

Board Duties; Indemnification; Accountability

33-1202. Definitions

In the condominium documents, unless specifically provided otherwise or the context otherwise requires, and 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. "Assessment" means the share of monies that is required for the payment of common expenses and that the association assesses periodically against each unit.

5. "Association" or "unit owners' association" means the unit owners' association organized under section 33-1241.

6. "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.

7. "Bylaws" means the bylaws required by section 33-1246.

8. "Common elements" means all portions of a condominium other than the units.

9. "Common expense liability" means the liability for common expenses allocated to each unit pursuant to section 33-1217.

10. "Common expense lien" means the lien for assessments, charges for late payment of assessments if authorized the declaration, reasonable collection fees and cost incurred or applied by the association and reasonable attorney fees and cost that are incurred with respect to those assessments, if the attorney fees and cost are awarded by a court.

11. "Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.

12. "Condominium" means:

(a) 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.

(b) Real Estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

13. "Condominium documents" means the declaration, bylaws, articles of incorporation, if any, and rules, if any.

14. "Declarant" means any person or group of persons who reserves, is granted or succeeds to any special declarant right.

15. "Declaration" means any instruments, however denominated, that create a condominium and any amendments to those instruments.

16. "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 G, to comply with applicable law

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1 or to correct any error or inconsistency in the declaration, if the amendment
2 does not adversely affect the rights of any unit owner.

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

8 17. "Identifying number" means a symbol or address that identifies
9 one unit in a condominium.

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

13 19. "Limited common element" means a portion of the common elements
14 specifically designated as a limited common element in the declaration and
15 allocated by the declaration or by operation of section 33-1212, paragraph
16 2 or 4 for the exclusive use of one or more but fewer than all of the units.

17 20. "Person" means:

18 (a) A natural person, corporation, business trust, estate, trust,
19 partnership, association, joint venture, government, governmental
20 subdivision or agency, or other legal or commercial entity.

21 (b) In the case of a subdivision trust, as defined in section 6-801,
22 the beneficiary of the trust who holds the right to subdivide, develop or
23 sell the real estate rather than the trust or trustee.

24 21. "Real estate" means:

25 (a) Any legal, equitable, leasehold or other estate or interest in,
26 over or under land, including structures, fixtures and other improvements
27 and interests which by custom, usage or law pass with a conveyance of land
28 though not described in the contract of sale or instrument of conveyance.

29 (b) Includes parcels with or without upper or lower boundaries and
30 spaces that may be filled with air or water.

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

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

37 (a) Construct improvements provided for in the declaration.

38 (b) Exercise any development right.

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

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

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

46 24. "Unit" means a portion of the condominium designated for separate
47 ownership or occupancy.

48 25. "Unit owner" means:

49 (a) A declarant or other person who owns a unit or, unless otherwise
50 provided in the lease, a lessee of a unit in a leasehold condominium whose
51 lease expires simultaneously with any lease the expiration or termination
52 of which will remove the unit from the condominium but does not include a
53 person having an interest in a unit solely as security for an obligation.

54 (b) In the case of a contract for conveyance, as defined in section
55 33-741, of real property, the purchaser of the unit.

56 26. "Unit owner expenses":

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- (a) Means fees, charges, late charges and monetary penalties or interest that is imposed pursuant to section 33-1242, subsection A paragraph 10, 11 and 12.
- (b) Does not include any amount that is included in a common expense lien.

33-1215. Contents of declaration

A. The declaration shall contain:

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

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B. If a city, town or county is unable to produce a building permit as required in subsection A, paragraph 11, subdivision (c) of this section, the subdivider shall submit a letter from the applicable city, town or county stating that the information required by subsection A, paragraph 11, subdivision (c) of this section is not available.

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

33-1243. Board of directors and officers; conflict; powers; DUTIES; INDEMNIFICATION; LIABILITY, limitations; removal; annual audit; applicability

A. Except as provided in the declaration, the bylaws, subsection B of this section or other provisions of this chapter, the board of directors may act in all instances on behalf of the association.

