

REFERENCE TITLE: homeowners' associations; condominiums; meetings

State of Arizona  
Senate  
Forty-ninth Legislature  
Second Regular Session  
2010

# SB 1012

Introduced by  
Senator Harper

AN ACT

AMENDING SECTIONS 33-1243, 33-1248, 33-1256, 33-1804, 33-1807 AND 33-1813,  
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 33-1243, Arizona Revised Statutes, is amended to  
3 read:

4 33-1243. Board of directors and officers; conflict; powers;  
5 limitations; removal; annual audit; applicability

6 A. Except as provided in the declaration, the bylaws, subsection B OF  
7 THIS SECTION or other provisions of this chapter, the board of directors may  
8 act in all instances on behalf of the association.

9 B. The board of directors shall not act on behalf of the association  
10 to amend the declaration, terminate the condominium, elect members of the  
11 board of directors or determine the qualifications, powers and duties or  
12 terms of office of board of directors members. The board of directors may  
13 fill vacancies in its membership for the unexpired portion of any term.

14 C. If any contract, decision or other action for compensation taken by  
15 or on behalf of the board of directors would benefit any member of the board  
16 of directors or any person who is a parent, grandparent, spouse, child or  
17 sibling of a member of the board of directors or a parent or spouse of any of  
18 those persons, that member of the board of directors shall declare a conflict  
19 of interest for that issue. The member shall declare the conflict in an open  
20 meeting of the board before the board discusses or takes action on that issue  
21 and that member may then vote on that issue. Any contract entered into in  
22 violation of this subsection is void and unenforceable.

23 D. Except as provided in the declaration, within thirty days after  
24 adoption of any proposed budget for the condominium, the board of directors  
25 shall provide a summary of the budget to all the unit owners. Unless the  
26 board of directors is expressly authorized in the declaration to adopt and  
27 amend budgets from time to time, any budget or amendment shall be ratified by  
28 the unit owners in accordance with the procedures set forth in this  
29 subsection. If ratification is required, the board of directors shall set a  
30 date for a meeting of the unit owners to consider ratification of the budget  
31 not fewer than fourteen nor more than thirty days after mailing of the  
32 summary. Unless at that meeting a majority of all the unit owners or any  
33 larger vote specified in the declaration rejects the budget, the budget is  
34 ratified, whether or not a quorum is present. If the proposed budget is  
35 rejected, the periodic budget last ratified by the unit owners shall be  
36 continued until such time as the unit owners ratify a subsequent budget  
37 proposed by the board of directors.

38 E. The declaration may provide for a period of declarant control of  
39 the association, during which period a declarant or persons designated by the  
40 declarant may appoint and remove the officers and members of the board of  
41 directors. Regardless of the period provided in the declaration, a period of  
42 declarant control terminates no later than the earlier of:

43 1. Ninety days after conveyance of seventy-five per cent of the units  
44 ~~which~~ THAT may be created to unit owners other than a declarant.

1           2. Four years after all declarants have ceased to offer units for sale  
2 in the ordinary course of business.

3           F. A declarant may voluntarily surrender the right to appoint and  
4 remove officers and members of the board of directors before termination of  
5 the period prescribed in subsection E OF THIS SECTION, but in that event the  
6 declarant may require, for the duration of the period of declarant control,  
7 that specified actions of the association or board of directors, as described  
8 in a recorded instrument executed by the declarant, be approved by the  
9 declarant before they become effective.

10          G. Not later than the termination of any period of declarant control  
11 the unit owners shall elect a board of directors of at least three members,  
12 at least a majority of whom must be unit owners. The board of directors  
13 shall elect the officers. The board members and officers shall take office  
14 upon election.

15          H. Notwithstanding any provision of the declaration or bylaws to the  
16 contrary, the unit owners, by a majority vote of members entitled to vote and  
17 voting on the matter at a meeting of the members called pursuant to this  
18 section at which a quorum is present, may remove any member of the board of  
19 directors with or without cause, other than a member appointed by the  
20 declarant. For purposes of calling for removal of a member of the board of  
21 directors, other than a member appointed by the declarant, the following  
22 apply:

