



**SHAW & LINES, LLC**  
ATTORNEYS AT LAW

## **2024 SUMMARY OF ARIZONA COMMUNITY ASSOCIATION LAW**

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## **I. WHAT IS A HOMEOWNERS OR COMMUNITY ASSOCIATION**

### **A. What is a Homeowners Association**

A homeowners association (hereinafter, “Association”) is a common-interest community consisting of landowners in a residential neighborhood (or sometimes commercial property) that has restrictive covenants placed on the property. Owners become subject to restrictive covenants imposed on the real estate encompassing the Association and contractual provisions located within the restrictive covenants, regardless of express acquiescence<sup>1</sup>

Over 2.2 million residents live in one of the approximately 9,900 community associations in Arizona (more than 30% of Arizona residents) and approximately 74.1 million people live in community associations throughout the United States.<sup>2</sup>

Arizona law divides Associations into three (3) basic types: Condominiums<sup>3</sup>, Planned Communities<sup>4</sup>, and “others.”

### **1. Definition of Planned Community**

As defined under A.R.S. § 33-1802(4), a Planned Community “means a real estate development that includes real estate owned and operated by [...] a nonprofit corporation or unincorporated Association of owners, that is created for the purpose of managing, maintaining or improving the property and in which the owners of separately owned lots, parcels or units are mandatory members and are required to pay assessments to the Association for these purposes.”

Summarily, a Planned Community is an Association where deed restrictions are placed on property owned by owners who are required to be members of the Association.

### **2. Definition of Condominium**

A Condominium under A.R.S. § 33-1202(10) is defined as “real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the separate portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.”

In essence, a Condominium is a community Association in which the individual owners own an undivided interest in the common area. The common area is property to be equally enjoyed by the members of the Association.

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<sup>1</sup> See *Lacer v. Navajo County*, 141 Ariz. 392, 394 (App. 1984). “When a grantee accepts a deed containing restrictions, he assents to those restrictions and is bound to their performance as effectively as if he had executed an instrument containing them.”

<sup>2</sup> *The Community Association Fact Book, National and State Statistical Review for 2021*: Fact Book 2021 Dashboard - Foundation for Community Association Research ([caionline.org](https://caionline.org)).

<sup>3</sup> See, Arizona Condominium Act, Arizona Revised Statutes (“A.R.S.”) §§ 33-1201, et seq.

<sup>4</sup> See, Arizona Planned Communities Act, A.R.S. §§ 33-1801, et seq.

### **3. Definition of Real Estate Cooperative**

A corporation owns the property that makes up the cooperative. Typically, the property is a building. The owner purchases a shared interest in the corporation and with that purchase, the owner has a right to occupy a portion of the building. This portion is generally called an apartment. Anything outside the apartment becomes the common area maintained by the corporation.

### **4. Townhomes, Patio Homes, and Cluster Housing**

These are all marketing names for different types of housing products. To know what type of community exists, it is necessary to know how the common area is structured.

## **II. STATUTES THAT GOVERN HOMEOWNERS ASSOCIATIONS**

### **A. Arizona Planned Communities Act**

The Arizona Planned Communities Act is found in Arizona Revised Statutes (“A.R.S.”) Sections 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.

### **B. Arizona Condominiums Act**

The Condominium Act is found in A.R.S. § 33-1201 *et seq.* It applies to all condominiums, whenever formed.

### **C. Arizona Nonprofit Corporations Act**

Arizona’s Nonprofit Corporation Act is found in A.R.S. §§ 10-3101 through 10-11702 *et seq.* and is applicable to those incorporated associations.

## **III. DOCUMENTS THAT GOVERN HOMEOWNERS ASSOCIATIONS**

Governing documents of homeowner Associations are divided into two (2) basic categories: (1) documents that restrict the use of the property or the behavior of residents concerning the property; and (2) documents that govern the corporate entity embodying the Association. Association documents that restrict the use of the property or the behavior of owners concerning the property are:

1. The Declaration of Covenants, Conditions, and Restrictions;
2. The Rules and Regulations; and
3. Architectural Guidelines.

Association documents that govern the corporate entity embodying the Association are:

1. The Articles of Incorporation;
2. The Bylaws; and
3. Resolution of the Board of Directors.

## **A. Restrictive Covenants**

The Merriam Webster Dictionary defines a restrictive covenant as “a covenant acknowledged in a deed or lease that restricts the free use or occupancy of property (as by forbidding commercial use or types of structures).” In the context of homeowner associations, restrictive covenants and deed restrictions constitute a “contract between the subdivision’s property owners as a whole and the individual lot owners.” Ahwatukee Custom Estates Mgmt. Ass’n, Inc. v. Turner, 196 Ariz. 631, 634, 2 P.3d 1276 (App. 2000). Where a grantee purchases a property encumbered by restrictive covenants, that person is bound to perform them. Heritage Heights Home Owners Association v. Esser, 115 Ariz. 330, 333, 565 P.2d 207, 210 (App. 1977); *see also*, Johnson v. Pointe Community Ass’n, Inc., 205 Ariz. 485, 490-91, 73 P.3d 616, 621-22 (App. 2003) (A planned community association must comply with planned community documents.).

The “contract” discussed above usually comes in the form of homeowner association governing document known as the Declaration of Covenants, Conditions, and Restrictions, the Rules and Regulations; and the Architectural Guidelines.

### **1. Declaration of Covenants, Conditions and Restrictions**

The Declaration of Covenants, Conditions, and Restrictions (commonly referred to as the “Declaration”) is a document that creates a scheme of enforceable covenants and restrictions that run with a property. Both the Condominium Act<sup>5</sup> and the Planned Communities Act<sup>6</sup> have defined terms for the Declaration. The Condominium Act contains requirements that require certain provisions be incorporated into a condominium’s Declaration<sup>7</sup>. As a document that places restrictions on property, the Declaration must be recorded with the applicable county recorder.

### **2. Rules and Regulations**

Most Declaration allow Associations to draft and adopt reasonable Rules and Regulations that help explain the restrictions found in the Declaration. Arizona law allows Associations to draft and enact reasonable Rules and Regulations related to governing the common area property only.<sup>8</sup> The Rules and Regulations are usually developed by the Association’s Board of Directors and have the same enforceability as the Declaration, even though the Rules and Regulations for the most part are not recorded with the county recorder.

Rules and Regulations may only explain regulations found in the Declaration. Rules and Regulations may not contradict provisions of the Declaration, nor may they add restrictions that are not found in the Declaration unless the Association’s Declaration allow

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<sup>5</sup> A.R.S. § 33-1202(13).

<sup>6</sup> A.R.S. § 33-1802(3).

<sup>7</sup> A.R.S. § 33-1215.

<sup>8</sup> *See*, A.R.S. § 33-1242 (for Condominiums) and the Restatement (Third) of Property: Servitudes § 6.7(3) (2000) (for Planned Communities). *See also*, Wilson v. Playa de Serrano, 211 Ariz. 511, 123 P.3d 1148 (App. 2005) ruling that community Associations may not place restrictions on the use of individual units or lots via rules and regulations, unless the community Association’s Declaration provide it with the ability to develop rules that reasonably regulate activity in units or on lots.

the Association's rules and regulations to add additional restrictions to the Declaration<sup>9</sup>. If Rules and Regulations conflict with the Declaration, then they are generally unenforceable.

### **3. Architectural Guidelines**

Architectural Guidelines also derive their authority from the Association's Declaration. The Architectural Guidelines usually provide a framework for the decision-making process of an Architectural Committee. The Architectural Guidelines have the same enforceability as the Declaration, even though they are usually not recorded with the county recorder.

## **B. Corporate Governing Documents**

### **1. Articles of Incorporation**

The Articles of Incorporation establish the Association as a separate legal and corporate entity and must meet certain statutory criteria found in the Arizona Nonprofit Corporation Act.<sup>10</sup> The Articles of Incorporation constitute the corporate charter and are filed with the Arizona Corporation Commission.

### **2. Bylaws**

The Bylaws of an Association set out the procedures for the internal government and operation of the Association.<sup>11</sup> The Bylaws guide the Association concerning how owners may vote regarding corporate issues. The Bylaws also regulate the conduct of the Association's Board of Directors as well as outline how an Association's Board of Directors is elected.

### **3. Resolutions**

Corporate resolutions are decisions of the Association's Board of Directors that are reduced to a formal written document. Resolutions usually contain official written policies and procedures of the Association such as an enforcement policy or an assessment collection policy.

## **IV. CORPORATE GOVERNANCE OF ASSOCIATIONS**

Pursuant to the Planned Communities<sup>12</sup> Act and the Condominium Act<sup>13</sup>, an Association can be either an incorporated entity or an unincorporated association of owners. The vast majority of Associations in Arizona are organized as Arizona Non-Profit Corporations.

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<sup>9</sup> Some Declaration allow the Association to create rules and regulations that can add additional restrictive covenants not expressly provided for in the Declaration. These types of provisions are rare though.

<sup>10</sup> A.R.S. § 10-3202.

<sup>11</sup> A.R.S. § 10-3206.

<sup>12</sup> A.R.S. § 33-1802(1).

<sup>13</sup> A.R.S. § 33-1241.

If an Association is incorporated as an Arizona Non-Profit Corporation, the Association will be subject to the Arizona Non-Profit Corporations Act<sup>14</sup> and will be usually taxed as a 501(C)(4) Non-Profit entity.

A Non-Profit Association is comprised of two basic actors; the Members that compromise the Association and the Association Board of Directors.

### **A. Association Board of Directors**

Pursuant to Arizona Law<sup>15</sup> and most Association Articles of Incorporation and Bylaws, Associations must have a duly elected Board of Directors. The Board of Directors serves to operate the Association and is the primary executive source or power.

Directors and Officers of an Association are charged with a “fiduciary duty” to the Association. The Board’s “fiduciary duty” may be broken down into two distinct duties: (1) the duty of care; and (2) the duty of loyalty.

Directors have an obligation to exercise reasonable care in making decisions on behalf of the Association. This obligation is referred to as the duty of care. To meet the duty of care when making decisions concerning Association issues, the Association Board of Directors:

1. Must act in good faith, in a manner that he or she believes to be in the best interest of the Association and its members;
2. Must make decisions that any other reasonable director would make in the same situation or circumstances;
3. Must exercise discretion within the scope of their authority under relevant statutes, covenants and restrictions;
4. Must treat members equally and fairly; and
5. Must maintain and repair the Association’s common area property.<sup>16</sup>

The above concept is also discussed in the “business judgment rule” which is found in both Arizona case law<sup>17</sup> and in A.R.S. § 10-3830 of the Arizona Nonprofit Corporation Act.<sup>18</sup> The business judgment rule states that a Board member will have met his or her duties when he or she acts “in good faith[,] with the care an ordinarily prudent person in a like position would exercise under similar circumstances, [and] in a manner the director reasonably believes to be in the best interests of the corporation.”<sup>19</sup>

This rule also protects Board members from personal liability if they make a decision after relying on “information, opinions, reports or statements, including financial statements and other financial data,” received from “legal counsel, public accountants or other person as to matters the director reasonably believes are within the person’s professional or expert

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<sup>14</sup> A.R.S. §§ 10-3101 through 10-11031, et seq.

<sup>15</sup> A.R.S. § 10-3801.

<sup>16</sup> *See, Tierra Ranchos Homeowners Ass’n v. Kitchukov*, 216 Ariz. 195, 204, 165 P.3d 173, 178 (App. 2007).

<sup>17</sup> *See, Tierra Ranchos Homeowners Ass’n v. Kitchukov*, supra.

<sup>18</sup> If the community Association is a nonprofit corporation.

<sup>19</sup> Codified in A.R.S. § 10-3830 (Arizona Nonprofit Corporation Act - General standards for directors).

competence.”<sup>20</sup> In other words, if the Board’s decision ends with a bad result – even a financial loss – the directors should be shielded from claims of personal liability if the decision was made pursuant to the advice of the Association’s attorney.

Another duty relating to the fiduciary responsibilities of a member of an Association Board is a duty of loyalty. Directors should have undivided loyalty to the Association. This duty prohibits directors from receiving a benefit for serving on the Board at the expense of the Association or its members. This duty of loyalty is breached when a Board member acts in his or her own interest or with a conflicting interest.<sup>21</sup>

One example of a breach of the duty of loyalty is when a Board member has a financial interest in a transaction or decision before the Board and fails to properly follow Arizona law.<sup>22</sup> Another example of breaching the duty of loyalty or fiduciary duty is to discuss with other members matters that are either protected by attorney/client privilege (*i.e.*, correspondence, communications or advice from legal counsel) or matters that are reserved for executive session Board meeting discussions provided in Arizona statutes.

To avoid breaching this duty of loyalty, Board members should consider and ensure the following:

1. Enforce the governing documents equally, not selectively, and without regard to whether the owner is a neighbor, friend or relative;
2. Fully disclose any potential conflict prior to any deliberations;
3. Ask to be dismissed and do not participate in the decision-making process for any issues where a conflict may exist;
4. Maintain accurate records; and
5. Keep confidences (*i.e.*, attorney/client communications and results from executive session meetings).

Occasionally there will be factions and differences of opinions among members of the Board. Diverse positions among Board members can lead to progressive discussion and innovative administration. Board members, however, must understand that Board decisions are made by majority vote. If the minority is out-voted on an issue, the minority should attempt to provide unified support, unless the action taken by the majority is unlawful.

Since Board members serve at the will of the members of each community, the general membership of each community has the ability to remove Board members who the members

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<sup>20</sup> *See*, A.R.S. §§ 10-3830(B) – (D).

<sup>21</sup> *See*, A.R.S. § 33-1811 (Planned Communities) and A.R.S. § 33-1243(C) (Condominiums) indicating that: “If any contract, decision or other action for compensation taken by or on behalf of the Board of directors would benefit any member of the Board of directors or any person who is a parent, grandparent, spouse, child or sibling of a member of the Board of directors or a parent or spouse of any of those persons, that member of the Board of directors shall declare a conflict of interest for that issue. The member shall declare the conflict in an open meeting of the Board before the Board discusses or takes action on that issue and that member may then vote on that issue. Any contract entered into in violation of this [section/subsection] is void and unenforceable.”

<sup>22</sup> *See*, A.R.S. § 33-1811 (Planned Communities) and A.R.S. § 33-1243(C) (Condominiums).

believe are not taking action in accordance with the desires of the majority. As such, dissident Board members should use caution when challenging a valid decision of the Board majority.

## **B. HOMEOWNERS ASSOCIATION MEETINGS**

There are four (4) main types of Association meetings: (1) meetings of the Association's Board of Directors; (2) meetings of committees of the Association; (3) annual meetings of the Association; and (4) special membership meetings of the Association.

All Association meetings must be held or originate in the State of Arizona.<sup>23</sup> This means that the origin of the meeting must be in Arizona. Teleconferences are still allowed so long as the call originates in Arizona.<sup>24</sup>

Also, except for limited circumstances that will be discussed below, Association meetings are open to all members of the Association or any person designated by a member in writing as the member's representative. Members or their designated representatives also have the right to speak at an appropriate time during the deliberations and proceedings of Association meetings.<sup>25</sup> The Board may place reasonable time limits restrictions on those persons speaking during the meeting but must permit a member or the 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.<sup>26</sup>

Recent changes to Arizona statutory law applicable to Associations also serve to establish the State Legislature's public policy belief that Associations meetings should be as open as possible to Association member attendance. A.R.S. § 33-1248(F) (Condominiums) and A.R.S. § 33-1804(F) (Planned Communities) outlines the Legislature's "public policy" belief that an Association should err on the side of open meetings instead of closed meetings. This means that the Board of Directors and management must do all they can to ensure that Associations only meet in executive session or have an emergency meeting when the applicable statutory allowance is at play.

To implement its public policy beliefs, the Arizona Legislature has enacted a number of laws geared toward open Association meetings. Both the Arizona Planned Community Act and Condominium Act each state that agendas must be made available to all members prior to certain Association Board of Directors meetings.<sup>27</sup>

Since there are a number of Arizona statutes that cover the various types of Association meetings, it is important to discuss each type in more detail.

### **1. Board Meetings**

There are three (3) types of Board of Director meetings: (1) Regular Board Meetings; (2) Executive Session Board Meetings; and (3) Emergency Board Meetings. The most common type of Board of Director meetings are their Regular Board Meetings.

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<sup>23</sup> A.R.S. § 33-1804(B) (Planned Communities) and § 33-1248(B) (Condominiums).

<sup>24</sup> A.R.S. § 33-1804(B) (Planned Communities) and § 33-1248(B) (Condominiums).

<sup>25</sup> A.R.S. § 33-1804(A) (Planned Communities) and § 33-1248(A) (Condominiums).

<sup>26</sup> A.R.S. § 33-1804(A) (Planned Communities) and § 33-1248(A) (Condominiums).

<sup>27</sup> A.R.S. § 33-1804(D) (Planned Communities) and § 33-1248(D) (Condominiums).



### **i. Regular Board Meetings**

Regular Board Meetings are meetings in which the Association conducts general “day-to-day” business of the Association. Regular Board Meetings are usually held once a month or once per quarter. A Regular Board Meeting occurs whenever a quorum of the Board meets either formally or informally to discuss Association business.<sup>28</sup>

Unless otherwise stated in the Association’s Bylaws, the Association must provide at least 48-hours’ notice to owners of meetings of the Board.<sup>29</sup> Said notice shall be by “newsletter, conspicuous posting or any other reasonable means as determined by the Board of directors.”<sup>30</sup> Also, Regular Board Meetings are open to all members of the Association or any person designated by the member in writing as the member’s representative.<sup>31</sup>

Agendas must be made available to all members prior to the start of an Association Board meeting.<sup>32</sup> Members or their designated representatives also have the right to speak at an appropriate time during the deliberations and proceedings of Regular Board Meetings.<sup>33</sup> Also, attendees of Regular Board Meetings have the right, subject to reasonable Association rules, to audiotape or videotape those portions of the meetings that are open to the members.<sup>34</sup>

### **ii. Executive Session Board Meetings**

Executive Session Board of Director Meetings are meetings of the Board that are exempt from the open meeting requirements. These meetings are closed to the members. Executive Session Board Meetings are held to discuss issues that are not required by statute to be discussed in a Regular Board Meeting. These meetings occur “behind closed doors” or outside the presence of, and without participation from, the members.

In addition, A.R.S. § 33-1248(C) (Condominiums) and A.R.S. § 33-1804(C) (Planned Communities) both state:

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.

The reference to “any closed portion of a meeting” in the first sentence of the statute refers to executive session Board of Director meetings.

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<sup>28</sup> A.R.S. § 33-1804(D) (Planned Communities) and § 33-1248(D) (Condominiums).

<sup>29</sup> A.R.S. § 33-1804(C) (Planned Communities) and § 33-1248(C) (Condominiums).

<sup>30</sup> A.R.S. § 33-1804(C) (Planned Communities) and § 33-1248(C) (Condominiums).

<sup>31</sup> A.R.S. § 33-1804(A) (Planned Communities) and § 33-1248(A) (Condominiums).

<sup>32</sup> A.R.S. § 33-1804(D) (Planned Communities) and § 33-1248(D) (Condominiums).

<sup>33</sup> A.R.S. § 33-1804(A) (Planned Communities) and § 33-1248(A) (Condominiums).

<sup>34</sup> A.R.S. § 33-1804(A) (Planned Communities) and § 33-1248(A) (Condominiums). *See also*, Page 6 above.

And there are five (5) particular topics or issues that may be discussed in these executive session Board of Director meetings:

1. Legal advice from an attorney for the Board or for the Association;
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 a contractor of the Association who works under the direction of the Association; and
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 open session.

A.R.S. § 33-1248(C) (Condominiums) and A.R.S. § 33-1804(C) (Planned Communities) will make it critical that an Association's Board and managers understand when an Association may meet in executive session. Also, it is advisable to have an agenda available to hand out to the members regarding an executive session meeting. When providing notice of your executive session meetings, the notice should also include an agenda.

### **iii. Emergency Board Meetings**

An Emergency Board of Directors meeting may only be called to discuss business or take action that cannot be delayed for the 48 hours required for notice of a regular meeting of the Board of Directors. Thus, in order for the Board to conduct an emergency Board meeting, there must be a serious threat to life or property. Also, only "emergency matters" may be discussed at an Emergency Board meeting.<sup>35</sup>

The minutes of the Emergency Board Meeting must state the reason necessitating the emergency meeting. Also, the minutes of the Emergency Board Meeting shall be read and approved at the next regularly scheduled meeting of the Board.<sup>36</sup>

## **2. Association Committee Meetings**

Association committees provide an opportunity for Association members to serve their community in specialized areas. They aid the Board of Directors in governing the Association. Association committees are functions of the Association's Board of Directors. Some common

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<sup>35</sup> A.R.S. § 33-1804(C) (Planned Communities) and § 33-1248(C) (Condominiums). *See also*, Page 7 above.

<sup>36</sup> A.R.S. § 33-1804(D) (Planned Communities) and § 33-1248(D) (Condominiums).

Association committees include Architectural Control, Landscaping, and “Welcome Wagon” committees.

Most Association committees meet on a regular basis. If an Association committee meets on a regular basis, the committee must meet in the State of Arizona.<sup>37</sup> Also, Association members or their designative representatives have the right to attend and speak at committee meetings.<sup>38</sup>

### **3. Annual Meetings of the Members**

Arguably the most important meeting an Association is required to conduct is the Annual Meeting of the members. Not only do Association governing documents require Associations to conduct Annual Meetings, Arizona law requires Associations to conduct an Annual Meeting at least once per year.<sup>39</sup>

#### **i. Purpose of Annual Meetings**

Annual Meetings are meetings of the members. Annual Meets are held to conduct the “business” of the membership and allow the membership to address their Association. In most Associations, Annual Meetings are conducted for three (3) main purposes:

1. To conduct member business;
2. To elect members to the Association’s Board of Directors; and
3. To allow the members to address their Association.

#### **ii. Conduct Member Business**

Annual Meetings are forums where member business may be conducted. Member business can take many forms, including:

1. Approval of the previous year’s Annual Meeting Minutes (see Section below on Annual Meeting Minutes);
2. Amendment of the Association’s governing documents; and
3. Authorization increases in the annual assessments or special assessments.

Arizona law and most Association documents allow Member business at Annual Meetings. The challenge, however, lies in statutory requirements concerning absentee ballots, which will be discussed below.

#### **iii. To Elect Members to the Board of Directors**

The most important purpose of an Annual Meeting is to elect members to the Association’s Board of Directors. Effectuating an election to the Board of Directors takes a great deal of forethought, especially in light of Arizona law.

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<sup>37</sup> A.R.S. § 33-1804(B) (Planned Communities) and § 33-1248(B) (Condominiums).

<sup>38</sup> A.R.S. § 33-1804(A) (Planned Communities) and § 33-1248(A) (Condominiums).

<sup>39</sup> A.R.S. § 33-1804(B) (Planned Communities) and § 33-1248(B) (Condominiums).

A successful and legal election to the Board starts at least two (2) months prior to the Annual Meeting. This is due, in large part, to the requirements found in Arizona law.<sup>40</sup> Arizona law requires that Associations send ballots to all members of the Association.<sup>41</sup>

When drafting an absentee ballot, the Association must keep Arizona's statutory requirements in mind. Specifically, A.R.S. § 33-1812(A) sets out the ballot requirements for Planned Communities and A.R.S. § 33-1250(A) sets out the ballot requirements for Condominiums.

In relevant part, the above statutes on ballot requirements state that:

Any action taken at an Annual, Regular or Special Meeting of the members shall comply with all of the following if absentee ballots are used:

1. The absentee ballot shall set forth each proposed action.
2. The absentee ballot shall provide an opportunity to vote for or against each proposed action.
3. The absentee ballot is valid only for one specified election or meeting of the members and expires automatically after the completion of the election or meeting.
4. The absentee 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 absentee ballot to the member.
5. The absentee ballot does not authorize another person to cast votes on behalf of the member.

If an Association provides for absentee ballots or ballots provided by some other form of delivery, the completed ballot must contain the name, address and signature of the person voting, unless the Association documents permit secret ballots, in which case only the envelope must contain name, address and signature. The ballots, envelopes and related materials must be retained and made available for unit owner or member inspection for at least one year after completion of the election.

If an Association chooses to permit electronic voting in addition to providing for votes to be cast in person and by absentee ballot, the Association must be sure to comply with the following:

1. The Association must provide **notice** to members that the vote will be conducted by electronic means.
2. The notice must include a "reasonable" procedure for members to obtain and cast a ballot through some other form of delivery, including U.S. Mail and fax transmission.

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<sup>40</sup> See, A.R.S. § 33-1812(A) (Planned Communities) and § 33-1250(A) (Condominiums).

<sup>41</sup> See, A.R.S. § 33-1812(A) (Planned Communities) and § 33-1250(A) (Condominiums).

3. The online voting system must also meet all of the following requirements:
  - a. Authenticates the member's identity;
  - b. Authenticates the validity of each electronic vote to ensure that the vote is not altered in transit;
  - c. Transmits a receipt to each member who casts an electronic vote; and
  - d. Stores electronic votes for recount, inspection and review purposes.<sup>42</sup>

#### **iv. To Allow Members to Address their Association**

It is important to remember that the Annual Meeting is a meeting of the members, which means that the members should be provided with the opportunity to address their Board of Directors and other members of the Association.

Many Associations attempt to limit who may speak at an Annual Meeting. A good policy is to let all members who wish to speak have the opportunity to speak but limit how long they may speak. Shaw & Lines usually suggests no more than five (5) minutes per person, but this timeframe may be less depending on the number of members who desire to speak. We further suggest that, where a meeting becomes very adversarial, the Association strictly comply with all time limits, even bringing a stopwatch or other timer if necessary.

### **4. Special Meetings of the Members**

Special Meetings of the members are another form of member meeting. Special Meetings of the members are unique because they vary depending on the purpose of the Meeting of the members.

#### **i. Who May Call A Special Meeting of the Members**

The question of who may call a Special Meeting of the members is usually answered in the governing documents of the Association. If the Association's governing documents are silent, applicable Arizona statutes require that Special Meetings of the members may be called by the president, by a majority of the Board, or by owners having at least twenty-five percent (25%), or any lower percentage specified in the Bylaws, of the votes in the Association.<sup>43</sup>

#### **ii. Common Purposes for Special Meetings of the Members**

Special Meetings of the members may be called for a number of reasons, such as:

1. To authorize a Special Assessment or an increase to Annual Assessments.
2. To authorize an amendment of the Association's governing documents.
3. To remove members of the Association's Board of Directors.
4. To vote on other issues pursuant to the Association's governing documents.

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<sup>42</sup> *See*, A.R.S § 33-1812(A) (Planned Communities) and § 33-1250(C) (Condominiums) which require that election materials, including electronic ballots and non-ballot-related material, are retained and made available to owners for at least one year.

<sup>43</sup> *See*, A.R.S. § 33-1804(B) (Planned Communities) and A.R.S. § 33-1248(B) (Condominiums).

**iii. Special Meeting of the Members to Authorize a Special Assessment or Increase in the Annual Assessments**

Generally, the Association's Declaration will dictate how Special Meetings of the members may be called to vote on a special assessment or increase in the annual assessment of the Association. Voting and quorum requirements concerning this type of Special Meeting of the members will also generally be found in the Association's Declaration. Additionally, any Special Meetings of the members must be conducted using absentee ballots pursuant to A.R.S. § 33-1812 (Planned Communities) and A.R.S. § 33-1250 (Condominiums).

**iv. Special Meeting of the Members to Amend the Association's Governing Documents**

Pursuant to most Association governing documents, Special Meetings of the members may be called to vote amending certain provisions of the Association's governing documents. Voting and quorum requirements concerning this type of Special Meetings of the members should also be generally found in the specific Association governing document that is being amended. Additionally, any Special Meetings of the members must be conducted using absentee ballots pursuant to A.R.S. § 33-1250(C) (Condominiums) and A.R.S. § 33-1812(A) (Planned Communities).

**v. Special Meeting of the Members to Remove Members of the Association's Board of Directors**

Recent changes in Arizona law have changed the way members of an Association's Board of Directors may be removed. A.R.S. § 33-1813 (Planned Communities) and A.R.S. § 33-1243 (Condominiums) now trump any language in the Association's governing documents regarding Board member removal, and the statutes provide procedures concerning a Special Meeting of the members to remove members of the Association's Board of Directors.

It is important that an Association follow the quorum requirements of A.R.S. § 33-1813(A)(4)(e) (Planned Communities) and A.R.S. § 33-1243(H)(4)(e) (Condominiums). It is equally important that the Association carefully study A.R.S. § 33-1243 and § 33-1813 in order to abide by its provisions. If one or less than a majority of the Board is removed, the member(s) vacant seat shall be filled as provided in the Association's documents. This means that prior to the removal meeting being effectuated, the Association must review the Association's documents to determine how the Board seat(s) will be filled if the recall is successful and inform the owners of how the seat(s) will be filled.

If the community documents do not discuss how to replace a removed director, the procedures discussed below will apply.

If a majority of the Board members or all of the Board of Directors are removed, then the Association must elect their replacements and a duly called special meeting of the members. The special meeting of the members must be held no later than thirty (30) days from the date of the recall meeting.

