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October 11, 2012

Board of Directors
Concord Village, Inc.
631 E. Lexington Place
Tempe, AZ 85281

Re: OPEN MEETING LAWS

Dear Members of the Board:

This letter is in response to your inquiry regarding the application of so-called "Open Meeting Laws" to proceedings of the Board of Directors of Concord Village. We understand that some Members are contending that the Board may not meet without opening its meetings to any Member who wishes to attend. As outlined below, there is no open meeting law that applies to meetings of the Board of Directors of Concord Village. The Board may meet in executive session (without members present) at its discretion.

By way of explanation, the following are the only open meeting laws enshrined in the Arizona Revised Statutes which might even arguably apply to Concord Village together with the reasons they do not apply:

1. General Open Meeting Law:

A.R.S. §38-431.01 requires that meetings of "public bodies" be open to the public.¹ This statute applies essentially to governmental and/or quasi-governmental entities, which are defined by A.R.S. §38-431(6) as follows:

"Public body" means the legislature, all boards and commissions of this state or political subdivisions, all multimember governing bodies of departments, agencies, institutions and instrumentalities of this state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by this state or political subdivision. Public body includes all quasi-judicial

¹ Please note that in the case of public bodies as well as in the case of all the other statutes discussed in this letter, there are statutory exceptions which allow for meetings to be held in executive session (without members present) based upon the subject matter of the meeting. Because none of the statutes discussed in this letter apply to Concord Village by definition, those exceptions are not material to your inquiry. There are also many statutes not discussed here that address open meetings in the case of specific public or quasi-public entities.

bodies and all standing, special or advisory committees or subcommittees of, or appointed by, the public body. Public body includes all commissions and other public entities established by the Arizona Constitution or by way of ballot initiative, including the independent redistricting commission, and this article applies except and only to the extent that specific constitutional provisions supersede this article.

This Act by definition does not apply to meetings of the Board of Directors of any private organization.

2. **Planned Communities (A.R.S. §33-1801 *et seq.*):**

A.R.S § 33-1804 requires that meetings of the Board of Directors of a Planned Community be open to its members or their representatives. A.R.S §33-1802(4) defines as Planned Community as follows:

“Planned Community” means a real estate development which includes real estate owned and operated by a nonprofit corporation or unincorporated association of owners, 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.

In that there are no “separately owned lots, parcels or units” in the case of a housing cooperative, such an organization is not by definition a “planned community” and this Act therefore does not apply.

3. **Time Share Owners Association (A.R.S. §33-2201 *et seq.*):**

A.R.S. §33-2208 requires that meetings of the Board of a Timeshare Owners Association be open to members. This statutory scheme applies solely to time share properties and again has no application to a housing cooperative.

4. **Condominium Association (A.R.S. §33-1201 *et seq.*):**

A.R.S. §33-1248 requires that meeting of the Board of Directors of a Condominium Association be open to Members. This is the statute most frequently cited as “controlling” Cooperatives in the case of open meeting requirements. However, this statutory scheme again has no application to a housing cooperative due to the definition of a “condominium” in A.R.S. §33-1202 (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.

In the case of a housing cooperative there is no "separate ownership" of any portion of the real estate, nor are there any "undivided interests" vested in any of the Members. Thus again by definition a housing cooperative is not a "condominium".

5. **Uniform Residential Landlord and Tenant Act (A.R.S. §33-1301 *et seq.*):**

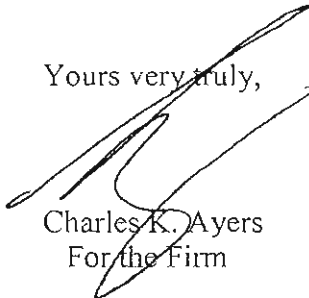
While this Act contains no open meeting requirements, it is often erroneously relied upon as controlling actions taken by a housing cooperative and is mentioned for that reason. This Act has no application to housing cooperatives due to the specific exclusion stated in A.R.S. §33-1308(6), which provides:

Unless created to avoid the application of this chapter, the following arrangements are not covered by this chapter: [...]

6. Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative.

We trust that this letter has been responsive to your inquiry. For your files we have attached copies of the various statutes discussed above. If you have any additional questions or wish to discuss any of the information set forth herein please feel free to contact the Firm at any time.

Yours very truly,

A handwritten signature in black ink, appearing to read "Charles K. Ayers", is written over the typed name and title.

Charles K. Ayers
For the Firm

Enclosures



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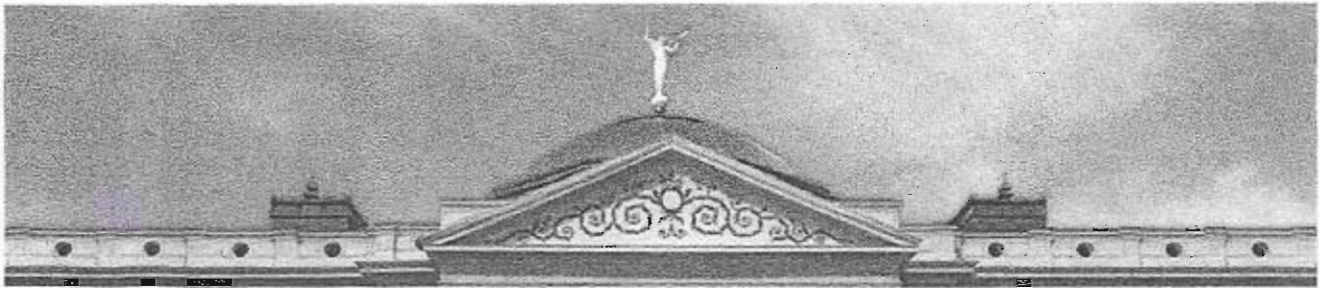
38-431. Definitions

In this article, unless the context otherwise requires:

1. "Advisory committee" or "subcommittee" means any entity, however designated, that is officially established, on motion and order of a public body or by the presiding officer of the public body, and whose members have been appointed for the specific purpose of making a recommendation concerning a decision to be made or considered or a course of conduct to be taken or considered by the public body.
2. "Executive session" means a gathering of a quorum of members of a public body from which the public is excluded for one or more of the reasons prescribed in section 38-431.03. In addition to the members of the public body, officers, appointees and employees as provided in section 38-431.03 and the auditor general as provided in section 41-1279.04, only individuals whose presence is reasonably necessary in order for the public body to carry out its executive session responsibilities may attend the executive session.
3. "Legal action" means a collective decision, commitment or promise made by a public body pursuant to the constitution, the public body's charter, bylaws or specified scope of appointment and the laws of this state.
4. "Meeting" means the gathering, in person or through technological devices, of a quorum of members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to such action.
5. "Political subdivision" means all political subdivisions of this state, including without limitation all counties, cities and towns, school districts and special districts.
6. "Public body" means the legislature, all boards and commissions of this state or political subdivisions, all multimember governing bodies of departments, agencies, institutions and instrumentalities of this state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by this state or political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, the public body. Public body includes all commissions and other public entities established by the Arizona Constitution or by way of ballot initiative, including the independent redistricting commission, and this article applies except and only to the extent that specific constitutional provisions supersede this article.
7. "Quasi-judicial body" means a public body, other than a court of law, possessing the power to hold hearings on disputed matters between a private person and a public agency and to make decisions in the general manner of a court regarding such disputed claims.

I. A member of a public body shall not knowingly direct any staff member to communicate in violation of this article.

J. Any posting required by subsection E of this section must remain on the applicable website for at least one year after the date of the posting.



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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.



