



State Laws Affecting Office Condominiums

MULCAHY Community Association Cheat Sheet®

BRINGING ANSWERS
TO COMMUNITY
ASSOCIATIONS

This publication discusses significant points of law as they apply to community associations and is not intended to offer specific legal advice or responses to individual circumstances or problems.

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STATE LAWS THAT APPLY TO OFFICE CONDOMINIUMS

Arizona Non-Profit Corporation Act: A.R.S. Sections 10-3101 through 10-11702

All associations that are incorporated as non-profit corporations are subject to the Arizona Non-Profit Corporation Act.

The Arizona Non-Profit Corporation Act contains extensive provisions governing the formation and operation of non-profit corporations. These provisions are usually "gap fillers" and apply only if the association's articles of incorporation or bylaws are silent on the issue.

Arizona Condominium Act: A.R.S. Sections 33-1201 through 1207; 33-1211 through 1230; 33-1241 through 1261 and 33-1270

In a condominium, the common area is owned in common by the owners. *Effective January 1, 2009, ALL* condominiums are subject to the Condominium Act, regardless of when the condominium was formed. The Condominium Act addresses among other things, the creation, alteration, management and termination of the condominium, fines and penalties, resale disclosure, assessment liens and open meetings of the units.

ASPECTS OF ARIZONA LAW REGARDING OFFICE CONDOMINIUMS

The Arizona Open Meeting Law: A.R.S. Section 33-1248

Open Meetings: All meetings of an association and board of directors must be open to all members of the association or their representatives. Association members or their representatives (who have been designated as such in writing) so desiring shall be permitted to attend and speak at an appropriate time during the deliberations and proceedings of all meetings of the association and the board of directors. However, the board may place reasonable time restrictions on those persons speaking during the meeting, but shall permit a member or a member's designated representative to speak before the board takes formal action on an item under discussion in addition to any other opportunities to speak. The board shall provide for a reasonable number of persons to speak on each side of an issue.

Executive Sessions: The board may close a portion of a meeting to go into executive session to consider one or more of the following subjects:

1. Legal advice from an attorney for the board or the association;
2. Pending or contemplated litigation;
3. Personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor of the association; and
4. Matters relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association.

Board Meetings Must be Held in Arizona:

All association meetings for planned communities and condominiums must be held in the State of Arizona.

Associations Must Give 48 Hours Notice to the Membership of Regular Board Meetings:

Unless an association's documents provide otherwise, an association must give notice to the members regarding meetings of the board of directors by newsletter, conspicuous posting, or any other reasonable means at least 48 hours in advance of the meeting. The notice must state the date, time and place of the meeting. Emergency board meetings do not require 48 hours notice if emergency circumstances require action by the board before notice can be given.

RESALE OF UNITS/INFORMATION REQUIRED: A.R.S. Section 33-1260

Under Arizona law, associations which have fifty or more lots/units are required to mail or deliver to a purchaser within ten (10) days after receipt of a written notice (usually from a title company) of a pending sale all of the following information: a copy of the association's CC&Rs, bylaws, rules and regulations, current operating budget, most recent annual financial report (or a summary of the report if it is over 10 pages) and the most recent reserve study (if any).

The association must also provide the purchaser a dated statement containing:

1. The telephone number and address of a principal contact for the association;
2. The amount of the assessment for each unit/lot and the amount of any unpaid regular assessments, special assessments or any other assessments, fees or charges currently due and payable from the selling unit/lot owner;
3. Statement as to whether a portion of the unit/lot is covered by insurance maintained by the association;
4. The total amount of money held by the association as reserves;

5. A statement as to whether the records of the association reflect any alterations or improvements to the unit/lot that violate the CC&Rs; and

6. A statement of the case names and case numbers for pending litigation with respect to the unit/lot owner against the association or vice versa.

The association may charge the unit/lot owner a reasonable fee to compensate the association for the costs incurred in the preparation of the disclosure statements.

