

Open Meeting & Voting

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. "INDEPENDENT ACTION COMMITTEE" MEANS ANY COMMITTEE HOWEVER DENOMINATED THAT IS AUTHORIZED IN THE CONDOMINIUM DOCUMENTS TO TAKE ACTION TO CREATE RULES OR TO ENFORCE THOSE RULES OR ANY OTHER PROVISION OF THE CONDOMINIUM DOCUMENTS INDEPENDENT FROM THE BOARD OF DIRECTORS. BECAUSE A COMMITTEE DECISION CAN BE APPEALED TO THE BOARD OF DIRECTORS DOES NOT DISQUALIFY A COMMITTEE FROM THIS CLASSIFICATION.
165. "Identifying number" means a symbol or address that identifies one unit in a condominium.
176. "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.
187. "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.
198. "MEETING" MEANS ANY FORMAL OR INFORMAL INTERACTION IN PERSON OR VIA TECHNOLOGICAL MEANS BETWEEN A QUORUM OF THE BOARD OF DIRECTORS, INDEPENDENT ACTION COMMITTEE OR UNIT OWNERS TO PROPOSE, DISCUSS, DELIBERATE OR TAKE ACTION ON ANY CONDOMINIUM BUSINESS THAT CAN LEGALLY COME BEFORE THAT BODY FOR CONSIDERATION.

~~2019~~. "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.

~~210~~. "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.

~~221~~. "Rules" means the provisions, if any, adopted pursuant to the declaration or bylaws governing maintenance and use of the units and common elements.

~~232~~. "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.

~~243~~. "Unit" means a portion of the condominium designated for separate ownership or occupancy.

~~254~~. "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.

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~~ **INDEPENDENT ACTION** 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 **OR INDEPENDENT ACTION COMMITTEE** 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 **OR COMMITTEE** has discussed a specific agenda item but before the board **OR COMMITTEE** takes formal action on that item in addition to any other opportunities to speak. The board **OR COMMITTEE** 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, **INDEPENDENT ACTION COMMITTEES**, and meetings of the **UNIT OWNERS—members** that are open. The board of directors of the association **OR COMMITTEE** shall not require advance notice of the audiotaping or videotaping and may adopt reasonable rules governing the audiotaping or videotaping of open portions of the meetings of the board, **COMMITTEE** and the membership, but such rules shall not preclude such audiotaping or videotaping by those attending, unless the board **OR COMMITTEE** 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 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 **UNIT OWNER** ~~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 **UNIT OWNER** ~~member~~ of the association, an individual employee of the association or an individual employee of a contractor for the association. **ALLEGED OR CONFIRMED VIOLATIONS OF COMMUNITY DOCUMENTS ARE NOT CONSIDERED PERSONAL INFORMATION IN THIS CONTEXT.**

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 THE PROVISIONS OF SECTION 10-3821 OR ANY PROVISIONS IN THE CONDOMINIUM DOCUMENTS TO THE CONTRARY, AFTER THE TERMINATION OF THE PERIOD OF DECLARANT CONTROL, ALL ACTIONS TAKEN BY THE BOARD OF DIRECTORS, INDEPENDENT ACTION COMMITTEES OR UNIT OWNERS MUST BE TAKEN AT A MEETING CONDUCTED IN ACCORDANCE WITH THIS CHAPTER, EXCEPT AS FOLLOWS.

1) FOR UNIT OWNERS CONSIDERATION OF AMENDMENTS TO THE DECLARATION OR THE BYLAWS THE ASSOCIATION MAY ALSO ALLOW FOR VOTES TO BE CAST BY WRITTEN BALLOT OR BY WRITTEN CONSENT WITHOUT A MEETING IN ACCORDANCE WITH SECTIONS 10-3708 AND 10-3704 RESPECTIVELY.

2) THE ASSOCIATION WILL BE FREE TO DEFINE THE LENGTH OF TIME THAT THE BALLOT INITIATIVE WILL REMAIN OPEN BUT ONCE DEFINED THE END DATE CANNOT BE CHANGED. IF THE ASSOCIATION DOES NOT RECEIVE THE REQUIRED NUMBER OF AFFIRMATIVE VOTES BY THE END DATE THE MEASURE IS DEFEATED.

