

College of Community Association Lawyers
State Laws Affecting Common Interest Communities Project
Frequently Asked Questions ("FAQs")
ARIZONA

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Disclaimer:

This document reflects changes through the Arizona Legislative Session in 2011, with changes effective July 20, 2011 unless otherwise noted. This document is intended to provide general information about community associations and is not legal advice or a legal opinion. Specific questions should be directed to a lawyer at Carpenter, Hazlewood, Delgado & Wood, PLC, or to another attorney.

GENERAL

1. What state statutes apply to Common Interest Communities in your state?

The Condominium Act is found in Arizona Revised Statutes (ARS) §33-1201 et seq. It applies to all condominiums, whenever formed. The planned community association statutes are found in ARS §33-1801 et seq. Planned communities must have property owned by the association, and mandatory membership of the owners of separate lots in an association with the power to impose assessments. There is also a Nonprofit Corporation Act applicable to most associations, as most are incorporated. ARS 10-3101 et seq.

2. Are Common Interest Communities required to incorporate? Can they be incorporated? Advantages/Disadvantages?

Neither condominium nor planned community associations are required to be incorporated. The Condominium Act at ARS §33-1241 allows for profit or nonprofit corporations or unincorporated associations. The planned community statutes at ARS §33-1802 define associations as nonprofit corporations or unincorporated associations. The primary advantages of incorporating are liability protection for the individual members and indemnification of directors and officers under the Nonprofit Act.

3. Is there a state agency which has authority to regulate and oversee the affairs of Common Interest Communities? What is the scope of its power and

authority?

No agency expressly oversees or regulates Common Interest Communities in Arizona. However, effective July 20, 2011, the Department of Fire, Building and Life Safety has been given bare legal authority given over planned community associations and condominiums permitting filing of complaints by associations or members, with hearings by administrative law judges. The Department does nothing else to regulate them. These judges will hear disputes about alleged violations of Arizona law or governing documents, with the power to fine and make rulings. A similar procedure was declared unconstitutional under the Arizona Constitution based on a 2006 statute.

The Arizona Corporation Commission regulates nonprofit corporations.

4. On the state level, what are the annual reporting requirements of a Common Interest Community, if any, and to whom?

There are no reporting requirements for unincorporated associations. Nonprofit corporations must file annual reports with the Arizona Corporation Commission with information on directors and officers, statutory agent and other minimal information.

MEMBERSHIP MEETINGS

5. Is an Annual Meeting of Members required?

The planned community statutes and the Condominium Act require the association to meet at least once each year. ARS §33-1804 and 33-1248. The Nonprofit Corporation Act requires annual meetings, ARS §10-3701, and can order the meeting to be held on application if not held within 15 months of the last annual meeting, §10-3703.

6. How are special Meetings of the Members called?

Generally bylaws of associations permit special meetings to be called by the president, by a percentage of the board, or upon request of a percentage of the members. Under ARS §10-3702, a nonprofit corporation shall hold a meeting on the call of its board or of the person or persons authorized to do so by the articles or bylaws, or if the holders of at least ten per cent of the voting power of any corporation sign, date and deliver to any corporate officer one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

Under the planned community statutes, ARS §33-1804, and the Condominium Act, §33-1248, 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.

7. What are the Notice Requirements for Membership Meetings?

Under the planned community statutes, ARS §33-1804, and the Condominium Act, §33-1248, 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.

8. What are the Quorum Requirements for Membership Meetings?

Planned community associations in Arizona have no specific quorum requirement by statute. The Condominium Act, at ARS §33-1249, sets a quorum of 25% of the votes, unless otherwise provided in the bylaws. The Nonprofit Corporation Act provides for a quorum of one-tenth of the votes entitled to be cast, in the absence of a higher or lower number in the articles or bylaws.

9. Can Members use Proxies? Absentee Ballots? Mail Ballots?

Members of planned community and condominium associations in Arizona are not been able to use proxies except during the period of declarant control. Under ARS §33-1250 (condominiums) and 33-1812 (planned communities), associations must provide for ballots to be cast in person and by absentee ballot. Ballots may be cast by some other form of delivery, such as mail.

