

APPLICATION FOR INITIATIVE OR REFERENDUM PETITION SERIAL NUMBER

Secretary of State
1700 W. Washington Street, 7th Floor
Phoenix, AZ 85007

The undersigned intends to circulate and file an **INITIATIVE** or a **REFERENDUM** (circle the appropriate word) petition and hereby makes application for the issuance of an official serial number to be printed in the lower right-hand corner of each side of each signature sheet of such petition. Pursuant to Arizona Revised Statutes § 19-111, attached hereto is the full text, in no less than eight point type, of the **MEASURE** or **CONSTITUTIONAL AMENDMENT** (circle appropriate word) intended to be **INITIATED** or **REFERRED** (circle appropriate word) at the next general election.

SUMMARY: A description of no more than one hundred words of the principal provisions of the proposed law, constitutional amendment or measure that will appear in no less than eight point type on the face of each petition signature sheet to be circulated.

HOMEOWNERS' BILL OF RIGHTS. Ten-year warranty on new homes. Right to demand correction of construction defects or compensation. Homeowners participate in selecting contractors to do repair work. They can sue if no agreement with the builder. No liability for builders' attorney and expert fees but homeowner can recover these costs. Homeowners can sometimes recover compensatory and consequential damages. Disclosure of builders' relationships with financial institutions. Model homes must reflect what is actually for sale. Right to cancel within 100 days and get back most of the deposit. Prohibiting sellers' agents from participating in false mortgage applications.

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Signature of Applicant

Dion Abril

Printed Name of Applicant

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Homeowners' Bill of Rights Committee

Name of Organization (if any)

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Dion Abril, Chair

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Don Lathem, Treasurer

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Date of Application	12-19-07
Signatures Required	153,365
Deadline for Filing	July 3, 2008
Serial Number Issued	I-14-2008
FOR OFFICE USE ONLY	

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Be it enacted by the People of the State of Arizona:

Section 1. Title

This act may be cited as the "Homeowners' Bill of Rights."

Section 2. Purpose and intent

The People of the State of Arizona hereby make the following findings and declare their purpose in enacting this Act is as follows:

Arizona's expanding population needs housing. This should be good housing, using careful design and high-quality construction materials and techniques. We want our houses to look good and last for generations to come. Arizona cannot afford to have vast tracts of poorly-made houses that become "insta-slums". Good houses, on the other hand, keep their value economically and help prevent neighborhood decay.

Arizona homeowners are also entitled to be protected from sharp home sales practices. There are too many instances of homeowners being pushed into houses and mortgages that they cannot afford, with disastrous consequences that are now well known. They have also been victimized by bait-and-switch tactics, deceptive model homes, hidden charges and finance and insurance schemes riddled with conflicts of interest.

Current law is inadequate to deal with these problems. In fact, the Legislature has enacted laws that served to unduly protect home builders at the expense of home owners. It has become very difficult for homeowners to take effective legal action to correct even the most blatant design and construction defects.

This Homeowners' Bill of Rights is a law by homeowners for homeowners. It will give homeowners the ability to get defective homes fixed, to have their homes when built match what they were led to expect and to better understand financing and insurance schemes that are offered to them.

Section 3. Title 12, Chapter 8, Article 14, Arizona Revised Statutes, is amended by striking certain portions thereof (indicated by strikethroughs) and adding certain other portions (indicated by underlining) to read:

Article 14 ~~Purchaser-Dwelling-Actions~~ HOMEOWNERS' BILL OF RIGHTS

12-1361. Definitions

In this article, unless the context otherwise requires:

1. "Association" means either of the following:

(a) The unit owners' association organized under section 33-1241.

(b) A nonprofit corporation or unincorporated association of owners created pursuant to a declaration to own and operate portions of a planned community and which 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.

2. "Community documents" means the declaration, bylaws, articles of incorporation, if any, and rules, if any.

3. "Dwelling" means a single or multifamily unit designed for residential use and common areas and improvements that are owned or maintained by an association or by members of an association. A dwelling includes the systems, other components and improvements that are part of a single or multifamily unit at the time of construction.

