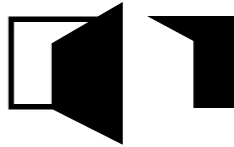


# IMPLEMENTATION MANUAL ARIZONA COMMUNITY ASSOCIATION LEGISLATIVE CHANGES



## CARPENTER HAZLEWOOD

Carpenter, Hazlewood, Delgado & Bolen, LLP

ATTORNEYS AT LAW

333 N. Wilmot Rd., Suite 180  
Tucson, AZ 85711-2631  
t 520.744.9480 / f 520.744.9402

1400 E. Southern Ave., Suite 400  
Tempe, AZ 85282-5691  
t 480.427.2800 / f 480.427.2801

1550 Plaza West Dr.  
Prescott, AZ 86303-0001  
t 928.443.0775 / f 928.445.9220

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Josh M. Bolen, Esq.

Scott B. Carpenter, Esq.

[josh@carpenterhazlewood.com](mailto:josh@carpenterhazlewood.com)

[scott@carpenterhazlewood.com](mailto:scott@carpenterhazlewood.com)

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[www.carpenterhazlewood.com](http://www.carpenterhazlewood.com)

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## EXHIBITS

### Bills

<i>HB2411</i> , Amendments, Recording of Meetings, Closed Board Meetings, Emergency Board Meetings & Ballots ....	Exhibit A, Pages 1 through 17
<i>SB1060</i> , Real Estate Department Dispute Process .....	Exhibit A, Pages 18 through 22
<i>SB1175</i> , Resale and Transfer Fees .....	Exhibit A, Pages 23 through 26

## I. INTRODUCTION

The passage of the bills attached at Exhibit A comprise the Arizona Legislature's activity regulating community associations for 2017. The bill detailed and explained in this Manual **will become effective on August 9, 2017.**

This Implementation Manual is intended to provide an operational guide to the day-to-day changes community associations will need to make to comply with the new laws.

## II. RECORDING OPEN MEETINGS

**HB2411** is attached at Exhibit A, Pages 1 through 17. **HB2411** makes changes to how community associations must conduct meetings. Before **HB2411**, both a planned community (A.R.S. § 33-1804) and condominium (A.R.S. § 33-1248) were allowed to adopt "reasonable rules" regarding an owner (or their designated representative so designated in writing) who desired to audiotape or videotape all or a portion of an open board of directors meeting or a membership meeting (such as the annual meeting). **HB2411** modifies both A.R.S. § 33-1804 (Exhibit A, Page 11, Line 23) for planned communities and A.R.S. § 33-1248 (Exhibit A, Page 3, Line 38) for Condominiums to eliminate the possibility that a community association's "reasonable rules" would require advance notice of an attendee's intent to audiotape or videotape the meeting.

**BEST PRACTICE:** *Assume that every word and action in an open board meeting and at any membership meeting is being video recorded at all times.*

**CAVEAT:** **HB2411** provides that both Condominiums and planned communities can require advance notice of an owner's intent to record (but the advance notice requirement must be in reasonable rules adopted by the association) if the Board "*audiotapes or videotapes the meeting and makes the unedited audiotapes or videotapes available to members on request without restrictions on its use as evidence in any dispute resolution process.*"

There are challenges with the caveat:

1. It is not clear from **HB2411** if the “on request” availability of association created recordings of meetings allows the association to prohibit all recording by attendees or simply allows the association to impose an advance notice requirement. Our reading is that it likely only applies to the advance notice requirement.
2. The requirement to produce the recording “on request” without a timeframe suggests that an owner has a right to immediately receive the copy of the audio or video tape or digital file. This requirement alone creates a possible “gotcha” for an association that would go to the trouble of creating the recordings.

We suggest that community associations carefully consider whether to take advantage of the “Caveat” and to consider the pros and cons of getting into the unedited audiotaping and/or videotaping habit.

