

Conference Engrossed

State of Arizona
House of Representatives
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 269

HOUSE BILL 2154

AN ACT

AMENDING SECTIONS 33-1243, 33-1250, 33-1256, 33-1260, 33-1803, 33-1806 AND 33-1807, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 16, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 33-1812 AND 33-1813; 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 33-1243, Arizona Revised Statutes, is amended to
3 read:

4 33-1243. Board of directors and officers; conflict; powers;
5 limitations; removal; annual audit

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

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

14 C. If any contract, decision or other action for compensation taken by
15 or on behalf of the board of directors would benefit any member of the board
16 of directors or any person who is a parent, grandparent, spouse, child or
17 sibling of a member of the board of directors or a parent or spouse of any of
18 those persons, that member of the board of directors shall declare a conflict
19 of interest for that issue. The member shall declare the conflict in an open
20 meeting of the board before the board discusses or takes action on that issue
21 and that member may then vote on that issue. Any contract entered into in
22 violation of this subsection is void and unenforceable.

23 D. Except as provided in the declaration, within thirty days after
24 adoption of any proposed budget for the condominium, the board of directors
25 shall provide a summary of the budget to all the unit owners. Unless the
26 board of directors is expressly authorized in the declaration to adopt and
27 amend budgets from time to time, any budget or amendment shall be ratified by
28 the unit owners in accordance with the procedures set forth in this
29 subsection. If ratification is required, the board of directors shall set a
30 date for a meeting of the unit owners to consider ratification of the budget
31 not fewer than fourteen nor more than thirty days after mailing of the
32 summary. Unless at that meeting a majority of all the unit owners or any
33 larger vote specified in the declaration rejects the budget, the budget is
34 ratified, whether or not a quorum is present. If the proposed budget is
35 rejected, the periodic budget last ratified by the unit owners shall be
36 continued until such time as the unit owners ratify a subsequent budget
37 proposed by the board of directors.

38 E. The declaration may provide for a period of declarant control of
39 the association, during which period a declarant or persons designated by the
40 declarant may appoint and remove the officers and members of the board of
41 directors. Regardless of the period provided in the declaration, a period of
42 declarant control terminates no later than the earlier of:

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

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

3 F. A declarant may voluntarily surrender the right to appoint and
4 remove officers and members of the board of directors before
5 termination of the period prescribed in subsection E, but in that event the
6 declarant may require, for the duration of the period of declarant control,
7 that specified actions of the association or board of directors, as described
8 in a recorded instrument executed by the declarant, be approved by the
9 declarant before they become effective.

10 G. Not later than the termination of any period of declarant control
11 the unit owners shall elect a board of directors of at least three members,
12 at least a majority of whom must be unit owners. The board of directors
13 shall elect the officers. The board members and officers shall take office
14 upon election.

15 H. Notwithstanding any provision of the declaration or bylaws to the
16 contrary, the unit owners, by a ~~two-thirds~~ MAJORITY vote of ~~all persons~~
17 ~~present and entitled to vote at any meeting of the unit owners~~ MEMBERS
18 ENTITLED TO VOTE AND VOTING ON THE MATTER AT A MEETING OF THE MEMBERS CALLED
19 PURSUANT TO THIS SECTION at which a quorum is present, may remove any member
20 of the board of directors with or without cause, other than a member
21 appointed by the declarant. FOR PURPOSES OF CALLING FOR REMOVAL OF A MEMBER
22 OF THE BOARD OF DIRECTORS, OTHER THAN A MEMBER APPOINTED BY THE DECLARANT,
23 THE FOLLOWING APPLY:

24 1. IN AN ASSOCIATION WITH ONE THOUSAND MEMBERS OR FEWER, ON RECEIPT OF
25 A PETITION THAT CALLS FOR REMOVAL OF A MEMBER OF THE BOARD OF DIRECTORS AND
26 THAT IS SIGNED BY THE NUMBER OF PERSONS WHO ARE ENTITLED TO CAST AT LEAST
27 TWENTY-FIVE PER CENT OF THE VOTES IN THE ASSOCIATION OR ONE HUNDRED VOTES IN
28 THE ASSOCIATION, WHICHEVER IS LESS, THE BOARD SHALL CALL AND PROVIDE WRITTEN
29 NOTICE OF A SPECIAL MEETING OF THE ASSOCIATION AS PRESCRIBED BY SECTION
30 33-1248, SUBSECTION B.

