

State of Arizona
House of Representatives
Fifty-third Legislature
First Regular Session
2017

HOUSE BILL 2411

AN ACT

AMENDING SECTIONS 33-440, 33-1248, 33-1250, 33-1260, 33-1804, 33-1806 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 33-440, Arizona Revised Statutes, is amended to
3 read:

4 33-440. Enforceability of private covenants; amendment of
5 declaration; definitions

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

9 1. The private covenant is not prohibited by any other existing
10 private covenant or declaration affecting the real property and does not
11 violate any statute governing the subject matter of the private covenant
12 that is in effect before September 26, 2008.

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

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

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

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

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

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

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

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

43 3. Within thirty days after the adoption of any amendment pursuant
44 to this subsection, the association or, if there is no association or

1 board, a property owner that is authorized by the affirmative vote on or
2 the written consent to the amendment shall prepare, execute and record a
3 written instrument setting forth the amendment.

4 4. Notwithstanding any provision in the declaration that provides
5 for periodic renewal of the declaration, an amendment to the declaration
6 is effective immediately on recordation of the instrument in the county in
7 which the property is located.

8 D. Subsection C of this section does not apply to a condominium as
9 defined in section 33-1202 or a timeshare plan or association as defined
10 in section 33-2202.

11 E. For the purposes of this section:

12 1. "Declaration" ~~has the same meaning prescribed in section 33-1802~~
13 MEANS ANY INSTRUMENT, HOWEVER DENOMINATED, THAT ESTABLISHES RESTRICTIVE
14 COVENANTS ON THE DEVELOPMENT OR USE OF REAL PROPERTY.

15 2. "Private covenant" means any uniform or nonuniform covenant,
16 restriction or condition regarding real property that is contained in any
17 deed, contract, agreement or other recorded instrument affecting real
18 property.

19 Sec. 2. Section 33-1248, Arizona Revised Statutes, is amended to
20 read:

21 33-1248. Open meetings; exceptions

22 A. Notwithstanding any provision in the declaration, bylaws or
23 other documents to the contrary, all meetings of the unit owners'
24 association and the board of directors, and any regularly scheduled
25 committee meetings, are open to all members of the association or any
26 person designated by a member in writing as the member's representative
27 and all members or designated representatives so desiring shall be
28 permitted to attend and speak at an appropriate time during the
29 deliberations and proceedings. The board may place reasonable time
30 restrictions on those persons speaking during the meeting but shall permit
31 a member or a member's designated representative to speak once after the
32 board has discussed a specific agenda item but before the board takes
33 formal action on that item in addition to any other opportunities to
34 speak. The board shall provide for a reasonable number of persons to
35 speak on each side of an issue. Persons attending may audiotape or
36 videotape those portions of the meetings of the board of directors and
37 meetings of the members that are open. The board of directors of the
38 association SHALL NOT REQUIRE ADVANCE NOTICE OF THE AUDIOTAPING OR
39 VIDEOTAPING AND may adopt reasonable rules governing the audiotaping or
40 videotaping of open portions of the meetings of the board and the
41 membership, but such rules shall not preclude such audiotaping or
42 videotaping by those attending, UNLESS THE BOARD AUDIOTAPES OR VIDEOTAPES
43 THE MEETING AND MAKES THE UNEDITED AUDIOTAPES OR VIDEOTAPES AVAILABLE TO
44 MEMBERS ON REQUEST WITHOUT RESTRICTIONS ON ITS USE AS EVIDENCE IN ANY

1 **DISPUTE RESOLUTION PROCESS.** Any portion of a meeting may be closed only
2 if that portion of the meeting is limited to consideration of one or more
3 of the following:

4 1. Legal advice from an attorney for the board or the association.
5 On final resolution of any matter for which the board received legal
6 advice or that concerned pending or contemplated litigation, the board may
7 disclose information about that matter in an open meeting except for
8 matters that are required to remain confidential by the terms of a
9 settlement agreement or judgment.

10 2. Pending or contemplated litigation.