23           1. In an association with one thousand or fewer members, on receipt of  
24 a petition that calls for removal of a member of the board of directors and  
25 that is signed by the number of persons who are entitled to cast at least  
26 twenty-five per cent of the votes in the association or one hundred votes in  
27 the association, whichever is less, the board shall call and provide written  
28 notice of a special meeting of the association as prescribed by section  
29 33-1248, subsection B. **A MEMBER WHO IS DELINQUENT IN PAYMENT OF MONETARY  
30 PENALTIES SHALL NOT BE BARRED FROM SIGNING A PETITION THAT CALLS FOR REMOVAL  
31 OF A BOARD MEMBER.**

32           2. Notwithstanding section 33-1248, subsection B, in an association  
33 with more than one thousand members, on receipt of a petition that calls for  
34 removal of a member of the board of directors and that is signed by the  
35 number of persons who are entitled to cast at least ten per cent of the votes  
36 in the association or one thousand votes in the association, whichever is  
37 less, the board shall call and provide written notice of a special meeting of  
38 the association. The board shall provide written notice of a special meeting  
39 as prescribed by section 33-1248, subsection B. **A MEMBER WHO IS DELINQUENT  
40 IN PAYMENT OF MONETARY PENALTIES SHALL NOT BE BARRED FROM SIGNING A PETITION  
41 THAT CALLS FOR REMOVAL OF A BOARD MEMBER.**

42           3. The special meeting shall be called, noticed and held within thirty  
43 days after receipt of the petition.

1           4. For purposes of a special meeting called pursuant to this  
2 subsection, a quorum is present if the number of owners to whom at least  
3 twenty per cent of the votes or one thousand votes, whichever is less, are  
4 allocated is present at the meeting in person or as otherwise permitted by  
5 law.

6           5. If a civil action is filed regarding the removal of a board member,  
7 the prevailing party in the civil action shall be awarded its reasonable  
8 attorney fees and costs.

9           6. The board of directors shall retain all documents and other records  
10 relating to the proposed removal of the member of the board of directors for  
11 at least one year after the date of the special meeting and shall permit  
12 members to inspect those documents and records pursuant to section 33-1258.

13           7. A petition that calls for the removal of the same member of the  
14 board of directors shall not be submitted more than once during each term of  
15 office for that member.

16           I. For an association in which board members are elected from  
17 separately designated voting districts, a member of the board of directors,  
18 other than a member appointed by the declarant, may be removed only by a vote  
19 of the members from that voting district, and only the members from that  
20 voting district are eligible to vote on the matter or be counted for purposes  
21 of determining a quorum.

22           J. Unless any provision in the condominium documents requires an  
23 annual audit by a certified public accountant, the board of directors shall  
24 provide for an annual financial audit, review or compilation of the  
25 association. The audit, review or compilation shall be completed no later  
26 than one hundred eighty days after the end of the association's fiscal year  
27 and shall be made available upon request to the unit owners within thirty  
28 days after its completion.

29           K. This section does not apply to timeshare plans or associations, or  
30 the period of declarant control under timeshare instruments, that are subject  
31 to chapter 20 of this title.

32           Sec. 2. Section 33-1248, Arizona Revised Statutes, is amended to read:  
33           33-1248. Open meetings; exceptions

34           A. Notwithstanding any provision in the declaration, bylaws or other  
35 documents to the contrary, all meetings of the association and board of  
36 directors are open to all members of the association or any person designated  
37 by a member in writing as the member's representative and all members or  
38 designated representatives so desiring shall be permitted to attend and speak  
39 at an appropriate time during the deliberations and proceedings. The board  
40 may place reasonable time restrictions on those persons speaking during the  
41 meeting but shall permit a member or a member's designated representative to  
42 speak **ONCE AFTER THE BOARD HAS DISCUSSED A SPECIFIC AGENDA ITEM BUT** before  
43 the board takes formal action on ~~an~~ **THAT** item ~~under discussion~~ in addition to  
44 any other opportunities to speak. The board shall provide for a reasonable  
45 number of persons to speak on each side of an issue. Any portion of a

1 meeting may be closed only if that portion of the meeting is limited to  
2 consideration of one or more of the following:

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

9 2. Pending or contemplated litigation.

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

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

21 5. DISCUSSION OF A UNIT OWNER'S APPEAL OF ANY VIOLATION CITED OR  
22 PENALTY IMPOSED BY THE ASSOCIATION EXCEPT ON REQUEST OF THE AFFECTED UNIT  
23 OWNER.