The Board of directors shall retain all documents and other records relating to the removal and replacement of the member(s) of the Board of directors for at least one year and shall permit members to inspect those documents and records.

Finally, a member of the Board of Directors who is removed is not eligible to serve on the Board again until after her original term has expired unless the governing documents require a longer period of time.

## **V. PRIMARY FUNCTIONS OF A HOMEOWNERS ASSOCIATION**

One of the primary duties of a homeowner's Association is to enforce the restrictions in the Association's governing documents.<sup>44</sup> In some circumstances, Associations may have an obligation to enforce the restrictions found in the Association's governing documents.<sup>45</sup> It is important to understand how and when to properly enforce an Association's governing documents.

### **A. ENFORCEMENT OF RESTRICTIVE COVENANTS**

Restrictive covenants may be enforced in three (3) basic ways:

1. Imposing fines;
2. Filing a lawsuit seeking injunctive relief; and
3. Exercising "Self-Help."

In selecting any one of these options, an Association should rely on three (3) main questions guiding the enforcement:

1. What enforcement action is allowed by the Association's governing documents?
2. Which contemplated method of enforcement action is likely to gain compliance?
3. And, which method of enforcement action is reasonable under the circumstances?

These principles will help an Association safely navigate the complexity involved with enforcement of the Declaration. The above principles, along with the enforcement actions, are discussed in greater detail below.

In addition and prior to engaging in certain enforcement mechanisms, an Association must follow provisions of Arizona statutory law.

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<sup>44</sup> *See, Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 201, 165 P.3d 173, 179 (App. 2007), which states that among other duties, the Association has a duty to act reasonably in exercise of its discretionary powers including rulemaking, enforcement, and design-control powers. *See also, College Book Centers, Inc. v. Carefree Foothills Homeowners' Ass'n*, 225 Ariz. 533, 241 P.3d 897 (App. 2010).

<sup>45</sup> *See, Gfeller v. Scottsdale North Townhomes Ass'n*, 193 Ariz. 52, 969 P.2d 658 (App. 1998); *Johnson v. Pointe Cmty. Ass'n, Inc.*, 205 Ariz. 485, 489, 73 P.3d 616, 620 (App. 2003).

A.R.S. § 33-1242(D) (Condominiums) and A.R.S. § 33-1803(E) (Planned Communities) state that before an Association may take enforcement action other than sending an enforcement letter or “courtesy notice” (*i.e.*, impose a fine or file an injunction lawsuit), the Association must inform any owner that he/she may provide the Association with a written response concerning the violation by sending a certified letter to the address referenced in the violation letter **within 21-calendar days after the date of the initial violation letter**.

A.R.S. § 33-1242(D) and A.R.S. § 33-1803(E) require the Association to provide written notice to an owner of their option to petition for an administrative hearing on any enforcement action. Thus, in an enforcement action, an Association is required to notify an owner of the option to petition the Arizona Department of Real Estate for a hearing on the matter.

### **1. Waiver of Enforcement**

Many Associations struggle with the concept of waiver of enforcement. This concept addresses whether an Association may require remediation of long-standing violations of the restrictions.

The above waiver of enforcement concept has been addressed further by Arizona Courts. In *College Book Centers, Inc. v. Carefree Foothills Homeowners’ Ass’n*, 225 Ariz. 533, 241 P.3d 897 (App. 2010), the Court articulated that:

[W]hen Declaration contain a non-waiver provision, a restriction remains enforceable, despite prior violations, so long as the violations did not constitute a “complete abandonment” of the Declaration. *Id.* at 399, ¶ 26, 87 P.3d at 87. Complete abandonment of deed restrictions occurs when “the restrictions imposed upon the use of lots in [a] subdivision have been so thoroughly disregarded as to result in such a change in the area as to destroy the effectiveness of the restrictions [and] defeat the purposes for which they were imposed[.]” *Id.* (quoting *Condos v. Home Dev. Co.*, 77 Ariz. 129, 133, 267 P.2d 1069, 1071 (1954)).

The Court in *College Book* ultimately held that, so long as an Association has a non-waiver provision in its Declaration, the Association may enforce its restrictions against owners who are in long standing violation of the restrictions, so long as the Association has not abandoned the Declaration.

In fact, the *College Book* case further suggests that the Association has a duty to enforce the long standing violation. The Court specifically declared that (225 Ariz. at 541, 241 P.3d at 905):

Similarly, we agree that applying a plainly worded non-waiver clause will not encourage discriminatory conduct by homeowners’ Associations because they are constrained by principles of fairness and reasonableness. In *Tierra Ranchos Homeowners Ass’n v. Kitchukov*, we adopted the Restatement (Third) of Property: Servitudes § 6.13, which includes the duty of an Association to “treat members fairly” and to “act reasonably in the exercise of



its discretionary powers including rulemaking, enforcement, and design-control powers.” 216 Ariz. 195, 201, ¶ 25, 165 P.3d 173, 179 (App. 2007).

Additionally, the failure of an Association to take appropriate action to enforce restrictive covenants may subject it to liability. *See, e.g., Johnson v. Pointe Cmty. Ass’n, Inc.*, 205 Ariz. 485, 489, ¶ 22, 73 P.3d 616, 620 (App. 2003) (holding that an Association's interpretation of its own restrictive covenants in a dispute with a homeowner is not entitled to judicial deference; reversing trial court's dismissal of claim for breach of fiduciary duty). In our view, these considerations will discourage an HOA from engaging in selective enforcement of restrictive covenants.

## **2. Mechanisms of Enforcement**

### **i. Gaining Compliance by Imposing Fines**

Imposing a fine for the violation of restrictive covenants is the most common means of gaining compliance in Associations. Under A.R.S. § 33-1803(B) (Planned Communities) and A.R.S. § 33-1242(A)(11) (Condominiums), an Association may fine an owner who is in violation of the restrictions, so long as the following criteria are met:

- ✓ the fine is “**reasonable**”; and
- ✓ the fine is only imposed after the following:
  - i. notice; and
  - ii. an opportunity to be heard.

A recent ruling in Arizona may have implications with regard to the ability of an association to validly assess and collect monetary penalties and/or fines from owners.

In *Turtle Rock III Homeowners Ass’n v. Fisher*, 243 Ariz. 294, 406 P.3d 824 (App. 2017), the Arizona Court of Appeals held that an Association must create and promulgate a separate schedule of fines to all owners prior to imposing such fines. The failure to have a schedule of fines is fatal – meaning – the absence of a schedule of fines is *per se* unreasonable under A.R.S. § 33-1803(B) and A.R.S. § 33-1242(A)(11), making any fines unenforceable. The Court of Appeals further held that “[a]d hoc fines” – fines that are imposed seemingly out of thin air – “are *per se* unreasonable”. *Turtle Rock III*, 243 Ariz. at 294, ¶ 14, 406 P.3d at 824 (citing *Villas at Hidden Lakes Condos Assoc. v. Geupel Constr. Co.*, 174 Ariz. 72, 81, 847 P.2d 117, 126 (App. 1992)).

*Turtle Rock III* also suggests that any such fines, in addition to being set forth in a published schedule of fines, must relate to some damage that the Association might suffer. “Without competent evidence of a fee schedule timely promulgated demonstrating the fine amounts and the appropriateness of such amounts, monetary penalties are *per se* unreasonable.” *Turtle Rock III*, at ¶ 17. The Association also has the burden of proving its damages in order to obtain a judgment for fines. “Even if a fine schedule existed, the HOA [still] had the burden to prove its burden”... that the fines were reasonable. *Turtle Rock III*, at ¶ 18.

**The Arizona Supreme Court de-published *Turtle Rock III* in July of 2018; meaning that Arizona Courts are not required to abide by the decision and the decision is no longer precedence. This does not mean, however, that the arguments contained in *Turtle Rock III* could not be asserted in other cases and actions.**

Therefore, it is still advisable that Associations attempt to abide by *Turtle Rock III*, as doing so is the legally conservative route. Abiding by *Turtle Rock III* will ensure that the Association is not susceptible to legal liability in the future.

Above all, the *Turtle Rock III* ruling reinforces the suggestion that an Association have:

- i. a comprehensive enforcement policy that encompasses all of the various statutory and case law requirements regarding the enforcement of restrictive covenants;
- ii. a subset of the comprehensive enforcement policy which contains a clearly articulated schedule of fines or fine policy that lists all potential violations and the corresponding fine attached to said violation; and
- iii. proof that the comprehensive enforcement policy and articulated schedule of fines or fine policy has disseminated to all owners.

## **ii. Violation Enforcement through Filing a Lawsuit Seeking Injunctive Relief**

Restrictions found in Association governing documents may also be enforced through the seeking of injunctive relief. Injunctive relief is the process in which an Association petitions the Superior Court to issue an order requiring an owner who is in violation of the restrictions to comply with the restrictions. Because injunctive relief requires litigation, seeking injunctive relief is usually implemented in emergency situations or as a last resort.

When an actor becomes an owner of property located within a homeowner's Association, it agrees to the restrictions in the Declaration and it is "bound to (its) performance as effectively as if (it) had executed an instrument containing them." *Heritage Heights Home Owners Ass'n v. Esser*, 115 Ariz. 330, 333, 565 P.2d 207, 210 (App. 1977). Furthermore, "enforcement of such restrictions is by means of an injunction." *Id.*

To assert a claim for injunctive relief, the Association must show that "(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the Association and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *Ebay Inc. v. Mercexchange, L.L.C.*, 547 U.S. 388, 391 (2006).

Although most enforcement costs can be secured as an assessment lien under most Declaration, recent case law might invalidate such contractual language. The ruling in *Bocchino v. Fountain Shadows Homeowners Ass'n*, 244 Ariz. 323, 418 P.3d 1096 (App. 2018) suggests that an Association might no longer be able to include pre-litigation attorneys' fees regarding enforcement in the Association's assessment lien.

### **iii. Exercising Self-Help**

Self-help is a mechanism by which the Association seeks to address a continuing violation of the restrictions by remedying the violation itself. The most common example of self-help is when an Association pays a landscaper to maintain the yard of an owner who has not been maintaining the yard in violation of the restrictions. Self-help is usually available under an Association's Declaration and the costs of self-help may usually be recouped by the Association. Before exercising self-help, an Association should carefully review its Declaration to make sure it is allowed to do so.

## **B. COLLECTING ASSESSMENTS**

The most important function of an Association is the collection of special and annual assessments. Assessments are the financial life-blood of the Association and without assessments, an Association would be unable to function. An Association's rights and abilities to collect assessments are provided in both the Association's Declaration and Arizona statutes.

By operation of law, Associations have automatic, statutory liens pursuant to A.R.S. § 33-1256(A) (Condominiums) and A.R.S. § 33-1807(A) (Planned Communities). They also have contractual lien rights under the restrictive covenants (Declaration) of the Association.

### **1. The Statutory Lien**

The Arizona Condominium Act (A.R.S. § 33-1256(A)) and Planned Communities Act (A.R.S. § 33-1807(A)) defines what charges constitute an Association's Statutory Lien and the Association's rights to foreclose the Statutory Lien.

The Statutory Lien arises when "the assessment becomes due."<sup>46</sup> This does not necessarily coincide with when the delinquency arises. If you have an annual assessment "payable in installments, the full amount of the assessment is a lien from the time the first assessment installment becomes due."<sup>47</sup>

The assessment lien includes "assessments for charges for late payment of those assessments," and "reasonable collection fees" and "reasonable attorney fees and costs incurred with respect to those assessments" incurred in connection with collecting on the unpaid lien. These charges all comprise the lien and are, therefore, subject to foreclosure.<sup>48</sup>

The assessment lien may only be foreclosed "if the owner has been delinquent in the payment of monies secured by the lien, excluding reasonable collection fees, reasonable attorney fees and charges for late payment of and costs incurred with respect to those assessments, for a period of one year or in the amount of one thousand two hundred dollars [\$1,200] or more, whichever occurs first."<sup>49</sup>

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<sup>46</sup> See A.R.S. § 33-1807(A) (Planned Communities) and A.R.S. § 33-1256(A) (Condominiums).

<sup>47</sup> See A.R.S. § 33-1807(A) (Planned Communities) and A.R.S. § 33-1256(A) (Condominiums).

<sup>48</sup> See A.R.S. § 33-1807(A) (Planned Communities) and A.R.S. § 33-1256(A) (Condominiums).

<sup>49</sup> See A.R.S. § 33-1807(A) (Planned Communities) and A.R.S. § 33-1256(A) (Condominiums).

## **2. The Contractual Lien**

In addition to the Statutory Lien, an Association has a “consensual” or Contractual Lien pursuant to the Association’s Declaration. The Declaration constitute a “contract between the subdivision’s property owners as a whole and the individual lot owners.” Ahwatukee Custom Estates Mgmt. Ass’n, Inc. v. Turner, 196 Ariz. 631, 634, 2 P.3d 1276 (App. 2000). Where a grantee purchases a property encumbered by restrictive covenants, that person is bound to perform them. Heritage Heights Home Owners Association v. Esser, 115 Ariz. 330, 333, 565 P.2d 207, 210 (App. 1977); *see also*, Johnson v. Pointe Community Ass’n, Inc., 205 Ariz. 485, 490-91, 73 P.3d 616, 621-22 (App. 2003) (A planned community association must comply with planned community documents.). The contractual lien includes those fees and charges specifically listed in the Declaration. For example, fees and charges could include assessments, late fees, collections costs, attorney’s fees and costs of enforcement.

Normally, one may determine what fees are included in the Declaration contractual lien by looking at the assessments section of the Declaration.

## **3. Lien Priority**

In Arizona, an Association’s lien is second in priority to the following liens<sup>50</sup>:

- a. Liens and encumbrances recorded prior to the recordation date of the Declaration;
- b. Recorded first mortgages or contracts for sale;
- c. Liens for real estate taxes and other governmental assessments directly related to the property; and
- d. Property taxes.

Mechanics’ and materialmens’ liens and certain other assessment liens are exceptions from this priority scheme.<sup>51</sup>

## **4. Collection of Association Assessments - Enforcement of Association Liens**

When an owner in an Association fails to pay Association assessments, the Association has several means to effectuate collection of the delinquent assessment. Some collections options are based on the fact, as discussed above, that the Association has a lien regarding the assessments.

### **i. Initial Collection Demand Letter**

The Association, or the Association’s managing agent, may send owners an initial collection demand letter when owners are delinquent in paying their assessments. Most Associations send an initial collection demand letter when owners are more than thirty (30) days delinquent in paying their assessments.

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<sup>50</sup> *See*, A.R.S. § 33-1256(B) (Condominiums) and A.R.S. § 33-1807(B) (Planned Communities).

<sup>51</sup> *See*, A.R.S. § 33-1256(C) (Condominiums) and A.R.S. § 33-1807(C) (Planned Communities).

Please note that a collection demand letter is subject to the provisions of the Federal Fair Debt Collections Practices Act (“FDCPA”) and Associations (or its agent) should familiarize itself with the requirements of the FDCPA.

In addition to sending an initial collection demand letter, an Association may also impose a late fee for late payment of assessments pursuant to A.R.S. § 33-1803(A) (Planned Communities) and A.R.S. § 33-1242(A)(11) (Condominiums).

## **ii. Subsequent Collection Demand Letters**

Prior to sending an owner to a collection agency or attorney to collect delinquent amounts owed, the Association shall provide the following written notice to the member at the member’s address as provided to the Association<sup>52</sup>:

**YOUR ACCOUNT IS DELINQUENT. IF YOU DO NOT BRING YOUR ACCOUNT CURRENT OR MAKE ARRANGEMENTS THAT ARE APPROVED BY THE ASSOCIATION TO BRING YOUR ACCOUNT CURRENT WITHIN THIRTY DAYS AFTER THE DATE OF THIS NOTICE, YOUR ACCOUNT WILL BE TURNED OVER FOR FURTHER COLLECTION PROCEEDINGS. SUCH COLLECTION PROCEEDINGS COULD INCLUDE BRINGING A FORECLOSURE ACTION AGAINST YOUR PROPERTY.**

The above written notice must:

- i. be sent at least **thirty days (30) before authorizing an attorney or a collection agency** to begin collection activity on behalf of the Association;
- ii. be sent by certified mail, return receipt requested, and may be included within other correspondence sent to the member regarding the member’s delinquent account;
- iii. be written in boldfaced type or all capital letters; and
- iv. include the contact information for the person that the member may contact to discuss payment.

## **5. Notice of Claim of Lien**

Although Arizona law does not require an Association to record a “Notice of Claim of Lien,” recording a “Notice of Claim of Lien” is nonetheless a widespread practice and an effective collections tool. An Association’s lien arises automatically and is deemed “recorded” as of the recording date of the Declaration. However, recording a “Notice of Claim of Lien” when a delinquency arises does not adversely affect the automatic lien and does provide some additional benefits. For instance, recording a “Notice of Claim of Lien” provides notice to title companies insuring transfers of title. Additionally, a recorded ensures that any payoff requests will be supplied to the proper address.

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<sup>52</sup> *See*, A.R.S. § 33-1256(K) (Condominiums) and A.R.S. § 33-1807(K) (Planned Communities).

Some older Declaration require 30-days' notice before acting to enforce a lien or may require the Association to first send a "notice of intent to lien letter". Declaration should be carefully examined for these procedural requirements before commencing with any lien enforcement action.

## **6. Personal Money Judgments Lawsuits**

If the collection letter does not resolve the dispute, the Association may seek to collect the debt through court action. Under general Declaration provisions, an owner is personally liable for unpaid assessments and the Association may file a lawsuit against the owner to collect the delinquency. For collection of relatively small delinquencies (less than \$10,000), many Associations choose to file personal judgment lawsuits in Justice Court. Justice Court can provide a less expensive and more efficient means of obtaining a personal money judgment against an owner, as opposed to the more costly route of filing in Superior Court.

Once the personal judgment lawsuit is filed and served, the defendant has twenty (20) days (if served out-of-state, thirty (30) days) to file an answer. If the defendant fails to file an answer, the Association may file an application for entry of default. The defendant then has ten (10) business days from the date the application for default was filed to respond with an answer or responsive pleading. If no answer is filed within this timeframe, "default" is automatically entered in the case and the Association may then request a default judgment in the Association's favor. In the event of default, judgment can generally be obtained in as little as two to three months. If the defendant appears and contests the personal judgment lawsuit, the Association can often prevail on a motion for summary judgment. In rare circumstances, a trial may be necessary.

Personal judgment actions are generally less expensive than a foreclosure suit because of the differing level of complexity. With that said, an Association is entitled to recover its reasonable attorney fees and costs in the case and therefore, an Association should not rule out a foreclosure action based solely on increased legal expenses.

Once a judgment is obtained and recorded, it becomes a lien on any real property (not just the property located within the Association) owned by the defendant in any county in Arizona where the judgment is recorded. This "judgment lien" may be subject to the statutory homestead exemption and is generally dischargeable in bankruptcy. An Association may, however, utilize the money judgment to pursue wage garnishments and bank garnishments to collect on the judgment. Additionally, if the Association finds its collection efforts on the money judgment unfruitful, it is not precluded from proceeding with foreclosure.

## **7. Foreclosure Lawsuits**

As discussed above, unpaid assessments are secured by a lien against the owner's property, which may be foreclosed upon in the same fashion as a mortgage on real estate.<sup>53</sup> In Arizona, Associations do not have the "power of sale" to conduct foreclosures in the same way that mortgages are foreclosed (*i.e.*, through a "trustee sale"). An Association must proceed

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<sup>53</sup> *See*, A.R.S. § 33-1256 (Condominiums) and A.R.S. § 33-1807 (Planned Communities). *See also*, *Cypress on Sunland Homeowners Ass'n v. Orlandini*, 227 Ariz. 228, 253 P.3d 288 (App. 2011) which states that "a lien may be foreclosed in the same manner as a mortgage on real estate but may be foreclosed only if the owner has been delinquent in the payment of monies secured by the lien."

with “judicial foreclosure.” In other words, the Association must file a lawsuit in Superior Court seeking a judgment on foreclosure.

Because the lawsuit affects title to the property, a “Notice of *Lis Pendens*” must be filed and recorded. This notice informs any potential buyer or transferee that he/she will take the property subject to the pending foreclosure lawsuit and any final judgment entered in that case, unless the litigation is satisfied and a “Release of *Lis Pendens*” is recorded. This also notifies title companies that may be handling a sale or refinance of the property that the lien must be cleared before transferring title.

Unlike a personal money judgment lawsuit, a foreclosure lawsuit may typically name several defendants, including the record title owners and any junior lien holders (*i.e.*, a second mortgage, judgment liens, liens for unpaid income taxes, etc.). If the Association has reason to believe that the record owners are deceased, the unknown heirs and devisees should also be named.

The Association’s lawsuit would seek a judgment foreclosing all interests in the property that are junior to the Association’s lien interest in the property. (*See*, above Section on Lien Priority). It is not unusual for a junior lien holder with a sizable interest in the property (*i.e.*, a second mortgage) to contact the Association and pay the full balance of the delinquency, including attorney fees and costs, to protect its interest from the threat of foreclosure.

Similar to the money judgment lawsuit, a default judgment may be secured if the defendants fail to appear and contest the lawsuit. If a defendant appears and answers, the matter is generally resolved promptly on a motion for summary judgment in the Association’s favor. Very few cases require a trial and, therefore, Associations generally secure judgments on foreclosure if the case is not resolved by payment in full or settlement. The judgment will generally include an award of the principal amount of unpaid assessments, together with the attorney fees and costs incurred and interest.

Once a judgment is obtained, the county Sheriff’s office may be instructed to sell the property to satisfy the judgment to recover the delinquency. A “writ of special execution” is issued by the Court instructing the Sheriff to conduct the sale. After posting and publishing notice of the sale, the property is auctioned off to the highest bidder at the Sheriff’s offices, or any other place designated in the notice. If no one bids on the property, the Association will take title to the property for the amount of its bid. The Association may then dispose of the property as it sees fit.

If a purchaser outbids the Association at the auction, the purchaser must deliver cash or a cashier’s check to the Sheriff’s office within five (5) days from the sale. Upon receipt of the sale price, the Sheriff will issue payment to the Association in the amount of its judgment, interest and costs incurred in connection with the sale. The Association is also responsible for payment of a commission to the Sheriff for successfully selling the property and satisfying the delinquency.

After the sale, the owner’s interest is foreclosed, but he/she still has time to redeem the property. The owner has a statutory redemption period (generally, 6-months unless the property is abandoned, then 30-days) in which the owner can redeem the property and regain full title to the property by paying the total amount of the sale price, plus interest and a penalty.

Following the owner's redemption period, junior lien holders in their order of priority may also redeem the property and secure title by payment of the full redemption amount. The redemption payoff is generally provided by and handled through the Sheriff's office that conducted the sale. If the property is redeemed within the redemption period, the owner takes back all rights and interest in the property as if the foreclosure and sale never occurred; however, the Association is paid in full.

If the owner or any junior lien holder fails to redeem the property within the redemption period, the purchaser (including the Association if it was the successful bidder at the sale) may then request and the Sheriff must issue a "Sheriff's Deed" to the purchaser, subject to any liens that were not foreclosed through the foreclosure process or liens that may have attached during the redemption period. With a recorded Sheriff's Deed in hand, the purchaser is generally considered to hold good and marketable legal title as owner of the property.

## **8. Unforeseen Collections Issues**

### **i. First Mortgage Holder Foreclosure**

The first question that comes to mind concerning first mortgage holder foreclosures is "when does an Association know a house is being foreclosed by a first mortgage holder?" Pursuant to law, first mortgage holders, prior to conducting a trustee sale (which is where the property will be foreclosed and sold to remedy the delinquent mortgage), must send the Association a "Notice of Trustee Sale." The Notice of Trustee Sale must also be recorded in the county where the property is located. The Notice of Trustee Sale must be sent to anyone who has a recorded interest or lien (such as an Association) in the property.

Once the Association has received the Notice of Trustee Sale, the Association should determine whether the owner is delinquent in their assessments. If the owner is delinquent in their assessments, the Association may make a claim to the trustee for any excess proceeds if the property is sold at a trustee sale. Excess proceeds are monies obtained by selling a property at a trustee sale that are over and above the amount owed to the first mortgage holder. Since, in most cases, an Association's lien for delinquent assessments is second in priority to that of the first mortgage holder, any excess proceeds should go to the Association to satisfy any delinquent assessments and other statutorily collectible amounts owed.

In order to secure excess proceeds, the Association must make a written claim to the trustee (the person who will be holding the money once the trustee sale takes place) pursuant to A.R.S. § 33-812, requesting that the trustee release any excess proceeds gained to satisfy the owner's delinquency with the Association. The letter should include:

1. The amount of the delinquency and proof of the delinquency (a customer ledger will usually suffice as proof of the delinquency);
2. A statement as to the Association's lien priority; and
3. A statement showing the Association is entitled to excess proceeds (reference to the appropriate statute or Declaration provision regarding the Association's assessment lien should suffice).



If the trustee, after receipt of the above notice letter, fails to deliver any excess proceeds to the Association, the Association's right to collect attorney's fees should it have to institute legal action to collect the excess proceeds will be saved. It is because of this that the above notice letter is so important and should be sent upon receiving a Notice of Trustee Sale.

In the event that there are no excess proceeds after the trustee sale and the property has reverted to a third party, then the Association's lien will be extinguished. Consequently, the Association would not be entitled to collect any assessments or attorney fees incurred prior to the date of the trustee sale from the new owner. Nonetheless, the Association may still pursue a money judgment in the hope that the homeowner will obtain future assets that the Association could garnish in order to recover what it is owed.

## **ii. Bankruptcy**

Another unexpected collection issue occurs when an owner declares bankruptcy and ceases paying their assessments. Upon the receipt of a Notice of Petition for Bankruptcy (typically a Chapter 7 filing or a Chapter 13 filing), an Association should prepare a statement of the declaring owner's account. Once the statement has been prepared, it should be sent to the Association's attorney.

At this point, the Association's attorney will intervene on behalf of the Association by filing a Notice of Appearance with the Bankruptcy Court informing the Court that the attorney is representing the Association. The attorney may also file a Proof of Claim with the Bankruptcy Court that substantiates the debt owed by the owner to the Association.

If the owner files a Chapter 7 bankruptcy and decides to keep their home, the Association may petition to lift the bankruptcy-initiated "stay" of collections enforcement and foreclose on the property should the owner not pay the delinquent assessments.

If the owner files a Chapter 13 bankruptcy, the Association may petition the Court to include the Association's delinquency in the payment plan created by the Bankruptcy Court.

Bankruptcy is a complicated matter. Because of this, it is important that the Association rely on the advice of its attorney to aid in navigating the process.

## **C. PROTECT AND MAINTAIN THE COMMON PROPERTY**

Both Arizona statutory law<sup>54</sup> and case law<sup>55</sup> assert that Associations have a duty to protect and properly maintain the common area property to which the Association, either through ownership or exclusive control, has the power to solely maintain or otherwise control. The duty to maintain the safety of common area property applies not only to physical conditions on the land but also to dangerous activities on the land.<sup>56</sup>

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<sup>54</sup> *See*, A.R.S. § 33-1247(A) (Condominiums) and A.R.S. § 33-1802(1) (Planned Communities).

<sup>55</sup> *See*, *Martinez v. Woodmar IV Condominiums Homeowners Ass'n, Inc.*, 189 Ariz. 206, 941 P. 2d 218 (1997).

<sup>56</sup> *See*, *Martinez v. Woodmar IV Condominiums Homeowners Ass'n, Inc.*, *supra*.

**EXHIBIT A**  
**SAMPLE DECLARATION**  
**DECLARATION OF COVENANTS, CONDITIONS,**  
**RESTRICTIONS AND EASEMENTS**  
**FOR**  
**GREENACRE COMMUNITY ASSOCIATION**

Declarant, GREENACRE PARTNERS, an Arizona limited liability company, is the owner and developer of GREENACRE COMMUNITY ASSOCIATION, a planned residential development in Maricopa County, Arizona. The development will be comprised of single-family residential lots platted and recorded from time to time in the Office of the County Recorder of Maricopa County, Arizona.

It is desirable to provide uniform restrictions for all single-family residential subdivision lots of the development for the purpose of establishing:

- a. A plan for the individual ownership of real property estates consisting of a lot and the improvements contained thereon;
- b. A uniform plan for the use of the Property in all single family residential subdivision lots of the development, and the establishment of regulations to maintain quality neighborhoods;
- c. The formation of a nonprofit corporation with membership of the Lot Owners with specific powers of regulation and control affecting single-family residential lots located within the development;
- d. The ownership and management of common elements by the nonprofit corporation, GREENACRE COMMUNITY ASSOCIATION;

In order to establish the nature of the use and enjoyment thereof, GREENACRE COMMUNITY ASSOCIATION, hereby declares said premises subject to the following expressed covenants, stipulations, and restrictions as to the use and enjoyment thereof, all of which are to be construed to be restrictive covenants, running with the title to said premises and with each and every part and parcel thereof to-wit:

**ARTICLE 1**  
**DEFINITIONS**

1.1 “**Annual Assessment**” means the assessments levied against each Lot, and the Owner thereof, pursuant to Section 6.2 of this Declaration.

