

**AMENDED AND RESTATED
BYLAWS
OF
EL ENCANTO ESTATES
HOMEOWNERS ASSOCIATION, INC.,
An Arizona nonprofit corporation**

ARTICLE I.

Name and Place of Business

§ 1. Name. The name of the corporation is EL ENCANTO ESTATES HOMEOWNERS ASSOCIATION, INC., hereinafter referred to as the "Association".

§ 2. Place of Business. The principal office and known place of business shall be located in Tucson, Arizona, at the home of the president of the Association or at such other location as may be designated by the board of directors from time to time, but meetings of members and directors may be held at such places within Pima County, Arizona as may be designated by the board of directors.

ARTICLE II.

Scope and Purposes of Association

§ 1. General Purposes. The general purpose of the Association, as successor of the El Encanto Estates Neighborhood Association, Inc., an Arizona corporation, is to promote the general welfare of El Encanto Estates, a legal subdivision of Pima County, Arizona, according to the map or plat thereof recorded in Book 5 of Maps and Plats at page 35 in the Pima County Recorder's Office, Arizona, hereinafter referred to as "El Encanto Estates", and its environs.

§ 2. Specific Purposes. The specific purposes of this Association shall include, without limitation, the following:

- (a) to promote the quality of life of the residents of El Encanto Estates and its environs;
- (b) to receive, own and administer Association property;
- (c) to provide for the acquisition, construction, management and maintenance of Association property;

- (d) to encourage the residents and property owners of El Encanto Estates to maintain and enhance buildings, grounds and properties to the standards appropriate to a high quality residential area;
- (e) to promote compliance with any and all restrictions as to the use of lots and improvements situated thereon within El Encanto Estates as set forth in any Declaration of Establishment of Conditions and Restrictions or similar instrument which is in effect or as may be adopted pertaining to El Encanto Estates, or as set forth in the Code of Ordinances of the City of Tucson, Arizona, and any applicable area or neighborhood plans of the City of Tucson, including but not limited to the El Encanto--Colonia Solana Neighborhood plan; and
- (f) to carry on and maintain any and all services which shall be desired by the members of the Association.

ARTICLE III.

Membership; Voting; Meetings of Members

§ 1. Membership Qualification. All owners and part owners of record title (including contract purchasers under a recorded contract for sale but excluding contract sellers) of one or more lots in El Encanto Estates shall qualify for the number of memberships as the number of lots so owned. The board of directors shall be empowered to determine all issues relating to membership in the Association in any manner consistent with the Articles of Incorporation and the Bylaws. For these Bylaws, the definition of a "lot" is a parcel listed in the Pima County Assessor property data.

§ 2. Membership. All persons who qualify for membership and whose dues are currently paid shall be members. Only members shall have the right to vote. Those persons holding more than one membership by virtue of ownership of more than one lot shall be entitled to vote for the number of lots owned and for which dues are currently paid. Memberships are not transferable and may not be pledged or alienated in any way. Upon the sale of a lot, the seller shall cease to be a member, unless the seller shall own another lot in El Encanto Estates for which dues are currently paid.

§ 3. Dues. Dues shall be Fifty Dollars (\$50.00) per year per lot, or such other amount as the board of directors may from time to time determine.

§ 4. Voting. Except as otherwise prescribed for electing members of the board of directors, members shall be entitled to cast one vote for each lot in El Encanto Estates owned and for which dues are currently paid; provided, however, if a lot is owned by two or more persons, or entities, they shall designate one among their number to exercise voting rights and such designation shall be in a writing delivered to the secretary of the Association. Except as otherwise specifically provided by the Articles of Incorporation or these Bylaws, all matters shall be

decided by the vote of a majority of members present at the meeting at which a quorum is present. Except as otherwise specifically provided by the Articles of Incorporation or these Bylaws, the intent of these Bylaws is that members shall not be entitled to vote on any matter which the Arizona Revised Statutes permit the Bylaws to exclude from a member vote. In other words, the members shall not be entitled to vote on any matter, except as specifically stated in the Articles of Incorporation or these Bylaws and matters which the Bylaws have no discretion to exclude from member voting pursuant to Arizona law.

