

House Engrossed

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

HOUSE BILL 2160

AN ACT

AMENDING SECTIONS 33-1250 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 33-1250, Arizona Revised Statutes, is amended to
3 read:

4 33-1250. Voting: proxies: absentee ballots: applicability:
5 definition: violation: classification

6 A. If only one of the multiple owners of a unit is present at a
7 meeting of the association, the owner is entitled to cast all the votes
8 allocated to that unit. If more than one of the multiple owners are present,
9 the votes allocated to that unit may be cast only in accordance with the
10 agreement of a majority in interest of the multiple owners unless the
11 declaration expressly provides otherwise. There is majority agreement if any
12 one of the multiple owners casts the votes allocated to that unit without
13 protest being made promptly to the person presiding over the meeting by any
14 of the other owners of the unit.

15 B. During the period of declarant control, votes allocated to a unit
16 may be cast pursuant to a proxy duly executed by a unit owner. If a unit is
17 owned by more than one person, each owner of the unit may vote or register
18 protest to the casting of votes by the other owners of the unit through a
19 duly executed proxy. A unit owner may not revoke a proxy given pursuant to
20 this section except by actual notice of revocation to the person presiding
21 over a meeting of the association. A proxy is void if it is not dated or
22 purports to be revocable without notice. The proxy is revoked on
23 presentation of a later dated proxy executed by the same unit owner. A proxy
24 terminates one year after its date, unless it specifies a shorter term or
25 unless it states that it is coupled with an interest and is irrevocable.

26 C. Notwithstanding any provision in the condominium documents, after
27 termination of the period of declarant control, votes allocated to a unit may
28 not be cast pursuant to a proxy. The association shall provide for votes to
29 be cast in person and by absentee ballot. ~~and~~ IN ADDITION TO MANDATORY USE
30 OF IN PERSON AND ABSENTEE VOTING, THE ASSOCIATION may provide for voting by
31 some other form of delivery BUT SECTION 10-3708 DOES NOT APPLY TO A
32 CONDOMINIUM, AND AN ASSOCIATION SHALL NOT CONDUCT ITS MEETINGS BY WRITTEN
33 BALLOT PURSUANT TO THAT SECTION AND SHALL NOT ALLOW A VOTE OF THE MEMBERSHIP
34 TO BE CONDUCTED BY WRITTEN BALLOT IN LIEU OF IN PERSON AND ABSENTEE VOTING.
35 Notwithstanding section 10-3708 or the provisions of the condominium
36 documents, any action taken at an annual, regular or special meeting of the
37 members shall comply with all of the following if absentee ballots are used:

38 1. The absentee ballot shall set forth each proposed action.

39 2. The absentee ballot shall provide an opportunity to vote for or
40 against each proposed action.

41 3. The absentee ballot is valid for only one specified election or
42 meeting of the members and expires automatically after the completion of the
43 election or meeting.

44 4. The absentee ballot specifies the time and date by which the ballot
45 must be delivered to the board of directors in order to be counted, which

1 shall be at least seven days after the date that the board delivers the
2 unvoted absentee ballot to the member.

3 5. The absentee ballot does not authorize another person to cast votes
4 on behalf of the member.

5 D. Votes cast by absentee ballot or other form of delivery are valid
6 for the purpose of establishing a quorum.

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

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

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

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

17 3. Lessees are entitled to notice of meetings, access to records and
18 other rights respecting those matters as if they were unit owners. Unit
19 owners shall also be given notice, in the manner prescribed in section
20 33-1248, of all meetings at which lessees may be entitled to vote.

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

23 H. NOTWITHSTANDING ANY PROVISION IN THE CONDOMINIUM DOCUMENTS, A
24 CONDOMINIUM ELECTION IN WHICH VOTES ARE CAST IN PERSON, BY ABSENTEE BALLOT OR
25 ANY OTHER FORM OF DELIVERY SHALL COMPLY WITH THE FOLLOWING:

26 1. BALLOTING SHALL BE SECRET, AND MARKED BALLOTS SHALL BE RECEIVED AND
27 HELD USING A METHOD THAT ENSURES SECRECY IN BALLOTING. ABSENTEE BALLOTS
28 SHALL USE A SYSTEM IN WHICH THE VOTER'S SIGNATURE AND ANY OTHER IDENTIFYING
29 INFORMATION ARE ON THE OUTSIDE OF THE ENVELOPE AND THE VOTED BALLOT IS
30 CONTAINED INSIDE THE ENVELOPE.