1.2 “**Architectural Committee**” means the architectural committee of the Association to be created pursuant to Section 5.11 of this Declaration and the Bylaws.

1.3 “**Architectural Committee Rules**” means the rules and guidelines adopted by the Architectural Committee pursuant to Section 5.11 of this Declaration and the Bylaws, as they may from time to time be amended or supplemented.

1.4 “**Areas of Association Responsibility**” means (i) all Common Area, including the Improvements and landscaping situated thereon, and (ii) any portion of the Improvements situated on a Lot which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or the terms of another recorded document executed by the Association and (iii) all real property, and the improvements situated thereon, within the Project located within dedicated rights-of-way with respect to which the State of Arizona, Maricopa County or the City of Scottsdale has not accepted responsibility for the maintenance.

1.5 “**Articles**” means the Articles of Incorporation of the Association, as they may from time to time be amended.

1.6 “**Assessment**” means an Annual Assessment, Special Assessment or Lot Specific Assessment.

1.7 “**Association**” means Greenacre Community Association, Inc., an Arizona nonprofit corporation, and its successors and assigns.

1.8 “**Association Lien**” means the lien created and imposed by Section 6.1 of this Declaration.

1.9 “**Association Property**” means any personal property owned or leased by the Association.

1.10 “**Association Rules**” means the restrictions, limitations, rules and regulations adopted by the Association pursuant to Section 5.3 of this Declaration, as they may from time to time be amended.

1.11 “**Board**” means the Board of Directors of the Association.

1.12 “**Bylaws**” means the Bylaws of the Association, as amended from time to time.

1.13 “**Common Area**” means all real property, together with all Improvements situated thereon, which the Association owns in fee or in which the Association has a leasehold interest. "Common Area" shall not include any real property, improvements or personal property acquired by the Association in lieu of foreclosure or trustee's sale or through attachment, foreclosure, Sheriff's sale, Trustee's sale, tax sale, redemption or any other judicial, quasi-judicial, bankruptcy or regulatory action.

1.14 “**Common Expenses**” means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

1.15 “**Declarant**” means Saratoga Homes, LTD, an Arizona corporation, its successors and assigns.

1.16 “**Declaration**” means this Amended and Restated Declaration of Covenants, Conditions and Restrictions, as it may be amended from time to time.

1.17 “**Eligible Mortgage Holder, Insurer or Governmental Guarantor**” means a First Mortgagee, insurer or governmental guarantor who has requested notice of certain matters from the Association in accordance with Article 9 of this Declaration.

1.18 “**Exterior Alteration**” means any construction, installation, addition alteration, repair, change, change of color, landscaping, removal, demolition or other work that alters the exterior appearance of a Lot or the Improvements located thereon.

1.19 “**First Mortgage**” means any mortgage or deed of trust on a Lot which has priority over all other mortgages and deeds of trust on the same Lot.

1.20 “**First Mortgagee**” means the holder or beneficiary of any First Mortgage.

1.21 “**Improvement**” means any building, fence, wall or other structure or any swimming pool, tennis court, road, driveway, parking area or any trees, plants, shrubs, grass or other landscaping improvements of every type and kind.

1.22 “**Lessee**” means a third-party lessee, sublessee, tenant or subtenant under a lease, oral or written, of any Lot. As used herein a "third party" is any Person who is not an Owner.

1.23 “**Lot**” means each parcel of real property designated as a lot on the Plat and, where the context indicates or requires, shall include any Residential Unit, building, structure or other Improvements situated on the Lot.

1.24 “**Maintenance Standard**” means the standard of maintenance of Improvements established from time to time by the Board or, in the absence of any standard established by the Board, the standard of maintenance of Improvements generally prevailing throughout the Project.

1.25 “**Member**” means any Person who is a Member of the Association.

1.26 “**Owner**” means the record owner, whether one or more Persons, of legal, beneficial or equitable title to the fee simple interest of a Lot. "Owner" shall not include (i) Persons having an interest in a Lot merely as security for the performance of an obligation, or (ii) a Lessee. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801, *et seq.*, the Trustor shall be deemed to be the "Owner." "Owner" shall also include a purchaser under a contract for the conveyance of real property subject to the provisions of A.R.S. Section 33-741, *et seq.* "Owner" shall not include purchasers under purchase contracts and receipts, escrow instructions or similar executory contracts that are intended to control the rights and obligations of the parties to such executory contracts pending the closing of a sale or purchase transaction.

1.27 “**Person**” means a natural person, corporation, business trust, estate, trust, living trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.28 “**Plat**” means the plat recorded in Book 369, page 28, records of Maricopa County, Arizona, and all amendments, supplements and corrections thereto.

1.29 “**Property**” or “**Project**” means the real property described on the Plat.

1.30 “**Project or Governing Documents**” means this Declaration, the Articles, the Bylaws, the Association Rules, and the Architectural Committee Rules.

1.31 “**Purchaser**” means any Person who by means of a voluntary transfer becomes the Owner of a Lot.

1.32 “**Recording**” means placing an instrument of public record in the office of the County Recorder of Maricopa County, Arizona, and “**Recorded**” means having been so placed of public record.

1.33 “**Resident**” means each individual occupying or residing in any Residential Unit.

1.34 “**Residential Unit**” means any building, or portion of a building, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence.

1.35 “**Single Family**” means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Residential Unit.

1.36 “**Special Assessment**” means any assessment levied and assessed pursuant to Section 6.4 of this Declaration.

1.37 “**Visible From Neighboring Property**” means, with respect to any given object, that the object is or would be visible to a person six feet tall, standing at ground level on any part of the neighboring property.

## **ARTICLE 2 PLAN OF DEVELOPMENT**

2.1 **Property Subject to the Declaration.** This Declaration is being recorded to establish a general plan for the development and use of the Project and in order to protect and enhance the value and desirability of the Project. All of the Property within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each Person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns to all of the provisions, obligations, limitations, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereto. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development and use of the Property and hereby evidences his or its intent that all the provisions, obligations, limitations, restrictions, covenants, conditions, rules, and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, restrictive and enforceable by the Association and all Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its

respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

### **ARTICLE 3 USE RESTRICTIONS**

**3.1 Architectural Control.** In addition to any requirements imposed by Maricopa County or the City of Scottsdale:

3.1.1 All Improvements constructed on Lots shall be of new construction, and no building or other structures shall be moved from other locations onto any Lot.

3.1.2 No excavation or grading work shall be performed on any Lot without the prior written approval of the Architectural Committee.

3.1.3 No Improvements shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee.

3.1.4 No Exterior Alteration shall be made or done without the prior written approval of the Architectural Committee.

3.1.5 Any Owner desiring approval of the Architectural Committee for any Exterior Alteration shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the Exterior Alteration that the Owner desires to make or perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove, in writing, an application for approval within forty-five (45) days after receipt of the application and any supporting information, plans and specifications requested by the Architectural Committee (the application shall not be deemed received until all supporting information, plans and specifications have been received), approval will not be required and this Section will be deemed to have been complied with by the Owner who requested approval of such plans.

3.1.6 The approval by the Architectural Committee of any Exterior Alteration pursuant to this Section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar Exterior Alteration subsequently submitted for approval.

3.1.7 Upon receipt of approval from the Architectural Committee for any Exterior Alteration, the Owner who requested such approval shall proceed to perform, construct or make the Exterior Alteration approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee.

3.1.8 Any change, deletion or addition to the plans and specifications approved by the Architectural Committee, including plans deemed approved as a result of the Architectural Committee's failure to act, must be submitted to and approved in writing by the Architectural Committee. Failure to submit changes, deletions or additions to previously approved plans shall void the original approval.

3.1.9 The Architectural Committee shall have the right to charge a fee for reviewing requests for approval of any Exterior Alteration pursuant to this Section, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

3.1.10 The provisions of the Section do not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any improvements made by, or on behalf of, the Declarant.

3.1.11 The approval required of the Architectural Committee pursuant to this Section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

3.1.12 The Architectural Committee Rules may include approval requirements and criteria that, unless specifically preempted, are more restrictive than those established by any federal, state or local law, statute, ordinance, rule or regulation.

3.1.13 The Architectural Committee may require that an Owner, before commencing construction of any Improvements approved by the Architectural Committee, pay to the Association a deposit in an amount determined by the Architectural Committee to be used by the Association to remove any construction debris from a Lot that is allowed to accumulate in violation of Section 3.3 of this Declaration or to repair any damage to the Common Area. The Architectural Committee shall also have the right to determine which portion, if any, of the deposit will be nonrefundable. Any portion of the deposit that is refundable shall be refunded to the Owner by the Association upon the completion of construction of the Improvements, the removal of all construction debris from the Lot, and the repair of any damage to the Common Area occasioned by such construction.

**3.2 Temporary Occupancy and Temporary Buildings.** No trailer, incomplete building, tent, shack, garage, or temporary buildings or structures of any kind, shall be used at any time for a residence. Temporary buildings, trailers or other structures used during the construction of Exterior Alterations approved by the Architectural Committee, interior remodeling, re-roofing or other work shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailer or other structures be maintained or kept on any property for a period in excess of one month without the prior written approval of the Architectural Committee.

**3.3 Nuisances.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or other property, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot or other property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants.

**3.4 Diseases and Insects.** No Person shall permit any thing or condition to exist upon any Lot or other property which shall induce, breed or harbor infectious plant diseases or noxious insects.

**3.5 Repair of Building.** No Residential Unit, building or structure on any Lot or other property shall be permitted to fall into disrepair and each such Residential Unit, building and structure shall, at all times, be kept in good condition and repair and adequately painted or otherwise finished. In the event that any Residential Unit, building or structure is damaged or destroyed, then, subject to the approvals required by Section 3.1 of this Declaration, such Residential Unit, building or structure shall be immediately repaired or rebuilt or shall be demolished.

**3.6 Mineral Exploration.** No Lot or other property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

**3.7 Utility Service.** No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot or other property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee.

**3.8 Overhead Encroachments.** No tree, shrub, or planting of any kind on any Lot or other property shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet without the prior approval of the Architectural Committee.

**3.9 Residential Use.** All Residential Units shall be used, improved and devoted exclusively to residential use by a Single Family. No trade or business may be conducted on any Lot or in or from any Residential Unit, except that an Owner or other Resident of a Residential Unit may conduct a business activity within a Residential Unit so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residential Unit, (ii) the business activity conforms to all applicable zoning ordinances of the City of Scottsdale, and (iii) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents in the Project, as may be determined from time to time in the sole discretion of the Board. The terms “business” and “trade” as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider’s family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (a) such activity is engaged in full or part time, (b) such activity is intended or does generate a profit, or (c) a license is required for such activity. The leasing of a Residential Unit by the Owner thereof for periods of not less than thirty (30) consecutive days and with the consent of the Association shall not be considered a trade or business within the meaning of this Section.

**3.10 Restriction on Further Subdivision, Property Restrictions and Rezoning.** No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner without the prior written approval of the Architectural Committee. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Lessee, or other Person against any Lot without the provisions thereof having been first approved in writing by the Architectural



Committee. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person unless the application has been approved by the Architectural Committee and the proposed use otherwise complies with this Declaration.

**3.11 Leasing of Lots.** No Owner may lease or sublease his or her Lot to Lessee for any period whatsoever or modify, alter or extend the term of an existing or previously approved lease or sublease without the prior written consent of the Association. The requirements and guidelines for the approval of leases and subleases shall be set by the Board of Directors of the Association. All Owners of lots that are leased or subleased, including those that may be leased without the consent of the Association, hereby grant to the Association a power of attorney to enforce against the Lessee the provisions of the Project Documents and to enforce against the Lessee those provisions of such leases or subleases that relate to violations by the Lessee or by such Lessee's visitors, guests, invitees, employees or contractors of the Project Documents or the lease agreement (except those provisions that relate to the payment of rent.) The power of attorney granted hereby authorizes the Association to take any lawful action to enforce the Project Documents and the lease agreement, including, without limitation, bringing actions at law or in equity and to recover, from the Owner and/or the Lessee against whom any enforcement effort or action is brought, the costs of enforcing the terms of the Project Documents and the lease or sublease with respect to violations thereof by the Lessee or by such Lessee's visitors, guests, invitees, employees or contractors. The "costs of enforcing" shall include properly levied fines and penalties, penalty late fees and interest, costs of collection (including legal fees incurred in matters where court action is not taken or where an action is taken but is resolved short of court action), attorneys' fees, court costs, property damage, etc.

**3.12 Other Uses, Activities and Facilities.** The Association Rules may contain restrictions, limitations, rules and regulations governing any additional uses, activities, Improvements or facilities on a Lot or within the Project that are (i) Visible From Neighboring Property, (ii) visible from any Common Area or street, or (iii) that are deemed by the Association to be a nuisance or to adversely affect the health, safety or welfare of Owners, Lessees and Residents. The following are some, but not all of the uses, activities, Improvements or facilities that may be governed by the Association Rules: animals; construction and maintenance activity; antennas; trash containers and collection; clothes drying facilities; signs; flags and flagpoles; basketball, tetherball and volleyball standards; motor vehicles; parking; trucks, trailers, campers and boats; towing of vehicles; garages and driveways; rooftop air conditioners; solar energy devices; sport courts; lighting; use of Common Area; amplifiers; window treatments; garage sales; and noise. The foregoing list is not intended to be exhaustive. The Association Rules are intended to be responsive to the changing needs of the Project and the desires of the Association's Members.

**3.13 Variances.** The Board may, at its option and in extenuating circumstances, grant variances from the restrictions, limitations, rules and regulations set forth in this Article 3, the Association Rules or the Architectural Rules if the Board determines in its discretion that (i) a restriction, limitation, rule or regulation would create an unreasonable hardship or burden on an Owner or Lessee and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the other Owners or Lessees or the Project and is consistent with the high quality of life intended for residents of the Project.

**3.14 Drainage.** No Residential Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage

plans for the Project, or any part thereof, or for any Lot as shown on the drainage plans on file with the county or municipality in which the Project is located.

## **ARTICLE 4 EASEMENTS**

### **4.1 Owners' Easements of Enjoyment.**

4.1.1 Every Owner or Lessee, and any person residing with such Owner or Lessee, shall have a right and easement of enjoyment in and to the Common Area which right shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(i) The right of the Association to dedicate, convey, transfer or encumber the Common Area as provided in Section 5.12 of this Declaration.

(ii) The right of the Association to regulate the use of the Common Area through the Association Rules and to prohibit access to such portions of the Common Area, such as landscaped areas, not intended for use by the Owners or Lessees.

(iii) The right of the Association to suspend the right of an Owner or Lessee and such Owner's or Lessee's family, tenants and guests to use the Common Area if such Owner is more than fifteen (15) days delinquent in the payment of Assessments or other amounts due to the Association or if the Owner or Lessee has violated any other provisions of the Project Documents and has failed to cure such violation within fifteen (15) days after the Association notifies the Owner of the violation.

4.1.2 If a Lot is leased or rented by the Owner thereof, the Lessee and the members of his family residing with such Lessee shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right, without the specific written consent of the Association, to use the Common Area until the termination or expiration of such lease.

4.2 **Utility Easement.** There is hereby created an easement upon, across, over and under the Common Area and the Lots for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including , but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this Easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Area or Lots but no sewers, electrical lines, waterlines, or other utility or service lines may be installed or located on the Common Area or Lots except as initially designed, approved and constructed or as approved by the Board.

4.3 **Easement in Favor of Association.** The Lots are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

4.3.1 For inspection of the Lots in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible;

4.3.2 For inspection, maintenance, repair and replacement of the Areas of Association Responsibility accessible only from such Lots;

4.3.3 For correction of emergency conditions in one or more Lots;

4.3.4 For the purpose of enabling the Association, the Board, the Architectural Committee or any other committees appointed by the Board to exercise and discharge their respective rights, powers and duties under the Project Documents;

4.3.5 For inspection of the Lots (i) in order to verify that the provisions of the Project Documents are being complied with by the Owners, their guests, tenants, invitees and the other occupants of the Lot, or (ii) to satisfy the disclosure requirements, if any, of applicable law.

## **ARTICLE 5 THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS**

5.1 **Formation of Association.** The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Project Documents. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, Association Rules or Architectural Rules, this Declaration shall control.

5.2 **Board of Directors and Officers.** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws.

5.3 **The Association Rules.** The Association may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to (i) all aspects of the Association's rights, activities and duties, (ii) the management, operation and use of the Areas of Association Responsibility, (iii) the Common Areas including, but not limited to, any recreational facilities situated upon the Common Areas, or (iv) any other subject within the jurisdiction of the Association. Except as limited herein, the Association Rules may be adopted, amended and repealed by a majority of the members of the Board. In the event that the Association Rules establish restrictions or limitations on the use and maintenance of Lots as contemplated by Section 3.14, such rules and regulations may be adopted, amended or repealed by three-fourths (3/4ths) of the members of the Board. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail.

5.4 **Personal Liability.** No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, the manager any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitation set forth in this Section shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

5.5 **Implied Rights.** The Association may exercise any right or privilege given to the Association expressly by the Project Documents and every other right or privilege reasonably to be

implied from the existence of any right or privilege given to the Association by the Project Documents or reasonably necessary to effectuate any such right or privilege.

**5.6 Identity of Members.** Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a member of the Association and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease.

**5.7 Classes of Members.** The Association shall have Members who shall be Owners of Lots. A Member shall be entitled to one (1) vote for each Lot owned.

**5.8 Voting Procedures.** No change in the ownership of a Lot shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one person or entity and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast by a Member for a particular Lot, none of the votes shall be counted and all of the votes shall be deemed void.

**5.9 Voting By Mail.** Unless the project documents require otherwise, when directors are to be elected or any other matter is submitted to a vote of the members, such vote may be conducted by mail as provided in the Bylaws or as determined by the Board.

**5.10 Transfer of Membership.** The rights and obligations of any Member may not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be affected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. Each Purchaser of a Lot shall be subject to all of the terms, conditions and obligations set forth in this Declaration upon becoming the Owner of a Lot.

**5.11 Architectural Committee.** The Association shall have an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration. The Architectural Committee shall be a Committee of the Board. The members of the Architectural Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. So long as the Declarant owns any Lot, the Declarant shall have the sole right to appoint and remove the members of the Architectural Committee. At such time as the Declarant no longer owns any Lot or voluntarily surrenders its right to appoint and remove the members of the Architectural Committee, the members of the Architectural Committee shall be appointed by the Board. The Architectural Committee shall promulgate architectural guidelines and standards to be used in rendering its decisions (the "Architectural Committee Rules"). The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration. The Architectural Committee may establish a reasonable processing fee to defer the

costs of the Association in considering any request for approval submitted to the Architectural Committee, which fee shall be paid at the time the request for approval is submitted.

**5.12 Conveyance or Encumbrance of Common Area.** The Common Area shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent of affirmative vote of Owners representing at least sixty-seven percent (67%) of the votes entitled to be cast by members of the Association.

**5.13 Suspension of Voting Rights.** If an Owner otherwise entitled to vote is delinquent in the payment of periodic or special assessments, fines, penalties, interest, late charges, transfer fees, refinance fees, costs of collection, lien fees, attorneys' fees or other monies owed to the Association or is not in compliance with the terms of the Project Documents, the Board of Directors may, in its sole discretion, certify that such Owner is not in good standing and such Owner's right to vote shall be suspended until the delinquency, breach or violation is paid in full, cured or corrected.

## **ARTICLE 6**

### **COVENANT FOR ASSESSMENTS, FEES, CHARGES, FINES AND PENALTIES AND CREATION OF LIEN THEREFOR**

**6.1 Creation of Association Lien and Personal Obligation for Assessments, Fees, Charges, Fines and Penalties.** The Declarant, for each Lot owned by it, and each Owner, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments, fees, charges, fines and penalties to the Association in accordance with this Declaration. All Assessments, fees, charges, fines and penalties shall be established and collected as provided in this Declaration. The Assessments, fees, charges, fines and penalties, together with interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, fees, charges, fines or penalties, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment, fee, charge, fine or penalty is levied or made. Recording of this Declaration constitutes record notice and perfection of the lien established hereby. Each Assessment, fee, charge, fine and penalty, together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in enforcing the Project Documents and collecting or attempting to collect delinquent Assessments, fees, charges, fines or penalties, whether or not suit is filed, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment, fee, charge, fine or penalty became due. The personal obligation for delinquent Assessments, fees, charges, fines or penalties shall not pass to the successors in title of the Owner unless expressly assumed by them.

#### **6.2 Annual Assessments.**

**6.2.1** In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Project Documents, including the establishment of replacement and maintenance reserves, the Board, for each Assessment Period, shall assess an Annual Assessment against each Lot. The Board shall not levy an Annual Assessment that is more than twenty percent

(20%) greater than the immediately preceding fiscal year's Annual Assessment without the approval of a majority of the Members of the Association.

6.2.2 The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessment by Members, it may, subject to the twenty percent (20%) limit set forth in Section 6.2.1 above, increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board.

6.3 **Assessment Period.** The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the Association's fiscal year.

6.4 **Rate of Assessment.** The amount of the Annual Assessment for each Lot other than Lots owned by the Declarant shall be the amount obtained by dividing the anticipated Common Expenses of the Association for the Assessment Period for which the Annual assessment is being levied by the total number of Lots.

6.5 **Special Assessments.** The Association may levy against each Lot, in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area, including fixtures and personal property related thereto, provided that any Special Assessment shall have the assent of sixty-seven percent (67%) of the votes entitled to be cast by Members who are voting in person, by mail or by proxy at a meeting duly called for such purpose.

6.6 **Lot Specific Assessments.** Lot Specific Assessments shall be levied by the Board of Directors against Lots with respect to which particular costs have been incurred by the Association. In the event the Association undertakes to provide work, materials or services on or about a Lot which are necessary to cure or remedy a breach or violation of the Governing Documents that the Owner has refused to cure or remedy, such Owner by refusing to undertake or complete the required cure or remedy shall be deemed to have agreed in writing that all of the costs and expenses incurred in connection therewith shall be Lot Specific Assessments.

6.7 **No Offsets.** All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason including, without limitation, a claim that the Association is not properly exercising its duties of maintenance of all or any portion of the Common Area or other Area of Association Responsibility, or that the Association is not enforcing the Project Documents.

6.8 **Purposes for which Association's Funds may be Used.** The Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Project and the Owners by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which

may be necessary, desirable or beneficial to the general common interests of the Project and the Owners. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among Members and residents, maintenance of landscaping on Common Areas and public right-of-ways and drainage areas within the Project, recreation, liability insurance, communications, ownership and operation of vehicle storage areas, education, transportation, health, utilities, public services, safety, indemnification of officers and directors of the Association and any other purposes permitted by applicable statutes or the Project Documents.

**6.9 Rules Regarding Billing and Collection Procedures.** Annual Assessments shall be collected on a monthly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period; successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

**6.10 Transfer, Refinance and Disclosure Fees.** Each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board. Any Owner of a Lot who sells or refinances his or her Lot and requires a status or disclosure statement from the Association in connection therewith shall pay to the Association a refinance or disclosure fee in such amount as is established from time to time by the Board. Fees charged pursuant hereto shall be secured by the Association Lien established pursuant to Section 6.1.

**6.11 Fines and Penalties.** In addition to any other rights or remedies which the Association may have under this Declaration or at law or in equity as a result of the violation of this Declaration or the Project Documents, the Association shall have the right, subject to applicable law, to levy reasonable fines or penalties against an Owner for any violation of this Declaration or the Project Documents by the Owner, any other Residents of the Owner's Lot or any of the Owner's family, tenants, guests, contractors or agents. The amount of the fine or penalty for each violation shall be established by the Board.

**6.12 Notice of Violation, Appeal and Payment of Fines and Penalties.**

6.12.1 The Board, or any person designated by the Board, may serve a "Notice of Violation" against an Owner or Lessee for a violation of any provision of the Project Documents by the Owner, his family or guests. A Notice of Violation shall contain (i) a description of the violation, (ii) the appropriate time and place at which the violation was observed, (iii) the amount of the fine to be paid by the Owner or Lessee for such violation, (iv) the name of the person issuing the Notice of Violation, and (v) a statement advising the Owner or Lessee of the Owner's or Lessee's right to appear before the Board on the date, time and place specified for a hearing at which the Owner or Lessee can offer any defenses or mitigating circumstances.

6.12.2 A Notice of Violation shall be deemed to have been served if delivered personally to the Owner or Lessee named in the Notice of Violation or sent to the Owner or Lessee by registered or certified United States mail, return receipt requested, postage prepaid. A Notice of Violation served by mail shall be deemed to have been received by the Owner or Lessee to whom

the notice was addressed on the earlier of the date the notice is actually received or three (3) days after the notice is deposited in the United States mail. A Notice of Violation given to the Owner by mail shall be addressed to the Owner at the address of the Owner as shown on the records of the Association. A Notice of Violation given to the Lessee by mail shall be addressed to the Residential Unit occupied by the Lessee. If a Lot is owned by more than one person or entity, a Notice of Violation to one of the joint Owners shall constitute notice to all of the joint Owners.

6.12.3 The Owner or Lessee shall pay the fine set forth in the Notice of Violation to the Association within ten (10) days after the Notice of Violation is served on the Owner or Lessee or, if the Owner or Lessee appears at the hearing specified in the Notice of Violation, within ten (10) days after a hearing before the Board in which the Board upholds the fine.

6.12.4 Any fines or penalty levied pursuant hereto shall be secured by the Association Lien established pursuant to Section 6.1.

6.13 **Costs of Enforcement.** Any costs incurred by the Association in enforcing this Declaration or the other Project Documents shall be the obligation of the Owner of the Lot against which enforcement is sought. Such costs shall include, but not be limited to, reasonable attorneys' fees, whether or not suit is filed. The obligation to pay the costs of enforcement shall be secured by the Association Lien established pursuant to Section 6.1.

6.14 **Effect of Nonpayment of Assessments, Fees, Charges, Fines and Penalties; Remedies of the Association.**

6.14.1 Any Assessment, fee, charge, fine or penalty, or any installment of an Assessment, fee, charge, fine or penalty not paid within fifteen (15) days after the Assessment, fee, charge, fine or penalty, or the installment thereof, first became due shall bear interest from the due date at the rate of interest established from time to time by the Board. In addition, the Board of Directors may establish a late fee and interest to be charged to any Owner who has not paid any Assessment, fee, charge, fine or penalty, or any installment thereof, within fifteen (15) days after such payment was due.

6.14.2 As set forth in Section 6.1, the Association shall have a lien on each Lot for all Assessments, fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees levied against or charged to a Lot or the Owner thereof. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the recording of the Notice, including late charges, interest, costs of collection, lien recording fees, lien release fees, reasonable attorneys' fees and the costs of preparing the Notice of Lien.

6.14.3 Subject to applicable statutes, the Lien created by Section 6.1 shall have priority over all liens or claims except for (i) tax liens for real property taxes, and (ii) assessments in favor of any municipal or other governmental body.



6.14.4 The Board may suspend for the entire period during which any Assessments, fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees remain delinquent the obligated Owner's right to vote on any matter at regular or special meetings of the Association.

6.14.5 The Board may suspend for the entire period during which any Assessments, fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees remain delinquent, the obligated Owner's right, if any, to the use of the recreational facilities that are part of the Common Area.

6.14.6 The Board may, without notice or demand, enforce the lien established pursuant to Section 6.1.

6.14.7 The Board may, without notice or demand, institute an action at law for a money judgment to recover the amount of the delinquent Assessment together with all fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees.

6.15 **Surplus Funds.** The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

## **ARTICLE 7 MAINTENANCE**

### **7.1 Areas of Association Responsibility.**

7.1.1 The Association, or its duly delegated representative, shall manage, maintain, repair and replace the (i) Common Area, and all Improvements located thereon, and (ii) all Association Property.

7.1.2 The Board shall be the sole judge as to the appropriate maintenance of all Areas of Association Responsibility and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

7.2 **Lots.** Each Owner shall be responsible for maintaining his or her Lot. Each Owner shall be responsible for maintaining, repairing or replacing all buildings, Residential Units, landscaping or other Improvements situated on his or her Lot. All buildings, Residential Units, landscaping and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines and plants of any type on a Lot that are the responsibility of the Owner thereof shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass which die shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing

by the Architectural Committee. No yard equipment, wood piles or storage area may be maintained so as to be Visible From Neighboring Property or streets.

**7.3 Assessment of Certain Costs of Maintenance and Repair.** In the event that the need for maintenance or repair of an Area of Association Responsibility is caused through the willful or negligent act of any Member, his family, Lessee, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Member and the Member's Lot is subject and shall be secured by the Association Lien. Any charges or fees to be paid by the Owner of a Lot pursuant to this Section in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Association Lien.

**7.4 Improper Maintenance and Use of Lots.** In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration; or in the event the Owner of any Lot is failing to perform any of its obligations under the Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen (14) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the Association Lien.

**7.5 Maintenance Easement.** The rights and duties of Owners of Lots with respect to common walls shall be as follows:

**7.5.1** Each Owner and Lessee shall permit the Owner of adjoining Lots, or their representatives, contractors, or employees, when reasonably required and in a reasonable manner, to enter his or her Lot for the purpose of repairing or maintaining that portion of such Owner's Residential Unit that is accessible only by entering upon such adjoining Lot.

