

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)

1 Be it enacted by the Legislature of the State of Arizona:

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

4 33-1242. Powers of unit owners' association: notice to unit
5 owner of violation

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

7 1. Adopt and amend bylaws and rules.

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

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

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

15 5. Make contracts and incur liabilities.

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

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

20 8. Acquire, hold, encumber and convey in its own name any right, title
21 or interest to real or personal property, except that common elements may be
22 conveyed or subjected to a security interest only pursuant to section
23 33-1252.

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

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

30 11. Impose charges for late payment of assessments **AFTER THE**
31 **ASSOCIATION HAS PROVIDED NOTICE THAT THE ASSESSMENT IS OVERDUE OR PROVIDED**
32 **NOTICE THAT THE ASSESSMENT IS CONSIDERED OVERDUE AFTER A CERTAIN DATE** and,
33 after notice and an opportunity to be heard, impose reasonable monetary
34 penalties ~~upon~~ **ON** unit owners for violations of the declaration, bylaws and
35 rules of the association.

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

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

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

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

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

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

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

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

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

17 1. The provision of the condominium documents that has allegedly been
18 violated.

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

20 3. The first and last name of the person or persons who observed the
21 violation.

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

23 D. Unless the information required in subsection C, paragraph 4 of
24 this section is provided in the notice of violation, the association shall
25 not proceed with any action to enforce the condominium documents, including
26 the collection of attorney fees, before or during the time prescribed by
27 subsection C of this section regarding the exchange of information between
28 the association and the unit owner AND SHALL GIVE THE UNIT OWNER WRITTEN
29 NOTICE OF THE UNIT OWNER'S OPTION TO PETITION FOR AN ADMINISTRATIVE HEARING
30 ON THE MATTER IN THE DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY PURSUANT TO
31 SECTION 41-2198.01. At any time before or after completion of the exchange
32 of information pursuant to this section, the unit owner may petition for a
33 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 Sec. 2. Section 33-1250, Arizona Revised Statutes, is amended to read:

37 33-1250. Voting; proxies; absentee ballots; applicability;
38 definition

39 A. If only one of the multiple owners of a unit is present at a
40 meeting of the association, the owner is entitled to cast all the votes
41 allocated to that unit. If more than one of the multiple owners are present,
42 the votes allocated to that unit may be cast only in accordance with the
43 agreement of a majority in interest of the multiple owners unless the
44 declaration expressly provides otherwise. There is majority agreement if any
45 one of the multiple owners casts the votes allocated to that unit without

1 protest being made promptly to the person presiding over the meeting by any
2 of the other owners of the unit.

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

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

23 1. The ballot shall set forth each proposed action.

24 2. The ballot shall provide an opportunity to vote for or against each
25 proposed action.

26 3. The ballot is valid for only one specified election or meeting of
27 the members and expires automatically after the completion of the election or
28 meeting.

29 4. The ballot specifies the time and date by which the ballot must be
30 delivered to the board of directors in order to be counted, which shall be at
31 least seven days after the date that the board delivers the unvoted ballot to
32 the member.

33 5. The ballot does not authorize another person to cast votes on
34 behalf of the member.

35 6. THE COMPLETED BALLOT AND ENVELOPE AND ANY RELATED MATERIALS SHALL
36 CONTAIN THE NAME, ADDRESS AND EITHER THE ACTUAL OR ELECTRONIC SIGNATURE OF
37 THE PERSON VOTING, EXCEPT THAT IF THE CONDOMINIUM DOCUMENTS PERMIT SECRET
38 BALLOTS, ONLY THE ENVELOPE OR ANY NONBALLOT-RELATED MATERIALS SHALL CONTAIN
39 THE NAME, ADDRESS AND EITHER THE ACTUAL OR ELECTRONIC SIGNATURE OF THE VOTER.

40 7. BALLOTS, ENVELOPES AND RELATED MATERIALS, INCLUDING SIGN-IN SHEETS
41 IF USED, SHALL BE RETAINED IN ELECTRONIC OR PAPER FORMAT AND MADE AVAILABLE
42 FOR UNIT OWNER INSPECTION FOR AT LEAST ONE YEAR AFTER COMPLETION OF THE
43 ELECTION.

44 D. Votes cast by absentee ballot or other form of delivery, including
45 the use of e-mail and fax delivery, are valid for the purpose of establishing
46 a quorum.

1 E. Notwithstanding subsection C of this section, an association for a
2 timeshare plan as defined in section 32-2197 may permit votes by a proxy that
3 is duly executed by a unit owner.

4 F. If the declaration requires that votes on specified matters
5 affecting the condominium be cast by lessees rather than unit owners of
6 leased units all of the following apply:

7 1. The provisions of subsections A and B of this section apply to
8 lessees as if they were unit owners.

9 2. Unit owners who have leased their units to other persons shall not
10 cast votes on those specified matters.

11 3. Lessees are entitled to notice of meetings, access to records and
12 other rights respecting those matters as if they were unit owners. Unit
13 owners shall also be given notice, in the manner prescribed in section
14 33-1248, of all meetings at which lessees may be entitled to vote.

