

PROPOSITION 201

OFFICIAL TITLE

AN INITIATIVE MEASURE  
HOMEOWNERS' BILL OF RIGHTS

TEXT OF PROPOSED AMENDMENT

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 organiza-

tion 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;
- (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:

~~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.

**ANALYSIS BY LEGISLATIVE COUNCIL**

Current law provides an alternative process for purchasers and contractors or sellers to resolve issues related to the design, construction, condition or sale of a dwelling prior to filing a lawsuit. Proposition 201 makes mandatory changes to the legal procedures for any purchaser dwelling action and for the time to sue on any improvements for real property:

1. Expands existing law to grant "prospective buyers" the rights to sue over a dwelling action.

2. Prohibits sellers or purchasers from agreeing to or allowing any "reasonable alternative dispute resolution" procedures in sales contracts.
3. A purchaser would be required to give 60 days' notice, instead of 90 days' notice, to a seller of the alleged defects before filing a court action against the seller. The notice must currently contain a "detailed and itemized" list of alleged defects. Proposition 201 replaces that standard with a requirement that the notice contain a description in "ordinary, non-technical terms" of defects that a purchaser of "average experience" would be expected to observe and any defects that should have been found by the seller shall be deemed a part of the notice.
4. After receiving notice of alleged defects, the measure would require rather than allow the seller to conduct an inspection of the dwelling to determine the cause of the alleged defects and what repairs or replacements would be necessary, if any, to remedy the alleged defects.
5. The seller would be required to send the purchaser a written response within 30 days, instead of 60 days, after receiving a notice from the purchaser of the purchaser's intent to file a court action against the seller. If an offer to repair or replace any alleged defects includes an offer of compensation, the purchaser would be given the sole power to choose compensation instead of repair or replacement.
6. A seller would be required to hire a qualified licensed contractor to complete any and all repairs to the dwelling. In order for the licensed contractor to be qualified, the registrar of contractors could not have had an order against the licensed contractor in the preceding ten years.
7. The seller would be required to provide the purchaser a choice of at least three qualified licensed contractors for each contract or subcontract for repair or replacement. The right of any seller to receive attorney and expert witness fees and costs even if the seller is the successful party is eliminated.
8. A contract for the purchase of a dwelling could not require the purchaser to pay the attorney or expert fees of the seller under any circumstances. If a purchaser is awarded any relief the court must also award attorney and expert witness fees, plus taxable costs.
9. The purchase of a dwelling would include a ten year warranty of the materials and workmanship. This warranty would transfer to any subsequent purchasers within the ten year warranty period.
10. The contract for the sale of a newly constructed dwelling would need to include disclosures of a seller's financial relationships with any financial institution, including arrangements for mortgage financing, title insurance, or property and casualty insurance, ownership interests in the financial institution, and any commissions or payments the seller may receive as a result of the transaction with the buyer. This disclosure would also need to indicate whether a mortgage arranged by the seller will be held by the seller, the financial institution or is intended to be sold to other parties. A purchaser would be allowed to sue the seller for violating these disclosure requirements.
11. A seller would not be allowed to require a deposit for a contract to sell a dwelling unless the contract allowed the purchaser to cancel the contract within 100 days and receive a refund of at least ninety-five per cent of the deposit.
12. The advertised base price of a home would need to include all fixtures or equipment shown in a seller's model home, unless the fixtures or equipment are priced separately and are clearly and accurately disclosed to prospective buyers.
13. The time period in which a person can file an action against any person who makes improvements to any real property or dwelling, including commercial, industrial, raw land and retail would be extended to ten years instead of eight years.
14. An owner of a residential dwelling who is successful in a dwelling action against the seller would be able to receive damages such as out-of-pocket expenses for repairing and replacing defects, costs of relocation if defects make a dwelling uninhabitable, reimbursement for reasonably-documented time missed from work due to dealing with defects and compensation for a seller's unreasonable failure to repair the defects, consequential damages and other damages that were reasonably foreseeable.

**FISCAL IMPACT STATEMENT**

State law requires the Joint Legislative Budget Committee (JLBC) Staff to prepare a summary of the fiscal impact of certain ballot measures. Proposition 201 may result in an increase in the number of complaints filed with the Registrar of Contractors and the number of dwelling actions filed in court. The proposition would also require the Registrar of Contractors to update its online database of contractors to have a 10-year disciplinary history. The proposition also contains provisions that may result in an increased workload for the Department of Financial Institutions and the Department of Real Estate. It is difficult to predict in advance the impact of the proposition on these entities' workloads.

**ARGUMENTS "FOR" PROPOSITION 201**

If you think a new home should come with a warranty at least as good as a car... Vote Yes.

A home is our family's biggest investment. The Homeowners Bill of Rights will give homeowners the rights they need.