11 3. Personal, health or financial information about an individual
12 member of the association, an individual employee of the association or an
13 individual employee of a contractor for the association, including records
14 of the association directly related to the personal, health or financial
15 information about an individual member of the association, an individual
16 employee of the association or an individual employee of a contractor for
17 the association.

18 4. Matters relating to the job performance of, compensation of,
19 health records of or specific complaints against an individual employee of
20 the association or an individual employee of a contractor of the
21 association who works under the direction of the association.

22 5. Discussion of a unit owner's appeal of any violation cited or
23 penalty imposed by the association except on request of the affected unit
24 owner that the meeting be held in an open session.

25 B. Notwithstanding any provision in the condominium documents, all
26 meetings of the unit owners' association and the board shall be held in
27 this state. A meeting of the unit owners' association shall be held at
28 least once each year. Special meetings of the unit owners' association
29 may be called by the president, by a majority of the board of directors or
30 by unit owners having at least twenty-five ~~per cent~~ **PERCENT**, or any lower
31 percentage specified in the bylaws, of the votes in the association. Not
32 fewer than ten nor more than fifty days in advance of any meeting of the
33 unit owners, the secretary shall cause notice to be hand delivered or sent
34 prepaid by United States mail to the mailing address of each unit or to
35 any other mailing address designated in writing by the unit owner. The
36 notice of any meeting of the unit owners shall state the **DATE**, time and
37 place of the meeting. The notice of any **ANNUAL, REGULAR OR** special
38 meeting of the unit owners shall also state the purpose for which the
39 meeting is called, including the general nature of any proposed amendment
40 to the declaration or bylaws, any changes in assessments that require
41 approval of the unit owners and any proposal to remove a director or
42 officer. The failure of any unit owner to receive actual notice of a
43 meeting of the unit owners does not affect the validity of any action
44 taken at that meeting.

1 C. BEFORE ENTERING INTO ANY CLOSED PORTION OF A MEETING OF THE
2 BOARD OF DIRECTORS, OR ON NOTICE OF A MEETING UNDER SUBSECTION D OF THIS
3 SECTION THAT WILL BE CLOSED, THE BOARD SHALL IDENTIFY THE PARAGRAPH UNDER
4 SUBSECTION A OF THIS SECTION THAT AUTHORIZES THE BOARD TO CLOSE THE
5 MEETING.

6 ~~E.~~ D. Notwithstanding any provision in the declaration, bylaws or
7 other condominium documents, for meetings of the board of directors that
8 are held after the termination of declarant control of the association,
9 notice to unit owners of meetings of the board of directors shall be given
10 at least forty-eight hours in advance of the meeting by newsletter,
11 conspicuous posting or any other reasonable means as determined by the
12 board of directors. An affidavit of notice by an officer of the
13 association is prima facie evidence that notice was given as prescribed by
14 this section. Notice to unit owners of meetings of the board of directors
15 is not required if emergency circumstances require action by the board
16 before notice can be given. Any notice of a board meeting shall state the
17 DATE, time and place of the meeting. The failure of any unit owner to
18 receive actual notice of a meeting of the board of directors does not
19 affect the validity of any action taken at that meeting.

20 ~~D.~~ E. Notwithstanding any provision in the declaration, bylaws or
21 other condominium documents, for meetings of the board of directors that
22 are held after the termination of declarant control of the association,
23 all of the following apply:

24 1. The agenda shall be available to all unit owners attending.
25 2. An emergency meeting of the board of directors may be called to
26 discuss business or take action that cannot be delayed ~~until the next~~
27 ~~regularly scheduled board meeting~~ FOR THE FORTY-EIGHT HOURS REQUIRED FOR
28 NOTICE. AT ANY EMERGENCY MEETING CALLED BY THE BOARD OF DIRECTORS, THE
29 BOARD OF DIRECTORS MAY ACT ONLY ON EMERGENCY MATTERS. The minutes of the
30 emergency meeting shall state the reason necessitating the emergency
31 meeting. The minutes of the emergency meeting shall be read and approved
32 at the next regularly scheduled meeting of the board of directors.

