



# SHAW & LINES, LLC

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## **KNOW YOUR ACTS FROM A HOLE IN THE WALL AN EXPLANATION OF THE STATUTES THAT GOVERN HOAS**

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**This document is intended to provide general information. It does not and cannot provide specific legal advice. For additional information or answers to questions, you may contact Augustus H. Shaw IV, Esq. of Shaw & Lines, LLC at 480-456-1500 or send questions to [ashaw@shawlines.com](mailto:ashaw@shawlines.com).**

*This course is approved by Community Association Managers International Certification Board (CAMICB) to fulfill continuing education requirements for the CMCA® certification. [www.Camicb.org](http://www.Camicb.org).*

## **Syllabus**

### **Learning Objectives:**

This seminar will provide a detailed analysis of the Arizona Statutes that govern HOAs in Arizona and how they interact with the HOA's governing documents.

**I. INTRODUCTION.**

**II. EXPLANATION OF THE ARIZONA CONDOMINIUM ACT.**

- a. Provisions of the Arizona Condominium Act that will trump a homeowner association's governing documents
- b. Provisions of the Arizona Condominium Act that will be trumped by a homeowner association's governing documents
- c. Ambiguous provisions of the Arizona Condominium Act

**III. EXPLANATION OF THE ARIZONA PLANNED COMMUNITIES ACT.**

- a. Provisions of the Arizona Planned Communities Act that will trump a homeowner association's governing documents
- b. Provisions of the Arizona Planned Communities Act that will be trumped by a homeowner association's governing documents
- c. Ambiguous provisions of the Arizona Planned Communities Act

**IV. OTHER STATUTES THAT APPLY TO ARIZONA HOMEOWNERS ASSOCIATIONS.**

**V. CONCLUSION.**

**IMPORTANT PROVISIONS**  
**THE ARIZONA CONDOMINIUM ACT**  
**ARIZONA REVISED STATUTES § 33-1201 *ET SEC.***

- [33-1201](#) **Applicability** – The Arizona Condominium Act, effective January 1, 2009, applies to all condominiums in the State of Arizona.
- [33-1202 \(CC&R Control Section\)](#) **Definitions** – This Section contains certain defined terms. If the CC&Rs defines terms in this Section, then the CC&Rs definition will control. If the CC&Rs are silent regarding a term found in this Section, this Section will control.
- [33-1203 \(Statute Trumps CC&Rs Section\)](#) **Variation** – This Section states that the provisions of the Condominium Act may not be negated by agreement or contract.
- [33-1204](#) **Separate titles and taxation** – This Section states that each Unit shall be separately titled and shall pay its own property taxes.
- [33-1205](#) **Applicability of local ordinances, rules and building codes** – This Section states that the local zoning, subdivision or building code shall be no different for a condominium as it would be for any other physically identical development under different form of ownership.
- [33-1206](#) **Eminent domain** – This Section details the allocation of an individual unit, partial unit or entire condominium acquired through eminent domain.
- [33-1207](#) **Severability** – This Section provides that each Section is individually applicable, if one Section is deemed invalid that does not invalidate any other Section.
- [33-1211](#) **Creation of condominium** – This Section states that a condominium may only be created through the recording of a declaration (CC&Rs).
- [33-1212 \(CC&R Control Section\)](#) **Unit boundaries** - This Section discusses the boundaries of Units within the Condominium. If the CC&Rs discuss the boundaries of a Unit, then the CC&Rs definition will control. If the CC&Rs are silent regarding the boundaries of a Unit, then this Section will control.

