Senate Engrossed

FILED
MICHELE REAGAN
SECRETARY OF STATE

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 343

SENATE BILL 1496

AN ACT

AMENDING SECTIONS 33-1243 AND 33-1813, ARIZONA REVISED STATUTES; RELATING TO CONDOMINIUMS AND PLANNED COMMUNITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 33-1243, Arizona Revised Statutes, is amended to read:

33-1243. Board of directors and officers; conflict; powers; limitations; removal; annual audit; applicability

A. Except as provided in the declaration, the bylaws, subsection B of this section or other provisions of this chapter, the board of directors may act in all instances on behalf of the association.

B. The board of directors shall not act on behalf of the association to amend the declaration, terminate the condominium, elect members of the board of directors or determine the qualifications, powers and duties or terms of office of board of directors members. EXCEPT AS PROVIDED IN SUBSECTION H OF THIS SECTION, the board of directors may fill vacancies in its membership for the unexpired portion of any term.

C. If any contract, decision or other action for compensation taken by or on behalf of the board of directors would benefit any member of the board of directors or any person who is a parent, grandparent, spouse, child or sibling of a member of the board of directors or a parent or spouse of any of those persons, that member of the board of directors shall declare a conflict of interest for that issue. The member shall declare the conflict in an open meeting of the board before the board discusses or takes action on that issue and that member may then vote on that issue. Any contract entered into in violation of this subsection is void and unenforceable.

D. Except as provided in the declaration, within thirty days after adoption of any proposed budget for the condominium, the board of directors shall provide a summary of the budget to all the unit owners. Unless the board of directors is expressly authorized in the declaration to adopt and amend budgets from time to time, any budget or amendment shall be ratified by the unit owners in accordance with the procedures set forth in this subsection. If ratification is required, the board of directors shall set a date for a meeting of the unit owners to consider ratification of the budget not fewer than fourteen nor more than thirty days after mailing of the summary. Unless at that meeting a majority of all the unit owners or any larger vote specified in the declaration rejects the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the unit owners shall be continued until such time as the unit owners ratify a subsequent budget proposed by the board of directors.

E. The declaration may provide for a period of declarant control of the association, during which period a declarant or persons designated by the declarant may appoint and remove the officers and members of the board of directors. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of:

1. Ninety days after conveyance of seventy-five percent of the units that may be created to unit owners other than a declarant.

2. Four years after all declarants have ceased to offer units for sale in the ordinary course of business.

F. A declarant may voluntarily surrender the right to appoint and remove officers and members of the board of directors before termination of the period prescribed in subsection E of this section, but in that event the declarant may require, for the duration of the period of declarant control, that specified actions of the association or board of directors, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

G. Not later than the termination of any period of declarant control the unit owners shall elect a board of directors of at least three members, at least a majority of whom must be unit owners. The board of directors shall elect the officers. The board members and officers shall take office on election.

H. Notwithstanding any provision of the declaration or bylaws to the contrary, ALL OF THE FOLLOWING APPLY TO A MEETING AT WHICH A MEMBER OF THE BOARD OF DIRECTORS, OTHER THAN A MEMBER APPOINTED BY THE DECLARANT, IS PROPOSED TO BE REMOVED FROM THE BOARD OF DIRECTORS:

1. The unit owners who are eligible to vote at the time of the meeting may remove any member of the board of directors, other than a member appointed by the declarant, by a majority vote of those voting on the matter at a meeting of the unit owners.

2. The meeting of the unit owners shall be called pursuant to this section and action may be taken only if a quorum is present.

3. The unit owners may remove any member of the board of directors with or without cause, other than a member appointed by the declarant.

4. For purposes of calling for removal of a member of the board of directors, other than a member appointed by the declarant, the following apply:

(a) In an association with one thousand or fewer members, on receipt of a petition that calls for removal of a member of the board of directors and that is signed by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least twenty-five percent of the votes in the association or by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least one hundred votes in the association, whichever is less, the board shall call and provide written notice of a special meeting of the association as prescribed by section 33-1248, subsection B.

(b) Notwithstanding section 33-1248, subsection B, in an association with more than one thousand members, on receipt of a petition that calls for removal of a member of the board of directors and that is signed by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least ten percent of the votes in the association or by the number of persons who are eligible to vote in the

association at the time the person signs the petition equal to at least one thousand votes in the association, whichever is less, the board shall call and provide written notice of a special meeting of the association. The board shall provide written notice of a special meeting as prescribed by section 33-1248, subsection B.