### **III. CLOSED OR “EXECUTIVE SESSION” BOARD MEETINGS**

**HB2411** makes changes to how community association Boards of Directors move into a closed or “executive session” board meeting. Before **HB2411**, both a planned community (A.R.S. § 33-1804) and condominium (A.R.S. § 33-1248) were allowed to go into executive session without informing the membership why the board is moving into executive session. It was sufficient to say, “We’re going into executive or closed session”. **HB2411** modifies both A.R.S. § 33-1804 (Exhibit A, Page 12, Line 30) for planned communities and A.R.S. § 33-1248 (Exhibit A, Page 5, Line 1) for Condominiums to require the board of directors to specifically identify, by reference to the closed meeting statute section number, the reason for the executive session. This can be done in two ways. First, the community-wide notice informing the membership of the board meeting can refer to the statutory reference. Second, in circumstances where the board moves into a closed session seamlessly from an open session, the board can do it verbally and note it in the meeting minutes. For reference, the statutory references and suggested verbiage for a notice or to be said verbally are below:

## Planned Communities

<b>Reason:</b>	<b>Suggested Statement:</b>
<p><b>Legal advice</b> from an attorney for the board or the association. On final resolution of any matter for which the board received legal advice or that concerned pending or contemplated litigation, the board may disclose information about that matter in an open meeting except for matters that are required to remain confidential by the terms of a settlement agreement or judgment.</p>	<p>The Board of Directors will be meeting in executive session pursuant to A.R.S. Section 33-1804(A)(1)</p>
<p><b>Pending or contemplated litigation.</b></p>	<p>The Board of Directors will be meeting in executive session pursuant to A.R.S. Section 33-1804(A)(2)</p>
<p><b>Personal, health or financial information</b> about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association, including records of the association directly related to the personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association.</p>	<p>The Board of Directors will be meeting in executive session pursuant to A.R.S. Section 33-1804(A)(3)</p>
<p>Matters relating to the <b>job performance</b> of, compensation of, health records of or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association.</p>	<p>The Board of Directors will be meeting in executive session pursuant to A.R.S. Section 33-1804(A)(4)</p>
<p>Discussion of a member's <b>appeal of any violation</b> cited or penalty imposed by the association except on request of the affected member that the meeting be held in an open session.</p>	<p>The Board of Directors will be meeting in executive session pursuant to A.R.S. Section 33-1804(A)(5)</p>

## Condominiums

<b>Reason:</b>	<b>Suggested Statement:</b>
<p><b>Legal advice</b> from an attorney for the board or the association. On final resolution of any matter for which the board received legal advice or that concerned pending or contemplated litigation, the board may disclose information about that matter in an open meeting except for matters that are required to remain confidential by the terms of a settlement agreement or judgment.</p>	<p>The Board of Directors will be meeting in executive session pursuant to A.R.S. Section 33-1248(A)(1)</p>
<p><b>Pending or contemplated litigation.</b></p>	<p>The Board of Directors will be meeting in executive session pursuant to A.R.S. Section 33-1248(A)(2)</p>
<p><b>Personal, health or financial information</b> about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association, including records of the association directly related to the personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association.</p>	<p>The Board of Directors will be meeting in executive session pursuant to A.R.S. Section 33-1248(A)(3)</p>
<p>Matters relating to the <b>job performance</b> of, compensation of, health records of or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association.</p>	<p>The Board of Directors will be meeting in executive session pursuant to A.R.S. Section 33-1248(A)(4)</p>
<p>Discussion of a member's <b>appeal of any violation</b> cited or penalty imposed by the association except on request of the affected member that the meeting be held in an open session.</p>	<p>The Board of Directors will be meeting in executive session pursuant to A.R.S. Section 33-1248(A)(5)</p>

### IV. EMERGENCY BOARD MEETINGS

**HB2411** makes changes to how community association Boards of Directors hold “emergency” meetings. Before **HB2411**, both a planned community (A.R.S. § 33-1804) and a condominium (A.R.S. § 33-1248) were allowed to

have an “emergency meeting” if an item could not wait until the “next regularly scheduled” board meeting. The consequence of conducting an “emergency meeting” was that notice to the membership was not required (making attendance of owners to an emergency meeting on an open session topic nearly impossible). **HB2411** does not modify this statement found in A.R.S. § 33-1804(C) and A.R.S. § 33-1248(C): *Notice to unit owners of meetings of the board of directors is not required if emergency circumstances require action by the board before notice can be given.*

**HB2411** does, however, restrict the circumstances where an “emergency meeting” could result in no notice being given to the members to only those circumstances where the matter is so urgent that it cannot wait 48 hours rather than the current standard of, “Until the next regularly scheduled board meeting.”