4. "Dwelling action" means any action brought by a purchaser against the seller of a dwelling arising out of or related to the design, construction, condition or sale of the dwelling.

5. "Multiunit dwelling action" means a dwelling action brought by an association or by or on behalf of the owners of five or more individual dwelling units.

6. "Purchaser" means any person or entity ~~who files a dwelling action~~ WHO PURCHASES A DWELLING. FOR THE PURPOSES OF THE SECTION OF THIS ARTICLE PROVIDING FOR DISCLOSURES TO PROSPECTIVE BUYERS OF DWELLINGS, "PURCHASER" ALSO INCLUDES SUCH PROSPECTIVE BUYERS.

7. "Seller" means any person, firm, partnership, corporation, association or other organization that is engaged in the business of designing, constructing or selling dwellings, including a person, firm, partnership, corporation, association or organization licensed pursuant to title 32, chapter 20.

12-1362. Dwelling action; jurisdictional prerequisite; insurance

A. Except with respect to claims for alleged defects involving an immediate threat to the life or safety of persons occupying or visiting the dwelling, a purchaser must first comply with this article before filing a dwelling action.

B. If a seller presents a notice received pursuant to section 12-1363 to an insurer that has issued an insurance policy to the seller that covers the seller's liability arising out of the design, construction or sale of the property that is the subject of the notice, the insurer must treat the notice as a notice of a claim subject to the terms and conditions of the policy of insurance. An insurer is obliged to work cooperatively and in good faith with the insured seller within the timeframes specified in this article to effectuate the purpose of this article. Nothing in this subsection otherwise affects the coverage available under the policy of insurance or creates a cause of action against an insurer whose actions were reasonable under the circumstances, notwithstanding its inability to comply with the timeframes specified in section 12-1363.

12-1363. Notice and opportunity to repair

A. At least ninety SIXTY days before filing a dwelling action, the purchaser shall give written notice by certified mail, return receipt requested, to the seller specifying in reasonable detail the basis of the dwelling action. The notice in a multiunit dwelling action involving alleged defects that are substantially similar in multiple residential units may comply with this section by providing a reasonably detailed description of the

alleged defects in a fair and representative sample of the affected residential units. For the purposes of this subsection, "reasonable detail" includes a detailed and itemized list that describes each alleged defect and the location that each alleged defect has been observed by the purchaser in each dwelling that is the subject of the notice MEANS A DESCRIPTION IN ORDINARY, NON-TECHNICAL LANGUAGE THAT PUTS THE SELLER ON NOTICE OF THE TYPES OF DEFECTS A HOMEOWNER OF AVERAGE EXPERIENCE WOULD BE EXPECTED TO OBSERVE. ANY PARTICULAR DEFECT THAT IS REASONABLY ENCOMPASSED IN THE HOMEOWNER'S DESCRIPTION OR THAT IS OR SHOULD HAVE BEEN FOUND BY A SELLER DURING AN INSPECTION OF THE ALLEGED DEFECTS USING DUE DILIGENCE SHALL BE DEEMED INCLUDED WITHIN THE PURCHASER'S NOTICE TO THE SELLER.

B. After receipt of the notice described in subsection A of this section, the seller may SHALL CONDUCT A DILIGENT inspection OF the dwelling to determine the nature and cause of the alleged defects and the nature and extent of any repairs or replacements necessary to remedy the alleged defects. The purchaser shall ensure that the dwelling is made available for inspection no later than ten days after the purchaser receives the seller's request for an inspection. The seller shall provide reasonable notice to the purchaser before conducting the inspection. The inspection shall be conducted at a reasonable time. The seller may use reasonable measures, including testing, to determine the nature and cause of the alleged defects and the nature and extent of any repairs or replacements necessary to remedy the alleged defects. If the seller conducts testing pursuant to this subsection, the seller shall restore the dwelling to its condition before the testing.