3) WITHIN THE TIME FRAME OF THE BALLOT INITIATIVE THE ASSOCIATION MUST HOLD AT LEAST ONE INFORMAL QUESTION AND ANSWER MEETING OF THE UNIT OWNERS THAT WILL ALLOW UNIT OWNERS THE OPPORTUNITY TO ASK QUESTIONS ABOUT THE AMENDMENT AND TO VOICE SUPPORT OR OPPOSITION TO THE AMENDMENT.

4) THE ASSOCIATION MAY NOT DISCLOSE ANY PRELIMINARY RESULTS OF THE BALLOT INITIATIVE OTHER THAN THE TOTAL AMOUNT OF VOTES CAST TO ANY UNIT OWNER UNTIL THE INITIATIVE IS EITHER DEFEATED OR APPROVED.

CB. Notwithstanding any provision in the condominium documents, all meetings of the unit owners' association and the board **OR INDEPENDENT ACTION COMMITTEE** shall be held in this state. A meeting of the unit owners' association shall be held at least once each year **TO ELECT DIRECTORS AS NECESSARY AND CONDUCT ANY OTHER BUSINESS OF THE UNIT OWNERS**. 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 percent or any lower percentage specified in the bylaws, of the votes in the association. **IF CONDITIONS EXIST BEYOND THE CONTROL OF THE ASSOCIATION THAT MAKE IN PERSON MEETINGS OF THE UNIT OWNERS IMPRACTICAL, THOSE MEETINGS MAY BE CONDUCTED BY TECHNOLOGICAL MEANS AS LONG AS THE ASSOCIATION TAKES THE APPROPRIATE STEPS TO MAKE ACCESS TO THOSE TECHNOLOGICAL MEANS AVAILABLE TO ANY UNIT OWNER WISHING TO PARTICIPATE IN THAT MEETING.** Not fewer than ~~ten~~ **TWENTY-FIVE** 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 **RECORD FOR** each unit **OWNER**. ~~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 date, time and place of the meeting. The notice of any annual, regular or special meeting of the unit owners shall also state the purpose for which the meeting is called, including the **NUMBER OF BOARD OF DIRECTOR POSITIONS TO BE FILLED, 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. **ANY NOTICE FOR A FORMAL MEETING OR BALLOT INITIATIVE OF THE UNIT OWNERS TO PROPOSE ACTION OTHER THAN THE ELECTION OF DIRECTORS SHALL PROVIDE FOR AN OPPORTUNITY FOR THE BOARD OF DIRECTORS AND ANY UNIT OWNER OR GROUP OF UNIT OWNERS TO SUBMIT ARGUMENTS FOR OR AGAINST THE PROPOSED ACTION, FOR DISTRIBUTION BY THE ASSOCIATION TO ALL UNIT OWNERS, OR AT THE BOARD'S OPTIONS CONSPICUOUSLY POSTING THOSE ARGUMENTS AT A LOCATION WHERE ALL UNIT OWNERS HAVE ACCESS. THE DISTRIBUTION OF THESE ARGUMENTS SHALL BE MADE A MAXIMUM OF TWENTY DAYS FROM THE DATE OF THE MEETING OR BALLOT INITIATIVE NOTICE.** 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.

DC. Before entering into any closed portion of a meeting of the board of directors, or on notice of a meeting under subsection **ED** 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 **SPECIFIC SUBJECT MATTER OF THIS** meeting.

ED. Notwithstanding any provision in the declaration, bylaws or other condominium documents, for **OPEN** meetings of the board of directors **AND INDEPENDANT ACTION COMMITTEES** that are held after the termination of declarant control of the association, notice to unit owners of ~~THAT meetings of the board of directors~~ **ALONG WITH THE MEETING AGENDA** 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 **OR INDEPENDENT ACTION COMMITTEE** is not required if emergency circumstances require action by the board **OR COMMITTEE** before notice can be given. Any notice of a board **OR COMMITTEE** meeting shall state the date, time and place of the meeting. The failure of any unit owner to receive actual notice of a meeting of the board of directors **OR COMMITTEE** does not affect the validity of any action taken at that meeting.