10. Can Members Raise Concerns or Issues at a Membership Meeting?

Members of both condominium associations (ARS §33-1248) and planned community associations (ARS §33-1804) all members or designated representatives (in writing) so desiring shall be permitted to attend and speak at an appropriate time during the deliberations and proceedings. They have an opportunity to speak once after the board has discussed a specific agenda item and before the board takes formal action on that item.

11. Can Non-Members attend Membership Meetings?
(Attorneys of Members? Guests of
Members? Local or National Media representatives?)

Non-members have no statutory right to attend membership meetings, unless they are designated in writing by a member as the member's representative. See ARS §33-1248 (condominiums), and 33-1804 (planned communities). Members and their designated representatives have a right to attend.

BOARD MEETINGS

12. Are Boards of Directors required to hold Regular Board Meetings?

There is no statute requiring association boards to have regular meetings.

13. How are Special Meetings of the Board called?

According to the Nonprofit Corporation Act at ARS §10-3822, unless the articles of incorporation or bylaws provide otherwise, the presiding officer of the board of directors, the president or twenty per cent of the directors then in office may call and give notice of a meeting of the board. There is nothing specific in the association statutes.

14. What are the Notice requirements for Board meetings? Are Members required to be notified as well?

The Condominium Act, at ARS §33-1248(C), states that notwithstanding any provision in the declaration, bylaws or other documents 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 (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. The planned community statutes at ARS §33-1804 say the same. Notice to Board members is simply governed by the association documents.

15. What constitutes a quorum for Board Meetings?

Under the Condominium Act, at ARS §33-1249(B), unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the board of directors if persons entitled to cast at least fifty per cent of the votes on that board are present at the beginning of the

meeting. There is no comparable provision in the planned community association statutes.

The Nonprofit Corporation Act at ARS §10-3824 provides:

A. Unless the articles of incorporation or bylaws require a different number, a quorum of a board of directors consists of either:

1. A majority of the fixed number of directors if the corporation has a fixed board size.
2. A majority of the number of directors prescribed, or if no number is prescribed, the number in office immediately before the meeting begins, if the corporation has a variable range size board.]

B. The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of at least one-third of the fixed or prescribed number of directors determined under subsection A.

16. Can Board Members use Proxies?

The Arizona Nonprofit Corporation Act permits articles or bylaws to authorize directors to vote in person or by proxy. ARS §10-3824(G).

17. Which meetings of the Board of Directors are open to all

homeowners?

All meetings are open with four statutory exceptions for meetings that may be closed in the Condominium Act (A.R.S. §33-1248) and the planned community statutes (A.R.S. §33-1804), where the following are considered:

- | | | |
|-----|--|---|
| (1) | Legal advice from an attorney for the board or association | L |
| (2) | Pending or contemplated litigation | P |
| (3) | Personal, health or financial information about a member of the association, an employee of the association or an employee of a contractor for the association | P |
| (4) | Matters relating to the job performance, compensation, health records or specific complaints against an employee of the association or a contractor. | M |
| (5) | Discussion of a member's appeal of any violation cited or penalty imposed except on request by the affected member that the meeting be held in open session. | D |

18. Does a member have the right to address the board of Directors during the meeting?

Yes. Under the same statutes referred to in paragraph 17, members and their representatives designated in writing shall be permitted to speak at an appropriate time during the deliberations and proceedings, subject to reasonable time limits. Members are to be allowed to speak once after the board has discussed a specific agenda item but before

action is taken.

19. Can Board of Directors meeting in Closed or Executive Session? If so, for what purposes?

Yes. See categories for closing meetings in paragraph 17

above.

20. Are Minutes of Board Meetings required? When can Members see the minutes of such meetings?

Neither the Condominium Act nor the planned community statutes expressly require minutes except in the case of emergency meetings. Those minutes are to be read and approved at the next regularly scheduled meeting.

21. Does a Member have a right to audio-or video- record meetings of the Board? Under what circumstances or conditions?

Under A.R.S. §33-1248 and §33-1804, condominium and planned community associations must permit persons attending board or member meetings to tape record or videotape open portions of the meetings. The board may adopt reasonable rules.