B. AFTER TERMINATION OF THE PERIOD OF DECLARANT CONTROL, NOTWITHSTANDING ANY PROVISION OF THE CONDOMINIUM DOCUMENTS TO THE CONTRARY, the board of directors shall not act on behalf of the association to ~~amend the declaration,~~ terminate the condominium, elect, OR REMOVE, members of the board of directors, or determine the qualifications, powers, and duties or terms of office of board of directors' members. ~~Except as provided in subsection H of this section,~~ A QUORUM OF the board of directors may fill vacancies in its membership for the unexpired portion of any term.

C. If any contract, decision or other action for compensation taken by or on behalf of the board of directors would benefit any member of the board of directors or any person who is a parent, grandparent, spouse, child or sibling of a member of the board of directors or a parent or spouse of any of those persons, that member of the board of directors shall declare a conflict of interest for that issue. The member shall declare the conflict in an open meeting of the board before the board discusses or takes action on that issue, and that member may ~~then~~ NOT vote on that issue. ~~Any contract entered into in violation of this section is void and unenforceable.~~ THE DECLARATION OF CONFLICT SHALL BE RECORDED IN THE MINUTES OF THE MEETING.

D. AFTER TERMINATION OF THE PERIOD OF DECLARANT CONTROL, AND NOTWITHSTANDING ANY PROVISION OF TITLE 10 TO THE CONTRARY, THE ASSOCIATION'S BOARD OF DIRECTORS SHALL HAVE THE FOLLOWING DUTIES TO THE UNIT OWNERS AND THE ASSOCIATION:

1. TO ACT IN GOOD FAITH, AND IN COMPLIANCE WITH THE REQUIREMENTS OF AND WITHIN THE AUTHORITY GRANTED BY THIS CHAPTER AND THE CONDOMINIUM DOCUMENTS.

2. TO ACT WITH ORDINARY CARE AND PRUDENCE TO PRESERVE, PROTECT, AND MAINTAIN THE COMMON ELEMENTS, PROVIDE FOR REASONABLE SAFETY WITHIN THE COMMON ELEMENTS, AND TO BUDGET FOR, PROTECT, MANAGE, AND EXPEND THE FINANCIAL ASSETS OF THE ASSOCIATION.

3. TO TREAT UNIT OWNERS FAIRLY, AND TO ACT REASONABLY IN THE EXERCISE OF THEIR DISCRETIONARY POWERS OF RULEMAKING AND ENFORCEMENT.

4. TO ACT IN A MANNER THE DIRECTORS REASONABLY BELIEVE TO BE IN THE BEST INTEREST OF THE UNIT OWNERS AS A WHOLE.

E. THE BOARD OF DIRECTORS ARE INDEMNIFIED FROM ALL LIABILITY FOR ANY ACTION TAKEN OR ANY FAILURE TO TAKE ANY ACTION IF THE DUTIES WERE PERFORMED IN COMPLIANCE WITH SUBSECTION D. IN ANY PROCEEDINGS COMMENCED UNDER THIS SECTION OR ANY OTHER PROVISION OF THIS CHAPTER, A DIRECTOR IS PRESUMED IN ALL CASES TO HAVE ACTED, FAILED TO ACT OR OTHERWISE DISCHARGE SUCH DIRECTOR'S DUTIES PER SUBSECTION D. THE BURDEN IS ON THE PARTY CHALLENGING THE DIRECTOR'S ACTION, FAILURE TO ACT OR OTHER DISCHARGE OF DUTIES TO ESTABLISH A BREACH OF DUTY BY CLEAR AND CONVINCING EVIDENCE, FACTS REBUTTING THE PRESUMPTION. EXCEPT WHEN THE BREACH ALLEGED WAS BEYOND THE

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1 AUTHORITY OF THE BOARD OR INDIVIDUAL DIRECTOR TO TAKE, THE CHALLENGER HAS
2 THE ADDITIONAL BURDEN OF PROVING THAT THE BREACH HAS CAUSED OR THREATENS TO
3 CAUSE HARM TO THE PLAINTIFF OR THE INTEREST OF THE CONDOMINIUM ASSOCIATION.