- A 10-year warranty on new homes... Vote Yes.
- Make homebuilders correct construction defects or compensate the homeowner... Vote Yes.
- Guarantee that homeowners can participate in choosing contractors to do repair work... Vote Yes.
- Only contractors with 10-year clean records can be used for corrections... Vote Yes.
- Make builders reveal their relationships with financial institutions... Vote Yes.
- Make model homes reflect what is actually for sale... Vote Yes.
- Give buyers the right to cancel within 100 days and get back most of their deposits... Vote Yes.
- Give homeowners good ways to enforce their rights in court, including money for the hardship caused by home defects...

Vote Yes.

And voting Yes will keep current law to screen out frivolous lawsuits.

The people of Arizona can vote Yes to balance legal rights between homebuilders and their customers. The politicians changed the law and denied buyers reasonable protection against deceptive sales practices and construction defects.

Individual homeowners and real estate agents are NOT subject to this law. Only the homebuilders are covered.

The giant home building corporations oppose this law. But they made huge profits during the last boom and can easily afford to build and sell homes fairly. Homeowners can't afford the way the system is stacked against them. It's time to make things right.

VOTE YES to protect Arizona homeowners!

Dion Abril, Chairman, Homeowners Bill of Rights  
Committee, Tolleson

Donald Latham, Treasurer, Homeowners Bill of Rights  
Committee, Phoenix

*Paid for by "Homeowners' Bill of Rights Committee"*

Why should you ignore the opposition's arguments and Vote FOR the Homeowners' Bill of Rights? My wife and I had talked about building a new home for several years. 2005 was the year we decided we would do it. We contracted with Engle who emphasized (or implied) quality.

Buying this Engle house has left my family shaken and much poorer from the experience. We are stuck in this defective house and we hope our story can help prevent others from sharing our nightmare. I hope you never see the pain in your wife's face when the truth is discovered.

We found many defects: dangerous natural gas leaks, structural problems, leaky air conditioner ducts, mold, large holes in outside walls (bugs!), rain water poured out from inside walls, even electrocution hazards and carbon monoxide.

The builder was made aware of serious problems and did nothing about them. When the builder told us of other neighbors who also had many problems they described them as "too picky" or a pain in the butt. All we expected is what we paid for and what we were promised. We had to spend \$20,000 on experts to prove our concerns were real while Engle Homes used the best attorneys to evade responsibility or prove us wrong. Our conscience will not allow us to pass these problems on to an unsuspecting buyer, all we can do is warn you.

We thought we had a warranty but our warranty doesn't work for anyone but the builder. There is no accountability.

I hope that you, your family or your grandchildren will experience the American dream of owning their own home. Two and a half years later we still have an unfixed lemon. Please vote YES to protect your family and others.

Terry Landa, Goodyear

#### **Support Homeowners Bill of Rights--Arizona Needs a Unionized Construction Industry**

I hear opponents to Prop. 201 say that this will lead Arizona towards having a unionized construction industry. I say what's wrong with that! Arizona's construction industry should be all union, and if it takes an initiative to accomplish this, so be it.

Our Arizona Legislature and Governor have let us down by not pushing for more laws that promote increased collective bargaining and union organizing. As we speak, the federal government is on the verge of passing the Free Choice Act, a needed measure that would eliminate secret ballots in order to make it easier for workers to form unions. The same proactive steps need to be taken here in Arizona, and Prop. 201 is a good first step.

So I say to the Sheet Metal International Association and AFL-CIO: Thank You! Every Arizona worker is in your debt. Hopefully with your continued efforts, we will be able to push for new laws and initiatives that improve the workers plight and punish the business class for everything they have taken from us.

Josh Stockton, Mesa

#### **Please support Unions by voting for Prop. 201**

As a longtime supporter of the Sheet Metal Union and the AFL-CIO, I wholeheartedly endorse their efforts to pass Prop. 201. It's about time that the unions start stepping up and putting more pressure on the construction industry to unionize.

Prop. 201 does a couple of things to help increase their membership. First, it limits the choices on what subcontractors consumers can use, improving the odds that union only labor will be used. Secondly, it sets up several new rules, regulations, and requirements that builders must meet, several of which that will surely hamper their ability to operate without union labor.

The only unfortunate thing about this initiative is that it took money from an out of state group to finally put the construction industry in its place. Thankfully with the housing market the way it is, this is the perfect time to push for laws that will tip the balance of power towards union shops. I just hope we don't blow this opportunity.

I ask every Arizonan that cares about the unions in this state to join me in voting yes on Prop. 201.

David Snyder, Mesa

#### **Gain leverage over Home Builders by Supporting Prop. 201**

Every Arizonan needs to support Prop. 201, a quality initiative that will help increase the leverage prospective buyers and current home owners have when dealing with home builders.

Moving here from California, I couldn't believe there wasn't any laws in place that I could use to pressure builders into offering me a better price or more upgrades on my home. Fortunately, Prop. 201 opens the litigation statutes up to prospective buyers as well, so now I can contact my attorney if I believe a builder isn't offering me a fair price.

Another good provision in Prop. 201 is that it prohibits a home buyer from agreeing to any form of mediation or arbitration process with a builder, meaning every dispute has to be settled in court. It's a great way to stick it to builders, especially since this initiative prohibits home builders from recovering court costs.

