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OPEN BOARD MEETINGS, BOOKS AND RECORDS INSPECTION

OPEN BOARD OF DIRECTORS MEETINGS

As amended, A.R.S. § 33-1248(A) of the Condominium Act and § 33-1804(A) of the planned community statutes will impose the following requirements at any association or board meeting:

1. Association members “or any person designated by a member in writing as the member’s representative” must be allowed to attend and speak at board of directors meetings.

The use of the word “or” and the singular appears to indicate that if necessary the board could restrict attendance/speaking to one or the other, and no more than one representative per member.

2. The member or representative will be legally permitted to attend and to speak at the board meeting “at an appropriate time during the deliberations and proceedings.” The board must also permit the member or designated representative to speak “before the board takes formal action on an item under discussion”.

This means that boards of directors should place homeowner forums at the beginning of meetings rather than at the end, so that members have an opportunity to speak on action items. As a matter of practice, the action items should be spelled out in an outline or agenda distributed or available to

those in attendance before the board meeting. If action items arise that are not on the agenda and that must be voted on by the board, members must be given the opportunity to speak even if outside the previously held homeowner forum.

3. The Board may place reasonable time limitations on persons speaking during the meeting, but must allow a “reasonable number of persons to speak on each side of an issue”.

CLOSED BOARD OF DIRECTORS MEETINGS

There are currently four categories of topics under A.R.S. § 33-1248(A) (Condominiums) and § 33-1804(A) (planned communities) which may be discussed during a closed board of directors meeting:

1. Legal advice from an attorney for the board or the association.

The statute also provides language that on final resolution of any matter for which the board received legal advice or that concerned pending or contemplated litigation, the board may, but is not required to, disclose information about that matter in an open meeting except for matters that are 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 of the association, including records of the association directly related to the personal, health or financial information about an individual member of the association, and individual employee of the association or an individual employee of a contractor for the association.

This permits the Board to close a hearing on a fine actually attended by the member/owner, because the matter is “personal” and often financial. It also allows the Board to close discussions on sanctions for violations if “personal” or financial. Senate Bill 1007 amended this section of the statute to also include records of the association related to personal, health or financial information.

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.

BOOKS AND RECORDS ACCESS

In A.R.S. § 33-1258(B) (Condominiums) and § 33-1805(B) (planned communities), there are categories of records that are exceptions to the statement in subsection (A) that “all financial and other records of the association shall be made reasonably available for examination by any member or person designated by the member in writing as the member’s representative”:

1. Four of those categories are the same as the four categories appropriate for “Closed Meetings” under 33-1248(A) and 33-1804(A) (attorney communication; pending or contemplated litigation; personal/health/financial records of individual members or employees; employee job performance).
2. The fifth category consists of meeting minutes or other records of meetings not required to be open.

The category of “personal” and “financial” records of an “individual member” allows the association to withhold copies of virtually all documents from individual lot files in most cases.

The Nonprofit Corporation Act, at A.R.S. § 10-11602 also addresses records requests. The “closed meeting” categories were moved out and over to the association statutes. With respect to records, a Section 10-11602(G) says:

G. Sections 33-1258 and 33-1805, relating to association financial and other records, apply to any corporation that is a condominium as defined in Section 33-1202 or a planned community as defined in section 33-1802.

The issue with respect to Section G is whether the Legislature intended 33-1258 and 33-1805 to be the exclusive statutes applying to record requests, or whether the remainder of 10-11602 of the Nonprofit Corporation Act still applies to community associations that are also nonprofit corporations. For instance, for certain records, the Nonprofit Corporation Act says that those records may be inspected and copied only if the demand is made in good faith and for a proper purpose, if records are described with reasonable particularity, and if the records are connected to the purpose. The Nonprofit Corporation Act also requires written notice of at least five business days. The best approach is to evaluate books and records requests under applicable provisions of governing documents, the above statutory provisions, and the Arizona Nonprofit Corporation Act.