22. Can Non-

Members attend Board

Meetings?

Only as a designated representative (in writing) of a member in condominiums and planned communities. They have no independent right.

ADMINISTRATI

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23. Does a Member have a right to review books and records of the Association?

Yes, under the Condominium Act, the planned community statutes, and the Nonprofit Corporation Act.

- a. If so, what books and records can be reviewed?

In planned communities and condominiums, "all financial and other records". For other nonprofit corporations, under A.R.S. §10-11602, accounting records, list of members, minutes, governing documents, written communications to members, annual reports, financial statements.

- b. Can the Member obtain copies of the books and records requested?

Yes, whether planned community, condominium or nonprofit corporation.

- c. Does a member have to pay for copies of the books and records?

Yes, whether planned community, condominium or nonprofit corporation.

- d. Are there books and records which the Association can withhold or otherwise prevent a Members from reviewing?

Yes. These are the categories of records under the planned community association statute (A.R.S. §33-1805) and Condominium Act (A.R.S. §33-1258):

- (1) Privileged communication between an attorney for the association and the association.
- (2) Pending litigation.
- (3) Meeting minutes or other records of closed meetings.
- (4) Personal, health or financial records of an individual member or individual employee of the association, or an individual employee of a contractor.
- (5) Records relating to the job performance, compensation or health records of or specific complaints against an individual employee of the association or of a contractor.

24. What are the Reserve requirements in the State? Are Reserve Studies mandated? What reporting requirements does the Association have with respect to the status of the Reserves, the Reserve Accounts or the funding of the Reserves?

There are no Reserve requirements by statute in Arizona.

Reserve Studies are not mandated. The Arizona Condominium Act at A.R.S §33-1260 and the planned community statutes at A.R.S. §33-1806 require associations of 50 units or more to provide a copy of any Reserve Study to prospective purchasers on resale, as well as the amount of money held in reserves.

25. What are the resale disclosure requirements?

The Arizona Condominium Act at A.R.S §33-1260 and the planned community statutes at A.R.S. §33-1806 require associations of 50 units or more to mail or deliver to a purchaser or a purchaser's authorized agent within 10 days of receipt of a written notice of a pending sale:

- a. Copy of bylaws and rules
- b. Copy of the declaration
- c. Dated statement containing:
 - (1) Phone number and address of principal contact
 - (2) Amount of the common expense assessment and unpaid assessments currently due.
 - (3) Statement of whether a portion of the unit is covered by association insurance.
 - (4) Total amount of money held in reserves.
 - (5) Statement as to whether the records reflect any alterations or improvements violated the declaration.
 - (6) Statement of case names and case numbers of pending litigation with respect to any unit filed by the owner against the association or the association against the owner.
 - (7) Statement signed by the owner acknowledging a number of items.
- d. Copy of operating budget
- e. Copy of most recent financial report
- f. Copy of most recent reserve study
- g. Statement summarizing any pending lawsuits, except those relating to collection of assessments, in which the association is a named party.

26. Does the Membership by Vote or the Board of Directors establish the

Assessment?

Arizona statutes do not dictate whether the Membership or Board establishes Assessments. The declaration generally does so, and the vast majority of them give authority to the Board.

27. Is a budget required?

A budget is required under the Arizona Condominium Act at A.R.S. §33-1255, as assessments are to be made based on an annual budget.

28. Is an annual audit required?

An audit is not required in condominiums or planned communities.

However, under A.R.S. §33-1243(J) and 33-1810, association boards shall provide for an annual audit, review or compilation unless a provision in the community documents requires an annual audit.

29. Does the State regulate the collection of assessments?

- a. What happens if a Member is delinquent in the payment of assessments?

Under the Condominium Act, A.R.S. §33-1256 and the planned community statutes, A.R.S. §33-1807, assessments are a lien on the unit or lot from the time the assessment comes due. The lien, together with late charges, reasonable collection fees and reasonable attorneys fees and costs incurred, may be foreclosed in the same manner as a mortgage (judicially) if the owner has been delinquent for a year or \$1,200, whichever occurs first. Actions to recover amounts subject to the lien may also be pursued personally against the owner. Other sections also expressly empower boards to impose late charges for delinquent assessments.