33 3. A quorum of the board of directors may meet by means of a
34 telephone conference if a speakerphone is available in the meeting room
35 that allows board members and unit owners to hear all parties who are
36 speaking during the meeting.

37 4. Any quorum of the board of directors that meets informally to
38 discuss association business, including workshops, shall comply with the
39 open meeting and notice provisions of this section without regard to
40 whether the board votes or takes any action on any matter at that informal
41 meeting.

42 ~~E.~~ F. It is the policy of this state as reflected in this section
43 that all meetings of a condominium, whether meetings of the unit owners'
44 association or meetings of the board of directors of the association, be

1 conducted openly and that notices and agendas be provided for those
2 meetings that contain the information that is reasonably necessary to
3 inform the unit owners of the matters to be discussed or decided and to
4 ensure that unit owners have the ability to speak after discussion of
5 agenda items, but before a vote of the board of directors OR MEMBERS is
6 taken. Toward this end, any person or entity that is charged with the
7 interpretation of these provisions, INCLUDING MEMBERS OF THE BOARD OR
8 DIRECTORS AND ANY COMMUNITY MANAGER, shall take into account this
9 declaration of policy and shall construe any provision of this section in
10 favor of open meetings.

11 ~~F.~~ G. This section does not apply to timeshare plans or
12 associations that are subject to chapter 20 of this title.

13 Sec. 3. Section 33-1250, Arizona Revised Statutes, is amended to
14 read:

15 33-1250. Voting; proxies; absentee ballots; applicability;
16 definition

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

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

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

1 at an annual, regular or special meeting of the members shall comply with
2 all of the following if absentee ballots or ballots provided by some other
3 form of delivery are used:

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

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

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

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

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

16 6. The completed ballot ~~and envelope and any related materials~~
17 shall contain the name, THE address and either the actual or electronic
18 signature of the person voting, except that if the condominium documents
19 permit secret ballots, only the envelope ~~or any nonballot-related~~
20 ~~materials~~ shall contain the name, THE address and either the actual or
21 electronic signature of the voter.

22 7. Ballots, envelopes and related materials, including sign-in
23 sheets if used, shall be retained in electronic or paper format and made
24 available for unit owner inspection for at least one year after completion
25 of the election.

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

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

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

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

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

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

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

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

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

8 Sec. 4. Section 33-1260, Arizona Revised Statutes, is amended to
9 read:

10 33-1260. Resale of units; information required; fees; civil
11 penalty; applicability; definition

12 A. For condominiums with fewer than fifty units, a unit owner shall
13 mail or deliver to a purchaser or a purchaser's authorized agent within
14 ten days after receipt of a written notice of a pending sale of the unit,
15 and for condominiums with fifty or more units, the association shall mail
16 or deliver to a purchaser or a purchaser's authorized agent within ten
17 days after receipt of a written notice of a pending sale that contains the
18 name and address of the purchaser all of the following in either paper or
19 electronic format:

- 20 1. A copy of the bylaws and the rules of the association.
- 21 2. A copy of the declaration.
- 22 3. A dated statement containing:

23 (a) The telephone number and address of a principal contact for the
24 association, which may be an association manager, an association
25 management company, an officer of the association or any other person
26 designated by the board of directors.

27 (b) The amount of the common expense assessment for the unit and
28 any unpaid common expense assessment, special assessment or other
29 assessment, fee or charge currently due and payable from the selling unit
30 owner. If the request is made by a lienholder, escrow agent, unit owner
31 or person designated by a unit owner pursuant to section 33-1256, failure
32 to provide the information pursuant to this subdivision within the time
33 provided for in this subsection shall extinguish any lien for any unpaid
34 assessment then due against that unit.

35 (c) A statement as to whether a portion of the unit is covered by
36 insurance maintained by the association.

37 (d) The total amount of money held by the association as reserves.

