

REFERENCE TITLE: condominiums; planned communities; write-in candidates

State of Arizona  
House of Representatives  
Fifty-fourth Legislature  
Second Regular Session  
2020

## **HB 2279**

Introduced by  
Representative Hernandez D

AN ACT

AMENDING SECTIONS 33-1243 AND 33-1813, 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 33-1243, Arizona Revised Statutes, is amended to  
3 read:

4 33-1243. Board of directors and officers; conflict; powers;  
5 limitations; write-ins; removal; annual audit;  
6 applicability

7 A. Except as provided in the declaration, the bylaws, subsection B  
8 of this section or ~~other provisions of~~ this chapter, the board of  
9 directors may act in all instances on behalf of the association.

10 B. The board of directors shall not act on behalf of the  
11 association to amend the declaration, terminate the condominium, elect  
12 members of the board of directors or determine the qualifications, powers  
13 and duties or terms of office of board of directors members. Except as  
14 provided in subsection ~~H~~ I of this section, the board of directors may  
15 fill vacancies in its membership for the unexpired portion of any term.

16 C. If any contract, decision or other action for compensation taken  
17 by or on behalf of the board of directors would benefit any member of the  
18 board of directors or any person who is a parent, grandparent, spouse,  
19 child or sibling of a member of the board of directors or a parent or  
20 spouse of any of those persons, that member of the board of directors  
21 shall declare a conflict of interest for that issue. The member shall  
22 declare the conflict in an open meeting of the board before the board  
23 discusses or takes action on that issue and that member may then vote on  
24 that issue. Any contract entered into in violation of this subsection is  
25 void and unenforceable.

26 D. Except as provided in the declaration, within thirty days after  
27 adoption of any proposed budget for the condominium, the board of  
28 directors shall provide a summary of the budget to all the unit owners.  
29 Unless the board of directors is expressly authorized in the declaration  
30 to adopt and amend budgets from time to time, any budget or amendment  
31 shall be ratified by the unit owners in accordance with the procedures set  
32 forth in this subsection. If ratification is required, the board of  
33 directors shall set a date for a meeting of the unit owners to consider  
34 ratification of the budget ~~not fewer than~~ AT LEAST fourteen ~~nor~~ BUT NOT  
35 more than thirty days after mailing of the summary. Unless at that  
36 meeting a majority of all the unit owners or any larger vote specified in  
37 the declaration rejects the budget, the budget is ratified, whether or not  
38 a quorum is present. If the proposed budget is rejected, the periodic  
39 budget last ratified by the unit owners ~~shall be continued~~ CONTINUES until  
40 such time as the unit owners ratify a subsequent budget proposed by the  
41 board of directors.

42 E. The declaration may provide for a period of declarant control of  
43 the association, during which period a declarant or persons designated by  
44 the declarant may appoint and remove the officers and members of the board

1 of directors. Regardless of the period provided in the declaration, a  
2 period of declarant control terminates ~~to~~ NOT later than the earlier of:

3 1. Ninety days after conveyance of seventy-five percent of the  
4 units that may be created to unit owners other than a declarant.

5 2. Four years after all declarants have ceased to offer units for  
6 sale in the ordinary course of business.

7 F. A declarant may voluntarily surrender the right to appoint and  
8 remove officers and members of the board of directors before termination  
9 of the period prescribed in subsection E of this section, but in that  
10 event the declarant may require, for the duration of the period of  
11 declarant control, that specified actions of the association or board of  
12 directors, as described in a recorded instrument executed by the  
13 declarant, be approved by the declarant before they become effective.

14 G. Not later than the termination of any period of declarant  
15 control the unit owners shall elect a board of directors of at least three  
16 members, at least a majority of whom must be unit owners. The board of  
17 directors shall elect the officers. The board members and officers shall  
18 take office on election.

19 H. NOTWITHSTANDING ANY PROVISION OF THE CONDOMINIUM DOCUMENTS, THE  
20 BOARD OF DIRECTORS SHALL PROVIDE FOR AND SHALL ACCEPT WRITE-IN CANDIDATES  
21 FOR ELECTION TO ANY POSITION ON THE BOARD OF DIRECTORS, OTHER THAN FOR A  
22 DIRECTOR APPOINTED BY THE DECLARANT.

23 ~~H.~~ I. Notwithstanding any provision of the declaration or bylaws  
24 to the contrary, all of the following apply to a meeting at which a member  
25 of the board of directors, other than a member appointed by the declarant,  
26 is proposed to be removed from the board of directors:

27 1. The unit owners who are eligible to vote at the time of the  
28 meeting may remove any member of the board of directors, other than a  
29 member appointed by the declarant, by a majority vote of those voting on  
30 the matter at a meeting of the unit owners.