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

43 C. ~~Unless otherwise provided in the articles or bylaws of the~~  
44 ~~association~~ NOTWITHSTANDING ANY PROVISION IN THE DECLARATION, BYLAWS OR OTHER  
45 CONDOMINIUM DOCUMENTS, for meetings of the board of directors that are held

1 after the termination of declarant control of the association, notice to unit  
2 owners of meetings of the board of directors shall be given at least  
3 forty-eight hours in advance of the meeting by newsletter, conspicuous  
4 posting or any other reasonable means as determined by the board of  
5 directors. An affidavit of notice by an officer of the association is prima  
6 facie evidence that notice was given as prescribed by this section. Notice  
7 to unit owners of meetings of the board of directors is not required if  
8 emergency circumstances require action by the board before notice can be  
9 given. Any notice of a board meeting shall state the time and place of the  
10 meeting. The failure of any unit owner to receive actual notice of a meeting  
11 of the board of directors does not affect the validity of any action taken at  
12 that meeting.

13 D. NOTWITHSTANDING ANY PROVISION IN THE DECLARATION, BYLAWS OR OTHER  
14 CONDOMINIUM DOCUMENTS, FOR MEETINGS OF THE BOARD OF DIRECTORS THAT ARE HELD  
15 AFTER THE TERMINATION OF DECLARANT CONTROL OF THE ASSOCIATION, ALL OF THE  
16 FOLLOWING APPLY:

17 1. THE AGENDA SHALL BE AVAILABLE TO ALL UNIT OWNERS ATTENDING ANY  
18 MEETING OF THE BOARD OF DIRECTORS.

19 2. THE BOARD OF DIRECTORS MAY ADJOURN INTO A CLOSED SESSION ON A VOTE  
20 OF THE BOARD OF DIRECTORS AND AFTER ANNOUNCING THE REASON FOR THE CLOSED  
21 SESSION AT AN OPEN SESSION OF A MEETING OF THE BOARD. A CLOSED SESSION OF  
22 THE BOARD OF DIRECTORS MAY BE HELD WITHOUT FIRST MEETING IN AN OPEN SESSION  
23 IF NOTICE IS GIVEN AS PRESCRIBED BY THIS SECTION. THE BOARD OF DIRECTORS  
24 SHALL DISCLOSE AT AN OPEN MEETING A DECISION TO BECOME A PARTY TO A LAWSUIT.  
25 THIS SUBSECTION DOES NOT APPLY TO AN ACTION FILED PURSUANT TO TITLE 12,  
26 CHAPTER 8, ARTICLE 14.

27 3. AN EMERGENCY MEETING OF THE BOARD OF DIRECTORS MAY BE CALLED TO  
28 DISCUSS BUSINESS OR TAKE ACTION THAT CANNOT BE DELAYED UNTIL THE NEXT  
29 REGULARLY SCHEDULED BOARD MEETING. THE MINUTES OF THE EMERGENCY MEETING  
30 SHALL STATE THE REASON NECESSITATING THE EMERGENCY MEETING. THE MINUTES OF  
31 THE EMERGENCY MEETING SHALL BE READ AND APPROVED AT THE NEXT REGULARLY  
32 SCHEDULED MEETING OF THE BOARD OF DIRECTORS.

33 4. PURSUANT TO SECTION 10-3821, THE BOARD OF DIRECTORS MAY TAKE ACTION  
34 WITHOUT A MEETING. IF THE BOARD TAKES ACTION WITHOUT A MEETING, A STATEMENT  
35 SHALL BE PREPARED STATING THAT AN ACTION HAS BEEN TAKEN WITHOUT A MEETING,  
36 THE REASON FOR TAKING THE ACTION AND THE ACTION TAKEN. THIS STATEMENT SHALL  
37 BE READ INTO THE MINUTES OF THE NEXT REGULARLY SCHEDULED MEETING OF THE BOARD  
38 OF DIRECTORS. THE PROCEDURE FOR TAKING ACTION WITHOUT A MEETING SHALL BE  
39 USED ONLY WHEN EMERGENCY CIRCUMSTANCES WARRANT A MEETING AND THERE IS NOT  
40 SUFFICIENT TIME TO NOTICE A MEETING, OR WHEN A QUORUM OF THE BOARD IS  
41 IMPOSSIBLE TO OBTAIN AND NECESSARY BUSINESS MUST BE UNDERTAKEN. THIS  
42 PROCEDURE SHALL NOT BE USED TO TAKE THE PLACE OF CONDUCTING BUSINESS AT A  
43 REGULARLY SCHEDULED BOARD MEETING.

