Senate Engrossed House Bill

**FILED**
**MICHELE REAGAN**
**SECRETARY OF STATE**

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House of Representatives
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**CHAPTER 217**

# HOUSE BILL 2411

AN ACT

AMENDING SECTIONS 33-440, 33-1248, 33-1250, 33-1260, 33-1804, 33-1806 AND 33-1812, 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 33-440, Arizona Revised Statutes, is amended to read:

33-440. Enforceability of private covenants; amendment of declaration; definitions

A. An owner of real property may enter into a private covenant regarding that real property and the private covenant is valid and enforceable according to its terms if all of the following apply:

1. The private covenant is not prohibited by any other existing private covenant or declaration affecting the real property and does not violate any statute governing the subject matter of the private covenant that is in effect before September 26, 2008.

2. The owner of the real property affected by the private covenant and any person on whom the private covenant imposes any liability or obligation have consented to the private covenant.

3. Any consent requirements contained in the express provisions of any existing private covenant or declaration affecting the real property have been met.

B. A private covenant is deemed not to constitute an amendment to any existing private covenant or declaration unless the private covenant expressly violates an express provision of the existing private covenant or declaration.

C. Except during the period of declarant control, or if during the period of declarant control with the written consent of the declarant in each instance, the following apply to an amendment to a declaration:

1. The declaration may be amended by the association, if any, or, if there is no association or board, the owners of the property that is subject to the declaration, by an affirmative vote or written consent of the number of owners or eligible voters specified in the declaration, including the assent of any individuals or entities that are specified in the declaration.

2. An amendment to a declaration may apply to fewer than all of the lots or less than all of the property that is bound by the declaration and an amendment is deemed to conform to the general design and plan of the community, if both of the following apply:

(a) The amendment receives the affirmative vote or written consent of the number of owners or eligible voters specified in the declaration, including the assent of any individuals or entities that are specified in the declaration.

(b) The amendment receives the affirmative vote or written consent of all of the owners of the lots or property to which the amendment applies.

3. Within thirty days after the adoption of any amendment pursuant to this subsection, the association or, if there is no association or

board, a property owner that is authorized by the affirmative vote on or the written consent to the amendment shall prepare, execute and record a written instrument setting forth the amendment.

4. Notwithstanding any provision in the declaration that provides for periodic renewal of the declaration, an amendment to the declaration is effective immediately on recordation of the instrument in the county in which the property is located.

D. Subsection C of this section does not apply to a condominium as defined in section 33-1202 or a timeshare plan or association as defined in section 33-2202.

E. For the purposes of this section:

1. "Declaration" ~~has the same meaning prescribed in section 33-1802~~ MEANS ANY INSTRUMENT, HOWEVER DENOMINATED, THAT ESTABLISHES RESTRICTIVE COVENANTS ON THE DEVELOPMENT OR USE OF REAL PROPERTY.

2. "Private covenant" means any uniform or nonuniform covenant, restriction or condition regarding real property that is contained in any deed, contract, agreement or other recorded instrument affecting real property.

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 unit owners' association and the board of directors, and any regularly scheduled committee meetings, 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 speak at an appropriate time during the deliberations and proceedings. 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 once after the board has discussed a specific agenda item but before the board takes formal action on that item 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. Persons attending may audiotape or videotape those portions of the meetings of the board of directors and meetings of the members that are open. The board of directors of the association SHALL NOT REQUIRE ADVANCE NOTICE OF THE AUDIOTAPING OR VIDEOTAPING AND may adopt reasonable rules governing the audiotaping or videotaping of open portions of the meetings of the board and the membership, but such rules shall not preclude such audiotaping or videotaping by those attending, UNLESS THE BOARD AUDIOTAPES OR VIDEOTAPES THE MEETING AND MAKES THE UNEDITED AUDIOTAPES OR VIDEOTAPES AVAILABLE TO MEMBERS ON REQUEST WITHOUT RESTRICTIONS ON ITS USE AS EVIDENCE IN ANY

DISPUTE RESOLUTION PROCESS. 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. 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.

2. Pending or contemplated litigation.

3. Personal, health or 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, including records of the association directly related to the personal, health or 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.