31 2. The meeting of the unit owners shall be called pursuant to this  
32 section and action may be taken only if a quorum is present.

33 3. The unit owners may remove any member of the board of directors  
34 with or without cause, other than a member appointed by the declarant.

35 4. For purposes of calling for removal of a member of the board of  
36 directors, other than a member appointed by the declarant, the following  
37 apply:

38 (a) In an association with one thousand or fewer members, on  
39 receipt of a petition that calls for removal of a member of the board of  
40 directors and that is signed by the number of persons who are eligible to  
41 vote in the association at the time the person signs the petition equal to  
42 at least twenty-five percent of the votes in the association or by the  
43 number of persons who are eligible to vote in the association at the time  
44 the person signs the petition equal to at least one hundred votes in the  
45 association, whichever is less, the board shall call and provide written

1 notice of a special meeting of the association as prescribed by section  
2 33-1248, subsection B.

3 (b) Notwithstanding section 33-1248, subsection B, in an  
4 association with more than one thousand members, on receipt of a petition  
5 that calls for removal of a member of the board of directors and that is  
6 signed by the number of persons who are eligible to vote in the  
7 association at the time the person signs the petition equal to at least  
8 ten percent of the votes in the association or by the number of persons  
9 who are eligible to vote in the association at the time the person signs  
10 the petition equal to at least one thousand votes in the association,  
11 whichever is less, the board shall call and provide written notice of a  
12 special meeting of the association. The board shall provide written  
13 notice of a special meeting as prescribed by section 33-1248,  
14 subsection B.

15 (c) The special meeting shall be called, noticed and held within  
16 thirty days after receipt of the petition.

17 (d) For purposes of a special meeting called pursuant to this  
18 subsection, a quorum is present if the number of owners who are eligible  
19 to vote in the association at the time the person attends the meeting  
20 equal to at least twenty percent of the votes of the association or the  
21 number of persons who are eligible to vote in the association at the time  
22 the person attends the meeting equal to at least one thousand votes,  
23 whichever is less, is present at the meeting in person or as otherwise  
24 permitted by law.

25 (e) If a civil action is filed regarding the removal of a board  
26 member, the prevailing party in the civil action shall be awarded its  
27 reasonable attorney fees and costs.

28 (f) The board of directors shall retain all documents and other  
29 records relating to the proposed removal of the member of the board of  
30 directors and any election or other action taken for that director's  
31 replacement for at least one year after the date of the special meeting  
32 and shall permit members to inspect those documents and records pursuant  
33 to section 33-1258.

34 (g) A petition that calls for the removal of the same member of the  
35 board of directors shall not be submitted more than once during each term  
36 of office for that member.

37 5. On removal of at least one but fewer than a majority of the  
38 members of the board of directors at a special meeting of the membership  
39 called pursuant to this subsection, the vacancies shall be filled as  
40 provided in the condominium documents.

41 6. On removal of a majority of the members of the board of  
42 directors at a special meeting of the membership called pursuant to this  
43 subsection, or if the condominium documents do not provide a method for  
44 filling board vacancies, the association shall hold an election for the  
45 replacement of the removed directors at a separate meeting of the members

1 of the association that is held not later than thirty days after the  
2 meeting at which the members of the board of directors were removed.

3 7. A member of the board of directors who is removed pursuant to  
4 this subsection is not eligible to serve on the board of directors again  
5 until after the expiration of the removed board member's term of office,  
6 unless the condominium documents specifically provide for a longer period  
7 of ineligibility.

8 ~~I.~~ J. For an association in which board members are elected from  
9 separately designated voting districts, a member of the board of  
10 directors, other than a member appointed by the declarant, may be removed  
11 only by a vote of the members from that voting district, and only the  
12 members from that voting district are eligible to vote on the matter or be  
13 counted for purposes of determining a quorum.

14 ~~J.~~ K. Unless any provision in the condominium documents requires  
15 an annual audit by a certified public accountant, the board of directors  
16 shall provide for an annual financial audit, review or compilation of the  
17 association. The audit, review or compilation shall be completed ~~no~~ NOT  
18 later than one hundred eighty days after the end of the association's  
19 fiscal year and shall be made available on request to the unit owners  
20 within thirty days after its completion.

21 ~~K.~~ L. This section does not apply to timeshare plans or  
22 associations, or the period of declarant control under timeshare  
23 instruments, that are subject to chapter 20 of this title.

