

REFERENCE TITLE: homeowners' associations; condominiums; amendments

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2724

Introduced by
Representative Nichols

AN ACT

AMENDING SECTIONS 33-1213, 33-1221, 33-1227 AND 33-1242, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 9, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-1262; AMENDING SECTIONS 33-1801, 33-1802, 33-1803 AND 33-1809, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 16, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 33-1817, 33-1818, 33-1819 AND 33-1820; RELATING TO CONDOMINIUMS AND PLANNED COMMUNITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 33-1213, Arizona Revised Statutes, is amended to
3 read:
4 33-1213. Construction and validity of declaration and bylaws:
5 limitations
6 A. All provisions of the condominium documents are severable.
7 B. The rule against perpetuities shall not be applied to defeat any
8 provision of the condominium documents.
9 C. Except to the extent inconsistent with this chapter:
10 1. If a conflict exists between the provisions of the declaration and
11 the other condominium documents, the declaration prevails.
12 2. If a conflict exists between the provisions of the articles of
13 incorporation and the bylaws or rules, the articles of incorporation prevail.
14 3. If a conflict exists between the provisions of the bylaws and the
15 rules, the bylaws prevail.
16 D. THE ASSOCIATION OR THE BOARD MAY CREATE AND ENFORCE RULES OR CREATE
17 AN ENFORCEMENT, REVIEW OR REGULATORY BODY WITHIN THE ASSOCIATION ONLY IF
18 EXPRESSLY AUTHORIZED BY THE DECLARATION.
19 E. ANY RULE OF THE ASSOCIATION THAT DIRECTLY OR INDIRECTLY MODIFIES OR
20 SUPERSEDES ANY PROVISION OF THE DECLARATION IS VOID AND UNENFORCEABLE.
21 ~~D.~~ F. Title to a unit and common elements is not rendered
22 unmarketable or otherwise affected by reason of an insubstantial failure of
23 any condominium documents to comply with this chapter.
24 Sec. 2. Section 33-1221, Arizona Revised Statutes, is amended to read:
25 33-1221. Alterations of units
26 A. Subject to the provisions of the declaration and other provisions
27 of law, a unit owner:
28 1. May make any improvements or alterations to his unit that do not
29 impair the structural integrity or mechanical systems or lessen the support
30 of any portion of the condominium.
31 2. Shall not change the appearance of the common elements, or the
32 exterior appearance of a unit or any other portion of the condominium,
33 without written permission of the association.
34 3. After acquiring an adjoining unit or, if the declaration expressly
35 permits, an adjoining part of an adjoining unit, may remove or alter any
36 intervening partition or create apertures in intervening partitions, even if
37 the partition in whole or in part is a common element, if those acts do not
38 impair the structural integrity or mechanical systems or lessen the support
39 of any portion of the condominium. Removal of partitions or creation of
40 apertures under this paragraph is not an alteration of boundaries.
41 B. THE ASSOCIATION SHALL NOT LIMIT BY THE CONDOMINIUM DOCUMENTS OR
42 OTHERWISE THE RIGHT OF A UNIT OWNER TO CONSTRUCT, DECORATE, IMPROVE, MODIFY
43 OR REMODEL ANY PORTION OF A UNIT THAT IS EITHER NOT READILY VISIBLE FROM THE
44 COMMON AREA OR THAT IS INTERIOR TO A UNIT.

1 Sec. 3. Section 33-1227, Arizona Revised Statutes, is amended to read:
2 33-1227. Amendments to the declaration

3 A. Except in cases of amendments that may be executed by a declarant
4 under section 33-1220, by the association under section 33-1206 or section
5 33-1216, subsection D, or by certain unit owners under section 33-1218,
6 subsection B, section 33-1222, section 33-1223 or section 33-1228, subsection
7 B, and except to the extent permitted or required by other provisions of this
8 chapter, the declaration, including the plat, may be amended only by a vote
9 of the unit owners to which at least sixty-seven per cent of the votes in the
10 association are allocated, or any larger majority the declaration specifies.
11 The declaration may specify a smaller percentage only if all of the units are
12 restricted exclusively to nonresidential use. The declaration may also
13 provide that the consent of the declarant is required to an amendment during
14 any period of declarant control pursuant to section 33-1243. Within thirty
15 days after the adoption of any amendment pursuant to this subsection, the
16 association shall prepare, execute and record a written instrument setting
17 forth the amendment.

