

REFERENCE TITLE: planned communities; declarant; boards; voting

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

HB 2135

Introduced by
Representative Lovas

AN ACT

AMENDING SECTIONS 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 33-1250, Arizona Revised Statutes, is amended to
3 read:

4 33-1250. Voting: proxies: absentee ballots: applicability:
5 declarant directors: definition

6 A. If only one of the multiple owners of a unit is present at a
7 meeting of the association, the owner is entitled to cast all the votes
8 allocated to that unit. If more than one of the multiple owners are present,
9 the votes allocated to that unit may be cast only in accordance with the
10 agreement of a majority in interest of the multiple owners unless the
11 declaration expressly provides otherwise. There is majority agreement if any
12 one of the multiple owners casts the votes allocated to that unit without
13 protest being made promptly to the person presiding over the meeting by any
14 of the other owners of the unit.

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

26 C. Notwithstanding any provision in the condominium documents, after
27 termination of the period of declarant control, votes allocated to a unit may
28 not be cast pursuant to a proxy. The association shall provide for votes to
29 be cast in person and by absentee ballot and ~~may~~ SHALL provide for voting by
30 ~~some other form of~~ USE OF ELECTRONIC MAIL AND BY USE OF FACSIMILE delivery.
31 Notwithstanding section 10-3708 or the provisions of the condominium
32 documents, any action taken at an annual, regular or special meeting of the
33 members shall comply with all of the following if absentee ballots are used:

- 34 1. The absentee ballot shall set forth each proposed action.
- 35 2. The absentee ballot shall provide an opportunity to vote for or
36 against each proposed action.

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

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

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

1 D. Votes cast by absentee ballot, ~~or other form of~~ BY ELECTRONIC MAIL
2 AND BY FACSIMILE delivery are valid for the purpose of establishing a quorum.

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

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

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

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

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

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

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

21 I. NOTWITHSTANDING ANY PROVISION IN THE CONDOMINIUM DOCUMENTS, AFTER
22 THE PERIOD OF DECLARANT CONTROL, THE DECLARANT, INCLUDING ANY OF ITS
23 AFFILIATES, OFFICERS AND EMPLOYEES, MAY NOT HOLD MORE THAN ONE SEAT ON THE
24 BOARD OF DIRECTORS OF THE ASSOCIATION. ON WINNING ELECTION TO ONE SEAT ON
25 THE BOARD OF DIRECTORS, THE DECLARANT AND ITS AFFILIATES ARE INELIGIBLE TO BE
26 CANDIDATES FOR OR HOLD ADDITIONAL SEATS, AND IF ELECTED, THE
27 DECLARANT-AFFILIATED CANDIDATE SHALL NOT TAKE OFFICE AND THE CANDIDATE WITH
28 THE NEXT HIGHEST NUMBER OF VOTES WHO IS NOT AFFILIATED WITH THE DECLARANT
29 SHALL BE DECLARED THE WINNER OF THE ELECTION FOR THAT SEAT.

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

34 Sec. 2. Section 33-1812, Arizona Revised Statutes, is amended to read:

35 33-1812. Voting; proxies; absentee ballots; declarant
36 directors; definition

37 A. Notwithstanding any provision in the community documents, after
38 termination of the period of declarant control, votes allocated to a unit may
39 not be cast pursuant to a proxy. The association shall provide for votes to
40 be cast in person and by absentee ballot and ~~may~~ SHALL provide for voting by
41 ~~some other form of~~ USE OF ELECTRONIC MAIL AND BY USE OF FACSIMILE delivery.
42 Notwithstanding section 10-3708 or the provisions of the community documents,
43 any action taken at an annual, regular or special meeting of the members
44 shall comply with all of the following if absentee ballots are used:

1 1. The absentee ballot shall set forth each proposed action.
2 2. The absentee ballot shall provide an opportunity to vote for or
3 against each proposed action.

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

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

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

13 B. Votes cast by absentee ballot, ~~or other form of~~ BY ELECTRONIC MAIL
14 AND BY FACSIMILE delivery are valid for the purpose of establishing a quorum.

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

18 D. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS, AFTER THE
19 PERIOD OF DECLARANT CONTROL, THE DECLARANT, INCLUDING ANY OF ITS AFFILIATES,
20 OFFICERS AND EMPLOYEES, MAY NOT HOLD MORE THAN ONE SEAT ON THE BOARD OF
21 DIRECTORS OF THE ASSOCIATION. ON WINNING ELECTION TO ONE SEAT ON THE BOARD
22 OF DIRECTORS, THE DECLARANT AND ITS AFFILIATES ARE INELIGIBLE TO BE
23 CANDIDATES FOR OR HOLD ADDITIONAL SEATS, AND IF ELECTED, THE
24 DECLARANT-AFFILIATED CANDIDATE SHALL NOT TAKE OFFICE AND THE CANDIDATE WITH
25 THE NEXT HIGHEST NUMBER OF VOTES WHO IS NOT AFFILIATED WITH THE DECLARANT
26 SHALL BE DECLARED THE WINNER OF THE ELECTION FOR THAT SEAT.

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