## **ARTICLE 8 INSURANCE**

**8.1 Scope of Coverage.** Commencing not later than the time of the first conveyance of a Lot to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

**8.1.1** Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Area of Association Responsibility and all other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverage with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

8.1.2 Property insurance on all Area of Association Responsibility insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Area of Association Responsibility, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy;

8.1.3 Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

8.1.4 Directors and officers liability insurance in an amount to be determined by the Board;

8.1.5 Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners.

8.1.6 The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

(i) That there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household;

(ii) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy;

(iii) That the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust;

(iv) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners;

(v) Statement of the name of the insured as the Association; and

(vi) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

8.2 **Certificates of Insurance.** An insurer that has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be canceled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.

**8.3 Payment of Premiums.** The premiums for any insurance obtained by the Association pursuant to Section 8.1 of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

**8.4 Payment of Insurance Proceeds.** With respect to any loss to any Area of Association Responsibility covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 8.5 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

**8.5 Repair and Replacement of Damaged or Destroyed Common Area.** Any portion of the Common Area which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either (i) be retained by the Association as an additional capital reserve, or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

## **ARTICLE 9 RIGHTS OF FIRST MORTGAGEES**

**9.1 Notification to First Mortgagees.** Upon receipt by the Association of a written request from a First Mortgagee or insurer or governmental guarantor of a First Mortgage informing the Association of its correct name and mailing address and the Lot number or address to which the request relates, the Association shall provide such Eligible Mortgage Holder or Eligible Insurer Or Guarantor with timely written notice of the following:

9.1.1 Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer Or Guarantor;

9.1.2 Any delinquency in the payment of Assessments or charges owed by an Owner of a Lot subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer Or Guarantor or any other default in the performance by the Owner of any obligation under the Project Documents, which delinquency remains uncured for the period of sixty (60) days;

9.1.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

9.1.4 Any proposed action which will require the consent of a specified percentage of Eligible Mortgage Holders as set forth in Section 9.2 or 9.3 of this Declaration.

**9.2 Approval Required to Terminate Project.** Any termination of the legal status of the Project for reasons other than the substantial destruction or a substantial taking in condemnation of the Project shall not be effective unless approved by Eligible Mortgage Holders holding First Mortgages on Lots the Owners of which have at least sixty-seven percent (67%) of the votes in the Association allocated to Owners of all Lots subject to First Mortgages held by Eligible Mortgage Holders.

**9.3 Approval Required for Amendment to Declaration, Articles or Bylaws.**

9.3.1 The approval of Eligible Mortgage Holders holding First Mortgages on Lots the Owners of which have at least fifty-one percent (51%) of the votes in the Association allocated to Owners of all Lots subject to First Mortgages held by Eligible Mortgage Holders shall be required to add or amend any material provisions of the Declaration, Articles or Bylaws which establish, provide for, govern or regulate any of the following:

- (i) Voting rights;
- (ii) Assessments, assessment liens or subordination of assessment liens;
- (iii) Reserves for maintenance, repair and replacement of Common Areas;
- (iv) Insurance or fidelity bonds;
- (v) Responsibility for maintenance and repairs;
- (vi) Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project;
- (vii) Boundaries of any Lot;
- (viii) Reallocation of interests in the Common Areas or the rights to their use;
- (ix) Convertibility of Lots into Common Areas or of Common Areas into Lots;
- (x) Leasing of Lots;
- (xi) Imposition of any restrictions on an Owner's right to sell or transfer his Lot;
- (xii) A decision by the Association to establish self management when professional management had been required previously by an Eligible Mortgage Holder;
- (xiii) Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the

Project Documents;

(xiv) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs;

(xv) Any provisions which expressly benefit First Mortgagees, Eligible Mortgage Holders or Eligible Insurers Or Guarantors.

9.3.2 Any addition or amendment to the Declaration, Articles or Bylaws shall not be considered material if it is for the purpose of correcting technical errors or for clarification only.

**9.4 First Mortgagee's Right of Inspection of Records.** Any First Mortgagee will, upon written request, be entitled to (i) inspect the books and records of the Association during normal business hours, (ii) receive within ninety (90) days following the end of any fiscal year of the Association, a financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party, and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

**9.5 Limitation on Partition and Subdivision.** No Lot shall be partitioned or subdivided without the prior written approval of the holder of any first Mortgage on such Lot.

**9.6 Prior Written Approval of First Mortgagees.** Unless at least two-thirds (2/3) of the Eligible Mortgage Holders (based upon one vote for each First Mortgage owned) or Owners (other than the sponsor, developer or builder) of at least two-thirds (2/3) of the Lots have given their prior written approval, the Association shall not be entitled to:

9.6.1 Seek to abandon, partition, subdivide, sell or transfer the Common Area owned, directly or indirectly, by the Association for the benefit of the Lots. The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area shall not be deemed a transfer within the meaning of this Subsection;

9.6.2 Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

9.6.3 Change, waive or abandon any scheme or regulation, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots or the maintenance of the Common Area;

9.6.4 Fail to maintain fire and extended coverage on insurance common area on current replacement cost basis in an amount of at least 100 percent of insurable value;

9.6.5 Use hazard insurance proceeds for losses to any Common Area, other than the repair, replacement or reconstruction of such Common Area.

**9.7 No Priority over First Mortgagees.** No provision of this Declaration gives or shall be construed as giving any Owner or other Person priority over any rights of a First Mortgagee of a Lot in the case of the distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of the Common Area.

**9.8 Failure of First Mortgagees to Respond.** Any First Mortgagee who receives a written request from the Board to respond to or consent to any action requiring the consent of the First Mortgagee shall be deemed to have approved such action if the Association has not received a negative response from such First Mortgagee within thirty (30) days of the date of the Association's request.

**9.9 Conflicting Provisions.** In the event of any conflict or inconsistency between the provision of this Article and any other provision of the Project Documents, the provisions of this Article shall prevail; provided, however, that in the event of any conflict or inconsistency between the different Sections of this Article or between the provisions of this Article and any other provisions of the Project Documents with respect to the number or percentage of Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers Or Guarantors that must consent to (i) an amendment of the Declaration, Articles or Bylaws, (ii) a termination of the Project, or (iii) certain actions of the Association as specified in Section 9.2, 9.3 and 9.6 of this Declaration, the provision requiring the consent of the greatest number or percentage of Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers Or Guarantors shall prevail; provided, however, that so long as there is a Class B membership in the Association, the Declarant, without the consent of any Owner or First Mortgagee being required, shall have the right to amend this Declaration, the Articles of the Bylaws in order to conform this Declaration, the Articles or the Bylaws to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required or requested by the Declarant.

## **ARTICLE 10 GENERAL PROVISIONS**

**10.1 Enforcement.** The Association or any Owner shall have the right to enforce Project Documents and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (i) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (ii) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Project Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Project Documents in the future. In the event of any litigation or arbitration by or against the Association, the prevailing party in such litigation or arbitration shall be entitled to recover from the nonprevailing party all attorneys' fees, costs and expert witness fees incurred by the prevailing party.

**10.2 Method of Termination.** This Declaration shall continue in full force and effect unless terminated by the affirmative vote or written consent, or any combination thereof, of the Owners representing ninety percent (90%) or more of the votes of in the Association. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County Recorder of Maricopa County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

### 10.3 **Amendments.**

10.3.1 This Declaration may be amended at any time by the written approval or the affirmative vote of Owners of not less than two-thirds (2/3rds) of the Lots.

10.3.2 Notwithstanding the requirements of Section 9.3.1, the Board may amend this Declaration or the Plat, without obtaining the approval or consent of any Owner or First Mortgagee, in order to conform this Declaration or the Plat to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required by law or requested by the Declarant or the Board.

10.3.3 Any amendment approved pursuant to Subsection 9.3.1 of this Declaration or by the Board pursuant to Subsection 9.3.2 of this Declaration shall be signed by the President or Vice President of the Association and shall be recorded with the county Recorder of Maricopa County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section.

10.4 **Interpretation.** Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules or Architectural Committee Rules, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules or the Architectural Committee Rules, the Bylaws shall control.

10.5 **Severability.** Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

10.6 **Rule Against Perpetuities.** If any interest purported to be created by this Declaration is challenged under the Rule against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (i) those which would be used in determining the validity of the challenged interest, plus (ii) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

10.7 **Change of Circumstances.** Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

### 10.8 **Laws, Ordinances and Regulations.**



10.8.1 The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other persons to obtain the approval of the Board or the Architectural Committee with respect to certain actions are independent of the obligation of the Owners and other persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other person from the obligation to also comply with all applicable laws, ordinances and regulations.

10.8.2 Any violation of any state, municipal, or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

10.9 **References to this Declaration in Deeds.** Deeds to and instruments affecting any Lot or any part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, successors and assignees.

10.10 **Gender and Number.** Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

10.11 **Captions and Titles.** All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent of context thereof.

10.12 **Notices.** If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner, Lessee or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within Maricopa County. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

10.13 **Condemnations of Common Area.** If all or any part of the Common Area is taken or condemned, or conveyed by the Association in lieu of or under threat of such condemnation with the written consent or affirmative vote of Owners representing at least eighty percent (80%) of the votes in the Association, by or to any authority having the power of condemnation or eminent domain, the award or other compensation paid as a result of such taking or conveyance shall be paid to the Association. If the taking involves a portion of the Common Area upon which Improvements have been constructed, then the Association shall construct replacement Improvements on the remaining common Area to the extent land is available for such construction, unless within sixty (60) days after such taking the Owners having at least eighty percent (80%) of the votes in the Association, by written consent or affirmative vote, or any combination thereof, instruct the Board not to build replacement Improvements. If such replacement Improvements are to be constructed, then the Association shall be entitled to use the award or other compensation

made for such taking solely for the purpose of such construction. If the taking does not involve any Improvements on the Common Area or if the Owners representing more than eighty percent (80%) of the votes in the Association decide not to construct any replacement Improvements or if there are any net funds remaining after such construction is completed, then such awarded net funds may either be disbursed by the Association to the Owners with an equal share being disbursed to each Lot or retain such funds as additional operating or capital reserves.

IN WITNESS WHEREOF, the Declarant/Developer has executed this Declaration as of the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**GREENACRE PARTNERS, L.L.C.,  
an Arizona Limited Liability Company**

By: \_\_\_\_\_

Its: \_\_\_\_\_

## **EXHIBIT B**

### **SAMPLE ARTICLES OF INCORPORATION**

### **ARTICLES OF INCORPORATION**

### **OF**

### **GREENACRE COMMUNITY ASSOCIATION**

Pursuant to Title 10, Chapters 24-40 of the Arizona Revised Statutes, the undersigned hereby adopt the following Articles of Incorporation.

#### **ARTICLE I - NAME**

The name of the corporation shall be **GREENACRE COMMUNITY ASSOCIATION** (hereinafter referred to as the "Association").

#### **ARTICLE II - NONPROFIT CORPORATION**

The Association is organized as a nonprofit Association pursuant to Title 10, Chapters 24-40, of the Arizona Revised Statutes. The Association shall have no stock, and no dividends or pecuniary profits shall be declared or paid to its members, directors or officers. All income and earnings of the Association shall be used to further the purposes and objectives of the Association. Nothing contained herein, however, shall prohibit payments by the Association to members, directors or officers as reasonable compensation or reimbursement for services rendered to the Association.

#### **ARTICLE III - PRINCIPAL PLACE OF BUSINESS**

The Association's principal place of business is located at 4523 E. Broadway Road, Phoenix, AZ 85040, but it may establish other places of business and other offices at such other places as the Board of Directors may from time to time determine.

#### **ARTICLE IV - PURPOSE, POWERS AND DUTIES**

The primary business and purpose of the Association is to serve as an "association" as that term is defined and used in the Planned Communities Act (Title 33, Chapter 16 of the Arizona Revised Statutes, A.R.S. § 33-1801 *et seq.* hereafter, the Act) and as the "Association" as that term is defined and used in the Declaration of Covenants, Conditions, Restrictions and Easements for Greenacre Community Association recorded at 2024-XXXXXXXXXX, records of Maricopa County, Arizona (the "Declaration"). In furtherance of said purpose, the Association shall have the powers and shall perform the duties and obligations granted to and imposed upon it by the Declaration, the Bylaws and the Act. In addition, subject to the provisions of the Declaration, the Association shall have and may exercise any and all of the powers, rights and privileges now or hereafter granted to nonprofit Associations by Title 10, Chapters 24-40, of the Arizona Revised Statutes, as the same may be amended or revised.

## **ARTICLE V - MEMBERSHIP AND VOTING RIGHTS**

The Corporation shall have members. The membership of the Association shall consist exclusively of all of the owners of Lots. The property, voting and other rights and privileges of members, and their liability for assessments and other charges, shall be as set forth in the Declaration, the Bylaws and the Act.

## **ARTICLE VI - BOARD OF DIRECTORS**

The control and management of the affairs of the Association shall be vested in a Board of Directors, members of which shall be considered as the Board of Directors under the Declaration, consisting of no less than three (3) Directors and no more than five (5) Directors. The names and addresses of the initial Members are as follows:

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The Bylaws of the Association shall prescribe the terms of office and manner of election of directors, and the number of directors, which shall be no less than the number of Directors required by the Declaration.

## **ARTICLE VII - OFFICERS**

The affairs of the Association shall be administered by officers elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the Members of the Association, or at other meeting called for such purpose. The officers shall consist of a President, Vice-President, Secretary, Treasurer and other officers as required, each of whom shall serve at the pleasure of the Board of Directors.

## **ARTICLE VIII - INCORPORATORS**

The name and address of the incorporator is:

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## **ARTICLE IX - NO PERSONAL LIABILITY**

The directors, officers and members of the Association shall not be individually liable for the Association's debts or other liabilities. The private property of such individuals shall be exempt from any corporate debts or liabilities. A director of the Association shall not be personally liable

to the Association or its members, if any, for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Association or its members, if any, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under the Arizona nonprofit corporation act as it may be amended from time to time, or (iv) for any transaction from which the director derived any improper personal benefit. If the Arizona Revised Statutes are hereafter amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Association shall be eliminated or limited to the fullest extent permitted by the Arizona Revised Statutes, as so amended. Any repeal or modification of this Article shall not adversely affect any right or protection of a director of the Association existing at the time of such repeal or modification.

## **ARTICLE X - INDEMNIFICATION**

The Association shall indemnify any past or present Director, officer, committee member, employee or agent against expenses, including without limitation, attorneys' fees, judgments, fines and amounts incurred while acting within the scope of his or her authority as a Director, officer, committee member, employee or agent of the Association; provided that the board of Directors shall determine in good faith that such did not act, fail to act, or refuse to act, willfully or with gross negligence or with fraudulent or criminal intent with regard to the matters involved in this action.

## **ARTICLE XI - DISSOLUTION**

No person shall possess any property right in or to the property or assets of the Association. Upon termination, the Association may be dissolved as provided in the Bylaws. Upon dissolution, all assets remaining after payment of any outstanding liabilities shall be distributed as provided in the Act.

## **ARTICLE XII - FISCAL YEAR END**

The Association shall have its fiscal year end on the last day of December.

## **ARTICLE XIII - AMENDMENTS**

These Articles of Incorporation may be amended by obtaining the approval of the members representing at least 51% of the total votes of the Association.

## **ARTICLE XIV - STATUTORY AGENT**

This Association hereby appoints Augustus H. Shaw IV, as its statutory agent. All notices and processes, including service of summons, may be served upon said statutory agent and, when so served, shall be lawful, personal service upon this Association. The Board of Directors may, at any time, appoint another agent for such purpose, and filing of such other appointment shall revoke this or any other previous appointment of such agent.

**IN WITNESS WHEREOF**, we, have executed these Articles of Incorporation this \_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Incorporator

**CONSENT OF STATUTORY AGENT**

The undersigned hereby certifies that consent is given to act as statutory agent for this Association.

\_\_\_\_\_

**EXHIBIT C**  
**SAMPLE BYLAWS**

**BYLAWS  
OF  
GREENACRE COMMUNITY ASSOCIATION**

**ADOPTED \_\_\_\_\_, 2024**

WHEREAS, Greenacre Community Association (the "Association") was incorporated as a nonprofit corporation in the State of Arizona on or about \_\_\_\_\_, 2024;

WHEREAS, Arizona Revised Statutes § 10-3101, *et seq.* vests the authority to adopt initial bylaws in the Board of Directors; and

WHEREAS, at a meeting of the Board of Directors duly called and held on \_\_\_\_\_, 2024, a majority of the Directors present voted in favor of adopting these Bylaws as set forth herein.

NOW THEREFORE, the Bylaws of the Association are hereby adopted in their entirety as follows:

**ARTICLE I  
NAME AND LOCATION OF ASSOCIATION**

**Section 1.1 Names.** The name of the Association is GREENACRE COMMUNITY ASSOCIATION.

**Section 1.2 Principal Office.** The principal office of the Association in the State of Arizona is currently located at 565 W. Chandler Blvd, Ste 210, Chandler AZ, 85225. The Association may change the location of its principal office as the Board of Directors may determine or as the affairs of the Association may require.

**ARTICLE II  
REFERENCE TO DECLARATION**

**Section 2.1 References to Declaration.** Reference is made to the certain Declaration of Covenants, Conditions, Restrictions and Easements for Greenacre Community Association recorded on \_\_\_\_\_, 2024 as instrument No. \_\_\_\_\_ in the Official Records of Maricopa County, Arizona, (the "Declaration"). Unless otherwise defined in these Bylaws, all capitalized words and phrases shall have the meanings set forth in the Declaration.

**ARTICLE III  
PURPOSE**

**Section 3.1 Purposes.** The primary purpose of the Association is to serve as the governing body for the Owners of Lots and to fulfill such obligations and exercise such rights as are given by statute and the Association's Governing Documents, as they may hereafter be amended.

## **ARTICLE IV MEMBERSHIP**

**Section 4.1 Qualifications.** Membership in the Association shall be limited to Owners of Lots.

**Section 4.2 Voting Rights.** Subject to the provisions of Section 4.3, the Owner of a Lot shall be entitled to one (1) vote on each matter submitted to a vote of the Members. The vote attributable to each Lot must be cast as a whole; fractional votes shall not be allowed. In the event that a Lot is owned by two (2) or more Persons, the joint or common owners shall designate to the Association in writing one of their number who shall have the right to cast votes with respect to such Lot. If multiple Persons own a Lot and are unable to agree upon how their vote shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed that he was acting with the authority and consent of all other owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event that more than one (1) vote is cast with respect to particular Lot, all such votes shall be deemed void. In the event that an Owner owns more than one (1) Lot, such Member shall be entitled, subject to the provisions of Section 4.3, to one (1) vote for each Lot owned.

**Section 4.3 Good Standing.** If a Member otherwise entitled to vote is delinquent in the payment of periodic or special assessments, fines, penalties, interest, late charges, transfer fees, refinance fees, costs of collection, lien fees, attorneys' fees or other monies owed to the Association or is not in compliance with the terms of the Association's Governing Documents, the Bylaws or the Rules and Regulations of the Association, the Board of Directors may, in its sole discretion, certify that such Member is not in good standing and such Member's right to vote shall be suspended until the delinquency, breach, or violation is paid in full, cured, or corrected.

**Section 4.4 Transfer of Membership.** Membership in the Association is inextricably and irrevocably connected with ownership of a Lot and may not be transferred independently of such ownership.

## **ARTICLE V MEETINGS OF MEMBERS**

**Section 5.1 Annual Meeting.** An annual meeting of the Members of the Association shall be held at least once every twelve (12) months at a date and time determined by the Board of Directors for the purpose of electing or announcing the results of the election of Directors and transacting such other business as may properly come before the meeting. The annual meeting shall be conducted pursuant to the provisions of Arizona Revised Statutes (A.R.S.) §33-1812.

**Section 5.2 Special Meetings.** Special meetings of the Members may be called by the President, the Board of Directors, or by the written request signed by Members having at least one-fourth (1/4th) of the total authorized votes in the Association. Any special meeting of the Members shall be conducted pursuant to the provisions of Arizona Revised Statutes (A.R.S.) §33-1812.

**Section 5.3 Record Date.** For any meeting of the Members, the Board of Directors may fix a date not more than fifty (50) nor less than ten (10) days before the date of such meeting, as a record date for the determination of the Members of record entitled to vote at such meeting. If a



record date has not been fixed in advance of a meeting as provided herein, the time of commencement of the meeting shall be deemed the record date.

**Section 5.4 Place of Meeting.** Meetings of the Members shall be held in Arizona, at a suitable place designated by the Board of Directors.

**Section 5.5 Notice of Meetings.** Written notice stating the place, day and hour of the annual meeting of Members or a special meeting of Members shall be hand-delivered or delivered by first-class U.S. Mail to all Members, not less than ten (10) nor more than fifty (50) days before the date of such meeting, by or at the direction of the Secretary. The notice of the meeting shall be deemed to be delivered when left with a person of suitable age and discretion at the address that appears on the records of the Association or when deposited, postage prepaid, in the United States Mail and addressed to the Member at the address that appears on the records of the Association. In the case of special meetings, the purpose for which the special meeting is called shall be stated in the notice and no business shall be transacted at such special meeting except as stated in the notice.

**Section 5.6 Quorum.** Those Owners present in person or by absentee ballot pursuant to Arizona Revised Statutes (A.R.S.) §33-1812 at a properly noticed meeting of the Association holding not less than ten percent (10%) of the total votes of the Association shall constitute a quorum at all meetings of the Association.

**Section 5.7 Manner of Acting.** A majority of the votes entitled to be cast on a matter to be voted upon by the Members present at a meeting at which a quorum is present shall be necessary for the adoption thereof unless a greater proportion is required by statute, the Declaration or these Bylaws.

**Section 5.8 Minutes.** Minutes shall be taken at all meeting of Members. Copies of the minutes shall be available for inspection at the office of the Association by Members and Directors at all reasonable times.

**Section 5.9 Non-cumulative Voting.** All voting shall be done on a non-cumulative basis.

## **ARTICLE VI BOARD OF DIRECTORS**

**Section 6.1 Powers and Duties.** The affairs of the Association shall be managed by its Board of Directors. The Board shall have all of the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things that are not required by the Declaration, statute or these Bylaws to be exercised or done by the Members. In addition to the powers and duties granted and imposed by statute and the Governing Documents, the powers and duties of the Board of Directors shall include, but are not limited to, the following:

- (A) Open bank accounts on behalf of the Association and designate the signatories thereon;
- (B) To accept such properties, improvements, rights, and interests as may be conveyed, leased, assigned, or transferred to the Association;

- (C) To own, maintain and otherwise manage all of the Common Area and all facilities, improvements, and landscaping thereon; to pay all taxes and assessments, if any, which may properly be levied against the Common Area; to repair, rehabilitate, and restore the Common Area; and to insure the Common Area against such risks as the Board of Directors shall determine in accordance with the Governing Documents;
- (D) To own, maintain, manage, lease, sell or otherwise dispose of any personal and real property acquired by the Association in lieu of foreclosure or trustee's sale or through attachment, foreclosure, Sheriff's sale, Trustee's sale, tax sale, redemption or any other judicial, quasi-judicial, bankruptcy or regulatory action and all facilities, structures, buildings, fixtures, landscaping and other improvements located thereon; to pay all taxes and assessments, if any, which may properly be levied against such property; to repair, rehabilitate, and restore such property; and to insure such property against such risks as the Board of Directors shall determine;
- (E) To purchase, lease, acquire, own, maintain, manage, sell or otherwise dispose of Association Property; to pay all taxes and assessments, if any, which may properly be levied against Association Property; and to insure Association Property against such risks as the Board of Directors shall determine;
- (F) To manage, maintain, repair and replace the lawn and Association-planted trees located on those portions of Lots lying between the front of the Residential Unit and the adjacent street;
- (G) To do all things necessary to carry out and enforce the terms and provisions of the Governing Documents and to do all things and acts, including the payment of all maintenance, operating and other costs, which in the sole discretion of its Board of Directors shall be deemed to be in the best interest of the Members of the Association or for the peace, comfort, safety, or general welfare of the Members of the Association, all in accordance with the Governing Documents;
- (H) To enter into agreements with third parties authorizing such parties to carry on any activities which might legally be carried on by the Association and delegated by the Association to third parties;
- (I) To engage the services of a manager or managing agent who shall manage and operate the Property for all of the Members upon such terms, for such compensation and with such authority as the Board of Directors may approve;
- (J) To appoint committees of the Board of Directors and to delegate to such committees the authority to carry out certain duties of the Board of Directors, to the extent permitted by statute and the Governing Documents law;
- (K) To estimate the amount of the annual budget; to provide the manner and time of assessing and collecting from the owners the Assessments provided for in the Governing Documents;
- (L) To promulgate such rules and regulations pertaining to the use and occupancy of the Property and the personal conduct of the Members and their family members,

guests, lessees and invitees thereon as may be deemed proper and which are consistent with the Declaration;

- (M) To enforce, by suit or otherwise, the terms and provisions of the Governing Documents;
- (N) To establish and maintain working capital, reserve and contingency accounts in an amount to be determined by the Board of Directors;
- (O) To lend or invest it's working capital and reserves with or without security;
- (P) To fix and collect fees, rates, rentals and other charges for the use of Common Areas, for the use of other property owned by the Association, and for services rendered by the Association;
- (Q) To obtain, for the benefit of all of the Property, all water, sewerage, gas and electric services and refuse collections, and to grant easements when necessary for utilities, sewer facilities and CATV over the Property;
- (R) To enter into agreements with the owners of property not within the Project whereby such owners shall contribute to the payment of construction, maintenance and reconstruction expenses, taxes, insurance and other charges attributable to portions of the Common Areas which may directly or indirectly benefit such Parcels;
- (S) Levy and collect Assessments as provided in the Declaration;
- (T) To establish, levy, collect and enforce by any lawful means a schedule of fines, penalties, transfer fees, refinance fees, administrative charges, late charges, interest, and costs of collection;
- (U) To do all other acts and things required by applicable law or statute or authorized in the Declaration but not explicitly set out above;
- (V) In general to do and perform such acts and things and to transact such business in connection with the foregoing objects and purposes as may be necessary or appropriate.

**Section 6.2 Number and Qualifications of Directors.** Prior to the Transition Date, the number of Directors of the Association shall consist of three (3) Directors, all of whom shall be appointed and serve at the pleasure of the Developer. Subsequent to the Transition Date, the number of Directors of the Association shall be not less than three (3) nor more than five (5) as determined by the Board of Directors. If the number of Directors is reduced, all Directors whose terms have not yet expired and who are in good standing shall be allowed to serve the balance of their terms. All Directors must be Members in good standing of the Association in accordance with the provisions of Section 4.3. If an Owner is a corporation, partnership or trust, an officer, partner, trustee or beneficiary of such owner may serve as a Director. If a Director shall fail to meet the qualifications of good standing or Membership at any time during his term, he or she will thereupon cease to be a Director and his or her place on the Board shall be deemed vacant.

**Section 6.3 Terms.** Directors shall be elected to and shall serve staggered two-year terms as follows: One-half of the number of Directors (or as close to one-half as is possible if there are an uneven number of Directors) shall be elected at each annual meeting, or each year if voting is conducted by mail, for two-year terms. All elections and appointments of Directors under these Bylaws shall be made in a manner to preserve the staggering of terms contemplated hereby.

**Section 6.4 Regular Meetings.** A regular annual meeting of the Board of Directors shall be held without other notice than this bylaw, immediately after, and at the same place as, the annual meeting of Members. The Board of Directors may provide by resolution the time and place for additional regular meetings of the Board.

**Section 6.5 Special Meetings.** Special meetings of the Board of Directors may be called by or at the request of the President or any two (2) Directors. The person or persons authorized to call special meetings of the Board of Directors may fix any convenient place and time as the place and time for holding any special meeting of the Board of Directors called by them.

**Section 6.6 Teleconference Meetings.** Meetings of the Board of Directors may be held by conference telephone or other similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation at such meeting shall constitute presence in person at the meeting.

**Section 6.7 Notice.** Notice of any special meeting of the Board of Directors shall be given to Directors at least three (3) days prior thereto by written notice delivered personally or sent by mail or facsimile to each Director at his address or facsimile number as shown on the records of the Association. If mailed, such notice shall be deemed to be delivered when deposited, postage prepaid, in the United States Mail in a sealed envelope so addressed. If notice is given by facsimile, such notice shall be deemed to be delivered when the notice is transmitted to a telecopier to which the sender has reason to believe the Director has access. Any Director may waive notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting, unless specifically required by statute or by these Bylaws.

**Section 6.8 Quorum.** A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors; but if less than a majority of the Directors are present at said meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

**Section 6.9 Manner of Acting.** The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless a greater number is required by law or by the Declaration, the Articles of Incorporation or these Bylaws.

**Section 6.10 Attendance at Meetings.** If any Director fails to attend three (3) or more successive meetings of the Board, including special meetings of which such Director has been given notice as provided in Section 6.7, or misses four (4) or more meetings out of six (6) successive meetings of the Board, including special meetings of which such Director has been given notice as

provided in Section 6.7, such Director may, upon the affirmative vote of a majority of the Directors present at a meeting at which a quorum is present, be removed as a Director.