5. Discussion of a unit owner's appeal of any violation cited or penalty imposed by the association except on request of the affected unit owner that the meeting be held in an open session.

B. Notwithstanding any provision in the condominium documents, all meetings of the unit owners' association and the board shall be held in this state. A meeting of the unit owners' association shall be held at least once each year. Special meetings of the unit owners' 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~~ PERCENT, or any lower percentage specified in the bylaws, of the votes in 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 DATE, time and place of the meeting. The notice of any ANNUAL, REGULAR OR 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. BEFORE ENTERING INTO ANY CLOSED PORTION OF A MEETING OF THE BOARD OF DIRECTORS, OR ON NOTICE OF A MEETING UNDER SUBSECTION D OF THIS SECTION THAT WILL BE CLOSED, THE BOARD SHALL IDENTIFY THE PARAGRAPH UNDER SUBSECTION A OF THIS SECTION THAT AUTHORIZES THE BOARD TO CLOSE THE MEETING.

~~C.~~ D. Notwithstanding any provision in the declaration, bylaws or other condominium documents, 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 DATE, 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.

~~D.~~ E. Notwithstanding any provision in the declaration, bylaws or other condominium documents, for meetings of the board of directors that are held after the termination of declarant control of the association, all of the following apply:

1. The agenda shall be available to all unit owners attending.

2. An emergency meeting of the board of directors may be called to discuss business or take action that cannot be delayed ~~until the next regularly scheduled board meeting~~ FOR THE FORTY-EIGHT HOURS REQUIRED FOR NOTICE. AT ANY EMERGENCY MEETING CALLED BY THE BOARD OF DIRECTORS, THE BOARD OF DIRECTORS MAY ACT ONLY ON EMERGENCY MATTERS. The minutes of the emergency meeting shall state the reason necessitating the emergency meeting. The minutes of the emergency meeting shall be read and approved at the next regularly scheduled meeting of the board of directors.

3. A quorum of the board of directors may meet by means of a telephone conference if a speakerphone is available in the meeting room that allows board members and unit owners to hear all parties who are speaking during the meeting.

4. Any quorum of the board of directors that meets informally to discuss association business, including workshops, shall comply with the open meeting and notice provisions of this section without regard to whether the board votes or takes any action on any matter at that informal meeting.

~~E.~~ F. It is the policy of this state as reflected in this section that all meetings of a condominium, whether meetings of the unit owners' association or meetings of the board of directors of the association, be

conducted openly and that notices and agendas be provided for those meetings that contain the information that is reasonably necessary to inform the unit owners of the matters to be discussed or decided and to ensure that unit owners have the ability to speak after discussion of agenda items, but before a vote of the board of directors OR MEMBERS is taken. Toward this end, any person or entity that is charged with the interpretation of these provisions, INCLUDING MEMBERS OF THE BOARD OR DIRECTORS AND ANY COMMUNITY MANAGER, shall take into account this declaration of policy and shall construe any provision of this section in favor of open meetings.

~~F.~~ G. This section does not apply to timeshare plans or associations that are subject to chapter 20 of this title.

Sec. 3. Section 33-1250, Arizona Revised Statutes, is amended to read:

33-1250. Voting; proxies; absentee ballots; applicability; definition

A. If only one of the multiple owners of a unit is present at a meeting of the association, the owner is entitled to cast all the votes allocated to that unit. If more than one of the multiple owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners unless the declaration expressly provides otherwise. There is majority agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

B. During the period of declarant control, votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. The proxy is revoked on presentation of a later dated proxy executed by the same unit owner. A proxy terminates one year after its date, unless it specifies a shorter term or unless it states that it is coupled with an interest and is irrevocable.

C. Notwithstanding any provision in the condominium documents, after termination of the period of declarant control, votes allocated to a unit may not be cast pursuant to a proxy. The association shall provide for votes to be cast in person and by absentee ballot and, in addition, the association may provide for voting by some other form of delivery, including the use of e-mail and fax delivery. Notwithstanding section 10-3708 or the provisions of the condominium documents, any action taken

at an annual, regular or special meeting of the members shall comply with all of the following if absentee ballots or ballots provided by some other form of delivery are used:

1. The ballot shall set forth each proposed action.

2. The ballot shall provide an opportunity to vote for or against each proposed action.

3. The ballot is valid for only one specified election or meeting of the members and expires automatically after the completion of the election or meeting.

