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Information Session

**Proposed Homeowner
Budget Initiative**

April 11, 2024



Welcome

- The purpose of this Information Session is to share the Board's perspective on the budget initiative proposed by homeowners
- Describe best business practices for Arizona Community Associations
- Explain existing legislative and contractual protections for members
- Examine potential unintended consequences of the proposal
- Welcome civil dialogue



Proposed Initiative

- In light of recent Assessment increase, there is a proposal to require 2/3 membership approval for annual budgets
- Motivated by frustration with the current assessment increase and fear of future increases

Best Practices for Arizona Community Associations

- According to the Community Associations Institute, a national organization, there are 2,249,000 people that reside in the 10,100 community associations in this state
- Based on 30+ years of experience focusing our law practice on Arizona Community Association, **the vast majority of Community Associations are nonprofit corporations, governed by volunteer Boards of Directors with budget authority**

Best Practices for Arizona Community Associations

- Community Association governance is deliberate
- Directors have heightened legal duties to the Association – a duty of loyalty to be informed and to act in the best interests of the Community as whole
- Directors face personal liability if the duty of loyalty is violated
- General members are free to act in a self-interested manner to protect their individual property values
- **Therefore, budgetary authority is delegated to directors**

Best Practices for Arizona Community Associations

- The Arizona Planned Community Statutes at A.R.S. § 33-1804(A) and A.R.S. § 33-1805(B) limit the information available to the general membership
 - Attorney-client privileged information
 - Pending/Contemplated litigation
 - Personal, health, or financial information of members, employees, and contractors
 - Job performance, compensation, and health records of, or complaints against, employees and contractors
- Management is intimately familiar with maintenance and operations costs
- **It is difficult for general members to make informed decisions about the final budget because the law limits the information they have access to**

Best Practices for Arizona Community Associations

- The Board's authority to fund operations is necessary to support the Board's authority to manage the Association that is delineated throughout the governing documents
- Efficiency requires that, while meetings and records are open to members, decision making is concentrated in the few directors that comprise the Board
- Several other examples of critical decisions entrusted to the Board, i.e. directing a foreclosure lawsuit to collection assessments
- For these reasons, **governance decisions, particularly determining the Association budget and assessments, are left to the Board**

Unintended Consequences

Section 6.3 (Annual Assessment and Budget)

The amount of the annual assessment for each Lot shall, for each fiscal year of the Association, be determined at least thirty (30) days in advance of each fiscal year. Each year, the Board of Directors will give due consideration to current maintenance and repair costs of the common areas, insurance premiums for insurance on the common areas, operating costs of the Association, and the need for contingency and maintenance reserves. During this process the Board will consider the level of increase in the HOA's assessment for the next fiscal year. **The proposed annual budget, including the proposed assessment for each lot, shall be sent to every lot owner at least sixty (60) days before commencement of the next fiscal year for approval. Once a proposed budget, including a proposed assessment, is approved by at least two-thirds (2/3) of all valid ballots cast,** The Board will give written notice to Lot owners confirming the next fiscal year's annual assessment for each lot at least 30 days in advance of the commencement of each fiscal year.

Unintended Consequences

- What happens if the budget is not approved?
- Could paralyze operations
- Statutory and contractual formalities of the membership meeting and vote, achieving quorum, etc. can be difficult to navigate
- Could create inconsistencies across the governing documents regarding Board powers and duties to act on behalf of the Association
- The corporation must be able to address growing inflation, escalating labor costs including the minimum wage increase, rising contractor charges, and general costs of maintaining 40-year-old infrastructure
- Failure to meet operational expenses can result in reduced services, deferred maintenance, and even receivership

Unintended Consequences

- The proposed language is imprecise
- Creates conflicts with express powers of the Board
- Fails to address the assessment amount if the proposed budget is not approved by the membership
- Fails to specify calculation of 2/3 membership approval requirement
- Fails to specify notice and quorum requirements for membership consideration of proposed budget

Legislative and Contractual Protections

- The right to critically review budget proposals and offer feedback to the Board in advance of adoption currently exists
- **Standing Finance Committee participation is open**, advisory to the Board
- The Arizona Planned Community Statutes at A.R.S. § 33-1804 and A.R.S. § 33-1805 give members rights to observe and review meetings and records
- The governing documents expressly describe the purpose of assessments

Legislative and Contractual Protections

- The Arizona Planned Community Statutes at A.R.S. § 33-1803(A) and the CC&Rs at Section 6.3 set an annual ceiling for assessment increases of 20% greater than the immediately preceding fiscal year's assessment
- Directors are elected, and removed, by the general membership
 - 7 members
 - 3-year term, maximum of 3 terms
 - Terms are staggered
 - New Board members are elected each March by the homeowners.



Be Proactive, Not Reactive

- Review and understand the current budget
- Offer alternative proposals for funding 2025 operations
- Standing Finance Committee participation is open, be an advisory to the Board

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