

Summary of HB 2154
Amends Condominium & Planned Communities Acts
(Effective Date: August 12, 2005)

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1. **Procedure for Members' Removal of Directors from the Board** (overrides procedure in Declaration or Bylaws): A.R.S. §33-1243 & A.R.S. §33-1813.
 - A. Members deliver petition to the Board.
 - (1) If Association has 1,000 members or less, petition must be signed by members entitled to cast at least 25% of the votes in the Association, or 100 votes, whichever is less.
 - (2) If Association has more than 1,000 members, petition must be signed by members entitled to cast at least 10% of the votes in the Association, or 1,000 votes, whichever is less.
 - B. Board must hold a meeting of members within 30 days after receiving a valid petition.
 - (1) Written notice of the meeting must be given to all members at least 10 days before the meeting, unless the governing documents provide for a different time period.
 - (2) The required quorum for the meeting is 20% of the votes in the Association or 1,000 votes, whichever is less.
 - C. A majority of those voting at the meeting, provided a quorum is present (see new voting requirements in next Section), may remove a director from the Board.
 - D. Additional provisions:
 - (1) The Board must retain all documents related to the removal process for at least 1 year after the date of the special meeting, and must permit any member or his/her designated representative to inspect the documents in accordance with existing law [A.R.S. §33-1248 & A.R.S. §33-1805].
 - (2) Members cannot petition to remove the same director more than once during his or her term of office.

- (3) If directors are elected from different voting districts, a director may be removed only by a majority vote of the members voting from the district that elected the director initially (unless the director was appointed by the Declarant). And, only members from the particular voting district are eligible to vote or be counted to determine a quorum.
- (4) If a civil lawsuit is filed regarding the removal of a director, the prevailing party shall be awarded its reasonable attorney fees.
- (5) Directors appointed by the Declarant may not be removed.

2. **Deletion of Proxy Voting** (overrides provisions for voting by proxy in governing documents but does not apply during period of Declarant control¹ or to timeshare plans, and may not apply to condominiums formed prior to 1986): A.R.S. §33-1250 & A.R.S. §33-1812.

- A. Members may no longer delegate a proxy to vote for them in Association matters.
- B. The Association must provide for votes to be cast in person and by absentee ballot or may provide for voting by some other form of delivery (such as a mail-in ballot, which is authorized by the Arizona Non-Profit Corporation Act [A.R.S. §10-3708²]).
- C. Absentee Ballots must:
 - (1) Set forth each proposed action.
 - (2) Provide a space to vote “for” or “against” each proposed action.
 - (3) Specify the time and date by which the ballot must be delivered to the Board of Directors in order to be counted (this must be at least 7 days after delivery by the Board of the ballots to the members).
- D. Additional provisions pertaining to an Absentee Ballot:

¹Proxy voting during the period of Declarant control: The proxy must be dated and terminates one year after its date, unless it specifies a shorter term. A proxy may be revoked only by actual notice of revocation to the person presiding over an Association meeting or by the presentation of a later-dated proxy by the same unit or lot owner. “Declarant control” is the time during which the Declarant has the voting power to elect or appoint the Board of Directors.

²The statutory requirements for a “mail-in ballot” are identical to the requirements for an absentee ballot, except that a “mail-in ballot” or the cover letter sent with it, must indicate the number of ballots that must be returned to meet the quorum requirement, which is the same as it would be if the vote were taken at an Association meeting.

- (1) It may not authorize another person to cast the vote for the member.
 - (2) It is valid for only one specified election or meeting, and expires automatically after the election or meeting.
- E. Votes cast by Absentee Ballot or another form of delivery are valid for the purposes of establishing a quorum.
3. Application of Payments on Delinquent Accounts: A.R.S. §33-1256 & A.R.S. §33-1807. Unless a member directs otherwise, the Association must apply payments in the following order:
 - A. Unpaid assessments.
 - B. Unpaid charges for late payment of those assessments.
 - C. Reasonable collection fees.
 - D. Unpaid attorney fees and costs incurred with respect to collection of the unpaid assessments.
 - E. Other unpaid fees, charges and monetary penalties or interest and late charges on any of those amounts.
4. Reasonable Collection Fees: A.R.S. §33-1256 & A.R.S. §33-1807. “Reasonable Collection Fees” are now included in the Association’s lien unless they are associated with fines, in which case they must be collected through the same process as fines.
5. New Disclosure Language: A.R.S. §33-1260 & A.R.S. §33-1806. The disclosure that is required on the sale of a unit or lot must include the following paragraph:

“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 a matter of Arizona law, if I fail to pay my association assessments, the association may foreclose on my property.”