

Senate Engrossed

State of Arizona  
Senate  
Forty-sixth Legislature  
First Regular Session  
2003

CHAPTER 209

# SENATE BILL 1318

AN ACT

AMENDING SECTIONS 10-3304, 33-1248 AND 33-1804, ARIZONA REVISED STATUTES;  
RELATING TO CONDOMINIUMS AND PLANNED COMMUNITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 10-3304, Arizona Revised Statutes, is amended to  
3 read:

4 10-3304. Validity of actions

5 A. Except as provided in subsection B of this section, the validity  
6 of corporate action shall not be challenged on the ground that the  
7 corporation lacks or lacked power to act.

8 B. A corporation's power to act may be challenged either:

9 1. In a proceeding by members having at least ten per cent or more of  
10 the voting power or by at least fifty members, unless a lesser percentage or  
11 number is provided in the articles of incorporation, against the corporation  
12 to enjoin the act.

13 2. In a proceeding by the corporation, directly, derivatively or  
14 through any receiver, trustee or other legal representative, against an  
15 incumbent or former director, officer, employee or agent of the corporation.

16 C. In a member's proceeding under subsection B, paragraph 1 OF THIS  
17 SECTION to enjoin an unauthorized corporate act, the court may enjoin or set  
18 aside the act, if equitable and if all affected persons are parties to the  
19 proceeding, and may award damages for loss, other than anticipated profits,  
20 suffered by the corporation or another party because of enjoining the  
21 unauthorized act.

22 D. THIS SECTION DOES NOT APPLY TO:

23 1. A PROCEEDING IN WHICH A MEMBER OF A CONDOMINIUM AS DEFINED IN  
24 SECTION 33-1202 CHALLENGES THE ACTIONS OF THE BOARD OF DIRECTORS OF THE  
25 CONDOMINIUM.

26 2. A PROCEEDING IN WHICH A MEMBER OF A PLANNED COMMUNITY AS DEFINED  
27 IN SECTION 33-1802 CHALLENGES THE ACTIONS OF THE BOARD OF DIRECTORS OF THE  
28 PLANNED COMMUNITY.

29 Sec. 2. Section 33-1248, Arizona Revised Statutes, is amended to read:

30 33-1248. Open meetings; exceptions

31 A. Notwithstanding any provision in the declaration, bylaws or other  
32 documents to the contrary, all meetings of the association and board of  
33 directors are open to all members of the association and all members so  
34 desiring shall be permitted to attend and listen to the deliberations and  
35 proceedings provided, ~~however~~, EXCEPT that, for regular and special meetings  
36 of the board, association members who are not board members may not  
37 participate in any deliberation or discussion unless expressly so authorized  
38 by a vote of the majority of a quorum of the board. ~~except that~~ Any portion  
39 of a meeting may be closed only if ~~the~~ THAT portion of the meeting is limited  
40 to consideration of one or more of the following:

41 1. Employment or personnel matters for employees of the board or the  
42 association.

43 2. Legal advice from an attorney for the board or the association.

44 3. Pending or contemplated litigation.

1 4. Pending or contemplated matters relating to enforcement of the  
2 association's documents or rules.

3 B. NOTWITHSTANDING ANY PROVISION IN THE CONDOMINIUM DOCUMENTS AND  
4 EXCEPT FOR ASSOCIATIONS FOR A TIMESHARE PLAN AS DEFINED IN SECTION 32-2197,  
5 ALL MEETINGS OF THE ASSOCIATION AND THE BOARD SHALL BE HELD IN THIS STATE.  
6 A meeting of the association shall be held at least once each year. Special  
7 meetings of the association may be called by the president, by a majority of  
8 the board of directors or by unit owners having AT LEAST twenty-five per  
9 cent, or any lower percentage specified in the bylaws, of the votes in the  
10 association. Unless otherwise provided in the articles or the bylaws of the  
11 association, not fewer than ten nor more than fifty days in advance of any  
12 meeting of the unit owners, the secretary shall cause notice to be  
13 hand-delivered or sent prepaid by United States mail to the mailing address  
14 of each unit or to any other mailing address designated in writing by the  
15 unit owner. The notice of any meeting of the unit owners shall state the  
16 time and place of the meeting. The notice of any special meeting of the unit  
17 owners shall also state the purpose for which the meeting is called,  
18 including the general nature of any proposed amendment to the declaration or  
19 bylaws, any changes in assessments that require approval of the unit owners  
20 and any proposal to remove a director or officer. The failure of any unit  
21 owner to receive actual notice of a meeting of the unit owners does not  
22 affect the validity of any action taken at that meeting.

