

REFERENCE TITLE: homeowners' associations; enforcement; board
indemnification

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

HB 2455

Introduced by
Representatives Alston: Gonzales

AN ACT

AMENDING SECTIONS 33-1243, 33-1810 AND 33-1811, 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; indemnification;
6 applicability

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

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

15 C. If any contract, decision or other action for compensation taken by
16 or on behalf of the board of directors would benefit any member of the board
17 of directors or any person who is a parent, grandparent, spouse, child or
18 sibling of a member of the board of directors or a parent or spouse of any of
19 those persons, that member of the board of directors shall declare a conflict
20 of interest for that issue. The member shall declare the conflict in an open
21 meeting of the board before the board discusses or takes action on that issue
22 and that member may ~~then~~ NOT vote on that issue. Any contract entered into
23 in violation of this subsection is void and unenforceable.

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

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

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

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

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

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

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

1. In an association with one thousand or fewer members, on receipt of a petition that calls for removal of a member of the board of directors and that is signed by the number of persons who are entitled to cast at least twenty-five per cent of the votes in the association or one hundred votes in the association, whichever is less, the board shall call and provide written notice of a special meeting of the association as prescribed by section 33-1248, subsection B.

2. Notwithstanding section 33-1248, subsection B, in an association with more than one thousand members, on receipt of a petition that calls for removal of a member of the board of directors and that is signed by the number of persons who are entitled to cast at least ten per cent of the votes in the association or one thousand votes in the association, whichever is less, the board shall call and provide written notice of a special meeting of the association. The board shall provide written notice of a special meeting as prescribed by section 33-1248, subsection B.

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

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

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

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

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

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

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

K. NOTWITHSTANDING ANY PROVISION IN THE CONDOMINIUM DOCUMENTS, IF A UNIT OWNER INCURS ATTORNEY FEES AND IS SUCCESSFUL IN COMPELLING THE BOARD TO COMPLY WITH ANY PROVISION OF THE CONDOMINIUM DOCUMENTS OR ARIZONA LAW, THE INDIVIDUAL BOARD MEMBERS ARE JOINTLY AND SEVERALLY LIABLE FOR THE UNIT OWNER'S ATTORNEY FEES AND THE ASSOCIATION SHALL NOT INDEMNIFY THE BOARD MEMBERS FOR THAT LIABILITY UNLESS THAT INDEMNIFICATION IS APPROVED BY A VOTE OF TWO-THIRDS OR MORE OF THE MEMBERSHIP.

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

Sec. 2. Section 33-1810, Arizona Revised Statutes, is amended to read:

33-1810. Board of directors; annual audit; indemnification

A. Unless any provision in the planned community documents requires an annual audit by a certified public accountant, the board of directors shall provide for an annual financial audit, review or compilation of the association. The audit, review or compilation shall be completed no later than one hundred eighty days after the end of the association's fiscal year and shall be made available upon request to the members within thirty days after its completion.

B. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS, IF A MEMBER INCURS ATTORNEY FEES AND IS SUCCESSFUL IN COMPELLING THE BOARD TO COMPLY WITH ANY PROVISION OF THE COMMUNITY DOCUMENTS OR ARIZONA LAW, THE INDIVIDUAL BOARD MEMBERS ARE JOINTLY AND SEVERALLY LIABLE FOR THE MEMBER'S ATTORNEY FEES AND THE ASSOCIATION SHALL NOT INDEMNIFY THE BOARD MEMBERS FOR THAT LIABILITY UNLESS THAT INDEMNIFICATION IS APPROVED BY A VOTE OF TWO-THIRDS OR MORE OF THE MEMBERSHIP.

1 Sec. 3. Section 33-1811, Arizona Revised Statutes, is amended to read:

2 33-1811. Board of directors; contracts; conflict

3 If any contract, decision or other action for compensation taken by or
4 on behalf of the board of directors would benefit any member of the board of
5 directors or any person who is a parent, grandparent, spouse, child or
6 sibling of a member of the board of directors or a parent or spouse of any of
7 those persons, that member of the board of directors shall declare a conflict
8 of interest for that issue. The member shall declare the conflict in an open
9 meeting of the board before the board discusses or takes action on that issue
10 and that member may ~~then~~ NOT vote on that issue. Any contract entered into
11 in violation of this section is void and unenforceable.