

REFERENCE TITLE: homeowners' associations; condominiums; director removal

State of Arizona
Senate
Fifty-second Legislature
First Regular Session
2015

SB 1452

Introduced by
Senator Farnsworth D

AN ACT

AMENDING SECTIONS 33-1243 AND 33-1813, 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: 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. EXCEPT AS PROVIDED IN
13 SUBSECTION H OF THIS SECTION, the board of directors may fill vacancies in
14 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 vote on that issue. THE BOARD SHALL NOTE THE
23 DECLARATION OF CONFLICT IN THE RECORDS OF THE MEETING. Any contract entered
24 into in violation of this subsection is void and unenforceable.

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

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

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

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

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

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

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

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

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

42 4. For purposes of a special meeting called pursuant to this
43 subsection, a quorum is present if the number of owners to whom at least
44 twenty ~~per-cent~~ PERCENT 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 **AND FOR ANY ELECTION OR OTHER ACTION FOR THAT DIRECTOR'S REPLACEMENT** 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.

8. ON REMOVAL OF A MEMBER OF THE BOARD OF DIRECTORS AT A MEETING OF THE MEMBERSHIP, THE BOARD SHALL HOLD AN ELECTION FOR THE REPLACEMENT OF THE REMOVED DIRECTOR AT A SEPARATE MEETING OF THE MEMBERSHIP. THE SEPARATE MEETING FOR ELECTING A REPLACEMENT DIRECTOR SHALL BE HELD NO LATER THAN THIRTY DAYS AFTER THE DAY OF THE MEETING AT WHICH THE DIRECTOR WAS REMOVED. THE DIRECTOR WHO WAS REMOVED MAY NOT BE APPOINTED OR ELECTED TO THE BOARD FOR TWO YEARS AFTER THE DATE OF REMOVAL UNLESS THE CONDOMINIUM DOCUMENTS SPECIFICALLY PROVIDE OTHERWISE.

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~~ **ON** request to the unit owners within thirty days after its completion.

K. 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 33-1813, Arizona Revised Statutes, is amended to read:
33-1813. Removal of board member; special meeting

A. Notwithstanding any provision of the declaration or bylaws to the contrary, the members, 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

1 directors, other than a member appointed by the declarant, the following
2 apply:

3 1. In an association with one thousand or fewer members, on receipt of
4 a petition that calls for removal of a member of the board of directors and
5 that is signed by the number of persons who are entitled to cast at least
6 twenty-five per cent of the votes in the association or one hundred votes in
7 the association, whichever is less, the board shall call and provide written
8 notice of a special meeting of the association as prescribed by section
9 33-1804, subsection B.

10 2. Notwithstanding section 33-1804, subsection B, in an association
11 with more than one thousand members, on receipt of a petition that calls for
12 removal of a member of the board of directors and that is signed by the
13 number of persons who are entitled to cast at least ten ~~per cent~~ PERCENT of
14 the votes in the association or one thousand votes in the association,
15 whichever is less, the board shall call and provide written notice of a
16 special meeting of the association. The board shall provide written notice
17 of a special meeting as prescribed by section 33-1804, subsection B.

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

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

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

28 6. The board of directors shall retain all documents and other records
29 relating to the proposed removal of the member of the board of directors AND
30 FOR ANY ELECTION FOR THAT DIRECTOR'S REPLACEMENT for at least one year after
31 the date of the special meeting and shall permit members to inspect those
32 documents and records pursuant to section 33-1805.

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

36 8. ON REMOVAL OF A MEMBER OF THE BOARD OF DIRECTORS AT A MEETING OF
37 THE MEMBERSHIP, THE BOARD SHALL HOLD AN ELECTION FOR THE REPLACEMENT OF THE
38 REMOVED DIRECTOR AT A SEPARATE MEETING OF THE MEMBERSHIP. THE SEPARATE
39 MEETING FOR ELECTING A REPLACEMENT DIRECTOR SHALL BE HELD NO LATER THAN
40 THIRTY DAYS AFTER THE DAY OF THE MEETING AT WHICH THE DIRECTOR WAS REMOVED.
41 THE DIRECTOR WHO WAS REMOVED MAY NOT BE APPOINTED OR ELECTED TO THE BOARD FOR
42 TWO YEARS AFTER THE DATE OF REMOVAL UNLESS THE COMMUNITY DOCUMENTS
43 SPECIFICALLY PROVIDE OTHERWISE.

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