

Association Board Powers & Duties

Consistency:

- 1) Applies relevant and applicable statutes currently contained in either Title 33 chapters 9 or 16 on this subject matter, to the other chapter to make them consistent.
- 2) Establishes the duties of the board to the community members and the duty of the directors to the association as described and compiled in The Restatement of Law Third; Property , Servitudes 2000,sections 6.13 and 6.14, summarizing the established common law and Arizona case law governing these communities. *Both Servitudes law and Arizona case law have determined that the application of the Non-profit Corporation business judgement Rule is inappropriate for these common interest communities. Servitudes law established the exact language includes here. These requirements are in plain and simple language and are impartial and meant to be fair and balanced to both the board and the members. We also provide for the presumption and protection of board members in their decision making from any liability based on compliance with these duties.*
- 3) Clarifies the conflict of interest provisions to exclude a board member with a stated financial conflict of interest on an issue before the board, from participating in the deliberation or vote on that issue. Consistent with every other such statute, including those for Corporations. *With every other example of conflict of interest consideration in statute the conflicted member identifies the conflict and recuses him/herself from discussion on the issue and voting on the issue.*
- 4) Reduces the period of Declarant control once all declarants stop offering any unit of property for sale from 4 years to 2 years to be consistent with Servitudes Law and the UCIOA.

Clarity:

- 1) Clarifies that board members are elected for the terms specified in the community documents and once that term expires they must be re-elected to continue to be on the board. *As fundamental and obvious this may appear many association have either refused to hold elections to perpetuate the standing board or have used the high quorum requirements to not hold member meetings. There are some communities in this state where the board has been in position for greater than 15 years without ever being elected by the members. If a vacancy occurs a friend of the board is appointed and that board member is allowed to remain on the board as long as he wants because elections are not held.*
- 2) Clarifies that the powers specified in the statutes are subject to the specific provisions of the community document and other sections of the applicable chapter. *Many powers granted a board are specified in the Bylaws and not just the Declaration, and are in some cases further limited by other sections in the relevant act.*
- 3) Clarifies that boards can fill vacancies of less than a majority of the board. *While most vacancies on a board occur one board member at a time. Situations still often occur where a majority of the board either resigns or moves. For those cases it is more appropriate for the members to elect new board members to fill the unexpired terms than to have a minority of the board appoint a majority of the board.*
- 4) Clarifies that the board has always retained the authority to modify the governing documents unilaterally to make provision of the community document compliant to State or Federal law. *Most governing documents allow the boards to modify either the declaration of the bylaws to be consistent with changing state and federal laws without requiring the supermajority approval of the members. If any provision in the community documents is superseded by state or federal law that*

provision is void and unenforceable. Correcting that issue becomes an editorial change for clarity in the guidance of the governing document.

5) Clarifies that a quorum of the board of Directors cannot be from the same household, for the obvious conflict this would cause with compliance with the open meeting laws of Sections 1246 or 1804.

Accountability:

1) Establishes a maximum civil penalty of \$500 per offense for violations of either the Condominium Act or the Planned Community act. *The homeowners are the only enforcement mechanism to assure compliance with the law. Because of the cost of litigation many associations take compliance with the law as optional because they know that most homeowners will not challenge their actions. While the threat of a fine may not be a compelling deterrent because the fine will be paid by the community as a whole and not the board members that violated the law, it is all that we have. At the very minimum it provides the adjudicating tribunal guidance for their discretion on appropriate fines. Establishing a maximum penalty also serves to ensure compliance with constitutional requirement to make the boards aware of what level of fine could be applied for non-compliance with the law.*