4. The ballot specifies the time and date by which the ballot must be delivered to the board of directors in order to be counted, which shall be at least seven days after the date that the board delivers the unvoted ballot to the member.

5. The ballot does not authorize another person to cast votes on behalf of the member.

6. The completed ballot ~~and envelope and any related materials~~ shall contain the name, THE address and either the actual or electronic signature of the person voting, except that if the condominium documents permit secret ballots, only the envelope ~~or any nonballot-related materials~~ shall contain the name, THE address and either the actual or electronic signature of the voter.

7. Ballots, envelopes and related materials, including sign-in sheets if used, shall be retained in electronic or paper format and made available for unit owner inspection for at least one year after completion of the election.

D. Votes cast by absentee ballot or other form of delivery, including the use of e-mail and fax delivery, are valid for the purpose of establishing a quorum.

E. Notwithstanding subsection C of this section, an association for a timeshare plan as defined in section 32-2197 may permit votes by a proxy that is duly executed by a unit owner.

F. If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units all of the following apply:

1. The provisions of subsections A and B of this section apply to lessees as if they were unit owners.

2. Unit owners who have leased their units to other persons shall not cast votes on those specified matters.

3. Lessees are entitled to notice of meetings, access to records and other rights respecting those matters as if they were unit owners. Unit owners shall also be given notice, in the manner prescribed in section 33-1248, of all meetings at which lessees may be entitled to vote.

G. Unless the declaration provides otherwise, votes allocated to a unit owned by the association shall not be cast.

H. This section does not apply to timeshare plans or associations that are subject to chapter 20 of this title.

I. For the purposes of this section, "period of declarant control" means the time during which the declarant or persons designated by the declarant may elect or appoint the members of the board of directors pursuant to the condominium documents or by virtue of superior voting power.

Sec. 4. Section 33-1260, Arizona Revised Statutes, is amended to read:

33-1260. Resale of units; information required; fees; civil penalty; applicability; definition

A. For condominiums with fewer than fifty units, a unit owner shall mail or deliver to a purchaser or a purchaser's authorized agent within ten days after receipt of a written notice of a pending sale of the unit, and for condominiums with fifty or more units, the association shall mail or deliver to a purchaser or a purchaser's authorized agent within ten days after receipt of a written notice of a pending sale that contains the name and address of the purchaser all of the following in either paper or electronic format:

1. A copy of the bylaws and the rules of the association.

2. A copy of the declaration.

3. A dated statement containing:

(a) The telephone number and address of a principal contact for the association, which may be an association manager, an association management company, an officer of the association or any other person designated by the board of directors.

(b) The amount of the common expense assessment for the unit and any unpaid common expense assessment, special assessment or other assessment, fee or charge currently due and payable from the selling unit owner. If the request is made by a lienholder, escrow agent, unit owner or person designated by a unit owner pursuant to section 33-1256, failure to provide the information pursuant to this subdivision within the time provided for in this subsection shall extinguish any lien for any unpaid assessment then due against that unit.

(c) A statement as to whether a portion of the unit is covered by insurance maintained by the association.

(d) The total amount of money held by the association as reserves.

(e) If the statement is being furnished by the association, a statement as to whether the records of the association reflect any alterations or improvements to the unit that violate the declaration. The association is not obligated to provide information regarding alterations or improvements that occurred more than six years before the proposed sale. Nothing in this subdivision relieves the seller of a unit from the obligation to disclose alterations or improvements to the unit that

violate the declaration, nor precludes the association from taking action against the purchaser of a unit for violations that are apparent at the time of purchase and that are not reflected in the association's records.

(f) If the statement is being furnished by the unit owner, a statement as to whether the unit owner has any knowledge of any alterations or improvements to the unit that violate the declaration.