C. Within sixty THIRTY days after receipt of the notice described in subsection A of this section, the seller shall send to the purchaser a good faith written response to the purchaser's notice by certified mail, return receipt requested. The response may include an offer to repair or replace any alleged defects, to have the alleged defects repaired or replaced at the seller's expense or to provide monetary compensation to the purchaser. The offer shall describe in reasonable detail all repairs or replacements that the seller is offering to make or provide to the dwelling and a reasonable estimate of the date by which the repairs or replacements will be made or monetary compensation will be provided. THE OFFER MUST INCLUDE AN OFFER TO REPAIR OR REPLACE ANY ALLEGED DEFECTS AND IF COMPENSATION TO THE PURCHASER IS OFFERED, THE PURCHASER MUST BE GIVEN THE SOLE POWER TO ELECT COMPENSATION INSTEAD OF REPAIR OR REPLACEMENT. ANY AND ALL REPAIRS MUST BE MADE BY A CONTRACTOR LICENSED BY THE STATE WITH NO RECORD OF AN ORDER BY THE REGISTRAR OF CONTRACTORS AGAINST IT WITHIN THE 10 YEARS PRECEDING THE SELLER'S OFFER. THE SELLER SHALL INCLUDE IN ITS OFFER OF REPAIR OR REPLACEMENT A CHOICE OF AT LEAST THREE CONTRACTORS FOR EACH CONTRACT OR SUBCONTRACT FOR THE WORK TO BE DONE, FROM WHICH THE PURCHASER MAY CHOOSE A CONTRACTOR.

D. If the seller does not provide a written response to the purchaser's notice within sixty THIRTY days, the purchaser may file a dwelling action without waiting for the expiration of ninety SIXTY days as required by subsection A of this section.

E. Within twenty days after receipt of the seller's offer made pursuant to subsection C of this section, the purchaser shall provide a good faith written response. A purchaser who accepts the seller's offer made pursuant to subsection C of this section shall do so in writing by certified mail, return receipt requested. A purchaser who rejects the seller's offer made pursuant to subsection C of this section shall respond to the seller in writing by certified mail, return receipt requested. ~~If the seller provides a specific factual basis for the offer, THE response shall include the specific factual basis for the purchaser's rejection of the seller's offer and the purchaser's counteroffer, if any.~~ Within ten days after receipt of the purchaser's response, the seller may make a best and final offer THAT CONFORMS TO THE REQUIREMENTS IN SUBSECTION C to the purchaser in writing by certified mail, return receipt requested.

F. The following are not admissible in any dwelling action:

1. A purchaser's good faith notice given to the seller pursuant to subsection A of this section.
2. A seller's good faith response or offer made pursuant to subsection C of this section.
3. A purchaser's good faith response made to a seller's offer pursuant to subsection E of this section.
4. A purchaser's good faith counteroffer to a seller's offer made pursuant to subsection E of this section.
5. A seller's good faith best and final offer made pursuant to subsection E of this section.

G. A purchaser may amend the notice provided pursuant to subsection A of this section to include alleged defects identified in good faith after submission of the original notice during the ninety day notice period. The seller shall have a reasonable period of time to conduct an inspection, if requested, and thereafter the parties shall comply with the requirements of subsections B, C and E of this section for the additional alleged defects identified in reasonable detail in the notice.

H. A purchaser's written notice made pursuant to subsection A of this section or an amended notice made pursuant to subsection G of this section tolls the applicable statute of limitations, including section 12-552, until FOR ninety days after the seller receives the notice or for a reasonable period agreed to in writing by the purchaser and seller.

I. Subject to Arizona rules of court, during the pendency of a dwelling action the purchaser may supplement the list of alleged defects to include additional alleged defects identified in good faith after filing of the original dwelling action that have been identified in reasonable detail as required by this section. The court shall provide the seller a reasonable amount of time to inspect the dwelling to determine the nature and cause of the additional alleged defects and the nature and extent of any repairs or replacements necessary to remedy the additional alleged defects. The parties shall comply with the requirements of subsections B, C and E of this section for the additional alleged defects identified in reasonable detail in the notice.

J. The service of an amended notice identifying in reasonable detail the alleged defects during the pendency of a dwelling action shall relate back to the original notice of alleged defects for the purpose of tolling applicable statutes of limitations, including section 12-552.