23 C. Unless otherwise provided in the articles or bylaws of the  
24 association, for meetings of the board of directors that are held after the  
25 termination of declarant control of the association, notice to unit owners  
26 of meetings of the board of directors shall be given at least forty-eight  
27 hours in advance of the meeting by newsletter, conspicuous posting or any  
28 other reasonable means as determined by the board of directors. An affidavit  
29 of notice by an officer of the association is prima facie evidence that  
30 notice was given as prescribed by this section. Notice to unit owners of  
31 meetings of the board of directors is not required if emergency circumstances  
32 require action by the board before notice can be given. Any notice of a  
33 board meeting shall state the time and place of the meeting. The failure of  
34 any unit owner to receive actual notice of a meeting of the board of  
35 directors does not affect the validity of any action taken at that meeting.

36 Sec. 3. Section 33-1804, Arizona Revised Statutes, is amended to read:

37 33-1804. Open meetings; exceptions

38 A. Notwithstanding any provision in the declaration, bylaws or other  
39 documents to the contrary, all meetings of the association and board of  
40 directors are open to all members of the association and all members so  
41 desiring shall be permitted to attend and listen to the deliberations and  
42 proceedings provided, ~~however,~~ EXCEPT that, for regular and special meetings  
43 of the board, association members who are not board members may not  
44 participate in any deliberation or discussion unless expressly so authorized  
45 by a vote of the majority of a quorum of the board. ~~, except that~~ Any portion

1 of a meeting may be closed only if the THAT closed portion of the meeting is  
2 limited to consideration of one or more of the following:

3 1. Employment or personnel matters for employees of the board or the  
4 association.

5 2. Legal advice from an attorney for the board or the association.

6 3. Pending or contemplated litigation.

7 4. Pending or contemplated matters relating to enforcement of the  
8 association's documents or rules.

9 B. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS, ALL  
10 MEETINGS OF THE ASSOCIATION AND THE BOARD SHALL BE HELD IN THIS STATE. A  
11 meeting of the association shall be held at least once each year. Special  
12 meetings of the association may be called by the president, by a majority of  
13 the board of directors or by members having at least twenty-five per cent,  
14 or any lower percentage specified in the bylaws, of the votes in the  
15 association. Unless otherwise provided in the articles or bylaws of the  
16 association, not fewer than ten nor more than fifty days in advance of any  
17 meeting of the members the secretary shall cause notice to be hand-delivered  
18 or sent prepaid by United States mail to the mailing address for each lot,  
19 parcel or unit owner or to any other mailing address designated in writing  
20 by a member. The notice shall state the time and place of the meeting. A  
21 notice of any special meeting of the members shall also state the purpose for  
22 which the meeting is called, including the general nature of any proposed  
23 amendment to the declaration or bylaws, changes in assessments that require  
24 approval of the members and any proposal to remove a director or an officer.  
25 The failure of any member to receive actual notice of a meeting of the  
26 members does not affect the validity of any action taken at that meeting.

27 C. Unless otherwise provided in the articles or bylaws of the  
28 association, for meetings of the board of directors that are held after the  
29 termination of declarant control of the association, notice to members of  
30 meetings of the board of directors shall be given at least forty-eight hours  
31 in advance of the meeting by newsletter, conspicuous posting or any other  
32 reasonable means as determined by the board of directors. An affidavit of  
33 notice by an officer of the corporation is prima facie evidence that notice  
34 was given as prescribed by this section. Notice to members of meetings of  
35 the board of directors is not required if emergency circumstances require  
36 action by the board before notice can be given. Any notice of a board  
37 meeting shall state the time and place of the meeting. The failure of any  
38 member to receive actual notice of a meeting of the board of directors does  
39 not affect the validity of any action taken at that meeting.

APPROVED BY THE GOVERNOR MAY 12, 2003.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 13, 2003.

Passed the House May 5, 20 03,

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

Jake Flake  
Speaker of the House  
Norman L. Fyore  
Chief Clerk of the House

Passed the Senate March 12, 20 03,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

Klu Bennett  
President of the Senate  
Charmine Billington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

6 day of May, 20 03,

at 12:00 o'clock P M.

Sandra Chaniz  
Secretary to the Governor

Approved this 12 day of

May, 20 03,

at 9:00 o'clock A M.

J. T. Ayllon  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 13 day of May, 20 03,

at 4:03 o'clock P M.

Janice L. Brewer  
Secretary of State

S.B. 1318