1 5. MEETINGS OF THE ASSOCIATION OR THE BOARD OF DIRECTORS, OTHER THAN  
2 CLOSED SESSIONS, MAY BE RECORDED BY MEANS OF A VIDEO CAMERA OR TAPE RECORDER  
3 OR ANY OTHER MEANS OF AUDIO REPRODUCTION ONLY IF THE PARTICIPANTS ARE  
4 NOTIFIED AND THERE IS NO ACTIVE INTERFERENCE WITH THE CONDUCT OF THE MEETING.

5 6. OTHER THAN ACTIONS ALLOWED BY PARAGRAPH 4 OF THIS SUBSECTION, A  
6 QUORUM OF THE BOARD OF DIRECTORS SHALL NOT MEET, CONDUCT BUSINESS OR MAKE ANY  
7 DECISIONS BY MEANS OF ELECTRONIC MAIL COMMUNICATIONS.

8 7. A QUORUM OF THE BOARD OF DIRECTORS MAY MEET BY MEANS OF A TELEPHONE  
9 CONFERENCE IF A SPEAKERPHONE IS AVAILABLE IN THE MEETING ROOM THAT ALLOWS  
10 BOARD MEMBERS AND UNIT OWNERS TO HEAR ALL PARTIES WHO ARE SPEAKING DURING THE  
11 MEETING.

12 8. ANY QUORUM OF THE BOARD THAT MEETS INFORMALLY TO DISCUSS  
13 ASSOCIATION BUSINESS, INCLUDING WORKSHOPS, SHALL COMPLY WITH THE OPEN MEETING  
14 AND NOTICE PROVISIONS OF THIS SECTION WITHOUT REGARD TO WHETHER THE BOARD  
15 VOTES OR TAKES ANY ACTION ON ANY MATTER AT THAT INFORMAL MEETING.

16 ~~D.~~ E. This section does not apply to timeshare plans or associations  
17 that are subject to chapter 20 of this title.

18 Sec. 3. Section 33-1256, Arizona Revised Statutes, is amended to read:

19 33-1256. Lien for assessments; priority; mechanics' and  
20 materialmen's liens; applicability

21 A. The association has a lien on a unit for any assessment levied  
22 against that unit from the time the assessment becomes due. The  
23 association's lien for assessments, for charges for late payment of those  
24 assessments, for reasonable collection fees and for reasonable attorney fees  
25 and costs incurred with respect to those assessments may be foreclosed in the  
26 same manner as a mortgage on real estate but may be foreclosed only if the  
27 owner has been delinquent in the payment of monies secured by the lien,  
28 excluding reasonable collection fees, reasonable attorney fees and charges  
29 for late payment of and costs incurred with respect to those assessments, for  
30 a period of one year or in the amount of one thousand two hundred dollars or  
31 more, whichever occurs first. A COURT MAY LIMIT THE AMOUNT OF ATTORNEY FEES  
32 INCLUDED IN THE ASSOCIATION'S LIEN. Fees, charges, late charges, monetary  
33 penalties and interest charged pursuant to section 33-1242, subsection A,  
34 paragraphs 10, 11 and 12, other than charges for late payment of assessments,  
35 are not enforceable as assessments under this section. If an assessment is  
36 payable in installments, the full amount of the assessment is a lien from the  
37 time the first installment of the assessment becomes due. The association  
38 has a lien for fees, charges, late charges, other than charges for late  
39 payment of assessments, monetary penalties or interest charged pursuant to  
40 section 33-1242, subsection A, paragraphs 10, 11 and 12 after the entry of a  
41 judgment in a civil suit for those fees, charges, late charges, monetary  
42 penalties or interest from a court of competent jurisdiction and the  
43 recording of that judgment in the office of the county recorder as otherwise  
44 provided by law. The association's lien for monies other than for  
45 assessments, for charges for late payment of those assessments, for

1 reasonable collection fees and for reasonable attorney fees and costs  
2 incurred with respect to those assessments may not be foreclosed and is  
3 effective only on conveyance of any interest in the real property.

4 B. A lien for assessments, for charges for late payment of those  
5 assessments, for reasonable collection fees and for reasonable attorney fees  
6 and costs incurred with respect to those assessments under this section is  
7 prior to all other liens, interests and encumbrances on a unit except:

8 1. Liens and encumbrances recorded before the recordation of the  
9 declaration.

