

REFERENCE TITLE: homeowners' associations; elections; meetings

State of Arizona
Senate
Fifty-first Legislature
First Regular Session
2013

SB 1333

Introduced by
Senators Bradley: Farley, Hobbs, Jackson Jr., Reagan

AN ACT

AMENDING SECTIONS 10-3701, 10-3704, 10-3708, 10-3821, 33-1248, 33-1250, 33-1804 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 10-3701, Arizona Revised Statutes, is amended to
3 read:

4 10-3701. Annual and regular meetings; exceptions

5 A. EXCEPT AS PROVIDED IN SUBSECTION F OF THIS SECTION, unless
6 otherwise provided in the articles of incorporation or bylaws, a corporation
7 with members shall hold a membership meeting annually at a time stated in or
8 fixed in accordance with the bylaws.

9 B. A corporation with members may hold regular membership meetings at
10 the times stated in or fixed in accordance with the bylaws.

11 C. A corporation may hold annual and regular membership meetings in or
12 out of this state at the place stated in or fixed in accordance with the
13 bylaws. If no place is stated in or fixed in accordance with the bylaws, the
14 corporation shall hold annual and regular meetings at the corporation's
15 principal office.

16 D. At regular meetings the members shall consider and act on any
17 matter THAT IS raised and that is consistent with the notice requirements of
18 section 10-3705.

19 E. The failure to hold an annual or regular meeting at a time stated
20 in or fixed in accordance with a corporation's bylaws does not affect the
21 validity of any corporate action.

22 ~~F. Notwithstanding this chapter, a condominium association shall~~
23 ~~comply with title 33, chapter 9 and a planned community association shall~~
24 ~~comply with title 33, chapter 16 to the extent that this chapter is~~
25 ~~inconsistent with title 33, chapters 9 and 16.~~

26 F. THIS SECTION DOES NOT APPLY TO A CONDOMINIUM AS DEFINED IN SECTION
27 33-1202 OR A PLANNED COMMUNITY AS DEFINED IN SECTION 33-1802, AND ALL ACTION
28 TAKEN BY THE BOARD OR BY THE MEMBERSHIP OF A CONDOMINIUM ASSOCIATION OR A
29 PLANNED COMMUNITY ASSOCIATION SHALL BE TAKEN IN A MEETING HELD AS PRESCRIBED
30 BY SECTION 33-1248 OR 33-1804.

31 Sec. 2. Section 10-3704, Arizona Revised Statutes, is amended to read:

32 10-3704. Action by written consent; exceptions; definition

33 A. EXCEPT AS PROVIDED IN SUBSECTION G OF THIS SECTION, the members may
34 approve any action that is required or permitted by chapters 24 through 40 of
35 this title and that requires the members' approval without a meeting of
36 members if the action is approved by members holding at least a majority of
37 the voting power, unless the articles of incorporation, bylaws or chapters 24
38 through 40 of this title require a different amount of voting power. The
39 action shall be evidenced by one or more written consents describing the
40 action taken, signed by those members representing at least the requisite
41 amount of the voting power, and delivered to the corporation for inclusion in
42 the minutes or filing with the corporate records.

43 B. If not otherwise fixed under section 10-3703 or 10-3707, the record
44 date for determining members entitled to take action without a meeting is the
45 date the first member signs the consent under subsection A of this section.

1 C. The consent signed under this section has the effect of a meeting
2 vote and may be described as such in any document.

3 D. Written notice of member approval pursuant to this section shall be
4 given to all members who have not signed the written consent.

5 E. Unless otherwise specified in the consent or consents, the action
6 is effective on the date that the consent or consents are signed by the last
7 member whose signature results in the requisite amount of the voting power,
8 except that if chapters 24 through 40 of this title require notice of
9 proposed actions to members who are not entitled to vote in the action and
10 the action is to be taken by unanimous consent of the members entitled to
11 vote, the effective date is not before ten days after the corporation gives
12 its members not entitled to vote written notice of the proposed action. The
13 notice shall contain or be accompanied by the same material that under
14 chapters 24 through 40 of this title would have been sent to members not
15 entitled to vote in a notice of meeting at which the proposed action would
16 have been submitted to the members for action.