With unfair laws such as allowing arbitration, letting builders collect court cost if they win, and prohibiting prospective buyers from filing lawsuits against builders, it's clear that Arizona's home building statutes need an upgrade. That is why I support Prop. 201, and I hope every voter joins me in doing so.

Nate Porter, Mesa

#### **Help increase litigation payouts by supporting Prop. 201**

Coming from a family of trial lawyers, I was thrilled to see the Sheet Metal Union put Prop. 201 on the ballot. If you don't know, under current law if you sue a builder for an alleged construction defect and the claim turns out to be frivolous, the builder is eligible to recover reasonable attorney fees as awarded by the court. The problem with this provision is that it discourages large scale class action lawsuits against builders, which are needed to intimidate them into settling out of court.

But now with Prop. 201, home builders will no longer be eligible to recover court costs, meaning attorneys will be able to file as many lawsuits as they want with no fear of actually having to pay for the litigation. The result is that buffer claims, a much needed component to help expand the size and scope of construction defect lawsuits, can be included as a way to increase settlement payouts.

Some people try to give trial attorneys a bad name, but using the court process is a legitimate and smart way to make money. I believe that the legal process needs to be utilized to its fullest extent, and that is why come November, please support Prop. 201.

Beau Flahart, Gilbert

The Homeowners Bill of Rights is based on the notion that if you buy a house and it turns out to be poorly built you should be able to do something about it. It is based on the notion that consumers should get what they pay for and that sellers should be held accountable for the quality of their product. It is based on the notion that transparency and full disclosure is a consumer right.

For too long, too many Arizona homeowners have watched their American dream of home ownership turn into a nightmare. Attempts to get construction defects repaired have resulted in months and often years of denial and delay on the part of builders and sellers. Sellers have been able to hide behind confusing legal jargon and requirements that prevent ordinary consumers from being able to get their concerns addressed. Instead of sellers backing their product, buyers are threatened with having to pay the attorney's fees and court costs of the very ones who sold them a defective product in the first place.

Shelter is a basic human need; it is not an option. In a place like Arizona, with its extreme weather, quality is essential and defects need to be addressed in a timely way. People who spend their hard earned, life savings in the purchase of shelter deserve a reasonable course of action if their purchase turns out to be problematic.

The Homeowners' Bill of Rights uses ordinary, non-technical language that anyone can understand. It requires that sellers do the same in their dealings with purchasers. Should Arizona consumers settle for anything less?

Vote for Justice. Vote Yes on Prop 201

Rev. Catherine "Trina" Zelle, Director, Interfaith Worker Justice of Arizona, Tempe  
Robert Smith, President, Interfaith Worker Justice of Arizona, Mesa  
*Paid for by "Interfaith Worker Justice"*

Walter Henyard, Vice President, Interfaith Worker Justice of Arizona, East Mesa

The Air Conditioning Excellence Coalition ([www.acecoalition.org/](http://www.acecoalition.org/)) is a group of industry minded professionals who volunteer their time and effort to promote issues of quality, training and energy conservation. In hundreds of free inspections to new homeowners we routinely see serious multiple construction defects.

There are thousands of cases across Arizona where homebuyers are complaining about the construction of their new homes including faulty electrical wiring, bad plumbing, and foundational problems. This initiative overturns a law passed in 2002 supported by homebuilders, contractors and pro-industry lobbyists to limit construction-related lawsuits regarding shoddy construction. This law simply gives people the right to do something about it.

Opponents of this measure claim it would make houses unaffordable but warranties do not control the sales price of new houses; supply and demand sets prices. We need to do everything we can to protect the value of our homes. We need to protect our home value by protecting against faulty construction. Why are some homebuilders often antagonistic to third party inspectors even those who are non-profit?

Buying a new home is a huge investment. It is only fair to ask homebuilders to stand by the quality of their homes and provide a warranty to the buyers of new homes. A 10-year warranty is reasonable since most people are taking out a 30-year mortgage. It also fully supports the common sense principle that builders and contractors should stand behind their products and be held accountable if they build a shoddy or substandard product.

There is no reason why homebuilders should oppose providing a warranty on homes unless they are trying to cut corners or use defective materials. Others seek to make it a union or non-union issue: this initiative would only reward contractors who did quality work regardless of union status.

Vote YES!

Edward B. Armour, Director, ACE Coalition, Gilbert

The Arizona Advocacy Network supports the Homeowners' Bill of Rights and urges voters to support it because it will ensure that home buyers and home owners have a stronger position in disputes with home builders, including a ten year warranty on new homes, the right to choose contractors for repair work, and the right to sue homebuilders for deceptive sales practices and construction defects without the threat of having to pay builders' attorney fees and expert witness fees.

In 2002 the home building industry secured legislation that radically changed the rights of home buyers in favor of builders. This initiative levels the playing field.

