



**DC Ranch Association  
Board Report 1-4-2021 #2**

**Subject Matter: Proposed Revisions to Policy 104 (Board Governance)**

**Background:** In 2020, the Association's Bylaws were amended and recorded. There were many changes to the document, all of which were vetted by the Board and its legal counsel; they were then voted on by NVMs, achieving the necessary approval requirements.

When the Amended Bylaws were recorded in 2020, a necessary correction to Policy 104 (Board Governance) went unnoticed, until just recently. The existing policy language provides the following: *"Directors can be removed by a majority of the directors present at a regular or special meeting at which a quorum is present."* This provision in its current state does not conform with the law. Section 104.5 should be revised to align with the Amended Bylaws, as well as to conform with Arizona Revised Statutes 33-1813 and 33-1804.

It is important to note that the Board is granted the authority via the Amended Bylaws and Arizona Revised Statutes, to remove directors from offices they hold e.g., President, Vice President, Treasurer and Secretary. The Board can do this because it was the directors themselves who elected the officers on the Board.

While the foregoing is an authorized action, what's not authorized by any governing document is the Board unilaterally removing a director from the Board, because unlike the election of officers, Board directors are elected by Voting Members and therefore can only be removed completely from the Board by the Voting Members. You will see on the accompanying documents that language is proposed that remedies the foregoing concern.

Section 102.4c of the Policy for the Management and Development of Policies reads as follows: *"When the Policy Committee recommends a new policy or a change to a policy and prior to the Board's formal vote, community members shall be provided with a 30-day comment period, where they are afforded an opportunity to provide input and comment on the proposed policy. The proposed policy or policies will be posted on the community's website and notice regarding the posting will reflect in the weekly This Week on the Ranch e-mail to DC Ranch residents."*

The Board can conditionally approve this proposed policy and post it for the required 30-day member comment period. The policy can then be formally considered at the March 1, 2021 regularly scheduled board meeting.

**Recommendation:** Conditionally approve proposed revisions to Policy 104 (Board Governance) post for the 30-day member comment period.

A handwritten signature in black ink, appearing to read "Darren Shaw", written over a horizontal line.

Darren Shaw, Executive Director



**DC Ranch Association  
Policy 104  
Policy on Board Governance**

Policy 104

Date of Adoption: January 8, 2018

Effective Date: January 9, 2018

Last Revised: January 8, 2018

104.1 Purpose: The purpose of this policy is to define governance procedures of the Board of Directors.

104.2 Scope: This policy applies to all members of the DC Ranch Association Board of Directors. Its scope is to bring attention to, and clarify where needed, important procedures and requirements related to the governance of the Association. Additional information can be found in the Association's CC&Rs, Bylaws, Articles of Incorporation and Arizona Revised Statutes (Governing Documents). Should a conflict regarding language in this policy and the Governing Documents occur, those documents have precedence over this policy. Further, should a situation arise that is not addressed by the Governing Documents, applicable policies can be written to provide direction and procedures, provided the foregoing are within the spirit of the Governing Documents.

104.3 Responsibility/Authority: The Ranch Association Board of Directors.

104.4 Introduction: The Association's mission statement is as follows: To serve all DC Ranch Stakeholders through the professional management and protection of the community's fiscal and environmental assets. DC Ranch Association delivers high quality and consistent operations, landscape, maintenance and security services with an emphasis on customer care and open communication that result in sustained property values and exceptional quality of life. This policy will provide guidance to the Board of Directors as it endeavors to fulfill the mission and effectively govern the community.

104.5 ~~Removal and Vacancies from the Board: Pursuant to Article 3.6 of the Bylaws, Directors can be removed by a majority of the directors present at a regular or special meeting, at which a quorum is present, if the director:~~

- ~~1. Becomes more than 30 days delinquent paying all assessments, fees and fines even if such assessments, fees or fines are disputed.~~
- ~~2. Is absent for three consecutive regularly scheduled board meetings.~~
- ~~3. No longer owns a home in DC Ranch Association, or is no longer a resident.~~

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~~Pursuant to Article 4.3. of the Bylaws, the Board may remove any officer whenever in the Board's judgment the Association's best interests will be served and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.~~

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~~An action to remove a director from Board must conform with Arizona Revised Statute 33-1813, and 33-1804 (exhibit A and B). The voting members of the Association who are eligible to vote at the time of the meeting may remove any member of the Board of Directors by a majority (51%) of the voting members who are voting on the matter at a meeting of the members.~~

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104.6 Board Meeting Attendance and Quorum: A quorum is required at a board meeting for the Board to conduct business. Pursuant to Article 3.12 of the Bylaws, at all board meetings, a majority of the directors shall constitute a quorum. Pursuant to Article 3.11 of the Bylaws, directors may attend the meeting telephonically or by any other means of voice communication as long as all participants of the meeting can hear and understand each other.

