

NEW LEGISLATION PERTAINING TO HOMEOWNERS ASSOCIATIONS 2005

The Arizona Legislature passed House Bill 2154, which will become law on August 12, 2005. The new law has five main components, which are set forth below in summarized form.

Removal of Directors

1. This law applies to both condominiums (A.R.S. 33-1243) and planned communities (A.R.S. 33-1813).

- This statutory process must be followed in order to remove directors and directors may no longer be ambushed at an annual meeting.

2. What triggers the process?

- In communities with 1,000 members or fewer, the board receives a petition signed by people entitled to cast 25% of the votes or 100 votes, whichever is less.

- In communities with over 1,000 members, the board receives a petition signed by people entitled to cast 10% of the votes or 1,000 votes, whichever is less.

3. What happens if the board receives a petition?

- The board must hold a meeting of the members within 30 days after receiving the petition.

- Unless the documents provide for a different time period, notice must be sent out at least ten days before the meeting.

4. What is the quorum?

- Twenty percent of the votes or 1,000 votes, whichever is less.

- Can no longer use proxies.

5. What vote is required for removal?

- A majority of those voting even if the documents provide for a different number.

6. How long must the association keep the documents related to the recall effort?

- The law requires that the association keep all documents related to a recall effort for at least one year and allow owners to inspect them pursuant to existing statute.

7. How often must a director face a recall effort?

- The law only allows one recall effort per director per term.

8. Can you use this process to remove directors appointed by the Declarant?

- No.

9. This process applies to the district only in those communities that elect directors with voting districts.

10. In the event of litigation regarding a recall effort, the prevailing party is entitled to attorneys' fees.

Proxies

1. This law applies to condominiums (A.R.S. § 33-1250) and planned communities (A.R.S. § 33-1812).
 - This law does not apply during the period of Declarant control.
 - This law does not apply to timeshare communities.
2. This law does not allow proxies.
 - Rather, the association shall provide for votes to be cast in person and by absentee ballot and may provide for voting by some other form of delivery.
3. The following rules apply to absentee ballots:
 - The absentee ballot shall set forth each proposed action.
 - The absentee ballot shall provide an opportunity to vote for or against each proposed action.
 - The absentee ballot is valid only for one specified election or meeting of the members and expires automatically at the completion of the election or meeting.
 - The absentee ballot specifies the time and date by which the ballot must be delivered to the board of directors.
 - The date must be at least seven days after the board delivers the unvoted absentee ballot to the member.
 - The absentee ballot does not authorize another person to cast votes on behalf of the member.
4. Votes cast by absentee ballot or other form of delivery are valid for the purpose of establishing a quorum.

Disclosure Language to be Provided for Purchasers

1. This law applies to both condominiums and planned communities.
2. The new language to be provided to owners is as follows:

“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.”

Application of Payments

1. This law applies both to condominiums (A.R.S. § 33-1256) and planned communities (A.R.S. § 33-1807).

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2. Unless the member directs otherwise, the association must apply payments in the following order:

- 1) Unpaid assessments.
- 2) Unpaid charges for late payment of those assessments.
- 3) Reasonable collection fees.
- 4) Unpaid attorneys' fees and costs incurred with respect to the assessments.
- 5) Other unpaid fees, charges, monetary penalties or interest and late charges on any of those amounts.

Reasonable Collection Fees

1. This law applies to condominiums (A.R.S. § 33-1256) and planned communities (A.R.S. § 33-1807).

2. The law now makes clear that reasonable collection fees are included in the association's lien rights with respect to delinquent assessments.

3. Reasonable collection fees associated with fines do not result in an automatic lien and must be collected through the same process by which fines are collected.

Thanks to Curtis Ekmark of Ekmark and Ekmark for providing this 2005 Legislative Update.

^a If your condominium was formed prior to the implementation of the Condominium Act, please keep in mind that the provisions of the Condominium Act only apply to your association to the extent that they do not conflict with your governing documents. Therefore, if your governing documents have a provision on point, that provision will still govern. However, if your governing documents do not have a provision on point, the relevant provision of the Condominium Act applies.