38 (e) If the statement is being furnished by the association, a
39 statement as to whether the records of the association reflect any
40 alterations or improvements to the unit that violate the declaration. The
41 association is not obligated to provide information regarding alterations
42 or improvements that occurred more than six years before the proposed
43 sale. Nothing in this subdivision relieves the seller of a unit from the
44 obligation to disclose alterations or improvements to the unit that

1 violate the declaration, nor precludes the association from taking action
2 against the purchaser of a unit for violations that are apparent at the
3 time of purchase and that are not reflected in the association's records.

4 (f) If the statement is being furnished by the unit owner, a
5 statement as to whether the unit owner has any knowledge of any
6 alterations or improvements to the unit that violate the declaration.

7 (g) A statement of case names and case numbers for pending
8 litigation with respect to the unit filed by the association against the
9 unit owner or filed by the unit owner against the association. The unit
10 owner or the association shall not be required to disclose information
11 concerning the pending litigation that would violate any applicable rule
12 of attorney-client privilege under Arizona law.

13 (h) A statement that provides "I hereby acknowledge that the
14 declaration, bylaws and rules of the association constitute a contract
15 between the association and me (the purchaser). By signing this
16 statement, I acknowledge that I have read and understand the association's
17 contract with me (the purchaser). I also understand that as a matter of
18 Arizona law, if I fail to pay my association assessments, the association
19 may foreclose on my property." The statement shall also include a
20 signature line for the purchaser and shall be returned to the association
21 within fourteen calendar days.

22 4. A copy of the current operating budget of the association.

23 5. A copy of the most recent annual financial report of the
24 association. If the report is more than ten pages, the association may
25 provide a summary of the report in lieu of the entire report.

26 6. A copy of the most recent reserve study of the association, if
27 any.

28 7. A statement summarizing any pending lawsuits, except those
29 relating to the collection of assessments owed by unit owners other than
30 the selling unit owner, in which the association is a named party,
31 including the amount of any money claimed.

32 B. A purchaser or seller who is damaged by the failure of the unit
33 owner or the association to disclose the information required by
34 subsection A of this section may pursue all remedies at law or in equity
35 against the unit owner or the association, whichever failed to comply with
36 subsection A of this section, including the recovery of reasonable
37 attorney fees.

38 C. The association may charge the unit owner a fee of ~~no~~ NOT more
39 than an aggregate of four hundred dollars to compensate the association
40 for the costs incurred in the preparation AND DELIVERY of a statement or
41 other documents furnished by the association pursuant to this section for
42 purposes of resale disclosure, lien estoppel and any other services
43 related to the transfer or use of the property. In addition, the
44 association may charge a rush fee of ~~no~~ NOT more than one hundred dollars

1 if the rush services are required to be performed within seventy-two hours
2 after the request for rush services, and may charge a statement or other
3 documents update fee of ~~no~~ NOT more than fifty dollars if thirty days or
4 more have passed since the date of the original disclosure statement or
5 the date the documents were delivered. The association shall make
6 available to any interested party the amount of any fee established from
7 time to time by the association. If the aggregate fee for purposes of
8 resale disclosure, lien estoppel and any other services related to the
9 transfer or use of a property is less than four hundred dollars on January
10 1, 2010, the fee may increase at a rate of ~~no~~ NOT more than twenty ~~per~~
11 ~~cent~~ PERCENT per year based on the immediately preceding fiscal year's
12 amount not to exceed the four hundred dollar aggregate fee. The
13 association may charge the same fee without regard to whether the
14 association is furnishing the statement or other documents in paper or
15 electronic format.

16 D. The fees prescribed by this section shall be collected no
17 earlier than at the close of escrow and may only be charged once to a unit
18 owner for that transaction between the parties specified in the notice
19 required pursuant to subsection A of this section. An association shall
20 not charge or collect a fee relating to services for resale disclosure,
21 lien estoppel and any other services related to the transfer or use of a
22 property except as specifically authorized in this section. An
23 association that charges or collects a fee in violation of this section is
24 subject to a civil penalty of ~~no~~ NOT more than one thousand two hundred
25 dollars.

