



# PLANNED COMMUNITIES ACT

(Arizona Revised Statutes)

## CHAPTER 16 PLANNED COMMUNITIES

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### **33-1801. Applicability; exemption**

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 home schools 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 timeshare plans or associations that are subject to chapter 20 of this title.

### **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.

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 which 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. Planned community does not include a timeshare plan or a timeshare association that is governed by chapter 20 of this title.

**33-1803. 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 per cent 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 per cent of the amount of the unpaid assessment. 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 per cent 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 ten business days after the date of the notice. The response shall be sent to the address contained in the notice or in the recorded notice prescribed by section 33-1807, subsection J.

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. 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 41-2198.01 if the dispute is within the jurisdiction of the department of fire, building and life safety as prescribed in section 41-2198.01, subsection B.

### **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 ~~an~~ that item ~~under discussion~~ in addition to any other opportunities to speak. The board shall provide for a reasonable number of persons to speak on each side of an issue. Persons attending may tape record 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 may adopt reasonable rules governing the taping of open portions of the meetings of the board and the membership, but such rules shall not preclude such tape recording or videotaping by

those attending. Any portion of a meeting may be closed only if that closed portion of the meeting is limited to consideration of one or more of the following:

1. Legal advice from an attorney for the board or the association. On final resolution of any matter for which the board received legal advice or that concerned pending or contemplated litigation, the board may disclose information about that matter in an open meeting except for matters that are required to remain confidential by the terms of a settlement agreement or judgment.
2. Pending or contemplated litigation.
3. Personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association, including records of the association directly related to the personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association.
4. Matters relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association or an individual employee of a

contractor of the association who works under the direction of the association.

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

B. Notwithstanding any provision in the community documents, all meetings of the members' association and the board shall be held in this state. A meeting of the members' association shall be held at least once each year. Special meetings of the members' association may be called by the president, by a majority of the board of directors or by members having at least twenty-five per cent, or any lower percentage specified in the bylaws, of the votes in the association. ~~Unless otherwise provided in the articles or bylaws of 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 time and place of the meeting. A notice of any special meeting of the members shall

also state the purpose for which the meeting is called, including the general nature of any proposed amendment to the declaration or bylaws, changes in assessments that require approval of the members and any proposal to remove a director or an officer. 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. ~~Unless otherwise provided in the articles or bylaws of the association,~~ 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 time and place of the meeting. The failure of any member to receive actual notice of a

meeting of the board of directors does not affect the validity of any action taken at that meeting.

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

1. The agenda shall be available to all members attending.
2. An emergency meeting of the board of directors may be called to discuss business or take action that cannot be delayed until the next regularly scheduled board meeting. The minutes of the emergency meeting shall state the reason necessitating the emergency meeting. The minutes of the emergency meeting shall be read and approved at the next regularly scheduled meeting of the board of directors.
3. A quorum of the board of directors may meet by means of a telephone conference if a speakerphone is available in the meeting room that allows board members and association members to hear all parties who are speaking during the meeting.
4. Any quorum of the board of directors that meets informally to discuss association business, including workshops, shall comply with

the open meeting and notice provisions of this section without regard to whether the board votes or takes any action on any matter at that informal meeting.

E. 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 is taken. Toward this end, any person or entity that is charge with the interpretation of these provisions 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; 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 ~~which~~ 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 reasonable fee of no more than an aggregate of four hundred dollars to compensate the association for the costs incurred in the preparation of a statement or other documents furnished by the association pursuant to this

section for purposes of resale disclosure, lien estoppel and any other services related to the transfer or use of the property. In addition, the association may charge a rush fee of no more than one hundred dollars if the rush services are required to be performed within seventy-two hours after the request for rush services, and may charge a statement or other documents update fee of no more than fifty dollars if thirty days or more have passed since the date of the original disclosure statement or 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. 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 of January 1, 2010, the fee may increase at a rate of no more than twenty per cent 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 charge 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 property except as specifically authorized in this section. An association that charges or collects a fee in violation of this section is subject to a civil penalty of no 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.

