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COMMUNITY ASSOCIATION LAW SUMMARY – 2007-08

EFFECTIVE UNTIL JULY 1, 2008

OPEN BOARD OF DIRECTORS MEETINGS

A.R.S. § 33-1248(A) (condominiums) and § 33-1804(A) (planned communities) impose the following requirements at any association or board meeting:

1. Association members “or any person designated by a member in writing as the member’s representative” must be allowed to attend and speak.
2. The member or representative must be legally permitted to speak “at an appropriate time during the deliberations and proceedings.” The board must also permit the member or designated representative to speak “before the board takes formal action on an item under discussion”.
3. The Board may place reasonable time limitations on persons speaking during the meeting, but must allow a “reasonable number of persons to speak on each side of an issue”.

CLOSED BOARD OF DIRECTORS MEETINGS

A.R.S. § 33-1248(A) (condominiums) and § 33-1804(A) (planned communities) provide four categories for closed board of directors meetings:

1. Legal advice from an attorney for the board or the association.
2. Pending or contemplated litigation.
3. Personal, health and financial information, including records of the Association directly related to this information, about an individual member of the association, an individual employee of the association or an individual employee of a contractor of the association.
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.

NOTICE OF VIOLATIONS

A.R.S. § 33-1242 (condominiums) and § 33-1803 (planned communities) require the Association to give the homeowner written notice before enforcing the provisions of the Association’s documents regarding the “condition of the owner’s property.” The Association must include the following information in the initial violation notice before the Association can take enforcement action:

1. The provision of the 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 or persons who observed the violation; and
4. A description of the process the Owner must follow to contest the notice.

The Owner has 10 business days to respond to the violation letter and must respond by certified mail.

BOOKS AND RECORDS ACCESS

A.R.S. § 33-1258 (condominiums) and § 33-1805 (planned communities) create the following categories of records that are exceptions to the statement that “all financial and other records of the association shall be made reasonably available for examination by any member or person designated by the member in writing as the member’s representative”:

1. Four of the categories are the same* as the four categories appropriate for “Closed Meetings” under A.R.S. § 33-1248(A) and A.R.S. § 33-1804(A). (*Except “pending” litigation records only)
2. The fifth category consists of meeting minutes or other records of meetings not required to be open to the membership.

The Association cannot charge an owner to inspect the Association’s books and records pursuant to A.R.S. § 33-1258 (condominiums) and § 33-1805 (planned communities). Upon request, the Association has 10 business days to fulfill the owner’s demand.

PROXIES, ABSENTEE BALLOTS

A.R.S. § 33-1250(C) through (E) (condominiums) and A.R.S. § 33-1812 (planned communities) provide the rules for the use of proxies and absentee ballots for issues that come before the membership.

The use of proxies at condominium and planned community membership meetings is prohibited. The Association must provide for votes to be cast by an absentee ballot and may provide for voting by some other form of delivery. The “other form of delivery” allows a community association to use a “mail ballot”, specifically authorized by A.R.S. § 10-3708, a provision of the Arizona Nonprofit Corporation Act.

The “Absentee Ballot” must:

1. Set forth each proposed action;
2. Provide a space to vote “for” or “against” each proposed action;
3. Specify the date and time for the ballot to be delivered to be counted [must be at least 7 days after the ballot is delivered to the owner]; and
4. Only be valid for one meeting.

The return of absentee ballots is sufficient to satisfy the quorum requirement. An absentee ballot cannot authorize any other person to cast votes on behalf of a member.

The requirements for a “written ballot” by mail pursuant to A.R.S. § 10-3708 are identical to the requirements for the absentee ballot with the exception that a mailed solicitation for a “written ballot” [the cover letter] must indicate the number of ballots that must be returned to meet the quorum requirement.

BOARD REMOVAL

Pursuant to A.R.S. § 33-1243(H) and (I) (condominiums) and A.R.S. § 33-1813 (planned communities), if the Association has 1,000 members or fewer, a special membership meeting must be called and held within 30 days of the presentation to the Board of Directors of petitions calling for the removal of a director, directors or the entire Board of Directors signed by members holding 100 votes, or by members entitled to cast 25% of the votes in the Association, whichever is less. For example, if an Association has 900 units, and each unit has one vote, then a petition signed by owners entitled to cast 100 votes would be sufficient to require the membership meeting. If the Association has 80 members, then the petition would need to be signed by only 20 members [25% of 80 is less than 100].

If the Association has more than 1,000 members, a special membership meeting must be called and held within 30 days of the presentation to the Board of Directors of petitions calling for the removal of a director, directors or the entire Board of Directors signed by members holding at least 1,000 votes, or by members entitled to cast 10% of the votes in the Association, whichever is less. For example, if an Association has 9,000 units, and each unit has one vote, then a petition signed by owners entitled to cast 1,000 votes would be sufficient to require the membership meeting. If the Association has 2,000 members, then the petition would need to be signed by only 200 members [10% of 2,000 is less than 1,000].