26 E. This section applies to a managing agent for an association that
27 is acting on behalf of the association.

28 F. The following are exempt from this section:

29 1. A sale in which a public report is issued pursuant to ~~sections~~
30 SECTION 32-2183 ~~and~~ OR 32-2197.02.

31 2. A sale pursuant to section 32-2181.02.

32 3. A conveyance by recorded deed that bears an exemption listed in
33 section 11-1134, subsection B, paragraph 3 or 7. On recordation of the
34 deed and for no additional charge, the unit owner shall provide the
35 association with the changes in ownership including the unit owner's name,
36 billing address and phone number. Failure to provide the information
37 shall not prevent the unit owner from qualifying for the exemption
38 pursuant to this section.

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

41 H. For the purposes of this section, unless the context otherwise
42 requires, "unit owner" means the seller of the condominium unit title and
43 excludes any real estate salesperson or real estate broker who is licensed
44 under title 32, chapter 20 and who is acting as a salesperson or broker,

1 any escrow agent who is licensed under title 6, chapter 7 and who is
2 acting as an escrow agent and also excludes a trustee of a deed of trust
3 who is selling the property in a trustee's sale pursuant to chapter 6.1 of
4 this title.

5 Sec. 5. Section 33-1804, Arizona Revised Statutes, is amended to
6 read:

7 33-1804. Open meetings; exceptions

8 A. Notwithstanding any provision in the declaration, bylaws or
9 other documents to the contrary, all meetings of the members' association
10 and the board of directors, and any regularly scheduled committee
11 meetings, are open to all members of the association or any person
12 designated by a member in writing as the member's representative and all
13 members or designated representatives so desiring shall be permitted to
14 attend and speak at an appropriate time during the deliberations and
15 proceedings. The board may place reasonable time restrictions on those
16 persons speaking during the meeting but shall permit a member or member's
17 designated representative to speak once after the board has discussed a
18 specific agenda item but before the board takes formal action on that item
19 in addition to any other opportunities to speak. The board shall provide
20 for a reasonable number of persons to speak on each side of an issue.
21 Persons attending may ~~tape record~~ AUDIOTAPE or videotape those portions of
22 the meetings of the board of directors and meetings of the members that
23 are open. The board of directors of the association SHALL NOT REQUIRE
24 ADVANCE NOTICE OF THE AUDIOTAPING OR VIDEOTAPING AND may adopt reasonable
25 rules governing the ~~taping~~ AUDIOTAPING AND VIDEOTAPING of open portions of
26 the meetings of the board and the membership, but such rules shall not
27 preclude such ~~tape recording~~ AUDIOTAPING or videotaping by those
28 attending, UNLESS THE BOARD AUDIOTAPES OR VIDEOTAPES THE MEETING AND MAKES
29 THE UNEDITED AUDIOTAPES OR VIDEOTAPES AVAILABLE TO MEMBERS ON REQUEST
30 WITHOUT RESTRICTIONS ON ITS USE AS EVIDENCE IN ANY DISPUTE RESOLUTION
31 PROCESS. Any portion of a meeting may be closed only if that closed
32 portion of the meeting is limited to consideration of one or more of the
33 following:

34 1. Legal advice from an attorney for the board or the association.
35 On final resolution of any matter for which the board received legal
36 advice or that concerned pending or contemplated litigation, the board may
37 disclose information about that matter in an open meeting except for
38 matters that are required to remain confidential by the terms of a
39 settlement agreement or judgment.

40 2. Pending or contemplated litigation.

41 3. Personal, health or financial information about an individual
42 member of the association, an individual employee of the association or an
43 individual employee of a contractor for the association, including records
44 of the association directly related to the personal, health or financial

1 information about an individual member of the association, an individual
2 employee of the association or an individual employee of a contractor for
3 the association.

4 4. Matters relating to the job performance of, compensation of,
5 health records of or specific complaints against an individual employee of
6 the association or an individual employee of a contractor of the
7 association who works under the direction of the association.

8 5. Discussion of a member's appeal of any violation cited or
9 penalty imposed by the association except on request of the affected
10 member that the meeting be held in an open session.