31 2. NOTWITHSTANDING SECTION 33-1248, SUBSECTION B, IN AN ASSOCIATION
32 WITH MORE THAN ONE THOUSAND MEMBERS, ON RECEIPT OF A PETITION THAT CALLS FOR
33 REMOVAL OF A MEMBER OF THE BOARD OF DIRECTORS AND THAT IS SIGNED BY THE
34 NUMBER OF PERSONS WHO ARE ENTITLED TO CAST AT LEAST TEN PER CENT OF THE VOTES
35 IN THE ASSOCIATION OR ONE THOUSAND VOTES IN THE ASSOCIATION, WHICHEVER IS
36 LESS, THE BOARD SHALL CALL AND PROVIDE WRITTEN NOTICE OF A SPECIAL MEETING OF
37 THE ASSOCIATION. THE BOARD SHALL PROVIDE WRITTEN NOTICE OF A SPECIAL MEETING
38 AS PRESCRIBED BY SECTION 33-1248, SUBSECTION B.

39 3. THE SPECIAL MEETING SHALL BE CALLED, NOTICED AND HELD WITHIN THIRTY
40 DAYS AFTER RECEIPT OF THE PETITION.

41 4. FOR PURPOSES OF A SPECIAL MEETING CALLED PURSUANT TO THIS
42 SUBSECTION, A QUORUM IS PRESENT IF THE NUMBER OF OWNERS TO WHOM AT LEAST
43 TWENTY PER CENT OF THE VOTES OR ONE THOUSAND VOTES, WHICHEVER IS LESS, ARE
44 ALLOCATED IS PRESENT AT THE MEETING IN PERSON OR AS OTHERWISE PERMITTED BY
45 LAW.

1 5. IF A CIVIL ACTION IS FILED REGARDING THE REMOVAL OF A BOARD MEMBER,
2 THE PREVAILING PARTY IN THE CIVIL ACTION SHALL BE AWARDED ITS REASONABLE
3 ATTORNEY FEES AND COSTS.

4 6. THE BOARD OF DIRECTORS SHALL RETAIN ALL DOCUMENTS AND OTHER RECORDS
5 RELATING TO THE PROPOSED REMOVAL OF THE MEMBER OF THE BOARD OF DIRECTORS FOR
6 AT LEAST ONE YEAR AFTER THE DATE OF THE SPECIAL MEETING AND SHALL PERMIT
7 MEMBERS TO INSPECT THOSE DOCUMENTS AND RECORDS PURSUANT TO SECTION 33-1258.

8 7. A PETITION THAT CALLS FOR THE REMOVAL OF THE SAME MEMBER OF THE
9 BOARD OF DIRECTORS SHALL NOT BE SUBMITTED MORE THAN ONCE DURING EACH TERM OF
10 OFFICE FOR THAT MEMBER.

11 I. FOR AN ASSOCIATION IN WHICH BOARD MEMBERS ARE ELECTED FROM
12 SEPARATELY DESIGNATED VOTING DISTRICTS, A MEMBER OF THE BOARD OF DIRECTORS,
13 OTHER THAN A MEMBER APPOINTED BY THE DECLARANT, MAY BE REMOVED ONLY BY A VOTE
14 OF THE MEMBERS FROM THAT VOTING DISTRICT, AND ONLY THE MEMBERS FROM THAT
15 VOTING DISTRICT ARE ELIGIBLE TO VOTE ON THE MATTER OR BE COUNTED FOR PURPOSES
16 OF DETERMINING A QUORUM.

17 ~~I.~~ J. Unless any provision in the condominium documents requires an
18 annual audit by a certified public accountant, the board of directors shall
19 provide for an annual financial audit, review or compilation of the
20 association. The audit, review or compilation shall be completed no later
21 than one hundred eighty days after the end of the association's fiscal year
22 and shall be made available upon request to the unit owners within thirty
23 days after its completion.

24 Sec. 2. Section 33-1250, Arizona Revised Statutes, is amended to read:
25 33-1250. Voting; proxies; definition

26 A. If only one of the multiple owners of a unit is present at a
27 meeting of the association, ~~he~~ THE OWNER is entitled to cast all the votes
28 allocated to that unit. If more than one of the multiple owners are present,
29 the votes allocated to that unit may be cast only in accordance with the
30 agreement of a majority in interest of the multiple owners unless the
31 declaration expressly provides otherwise. There is majority agreement if any
32 one of the multiple owners casts the votes allocated to that unit without
33 protest being made promptly to the person presiding over the meeting by any
34 of the other owners of the unit.