FE. Notwithstanding any provision in the declaration, bylaws or other condominium documents, for meetings of the board of directors **OR INDEPENDENT ACTION COMMITTEES** 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 **OR INDEPENDENT ACTION COMMITTEE** 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, **OR COMMITTEE**, the board of directors **OR COMMITTEE** 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, **OR COMMITTEE**.

3. A quorum of the board of directors **OR COMMITTEE** may meet by **TECHNOLOGICAL** means ~~of a telephone conference~~ if **THE a-speakerphone TECHNOLOGICAL MEANS ARE IS MADE REASONABLE** available **TO ANY UNIT OWNER WISHING TO PARTICIPATE**, ~~in the meeting room~~ that allows board **OR COMMITTEE** 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.

G. THE DRAFT MINUTES OF ANY OPEN OR EMERGENCY MEETING OF THE BOARD OF DIRECTORS, OR INDEPENDENT ACTION COMMITTEE, OR UNIT OWNERS SHALL BE MADE AVAILABLE TO ANY UNIT OWNER UPON REQUEST NO LATER THAN FIFTEEN BUSINESS DAYS AFTER THE MEETING WAS HELD. THE ASSOCIATION MAY POST THOSE DRAFT MINUTES AT A CONVENIENT LOCATION AT THEIR DISCRETION.

H.F. 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 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 or 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.

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

33-1250. Voting; proxies; absentee ballots; applicability; definition

A. If only one of the multiple owners of a unit is present at a meeting of the association, the owner is entitled to cast all the votes allocated to that unit. If more than one of the multiple owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners unless the declaration expressly provides otherwise. There is majority agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

B. During the period of declarant control, votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. The proxy is revoked on presentation of a later dated proxy executed by the same unit owner. A proxy terminates one year after its date, unless it specifies a shorter term or unless it states that it is coupled with an interest and is irrevocable.

C. Notwithstanding any provision in the condominium documents, after termination of the period of declarant control, votes allocated to a unit may not be cast pursuant to a proxy. The association shall provide for votes to be cast in person and by absentee ballot. **IF CONDITIONS EXIST BEYOND THE CONTROL OF THE ASSOCIATION THAT PREVENT IN PERSON MEETINGS AND VOTING, ABSENTEE BALLOTS ALONE MAY BE UTILIZED. ABSENTEE BALLOTS MAY BE DELIVERED AND RETURNED IN EITHER PAPER OR ELECTRONIC FORMAT AND MEANS. and, in addition, the association may provide for voting by some other form of delivery, including the use of e-mail and fax delivery.** Notwithstanding section 10-3708 or the provisions of the condominium documents, any action taken at an annual, regular or special meeting of the **UNIT OWNERS members** shall comply with all of the following: ~~if absentee ballots or ballots provided by some other form of delivery are used:~~

1. The ballot shall set forth each proposed action.

2. The ballot shall provide an opportunity to vote for or against each proposed action.

3. FOR BALLOTS INVOLVING THE ELECTION OF BOARD MEMBERS THE BALLOT WILL IDENTIFY THE NUMBER OF OPEN SEATS AVAILABLE TO FILL, ALL QUALIFIED APPLICANTS WISHING TO BE CONSIDERED FOR THOSE POSITIONS, AND WHETHER CUMULATIVE VOTING WILL BE UTILIZED, IF ALLOWED IN THE CONDOMINIUM DOCUMENTS.

(A) THE ASSOCIATION BOARD MAY ESTABLISH REASONABLE TIME LIMITS FOR APPLICANTS TO REQUEST TO BE INCLUDED ON THE ELECTION BALLOTS.

4.3. The ballot is valid for only one specified election or meeting of the **UNIT OWNERS members** and expires automatically after the completion of the election or meeting. **IF A MEETING IS CONTINUED DUE TO LACK OF QUORUM OR ANY OTHER REASON, THE ABSENTEE BALLOTS SUBMITTED REMAIN VALID FOR THE CONTINUED MEETING.**

5.4. The **ABSENTEE** ballot specifies the time and date by which the ballot must be delivered to the board of directors in order to be counted, which shall be at least seven days after the date that the board delivers the unvoted ballot to the **UNIT OWNER member**.