11 B. Notwithstanding any provision in the community documents, all
12 meetings of the members' association and the board shall be held in this
13 state. A meeting of the members' association shall be held at least once
14 each year. Special meetings of the members' association may be called by
15 the president, by a majority of the board of directors or by members
16 having at least twenty-five ~~per cent~~ PERCENT, or any lower percentage
17 specified in the bylaws, of the votes in the association. Not fewer than
18 ten nor more than fifty days in advance of any meeting of the members the
19 secretary shall cause notice to be hand-delivered or sent prepaid by
20 United States mail to the mailing address for each lot, parcel or unit
21 owner or to any other mailing address designated in writing by a member.
22 The notice shall state the DATE, time and place of the meeting. A notice
23 of any ANNUAL, REGULAR OR special meeting of the members shall also state
24 the purpose for which the meeting is called, including the general nature
25 of any proposed amendment to the declaration or bylaws, changes in
26 assessments that require approval of the members and any proposal to
27 remove a director or an officer. The failure of any member to receive
28 actual notice of a meeting of the members does not affect the validity of
29 any action taken at that meeting.

30 C. BEFORE ENTERING INTO ANY CLOSED PORTION OF A MEETING OF THE
31 BOARD OF DIRECTORS, OR ON NOTICE OF A MEETING UNDER SUBSECTION D OF THIS
32 SECTION THAT WILL BE CLOSED, THE BOARD SHALL IDENTIFY THE PARAGRAPH UNDER
33 SUBSECTION A OF THIS SECTION THAT AUTHORIZES THE BOARD TO CLOSE THE
34 MEETING.

35 ~~C.~~ D. Notwithstanding any provision in the declaration, bylaws or
36 other community documents, for meetings of the board of directors that are
37 held after the termination of declarant control of the association, notice
38 to members of meetings of the board of directors shall be given at least
39 forty-eight hours in advance of the meeting by newsletter, conspicuous
40 posting or any other reasonable means as determined by the board of
41 directors. An affidavit of notice by an officer of the corporation is
42 prima facie evidence that notice was given as prescribed by this section.
43 Notice to members of meetings of the board of directors is not required if
44 emergency circumstances require action by the board before notice can be

1 given. Any notice of a board meeting shall state the DATE, time and place
2 of the meeting. The failure of any member to receive actual notice of a
3 meeting of the board of directors does not affect the validity of any
4 action taken at that meeting.

5 ~~D.~~ E. Notwithstanding any provision in the declaration, bylaws or
6 other community documents, for meetings of the board of directors that are
7 held after the termination of declarant control of the association, all of
8 the following apply:

9 1. The agenda shall be available to all members attending.

10 2. An emergency meeting of the board of directors may be called to
11 discuss business or take action that cannot be delayed ~~until the next~~
12 ~~regularly scheduled board meeting~~ FOR THE FORTY-EIGHT HOURS REQUIRED FOR
13 NOTICE. AT ANY EMERGENCY MEETING CALLED BY THE BOARD OF DIRECTORS, THE
14 BOARD OF DIRECTORS MAY ACT ONLY ON EMERGENCY MATTERS. The minutes of the
15 emergency meeting shall state the reason necessitating the emergency
16 meeting. The minutes of the emergency meeting shall be read and approved
17 at the next regularly scheduled meeting of the board of directors.

18 3. A quorum of the board of directors may meet by means of a
19 telephone conference if a speakerphone is available in the meeting room
20 that allows board members and association members to hear all parties who
21 are speaking during the meeting.

22 4. Any quorum of the board of directors that meets informally to
23 discuss association business, including workshops, shall comply with the
24 open meeting and notice provisions of this section without regard to
25 whether the board votes or takes any action on any matter at that informal
26 meeting.