## V. BALLOTS

**HB2411** makes changes to how community associations conduct voting. Last year, there was a change to A.R.S. § 33-1812, planned communities, and A.R.S. § 33-1250, Condominiums, which contained this statement:

6. *The completed ballot and envelope and any related materials shall contain the name, address and either the actual or electronic signature of the person voting, except that if the condominium/planned community documents permit secret ballots, only the envelope or any nonballot-related materials shall contain the name, address and either the actual or electronic signature of the voter.*

This language created confusion as to whether both the ballot and envelope must be signed in order for a vote to be counted. Thankfully, the Legislature has modified this provision with the following language that clarifies that an owner need not sign both the ballot and the envelope in a non-secret ballot voting situation:

6. *The completed ballot shall contain the name, the address and either the actual or electronic signature of the person voting, except that if the condominium/planned community documents permit secret ballots, only the envelope shall contain the name, the address and either the actual or electronic signature of the voter.*

## **VI. NON-UNIFORM AMENDMENTS IN NON-CONDO, NON-PLANNED COMMUNITY SUBDIVISIONS**

**HB2411** enacts changes to A.R.S. § 33-420 (*applicable to non-planned communities and non-condominiums*) regarding “non-uniform” amendments to a “Declaration” (generally referred to as “CC&Rs”). The modifications to A.R.S. § 33-440, see Exhibit A, Pages 2 and 3) clarify that A.R.S. § 33-440 applies to non-planned communities. A.R.S. § 33-40 tracks changes made in 2016 to A.R.S. § 33-1817 regarding non-uniform amendments.

## **VII. DEPARTMENT OF REAL ESTATE CLERICAL CLEAN UP**

**SB1060**, attached as Exhibit A, Pages 18 through 22, clarifies that the dispute resolution process that exists outside of the judicial branch is lodged in the Department of Real Estate, not the Department of Fire, Building, and Life Safety. This change was made last year but a clerical error left a reference to the DFBLS in both the planned community statutes and the condominium act. See Exhibit A, Page 20, Line 38 (condominiums), and Exhibit A, Page 22, Line 15 (planned communities).

## **VIII. RESALE AND TRANSFER FEES**

**SB1175**, attached as Exhibit A, Pages 23 through 26, clarifies that prohibition on certain types of transfer fees found in A.R.S. § 33-442 applies to 501(c)(3) and 501(c)(4) organizations as well as “nonprofit mandatory membership organizations that are created pursuant to a declaration, covenant or other applicable law and that are composed of the owners of homes, condominiums, cooperatives or manufactured homes or any other interest in real property.”



Senate Engrossed House Bill

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

**CHAPTER 217**  
**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 ~~two~~ 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 ~~two~~ 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.

APPROVED BY THE GOVERNOR APRIL 28, 2017.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 28, 2017.

Senate Engrossed

State of Arizona  
Senate  
Fifty-third Legislature  
First Regular Session  
2017