17 F. Any member may revoke the member's consent by delivering a signed
18 revocation of the consent to the president or secretary before the date that
19 the consent or consents are signed by the last member whose signature results
20 in the requisite amount of the voting power.

21 G. THIS SECTION DOES NOT APPLY TO A CONDOMINIUM AS DEFINED IN SECTION
22 33-1202 OR A PLANNED COMMUNITY AS DEFINED IN SECTION 33-1802. ALL ACTION
23 TAKEN BY THE MEMBERSHIP SHALL BE TAKEN AT A MEETING HELD AS PRESCRIBED BY
24 SECTION 33-1248 OR 33-1804.

25 ~~G.~~ H. For the purposes of this section, "signature" includes an
26 electronic signature as defined in section 44-7002.

27 Sec. 3. Section 10-3708, Arizona Revised Statutes, is amended to read:
28 10-3708. Action by written ballot; exceptions

29 A. EXCEPT AS PROVIDED IN SUBSECTION F OF THIS SECTION, unless
30 prohibited or limited by the articles of incorporation or bylaws, any action
31 that the corporation may take at any annual, regular or special meeting of
32 members may be taken without a meeting if the corporation delivers a written
33 ballot to every member entitled to vote on the matter.

34 B. A written ballot shall:

35 1. Set forth each proposed action.

36 2. Provide an opportunity to vote for or against each proposed action.

37 C. Approval by written ballot pursuant to this section is valid only
38 if both:

39 1. The number of votes cast by ballot equals or exceeds the quorum
40 required to be present at a meeting authorizing the action.

41 2. The number of approvals equals or exceeds the number of votes that
42 would be required to approve the matter at a meeting at which the total
43 number of votes cast was the same as the number of votes cast by ballot.

- 1 D. All solicitations for votes by written ballot shall:
2 1. Indicate the number of responses needed to meet the quorum
3 requirements.
4 2. State the percentage of approvals necessary to approve each matter
5 other than election of directors.
6 3. Specify the time by which a ballot must be delivered to the
7 corporation in order to be counted, which time shall not be less than three
8 days after the date that the corporation delivers the ballot.

9 E. Except as otherwise provided in the articles of incorporation or
10 bylaws, a written ballot shall not be revoked.

11 F. THIS SECTION DOES NOT APPLY TO A CONDOMINIUM AS DEFINED IN SECTION
12 33-1202 OR A PLANNED COMMUNITY AS DEFINED IN SECTION 33-1802, AND ALL ACTION
13 TAKEN BY THE BOARD OR BY THE MEMBERSHIP OF A CONDOMINIUM ASSOCIATION OR A
14 PLANNED COMMUNITY ASSOCIATION SHALL BE TAKEN AT A MEETING HELD AS PRESCRIBED
15 BY SECTION 33-1248 OR 33-1804.

16 Sec. 4. Section 10-3821, Arizona Revised Statutes, is amended to read:
17 10-3821. Action without meeting; exceptions

18 A. EXCEPT AS PROVIDED IN SUBSECTION F OF THIS SECTION, unless the
19 articles of incorporation or bylaws provide otherwise, action required or
20 permitted by chapters 24 through 40 of this title to be taken at a directors'
21 meeting may be taken without a meeting if the action is taken by all of the
22 directors. The action must be evidenced by one or more written consents
23 describing the action taken, signed by each director and included in the
24 minutes filed with the corporate records reflecting the action taken.

25 B. Action taken under this section is effective when the last director
26 signs the consent, unless the consent specifies a different effective date.

27 C. The consent signed under this section has the effect of a meeting
28 vote and may be described as such in any document.

29 D. Any director may revoke a consent by delivering a signed revocation
30 of the consent to the president or secretary before the date the last
31 director signs the consent.

32 E. For the purposes of this section, a consent may be signed using an
33 electronic signature as defined in section 44-7002.

