

AN ANALYSIS OF PERTINENT HOMEOWNER ASSOCIATION STATUTES

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In Arizona, Homeowners Associations are governed primarily by two sets of statutes, planned community statutes, § 33-1801, et. seq. and condominium statutes, A.R.S. § 33-1201, et. seq., This article is a summary of some of those statutes.

Open Meetings. §33-1804; 33-1248.

The planned community and condominium statutes provide that all meetings of the association and board of directors are open to all members of the association or any person designated by a member in writing as the member's representative. These statutes also provide that at each of these meetings the member and/or the member's designated representative is entitled to speak at designated times and before the Board takes formal action on an item under discussion. These statutes also set forth that Board meetings can be closed for legal advice from an attorney from the Board; pending or contemplated litigation; personal, health or financial information about an individual member of the association, an individual employee or employee of a contractor for the association; matters relating to the job performance of, compensation of, health records of or specific complaints against an individual employee or individual employee of the contractor of the association.

Association financial and other records. § 33-1805; 33-1258.

These statutes set forth that all financial and other records of the association, other than those which would occur during a closed meeting of the Board of Directors, shall be made reasonably available for examination by any member or any person designated by the member in writing as the member's representative. A member or the member's designated representative can request to review documents and the association shall have ten business days to fulfill a request for examination. Copies can also be requested and the association shall have ten business days to provide copies of the requested records and the association may charge a fee of not more than \$0.15 per page for the copies.

Penalties; notice to member of violation. § 33-1803; 33-1242.

The planned community statute, §33-1803, addresses numerous issues, including setting a limit as to the amount the association can charge for regular assessment. The statute states that unless the limitations of the community documents would result in a lower limit of the assessment, the association shall not impose a regular assessment that is more than 20% greater than the immediately preceding fiscal year's assessment without the approval of the majority of the members.

The majority of this planned community statute, however, addresses notice to a member of violations of the community documents and provides that before any penalties can be imposed that a member must be given notice and an opportunity to be heard.



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The statute also provides that a member who receives written notice that the property is in violation of community documents may provide the association with a written response by sending a response by certified mail within ten days business days after the date of the notice and then within ten business days after receipt of that certified mail from the member, the association shall respond with a written explanation that must provide at least, the provision of the community documents that has allegedly been violated, the date of the violation or the date the violation was observed, the first and last name of the person or persons who observed the violation, and the process the member must follow to contest the notice. This statute also provides that the association cannot proceed with any action to enforce the community documents or collection of any attorneys' fees with respect to any violations during the time frame of the notices and responses.

Finally, the statute advises members that they may petition for a hearing pursuant to A.R.S. § 41-2198.01 with the Department of Fire, Building and Life Safety. This process includes filing a complaint and then a hearing will be held with the Office of Administrative Hearings in front of an Administrative Law Judge, which decision is binding.

The condominium statute, §33-1242, is not identical and does not address the assessment increase, however, it does include provisions for notice and opportunity to be heard before monetary penalties can be imposed and sets forth the same provisions for a member who receives a notice of violation, as well as the right to seek a hearing pursuant to A.R.S. §41-2198.01.

Board of Directors, annual audit. § 33-1810.

This statute requires the Board of a planned community to provide for an annual financial audit, review or compilation of the association, which must be completed no later than 180 days after the end of the association's fiscal year and thereafter, shall be made available upon request to the members within thirty days after completion.

Board of Directors, conflict. § 33-1811.

This planned community statute provides that prior to any action taken on an issue where a board member has a conflict, that member shall declare the conflict in an open meeting of the board before the board discusses or takes action on that issue, and that if this does not occur that any contract entered into would be void and unenforceable.

Absentee ballots. § 33-1812; 33-1250.

These statutes set forth how voting is to occur at member meetings, and that after that termination of the period of declarant control, votes allocated to a member may not be cast pursuant to a proxy, but with absentee ballots. The statutes specify the requirements for the absentee ballots, including that the ballot sets forth each proposed action, provides an opportunity to vote for or against each proposed action, is valid for only one specified



election or meeting and expires automatically after the completion of the election or the meeting, specifies the time or date in which the ballot must be delivered to the board in order to be counted, which will be at least seven days after the board delivers the absentee ballot to the member, and the absentee ballot does not authorize another person to cast votes on behalf of the member. These statutes also provide that the votes cast by absentee ballots are valid for the purpose of establishing quorum.

Removal of Board Member and Special Meetings. §33-1813.

This planned community statute provides that a majority vote of the members entitled to vote on the matter at a meeting of the members may remove any member of the board, with or without cause, other than a member appointed by the declarant. In an association with 1,000 or fewer members, the petition that calls for a removal of the member must be signed by at least 25% of those entitled to cast a vote, or 100 votes, whichever is less. In an association with more than 1,000 members, the petition must be signed by at least 10% of the votes, or 1,000 votes, whichever is less.

