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How to Run a Legal, Smooth and Successful Annual Meeting

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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.

INTRODUCTION

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.

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.

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.

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:

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

3. To Allow the Members to Address their Association.

CONDUCT MEMBER “BUSINESS.”

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

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

Arizona law and most HOA 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 HOA’s Board of Directors. Effectuating an election to the Board of Directors takes a great deal of forethought.

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) regarding methods of voting. The Statutes state, in relevant part:

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.

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 proposed Annual Meeting date in HOAs without a nominating committee process and ninety (90) days prior to the proposed Annual Meeting date in HOAs with a nominating committee process

THE NOMINATION PROCESS.

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.

METHODS OF VOTING – ABSENTEE BALLOT

Once the return time for the Board Member Nomination Forms has expired, the absentee ballot may be drafted. As stated above, the completed 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 by a variety of means,

including fax, mail, e-mail or the absentee ballot may be brought to the Annual Meeting of the Members or given to management or a Board member.

METHODS OF VOTING – ONLINE VOTING

Recent changes in the laws now allow Members to vote “by some other form of delivery, including the use of e-mail and fax delivery.” This language now allows HOAs to effectuate voting through online or electronic voting.

There are many companies that provide online voting applications. The important issue to understand is that a HOA may provide for online and electronic voting but also must “provide for votes to be cast in person and by absentee ballot.”

If a HOA desires to implement an online voting election, the HOA, in the Annual Meeting Notice, must place language that a Member may either vote via mail ballot or via online means. **A sample Annual Meeting Notice is attached as Exhibit C.**

Also, the mail ballot must also contain language stating that an owner may either vote by using the ballot or may vote on-line. **For your convenience, we have attached as Exhibit B a SAMPLE Board Meeting absentee ballot.**

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 that 5 minutes per person but this timeframe may be less depending on the number of Members who desire to speak.

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.

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.

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.

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.

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.

**EXHIBIT A
SAMPLE BOARD MEMBER NOMINATION FORM**

**BOARD OF DIRECTORS
CANDIDATE NOMINATION FORM**

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 it to the below listed address, fax it to _____ or e-mail it to _____ by 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 an Owner since ___/___/___

Signature

Date

Please Return this Application to:

**EXHIBIT B
SAMPLE BOARD ELECTION BALLOT**

MAIL BALLOT TO ELECT THE BOARD OF DIRECTORS

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 votes as follows. (Please vote for no more than two (2) candidates):

_____ **I VOTE THIS BALLOT FOR QUORUM PURPOSES ONLY.**

_____ **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 (E-MAIL IT TO _____, FAX IT TO _____, GIVE TO THE ASSOCIATION'S MANAGER, GIVE IT TO A BOARD MEMBER) 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. THIS BALLOT MAY BE USED FOR QUORUM PURPOSES.

(PLEASE NOTE YOU MAY ALSO VOTE AT WWW. _____ BY NO LATER THAN _____)

(THIS BALLOT IS VALID FOR ANY ADJOURNMENT OF THIS MEETING PURSUANT TO THE BYLAWS)

Name and Address: _____

Signature: _____