~~D.~~ F. A sale in which a public report is issued pursuant to sections 32-2183 and 32-2197.02 or a sale pursuant to section 32-2181.02 is exempt from this section.

E. 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 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.

**33-1807. Lien for assessments; priority;**

## **mechanics' and materialmen's liens**

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 one thousand two hundred dollars or more, whichever occurs first. 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 three 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 ~~fifteen~~ 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 shall extinguish any lien for any unpaid assessment then due.

J. The association shall record in the office of the county recorder in the county in which the planned community is located a notice stating the name of the association or designated agent or management company for the association, the address for the association and the telephone number of the association or its designated agent or management company. The notice shall include the name of the planned community, the date of

the recording and the recorded instrument number or book and page for the main document that constitutes the declaration. If an association's address, designated agent or management company changes, the association shall amend its notice or record a new notice within ninety days after the change.

K. 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, for unpaid charges for late payment of those assessments, for reasonable collection fees and for 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.

**33-1808. Flag display; political signs; caution signs; for sale signs; political petitions<sup>1</sup>**

A. Notwithstanding any provision in the community documents, an association shall not prohibit the

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<sup>1</sup>This act is effective from and after December 31, 2011.

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 United States army, navy, air force, marine corps or coast guard by an association member on that member's property if the American flag or military 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.

B. The association shall adopt reasonable rules and regulations regarding the placement and manner of display of the American flag, the military flag, the POW/MIA flag, the Arizona state flag or an Arizona Indian nations flag. The association rules may regulate the location and size of flagpoles, may limit the member to displaying no more than two flags at once and may limit the height of the flagpole to no more than the height of the rooftop of the member's home but shall not prohibit the installation of 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 earlier than ~~forty-five~~ fifty-five days before the day of an election and later than ~~seven~~ fifteen days after an election day. 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 no more restrictive~~ conforms to 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 ~~permit at least one~~ not limit the number of political sign with signs, except that the maximum aggregate total dimensions of ~~twenty-four inches by twenty-four inches~~ all political signs on a member's property shall not exceed nine square feet. This subsection applies only to a commercially produced sign and an association may prohibit the use of signs that are not commercially produced. For the purposes of this subsection, "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.

D. Notwithstanding any provision in the community documents, an association shall not prohibit the use of 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 no taller than three feet in height.
5. The signs are professionally manufactured or produced.

E. 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.

F. Notwithstanding any provision in the community documents, an association shall not prohibit or charge any 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 the use of 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 or otherwise regulate in any way other than specifically authorized by this section any of the following:

1. Temporary open house signs or a unit-owner's 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.

G. Notwithstanding any provision in the community documents, an association shall not prohibit ~~but may reasonably regulate~~ door to door political activity, including solicitations of support or opposition regarding candidates or ballot issues, and shall not prohibit the circulation of 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 dedicated to the public normally open to visitors~~ within the association, ~~except that an association may do the following:~~

1. Restrict or prohibit 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.

H. 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.

I. 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 signs.

J. A planned community is not required to comply with this ~~subsection G~~ if the planned community restricts vehicular or pedestrian access to the planned community. Nothing in this ~~subsection section~~ requires a planned community to make its common elements other than roadways and sidewalks that are normally open to visitors available for the circulation of political petitions to

anyone who is not an owner or resident of the community.

K. Any association or managing agent that violates subsection F of this section, forfeits and extinguishes lien rights authorized under section 33-1807 against that member's property for a period of six consecutive months from the date of the violation.

### **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 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 may provide for voting by some other form of 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 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 for only 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.
- B. Votes cast by absentee ballot or other form of 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, the members, by a majority vote of members entitled to vote and voting on the matter at a meeting of the members called pursuant to this section at which a quorum is present, may remove any member of the board of directors with or without cause, other than a member appointed by the declarant. 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:

1. 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 entitled to cast at least twenty-five per cent of the votes in the association or 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.

2. 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 entitled to cast at least ten per cent of the votes in the association or 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.

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

4. For purposes of a special meeting called pursuant to this subsection, a quorum is present if the number of owners to whom at least twenty per cent of the votes or one thousand votes, whichever is less, are allocated is present at the meeting in person or as otherwise permitted by law.