(g) A statement of case names and case numbers for pending litigation with respect to the unit filed by the association against the unit owner or filed by the unit owner against the association. The unit owner or the association shall not be required to disclose information concerning the pending litigation that would violate any applicable rule of attorney-client privilege under Arizona law.

(h) A statement that provides "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 as a matter of Arizona law, if I fail to pay my association assessments, the association may foreclose on my property." The statement shall also include a signature line for the purchaser and shall be returned to the association within fourteen calendar days.

4. A copy of the current operating budget of the association.

5. A copy of the most recent annual financial report of the association. If the report is more than ten pages, the association may provide a summary of the report in lieu of the entire report.

6. A copy of the most recent reserve study of the association, if any.

7. A statement summarizing any pending lawsuits, except those relating to the collection of assessments owed by unit owners other than the selling unit owner, in which the association is a named party, including the amount of any money claimed.

B. A purchaser or seller who is damaged by the failure of the unit owner or the association to disclose the information required by subsection A of this section may pursue all remedies at law or in equity against the unit owner or the association, whichever failed to comply with subsection A of this section, including the recovery of reasonable attorney fees.

C. The association may charge the unit owner a fee of ~~no~~ NOT more than an aggregate of four hundred dollars to compensate the association for the costs incurred in the preparation AND DELIVERY of a statement or other documents furnished by the association pursuant to this section for purposes of resale disclosure, lien estoppel and any other services related to the transfer or use of the property. In addition, the association may charge a rush fee of ~~no~~ NOT more than one hundred dollars

if the rush services are required to be performed within seventy-two hours after the request for rush services, and may charge a statement or other documents update fee of ~~no~~ NOT more than fifty dollars if thirty days or more have passed since the date of the original disclosure statement or the date the documents were delivered. The association shall make available to any interested party the amount of any fee established from time to time by the association. If the aggregate fee for purposes of resale disclosure, lien estoppel and any other services related to the transfer or use of a property is less than four hundred dollars on January 1, 2010, the fee may increase at a rate of ~~no~~ NOT more than twenty ~~per cent~~ PERCENT per year based on the immediately preceding fiscal year's amount not to exceed the four hundred dollar aggregate fee. The association may charge the same fee without regard to whether the association is furnishing the statement or other documents in paper or electronic format.

D. The fees prescribed by this section shall be collected no earlier than at the close of escrow and may only be charged once to a unit owner for that transaction between the parties specified in the notice required pursuant to subsection A of this section. An association shall not charge or collect a fee relating to services for resale disclosure, lien estoppel and any other services related to the transfer or use of a property except as specifically authorized in this section. An association that charges or collects a fee in violation of this section is subject to a civil penalty of ~~no~~ NOT more than one thousand two hundred dollars.

E. This section applies to a managing agent for an association that is acting on behalf of the association.

F. The following are exempt from this section:

1. A sale in which a public report is issued pursuant to ~~sections~~ SECTION 32-2183 ~~and~~ OR 32-2197.02.

2. A sale pursuant to section 32-2181.02.

3. A conveyance by recorded deed that bears an exemption listed in section 11-1134, subsection B, paragraph 3 or 7. On recordation of the deed and for no additional charge, the unit owner shall provide the association with the changes in ownership including the unit owner's name, billing address and phone number. Failure to provide the information shall not prevent the unit owner from qualifying for the exemption pursuant to this section.

G. This section does not apply to timeshare plans or associations that are subject to chapter 20 of this title.

H. For the purposes of this section, unless the context otherwise requires, "unit owner" means the seller of the condominium unit title and excludes any real estate salesperson or real estate broker who is licensed under title 32, chapter 20 and who is acting as a salesperson or broker,

any escrow agent who is licensed under title 6, chapter 7 and who is acting as an escrow agent and also excludes a trustee of a deed of trust who is selling the property in a trustee's sale pursuant to chapter 6.1 of this title.