18 B. An action to challenge the validity of an amendment adopted by the
19 association pursuant to this section shall not be brought more than one year
20 after the amendment is recorded.

21 C. An amendment to the declaration shall be recorded in each county in
22 which any portion of the condominium is located and is effective only on
23 recordation in the same manner as required for the declaration under section
24 33-1211.

25 D. Except to the extent expressly permitted or required by other
26 provisions of this chapter, an amendment shall not create or increase special
27 declarant rights, increase the number of units or change the boundaries of
28 any unit, the allocated interests of a unit or the uses to which any unit is
29 restricted, in the absence of unanimous consent of the unit owners.

30 E. An amendment shall not terminate or decrease any unexpired
31 development right, special declarant right or period of declarant control
32 unless the declarant approves.

33 F. Amendments to the declaration required by this chapter to be
34 executed by the association shall be executed on behalf of the association by
35 any officer of the association designated for that purpose or, in the absence
36 of designation, by the president of the association.

37 G. SUBJECT TO SUBSECTION B OF THIS SECTION AND NOTWITHSTANDING ANY
38 PROVISION OF THE DECLARATION, AN AMENDMENT TO THE DECLARATION IS VOID AND
39 UNENFORCEABLE AGAINST ANY UNIT OWNER WHO ENTERED THE ASSOCIATION BEFORE THE
40 ADOPTION OF THE AMENDMENT UNLESS THE AMENDMENT WAS APPROVED BY UNANIMOUS
41 CONSENT OF ALL UNIT OWNERS, IF THE AMENDMENT MODIFIES OR CONTRADICTS ANY OF
42 THE FOLLOWING:

43 1. AN EXPRESS PROVISION OF THE DECLARATION THAT WAS REASONABLY RELIED
44 ON BY A UNIT OWNER BEFORE THE AMENDMENT.

1 2. THE EXPECTATIONS OF A UNIT OWNER THAT ARE REASONABLY FORESEEABLE
 2 BASED ON THE CHARACTER OF THE ASSOCIATION AND IN RELIANCE ON WHICH THE UNIT
 3 OWNER HAS ACTED OR CHANGED POSITION.

4 H. AMENDMENTS TO THE DECLARATION THAT DO NOT APPLY UNIFORMLY TO
 5 SIMILAR LOTS OR UNITS ARE VOID AND UNENFORCEABLE WITHOUT THE APPROVAL OF THE
 6 UNIT OWNERS WHOSE INTERESTS WOULD BE ADVERSELY AFFECTED UNLESS THE
 7 DECLARATION EXPRESSLY AND SPECIFICALLY INFORMS PURCHASERS THAT SUCH
 8 AMENDMENTS TO THE DECLARATION MAY BE MADE.

9 Sec. 4. Section 33-1242, Arizona Revised Statutes, is amended to read:
 10 33-1242. Powers of unit owners' association; notice to unit
 11 owner of violation

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

13 1. Adopt and amend bylaws and rules.

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

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

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

21 5. Make contracts and incur liabilities.

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

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

26 8. Acquire, hold, encumber and convey in its own name any right, title
 27 or interest to real or personal property, except that common elements may be
 28 conveyed or subjected to a security interest only pursuant to section
 29 33-1252.

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

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

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

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

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

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

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

8 16. Exercise any other powers conferred by the declaration or bylaws.

9 17. Exercise all other powers that may be exercised in this state by
10 legal entities of the same type as the association.

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

13 B. A unit owner who receives a written notice that the condition of
14 the property owned by the unit owner is in violation of a requirement of the
15 condominium documents without regard to whether a monetary penalty is imposed
16 by the notice may provide the association with a written response by sending
17 the response by certified mail within ten business days after the date of the
18 notice. The response shall be sent to the address contained in the notice or
19 in the recorded notice prescribed by section 33-1256, subsection J.