The number necessary to remove a director, directors, or the entire board of directors, with or without cause, is a simple majority of those voting, so long as a quorum is present. The quorum for the membership meeting called for the purposes of voting on the recall is 20% of the votes or 1,000 votes present, whichever is less.

If a lawsuit is filed, the winner will be awarded their attorneys' fees from the loser. A community association is obligated to keep the records of the meeting and the petition for at least one year from the date of the special meeting.

A petition to remove a director can only be submitted once during that director's term. If the removal is not successful, that director cannot be the target of a recall again for the remainder of his or her term.

BOARD ACTION WITHOUT A BOARD MEETING

If a community association is a nonprofit corporation, A.R.S. § 10-3821 allows action by the board of directors without a meeting if the action is taken by all of the directors. The action must be evidenced by one or more written consents describing the action taken, signed by each director and included in the minutes filed with the corporate records reflecting the action taken.

PARKING – PLANNED COMMUNITIES

A.R.S. § 33-1809 forbids planned community associations from restricting the parking of a motor vehicle on a street or driveway in the planned community if the vehicle is required to be available at designated periods at the person's residence as a condition of the person's employment and either:

- (A) (1) the resident is employed by a "public service corporation" that is regulated by the Arizona Corporation Commission or a municipal utility, (2) that is required to prepare for emergency deployment of personnel or equipment for repair and maintenance of natural gas, telecommunications, electrical or water infrastructure, (3) the vehicle is owned or operated by the public service corporation or a municipal utility, (4) the vehicle has a gross vehicle weight rating of 20,000 pounds or less, (5) and the vehicle bears an emblem or other visible designation of the public service corporation or municipal utility. **OR**
- (B) (1) The resident is employed by a public safety agency [including police or fire service for a federal, state, local or tribal agency or a private fire service provider or an ambulance service provider that is regulated pursuant to Title 36, Chapter 21.1], (2) the vehicle has a gross vehicle weight rating of 10,000 pounds or less, (3) and the vehicle bears an emblem or other visible designation of the agency.

A.R.S. § 33-1809 does not restrict a planned community association from restricting other work-related vehicles, and utility vehicles other than these vehicles. But a prerequisite to any regulation of any vehicle and where it is parked is authority in the governing documents of the planned community for restricting vehicles on the street or driveway.

LIEN FOR FINES

Pursuant to A.R.S. § 33-1256 (condominiums) and A.R.S. § 33-1807 (planned communities) there are two categories of assessments. Assessments, late charges on assessments, and reasonable attorneys' fees and costs related to the assessments, are in one category. The association can foreclose the most recent three year's worth of assessments and the lien for the assessments is automatic. For all other charges, including monetary penalties, interest, and other charges, a condominium or planned community association will not have an automatic lien under the Condominium Act or the planned community statutes for those charges. A condominium or planned community association must first file suit against the owner for those charges, obtain a judicial judgment, and record that judgment with the appropriate county recorder. After recording the judgment, the condominium or planned community association will have a lien that will become "effective upon conveyance". Presumably, those judgments will be paid from the proceeds of a close of escrow upon resale.

The statutes do not clearly and explicitly state that the 2004 statutory provisions regarding the lien are intended to supersede CC&R provisions that might provide that the continuing lien secures monetary penalties or other charges. Before taking this position, a legal opinion from a lawyer should be obtained to protect the Board and management company from the inherent risks associated with this position.

FORECLOSURES

A.R.S. § 33-1256 (condominiums) and A.R.S. § 33-1807 (planned communities) limit when an association can foreclose upon property with unpaid assessments. The association can only foreclose at the earlier of:

- (1) The assessments secured by the lien being delinquent for at least 12 months or
- (2) The delinquent assessment(s) totals at least \$1,200

ASSESSMENT INCREASES

There is no limit in the Condominium Act on the permissible increase in assessments. If there are limits in the condominium's governing documents, those limits control. If there are limits in a planned community's governing documents, those limits control unless the limit is greater than 20%. If there are no limits in a planned community's governing documents, or if the limit is greater than 20%, the planned community association cannot impose a regular assessment that is 20% greater than the immediately preceding fiscal year's assessment without the approval of a majority of the members. A.R.S. § 33-1803(A).

FOR SALE SIGNS

New in 2007, A.R.S. § 33-1261 (condominiums) and A.R.S. § 33-1808 (planned communities) prohibit associations from prohibiting a "for sale" sign and one sign rider on the owner's property. The size can be limited to the "industry standard" – 18" x 24" for the sign, 6" x 24" for the rider.

"CHILDREN PLAYING" SIGNS AND PLAYING IN THE STREETS

New in 2007, A.R.S. § 33-1808 (planned communities) provides that a planned community cannot prohibit "children playing" signs in residential areas when children are present within 50 feet of the sign. In addition, the new statute states that a planned community association cannot "prohibit children from engaging in recreational activity on residential roadways that are under the jurisdiction of the association and on which the posted speed limit is 25 mph or less."

ADDITIONAL COPIES OF THIS SUMMARY, SEMINAR OPPORTUNITIES, PREVIOUS SUMMARIES & ADDITIONAL RESOURCES AVAILABLE AT www.carpenterhazlewood.com