§ 5. Meetings.

- (a) *Annual Meeting.* The annual meeting of the members of the Association for the election of directors and the transaction of such other business of the Association as may be brought before it shall be held in October of each year at such place and time as the board of directors may designate.
- (b) *Special Meetings.* Special meetings of the Association may be called at any time by the president or by the board of directors or upon written request of one-tenth (1/10) of the members. Special meetings shall be held at such time and at such place as may be designated in the notice thereof.
- (c) *Meetings Notices.* Notices of each meeting of the members of the Association, whether annual or special, shall be given by the secretary of the Association or such person authorized to call the meeting, orally or mailed to each member (if a lot has multiple owners, notice need be sent only to the member designated in writing by such owners to receive notices) at the address supplied by such member to the Association for the purpose of notice, or if none, to the address of the member's lot, not fewer than ten (10) days prior to the date of the meeting. The notice of each special meeting shall contain the purpose for which it is to be conducted. Any member may waive notice to any meeting. Any member may choose to be given notice by email, in which case the member is responsible for the secretary of the Association having the member's correct email address. Any member may provide the secretary with and request that notices be sent to more than one mail or email address.
- (d) *Quorum.* The presence at the meeting in person or by proxy of one-tenth (1/10) of the members shall constitute a quorum for any action unless otherwise provided in the Articles of Incorporation or these Bylaws. If, however, such quorum shall not be present or represented by proxy at any meeting, the members who are present shall have the power to adjourn the meeting from time to time, without notice other than announcement at such meeting, until a quorum shall be present or represented.
- (e) *Proxies.* At all meetings of members, each member entitled to vote may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable, and shall cease automatically upon presence of the member at a meeting or upon disqualification of the member.

- (f) *Eligibility to Vote.* All members must be current and in good standing with the Association to be entitled to vote. For purposes of determining the right to vote at any meeting of the members, the information set forth in the membership book maintained by the secretary shall be deemed conclusive except that, if any member presents evidence as to the incorrectness of the information in the membership book, the secretary shall correct the membership book pursuant to the direction of the majority of members at the meeting, and the right to vote shall be determined from the membership book as corrected.
- (g) *Record Date.* The board of directors may fix a time not exceeding twenty (20) days preceding the date of any meeting as a record date for the determination of members entitled to notice of, and to vote at, any such meeting. In the event that no such record date is fixed by the board of directors, the record date for such determination of members entitled to notice and to vote at any such meeting shall be the fifteenth (15th) day preceding the date of such meeting.

ARTICLE IV.

Board of Directors; Selection; Term of Office; Meetings

§ 1. Number. The number of directors of the Association shall be determined, from time to time, by the board of directors, but in no event shall there be fewer than five (5) directors.

§ 2. Qualification. Only members who are natural persons may be elected or appointed to the board of directors. Any person whose membership terminates or lapses may not remain a director.

§ 3. Election and Term of Office. Directors shall be elected at the annual meeting of the membership by the members. At least thirty (30) days prior to the annual meeting the existing board of directors shall select a nominating committee comprised of such number as it shall designate. The nominating committee shall make nominations for vacancies on the board of directors. The nominating committee shall present to the secretary of the Association at least twenty (20) days before the annual meeting the nominees for the board of directors. The secretary of the Association shall include the names of the nominees with the notice of the meeting. Nominations for directors may be made by any member from the floor of the meeting. Members may vote for directors in person or by proxy with votes to be cast in the manner set forth in Article III, Section 4, above, but shall be entitled to cast as many votes as there are number of directors to be elected, one vote per position to be filled (i.e., not cumulative voting). The term of office of a director shall begin at the annual meeting of the board of directors following the annual meeting of the membership. Unless terminated earlier in accordance with other provisions of these Bylaws, each director's term shall continue until the earlier of the annual meeting of the board

of directors held the following year or the time at which his successor shall have qualified. Any director may serve five (5) years in succession, and after one year off the board may serve again.