10 2. A recorded first mortgage on the unit, a seller's interest in a  
11 first contract for sale pursuant to chapter 6, article 3 of this title on the  
12 unit recorded prior to the lien arising pursuant to subsection A of this  
13 section or a recorded first deed of trust on the unit.

14 3. Liens for real estate taxes and other governmental assessments or  
15 charges against the unit.

16 C. Subsection B of this section does not affect the priority of  
17 mechanics' or materialmen's liens or the priority of liens for other  
18 assessments made by the association. The lien under this section is not  
19 subject to chapter 8 of this title.

20 D. Unless the declaration otherwise provides, if two or more  
21 associations have liens for assessments created at any time on the same real  
22 estate, those liens have equal priority.

23 E. Recording of the declaration constitutes record notice and  
24 perfection of the lien for assessments, for charges for late payment of those  
25 assessments, for reasonable collection fees and for reasonable attorney fees  
26 and costs incurred with respect to those assessments. Further recordation of  
27 any claim of lien for assessments under this section is not required.

28 F. A lien for unpaid assessments is extinguished unless proceedings to  
29 enforce the lien are instituted within three years after the full amount of  
30 the assessments becomes due.

31 G. This section does not prohibit actions to recover sums for which  
32 subsection A of this section creates a lien or does not prohibit an  
33 association from taking a deed in lieu of foreclosure.

34 H. A judgment or decree in any action brought under this section shall  
35 include costs and reasonable attorney fees for the prevailing party.

36 I. The association on written request shall furnish to a lienholder,  
37 escrow agent, unit owner or person designated by a unit owner a statement  
38 setting forth the amount of unpaid assessments against the unit. The  
39 statement shall be furnished within fifteen days after receipt of the request  
40 and the statement is binding on the association, the board of directors and  
41 every unit owner if the statement is requested by an escrow agency that is  
42 licensed pursuant to title 6, chapter 7. Failure to provide the statement to  
43 the escrow agent within the time provided for in this subsection shall  
44 extinguish any lien for any unpaid assessment then due.

1 J. The association shall record in the office of the county recorder  
2 in the county in which the condominium is located a notice stating the name  
3 of the association or designated agent or management company for the  
4 association, the address for the association and the telephone number of the  
5 association or its designated agent or management company. The notice shall  
6 include the name of the condominium community, the date of the recording and  
7 the recorded instrument number or book and page for the main document that  
8 constitutes the declaration. If an association's address, designated agent  
9 or management company changes, the association shall amend its notice or  
10 record a new notice within ninety days after the change.

11 K. Notwithstanding any provision in the condominium documents or in  
12 any contract between the association and a management company, unless the  
13 member directs otherwise, all payments received on a member's account shall  
14 be applied first to any unpaid assessments, for unpaid charges for late  
15 payment of those assessments, for reasonable collection fees and for unpaid  
16 attorney fees and costs incurred with respect to those assessments, in that  
17 order, with any remaining amounts applied next to other unpaid fees, charges  
18 and monetary penalties or interest and late charges on any of those amounts.

19 L. This section does not apply to timeshare plans or associations that  
20 are subject to chapter 20 of this title.

21 Sec. 4. Section 33-1804, Arizona Revised Statutes, is amended to read:  
22 33-1804. Open meetings; exceptions

23 A. Notwithstanding any provision in the declaration, bylaws or other  
24 documents to the contrary, all meetings of the association and board of  
25 directors are open to all members of the association or any person designated  
26 by a member in writing as the member's representative and all members or  
27 designated representatives so desiring shall be permitted to attend and speak  
28 at an appropriate time during the deliberations and proceedings. The board  
29 may place reasonable time restrictions on those persons speaking during the  
30 meeting but shall permit a member or member's designated representative to  
31 speak **ONCE AFTER THE BOARD HAS DISCUSSED A SPECIFIC AGENDA ITEM BUT** before  
32 the board takes formal action on ~~an~~ **THAT** item ~~under discussion~~ in addition to  
33 any other opportunities to speak. The board shall provide for a reasonable  
34 number of persons to speak on each side of an issue. Any portion of a  
35 meeting may be closed only if that closed portion of the meeting is limited  
36 to consideration of one or more of the following:

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

43 2. Pending or contemplated litigation.