104.7 Authority of the Executive Director: Article 4.4 of the Bylaws provides that the Board President shall be the Chief Executive Officer. Pursuant to Article 3.20 of the Bylaws, the Board may delegate such powers necessary to carry out the duties and services required to operate the business. The Executive Director thereby, has full authority and responsibility to manage all employees, finances and activities of the Association except as limited by this Section 104.7, by Sections 104.8 and 104.10 of this policy and by any other approved policy. Specific limitations on the Executive Director's authority include:

1. The Executive Director must comply with all approved policies.
2. The compensation budget approved by the Board each year shall be adhered to. Deviations from that plan require approval from the Board of Directors.
3. All contracts with a greater annual value of \$150,000 must be approved by the Board.

104.8 Expense Signature Authority:

104.8.a Executive Director's Expense Authority: The Executive Director is authorized to approve Ranch Association expenses as follows:

- Planned and scheduled replacement/repair reserves expenses not exceeding \$150,000
- Unplanned replacement/repair reserves expenses not exceeding an aggregate of \$50,000 in one fiscal year

- Reallocation and timing of replacement/repair reserve expenses among approved planned reserve expenses not to exceed \$100,000 in one fiscal year
- Reallocation and timing of replacement/repair reserve expenses from approved planned reserve expenses to unplanned reserve expenses not to exceed an aggregate of \$20,000 in one fiscal year
- Recurring operational expenses approved by the Board with its annual budget approval
- Other non-budgeted operating expenses not exceeding \$25,000

104.9 Spokespersons: The Board President and the Executive Director are authorized to speak or make statements on behalf of the Association. No other members of the Board or staff are so authorized. All inquiries for information or requests for a statement from the media, residents, governmental figures of all levels and all other entities must be referred to one of those two people.

104.9.a Involvement in Non-DC Ranch Activities: Directors may attend and participate in meetings or events organized by, or involving, individuals, groups or other entities not affiliated with DC Ranch, including meetings held by the City of Scottsdale or other government agencies. Absent prior approval from the Board President, a Director may not represent, either explicitly or implicitly, that he or she is attending or participating in any such meeting or event as a representative of, or on behalf of DC Ranch or DC Ranch Association. Additionally, if name badges are worn, the Director's badge may not display any affiliation with DC Ranch or DC Ranch Association, and any program, handouts, slides or other printed material prepared for the meeting or event must similarly exclude the Director's affiliation. Further, oral introductions made before speaking shall not include the Director's affiliation with DC Ranch.

104.10 Items Requiring Board of Directors' Approval: The following items must be approved by vote of the Board of Directors:

- All policies other than policies directed to the day-to-day management of the staff
- The Executive Director's annual review and compensation plan
- The annual operations and reserves budgets
- The choice of the auditor and the contract with the auditor
- All standards enforced in the community
- Any additions or reductions in Association authority (Examples include: adding or removing neighborhoods, management or oversight of sub-associations, additional or reduced authority over modifications, etc.)
- Expenses greater than those listed in 104.8.a above
- Minutes of regular and special board meeting and of Executive Sessions of the Board
- Disciplinary action taken against a Board member up to and including removal
- Appointment of replacement directors
- Disciplinary related lawsuits against members

104.11 Voting: The Board of Directors can only conduct business when a quorum is present at the beginning of the meeting. To vote, directors must be in attendance at the meeting (in person or telephonically) when the vote is taken, must be in compliance with Article 3.6 of the Bylaws (attendance and current on assessments), and not have a conflict of interest in the matter as defined by Policy 103. Board members may abstain from a vote in their sole discretion. Any matters brought to a vote at any board meeting must achieve 51% or greater of attending members' votes in favor to pass.

104.11.a Vote of Board President: Each year, when the Board of Directors conducts its organizational meeting, the Board shall determine if the Board President can vote on all matters brought before the Board, or on just those voting matters where there is a tie vote that needs to be broken.

104.11.b Pursuant to Article 2.7 of the Bylaws, if a quorum is achieved and a meeting has commenced and subsequently one or more members leave the meeting, business can still be transacted as long as the matter up for vote receives a majority of the votes of the original quorum or greater.

104.11.c Voting by Proxy: Voting by proxy is not allowed pursuant to Non-profit Act at §10-3824(G).

104.11.d Action Without a Formal Meeting: Pursuant to 3.16 of the Bylaws, any action that may be taken at a board meeting may be taken without a meeting if written consent, setting forth the action so taken, is signed by all directors. Such consent shall have the same force and effect as a unanimous vote.