§ 4. Removal; Resignation; Vacancies; Leave of Absence. Any director may be removed from the board, with or without cause, by the two-thirds (2/3) vote of the entire number of other directors, or by the majority vote of the members, who are present personally or voting by proxy, at a regular meeting, or a special meeting called for such purpose. Further, any director, at any time, may resign from the board by giving written notice to the board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice, or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Failure to be a member or lapse of membership shall be deemed to be a resignation from the board. In the event of death, resignation, removal or disqualification of a director, his/her successor shall be selected and appointed by the majority vote of the remaining directors and shall serve the unexpired term of the director so replaced. Any director may take leave of absence from the board, subject to approval by the board and provided the leave of absence shall be no longer than 120 days and provided the number of directors not on leave accords with Article IV, Section 1 of these bylaws. A director on leave of absence shall not be counted as a director for any purpose.

§ 5. Compensation. No director shall receive compensation for any service he/she may render to the Association. A director may be reimbursed for his/her actual expenses incurred in the performance of his/her duty.

§ 6. Meetings.

- (a) *Annual Meeting.* The annual meeting of the board of directors shall be held upon the call of the president and within two weeks of the Annual Meeting of the members, at a time and location that are consistent with the board's regular practice for meetings.
- (b) *Regular Meetings.* Regular meetings of the board of directors of the Association shall be held in Tucson, Arizona, at such times as the board of directors shall determine.
- (c) *Special Meetings.* Special meetings of the board of directors shall be held when called by the president or by fifty percent (50%) or more of the directors. Said meetings shall be held in Pima County, Arizona.

§ 7. Notice/Waiver of Notice. A notice of the time and place of the annual, regular or special meetings (including, in the case of special meetings, the purpose or purposes for which the meeting is called) shall be made by the secretary or such person calling the meeting, in writing or by email, at least three days prior to the meeting. Any members of the board of directors may waive notice of any meeting. Attendance at a meeting by a director shall be deemed waiver of notice to the meeting unless the director at the beginning of the

meeting or promptly on the director's arrival at the meeting objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

§ 8. Quorum. A majority of the directors shall constitute a quorum for the transaction of business by the board of directors. Any meeting at which a quorum is not present may be adjourned from time to time until the meeting shall be regularly constituted, at which time any business may be transacted which might have been transacted at the meeting as originally noticed. The directors present at a duly organized meeting may continue to transact business until adjournment, unless the presiding officer declares or a director makes a point of order to the effect that a quorum is no longer remaining due to the withdrawal of directors from such meeting. A director on leave of absence shall not be counted among the directors in determining a quorum.

§ 9. Manner of Acting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as if so taken at a meeting of the directors.

§ 10. Proxies. At meetings of directors, each member must vote in person, except in the case of a specific action for which these Bylaws explicitly allow voting by proxy, for which all proxies shall be in writing and filed with the secretary, shall be revocable, and shall be valid only for the duration of the meeting at which the action is considered and for the vote on the action.

ARTICLE V.

Powers and Duties of the Board of Directors

§ 1. Powers and Authority of the Board. The board of directors shall have all the powers of an Arizona non-profit corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Association's Articles of Incorporation and these Bylaws, and shall have the power and authority to perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the expressed powers of the Association. Without in any way limiting the generality of any of the foregoing provisions, the board of directors shall have the power to establish policies for the Association, to supervise and direct actions taken to implement those policies, and to oversee and direct the affairs of the Association. Also without limitation, the board of directors shall have the power and authority at any time to do the following:

- (a) Delegate specific powers to any committees, including an executive committee, designated by the board of directors;

- (b) Adopt and publish rules and regulations governing the maintenance and control of the Association's property;
- (c) Suspend the voting rights of a member during any period in which such member shall be in breach of the provisions of these Bylaws and /or any rules and regulations promulgated by the board of directors until such default or breach is cured;
- (d) Encumber the property of the Association up to the amount of \$5,000.00, unless a greater amount is approved by the membership;
- (e) Exercise for the Association all powers, duties and authority vested in or delegated to the Association and /or any declaration of establishment of covenants, conditions and restrictions or similar instrument as may be in effect with respect to El Encanto Estates;
- (f) Declare the office of a director of the board of directors to be vacant in the event such director shall be absent from three (3) consecutive regular meetings, provided that these absences have not been approved by the board and provided that the board votes for removal of such director from the board in the manner set forth in Article IV, Section 4 of these bylaws; and
- (g) Employ managers, independent contractors, or such other employees or agents as the board deems necessary, and to prescribe their duties.

