State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 114

HOUSE BILL 2177

AN ACT

AMENDING SECTIONS 10-11602 AND 33-1248, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 9, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-1258; AMENDING SECTION 33-1804, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 16, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-1805; RELATING TO HOMEOWNERS' ASSOCIATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

SENATE

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 10-11602, Arizona Revised Statutes, is amended to
3 read:
4 10-11602. Inspection of records by members
5 A. Subject to subsections E and F of this section, any member who has
6 been a member of record at least six months immediately preceding its demand
7 is entitled to inspect and copy any of the records of the corporation
8 described in section 10-11601, subsection E during regular business hours at
9 the corporation's principal office, if the member gives the corporation
10 written notice of its demand as provided in section 10-3141 at least five
11 business days before the date on which the member wishes to inspect and copy.
12 B. Subject to subsections E and F of this section, a member who has
13 been a member of record at least six months immediately preceding its demand
14 is entitled to inspect and copy any of the following records of the
15 corporation during regular business hours at a reasonable location specified
16 by the corporation, if the member meets the requirements of subsection C of
17 this section and gives the corporation written notice of its demand as
18 provided in section 10-3141 at least five business days before the date on
19 which the member wishes to inspect and copy the following:
20 1. Excerpts from any records required to be maintained under section
21 10-11601, subsection A, to the extent not subject to inspection under
22 subsection A of this section.
23 2. Accounting records of the corporation.
24 3. Subject to section 10-11605, the membership list described in
25 section 10-11601, subsection C.
26 4. The corporation's most recent financial statements showing in
27 reasonable detail its assets and liabilities and the results of its
28 operations.
29 C. A member may inspect and copy the records identified in subsection
30 B of this section only if the following conditions are met:
31 1. The member's demand is made in good faith and for a proper purpose.
32 2. The member describes with reasonable particularity the member's
33 purpose and the records the member desires to inspect.
34 3. The records are directly connected with the member's purpose.
35 D. This section does not affect either:
36 1. The right of a member to inspect records under section 10-3720 or,
37 if the member is in litigation with the corporation, to the same extent as
38 any other litigant.
39 2. The power of a court, independently of chapters 24 through 40 of
40 this title, to compel the production of corporate records for examination on
41 proof by a member of proper purpose.
42 E. The articles of incorporation or bylaws of a corporation organized
43 primarily for religious purposes may limit or abolish the right of a member
44 under this section to inspect and copy any corporate record.

F. Unless the board of directors has provided express permission to the member, a member of a corporation that is a ~~condominium association or~~ rural electric cooperative ~~or a planned community association~~ is not entitled to inspect or copy any records, documents or other materials that are maintained by or in the possession of the corporation and that relate to any of the following:

1. Personnel matters or a person's medical records.

2. Communications between an attorney for the corporation and the corporation.

3. Pending or contemplated litigation.

4. Pending or contemplated matters relating to enforcement of the corporation's documents or rules.

~~5. Meeting minutes or other records of a session of a board meeting or a members' meeting that is not required to be open to all members pursuant to section 33-1248 or 33-1804.~~

G. SECTIONS 33-1258 AND 33-1805, RELATING TO ASSOCIATION FINANCIAL AND OTHER RECORDS, APPLY TO ANY CORPORATION THAT IS A CONDOMINIUM AS DEFINED IN SECTION 33-1202 OR A PLANNED COMMUNITY AS DEFINED IN SECTION 33-1802.