35 B. DURING THE PERIOD OF DECLARANT CONTROL, votes allocated to a unit
36 may be cast pursuant to a proxy duly executed by a unit owner. If a unit is
37 owned by more than one person, each owner of the unit may vote or register
38 protest to the casting of votes by the other owners of the unit through a
39 duly executed proxy. A unit owner may not revoke a proxy given pursuant to
40 this section except by actual notice of revocation to the person presiding
41 over a meeting of the association. A proxy is void if it is not dated or
42 purports to be revocable without notice. The proxy is revoked on
43 presentation of a later dated proxy executed by the same unit owner. A proxy
44 terminates one year after its date, unless it specifies a shorter term or
45 unless it states that it is coupled with an interest and is irrevocable.

1 C. NOTWITHSTANDING ANY PROVISION IN THE CONDOMINIUM DOCUMENTS, AFTER
2 TERMINATION OF THE PERIOD OF DECLARANT CONTROL, VOTES ALLOCATED TO A UNIT MAY
3 NOT BE CAST PURSUANT TO A PROXY. THE ASSOCIATION SHALL PROVIDE FOR VOTES TO
4 BE CAST IN PERSON AND BY ABSENTEE BALLOT AND MAY PROVIDE FOR VOTING BY SOME
5 OTHER FORM OF DELIVERY. NOTWITHSTANDING SECTION 10-3708 OR THE PROVISIONS OF
6 THE CONDOMINIUM DOCUMENTS, ANY ACTION TAKEN AT AN ANNUAL, REGULAR OR SPECIAL
7 MEETING OF THE MEMBERS SHALL COMPLY WITH ALL OF THE FOLLOWING IF ABSENTEE
8 BALLOTS ARE USED:

9 1. THE ABSENTEE BALLOT SHALL SET FORTH EACH PROPOSED ACTION.

10 2. THE ABSENTEE BALLOT SHALL PROVIDE AN OPPORTUNITY TO VOTE FOR OR
11 AGAINST EACH PROPOSED ACTION.

12 3. THE ABSENTEE BALLOT IS VALID FOR ONLY ONE SPECIFIED ELECTION OR
13 MEETING OF THE MEMBERS AND EXPIRES AUTOMATICALLY AFTER THE COMPLETION OF THE
14 ELECTION OR MEETING.

15 4. THE ABSENTEE BALLOT SPECIFIES THE TIME AND DATE BY WHICH THE BALLOT
16 MUST BE DELIVERED TO THE BOARD OF DIRECTORS IN ORDER TO BE COUNTED, WHICH
17 SHALL BE AT LEAST SEVEN DAYS AFTER THE DATE THAT THE BOARD DELIVERS THE
18 UNVOTED ABSENTEE BALLOT TO THE MEMBER.

19 5. THE ABSENTEE BALLOT DOES NOT AUTHORIZE ANOTHER PERSON TO CAST VOTES
20 ON BEHALF OF THE MEMBER.

21 D. VOTES CAST BY ABSENTEE BALLOT OR OTHER FORM OF DELIVERY ARE VALID
22 FOR THE PURPOSE OF ESTABLISHING A QUORUM.

23 E. NOTWITHSTANDING SUBSECTION C OF THIS SECTION, AN ASSOCIATION FOR A
24 TIMESHARE PLAN AS DEFINED IN SECTION 32-2197 MAY PERMIT VOTES BY A PROXY THAT
25 IS DULY EXECUTED BY A UNIT OWNER.

26 ~~E.~~ F. If the declaration requires that votes on specified matters
27 affecting the condominium be cast by lessees rather than unit owners of
28 leased units all of the following apply:

29 1. The provisions of subsections A and B of this section apply to
30 lessees as if they were unit owners.

31 2. Unit owners who have leased their units to other persons shall not
32 cast votes on those specified matters.

33 3. Lessees are entitled to notice of meetings, access to records and
34 other rights respecting those matters as if they were unit owners. Unit
35 owners shall also be given notice, in the manner prescribed in section
36 33-1248, of all meetings at which lessees may be entitled to vote.

37 ~~F.~~ G. Unless the declaration provides otherwise, votes allocated to a
38 unit owned by the association shall not be cast.

39 H. FOR THE PURPOSES OF THIS SECTION, "PERIOD OF DECLARANT CONTROL"
40 MEANS THE TIME DURING WHICH THE DECLARANT OR PERSONS DESIGNATED BY THE
41 DECLARANT MAY ELECT OR APPOINT THE MEMBERS OF THE BOARD OF DIRECTORS PURSUANT
42 TO THE CONDOMINIUM DOCUMENTS OR BY VIRTUE OF SUPERIOR VOTING POWER.