6.5. The ballot does not authorize another person to cast votes on behalf of the **UNIT OWNER member**. **NO BALLOT SHALL BE ACCEPTED AT THE MEETING FROM ANYONE OTHER THAN THE VOTING UNIT OWNER.**

7.6. The completed **ABSENTEE** ballot shall **BE RETURNED WITH A SEPARATE AUTHENTICATION DOCUMENT, WHICH WILL** contain the name, the **address UNIT NUMBER** and either the actual or electronic signature of the person

voting, ~~except that if the condominium documents permit secret ballots, only the envelope shall contain the name, the address and either the actual or electronic signature of the voter.~~

87. Ballots, **SEPARATE SIGNED AUTHENTICATION DOCUMENT envelopes** and related materials, including sign-in sheets if used, shall be retained in electronic or paper format and made available for unit owner inspection for at least one year after completion of the election.

9. **IF AN ONLINE VOTING SYSTEM IS USED FOR ABSENTEE BALLOTS, IT MUST ACCOMPLISH ALL OF THE FOLLOWING:**

(A) AUTHENTICATES THE UNIT OWNERS IDENTITY.

(B) AUTHENTICATES THE VALIDITY OF EACH ELECTRONIC VOTE TO ENSURE THAT THE VOTE IS NOT ALTERED IN TRANSIT.

(C) TRANSMITS A RECEIPT TO EACH UNIT OWNER WHO CASTS AN ELECTRONIC VOTE.

(D) STORES ELECTRONIC VOTES FOR RECOUNT, INSPECTION AND REVIEW PURPOSES.

10. IF A QUORUM OF UNIT OWNERS IS PRESENT AT THE MEETING, THOSE UNIT OWNERS MAY TAKE ANY APPROPRIATE ACTION BY HAND OR VOICE VOTE OR BY SEPARATE SECRET BALLOT AS DESIRED.

11. THE ASSOCIATION IS RESPONSIBLE TO ENSURE THE INTEGRITY OF THE VOTING PROCESS, INCLUDING BUT NOT LIMITED TO PREVENTING BALLOT TAMPERING, ENSURING A TRUE AND ACCURATE BALLOT COUNT, AND ENSURING THAT PRELIMINARY VOTING RESULTS ARE NOT DISCLOSED IN ANY WAY TO ANY UNIT OWNERS, INCLUDING BOARD MEMBERS THAT HAVE NOT YET VOTED.

D. NOTWITHSTANDING ANY PROVISION IN THE CONDOMINIUM DOCUMENTS, THE VOTING RIGHTS OR ELIGIBILITY TO RUN FOR OFFICE, OF ANY UNIT OWNER MAY NOT BE SUSPENDED OR DENIED FOR ANY REASON OTHER THAN FAILURE TO PAY COMMON EXPENSE ASSESSMENTS. THE RIGHT TO RUN FOR OFFICE AND TO BE PLACED ON THE BALLOT MAY NOT BE SUBJECT TO ANY ADDITIONAL ASSOCIATION SCREENING OR APPROVAL BEYOND THE MEMBERSHIP ELIGIBILITY REQUIREMENTS OF THE DECLARATION AND BYLAWS AND THE COMMON EXPENSE ASSESSMENT PAYMENT STATUS.

ED. Votes cast by absentee ballot ~~or other form of delivery, including the use of e-mail and fax delivery,~~ are valid for the purpose of establishing a quorum.

FE. Notwithstanding subsection C of this section, an association for a timeshare plan as defined in section 32-2197 may permit votes by a proxy that is duly executed by a unit owner.

GF. If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units all of the following apply:

1. The provisions of subsections A and B of this section apply to lessees as if they were unit owners.

2. Unit owners who have leased their units to other persons shall not cast votes on those specified matters.

3. Lessees are entitled to notice of meetings, access to records and other rights respecting those matters as if they were unit owners. Unit owners shall also be given notice, in the manner prescribed in section 33-1248, of all meetings at which lessees may be entitled to vote.