27 ~~E.~~ F. It is the policy of this state as reflected in this section
28 that all meetings of a planned community, whether meetings of the members'
29 association or meetings of the board of directors of the association, be
30 conducted openly and that notices and agendas be provided for those
31 meetings that contain the information that is reasonably necessary to
32 inform the members of the matters to be discussed or decided and to ensure
33 that members have the ability to speak after discussion of agenda items,
34 but before a vote of the board of directors OR MEMBERS is taken. Toward
35 this end, any person or entity that is charged with the interpretation of
36 these provisions, INCLUDING MEMBERS OF THE BOARD OF DIRECTORS AND ANY
37 COMMUNITY MANAGER, shall take into account this declaration of policy and
38 shall construe any provision of this section in favor of open meetings.

39 Sec. 6. Section 33-1806, Arizona Revised Statutes, is amended to
40 read:

41 33-1806. Resale of units; information required; fees; civil
42 penalty; definition

43 A. For planned communities with fewer than fifty units, a member
44 shall mail or deliver to a purchaser or a purchaser's authorized agent

1 within ten days after receipt of a written notice of a pending sale of the
2 unit, and for planned communities with fifty or more units, the
3 association shall mail or deliver to a purchaser or a purchaser's
4 authorized agent within ten days after receipt of a written notice of a
5 pending sale that contains the name and address of the purchaser all of
6 the following in either paper or electronic format:

- 7 1. A copy of the bylaws and the rules of the association.
- 8 2. A copy of the declaration.
- 9 3. A dated statement containing:

10 (a) The telephone number and address of a principal contact for the
11 association, which may be an association manager, an association
12 management company, an officer of the association or any other person
13 designated by the board of directors.

14 (b) The amount of the common regular assessment and the unpaid
15 common regular assessment, special assessment or other assessment, fee or
16 charge currently due and payable from the selling member. If the request
17 is made by a lienholder, escrow agent, member or person designated by a
18 member pursuant to section 33-1807, failure to provide the information
19 pursuant to this subdivision within the time provided for in this
20 subsection shall extinguish any lien for any unpaid assessment then due
21 against that property.

22 (c) A statement as to whether a portion of the unit is covered by
23 insurance maintained by the association.

24 (d) The total amount of money held by the association as reserves.

25 (e) If the statement is being furnished by the association, a
26 statement as to whether the records of the association reflect any
27 alterations or improvements to the unit that violate the declaration. The
28 association is not obligated to provide information regarding alterations
29 or improvements that occurred more than six years before the proposed
30 sale. Nothing in this subdivision relieves the seller of a unit from the
31 obligation to disclose alterations or improvements to the unit that
32 violate the declaration, nor precludes the association from taking action
33 against the purchaser of a unit for violations that are apparent at the
34 time of purchase and that are not reflected in the association's records.

35 (f) If the statement is being furnished by the member, a statement
36 as to whether the member has any knowledge of any alterations or
37 improvements to the unit that violate the declaration.

38 (g) A statement of case names and case numbers for pending
39 litigation with respect to the unit filed by the association against the
40 member or filed by the member against the association. The member shall
41 not be required to disclose information concerning such pending litigation
42 that would violate any applicable rule of attorney-client privilege under
43 Arizona law.

1 (h) A statement that provides "I hereby acknowledge that the
2 declaration, bylaws and rules of the association constitute a contract
3 between the association and me (the purchaser). By signing this
4 statement, I acknowledge that I have read and understand the association's
5 contract with me (the purchaser). I also understand that as a matter of
6 Arizona law, if I fail to pay my association assessments, the association
7 may foreclose on my property." The statement shall also include a
8 signature line for the purchaser and shall be returned to the association
9 within fourteen calendar days.

10 4. A copy of the current operating budget of the association.

11 5. A copy of the most recent annual financial report of the
12 association. If the report is more than ten pages, the association may
13 provide a summary of the report in lieu of the entire report.

14 6. A copy of the most recent reserve study of the association, if
15 any.

16 7. A statement summarizing any pending lawsuits, except those
17 relating to the collection of assessments owed by members other than the
18 selling member, in which the association is a named party, including the
19 amount of any money claimed.