34 F. THIS SECTION DOES NOT APPLY TO A CONDOMINIUM AS DEFINED IN SECTION
35 33-1202 OR A PLANNED COMMUNITY AS DEFINED IN SECTION 33-1802, AND ALL ACTION
36 TAKEN BY THE BOARD OF DIRECTORS OF A CONDOMINIUM ASSOCIATION OR A PLANNED
37 COMMUNITY ASSOCIATION SHALL BE TAKEN AT A MEETING HELD AS PRESCRIBED BY
38 SECTION 33-1248 OR 33-1804.

39 Sec. 5. Section 33-1248, Arizona Revised Statutes, is amended to read:
40 33-1248. Open meetings; exceptions

41 A. Notwithstanding SECTIONS 10-3701, 10-3704, 10-3708 AND 10-3821 AND
42 any provision in the declaration, bylaws or other documents to the contrary,
43 all meetings of the unit owners' association and the board of directors, and
44 any regularly scheduled committee meetings, are open to all members of the
45 association or any person designated by a member in writing as the member's

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

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

23 2. Pending or contemplated litigation.

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

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

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

38 B. Notwithstanding any provision in the condominium documents, all
 39 meetings of the unit owners' association and the board shall be held in this
 40 state. A meeting of the unit owners' association shall be held at least once
 41 each year. Special meetings of the unit owners' association may be called by
 42 the president, by a majority of the board of directors or by unit owners
 43 having at least twenty-five per cent, or any lower percentage specified in
 44 the bylaws, of the votes in the association. Not fewer than ten nor more
 45 than fifty days in advance of any meeting of the unit owners, the secretary

1 shall cause notice to be hand delivered or sent prepaid by United States mail
2 to the mailing address of each unit or to any other mailing address
3 designated in writing by the unit owner. The notice of any meeting of the
4 unit owners shall state the DATE, time and place of the meeting. The notice
5 of any special meeting of the unit owners shall also state the purpose for
6 which the meeting is called, including the general nature of any proposed
7 amendment to the declaration or bylaws, any changes in assessments that
8 require approval of the unit owners and any proposal to remove a director or
9 officer. The failure of any unit owner to receive actual notice of a meeting
10 of the unit owners does not affect the validity of any action taken at that
11 meeting.

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

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

30 1. The agenda shall be available to all unit owners attending.

31 2. An emergency meeting of the board of directors may be called to
32 discuss business or take action that cannot be delayed until the next
33 regularly scheduled board meeting. THE NATURE OF THE EMERGENCY AND THE
34 REASONS FOR THE EMERGENCY MEETING SHALL BE CONSPICUOUSLY POSTED IN NOTICES
35 PROVIDED PROMPTLY TO ALL MEMBERS, AND the minutes of the emergency meeting
36 shall state the reason necessitating the emergency meeting. The minutes of
37 the emergency meeting shall be read and approved at the next regularly
38 scheduled meeting of the board of directors.

39 3. 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 unit owners to hear all parties who are speaking during the
42 meeting.

43 4. Any quorum of the board of directors that meets informally to
44 discuss association business, including workshops, shall comply with the open

1 meeting and notice provisions of this section without regard to whether the
2 board votes or takes any action on any matter at that informal meeting.

3 E. It is the policy of this state as reflected in this section that
4 all meetings of a condominium, whether meetings of the unit owners'
5 association or meetings of the board of directors of the association, be
6 conducted openly, **THAT ALL ACTIONS TAKEN BY THE MEMBERSHIP AND THE BOARD OF**
7 **DIRECTORS BE CONDUCTED AT OPEN MEETINGS HELD IN COMPLIANCE WITH THIS SECTION**
8 and that notices and agendas be provided for those meetings that contain the
9 information that is reasonably necessary to inform the unit owners of the
10 matters to be discussed or decided and to ensure that unit owners have the
11 ability to speak after discussion of agenda items, but before a vote of the
12 board of directors is taken. Toward this end, any person or entity that is
13 charged with the interpretation of these provisions shall take into account
14 this declaration of policy and shall construe any provision of this section
15 in favor of open meetings.

