

REFERENCE TITLE: homeowners' associations; dispute resolution, taping

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

## **HB 2290**

Introduced by  
Representative Smith D

AN ACT

AMENDING SECTIONS 33-1242, 33-1248, 33-1803 AND 33-1804, 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; attorney fees; arbitration  
6 A. Subject to the provisions of the declaration, the association may:  
7 1. Adopt and amend bylaws and rules.  
8 2. Adopt and amend budgets for revenues, expenditures and reserves and  
9 collect assessments for common expenses from unit owners.  
10 3. Hire and discharge managing agents and other employees, agents and  
11 independent contractors.  
12 4. Institute, defend or intervene in litigation or administrative  
13 proceedings in its own name on behalf of itself or two or more unit owners on  
14 matters affecting the condominium.  
15 5. Make contracts and incur liabilities.  
16 6. Regulate the use, maintenance, repair, replacement and modification  
17 of common elements.  
18 7. Cause additional improvements to be made as a part of the common  
19 elements.  
20 8. Acquire, hold, encumber and convey in its own name any right, title  
21 or interest to real or personal property, except that common elements may be  
22 conveyed or subjected to a security interest only pursuant to section  
23 33-1252.  
24 9. Grant easements, leases, licenses and concessions through or over  
25 the common elements.  
26 10. Impose and receive any payments, fees or charges for the use,  
27 rental or operation of the common elements other than limited common elements  
28 described in section 33-1212, paragraphs 2 and 4 and for services provided to  
29 unit owners.  
30 11. Impose charges for late payment of assessments and, after notice  
31 and an opportunity to be heard, impose reasonable monetary penalties upon  
32 unit owners for violations of the declaration, bylaws and rules of the  
33 association.  
34 12. Impose reasonable charges for the preparation and recordation of  
35 amendments to the declaration or statements of unpaid assessments.  
36 13. Provide for the indemnification of its officers and executive board  
37 of directors and maintain directors' and officers' liability insurance.  
38 14. Assign its right to future income, including the right to receive  
39 common expense assessments, but only to the extent the declaration expressly  
40 provides.  
41 15. Be a member of a master association or other entity owning,  
42 maintaining or governing in any respect any portion of the common elements or  
43 other property benefitting or related to the condominium or the unit owners  
44 in any respect.  
45 16. Exercise any other powers conferred by the declaration or bylaws.

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

3           18. Exercise any other powers necessary and proper for the governance  
4 and operation of the association.

5           B. A unit owner who receives a written notice that the condition of  
6 the property owned by the unit owner is in violation of a requirement of the  
7 condominium documents without regard to whether a monetary penalty is imposed  
8 by the notice may provide the association with a written response by sending  
9 the response by certified mail within ten business days after the date of the  
10 notice. The response shall be sent to the address contained in the notice or  
11 in the recorded notice prescribed by section 33-1256, subsection J.

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

17           1. The provision of the condominium documents that has allegedly been  
18 violated.

19           2. The date of the violation or the date the violation was observed.

20           3. The first and last name of the person or persons who observed the  
21 violation.

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

23           D. Unless the information required in subsection C, paragraph 4 of  
24 this section is provided in the notice of violation, the association shall  
25 not proceed with any action to enforce the condominium documents, including  
26 the collection of attorney fees, before or during the time prescribed by  
27 subsection C of this section regarding the exchange of information between  
28 the association and the unit owner. At any time before or after completion  
29 of the exchange of information pursuant to this section, the unit owner may  
30 petition for a hearing pursuant to section 41-2198.01 if the dispute is  
31 within the jurisdiction of the department of fire, building and life safety  
32 as prescribed in section 41-2198.01, subsection B.

33           E. FOR ANY DISPUTE BETWEEN A UNIT OWNER AND THE BOARD OF DIRECTORS OR  
34 THE ASSOCIATION, BEFORE THE UNIT OWNER, THE BOARD OF DIRECTORS OR THE  
35 ASSOCIATION FILES A CIVIL ACTION REGARDING THE DISPUTE, THE PARTIES TO THE  
36 DISPUTE SHALL SUBMIT TO ARBITRATION OF THE DISPUTE BY A NATIONALLY RECOGNIZED  
37 ARBITRATION ASSOCIATION OR THE PARTIES MAY AGREE TO MEDIATE THE DISPUTE.  
38 EACH PARTY IS LIABLE FOR THEIR OWN FEES AND COSTS INCURRED IN A MEDIATION BUT  
39 THE ARBITRATOR MAY APPORTION BETWEEN AND AMONG THE PARTIES THE REASONABLE  
40 FEES AND COSTS FOR THE ARBITRATION.