New home buyers should have a reasonable expectation that the construction on their home is sound and the house is safe for their families. Proposition 201 will protect home buyers from the worst actors in the home building industry and hold the builders accountable for the quality of their work.

The Arizona Advocacy Network promotes social, economic, racial and environmental justice by educating voters on ballot measures and by advocating for consumer protection and preservation of a civil justice system in which average people can be assured of fairness in dealing with corporate and business interests. We urge you to Vote Yes on Proposition 201.

Michael J. Valder, President, Arizona Advocacy Network, Phoenix

Eric Ehst, Treasurer, Arizona Advocacy Network, Phoenix

*Paid for by "Arizona Advocacy Network"*

#### Homeowners' Bill of Rights

Arizona homeowners are entitled to live and raise their families in quality-built homes that will last for generations. PROP 201 holds contractors accountable and protects homeowners against substandard construction practices.

Many contractors emphasize profitability over quality, seeking to reduce construction costs and increase profits while selling homes at top dollar. As a result, vast tracts of homes suffer from construction defects caused by substandard construction practices. The owners of these homes are left with the grim reality of pursuing a potentially cost prohibitive lawsuit or facing substantial repair costs and unreasonable maintenance burdens on nearly new homes. Builders should be held accountable for the quality of their construction.

Current laws "protecting" homeowners were created by builders, to protect builders. These laws set unreasonable burdens, expose homeowners to substantial costs, and effectively prohibit many homeowners from holding their builders accountable for shoddy construction. Arizona's citizens, not builders, should create the laws that protect the home buying public.

PROP 201 levels the playing field between homeowners and large corporate homebuilders. PROP 201 eliminates many of the current burdens that protect homebuilders. Should a builder refuse to correct substandard construction, the proposition requires the builder to pay a successful homeowners' attorneys' fees and costs should a legal action be required. At the same time, PROP 201 eliminates a homeowners potential liability for paying the builders' substantial attorneys' fees should the builder use its financial strength to spend the homeowner into submission. Prop 201 also extends the period of time from 8 years to 10 years within which a homeowner can hold their builder accountable for faulty construction.

Homeowners have always paid for quality homes, now is the time to hold homebuilders responsible for providing quality homes that will last for generations to come.

Douglas Lusson, Chairman, Coalition for Better Construction, Phoenix  
*Paid for by "Coalition for Better Construction"*

John Chaix, Co-Chairman, Coalition for Better Construction, Phoenix

Dear Arizona Voter,

The Arizona Alliance for Retired Americans urges your support of Prop 201, the Homeowners Bill of Rights initiative. Over the past several years, Arizona has seen an influx of new residents and the homebuilder industry has met the demand and benefited from that growth. Yet, ever since the laws were changed in 2002, homebuyers have seen their rights as new homeowners decrease. Too often, new homeowners experience questionable sales tactics, "bait and switch" standard versus custom features, and upon move-in, dozens of construction defects.

No more is this present than in the senior retirement communities in Arizona. Retirees purchase their "dream" home in these master planned retirement communities and find their dreams turning into nightmares. Seniors encounter construction defects that they may not be able to fix themselves due to health conditions or being on a fixed income. When seeking repairs from the builder, they are met with hostility and are forced to seek rectification through the legal process, all at the expense of their hard-earned retirement income.

By voting yes on Prop 201 the Homeowner's Bill of Rights initiative, we remove the advantage the Legislature gave the homebuilding companies, and allow home buyers a fair hearing on a level playing field.

John Campbell, First Vice President, Arizona Alliance  
for Retired Americans, Glendale

Bill Engler, Second Vice President, Arizona Alliance for  
Retired Americans, Anthem

*Paid for by "Arizona Alliance for Retired Americans"*

One of the largest investments a working family will make is their home. Many hard working Arizonans scrimp and save for years in order to have their piece of the American Dream for their families. These dreams can quickly be shattered by the realization of faulty construction and defects and no real process to remedy the situation.

As families move into these homes there are too many times their dreams become a nightmare. Foundations start to crack, shoddy roofs bring leaks which turn to mold and faulty wiring makes the simple flip of a light switch a potential hazard. These homeowners do everything possible to correct the problems. They make calls, fill out paperwork and experience a never ending maze of bureaucracy in their attempts to have a livable home for their family. Time and time again the Homebuilders fail to meet their responsibilities for their faulty construction and defects.

In 2002, lobbyists for the Homebuilders convinced the Arizona Legislature to pass legislation, to radically change the rights of homeowners in favor of the Homebuilders. It stripped out most of the basic consumer protections that should be part of every purchase made by working families.

This initiative when passed will restore the rights of these families to have their concerns and complaints responded to in a timely manner and to have the repairs done on their homes by reputable contractors. It will put an end to deceptive sales tactics and require the Homebuilders to be forthright with information needed by working families when making their decision to purchase.

The Homeowners Bill of Rights will reverse this trend and it will put in place safeguards to protect a homeowner's investment.

Vote YES on Prop 201 to protect the American Dream.