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

18 Sec. 6. Section 33-1250, Arizona Revised Statutes, is amended to read:
19 **33-1250. Voting; proxies; absentee ballots; applicability;**
20 **definition**

21 A. If only one of the multiple owners of a unit is present at a
22 meeting of the association, the owner is entitled to cast all the votes
23 allocated to that unit. If more than one of the multiple owners are present,
24 the votes allocated to that unit may be cast only in accordance with the
25 agreement of a majority in interest of the multiple owners unless the
26 declaration expressly provides otherwise. There is majority agreement if any
27 one of the multiple owners casts the votes allocated to that unit without
28 protest being made promptly to the person presiding over the meeting by any
29 of the other owners of the unit.

30 B. During the period of declarant control, votes allocated to a unit
31 may be cast pursuant to a proxy duly executed by a unit owner. If a unit is
32 owned by more than one person, each owner of the unit may vote or register
33 protest to the casting of votes by the other owners of the unit through a
34 duly executed proxy. A unit owner may not revoke a proxy given pursuant to
35 this section except by actual notice of revocation to the person presiding
36 over a meeting of the association. A proxy is void if it is not dated or
37 purports to be revocable without notice. The proxy is revoked on
38 presentation of a later dated proxy executed by the same unit owner. A proxy
39 terminates one year after its date, unless it specifies a shorter term or
40 unless it states that it is coupled with an interest and is irrevocable.

41 C. Notwithstanding any provision in the condominium documents, after
42 termination of the period of declarant control, votes allocated to a unit may
43 not be cast pursuant to a proxy. The association shall provide for votes to
44 be cast in person and by absentee ballot. **and IN ADDITION TO THE MANDATORY**
45 **USE OF BOTH IN-PERSON AND ABSENTEE VOTING, THE ASSOCIATION** may provide for

1 voting by some other form of delivery BUT SECTIONS 10-3704, 10-3708 AND
2 10-3821 DO NOT APPLY TO ANY ELECTION OF A CONDOMINIUM, AND AN ASSOCIATION
3 SHALL NOT TAKE ANY ACTION BY WRITTEN BALLOT OR WRITTEN CONSENT INSTEAD OF
4 IN-PERSON AND ABSENTEE VOTING AND SHALL CONDUCT ALL OF ITS MEETINGS PURSUANT
5 TO SECTION 33-1248. Notwithstanding ~~section~~ SECTIONS 10-3701, 10-3704,
6 10-3708 AND 10-3821 or the provisions of the condominium documents, ~~any~~
7 ~~action taken at an annual, regular or special meeting of the members shall~~
8 ~~comply with all of the following if~~ absentee ballots ~~are used~~ SHALL COMPLY
9 WITH ALL OF THE FOLLOWING:

10 1. The absentee ballot shall set forth each proposed action OR
11 CANDIDATE.

12 2. The absentee ballot shall provide an opportunity to vote for or
13 against each proposed action OR CANDIDATE.

14 3. The absentee ballot ~~is~~ SHALL BE valid for only one specified
15 ~~election or~~ meeting of the members and expires automatically after the
16 completion of the ~~election or~~ meeting.

17 4. The absentee ballot ~~specifies~~ OR ITS ACCOMPANYING NOTICE SHALL
18 SPECIFY the time and date by which the ballot must be delivered to the board
19 of directors in order to be counted, which shall be at least seven days after
20 the date that the board delivers the unvoted absentee ballot to the member.

21 5. The absentee ballot ~~does~~ SHALL not authorize another person to cast
22 votes on behalf of the member.

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

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

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

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

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

35 3. Lessees are entitled to notice of meetings, access to records and
36 other rights respecting those matters as if they were unit owners. Unit
37 owners shall also be given notice, in the manner prescribed in section
38 33-1248, of all meetings at which lessees may be entitled to vote.

