

REFERENCE TITLE: homeowners' associations; enforcement; elections; meetings

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

SB 1453

Introduced by
Senator Farnsworth D

AN ACT

AMENDING SECTIONS 33-1242, 33-1250, 33-1803, 33-1811 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 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; enforcement

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~~ ON
32 unit owners for violations of the declaration, bylaws and rules of the
33 association. ~~Notwithstanding any provision in the condominium documents, an~~
34 ~~association may charge for late payment of assessments only if the assessment~~
35 ~~is thirty days or more overdue and only after the association has provided~~
36 ~~written notice that the assessment is thirty days or more overdue.~~

37 12. Impose reasonable charges for the preparation and recordation of
38 amendments to the declaration or statements of unpaid assessments.

39 13. Provide for the indemnification of its officers and executive board
40 of directors and maintain directors' and officers' liability insurance.

41 14. Assign its right to future income, including the right to receive
42 common expense assessments, but only to the extent the declaration expressly
43 provides.

44 15. Be a member of a master association or other entity owning,
45 maintaining or governing in any respect any portion of the common elements or

1 other property benefitting or related to the condominium or the unit owners
2 in any respect.

3 16. Exercise any other powers conferred by the declaration or bylaws.

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

6 18. Exercise any other powers necessary and proper for the governance
7 and operation of the association.

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

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

20 1. The provision of the condominium documents that has allegedly been
21 violated.

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

23 3. The first and last name of the person or persons who observed the
24 violation.

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

26 D. Unless the information required in subsection C, paragraph 4 of
27 this section is provided in the notice of violation, the association shall
28 not proceed with any action to enforce the condominium documents, including
29 the collection of attorney fees, before or during the time prescribed by
30 subsection C of this section regarding the exchange of information between
31 the association and the unit owner AND SHALL GIVE THE UNIT OWNER WRITTEN
32 NOTICE OF THE UNIT OWNER'S OPTION TO PETITION FOR AN ADMINISTRATIVE HEARING
33 ON THE MATTER IN THE DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY PURSUANT TO
34 SECTION 41-2198.01. At any time before or after completion of the exchange
35 of information pursuant to this section, the unit owner may petition for a
36 hearing pursuant to section 41-2198.01 if the dispute is within the
37 jurisdiction of the department of fire, building and life safety as
38 prescribed in section 41-2198.01, subsection B.

39 Sec. 2. Section 33-1250, Arizona Revised Statutes, is amended to read:

40 33-1250. Voting; proxies; absentee ballots; applicability;
41 definition

42 A. If only one of the multiple owners of a unit is present at a
43 meeting of the association, the owner is entitled to cast all the votes
44 allocated to that unit. If more than one of the multiple owners are present,
45 the votes allocated to that unit may be cast only in accordance with the

1 agreement of a majority in interest of the multiple owners unless the
2 declaration expressly provides otherwise. There is majority agreement if any
3 one of the multiple owners casts the votes allocated to that unit without
4 protest being made promptly to the person presiding over the meeting by any
5 of the other owners of the unit.

6 B. During the period of declarant control, votes allocated to a unit
7 may be cast pursuant to a proxy duly executed by a unit owner. If a unit is
8 owned by more than one person, each owner of the unit may vote or register
9 protest to the casting of votes by the other owners of the unit through a
10 duly executed proxy. A unit owner may not revoke a proxy given pursuant to
11 this section except by actual notice of revocation to the person presiding
12 over a meeting of the association. A proxy is void if it is not dated or
13 purports to be revocable without notice. The proxy is revoked on
14 presentation of a later dated proxy executed by the same unit owner. A proxy
15 terminates one year after its date, unless it specifies a shorter term or
16 unless it states that it is coupled with an interest and is irrevocable.

17 C. Notwithstanding any provision in the condominium documents, after
18 termination of the period of declarant control, votes allocated to a unit may
19 not be cast pursuant to a proxy. The association shall provide for votes to
20 be cast in person and by absentee ballot and, in addition, the association
21 may provide for voting by some other form of delivery, including the use of
22 e-mail and fax delivery. Notwithstanding section 10-3708 or the provisions
23 of the condominium documents, any action taken at an annual, regular or
24 special meeting of the members shall comply with all of the following if
25 absentee ballots or ballots provided by some other form of delivery are used:

- 26 1. The ballot shall set forth each proposed action.
- 27 2. The ballot shall provide an opportunity to vote for or against each
28 proposed action.
- 29 3. The ballot is valid for only one specified election or meeting of
30 the members and expires automatically after the completion of the election or
31 meeting.
- 32 4. The ballot specifies the time and date by which the ballot must be
33 delivered to the board of directors in order to be counted, which shall be at
34 least seven days after the date that the board delivers the unvoted ballot to
35 the member.

36 5. The ballot does not authorize another person to cast votes on
37 behalf of the member. THE COMPLETED BALLOT OR ITS ATTACHED DOCUMENTATION
38 MUST INCLUDE THE NAME, ADDRESS AND SIGNATURE OF THE PERSON VOTING.

39 6. BALLOTS AND RELATED MATERIALS SHALL BE RETAINED AND MADE AVAILABLE
40 FOR UNIT OWNER INSPECTION FOR AT LEAST ONE YEAR AFTER COMPLETION OF THE
41 ELECTION.

42 D. Votes cast by absentee ballot or other form of delivery, including
43 the use of e-mail and fax delivery, are valid for the purpose of establishing
44 a quorum.