- b. How can an association increase annual assessments?

The Condominium Act does not address this issue. The Arizona planned community statutes at A.R.S. §33-1803 do not empower, but provide a limitation on increases in regular assessments of 20% over the previous year without approval of a majority of the members of the association.

- c. Under what circumstances can my association levy special assessments?

The Arizona association statutes do not address this issue.

- d. Are there provisions related to additional assessments or adjustments in the budget or assessment level in the event of a deficit?

Arizona association statutes do not address these issues.

30. What authority does the association have to access a Unit or Lot? Under what circumstances?

The Arizona Condominium Act provides in A.R.S. §33-1247 that units owners must provide the association, its agents and employees, access on reasonable notice for the purpose of maintenance, repair and repair and replacement functions for which it is responsible.

31. Does the Association have the authority to adopt rules and regulations? By law or by statute?

Arizona condominium associations have the power to adopt rules pursuant to A.R.S. §33-1242, as well as most declarations.

Arizona planned community associations need to have rule-making authority in their governing documents although arguments can be made that associations and boards have inherent authority over their common areas at least.

32. Does the Association have the authority to assess charges or fines for violations by Members? Does the Association have the right to suspend the right of use of the common elements or common areas in the event of a violation? To suspend the right of a Member to vote or otherwise participate in the Association in the event of a violation?

Boards of planned community Associations and condominium associations in Arizona have authority to impose fines (monetary penalties) on members after notice and an opportunity to be heard. A.R.S. §33-1803(B); §33-1242(11). There is no statutory authority for suspensions. Many governing documents provide for it.

33. Is there a requirement to have an internal administrative Complaint or Dispute Process? Is it mandatory and/or a prerequisite to other legal action?

There is no requirement in Arizona for an internal administrative Complaint or Dispute Process within the Association itself.

34. Does any applicable statute provide for the removal of a Board member, several Board members, or the entire Board? Under what conditions? Who decides upon their successors and when?

Both the planned community statutes (A.R.S. §33-1813) and the Condominium Act (A.R.S. §33-1243) provide for the removal of one or all Board members. The process starts with a petition signed by members entitled to cast at least 25% of the votes (or 100 whichever is less) in a community of 1,000 or fewer, and 10% (or 1,000) whichever is less) in a community of more than 1,000 members. The Board is then required to notice and hold a special meeting within 30 days. The quorum is 20% of the votes or 1,000, whichever is less. Removal is accomplished by majority vote of those voting. There is no provision in the statutes for decisions on successor selection. Therefore, one must look back to the governing documents.

35. Can an association be placed into receivership by a Court under state law?

There is no provision in the Condominium Act or the planned community association statutes about receivership. However, Arizona law would allow an association to be placed into receivership under other civil procedures, through a civil complaint process.

36. Does state statute provide for condemnation of common property?

The Condominium Act at A.R.S. §33-1206 provides for acquisition of units, portions of units, or common elements by eminent domain, and for the results thereof.

UNIT/LOT OWNER ISSUES

37. What action(s) can an association take in the event of non-payment of association assessments? Is foreclosure an option? Under what circumstances? (Please address judicial and non-judicial foreclosure.)

Under the Condominium Act, A.R.S. §33-1256 and the planned community statutes, A.R.S. §33-1807, assessments are a lien on the unit or lot from the time the assessment comes due. The lien, together with late charges, reasonable collection fees and reasonable attorneys fees and costs incurred, may be foreclosed in the same manner as a mortgage (judicially only) if the owner has been delinquent for a year or \$1,200, whichever occurs first. Actions to recover amounts subject to the lien may also be pursued personally against the owner.

38. Are there state laws that regulate whether a Member can be assessed a charge or otherwise fined by my association for violations? What violations trigger this authority? What procedures must be followed?

Boards of planned community Associations and condominium associations in Arizona have authority to impose fines (monetary penalties) on members after notice and an opportunity to be heard. A.R.S. §33-1803(B); §33-1242(11). Violations of the declaration, bylaws, and rules are all covered.