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

41 H. NOTWITHSTANDING ANY PROVISION IN THE CONDOMINIUM DOCUMENTS AND
42 AFTER THE PERIOD OF DECLARANT CONTROL, EVERY CONDOMINIUM ELECTION SHALL
43 COMPLY WITH THE FOLLOWING:

44 1. BALLOTING SHALL BE SECRET, AND MARKED BALLOTS SHALL BE RECEIVED AND
45 HELD USING A METHOD THAT ENSURES SECRECY IN BALLOTING.

1 2. ABSENTEE BALLOTS SHALL USE A SYSTEM IN WHICH THE VOTER'S SIGNATURE
2 AND ANY OTHER IDENTIFYING INFORMATION ARE ON THE OUTSIDE OF THE ENVELOPE AND
3 THE VOTED BALLOT IS CONTAINED INSIDE THE ENVELOPE.

4 3. THE ASSOCIATION SHALL PROVIDE FOR INDEPENDENT OBSERVERS TO WITNESS
5 THE TALLYING OF THE BALLOTS. A CANDIDATE FOR OFFICE AT THAT ELECTION IS
6 DEEMED NOT TO BE AN INDEPENDENT OBSERVER.

7 4. VOTED BALLOTS SHALL BE SAVED INTACT AND MAINTAINED FOR A PERIOD OF
8 ONE YEAR UNDER THE SUPERVISION OF A PERSON DULY AUTHORIZED BY THE BOARD.

9 5. ANY MEMBER MAY AUDIT THE RESULTS OF THE TALLY IF THE PERSON MAKES
10 THAT REQUEST WITHIN THIRTY DAYS AFTER THE CLOSE OF VOTING.

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

14 ~~H.~~ I. This section does not apply to timeshare plans or associations
15 that are subject to chapter 20 of this title.

16 ~~I.~~ J. For the purposes of this section, "period of declarant control"
17 means the time during which the declarant or persons designated by the
18 declarant may elect or appoint the members of the board of directors pursuant
19 to the condominium documents or by virtue of superior voting power.

20 Sec. 7. Section 33-1804, Arizona Revised Statutes, is amended to read:

21 33-1804. Open meetings; exceptions

22 A. Notwithstanding SECTIONS 10-3701, 10-3704, 10-3708 AND 10-3821 AND
23 any provision in the declaration, bylaws or other documents to the contrary,
24 all meetings of the members' association and the board of directors, and any
25 regularly scheduled committee meetings, are open to all members of the
26 association or any person designated by a member in writing as the member's
27 representative and all members or designated representatives so desiring
28 shall be permitted to attend and speak at an appropriate time during the
29 deliberations and proceedings. The board may place reasonable time
30 restrictions on those persons speaking during the meeting but shall permit a
31 member or member's designated representative to speak once after the board
32 has discussed a specific agenda item but before the board takes formal action
33 on that item in addition to any other opportunities to speak. The board
34 shall provide for a reasonable number of persons to speak on each side of an
35 issue. Persons attending may ~~tape-record~~ AUDIOTAPE or videotape those
36 portions of the meetings of the board of directors and meetings of the
37 members that are open. The board of directors of the association may adopt
38 reasonable rules governing the ~~taping~~ AUDIOTAPING AND VIDEOTAPING of open
39 portions of the meetings of the board and the membership, but such rules
40 shall not preclude such ~~tape-recording~~ AUDIOTAPING or videotaping by those
41 attending. Any portion of a meeting OF THE BOARD OF DIRECTORS may be closed
42 only if that closed portion of the meeting is limited to consideration of one
43 or more of the following:

44 1. Legal advice from an attorney for the board or the association. On
45 final resolution of any matter for which the board received legal advice or

1 that concerned pending or contemplated litigation, the board may disclose
2 information about that matter in an open meeting except for matters that are
3 required to remain confidential by the terms of a settlement agreement or
4 judgment.

5 2. Pending or contemplated litigation.

6 3. Personal, health or financial information about an individual
7 member of the association, an individual employee of the association or an
8 individual employee of a contractor for the association, including records of
9 the association directly related to the personal, health or financial
10 information about an individual member of the association, an individual
11 employee of the association or an individual employee of a contractor for the
12 association.