**Section 6.11 Removal.** Any single Director or all of the Directors may be removed pursuant to Arizona Revised Statutes (A.R.S.) § 33-1813. If a single Director or all of the Directors are removed pursuant to Arizona Revised Statutes (A.R.S.) § 33-1813, a successor may then and there be elected to fill the vacancy thereby created by a majority of the Members in attendance at the meeting. A Director so elected shall be elected for the full unexpired term of the Director removed. Any Director whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting prior to the vote for removal.

**Section 6.12 Vacancies.** Except as provided in Section 6.11, any vacancy occurring in the Board of Directors and any directorship to be filled by reason of an increase in the number of Directors shall be filled by the affirmative vote of a majority of the remaining Directors, though less than a quorum, at the next regular or special meeting of the Board. A Director appointed to fill a vacancy shall be appointed for the full unexpired term of his predecessor in office.

**Section 6.13 Compensation.** Directors shall not receive any compensation for their services as such. However, any Director may be reimbursed for his or her actual expenses incurred in the performance of his or her duties. Nothing herein contained shall be construed to preclude any Director from serving the Association in any other capacity and receiving compensation therefor.

## **ARTICLE VII OFFICERS AND EXECUTIVE DIRECTOR OR MANAGING AGENT**

**Section 7.1 Officers.** The officers of the Association shall be a President, one (1) or more Vice Presidents (the number thereof to be determined by the Board of Directors), a Secretary, a Treasurer and such other officers as may be elected in accordance with the provisions of this Article. The Board of Directors may elect or appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority to perform the duties prescribed, from time to time, by the Board of Directors. All officers of the Association must be Members in good standing of the Association. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

**Section 7.2 Election and Term of Office.** The officers of the Association shall be elected annually by the Board of Directors at the regular annual meeting of the Board of Directors. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as convenient. New offices may be created and filled at any meeting of the Board of Directors. Each officer shall hold office until his successor shall have been duly elected and qualified.

**Section 7.3 Removal or Disqualification.** Any officer elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interests of the Association would be served thereby. Any officer who ceases to be a Member of the Association or who ceases to be in good standing shall be automatically removed from office.

**Section 7.4 Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

**Section 7.5 President.** The President shall be the principal executive officer of the Association and shall, in general, supervise and control all of the business and affairs of the Association. The President shall preside at all meetings of the Members and of the Board of Directors. The President may sign, with the Secretary or any other proper officer of the Association authorized by the Board of Directors, any deeds, leases, mortgages, bonds, contracts, or other instruments that the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by the Declaration, these Bylaws or by statute to some other officer or agent of the Association.

**Section 7.6 Vice President.** In the absence of the President or in the event of the President's inability or refusal to act, the Vice President (or in the event there be more than one (1) Vice President, the Vice Presidents in the order of their election) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Any Vice President shall perform such other duties as from time to time may be delegated or assigned by the President or by the Board of Directors.

**Section 7.7 Treasurer.** The Treasurer shall have charge and custody of and be responsible for all funds and securities of the Association; receive and give receipts for moneys due and payable to the Association from any source whatsoever, and deposit all such moneys in the name of the Association in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of these Bylaws; and, in general, perform all the duties incident to the office of Treasurer and such other duties as from time to time may be delegated or assigned by the President or by the Board of Directors. If required by the Board of Directors, the Treasurer shall give, at the Association's expense, a bond for the faithful discharge of his/her duties in such sum and with such surety or sureties as the Board of Directors shall determine.

**Section 7.8 Secretary.** The Secretary shall keep the minutes of the meetings of the Members and of the Board of Directors in one (1) or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; be custodian of the Association records; keep a register of the post-office addresses of each Member which shall be furnished to the Secretary by such Member; and, in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be delegated or assigned by the President or by the Board of Directors.

**Section 7.9 Assistant Treasurers and Secretaries.** The Assistant Treasurers and Assistant Secretaries, in general, shall perform such duties as shall be assigned to them by the Treasurer or the Secretary or by the President or Board of Directors. If required by the Board of Directors, the Assistant Treasurers shall give, at the Association's expense, bonds for the faithful discharge of their duties in such sums and with such sureties as the Board of Directors shall determine.

**Section 7.10 Compensation.** No officer shall receive any compensation from the corporation for acting as such. However, any officer may be reimbursed for his or her actual expenses incurred in the performance of his or her duties. Nothing contained herein shall be

construed to preclude an officer from serving the corporation in any other capacity, and receiving compensation therefor.

**Section 7.11 Managing Agent.** The Board of Directors may hire a Managing Agent at a compensation established by the Board of Directors. The Managing Agent may either be an employee of the Association, an independent professional management company, or an independent contractor. The Managing Agent shall perform such duties and services, as the Board of Directors shall authorize. The Board of Directors may, but is not obligated to, delegate to the Managing Agent all of the powers granted to the Board of Directors or the officers of the Association by these Bylaws; provided, however, that the following powers may not be delegated to the Managing Agent:

- (A) To adopt the annual budget, any amendment thereto or to levy Assessments;
- (B) To adopt, repeal or amend Association Rules;
- (C) To designate signatories on Association bank accounts;
- (D) To borrow or lend money on behalf of the Association;

## **ARTICLE VIII COMMITTEES**

**Section 8.1 Committees of Directors.** The Board of Directors shall establish an Architectural Committee. The Board of Directors may, by resolution adopted by a majority of the Directors in office, designate and appoint other standing or *ad hoc* committees, which committees, to the extent provided in said resolution, shall have and exercise the authority of the Board of Directors in the management of the Association, except that no such committee shall have the authority of the Board of Directors, in reference to amending, altering or repealing these Bylaws; electing, appointing or removing any Member of any such committee or any Director or officer of the Association; amending the Articles of Incorporation; authorizing the sale, lease, exchange or mortgage of the property and assets of the Association; authorizing the voluntary dissolution of the Association or revoking proceedings therefor; adopting a plan for the distribution of the assets of the Association; or amending, altering or repealing any resolution of the Board of Directors which by its terms provides that it shall not be amended, altered or repealed by such committee. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual Director, of any responsibility imposed by the Declaration or by law.

## **ARTICLE IX NEGOTIABLE INSTRUMENTS AND SECURITIES**

**Section 9.1 Signatures on Checks, Etc.** All checks, drafts, orders for payment of money, and negotiable instruments shall be signed by an officer or officers, employee or employees, or the Managing Agent of the Association as the Board of Directors may from time to time, by standing resolution or special order, prescribe.

**Section 9.2 Signatures on Certificates and Securities.** Endorsements or transfers of bonds or other securities will be signed by the president or any vice president and by the treasurer

or an assistant treasurer or the secretary or an assistant secretary of the Association unless the Board of Directors prescribes otherwise.

**Section 9.3 Securities.** An officer or officers of the Association will from time to time be designated by the Board of Directors to have power to control and direct the disposition of any bonds or other securities or property of the Association deposited in the custody of any trust company, bank, or custodian.

## **ARTICLE X FISCAL YEAR**

**Section 10.1 Fiscal Year.** The fiscal year of the corporation shall be from the first day of January through the last day of the succeeding December.

## **ARTICLE XI MISCELLANEOUS**

**Section 11.1 Notices.** All notices required or permitted to be sent to the Board of Directors will be sent by first-class mail, postage prepaid, in care of the manager or managing agent, or if there is no manager or managing agent, to the office of the Association as set forth herein, or to such other address as the Board may, from time to time, designate. All notices required or permitted to be sent to any Member will be sent first-class U.S. mail, postage prepaid, to such address as the Member may have designated in writing to the Board of Directors. All notices will be deemed to have been given when mailed, except notices of change of address which will be deemed to have been given when received.

**Section 11.2 Waiver.** No restriction, condition, obligation, or provision contained in these Bylaws will be deemed to have been abrogated or waived by reason of any failure to enforce it, irrespective of the number of violations and failures to enforce that may occur.

**Section 11.3 Invalidity.** If any provision or provisions of these Bylaws is or are declared invalid, the invalidity will in no way impair or affect the validity, enforceability, or effect of the remaining provisions of these Bylaws.

**Section 11.4 Captions.** Captions are inserted in these bylaws for convenience and reference only, and will not be taken in any way to limit or describe the scope of these Bylaws or any provision thereof.

## **ARTICLE XII CONFLICTS**

**Section 12.1 Conflicts.** In case of a conflict between these Bylaws and the Articles of Incorporation, the Articles shall control. In case of a conflict with these Bylaws and the Declaration, the Declaration shall control. If any provision of these Bylaws is less restrictive than the Declaration or the Articles of Incorporation when dealing with the same subject, the more restrictive provisions of the Declaration and Articles of Incorporation shall be applicable in the same manner as if included in the provisions of these Bylaws.



## **ARTICLE XIII DISSOLUTION**

**Section 13.1 Dissolution.** If there are Members entitled to vote on dissolution, the Board of Directors shall adopt a resolution recommending that the corporation be dissolved and directing that the question of such dissolution be submitted to a vote at a meeting of those Members, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation shall be given to each Member entitled to vote at such meeting of Members. A resolution to dissolve the corporation may be adopted only by act of the Members. If there are no Members, or no Members entitled to vote on dissolution, the dissolution of the corporation may be authorized by act of the Board of Directors.

IN WITNESS WHEREOF, these Bylaws of the Greenacre Community Association are adopted as set forth above.

**GREENACRE COMMUNITY ASSOCIATION, INC**  
an Arizona non-profit corporation

By: \_\_\_\_\_

Its: President

# **2024 Arizona Planned Communities Act**

33-1801. Applicability; exemptions; voluntary election to be subjected to chapter

A. This chapter applies to all planned communities.

B. Notwithstanding any provisions in the community documents, this chapter does not apply to any school that receives monies from this state, including a charter school, and a school is exempt from regulation or any enforcement action by any homeowners' association that is subject to this chapter. With the exception of homeschools as defined in section 15-802, schools shall not be established within the living units of a homeowners' association. The homeowners' association may enter into a contractual agreement with a school district or charter school to allow use of the homeowners' association's common areas by the school district or charter school.

C. This chapter does not apply to either of the following:

1. Timeshare plans or associations that are subject to chapter 20 of this title.

2. Notwithstanding any provision in the community documents, a nonprofit corporation or unincorporated association of owners that is created or incorporated before January 1, 1974 and that does not have authority to enforce covenants, conditions and restrictions related to the use, occupancy or appearance of the separately owned lots, parcels or units in a real estate development, unless a majority of all the members of such a nonprofit corporation or unincorporated association of owners elect in writing to subject the corporation or association to this chapter by recording a notice of election pursuant to subsection D of this section.

D. A nonprofit corporation or unincorporated association of owners that has the power under recorded covenants to assess members to pay the costs and expenses incurred in the performance of obligations created by recorded covenants for a real estate development that does not qualify as a planned community may elect to subject the nonprofit corporation or unincorporated association of owners to this chapter with the written approval of a majority of all the members. A notice of election to be subject to this chapter shall be recorded by the nonprofit corporation or unincorporated association of owners with the county recorder of the county or counties in which the real estate development is located. The notice is effective as of the date of the recording of the notice. Any such election may be rescinded in the same manner as an election and is effective as of the date of the recording of the notice of rescission.

### 33-1802. Definitions

In this chapter and in the community documents, unless the context otherwise requires:

1. "Association" means a nonprofit corporation or unincorporated association of owners that is created pursuant to a declaration to own and operate portions of a planned community and that has the power under the declaration to assess association members to pay the costs and expenses incurred in the performance of the association's obligations under the declaration. Association does not include a nonprofit corporation or unincorporated association of owners that is created or incorporated before January 1, 1974 and that does not have authority to enforce covenants, conditions or restrictions related to the use, occupancy or appearance of the separately owned lots, parcels or units in a real estate development, unless the nonprofit corporation or unincorporated association of owners elects to be subject to this chapter pursuant to section 33-1801, subsection D.
2. "Community documents" means the declaration, bylaws, articles of incorporation, if any, and rules, if any.
3. "Declaration" means any instruments, however denominated, that establish a planned community and any amendment to those instruments.
4. "Planned community" means a real estate development that includes real estate owned and operated by or real estate on which an easement to maintain roadways or a covenant to maintain roadways is held by a nonprofit corporation or unincorporated association of owners, that is created for the purpose of managing, maintaining or improving the property and in which the declaration expressly states both that the owners of separately owned lots, parcels or units are mandatory members and that the owners are required to pay assessments to the association for these purposes. Planned community does not include any of the following:
  - (a) A timeshare plan or a timeshare association that is governed by chapter 20 of this title.
  - (b) A condominium that is governed by chapter 9 of this title.
  - (c) A real estate development that is not managed or maintained by an association.

33-1803. Assessment limitation; penalties; notice to member of violation

A. Unless limitations in the community documents would result in a lower limit for the assessment, the association shall not impose a regular assessment that is more than twenty percent greater than the immediately preceding fiscal year's assessment without the approval of the majority of the members of the association. Unless reserved to the members of the association, the board of directors may impose reasonable charges for the late payment of assessments. A payment by a member is deemed late if it is unpaid fifteen or more days after its due date, unless the community documents provide for a longer period. Charges for the late payment of assessments are limited to the greater of fifteen dollars or ten percent of the amount of the unpaid assessment and may be imposed only after the association has provided notice that the assessment is overdue or provided notice that the assessment is considered overdue after a certain date. Any monies paid by the member for an unpaid assessment shall be applied first to the principal amount unpaid and then to the interest accrued.

B. After notice and an opportunity to be heard, the board of directors may impose reasonable monetary penalties on members for violations of the declaration, bylaws and rules of the association. Notwithstanding any provision in the community documents, the board of directors shall not impose a charge for a late payment of a penalty that exceeds the greater of fifteen dollars or ten percent of the amount of the unpaid penalty. A payment is deemed late if it is unpaid fifteen or more days after its due date, unless the declaration, bylaws or rules of the association provide for a longer period. Any monies paid by a member for an unpaid penalty shall be applied first to the principal amount unpaid and then to the interest accrued. Notice pursuant to this subsection shall include information pertaining to the manner in which the penalty shall be enforced.

C. A member who receives a written notice that the condition of the property owned by the member is in violation of the community documents without regard to whether a monetary penalty is imposed by the notice may provide the association with a written response by sending the response by certified mail within twenty-one calendar days after the date of the notice. The response shall be sent to the address identified in the notice.

D. Within ten business days after receipt of the certified mail containing the response from the member, the association shall respond to the member with a written explanation regarding the notice that shall provide at least the following information unless previously provided in the notice of violation:

1. The provision of the community documents that has allegedly been violated.
2. The date of the violation or the date the violation was observed.
3. The first and last name of the person or persons who observed the violation.
4. The process the member must follow to contest the notice.

E. Unless the information required in subsection D, paragraph 4 of this section is provided in the notice of violation, the association shall not proceed with any action to enforce the community documents, including the collection of attorney fees, before or during the time prescribed by subsection D of this section regarding the exchange of information between the association and the member and shall give the member written notice of the member's option to petition for an administrative hearing on the matter in the state real estate department pursuant to section 32-2199.01. At any time before or after completion of the exchange of information pursuant to this section, the member may petition for a hearing pursuant to section 32-2199.01 if the dispute is within the jurisdiction of the state real estate department as prescribed in section 32-2199.01.

### 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 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 and 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 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 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.

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.

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 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.

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.

### 33-1805. Association financial and other records

A. Except as provided in subsection B of this section, all financial and other records of the association shall be made reasonably available for examination by any member or any person designated by the member in writing as the member's representative. The association shall not charge a member or any person designated by the member in writing for making material available for review. The association shall have ten business days to fulfill a request for examination. On request for purchase of copies of records by any member or any person designated by the member in writing as the member's representative, the association shall have ten business days to provide copies of the requested records. An association may charge a fee for making copies of not more than fifteen cents per page.

B. Books and records kept by or on behalf of the association and the board may be withheld from disclosure to the extent that the portion withheld relates to any of the following:

1. Privileged communication between an attorney for the association and the association.
2. Pending litigation.
3. Meeting minutes or other records of a session of a board meeting that is not required to be open to all members pursuant to section 33-1804.
4. Personal, health or financial records of an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association, 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.
5. Records relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association.

C. The association shall not be required to disclose financial and other records of the association if disclosure would violate any state or federal law.



**33-1806. Resale of units; information required; fees; civil penalty; definition**

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 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 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 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 not more than twenty 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 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 section 32-2183 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.

**33-1806.01. Rental property; member and agent information; fee; disclosure**

A. A member may use the member's property as a rental property unless prohibited in the declaration and shall use it in accordance with the declaration's rental time period restrictions.

B. A member may designate in writing a third party to act as the member's agent with respect to all association matters relating to the rental property, except for voting in association elections and serving on the board of directors. The member shall sign the written designation and shall provide a copy of the written designation to the association. On delivery of the written designation, the association is authorized to conduct all association business relating to the member's rental property through the designated agent. Any notice given by the association to a member's designated agent on any matter relating to the member's rental property constitutes notice to the member.

C. Notwithstanding any provision in the community documents, on rental of a member's property an association shall not require a member or a member's agent to disclose any information regarding a tenant other than the name and contact information for any adults occupying the property, the time period of the lease, including the beginning and ending dates of the tenancy, and a description and the license plate numbers of the tenants' vehicles. If the planned community is an age restricted community, the member, the member's agent or the tenant shall show a government issued identification that bears a photograph and that confirms that the tenant meets the community's age restrictions or requirements.

D. On request of an association or its managing agent for the disclosures prescribed in subsection C of this section, the managing agent or, if there is no managing agent, the association may charge a fee of not more than twenty-five dollars, which shall be paid within fifteen days after the postmarked request. The fee may be charged for each new tenancy for that property but may not be charged for a renewal of a lease. Except for the fee permitted by this subsection and fees related to the use of recreational facilities, the association or its managing agent shall not assess, levy or charge a fee or fine or otherwise impose a requirement on a member's rental property any differently than on an owner-occupied property in the association.

E. Notwithstanding any provision in the community documents, the association is prohibited from doing any of the following:

1. Requiring a member to provide the association with a copy of the tenant's rental application, credit report, lease agreement or rental contract or other personal information except as prescribed by this section. This paragraph does not prohibit the association from acquiring a credit report on a person in an attempt to collect a debt.
2. Requiring the tenant to sign a waiver or other document limiting the tenant's due process rights as a condition of the tenant's occupancy of the rental property.
3. Prohibiting or otherwise restricting a member from serving on the board of directors based on the member's not being an occupant of the property.
4. Imposing on a member or managing agent any fee, assessment, penalty or other charge in an amount greater than fifteen dollars for incomplete or late information regarding the information requested pursuant to subsection C of this section.

F. Any attempt by an association to exceed the fee, assessment, penalty or other charge authorized by subsection D or E of this section voids the fee, assessment, penalty or other charge authorized by subsection D or E of this section. This section does not prevent an association from complying with the housing for older persons act of 1995 (P.L. 104-76; 109 Stat. 787).

G. An owner may use a crime free addendum as part of a lease agreement. This section does not prohibit the owner's use of a crime free addendum.

H. This section does not prohibit and an association may lawfully enforce a provision in the community documents that restricts the residency of persons who are required to be registered pursuant to section 13-3821 and who are classified as level two or level three offenders.

I. An owner of rental property shall abate criminal activity as authorized in section 12-991.

33-1807. Lien for assessments; priority; mechanics' and materialmen's liens; notice

A. The association has a lien on a unit for any assessment levied against that unit from the time the assessment becomes due. The association's lien for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments may be foreclosed in the same manner as a mortgage on real estate but may be foreclosed only if the owner has been delinquent in the payment of monies secured by the lien, excluding reasonable collection fees, reasonable attorney fees and charges for late payment of and costs incurred with respect to those assessments, for a period of one year or in the amount of \$1,200 or more, whichever occurs first, as determined on the date the action is filed. Fees, charges, late charges, monetary penalties and interest charged pursuant to section 33-1803, other than charges for late payment of assessments are not enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment of the assessment becomes due. The association has a lien for fees, charges, late charges, other than charges for late payment of assessments, monetary penalties or interest charged pursuant to section 33-1803 after the entry of a judgment in a civil suit for those fees, charges, late charges, monetary penalties or interest from a court of competent jurisdiction and the recording of that judgment in the office of the county recorder as otherwise provided by law. The association's lien for monies other than for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments may not be foreclosed and is effective only on conveyance of any interest in the real property.

B. A lien for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments under this section is prior to all other liens, interests and encumbrances on a unit except:

1. Liens and encumbrances recorded before the recordation of the declaration.
2. A recorded first mortgage on the unit, a seller's interest in a first contract for sale pursuant to chapter 6, article 3 of this title on the unit recorded prior to the lien arising pursuant to subsection A of this section or a recorded first deed of trust on the unit.
3. Liens for real estate taxes and other governmental assessments or charges against the unit.

C. Subsection B of this section does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the association. The lien under this section is not subject to chapter 8 of this title.

D. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same real estate those liens have equal priority.

E. Recording of the declaration constitutes record notice and perfection of the lien for assessments, for charges for late payment of assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments. Further recordation of any claim of lien for assessments under this section is not required.

F. A lien for an unpaid assessment is extinguished unless proceedings to enforce the lien are instituted within six years after the full amount of the assessment becomes due.

G. This section does not prohibit:

1. Actions to recover amounts for which subsection A of this section creates a lien.
2. An association from taking a deed in lieu of foreclosure.

H. A judgment or decree in any action brought under this section shall include costs and reasonable attorney fees for the prevailing party.

I. On written request, the association shall furnish to a lienholder, escrow agent, unit owner or person designated by a unit owner a statement setting forth the amount of any unpaid assessment against the unit. The association shall furnish the statement within ten days after receipt of the request, and the statement is binding on the association, the board of directors and every unit owner if the statement is requested by an escrow agency that is licensed pursuant to title 6, chapter 7. Failure to provide the statement to the escrow agent within the time provided for in this subsection extinguishes any lien for any unpaid assessment then due.

J. Notwithstanding any provision in the community documents or in any contract between the association and a management company, unless the member directs otherwise, all payments received on a member's account shall be applied first to any unpaid assessments, unpaid charges for late payment of those assessments, unpaid reasonable collection fees and unpaid attorney fees and costs incurred with respect to those assessments, in that order, with any remaining amounts applied next to other unpaid fees, charges and monetary penalties or interest and late charges on any of those amounts.

K. For a delinquent account for unpaid assessments or for charges related to unpaid assessments, the association shall provide the following written notice to the member at the member's address as provided to the association at least thirty days before authorizing an attorney, or a collection agency that is not acting as the association's managing agent, to begin collection activity on behalf of the association:

Your account is delinquent. If you do not bring your account current or make arrangements that are approved by the association to bring your account current within thirty days after the date of this notice, your account will be turned over for further collection proceedings. Such collection proceedings could include bringing a foreclosure action against your property.

The notice shall be in boldfaced type or all capital letters and shall include the contact information for the person that the member may contact to discuss payment. The notice shall be sent by certified mail, return receipt requested, and may be included within other correspondence sent to the member regarding the member's delinquent account.

L. Beginning January 1, 2020, except for planned communities that have fewer than fifty lots and that do not contract with a third party to perform management services on behalf of the association, the association shall provide a statement of account in lieu of a periodic payment book to the member with the same frequency that assessments are provided for in the declaration. The statement of account shall include the current account balance due and the immediately preceding ledger history. If the association offers the statement of account by electronic means, a member may opt to receive the statement electronically. The association may stop providing any further statements of account to a member if collection activity begins by an attorney, or a collection agency that is not acting as the association's managing agent, regarding that member's unpaid account. After collection activity begins, a member may request statements of account by written request to the attorney or collection agency. Any request by a member for a statement of account after collection activity begins by an attorney or a collection agency that is not acting as the association's managing agent must be fulfilled by the attorney or the collection agency responsible for the collection. The statement of account provided by the attorney or collection agency responsible for the collection shall include all amounts claimed to be owing to resolve the delinquency through the date set forth in the statement, including attorney fees and costs, regardless of whether such amounts have been reduced to judgment.

M. An agent for the association may collect on behalf of the association directly from a member the assessments and other amounts owed by cash or check, by mailed or hand-delivered bank drafts, checks, cashier's checks or money orders, by credit, charge or debit card or by other electronic means. For any form of payment other than for cash or for mailed or hand-delivered bank drafts, checks, cashier's checks or money orders, the agent may charge a convenience fee to the member that is approximately the amount charged to the agent by a third-party service provider.



33-1808. Flag display; political signs; caution signs; for sale, rent or lease signs; political and community activities; definitions

A. Notwithstanding any provision in the community documents, an association shall not prohibit the outdoor front yard or backyard display of any of the following:

1. The American flag or an official or replica of a flag of the uniformed services of the United States by an association member on that member's property if the American flag or a uniformed services flag is displayed in a manner consistent with the federal flag code (P.L. 94-344; 90 Stat. 810; 4 United States Code sections 4 through 10).
2. The POW/MIA flag.
3. The Arizona state flag.
4. An Arizona Indian nations flag.
5. The Gadsden flag.
6. A first responder flag. A first responder flag may incorporate the design of one or two other first responder flags to form a combined flag.
7. A blue star service flag or a gold star service flag.
8. Any historic version of the American flag, including the Betsy Ross flag, without regard to how the stars and stripes are arranged on the flag.

B. The association shall adopt reasonable rules and regulations regarding the placement and manner of display of the flags prescribed by subsection A of this section. The association rules may regulate the location and size of flagpoles, may limit the member to displaying not more than two flags at once and may limit the height of the flagpole to not more than the height of the rooftop of the member's home but shall not prohibit installing a flagpole in the front yard or backyard of the member's property.

C. Notwithstanding any provision in the community documents, an association shall not prohibit the indoor or outdoor display of a political sign by an association member on that member's property, except that an association may prohibit the display of political signs as follows:

1. Earlier than seventy-one days before the day of a primary election.
2. Later than fifteen days after the day of the general election.
3. For a sign for a candidate in a primary election who does not advance to the general election, later than fifteen days after the primary election.

D. An association may regulate the size and number of political signs that may be placed on a member's property if the association's regulation is not more restrictive than any applicable city, town or county ordinance that regulates the size and number of political signs on residential property. If the city, town or county in which the property is located does not regulate the size and number of political signs on residential property, the association shall not limit the number of political signs, except that the maximum aggregate total dimensions of all political signs on a member's property shall not exceed nine square feet.

E. Notwithstanding any provision in the community documents, an association shall not prohibit using cautionary signs regarding children if the signs are used and displayed as follows:

1. The signs are displayed in residential areas only.

2. The signs are removed within one hour of children ceasing to play.
3. The signs are displayed only when children are actually present within fifty feet of the sign.
4. The temporary signs are not taller than three feet in height.
5. The signs are professionally manufactured or produced.

F. Notwithstanding any provision in the community documents, an association shall not prohibit children who reside in the planned community from engaging in recreational activity on residential roadways that are under the jurisdiction of the association and on which the posted speed limit is twenty-five miles per hour or less.

G. Notwithstanding any provision in the community documents, an association shall not prohibit or charge a fee for the use of, the placement of or the indoor or outdoor display of a for sale, for rent or for lease sign and a sign rider by an association member on that member's property in any combination, including a sign that indicates the member is offering the property for sale by owner. The size of a sign offering a property for sale, for rent or for lease shall be in conformance with the industry standard size sign, which shall not exceed eighteen by twenty-four inches, and the industry standard size sign rider, which shall not exceed six by twenty-four inches. This subsection applies only to a commercially produced sign, and an association may prohibit using signs that are not commercially produced. With respect to real estate for sale, for rent or for lease in the planned community, an association shall not prohibit in any way other than as is specifically authorized by this section or otherwise regulate any of the following:

1. Temporary open house signs or a member's for sale sign. The association shall not require the use of particular signs indicating an open house or real property for sale and may not further regulate the use of temporary open house or for sale signs that are industry standard size and that are owned or used by the seller or the seller's agent.
2. Open house hours. The association may not limit the hours for an open house for real estate that is for sale in the planned community, except that the association may prohibit an open house being held before 8:00 a.m. or after 6:00 p.m. and may prohibit open house signs on the common areas of the planned community.
3. An owner's or an owner's agent's for rent or for lease sign unless an association's documents prohibit or restrict leasing of a member's property. An association shall not further regulate a for rent or for lease sign or require the use of a particular for rent or for lease sign other than the for rent or for lease sign shall not be any larger than the industry standard size sign of eighteen by twenty-four inches on or in the member's property. If rental or leasing of a member's property is not prohibited or restricted, the association may prohibit an open house for rental or leasing being held before 8:00 a.m. or after 6:00 p.m.

H. Notwithstanding any provision in the community documents, an association shall not prohibit door-to-door political activity, including solicitations of support or opposition regarding candidates or ballot issues, and shall not prohibit circulating political petitions, including candidate nomination petitions or petitions in support of or opposition to an initiative, referendum or recall or other political issue on property normally open to visitors within the association, except that an association may do the following:

1. Restrict or prohibit the door-to-door political activity from sunset to sunrise.
2. Require the prominent display of an identification tag for each person engaged in the activity, along with the prominent identification of the candidate or ballot issue that is the subject of the support or opposition.
3. Prohibit a person who is not accompanied by a member or resident of the planned community from entering the planned community if the planned community restricts vehicular or pedestrian access.

