The Top 10

Things You Need To Know About Community Association Law

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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1. THE ARIZONA OPEN MEETING LAW *A.R.S. 33-1804 / CONDO A.R.S. 33-1248*

All meetings of the association and board of directors are open to all members of the association or to any person designated by a member in writing as the member's representative. Association members or their representatives 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.

Associations Must give 48 Hours Notice to the Membership of Board Meetings:
Unless an association's documents provide otherwise, an association must give notice to its members of 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. *Exception*: Emergency board meetings do not require 48 hours notice if emergency circumstances require action by the board before notice can be given.

Executive Session: 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 for 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.

2. RECORD CONTACT INFORMATION A.R.S. 33-1807(J) / CONDO 33-1256(J)

All associations are required to record in the office of the county recorder in the county in which the association is located, a notice stating the following: 1) Name of the association; 2) The name of the community; 3) The name of the designated agent or management company for the association; 4) The address and the telephone number of the association or its designated agent or management company; and 5) 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 is required to record a new notice with updated information within 90 days after the change.

3. MAIL- IN BALLOTS/ABSENTEE BALLOTS *A.R.S. 33-1812 / CONDO A.R.S. 33-1250*

Proxy voting is *only* allowed while the association is under developer control (time during which the developer may elect or appoint the board of directors).
After termination of developer control, proxy voting is prohibited. Votes by members may now be cast in person AND by mail-in ballot or absentee ballot for special meetings and annual meetings of the membership.
There are several requirements for mail-in ballots/absentee ballots:
1) The ballot must set forth each proposed action; 2) The ballot must provide an opportunity to vote for or against each proposed action; 3) The ballot is valid only for one specified election or meeting of the members and expires automatically after the completion of the election or meeting; 4) The ballot must specify the time and date by which the ballot must be delivered to the board of directors in order to be counted, which must be at least seven days after the date the board delivers the un-voted mail-in ballot to the member; and 5) The ballot must specify how many ballots must be returned to achieve a quorum *and* what percentage of approval is required to approve the action, other than for an election of directors. The ballot cannot authorize another person to cast votes on behalf of the member. Votes cast by ballot are valid for purposes of a quorum.

4. FORCLOSURE LIMITATIONS *A.R.S. 33-1807 / CONDO A.R.S. 33-1256*

Associations can only foreclose if assessments are delinquent for a period of one (1) year or if the owner owes $1,200 or more in assessments (whichever occurs first).

5. ANNUAL AUDIT *A.R.S. 33-1810 / CONDO A.R.S. 33-1243*

A board of directors is required to conduct a financial audit, review or compilation of the association annually. The annual audit, review or compilation shall be completed no later than 180 days (6 months) after the end of *each* 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 by a certified public accountant, then the association must hire a certified public accountant to conduct the audit.

6. Removal of Directors & Board Members *A.R.S. 33-1813 / Condo A.R.S. 33-1243*

Removal of Directors from Office: This procedure does not apply to board members appointed by the developer and supersedes any other provisions in the association's documents pertaining to removal of board members:
1) Petition for Removal of Director Requirements: (a) Associations with 1,000 or Fewer Members: A petition must be presented to the board for removal of a director that is signed by the number of persons who are entitled to cast at least 25% of the votes in the association or one hundred votes in the association, whichever is less; (b) Associations with over 1,000 Members: A petition must be presented to the board for removal of a director that is 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; 2) Special Meeting: The special meeting shall be called, noticed and held within 30 days after receipt of the petition for removal; 3) 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 as otherwise permitted by law; 4) 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; 5) 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; 6) 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.

7. Display Of The American Flag *A.R.S. 33-1808 (A) (B) / Condo A.R.S. 33-1261*

An association cannot prohibit the outdoor display of the American Flag or an official flag (or a replica) of the United States Army, Navy, Air Force, Marine Corps, Coast Guard by a unit/lot owner on that unit/lot owner's property if the American flag or military flag is displayed in a manner consistent with the Federal Flag Code. Associations also cannot prohibit the outdoor display of the following: 1) POW/MIA flag; 2) Arizona State flag; and 3) The Arizona Indian Nations flag. In addition, the association shall adopt reasonable rules and regulations regarding the placement and manner of display of the American flag. Finally, these rules may regulate the location and size of flagpoles, but shall not prohibit the installation of a flag-pole.

8. Fines & Penalities *A.R.S. 33-1803 (B) A.S.S. 33-1807 / Condo A.R. S. 33-1242*

After notice and an opportunity to be heard, an association or board of directors may impose reasonable monetary penalties on members for violations of the declaration, bylaws and rules of the association. Associations no longer have the right to record a notice of lien for unpaid fines and penalties. Associations can enforce payment of these fines by: 1) filing a lawsuit against the owner; 2) obtaining a judgment against the owner; AND 3) recording the judgment with the county recorder's office. After the judgment is recorded, the association will have a lien that is effective upon conveyance or paid at the time of the sale of the unit/lot. Alternatively, the association can collect the judgment through garnishment of wages, rent or a bank account.

9. Requirements for Enforcement of Association Documents *A.R.S. 33-1803 / Condo A.R.S. 33-1242*

Step One – Notice of Violation: The association sends the lot/unit owner written notice of the violation.
Step Two – Written Response by Unit/Lot Owner: A unit/lot owner who receives a written notice that the *condition of the property owned by the unit/lot owner is in violation of a requirement of the association's documents* may provide the association with a written response by sending the written response *by certified mail* to the association's address (as listed in the written notice OR on the notice of contact form recorded with the county recorder) within ten (10) business days after the date of the notice.
Step Three – Required Response from Association: If the Association receives a written response from the unit/lot owner as specified in step 2, the association is then required to respond to the unit/lot owner within ten (10) business days (after receipt of the certified mail containing the response from the unit/lot owner) with a written explanation regarding the notice.
The written notice shall provide, at a minimum, the following information (if the Notice of Violation did not already include this information):
1) The provision of the association's documents that has allegedly been violated; 2) The date of the violation or the date the violation was observed; 3) The first and last name of the person(s) who observed the violation; and 4) The process the unit/lot owner must follow to contest the notice.
If the owner complies with the requirements of Step Two, the association *cannot* proceed with any action to enforce the association's documents (including fines, self-help and the collection of attorneys' fees) until the requirements of Step Three are met (*exception*: If Step One contains the requirements of Step Three).

10. Inspection Of Association Books & Records By Members *A.R.S. 33-1805 / Condo A.R.S. 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 of 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 the association or an individual employee of a contractor of the association who works under the direction of the association.

New legislation in 2006 *entitles* owners to see association books and records pertaining to "contemplated" litigation. An association cannot charge a member for making books and records available for review. An association has ten (10) business days from submittal of a request by an owner or an owner's designated agent to make records available or copies of the requested records. The association can only charge 15 cents per page for copies of records.