13 4. Matters relating to the job performance of, compensation of, health
14 records of or specific complaints against an individual employee of the
15 association or an individual employee of a contractor of the association who
16 works under the direction of the association.

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

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

38 C. Notwithstanding any provision in the declaration, bylaws or other
39 community documents, for meetings of the board of directors that are held
40 after the termination of declarant control of the association, notice to
41 members of meetings of the board of directors shall be given at least
42 forty-eight hours in advance of the meeting by newsletter, conspicuous
43 posting or any other reasonable means as determined by the board of
44 directors. An affidavit of notice by an officer of the corporation is prima
45 facie evidence that notice was given as prescribed by this section. Notice

1 to members of meetings of the board of directors is not required if emergency
2 circumstances require action by the board before notice can be given. Any
3 notice of a board meeting shall state the DATE, time and place of the
4 meeting. The failure of any member to receive actual notice of a meeting of
5 the board of directors does not affect the validity of any action taken at
6 that meeting.

7 D. Notwithstanding any provision in the declaration, bylaws or other
8 community documents, for meetings of the board of directors that are held
9 after the termination of declarant control of the association, all of the
10 following apply:

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

12 2. An emergency meeting of the board of directors may be called to
13 discuss business or take action that cannot be delayed until the next
14 regularly scheduled board meeting. THE NATURE OF THE EMERGENCY AND THE
15 REASONS FOR THE EMERGENCY MEETING SHALL BE CONSPICUOUSLY POSTED IN NOTICES
16 PROVIDED PROMPTLY TO ALL MEMBERS, AND the minutes of the emergency meeting
17 shall state the reason necessitating the emergency meeting. The minutes of
18 the emergency meeting shall be read and approved at the next regularly
19 scheduled meeting of the board of directors.

20 3. A quorum of the board of directors may meet by means of a telephone
21 conference if a speakerphone is available in the meeting room that allows
22 board members and association members to hear all parties who are speaking
23 during the meeting.

24 4. Any quorum of the board of directors that meets informally to
25 discuss association business, including workshops, shall comply with the open
26 meeting and notice provisions of this section without regard to whether the
27 board votes or takes any action on any matter at that informal meeting.

28 E. It is the policy of this state as reflected in this section that
29 all meetings of a planned community, whether meetings of the members'
30 association or meetings of the board of directors of the association, be
31 conducted openly, THAT ALL ACTIONS TAKEN BY THE MEMBERSHIP AND THE BOARD OF
32 DIRECTORS BE CONDUCTED AT OPEN MEETINGS HELD IN COMPLIANCE WITH THIS SECTION
33 and that notices and agendas be provided for those meetings that contain the
34 information that is reasonably necessary to inform the members of the matters
35 to be discussed or decided and to ensure that members have the ability to
36 speak after discussion of agenda items, but before a vote of the board of
37 directors is taken. Toward this end, any person or entity that is charged
38 with the interpretation of these provisions shall take into account this
39 declaration of policy and shall construe any provision of this section in
40 favor of open meetings.

41 Sec. 8. Section 33-1812, Arizona Revised Statutes, is amended to read:
42 33-1812. Voting; proxies; absentee ballots; definition

43 A. Notwithstanding any provision in the community documents, after
44 termination of the period of declarant control, votes allocated to a unit may
45 not be cast pursuant to a proxy. The association shall provide for votes to

1 be cast in person and by absentee ballot. ~~and~~ IN ADDITION TO THE MANDATORY
2 USE OF BOTH IN-PERSON AND ABSENTEE VOTING, THE ASSOCIATION may provide for
3 voting by some other form of delivery BUT SECTIONS 10-3704, 10-3708 AND
4 10-3821 DO NOT APPLY TO ANY ELECTION FOR A PLANNED COMMUNITY, AND AN
5 ASSOCIATION SHALL NOT TAKE ANY ACTION BY WRITTEN BALLOT OR WRITTEN CONSENT
6 INSTEAD OF IN-PERSON AND ABSENTEE VOTING AND SHALL CONDUCT ALL PLANNED
7 COMMUNITY MEETINGS PURSUANT TO SECTION 33-1804. Notwithstanding ~~section~~
8 SECTIONS 10-3701, 10-3704, 10-3708 ~~or~~ AND 10-3821 AND the provisions of the
9 community documents, ~~any action taken at an annual, regular or special~~
10 ~~meeting of the members shall comply with all of the following if~~ absentee
11 ballots ~~are used~~ SHALL COMPLY WITH ALL OF THE FOLLOWING:

12 1. The absentee ballot shall set forth each proposed action OR
13 CANDIDATE.

14 2. The absentee ballot shall provide an opportunity to vote for or
15 against each proposed action OR CANDIDATE.

16 3. The absentee ballot ~~is~~ SHALL BE valid for only one specified
17 ~~election or~~ meeting of the members and expires automatically after the
18 completion of the ~~election or~~ meeting.

19 4. The absentee ballot ~~specifies~~ OR ITS ACCOMPANYING NOTICE SHALL
20 SPECIFY the time and date by which the ballot must be delivered to the board
21 of directors in order to be counted, which shall be at least seven days after
22 the date that the board delivers the unvoted absentee ballot to the member.

23 5. The absentee ballot ~~does~~ SHALL not authorize another person to cast
24 votes on behalf of the member.

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

27 C. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS AND AFTER
28 THE PERIOD OF DECLARANT CONTROL, EVERY PLANNED COMMUNITY ELECTION SHALL
29 COMPLY WITH THE FOLLOWING:

30 1. BALLOTING SHALL BE SECRET, AND MARKED BALLOTS SHALL BE RECEIVED AND
31 HELD USING A METHOD THAT ENSURES SECRECY IN BALLOTING.

32 2. ABSENTEE BALLOTS SHALL USE A SYSTEM IN WHICH THE VOTER'S SIGNATURE
33 AND ANY OTHER IDENTIFYING INFORMATION ARE ON THE OUTSIDE OF THE ENVELOPE AND
34 THE VOTED BALLOT IS CONTAINED INSIDE THE ENVELOPE.

35 3. THE ASSOCIATION SHALL PROVIDE FOR INDEPENDENT OBSERVERS TO WITNESS
36 THE TALLYING OF THE BALLOTS. A CANDIDATE FOR OFFICE AT THAT ELECTION IS
37 DEEMED NOT TO BE AN INDEPENDENT OBSERVER.

38 4. VOTED BALLOTS SHALL BE SAVED INTACT AND MAINTAINED FOR A PERIOD OF
39 ONE YEAR UNDER THE SUPERVISION OF A PERSON DULY AUTHORIZED BY THE BOARD.

40 5. ANY MEMBER MAY AUDIT THE RESULTS OF THE TALLY IF THE PERSON MAKES
41 THAT REQUEST WITHIN THIRTY DAYS AFTER THE CLOSE OF VOTING.

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

4 ~~D.~~ E. For the purposes of this section, "period of declarant control"
5 means the time during which the declarant or persons designated by the
6 declarant may elect or appoint the members of the board of directors pursuant
7 to the community documents or by virtue of superior voting power.

8 Sec. 9. Legislative intent; clarifying amendments

9 It is the intent of the legislature that by amending sections 10-3701,
10 10-3708 and 10-3821, Arizona Revised Statutes, as amended by this act, it is
11 clarifying that its intent has been and continues to be:

12 1. That the specific statutes relating to condominiums and planned
13 communities supersede the more general laws on corporations.

14 2. That the specific provisions of sections 33-1248 and 33-1804,
15 Arizona Revised Statutes, as amended by this act, apply to condominiums and
16 planned communities and that sections 10-3701, 10-3704, 10-3708 and 10-3821,
17 Arizona Revised Statutes, as amended by this act, do not apply to any meeting
18 or election held by a condominium or planned community, and that a
19 condominium or planned community may not lawfully take any action by written
20 ballot.