Vote YES on the Homeowner Bill of Rights.

Rebekah Friend, Secretary/Treasurer, Arizona  
AFL-CIO, Mesa

Martin "Buzz" Murphy, President, Arizona AFL-CIO,  
Glendale

*Paid for by "Arizona AFL-CIO"*

### **ARGUMENTS "AGAINST" PROPOSITION 201**

As Chairman of Arizonan's Against Lawsuit Abuse (ALAW), I would like to encourage the voters of Arizona to reject Prop 201. ALAW fights against abuses in our legal systems that create inequities in our system which raise the legal costs for consumers.

This proposal creates a mandatory and complex litigation process that that will cause unnecessary lawsuits without resolving homeowner's problems.

- It prohibits two parties from agreeing to resolve their disputes without going to court and hiring attorneys.
- It forbids the seller of new homes from recovering any attorney's fees even if the case was frivolous or if they win.
- It allows prospective buyers to file lawsuits so you do not even have to own a home to file suit.
- It assures that all disputes, either large or small, go to court raising costs for everyone.
- If these disputes go to court, it assures us that homeowners will wait years until their issue is resolved or their homes get fixed.

Unlike any issue ALAW has ever seen, this is an unprecedented attempt of alter our legal system in the favor of litigation over mediation. This is an unnecessary step when we have legal procedures in place today that allow for mediation while preserving consumers right to litigation.

As many consumers understand, when you create a complicated and unfair legal process that requires the use of lawyers, it creates higher costs for consumers. We oppose any efforts to increase costs to consumer during these difficult economic times.

VOTE NO ON PROP 201

Spencer Kamps, Chairman, Arizonan's Against Lawsuit Abuse, Phoenix

Although the title of this proposition says homeowners "bill" of rights, the only "bill" you will see is an increase in your legal "bills" if this passes. The title is misleading and affords homeowners fewer rights than the laws that are currently in place in Arizona.

In 2003, I successfully sponsored the "Notice to Cure" legislation. It was a good law then and it is a good law now. The goal was to resolve disputes quickly so people could get on with their lives. The law is working well.

Prior to its passage, most construction defect claims ended up in court where builders and homeowners spent years and thousands of dollars trying to figure out who was at fault.

Under the "Notice to Cure" law, a fair and reasonable process was established. The homeowner notifies the builder that there is a defect and the builder has ninety days to fix the problem. In addition, there is an alternative mediation process that homeowners can take advantage of to reach quick settlements without going to court. This saves time and money.

With Proposition 201, these provisions are gone. Litigation is the only option. To makes matters even worse, they eliminate the "Loser Pays Court Fees" statutes. Without that statute, lawyers are encouraged to go to court. Everyone loses except the attorneys.

The "Notice to Cure" statute is good public policy. Consumer satisfaction is at an all time high while attorney payouts are at an all time low. More importantly, people can get on with their lives and enjoy their new homes.

Don't let out-of-state groups tear down solid Arizona laws. Vote "no" on proposition 201.

Senator Barbara Leff, District 11, Phoenix

*Paid for by "Barbara Leff"*

Members of the Home Builders Association of Central Arizona pride themselves in taking care of their homebuyers. Last year, members of the Association were at the top of the JD Powers ratings for customer satisfaction. We want to keep it that way!

Prop. 201 will prevent homebuilders from working with their customers to resolve problems. Instead of having the ability to repair items or arbitrate any disputes, homebuyers will be forced to go to court. This proposed "litigation only" solution to problem solving does nothing more than line the pockets of trial attorneys and delay homeowners from getting problems addressed.

Over the last ten years, the State Legislature has enacted a fair and reasonable process for homebuyers and homebuilders to resolve disputes. Prop. 201 throws out existing law and forces the wishes of an out-of-state trial attorney and his union supporters upon all homebuyers in Arizona.

The only people who win in Prop. 201 are the lawyers! Let's keep the homebuyers and homebuilders working together to keep housing affordable. VOTE "NO" ON Prop. 201.

Carl Mulac, Chairman of the Board, Home Builders  
Association of Central Arizona, Phoenix

Connie Wilhelm, President, Home Builders Association  
of Central Arizona, Phoenix

*Paid for by "Home Builders Association of Central Arizona"*

#### **Arizona Chamber Urges NO Vote on Prop 201**

The Arizona Chamber of Commerce and Industry opposes Prop 201, an unnecessary initiative that will encourage litigation and increase costs for both consumers and home builders. Current law already provides a process for home owners and home builders to resolve construction related disputes prior to filing any lawsuits. These laws have been in place for years and have resulted in increased consumer satisfaction, reduced litigation costs, and lower insurance premiums for home builders and homeowners alike.

Prop 201 turns this reasonable process on its head by making two fundamental distortions to this law. First, Prop 201 will prohibit builders from being awarded attorney fees even if they are the prevailing party in a lawsuit. Arizona has had a long standing legal practice of "loser pays" when it comes to construction defect claims, especially because it encourages builders to quickly resolve disputes and discourages trial attorneys from filing frivolous claims. By dismantling loser pays, innocent builders will have little protection under the law and emboldened litigators will have little incentive to keep costs down.