4 1. IF THE BOARD OF DIRECTORS IS FOUND BY A COURT OF COMPETENT
5 JURISDICTION TO HAVE ACTED IN BREACH OF THE DUTIES PRESCRIBED IN
6 SUBSECTION D OF THIS SECTION. IN THAT CASE, THE ASSOCIATION, AND ANY PAID
7 AGENT MADE PARTY TO THE SUIT, AND FOUND TO BE COMPLICIT IN THE BREACH, MAY
8 BE JOINTLY AND SEVERABLY LIABLE FOR ANY DAMAGES, ATTORNEY FEES, AND THE
9 COSTS OF SUIT AWARDED TO A PLAINTIFF IN LITIGATION AGAINST THE ASSOCIATION
10 AS A RESULT OF THE BREACH.

11 2. ANY DIRECTOR FOUND COMPLICIT IN THE BREACH OF DUTY BASED ON THEIR
12 INDIVIDUAL VOTE OR DIRECT ACTION ON THE ISSUE SHALL BE REMOVED FROM OFFICE
13 AND MAY BE BARRED FROM SERVING ON ANY COMMON INTEREST COMMUNITY BOARD FOR
14 UP TO FIVE YEARS, AT THE DISCRETION OF AND BY ORDER OF THE COURT.

15 3. IN ADDITION TO THE FINANCIAL LIABILITY, IF THE ASSOCIATION'S
16 ATTORNEY IS FOUND COMPLICIT IN THE BREACH OF DUTY BASED ON DIRECT ADVICE
17 OR ACTIONS FROM OR BY THE ATTORNEY, THE ATTORNEY MAY BE REFERRED TO THE
18 STATE BAR OF ARIZONA FOR CONSIDERATION OF DISCIPLINARY ACTIONS PURSUANT TO
19 RULE 42 OF THE RULES OF THE SUPREME COURT OF ARIZONA, BY ORDER OF THE
20 COURT.

21 **D F.** Except as provided in the declaration, within thirty days
22 after adoption of any proposed budget for the condominium, the board of
23 directors shall provide a summary of the budget to all the unit owners.
24 Unless the board of directors is expressly authorized in the declaration
25 to adopt and amend budgets from time to time, any budget or amendment
26 shall be ratified by the unit owners in accordance with the Procedures set
27 forth in this subsection. If ratification is required, the board of
28 directors shall set a date for a meeting of the unit owners to consider
29 ratification of the budget not fewer than fourteen or more than thirty
30 days after mailing of the summary. Unless at that meeting a majority of
31 all the unit owners or any larger vote specified in the declaration
32 rejects the budget, the budget is ratified, whether or not a quorum is
33 present. If the proposed budget is rejected, the periodic budget last
34 ratified by the unit owners shall be continued until such time as the unit
35 owners ratify a subsequent budget proposed by the board of directors.

36 **E G.** The declaration may provide for a period of declarant control
37 of the association, during which period a declarant or persons designated
38 by the declarant may appoint and remove the officers and members of the
39 board of directors. Regardless of the period provided in the declaration,
40 a period of declarant control terminates not later than the earlier of:

41 1. Ninety days after conveyance of seventy-five percent of the units
42 that may be created to unit owners other than a declarant.

43 2. Four years after all declarants have ceased to offer units for
44 sale in the ordinary course of business.

45 **F H.** A declarant may voluntarily surrender the right to appoint and
46 remove officers and members of the board of directors before termination of
47 the period prescribed in subsection **E G** of this section, but in that event
48 the declarant may require, for the duration of the period of declarant
49 control, that specified actions of the association or board of directors,
50 as described in a recorded instrument executed by the declarant, be approved
51 by the declarant before they become effective.