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

25 1. The provision of the condominium documents that has allegedly been
26 violated.

27 2. The date of the violation or the date the violation was observed.

28 3. The first and last name of the person or persons who observed the
29 violation.

30 4. The process the unit owner must follow to contest the notice.

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

41 E. NOTWITHSTANDING ANY PROVISION IN THE CONDOMINIUM DOCUMENTS THAT
42 ALLOWS OR REQUIRES THE UNIT OWNER TO OBTAIN A REVIEW BY THE ASSOCIATION OF AN
43 ALLEGED VIOLATION OF THE CONDOMINIUM DOCUMENTS, THE FAILURE OF A UNIT OWNER
44 TO DO SO SHALL NOT LIMIT OR RESTRICT THE UNIT OWNER'S RIGHT TO FILE A
45 COMPLAINT AT ANY TIME WITH ANY STATE OR FEDERAL COURT OR WITH AN

1 ADMINISTRATIVE AGENCY FOR AN INDEPENDENT REVIEW OF THE ALLEGED VIOLATION AND
2 A DETERMINATION ON THE MERITS.

3 Sec. 5. Title 33, chapter 9, article 3, Arizona Revised Statutes, is
4 amended by adding section 33-1262, to read:

5 33-1262. Enforcement of condominium documents; burden of proof

6 A. NOTWITHSTANDING ANY PROVISION IN THE CONDOMINIUM DOCUMENTS, AN
7 ASSOCIATION SHALL UNIFORMLY ENFORCE THE PROVISIONS IN THE CONDOMINIUM
8 DOCUMENTS AGAINST ALL UNIT OWNERS.

9 B. DURING AN ACTION BY THE ASSOCIATION TO ENFORCE ANY PROVISION OF THE
10 CONDOMINIUM DOCUMENTS AGAINST ANY UNIT OWNER, THE ASSOCIATION SHALL ENFORCE
11 THAT PROVISION OF THE CONDOMINIUM DOCUMENTS AGAINST ALL OTHER UNIT OWNERS WHO
12 CAN REASONABLY AND READILY BE DETERMINED TO BE IN VIOLATION. THESE
13 ENFORCEMENT ACTIONS SHALL BE TAKEN CONCURRENTLY WITH OR IN CONSOLIDATION WITH
14 THE OTHER ENFORCEMENT ACTION TAKEN BY THE ASSOCIATION TO ENFORCE THAT
15 PROVISION.

16 C. IN AN ACTION TO ENFORCE ANY PROVISION OF THE CONDOMINIUM DOCUMENTS,
17 THE ASSOCIATION BEARS THE BURDEN OF PROVING THAT THE ASSOCIATION ENFORCES
18 THAT PROVISION UNIFORMLY.

19 D. ANY PROVISION IN THE CONDOMINIUM DOCUMENTS THAT IS NOT UNIFORMLY
20 ENFORCED PURSUANT TO THIS SECTION IS DEEMED UNENFORCEABLE FOR PURPOSES OF ANY
21 PENDING ENFORCEMENT ACTION.

22 Sec. 6. Section 33-1801, Arizona Revised Statutes, is amended to read:

23 33-1801. Applicability; exemption

24 A. This chapter applies to all planned communities.

25 B. Notwithstanding any provisions in the community documents, this
26 chapter does not apply to any school that receives monies from this state,
27 including a charter school, and a school is exempt from regulation or any
28 enforcement action by any homeowners' association that is subject to this
29 chapter. With the exception of home schools as defined in section 15-802,
30 schools shall not be established within the living units of a homeowners'
31 association. The homeowners' association may enter into a contractual
32 agreement with a school district or charter school to allow use of the
33 homeowners' association's common areas by the school district or charter
34 school.