I. A planned community shall not make any regulations regarding the number of candidates supported, the number of public officers supported or opposed in a recall or the number of propositions supported or opposed



on a political sign.

J. A planned community shall not require political signs to be commercially produced or professionally manufactured or prohibit the utilization of both sides of a political sign.

K. Notwithstanding any provision in the community documents, an association may not prohibit or unreasonably restrict the indoor or outdoor display of an association-specific political sign by a member by placement of a sign on that member's property. An association may adopt reasonable rules regarding the placement, location and manner of display of association-specific political signs, except an association shall not do any of the following:

1. Prohibit the display of association-specific political signs between the date that the association provides written or absentee ballots to members and three days after the planned community election.
2. Limit the number of association-specific political signs, except that the association may limit the aggregate total dimensions of all association-specific political signs on a member's property to not more than nine square feet.
3. Require association-specific political signs to be commercially produced or professionally manufactured or prohibit using both sides of the sign.
4. Regulate the number of candidates supported or opposed, the number of board members supported or opposed in a recall or the number of ballot measures supported or opposed on an association-specific political sign.
5. Make any other regulations regarding the content of an association-specific political sign except that the association may prohibit using profanity and discriminatory text, images or content based on race, color, religion, sex, familial status or national origin as prescribed by federal or state fair housing laws.

L. Notwithstanding any provision in the community documents, an association may not prohibit or unreasonably restrict a member's ability to peacefully assemble and use common areas of the planned community if done in compliance with reasonable restrictions for the use of that property adopted by the board of directors. An individual member or group of members may assemble to discuss matters related to the planned community, including board elections or recalls, potential or actual ballot issues or revisions to the community documents, property maintenance or safety issues or any other planned community matters. A member may invite one political candidate or one non-member guest to speak to an assembly of members about matters related to the community. The association shall not prohibit a member from posting notices regarding those assemblies of members on bulletin boards located on the common areas or within common area facilities. An assembly of members prescribed by this subsection does not constitute an official members' meeting unless the meeting is noticed and convened as prescribed in the community documents and this chapter.

M. An association or managing agent that violates subsection G of this section forfeits and extinguishes the lien rights authorized under section 33-1807 against that member's property for a period of six consecutive months after the date of the violation.

N. For the purposes of this section:

1. "Association-specific political sign" means a sign that supports or opposes a candidate for the board of directors, the recall of a board member or a planned community ballot measure that requires a vote of the association members.
2. "Betsy Ross flag" means an historic flag of the United States that consists of thirteen stripes alternating between red and white stripes and thirteen five-pointed white stars arranged in a circle against a blue background.
3. "First responder flag" means a flag that recognizes and honors the services of any of the following:

(a) Law enforcement and that is limited to the colors blue, black and white, the words "law enforcement", "police", "officers", "first responder", "honor our", "support our" and "department" and the symbol of a generic police shield in a crest or star shape.

(b) Fire departments and that is limited to the colors red, gold, black and white, the words "fire", "fighters", "F", "D", "FD", "first responder", "department", "honor our" and "support our" and the symbol of a generic Maltese Cross.

(c) Paramedics or emergency medical technicians and that is limited to the colors blue, black and white, the words "first responder", "paramedic", "emergency medical", "service", "technician", "honor our" and "support our" and the symbol of a generic star of life.

4. "Political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing the recall of a public officer or supporting or opposing the circulation of a petition for a ballot measure, question or proposition or the recall of a public officer.

33-1809. Parking; public service and public safety emergency vehicles; definition

A. Notwithstanding any provision in the community documents, an association shall not prohibit a resident from parking a motor vehicle on a street or driveway in the planned community if the vehicle is required to be available at designated periods at the person's residence as a condition of the person's employment and either of the following applies:

1. The resident is employed by a public service corporation that is regulated by the corporation commission, an entity regulated by the federal energy regulatory commission or a municipal utility and the public service corporation or municipal utility is required to prepare for emergency deployments of personnel and equipment for repair or maintenance of natural gas, electrical, telecommunications or water infrastructure, the vehicle has a gross vehicle weight rating of twenty thousand pounds or less and is owned or operated by the public service corporation or municipal utility and the vehicle bears an official emblem or other visible designation of the public service corporation or municipal utility.
2. The resident is employed by a public safety agency, including police or fire service for a federal, state, local or tribal agency or a private fire service provider or an ambulance service provider that is regulated pursuant to title 36, chapter 21.1, and the vehicle has a gross vehicle weight rating of ten thousand pounds or less and bears an official emblem or other visible designation of that agency.

B. For the purposes of this section, "telecommunications" means the transmission of information of the user's choosing between or among points specified by the user without change in the form or content of the information as sent and received. Telecommunications does not include commercial mobile radio services.

33-1810. Board of directors; annual audit

Unless any provision in the planned community 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 members within thirty days after its completion.

33-1811. Board of directors; contracts; conflict

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

33-1812. Proxies; absentee ballots; definition

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 shall contain the name, address and signature of the person voting, except that if the community documents permit secret ballots, only the envelope 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.

### 33-1813. Removal of board member; special meeting

A. Notwithstanding any provision of the declaration or bylaws to the contrary, all of the following apply to a meeting at which a member of the board of directors, other than a member appointed by the declarant, is proposed to be removed from the board of directors:

1. The members of the association who are eligible to vote at the time of the meeting may remove any member of the board of directors, other than a member appointed by the declarant, by a majority vote of those voting on the matter at a meeting of the members.
2. The meeting of the members shall be called pursuant to this section and action may be taken only if a quorum is present.
3. The members of the association may remove any member of the board of directors with or without cause, other than a member appointed by the declarant.
4. For purposes of calling for removal of a member of the board of directors, other than a member appointed by the declarant, the following apply:
  - (a) In an association with one thousand or fewer members, on receipt of a petition that calls for removal of a member of the board of directors and that is signed by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least twenty-five percent of the votes in the association or by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least one hundred votes in the association, whichever is less, the board shall call and provide written notice of a special meeting of the association as prescribed by section 33-1804, subsection B.
  - (b) Notwithstanding section 33-1804, subsection B, in an association with more than one thousand members, on receipt of a petition that calls for removal of a member of the board of directors and that is signed by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least ten percent of the votes in the association or by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least one thousand votes in the association, whichever is less, the board shall call and provide written notice of a special meeting of the association. The board shall provide written notice of a special meeting as prescribed by section 33-1804, subsection B.
  - (c) The special meeting shall be called, noticed and held within thirty days after receipt of the petition.
  - (d) If all of the requirements of this subsection for calling a special meeting are met and the board of directors fails to call, notice and hold a special meeting within thirty days after receipt of the petition, the members of the board of directors are deemed removed from office effective at midnight of the thirty-first day.
  - (e) For purposes of a special meeting called pursuant to this subsection, a quorum is present if the number of owners who are eligible to vote in the association at the time the person attends the meeting equal to at least twenty percent of the votes of the association or the number of persons who are eligible to vote in the association at the time the person attends the meeting equal to at least one thousand votes, whichever is less, is present at the meeting in person or as otherwise allowed by law.
  - (f) If a civil action is filed regarding the removal of a board member, the prevailing party in the civil action shall be awarded its reasonable attorney fees and costs.
  - (g) The board of directors shall retain all documents and other records relating to the proposed removal of the member of the board of directors and any election or other action taken for that director's replacement for at least one year after the date of the special meeting and shall allow members to inspect those documents and records pursuant to section 33-1805.

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

5. On removal of at least one but fewer than a majority of the members of the board of directors at a special meeting of the membership called pursuant to this subsection, the vacancies shall be filled as provided in the community documents.

6. On removal of a majority of the members of the board of directors at a special meeting of the membership called pursuant to this subsection, or if the community documents do not provide a method for filling board vacancies, the association shall hold an election for the replacement of the removed directors at a separate meeting of the members of the association that is held not later than thirty days after the meeting at which the members of the board of directors were removed.

7. A member of the board of directors who is removed pursuant to this subsection is not eligible to serve on the board of directors again until after the expiration of the removed board member's term of office, unless the community documents specifically provide for a longer period of ineligibility.

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



#### 33-1814. Slum property; professional management

For any residential rental units that have been declared a slum property by the city or town pursuant to section 33-1905 and that are in the planned community, the association is responsible for enforcing any requirement for a licensed property management firm that is imposed by a city or town pursuant to section 33-1906.

33-1815. Association authority; commercial signage

Notwithstanding any provision in the community documents, after an association has approved a commercial sign, including its registered trademark that is located on properties zoned for commercial use in the planned community, the association, including any subsequently elected board of directors, may not revoke or modify its approval of that sign if the owner or operator of the sign has received approval for the sign from the local or county governing body with jurisdiction over the sign.

33-1816. Solar energy devices; reasonable restrictions; fees and costs

- A. Notwithstanding any provision in the community documents, an association shall not prohibit the installation or use of a solar energy device as defined in section 44-1761.
- B. An association may adopt reasonable rules regarding the placement of a solar energy device if those rules do not prevent the installation, impair the functioning of the device or restrict its use or adversely affect the cost or efficiency of the device.
- C. Notwithstanding any provision of the community documents, the court shall award reasonable attorney fees and costs to any party who substantially prevails in an action against the board of directors of the association for a violation of this section.

33-1817. Declaration amendment; design, architectural committees; review

A. 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 section, the association or, if there is no association or board, an 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.

B. Notwithstanding any provision in the community documents:

1. Membership on a design review committee, an architectural committee or a committee that performs similar functions, however denominated, for the planned community shall include at least one member of the board of directors who shall serve as chairperson of the committee.

2. For new construction of the main residential structure on a lot or for rebuilds of the main residential structure on a lot and only in a planned community that has enacted design guidelines, architectural guidelines or other similar rules, however denominated, and if the association documents permit the association to charge the member a security deposit and the association requires the member to pay a security deposit to secure completion of the member's construction project or compliance with approved plans, all of the following apply:

(a) The deposit shall be placed in a trust account with the following instructions:

(i) The cost of the trust account shall be shared equally between the association and the member.

(ii) If the construction project is abandoned, the board of directors may determine the appropriate use of any deposit monies.

(iii) Any interest earned on the refundable security deposit shall become part of the security deposit.

(b) The association or the design review committee must hold a final design approval meeting for the purpose of issuing approval of the plans, and the member or member's agent must have the opportunity to attend the meeting. If the plans are approved, the association's design review representative shall provide written acknowledgement that the approved plans, including any approved amendments, are in compliance with all rules

and guidelines in effect at the time of the approval and that the refund of the deposit requires that construction be completed in accordance with those approved plans.

(c) The association must provide for at least two on-site formal reviews during construction for the purpose of determining compliance with the approved plans. The member or member's agent shall be provided the opportunity to attend both formal reviews. Within five business days after the formal reviews, the association shall cause a written report to be provided to the member or member's agent specifying any deficiencies, violations or unapproved variations from the approved plans, as amended, that have come to the attention of the association.

(d) Within thirty business days after the second formal review, the association shall provide to the member a copy of the written report specifying any deficiencies, violations or unapproved variations from the approved plans, as amended, that have come to the attention of the association. If the written report does not specify any deficiencies, violations or unapproved variations from the approved plans, as amended, that have come to the attention of the association, the association shall promptly release the deposit monies to the member. If the report identifies any deficiencies, violations or unapproved variations from the approved plans, as amended, the association may hold the deposit for one hundred eighty days or until receipt of a subsequent report of construction compliance, whichever is less. If a report of construction compliance is received before the one hundred eightieth day, the association shall promptly release the deposit monies to the member. If a compliance report is not received within one hundred eighty days, the association shall release the deposit monies promptly from the trust account to the association.

(e) Neither the approval of the plans nor the approval of the actual construction by the association or the design review committee shall constitute a representation or warranty that the plans or construction comply with applicable governmental requirements or applicable engineering, design or safety standards. The association in its discretion may release all or any part of the deposit to the member before receiving a compliance report. Release of the deposit to the member does not constitute a representation or warranty from the association that the construction complies with the approved plans.

3. Approval of a construction project's architectural designs, plans and amendments shall not unreasonably be withheld.

33-1818. Community authority over public roadways; vote of the membership; applicability

A. For any planned community for which the declaration is recorded after December 31, 2014 and notwithstanding any provision in the community documents, after the period of declarant control, an association has no authority over and shall not regulate any roadway for which the ownership has been dedicated to or is otherwise held by a governmental entity.

B. After the period of declarant control, for any planned community for which the declaration was recorded before January 1, 2015 and that regulates any roadway for which the ownership has been dedicated to or is otherwise held by a governmental entity, the existing regulations continue in effect until either of the following occurs:

1. Not later than June 30, 2025, the planned community shall call a meeting of the membership on the question of whether to continue to regulate public roadways. If the number of owners voting at the meeting on the question is sufficient to constitute a quorum of the membership and a majority of that number votes to continue regulating public roadways in the planned community, the planned community retains its authority to regulate those public roadways. The board of directors shall record in the office of the county recorder of the county in which the planned community is located a document confirming that the planned community continues to regulate the public roadways.

2. If the vote prescribed by paragraph 1 of this subsection fails or if the planned community does not hold a vote of the membership in compliance with paragraph 1 of this subsection, the planned community no longer has authority to regulate the public roadways in the planned community and any existing regulations expire.

C. This section does not apply to any one-way streets, without regard to ownership, or to any privately owned roadways.

33-1819. Artificial turf ban; prohibition; restrictions; attorney fees; applicability

A. Except as prescribed in subsection B of this section and notwithstanding any provision in the community documents, in any planned community that allows natural grass on a member's property, after the period of declarant control, the association may not prohibit installing or using artificial turf on any member's property. An association may do all of the following:

1. Adopt reasonable rules regarding the installation and appearance of artificial turf if those rules do not prevent installing artificial turf in the same manner that natural grass would be allowed by the community documents. Those rules may regulate the location on the property and percentage of the property that may be covered with artificial turf to the same extent as natural grass and may regulate artificial turf quality.
2. Require the removal of a member's artificial turf if the artificial turf creates a health or safety issue that the member does not correct.
3. Require replacement or removal of the artificial turf if the artificial turf is not maintained in accordance with the association's standards for maintenance.

B. The association may prohibit the installation of artificial turf if the artificial turf would be installed in an area that the association is required to maintain or irrigate. If an association prohibits new installation of natural grass on a member's property, the association may also prohibit new installation of artificial turf on a member's property, except that, in that instance, an association may not prohibit a member from converting natural grass to artificial turf on the member's property.

C. Notwithstanding any provision in the community documents, in an action against the association for a violation of this section, the court shall award reasonable attorney fees and costs to any party that prevails as determined by the court.

D. This section does not:

1. Affect an association's responsibility to carry out both the express and the reasonably implied intent of a declaration that provides that the design standards of the planned community are required to be followed to protect the natural environment in which the planned community is developed.
2. Apply to a planned community that has unique vegetation and geologic characteristics that require preservation by the association and in which the viability of those characteristics is protected, supported and enhanced as a result of the continued existence of natural landscaping materials.

# **2024 Arizona Condominium Act**



33-1201. Applicability.

This chapter applies to all condominiums created within this state without regard to the date the condominium was created.

### 33-1202. Definitions

In the condominium documents, unless specifically provided otherwise or the context otherwise requires, and in this chapter:

1. "Affiliate of a declarant" means any person who controls, is controlled by or is under common control with a declarant.
2. "Allocated interests" means the undivided interests in the common elements, the common expense liability and votes in the association allocated to each unit.
3. "Articles of incorporation" means the instrument by which an incorporated association or unit owners' association is formed and organized under this state's corporate statutes.
4. "Association" or "unit owners' association" means the unit owners' association organized under section 33-1241.
5. "Board of directors" means the body, regardless of its name, designated in the declaration and given general management powers to act on behalf of the association.
6. "Bylaws" means the bylaws required by section 33-1246.
7. "Common elements" means all portions of a condominium other than the units.
8. "Common expense liability" means the liability for common expenses allocated to each unit pursuant to section 33-1217.
9. "Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.
10. "Condominium" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the separate portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.
11. "Condominium documents" means the declaration, bylaws, articles of incorporation, if any, and rules, if any.
12. "Declarant" means any person or group of persons who reserves, is granted or succeeds to any special declarant right.
13. "Declaration" means any instruments, however denominated, that create a condominium and any amendments to those instruments.
14. "Development rights" means any right or combination of rights reserved by or granted to a declarant in the declaration to do any of the following:
  - (a) Add real estate to a condominium.
  - (b) Create easements, units, common elements or limited common elements within a condominium.
  - (c) Subdivide units, convert units into common elements or convert common elements into units.
  - (d) Withdraw real estate from a condominium.
  - (e) Make the condominium part of a larger condominium or planned community.

(f) Amend the declaration during any period of declarant control, pursuant to section 33-1243, subsection E, to comply with applicable law or to correct any error or inconsistency in the declaration, if the amendment does not adversely affect the rights of any unit owner.

(g) Amend the declaration during any period of declarant control, pursuant to section 33-1243, subsection E, to comply with the rules or guidelines, in effect from time to time, of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments.

15. "Identifying number" means a symbol or address that identifies one unit in a condominium.

16. "Leasehold condominium" means a condominium in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the condominium or reduce its size.

17. "Limited common element" means a portion of the common elements specifically designated as a limited common element in the declaration and allocated by the declaration or by operation of section 33-1212, paragraph 2 or 4 for the exclusive use of one or more but fewer than all of the units.

18. "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity. In the case of a subdivision trust, as defined in section 6-801, person means the beneficiary of the trust who holds the right to subdivide, develop or sell the real estate rather than the trust or trustee.

19. "Real estate" means any legal, equitable, leasehold or other estate or interest in, over or under land, including structures, fixtures and other improvements and interests which by custom, usage or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. Real estate includes parcels with or without upper or lower boundaries and spaces that may be filled with air or water.

20. "Rules" means the provisions, if any, adopted pursuant to the declaration or bylaws governing maintenance and use of the units and common elements.

21. "Special declarant rights" means any right or combination of rights reserved by or granted to a declarant in the declaration to do any of the following:

(a) Construct improvements provided for in the declaration.

(b) Exercise any development right.

(c) Maintain sales offices, management offices, signs advertising the condominium, and models.

(d) Use easements through the common elements for the purpose of making improvements within the condominium or within real estate which may be added to the condominium.

(e) Appoint or remove any officer of the association or any board member during any period of declarant control.

22. "Unit" means a portion of the condominium designated for separate ownership or occupancy.

23. "Unit owner" means a declarant or other person who owns a unit or, unless otherwise provided in the lease, a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the condominium but does not include a person having an interest in a unit solely as security for an obligation. In the case of a contract for conveyance, as defined in section 33-741, of real property, unit owner means the purchaser of the unit.

33-1203. Variation

Except as expressly provided in this chapter, the provisions of this chapter shall not be varied by agreement and rights conferred by this chapter shall not be waived. A person shall not use any device to evade the limitations or prohibitions of this chapter.

33-1204. Separate titles and taxation

- A. If there is a unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate.
- B. Except as provided in subsection C, if there is a unit owner other than a declarant, each unit shall be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements.
- C. Any portion of the common elements which the declarant reserves the right to withdraw from the condominium shall be separately taxed and assessed against the declarant and the declarant alone is liable for payment of those taxes, as long as the declarant retains this right to withdraw.
- D. If there is no unit owner other than a declarant, the real estate comprising the condominium shall be taxed and assessed as a single parcel.

33-1205. Applicability of local ordinances, rules and building codes

A. A zoning, subdivision or building code or other real estate use law, ordinance or rule shall not prohibit a condominium form of ownership or impose any requirement on a condominium which it would not impose on a physically identical development under a different form of ownership.

B. Except as provided in subsection A, this chapter does not invalidate or modify any provision of any zoning, subdivision or building code or other real estate use law, ordinance or rule.

### 33-1206. Eminent domain

A. If a unit is acquired by eminent domain, or if part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award must compensate the unit owner for his unit and its interest in the common elements, regardless of whether any common elements are acquired. On acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection becomes a common element.

B. Except as provided in subsection A of this section, if part of a unit is acquired by eminent domain the award must compensate the unit owner for the reduction in value of the unit and its interest in the common elements, regardless of whether any common elements are acquired. On acquisition, unless the decree otherwise provides, all of the following apply:

1. The unit's allocated interests are reduced in proportion to the reduction in the size of the unit or on any other basis specified in the declaration.

2. The portion of the allocated interests divested from the partially acquired unit is automatically reallocated to that unit and the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

C. If part of the common elements is acquired by eminent domain, the portion of the award attributable to the common elements taken shall be paid to the association for the benefit of the unit owners. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element shall be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition.

D. The court decree shall be recorded in every county in which any portion of the condominium is located.

E. If all of the units of the condominium are acquired by eminent domain, the condominium is terminated and the provisions of section 33-1228 apply.

F. This section does not restrict the rights of lessees, mortgagees, declarants or any other person holding an interest in a unit or its common elements from receiving separate compensation or a portion of the compensation payable, or both, pursuant to this section.

### 33-1207. Severability

If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or application, and to this end the provisions of this chapter are severable.



### 33-1211. Creation of condominium

A condominium may only be created pursuant to this chapter by recording a declaration in the same manner as a deed in each county in which any portion of the condominium is located. The declaration shall be indexed in the name of the condominium, the name of the association and otherwise as required by law.

### 33-1212. Unit boundaries

Except as provided by the declaration:

1. If walls, floors or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces are a part of the unit, and all other portions of the walls, floors or ceilings are a part of the common elements.
2. If any chute, flue, duct, wire, conduit, bearing wall, bearing column or other fixture lies partially within and partially outside the designated boundaries of a unit, any portion serving only that unit is a limited common element allocated solely to that unit and any portion serving more than one unit or any portion of the common elements is a part of the common elements.
3. Subject to the provisions of paragraph 2, all spaces, interior partitions and other fixtures and improvements within the boundaries of a unit are a part of the unit.
4. Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, entryways or patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

33-1213. Construction and validity of declaration and bylaws

- A. All provisions of the condominium documents are severable.
- B. The rule against perpetuities shall not be applied to defeat any provision of the condominium documents.
- C. Except to the extent inconsistent with this chapter:
  - 1. If a conflict exists between the provisions of the declaration and the other condominium documents, the declaration prevails.
  - 2. If a conflict exists between the provisions of the articles of incorporation and the bylaws or rules, the articles of incorporation prevail.
  - 3. If a conflict exists between the provisions of the bylaws and the rules, the bylaws prevail.
- D. Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of any condominium documents to comply with this chapter.

### 33-1214. Description of units

A description of a unit which sets forth the name of the condominium, the recording data for the declaration, the county or counties in which the condominium is located and the identifying number of the unit is a sufficient legal description of that unit and all common elements, rights, obligations and interests appurtenant to that unit.

### 33-1215. Contents of declaration

#### A. The declaration shall contain:

1. The name of the condominium, which shall include the word "condominium" or be followed by the words "a condominium", and the name of the association.
2. The name of every county in which any portion of the condominium is located.
3. A legal description of the real estate included in the condominium.
4. A description of the boundaries of each unit created by the declaration, including each unit's identifying number.
5. A description of any limited common elements, other than those specified in section 33-1212, paragraphs 2 and 4, but the declaration shall contain a description of any porches, balconies, patios and entryways, if any, as provided in section 33-1219, subsection B, paragraph 11.
6. A description of any development rights and other special declarant rights, together with a legal description of the real estate to which each of those rights applies, any time limit within which each of those rights must be exercised and any other conditions or limitations under which the rights described in this paragraph may be exercised or will lapse.
7. An allocation to each unit of the allocated interests in the manner described in section 33-1217.
8. Any restrictions on use, occupancy and alienation of the units.
9. All matters required by sections 33-1216, 33-1217, 33-1218, 33-1219 and 33-1226 and section 33-1243, subsection E.
10. A statement that the assessment obligation of the unit owner under section 33-1255 is secured by a lien on the owner's unit in favor of the association pursuant to section 33-1256.
11. If the condominium is a conversion from multifamily rental to condominiums, a statement containing all of the following:
  - (a) A statement that the property is a conversion from multifamily rental to condominiums.
  - (b) The date original construction was completed.
  - (c) The name and address of the original owner, builder, developer and general contractor as shown on the applicable city, town or county building permit.
  - (d) The name and address of each subsequent owner as determined by a search of the county recorder's records in the county in which the property is located.
  - (e) The subdivider's agreement to provide the following information on request:
    - (i) The name and address of any builder, developer, general contractor, subcontractor, architect and engineer who designed or made improvements to the property immediately before the first condominium was sold.
    - (ii) A specific description of all improvements made.

B. If a city, town or county is unable to produce a building permit as required in subsection A, paragraph 11, subdivision (c) of this section, the subdivider shall submit a letter from the applicable city, town or county

### 33-1216. Leasehold condominiums

A. Any lease, the expiration or termination of which may terminate the condominium or reduce its size, shall be recorded. Unless the lease otherwise specifically provides for the creation of a leasehold condominium and the rights and benefits set forth in this section, each lessor of those leases shall sign or otherwise consent to the provisions of the declaration. The declaration shall state all of the following:

1. The recording data for the lease.
2. The date on which the lease is scheduled to expire.
3. A legal description of the real estate subject to the lease.
4. Any right of the unit owners to acquire title to their units free of the lease or a statement that they do not have this right.
5. Any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease or that they do not have this right.
6. Any rights of the unit owners to renew the lease and the conditions of any renewal or that they do not have those rights.

B. After the declaration for a leasehold condominium is recorded, neither the lessor nor his successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of his share of the rent and otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest is not affected by failure of any other person to pay rent or fulfill any other covenant.

C. Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired.

D. If the expiration or termination of a lease decreases the number of units in a condominium, the allocated interests shall be reallocated in accordance with section 33-1206, subsection A as though those units had been taken by eminent domain.

33-1217. Allocation of common element interests, votes and common expense liabilities

A. The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit and state the formulas used to establish those allocations. Except as otherwise provided in this chapter, the allocations shall not discriminate in favor of units owned by the declarant.

B. If units may be added to or withdrawn from the condominium, the declaration must state the formulas to be used to reallocate the allocated interests among all units included in the condominium after the addition or withdrawal.

C. The declaration may provide:

1. That different allocations of votes shall be made to the units on particular matters specified in the declaration.
2. For cumulative voting only for the purpose of electing members of the board of directors.
3. For class voting on specified issues affecting the class if necessary to protect valid interests of the class.

D. Except for minor variations due to rounding, the sum of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units must each equal one if stated as fractions or one hundred per cent if stated as percentages. If a discrepancy exists between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

E. Except as otherwise permitted by the provisions of this chapter, the common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated is void.

stating that the information required by subsection A, paragraph 11, subdivision (c) of this section is not available.

C. The declaration may contain any other matters the declarant deems appropriate.



33-1218. Limited common elements

A. Except for the limited common elements described in section 33-1212, paragraphs 2 and 4, other than porches, balconies, patios and entryways, the declaration shall specify to which unit or units each limited common element is allocated. The allocation shall not be altered without the consent of the unit owners whose units are affected.

B. Except as the declaration otherwise provides, a limited common element may be reallocated by an amendment to the declaration. The amendment shall be executed by the unit owners between or among whose units the reallocation is made, shall state the manner in which the limited common elements are to be reallocated and, before recording the amendment, shall be submitted to the board of directors. Unless the board of directors determines within thirty days that the proposed amendment is unreasonable, which determination shall be in writing and specifically state the reasons for disapproval, the association shall execute its approval and record the amendment.

C. A common element not previously allocated as a limited common element shall not be so allocated except pursuant to provisions in the declaration. The allocations shall be made by amendments to the declaration.

33-1219. Plat

A. The plat is a part of the declaration. The plat must be clear and legible.

B. The plat shall show:

1. The name of the condominium.
2. The boundaries of the condominium and a legal description of the real estate included in the condominium.
3. The extent of any encroachments on any portion of the condominium.
4. To the extent feasible, the location and dimensions of all easements serving or burdening any portion of the condominium.
5. The location and dimensions of the vertical boundaries of each unit, and each unit's identifying number.
6. Any horizontal unit boundaries, with reference to an established datum, and each unit's identifying number.
7. Any units with respect to which the declarant has reserved the right to create additional units or common elements, identified appropriately.
8. The location and dimensions of all real estate subject to the development right of withdrawal identified as such.
9. The location and dimensions of all real estate in which the unit owner will only own an estate for years labeled as a "leasehold condominium".
10. The distance between noncontiguous parcels of real estate comprising the condominium.
11. The location and dimensions of limited common elements, including porches, balconies, patios and entryways, other than the limited common elements described in section 33-1212, paragraphs 2 and 4.
12. Any other matters the declarant deems appropriate.

C. Unless the declaration provides otherwise, the horizontal boundaries of a part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part and need not be depicted on the plat.

D. On exercising any development right, the declarant shall record a new plat conforming to the requirements of subsections A and B of this section. No new plat need be recorded if the development right exercised was clearly depicted on the original plat and a document is recorded which references the declaration and original plat and declares that the development right has been exercised.