52 **G I.** Not later than the termination of any period of declarant control
53 the unit owners shall elect a board of directors of at least three members,
54 at least a majority of whom must be unit owners. The board of directors
55 shall elect the officers. The board members and officers shall take office
56 on election.

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

1. The unit owners who are eligible to vote at the time of the meeting may remove any member of the board of directors, other than a member appointed by the declarant, by a majority vote of those voting on the matter at a meeting of the unit owners.

2. The meeting of the unit owners shall be called pursuant to this section and action may be taken only if a quorum is present.

3. The unit owners may remove any member of the board of directors with or without cause, other than a member appointed by the declarant.

4. For purposes of calling for removal of a member of the board of directors, other than a member appointed by the declarant, the following apply:

(a) In an association with one thousand or fewer members, on receipt of a petition that calls for removal of a member of the board of directors and that is signed by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least twenty-five percent of the votes in the association or by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least one hundred votes in the association, whichever is less, the board shall call and provide written notice of a special meeting of the association as prescribed by section 33-1248, subsection B.

(b) Notwithstanding section 33-1248, subsection B, in an association with more than one thousand members, on receipt of a petition that calls for removal of a member of the board of directors and that is signed by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least ten percent of the votes in the association or by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least one thousand votes in the association, whichever is less, the board shall call and provide written notice of a special meeting of the association. The board shall provide written notice of a special meeting as prescribed by section 33-1248, subsection B.

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

(d) If all of the requirements of this section for calling a special meeting are met and the board of directors fails to call, notice, and hold a special meeting within thirty days after receipt of the petition, the members of the board of directors are deemed removed from office effective at midnight of the thirty-first day.

(e) For purposes of a special meeting called pursuant to this subsection, a quorum is present if the number of owners who are eligible to vote in the association at the time the person attends the meeting equal to at least twenty percent of the votes of the association or the number of persons who are eligible to vote in the association at the time the person attends the meeting equal to at least one thousand votes, whichever is less, is present at the meeting in person or as otherwise allowed by law.

(f) If a civil action is filed regarding the removal of a board member, the prevailing party in the civil action shall be awarded its reasonable attorney fees and costs.

(g) The board of directors shall retain all documents and other records relating to the proposed removal of the member of the board of directors and any election or other action taken for that director's replacement for at least one year after the date of the special meeting and

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shall allow members to inspect those documents and records pursuant to section 33-1258.

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

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

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

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

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

~~J~~ L. Unless any provision in the condominium documents requires an annual audit by a certified public accountant, the board of directors shall provide for an annual financial audit, review or compilation of the association. The audit, review or compilation shall be completed no later than one hundred eighty days after the end of the association's fiscal year and shall be made available on request to the unit owners within thirty days after its completion.

~~K~~ M. This section does not apply to timeshare plans or associations, or the period of declarant control under timeshare instruments, that are subject to chapter 20 of this title.

33-1245. Termination of contracts and leases of declarant; applicability

A. A contract for any of the following, if entered into before the board of directors elected by the unit owners pursuant to section 33-1243, subsection ~~G~~ I takes office, shall contain a provision in the contract that the contract may be terminated without penalty by the association at any time after the board of directors elected by the unit owners takes office:

1. Any management contract or employment contract.

2. Any other contract or lease between the association and a declarant or an affiliate of a declarant.

3. Any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing.

B. The board of directors shall notify the appropriate contractual party of the termination at least thirty days before termination.

C. This section does not apply to any lease if the termination of the lease would terminate the condominium or reduce its size.

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D. If a contract covered by this section fails to contain the provisions required by subsection A of this section, the contract is voidable at the option of the association.

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

33-1811. Board of directors; POWERS: DUTIES; INDEMNIFICATIONS; LIABILITIES; contracts; conflict

A. EXCEPT AS PROVIDED IN THE DECLARATION, THE BYLAWS, SUBSECTION B OF THIS SECTION, OR OTHER PROVISIONS OF THIS CHAPTER, THE BOARD OF DIRECTORS MAY ACT IN ALL INSTANCES ON BEHALF OF THE ASSOCIATION.

