

Conference Engrossed

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 312

HOUSE BILL 2381

AN ACT

AMENDING SECTIONS 33-1202, 33-1215, 33-1243 AND 33-1245, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 16, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-1811; RELATING TO CONDOMINIUMS AND PLANNED COMMUNITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 33-1202, Arizona Revised Statutes, is amended to
3 read:

4 33-1202. Definitions

5 In the condominium documents, unless specifically provided otherwise
6 or the context otherwise requires, and in this chapter:

7 1. "Affiliate of a declarant" means any person who controls, is
8 controlled by or is under common control with a declarant.

9 2. "Allocated interests" means the undivided interests in the common
10 elements, the common expense liability and votes in the association allocated
11 to each unit.

12 3. "Articles of incorporation" means the instrument by which an
13 incorporated association or unit owners' association is formed and organized
14 under this state's corporate statutes.

15 4. "Association" or "unit owners' association" means the unit owners'
16 association organized under section 33-1241.

17 5. "Board of directors" means the body, regardless of its name,
18 designated in the declaration and given general management powers to act on
19 behalf of the association.

20 6. "Bylaws" means the bylaws required by section 33-1246.

21 7. "Common elements" means all portions of a condominium other than
22 the units.

23 8. "Common expense liability" means the liability for common expenses
24 allocated to each unit pursuant to section 33-1217.

25 9. "Common expenses" means expenditures made by or financial
26 liabilities of the association, together with any allocations to reserves.

27 10. "Condominium" means real estate, portions of which are designated
28 for separate ownership and the remainder of which is designated for common
29 ownership solely by the owners of the separate portions. Real estate is not
30 a condominium unless the undivided interests in the common elements are
31 vested in the unit owners.

32 11. "Condominium documents" means the declaration, bylaws, articles of
33 incorporation, if any, and rules, if any.

34 12. "Declarant" means any person or group of persons who reserves, is
35 granted or succeeds to any special declarant right.

36 13. "Declaration" means any instruments, however denominated, that
37 create a condominium and any amendments to those instruments.

38 14. "Development rights" means any right or combination of rights
39 reserved by or granted to a declarant in the declaration to do any of the
40 following:

41 (a) Add real estate to a condominium.

42 (b) Create easements, units, common elements or limited common
43 elements within a condominium.

44 (c) Subdivide units, convert units into common elements or convert
45 common elements into units.

1 (d) Withdraw real estate from a condominium.

2 (e) Make the condominium part of a larger condominium or planned
3 community.

4 (f) Amend the declaration during any period of declarant control,
5 pursuant to section 33-1243, subsection D-E, to comply with applicable law
6 or to correct any error or inconsistency in the declaration, if the amendment
7 does not adversely affect the rights of any unit owner.

8 (g) Amend the declaration during any period of declarant control,
9 pursuant to section 33-1243, subsection D-E, to comply with the rules or
10 guidelines, in effect from time to time, of any governmental or
11 quasi-governmental entity or federal corporation guaranteeing or insuring
12 mortgage loans or governing transactions involving mortgage instruments.

13 15. "Identifying number" means a symbol or address that identifies one
14 unit in a condominium.

15 16. "Leasehold condominium" means a condominium in which all or a
16 portion of the real estate is subject to a lease the expiration or
17 termination of which will terminate the condominium or reduce its size.

18 17. "Limited common element" means a portion of the common elements
19 specifically designated as a limited common element in the declaration and
20 allocated by the declaration or by operation of section 33-1212, paragraph
21 2 or 4 for the exclusive use of one or more but fewer than all of the units.

22 18. "Person" means a natural person, corporation, business trust,
23 estate, trust, partnership, association, joint venture, government,
24 governmental subdivision or agency, or other legal or commercial entity. In
25 the case of a subdivision trust, as defined in section 6-801, person means
26 the beneficiary of the trust who holds the right to subdivide, develop or
27 sell the real estate rather than the trust or trustee.

28 19. "Real estate" means any legal, equitable, leasehold or other estate
29 or interest in, over or under land, including structures, fixtures and other
30 improvements and interests which by custom, usage or law pass with a
31 conveyance of land though not described in the contract of sale or instrument
32 of conveyance. Real estate includes parcels with or without upper or lower
33 boundaries and spaces that may be filled with air or water.