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

42           33-1248. Open meetings; exceptions

43           A. Notwithstanding any provision in the declaration, bylaws or other  
44 documents to the contrary, all meetings of the unit owners' association and  
45 the board of directors, and any regularly scheduled committee meetings, are

1 open to all members of the association or any person designated by a member  
2 in writing as the member's representative and all members or designated  
3 representatives so desiring shall be permitted to attend and speak at an  
4 appropriate time during the deliberations and proceedings. The board may  
5 place reasonable time restrictions on those persons speaking during the  
6 meeting but shall permit a member or a member's designated representative to  
7 speak once after the board has discussed a specific agenda item but before  
8 the board takes formal action on that item in addition to any other  
9 opportunities to speak. The board shall provide for a reasonable number of  
10 persons to speak on each side of an issue. IF A PERSON PROVIDES NOTICE TO  
11 THE BOARD TWENTY-FOUR HOURS IN ADVANCE, persons attending may audiotape or  
12 videotape those portions of the meetings of the board of directors and  
13 meetings of the members that are open. ~~The board of directors of the~~  
14 ~~association may adopt reasonable rules governing the audiotaping or~~  
15 ~~videotaping of open portions of the meetings of the board and the membership,~~  
16 ~~but such rules shall not preclude such audiotaping or videotaping by those~~  
17 ~~attending.~~ Any portion of a meeting may be closed only if that portion of  
18 the meeting is limited to consideration of one or more of the following:

19 1. Legal advice from an attorney for the board or the association. On  
20 final resolution of any matter for which the board received legal advice or  
21 that concerned pending or contemplated litigation, the board may disclose  
22 information about that matter in an open meeting except for matters that are  
23 required to remain confidential by the terms of a settlement agreement or  
24 judgment.

25 2. Pending or contemplated litigation.

26 3. Personal, health or financial information about an individual  
27 member of the association, an individual employee of the association or an  
28 individual employee of a contractor for the association, including records of  
29 the association directly related to the personal, health or financial  
30 information about an individual member of the association, an individual  
31 employee of the association or an individual employee of a contractor for the  
32 association.

33 4. Matters relating to the job performance of, compensation of, health  
34 records of or specific complaints against an individual employee of the  
35 association or an individual employee of a contractor of the association who  
36 works under the direction of the association.

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

40 B. Notwithstanding any provision in the condominium documents, all  
41 meetings of the unit owners' association and the board shall be held in this  
42 state. A meeting of the unit owners' association shall be held at least once  
43 each year. Special meetings of the unit owners' association may be called by  
44 the president, by a majority of the board of directors or by unit owners  
45 having at least twenty-five per cent, or any lower percentage specified in

1 the bylaws, of the votes in the association. Not fewer than ten nor more  
2 than fifty days in advance of any meeting of the unit owners, the secretary  
3 shall cause notice to be hand delivered or sent prepaid by United States mail  
4 to the mailing address of each unit or to any other mailing address  
5 designated in writing by the unit owner. The notice of any meeting of the  
6 unit owners shall state the time and place of the meeting. The notice of any  
7 special meeting of the unit owners shall also state the purpose for which the  
8 meeting is called, including the general nature of any proposed amendment to  
9 the declaration or bylaws, any changes in assessments that require approval  
10 of the unit owners and any proposal to remove a director or officer. The  
11 failure of any unit owner to receive actual notice of a meeting of the unit  
12 owners does not affect the validity of any action taken at that meeting.

13 C. 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, notice to unit  
16 owners of meetings of the board of directors shall be given at least  
17 forty-eight hours in advance of the meeting by newsletter, conspicuous  
18 posting or any other reasonable means as determined by the board of  
19 directors. An affidavit of notice by an officer of the association is prima  
20 facie evidence that notice was given as prescribed by this section. Notice  
21 to unit owners of meetings of the board of directors is not required if  
22 emergency circumstances require action by the board before notice can be  
23 given. Any notice of a board meeting shall state the time and place of the  
24 meeting. The failure of any unit owner to receive actual notice of a meeting  
25 of the board of directors does not affect the validity of any action taken at  
26 that meeting.

