

REFERENCE TITLE: homeowners' associations; proxies; nonprofit corporations

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1494

Introduced by
Senators Gorman: Blendu; Representative Nichols

AN ACT

AMENDING SECTIONS 10-3640, 10-3724, 33-1250 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 10-3640, Arizona Revised Statutes, is amended to
3 read:
4 10-3640. Delegates; exemption for condominiums and planned
5 communities
6 A. A corporation may provide in its articles of incorporation or
7 bylaws for delegates that have some or all of the authority of members.
8 B. The articles of incorporation or bylaws may set forth provisions
9 relating to:
10 1. The characteristics, qualifications, rights, limitations and
11 obligations of delegates including the delegates' selection and removal.
12 2. Calling, noticing, holding and conducting meetings of delegates.
13 3. Carrying on corporate activities during and between meetings of
14 delegates.
15 C. NOTWITHSTANDING THE AUTHORIZATION FOR THE USE OF DELEGATES BY A
16 NONPROFIT CORPORATION PURSUANT TO THIS SECTION, THIS SECTION DOES NOT APPLY
17 TO A NONPROFIT CORPORATION THAT IS EITHER OF THE FOLLOWING:
18 1. AN ASSOCIATION FOR A CONDOMINIUM AS DEFINED IN SECTION 33-1202. A
19 CONDOMINIUM ASSOCIATION IS SUBJECT TO SECTION 33-1250.
20 2. AN ASSOCIATION FOR A PLANNED COMMUNITY AS DEFINED IN SECTION
21 33-1802. A PLANNED COMMUNITY ASSOCIATION IS SUBJECT TO SECTION 33-1812.
22 D. THIS SECTION SHALL NOT BE CONSTRUED TO CONFLICT WITH SECTION
23 10-3701, SUBSECTION F.
24 Sec. 2. Section 10-3724, Arizona Revised Statutes, is amended to read:
25 10-3724. Proxies; exemption for condominiums and planned
26 communities
27 A. A member may vote the member's votes in person or by proxy.
28 B. Unless the articles of incorporation or bylaws prohibit or limit
29 proxy voting, a member may appoint a proxy to vote or otherwise act for the
30 member by signing an appointment form, either personally or by the member's
31 attorney-in-fact.
32 C. An appointment of a proxy is effective on receipt by the secretary
33 or other officer or agent authorized to tabulate votes. An appointment is
34 valid for eleven months unless a different period is expressly provided in
35 the appointment form.
36 D. An appointment of a proxy is revocable by the member unless the
37 appointment form conspicuously states that it is irrevocable and the
38 appointment is coupled with an interest. Appointments coupled with an
39 interest include the appointment of any of the following:
40 1. A pledgee.
41 2. A person who purchased, agreed to purchase, holds an option to
42 purchase or holds any other right to acquire the membership interest.
43 3. A creditor of the corporation who extended or continued credit to
44 the corporation under terms requiring the appointment.

1 4. An employee of the corporation whose employment contract requires
2 the appointment.

3 5. A party to a voting agreement created pursuant to section 10-3731.

4 E. The death or incapacity of the member who appoints a proxy does not
5 affect the right of the corporation to accept the proxy's authority unless
6 the secretary or other officer or agent authorized to tabulate votes receives
7 written notice of the death or incapacity before the proxy exercises
8 authority under the appointment.

9 F. Appointment of a proxy is revoked by the person who appoints the
10 proxy by either:

11 1. Attending any meeting and voting in person.

12 2. Signing and delivering to the secretary or other officer or agent
13 authorized to tabulate proxy votes either a writing stating that the
14 appointment of the proxy is revoked or a subsequent appointment form.

15 G. An appointment made irrevocable under subsection D of this section
16 is revoked if the interest with which it is coupled is extinguished.

17 H. A transferee for value of a membership interest subject to an
18 irrevocable appointment may revoke the appointment if the transferee did not
19 know of its existence at the time that the transferee acquired the membership
20 interest and the existence of the irrevocable appointment was not noted
21 conspicuously on the transfer documents.

22 I. Subject to section 10-3727 and to any express limitation on the
23 proxy's authority that appears on the face of the appointment form, a
24 corporation may accept the proxy's vote or other action as that of the member
25 making the appointment.