34 20. "Rules" means the provisions, if any, adopted pursuant to the
35 declaration or bylaws governing maintenance and use of the units and common
36 elements.

37 21. "Special declarant rights" means any right or combination of rights
38 reserved by or granted to a declarant in the declaration to do any of the
39 following:

40 (a) Construct improvements provided for in the declaration.

41 (b) Exercise any development right.

42 (c) Maintain sales offices, management offices, signs advertising the
43 condominium, and models.

1 (d) Use easements through the common elements for the purpose of
2 making improvements within the condominium or within real estate which may
3 be added to the condominium.

4 (e) Appoint or remove any officer of the association or any board
5 member during any period of declarant control.

6 22. "Unit" means a portion of the condominium designated for separate
7 ownership or occupancy.

8 23. "Unit owner" means a declarant or other person who owns a unit or,
9 unless otherwise provided in the lease, a lessee of a unit in a leasehold
10 condominium whose lease expires simultaneously with any lease the expiration
11 or termination of which will remove the unit from the condominium but does
12 not include a person having an interest in a unit solely as security for an
13 obligation. In the case of a contract for conveyance, as defined in section
14 33-741, of real property, unit owner means the purchaser of the unit.

15 Sec. 2. Section 33-1215, Arizona Revised Statutes, is amended to read:

16 33-1215. Contents of declaration

17 A. The declaration shall contain:

18 1. The name of the condominium, which shall include the word
19 "condominium" or be followed by the words "a condominium", and the name of
20 the association.

21 2. The name of every county in which any portion of the condominium
22 is located.

23 3. A legal description of the real estate included in the condominium.

24 4. A description of the boundaries of each unit created by the
25 declaration, including each unit's identifying number.

26 5. A description of any limited common elements, other than those
27 specified in section 33-1212, paragraphs 2 and 4, but the declaration shall
28 contain a description of any porches, balconies, patios and entryways, if
29 any, as provided in section 33-1219, subsection B, paragraph 11.

30 6. A description of any development rights and other special declarant
31 rights, together with a legal description of the real estate to which each
32 of those rights applies, any time limit within which each of those rights
33 must be exercised and any other conditions or limitations under which the
34 rights described in this paragraph may be exercised or will lapse.

35 7. An allocation to each unit of the allocated interests in the manner
36 described in section 33-1217.

37 8. Any restrictions on use, occupancy and alienation of the units.

38 9. All matters required by sections 33-1216, 33-1217, 33-1218, 33-1219
39 and 33-1226 and section 33-1243, subsection D- E.

40 10. A statement that the assessment obligation of the unit owner under
41 section 33-1255 is secured by a lien on the owner's unit in favor of the
42 association pursuant to section 33-1256.

43 11. If the condominium is a conversion from multifamily rental to
44 condominiums, a statement containing all of the following:

1 (a) A statement that the property is a conversion from multifamily
2 rental to condominiums.

3 (b) The date original construction was completed.

4 (c) The name and address of the original owner, builder, developer and
5 general contractor as shown on the applicable city, town or county building
6 permit.

7 (d) The name and address of each subsequent owner as determined by a
8 search of the county recorder's records in the county in which the property
9 is located.

10 (e) The subdivider's agreement to provide the following information
11 on request:

12 (i) The name and address of any builder, developer, general
13 contractor, subcontractors SUBCONTRACTOR, architects ARCHITECT and engineers
14 ENGINEER who designed or made improvements to the property immediately before
15 the first condominium was sold.

16 (ii) A specific description of all improvements made.

17 B. If a city, town or county is unable to produce a building permit
18 as required in subsection A, paragraph 11, subdivision (c) of this section,
19 the subdivider shall submit a letter from the applicable city, town or county
20 stating that the information required by subsection A, paragraph 11,
21 subdivision (c) of this section is not available.

22 C. The declaration may contain any other matters the declarant deems
23 appropriate.

24 Sec. 3. Section 33-1243, Arizona Revised Statutes, is amended to read:
25 33-1243. Board of directors and officers; conflict; powers;
26 limitations; removal

27 A. Except as provided in the declaration, the bylaws, subsection B or
28 other provisions of this chapter, the board of directors may act in all
29 instances on behalf of the association.