§ 2. Duties. It shall be the duties of the board of directors to:

- (a) Cause to be kept a complete record of all of its acts and corporate affairs;
- (b) Supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;
- (c) Procure and maintain adequate insurance in such amounts and of such types as deemed prudent by the board;
- (d) If the board shall so determine, cause easements and /or other property within the El Encanto Estates to be maintained and to own or hire equipment for such purpose;
- (e) Carry out any other or further duty imposed on the Association or its board of directors by the Articles of Incorporation and these Bylaws, by the Arizona Corporation Commission, and by Federal, State and local governments.

ARTICLE VI.

Officers and their Duties

§ 1. Officers. The officers of the Association shall be a president, who shall act as chairman of the board of directors, one or more vice presidents, a secretary, and a treasurer, all of whom shall be members of the board of directors and if designated by the board of directors, an assistant secretary and assistant treasurer. The board of directors in its discretion may designate additional officers. All officers must be members. Termination of membership shall be deemed to be a resignation as an officer of the Association.

§ 2. Election and Term of Office. The officers of the Association shall be elected at the annual meeting of the board of directors, or at such other times as the directors may determine. The election of the officers shall be by majority vote of the board of directors. The term of each office shall be from the close of the annual meeting of the board of directors at which each officer is elected until the next annual meeting of the board of directors and each officer shall hold office for the term thereof unless he/she shall sooner die, resign, become disqualified or be removed as set forth in Article VI, Section 4.

§ 3. Special Appointment. The board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the board may, from time-to-time, determine.

§ 4. Resignation and Removal. Any officer may be removed from office, with or without cause, by the majority vote of the entire number of other directors present personally or voting by proxy, at a regular meeting, or a special meeting called for such purpose. Any officer may resign at any time, by giving written notice to the board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice, or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Failure to be a member or lapse of membership shall be deemed to be a resignation from office.

§ 5. Vacancies. A vacancy in any office may be filled by appointment by the board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he/she replaces.

§ 6. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices, except in the case of special offices created pursuant to Section 3 of this Article.

§ 7. Duties. The duties of the officers are as follows:

- (a) *President.* The president shall be the principal officer of the Association, shall call and preside at all meetings, shall act as official spokesperson for the Association, and, subject to the control of the board of directors, shall in general, supervise and control all of the business and affairs of the Association. The president shall sign, with such other officer as the directors designate, if any, all instruments which the board of directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the board of directors or by these Bylaws to some other officer or agent of the Association or as shall be required by law to be otherwise signed or executed. In the case of the permanent or extended absence or inability of the president to act, the office shall be declared vacant by the board and a successor chosen by the board.
- (b) *Vice President.* The vice president shall perform such duties as may be delegated to him/her by the board of directors. In the case of the temporary absence of the president or in the case of his/her temporary inability to act, the vice president, or if there is more than one vice president, the senior vice president, shall perform and be vested with all of the powers and duties of the president during such temporary absence or temporary inability.
- (c) *Secretary.* The secretary shall report the votes and keep the minutes of all meetings and proceedings of the board and of the members; if a corporate seal of the Association exists, the secretary shall keep and affix it, as required, on any papers; the secretary shall serve notice of the meetings of the board and of the members and include with the notice the agenda for the meeting; the secretary shall keep appropriate current records showing the members of the Association together with their addresses, designated representatives and voting entitlements, shall keep a permanent record of all legal documents and legal transactions of the association, shall maintain the files and records of the Association other than those maintained by the treasurer or other officer, and shall perform such other duties as are required by the board. In the case of the permanent or extended absence or inability of the secretary to act, the office shall be declared vacant by the board and a successor chosen by the board.
- (d) *Treasurer.* The treasurer shall have charge of and custody of and be responsible for all monies, securities and property of the Association and shall keep account of all monies received and disbursed by the Association, and shall deposit all monies and valuables in the name and to the credit of the Association in such banks and depositories as the board of directors may designate. The treasurer shall submit an up-to-date financial report at each meeting of the board of directors or the membership. The Treasurer shall be responsible for recording the names of members who have paid annual dues. The treasurer shall be responsible for the timely filing of reports required by the Arizona