<a href="#">33-1213</a>	<b>(Statute Trumps CC&amp;Rs Section)</b>	<b>Construction and validity of declaration and bylaws</b> - This Section discusses the “Hierarchy of Documents.” Meaning, this Section lays out which documents will control should there be a conflict between the Association’s documents. The Section states that Association documents have the following priority: <ol style="list-style-type: none"><li>1. Declaration (CC&amp;Rs);</li><li>2. Articles of Incorporation;</li><li>3. Bylaws.</li></ol>
<a href="#">33-1214</a>		<b>Description of units</b> – This Section provides the requirements for a lot description to be a legal description.
<a href="#">33-1215</a>		<b>Contents of declaration</b> – This Section discusses what provisions must be contained within an Association’s Declaration (CC&Rs).
<a href="#">33-1216</a>		<b>Leasehold condominiums</b> – This Section details the requirements of a Lease, unit owner rights and leaseholder rights.
<a href="#">33-1217</a>		<b>Allocation of common element interests, votes and common expense liabilities</b> – This Section mandates that the Declaration (CC&Rs) allocate interests in the Common elements to Owners of Units.
<a href="#">33-1218</a>		<b>Limited common elements</b> – This Section mandates that the Declaration (CC&Rs) allocate limited common elements to the Unit Owners who have exclusive use for said limited common elements.
<a href="#">33-1219</a>		<b>Plat</b> – This Section discusses what must be contained on the Plat of the Association.
<a href="#">33-1220</a>		<b>Exercise of development rights</b> – This Section discussed what rights a Declarant has during the period of Declarant control and how they may execute those rights.
<a href="#">33-1221</a>		<b>Alterations of units</b> – This Section allows for non-structural alterations to the interior of a unit as long as they meet the requirements of the Association Governing Documents.
<a href="#">33-1222</a>		<b>Relocation of boundaries between adjoining units</b> – This Section allows the relocation of boundaries between units by an amendment to the Declaration, if the Declaration expressly approves relocation of boundaries.
<a href="#">33-1223</a>		<b>Subdivision of units</b> This Section allows the subdivision of units by an amendment to the Declaration, if the Declaration expressly subdivision of units.

[33-1224](#)

**Easement for encroachments** – This Section provides an automatic easement for encroachment if the encroachment is created because of the original construction, shifting or settling, or alteration or restoration authorized by the declaration.

[33-1225](#) (CC&R Control Section)

**Use for sale purposes** – This Section provides a declarant the right to maintain a sales office, model or management office at the Association so long as the Declaration or local laws do not provide otherwise.

[33-1226](#)

**Easement to facilitate exercise of special declarant rights** – This section provides the declarant an easement through the common elements necessary to discharge a declarant's obligation or exercise declarants rights.

[33-1227](#) (Statute Trumps CC&Rs Section)

**Amendment of declaration** – This Section sets a baseline for the required owner approval to amend the Declaration (CC&Rs). This Section states that unless the Declaration provides for a greater amount, the Declaration may only be amended so long as the approval of no less that 67% of the votes of the Association is obtained.

[33-1228](#) (Statute Trumps CC&Rs Section)

**Termination of condominium** – This Section discusses how a condominium association may be terminated. This Section states that unless the Declaration provides for a greater amount, the condominium association may only be terminated so long as the approval of no less that 80% of the votes of the Association is obtained.

[33-1229](#)

**Rights of secured lenders** – This Section covers the rights of secured lenders.

[33-1230](#)

**Merger or consolidation of condominiums** – This section outlines the steps to take and requirements to meet in order to merge two condominiums into one.

[33-1241](#)

**Organization of unit owners' association** – This Section requires that a condominium association be formed no later than the date the first Unit in the condominium is sold. The Section also states that the condominium association may be a non-profit association or unincorporated association.

[33-1242](#) This Section Both Trumps the CC&Rs and is Trumped by the CC&Rs

**Powers of unit owners' association; notice to unit owner of violation** – This Section discusses the following topics:

1. The powers of the condominium association (If the Association's documents discuss the powers of the Association, then the Association's documents would control. If the Association's documents are silent

**regarding the powers of the Association, then this Section will control)**

2. The remainder of this Section discusses how associations enforce their restrictions. The law requires an association to send out an initial violation letter that details how an owner may contest the violation and provides an owner with the right to contest the violation prior to the association “taking action”, including imposing fines or instituting a lawsuit. **(This Section trumps the Association’s governing documents)**

[33-1243](#) This Section Both Trumps the CC&Rs and is Trumped by the CC&Rs

**Board of directors and officers; conflict; powers; limitations; removal; annual audit; applicability** – This Section discusses several issues which are outlined below:

1. Powers of the Board **(If the Association’s governing documents discuss Board power, the documents will trump this Section);**

2. 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. The board of directors may fill vacancies in its membership for the unexpired portion of any term. **(If the Association’s governing documents discuss this power, the Statute will trump the documents);**

3. Board of Director Conflicts of Interest. **(If the Association’s governing documents discuss this power, the Statute will trump the documents);**

4. How to prepare and disseminate Association budgets. **(If the Association’s governing documents discuss this power, the documents will trump the Statute);**

5. Period of Declarant Control - Regardless of the period provided in the Declaration, a period of declarant control terminates no later than the earlier of:

- a. Ninety days after conveyance of seventy-five per cent of the units which may be created to unit owners other than a declarant.