HG. Unless the declaration provides otherwise, votes allocated to a unit owned by the association shall not be cast.

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

J. For the purposes of this section, "period of declarant control" means the time during which the declarant or persons designated by the declarant may elect or appoint the members of the board of directors pursuant to the condominium documents **OR THIS CHAPTER. ~~by virtue of superior voting power.~~**

K. **IF THE ASSOCIATION IS FOUND TO HAVE VIOLATED ANY PROVISION OF THIS SECTION, OR THIS CHAPTER IN CONDUCTING ELECTIONS OR BALLOT MEASURES THE ADJUDICATING TRIBUNAL EITHER THE ADMINISTRATIVE LAW JUDGE OR A COURT OF APPROPRIATE JURISDICTION MAY INVALIDATE THE ELECTIONS OR THE BALLOT MEASURE AS DEEMED APPROPRIATE BASED ON THE SPECIFIC CIRCUMSTANCES OF THE CASE.**

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. Association does not include a nonprofit corporation or unincorporated association of owners that is created or incorporated before January 1, 1974 and that does not have authority to enforce covenants, conditions or restrictions related to the use, occupancy or appearance of the separately owned lots, parcels or units in a real estate development, unless the nonprofit corporation or unincorporated association of owners elects to be subject to this chapter pursuant to section 33-1801, subsection D.

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. **'INDEPENDENT ACTION COMMITTEE' MEANS ANY COMMITTEE HOWEVER DENOMINATED THAT IS AUTHORIZED IN THE COMMUNITY DOCUMENTS TO TAKE ACTION TO CREATE RULES OR TO ENFORCE THOSE RULES OR ANY OTHER PROVISION OF THE COMMUNITY DOCUMENTS INDEPENDENT FROM THE BOARD OF DIRECTORS. BECAUSE**

A COMMITTEE DECISION CAN BE APPEALED TO THE BOARD OF DIRECTORS DOES NOT DISQUALIFY A COMMITTEE FROM THIS CLASSIFICATION.

5. "MEETING" MEANS ANY FORMAL OR INFORMAL INTERACTION IN PERSON OR VIA TECHNOLOGICAL MEANS BETWEEN A QUORUM OF THE BOARD OF DIRECTORS, INDEPENDENT ACTION COMMITTEE OR MEMBERS TO PROPOSE, DISCUSS, DELIBERATE OR TAKE ACTION ON COMMUNITY ASSOCIATION BUSINESS THAT CAN LEGALLY COME BEFORE THAT BODY FOR CONSIDERATION.

6. "Planned community" means a real estate development that includes real estate owned and operated by or real estate on which an easement to maintain roadways or a covenant to maintain roadways is held 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 declaration expressly states both that the owners of separately owned lots, parcels or units are mandatory members and that the owners are required to pay assessments to the association for these purposes. Planned community does not include any of the following:

- (a) A timeshare plan or a timeshare association that is governed by chapter 20 of this title.
- (b) A condominium that is governed by chapter 9 of this title.
- (c) A real estate development that is not managed or maintained by an association.

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~~ INDEPENDENT ACTION 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 OR INDEPENDENT ACTION COMMITTEE 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 OR COMMITTEE has discussed a specific agenda item but before the board OR COMMITTEE takes formal action on that item in addition to any other opportunities to speak. The board OR COMMITTEE 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, INDEPENDENT ACTION COMMITTEES and meetings of the members that are open. The board of directors of the association OR COMMITTEE 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 OR COMMITTEE 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. **ALEDGED OR CONFIRMED VIOLATIONS OF COMMUNITY DOCUMENTS ARE NOT CONSIDERED PERSONAL INFORMATION IN THIS CONTEXT.**

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 THE PROVISIONS OF SECTION 10-3821 OR ANY PROVISIONS IN THE COMMUNITY DOCUMENTS TO THE CONTRARY, AFTER THE TERMINATION OF THE PERIOD OF DECLARANT CONTROL, ALL ACTIONS TAKEN BY THE BOARD OF DIRECTORS, INDEPENDENT ACTION COMMITTEES OR MEMBERS MUST BE TAKEN AT A MEETING CONDUCTED IN ACCORDANCE WITH THIS CHAPTER, EXCEPT AS FOLLOWS.