35 C. EXCEPT AS EXPRESSLY PRESCRIBED IN THIS CHAPTER, THE REQUIREMENTS OF
36 THIS CHAPTER INCLUDING ANY RIGHTS CONFERRED BY THIS CHAPTER SHALL NOT BE
37 MODIFIED BY AGREEMENT OR OTHERWISE WAIVED. A PERSON SHALL NOT USE ANY DEVICE
38 TO EVADE THE LIMITATIONS OR PROHIBITIONS OF THIS CHAPTER.

39 ~~C.~~ D. This chapter does not apply to timeshare plans or associations
40 that are subject to chapter 20 of this title.

1 Sec. 7. Section 33-1802, Arizona Revised Statutes, is amended to read:

2 33-1802. Definitions

3 In this chapter and in the community documents, unless the context
4 otherwise requires:

5 1. "Association" means a nonprofit corporation or unincorporated
6 association of owners that is created pursuant to a declaration to own and
7 operate portions of a planned community and that has the power under the
8 declaration to assess association members to pay the costs and expenses
9 incurred in the performance of the association's obligations under the
10 declaration.

11 2. "Community documents" means the declaration, bylaws, articles of
12 incorporation, if any, and rules, if any.

13 3. "Declaration" means any instruments, however denominated, that
14 establish a planned community and any amendment to those instruments.

15 4. "Planned community" means a real estate development which includes
16 real estate owned and operated by a nonprofit corporation or unincorporated
17 association of owners that is created for the purpose of managing,
18 maintaining or improving the property and in which the owners of separately
19 owned lots, parcels or units are mandatory members and are required to pay
20 assessments to the association for these purposes. Planned community does
21 not include a timeshare plan or a timeshare association that is governed by
22 chapter 20 of this title.

23 5. "RULES" MEANS THE PROVISIONS, IF ANY, ADOPTED PURSUANT TO THE
24 DECLARATION OR BYLAWS GOVERNING MAINTENANCE AND USE OF THE LOTS, PARCELS,
25 UNITS OR REAL ESTATE OWNED AND OPERATED BY THE ASSOCIATION.

26 Sec. 8. Section 33-1803, Arizona Revised Statutes, is amended to read:

27 33-1803. Penalties; notice to member of violation

28 A. Unless limitations in the community documents would result in a
29 lower limit for the assessment, the association shall not impose a regular
30 assessment that is more than twenty per cent greater than the immediately
31 preceding fiscal year's assessment without the approval of the majority of
32 the members of the association. Unless reserved to the members of the
33 association, the board of directors may impose reasonable charges for the
34 late payment of assessments. A payment by a member is deemed late if it is
35 unpaid fifteen or more days after its due date, unless the community
36 documents provide for a longer period. Charges for the late payment of
37 assessments are limited to the greater of fifteen dollars or ten per cent of
38 the amount of the unpaid assessment. Any monies paid by the member for an
39 unpaid assessment shall be applied first to the principal amount unpaid and
40 then to the interest accrued.

41 B. After notice and an opportunity to be heard, the board of directors
42 may impose reasonable monetary penalties on members for violations of the
43 declaration, bylaws and rules of the association. Notwithstanding any
44 provision in the community documents, the board of directors shall not impose
45 a charge for a late payment of a penalty that exceeds the greater of fifteen

1 dollars or ten per cent of the amount of the unpaid penalty. A payment is
2 deemed late if it is unpaid fifteen or more days after its due date, unless
3 the declaration, bylaws or rules of the association provide for a longer
4 period. Any monies paid by a member for an unpaid penalty shall be applied
5 first to the principal amount unpaid and then to the interest accrued.
6 Notice pursuant to this subsection shall include information pertaining to
7 the manner in which the penalty shall be enforced.

8 C. A member who receives a written notice that the condition of the
9 property owned by the member is in violation of the community documents
10 without regard to whether a monetary penalty is imposed by the notice may
11 provide the association with a written response by sending the response by
12 certified mail within ten business days after the date of the notice. The
13 response shall be sent to the address contained in the notice or in the
14 recorded notice prescribed by section 33-1807, subsection J.

