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May 23, 2019

**SENT VIA CERTIFIED MAIL AND EMAIL**

One Hundred Hills Homeowners Association  
c/o FirstService Residential (Scottsdale)  
9000 East Pima Parkway Suite 300  
Scottsdale, AZ 85258

Jonathan Tutelo  
FirstService Residential Community Manager  
[jonathan.tutelo@fsresidential.com](mailto:jonathan.tutelo@fsresidential.com)

**RE: Martin Pladgeman; Account # 443003-0040-02; Fine Appeal and  
May 28, 2019 Board Meeting.**

Dear Mr. Tutelo:

This firm has been retained to represent Martin Pladgeman ("Mr. Pladgeman") with regard to the fine assessed and collected against him by One Hundred Hills Homeowners Association ("the Association"). Pursuant to A.R.S. § 33-1804(A), Martin Pladgeman has designated me as his representative to attend and speak on his behalf during deliberations and proceedings at the May 28, 2019 Board Meeting at which his appeal from the fine will be heard. Pursuant to A.R.S. § 33-1804(A)(5), Mr. Pladgeman hereby demands that his appeal be heard during the open session of the Board Meeting on May 28, 2019 and not during the closed session.

On May 8, 2019, Mr. Pladgeman sent a certified letter in response to the fine notice in which he requested information such as the specific provision of the community documents that he allegedly violated, clarification on the alleged "previous efforts to obtain compliance," and the alleged "recent inspection" showing non-compliance. Pursuant to A.R.S. § 33-1803(D), the Association was

to respond within ten business days, in writing, with answers to these questions and “the first and last name of the person or persons who observed the violation.” Yesterday was the deadline for the Association to provide this written response but Mr. Pladgeman has not yet received anything. Please provide such written response by 3:00 p.m. tomorrow.

Pursuant to the Associations own Fine Policy and Appeal Process, Mr. Pladgeman was supposed to have been given a written notice of a first violation before he could be fined for a second violation. No first notice was ever given, and if the Association contends that it was then we demand a copy. Pursuant to A.R.S. § 33-1804(B) the Association could only fine Mr. Pladgeman after providing “notice and an opportunity to be heard,” and it could only impose a fine that is “reasonable.” The association both assessed the fine and collected it before Mr. Pladgeman ever even received the notice, let alone an opportunity to be heard, and the amount of \$500 is clearly excessive. Further, pursuant to A.R.S. § 33-1803(E), the Association was not to proceed with enforcement until the information had been provided to Mr. Pladgeman in accordance with A.R.S. § 33-1803(D).

I have enclosed copies of the above cited statutes for your review. We expect to receive the Association’s overdue written response by tomorrow and we will be at the open session of the May 28, 2019 Board Meeting to be heard on Mr. Pladgeman’s appeal. If you have any questions or concerns please do not hesitate to contact me.

Sincerely,

**DEGNAN LAW, PLLC**

/s/ Mark W. Horne  
Mark W. Horne, Esq.  
For the Firm

Enclosures.

## **A.R.S. § 33-1804**

Current through emergency legislation adopted by the 54th Legislature (2019), 1st Reg. Sess., effective April 11, 2019.

***LexisNexis® Arizona Annotated Revised Statutes > Title 33 Property (Chs. 1 — 23) > Chapter 16 Planned Communities (Art. 1) > Article 1. General Provisions (§§ 33-1801 — 33-1818)***

### **33-1804. Open meetings; exceptions**

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**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 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 shall not require advance notice of the audiotaping or videotaping and may adopt reasonable rules governing the audiotaping and 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, unless the board audiotapes or videotapes the meeting and makes the unedited audiotapes or videotapes available to members on request without restrictions on its use as evidence in any dispute resolution process. 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 percent, 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

## A.R.S. § 33-1804

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 date, time and place of the meeting. A notice of any annual, regular or 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.

**C.** Before entering into any closed portion of a meeting of the board of directors, or on notice of a meeting under subsection D of this section that will be closed, the board shall identify the paragraph under subsection A of this section that authorizes the board to close the meeting.

**D.** Notwithstanding any provision in the declaration, bylaws or other community documents, for meetings of the board of directors that are held after the termination of declarant control of the association, notice to members 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 corporation is prima facie evidence that notice was given as prescribed by this section. Notice to members 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 date, time and place of the meeting. The failure of any member to receive actual notice of a meeting of the board of directors does not affect the validity of any action taken at that meeting.

**E.** Notwithstanding any provision in the declaration, bylaws or other community 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 members attending.
2. An emergency meeting of the board of directors may be called to discuss business or take action that cannot be delayed for the forty-eight hours required for notice. At any emergency meeting called by the board of directors, the board of directors may act only on emergency matters. 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 association members 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.

**F.** It is the policy of this state as reflected in this section that all meetings of a planned community, whether meetings of the members' 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 members of the matters to be discussed or decided and to ensure that members have the ability to speak after discussion of agenda items, but before a vote of the board of directors or members is taken. Toward this end, any person or entity that is charged with the interpretation of these provisions, including members of the board of directors and any community manager, shall take into account this declaration of policy and shall construe any provision of this section in favor of open meetings.