20 B. A purchaser or seller who is damaged by the failure of the
21 member or the association to disclose the information required by
22 subsection A of this section may pursue all remedies at law or in equity
23 against the member or the association, whichever failed to comply with
24 subsection A of this section, including the recovery of reasonable
25 attorney fees.

26 C. The association may charge the member a fee of ~~no~~ NOT more than
27 an aggregate of four hundred dollars to compensate the association for the
28 costs incurred in the preparation AND DELIVERY of a statement or other
29 documents furnished by the association pursuant to this section for
30 purposes of resale disclosure, lien estoppel and any other services
31 related to the transfer or use of the property. In addition, the
32 association may charge a rush fee of ~~no~~ NOT more than one hundred dollars
33 if the rush services are required to be performed within seventy-two hours
34 after the request for rush services, and may charge a statement or other
35 documents update fee of ~~no~~ NOT more than fifty dollars if thirty days or
36 more have passed since the date of the original disclosure statement or
37 the date the documents were delivered. The association shall make
38 available to any interested party the amount of any fee established from
39 time to time by the association. If the aggregate fee for purposes of
40 resale disclosure, lien estoppel and any other services related to the
41 transfer or use of a property is less than four hundred dollars on January
42 1, 2010, the fee may increase at a rate of ~~no~~ NOT more than twenty ~~per~~
43 ~~cent~~ PERCENT per year based on the immediately preceding fiscal year's
44 amount not to exceed the four hundred dollar aggregate fee. The

1 association may charge the same fee without regard to whether the
2 association is furnishing the statement or other documents in paper or
3 electronic format.

4 D. The fees prescribed by this section shall be collected no
5 earlier than at the close of escrow and may only be charged once to a
6 member for that transaction between the parties specified in the notice
7 required pursuant to subsection A of this section. An association shall
8 not charge or collect a fee relating to services for resale disclosure,
9 lien estoppel and any other services related to the transfer or use of a
10 property except as specifically authorized in this section. An
11 association that charges or collects a fee in violation of this section is
12 subject to a civil penalty of ~~no~~ NOT more than one thousand two hundred
13 dollars.

14 E. This section applies to a managing agent for an association that
15 is acting on behalf of the association.

16 F. The following are exempt from this section:

17 1. A sale in which a public report is issued pursuant to ~~sections~~
18 SECTION 32-2183 ~~and~~ OR 32-2197.02.

19 2. A sale pursuant to section 32-2181.02.

20 3. A conveyance by recorded deed that bears an exemption listed in
21 section 11-1134, subsection B, paragraph 3 or 7. On recordation of the
22 deed and for no additional charge, the member shall provide the
23 association with the changes in ownership including the member's name,
24 billing address and phone number. Failure to provide the information
25 shall not prevent the member from qualifying for the exemption pursuant to
26 this section.

27 G. For the purposes of this section, unless the context otherwise
28 requires, "member" means the seller of the unit title and excludes any
29 real estate salesperson or real estate broker who is licensed under title
30 32, chapter 20 and who is acting as a salesperson or broker, any escrow
31 agent who is licensed under title 6, chapter 7 and who is acting as an
32 escrow agent and also excludes a trustee of a deed of trust who is selling
33 the property in a trustee's sale pursuant to chapter 6.1 of this title.

34 Sec. 7. Section 33-1812, Arizona Revised Statutes, is amended to
35 read:

36 33-1812. Proxies; absentee ballots; definition

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

1 of the following if absentee ballots or ballots provided by some other
2 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
5 each proposed action.

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

9 4. The ballot specifies the time and date by which the ballot must
10 be delivered to the board of directors in order to be counted, which shall
11 be at least seven days after the date that the board delivers the unvoted
12 ballot to 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~~
16 shall contain the name, address and signature of the person voting, except
17 that if the community documents permit secret ballots, only the envelope
18 ~~and any nonballot-related materials~~ shall contain the name, address and
19 signature of the voter.

20 7. Ballots, envelopes and related materials, including sign-in
21 sheets if used, shall be retained in electronic or paper format and made
22 available for member inspection for at least one year after completion of
23 the election.

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

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

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