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

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

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

36 F. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS THAT
37 ALLOWS OR REQUIRES THE MEMBER TO OBTAIN A REVIEW BY THE ASSOCIATION OF AN
38 ALLEGED VIOLATION OF THE COMMUNITY DOCUMENTS, THE FAILURE OF A MEMBER TO DO
39 SO SHALL NOT LIMIT OR RESTRICT THE MEMBER'S RIGHT TO FILE A COMPLAINT AT ANY
40 TIME WITH ANY STATE OR FEDERAL COURT OR WITH AN ADMINISTRATIVE AGENCY FOR AN
41 INDEPENDENT REVIEW OF THE ALLEGED VIOLATION AND A DETERMINATION ON THE
42 MERITS.

1 Sec. 9. Section 33-1809, Arizona Revised Statutes, is amended to read:

2 33-1809. Parking; personal vehicles; public service and public
3 safety emergency vehicles; definition

4 A. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS, AN
5 ASSOCIATION SHALL NOT PROHIBIT A MEMBER FROM PARKING A PERSONAL MOTOR VEHICLE
6 ON A DRIVEWAY, OR ON A STREET THAT IS MAINTAINED BY ANY PUBLIC ENTITY OR THAT
7 IS UNRESTRICTED BY ANY BARRIERS LIMITING USE OR ACCESS IF BOTH OF THE
8 FOLLOWING APPLY:

9 1. THE VEHICLE IS NOT A PUBLIC SERVICE OR PUBLIC SAFETY EMERGENCY
10 VEHICLE AS PRESCRIBED BY THIS SECTION.

11 2. THE VEHICLE HAS A GROSS VEHICLE WEIGHT RATING OF TEN THOUSAND
12 POUNDS OR LESS.

13 ~~A.~~ B. Notwithstanding any provision in the community documents, an
14 association shall not prohibit a resident from parking a motor vehicle on a
15 street or driveway in the planned community if the vehicle is required to be
16 available at designated periods at the person's residence as a condition of
17 the person's employment and either of the following applies:

18 1. The resident is employed by a public service corporation that is
19 regulated by the corporation commission or a municipal utility and the public
20 service corporation or municipal utility is required to prepare for emergency
21 deployments of personnel and equipment for repair or maintenance of natural
22 gas, electrical, telecommunications or water infrastructure, the vehicle has
23 a gross vehicle weight rating of twenty thousand pounds or less and is owned
24 or operated by the public service corporation or municipal utility and the
25 vehicle bears an official emblem or other visible designation of the public
26 service corporation or municipal utility.

27 2. The resident is employed by a public safety agency, including
28 police or fire service for a federal, state, local or tribal agency or a
29 private fire service provider or an ambulance service provider that is
30 regulated pursuant to title 36, chapter 21.1, and the vehicle has a gross
31 vehicle weight rating of ten thousand pounds or less and bears an official
32 emblem or other visible designation of that agency.

33 ~~B.~~ C. For the purposes of this section, "telecommunications" means
34 the transmission of information of the user's choosing between or among
35 points specified by the user without change in the form or content of the
36 information as sent and received. Telecommunications does not include
37 commercial mobile radio services.

38 Sec. 10. Title 33, chapter 16, article 1, Arizona Revised Statutes, is
39 amended by adding sections 33-1817, 33-1818, 33-1819 and 33-1820, to read:

40 33-1817. Enforcement of community documents; burden of proof

41 A. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS, AN
42 ASSOCIATION SHALL UNIFORMLY ENFORCE THE PROVISIONS IN THE COMMUNITY DOCUMENTS
43 AGAINST ALL MEMBERS.

44 B. DURING AN ACTION BY THE ASSOCIATION TO ENFORCE ANY PROVISION OF THE
45 COMMUNITY DOCUMENTS AGAINST ANY MEMBER, THE ASSOCIATION SHALL ENFORCE THAT

1 PROVISION OF THE COMMUNITY DOCUMENTS AGAINST ALL OTHER MEMBERS WHO CAN
2 REASONABLY AND READILY BE DETERMINED TO BE IN VIOLATION. THESE ENFORCEMENT
3 ACTIONS SHALL BE TAKEN CONCURRENTLY WITH OR IN CONSOLIDATION WITH THE OTHER
4 ENFORCEMENT ACTION TAKEN BY THE ASSOCIATION TO ENFORCE THAT PROVISION.