Corporation Commission and by Federal, State, and local governments. In the case of the permanent or extended absence or inability of the treasurer to act, the office shall be declared vacant by the board and a successor chosen by the board.

- (e) *Assistant Secretary.* The assistant secretary, if one is so designated, shall perform such duties as may be delegated by the board of directors. In the case of the temporary absence of the secretary or in the case of his/her temporary inability to act, the assistant secretary shall perform and be vested with all of the powers and duties of the secretary during such temporary absence or temporary inability.
- (f) *Assistant Treasurer.* The assistant treasurer, if one is so designated, shall perform such duties as may be designated by the board of directors. In the case of the temporary absence of the treasurer or in the case of his/her temporary inability to act, the assistant treasurer shall perform and be vested with all of the powers and duties of the treasurer during such temporary absence or temporary inability.

ARTICLE VII.

Committees

§ 1. General. The board of directors from time to time may appoint committees as it shall deem appropriate in carrying out its purposes as provided by the Articles of Incorporation and these Bylaws, including without limitation, an executive committee and a financial review committee. The president shall appoint the chairman of any such committee and may appoint the members thereof or authorize the chairman to do so. The members of a committee need not be directors. The chairman of each such committee shall make reports of its activity to the board of directors at such times, in such manner and in such places as the board shall direct. The president shall be an ex-officio member of all committees.

ARTICLE VIII.

Finances

§ 1. **Fiscal Year.** The Association's fiscal year shall be October 1st through September 30th of the next year.

§ 2. **Accounts.** All receipts of the Association shall be deposited in accounts maintained by the treasurer and all disbursements by the Association shall be made through accounts maintained by the treasurer.

§ 3. **Number of Signatures.** All disbursements of funds shall be signed by the treasurer, or by one or more persons or officers as designated by the board of directors.

ARTICLE IX.

Corporate Seal

The Association, if the board of directors determines, may have a seal, which if existing, is shown to the right of this Article. A corporate seal shall not be requisite to the validity of any instrument executed on behalf of the Association.

ARTICLE X.

Books and Records

The books, records, or papers of the Association shall be made available for inspection by any member of the Association in a timely way upon request and at a time mutually convenient for the member and the person charged with keeping the books, records, or papers. Upon request, the member shall be provided with copies of any such instruments or documents upon payment of the reasonable cost of producing such copies.

Upon installation of the officers whose terms begin at the close of the annual meeting of the board of directors, all documents, records, and any materials pertaining to the duties of the office as designated in the bylaws which are in the possession of the outgoing officers shall be submitted to the newly elected counterpart as soon as possible but not later than the time of the next meeting of the board.

ARTICLE XI.

Indemnification/Insurance

To the fullest extent permitted by Arizona Revised Statutes Sections 10-3851, 10-3852, 10-3855, and 10-3856 and any successor provision, every director, officer or committee member of the Association who is employed, appointed or acts as such by the Association shall be indemnified by the Association, and every other person serving as a director, officer, committee member, employee, volunteer or direct agent of the Association, or otherwise acting on behalf of, and at the request of the Association, who is named as a defendant in threatened, pending or completed litigation, may be indemnified, in the discretion of the board, by the Association. Such indemnification, if mandatory, shall include without limitation, and if discretionary, may include some or all of the following as determined by the board, all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon such person in connection with any proceeding to which he/she may be a party, or in which he/she may become involved, by reason of his/her being or having served in such capacity on behalf of the Association or any settlement thereof, whether or not he/she is a director, officer or committee member or serving in such other specified capacity at the time such expenses are incurred; provided however, in the case of a proceeding threatened or brought in the right of the Association, the indemnity shall exclude judgments, fines and settlements except to the extent a court of competent jurisdiction shall determine that the indemnity is proper as to a settlement. Such indemnification shall be available only if such officer, director, member of a committee or other person acted, or failed to act, in good faith and in a manner he/she reasonably believed to be in or not opposed to the best interests of the Association and, with respect to a criminal proceeding, he/she had reasonable cause to believe his/her conduct was lawful.