30 B. The board of directors shall not act on behalf of the association
31 to amend the declaration, terminate the condominium, elect members of the
32 board of directors or determine the qualifications, powers and duties or
33 terms of office of board of directors members. The board of directors may
34 fill vacancies in its membership for the unexpired portion of any term.

35 C. IF ANY CONTRACT, DECISION OR OTHER ACTION FOR COMPENSATION TAKEN
36 BY OR ON BEHALF OF THE BOARD OF DIRECTORS WOULD BENEFIT ANY MEMBER OF THE
37 BOARD OF DIRECTORS OR ANY PERSON WHO IS A PARENT, GRANDPARENT, SPOUSE, CHILD
38 OR SIBLING OF A MEMBER OF THE BOARD OF DIRECTORS OR A PARENT OR SPOUSE OF ANY
39 OF THOSE PERSONS, THAT MEMBER OF THE BOARD OF DIRECTORS SHALL DECLARE A
40 CONFLICT OF INTEREST FOR THAT ISSUE. THE MEMBER SHALL DECLARE THE CONFLICT
41 IN AN OPEN MEETING OF THE BOARD BEFORE THE BOARD DISCUSSES OR TAKES ACTION
42 ON THAT ISSUE AND THAT MEMBER MAY THEN VOTE ON THAT ISSUE. ANY CONTRACT
43 ENTERED INTO IN VIOLATION OF THIS SUBSECTION IS VOID AND UNENFORCEABLE.

44 ~~C.~~ D. Except as provided in the declaration, within thirty days after
45 adoption of any proposed budget for the condominium, the board of directors

1 shall provide a summary of the budget to all the unit owners. Unless the
2 board of directors is expressly authorized in the declaration to adopt and
3 amend budgets from time to time, any budget or amendment shall be ratified
4 by the unit owners in accordance with the procedures set forth in this
5 subsection. If ratification is required, the board of directors shall set
6 a date for a meeting of the unit owners to consider ratification of the
7 budget not fewer than fourteen nor more than thirty days after mailing of the
8 summary. Unless at that meeting a majority of all the unit owners or any
9 larger vote specified in the declaration rejects the budget, the budget is
10 ratified, whether or not a quorum is present. If the proposed budget is
11 rejected, the periodic budget last ratified by the unit owners shall be
12 continued until such time as the unit owners ratify a subsequent budget
13 proposed by the board of directors.

14 ~~D~~. E. The declaration may provide for a period of declarant control
15 of the association, during which period a declarant or persons designated by
16 him THE DECLARANT may appoint and remove the officers and members of the
17 board of directors. Regardless of the period provided in the declaration,
18 a period of declarant control terminates no later than the earlier of:

19 1. Ninety days after conveyance of seventy-five per cent of the units
20 which may be created to unit owners other than a declarant.

21 2. Four years after all declarants have ceased to offer units for sale
22 in the ordinary course of business.

23 ~~E~~. F. A declarant may voluntarily surrender the right to appoint and
24 remove officers and members of the board of directors before termination of
25 the period prescribed in subsection ~~D~~ E, but in that event he THE DECLARANT
26 may require, for the duration of the period of declarant control, that
27 specified actions of the association or board of directors, as described in
28 a recorded instrument executed by the declarant, be approved by the declarant
29 before they become effective.

30 ~~F~~. G. Not later than the termination of any period of declarant
31 control the unit owners shall elect a board of directors of at least three
32 members, at least a majority of whom must be unit owners. The board of
33 directors shall elect the officers. The board members and officers shall
34 take office upon election.

35 ~~G~~. H. Notwithstanding any provision of the declaration or bylaws to
36 the contrary, the unit owners, by a two-thirds vote of all persons present
37 and entitled to vote at any meeting of the unit owners at which a quorum is
38 present, may remove any member of the board of directors with or without
39 cause, other than a member appointed by the declarant.