**CHAPTER 77**  
**SENATE BILL 1060**

AN ACT

AMENDING SECTIONS 33-1242 AND 33-1803, 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  
7 may:  
8 1. Adopt and amend bylaws and rules.  
9 2. Adopt and amend budgets for revenues, expenditures and reserves  
10 and collect assessments for common expenses from unit owners.  
11 3. Hire and discharge managing agents and other employees, agents  
12 and independent contractors.  
13 4. Institute, defend or intervene in litigation or administrative  
14 proceedings in its own name on behalf of itself or two or more unit owners  
15 on matters affecting the condominium.  
16 5. Make contracts and incur liabilities.  
17 6. Regulate the use, maintenance, repair, replacement and  
18 modification of common elements.  
19 7. Cause additional improvements to be made as a part of the common  
20 elements.  
21 8. Acquire, hold, encumber and convey in its own name any right,  
22 title or interest to real or personal property, except that common  
23 elements may be conveyed or subjected to a security interest only pursuant  
24 to section 33-1252.  
25 9. Grant easements, leases, licenses and concessions through or  
26 over the common elements.  
27 10. Impose and receive any payments, fees or charges for the use,  
28 rental or operation of the common elements other than limited common  
29 elements described in section 33-1212, paragraphs 2 and 4 and for services  
30 provided to unit owners.  
31 11. Impose charges for late payment of assessments after the  
32 association has provided notice that the assessment is overdue or provided  
33 notice that the assessment is considered overdue after a certain date and,  
34 after notice and an opportunity to be heard, impose reasonable monetary  
35 penalties on unit owners for violations of the declaration, bylaws and  
36 rules of the association.  
37 12. Impose reasonable charges for the preparation and recordation  
38 of amendments to the declaration or statements of unpaid assessments.  
39 13. Provide for the indemnification of its officers and executive  
40 board of directors and maintain directors' and officers' liability  
41 insurance.  
42 14. Assign its right to future income, including the right to  
43 receive common expense assessments, but only to the extent the declaration  
44 expressly provides.

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

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

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

9           18. Exercise any other powers necessary and proper for the  
10 governance and operation of the association.

11           B. A unit owner who receives a written notice that the condition of  
12 the property owned by the unit owner is in violation of a requirement of  
13 the condominium documents without regard to whether a monetary penalty is  
14 imposed by the notice may provide the association with a written response  
15 by sending the response by certified mail within twenty-one calendar days  
16 after the date of the notice. The response shall be sent to the address  
17 identified in the notice.

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

23           1. The provision of the condominium documents that has allegedly  
24 been violated.

25           2. The date of the violation or the date the violation was  
26 observed.

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

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

30           D. Unless the information required in subsection C, paragraph 4 of  
31 this section is provided in the notice of violation, the association shall  
32 not proceed with any action to enforce the condominium documents,  
33 including the collection of attorney fees, before or during the time  
34 prescribed by subsection C of this section regarding the exchange of  
35 information between the association and the unit owner and shall give the  
36 unit owner written notice of the unit owner's option to petition for an  
37 administrative hearing on the matter in the STATE REAL ESTATE department  
38 ~~of fire, building and life safety~~ pursuant to section ~~41-2198.01~~  
39 ~~32-2199.01~~. At any time before or after completion of the exchange of  
40 information pursuant to this section, the unit owner may petition for a  
41 hearing pursuant to section 32-2199.01 if the dispute is within the  
42 jurisdiction of the state real estate department as prescribed in section  
43 32-2199.01.

1           Sec. 2. Section 33-1803, Arizona Revised Statutes, is amended to  
2 read:

3           33-1803. Assessment limitation; penalties; notice to member  
4                                   of violation

5           A. Unless limitations in the community documents would result in a  
6 lower limit for the assessment, the association shall not impose a regular  
7 assessment that is more than twenty percent greater than the immediately  
8 preceding fiscal year's assessment without the approval of the majority of  
9 the members of the association. Unless reserved to the members of the  
10 association, the board of directors may impose reasonable charges for the  
11 late payment of assessments. A payment by a member is deemed late if it  
12 is unpaid fifteen or more days after its due date, unless the community  
13 documents provide for a longer period. Charges for the late payment of  
14 assessments are limited to the greater of fifteen dollars or ten percent  
15 of the amount of the unpaid assessment and may be imposed only after the  
16 association has provided notice that the assessment is overdue or provided  
17 notice that the assessment is considered overdue after a certain date.  
18 Any monies paid by the member for an unpaid assessment shall be applied  
19 first to the principal amount unpaid and then to the interest accrued.