Sec. 5. 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 members' association and the board of directors, and any regularly scheduled committee meetings, 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 speak at an appropriate time during the deliberations and proceedings. 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 once after the board has discussed a specific agenda item but before the board takes formal action on that item 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. Persons attending may ~~tape record~~ AUDIOTAPE or videotape those portions of the meetings of the board of directors and meetings of the members that are open. The board of directors of the association SHALL NOT REQUIRE ADVANCE NOTICE OF THE AUDIOTAPING OR VIDEOTAPING AND may adopt reasonable rules governing the ~~taping~~ AUDIOTAPING AND VIDEOTAPING of open portions of the meetings of the board and the membership, but such rules shall not preclude such ~~tape recording~~ AUDIOTAPING or videotaping by those attending, UNLESS THE BOARD AUDIOTAPES OR VIDEOTAPES THE MEETING AND MAKES THE UNEDITED AUDIOTAPES OR VIDEOTAPES AVAILABLE TO MEMBERS ON REQUEST WITHOUT RESTRICTIONS ON ITS USE AS EVIDENCE IN ANY DISPUTE RESOLUTION PROCESS. 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. 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.

2. Pending or contemplated litigation.

3. Personal, health or 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, including records of the association directly related to the personal, health or 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.

5. Discussion of a member's appeal of any violation cited or penalty imposed by the association except on request of the affected member that the meeting be held in an open session.

B. Notwithstanding any provision in the community documents, all meetings of the members' association and the board shall be held in this state. A meeting of the members' association shall be held at least once each year. Special meetings of the members' 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~~ PERCENT, or any lower percentage specified in the bylaws, of the votes in 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 DATE, time and place of the meeting. A notice of any ANNUAL, REGULAR OR 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. BEFORE ENTERING INTO ANY CLOSED PORTION OF A MEETING OF THE BOARD OF DIRECTORS, OR ON NOTICE OF A MEETING UNDER SUBSECTION D OF THIS SECTION THAT WILL BE CLOSED, THE BOARD SHALL IDENTIFY THE PARAGRAPH UNDER SUBSECTION A OF THIS SECTION THAT AUTHORIZES THE BOARD TO CLOSE THE MEETING.

~~C.~~ D. Notwithstanding any provision in the declaration, bylaws or other community documents, 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 was given as prescribed by this section. Notice to members 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 DATE, time and place of the meeting. The failure of any member to receive actual notice of a meeting of the board of directors does not affect the validity of any action taken at that meeting.

~~D.~~ E. Notwithstanding any provision in the declaration, bylaws or other community documents, for meetings of the board of directors that are held after the termination of declarant control of the association, all of the following apply:

1. The agenda shall be available to all members attending.

2. An emergency meeting of the board of directors may be called to discuss business or take action that cannot be delayed ~~until the next regularly scheduled board meeting~~ FOR THE FORTY-EIGHT HOURS REQUIRED FOR NOTICE. AT ANY EMERGENCY MEETING CALLED BY THE BOARD OF DIRECTORS, THE BOARD OF DIRECTORS MAY ACT ONLY ON EMERGENCY MATTERS. The minutes of the emergency meeting shall state the reason necessitating the emergency meeting. The minutes of the emergency meeting shall be read and approved at the next regularly scheduled meeting of the board of directors.

3. A quorum of the board of directors may meet by means of a telephone conference if a speakerphone is available in the meeting room that allows board members and association members to hear all parties who are speaking during the meeting.

4. Any quorum of the board of directors that meets informally to discuss association business, including workshops, shall comply with the open meeting and notice provisions of this section without regard to whether the board votes or takes any action on any matter at that informal meeting.

~~E.~~ F. It is the policy of this state as reflected in this section that all meetings of a planned community, whether meetings of the members' association or meetings of the board of directors of the association, be conducted openly and that notices and agendas be provided for those meetings that contain the information that is reasonably necessary to inform the members of the matters to be discussed or decided and to ensure that members have the ability to speak after discussion of agenda items, but before a vote of the board of directors OR MEMBERS is taken. Toward this end, any person or entity that is charged with the interpretation of these provisions, INCLUDING MEMBERS OF THE BOARD OF DIRECTORS AND ANY COMMUNITY MANAGER, shall take into account this declaration of policy and shall construe any provision of this section in favor of open meetings.