K. By written agreement of the seller and purchaser, the time periods provided in this section may be extended.

L. For the sale of a dwelling that occurs within the statutory period set forth in section 12-552, the escrow agent, as defined in section 6-801, shall provide notice to the purchaser of the provisions of this section and sections 12-1361 and 12-1362. Nothing in this subsection creates a fiduciary duty or provides any person or entity with a private right or cause of action or administrative action.

12-1364. Dwelling action; relief available; attorney fees, costs and expert witness fees

IN ANY CONTESTED DWELLING ACTION, THE COURT MAY AWARD THE PURCHASER ANY OR ALL OF THE FOLLOWING RELIEF:

- (a) THE PURCHASER'S OUT-OF-POCKET COSTS TO REPAIR OR REPLACE DEFECTS IN THE DWELLING;

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- (b) DAMAGES FOR ANY LOSS OF VALUE IN THE SALE OF A DWELLING CAUSED BY UNREPAIRED OR UNREPLACED DEFECTS IN THE DWELLING;
- (c) INJUNCTIVE OR OTHER EQUITABLE RELIEF TO RESTRAIN ANY VIOLATION OF THIS ARTICLE OR TO RESTORE TO THE PURCHASER THE CONDITIONS PROMISED BY THE SELLER;
- (d) CONSEQUENTIAL DAMAGES, INCLUDING COSTS OF RELOCATION IF DEFECTS MAKE A DWELLING UNINHABITABLE, REASONABLY-DOCUMENTED TIME MISSED FROM WORK DUE TO DEALING WITH DEFECTS, AND OTHER DAMAGES THAT WERE REASONABLY FORESEEABLE; AND
- (e) COMPENSATORY DAMAGES FOR UNREASONABLE FAILURE OF SELLER TO REPAIR OR COMPENSATE.

In any contested dwelling action, IF THE PURCHASER IS AWARDED ANY RELIEF, the court shall award the ~~successful party~~ PURCHASER reasonable attorney fees, reasonable expert witness fees and taxable costs. ~~If the seller's offer, including any best and final offer, is rejected and the judgment finally obtained is less than or less favorable to the purchaser than the offer or best and final offer, the seller is deemed to be the successful party from the date of the offer or best and final offer. If the judgment finally obtained is more favorable to the purchaser than the seller's offer or best and final offer, the purchaser is deemed to be the successful party from the date of the offer or best and final offer.~~ NO CONTRACT FOR THE PURCHASE OF A DWELLING MAY REQUIRE THE PURCHASER TO PAY THE ATTORNEY OR EXPERT FEES OF THE SELLER UNDER ANY CIRCUMSTANCES. ~~This section shall not be construed as altering, prohibiting or restricting present or future contracts or statutes that may provide for attorney fees.~~

12-1365. Notification; right to file a complaint with the registrar of contractors

A. A written contract for the sale of a newly constructed dwelling between a buyer of a newly constructed dwelling and the seller responsible for the original construction of the dwelling shall contain, or provide separate notice of, the following provisionS:

Under Arizona Revised Statutes section 32-1155, a buyer of a dwelling has the right to file a written complaint against the homebuilder with the Arizona registrar of contractors within two years of the commission of an act in violation of Arizona Revised Statutes section 32-1154, subsection A, INCLUDING SUCH THINGS AS ABANDONMENT OF A CONTRACT OR REFUSAL TO PERFORM, FAILURE TO COMPLETE A PROJECT FOR THE AGREED PRICE, DEPARTURE FROM OR DISREGARD OF PLANS OR BUILDING CODES, OR WRONGFUL OR FRAUDULENT ACTS.

B. The notice required in subsection A of this section shall be prominently displayed and appear in at least ten point bold type. THE NOTICE SHALL INCLUDE THE CURRENT ADDRESS, TELEPHONE NUMBER AND WEBSITE ADDRESS OF THE REGISTRAR OF CONTRACTORS.

C. The buyer of the dwelling is not deemed to have received the notice required pursuant to subsection A of this section, unless the buyer initials the notice provision.