31 2. BALLOTS AND BALLOT ENVELOPES SHALL NOT BE OPENED OR TABULATED UNTIL
32 AFTER THE TIME FOR VOTING HAS CLOSED.

33 3. EACH CANDIDATE FOR AN OFFICE MAY DESIGNATE AN OBSERVER, WHO MAY BE
34 A CANDIDATE, TO WITNESS THE TALLYING OF THE BALLOTS.

35 4. VOTED BALLOTS SHALL BE SAVED INTACT AND MAINTAINED FOR A PERIOD OF
36 SIX MONTHS UNDER THE SUPERVISION OF A PERSON DULY AUTHORIZED BY THE BOARD.

37 5. A CANDIDATE MAY AUDIT THE RESULTS OF THE TALLY IF THE CANDIDATE
38 MAKES THAT REQUEST WITHIN THIRTY DAYS AFTER THE CLOSE OF VOTING. A
39 CANDIDATE'S AUDIT MAY OCCUR ONLY UNDER THE SUPERVISION OF A PERSON DULY
40 AUTHORIZED BY THE BOARD AND SHALL BE PERFORMED AT A SITE ACCESSIBLE TO THE
41 OWNERS OF THE CONDOMINIUM.

42 6. THE BOARD OF DIRECTORS SHALL NOT INCLUDE ENDORSEMENTS FOR ANY
43 CANDIDATES FOR ELECTION IN ANY OFFICIAL MATERIALS CIRCULATED, POSTED OR
44 PROVIDED BY THE BOARD, INCLUDING THE BALLOTS AND RELATED ENVELOPES.

1 7. AN UNVOTED BALLOT, ISSUE, QUESTION OR RACE SHALL NOT BE TABULATED
2 AS EITHER A VOTE "FOR" OR A VOTE "AGAINST" ANY PARTICULAR ISSUE, QUESTION OR
3 CANDIDATE.

4 8. SECTION 10-3708 DOES NOT APPLY TO A CONDOMINIUM, AND AN ASSOCIATION
5 SHALL NOT CONDUCT ITS MEETINGS BY WRITTEN BALLOT PURSUANT TO THAT SECTION AND
6 SHALL NOT ALLOW A VOTE OF THE MEMBERSHIP TO BE CONDUCTED BY WRITTEN BALLOT IN
7 LIEU OF IN PERSON AND ABSENTEE VOTING.

8 I. A CORPORATION OR OTHER ENTITY THAT INTENTIONALLY VIOLATES
9 SUBSECTION H OF THIS SECTION IS GUILTY OF A CLASS 1 MISDEMEANOR.

10 ~~H.~~ J. This section does not apply to timeshare plans or associations
11 that are subject to chapter 20 of this title.

12 ~~I.~~ K. For the purposes of this section, "period of declarant control"
13 means the time during which the declarant or persons designated by the
14 declarant may elect or appoint the members of the board of directors pursuant
15 to the condominium documents or by virtue of superior voting power.

16 Sec. 2. Section 33-1812, Arizona Revised Statutes, is amended to read:

17 33-1812. Proxies; absentee ballots; definition; violation;
18 classification

19 A. Notwithstanding any provision in the community documents, after
20 termination of the period of declarant control, votes allocated to a unit may
21 not be cast pursuant to a proxy. The association shall provide for votes to
22 be cast in person and by absentee ballot. ~~and~~ IN ADDITION TO MANDATORY USE
23 OF IN PERSON AND ABSENTEE VOTING, THE ASSOCIATION may provide for voting by
24 some other form of delivery BUT SECTION 10-3708 DOES NOT APPLY TO A PLANNED
25 COMMUNITY, AND AN ASSOCIATION SHALL NOT CONDUCT ITS MEETINGS BY WRITTEN
26 BALLOT PURSUANT TO THAT SECTION AND SHALL NOT ALLOW A VOTE OF THE MEMBERSHIP
27 TO BE CONDUCTED BY WRITTEN BALLOT IN LIEU OF IN PERSON AND ABSENTEE VOTING.
28 Notwithstanding section 10-3708 or the provisions of the community documents,
29 any action taken at an annual, regular or special meeting of the members
30 shall comply with all of the following if absentee ballots are used:

31 1. The absentee ballot shall set forth each proposed action.