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

33-1248. Open meetings; exceptions

A. Notwithstanding any provision in the declaration, bylaws or other documents to the contrary, all meetings of the association and board of directors, EXCEPT FOR AN ASSOCIATION OR BOARD OF DIRECTORS FOR A TIMESHARE PLAN AS DEFINED IN SECTION 32-2197, are open to all members of the association OR ANY PERSON DESIGNATED BY A MEMBER IN WRITING AS THE MEMBER'S REPRESENTATIVE and all members OR DESIGNATED REPRESENTATIVES so desiring shall be permitted to attend and ~~listen to~~ SPEAK AT AN APPROPRIATE TIME DURING the deliberations and proceedings. ~~except that, for regular and special meetings of the board, association members who are not board members may not participate in any deliberation or discussion unless expressly so authorized by a vote of the majority of a quorum of the board.~~ THE BOARD MAY PLACE REASONABLE TIME RESTRICTIONS ON THOSE PERSONS SPEAKING DURING THE MEETING BUT SHALL PERMIT A MEMBER OR A MEMBER'S DESIGNATED REPRESENTATIVE TO SPEAK BEFORE THE BOARD TAKES FORMAL ACTION ON AN ITEM UNDER DISCUSSION IN ADDITION TO ANY OTHER OPPORTUNITIES TO SPEAK. THE BOARD SHALL PROVIDE FOR A REASONABLE NUMBER OF PERSONS TO SPEAK ON EACH SIDE OF AN ISSUE. Any portion of a meeting may be closed only if that portion of the meeting is limited to consideration of one or more of the following:

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

~~2.~~ 1. Legal advice from an attorney for the board or the association. ON FINAL RESOLUTION OF ANY MATTER FOR WHICH THE BOARD RECEIVED LEGAL ADVICE OR THAT CONCERNED PENDING OR CONTEMPLATED LITIGATION, THE BOARD MAY DISCLOSE INFORMATION ABOUT THAT MATTER IN AN OPEN MEETING EXCEPT FOR MATTERS THAT ARE

REQUIRED TO REMAIN CONFIDENTIAL BY THE TERMS OF A SETTLEMENT AGREEMENT OR JUDGMENT.

~~3.~~ 2. Pending or contemplated litigation.

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

3. PERSONAL, HEALTH AND FINANCIAL INFORMATION ABOUT AN INDIVIDUAL MEMBER OF THE ASSOCIATION, AN INDIVIDUAL EMPLOYEE OF THE ASSOCIATION OR AN INDIVIDUAL EMPLOYEE OF A CONTRACTOR FOR 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.

B. Notwithstanding any provision in the condominium documents and except for associations for a timeshare plan as defined in section 32-2197, all meetings of the association and the board shall be held in this state. A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, by a majority of the board of directors or by unit owners having at least twenty-five per cent, or any lower percentage specified in the bylaws, of the votes in the association. Unless otherwise provided in the articles or the bylaws of the association, not fewer than ten nor more than fifty days in advance of any meeting of the unit owners, the secretary shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting of the unit owners shall state the time and place of the meeting. The notice of any special meeting of the unit owners shall also state the purpose for which the meeting is called, including the general nature of any proposed amendment to the declaration or bylaws, any changes in assessments that require approval of the unit owners and any proposal to remove a director or officer. The failure of any unit owner to receive actual notice of a meeting of the unit owners does not affect the validity of any action taken at that meeting.

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

Sec. 3. Title 33, chapter 9, article 3, Arizona Revised Statutes, is amended by adding section 33-1258, to read:

33-1258. Association financial and other records

A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, ALL FINANCIAL AND OTHER RECORDS OF THE ASSOCIATION SHALL BE MADE REASONABLY AVAILABLE FOR EXAMINATION BY ANY MEMBER OR ANY PERSON DESIGNATED BY THE MEMBER IN WRITING AS THE MEMBER'S REPRESENTATIVE.

B. BOOKS AND RECORDS KEPT BY OR ON BEHALF OF THE ASSOCIATION AND THE BOARD MAY BE WITHHELD FROM DISCLOSURE TO THE EXTENT THAT THE PORTION WITHHELD RELATES TO ANY OF THE FOLLOWING:

1. PRIVILEGED COMMUNICATION BETWEEN AN ATTORNEY FOR THE ASSOCIATION AND THE ASSOCIATION.

2. PENDING OR CONTEMPLATED LITIGATION.

3. MEETING MINUTES OR OTHER RECORDS OF A SESSION OF A BOARD MEETING THAT IS NOT REQUIRED TO BE OPEN TO ALL MEMBERS PURSUANT TO SECTION 33-1248.