Sec. 6. Section 33-1806, Arizona Revised Statutes, is amended to read:

33-1806. <u>Resale of units; information required; fees; civil penalty; definition</u>

A. For planned communities with fewer than fifty units, a member shall mail or deliver to a purchaser or a purchaser's authorized agent

within ten days after receipt of a written notice of a pending sale of the unit, and for planned communities with fifty or more units, the association shall mail or deliver to a purchaser or a purchaser's authorized agent within ten days after receipt of a written notice of a pending sale that contains the name and address of the purchaser all of the following in either paper or electronic format:

1. A copy of the bylaws and the rules of the association.

2. A copy of the declaration.

3. A dated statement containing:

(a) The telephone number and address of a principal contact for the association, which may be an association manager, an association management company, an officer of the association or any other person designated by the board of directors.

(b) The amount of the common regular assessment and the unpaid common regular assessment, special assessment or other assessment, fee or charge currently due and payable from the selling member. If the request is made by a lienholder, escrow agent, member or person designated by a member pursuant to section 33-1807, failure to provide the information pursuant to this subdivision within the time provided for in this subsection shall extinguish any lien for any unpaid assessment then due against that property.

(c) A statement as to whether a portion of the unit is covered by insurance maintained by the association.

(d) The total amount of money held by the association as reserves.

(e) If the statement is being furnished by the association, a statement as to whether the records of the association reflect any alterations or improvements to the unit that violate the declaration. The association is not obligated to provide information regarding alterations or improvements that occurred more than six years before the proposed sale. Nothing in this subdivision relieves the seller of a unit from the obligation to disclose alterations or improvements to the unit that violate the declaration, nor precludes the association from taking action against the purchaser of a unit for violations that are apparent at the time of purchase and that are not reflected in the association's records.

(f) If the statement is being furnished by the member, a statement as to whether the member has any knowledge of any alterations or improvements to the unit that violate the declaration.

(g) A statement of case names and case numbers for pending litigation with respect to the unit filed by the association against the member or filed by the member against the association. The member shall not be required to disclose information concerning such pending litigation that would violate any applicable rule of attorney-client privilege under Arizona law.

(h) A statement that provides "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 as a matter of Arizona law, if I fail to pay my association assessments, the association may foreclose on my property." The statement shall also include a signature line for the purchaser and shall be returned to the association within fourteen calendar days.

4. A copy of the current operating budget of the association.

5. A copy of the most recent annual financial report of the association. If the report is more than ten pages, the association may provide a summary of the report in lieu of the entire report.

6. A copy of the most recent reserve study of the association, if any.

7. A statement summarizing any pending lawsuits, except those relating to the collection of assessments owed by members other than the selling member, in which the association is a named party, including the amount of any money claimed.

B. A purchaser or seller who is damaged by the failure of the member or the association to disclose the information required by subsection A of this section may pursue all remedies at law or in equity against the member or the association, whichever failed to comply with subsection A of this section, including the recovery of reasonable attorney fees.

C. The association may charge the member a fee of ~~no~~ NOT more than an aggregate of four hundred dollars to compensate the association for the costs incurred in the preparation AND DELIVERY of a statement or other documents furnished by the association pursuant to this section for purposes of resale disclosure, lien estoppel and any other services related to the transfer or use of the property. In addition, the association may charge a rush fee of ~~no~~ NOT more than one hundred dollars if the rush services are required to be performed within seventy-two hours after the request for rush services, and may charge a statement or other documents update fee of ~~no~~ NOT more than fifty dollars if thirty days or more have passed since the date of the original disclosure statement or the date the documents were delivered. The association shall make available to any interested party the amount of any fee established from time to time by the association. If the aggregate fee for purposes of resale disclosure, lien estoppel and any other services related to the transfer or use of a property is less than four hundred dollars on January 1, 2010, the fee may increase at a rate of ~~no~~ NOT more than twenty ~~per cent~~ PERCENT per year based on the immediately preceding fiscal year's amount not to exceed the four hundred dollar aggregate fee. The

association may charge the same fee without regard to whether the association is furnishing the statement or other documents in paper or electronic format.