(c) The special meeting shall be called, noticed and held within thirty days after receipt of the petition.

(d) For purposes of a special meeting called pursuant to this subsection, a quorum is present if the number of owners who are eligible to vote in the association at the time the person attends the meeting equal to at least twenty percent of the votes of the association or the number of persons who are eligible to vote in the association at the time the person attends the meeting equal to at least one thousand votes, whichever is less, is present at the meeting in person or as otherwise permitted by law.

(e) If a civil action is filed regarding the removal of a board member, the prevailing party in the civil action shall be awarded its reasonable attorney fees and costs.

(f) The board of directors shall retain all documents and other records relating to the proposed removal of the member of the board of directors AND ANY ELECTION OR OTHER ACTION TAKEN FOR THAT DIRECTOR'S REPLACEMENT for at least one year after the date of the special meeting and shall permit members to inspect those documents and records pursuant to section 33-1258.

(g) A petition that calls for the removal of the same member of the board of directors shall not be submitted more than once during each term of office for that member.

5. ON REMOVAL OF AT LEAST ONE BUT FEWER THAN A MAJORITY OF THE MEMBERS OF THE BOARD OF DIRECTORS AT A SPECIAL MEETING OF THE MEMBERSHIP CALLED PURSUANT TO THIS SUBSECTION, THE VACANCIES SHALL BE FILLED AS PROVIDED IN THE CONDOMINIUM DOCUMENTS.

6. ON REMOVAL OF A MAJORITY OF THE MEMBERS OF THE BOARD OF DIRECTORS AT A SPECIAL MEETING OF THE MEMBERSHIP CALLED PURSUANT TO THIS SUBSECTION, OR IF THE CONDOMINIUM DOCUMENTS DO NOT PROVIDE A METHOD FOR FILLING BOARD VACANCIES, THE ASSOCIATION SHALL HOLD AN ELECTION FOR THE REPLACEMENT OF THE REMOVED DIRECTORS AT A SEPARATE MEETING OF THE MEMBERS OF THE ASSOCIATION THAT IS HELD NOT LATER THAN THIRTY DAYS AFTER THE MEETING AT WHICH THE MEMBERS OF THE BOARD OF DIRECTORS WERE REMOVED.

7. A MEMBER OF THE BOARD OF DIRECTORS WHO IS REMOVED PURSUANT TO THIS SUBSECTION IS NOT ELIGIBLE TO SERVE ON THE BOARD OF DIRECTORS AGAIN UNTIL AFTER THE EXPIRATION OF THE REMOVED BOARD MEMBER'S TERM OF OFFICE, UNLESS THE CONDOMINIUM DOCUMENTS SPECIFICALLY PROVIDE FOR A LONGER PERIOD OF INELIGIBILITY.

I. For an association in which board members are elected from separately designated voting districts, a member of the board of directors, other than a member appointed by the declarant, may be removed only by a vote

of the members from that voting district, and only the members from that voting district are eligible to vote on the matter or be counted for purposes of determining a quorum.

J. Unless any provision in the condominium documents requires an annual audit by a certified public accountant, the board of directors shall provide for an annual financial audit, review or compilation of the association. The audit, review or compilation shall be completed no later than one hundred eighty days after the end of the association's fiscal year and shall be made available on request to the unit owners within thirty days after its completion.

K. This section does not apply to timeshare plans or associations, or the period of declarant control under timeshare instruments, that are subject to chapter 20 of this title.

Sec. 2. Section 33-1813, Arizona Revised Statutes, is amended to read:

33-1813. Removal of board member; special meeting

A. Notwithstanding any provision of the declaration or bylaws to the contrary, ALL OF THE FOLLOWING APPLY TO A MEETING AT WHICH A MEMBER OF THE BOARD OF DIRECTORS, OTHER THAN A MEMBER APPOINTED BY THE DECLARANT, IS PROPOSED TO BE REMOVED FROM THE BOARD OF DIRECTORS:

1. The members of the association who are eligible to vote at the time of the meeting may remove any member of the board of directors, other than a member appointed by the declarant, by a majority vote of those voting on the matter at a meeting of the members.

2. The meeting of the members shall be called pursuant to this section and action may be taken only if a quorum is present.