4. PERSONAL, HEALTH AND FINANCIAL RECORDS OF AN INDIVIDUAL MEMBER OF THE ASSOCIATION, AN INDIVIDUAL EMPLOYEE OF THE ASSOCIATION OR AN INDIVIDUAL EMPLOYEE OF A CONTRACTOR FOR THE ASSOCIATION.

5. RECORDS 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.

C. THE ASSOCIATION SHALL NOT BE REQUIRED TO DISCLOSE FINANCIAL AND OTHER RECORDS OF THE ASSOCIATION IF DISCLOSURE WOULD VIOLATE ANY STATE OR FEDERAL LAW.

D. THIS SECTION DOES NOT APPLY TO AN ASSOCIATION FOR A TIMESHARE PLAN AS DEFINED IN SECTION 32-2197.

Sec. 4. Section 33-1804, Arizona Revised Statutes, is amended to read:

33-1804. Open meetings; exceptions

A. Notwithstanding any provision in the declaration, bylaws or other documents to the contrary, all meetings of the association and board of directors are open to all members of the association OR ANY PERSON DESIGNATED BY A MEMBER IN WRITING AS THE MEMBER'S REPRESENTATIVE and all members OR DESIGNATED REPRESENTATIVES so desiring shall be permitted to attend and ~~listen to~~ SPEAK AT AN APPROPRIATE TIME DURING the deliberations and proceedings ~~except that, for regular and special meetings of the board, association members who are not board members may not participate in any deliberation or discussion unless expressly so authorized by a vote of the majority of a quorum of the board~~. THE BOARD MAY PLACE REASONABLE TIME RESTRICTIONS ON THOSE PERSONS SPEAKING DURING THE MEETING BUT SHALL PERMIT A MEMBER OR MEMBER'S DESIGNATED REPRESENTATIVE TO SPEAK BEFORE THE BOARD TAKES FORMAL ACTION ON AN ITEM UNDER DISCUSSION IN ADDITION TO ANY OTHER OPPORTUNITIES TO SPEAK. THE BOARD SHALL PROVIDE FOR A REASONABLE NUMBER OF PERSONS TO SPEAK ON EACH SIDE OF AN ISSUE. Any portion of a meeting may be

closed only if that closed portion of the meeting is limited to consideration of one or more of the following:

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

~~2.~~ 1. Legal advice from an attorney for the board or the association. ON FINAL RESOLUTION OF ANY MATTER FOR WHICH THE BOARD RECEIVED LEGAL ADVICE OR THAT CONCERNED PENDING OR CONTEMPLATED LITIGATION, THE BOARD MAY DISCLOSE INFORMATION ABOUT THAT MATTER IN AN OPEN MEETING EXCEPT FOR MATTERS THAT ARE REQUIRED TO REMAIN CONFIDENTIAL BY THE TERMS OF A SETTLEMENT AGREEMENT OR JUDGMENT.

~~3.~~ 2. Pending or contemplated litigation.

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

3. PERSONAL, HEALTH AND FINANCIAL INFORMATION ABOUT AN INDIVIDUAL MEMBER OF THE ASSOCIATION, AN INDIVIDUAL EMPLOYEE OF THE ASSOCIATION OR AN INDIVIDUAL EMPLOYEE OF A CONTRACTOR FOR 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.

B. Notwithstanding any provision in the community documents, all meetings of the association and the board shall be held in this state. A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, by a majority of the board of directors or by members having at least twenty-five per cent, or any lower percentage specified in the bylaws, of the votes in the association. Unless otherwise provided in the articles or bylaws of the association, not fewer than ten nor more than fifty days in advance of any meeting of the members the secretary shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address for each lot, parcel or unit owner or to any other mailing address designated in writing by a member. The notice shall state the time and place of the meeting. A notice of any special meeting of the members shall also state the purpose for which the meeting is called, including the general nature of any proposed amendment to the declaration or bylaws, changes in assessments that require approval of the members and any proposal to remove a director or an officer. The failure of any member to receive actual notice of a meeting of the members does not affect the validity of any action taken at that meeting.