1           3. Personal, health or financial information about an individual  
2 member of the association, an individual employee of the association or an  
3 individual employee of a contractor for the association, including records of  
4 the association directly related to the personal, health or financial  
5 information about an individual member of the association, an individual  
6 employee of the association or an individual employee of a contractor for the  
7 association.

8           4. Matters relating to the job performance of, compensation of, health  
9 records of or specific complaints against an individual employee of the  
10 association or an individual employee of a contractor of the association who  
11 works under the direction of the association.

12           5. DISCUSSION OF A MEMBER'S APPEAL OF ANY VIOLATION CITED OR PENALTY  
13 IMPOSED BY THE ASSOCIATION EXCEPT ON REQUEST OF THE AFFECTED UNIT OWNER.

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

32           C. ~~Unless otherwise provided in the articles or bylaws of the~~  
33 ~~association~~ NOTWITHSTANDING ANY PROVISION IN THE DECLARATION, BYLAWS OR OTHER  
34 COMMUNITY DOCUMENTS, for meetings of the board of directors that are held  
35 after the termination of declarant control of the association, notice to  
36 members of meetings of the board of directors shall be given at least  
37 forty-eight hours in advance of the meeting by newsletter, conspicuous  
38 posting or any other reasonable means as determined by the board of  
39 directors. An affidavit of notice by an officer of the corporation is prima  
40 facie evidence that notice was given as prescribed by this section. Notice  
41 to members of meetings of the board of directors is not required if emergency  
42 circumstances require action by the board before notice can be given. Any  
43 notice of a board meeting shall state the time and place of the meeting. The  
44 failure of any member to receive actual notice of a meeting of the board of  
45 directors does not affect the validity of any action taken at that meeting.

1 D. NOTWITHSTANDING ANY PROVISION IN THE DECLARATION, BYLAWS OR OTHER  
2 COMMUNITY DOCUMENTS, FOR MEETINGS OF THE BOARD OF DIRECTORS THAT ARE HELD  
3 AFTER THE TERMINATION OF DECLARANT CONTROL OF THE ASSOCIATION, ALL OF THE  
4 FOLLOWING APPLY:

5 1. THE AGENDA SHALL BE AVAILABLE TO ALL MEMBERS ATTENDING ANY MEETING  
6 OF THE BOARD OF DIRECTORS.

7 2. THE BOARD OF DIRECTORS MAY ADJOURN INTO A CLOSED SESSION ON A VOTE  
8 OF THE BOARD OF DIRECTORS AND AFTER ANNOUNCING THE REASON FOR THE CLOSED  
9 SESSION AT AN OPEN SESSION OF A MEETING OF THE BOARD. A CLOSED SESSION OF  
10 THE BOARD OF DIRECTORS MAY BE HELD WITHOUT FIRST MEETING IN AN OPEN SESSION  
11 IF NOTICE IS GIVEN AS PRESCRIBED BY THIS SECTION. THE BOARD OF DIRECTORS  
12 SHALL DISCLOSE AT AN OPEN MEETING A DECISION TO BECOME A PARTY TO A LAWSUIT.  
13 THIS SUBSECTION DOES NOT APPLY TO AN ACTION FILED PURSUANT TO TITLE 12,  
14 CHAPTER 8, ARTICLE 14.

15 3. AN EMERGENCY MEETING OF THE BOARD OF DIRECTORS MAY BE CALLED TO  
16 DISCUSS BUSINESS OR TAKE ACTION THAT CANNOT BE DELAYED UNTIL THE NEXT  
17 REGULARLY SCHEDULED BOARD MEETING. THE MINUTES OF THE EMERGENCY MEETING  
18 SHALL STATE THE REASON NECESSITATING THE EMERGENCY MEETING. THE MINUTES OF  
19 THE EMERGENCY MEETING SHALL BE READ AND APPROVED AT THE NEXT REGULARLY  
20 SCHEDULED MEETING OF THE BOARD OF DIRECTORS.