B. AFTER TERMINATION OF THE PERIOD OF DECLARANT CONTROL, NOTWITHSTANDING ANY PROVISION OF THE COMMUNITY DOCUMENTS TO THE CONTRARY, THE BOARD OF DIRECTORS SHALL NOT ACT ON BEHALF OF THE ASSOCIATION TO ELECT, OR REMOVE MEMBERS OF THE BOARD OF DIRECTORS, OR DETERMINE THE QUALIFICATIONS, POWERS, AND DUTIES, OR TERMS OF OFFICE OF THE BOARD OF DIRECTORS' MEMBERS. A QUORUM OF THE BOARD OF DIRECTORS MAY FILL VACANCIES IN ITS MEMBERSHIP FOR THE UNEXPIRED PORTION OF ANY TERM.

C. If any contract, decision or other action for compensation taken by or on behalf of the board of directors would benefit any member of the board of directors or any person who is a parent, grandparent, spouse, child or sibling of a member of the board of directors or a parent or spouse of any of those persons, that member of the board of directors shall declare a conflict of interest for that issue. The member shall declare the conflict in an open meeting of the board before the board discusses or takes action on that issue and that member may ~~then~~ NOT vote on that issue. ~~Any contract entered into in violation of this section is void and unenforceable. THE DECLARATION OF CONFLICT SHALL BE RECORDED IN THE MINUTES OF THE MEETING.~~

D. AFTER TERMINATION OF THE PERIOD OF DECLARANT CONTROL, AND NOTWITHSTANDING ANY PROVISION OF TITLE 10 TO THE CONTRARY, THE ASSOCIATION'S BOARD OF DIRECTORS SHALL HAVE THE FOLLOWING DUTIES TO THE MEMBERS AND THE ASSOCIATION:

1. TO ACT IN GOOD FAITH, AND IN COMPLIANCE WITH THE REQUIREMENTS OF AND WITHIN THE AUTHORITY GRANTED BY THIS CHAPTER AND THE COMMUNITY DOCUMENTS.

2. TO ACT WITH ORDINARY CARE AND PRUDENCE TO PRESERVE, PROTECT, AND MAINTAIN THE COMMON PROPERTY, PROVIDE FOR REASONABLE SAFETY WITHIN THE COMMON PROPERTY, AND TO BUDGET FOR, PROTECT, MANAGE, AND EXPEND THE FINANCIAL ASSETS OF THE ASSOCIATION.

3. TO TREAT MEMBERS FAIRLY, AND TO ACT REASONABLY IN THE EXERCISE OF THEIR DISCRETIONARY POWERS OF RULEMAKING, DESIGN CONTROL, AND ENFORCEMENT.

4. TO ACT IN A MANNER THE DIRECTORS REASONABLY BELIEVE TO BE IN THE BEST INTEREST OF THE ASSOCIATION AND MEMBERS AS A WHOLE.

E. THE BOARD OF DIRECTORS ARE INDEMNIFIED FROM ALL LIABILITY FOR ANY ACTION TAKEN OR ANY FAILURE TO TAKE ANY ACTION IF THE DUTIES WERE PERFORMED IN COMPLIANCE WITH SUBSECTION D. IN ANY PROCEEDINGS COMMENCED UNDER THIS SECTION OR ANY OTHER PROVISION OF THIS CHAPTER, A DIRECTOR IS PRESUMED IN ALL CASES TO HAVE ACTED, FAILED TO ACT OR OTHERWISE DISCHARGE SUCH DIRECTOR'S DUTIES PER SUBSECTION D. THE BURDEN IS ON THE PARTY CHALLENGING THE DIRECTOR'S ACTION, FAILURE TO ACT OR OTHER DISCHARGE OF DUTIES TO ESTABLISH A BREACH OF DUTY BY CLEAR AND CONVINCING EVIDENCE, FACTS REBUTTING THE PRESUMPTION. EXCEPT WHEN THE BREACH ALLEGED WAS BEYOND THE AUTHORITY OF THE BOARD OR INDIVIDUAL DIRECTOR TO TAKE, THE CHALLENGER HAS THE ADDITIONAL BURDEN OF PROVING THAT THE BREACH HAS CAUSED OR THREATENS TO CAUSE HARM TO THE PLAINTIFF OR THE INTEREST OF THE PLANNED COMMUNITY ASSOCIATION.