D. The fees prescribed by this section shall be collected no earlier than at the close of escrow and may only be charged once to a member for that transaction between the parties specified in the notice required pursuant to subsection A of this section. An association shall not charge or collect a fee relating to services for resale disclosure, lien estoppel and any other services related to the transfer or use of a property except as specifically authorized in this section. An association that charges or collects a fee in violation of this section is subject to a civil penalty of ~~no~~ NOT more than one thousand two hundred dollars.

E. This section applies to a managing agent for an association that is acting on behalf of the association.

F. The following are exempt from this section:

1. A sale in which a public report is issued pursuant to ~~sections~~ SECTION 32-2183 ~~and~~ OR 32-2197.02.

2. A sale pursuant to section 32-2181.02.

3. A conveyance by recorded deed that bears an exemption listed in section 11-1134, subsection B, paragraph 3 or 7. On recordation of the deed and for no additional charge, the member shall provide the association with the changes in ownership including the member's name, billing address and phone number. Failure to provide the information shall not prevent the member from qualifying for the exemption pursuant to this section.

G. For the purposes of this section, unless the context otherwise requires, "member" means the seller of the unit title and excludes any real estate salesperson or real estate broker who is licensed under title 32, chapter 20 and who is acting as a salesperson or broker, any escrow agent who is licensed under title 6, chapter 7 and who is acting as an escrow agent and also excludes a trustee of a deed of trust who is selling the property in a trustee's sale pursuant to chapter 6.1 of this title.

Sec. 7. Section 33-1812, Arizona Revised Statutes, is amended to read:

33-1812. <u>Proxies; absentee ballots; definition</u>

A. Notwithstanding any provision in the community documents, after termination of the period of declarant control, votes allocated to a unit may not be cast pursuant to a proxy. The association shall provide for votes to be cast in person and by absentee ballot and, in addition, the association may provide for voting by some other form of delivery, including the use of e-mail and fax delivery. Notwithstanding section 10-3708 or the provisions of the community documents, any action taken at an annual, regular or special meeting of the members shall comply with all

of the following if absentee ballots or ballots provided by some other form of delivery are used:

1. The ballot shall set forth each proposed action.

2. The ballot shall provide an opportunity to vote for or against each proposed action.

3. The ballot is valid for only one specified election or meeting of the members and expires automatically after the completion of the election or meeting.

4. The ballot specifies the time and date by which the ballot must be delivered to the board of directors in order to be counted, which shall be at least seven days after the date that the board delivers the unvoted ballot to the member.

5. The ballot does not authorize another person to cast votes on behalf of the member.

6. The completed ballot ~~and envelope and any related materials~~ shall contain the name, address and signature of the person voting, except that if the community documents permit secret ballots, only the envelope ~~and any nonballot-related materials~~ shall contain the name, address and signature of the voter.

7. 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.

B. Votes cast by absentee ballot or other form of delivery, including the use of e-mail and fax delivery, are valid for the purpose of establishing a quorum.

C. Notwithstanding subsection A of this section, an association for a timeshare plan as defined in section 32-2197 may permit votes by a proxy that is duly executed by a unit owner.

D. For the purposes of this section, "period of declarant control" means the time during which the declarant or persons designated by the declarant may elect or appoint the members of the board of directors pursuant to the community documents or by virtue of superior voting power.

**APPROVED BY THE GOVERNOR APRIL 28, 2017.**

**FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 28, 2017.**

Passed the House February 23, 2017

by the following vote: 60 Ayes,

0 Nays, 0 Not Voting

Speaker of the House

☐ Pro Tempore

Chief Clerk of the House

Passed the Senate April 13, 2017

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20_____

at _____ o'clock _____M.

Secretary to the Governor

Approved this _____ day of

_____

at _____ o'clock _____M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20_____

at _____ o'clock _____M.

Secretary of State

H.B. 2411

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 24, 2017,

by the following vote: 55 Ayes,

0 Nays, 4 Not Voting 1 Vacant

Speaker of the House

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

24th day of April, 2017,

at 2:03 o'clock P. M.

Secretary to the Governor

Approved this 28th day of

April, 2017,

at 2:30 o'clock P M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 28 day of April, 2017,

at 4:43 o'clock P M.

Michele Reagan

Secretary of State

H.B. 2411