The second distortion made by Prop 201 is that it prohibits home buyers from entering into alternative dispute and resolution agreements with home builders. Eliminating this crucial alternative for resolving disagreements out of court can only mean one thing: the proponents of this initiative want you to settle disputes **in court**. The Arizona Chamber has always been a strong proponent in the freedom to contract, especially when it comes to discouraging lawsuits.

The proponents of this initiative will try to argue that Prop 201 is good for consumers. Don't be deceived. Prop 201 is a boon for trial lawyers, and does little to aid home buyers or the construction industry. Come November, Vote NO on Prop 201.

Glenn Hamer, President & CEO, Arizona Chamber of  
Commerce and Industry, Phoenix

Don Robinson, Chairman-Elect, Arizona Chamber of  
Commerce and Industry, Phoenix

*Paid for by "Arizona Chamber of Commerce and Industry"*

#### **Arguments "Against" Homeowner Bill of Rights**

ICSC prides itself on promoting good public policy in that State of Arizona.

Prop 201 should not be adopted by the voters for the following reasons.

- It creates a fictitious problem that will only benefit contingency fee lawyers.
- This is a misguided effort by the unions to change Arizona's Right to Work status and to unionize the construction industry.
- It will cause an increase in the cost of liability insurance for the entire construction industry.
- The current system is working. This will only force sellers and buyers into the courtroom.
- Prohibits sellers or builders from collecting attorneys fees if they are the prevailing party, even if the case is frivolous.
- It will negatively impact our economy and new home buyers by increasing the cost of housing. The current problems with housing affordability in Arizona will drastically increase.

Prevents the freedom to contract for the sale of new homes by prohibiting parties from agreeing to resolve their disputes through mediation.

We have always had concerns whenever a process is created that requires people to go to court to resolve their disputes. We are also concerned anytime a union sponsored initiative is attempting to increase the cost of construction, as this bill clearly does. This revision to the current law is unnecessary because the current law is working. There is already a precise process enforced by the Arizona Registrar of Contractors under which a buyer can request repairs.

For these reasons, and many more, we encourage the voters to reject Prop 201

Larry Landry, Member of Government Relations Committee for International Council of Shopping Centers, Phoenix

#### **WESTMARC urges a NO VOTE on Proposition 201!**

WESTMARC is a regional coalition of business, government, and education that advocates for good public policy. As a partnership between business and government, it is paramount that we thoroughly consider public policy issues and work collaboratively toward public policy that is good for our West Valley region and our state.

**WESTMARC has thoroughly reviewed Proposition 201 and believes that the *Homeowners' Bill of Rights* will not be beneficial to our West Valley region or our state.**

**WESTMARC believes that:**

- **home warranties of 1-2 years are appropriate in the industry, but that 10 years is far too long;**
- **that the homebuilding industry should initiate warranties prior to legislative mandate;**
- **that 10-year warranties would significantly increase the cost of Arizona's housing at a time when the housing market is suffering;**
- **that the dramatic increases in housing prices would slow Arizona's economic rebound and stifle the West Valley's impending growth;**
- **although this Initiative originated in Arizona it is wholly funded by a single out-of-state organization; and**
- **the law of unintended consequences will prevail for many years to come.**

**WESTMARC believes that this Initiative is bad for Arizona's economy.**

**Therefore, we encourage you to join WESTMARC in opposing the *Homeowners' Bill of Rights* and urge you to vote NO on Proposition 201!**

Ray L. Jones, Chairman, WESTMARC, Peoria

Jack W. Lunsford, President & CEO, WESTMARC,  
Peoria

*Paid for by "WESTMARC"*

Buying a new home is often the most important purchase in a person or family's life. An important part of this process is the ability for the homebuyer and homebuilder to work together when issues arise. It is important to members of the Southern Arizona Home Builders Association that we are able to work closely with our homebuyers to resolve any issues in a fast and efficient manner. Prop. 201 wants to change all that! Homebuyers and homebuilders will no longer be able to have their own agreements to resolve disputes. The out-of-state trial attorney who drafted this Prop 201 wants to mandate that the only way to resolve disputes is by going to court!

And he doesn't stop there! He also has given "prospective buyers" the right to sue. So now people who don't even own a home can sue a homebuilder. The cost of these frivolous lawsuits will be passed on to everyone hoping to buy a new home. This will significantly raise the cost of housing and hurt Arizona's already struggling economy.

Arizona has a fair and equitable Opportunity to Repair Process that allows homeowners to get their problems fixed within 90 days. If parties fail to come to an agreement, homeowners can then pursue litigation. Join us in voting "NO" on Prop. 201 so Arizona homeowners and homebuilders can continue to resolve issues so that homeowners WIN and only the lawyers lose!