5 C. IN AN ACTION TO ENFORCE ANY PROVISION OF THE COMMUNITY DOCUMENTS,
6 THE ASSOCIATION BEARS THE BURDEN OF PROVING THAT THE ASSOCIATION ENFORCES
7 THAT PROVISION UNIFORMLY.

8 D. ANY PROVISION IN THE COMMUNITY DOCUMENTS THAT IS NOT UNIFORMLY
9 ENFORCED PURSUANT TO THIS SECTION IS DEEMED UNENFORCEABLE FOR PURPOSES OF ANY
10 PENDING ENFORCEMENT ACTION.

11 33-1818. Construction and validity of community documents;
12 limitations

13 A. ALL PROVISIONS OF THE COMMUNITY DOCUMENTS ARE SEVERABLE.

14 B. THE RULE AGAINST PERPETUITIES SHALL NOT BE APPLIED TO DEFEAT ANY
15 PROVISION OF THE COMMUNITY DOCUMENTS.

16 C. EXCEPT TO THE EXTENT INCONSISTENT WITH THIS CHAPTER:

17 1. IF A CONFLICT EXISTS BETWEEN THE PROVISIONS OF THE DECLARATION AND
18 THE OTHER COMMUNITY DOCUMENTS, THE DECLARATION PREVAILS.

19 2. IF A CONFLICT EXISTS BETWEEN THE PROVISIONS OF THE ARTICLES OF
20 INCORPORATION AND THE BYLAWS OR RULES, THE ARTICLES OF INCORPORATION PREVAIL.

21 3. IF A CONFLICT EXISTS BETWEEN THE PROVISIONS OF THE BYLAWS AND THE
22 RULES, THE BYLAWS PREVAIL.

23 D. THE ASSOCIATION OR THE BOARD MAY CREATE AND ENFORCE RULES OR CREATE
24 AN ENFORCEMENT, REVIEW OR REGULATORY BODY WITHIN THE ASSOCIATION ONLY IF
25 EXPRESSLY AUTHORIZED BY THE DECLARATION.

26 E. ANY RULE OF THE ASSOCIATION THAT DIRECTLY OR INDIRECTLY MODIFIES OR
27 SUPERSEDES ANY PROVISION OF THE DECLARATION IS VOID AND UNENFORCEABLE.

28 F. TITLE TO A UNIT AND COMMON ELEMENTS IS NOT RENDERED UNMARKETABLE OR
29 OTHERWISE AFFECTED BY REASON OF AN INSUBSTANTIAL FAILURE OF ANY COMMUNITY
30 DOCUMENTS TO COMPLY WITH THIS CHAPTER.

31 33-1819. Amendments to the declaration

32 A. THE DECLARATION, INCLUDING THE PLAT, MAY BE AMENDED ONLY BY A VOTE
33 OF THE MEMBERS TO WHICH AT LEAST SIXTY-SEVEN PER CENT OF THE VOTES IN THE
34 ASSOCIATION ARE ALLOCATED, OR ANY LARGER MAJORITY THE DECLARATION SPECIFIES.
35 THE DECLARATION MAY ALSO PROVIDE THAT THE CONSENT OF THE DECLARANT IS
36 REQUIRED TO AN AMENDMENT DURING ANY PERIOD OF DECLARANT CONTROL. WITHIN
37 THIRTY DAYS AFTER THE ADOPTION OF ANY AMENDMENT PURSUANT TO THIS SUBSECTION,
38 THE ASSOCIATION SHALL PREPARE, EXECUTE AND RECORD A WRITTEN INSTRUMENT
39 SETTING FORTH THE AMENDMENT.

40 B. AN ACTION TO CHALLENGE THE VALIDITY OF AN AMENDMENT ADOPTED BY THE
41 ASSOCIATION PURSUANT TO THIS SECTION SHALL NOT BE BROUGHT MORE THAN ONE YEAR
42 AFTER THE AMENDMENT IS RECORDED.