3. The members of the association may remove any member of the board of directors with or without cause, other than a member appointed by the declarant.

4. For purposes of calling for removal of a member of the board of directors, other than a member appointed by the declarant, the following apply:

(a) In an association with one thousand or fewer members, on receipt of a petition that calls for removal of a member of the board of directors and that is signed by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least twenty-five percent of the votes in the association or by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least one hundred votes in the association, whichever is less, the board shall call and provide written notice of a special meeting of the association as prescribed by section 33-1804, subsection B.

(b) Notwithstanding section 33-1804, subsection B, in an association with more than one thousand members, on receipt of a petition that calls for removal of a member of the board of directors and that is signed by the number of persons who are eligible to vote in the association at the time the

person signs the petition equal to at least ten percent of the votes in the association or by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least one thousand votes in the association, whichever is less, the board shall call and provide written notice of a special meeting of the association. The board shall provide written notice of a special meeting as prescribed by section 33-1804, subsection B.

(c) The special meeting shall be called, noticed and held within thirty days after receipt of the petition.

(d) For purposes of a special meeting called pursuant to this subsection, a quorum is present if the number of owners who are eligible to vote in the association at the time the person attends the meeting equal to at least twenty percent of the votes of the association or the number of persons who are eligible to vote in the association at the time the person attends the meeting equal to at least one thousand votes, whichever is less, is present at the meeting in person or as otherwise permitted by law.

(e) If a civil action is filed regarding the removal of a board member, the prevailing party in the civil action shall be awarded its reasonable attorney fees and costs.

(f) The board of directors shall retain all documents and other records relating to the proposed removal of the member of the board of directors AND ANY ELECTION OR OTHER ACTION TAKEN FOR THAT DIRECTOR'S REPLACEMENT for at least one year after the date of the special meeting and shall permit members to inspect those documents and records pursuant to section 33-1805.

(g) A petition that calls for the removal of the same member of the board of directors shall not be submitted more than once during each term of office for that member.

5. ON REMOVAL OF AT LEAST ONE BUT FEWER THAN A MAJORITY OF THE MEMBERS OF THE BOARD OF DIRECTORS AT A SPECIAL MEETING OF THE MEMBERSHIP CALLED PURSUANT TO THIS SUBSECTION, THE VACANCIES SHALL BE FILLED AS PROVIDED IN THE COMMUNITY DOCUMENTS.

6. ON REMOVAL OF A MAJORITY OF THE MEMBERS OF THE BOARD OF DIRECTORS AT A SPECIAL MEETING OF THE MEMBERSHIP CALLED PURSUANT TO THIS SUBSECTION, 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 AT A SEPARATE MEETING OF THE MEMBERS OF THE ASSOCIATION THAT IS HELD NOT LATER THAN THIRTY DAYS AFTER THE MEETING AT WHICH THE MEMBERS OF THE BOARD OF DIRECTORS WERE REMOVED.

7. A MEMBER OF THE BOARD OF DIRECTORS WHO IS REMOVED PURSUANT TO THIS SUBSECTION IS NOT ELIGIBLE TO SERVE ON THE BOARD OF DIRECTORS AGAIN UNTIL AFTER THE EXPIRATION OF THE REMOVED BOARD MEMBER'S TERM OF OFFICE, UNLESS THE COMMUNITY DOCUMENTS SPECIFICALLY PROVIDE FOR A LONGER PERIOD OF INELIGIBILITY.

1 B. For an association in which board members are elected from
2 separately designated voting districts, a member of the board of directors,
3 other than a member appointed by the declarant, may be removed only by a vote
4 of the members from that voting district, and only the members from that
5 voting district are eligible to vote on the matter or be counted for purposes
6 of determining a quorum.

APPROVED BY THE GOVERNOR MAY 18, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 18, 2016.

Passed the House May 7, 2016,

by the following vote: 54 Ayes,

1 Nays, 5 Not Voting

Speaker of the House

Jim Drake

Chief Clerk of the House

Passed the Senate March 1, 2016,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

President of the Senate

Susan Aceves

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

9th day of May, 2016,

at 10:07 o'clock A. M.

Secretary to the Governor

Approved this 18th day of

May, 2016,

at 9:17 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 18th day of May, 2016,

at 12:05 o'clock P M.

Michele Reagan

Secretary of State

S.B. 1496