12-1365.01. PROTECTION OF HOMEOWNERS; POTENTIAL CONFLICTS OF INTEREST BETWEEN SELLERS AND FINANCIAL INSTITUTIONS

A. EVERY SELLER OF A DWELLING MUST INCLUDE IN THE PURCHASE PRICE OF THE DWELLING WITHOUT ADDITIONAL OR SEPARATE CHARGE A WARRANTY OF THE MATERIALS AND WORKMANSHIP OF THE DWELLING EFFECTIVE FOR AT LEAST TEN YEARS FROM THE DATE OF PURCHASE. THE WARRANTY SHALL COVER THE ORIGINAL PURCHASER AND ALL SUBSEQUENT PURCHASERS WITHIN TEN YEARS OF THE DATE OF THE ORIGINAL PURCHASE.

B. A CONTRACT DESCRIBED IN SUBSECTION A OF SECTION 12-1365 SHALL ALSO CONTAIN CLEAR, COMPLETE AND ACCURATE DISCLOSURE OF ALL ARRANGEMENTS WITH FINANCIAL INSTITUTION PROVIDING MORTGAGE FINANCING, TITLE INSURANCE OR PROPERTY AND CASUALTY INSURANCE OFFERED BY OR THROUGH THE SELLER, INCLUDING ANY COMMON OWNERSHIP OR CONTROL, ANY AND ALL FEES, COMMISSIONS, REBATES, REFUNDS OR PAYMENTS OF ANY SORT FROM INSTITUTION TO THE SELLER THAT ARE DEPENDENT TO ANY DEGREE ON THE BUYER ELECTING TO OBTAIN ALL OR ANY PART OF THE FINANCING FOR PURCHASE OF THE DWELLING FROM THE INSTITUTION, AND WHETHER ANY MORTGAGE ARRANGED BY THE SELLER WILL BE HELD BY SELLER OR THE FINANCIAL INSTITUTION OR IS INTENDED TO BE SOLD TO OTHER PARTIES.

C. ALL FIXTURES OR EQUIPMENT SHOWN IN A SELLER'S MODEL HOMES MUST BE INCLUDED IN THE BASE PURCHASE PRICE ADVERTISED. ANY SUBSTITUTE OR ADDITIONAL FIXTURES OR EQUIPMENT MUST BE SEPARATELY PRICED AND THE PRICES CLEARLY, COMPLETELY AND ACCURATELY DISCLOSED TO BUYERS.

D. NO SELLER MAY REQUIRE A DEPOSIT FOR A CONTRACT TO SELL A DWELLING UNLESS THE CONTRACT PROVIDES THAT THE PURCHASER MAY CANCEL THE CONTRACT WITHIN 100 DAYS AND RECEIVE A REFUND OF NO LESS THAN 95% OF THE DEPOSIT.

E. NO SELLER MAY COMPLETE A MORTGAGE FINANCING APPLICATION FOR A DWELLING FALSELY OR AID OR ABET ANOTHER TO DO SO.

F. ANY WAIVER BY A PURCHASER BY ANY OR ALL OF THE PROVISIONS OF THIS ARTICLE SHALL BE DEEMED CONTRARY TO PUBLIC POLICY AND SHALL BE VOID AND UNENFORCEABLE. ANY ATTEMPTS BY SELLER TO HAVE A PURCHASER WAIVE RIGHTS GIVEN BY THIS ARTICLE SHALL CONSTITUTE A SEPARATE VIOLATION OF THIS ARTICLE. A SELLER MAY NOT VOID, ALTER OR IMPAIR ANY WARRANTY BECAUSE A BUYER EXERCISES ANY RIGHTS UNDER THIS ARTICLE.

12-1365.02. Applicability; claims and actions

A purchaser may bring an action against a seller for violation of section 12-1365.01 and shall be entitled to recover in such action ANY OR ALL OF THE FOLLOWING RELIEF:

- (a) INJUNCTIVE OR OTHER EQUITABLE RELIEF TO RESTRAIN ANY VIOLATION OF SECTION 12-1365.01;
- (b) RESCISSION OF ANY CONTRACT TO PURCHASE A DWELLING MADE IN VIOLATION OF SECTION 12-1365.01;
- (c) ANY ACTUAL DAMAGES CAUSED BY ANY VIOLATION OF SECTION 12-1365.01;
- (d) COMPENSATORY DAMAGES FOR WILLFUL VIOLATION OF SECTION 12-1365.01; AND
- (e) REASONABLE ATTORNEY FEES, REASONABLE EXPERT WITNESS FEES AND TAXABLE COSTS.