This statute also provides that once the petition is received, that a special meeting shall be called, noticed and held within thirty days after receipt of the petition, and that at the special meeting, a quorum is present if the number of members to whom at least 20% of the votes, or 1,000 of the votes, whichever is less, are present. The statute also provides that members can only seek to remove a board member once during their term, that the board of directors shall maintain all documents and other records relating to the proposed removal for at least one year, and permits members to inspect those documents, and if a civil action is filed regarding removal of a board member, the prevailing party should be awarded its reasonable attorneys' fees and costs.

Board of Directors and Officers, conflict, powers, limitations, removal, annual audit. §33-1243.

This condominium statute includes a provision similar to §33-1811 regarding a board's conflict of interest, the provisions of §33-1813 for the removal of board members and special meetings, and §33-1810, requiring an annual audit, review or compilation.

Resale of Units. § 33-1806; 33-1260.

For both planned communities and condominium associations there are statutes that set forth what information is required to be provided to a potential purchaser of the property. If the association has fewer than fifty units, the selling member of the association must provide this information directly to the purchaser and if there are fifty or more units, then the association must send the information directly to the purchaser. The information must be sent within ten days after receipt of written notice of a pending sale. The statutes sets forth all of the information that must be provided, including a copy of all of the community documents, contact information for the association, the amount of the regular assessments and if there are any special assessments or other assessments, whether any portion of the property is covered by insurance, the amount of money held by the association as reserves, whether there are any known violations of the community documents, whether the association and the selling member are in litigation, and if so, information regarding the litigation, the current operating budget, a copy of the most recent annual financial report and a copy of the most recent reserve study, if there is one.



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The statute also provides that the purchaser is to sign and return the document within fourteen days and contains a statement for the purchaser to acknowledge that the community documents create a contract with the association and that they understand that if they fail to pay their assessments, the association may foreclose on the property. The statute also provides that the association may charge the selling member a reasonable fee for copies and that a purchaser or a seller who is damaged by the failure of the member or the association to disclose this information may pursue all remedies at law or in equity, including the recovery of reasonable attorneys' fees.

Lien for assessments. §13-1807; 33-1256.

These statutes establish that the association has a lien on the property for any assessment levied against that property from the time the assessment becomes due and establishes the priority of the associations' lien.

These statutes also address the ability of the association to foreclose on the property if the member does not pay the assessments and clearly specifies that foreclosure can only occur for not paying assessments and that the association may only foreclose if the member has been delinquent in the payment of money secured by the lien, excluding reasonable collection fees, reasonable attorneys' fees and charges for late payment of costs incurred with respect to those assessments, for a period of one year, or in the amount of \$1,200.00 or more, whichever occurs first.

Flag display, political signs, caution signs, and for sale signs. § 33-1808, 33-1261.

These statutes are slightly different for planned communities and condominiums, but both include provisions that the association cannot prohibit a member from displaying certain flags, on that member's property. These flags include the American flag, a flag of the United States army, navy, air force, marine corps or coast guard, POW/MIA flag, the Arizona State flag, and the Arizona Indian Nations flag. These statutes state that the association may regulate the location and size of the flag poles, but the association cannot prohibit the installation of a flag pole.

These statutes, for both planned communities and condominiums, also state that an association shall not prohibit the indoor or outdoor display of a for sale sign and a sign rider, by a member on the member's property.

For planned communities only, political signs and cautionary signs are also addressed. Members in a planned community can display a political sign on the member's property, however, an association can limit the time that the political sign is displayed to forty-five days before the election and seven days after the election.

In addition, planned communities shall not prohibit the use of cautionary signs regarding children but places limits, including that the signs must be displayed in residential areas only, the signs are removed within one hour of children ceasing to play, the signs are displayed only when children are actually present within fifty feet of the signs, the temporary signs are no taller than three feet in height, and the signs are professionally manufactured and produced.



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The statute also states that an association shall not prohibit children who reside in the planned community from engaging in recreational activity on the residential roadways that are part of the community and controlled by the association and which the speed limit is 25 miles per hour or less.

Parking. § 33-1809.

This planned community statute addresses members who are employed by public service corporations who are regulated by the corporation commission or a municipal utility and which are required to prepare for emergency deployments of personal and equipment for repair or maintenance of natural gas, electrical, telecommunications or water infrastructure. The statute provides that members work for those companies may park their vehicle on the street or driveway in the community if the vehicle is required to be available at the person's residence as a condition of the person's employment and the vehicle bears an official emblem or other visible designation of the public service corporation or municipal utility, and the vehicle has a gross vehicle weight rating of 20,000 pounds or less. If a member is employed by a public safety agency and must have their work vehicle, and it has a gross vehicle weight rating at 10,000 pounds or less, and also bears an official emblem and other visible designation of that agency, that vehicle is permitted on the street or driveway.

Solar Energy Devices. §33-1816.

This statute provides that a planned community cannot prohibit the installation or use of a solar energy device by a member, but may adopt reasonable rules regarding the placement of the solar energy device, if those rules do not prevent the installation, impair the functioning the device or restrict its use or adversely effect the cost or efficiency of the device.



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