26 J. NOTWITHSTANDING THE AUTHORIZATION FOR THE USE OF PROXIES BY A
27 NONPROFIT CORPORATION PURSUANT TO THIS SECTION, THIS SECTION DOES NOT APPLY
28 TO A NONPROFIT CORPORATION THAT IS EITHER OF THE FOLLOWING:

29 1. AN ASSOCIATION FOR A CONDOMINIUM AS DEFINED IN SECTION 33-1202. A
30 CONDOMINIUM ASSOCIATION IS SUBJECT TO SECTION 33-1250.

31 2. AN ASSOCIATION FOR A PLANNED COMMUNITY AS DEFINED IN SECTION
32 33-1802. A PLANNED COMMUNITY ASSOCIATION IS SUBJECT TO SECTION 33-1812.

33 K. THIS SECTION SHALL NOT BE CONSTRUED TO CONFLICT WITH SECTION
34 10-3701, SUBSECTION F.

35 Sec. 3. Section 33-1250, Arizona Revised Statutes, is amended to read:

36 33-1250. Voting; proxies; absentee ballots; applicability;
37 definition

38 A. If only one of the multiple owners of a unit is present at a
39 meeting of the association, the owner is entitled to cast all the votes
40 allocated to that unit. If more than one of the multiple owners are present,
41 the votes allocated to that unit may be cast only in accordance with the
42 agreement of a majority in interest of the multiple owners unless the
43 declaration expressly provides otherwise. There is majority agreement if any
44 one of the multiple owners casts the votes allocated to that unit without

1 protest being made promptly to the person presiding over the meeting by any
2 of the other owners of the unit.

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

14 C. Notwithstanding any provision in the condominium documents **AND**
15 **SECTION 10-3640, SUBSECTIONS A AND B AND SECTION 10-3724, SUBSECTIONS A**
16 **THROUGH I**, after termination of the period of declarant control, votes
17 allocated to a unit may not be cast pursuant to a proxy. The association
18 shall provide for votes to be cast in person and by absentee ballot and may
19 provide for voting by some other form of delivery. Notwithstanding section
20 10-3708 or the provisions of the condominium documents, any action taken at
21 an annual, regular or special meeting of the members shall comply with all of
22 the following if absentee ballots are used:

23 1. The absentee ballot shall set forth each proposed action.

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

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

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

33 5. The absentee ballot does not authorize another person to cast votes
34 on behalf of the member.

35 D. Votes cast by absentee ballot or other form of delivery are valid
36 for the purpose of establishing a quorum.

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

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

43 1. The provisions of subsections A, ~~and~~ B **AND C** of this section apply
44 to lessees as if they were unit owners.

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

3 3. Lessees are entitled to notice of meetings, access to records and
4 other rights respecting those matters as if they were unit owners. Unit
5 owners shall also be given notice, in the manner prescribed in section
6 33-1248, of all meetings at which lessees may be entitled to vote.

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

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

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

15 Sec. 4. Section 33-1812, Arizona Revised Statutes, is amended to read:
16 33-1812. Proxies; absentee ballots; definition

17 A. Notwithstanding any provision in the community documents AND
18 SECTION 10-3640, SUBSECTIONS A AND B AND SECTION 10-3724, SUBSECTIONS A
19 THROUGH I, after termination of the period of declarant control, votes
20 allocated to a unit may not be cast pursuant to a proxy. The association
21 shall provide for votes to be cast in person and by absentee ballot and may
22 provide for voting by some other form of delivery. Notwithstanding section
23 10-3708 or the provisions of the community documents, any action taken at an
24 annual, regular or special meeting of the members shall comply with all of
25 the following if absentee ballots are used:

26 1. The absentee ballot shall set forth each proposed action.

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

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

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

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

38 B. Votes cast by absentee ballot or other form of delivery are valid
39 for the purpose of establishing a quorum.

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

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

5 Sec. 5. Legislative intent

6 It is the intent of the legislature in enacting this law to confirm the
7 applicability of title 33, chapter 9, Arizona Revised Statutes, for
8 condominiums and title 33, chapter 16, Arizona Revised Statutes, for planned
9 communities, for any instance in which a conflict may exist between the
10 provisions of law specifically relating to condominiums or planned
11 communities with the more general provisions of law relating to nonprofit
12 corporations. In any instance of potential conflict, it remains the intent
13 of the legislature and the legislature confirms that the more specific
14 provisions have applied and continue to apply.