12-1366. Applicability; claims and actions

A. SECTIONS 12-1362 THROUGH 12-1364 OF this article does not apply:

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~~1. If a contract for the sale of a dwelling or an association's community documents contain commercially reasonable alternative dispute resolution procedures. If the contract for the sale of a dwelling contains the procedures, the procedures shall conspicuously appear in the contract in bold and capital letters. If the contract for sale of a dwelling contains the procedures, a disclosure statement in at least twelve point font, bold and capital letters shall appear on the face of the contract and shall describe the location of the alternative dispute resolution procedures within the contract.~~

21. To personal injury claims.

32. To death claims.

43. To claims for damage to property other than a dwelling.

54. To common law fraud claims.

65. To proceedings brought pursuant to title 32, chapter 10.

76. To claims solely seeking recovery of monies expended for repairs to alleged defects that have been repaired by the purchaser.

B. A dwelling action brought by an association is also subject to title 33, chapter 18.

Section 4. Title 12, Chapter 5, Article 3, Section 12-552, Arizona Revised Statutes, is amended by striking certain portions thereof (indicated by strikethroughs) and adding certain other portions (indicated by underlining) to read:

12-552. Actions involving development of real property design, engineering and construction of improvements

A. Notwithstanding any other statute, no action or arbitration based in contract may be instituted or maintained against a person who develops or develops and sells real property, or performs or furnishes the design, specifications, surveying, planning, supervision, testing, construction or observation of construction of an improvement to real property more than ~~eight~~ TEN years after substantial completion of the improvement to real property.

B. Notwithstanding subsection A of this section, in the case of injury to real property or an improvement to real property, if the injury occurred during the ~~eight~~ TENTH year after the substantial completion, or, in the case of a latent defect, was not discovered until the ~~eight~~ TENTH year after substantial completion, an action to recover damages for injury to the real property may be brought within one year after the date on which the injury to real property or an improvement to real property occurred or a latent defect was discovered, but in no event may an action be brought more than ~~nine~~ ELEVEN years after the substantial completion of the improvement.

C. The limitations in subsections A and B of this section include any action based on implied warranty arising out of the contract or the construction, including implied warranties of habitability, fitness or workmanship.

D. Nothing in this section applies to actions for personal injury or death nor shall this section operate to shorten the period of warranty provided in an express written warranty.

E. For the purposes of subsections A, B and C of this section, an improvement to real property is considered substantially complete when any of the following first occurs:

1. It is first used by the owner or occupant of the improvement.

2. It is first available for use after having been completed according to the contract or agreement covering the improvement, including agreed changes to the contract or agreement.

~~3. Final inspection, if required, by the governmental body which issued the building permit for the improvement.~~

F. In this section an action based in contract is an action based on a written real estate contract, sales agreement, construction agreement, conveyance or written agreement for construction or for the services set forth in subsection A of this section. This section shall not be construed to extend the period prescribed by the laws of this state for bringing any action. If a shorter period of limitation is prescribed for a specific action, the shorter period governs.

G. With respect to an improvement to real property that was substantially complete on or before September 15, 1989, the eight and nine-year periods established in subsections A and B of this section shall begin to run on September 15, 1989. Notwithstanding the provisions of subsection E of this section and section 12-505, subsection A, this subsection applies to claims that accrued before the effective date of this amendment to this section.

Section 5. Severability

If any part of this law, or the application of the law to any person or circumstance, is held invalid, the remainder of this law, including the application of such part to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the parts of this law are severable.

Section 6. Effective Date

This article shall take effect upon enactment and shall apply to all causes of action whenever accrued that were not time-barred as of the date of enactment, provided that the provisions of subsection C of section 12-1362, the amendments to section 12-1365 and sections 12-1365.01 and 12-1365.02 shall only operate prospectively from the date of enactment.

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