5. 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.

6. The board of directors shall retain all documents and other records relating to the proposed removal of the member of the board of directors for at least one year after the date of the special meeting and shall permit members to inspect those documents and records pursuant to section 33-1805.

7. 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.

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.

## **TRANSFER FEES**

### **33-442. Prohibition on transfer fees; exceptions; definitions**

A. A provision in a declaration, covenant or any other document relating to real property in this state is not binding or enforceable against the real property or against any subsequent owner, purchaser, lienholder or other claimant on the property if it purports to do both of the following:

1. Bind successors in title to the specified real

property.

2. Obligate the transferee or transferor of all or part of the property to pay a fee or other charge to a declarant or a third person on transfer of an interest in the property or in consideration for permitting such a transfer. Regularly scheduled fees or charges shall not be considered payable on transfer of an interest if the fees or charges will be payable by the owner of the property regardless of whether or not the property is transferred, even if the obligation to pay does not commence until the trustee, declarant, builder or developer first conveys the property to a retail purchaser.

B. A transfer fee provision prescribed by subsection A is unenforceable whether or not recorded and does not create a lien right and any lien purportedly arising out of an unenforceable provision prescribed by subsection A is invalid and unenforceable.

C. This section does not apply to any of the following:

1. Any provision of a purchase contract, option, mortgage, security agreement, real property listing agreement or other agreement that obligates one party to the agreement to pay the other party as full or partial consideration for the agreement or for a waiver of rights under the agreement if the amount to be paid is:

(a) A loan assumption fee or similar fee charged by a lender that holds a lien on the property.

(b) A fee or commission paid to a licensed real estate broker for brokerage services rendered in connection with the transfer of the property for which the fee or commission is paid.

2. Any provision in a deed, memorandum or other document recorded for the purpose of providing record notice of an agreement prescribed in paragraph 1, subdivision (a) of this subsection.

3. Any provision of a document that requires payment of a fee or charge to an association to be used exclusively for the purpose authorized in the document if both of the following apply:

(a) The fee being charged touches and concerns the land.

(b) No portion of the charge or fee is required to be passed through to a third party or declarant designated or identifiable by description in the document or in another document that is referenced in the document unless the third party is authorized in the document to manage real property within the association or was part of an approved development plan.

4. Any rent, reimbursement, charge, fee or other amount payable by a lessee to a lessor under a lease, including any fee payable to the lessor for consenting to an assignment, sublease,

encumbrance or transfer of the lease.

5. Any consideration payable to the holder of an option to purchase an interest in the real property or to the holder of a right of first refusal or first offer to purchase an interest in real property and paid for waiving, releasing or not exercising the option or right on transfer of the property to another person.

6. Any fee, charge, assessment, dues, contribution or other amount relating to the purchase or transfer of a club membership related to the real property owner by the transferor.

7. Any fee or charge that is imposed by a document and that is payable to a nonprofit corporation for the sole purpose of supporting recreational activities within the association.

8. Any fee, tax, assessment or other charge imposed by a governmental authority pursuant to applicable laws, ordinances or regulations.

9. Any consideration payable by the transferee to the transferor for the interest in real property being transferred including any subsequent additional consideration for the property payable by the transferee based on any subsequent appreciation, development or sale of the property.

D. Notwithstanding any provision in the document or purported lien, a transfer fee covenant or other document prescribed by subsection A or a lien

purporting to secure payment under a transfer fee covenant or document prescribed by subsection A that is executed after the effective date of this section is not binding or enforceable. This section shall not be construed to imply that a transfer fee covenant or other document prescribed by subsection A that is executed before the effective date of this section is enforceable or valid.

E. For the purposes of this section:

1. "Association" means a nonprofit mandatory membership organization that is created pursuant to a declaration, covenant or other applicable law and that is comprised of the owners of homes, condominiums, cooperatives or manufactured homes or any other interest in real property.
2. "Transfer" means the sale, gift, conveyance, assignment, inheritance or other transfer of an interest in real property located in this state.