### 33-1220. Exercise of development rights

A. To exercise a development right the declarant shall prepare, execute and record an amendment to the declaration which shall include a new plat conforming to the requirements of section 33-1219, subsections A and B, if the previously recorded plat does not show the boundaries of the parcel or parcels as to which the development right is exercised. The amendment to the declaration shall assign an identifying number to each new unit created and, except in the case of subdivision or conversion of units described in subsection C of this section, reallocate the allocated interests among all units. The amendment shall describe any common elements and any limited common elements created and, in the case of limited common elements, designate the unit to which each is allocated as required by section 33-1218.

B. Development rights may be reserved within any real estate added to the condominium if the amendment adding that real estate includes all matters required by section 33-1215 or 33-1216, whichever is applicable, and the plat includes all matters required by section 33-1219. This subsection does not extend any time limit on the exercise of development rights imposed by the declaration pursuant to section 33-1215, subsection A, paragraph 6.

C. Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units or common elements, or both:

1. If the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain.
2. If the declarant subdivides the unit into two or more units, whether any part of the unit is converted into common elements, the amendment to the declaration shall reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.

D. If the declaration provides that all or a portion of the real estate is subject to the development right of withdrawal:

1. If all the real estate is subject to withdrawal and the declaration does not describe separate portions of the real estate subject to that right, none of the real estate may be withdrawn after a unit has been conveyed to a purchaser without the written consent of all unit owners in the condominium and any mortgagees or beneficiaries of deeds of trust or sellers under a contract, as defined in section 33-741, for conveyance of real property encumbering the units.
2. If a portion or portions are subject to withdrawal, a portion shall not be withdrawn after a unit in that portion has been conveyed to a purchaser without the written consent of all unit owners in the condominium and any mortgagees or beneficiaries of deeds of trust or sellers under contract, as defined in section 33-741, for conveyance of real property encumbering the units.

E. No development right shall be exercised in any manner which would eliminate or materially reduce in size any tennis court, swimming pool, clubhouse or other recreational facility which is part of the common elements and which was specified in the public report issued on the condominium by the commissioner of the state real estate department, unless the exercise of the development right is approved by an affirmative vote of the unit owners to which at least eighty per cent of the votes in the association are allocated.

### 33-1221. Alterations of units

Subject to the provisions of the declaration and other provisions of law, a unit owner:

1. May make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium.
2. Shall not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the condominium, without written permission of the association.
3. After acquiring an adjoining unit or, if the declaration expressly permits, an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures in intervening partitions, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

### 33-1222. Relocation of boundaries between adjoining units

If the declaration expressly permits, the boundaries between or among adjoining units may be relocated by an amendment to the declaration. The owners of the units shall prepare an amendment to the declaration, including the plat, that identifies the units involved, specifies the altered boundaries of the units and their dimensions and includes the units' identifying numbers. If the owners of the adjoining units have specified a reallocation between their units of the allocated interests, the amendment shall state the proposed reallocation in a reasonable manner. The amendment shall be executed by the owners of those units, shall contain words of conveyance between or among them and, before recording the amendment, shall be submitted to the board of directors. Unless the board of directors determines within thirty days that the proposed amendment is unreasonable, which determination shall be in writing and specifically state the reasons for disapproval, the association shall execute its approval and record the amendment.

### 33-1223. Subdivision of units

If the declaration expressly permits, a unit may be subdivided into two or more units. A unit owner shall prepare an amendment to the declaration, including the plat, which identifies the unit involved, specifies the boundaries of each unit created and its dimensions, assigns an identifying number to each unit created and allocates the allocated interests formerly allocated to the subdivided unit to the new units in a reasonable manner. The amendment shall be executed by the owner of the unit to be subdivided and, before recording, submitted to the board of directors. Unless the board of directors determines within thirty days that the proposed amendment is unreasonable, which determination shall be in writing and specifically state the reasons for disapproval, the association shall execute its approval and record the amendment.

33-1224. Easement for encroachments

To the extent that any unit or common element encroaches on any other unit or common element as a result of original construction, shifting or settling, or alteration or restoration authorized by the declaration, a valid easement for the encroachment exists.

33-1225. Use for sale purposes

A declarant may maintain sales offices, management offices and models in units or on common elements in the condominium unless:

1. The declaration provides otherwise.
2. Such use is prohibited by another provision of law or local ordinances.



33-1226. Easement to facilitate exercise of special declarant rights

Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under this chapter or reserved in the declaration.

33-1126. Money benefits or proceeds; exception

(2022 Prop. 209; Caution: 1998 Prop. 105 applies)

A. The following property of a debtor is exempt from execution, attachment or sale on any process issued from any court:

1. All money received by or payable to a surviving spouse or child on the life of a deceased spouse, parent or legal guardian, not exceeding twenty thousand dollars.
2. The earnings of the minor child of a debtor or the proceeds of these earnings by reason of any liability of the debtor not contracted for the special benefit of the minor child.
3. All monies received by or payable to a person entitled to receive child support or spousal maintenance pursuant to a court order.
4. All money, proceeds or benefits of any kind to be paid in a lump sum or to be rendered on a periodic or installment basis to the insured or any beneficiary under any policy of health, accident or disability insurance or any similar plan or program of benefits in use by any employer, except for premiums payable on the policy or debt of the insured secured by a pledge, and except for collection of any debt or obligation for which the insured or beneficiary has been paid under the plan or policy and except for payment of amounts ordered for support of a person from proceeds and benefits furnished in lieu of earnings that would have been subject to that order and subject to any exemption applicable to earnings so replaced.
5. All money arising from any claim for the destruction of, or damage to, exempt property and all proceeds or benefits of any kind arising from fire or other insurance on any property exempt under this article.
6. The cash surrender value of life insurance policies where for a continuous unexpired period of two years the policies have been owned by a debtor. The policy shall have named as beneficiary the debtor's surviving spouse, child, parent, brother or sister. The policy may have named as beneficiary any other family member who is a dependent, in the proportion that the policy names any such beneficiary, except that, subject to the statute of limitations, the amount of any premium that is recoverable or avoidable by a creditor pursuant to title 44, chapter 8, article 1, with interest thereon, is not exempt. The exemption provided by this paragraph does not apply to a claim for the payment of a debt of the insured or beneficiary that is secured by a pledge or assignment of the cash value of the insurance policy or the proceeds of the policy. For the purposes of this paragraph, "dependent" means a family member who is dependent on the insured debtor for not less than half support.
7. An annuity contract where for a continuous unexpired period of two years that contract has been owned by a debtor and has named as beneficiary the debtor, the debtor's surviving spouse, child, parent, brother or sister, or any other dependent family member, except that, subject to the statute of limitations, the amount of any premium, payment or deposit with respect to that contract is recoverable or avoidable by a creditor pursuant to title 44, chapter 8, article 1 is not exempt. The exemption provided by this paragraph does not apply to a claim for a payment of a debt of the annuitant or beneficiary that is secured by a pledge or assignment of the contract or its proceeds. For the purposes of this paragraph, "dependent" means a family member who is dependent on the debtor for not less than half support.
8. Any claim for damages recoverable by any person by reason of any levy on or sale under execution of that person's exempt personal property or by reason of the wrongful taking or detention of that property by any person, and the judgment recovered for damages.

9. A total of \$5,000 held in a single account in any one financial institution as defined by section 6-101. The property declared exempt by this paragraph is not exempt from normal service charges assessed against the account by the financial institution at which the account is carried. The exemption prescribed in this paragraph shall be adjusted annually beginning on January 1, 2024 and thereafter on January 1 of each successive year by the increase in the cost of living. The increase in the cost of living shall be measured by the percentage increase as of August of the immediately preceding year over the level as of August of the previous year of the consumer price index (all urban consumers, United States city average for all items) or its successor index as published by the United States department of labor, bureau of labor statistics, or its successor agency, with the amount of the exemption rounded up to the nearest \$100.

10. An interest in a college savings plan under section 529 of the internal revenue code of 1986, either as the owner or as the beneficiary. This does not include money contributed to the plan within two years before a debtor files for bankruptcy.

B. Any money or other assets payable to a participant in or beneficiary of, or any interest of any participant or beneficiary in, a retirement plan under section 401(a), 403(a), 403(b), 408, 408A or 409 or a deferred compensation plan under section 457 of the United States internal revenue code of 1986, as amended, whether the beneficiary's interest arises by inheritance, designation, appointment or otherwise, is exempt from all claims of creditors of the beneficiary or participant. This subsection does not apply to any of the following:

1. An alternate payee under a qualified domestic relations order, as defined in section 414(p) of the United States internal revenue code of 1986, as amended. The interest of any and all alternate payees is exempt from any and all claims of any creditor of the alternate payee.

2. Amounts contributed within one hundred twenty days before a debtor files for bankruptcy.

3. The assets of bankruptcy proceedings filed before July 1, 1987.

C. Any person eighteen years of age or over, married or single, who resides within this state and who does not exercise the homestead exemption under article 1 of this chapter may claim as a personal property homestead exempt from all process prepaid rent, including security deposits as provided in section 33-1321, subsection A, for the claimant's residence, not exceeding two thousand dollars.

D. This section does not exempt property from orders that are the result of a judgment for arrearages of child support or for a child support debt.

### 33-1227. Amendment of declaration

A. Except in cases of amendments that may be executed by a declarant under section 33-1220, by the association under section 33-1206 or section 33-1216, subsection D, or by certain unit owners under section 33-1218, subsection B, section 33-1222, section 33-1223 or section 33-1228, subsection D, and except to the extent allowed or required by other provisions of this chapter, the declaration, including the plat, may be amended only by a vote of the unit owners to which at least sixty-seven percent of the votes in the association are allocated, or any larger majority the declaration specifies. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use. The declaration may also provide that the consent of the declarant is required to an amendment during any period of declarant control pursuant to section 33-1243. Within thirty days after the adoption of any amendment pursuant to this subsection, the association shall prepare, execute and record a written instrument setting forth the amendment.

B. An action to challenge the validity of an amendment adopted by the association pursuant to this section shall not be brought more than one year after the amendment is recorded.

C. An amendment to the declaration shall be recorded in each county in which any portion of the condominium is located and is effective only on recordation in the same manner as required for the declaration under section 33-1211.

D. Except to the extent expressly allowed or required by other provisions of this chapter, an amendment shall not create or increase special declarant rights, increase the number of units or change the boundaries of any unit, the allocated interests of a unit or the uses to which any unit is restricted, in the absence of unanimous consent of the unit owners.

E. An amendment shall not terminate or decrease any unexpired development right, special declarant right or period of declarant control unless the declarant approves.

F. Amendments to the declaration required by this chapter to be executed by the association shall be executed on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

### 33-1228. Termination of condominium

A. Except as provided in subsection B of this section, a condominium may be terminated only by agreement of unit owners of units to which at least eighty percent of the votes in the association are allocated, or any larger percentage the declaration specifies, except:

1. In the case of a taking of all the units by eminent domain.
2. If the declaration specifies a smaller percentage, but only if all of the units in the condominium are restricted exclusively to nonresidential uses.

B. A condominium created on or after September 24, 2022 may be terminated only by agreement of unit owners of units to which ninety-five percent of the votes in the association are allocated, or any larger percentage the declaration specifies, except as provided in subsection A, paragraph 1 or 2 of this section.

C. At least thirty days before recording a termination agreement, the board of directors of the association shall convene a regular or special meeting of the board of directors at which a person or entity that purports to have the agreement of at least the percentage of the votes in the association specified in subsection A or B of this section, as applicable, or any larger percentage if required, shall produce and make available to the unit owners copies of a signed notarized statement that the owner of a unit has executed a termination agreement. The person or entity shall produce copies of a statement for each unit owner who has agreed to the termination, or may produce the signed termination agreement that includes a sufficient number of unit owners. Any meeting called pursuant to this subsection shall be noticed as otherwise provided by law, except that the board may not take action by written consent or any other method that does not provide for an actual meeting that is open to all the unit owners. Any termination agreement that is recorded without full compliance with this subsection is invalid.

D. An agreement to terminate shall be evidenced by the execution or ratifications of a termination agreement, in the same manner as a deed, by the requisite number of unit owners. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications of a termination agreement shall be recorded in each county in which a portion of the condominium is situated and is effective only on recordation.

E. A termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real estate in the condominium is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

F. The association, on behalf of the unit owners, may contract for the sale of real estate in the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections A, B, C and D of this section. If any real estate in the condominium is to be sold following termination, title to that real estate on termination vests in the association as trustee for the holders of all interest in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to unit owners and lienholders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection I of this section. Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit owner's unit. During the period of that occupancy, each unit owner and the successors in interest remain liable for all assessments and other obligations imposed on unit owners by this chapter or the declaration.

G. If the real estate constituting the condominium is not to be sold following termination, title to all the real estate in the condominium vests in the unit owners on termination as tenants in common in proportion to their respective interests as provided in subsection I of this section, and liens on the units shift accordingly. While the

tenancy in common exists, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit owner's unit.

H. Following termination of the condominium, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear. Following termination, creditors of the association holding liens on the units that were recorded before termination may enforce those liens in the same manner as any lienholder.

I. The respective interests of unit owners referred to in subsections F, G and H of this section are as follows:

1. Except as provided in paragraph 2 of this subsection, the respective interests of unit owners are the fair market values of their units, limited common elements and common element interests immediately before the termination, their pro rata share of any monies in the association's reserve fund and the operating account and an additional five percent of that total amount for relocation costs. An independent appraiser selected by the association shall determine the total fair market values. The determination of the independent appraiser shall be distributed to the unit owners and becomes final unless disapproved within sixty days after distribution to the unit owner. Any unit owner may obtain a second independent appraisal at the unit owner's expense and, if the unit owner's independent appraisal amount differs from the association's independent appraisal amount by five percent or less, the higher appraisal is final. If the total amount of compensation owed as determined by the second appraiser is more than five percent higher than the amount determined by the association's appraiser, the unit owner shall submit to arbitration by an arbitrator affiliated with a national arbitration association and under the rules of that association at the association's expense and the arbitration amount is the final sale amount. As part of the arbitration process, the appraisers shall fully disclose their appraisal methodologies and shall disclose any other transaction occurring between the buyer and the sellers. An additional five percent of the final sale amount shall be added for relocation costs.

2. If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value of the unit or element before destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination.

J. Except as provided in subsection K of this section, foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium does not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not of itself withdraw that real estate from the condominium, but the person taking title may require from the association, on request, an amendment excluding the real estate from the condominium.

K. If a lien or encumbrance against a portion of the real estate comprising the condominium has priority over the declaration, and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance, on foreclosure, may record an instrument excluding the real estate subject to that lien or encumbrance from the condominium.

L. The provisions of subsections E, F, G, H, J and K of this section do not apply if the original declaration, an amendment to the original declaration recorded before the conveyance of any unit to an owner other than the declarant or an agreement by all of the unit owners contains provisions inconsistent with these subsections.

M. Beginning on August 3, 2018, any provisions in the declaration that conflict with subsection I, paragraph 1 of this section are void as a matter of public policy.

### 33-1229. Rights of secured lenders

The declaration may require that all or a specified number or percentage of the mortgagees, beneficiaries of deeds of trust or sellers under contracts, as defined in section 33-741, for conveyance of real property encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but requirement for approval shall not operate to either:

1. Deny or delegate control over the general administrative affairs of the association by the unit owners or the board of directors.
2. Prevent the association or the board of directors from commencing, intervening in or settling any litigation or proceeding, or receiving and distributing any insurance proceeds pursuant to section 33-1253.

### 33-1230. Merger or consolidation of condominiums

A. Any two or more condominiums, by agreement of the unit owners as provided in subsection B, may be merged or consolidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium is, for all purposes, the legal successor of all of the preexisting condominiums and the operations and activities of all associations of the preexisting condominiums shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets and liabilities of all preexisting associations.

B. An agreement of two or more condominiums to merge or consolidate pursuant to subsection A shall be evidenced by an agreement prepared, executed, recorded and certified by the president of the association of each of the preexisting condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. Any such agreement shall be recorded in each county in which a portion of the condominium is located and is not effective until recorded. A merger or consolidation of two or more condominiums shall be considered an amendment to the declaration of each of the condominiums merged or consolidated.

C. Every merger or consolidation agreement shall provide for the reallocation of the allocated interests in the new association among the units of the resultant condominium either by stating:

1. The reallocations or the formulas on which they are based.
2. The percentage of overall allocated interests of the new condominium which are allocated to all of the units comprising each of the preexisting condominiums, and providing that the portion of the percentages allocated to each unit formerly comprising a part of the preexisting condominium must be equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting condominiums.



### 33-1241. Organization of unit owners' association

A unit owners' association shall be organized no later than the date the first unit in the condominium is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners or, following termination of the condominium, of all former unit owners entitled to distributions of proceeds under section 33-1228, or their heirs, successors or assigns. The association shall be organized as a profit or nonprofit corporation or as an unincorporated association.

33-1242. Powers of unit owners' association; notice to unit owner of violation

A. Subject to the provisions of the declaration, the association may:

1. Adopt and amend bylaws and rules.
2. Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from unit owners.
3. Hire and discharge managing agents and other employees, agents and independent contractors.
4. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium.
5. Make contracts and incur liabilities.
6. Regulate the use, maintenance, repair, replacement and modification of common elements.
7. Cause additional improvements to be made as a part of the common elements.
8. Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, except that common elements may be conveyed or subjected to a security interest only pursuant to section 33-1252.
9. Grant easements, leases, licenses and concessions through or over the common elements.
10. Impose and receive any payments, fees or charges for the use, rental or operation of the common elements other than limited common elements described in section 33-1212, paragraphs 2 and 4 and for services provided to unit owners.
11. Impose charges for late payment of assessments after the association has provided notice that the assessment is overdue or provided notice that the assessment is considered overdue after a certain date and, after notice and an opportunity to be heard, impose reasonable monetary penalties on unit owners for violations of the declaration, bylaws and rules of the association.
12. Impose reasonable charges for the preparation and recordation of amendments to the declaration or statements of unpaid assessments.
13. Provide for the indemnification of its officers and executive board of directors and maintain directors' and officers' liability insurance.
14. Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly provides.
15. Be a member of a master association or other entity owning, maintaining or governing in any respect any portion of the common elements or other property benefitting or related to the condominium or the unit owners in any respect.
16. Exercise any other powers conferred by the declaration or bylaws.
17. Exercise all other powers that may be exercised in this state by legal entities of the same type as the association.
18. Exercise any other powers necessary and proper for the governance and operation of the association.

B. A unit owner who receives a written notice that the condition of the property owned by the unit owner is in violation of a requirement of the condominium documents without regard to whether a monetary penalty is imposed by the notice may provide the association with a written response by sending the response by certified mail within twenty-one calendar days after the date of the notice. The response shall be sent to the address identified in the notice.

C. Within ten business days after receipt of the certified mail containing the response from the unit owner, the association shall respond to the unit owner with a written explanation regarding the notice that shall provide at least the following information unless previously provided in the notice of violation:

1. The provision of the condominium documents that has allegedly been violated.
2. The date of the violation or the date the violation was observed.
3. The first and last name of the person or persons who observed the violation.
4. The process the unit owner must follow to contest the notice.

D. Unless the information required in subsection C, paragraph 4 of this section is provided in the notice of violation, the association shall not proceed with any action to enforce the condominium documents, including the collection of attorney fees, before or during the time prescribed by subsection C of this section regarding the exchange of information between the association and the unit owner and shall give the unit owner written notice of the unit owner's option to petition for an administrative hearing on the matter in the state real estate department pursuant to section 32-2199.01. At any time before or after completion of the exchange of information pursuant to this section, the unit owner may petition for a hearing pursuant to section 32-2199.01 if the dispute is within the jurisdiction of the state real estate department as prescribed in section 32-2199.01.

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

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

B. The board of directors shall not act on behalf of the association to amend the declaration, terminate the condominium, elect members of the board of directors or determine the qualifications, powers and duties or terms of office of board of directors members. Except as provided in subsection H of this section, the board of directors may fill vacancies in its membership for the unexpired portion of any term.

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

D. Except as provided in the declaration, within thirty days after adoption of any proposed budget for the condominium, the board of directors shall provide a summary of the budget to all the unit owners. Unless the board of directors is expressly authorized in the declaration to adopt and amend budgets from time to time, any budget or amendment shall be ratified by the unit owners in accordance with the procedures set forth in this subsection. If ratification is required, the board of directors shall set a date for a meeting of the unit owners to consider ratification of the budget not fewer than fourteen or more than thirty days after mailing of the summary. Unless at that meeting a majority of all the unit owners or any larger vote specified in the declaration rejects the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the unit owners shall be continued until such time as the unit owners ratify a subsequent budget proposed by the board of directors.

E. The declaration may provide for a period of declarant control of the association, during which period a declarant or persons designated by the declarant may appoint and remove the officers and members of the board of directors. Regardless of the period provided in the declaration, a period of declarant control terminates not later than the earlier of:

1. Ninety days after conveyance of seventy-five percent of the units that may be created to unit owners other than a declarant.
2. Four years after all declarants have ceased to offer units for sale in the ordinary course of business.

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

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

H. Notwithstanding any provision of the declaration or bylaws to the contrary, all of the following apply to a meeting at which a member of the board of directors, other than a member appointed by the declarant, is proposed to be removed from the board of directors:

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

2. The meeting of the unit owners shall be called pursuant to this section and action may be taken only if a quorum is present.
3. The unit owners may remove any member of the board of directors with or without cause, other than a member appointed by the declarant.
4. For purposes of calling for removal of a member of the board of directors, other than a member appointed by the declarant, the following apply:
  - (a) In an association with one thousand or fewer members, on receipt of a petition that calls for removal of a member of the board of directors and that is signed by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least twenty-five percent of the votes in the association or by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least one hundred votes in the association, whichever is less, the board shall call and provide written notice of a special meeting of the association as prescribed by section 33-1248, subsection B.
  - (b) Notwithstanding section 33-1248, subsection B, in an association with more than one thousand members, on receipt of a petition that calls for removal of a member of the board of directors and that is signed by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least ten percent of the votes in the association or by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least one thousand votes in the association, whichever is less, the board shall call and provide written notice of a special meeting of the association. The board shall provide written notice of a special meeting as prescribed by section 33-1248, subsection B.
  - (c) The special meeting shall be called, noticed and held within thirty days after receipt of the petition.
  - (d) If all of the requirements of this subsection for calling a special meeting are met and the board of directors fails to call, notice and hold a special meeting within thirty days after receipt of the petition, the members of the board of directors are deemed removed from office effective at midnight of the thirty-first day.
  - (e) For purposes of a special meeting called pursuant to this subsection, a quorum is present if the number of owners who are eligible to vote in the association at the time the person attends the meeting equal to at least twenty percent of the votes of the association or the number of persons who are eligible to vote in the association at the time the person attends the meeting equal to at least one thousand votes, whichever is less, is present at the meeting in person or as otherwise allowed by law.
  - (f) If a civil action is filed regarding the removal of a board member, the prevailing party in the civil action shall be awarded its reasonable attorney fees and costs.
  - (g) The board of directors shall retain all documents and other records relating to the proposed removal of the member of the board of directors and any election or other action taken for that director's replacement for at least one year after the date of the special meeting and shall allow members to inspect those documents and records pursuant to section 33-1258.
  - (h) A petition that calls for the removal of the same member of the board of directors shall not be submitted more than once during each term of office for that member.
5. On removal of at least one but fewer than a majority of the members of the board of directors at a special meeting of the membership called pursuant to this subsection, the vacancies shall be filled as provided in the condominium documents.
6. On removal of a majority of the members of the board of directors at a special meeting of the membership called pursuant to this subsection, or if the condominium documents do not provide a method for filling board vacancies, the association shall hold an election for the replacement of the removed directors at a separate

meeting of the members of the association that is held not later than thirty days after the meeting at which the members of the board of directors were removed.

7. A member of the board of directors who is removed pursuant to this subsection is not eligible to serve on the board of directors again until after the expiration of the removed board member's term of office, unless the condominium documents specifically provide for a longer period of ineligibility.

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

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

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

### 33-1244. Transfer of special declarant rights

A. A special declarant right created or reserved under this chapter shall not be transferred except by an instrument evidencing the transfer recorded in every county in which any portion of the condominium is located. The instrument is not effective unless executed by the transferee.

B. On transfer of any special declarant right, the liability of a transferor declarant is as follows:

1. A transferor is not relieved of any obligation or liability arising before the transfer.
2. If a transferor retains any special declarant right, the transferor is liable for any obligations or liabilities imposed on a declarant by this chapter or by the declaration relating to the retained special declarant rights and arising after the transfer.
3. A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant.

C. Unless otherwise provided in a mortgage or deed of trust, in case of foreclosure of a mortgage, tax sale, judicial sale, sale by a trustee under a deed of trust, forfeiture of interest of a purchaser under a contract for conveyance of real property or sale under bankruptcy code or receivership proceedings, of any units owned by a declarant or real estate in a condominium subject to development rights, a person acquiring title to all the real estate being foreclosed or sold succeeds to all special declarant rights related to that real estate held by that declarant whether or not the judgment or instrument conveying title provides for transfer of the special declarant rights.

D. The liabilities and obligations of a person who succeeds to special declarant rights are as follows:

1. A successor to any special declarant right, other than a successor described in paragraph 2 of this subsection, is subject to all liabilities and obligations imposed by this chapter or the declaration:

(a) On a declarant which relate to his exercise or nonexercise of special declarant rights.

(b) On his transferor, other than:

(i) Misrepresentations by any previous declarant.

(ii) Warranty obligations on improvements made by any previous declarant or made before the condominium was created.

(iii) Breach of any fiduciary obligation by any previous declarant or his appointees to the board of directors.

(iv) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

2. A successor to special declarant rights under subsection C is subject to liability only for his own acts in the exercise of those special declarant rights.

**33-1245. Termination of contracts and leases of declarant; applicability.**

A. A contract for any of the following, if entered into before the board of directors elected by the unit owners pursuant to section 33-1243, subsection G takes office, shall contain a provision in the contract that the contract may be terminated without penalty by the association at any time after the board of directors elected by the unit owners takes office:

1. Any management contract or employment contract.
2. Any other contract or lease between the association and a declarant or an affiliate of a declarant.
3. Any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing.

B. The board of directors shall notify the appropriate contractual party of the termination at least thirty days before termination.

C. This section does not apply to any lease if the termination of the lease would terminate the condominium or reduce its size.

D. If a contract covered by this section fails to contain the provisions required by subsection A of this section, the contract is voidable at the option of the association.

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



### 33-1246. Bylaws

A. At the time the unit owners' association is organized, the association shall adopt bylaws which provide for each of the following:

1. The number of members of the board of directors and the titles of the officers of the association.
2. Election by the board of directors of a president, treasurer, secretary and any other officers of the association which the bylaws specify.
3. The qualifications, powers and duties, terms of office and manner of electing and removing board members and officers and filling vacancies.
4. Which, if any, of its powers the board of directors or officers may delegate to other persons or to a managing agent.
5. Which of its officers may execute, certify and record amendments to the declaration on behalf of the association.
6. The method of amending the bylaws.

B. Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

### 33-1247. Upkeep of the condominium

A. Except to the extent provided by the declaration, subsection C of this section or section 33-1253, subsection B, the association is responsible for maintenance, repair and replacement of the common elements and each unit owner is responsible for maintenance, repair and replacement of the unit. On reasonable notice, each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through the unit reasonably necessary for those purposes. If damage is inflicted on the common elements or any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair of the damage.

B. For any residential rental units that have been declared a slum property by the city or town pursuant to section 33-1905 and that are in the condominium complex, the association is responsible for enforcing any requirement for a licensed property management firm that is imposed by a city or town pursuant to section 33-1906.

C. In addition to the liability borne by the declarant as a unit owner under this chapter, the declarant alone is liable for the maintenance, repair and replacement of any portion of the common elements which the declarant reserves the right to withdraw from the condominium, as long as the unit owner maintains that right.

### 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 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.

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.

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 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.

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.

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

### 33-1249. Quorums; applicability

- A. Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast at least twenty-five per cent of the votes in the association are present in person or by proxy at the beginning of the meeting.
- 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.
- C. This section does not apply to timeshare plans or associations that are subject to chapter 20 of this title.

**33-1245. Termination of contracts and leases of declarant; applicability.**

A. A contract for any of the following, if entered into before the board of directors elected by the unit owners pursuant to section 33-1243, subsection G takes office, shall contain a provision in the contract that the contract may be terminated without penalty by the association at any time after the board of directors elected by the unit owners takes office:

1. Any management contract or employment contract.
2. Any other contract or lease between the association and a declarant or an affiliate of a declarant.
3. Any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing.

B. The board of directors shall notify the appropriate contractual party of the termination at least thirty days before termination.

C. This section does not apply to any lease if the termination of the lease would terminate the condominium or reduce its size.

D. If a contract covered by this section fails to contain the provisions required by subsection A of this section, the contract is voidable at the option of the association.

