



Bill Number: **SB 1091**\_\_\_\_\_

Lovas\_\_\_\_\_Floor Amendment

### **FLOOR AMENDMENT EXPLANATION**

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SB 1091 specifies that quorum and vote counts are based on the members eligible to vote, for the purposes of an HOA election to remove a member from the board of directors.

Your 5-page floor amendment to SB 1091 applies the provisions of the bill relating to planned community HOAs to condominium HOAs as well.

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3/17/2015

LOVAS FLOOR AMENDMENT  
HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1091  
(Reference to Senate engrossed bill)

1 Page 1, between lines 1 and 2, insert:

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

1 shall provide a summary of the budget to all the unit owners. Unless the  
2 board of directors is expressly authorized in the declaration to adopt and  
3 amend budgets from time to time, any budget or amendment shall be ratified by  
4 the unit owners in accordance with the procedures set forth in this  
5 subsection. If ratification is required, the board of directors shall set a  
6 date for a meeting of the unit owners to consider ratification of the budget  
7 not fewer than fourteen nor more than thirty days after mailing of the  
8 summary. Unless at that meeting a majority of all the unit owners or any  
9 larger vote specified in the declaration rejects the budget, the budget is  
10 ratified, whether or not a quorum is present. If the proposed budget is  
11 rejected, the periodic budget last ratified by the unit owners shall be  
12 continued until such time as the unit owners ratify a subsequent budget  
13 proposed by the board of directors.

14 E. The declaration may provide for a period of declarant control of  
15 the association, during which period a declarant or persons designated by the  
16 declarant may appoint and remove the officers and members of the board of  
17 directors. Regardless of the period provided in the declaration, a period of  
18 declarant control terminates no later than the earlier of:

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

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

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

30 G. Not later than the termination of any period of declarant control  
31 the unit owners shall elect a board of directors of at least three members,  
32 at least a majority of whom must be unit owners. The board of directors

1 shall elect the officers. The board members and officers shall take office  
2 ~~upon~~ ON election.

3 H. Notwithstanding any provision of the declaration or bylaws to the  
4 contrary: ~~;~~

5 1. The unit owners WHO ARE ELIGIBLE TO VOTE AT THE TIME OF THE MEETING  
6 MAY REMOVE ANY MEMBER OF THE BOARD OF DIRECTORS, OTHER THAN A MEMBER  
7 APPOINTED BY THE DECLARANT, by a majority vote of ~~members entitled to vote~~  
8 ~~and~~ THOSE voting on the matter at a meeting of the ~~members~~ UNIT OWNERS.

9 2. THE MEETING OF THE UNIT OWNERS SHALL BE called pursuant to this  
10 section ~~at which~~ AND ACTION MAY BE TAKEN ONLY IF a quorum is present. ~~;~~

11 3. THE UNIT OWNERS may remove any member of the board of directors  
12 with or without cause, other than a member appointed by the declarant.

13 4. 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.~~ (a) In an association with one thousand or fewer members, on  
17 receipt of a petition that calls for removal of a member of the board of  
18 directors and that is signed by the number of persons who are ~~entitled to~~  
19 ~~cast~~ ELIGIBLE TO VOTE IN THE ASSOCIATION AT THE TIME THE PERSON SIGNS THE  
20 PETITION EQUAL TO at least twenty-five ~~per cent~~ PERCENT of the votes in the  
21 association or BY THE NUMBER OF PERSONS WHO ARE ELIGIBLE TO VOTE IN THE  
22 ASSOCIATION AT THE TIME THE PERSON SIGNS THE PETITION EQUAL TO AT LEAST one  
23 hundred votes in the association, whichever is less, the board shall call and  
24 provide written notice of a special meeting of the association as prescribed  
25 by section 33-1248, subsection B.

26 ~~2.~~ (b) Notwithstanding section 33-1248, subsection B, in an  
27 association with more than one thousand members, on receipt of a petition  
28 that calls for removal of a member of the board of directors and that is  
29 signed by the number of persons who are ~~entitled to cast~~ ELIGIBLE TO VOTE IN  
30 THE ASSOCIATION AT THE TIME THE PERSON SIGNS THE PETITION EQUAL TO at least  
31 ten ~~per cent~~ PERCENT of the votes in the association or BY THE NUMBER OF  
32 PERSONS WHO ARE ELIGIBLE TO VOTE IN THE ASSOCIATION AT THE TIME THE PERSON  
33 SIGNS THE PETITION EQUAL TO AT LEAST one thousand votes in the association,

1           whichever is less, the board shall call and provide written notice of a  
2           special meeting of the association. The board shall provide written notice  
3           of a special meeting as prescribed by section 33-1248, subsection B.

4           ~~3.~~ (c) The special meeting shall be called, noticed and held within  
5           thirty days after receipt of the petition.

6           ~~4.~~ (d) For purposes of a special meeting called pursuant to this  
7           subsection, a quorum is present if the number of owners WHO ARE ELIGIBLE TO  
8           VOTE IN THE ASSOCIATION AT THE TIME THE PERSON ATTENDS THE MEETING EQUAL to  
9           whom at least twenty ~~per-cent~~ PERCENT of the votes OF THE ASSOCIATION or THE  
10          NUMBER OF PERSONS WHO ARE ELIGIBLE TO VOTE IN THE ASSOCIATION AT THE TIME THE  
11          PERSON ATTENDS THE MEETING EQUAL TO AT LEAST one thousand votes, whichever is  
12          less, ~~are-allocated~~ is present at the meeting in person or as otherwise  
13          permitted by law.

14          ~~5.~~ (e) If a civil action is filed regarding the removal of a board  
15          member, the prevailing party in the civil action shall be awarded its  
16          reasonable attorney fees and costs.

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

22          ~~7.~~ (g) A petition that calls for the removal of the same member of  
23          the board of directors shall not be submitted more than once during each term  
24          of office for that member.

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

31                J. Unless any provision in the condominium documents requires an  
32                annual audit by a certified public accountant, the board of directors shall  
33                provide for an annual financial audit, review or compilation of the

1 association. The audit, review or compilation shall be completed no later  
2 than one hundred eighty days after the end of the association's fiscal year  
3 and shall be made available ~~upon~~ ON request to the unit owners within thirty  
4 days after its completion.

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

8 Renumber to conform

9 Amend title to conform

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PHIL LOVAS

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03/17/2015  
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C: myr