The right of indemnification hereinabove provided shall not be exclusive of any rights to which any director or officer of the Association may otherwise be entitled at law.

The Association shall have the power to purchase insurance on behalf of any person who is or was a member, director, officer, employee or agent of the Association against any liability asserted against him/her or incurred by such person in any such capacity or arising out of such person's status, whether or not the Association would have the power to indemnify such person against such liabilities under this Article.

Indemnification and insurance of the Association's directors and officers are also subject to the applicable provisions of Arizona's Nonprofit Corporations Act, as they may be amended from time to time. Attached as Attachment A hereto for reference purposes is the text of Arizona Revised Statutes Sections 10-3850 through 10-3858 (as of 12/8/05). Prior to indemnifying or purchasing insurance for anyone, the Association should check the applicable Arizona law in effect at that time regarding indemnification and insurance.

ARTICLE XII.

Amendments

These Bylaws may be altered, amended or repealed and new bylaws may be adopted by the concurrence of two-thirds (2/3) of the entire number of the board of directors of the Association at its annual meeting, any regular meeting, or at any special meeting called for that purpose, or by two-thirds (2/3) vote of the membership present at the annual meeting or at a special meeting called for that purpose.

ARTICLE XIII.

General

§ 1. Robert's Rules of Order. The rules in the current edition of Robert's Rules of Order shall govern the association, the Board of Directors, and all subcommittees in all cases to which they apply and do not conflict with the specific provisions of this Charter and Bylaws or any special rules that the association may adopt.

§ 2. Severability. If any part of the Charter and Bylaws or the application thereof is hereafter held invalid or unenforceable, the remainder shall not be affected thereby, and only the affected portions are declared eliminated.

§ 3. Liability. No officer, director, representative, spokesperson or member shall have any financial liability of the association.

§ 4. Use of email. In Article IV and Article VI, a requirement or specification of a writing, written notice, written approval, or written request can be satisfied by use of email.

§ 5. Notices and Written Communications. Whenever any notice or other written communication is required to be given by law or by these Bylaws, it may be given personally or sent by mail, delivery service, e-mail, or facsimile transmission, charges prepaid, addressed to the person at his/her/its address as shown on the records of the Association or if it is not so shown on such records or is not readily ascertainable, at the place of the address of the member's lot. Notices and other written communications shall be deemed received upon delivery, except mailed notices shall be deemed to have been received three days after deposit in the United States mail, postage prepaid. In case such notice or other written communication is sent by e-mail or facsimile transmission, it shall be deemed given at the time transmitted by the sender. All such notices and written communications shall be filed with the records of the Association. For any lot with multiple owners, the owners thereof shall designate, in a writing provided to the secretary, one person to be the designated representative to receive notices and communications, and any notice or communication sent to such designated representative shall be effective notice or communication to all

owners of such lot.