## History

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## **A.R.S. § 33-1803**

Current through emergency legislation adopted by the 54th Legislature (2019), 1st Reg. Sess., effective April 11, 2019.

***LexisNexis® Arizona Annotated Revised Statutes > Title 33 Property (Chs. 1 – 23) > Chapter 16  
Planned Communities (Art. 1) > Article 1. General Provisions (§§ 33-1801 – 33-1818)***

### **33-1803. Assessment limitation; penalties; notice to member of violation**

**A.** Unless limitations in the community documents would result in a lower limit for the assessment, the association shall not impose a regular assessment that is more than twenty percent greater than the immediately preceding fiscal year's assessment without the approval of the majority of the members of the association. Unless reserved to the members of the association, the board of directors may impose reasonable charges for the late payment of assessments. A payment by a member is deemed late if it is unpaid fifteen or more days after its due date, unless the community documents provide for a longer period. Charges for the late payment of assessments are limited to the greater of fifteen dollars or ten percent of the amount of the unpaid assessment and may be imposed only after the association has provided notice that the assessment is overdue or provided notice that the assessment is considered overdue after a certain date. Any monies paid by the member for an unpaid assessment shall be applied first to the principal amount unpaid and then to the interest accrued.

**B.** After notice and an opportunity to be heard, the board of directors may impose reasonable monetary penalties on members for violations of the declaration, bylaws and rules of the association. Notwithstanding any provision in the community documents, the board of directors shall not impose a charge for a late payment of a penalty that exceeds the greater of fifteen dollars or ten percent of the amount of the unpaid penalty. A payment is deemed late if it is unpaid fifteen or more days after its due date, unless the declaration, bylaws or rules of the association provide for a longer period. Any monies paid by a member for an unpaid penalty shall be applied first to the principal amount unpaid and then to the interest accrued. Notice pursuant to this subsection shall include information pertaining to the manner in which the penalty shall be enforced.

**C.** A member who receives a written notice that the condition of the property owned by the member is in violation of the community documents without regard to whether a monetary penalty is imposed by the notice may provide the association with a written response by sending the response by certified mail within twenty-one calendar days after the date of the notice. The response shall be sent to the address identified in the notice.

**D.** Within ten business days after receipt of the certified mail containing the response from the member, the association shall respond to the member with a written explanation regarding the notice that shall provide at least the following information unless previously provided in the notice of violation:

1. The provision of the community documents that has allegedly been violated.
2. The date of the violation or the date the violation was observed.
3. The first and last name of the person or persons who observed the violation.
4. The process the member must follow to contest the notice.

**E.** Unless the information required in subsection D, paragraph 4 of this section is provided in the notice of violation, the association shall not proceed with any action to enforce the community documents, including the collection of attorney fees, before or during the time prescribed by subsection D of this section regarding the exchange of information between the association and the member and shall give the member written notice of the member's option to petition for an administrative hearing on the matter in the state real estate department pursuant to section 32-2199.01. At any time before or after completion of the exchange of information pursuant

## A.R.S. § 33-1803

to this section, the member may petition for a hearing pursuant to [section 32-2199.01](#) if the dispute is within the jurisdiction of the state real estate department as prescribed in [section 32-2199.01](#).

## History

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Last legislative year: 2006.

Recent legislative history: Laws 2005, Ch. 269, § [5](#); Laws 2006, Ch. 71, § [5](#); Laws 2006, Ch. 324, § [3](#); [Laws 2015, 1st Reg. Sess., Ch. 21, § 4](#); [Laws 2016, 2nd Reg. Sess., Ch. 128, § 48](#); [Laws 2016, 2nd Reg. Sess., Ch. 172, § 3](#); [Laws 2016, 2nd Reg. Sess., Ch. 230, § 2](#); [Laws 2017, 1st Reg. Sess., Ch. 77, § 2](#).

Annotations

## Notes

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### Prior Law

[Laws 1997, 1st Reg. Sess., Ch. 40, § 4](#).

[Laws 1996, 2nd Reg. Sess., Ch. 236, § 4](#).

### Amendment notes.

The 2015 amendment substituted “identified in the notice” for “contained in the notice or in the recorded notice prescribed by section 33-1807, subsection J” in the second sentence of (C).

The first 2016 amendment added “and may be imposed only after the association has provided notice that the assessment is overdue or provided notice that the assessment is considered overdue after a certain date” in the fourth sentence of (A) and added “and shall give the member written notice of the member's option to petition for an administrative hearing on the matter in the department of fire, building and life safety pursuant to section 41-2198.01” in the first sentence of (E).

The second 2016 amendment, in the second sentence of (E), substituted “section 32-2199.01” for “section 41-2198.01,” “state real estate department” for “department of fire, building and life safety,” and “section 32-2199.01” for “section 41-2198.01, subsection B.”

The third 2016 amendment substituted “twenty-one calendar days” for “ten business days” in the first sentence of (C).

The 2017 amendment, in the first sentence of (E), substituted “state real estate department” for “department of fire, building and life safety” and “32-2199.01” for “41-2198.01.”

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