Randy Agron, Chairman, Southern Arizona Home Builders Association, Vice President, A.F. Sterling Home Builders, Tucson

Edward Taczanowsky, President, Southern Arizona Home Builders Association, Tucson

*Paid for by "Southern Arizona Home Builders Association"*

We can all agree that any Arizona contractor or homebuilder that builds or sells a home with construction deficiencies should repair the home according to all applicable building codes and professional workmanship standards. In fact, that is what current Arizona law requires. Arizona law implies a warranty of workmanship and habitability in every home construction contract and currently provides a process for resolving legitimate home construction issues within 90 days. If the homeowner and builder cannot agree, the homeowner may pursue litigation on a "loser pays" basis for attorneys' fees. In addition, homeowners may file a complaint with the Arizona Registrar of Contractors, which may arrange for an inspection of the home and order the builder to correct any deficient work or make restitution for it. All of the foregoing provides a fair, even-handed approach to resolving disputes between homeowners and contractors in a reasonable manner.

Unfortunately, the proponents of PROP 201 do not seem to be interested in fairness or reasonability. Among other things, the proposition would eliminate the time-tested "loser pays" system of awarding attorney fees, thus passing on the cost of frivolous lawsuits to every consumer who buys a new home. It would prohibit homeowners and builders from agreeing to less-costly, alternative dispute resolution methods such as mediation and arbitration. It would prevent the builder from even having the opportunity to make any necessary repairs. Perhaps most importantly, it would impose significantly expanded liability on Arizona homebuilders that could drive many small companies out of business. PROP 201 is unnecessary and potentially disastrous for the citizens and homeowners of Arizona. I urge you to vote NO.

Lance M. Johnson, Esq., Scottsdale

#### VOTE NO ON PROP 201

I think Arizona is full of bright and optimistic people. It is too bad that the out of state drafters of Prop 201 do not.

These unknown drafters PROHIBIT any adult or parties from agreeing to resolve any disagreements on the sale of home, condo, or townhome through any other process but theirs. Do they not trust us or is that how they work in their state? The right for an adult to agree to ANY terms in contract on how to resolve differences should be protected.

What will we be left with? A mandated legal process that consumers have to go through... whether we like it or not. We will have to go to court, pay big attorney fees, and wait years for judges, lawyers, and insurance companies to make decisions that we have no control over.

Ask the drafters why I am not smart enough to make my own decisions when I have a problem? I am sure when I go to court under this mandated process some day, I will be facing one of the drafters across the table while he waits, like all plaintiff lawyers do, for a big paycheck.

Send these unknown out of state drafters a message and vote NO on Prop 201.

Alisa Schroder, Meritage Homes, Scottsdale

#### VOTE NO ON PRO 201

Prop 201 should be rejected by the voters of Arizona.

I have been in Arizona for years and every election I see a bunch of complicated proposals from various special interest groups that are out for their own good, not ours. Prop 201 is another one of those proposals.

Prop 201 is over four pages of legal changes to how plaintiffs and defendants will be treated in court when they have disputes over homes and "improvements on real property". This proposal will be read by few and understood only by the out of state attorney's who drafted it.

In addition, Prop 201 has never received a public hearing or an outside legal review and was drafted in secret. Why does Arizona seem to be the lab rat for all the experiments of out of state interests?

Do not take a chance on Prop 201. Vote no.

Paul Haggerty, Phoenix

#### PROP 201 JUST GOES TOO FAR!

I believe in a fair legal system that allows all parties equal access to justice. I do not believe in a legal process that gives the balance of power to lawyers or to one party in a dispute.

Prop 201 creates an unfair system where lawyers win and homeowners get stuck waiting years for simple repairs to be made on their house. We have an existing process that requires builders to fix repairs for consumers in 90 days, or give them cash compensation. This is a quick and efficient way for people to get their problems fixed when a builder is being a problem. And if the builder does not fix the problem, then home owners can sue them.

Prop 201 guts this 90 day process. It creates a system so plaintiffs' attorneys will tell their clients to go to court so that these attorneys get paid. Why would we create a complicated legal system just so attorneys can get paid and homeowners unknowingly wait years for the courts to decide whether they get their problems fixed? Why not keep with our existing system for make repairs?

VOTE AGAINST PLAINTIFF ATTORNEYS. VOTE NO ON PROP 201.

Russell Brock, Tempe

Despite what the misleading name of Proposition 201 suggests, Arizona homeowners already have a strong 'Bill of Rights' within Arizona law.

Since 1931, the Arizona Registrar of Contractors (ROC) has promoted quality construction by Arizona contractors through a licensing and regulatory system designed to protect the health, safety and welfare of the public. The ROC is a '90/10' agency that sends 10 percent of the license fees it collects to the State General Fund to help balance our budget.

The self-funded ROC, the Homeowners' Watchdog, costs our homeowners and taxpayers nothing – unlike the expensive attorneys' fees guaranteed by Proposition 201.

In July 1981, the Residential Contractors' Recovery Fund for Homeowners was established for the purpose of reimbursing homeowners for improper workmanship by residential licensed contractors.