- 1) FOR MEMBERS CONSIDERATION OF AMENDMENTS TO THE DECLARATION OR THE BYLAWS THE ASSOCIATION MAY ALSO ALLOW FOR VOTES TO BE CAST BY WRITTEN BALLOT OR BY WRITTEN CONSENT WITHOUT A MEETING IN ACCORDANCE WITH SECTIONS 10-3708 AND 10-3704 RESPECTIVELY.

- 2) THE ASSOCIATION WILL BE FREE TO DEFINE THE LENGTH OF TIME THAT THE BALLOT INITIATIVE WILL REMAIN OPEN BUT ONCE DEFINED THE END DATE CANNOT BE CHANGED. IF THE ASSOCIATION DOES NOT RECEIVE THE REQUIRED NUMBER OF AFFIRMATIVE VOTES BY THE END DATE THE MEASURE IS DEFEATED.

3) WITHIN THE TIME FRAME OF THE BALLOT INITIATIVE THE ASSOCIATION MUST HOLD AT LEAST ONE INFORMAL QUESTION AND ANSWER MEETING OF THE MEMBERS THAT WILL ALLOW MEMBERS THE OPPORTUNITY TO ASK QUESTIONS ABOUT THE AMENDMENT AND TO VOICE SUPPORT OR OPPOSITION TO THE AMENDMENT.

4) THE ASSOCIATION MAY NOT DISCLOSE ANY PRELIMINARY RESULTS OF THE BALLOT INITIATIVE OTHER THAN THE TOTAL AMOUNT OF VOTES CAST TO ANY UNIT OWNER UNTIL THE INITIATIVE IS EITHER DEFEATED OR APPROVED.

CB. 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 **TO ELECT DIRECTORS AS NECESSARY AND CONDUCT ANY OTHER BUSINESS OF THE MEMBERS**. 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. **IF CONDITIONS EXIST BEYOND THE CONTROL OF THE ASSOCIATION THAT MAKE IN PERSON MEETINGS OF THE MEMBERS IMPRACTICAL, THOSE MEETINGS MAY BE CONDUCTED BY TECHNOLOGICAL MEANS AS LONG AS THE ASSOCIATION TAKES THE APPROPRIATE STEPS TO MAKE ACCESS TO THOSE TECHNOLOGICAL MEANS AVAILABLE TO ANY MEMBER WISHING TO PARTICIPATE IN THAT MEETING.** Not fewer than **TWENTY-FIVE** ~~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 **OF RECORD** for each **MEMBER** ~~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 NUMBER OF BOARD OF DIRECTOR POSITIONS TO BE FILLED**, 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. **ANY NOTICE FOR A FORMAL MEETING OR BALLOT INITIATIVE OF THE MEMBERS TO PROPOSE ACTION OTHER THAN THE ELECTION OF DIRECTORS SHALL PROVIDE FOR AN OPPORTUNITY FOR THE BOARD OF DIRECTORS AND ANY MEMBER OR GROUP OF MEMBERS TO SUBMIT ARGUMENTS FOR OR AGAINST THE PROPOSED ACTION, FOR DISTRIBUTION BY THE ASSOCIATION TO ALL MEMBERS, OR AT THE BOARD'S OPTIONS CONSPICUOUSLY POSTING THOSE ARGUMENTS AT A LOCATION WHERE ALL MEMBERS HAVE ACCESS. THE DISTRIBUTION OF THESE ARGUMENTS SHALL BE MADE A MAXIMUM OF TWENTY DAYS FROM THE DATE OF THE MEETING OR BALLOT INITIATIVE NOTICE.** 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.

DC. Before entering into any closed portion of a meeting of the board of directors, or on notice of a meeting under subsection **Ed** 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 **SPECIFIC SUBJECT MATTER OF THAT** meeting.

ED. Notwithstanding any provision in the declaration, bylaws or other community documents, for **OPEN** meetings of the board of directors **OR INDEPENDENT ACTION COMMITTEES** that are held after the termination of declarant control of the association, notice to members of **THAT** meetings ~~of the board of directors~~ **ALONG WITH THE MEETING AGENDA**, 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 **OR INDEPENDENT ACTION COMMITTEE**, is not required if emergency circumstances require action by the board **OR COMMITTEE** before notice can be given. Any notice of a board **OR COMMITTEE** 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 **OR COMMITTEE** does not affect the validity of any action taken at that meeting.