24 Sec. 2. Section 33-1813, Arizona Revised Statutes, is amended to  
25 read:

26 33-1813. Write-in candidates; removal of board member;  
27 special meeting

28 A. NOTWITHSTANDING ANY PROVISION OF THE COMMUNITY DOCUMENTS, THE  
29 BOARD OF DIRECTORS SHALL PROVIDE FOR AND SHALL ACCEPT WRITE-IN CANDIDATES  
30 FOR ELECTION TO ANY POSITION ON THE BOARD OF DIRECTORS, OTHER THAN FOR A  
31 DIRECTOR APPOINTED BY THE DECLARANT.

32 ~~A.~~ B. Notwithstanding any provision of the declaration or bylaws  
33 to the contrary, all of the following apply to a meeting at which a member  
34 of the board of directors, other than a member appointed by the declarant,  
35 is proposed to be removed from the board of directors:

36 1. The members of the association who are eligible to vote at the  
37 time of the meeting may remove any member of the board of directors, other  
38 than a member appointed by the declarant, by a majority vote of those  
39 voting on the matter at a meeting of the members.

40 2. The meeting of the members shall be called pursuant to this  
41 section and action may be taken only if a quorum is present.

42 3. The members of the association may remove any member of the  
43 board of directors with or without cause, other than a member appointed by  
44 the declarant.

1           4. For purposes of calling for removal of a member of the board of  
2 directors, other than a member appointed by the declarant, the following  
3 apply:

4           (a) In an association with one thousand or fewer members, on  
5 receipt of a petition that calls for removal of a member of the board of  
6 directors and that is signed by the number of persons who are eligible to  
7 vote in the association at the time the person signs the petition equal to  
8 at least twenty-five percent of the votes in the association or by the  
9 number of persons who are eligible to vote in the association at the time  
10 the person signs the petition equal to at least one hundred votes in the  
11 association, whichever is less, the board shall call and provide written  
12 notice of a special meeting of the association as prescribed by section  
13 33-1804, subsection B.

14           (b) Notwithstanding section 33-1804, subsection B, in an  
15 association with more than one thousand members, on receipt of a petition  
16 that calls for removal of a member of the board of directors and that is  
17 signed by the number of persons who are eligible to vote in the  
18 association at the time the person signs the petition equal to at least  
19 ten percent of the votes in the association or by the number of persons  
20 who are eligible to vote in the association at the time the person signs  
21 the petition equal to at least one thousand votes in the association,  
22 whichever is less, the board shall call and provide written notice of a  
23 special meeting of the association. The board shall provide written  
24 notice of a special meeting as prescribed by section 33-1804,  
25 subsection B.

26           (c) The special meeting shall be called, noticed and held within  
27 thirty days after receipt of the petition.

28           (d) For purposes of a special meeting called pursuant to this  
29 subsection, a quorum is present if the number of owners who are eligible  
30 to vote in the association at the time the person attends the meeting  
31 equal to at least twenty percent of the votes of the association or the  
32 number of persons who are eligible to vote in the association at the time  
33 the person attends the meeting equal to at least one thousand votes,  
34 whichever is less, is present at the meeting in person or as otherwise  
35 permitted by law.

36           (e) If a civil action is filed regarding the removal of a board  
37 member, the prevailing party in the civil action shall be awarded its  
38 reasonable attorney fees and costs.

39           (f) The board of directors shall retain all documents and other  
40 records relating to the proposed removal of the member of the board of  
41 directors and any election or other action taken for that director's  
42 replacement for at least one year after the date of the special meeting  
43 and shall permit members to inspect those documents and records pursuant  
44 to section 33-1805.

1 (g) A petition that calls for the removal of the same member of the  
2 board of directors shall not be submitted more than once during each term  
3 of office for that member.

4 5. On removal of at least one but fewer than a majority of the  
5 members of the board of directors at a special meeting of the membership  
6 called pursuant to this subsection, the vacancies shall be filled as  
7 provided in the community documents.

8 6. On removal of a majority of the members of the board of  
9 directors at a special meeting of the membership called pursuant to this  
10 subsection, or if the community documents do not provide a method for  
11 filling board vacancies, the association shall hold an election for the  
12 replacement of the removed directors at a separate meeting of the members  
13 of the association that is held not later than thirty days after the  
14 meeting at which the members of the board of directors were removed.

15 7. A member of the board of directors who is removed pursuant to  
16 this subsection is not eligible to serve on the board of directors again  
17 until after the expiration of the removed board member's term of office,  
18 unless the community documents specifically provide for a longer period of  
19 ineligibility.

20 ~~B.~~ C. For an association in which board members are elected from  
21 separately designated voting districts, a member of the board of  
22 directors, other than a member appointed by the declarant, may be removed  
23 only by a vote of the members from that voting district, and only the  
24 members from that voting district are eligible to vote on the matter or be  
25 counted for purposes of determining a quorum.