104.12 Notice of Board Meetings and Committee Meetings: Notice for meetings of the Board is required as listed in the chart below:

Meeting Type	Notice to Board Members	Notice to Residents
Annual Member Meeting	N/A	Written notice not less than 10 days, no more than 50 days
Regular Board Meeting	4 days	4 days - posted on website
Executive Session of the Board	48 hours	48 hours - posted on website
Special Board Meeting – called by President, Vice President, or two directors	4 days	4 days - posted on website
Membership Meetings	N/A	Written notice - not less than 10 days, no more than 50 days

Board Workshop	4 days	4 days – posted on website
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104.13 Notice of committee meetings is required as listed below:

Meeting Type	Notice to Committee Members	Notice to Residents
Standing Committee Meetings (standing and ad-hoc)	4 days	4 days – posted on website

104.14 Board of Directors' Meeting Calendar: At the beginning of each fiscal year, the Board President will publish a Board Calendar. The Board Calendar will list all regularly scheduled board meetings and will highlight special presentations requested by the Board throughout the year. The purpose of the calendar is to ensure all major operating elements of the Association are reviewed in open session with the Board.

104.15 Executive Sessions of the Board: Pursuant to Arizona Revised Statute §33-1804, the Board may close any portion of a meeting of the Board 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. Financial information about an individual member of the association, an individual employee of the association, an individual employee of the managing entity or an individual employee of a contractor for the association or managing entity.
4. Matters relating to the job performance of, compensation of, health records of, or specific complaints against, an individual employee of the association, an individual employee of the managing entity or an individual employee of a contractor of the association or managing entity who works under the direction of the association or the managing entity.

Approved By: \_\_\_\_\_ Date \_\_\_\_\_  
 Board President or Secretary

Effective Date: \_\_\_\_\_



## **EXHIBIT A to Policy 104 (Board Governance)**

### **Arizona Revised Statutes (12-28-2020) 33-1813. Removal of board member; special meeting**

A. Notwithstanding any provision of the declaration or bylaws to the contrary, all of the following apply to a meeting at which a member of the board of directors, other than a member appointed by the declarant, is proposed to be removed from the board of directors:

1. The members of the association who are eligible to vote at the time of the meeting may remove any member of the board of directors, other than a member appointed by the declarant, by a majority vote of those voting on the matter at a meeting of the members.
2. The meeting of the members shall be called pursuant to this section and action may be taken only if a quorum is present.
3. The members of the association may remove any member of the board of directors with or without cause, other than a member appointed by the declarant.
4. For purposes of calling for removal of a member of the board of directors, other than a member appointed by the declarant, the following apply:
  - (a) In an association with one thousand or fewer members, on receipt of a petition that calls for removal of a member of the board of directors and that is signed by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least twenty-five percent of the votes in the association or by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least one hundred votes in the association, whichever is less, the board shall call and provide written notice of a special meeting of the association as prescribed by section 33-1804, subsection B.
  - (b) Notwithstanding section 33-1804, subsection B, in an association with more than one thousand members, on receipt of a petition that calls for removal of a member of the board of directors and that is signed by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least ten percent of the votes in the association or by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least one thousand votes in the association, whichever is less, the board shall call and provide written notice of a special meeting of the association. The board shall provide written notice of a special meeting as prescribed by section 33-1804, subsection B.
  - (c) The special meeting shall be called, noticed and held within thirty days after receipt of the petition.
  - (d) For purposes of a special meeting called pursuant to this subsection, a quorum is present if the number of owners who are eligible to vote in the association at the time the person attends the meeting equal to at least twenty percent of the votes of the association or the number of persons who are eligible to vote in the association at the time the person attends the meeting equal to at least one thousand votes, whichever is less, is present at the meeting in person or as otherwise permitted by law.

(e) If a civil action is filed regarding the removal of a board member, the prevailing party in the civil action shall be awarded its reasonable attorney fees and costs.

(f) The board of directors shall retain all documents and other records relating to the proposed removal of the member of the board of directors and any election or other action taken for that director's replacement for at least one year after the date of the special meeting and shall permit members to inspect those documents and records pursuant to section 33-1805.

(g) A petition that calls for the removal of the same member of the board of directors shall not be submitted more than once during each term of office for that member.

5. On removal of at least one but fewer than a majority of the members of the board of directors at a special meeting of the membership called pursuant to this subsection, the vacancies shall be filled as provided in the community documents.

6. On removal of a majority of the members of the board of directors at a special meeting of the membership called pursuant to this subsection, or if the community documents do not provide a method for filling board vacancies, the association shall hold an election for the replacement of the removed directors at a separate meeting of the members of the association that is held not later than thirty days after the meeting at which the members of the board of directors were removed.