FE. Notwithstanding any provision in the declaration, bylaws or other community documents, for meetings of the board of directors **OR INDEPENDENT ACTION COMMITTEES** 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 **OR COMMITTEE** 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, **OR COMMITTEE**, the board of directors **OR COMMITTEE** 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 **OR COMMITTEE**.

3. A quorum of the board of directors **OR COMMITTEE** may meet by **TECHNOLOGICAL** means ~~of a telephone conference~~ if ~~a speakerphone~~ **THE TECHNOLOGICAL MEANS ARE IS MADE REASONABLY AVAILABLE TO ANY MEMBER WISHING TO PARTICIPATE**, ~~available in the meeting room~~ that allows board **AND COMMITTEE** 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.

G. **THE DRAFT MINUTES OF ANY OPEN OR EMERGENCY MEETING OF THE BOARD OF DIRECTORS, OR INDEPENDENT ACTION COMMITTEE, OR MEMBERS SHALL BE MADE AVAILABLE TO ANY MEMBER UPON REQUEST NO LATER THAN FIFTEEN BUSINESS DAYS AFTER THE MEETING. THE ASSOCIATION MAY POST THOSE DRAFT MINUTES AT A CONVENIENT LOCATION AT THEIR DISCRETION.**

HF. 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.

33-1812. VOTING; Proxies; absentee ballots; definition

A. Notwithstanding any provision in the community documents, after termination of the period of declarant control, votes allocated to a unit may not be cast pursuant to a proxy. The association shall provide for votes to be cast in person and by absentee ballot. **IF CONDITIONS EXIST BEYOND THE CONTROL OF THE ASSOCIATION THAT PREVENT IN PERSON MEETINGS AND VOTING, ABSENTEE BALLOTS ALONE MAY BE UTILIZED. ABSENTEE BALLOTS MAY BE DELIVERED AND RETURNED IN EITHER PAPER OR ELECTRONIC FORMAT AND MEANS.** ~~and, in addition, the association may provide for voting by some other form of delivery, including the use of e-mail and fax delivery.~~ Notwithstanding section 10-3708 or the provisions of the community documents, any action taken at an annual, regular or special meeting of the members shall comply with all of the following: ~~if absentee ballots or ballots provided by some other form of delivery are used:~~

1. The ballot shall set forth each proposed action.
2. The ballot shall provide an opportunity to vote for or against each proposed action.
3. **FOR BALLOTS INVOLVING THE ELECTION OF BOARD MEMBERS THE BALLOT WILL IDENTIFY THE NUMBER OF OPEN SEATS AVAILABLE TO FILL, ALL QUALIFIED APPLICANTS WISHING TO BE CONSIDER FOR THOSE POSITIONS, AND WHETHER CUMULATIVE VOTING WILL BE UTILIZED, IF ALLOWED IN THE COMMUNITY DOCUMENTS.**
 - (A) **THE ASSOCIATION BOARD MAY ESTABLISH REASONABLE TIME LIMITS FOR APPLICANTS TO REQUEST TO BE INCLUDED ON THE ELECTION BALLOTS.**
4. **The ballot is valid for only one specified election or meeting of the members and expires automatically after the completion of the election or meeting. IF A MEETING IS CONTINUED DUE TO LACK OF QUORUM OR ANY OTHER REASON, THE ABSENTEE BALLOTS SUBMITTED REMAIN VALID FOR THE CONTINUED MEETING.**

5. **The ABSENTEE ballot specifies the time and date by which the ballot must be delivered to the board of directors in order to be counted, which shall be at least seven days after the date that the board delivers the unvoted ballot to the member.**

6. **The ballot does not authorize another person to cast votes on behalf of the member. NO BALLOT SHALL BE ACCEPTED AT THE MEETING FROM ANYONE OTHER THEN THE VOTING MEMBER.**