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1 1. IF THE BOARD OF DIRECTORS IS FOUND BY A COURT OF COMPETENT
2 JURISDICTION TO HAVE ACTED IN BREACH OF THE DUTIES PRESCRIBED IN
3 SUBSECTION D OF THIS SECTION. IN THAT CASE, THE ASSOCIATION, AND ANY PAID
4 AGENT MADE PARTY TO THE SUIT AND FOUND TO BE COMPLICIT IN THE BREACH, MAY
5 BE JOINTLY AND SEVERABLY LIABLE FOR ANY DAMAGES, ATTORNEY FEES, AND THE
6 COSTS OF SUIT AWARDED TO A PLAINTIFF IN LITIGATION AGAINST THE ASSOCIATION
7 AS A RESULT OF THE BREACH.

8 2. ANY DIRECTOR FOUND COMPLICIT IN THE BREACH OF DUTY BASED ON THEIR
9 INDIVIDUAL VOTE OR DIRECT ACTION ON THE ISSUE SHALL BE REMOVED FROM OFFICE
10 AND MAY BE BARRED FROM SERVING ON ANY COMMON INTEREST COMMUNITY BOARD FOR
11 UP TO FIVE YEARS, AT THE DISCRETION OF AND BY ORDER OF THE COURT.

12 3. IN ADDITION TO THE FINANCIAL LIABILITY, IF THE ASSOCIATION'S
13 ATTORNEY IS FOUND COMPLICIT IN THE BREACH OF DUTY BASED ON DIRECT ADVICE
14 OR ACTIONS FROM OR BY THE ATTORNEY, THE ATTORNEY MAY BE REFERRED TO THE
15 STATE BAR OF ARIZONA FOR CONSIDERATION OF DISCIPLINARY ACTIONS PURSUANT TO
16 RULE 42 OF THE RULES OF THE SUPREME COURT OF ARIZONA, BY ORDER OF THE
17 COURT.
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22 Legislative Intent:

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24 The legislature in this Act finds that the duties of a Common
25 Interest Community board of directors are based on well-established common
26 and case law principles compiled in the Restatement of Law Third Property
27 Servitudes sections 6.13, 6.14, and 6.16 and invoked as the standard by
28 the Arizona Appellate Court in their Tierra Rancho v. Kitchukov decision
29 in 2007 along with the McNally v. Sun Lakes HOA decision in 2016, and the
30 Arizona Supreme court decision in Martinez v. Woodmar IV Condominiums in
31 1997. The provisions of this act constitute no substantive changes in law.
32 This act codifies these principles into statute to help communicate these
33 duties to all board members and to counter misinformation and
34 misrepresentation of the truth regarding these duties by HOA Industry
35 players.

36 This act establishes blanket indemnification from any liability for
37 the board of directors and any individual board members who comply with
38 the reasonable and straightforward duties as established. It also imposes
39 a high burden of proof required to challenge that indemnification, thereby
40 mitigating frivolous lawsuits. But if a board of directors is found to
41 have breached its duties to the community, appropriate accountability
42 provisions are applied. Additionally, it will impose accountability and
43 liability on paid agents who knowingly advise the volunteer board to act
44 contrary to their duties to the community or in direct violation of the
45 law or the governing documents. While many examples of board actions
46 violating their fundamental duties to the association were taken against
47 the direct advice or recommendations of their paid advisors, the vast
48 majority of such actions were directly based on the bad advice from the
49 paid advisors to those association boards.