7. A member of the board of directors who is removed pursuant to this subsection is not eligible to serve on the board of directors again until after the expiration of the removed board member's term of office, unless the community documents specifically provide for a longer period of ineligibility.

B. For an association in which board members are elected from separately designated voting districts, a member of the board of directors, other than a member appointed by the declarant, may be removed only by a vote of the members from that voting district, and only the members from that voting district are eligible to vote on the matter or be counted for purposes of determining a quorum.

## **EXHIBIT B to Policy 104 (Board Governance)**

### **Arizona Revised Statutes (12-28-2020) 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 committee meetings, are open to all members of the association or any person designated by a member in writing as the member's representative and all members or designated representatives so desiring shall be permitted to attend and speak at an appropriate time during the deliberations and proceedings. The board may place reasonable time restrictions on those persons speaking during the meeting but shall permit a member or member's designated representative to speak once after the board has discussed a specific agenda item but before the board takes formal action on that item in addition to any other opportunities to speak. The board shall provide for a reasonable number of persons to speak on each side of an issue. Persons attending may audiotape or videotape those portions of the meetings of the board of directors and meetings of the members that are open. The board of directors of the association shall not require advance notice of the audiotaping or videotaping and may adopt reasonable rules governing the audiotaping and videotaping of open portions of the meetings of the board and the membership, but such rules shall not preclude such audiotaping or videotaping by those attending, unless the board audiotapes or videotapes the meeting and makes the unedited audiotapes or videotapes available to members on request without restrictions on its use as evidence in any dispute resolution process. Any portion of a meeting may be closed only if that closed portion of the meeting is limited to consideration of one or more of the following:

1. Legal advice from an attorney for the board or the association. On final resolution of any matter for which the board received legal advice or that concerned pending or contemplated litigation, the board may disclose information about that matter in an open meeting except for matters that are required to remain confidential by the terms of a settlement agreement or judgment.
2. Pending or contemplated litigation.
3. Personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association, including records of the association directly related to the personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association.
4. Matters relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association.
5. Discussion of a member's appeal of any violation cited or penalty imposed by the association except on request of the affected member that the meeting be held in an open session.

B. Notwithstanding any provision in the community documents, all meetings of the members' association and the board shall be held in this state. A meeting of the members' association shall be held at least once each year.

Special meetings of the members' association may be called by the president, by a majority of the board of directors or by members having at least twenty-five percent, or any lower percentage specified in the bylaws, of the votes in the association. Not fewer than ten nor more than fifty days in advance of any meeting of the members the secretary shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address for each lot, parcel or unit owner or to any other mailing address designated in writing by a member.

The notice shall state the date, time and place of the meeting. A notice of any annual, regular or special meeting of the members shall also state the purpose for which the meeting is called, including the general nature of any proposed amendment to the declaration or bylaws, changes in assessments that require approval of the members and any proposal to remove a director or an officer. The failure of any member to receive actual notice of a meeting of the members does not affect the validity of any action taken at that meeting.

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

D. Notwithstanding any provision in the declaration, bylaws or other community documents, for meetings of the board of directors that are held after the termination of declarant control of the association, notice to members of meetings of the board of directors shall be given at least forty-eight hours in advance of the meeting by newsletter, conspicuous posting or any other reasonable means as determined by the board of directors. An affidavit of notice by an officer of the corporation is prima facie evidence that notice was given as prescribed by this section. Notice to members of meetings of the board of directors is not required if emergency circumstances require action by the board before notice can be given. Any notice of a board meeting shall state the date, time and place of the meeting. The failure of any member to receive actual notice of a meeting of the board of directors does not affect the validity of any action taken at that meeting.

E. Notwithstanding any provision in the declaration, bylaws or other community documents, for meetings of the board of directors that are held after the termination of declarant control of the association, all of the following apply:

1. The agenda shall be available to all members attending.

2. An emergency meeting of the board of directors may be called to discuss business or take action that cannot be delayed for the forty-eight hours required for notice. At any emergency meeting called by the board of directors, the board of directors may act only on emergency matters. The minutes of the emergency meeting shall state the reason necessitating the emergency meeting. The minutes of the emergency meeting shall be read and approved at the next regularly scheduled meeting of the board of directors.

3. A quorum of the board of directors may meet by means of a telephone conference if a speakerphone is available in the meeting room that allows board members and association members to hear all parties who are speaking during the meeting.

4. Any quorum of the board of directors that meets informally to discuss association business, including workshops, shall comply with the open meeting and notice provisions of this section without regard to whether the board votes or takes any action on any matter at that informal meeting.

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