Secretary

Date

APPROVED:

President

Date

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Attachment A
Indemnification and Insurance of Directors and Officers of Nonprofit Corporations
(A.R.S. §§ 10-3850 through 10-3858) (as of 12/8/05)

A.R.S. § 10-3850 (Definitions)

In this article, unless the context otherwise requires:

1. "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.
2. "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other entity. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on or otherwise involve services by the director to the plan or to participants in or beneficiaries of the plan. Director includes the estate or personal representative of a director and includes ex officio members of the board.
3. "Expenses" include attorney fees and other costs and expenses reasonably related to a proceeding.
4. "Liability" means the obligation to pay a judgment, settlement, penalty or fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses actually incurred with respect to a proceeding and includes obligations and expenses that have not yet been paid by the indemnified persons but that have been or may be incurred.
5. "Officer" means an individual who is or was an officer of a corporation or an individual who, while an officer of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other entity. An officer is considered to be serving an employee benefit plan at the corporation's request if the officer's duties to the corporation also impose duties on or otherwise involve services by the officer to the plan or to participants in or beneficiaries of the plan. Officer includes the estate or personal representative of an officer.
6. "Official capacity" means if used with respect to a director, the office of director in a corporation and, if used with respect to an officer as contemplated in section 10-3856, the office in a corporation held by the officer. Official capacity does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other entity.

7. "Outside director" means a director who, when serving as a director, is not or was not a compensated officer, employee or member holding more than ten per cent of the voting power of the corporation or any affiliate of the corporation or an officer, employee or holder of more than ten per cent of the voting power of such a member or any affiliate of that member.

8. "Party" includes an individual who was, is or is threatened to be made a named defendant or respondent in a proceeding.

9. "Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal.

HISTORY: Last year in which legislation affected this section: 1997

A.R.S. § 10-3851 (Authority to indemnify)

A. Except as provided in subsection D of this section, a corporation may indemnify an individual made a party to a proceeding because either:

1. The individual is or was a director against liability incurred in the proceeding if all of the following conditions exist:

(a) The individual's conduct was in good faith.

(b) The individual reasonably believed:

(i) In the case of conduct in an official capacity with the corporation, that the conduct was in its best interests.

(ii) In all other cases, that the conduct was at least not opposed to its best interests.

(c) In the case of any criminal proceedings, the individual had no reasonable cause to believe the conduct was unlawful.

2. The director engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation pursuant to section 10-3202, subsection B, paragraph 2.

B. A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection A, paragraph 1, subdivision (a) of this section.

C. The termination of a proceeding by judgment, order, settlement or conviction or on a plea of

no contest or its equivalent is not of itself determinative that the director did not meet the standard of conduct described in this section.

D. A corporation may not indemnify a director under this section either:

1. In connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation.

2. In connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in the director's official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

E. Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

HISTORY: Last year in which legislation affected this section: 1997

A.R.S. § 10-3852 (Mandatory indemnification)

A. Unless limited by its articles of incorporation, a corporation shall indemnify a director who was the prevailing party, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director is or was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding.

B. Unless limited by its articles of incorporation, section 10-851, subsection D or subsection C of this section, a corporation shall indemnify an outside director against liability. Unless limited by its articles of incorporation or subsection C of this section, a corporation shall pay an outside director's expenses in advance of a final disposition of a proceeding, if the director furnishes the corporation with a written affirmation of the director's good faith belief that the director has met the standard of conduct described in section 10-851, subsection A and the director furnishes the corporation with a written undertaking executed personally, or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct. The undertaking required by this subsection is an unlimited general obligation of the director but need not be secured and shall be accepted without reference to the director's financial ability to make repayment.

C. A corporation shall not provide the indemnification or advancement of expenses described in subsection B of this section if a court of competent jurisdiction has determined before payment that the outside director failed to meet the standards described in section 10-851, subsection A, and a court of competent jurisdiction does not otherwise authorize payment under section 10-854. A corporation shall not delay payment of indemnification or expenses under subsection B of this section for more than sixty days after a request is made unless ordered to do so by a court of competent jurisdiction.

HISTORY: Last year in which legislation affected this section: 1997

A.R.S. § 10-3853 (Advance for expenses)

A. A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if both of the following conditions exist:

1. The director furnishes to the corporation a written affirmation of the director's good faith belief that the director has met the standard of conduct described in section 10-3851 or that the proceeding involves conduct for which liability has been eliminated under a provision of the articles of incorporation pursuant to section 10-3202, subsection B, paragraph 1.