- b. Four years after the declarant has ceased to offer units for sale in the ordinary course of business. **(If the Association’s governing documents discuss this power, the Statute will trump the documents);**

6. 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 upon election.

7. Removal of Members of the Board of Directors (**If the Association's governing documents discuss this power, the Statute will trump the documents**);

8. Annual Audit, Review or Compilation – 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 upon request to the unit owners within thirty days after its completion.

[33-1244](#)

**Transfer of special declarant rights** – This Section outlines the steps to take and requirements needed to transfer declarant rights.

[33-1245](#)

**Termination of contracts and leases of declarant; applicability** – Certain contract entered into by the declarant must have a provision in them stating that the contract may be voided after the termination of the period of declarant control.

[33-1246](#)

**Bylaws** – This Section discusses the requirement to have Bylaws and what provisions must be contained within the Bylaws.

[33-1247](#)

**Upkeep of the condominium** – This Section discusses the Association's minimum maintenance requirement.

[33-1248](#)

**Open meetings; exceptions** – This Section discusses how to conduct a meeting of the Board of Directors. For more information on this Section, please see the Shaw & Lines Guide on How to Conduct a Board Meeting at [www.shawlines.com](http://www.shawlines.com).

[33-1249](#) (CC&R and Bylaws Control Section)

**Quorums; applicability** – This Sections discusses quorum requirements.

[33-1250](#) (Statute CC&Rs Section) **Trumps**

**Voting; proxies; absentee ballots; applicability; definition** – This Section discusses how to conduct a meetings of the Members. For more information on this Section, please see the Shaw & Lines Guide on How to Conduct an Annual or Special Meeting of the Association at [www.shawlines.com](http://www.shawlines.com).

[33-1251](#)

**Tort and contract liability** – This Section provides any unit owner, board member or officer the right to bring action against the Association. It also requires that any action alleging wrong doing of the Association must be brought against the Association and not an individual owner. It also provides that the statute of limitations for an Association to bring action against the Declarant does not begin until the Declarant control is terminated.

[33-1252](#)

**Conveyance or encumbrance of common elements** – This Section outlines the voting requirements and required steps to take to convey or encumber common elements.

[33-1252.1](#)

**Conveyance of certain real property** - This Section outlines the voting requirements and required steps to take to convey or encumber property owned by the Association that is not a common element.

[33-1253](#) (Statute **Trumps**  
CC&Rs Section)

**Insurance** – This Section discusses the mandatory insurance obligation.

[33-1254](#)

**Surplus monies** – This Section requires the surplus monies of the Association remaining after payment of common expenses or prepayment of reserves to be paid to the unit owners in proportion to their liabilities or credited to their future common expenses assessment.

[33-1255](#)

**Assessments for common expenses; applicability** – This Section discusses the Association’s Assessment obligation, late fees and how to increase the Association’s Assessments. More details will come in our May 6<sup>th</sup> Lunch and Learn.

[33-1256](#)

**Lien for assessments; priority; mechanics’ and materialmen’s liens; applicability** – This Section discusses the Association’s Assessment Lien. **More details will come in our May 6<sup>th</sup> Lunch and Learn.**

[33-1257](#)

**Other liens affecting the condominium** – This Section defines a legally recorded judgment against the Association as a lien against each and every unit and not a lien against the common elements. If a unit owner wishes to extinguish the lien against his unit he may pay the judgment holder the amount of the lien attributed to his unit, the judgment holder will immediately have to release that individual unit from the lien.

[33-1258](#) (Statute **Trumps**  
CC&Rs Section)

**Association financial and other records; applicability** – This Section discusses the Association’s requirement to allow Owners to view records of the Association.



<a href="#">33-1259</a>			<b>Association as trustee</b> – This Section discusses the Association’s role as trustee.
<a href="#">33-1260</a>			<b>Resale of units; information required; applicability; definition</b> – This Section discusses resale disclosure statement requirements.
<a href="#">33-1260.1</a>			<b>Rental property; for sale, rent or lease signs; political signs and activities; applicability</b> – This section discusses the rights of unit owners to rent their unit, the restrictions the unit owners must follow in order to rent their unit and the Associations requirements, limitations and authorities regarding the renting of units.
<a href="#">33-1261</a> <b>CC&amp;Rs)</b>	<b>(Statute</b>	<b>Trumps</b>	<b>Flag display; for sale signs; political petitions; applicability</b> – This Section discusses various signs in the Association.
<a href="#">33-1270</a>			<b>Department of real estate; enforcement</b> – These statutes do not affect the commissioner of the department of real estate with respect to the issuance of public reports.