21 4. PURSUANT TO SECTION 10-3821, THE BOARD OF DIRECTORS MAY TAKE ACTION  
22 WITHOUT A MEETING. IF THE BOARD TAKES ACTION WITHOUT A MEETING, A STATEMENT  
23 SHALL BE PREPARED STATING THAT AN ACTION HAS BEEN TAKEN WITHOUT A MEETING,  
24 THE REASON FOR TAKING THE ACTION AND THE ACTION TAKEN. THIS STATEMENT SHALL  
25 BE READ INTO THE MINUTES OF THE NEXT REGULARLY SCHEDULED MEETING OF THE BOARD  
26 OF DIRECTORS. THE PROCEDURE FOR TAKING ACTION WITHOUT A MEETING SHALL BE  
27 USED ONLY WHEN EMERGENCY CIRCUMSTANCES WARRANT A MEETING AND THERE IS NOT  
28 SUFFICIENT TIME TO NOTICE A MEETING, OR WHEN A QUORUM OF THE BOARD IS  
29 IMPOSSIBLE TO OBTAIN AND NECESSARY BUSINESS MUST BE UNDERTAKEN. THIS  
30 PROCEDURE SHALL NOT BE USED TO TAKE THE PLACE OF CONDUCTING BUSINESS AT A  
31 REGULARLY SCHEDULED BOARD MEETING.

32 5. MEETINGS OF THE ASSOCIATION OR THE BOARD OF DIRECTORS, OTHER THAN  
33 CLOSED SESSIONS, MAY BE RECORDED BY MEANS OF A VIDEO CAMERA OR TAPE RECORDER  
34 OR ANY OTHER MEANS OF AUDIO REPRODUCTION ONLY IF THE PARTICIPANTS ARE  
35 NOTIFIED AND THERE IS NO ACTIVE INTERFERENCE WITH THE CONDUCT OF THE MEETING.

36 6. OTHER THAN ACTIONS ALLOWED BY PARAGRAPH 4 OF THIS SUBSECTION, A  
37 QUORUM OF THE BOARD OF DIRECTORS SHALL NOT MEET, CONDUCT BUSINESS OR MAKE ANY  
38 DECISIONS BY MEANS OF ELECTRONIC MAIL COMMUNICATIONS.

39 7. A QUORUM OF THE BOARD OF DIRECTORS MAY MEET BY MEANS OF A TELEPHONE  
40 CONFERENCE IF A SPEAKERPHONE IS AVAILABLE IN THE MEETING ROOM THAT ALLOWS  
41 BOARD MEMBERS AND MEMBERS OF THE ASSOCIATION TO HEAR ALL PARTIES WHO ARE  
42 SPEAKING DURING THE MEETING.



1           3. Liens for real estate taxes and other governmental assessments or  
2 charges against the unit.

3           C. Subsection B of this section does not affect the priority of  
4 mechanics' or materialmen's liens or the priority of liens for other  
5 assessments made by the association. The lien under this section is not  
6 subject to chapter 8 of this title.

7           D. Unless the declaration otherwise provides, if two or more  
8 associations have liens for assessments created at any time on the same real  
9 estate those liens have equal priority.

10          E. Recording of the declaration constitutes record notice and  
11 perfection of the lien for assessments, for charges for late payment of  
12 assessments, for reasonable collection fees and for reasonable attorney fees  
13 and costs incurred with respect to those assessments. Further recordation of  
14 any claim of lien for assessments under this section is not required.

15          F. A lien for an unpaid assessment is extinguished unless proceedings  
16 to enforce the lien are instituted within three years after the full amount  
17 of the assessment becomes due.

18          G. This section does not prohibit:

19           1. Actions to recover amounts for which subsection A of this section  
20 creates a lien.

21           2. An association from taking a deed in lieu of foreclosure.

22          H. A judgment or decree in any action brought under this section shall  
23 include costs and reasonable attorney fees for the prevailing party.

24          I. On written request, the association shall furnish to a lienholder,  
25 escrow agent, unit owner or person designated by a unit owner a statement  
26 setting forth the amount of any unpaid assessment against the unit. The  
27 association shall furnish the statement within fifteen days after receipt of  
28 the request, and the statement is binding on the association, the board of  
29 directors and every unit owner if the statement is requested by an escrow  
30 agency that is licensed pursuant to title 6, chapter 7. Failure to provide  
31 the statement to the escrow agent within the time provided for in this  
32 subsection shall extinguish any lien for any unpaid assessment then due.

33          J. The association shall record in the office of the county recorder  
34 in the county in which the planned community is located a notice stating the  
35 name of the association or designated agent or management company for the  
36 association, the address for the association and the telephone number of the  
37 association or its designated agent or management company. The notice shall  
38 include the name of the planned community, the date of the recording and the  
39 recorded instrument number or book and page for the main document that  
40 constitutes the declaration. If an association's address, designated agent  
41 or management company changes, the association shall amend its notice or  
42 record a new notice within ninety days after the change.