43 C. AN AMENDMENT TO THE DECLARATION SHALL BE RECORDED IN EACH COUNTY IN
44 WHICH ANY PORTION OF THE PLANNED COMMUNITY IS LOCATED AND IS EFFECTIVE ONLY
45 ON RECORDATION IN THE SAME MANNER AS REQUIRED FOR THE DECLARATION.

1 D. EXCEPT TO THE EXTENT EXPRESSLY PERMITTED OR REQUIRED BY OTHER
2 PROVISIONS OF THIS CHAPTER, AN AMENDMENT SHALL NOT CREATE OR INCREASE SPECIAL
3 DECLARANT RIGHTS, INCREASE THE NUMBER OF LOTS OR CHANGE THE BOUNDARIES OF ANY
4 LOT, THE ALLOCATED INTERESTS OF A LOT OR THE USES TO WHICH ANY LOT IS
5 RESTRICTED, IN THE ABSENCE OF UNANIMOUS CONSENT OF THE MEMBERS.

6 E. AN AMENDMENT SHALL NOT TERMINATE OR DECREASE ANY UNEXPIRED
7 DEVELOPMENT RIGHT, SPECIAL DECLARANT RIGHT OR PERIOD OF DECLARANT CONTROL
8 UNLESS THE DECLARANT APPROVES.

9 F. AMENDMENTS TO THE DECLARATION REQUIRED BY THIS CHAPTER TO BE
10 EXECUTED BY THE ASSOCIATION SHALL BE EXECUTED ON BEHALF OF THE ASSOCIATION BY
11 ANY OFFICER OF THE ASSOCIATION DESIGNATED FOR THAT PURPOSE OR, IN THE ABSENCE
12 OF DESIGNATION, BY THE PRESIDENT OF THE ASSOCIATION.

13 G. SUBJECT TO SUBSECTION B OF THIS SECTION AND NOTWITHSTANDING ANY
14 PROVISION OF THE DECLARATION, AN AMENDMENT TO THE DECLARATION IS VOID AND
15 UNENFORCEABLE AGAINST ANY MEMBER WHO ENTERED THE ASSOCIATION BEFORE THE
16 ADOPTION OF THE AMENDMENT UNLESS THE AMENDMENT WAS APPROVED BY UNANIMOUS
17 CONSENT OF ALL OF THE MEMBERS, IF THE AMENDMENT MODIFIES OR CONTRADICTS ANY
18 OF THE FOLLOWING:

19 1. AN EXPRESS PROVISION OF THE DECLARATION THAT WAS REASONABLY RELIED
20 ON BY A MEMBER BEFORE THE AMENDMENT.

21 2. THE EXPECTATIONS OF A MEMBER THAT ARE REASONABLY FORESEEABLE BASED
22 ON THE CHARACTER OF THE ASSOCIATION AND IN RELIANCE ON WHICH THE MEMBER HAS
23 ACTED OR CHANGED POSITION.

24 H. AMENDMENTS TO THE DECLARATION THAT DO NOT APPLY UNIFORMLY TO
25 SIMILAR LOTS OR UNITS ARE VOID AND UNENFORCEABLE WITHOUT THE APPROVAL OF THE
26 MEMBERS WHOSE INTERESTS WOULD BE ADVERSELY AFFECTED UNLESS THE DECLARATION
27 EXPRESSLY AND SPECIFICALLY INFORMS PURCHASERS THAT SUCH AMENDMENTS TO THE
28 DECLARATION MAY BE MADE.

29 33-1820. Alterations; limitations

30 AN ASSOCIATION SHALL NOT LIMIT BY THE COMMUNITY DOCUMENTS OR OTHERWISE
31 THE RIGHT OF AN OWNER TO CONSTRUCT, DECORATE, IMPROVE, MODIFY OR REMODEL ANY
32 PORTION OF THE OWNER'S PROPERTY THAT IS EITHER NOT READILY VISIBLE FROM A
33 COMMON AREA OR THAT IS INTERIOR TO A UNIT.