**IMPORTANT PROVISIONS**  
**THE ARIZONA PLANNED COMMUNITIES ACT**  
**ARIZONA REVISED STATUTES § 33-1801 *ET SEC.***

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[33-1801](#)                      **Applicability; exemption**

[33-1802](#)                      **Definitions** – This Section provides the Defined Terms of the Statute including:  
Association;  
Community Documents;  
Declaration; and  
Planned Community

[33-1803](#) (Statute **Trumps** **Penalties; notice to member of violation** – This Section discusses a number of issues, such as:

Limitations on the increase of annual assessments (20% rule);  
Provisions regarding late payment on annual assessments;  
How annual assessment payments must be applied to the owner's account;  
How and when fines may be imposed; and  
Owner's rights concerning notices of violation.

[33-1804](#) (Statute **Trumps** **Open meetings; exceptions** – This Section discusses:

The requirement for Board meetings to be open to members or their designated representatives unless the meeting discusses:

Legal advice;  
Pending or contemplated litigation;  
Personal, health or financial information of a member;  
Matters relating to the job performance of an employee or contractor

The requirement that a member or their designated representative be allowed to speak before the Association takes action at a Board meeting;

The requirement that Board meetings be held in the State of Arizona;  
Requirements regarding proper notice of Board Meetings;  
Requirement to call a Board Meeting at least once per year.

For more information on this Section, please see the Shaw & Lines Guide on How to Conduct a Board Meeting at [www.shawlines.com](http://www.shawlines.com).

[33-1805](#) (Statute **Trumps** **Association financial and other records** – This Section discusses: The member's ability or the ability of the member's designated representative to obtain certain records of the Association.

For more information on this Section, please see [www.shawlines.com](http://www.shawlines.com).

[33-1806](#) **Resale of units; information required; definition** - This Section discusses resale disclosure statement requirements.

[33-1806.1](#) **Rental property; member and agent information; fee; disclosure**

[33-1807](#) **Lien for assessments; priority; mechanics' and materialmen's liens** - This Section discusses the Association's Assessment Lien. **More details will come in our May 6, 2009 Lunch and Learn on Collections.**

[33-1808](#) (Statute **Trumps** **Flag display; political signs; caution signs; for sale signs; political petitions** - This Section discusses various signs in the Association and

their display, in addition to what flags may be displayed in the Association.

- [33-1809](#) (Statute **Trumps** **Parking; public service and public safety emergency vehicles; definition** – This Section discussed which types of Public Safety Vehicles may be parked in an Association.  
CC&Rs)
- [33-1810](#) (CC&R **Control** **Board of directors; annual audit** – Unless any provision in the association’s 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 upon request to the unit owners within thirty days after its completion.  
Section)
- [33-1811](#) (Statute **Trumps** **Board of directors; contracts; conflict** – This Section discusses when a conflict of interests exists and how the Board should handle the conflict.  
CC&Rs)
- [33-1812](#) (Statute **Trumps** **Proxies; absentee ballots; definition** - This Section discusses the voiding of using proxies and how to conduct a meeting of the Members. For more information on this Section, please see the Shaw & Lines Guide on How to Conduct an Annual or Special Meeting of the Association at [www.shawlines.com](http://www.shawlines.com).  
CC&Rs)
- [33-1813](#) (Statute **Trumps** **Removal of board member; special meeting** – This Section discusses how members may remove Board members and the proper steps to follow concerning said removal.  
CC&Rs)
- [33-1814](#) (Statute **Trumps** **Slum property; professional management** – This Section requires planned communities to enforce a city’s requirement for professional management of a “slum” planned community.  
CC&Rs)
- [33-1815](#) (Statute **Trumps** **Association authority; commercial signage** – This Section discusses rules concerning commercial signage.  
CC&Rs)
- [33-1816](#) (Statute **Trumps** **Solar energy devices; reasonable restrictions; fees and costs** – This Section discusses the procedures concerning solar energy devices. For more information, see [www.shawlines.com](http://www.shawlines.com).  
CC&Rs)
- [33-1817](#) **Declaration amendment; design, architectural committees; review**
- [33-1818](#) **Community authority over public roadways; applicability**

**Arizona Nonprofit Corporations Act: ARS §§ 10-3101 through 10-11031.**

All Associations that are incorporated are subject to the Arizona Nonprofit Corporations Act. The Arizona Nonprofit Corporations Act contains extensive provisions governing the formation and operation of nonprofit corporations.