43          K. Notwithstanding any provision in the community documents or in any  
44 contract between the association and a management company, unless the member  
45 directs otherwise, all payments received on a member's account shall be

1 applied first to any unpaid assessments, for unpaid charges for late payment  
2 of those assessments, for reasonable collection fees and for unpaid attorney  
3 fees and costs incurred with respect to those assessments, in that order,  
4 with any remaining amounts applied next to other unpaid fees, charges and  
5 monetary penalties or interest and late charges on any of those amounts.

6 Sec. 6. Section 33-1813, Arizona Revised Statutes, is amended to read:  
7 33-1813. Removal of board member; special meeting

8 A. Notwithstanding any provision of the declaration or bylaws to the  
9 contrary, the members, by a majority vote of members entitled to vote and  
10 voting on the matter at a meeting of the members called pursuant to this  
11 section at which a quorum is present, may remove any member of the board of  
12 directors with or without cause, other than a member appointed by the  
13 declarant. For purposes of calling for removal of a member of the board of  
14 directors, other than a member appointed by the declarant, the following  
15 apply:

16 1. In an association with one thousand or fewer members, on receipt of  
17 a petition that calls for removal of a member of the board of directors and  
18 that is signed by the number of persons who are entitled to cast at least  
19 twenty-five per cent of the votes in the association or one hundred votes in  
20 the association, whichever is less, the board shall call and provide written  
21 notice of a special meeting of the association as prescribed by section  
22 33-1804, subsection B. **A MEMBER WHO IS DELINQUENT IN PAYMENT OF MONETARY  
23 PENALTIES SHALL NOT BE BARRED FROM SIGNING A PETITION THAT CALLS FOR REMOVAL  
24 OF A BOARD MEMBER.**

25 2. Notwithstanding section 33-1804, subsection B, in an association  
26 with more than one thousand members, on receipt of a petition that calls for  
27 removal of a member of the board of directors and that is signed by the  
28 number of persons who are entitled to cast at least ten per cent of the votes  
29 in the association or one thousand votes in the association, whichever is  
30 less, the board shall call and provide written notice of a special meeting of  
31 the association. The board shall provide written notice of a special meeting  
32 as prescribed by section 33-1804, subsection B. **A MEMBER WHO IS DELINQUENT  
33 IN PAYMENT OF MONETARY PENALTIES SHALL NOT BE BARRED FROM SIGNING A PETITION  
34 THAT CALLS FOR REMOVAL OF A BOARD MEMBER.**

35 3. The special meeting shall be called, noticed and held within thirty  
36 days after receipt of the petition.

37 4. For purposes of a special meeting called pursuant to this  
38 subsection, a quorum is present if the number of owners to whom at least  
39 twenty per cent of the votes or one thousand votes, whichever is less, are  
40 allocated is present at the meeting in person or as otherwise permitted by  
41 law.

42 5. If a civil action is filed regarding the removal of a board member,  
43 the prevailing party in the civil action shall be awarded its reasonable  
44 attorney fees and costs.

1           6. The board of directors shall retain all documents and other records  
2 relating to the proposed removal of the member of the board of directors for  
3 at least one year after the date of the special meeting and shall permit  
4 members to inspect those documents and records pursuant to section 33-1805.

5           7. A petition that calls for the removal of the same member of the  
6 board of directors shall not be submitted more than once during each term of  
7 office for that member.

8           B. For an association in which board members are elected from  
9 separately designated voting districts, a member of the board of directors,  
10 other than a member appointed by the declarant, may be removed only by a vote  
11 of the members from that voting district, and only the members from that  
12 voting district are eligible to vote on the matter or be counted for purposes  
13 of determining a quorum.

14           Sec. 7. Declaration of policy; open meetings

15           It is the policy of this state as reflected in this act that all  
16 meetings of a condominium or planned community homeowners' association,  
17 whether meetings of the members or meetings of the board of directors of the  
18 association, be conducted openly and that notices and agendas be provided for  
19 those meetings that contain the information that is reasonably necessary to  
20 inform the members of the matters to be discussed or decided and to ensure  
21 that members have the ability to speak after discussion of agenda items, but  
22 before a vote of the board of directors is taken. Toward this end, any  
23 person or entity that is charged with the interpretation of these provisions  
24 shall take into account this declaration of policy and shall construe any  
25 provision of this act in favor of open meetings.