C. Unless otherwise provided in the articles or bylaws of the association, for meetings of the board of directors that are held after the termination of declarant control of the association, notice to members of meetings of the board of directors shall be given at least forty-eight hours in advance of the meeting by newsletter, conspicuous posting or any other reasonable means as determined by the board of directors. An affidavit of notice by an officer of the corporation is prima facie evidence that notice

1 was given as prescribed by this section. Notice to members of meetings of
2 the board of directors is not required if emergency circumstances require
3 action by the board before notice can be given. Any notice of a board
4 meeting shall state the time and place of the meeting. The failure of any
5 member to receive actual notice of a meeting of the board of directors does
6 not affect the validity of any action taken at that meeting.
7 Sec. 5. Title 33, chapter 16, article 1, Arizona Revised Statutes, is
8 amended by adding section 33-1805, to read:
9 33-1805. Association financial and other records
10 A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, ALL FINANCIAL
11 AND OTHER RECORDS OF THE ASSOCIATION SHALL BE MADE REASONABLY AVAILABLE FOR
12 EXAMINATION BY ANY MEMBER OR ANY PERSON DESIGNATED BY THE MEMBER IN WRITING
13 AS THE MEMBER'S REPRESENTATIVE.
14 B. BOOKS AND RECORDS KEPT BY OR ON BEHALF OF THE ASSOCIATION AND THE
15 BOARD MAY BE WITHHELD FROM DISCLOSURE TO THE EXTENT THAT THE PORTION WITHHELD
16 RELATES TO ANY OF THE FOLLOWING:
17 1. PRIVILEGED COMMUNICATION BETWEEN AN ATTORNEY FOR THE ASSOCIATION
18 AND THE ASSOCIATION.
19 2. PENDING OR CONTEMPLATED LITIGATION.
20 3. MEETING MINUTES OR OTHER RECORDS OF A SESSION OF A BOARD MEETING
21 THAT IS NOT REQUIRED TO BE OPEN TO ALL MEMBERS PURSUANT TO SECTION 33-1804.
22 4. PERSONAL, HEALTH AND FINANCIAL RECORDS OF AN INDIVIDUAL MEMBER OF
23 THE ASSOCIATION, AN INDIVIDUAL EMPLOYEE OF THE ASSOCIATION OR AN INDIVIDUAL
24 EMPLOYEE OF A CONTRACTOR FOR THE ASSOCIATION.
25 5. RECORDS RELATING TO THE JOB PERFORMANCE OF, COMPENSATION OF, HEALTH
26 RECORDS OF OR SPECIFIC COMPLAINTS AGAINST AN INDIVIDUAL EMPLOYEE OF THE
27 ASSOCIATION OR AN INDIVIDUAL EMPLOYEE OF A CONTRACTOR OF THE ASSOCIATION WHO
28 WORKS UNDER THE DIRECTION OF THE ASSOCIATION.
29 C. THE ASSOCIATION SHALL NOT BE REQUIRED TO DISCLOSE FINANCIAL AND
30 OTHER RECORDS OF THE ASSOCIATION IF DISCLOSURE WOULD VIOLATE ANY STATE OR
31 FEDERAL LAW.

APPROVED BY THE GOVERNOR APRIL 19, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 19, 2004.

Passed the House February 16, 2004,

by the following vote: 56 Ayes,

1 Nays, 3 Not Voting

Jake Flake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate April 1, 2004,

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

Ken Bennett
President of the Senate

Charlene B. Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

_____
Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

_____
Secretary of State

H.B. 2177

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 13, 2004,

by the following vote: 50 Ayes,

8 Nays, 2 Not Voting

Jake Flake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

13th day of April, 2004

at 12:59 o'clock P. M.

Jennifer Ybarra
Secretary to the Governor

Approved this 19 day of

April, 2004,

at 11 o'clock A. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 19 day of April, 2004,

at 4:30 o'clock P. M.

Janice K. Brewer
Secretary of State

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