7. **The completed ABSENTEE ballot shall BE RETURNED WITH A SEPARATE AUTHENTICATION DOCUMENT, WHICH WILL contain the name, address and THE ACTUAL OR ELECTRONIC signature of the person voting. ONCE THE BALLOT AND AUTHENTICATION INFORMATION IS VALIDATED BY THE ASSOCIATION, THE BALLOT WILL BE RETAINED SEPARATE FROM THE AUTHENTICATION DOCUMENT.** ~~, except that if the community documents permit secret ballots, only the envelope shall contain the name, address and signature of the voter.~~

8. **Ballots, SEPARATE SIGNED AUTHENTICATION DOCUMENT envelopes and related materials, including sign-in sheets if used, shall be retained in electronic or paper format and made available for member inspection for at least one year after completion of the election.**

9. **IF AN ONLINE VOTING SYSTEM IS USED IT MUST ACCOMPLISH ALL OF THE FOLLOWING:**

- (A) **AUTHENTICATES THE MEMBER'S IDENTITY.**
- (B) **AUTHENTICATES THE VALIDITY OF EACH ELECTRONIC VOTE TO ENSURE THAT THE VOTE IS NOT ALTERED IN TRANSIT.**

(C) TRANSMITS A RECEIPT TO EACH MEMBER WHO CASTS AN ELECTRONIC VOTE.
(D) STORES ELECTRONIC VOTES FOR RECOUNT, INSPECTION AND REVIEW PURPOSES.

10. **IF A QUORUM OF MEMBERS IS PRESENT AT THE MEETING, THOSE MEMBERS MAY TAKE ANY APPROPRIATE ACTION BY HAND OR VOICE VOTE OR BY SEPARATE SECRET BALLOT AS DESIRED.**

11. **THE ASSOCIATION IS RESPONSIBLE TO ENSURE THE INTEGRITY OF THE VOTING PROCESS, INCLUDING BUT NOT LIMITED TO PREVENTING BALLOT TAMPERING, ENSURING A TRUE AND ACCURATE BALLOT COUNT, AND ENSURING THAT PRELIMINARY VOTING RESULTS ARE NOT DISCLOSED IN ANY WAY TO ANY MEMBER, INCLUDING BOARD MEMBERS THAT HAVE NOT YET VOTED.**

B. **NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS, THE VOTING RIGHTS OR ELIGIBILITY TO RUN FOR OFFICE, OF ANY MEMBER MAY NOT BE SUSPENDED OR DENIED FOR ANY REASON OTHER THAN FAILURE TO PAY DIRECT COMMON EXPENSE ASSESSMENTS. THE RIGHT TO RUN FOR OFFICE AND TO BE PLACED ON THE BALLOT MAY NOT BE SUBJECT TO ANY ADDITIONAL ASSOCIATION SCREENING OR APPROVAL BEYOND THE MEMBERSHIP ELIGIBILITY REQUIREMENTS OF THE DECLARATION AND BYLAWS AND COMMON EXPENSE ASSESSMENT STATUS.**

CB. Votes cast by absentee ballot ~~or other form of delivery, including the use of e-mail and fax delivery~~ are valid for the purpose of establishing a quorum.

DC. Notwithstanding subsection A of this section, an association for a timeshare plan as defined in section 32-2197 may permit votes by a proxy that is duly executed by a unit owner.

ED. For the purposes of this section, "period of declarant control" means the time during which the declarant or persons designated by the declarant may elect or appoint the members of the board of directors pursuant to the community documents **OR THIS CHAPTER. ~~or by virtue of superior voting power.~~**

F. IF THE ASSOCIATION IS FOUND TO HAVE VIOLATED ANY PROVISION OF THIS SECTION, OR THIS CHAPTER IN CONDUCTING ELECTIONS OR BALLOT MEASURES THE ADJUDICATING TRIBUNAL EITHER THE ADMINISTRATIVE LAW JUDGE OR A COURT OF APPROPRIATE JURISDICTION MAY INVALIDATE THE ELECTIONS OR THE BALLOT MEASURE AS DEEMED APPROPRIATE BASED ON THE SPECIFIC CIRCUMSTANCES OF THE CASE.