20           B. After notice and an opportunity to be heard, the board of  
21 directors may impose reasonable monetary penalties on members for  
22 violations of the declaration, bylaws and rules of the  
23 association. Notwithstanding any provision in the community documents,  
24 the board of directors shall not impose a charge for a late payment of a  
25 penalty that exceeds the greater of fifteen dollars or ten percent of the  
26 amount of the unpaid penalty. A payment is deemed late if it is unpaid  
27 fifteen or more days after its due date, unless the declaration, bylaws or  
28 rules of the association provide for a longer period. Any monies paid by  
29 a member for an unpaid penalty shall be applied first to the principal  
30 amount unpaid and then to the interest accrued. Notice pursuant to this  
31 subsection shall include information pertaining to the manner in which the  
32 penalty shall be enforced.

33           C. A member who receives a written notice that the condition of the  
34 property owned by the member is in violation of the community documents  
35 without regard to whether a monetary penalty is imposed by the notice may  
36 provide the association with a written response by sending the response by  
37 certified mail within twenty-one calendar days after the date of the  
38 notice. The response shall be sent to the address identified in the  
39 notice.

40           D. Within ten business days after receipt of the certified mail  
41 containing the response from the member, the association shall respond to  
42 the member with a written explanation regarding the notice that shall  
43 provide at least the following information unless previously provided in  
44 the notice of violation:

1           1. The provision of the community documents that has allegedly been  
2 violated.  
3           2. The date of the violation or the date the violation was  
4 observed.  
5           3. The first and last name of the person or persons who observed  
6 the violation.  
7           4. The process the member must follow to contest the notice.  
8           E. Unless the information required in subsection D, paragraph 4 of  
9 this section is provided in the notice of violation, the association shall  
10 not proceed with any action to enforce the community documents, including  
11 the collection of attorney fees, before or during the time prescribed by  
12 subsection D of this section regarding the exchange of information between  
13 the association and the member and shall give the member written notice of  
14 the member's option to petition for an administrative hearing on the  
15 matter in the STATE REAL ESTATE department ~~of fire, building and life~~  
16 ~~safety~~ pursuant to section ~~41-2198.01~~ 32-2199.01. At any time before or  
17 after completion of the exchange of information pursuant to this section,  
18 the member may petition for a hearing pursuant to section 32-2199.01 if  
19 the dispute is within the jurisdiction of the state real estate department  
20 as prescribed in section 32-2199.01.

APPROVED BY THE GOVERNOR MARCH 27, 2017.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 27, 2017.

Senate Engrossed

State of Arizona  
Senate  
Fifty-third Legislature  
First Regular Session  
2017

**CHAPTER 218**  
**SENATE BILL 1175**

AN ACT

AMENDING SECTION 33-442, ARIZONA REVISED STATUTES; RELATING TO REAL ESTATE  
CONVEYANCES AND DEEDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 33-442, Arizona Revised Statutes, is amended to  
3 read:  
4 33-442. Prohibition on transfer fees; exceptions; definitions  
5 A. A provision in a declaration, A covenant or any other document  
6 relating to real property in this state is not binding or enforceable  
7 against the real property or against any subsequent owner, purchaser,  
8 lienholder or other claimant on the property if it purports to do both of  
9 the following:  
10 1. Bind successors in title to the specified real property.  
11 2. Obligate the transferee or transferor of all or part of the  
12 property to pay a fee or other charge to a declarant or a third person on  
13 transfer of an interest in the property or in consideration for permitting  
14 such a transfer. Regularly scheduled fees or charges shall not be  
15 considered payable on transfer of an interest if the fees or charges will  
16 be payable by the owner of the property regardless of whether or not the  
17 property is transferred, even if the obligation to pay does not commence  
18 until the trustee, declarant, builder or developer first conveys the  
19 property to a retail purchaser.  
20 B. A transfer fee provision prescribed by subsection A OF THIS  
21 SECTION is unenforceable whether or not recorded and does not create a  
22 lien right and any lien purportedly arising out of an unenforceable  
23 provision prescribed by subsection A OF THIS SECTION is invalid and  
24 unenforceable.  
25 C. This section does not apply to any of the following:  
26 1. Any provision of a purchase contract, option, mortgage, security  
27 agreement, real property listing agreement or other agreement that  
28 obligates one party to the agreement to pay the other party as full or  
29 partial consideration for the agreement or for a waiver of rights under  
30 the agreement if the amount to be paid is:  
31 (a) A loan assumption fee or similar fee charged by a lender that  
32 holds a lien on the property.  
33 (b) A fee or commission paid to a licensed real estate broker for  
34 brokerage services rendered in connection with the transfer of the  
35 property for which the fee or commission is paid.  
36 2. Any provision in a deed, memorandum or other document recorded  
37 for the purpose of providing record notice of an agreement prescribed in  
38 paragraph 1, subdivision (a) of this subsection.  
39 3. Any provision of a document that requires payment of a fee or  
40 charge to an association to be used exclusively for the purpose authorized  
41 in the document if both of the following apply:  
42 (a) The fee being charged touches and concerns the land.