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

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

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

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

11 3. Lessees are entitled to notice of meetings, access to records and
12 other rights respecting those matters as if they were unit owners. Unit
13 owners shall also be given notice, in the manner prescribed in section
14 33-1248, of all meetings at which lessees may be entitled to vote.

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

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

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

23 Sec. 3. Section 33-1803, Arizona Revised Statutes, is amended to read:

24 33-1803. Penalties; assessments; notice to member of violation;
25 enforcement

26 A. Unless limitations in the community documents would result in a
27 lower limit for the assessment, the association shall not impose a regular
28 assessment that is more than twenty ~~per-cent~~ PERCENT greater than the
29 immediately preceding fiscal year's assessment without the approval of the
30 majority of the members of the association. Unless reserved to the members
31 of the association, the board of directors may impose reasonable charges for
32 the late payment of assessments. A payment by a member is deemed late if it
33 is unpaid fifteen or more days after its due date, unless the community
34 documents provide for a longer period. Charges for the late payment of
35 assessments are limited to the greater of fifteen dollars or ten ~~per-cent~~
36 PERCENT of the amount of the unpaid assessment AND MAY ONLY BE IMPOSED AFTER
37 THE ASSOCIATION HAS PROVIDED NOTICE THAT THE ASSESSMENT IS OVERDUE. Any
38 monies paid by the member for an unpaid assessment shall be applied first to
39 the principal amount unpaid and then to the interest accrued.

40 B. After notice and an opportunity to be heard, the board of directors
41 may impose reasonable monetary penalties on members for violations of the
42 declaration, bylaws and rules of the association. Notwithstanding any
43 provision in the community documents, the board of directors shall not impose
44 a charge for a late payment of a penalty that exceeds the greater of fifteen
45 dollars or ten ~~per-cent~~ PERCENT of the amount of the unpaid penalty. A

1 payment is deemed late if it is unpaid fifteen or more days after its due
2 date, unless the declaration, bylaws or rules of the association provide for
3 a longer period. Any monies paid by a member for an unpaid penalty shall be
4 applied first to the principal amount unpaid and then to the interest
5 accrued. Notice pursuant to this subsection shall include information
6 pertaining to the manner in which the penalty shall be enforced.

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

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

19 1. The provision of the community documents that has allegedly been
20 violated.

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

22 3. The first and last name of the person or persons who observed the
23 violation.

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

25 E. Unless the information required in subsection D, paragraph 4 of
26 this section is provided in the notice of violation, the association shall
27 not proceed with any action to enforce the community documents, including the
28 collection of attorney fees, before or during the time prescribed by
29 subsection D of this section regarding the exchange of information between
30 the association and the member AND SHALL GIVE THE MEMBER WRITTEN NOTICE OF
31 THE MEMBER'S OPTION TO PETITION FOR AN ADMINISTRATIVE HEARING ON THE MATTER
32 IN THE DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY PURSUANT TO SECTION
33 41-2198.01. At any time before or after completion of the exchange of
34 information pursuant to this section, the member may petition for a hearing
35 pursuant to section 41-2198.01 if the dispute is within the jurisdiction of
36 the department of fire, building and life safety as prescribed in section
37 41-2198.01, subsection B.

38 Sec. 4. Section 33-1811, Arizona Revised Statutes, is amended to read:
39 33-1811. Board of directors; contracts; conflict

40 If any contract, decision or other action for compensation taken by or
41 on behalf of the board of directors would benefit any member of the board of
42 directors or any person who is a parent, grandparent, spouse, child or
43 sibling of a member of the board of directors or a parent or spouse of any of
44 those persons, that member of the board of directors shall declare a conflict
45 of interest for that issue. The member shall declare the conflict in an open

meeting of the board before the board discusses or takes action on that issue and that member may then vote on that issue. **THE BOARD SHALL NOTE THE DECLARATION OF CONFLICT IN THE RECORDS OF THE MEETING.** Any contract entered into in violation of this section is void and unenforceable.

Sec. 5. Section 33-1812, Arizona Revised Statutes, is amended to read: **33-1812. Proxies; absentee ballots; definition**

A. Notwithstanding any provision in the community documents, after termination of the period of declarant control, votes allocated to a unit may not be cast pursuant to a proxy. The association shall provide for votes to be cast in person and by absentee ballot and, in addition, the association may provide for voting by some other form of delivery, including the use of e-mail and fax delivery. Notwithstanding section 10-3708 or the provisions of the community documents, any action taken at an annual, regular or special meeting of the members shall comply with all of the following if absentee ballots or ballots provided by some other form of delivery are used:

1. The ballot shall set forth each proposed action.

2. The ballot shall provide an opportunity to vote for or against each proposed action.

3. The ballot is valid for only one specified election or meeting of the members and expires automatically after the completion of the election or meeting.

4. The ballot specifies the time and date by which the ballot must be delivered to the board of directors in order to be counted, which shall be at least seven days after the date that the board delivers the unvoted ballot to the member.

5. The ballot does not authorize another person to cast votes on behalf of the member. **THE COMPLETED BALLOT OR ITS ATTACHED DOCUMENTATION MUST INCLUDE THE NAME, ADDRESS AND SIGNATURE OF THE PERSON VOTING.**

6. BALLOTS AND RELATED MATERIALS SHALL BE RETAINED AND MADE AVAILABLE FOR MEMBER INSPECTION FOR AT LEAST ONE YEAR AFTER COMPLETION OF THE ELECTION.

B. Votes cast by absentee ballot or other form of delivery, including the use of e-mail and fax delivery, are valid for the purpose of establishing a quorum.

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

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