



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 Nonprofit Corporation Act: A.R.S. Sections 10-3101 through 10-11909

All associations that are incorporated as Nonprofit corporations are subject to the Arizona Nonprofit Corporation Act.

The Arizona Nonprofit Corporation Act contains extensive provisions governing the formation and operation of Nonprofit 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 33-1270

In a condominium, the common area is owned in common by the owners. 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.
5. discussion of a unit owner's appeal of any violation cited or penalty imposed by the association except on request of the affected unit owner that the meeting be held in an open session.

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:

An association must give notice to the members regarding meetings of the board of directors (post developer control) 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.

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 executive session minutes (see above, Arizona Open Meeting Law).

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 Nonprofit 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 1,000 or more members:

A petition must be signed by 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.

- Removal of at least 1, but fewer than a majority of the members of the board at a special meeting, the vacancies shall be filled as provided in the Association's documents.
- Upon removal of a majority of members of the board at a special meeting or if the documents do not provide for a method to fill board vacancies, the association shall hold an election for the replacement of removed directors at a separate meeting of the members that is held not later than thirty (30) days after the removal meeting.
- A member that is removed is not eligible to serve on the board again until after the expiration of the removed member's term of office, unless the Association documents specify a longer period of ineligibility.

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 associa-

tion's documents require an annual audit be a certified public accountant, then an association must conduct an annual audit by a certified public accountant.

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.

Transition and Construction Defects

New office condos, in the process of transition, should consider consulting with an engineer to create a punch list of construction defects (if there are any), determine the nature and extent of the defects and consider the possible remedies. Examples of construction defects may include, but are not limited to: leaky roofs, windows and balconies; stucco cracks; grading and drainage problems; settlement and cracking of foundations; and damaged sidewalks.

For Sale, Rent or Lease Signs A.R.S. Section 33-1261

Notwithstanding any provision in the association's documents, an association shall not prohibit or charge a fee for the use or placement of the indoor or outdoor display of a "for sale" sign and sign rider by a unit owner on that owner's property, including a sign that indicates the unit owner is offering the property "for sale by owner."

An association or managing agent's lien rights as authorized under A.R.S. Sections 33-1256 (for unpaid assessments) will be forfeited and extinguished against that unit/lot for a period of six (6) consecutive months from the date of the violation if an association or managing agent violates an owner's right to have the following:

- Temporary open house signs or a unit/lot owner's for sale sign on that owner's property. The association cannot require the use of particular signs indicating an open house or real property is for sale and may not further regulate the use of temporary open house or for sale signs that are industry standard size and that are owned or used by the seller or the seller's agent.
- Open house hours. The association may not limit the hours for an open house for real estate that is for sale or lease in the condominium, except that the association may prohibit an open house from being held before 8:00 a.m. or after 6:00 p.m. and may prohibit open house signs on the common elements of the condominium.
- An owner's or an owner's agent's for lease sign on that owner's property unless an association's documents prohibit or restrict leasing of a unit or units. An association shall not further regulate a for lease sign or require the use of a particular for lease sign other than the for lease sign shall not be any larger than the industry standard size sign of eighteen by twenty-four inches and on or in the unit owner's property. If leasing of a unit is allowed, the association may prohibit open house leasing being held before 8:00 a.m. or after 6:00 p.m.