32 2. The absentee ballot shall provide an opportunity to vote for or
33 against each proposed action.

34 3. The absentee ballot is valid for only one specified election or
35 meeting of the members and expires automatically after the completion of the
36 election or meeting.

37 4. The absentee ballot specifies the time and date by which the ballot
38 must be delivered to the board of directors in order to be counted, which
39 shall be at least seven days after the date that the board delivers the
40 unvoted absentee ballot to the member.

41 5. The absentee ballot does not authorize another person to cast votes
42 on behalf of the member.

43 B. Votes cast by absentee ballot or other form of delivery are valid
44 for the purpose of establishing a quorum.

1 C. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS, A PLANNED
2 COMMUNITY ELECTION IN WHICH VOTES ARE CAST IN PERSON, BY ABSENTEE BALLOT OR
3 ANY OTHER FORM OF DELIVERY SHALL COMPLY WITH THE FOLLOWING:

4 1. BALLOTING SHALL BE SECRET, AND MARKED BALLOTS SHALL BE RECEIVED AND
5 HELD USING A METHOD THAT ENSURES SECRECY IN BALLOTING. ABSENTEE BALLOTS
6 SHALL USE A SYSTEM IN WHICH THE VOTER'S SIGNATURE AND ANY OTHER IDENTIFYING
7 INFORMATION ARE ON THE OUTSIDE OF THE ENVELOPE AND THE VOTED BALLOT IS
8 CONTAINED INSIDE THE ENVELOPE.

9 2. BALLOTS AND BALLOT ENVELOPES SHALL NOT BE OPENED OR TABULATED UNTIL
10 AFTER THE TIME FOR VOTING HAS CLOSED.

11 3. EACH CANDIDATE FOR AN OFFICE MAY DESIGNATE AN OBSERVER, WHO MAY BE
12 A CANDIDATE, TO WITNESS THE TALLYING OF THE BALLOTS.

13 4. VOTED BALLOTS SHALL BE SAVED INTACT AND MAINTAINED FOR A PERIOD OF
14 SIX MONTHS UNDER THE SUPERVISION OF A PERSON DULY AUTHORIZED BY THE BOARD.

15 5. A CANDIDATE MAY AUDIT THE RESULTS OF THE TALLY IF THE CANDIDATE
16 MAKES THAT REQUEST WITHIN THIRTY DAYS AFTER THE CLOSE OF VOTING. A
17 CANDIDATE'S AUDIT MAY OCCUR ONLY UNDER THE SUPERVISION OF A PERSON DULY
18 AUTHORIZED BY THE BOARD AND SHALL BE PERFORMED AT A SITE ACCESSIBLE TO THE
19 MEMBERS OF THE COMMUNITY.

20 6. THE BOARD OF DIRECTORS SHALL NOT INCLUDE ENDORSEMENTS FOR ANY
21 CANDIDATES FOR ELECTION IN ANY OFFICIAL MATERIALS CIRCULATED, POSTED OR
22 PROVIDED BY THE BOARD, INCLUDING THE BALLOTS AND RELATED ENVELOPES.

23 7. AN UNVOTED BALLOT, ISSUE, QUESTION OR RACE SHALL NOT BE TABULATED
24 AS EITHER A VOTE "FOR" OR A VOTE "AGAINST" ANY PARTICULAR ISSUE, QUESTION OR
25 CANDIDATE.

26 8. SECTION 10-3708 DOES NOT APPLY TO A PLANNED COMMUNITY, AND AN
27 ASSOCIATION SHALL NOT CONDUCT ITS MEETINGS BY WRITTEN BALLOT PURSUANT TO THAT
28 SECTION AND SHALL NOT ALLOW A VOTE OF THE MEMBERSHIP TO BE CONDUCTED BY
29 WRITTEN BALLOT IN LIEU OF IN PERSON AND ABSENTEE VOTING.

30 D. A CORPORATION OR OTHER ENTITY THAT INTENTIONALLY VIOLATES
31 SUBSECTION C OF THIS SECTION IS GUILTY OF A CLASS 1 MISDEMEANOR.

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

35 ~~D.~~ F. For the purposes of this section, "period of declarant control"
36 means the time during which the declarant or persons designated by the
37 declarant may elect or appoint the members of the board of directors pursuant
38 to the community documents or by virtue of superior voting power.