40 Sec. 4. Section 33-1245, Arizona Revised Statutes, is amended to read:
41 33-1245. Termination of contracts and leases of declarant

42 A. A contract for any of the following, if entered into before the
43 board of directors elected by the unit owners pursuant to section 33-1243,
44 subsection ~~F~~ G takes office, shall contain a provision in the contract that

1 the contract may be terminated without penalty by the association at any time
2 after the board of directors elected by the unit owners takes office:

3 1. Any management contract or employment contract.

4 2. Any other contract or lease between the association and a declarant
5 or an affiliate of a declarant.

6 3. Any contract or lease that is not bona fide or was unconscionable
7 to the unit owners at the time entered into under the circumstances then
8 prevailing.

9 B. The board of directors shall notify the appropriate contractual
10 party of the termination ~~not fewer than~~ AT LEAST thirty days before
11 termination.

12 C. This section does not apply to any lease if the termination of the
13 lease would terminate the condominium or reduce its size.

14 D. If a contract covered by this section fails to contain the
15 provisions required by subsection A of this section, the contract shall be
16 voidable at the option of the association.

17 Sec. 5. Title 33, chapter 16, article 1, Arizona Revised Statutes, is
18 amended by adding section 33-1811, to read:

19 33-1811. Board of directors; contracts; conflict

20 IF ANY CONTRACT, DECISION OR OTHER ACTION FOR COMPENSATION TAKEN BY OR
21 ON BEHALF OF THE BOARD OF DIRECTORS WOULD BENEFIT ANY MEMBER OF THE BOARD OF
22 DIRECTORS OR ANY PERSON WHO IS A PARENT, GRANDPARENT, SPOUSE, CHILD OR
23 SIBLING OF A MEMBER OF THE BOARD OF DIRECTORS OR A PARENT OR SPOUSE OF ANY
24 OF THOSE PERSONS, THAT MEMBER OF THE BOARD OF DIRECTORS SHALL DECLARE A
25 CONFLICT OF INTEREST FOR THAT ISSUE. THE MEMBER SHALL DECLARE THE CONFLICT
26 IN AN OPEN MEETING OF THE BOARD BEFORE THE BOARD DISCUSSES OR TAKES ACTION
27 ON THAT ISSUE AND THAT MEMBER MAY THEN VOTE ON THAT ISSUE. ANY CONTRACT
28 ENTERED INTO IN VIOLATION OF THIS SECTION IS VOID AND UNENFORCEABLE.

APPROVED BY THE GOVERNOR JUNE 2, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 2, 2004.

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 27, 2004,

FAILED

by the following vote: 27 Ayes,

28 Nays, 5 Not Voting

Speaker of the House

Speman L. Moore

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

26th day of May, 2004,

at 3:24 o'clock P. M.

Wendee Ubarra
Secretary to the Governor

Approved this 1 day of

June, 2004,

at 3:45 o'clock P. M.

J. R. Reynolds
Governor of Arizona

H.B. 2381

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

HOUSE FINAL PASSAGE

as per Joint Conference

~~FAILED~~

Passed the House May 24, 2004,

by the following vote: 28 Ayes,

23 Nays, 9 Not Voting

Speaker of the House

Herman L. Moore
Chief Clerk of the House

SENATE FINAL PASSAGE

as per Joint Conference

Passed the Senate May 26, 2004,

by the following vote: 28 Ayes,

0 Nays, 3 Not Voting

President of the Senate

Kelli Blumett
Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR**

This Bill was received by the Governor

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of _____,

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

H.B. 2381

HOUSE FINAL PASSAGE
as per Joint Conference

Passed the House May 25, 20 04,

by the following vote: 45 Ayes,

8 Nays, 7 Not Voting

Jake Flake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

SENATE FINAL PASSAGE
as per Joint Conference

Passed the Senate _____, 20____,

by the following vote: _____ Ayes,

_____ Nays, _____ Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor

this 26th day of May, 2004,

at 3:24 o'clock P. M.

Wendell G. Barba
Secretary to the Governor

Approved this 2 day of

June, 2004,

at 11:35 o'clock A. M.

J. R. McElroy
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 2 day of June, 2004,

at 2:15 o'clock P. M.

James H. Brewer
Secretary of State

H.B. 2381
ON RECONSIDERATION