1 (b) No portion of the charge or fee is required to be passed  
2 through to a third party or declarant designated or identifiable by  
3 description in the document or in another document that is referenced in  
4 the document unless the third party is authorized in the document to  
5 manage real property within the association or was part of an approved  
6 development plan.

7 4. Any rent, reimbursement, charge, fee or other amount payable by  
8 a lessee to a lessor under a lease, including any fee payable to the  
9 lessor for consenting to an assignment, sublease, encumbrance or transfer  
10 of the lease.

11 5. Any consideration payable to the holder of an option to purchase  
12 an interest in the real property or to the holder of a right of first  
13 refusal or first offer to purchase an interest in real property and paid  
14 for waiving, releasing or not exercising the option or right on transfer  
15 of the property to another person.

16 6. Any fee, charge, assessment, dues, contribution or other amount  
17 relating to the purchase or transfer of a club membership related to the  
18 real property owner by the transferor.

19 7. Any fee or charge that is imposed by a document and that is  
20 payable to a nonprofit corporation for the sole purpose of supporting  
21 recreational activities within the association.

22 8. Any fee, tax, assessment or other charge imposed by a  
23 governmental authority pursuant to applicable laws, ordinances or  
24 regulations.

25 9. Any consideration payable by the transferee to the transferor  
26 for the interest in real property being transferred including any  
27 subsequent additional consideration for the property payable by the  
28 transferee based on any subsequent appreciation, development or sale of  
29 the property.

30 D. Notwithstanding any provision in the document or purported lien,  
31 a transfer fee covenant or other document prescribed by subsection A OF  
32 THIS SECTION or a lien purporting to secure payment under a transfer fee  
33 covenant or document prescribed by subsection A OF THIS SECTION that is  
34 executed after ~~the effective date of this section~~ JULY 29, 2010 is not  
35 binding or enforceable. This section shall not be construed to imply that  
36 a transfer fee covenant or other document prescribed by subsection A OF  
37 THIS SECTION that is executed before ~~the effective date of this section~~  
38 JULY 29, 2010 is enforceable or valid.

39 E. For the purposes of this section:

40 1. "Association" means A NONPROFIT ORGANIZATION THAT IS QUALIFIED  
41 UNDER SECTION 501(c)(3) OR SECTION 501(c)(4) OF THE UNITED STATES INTERNAL  
42 REVENUE CODE OR a nonprofit mandatory membership organization that is  
43 created pursuant to a declaration, covenant or other applicable law and  
44 that is ~~comprised~~ COMPOSED of the owners of homes, condominiums,  
45 cooperatives or manufactured homes or any other interest in real property.

1           2. "Transfer" means the sale, gift, conveyance, assignment,  
2 inheritance or other transfer of an interest in real property located in  
3 this state.

4           Sec. 2. Legislative intent; clarifying language

5           The amendments in this act to section 33-442, Arizona Revised  
6 Statutes, are intended to be clarifying changes and are consistent with  
7 the legislature's intent when section 33-442, Arizona Revised Statutes was  
8 enacted.

9           Sec. 3. Retroactivity

10          This act applies retroactively to from and after July 28, 2010.

APPROVED BY THE GOVERNOR APRIL 28, 2017.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 28, 2017.