27 D. Notwithstanding any provision in the declaration, bylaws or other  
28 condominium documents, for meetings of the board of directors that are held  
29 after the termination of declarant control of the association, all of the  
30 following apply:

- 31 1. The agenda shall be available to all unit owners attending.
- 32 2. An emergency meeting of the board of directors may be called to  
33 discuss business or take action that cannot be delayed until the next  
34 regularly scheduled board meeting. The minutes of the emergency meeting  
35 shall state the reason necessitating the emergency meeting. The minutes of  
36 the emergency meeting shall be read and approved at the next regularly  
37 scheduled meeting of the board of directors.
- 38 3. A quorum of the board of directors may meet by means of a telephone  
39 conference if a speakerphone is available in the meeting room that allows  
40 board members and unit owners to hear all parties who are speaking during the  
41 meeting.
- 42 4. Any quorum of the board of directors that meets informally to  
43 discuss association business, including workshops, shall comply with the open  
44 meeting and notice provisions of this section without regard to whether the  
45 board votes or takes any action on any matter at that informal meeting.

1 E. It is the policy of this state as reflected in this section that  
2 all meetings of a condominium, whether meetings of the unit owners'  
3 association or meetings of the board of directors of the association, be  
4 conducted openly and that notices and agendas be provided for those meetings  
5 that contain the information that is reasonably necessary to inform the unit  
6 owners of the matters to be discussed or decided and to ensure that unit  
7 owners have the ability to speak after discussion of agenda items, but before  
8 a vote of the board of directors is taken. Toward this end, any person or  
9 entity that is charged with the interpretation of these provisions shall take  
10 into account this declaration of policy and shall construe any provision of  
11 this section in favor of open meetings.

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

14 Sec. 3. Section 33-1803, Arizona Revised Statutes, is amended to read:  
15 33-1803. Penalties; notice to member of violation; attorney  
16 fees; arbitration

17 A. Unless limitations in the community documents would result in a  
18 lower limit for the assessment, the association shall not impose a regular  
19 assessment that is more than twenty per cent greater than the immediately  
20 preceding fiscal year's assessment without the approval of the majority of  
21 the members of the association. Unless reserved to the members of the  
22 association, the board of directors may impose reasonable charges for the  
23 late payment of assessments. A payment by a member is deemed late if it is  
24 unpaid fifteen or more days after its due date, unless the community  
25 documents provide for a longer period. Charges for the late payment of  
26 assessments are limited to the greater of fifteen dollars or ten per cent of  
27 the amount of the unpaid assessment. Any monies paid by the member for an  
28 unpaid assessment shall be applied first to the principal amount unpaid and  
29 then to the interest accrued.

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

1 C. A member who receives a written notice that the condition of the  
2 property owned by the member is in violation of the community documents  
3 without regard to whether a monetary penalty is imposed by the notice may  
4 provide the association with a written response by sending the response by  
5 certified mail within ten business days after the date of the notice. The  
6 response shall be sent to the address contained in the notice or in the  
7 recorded notice prescribed by section 33-1807, subsection J.

8 D. Within ten business days after receipt of the certified mail  
9 containing the response from the member, the association shall respond to the  
10 member with a written explanation regarding the notice that shall provide at  
11 least the following information unless previously provided in the notice of  
12 violation:

13 1. The provision of the community documents that has allegedly been  
14 violated.

15 2. The date of the violation or the date the violation was observed.

16 3. The first and last name of the person or persons who observed the  
17 violation.

18 4. The process the member must follow to contest the notice.

19 E. Unless the information required in subsection D, paragraph 4 of  
20 this section is provided in the notice of violation, the association shall  
21 not proceed with any action to enforce the community documents, including the  
22 collection of attorney fees, before or during the time prescribed by  
23 subsection D of this section regarding the exchange of information between  
24 the association and the member. At any time before or after completion of  
25 the exchange of information pursuant to this section, the member may petition  
26 for a hearing pursuant to section 41-2198.01 if the dispute is within the  
27 jurisdiction of the department of fire, building and life safety as  
28 prescribed in section 41-2198.01, subsection B.

29 F. FOR ANY DISPUTE BETWEEN A MEMBER AND THE BOARD OF DIRECTORS OR THE  
30 ASSOCIATION, BEFORE THE MEMBER, THE BOARD OF DIRECTORS OR THE ASSOCIATION  
31 FILES A CIVIL ACTION REGARDING THE DISPUTE, THE PARTIES TO THE DISPUTE SHALL  
32 SUBMIT TO ARBITRATION OF THE DISPUTE BY A NATIONALLY RECOGNIZED ARBITRATION  
33 ASSOCIATION OR THE PARTIES MAY AGREE TO MEDIATE THE DISPUTE. EACH PARTY IS  
34 LIABLE FOR THEIR OWN FEES AND COSTS INCURRED IN A MEDIATION BUT THE  
35 ARBITRATOR MAY APPORTION BETWEEN AND AMONG THE PARTIES THE REASONABLE FEES  
36 AND COSTS FOR THE ARBITRATION.