2. The director furnishes the corporation with a written undertaking, executed personally or on the director's behalf, to repay the advance if the director is not entitled to mandatory indemnification under section 10-3852 and it is ultimately determined that the director did not meet the standard of conduct.

B. The undertaking required by subsection A, paragraph 2 of this section is an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

C. Authorizations of payments under this section shall be made in a manner consistent with section 10-3830 or 10-3842.

D. This section does not apply to advancement of expenses to or for the benefit of an outside director. Advances to outside directors shall be made pursuant to section 10-3852.

HISTORY: Last year in which legislation affected this section: 1997

A.R.S. § 10-3854 (Court ordered indemnification)

Unless a corporation's articles of incorporation provide otherwise, a director of the corporation who is a party to a proceeding may apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice the court considers necessary may order indemnification advances for expenses if it determines either:

1. The director is entitled to mandatory indemnification under section 10-3852, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court ordered indemnification.

2. The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in section 10-3851 or was adjudged liable as described in section 10-3851, subsection D, but if the director was adjudged liable under section 10-3851, subsection D, indemnification is limited to reasonable expenses incurred.

HISTORY: Last year in which legislation affected this section: 1997

A.R.S. § 10-3855 (Determination and authorization of indemnification)

A. A corporation may not indemnify a director under section 10-3851 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in section 10-3851.

B. The determination shall be made either:

1. By the board of directors by a majority vote of the directors not at the time parties to the proceeding.

2. By special legal counsel:

(a) Selected by majority vote of the disinterested directors.

(b) If there are no disinterested directors, selected by majority vote of the board of directors.

3. By the members, but directors who are at the time parties to the proceeding may not vote on the determination.

C. Neither special legal counsel nor any member has any liability whatsoever for a determination made pursuant to this section. In voting pursuant to subsection B of this section, directors shall discharge their duty in accordance with section 10-3830.

D. Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection B, paragraph 2 of this section to select counsel.

HISTORY: Last year in which legislation affected this section: 1997

A.R.S. § 10-3856 (Indemnification of officer)

A. A corporation may indemnify and advance expenses under this article to an officer of the corporation who is a party to a proceeding because the individual is or was an officer of the corporation as follows:

1. To the same extent as a director.

2. If the individual is an officer but not a director, to the further extent as may be provided by the articles of incorporation, the bylaws, a resolution of the board of directors, or contract except for:

(a) Liability in connection with a proceeding by or in the right of the corporation other than for reasonable expenses incurred in connection with the proceeding.

(b) Liability arising out of conduct that constitutes:

(i) Receipt by the officer of a financial benefit to which the officer is not entitled.

(ii) An intentional infliction of harm on the corporation or the members.

(iii) An intentional violation of criminal law.

B. Subsection A, paragraph 2 of this section applies to an officer who is also director if the basis on which the officer is made a party to the proceeding is an act or omission solely as an officer.

C. An officer of a corporation who is not a director is entitled to mandatory indemnification under section 10-3852, subsection A and may apply to a court under section 10-3854 for indemnification or an advance for expenses, in each case to the same extent to which a director is entitled to indemnification or advance for expenses under those sections.

HISTORY: Last year in which legislation affected this section: 1997

A.R.S. § 10-3857 (Insurance)

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director or officer of the corporation or who, while a director or officer of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other entity, against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director or officer, whether or not the corporation would have power to indemnify or advance expenses to the person against the same liability under this article.

HISTORY: Last year in which legislation affected this section: 1997

A.R.S. § 10-3858 (Application of article)

A. A provision treating a corporation's indemnification of or advance for expenses to directors that is contained in its articles of incorporation, bylaws, a resolution of its members or board of directors or a contract or otherwise is valid only if and to the extent the provision is consistent with this article. If the articles of incorporation limit indemnification or advances for expenses, indemnification and advances for expenses are valid only to the extent consistent with the articles of incorporation.

B. This article does not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with the director's appearance as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding.

C. This article does not limit a corporation's power to indemnify, advance expenses or maintain insurance on behalf of an employee or agent.

HISTORY: Last year in which legislation affected this section: 1997