

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

SENATE BILL 1453

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 **AFTER THE**
31 **ASSOCIATION HAS PROVIDED NOTICE THAT THE ASSESSMENT IS OVERDUE** and, after
32 notice and an opportunity to be heard, impose reasonable monetary penalties
33 ~~upon~~ **ON** unit owners for violations of the declaration, bylaws and rules of
34 the association.
35 12. Impose reasonable charges for the preparation and recordation of
36 amendments to the declaration or statements of unpaid assessments.
37 13. Provide for the indemnification of its officers and executive board
38 of directors and maintain directors' and officers' liability insurance.
39 14. Assign its right to future income, including the right to receive
40 common expense assessments, but only to the extent the declaration expressly
41 provides.
42 15. Be a member of a master association or other entity owning,
43 maintaining or governing in any respect any portion of the common elements or
44 other property benefitting or related to the condominium or the unit owners
45 in any respect.

1 one of the multiple owners casts the votes allocated to that unit without
2 protest being made promptly to the person presiding over the meeting by any
3 of the other owners of the unit.

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

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

24 1. The ballot shall set forth each proposed action.

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

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

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

34 5. The ballot does not authorize another person to cast votes on
35 behalf of the member. **THE COMPLETED BALLOT, ENVELOPE OR RELATED MATERIALS
36 MUST INCLUDE THE NAME, ADDRESS AND SIGNATURE OF THE PERSON VOTING.**

37 **6. BALLOTS, ENVELOPES AND RELATED MATERIALS SHALL BE RETAINED AND MADE
38 AVAILABLE FOR UNIT OWNER INSPECTION FOR AT LEAST ONE YEAR AFTER COMPLETION OF
39 THE ELECTION.**

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

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

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

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

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

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

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

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

16 I. 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. 3. Section 33-1803, Arizona Revised Statutes, is amended to read:

21 33-1803. Penalties; assessments; notice to member of violation;
22 enforcement

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

37 B. After notice and an opportunity to be heard, the board of directors
38 may impose reasonable monetary penalties on members for violations of the
39 declaration, bylaws and rules of the association. Notwithstanding any
40 provision in the community documents, the board of directors shall not impose
41 a charge for a late payment of a penalty that exceeds the greater of fifteen
42 dollars or ten ~~per-cent~~ PERCENT of the amount of the unpaid penalty. A
43 payment is deemed late if it is unpaid fifteen or more days after its due
44 date, unless the declaration, bylaws or rules of the association provide for
45 a longer period. Any monies paid by a member for an unpaid penalty shall be

1 applied first to the principal amount unpaid and then to the interest
2 accrued. Notice pursuant to this subsection shall include information
3 pertaining to the manner in which the penalty shall be enforced.

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

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

16 1. The provision of the community documents that has allegedly been
17 violated.

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

19 3. The first and last name of the person or persons who observed the
20 violation.

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

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

35 Sec. 4. Section 33-1811, Arizona Revised Statutes, is amended to read:

36 33-1811. Board of directors; contracts; conflict

37 If any contract, decision or other action for compensation taken by or
38 on behalf of the board of directors would benefit any member of the board of
39 directors or any person who is a parent, grandparent, spouse, child or
40 sibling of a member of the board of directors or a parent or spouse of any of
41 those persons, that member of the board of directors shall declare a conflict
42 of interest for that issue. The member shall declare the conflict in an open
43 meeting of the board before the board discusses or takes action on that issue
44 and that member may then vote on that issue. THE BOARD SHALL NOTE THE

1 **DECLARATION OF CONFLICT IN THE RECORDS OF THE MEETING.** Any contract entered
2 into in violation of this section is void and unenforceable.

3 Sec. 5. Section 33-1812, Arizona Revised Statutes, is amended to read:
4 **33-1812. Proxies; absentee ballots; definition**

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

14 1. The ballot shall set forth each proposed action.

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

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

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

24 5. The ballot does not authorize another person to cast votes on
25 behalf of the member. **THE COMPLETED BALLOT, ENVELOPE OR RELATED MATERIALS**
26 **MUST INCLUDE THE NAME, ADDRESS AND SIGNATURE OF THE PERSON VOTING.**

27 **6. BALLOTS, ENVELOPES AND RELATED MATERIALS SHALL BE RETAINED AND MADE**
28 **AVAILABLE FOR MEMBER INSPECTION FOR AT LEAST ONE YEAR AFTER COMPLETION OF THE**
29 **ELECTION.**

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

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

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