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

### 33-1246. Bylaws

A. At the time the unit owners' association is organized, the association shall adopt bylaws which provide for each of the following:

1. The number of members of the board of directors and the titles of the officers of the association.
2. Election by the board of directors of a president, treasurer, secretary and any other officers of the association which the bylaws specify.
3. The qualifications, powers and duties, terms of office and manner of electing and removing board members and officers and filling vacancies.
4. Which, if any, of its powers the board of directors or officers may delegate to other persons or to a managing agent.
5. Which of its officers may execute, certify and record amendments to the declaration on behalf of the association.
6. The method of amending the bylaws.

B. Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

### 33-1247. Upkeep of the condominium

A. Except to the extent provided by the declaration, subsection C of this section or section 33-1253, subsection B, the association is responsible for maintenance, repair and replacement of the common elements and each unit owner is responsible for maintenance, repair and replacement of the unit. On reasonable notice, each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through the unit reasonably necessary for those purposes. If damage is inflicted on the common elements or any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair of the damage.

B. For any residential rental units that have been declared a slum property by the city or town pursuant to section 33-1905 and that are in the condominium complex, the association is responsible for enforcing any requirement for a licensed property management firm that is imposed by a city or town pursuant to section 33-1906.

C. In addition to the liability borne by the declarant as a unit owner under this chapter, the declarant alone is liable for the maintenance, repair and replacement of any portion of the common elements which the declarant reserves the right to withdraw from the condominium, as long as the unit owner maintains that right.



### 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 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.

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.

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 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.

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.

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

33-1249. Quorums; applicability

- A. Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast at least twenty-five per cent of the votes in the association are present in person or by proxy at the beginning of the meeting.
- 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.
- C. This section does not apply to timeshare plans or associations that are subject to chapter 20 of this title.

### 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 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 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.

33-1251. Tort and contract liability

- A. An action alleging a wrong done by the association shall be brought against the association and not against any unit owner.
- B. A statute of limitation affecting any right of action of the association against the declarant is tolled until the period of declarant control terminates.
- C. A unit owner is not precluded from bringing an action against the association because he is a unit owner or a member or officer of the association.
- D. Liens resulting from judgments against the association are governed by section 33-1256.

### 33-1252. Conveyance or encumbrance of common elements

A. Portions of the common elements may be conveyed or subjected to a mortgage, deed of trust or security interest by the association if persons entitled to cast at least eighty per cent of the votes in the association, or any larger percentage the declaration specifies, agree to that action in the manner prescribed in subsection B, except that all the owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a mortgage, deed of trust or security interest. The declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to nonresidential uses. Proceeds of the sale or encumbrance of the common elements are an asset of the association.

B. An agreement to convey common elements or subject them to a mortgage, deed of trust or security interest shall be evidenced by the execution of an agreement, or ratifications of the agreement, in the same manner as a deed, by the requisite number of unit owners. The agreement shall specify a date after which the agreement will be void unless previously recorded. The agreement and all ratifications of the agreement shall be recorded in each county in which a portion of the condominium is situated and are effective only on recordation.

C. The association, on behalf of the unit owners, may contract to convey common elements or subject them to a mortgage, deed of trust or security interest, but the contract is not enforceable against the association until approved pursuant to subsections A and B. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

D. Except as permitted in this chapter, any purported conveyance, encumbrance, judicial sale or other voluntary transfer of common elements is void.

E. A conveyance or encumbrance of common elements pursuant to this section does not deprive any unit of its rights of access and support.

F. A conveyance or encumbrance of common elements pursuant to this section does not affect the priority or validity of preexisting encumbrances.

### 33-1252.01. Conveyance of certain real property.

- A. Real property that is held as an asset of the association and that is not held as a common element of the condominium may be conveyed by the association if persons entitled to cast at least eighty per cent of the votes in the association, or any larger percentage the declaration specifies, agree to the conveyance in the manner prescribed in subsection B.
- B. An agreement to convey real property that is held as an asset of the association and that is not held as a common element of the condominium shall be evidenced by the execution of an agreement, or ratifications of the agreement, in the same manner as a deed and by the requisite number of unit owners. The agreement shall specify a date after which the agreement will be void unless previously recorded. The agreement and all ratifications of the agreement shall be recorded in each county in which a portion of the condominium is situated and are effective only on recordation.
- C. The association, on behalf of the unit owners, may contract to convey the real property but the contract is not enforceable against the association until approved pursuant to subsections A and B. Thereafter, the association has all powers necessary and appropriate to effect the conveyance, including the power to execute deeds or other instruments.
- D. Except as permitted in this chapter, any purported conveyance or other voluntary transfer of real property is void.
- E. A conveyance of real property pursuant to this section does not affect the priority or validity of preexisting encumbrances.
- F. Property an association acquires in an assessment lien foreclosure action shall not be considered real property held as an asset of the association for the purpose of this section.



### 33-1253. Insurance

A. Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available, both:

1. Property insurance on the common elements and, if required by the condominium documents, the units, insuring against all risks of direct physical loss commonly insured against. The total amount of insurance after application of any deductibles shall be not less than eighty percent of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies.

2. Liability insurance in an amount determined by the board of directors or the association but not less than any amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the common elements.

B. To the extent available, the insurance maintained under subsection A, paragraph 1 of this section includes the units or any portion of those units but need not include improvements and betterments installed by unit owners or the personal property of unit owners.

C. If the insurance described in subsection A of this section is not reasonably available, the association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all unit owners. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it deems appropriate to protect the association or the unit owners.

D. Insurance policies carried pursuant to subsection A of this section shall provide the following:

1. Each unit owner is an insured person under the policy with respect to liability or property damage arising out of the unit owner's interest in the common elements, the unit, if required by the condominium documents, or membership in the association.

2. The insurer waives its right to subrogation under the policy against any unit owner or members of the unit owner's household.

3. No act or omission by any unit owner, unless acting within the scope of the unit owner's authority on behalf of the association, will void the policy or be a condition to recovery under the policy.

4. If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same property covered by the policy, the association's policy provides primary insurance.

5. As an insured person under the association's policy with respect to the unit owner's interest in the common elements, the unit owner's individual unit or membership in the association, each unit owner has the right to report a loss under the association's property insurance policy. Each unit owner shall additionally report the loss to the association.

E. Prior to reporting a loss under the association's master property insurance policy, a unit owner shall report the loss to the association and give the association ten business days to provide the unit owner with a written decision whether the association will be reporting a claim to the master policy. If the association decides not to report a claim under the master policy, the association shall provide the reason for the decision in the written decision.

F. Notwithstanding subsection D, paragraph 5 of this section, any loss covered by the property policy under subsection A, paragraph 1 and subsection B of this section shall be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the

association shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to subsection H of this section, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the condominium is terminated.

G. An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for the unit owner's own benefit.

H. An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, on written request, to any unit owner, mortgagee or beneficiary under a deed of trust. The insurer issuing the policy shall not cancel or refuse to renew it until thirty days after notice of the proposed cancellation or nonrenewal has been mailed to the association, each unit owner and each mortgagee or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

I. Any portion of the condominium for which insurance is required under this section and that is damaged or destroyed shall be repaired or replaced promptly by the association unless any of the following apply:

1. The condominium is terminated.
2. Repair or replacement would be illegal under any state or local health or safety statute or ordinance.
3. Eighty percent of the unit owners, including every owner of a unit or allocated limited common element that will not be rebuilt, vote not to rebuild.

J. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire condominium is not repaired or replaced:

1. The insurance proceeds attributable to the damaged common elements in proportion to their common element interests or as otherwise provided in the declaration shall be used to restore the damaged area to a condition compatible with the remainder of the condominium.
2. The insurance proceeds attributable to units and allocated limited common elements that are not rebuilt shall be distributed in proportion to their common element interests or as otherwise provided in the declaration to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lienholders as their interests may appear.
3. The remainder of the proceeds shall be distributed to all the unit owners or lienholders as their interests may appear in proportion to the common element interests of all the units.

K. The association shall inform each unit owner annually in writing of both:

1. The unit owner's responsibility for the association's insurance deductibles for all property and liability coverage.
2. The amount of each deductible.

L. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated on the vote as if the unit had been condemned under section 33-1206, subsection A, and the association promptly shall prepare, execute and record an amendment to the declaration reflecting the reallocations.

M. Notwithstanding subsections H, I and L of this section, section 33-1228 governs the distribution of insurance proceeds if the condominium is terminated.

N. If all units are restricted to nonresidential use, the provisions of a subsection or paragraph of this section do not apply if the declaration, articles of incorporation or amended bylaws contain provisions inconsistent with such subsection or paragraph.

O. This section does not prohibit the declaration from requiring additional or greater amounts of insurance coverage or does not prohibit the board of directors from acquiring additional or greater amounts of coverage as it reasonably deems appropriate.

**33-1254. Surplus monies**

Unless otherwise provided in the declaration, any surplus monies of the association remaining after payment of or provision for common expenses and any prepayment of reserves shall be paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments.

### 33-1255. Assessments for common expenses; applicability.

- A. Until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments shall be made at least annually, based on a budget adopted at least annually by the association.
- B. Except for assessments under subsections C, D, E and F of this section, all common expenses shall be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to section 33-1217, subsection A. Any past due common expense assessment or installment bears interest at the rate established by the board subject to the condominium documents.
- C. Unless otherwise provided for in the declaration all of the following apply:
1. Any common expense associated with the maintenance, repair or replacement of a limited common element shall be equally assessed against the units to which the limited common element is assigned.
  2. Any common expense or portion of a common expense benefitting fewer than all of the units shall be assessed exclusively against the units benefitted.
- D. Assessments to pay a judgment against the association may be made only against the units in the condominium at the time the judgment was entered, in proportion to their common expense liabilities.
- E. If any common expense is caused by the misconduct of any unit owner, the association may assess that expense exclusively against that unit.
- F. If the declaration so provides, the common expense assessment for any unit on which construction has not been substantially completed may be an amount which is not less than twenty-five per cent of the common expense assessment for units which have been substantially completed. However, this reduced common expense assessment shall not be permitted, unless the declarant is obligated under the declaration to pay to the association any deficiency in monies due to the declarant having paid a reduced common assessment and necessary for the association to be able to timely pay all common expenses.
- G. If common expense liabilities are reallocated, common expense assessments and any installment on the assessments not yet due shall be recalculated in accordance with the reallocated common expense liabilities.
- H. This section does not apply to timeshare plans or associations that are subject to chapter 20 of this title.

**33-1256. Lien for assessments; priority; mechanics' and materialmen's liens; notice; applicability**

A. The association has a lien on a unit for any assessment levied against that unit from the time the assessment becomes due. The association's lien for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments may be foreclosed in the same manner as a mortgage on real estate but may be foreclosed only if the owner has been delinquent in the payment of monies secured by the lien, excluding reasonable collection fees, reasonable attorney fees and charges for late payment of and costs incurred with respect to those assessments, for a period of one year or in the amount of \$1,200 or more, whichever occurs first, as determined on the date the action is filed. Fees, charges, late charges, monetary penalties and interest charged pursuant to section 33-1242, subsection A, paragraphs 10, 11 and 12, other than charges for late payment of assessments, are not enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment of the assessment becomes due. The association has a lien for fees, charges, late charges, other than charges for late payment of assessments, monetary penalties or interest charged pursuant to section 33-1242, subsection A, paragraphs 10, 11 and 12 after the entry of a judgment in a civil suit for those fees, charges, late charges, monetary penalties or interest from a court of competent jurisdiction and the recording of that judgment in the office of the county recorder as otherwise provided by law. The association's lien for monies other than for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments may not be foreclosed and is effective only on conveyance of any interest in the real property.

B. A lien for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments under this section is prior to all other liens, interests and encumbrances on a unit except:

1. Liens and encumbrances recorded before the recordation of the declaration.
2. A recorded first mortgage on the unit, a seller's interest in a first contract for sale pursuant to chapter 6, article 3 of this title on the unit recorded prior to the lien arising pursuant to subsection A of this section or a recorded first deed of trust on the unit.
3. Liens for real estate taxes and other governmental assessments or charges against the unit.

C. Subsection B of this section does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the association. The lien under this section is not subject to chapter 8 of this title.

D. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

E. Recording of the declaration constitutes record notice and perfection of the lien for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments. Further recordation of any claim of lien for assessments under this section is not required.

F. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six years after the full amount of the assessments becomes due.

G. This section does not prohibit:

1. Actions to recover sums for which subsection A of this section creates a lien.
2. An association from taking a deed in lieu of foreclosure.

H. A judgment or decree in any action brought under this section shall include costs and reasonable attorney fees for the prevailing party.

I. The association on written request shall furnish to a lienholder, escrow agent, unit owner or person designated by a unit owner a statement setting forth the amount of unpaid assessments against the unit. The statement shall be furnished within ten days after receipt of the request and the statement is binding on the association, the board of directors and every unit owner if the statement is requested by an escrow agency that is licensed pursuant to title 6, chapter 7. Failure to provide the statement to the escrow agent within the time provided for in this subsection extinguishes any lien for any unpaid assessment then due.

J. Notwithstanding any provision in the condominium documents or in any contract between the association and a management company, unless the unit owner directs otherwise, all payments received on a unit owner's account shall be applied first to any unpaid assessments, unpaid charges for late payment of those assessments, unpaid reasonable collection fees and unpaid attorney fees and costs incurred with respect to those assessments, in that order, with any remaining amounts applied next to other unpaid fees, charges and monetary penalties or interest and late charges on any of those amounts.

K. For a delinquent account for unpaid assessments or for charges related to unpaid assessments, the association shall provide the following written notice to the unit owner at the unit owner's address as provided to the association at least thirty days before authorizing an attorney, or a collection agency that is not acting as the association's managing agent, to begin collection activity on behalf of the association:

Your account is delinquent. If you do not bring your account current or make arrangements that are approved by the association to bring your account current within thirty days after the date of this notice, your account will be turned over for further collection proceedings. Such collection proceedings could include bringing a foreclosure action against your property.

The notice shall be in boldfaced type or all capital letters and shall include the contact information for the person that the unit owner may contact to discuss payment. The notice shall be sent by certified mail, return receipt requested, and may be included within other correspondence sent to the unit owner regarding the unit owner's delinquent account.

L. Beginning January 1, 2020, except for condominiums that have fewer than fifty units and that do not contract with a third party to perform management services on behalf of the association, the association shall provide a statement of account in lieu of a periodic payment book to the unit owner with the same frequency that assessments are provided for in the declaration. The statement of account shall include the current account balance due and the immediately preceding ledger history. If the association offers the statement of account by electronic means, a unit owner may opt to receive the statement electronically. The association may stop providing any further statements of account to a unit owner if collection activity begins by an attorney, or a collection agency that is not acting as the association's managing agent, regarding that unit owner's unpaid account. After collection activity begins, a unit owner may request statements of account by written request to the attorney or collection agency. Any request by a unit owner for a statement of account after collection activity begins by an attorney or a collection agency that is not acting as the association's managing agent must be fulfilled by the attorney or the collection agency responsible for the collection. The statement of account provided by the attorney or collection agency responsible for the collection shall include all amounts claimed to be owing to resolve the delinquency through the date set forth in the statement, including attorney fees and costs, regardless of whether such amounts have been reduced to judgment.

M. An agent for the association may collect on behalf of the association directly from a unit owner the assessments and other amounts owed by cash or check, by mailed or hand-delivered bank drafts, checks, cashier's checks or money orders, by credit, charge or debit card or by other electronic means. For any form of payment other than for cash or for mailed or hand-delivered bank drafts, checks, cashier's checks or money orders, the agent may charge a convenience fee to the unit owner that is approximately the amount charged to the agent by a third-party service provider.

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



### 33-1257. Other liens affecting the condominium

A. Except as provided in subsection B of this section, a legally recorded judgment for money against the association is not a lien on the common elements but is a lien in favor of the judgment lienholder against all of the units in the condominium at the time the judgment was entered. Other property of a unit owner is not subject to the claims of creditors of the association.

B. If the association has granted a mortgage, deed of trust or security interest in the common elements to a creditor of the association pursuant to section 33-1252, the holder of that security interest must exercise its right against the common elements before its judgment lien on any unit may be enforced.

C. Whether perfected before or after the creation of the condominium, if a lien other than a deed of trust or mortgage becomes effective against two or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to his unit, and the lienholder, on receipt of payment, shall promptly deliver a release of the lien covering that unit. The amount of the payment shall be proportionate to the ratio which that unit owner's common expense liability bears to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association shall not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

D. A judgment against the association shall be indexed in the name of the condominium and the association and shall include the legal description of the unit subject to the lien. When so indexed, the judgment is notice of the lien against the units.

### 33-1258. Association financial and other records; applicability.

A. Except as provided in subsection B of this section, all financial and other records of the association shall be made reasonably available for examination by any member or any person designated by the member in writing as the member's representative. The association shall not charge a member or any person designated by the member in writing for making material available for review. The association shall have ten business days to fulfill a request for examination. On request for purchase of copies of records by any member or any person designated by the member in writing as the member's representative, the association shall have ten business days to provide copies of the requested records. An association may charge a fee for making copies of not more than fifteen cents per page.

B. Books and records kept by or on behalf of the association and the board may be withheld from disclosure to the extent that the portion withheld relates to any of the following:

1. Privileged communication between an attorney for the association and the association.
2. Pending litigation.
3. Meeting minutes or other records of a session of a board meeting that is not required to be open to all members pursuant to section 33-1248.
4. Personal, health or financial records of an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association, 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.
5. Records relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association.

C. The association shall not be required to disclose financial and other records of the association if disclosure would violate any state or federal law.

D. This section does not apply to an association for a timeshare plan that is subject to chapter 20 of this title.

### 33-1259. Association as trustee

With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

**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 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 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 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 not more than twenty 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 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 section 32-2183 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.

### 33-1260.01. Rental property; unit owner and agent information; fee; disclosure

A. A unit owner may use the unit owner's unit as a rental property unless prohibited in the declaration and shall use it in accordance with the declaration's rental time period restrictions.

B. A unit owner may designate in writing a third party to act as the unit owner's agent with respect to all association matters relating to the rental unit, except for voting in association elections and serving on the board of directors. The unit owner shall sign the written designation and shall provide a copy of the written designation to the association. On delivery of the written designation, the association is authorized to conduct all association business relating to the unit owner's rental unit through the designated agent. Any notice given by the association to a unit owner's designated agent on any matter relating to the unit owner's rental unit constitutes notice to the unit owner.

C. Notwithstanding any provision in the condominium documents, on rental of a unit an association shall not require a unit owner or a unit owner's agent to disclose any information regarding a tenant other than the name and contact information for any adults occupying the unit, the time period of the lease, including the beginning and ending dates of the tenancy, and a description and the license plate numbers of the tenants' vehicles. If the condominium is an age restricted condominium, the unit owner, the unit owner's agent or the tenant shall show a government issued identification that bears a photograph and that confirms that the tenant meets the condominium's age restrictions or requirements.

D. On request of an association or its managing agent for the disclosures prescribed in subsection C of this section, the managing agent or, if there is no managing agent, the association may charge a fee of not more than twenty-five dollars, which shall be paid within fifteen days after the postmarked request. The fee may be charged for each new tenancy for that unit but may not be charged for a renewal of a lease. Except for the fee permitted by this subsection and fees related to the use of recreational facilities, the association or its managing agent shall not assess, levy or charge a fee or fine or otherwise impose a requirement on a unit owner's rental unit any differently than on an owner-occupied unit in the association.

E. Notwithstanding any provision in the condominium documents, the association is prohibited from doing any of the following:

1. Requiring a unit owner to provide the association with a copy of the tenant's rental application, credit report, lease agreement or rental contract or other personal information except as prescribed by this section. This paragraph does not prohibit the association from acquiring a credit report on a person in an attempt to collect a debt.
2. Requiring the tenant to sign a waiver or other document limiting the tenant's due process rights as a condition of the tenant's occupancy of the rental unit.
3. Prohibiting or otherwise restricting a unit owner from serving on the board of directors based on the owner's not being an occupant of the unit.
4. Imposing on a unit owner or managing agent any fee, assessment, penalty or other charge in an amount greater than fifteen dollars for incomplete or late information regarding the information requested pursuant to subsection C of this section

F. Any attempt by an association to exceed the fee, assessment, penalty or other charge authorized by subsection D or E of this section voids the fee, assessment, penalty or other charge authorized by subsection D or E of this section. This section does not prevent an association from complying with the housing for older persons act of 1995 (P.L. 104-76; 109 Stat. 787).

G. An owner may use a crime free addendum as part of a lease agreement. This section does not prohibit the owner's use of a crime free addendum.

H. This section does not prohibit and an association may lawfully enforce a provision in the condominium documents that restricts the residency of persons who are required to be registered pursuant to section 13-3821 and who are classified as level two or level three offenders.

I. An owner of rental property shall abate criminal activity as authorized in section 12-991.

33-1261. Flag display; for sale, rent or lease signs; political signs; political and community activities; applicability; definitions

A. Notwithstanding any provision in the condominium documents, an association shall not prohibit the outdoor display of any of the following:

1. The American flag or an official or replica of a flag of the uniformed services of the United States by a unit owner on that unit owner's property if the American flag or a uniformed services flag is displayed in a manner consistent with the federal flag code (P.L. 94-344; 90 Stat. 810; 4 United States Code sections 4 through 10).
2. The POW/MIA flag.
3. The Arizona state flag.
4. An Arizona Indian nations flag.
5. The Gadsden flag.
6. A first responder flag. A first responder flag may incorporate the design of one or two other first responder flags to form a combined flag.
7. A blue star service flag or a gold star service flag.
8. Any historic version of the American flag, including the Betsy Ross flag, without regard to how the stars and stripes are arranged on the flag.

B. The association shall adopt reasonable rules and regulations regarding the placement and manner of display of the flags prescribed by subsection A of this section. The association rules may regulate the location and size of flagpoles but shall not prohibit installing a flagpole.

C. Notwithstanding any provision in the condominium documents, an association shall not prohibit or charge a fee for the use of, the placement of or the indoor or outdoor display of a for sale, for rent or for lease sign and a sign rider by a unit owner on that owner's property in any combination, including a sign that indicates the unit owner is offering the property for sale by owner. The size of a sign offering a property for sale, for rent or for lease shall be in conformance with the industry standard size sign, which shall not exceed eighteen by twenty-four inches, and the industry standard size sign rider, which shall not exceed six by twenty-four inches. This subsection applies only to a commercially produced sign and an association may prohibit using signs that are not commercially produced. With respect to real estate for sale, for rent or for lease in the condominium, an association shall not prohibit in any way other than as is specifically authorized by this section or otherwise regulate any of the following:

1. Temporary open house signs or a unit owner's for sale sign. The association shall not require the use of particular signs indicating an open house or real property for sale and may not further regulate the use of temporary open house or for sale signs that are industry standard size and that are owned or used by the seller or the seller's agent.
2. Open house hours. The association may not limit the hours for an open house for real estate that is for sale in the condominium, except that the association may prohibit an open house being held before 8:00 a.m. or after 6:00 p.m. and may prohibit open house signs on the common elements of the condominium.
3. An owner's or an owner's agent's for rent or for lease sign unless an association's documents prohibit or restrict leasing of a unit or units. An association shall not further regulate a for rent or for lease sign or require the use of a particular for rent or for lease sign other than the for rent or for lease sign shall not be any larger than the industry standard size sign of eighteen by twenty-four inches and on or in the unit owner's property. If



rental or leasing of a unit is allowed, the association may prohibit an open house for rental or leasing being held before 8:00 a.m. or after 6:00 p.m.

D. Notwithstanding any provision in the condominium documents, an association shall not prohibit door-to-door political activity, including solicitations of support or opposition regarding candidates or ballot issues, and shall not prohibit circulating political petitions, including candidate nomination petitions or petitions in support of or opposition to an initiative, referendum or recall or other political issue on property normally open to visitors within the association, except that an association may do the following:

1. Restrict or prohibit door-to-door political activity regarding candidates or ballot issues from sunset to sunrise.
2. Require the prominent display of an identification tag for each person engaged in the activity, along with the prominent identification of the candidate or ballot issue that is the subject of the support or opposition.
3. Prohibit a person who is not accompanied by a unit owner or resident of the condominium from entering the condominium premises if the condominium restricts vehicular or pedestrian access.

E. Notwithstanding any provision in the condominium documents, an association shall not prohibit the indoor or outdoor display of a political sign by a unit owner by placement of a sign on that unit owner's property, including any limited common elements for that unit that are doors, walls or patios or other limited common elements that touch the unit, other than the roof. An association may prohibit the display of political signs as follows:

1. Earlier than seventy-one days before the day of a primary election.
2. Later than fifteen days after the day of the general election.
3. For a sign for a candidate in a primary election who does not advance to the general election, later than fifteen days after the primary election.

F. An association may regulate the size and number of political signs that may be placed in the common element ground, on a unit owner's property or on a limited common element for that unit if the association's regulation is not more restrictive than any applicable city, town or county ordinance that regulates the size and number of political signs on residential property. If the city, town or county in which the property is located does not regulate the size and number of political signs on residential property, the association shall not limit the number of political signs, except that the maximum aggregate total dimensions of all political signs on a unit owner's property shall not exceed nine square feet. An association shall not make any regulations regarding the number of candidates supported, the number of public officers supported or opposed in a recall or the number of propositions supported or opposed on a political sign.

G. An association shall not require political signs to be commercially produced or professionally manufactured or prohibit the utilization of both sides of a political sign.

H. Notwithstanding any provision in the condominium documents, an association may not prohibit or unreasonably restrict the indoor or outdoor display of an association-specific political sign by a unit owner by placement of a sign on that unit owner's property, including any limited common elements for that unit that are doors, walls or patios or other limited common elements that touch the unit, other than the roof. An association may adopt reasonable rules regarding the placement, location and manner of display of association-specific political signs, except an association shall not do any of the following:

1. Prohibit the display of association-specific political signs between the date that the association provides written or absentee ballots to unit owners and three days after the condominium election.
2. Limit the number of association-specific political signs, except that the association may limit the aggregate total dimensions of all association-specific political signs on a unit owner's property to not more than nine square feet.

3. Require association-specific political signs to be commercially produced or professionally manufactured or prohibit using both sides of the sign.
4. Regulate the number of candidates supported or opposed, the number of board members supported or opposed in a recall or the number of ballot measures supported or opposed on an association-specific political sign.
5. Make any other regulations regarding the content of an association-specific political sign, except that the association may prohibit using profanity and discriminatory text, images or content based on race, color, religion, sex, familial status or national origin as prescribed by federal or state fair housing laws.

I. Notwithstanding any provision in the condominium documents, an association may not prohibit or unreasonably restrict a unit owner's ability to peacefully assemble and use common elements of the condominium if done in compliance with reasonable restrictions for the use of that property adopted by the board of directors. An individual unit owner or group of unit owners may assemble to discuss matters related to the condominium, including board of director elections or recalls, potential or actual ballot issues or revisions to the condominium documents, property maintenance or safety issues or any other condominium matters. A unit owner may invite one political candidate or one non-unit owner guest to speak to an assembly of unit owners about matters related to the condominium. The association shall not prohibit a unit owner from posting notices regarding those assemblies of unit owners on bulletin boards located on the common elements or within common element facilities. An assembly of unit owners prescribed by this subsection does not constitute an official unit owners' meeting unless the meeting is noticed and convened as prescribed in the condominium documents and this chapter.

J. An association or managing agent that violates subsection C of this section forfeits and extinguishes the lien rights authorized under section 33-1256 against that unit for a period of six consecutive months after the date of the violation.

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

L. An association or managing agent that violates subsection C of this section forfeits and extinguishes the lien rights authorized under section 33-1256 against that unit for a period of six consecutive months after the date of the violation.

M. For the purposes of this section:

1. "Association-specific political sign" means a sign that supports or opposes a candidate for the board of directors, the recall of a board member or a condominium ballot measure that requires a vote of the association unit owners.
2. "Betsy Ross flag" means an historic flag of the United States that consists of thirteen stripes alternating between red and white stripes and thirteen five-pointed white stars arranged in a circle against a blue background.
3. "First responder flag" means a flag that recognizes and honors the services of any of the following:
  - (a) Law enforcement and that is limited to the colors blue, black and white, the words "law enforcement", "police", "officers", "first responder", "honor our", "support our" and "department" and the symbol of a generic police shield in a crest or star shape.
  - (b) Fire departments and that is limited to the colors red, gold, black and white, the words "fire", "fighters", "F", "D", "FD", "first responder", "department", "honor our" and "support our" and the symbol of a generic Maltese cross.
  - (c) Paramedics or emergency medical technicians and that is limited to the colors blue, black and white, the words "first responder", "paramedic", "emergency medical", "service", "technician", "honor our" and "support

our" and the symbol of a generic star of life.

4. "Political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing the recall of a public officer or supporting or opposing the circulation of a petition for a ballot measure, question or proposition or the recall of a public officer.

33-1270. Department of real estate; enforcement

A. Nothing in this chapter shall be construed to increase or decrease or otherwise affect any rights or powers granted to the commissioner of the department of real estate under title 32, chapter 20 with respect to the issuance of public reports.

B. The commissioner of the department of real estate shall require compliance with section 33-1215 and section 33-1219 in connection with the administration of the subdivision laws of this state under title 32, chapter 20, article 4. The commissioner shall not be required to administer or enforce any other provisions of this chapter.