

Board Duties & Best Practices

PRESENTED BY: CHARLES B.
SELLERS



Introduction

- Primary Board Duties
- Be Transparent - Meetings
- Who's Your Boss?
- One Voice, Seven Minds
- What is Reasonable?
- Safe Harbor/Conflicts of Interest



State Statutes Regulating Community Associations

Arizona Planned Community Act

A.R.S. §§ 33-1801 et seq.

Arizona Condominium Act

A.R.S. §§ 33-1201 et seq.

Nonprofit Corporations Act

A.R.S. §§ 10-3140 et seq.



Other Laws and Regulations

State and Federal Fair Housing Acts

Solar Device Statutes

- A.R.S. §§ 33-439 & 33-1816

Federal Communication Commission

- (Satellite Dish and Over the Air Reception Device/Antenna Regulation)



MMI Maxwell & Morgan™
COMMUNITY ASSOCIATION LAW

Primary Board Duties

Enforcement

- Compliance of restrictive covenants, rules, regulations, etc. of the Association

Assessment Recovery

Repairs/Maintenance

- Adopt a schedule/reserve study
- Address emergencies first

MMI Maxwell & Morgan™
COMMUNITY ASSOCIATION LAW

Enforcement

Enforcement

- Treat similarly situated owners fairly
- Concentrate on most egregious violations first (i.e., nuisance and life, health and safety issues)
- Use self-help when appropriate
 - But follow requirements in governing documents



MMI Maxwell & Morgan™
COMMUNITY ASSOCIATION LAW

Assessment Recovery

Assessment Recovery

- Adopt a collection policy
- Follow governing documents (i.e., late charges, interest)
- The longer you wait, the less likely you will collect

MMI Maxwell & Morgan™
COMMUNITY ASSOCIATION LAW

Repairs/Maintenance

Repairs/Maintenance

- Adopt a maintenance/inspection schedule
- Duty to Inspect
- Failure to timely maintain or inspect may result in increased expenses or potential loss of claim by the Association



MMI Maxwell & Morgan™
COMMUNITY ASSOCIATION LAW

Typical Community Association Board Meetings

- Regular Board Meetings (Open)
- Executive Session Board Meetings (Closed)
- Special Board Meetings (Open or Closed)
- Emergency Board Meetings
- Committee Meetings

MMI Maxwell & Morgan™
COMMUNITY ASSOCIATION LAW

Board Meetings Notice Requirements

A.R.S. § 33-1804 and § 33-1248 require at least **48 hours** notice in advance of the meeting “by newsletter, conspicuous posting or any other reasonable means as determined by the board of directors.”

Notice must include items to be discussed on agenda.



MMI Maxwell & Morgan™
COMMUNITY ASSOCIATION LAW

Quorum of the Board of Directors

No “workshops” or “informal” meetings

A.R.S. § 33-1804 and § 33-1248 state that “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”

MMI Maxwell & Morgan™
COMMUNITY ASSOCIATION LAW

Be Transparent

Conduct Business in the Open, unless business can be conducted on closed session per statute.

- Allow member questions/discussion after a motion is made, but prior to Board voting on the matter.

MMI Maxwell & Morgan™
COMMUNITY ASSOCIATION LAW

Be Transparent – Email?

Can Meetings be Conducted by Email?

No. A.R.S. §33-1804 and A.R.S. §33-1248 provide: "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."

EMAIL TIPS:

- Set up separate email account just for HOA business.
- HOA account: Members may email the account, typically monitored by the community manager.
- Each director should have their own separate HOA email account.



MMI Maxwell & Morgan™
COMMUNITY ASSOCIATION LAW

Executive/Closed Board Meetings

Closed Session Topics (ARS 33-1804 and 33-1248):

- Legal advice
 - Pending or contemplated litigation
 - Personal information
 - Job performance of individual employees of management and vendors
 - Appeals and penalties
- Exception: Member appeals for violation or fine can be open at the request of that Member



MMI Maxwell & Morgan™
COMMUNITY ASSOCIATION LAW

Emergency Meetings of the Board

An emergency meeting of the board of directors may be called to discuss emergency business or take action before 48 hours notice can be given.

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.

MMI Maxwell & Morgan™
COMMUNITY ASSOCIATION LAW

Committees

Regularly scheduled committee meetings must comply with open meeting laws

MMI Maxwell & Morgan™
COMMUNITY ASSOCIATION LAW

3 Essential Points to Remember When Conducting a Board Meeting

A homeowner may speak at "an appropriate time" during the board's meeting: after a motion is made and before the board takes formal action on an item under discussion.

The board is permitted to "place reasonable time restrictions" on members.

The board can limit the number of people that may speak for or against a proposed board action.

MMI Maxwell & Morgan™
COMMUNITY ASSOCIATION LAW



Never share confidential information

Duty of confidentiality continues after service on the Board

MMI Maxwell & Morgan™
COMMUNITY ASSOCIATION LAW

Who do Board Members Work for?

The Association

Not necessarily the members of the Association

Definitely not yourself



MM Maxwell & Morgan™
COMMUNITY ASSOCIATION LAW

One Voice, Seven Minds

It's okay to have differing opinions

Deliberation is healthy for associations

Unified Front: Once a decision is reached, all board members should accept the decision of the majority

- Exceptions: illegal behavior



MM Maxwell & Morgan™
COMMUNITY ASSOCIATION LAW

What is Reasonable?

Business Judgment Rule

- ARS 10-3830 thru 10-3833: Must discharge duty
- In good faith
- Care of ordinarily prudent person in similar circumstances
- With reasonable belief it is in the corporation's best interest

MM Maxwell & Morgan™
COMMUNITY ASSOCIATION LAW

Safe Harbor for Board Members

Rely on Experts

- Community Managers
- Attorneys
- Accountants
- Other Professionals (i.e., insurance agents, bankers, landscapers, contractors, etc.)

Follow your Governing Documents

Have Proper and Adequate Insurance



MMI Maxwell & Morgan™
COMMUNITY ASSOCIATION LAW

Not Safe Harbor

Beware:

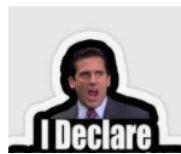
- Not obtaining or relying on qualified experts in the specific field at issue
- Some associations get into trouble when boards attempt to “save money” by not utilizing properly licensed and qualified professionals to provide advice or perform tasks.



MMI Maxwell & Morgan™
COMMUNITY ASSOCIATION LAW

Arizona Law Regarding Conflict of Interest

“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”



MMI Maxwell & Morgan™
COMMUNITY ASSOCIATION LAW

Conflicts of Interest

What to do when there is a conflict?

- ARS 33-1811 and 33-1243 are fairly liberal
- Best Practices recommendation:
 - Recuse yourself
 - Abstain from voting and deliberation



MMI Maxwell & Morgan™
COMMUNITY ASSOCIATION LAW

Must Act Within Scope of Authority

What can happen when Board members act without Board approval:

- Griffith v. Faltz



MMI Maxwell & Morgan™
COMMUNITY ASSOCIATION LAW

Questions



MMI Maxwell & Morgan™
COMMUNITY ASSOCIATION LAW