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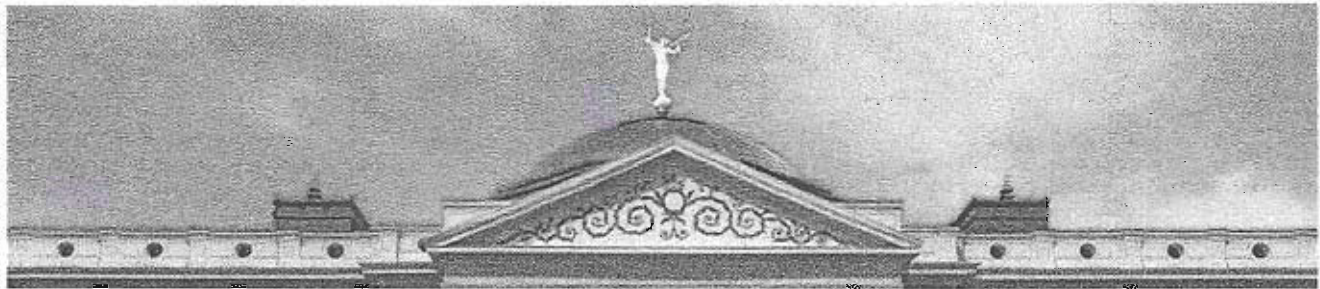
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33-1804. Open meetings; exceptions

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 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. 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.



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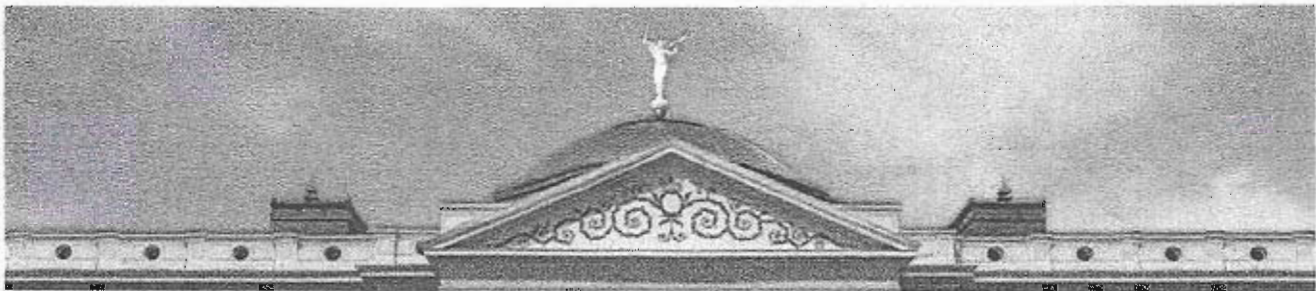
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33-2201. Application

This chapter applies to all timeshare plans, timeshare property and associations in this state that are established on or after the effective date of this chapter. This chapter also applies, unless the timeshare instrument provides otherwise, to timeshare plans, timeshare property and associations in this state that are established at any time before the effective date of this chapter. Notwithstanding this title or title 32 this chapter governs if there is any conflict between this chapter and any other statute related to the operation and management of timeshare plans, timeshare property or associations in this state.



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33-2202. Definitions

In this chapter, unless the context otherwise requires:

1. "Accommodation" means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room or other private or commercial structure that contains toilet facilities, that is designed and available for use and occupancy as a residence by one or more individuals and that is included in the offering of a timeshare plan.
2. "Assessment" means the share of monies that are required for the payment of common expenses and that the managing entity assesses periodically against each owner, and any other amount required to be paid by owners under a timeshare instrument.
3. "Association" means any organized body consisting solely of the owners of timeshare interests in a timeshare plan.
4. "Board" means the governing body designated in the timeshare instrument to act on behalf of an association.
5. "Common expenses" means the costs and expenses of and for operating the timeshare plan and timeshare property as set forth in the timeshare instrument.
6. "Developer" means either of the following:
 - (a) Any person, corporation, partnership, limited liability company, trust or other entity, other than a sales agent, that creates a timeshare plan.
 - (b) Any person or entity that succeeds to the interest of the developer by sale, lease, assignment, mortgage or other transfer if the person offers timeshare interests in a particular timeshare plan and the person is in the business of selling timeshare interests or employs sales agents to sell timeshare interests.
7. "Managing entity" means the association or other person that undertakes the duties, responsibilities and obligations of the management of a timeshare plan.
8. "Owner" means the owners of a timeshare interest in a timeshare plan, other than as security for an obligation. Owner includes developer to the extent the developer owns timeshare interests.
9. "Timeshare estate" means the right of occupancy in a timeshare property that is coupled with an estate in real property.
10. "Timeshare instrument" means one or more documents creating or governing the operation of a timeshare plan.
11. "Timeshare interest" means either a timeshare estate or a timeshare use.
12. "Timeshare period" means the period of time when the owner of a timeshare interest is afforded the opportunity to use the accommodations of a timeshare plan.
13. "Timeshare plan" means any arrangement, plan or similar device, other than an exchange program, whether by membership agreement, or sales, lease, deed, license or right-to-use agreement or by any other means, in which an owner, in exchange for consideration, receives ownership rights in or the right to use accommodations for a period of time that is less than a full year during any given year, but not necessarily for consecutive years, if the use rights extend for at least three years.
14. "Timeshare property" means one or more accommodations that are subject to the same timeshare instrument, together with any other property or rights to property appurtenant to those accommodations.
15. "Timeshare use" means the right to occupy a timeshare property that is not coupled with an estate in real property.



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.



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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 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. 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 per cent, 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 time and place of the meeting. The notice of any 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.

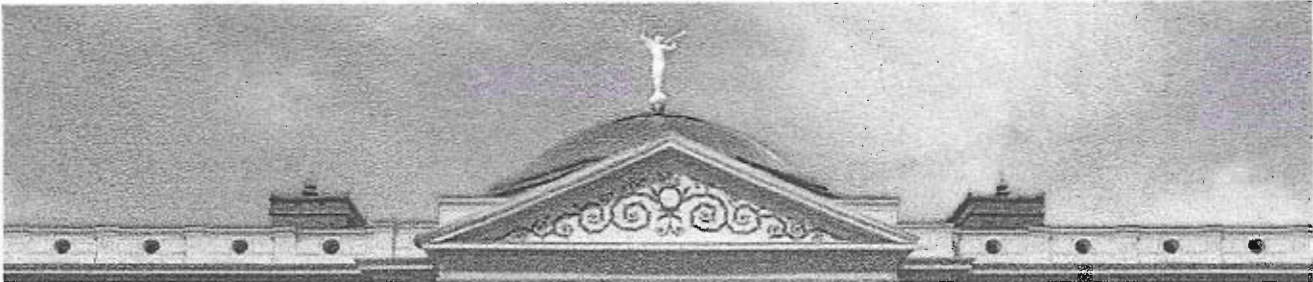
C. Notwithstanding any provision in the declaration, bylaws or other condominium documents, for meetings of the board of directors that are held after the termination of declarant control of the association, notice to unit owners of meetings of the board of directors shall be given at least forty-eight 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 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.

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, 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 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 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.

E. 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 is taken. Toward this end, any person or entity that is charged 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.

F. This section does not apply to timeshare plans or associations that are subject to chapter 20 of this title.



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33-1308. Exclusions from application of chapter

Unless created to avoid the application of this chapter, the following arrangements are not covered by this chapter:

1. Residence at an institution, public or private, if incidental to detention, the provision of medical, educational, counseling or religious services or the provision of a social service program that is provided by a social service provider. For the purposes of this paragraph, "social service provider" means a private entity that directly assists an individual or family in obtaining housing and that offers to provide the individual or family with assistance in obtaining employment, child care, health care, education, skills training, transportation, counseling or any other related service.
2. Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest.
3. Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization.
4. Transient occupancy in a hotel, motel or recreational lodging.
5. Occupancy by an employee of a landlord as a manager or custodian whose right to occupancy is conditional upon employment in and about the premises.
6. Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative.
7. Occupancy in or operation of public housing as authorized, provided or conducted under or pursuant to title 36, chapter 12, or under or pursuant to any federal law or regulation.