

State of Arizona  
Senate  
Fifty-second Legislature  
Second Regular Session  
2016

# SENATE BILL 1498

AN ACT

AMENDING SECTIONS 33-1242, 33-1250, 33-1803 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

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 ACTUAL NOTICE THAT THE ASSESSMENT IS OVERDUE OR**  
32 **PROVIDED ACTUAL NOTICE THAT THE ASSESSMENT IS CONSIDERED OVERDUE AFTER A**  
33 **CERTAIN DATE** and, after notice and an opportunity to be heard, impose  
34 reasonable monetary penalties ~~upon~~ **ON** unit owners for violations of the  
35 declaration, bylaws and rules of the association.

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

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

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

43 15. Be a member of a master association or other entity owning,  
44 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 identified in the notice.

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

19 1. The provision of the condominium 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 unit owner must follow to contest the notice.

25 D. Unless the information required in subsection C, 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 condominium documents, including  
28 the collection of attorney fees, before or during the time prescribed by  
29 subsection C of this section regarding the exchange of information between  
30 the association and the unit owner AND SHALL GIVE THE UNIT OWNER WRITTEN  
31 NOTICE OF THE UNIT OWNER'S OPTION TO PETITION FOR AN ADMINISTRATIVE HEARING  
32 ON THE MATTER IN THE DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY PURSUANT TO  
33 SECTION 41-2198.01. At any time before or after completion of the exchange  
34 of information pursuant to this section, the unit owner may petition for a  
35 hearing pursuant to section 41-2198.01 if the dispute is within the  
36 jurisdiction of the department of fire, building and life safety as  
37 prescribed in section 41-2198.01, subsection B.

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

39 33-1250. Voting; proxies; absentee ballots; applicability;  
40 definition

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

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

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

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

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

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

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

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

35 5. The ballot does not authorize another person to cast votes on  
36 behalf of the member.

37 6. THE COMPLETED BALLOT AND ENVELOPE AND ANY RELATED MATERIALS SHALL  
38 CONTAIN THE NAME, ADDRESS AND EITHER THE ACTUAL OR ELECTRONIC SIGNATURE OF  
39 THE PERSON VOTING, EXCEPT THAT IF THE CONDOMINIUM DOCUMENTS PERMIT SECRET  
40 BALLOTS, ONLY THE ENVELOPE OR ANY NONBALLOT-RELATED MATERIALS SHALL CONTAIN  
41 THE NAME, ADDRESS AND EITHER THE ACTUAL OR ELECTRONIC SIGNATURE OF THE VOTER.

42 7. BALLOTS, ENVELOPES AND RELATED MATERIALS, INCLUDING SIGN-IN SHEETS  
43 IF USED, SHALL BE RETAINED AND MADE AVAILABLE FOR UNIT OWNER INSPECTION FOR  
44 AT LEAST ONE YEAR AFTER COMPLETION OF THE ELECTION.

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

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

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

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

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

14 3. Lessees are entitled to notice of meetings, access to records and  
15 other rights respecting those matters as if they were unit owners. Unit  
16 owners shall also be given notice, in the manner prescribed in section  
17 33-1248, of all meetings at which lessees may be entitled to vote.

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

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

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

26 Sec. 3. Section 33-1803, Arizona Revised Statutes, is amended to read:  
27 33-1803. Assessment limitation; penalties; notice to member of  
28 violation

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

1           B. After notice and an opportunity to be heard, the board of directors  
2 may impose reasonable monetary penalties on members for violations of the  
3 declaration, bylaws and rules of the association. Notwithstanding any  
4 provision in the community documents, the board of directors shall not impose  
5 a charge for a late payment of a penalty that exceeds the greater of fifteen  
6 dollars or ten percent of the amount of the unpaid penalty. A payment is  
7 deemed late if it is unpaid fifteen or more days after its due date, unless  
8 the declaration, bylaws or rules of the association provide for a longer  
9 period. Any monies paid by a member for an unpaid penalty shall be applied  
10 first to the principal amount unpaid and then to the interest accrued.  
11 Notice pursuant to this subsection shall include information pertaining to  
12 the manner in which the penalty shall be enforced.

13           C. A member who receives a written notice that the condition of the  
14 property owned by the member is in violation of the community documents  
15 without regard to whether a monetary penalty is imposed by the notice may  
16 provide the association with a written response by sending the response by  
17 certified mail within ten business days after the date of the notice. The  
18 response shall be sent to the address identified in the notice.

19           D. Within ten business days after receipt of the certified mail  
20 containing the response from the member, the association shall respond to the  
21 member with a written explanation regarding the notice that shall provide at  
22 least the following information unless previously provided in the notice of  
23 violation:

24           1. The provision of the community documents that has allegedly been  
25 violated.

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

27           3. The first and last name of the person or persons who observed the  
28 violation.

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

30           E. Unless the information required in subsection D, paragraph 4 of  
31 this section is provided in the notice of violation, the association shall  
32 not proceed with any action to enforce the community documents, including the  
33 collection of attorney fees, before or during the time prescribed by  
34 subsection D of this section regarding the exchange of information between  
35 the association and the member **AND SHALL GIVE THE MEMBER WRITTEN NOTICE OF**  
36 **THE MEMBER'S OPTION TO PETITION FOR AN ADMINISTRATIVE HEARING ON THE MATTER**  
37 **IN THE DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY PURSUANT TO SECTION**  
38 **41-2198.01.** At any time before or after completion of the exchange of  
39 information pursuant to this section, the member may petition for a hearing  
40 pursuant to section 41-2198.01 if the dispute is within the jurisdiction of  
41 the department of fire, building and life safety as prescribed in section  
42 41-2198.01, subsection B.

1           Sec. 4. Section 33-1812, Arizona Revised Statutes, is amended to read:  
2           33-1812. Proxies; absentee ballots; definition

3           A. Notwithstanding any provision in the community documents, after  
4 termination of the period of declarant control, votes allocated to a unit may  
5 not be cast pursuant to a proxy. The association shall provide for votes to  
6 be cast in person and by absentee ballot and, in addition, the association  
7 may provide for voting by some other form of delivery, including the use of  
8 e-mail and fax delivery. Notwithstanding section 10-3708 or the provisions  
9 of the 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 or ballots provided by some other form of delivery are used:

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

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

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

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

22           5. The ballot does not authorize another person to cast votes on  
23 behalf of the member.

24           6. THE COMPLETED BALLOT AND ENVELOPE AND ANY RELATED MATERIALS SHALL  
25 CONTAIN THE NAME, ADDRESS AND SIGNATURE OF THE PERSON VOTING, EXCEPT THAT IF  
26 THE COMMUNITY DOCUMENTS PERMIT SECRET BALLOTS, ONLY THE ENVELOPE AND ANY  
27 NONBALLOT-RELATED MATERIALS SHALL CONTAIN THE NAME, ADDRESS AND SIGNATURE OF  
28 THE VOTER.

29           7. BALLOTS, ENVELOPES AND RELATED MATERIALS, INCLUDING SIGN-IN SHEETS  
30 IF USED, SHALL BE RETAINED AND MADE AVAILABLE FOR MEMBER INSPECTION FOR AT  
31 LEAST ONE YEAR AFTER COMPLETION OF THE ELECTION.

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

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

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