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

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

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

23 Sec. 3. Section 33-1803, Arizona Revised Statutes, is amended to read:

24 33-1803. Assessment limitation; penalties; notice to member of
25 violation

26 A. Unless limitations in the community documents would result in a
27 lower limit for the assessment, the association shall not impose a regular
28 assessment that is more than twenty percent greater than the immediately
29 preceding fiscal year's assessment without the approval of the majority of
30 the members of the association. Unless reserved to the members of the
31 association, the board of directors may impose reasonable charges for the
32 late payment of assessments. A payment by a member is deemed late if it is
33 unpaid fifteen or more days after its due date, unless the community
34 documents provide for a longer period. Charges for the late payment of
35 assessments are limited to the greater of fifteen dollars or ten percent of
36 the amount of the unpaid assessment AND MAY BE IMPOSED ONLY AFTER THE
37 ASSOCIATION HAS PROVIDED NOTICE THAT THE ASSESSMENT IS OVERDUE OR PROVIDED
38 NOTICE THAT THE ASSESSMENT IS CONSIDERED OVERDUE AFTER A CERTAIN DATE. Any
39 monies paid by the member for an unpaid assessment shall be applied first to
40 the principal amount unpaid and 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
46 dollars or ten percent of the amount of the unpaid penalty. A payment is

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

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

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

18 1. The provision of the community documents that has allegedly been
19 violated.

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

21 3. The first and last name of the person or persons who observed the
22 violation.

23 4. The process the member must follow to contest the notice.

24 E. Unless the information required in subsection D, paragraph 4 of
25 this section is provided in the notice of violation, the association shall
26 not proceed with any action to enforce the community documents, including the
27 collection of attorney fees, before or during the time prescribed by
28 subsection D of this section regarding the exchange of information between
29 the association and the member AND SHALL GIVE THE MEMBER WRITTEN NOTICE OF
30 THE MEMBER'S OPTION TO PETITION FOR AN ADMINISTRATIVE HEARING ON THE MATTER
31 IN THE DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY PURSUANT TO SECTION
32 41-2198.01. At any time before or after completion of the exchange of
33 information pursuant to this section, the member may petition for a hearing
34 pursuant to section 41-2198.01 if the dispute is within the jurisdiction of
35 the department of fire, building and life safety as prescribed in section
36 41-2198.01, subsection B.

37 Sec. 4. Section 33-1812, Arizona Revised Statutes, is amended to read:
38 33-1812. Proxies; absentee ballots; definition

39 A. Notwithstanding any provision in the community documents, after
40 termination of the period of declarant control, votes allocated to a unit may
41 not be cast pursuant to a proxy. The association shall provide for votes to
42 be cast in person and by absentee ballot and, in addition, the association
43 may provide for voting by some other form of delivery, including the use of
44 e-mail and fax delivery. Notwithstanding section 10-3708 or the provisions
45 of the community documents, any action taken at an annual, regular or special

1 meeting of the members shall comply with all of the following if absentee
2 ballots or ballots provided by some other form of delivery are used:

3 1. The ballot shall set forth each proposed action.

4 2. The ballot shall provide an opportunity to vote for or against each
5 proposed action.

6 3. The ballot is valid for only one specified election or meeting of
7 the members and expires automatically after the completion of the election or
8 meeting.

9 4. The ballot specifies the time and date by which the ballot must be
10 delivered to the board of directors in order to be counted, which shall be at
11 least seven days after the date that the board delivers the unvoted ballot to
12 the member.

13 5. The ballot does not authorize another person to cast votes on
14 behalf of the member.

15 6. THE COMPLETED BALLOT AND ENVELOPE AND ANY RELATED MATERIALS SHALL
16 CONTAIN THE NAME, ADDRESS AND SIGNATURE OF THE PERSON VOTING, EXCEPT THAT IF
17 THE COMMUNITY DOCUMENTS PERMIT SECRET BALLOTS, ONLY THE ENVELOPE AND ANY
18 NONBALLOT-RELATED MATERIALS SHALL CONTAIN THE NAME, ADDRESS AND SIGNATURE OF
19 THE VOTER.

20 7. BALLOTS, ENVELOPES AND RELATED MATERIALS, INCLUDING SIGN-IN SHEETS
21 IF USED, SHALL BE RETAINED IN ELECTRONIC OR PAPER FORMAT AND MADE AVAILABLE
22 FOR MEMBER INSPECTION FOR AT LEAST ONE YEAR AFTER COMPLETION OF THE ELECTION.

23 B. Votes cast by absentee ballot or other form of delivery, including
24 the use of e-mail and fax delivery, are valid for the purpose of establishing
25 a quorum.

26 C. Notwithstanding subsection A of this section, an association for a
27 timeshare plan as defined in section 32-2197 may permit votes by a proxy that
28 is duly executed by a unit owner.

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

APPROVED BY THE GOVERNOR MAY 11, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 11, 2016.