "Association") hereby presents this ballot to the Membership to elect members of the Association's Board of Directors.

The undersigned, being the Owner(s) of Lot _____ of the Association, hereby vote as follows. (Please vote for no more than three (3) candidates):

_____ **I VOTE TO ELECT** _____ to the Board of Directors.

_____ **I VOTE TO ELECT** _____ to the Board of Directors.

_____ **I VOTE TO ELECT** _____ to the Board of Directors.

_____ **I VOTE TO ELECT** _____ to the Board of Directors.

_____ **I VOTE TO ELECT** the following **write-in candidate** to the Board of Directors.

ONCE YOU HAVE COMPLETED YOUR BALLOT, PLEASE RETURN IT TO THE ASSOCIATION IN THE ENCLOSED ENVELOPE BY NO LATER THAN _____ ()M ON _____ OR BRING IT TO THE ANNUAL MEETING OF THE ASSOCIATION TO BE HELD ON _____ AT _____ ()M AT _____. THIS BALLOT IS VALID FOR ONLY THE PURPOSES OUTLINED ON THIS BALLOT. THIS BALLOT MAY NOT AUTHORIZE ANOTHER PERSON TO CAST VOTES ON BEHALF OF THE MEMBER.

Name and Address: _____

Signature: _____

EXHIBIT C
SAMPLE SPECIAL ASSESSMENT MAIL BALLOT

MAIL BALLOT TO VOTE APPROVE SPECIAL ASSESSMENT

_____ **ASSOCIATION**

The _____ Association (the "Association") wishes to present to the Members this Ballot to approve a Special Assessment of _____. The Special Assessment would be due thirty (30) days from approval by the Members.

THE UNDERSIGNED, BEING THE OWNER (S) OF LOT _____ OF THE ASSOCIATION, HEREBY VOTES AS FOLLOWS:

_____ **I VOTE TO APPROVE A ONE TIME SPECIAL ASSESSMENT OF \$ _____ AS REQUESTED ABOVE.**

_____ **I VOTE TO DISAPPROVE A ONE TIME SPECIAL ASSESSMENT OF _____ AS REQUESTED ABOVE.**

ONCE YOU HAVE COMPLETED YOUR BALLOT, PLEASE RETURN IT TO THE ASSOCIATION IN THE ENCLOSED ENVELOPE BY NO LATER THAN _____ ()M ON _____ OR BRING IT TO THE ANNUAL MEETING OF THE ASSOCIATION TO BE HELD ON _____ AT _____ ()M AT _____. THIS BALLOT IS VALID FOR ONLY THE PURPOSES OUTLINED ON THIS BALLOT. THIS BALLOT MAY NOT AUTHORIZE ANOTHER PERSON TO CAST VOTES ON BEHALF OF THE MEMBER.

PURSUANT TO CC&RS, THE SPECIAL ASSESSMENT MAY BE AUTHORIZED BY THE AFFIRMATIVE VOTE OF _____ OF THE MEMBERS PRESENT AT OR BALLOTS RETURNED TO THE SPECIAL MEETING OF THE MEMBERS. THIS BALLOT IS VALID FOR ONLY THE PURPOSES OUTLINED ON THIS BALLOT. THIS BALLOT MAY NOT AUTHORIZE ANOTHER PERSON TO CAST VOTES ON BEHALF OF THE MEMBER.

Name and Address: _____

Signature: _____

EXHIBIT D
SAMPLE DOCUMENT AMENDMENT BALLOT

**MAIL BALLOT AND CONSENT FOR AMENDMENT TO THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

The _____ Homeowners Association Inc. (the "Association") proposes to amend the Declaration of Covenants, Conditions and Restrictions (the "CC&Rs") The proposed amendment is enclosed with this Ballot.

**THE UNDERSIGNED, BEING THE OWNER(S) OF LOT _____ OF
THE ASSOCIATION, HEREBY VOTE AS FOLLOWS:**

_____ **I CONSENT TO AND APPROVE** the amendment to the CC&Rs
as enclosed;

_____ **I DO NOT CONSENT TO AND APPROVE** the amendment to
the CC&Rs as enclosed.

THE ASSOCIATION HAS _____ MEMBERS. ACCORDING TO THE
ASSOCIATION'S CC&RS, THE AMENDMENT MUST BE APPROVED BY THE
AFFIRMATIVE VOTE OF OWNERS OF NOT LESS THAN _____ OF
THE LOTS. THE NUMBER VOTING IN FAVOR MUST EQUAL AT LEAST ___
MEMBERS.

ONCE YOU HAVE COMPLETED YOUR BALLOT, PLEASE RETURN IT TO
THE ASSOCIATION IN THE ENCLOSED ENVELOPE BY NO LATER THAN
_____ ()M ON _____ OR BRING IT TO THE ANNUAL
MEETING OF THE ASSOCIATION TO BE HELD ON
_____ AT _____ ()M AT
_____. THIS BALLOT IS VALID FOR ONLY
THE PURPOSES OUTLINED ON THIS BALLOT. THIS BALLOT MAY NOT
AUTHORIZE ANOTHER PERSON TO CAST VOTES ON BEHALF OF THE
MEMBER.

Name and Address: _____

Signature: _____