The resale disclosure statement must also include the following language: "I hereby acknowledge that the declaration, bylaws and rules of the association constitute a contract between the association and me (the purchaser). By signing this statement, I acknowledge that I have read and understand the association's contract with me (the purchaser). I also understand that, as a matter of Arizona law, if I fail to pay my association assessments, the association may foreclose on my property." *Signature*"

This statement shall also include a signature line for the purchaser and shall be returned to the association within fourteen calendar days.

REQUESTS BY MEMBERS TO REVIEW THE ASSOCIATION'S RECORDS: A.R.S. Section 33-1258

All financial and other records of the association shall be made reasonably available for examination by any member or any person designated by the member in writing as the member's representative. Books and records kept by or on behalf of the association and the board may be withheld from disclosure to the extent that the portion withheld relates to any of the following:

1. Privileged communication between an attorney for the association and the association;
2. Pending litigation;
3. Meeting minutes or other records of a session or an executive session board meeting;
4. Personal, health or financial records of an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association; and
5. Records relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of a contractor of the association who works under the direction of the association.

An association cannot charge a member for making books and records available for review. An association has ten (10) business days from a request by an owner or an owner's designated agent to make records available or copies of requested records. The association can only charge 15 cents per page for copies of records.

STANDARD OF CONDUCT FOR BOARD OF DIRECTORS: A.R.S.: Section 10-3830

A director must act in good faith and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner the director reasonably believes to be in the best interests of the association. This law applies to all non-profit Arizona corporations.

REMOVAL AND REPLACEMENT OF DIRECTORS: A.R.S. 33-1243(H)

The 2005 legislature adopted a new procedure for removing board members from office. This procedure does not apply to board members appointed by the developer. This procedure supersedes any other provisions in the association's documents pertaining to removal of board members:

Petition for Removal of Director Requirements: Associations with 1,000 or fewer members: A petition must be signed by at least 25% of the votes in the association or one hundred votes

in the association, whichever is less. Associations with over 1,000 members: A petition must be signed by the number of persons who are entitled to cast at least 10% of the votes in the association or one thousand votes in the association, whichever is less.

Special Meeting: The special meeting shall be called by the board of directors, noticed and held within 30 days after receipt of the petition for removal.

Quorum: A quorum for the removal meeting purpose is met if at least 20% of the votes, or one thousand votes, whichever is less, are present at the meeting in person or by mail-in/absentee ballot.

Percentage Required to Remove Director: A member of the board can be removed from office with or without cause by a majority vote of the members entitled to vote and voting on the matter at a meeting of the members called for the removal purpose. A quorum must be present.

Attorneys' Fees in the Event of a Lawsuit: If a civil action is filed regarding the removal of a board member, the prevailing party in the civil action shall be awarded its reasonable attorneys fees and costs.

Retention of Documents: The board must retain documents related to proposed removal for at least one year after the special meeting and shall permit inspection of these records by members.

Only One Removal Attempt Per Term: A petition for removal of the same member of the board shall not be submitted more than once during each term of office for that member.

ANNUAL AUDIT: A.R.S. Section 33-1243(J)

The board of directors shall provide for an annual financial audit, review or compilation of the association to be completed no later than 180 days (6 months) after the end of the association's fiscal year and shall be made available upon request to the members within 30 days of its completion. If the association's documents require an annual audit be a certified public accountant, then an association must conduct an annual audit by a certified public accountant.

REQUIREMENT FOR ASSOCIATIONS TO RECORD CONTACT INFORMATION: A.R.S. Section 33-1256(J)

The association shall record in the office of the county recorder in the county in which the association is located, a notice stating the name of the association or designated agent or management company for the association, the address for the association and the telephone number of the association or its designated agent or management company. The notice shall include: the name of the condominium community, the date of the recording and the recorded instrument number or book and page for the main document that constitutes the declaration. If an association's address, designated agent or management company changes, the association shall amend its notice or record a new notice within 90 days after the change.

COMMON ELEMENTS-INSURANCE AND DAMAGE: A.R.S. Section 33-1253

The Arizona Condominium Act has detailed requirements regarding insurance. Office condominium associations are required to carry property insurance on common elements in an amount (after application of any deductibles) not less than 80% of the actual cash value of the insured property and liability insurance in an amount determined by the board of directors, but not less than any amount specified in the Declaration, covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the common elements or common areas.