A member who receives a written notice that the condition of the property owned is in violation, regardless of a fine, may provide a written response by certified mail within 10 business days after the date of the notice. The association then has 10 business days to provide information on the provision of the documents allegedly violated, the date of the violation, the name of the person(s) who observed the violation, and the process to be followed to contest the notice.

a. What actions can the association take to collect

these charges or fines?

The association may seek a personal judgment against the owner for such fines. If the judgment is properly recorded it creates a lien. Fines are excluded from the statutory assessment lien.

- b. Can my association foreclose on my property for non-payment of these charges or fines?

No. See A.R.S. §33-1256 and 33-1807. Fines are excluded from the statutory assessment lien.

39. What, if any, other internal administrative enforcement options can the association take in the event of a violation of the state statute, association's governing documents, or the rules and regulations of the association?

There are no other express statutory enforcement options for condominium or planned community associations.

40. Does any applicable statute regulate the flying of the American Flag?

Under both the Condominium Act (A.R.S. §33-1261) and the planned community statutes (A.R.S. §33-1808), associations shall not prohibit (notwithstanding any provision in the community documents) the outdoor display of the American Flag on the owner's property if displayed in a manner consistent with the federal flag code. The association may adopt reasonable rules and regulations regarding placement and manner of display, and may regulate the size and location of flagpoles.

41. Does any applicable statute regulate solar panels? Clotheslines?

No statutes regulate clotheslines. For planned community associations, A.R.S. §33-1816 states that an association shall not prohibit the installation of a solar energy device (defined in 44-1761) notwithstanding any provision in the community documents. The association may adopt reasonable rules regarding placement if they do not prevent installation, impair functioning, restrict its use or adversely affect the cost or efficiency of the device.

42. What are the rules regarding placement of satellite dishes or antennas on my property? [\(Link to the OTARD Fact Sheet\)](#)

43. What dispute resolution options do I have if I have a problem with the board?

There are no express statutory dispute resolution procedures in Arizona law.

44. What is the state law regarding recalling board members?

Both the planned community statutes (A.R.S. §33-1813) and the Condominium Act (A.R.S. §33-1243) provide for the removal of one or all Board members. The process starts with a petition signed by members entitled to cast at least 25% of the votes (or 100 whichever is less) in a community of 1,000 or fewer, and 10% (or 1,000) whichever is less) in a community of more than 1,000 members. The Board is then required to notice and hold a special meeting within 30 days. The quorum is 20% of the votes or 1,000, whichever is less. Removal is accomplished by majority vote of those voting.

AMDENDMENT OF DOCUMENTS

45. Does state statute provide for the amendment of the association's documents?

Only the Condominium Act addresses amendments. See A.R.S. §33-1227.

a. What percentage of the owners must approve?
67%

b. Is Percentage based on those voting or totality of the number of owners?

Owners to which at least 67% of the votes are allocated.

c. Is the vote taken at a meeting or is it required to be by written consent?

This statute only specifies a "vote". However, the

Nonprofit Corporation Act permits action by written consent that takes the place of a meeting.

- d. Is mortgagee approval required? Is there a statutory process for obtaining mortgagee approval or providing for a presumptive mortgagee approval?

Mortgagee approval is not required by statute and there is no statutory process.. Some declarations require such approvals.

USE OF TECHNOLOGY

- 46. Other than a written document or by voting at a meeting, can a Common Interest Community use the most advanced technology, including e-mail or the internet to:

- a. Provide notice to Members of any meeting?

Both the Condominium Act at A.R.S. §33-1248 and the planned community statutes at A.R.S. §33-1804 require notice by hand delivery or mail.

- b. Obtain votes of the Members?

The Condominium Act, A.R.S. §33-1250 and the planned community statutes, A.R.S. §33-1812, require voting to be in person and by absentee ballot. However, the association “may provide for voting by some other form of delivery”. Therefore, voting could be permitted by other methods if adopted in the governing documents.

- c. Obtain the consents, acknowledgements or ratifications of Members?

There does not appear to be anything in the Arizona statutes addressing the subject.

- d. Obtain the electronic signatures of Members?

There does not appear to be anything in the Arizona statutes addressing the subject.