The ROC has broad powers to fine, suspend or revoke a contractor's license for poor workmanship standards and even provides a venue for homeowners to file complaints against a contractor. Moreover, the Recovery Fund ensures homeowners can collect their rightful damages.

You see, homeowners do have rights, but the trial lawyers don't want you to realize it.

For over 50 years, the Arizona Contractors Association has provided corporate, political and civic leadership in the Arizona construction industry for the benefit of our companies, employees and communities. We're strictly a state non-profit association whose membership consists of residential and commercial general contractors, subcontractors of various trades, material suppliers, developers, architects and engineers.

We urge voters to reject Proposition 201 and not be tricked by slick and dishonest marketing appeals in its favor.

Proposition 201 will increase costly litigation and make homeownership harder for more Arizonans.

**Protect and Defend the Rights Homeowners Have Now.**

**Stay Out of Court, Where Only Attorneys Win!**

**Vote "NO" on Proposition 201**

Brett A. Jones, Vice President of Operations, Arizona Contractors Association, Phoenix

Jeffery M. Hall, General Counsel, Arizona Contractors Association, Phoenix

*Paid for by "Arizona Contractors Association"*

The Professional Fire Fighters of Arizona are opposed to the Homeowners Bill of Rights Initiative. This initiative will add thousands of dollars to the cost of a house while we are in a housing and financial crisis. Today we have Fire Fighters who cannot afford to live in the city they work for; this initiative will make this problem worst.

We respectfully ask that you vote NO.

Thank you,

Tim Hill, President, Professional Fire Fighters of Arizona, Phoenix

Mike Colletto, Legislative Director, Professional Fire Fighters of Arizona

*Paid for by "Professional Fire Fighters of Arizona"*

Proposition 201 – The Frivolous Lawsuit Initiative

Proposition 201 will not benefit homeowners, but rather is a gift to unscrupulous lawyers. By providing an incentive for frivolous lawsuits, Prop. 201 will decrease current home values and reduce affordable housing in Arizona.

Prop. 201's frivolous defect claims, additional attorneys' fees and litigation costs, and related union costs will increase the price of new homes while devaluing the price of current homes. Furthermore, the new price increases won't go to the builder's bottom line but instead to the unions and lawyers who drove up the costs.

Prop. 201 seeks to prohibit "reasonable alternative dispute resolution" which eliminates the homeowner's ability to arbitrate.

Once arbitration is abolished, reckless attorneys can, for example, claim a variety of home defects (devaluing the home), settle with the builders, and cover their legal fees. This leaves Arizona homeowners with the misfortune of having to disclose hundreds of the "alleged" defects when trying to sell their home.

In this economic downturn, the last thing we need is to further hurt the housing market while directing more money to unions and unscrupulous lawyers. Vote No on Prop. 201.

Steve Voeller, Phoenix

**PROPOSITION 201**

**BALLOT FORMAT**

**PROPOSITION 201**

**PROPOSED BY INITIATIVE PETITION RELATING TO  
HOMEOWNERS**

<p><b><u>OFFICIAL TITLE</u></b> HOMEOWNERS' BILL OF RIGHTS</p>
<p><b><u>DESCRIPTIVE TITLE</u></b> ALLOWS PROSPECTIVE DWELLING BUYER LAWSUIT; PERMITTING LAWSUITS DESPITE ALTERNATIVE DISPUTE RESOLUTION AGREEMENTS; PROHIBITS SELLER ATTORNEY FEES; SHORTENS NOTICE AND RESPONSE TIME; REQUIRES SELLER INSPECTION AND LICENSED CONTRACTOR; REQUIRES SELLER CONTRACT PROVIDE 10-YEAR WARRANTY; SELLER MUST DISCLOSE CONFLICTS; GIVES BUYER CANCELLATION RIGHTS; EXPANDS TIME TO FILE IMPROVEMENTS SUIT; EXPANDS PURCHASER REMEDIES.</p>

<p>A "yes" vote shall have the effect of granting "prospective buyers" a right to sue over a dwelling action, permitting lawsuits despite alternative dispute resolution provisions in sales contracts, shortening buyer purchaser notice and seller response period before and after filing defects lawsuit, requiring seller to inspect dwelling after receiving notice, requiring any seller offer to include repair or replace option that must be performed by a licensed contractor, eliminating seller right to receive attorney fees and costs if the seller prevails, mandating seller to provide ten year warranty of materials and workmanship, requiring newly constructed dwelling contract to include disclosure of seller's financial relationship with a financial institution, disallowing seller from requiring a buyer deposit unless contract allows 100 day cancellation period, extending from eight to ten years the time to file suit against any person making improvements to real property, and expanding remedies available to an owner who is successful in a dwelling action against the seller.</p>	<p><b>YES</b> <input type="checkbox"/></p>
<p>A "no" vote shall have the effect of retaining the current law regarding purchaser dwelling actions.</p>	<p><b>NO</b> <input type="checkbox"/></p>

**PROPOSITION 201**