

2016 ARIZONA LEGISLATIVE UPDATE

The 2016 Arizona Legislative Session (52nd Legislature, Second Regular Session) adjourned on May 7, 2016, and resulted in seven new laws affecting homeowners associations. The general effective date for these new laws is August 6, 2016.

HB 2106: Enforcement Procedure [Amends A.R.S. §33-1242(B) & §33-1803(C)]

- In Condominium and Planned Community Associations, a member who receives a written notice that the condition of his/her property is in violation of the community documents, has 21 calendar days (instead of 10 business days in the current law) to respond to the notice before the Association can proceed with enforcement action.

HB 2172: Architectural Review Standard [Adds A.R.S. §33-1817(3)]

- Approval of an owner's construction project's architectural designs, plans and amendments shall not be unreasonably withheld by a Planned Community Association.

HB 2341: Potlucks [Revises A.R.S. §36-136(I)((4)(a)]

- Revises Arizona Public Health & Safety Code to provide an exemption from the rules pertaining to proper preparation, serving and storage of food or drink that is served at a noncommercial social event, like a potluck.

HB 2382: Declaration Amendments [Adds A.R.S. §33-1817(A)]

- Does not apply during period of Declarant control without the written consent of Declarant, and applies only to Planned Communities.
- Declaration (aka CC&Rs) is amended in accordance with the approval requirements specified in the Declaration.
- Within 30 days after the adoption of a Declaration amendment, the Association shall prepare, execute and record a written instrument setting forth the amendment.
- An amendment to the Declaration is effective immediately on recordation of the instrument in the County in which the property is located, even if the Declaration states that amendments are effective only on a periodic renewal date.

HB 2592: Electronic Voting [Adds A.R.S. §10-3708(F) & (G)]

- If a non-profit corporation is conducting a member vote by written ballot without a meeting, the corporation can provide notice that the vote shall be conducted by electronic means, including an online voting system.

- A written ballot can be delivered through an online voting system that meets the statutory requirements, which are: (A) authentication of member's identity; (B)

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authentication of the validity of each electronic vote to insure the vote is not altered in transit; (C) transmittal of a receipt to every member who casts an electronic vote; (D) storage of electronic votes for recount, inspection and review purposes.

- The notice of electronic voting must include a reasonable procedure by which a member may obtain and cast a ballot through some other form of delivery, including U.S. mail and fax.

SB 1496: Removal of Directors [Amends A.R.S. §33-1243(H) & §33-1813(A)]

- In Condominiums and Planned Communities, if at least one but fewer than a majority of the members of the board of directors are removed by the members, the vacancies shall be filled as provided in the community documents.

- If a majority of the members of the board of directors is removed by the members, or if the community documents do not provide a method for filling board vacancies, the Association shall hold an election for the replacement of the removed directors.

- The replacement election shall be held at a separate members' meeting that is held not later than 30 days after the removal meeting.

- A board member who is removed from the board is not eligible to serve on the board again until after the expiration of his/her term of office unless the community documents specifically provide for a longer period of ineligibility.

SB 1498: Voting, late fees and administrative complaint rights [Amends A.R.S. §33-1242, 33-1250, 33-1803 and 33-1812]

- In Planned Communities and Condominiums, late charges on delinquent assessments can be imposed only after the Association has provided notice that the assessment is overdue or has provided notice that the assessment is considered overdue after a certain date.

- In Planned Communities and Condominiums, with a notice of violation, the Association must give the unit or lot owner written notice of his/her option to petition for an

administrative hearing on the matter to the Dept. of Fire, Building and Life Safety.

- In Planned Communities and Condominiums, if there will be voting at a members' meeting and absentee ballots or ballots provided by some other form of delivery are used, the completed ballot and envelope and any related materials shall contain the name, address and either the actual or electronic signature of the person voting.
- If the community documents permit secret ballots, only the envelope or any non-ballotrelated materials shall contain the name, address and either the actual or electronic signature of the voter.
- Ballots, envelopes and related materials, including sign-in sheets if used, shall be retained in electronic or paper format and made available for member inspection for at least one year after completion of the election.

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