37 Sec. 4. Section 33-1804, Arizona Revised Statutes, is amended to read:  
38 33-1804. Open meetings; exceptions

39 A. Notwithstanding any provision in the declaration, bylaws or other  
40 documents to the contrary, all meetings of the members' association and the  
41 board of directors, and any regularly scheduled committee meetings, are open  
42 to all members of the association or any person designated by a member in  
43 writing as the member's representative and all members or designated  
44 representatives so desiring shall be permitted to attend and speak at an  
45 appropriate time during the deliberations and proceedings. The board may

1 place reasonable time restrictions on those persons speaking during the  
2 meeting but shall permit a member or member's designated representative to  
3 speak once after the board has discussed a specific agenda item but before  
4 the board takes formal action on that item in addition to any other  
5 opportunities to speak. The board shall provide for a reasonable number of  
6 persons to speak on each side of an issue. IF A PERSON PROVIDES NOTICE TO  
7 THE BOARD TWENTY-FOUR HOURS IN ADVANCE, persons attending may ~~tape record~~  
8 ~~AUDIOTAPE~~ or videotape those portions of the meetings of the board of  
9 directors and meetings of the members that are open. ~~The board of directors~~  
10 ~~of the association may adopt reasonable rules governing the taping of open~~  
11 ~~portions of the meetings of the board and the membership, but such rules~~  
12 ~~shall not preclude such tape recording or videotaping by those attending.~~  
13 Any portion of a meeting may be closed only if that closed portion of the  
14 meeting is limited to consideration of one or more of the following:

15 1. Legal advice from an attorney for the board or the association. On  
16 final resolution of any matter for which the board received legal advice or  
17 that concerned pending or contemplated litigation, the board may disclose  
18 information about that matter in an open meeting except for matters that are  
19 required to remain confidential by the terms of a settlement agreement or  
20 judgment.

21 2. Pending or contemplated litigation.

22 3. Personal, health or financial information about an individual  
23 member of the association, an individual employee of the association or an  
24 individual employee of a contractor for the association, including records of  
25 the association directly related to the personal, health or financial  
26 information about an individual member of the association, an individual  
27 employee of the association or an individual employee of a contractor for the  
28 association.

29 4. Matters relating to the job performance of, compensation of, health  
30 records of or specific complaints against an individual employee of the  
31 association or an individual employee of a contractor of the association who  
32 works under the direction of the association.

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

36 B. Notwithstanding any provision in the community documents, all  
37 meetings of the members' association and the board shall be held in this  
38 state. A meeting of the members' association shall be held at least once  
39 each year. Special meetings of the members' association may be called by the  
40 president, by a majority of the board of directors or by members having at  
41 least twenty-five per cent, or any lower percentage specified in the bylaws,  
42 of the votes in the association. Not fewer than ten nor more than fifty days  
43 in advance of any meeting of the members the secretary shall cause notice to  
44 be hand-delivered or sent prepaid by United States mail to the mailing  
45 address for each lot, parcel or unit owner or to any other mailing address

1 designated in writing by a member. The notice shall state the time and place  
2 of the meeting. A notice of any special meeting of the members shall also  
3 state the purpose for which the meeting is called, including the general  
4 nature of any proposed amendment to the declaration or bylaws, changes in  
5 assessments that require approval of the members and any proposal to remove a  
6 director or an officer. The failure of any member to receive actual notice  
7 of a meeting of the members does not affect the validity of any action taken  
8 at that meeting.

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

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

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

27 2. 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 3. A quorum of the board of directors may meet by means of a telephone  
34 conference if a speakerphone is available in the meeting room that allows  
35 board members and association members to hear all parties who are speaking  
36 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 open  
39 meeting and notice provisions of this section without regard to whether the  
40 board votes or takes any action on any matter at that informal meeting.

41 E. It is the policy of this state as reflected in this section that  
42 all meetings of a planned community, whether meetings of the members'  
43 association or meetings of the board of directors of the association, be  
44 conducted openly and that notices and agendas be provided for those meetings  
45 that contain the information that is reasonably necessary to inform the

1 members of the matters to be discussed or decided and to ensure that members  
2 have the ability to speak after discussion of agenda items, but before a vote  
3 of the board of directors is taken. Toward this end, any person or entity  
4 that is charged with the interpretation of these provisions shall take into  
5 account this declaration of policy and shall construe any provision of this  
6 section in favor of open meetings.