1 Sec. 3. Section 33-1256, Arizona Revised Statutes, is amended to read:
2 33-1256. Lien for assessments; priority; mechanics' and
3 materialmen's liens

4 A. The association has a lien on a unit for any assessment levied
5 against that unit from the time the assessment becomes due. The
6 association's lien for assessments, for charges for late payment of those
7 assessments, FOR REASONABLE COLLECTION FEES and for reasonable attorney fees
8 and costs incurred with respect to those assessments may be foreclosed in the
9 same manner as a mortgage on real estate. Fees, charges, late charges,
10 monetary penalties and interest charged pursuant to section 33-1242,
11 paragraphs 10, 11 and 12, other than charges for late payment of assessments,
12 are not enforceable as assessments under this section. If an assessment is
13 payable in installments, the full amount of the assessment is a lien from the
14 time the first installment of the assessment becomes due. The association
15 has a lien for fees, charges, late charges, other than charges for late
16 payment of assessments, monetary penalties or interest charged pursuant to
17 section 33-1242, paragraphs 10, 11 and 12 after the entry of a judgment in a
18 civil suit for those fees, charges, late charges, monetary penalties or
19 interest from a court of competent jurisdiction and the recording of that
20 judgment in the office of the county recorder as otherwise provided by law.
21 The association's lien for monies other than for assessments, for charges for
22 late payment of those assessments, FOR REASONABLE COLLECTION FEES and for
23 reasonable attorney fees and costs incurred with respect to those assessments
24 may not be foreclosed and is effective only on conveyance of any interest in
25 the real property. Nothing in this subsection or subsection E of this
26 section shall be interpreted to restrict an association for a timeshare plan
27 as defined by IN section 32-2197 from acquiring or foreclosing on a lien,
28 whether the lien is for assessments, fees, charges, late charges, monetary
29 penalties or interest charged pursuant to section 33-1242, paragraphs 10, 11
30 and 12, and any lien shall be a first lien as provided in subsection B of
31 this section. An association for a timeshare plan may foreclose on a lien at
32 any time after the lien is acquired.

33 B. A lien for assessments, for charges for late payment of those
34 assessments, FOR REASONABLE COLLECTION FEES and for reasonable attorney fees
35 and costs incurred with respect to those assessments under this section is
36 prior to all other liens, interests and encumbrances on a unit except:

37 1. Liens and encumbrances recorded before the recordation of the
38 declaration.

39 2. A recorded first mortgage on the unit, a seller's interest in a
40 first contract for sale pursuant to chapter 6, article 3 of this title on the
41 unit recorded prior to the lien arising pursuant to subsection A of this
42 section or a recorded first deed of trust on the unit.

43 3. Liens for real estate taxes and other governmental assessments or
44 charges against the unit.

1 C. Subsection B of this section does not affect the priority of
2 mechanics' or materialmen's liens or the priority of liens for other
3 assessments made by the association. The lien under this section is not
4 subject to the provisions of chapter 8 of this title.

5 D. Unless the declaration otherwise provides, if two or more
6 associations have liens for assessments created at any time on the same real
7 estate, those liens have equal priority.

8 E. Recording of the declaration constitutes record notice and
9 perfection of the lien for assessments, for charges for late payment of those
10 assessments, FOR REASONABLE COLLECTION FEES and for reasonable attorney fees
11 and costs incurred with respect to those assessments. Further recordation of
12 any claim of lien for assessments under this section is not required.

13 F. A lien for unpaid assessments is extinguished unless proceedings to
14 enforce the lien are instituted within three years after the full amount of
15 the assessments becomes due.

16 G. This section does not prohibit actions to recover sums for which
17 subsection A of this section creates a lien or does not prohibit an
18 association from taking a deed in lieu of foreclosure.

19 H. A judgment or decree in any action brought under this section shall
20 include costs and reasonable attorney fees for the prevailing party.

21 I. The association on written request shall furnish to a lienholder,
22 escrow agent, unit owner or person designated by a unit owner a statement
23 setting forth the amount of unpaid assessments against the unit. The
24 statement shall be furnished within fifteen days after receipt of the request
25 and the statement is binding on the association, the board of directors and
26 every unit owner if the statement is requested by an escrow agency that is
27 licensed pursuant to title 6, chapter 7. Failure to provide the statement to
28 the escrow agent within the time provided for in this subsection shall
29 extinguish any lien for any unpaid assessment then due.

30 J. The association shall record in the office of the county recorder
31 in the county in which the condominium is located a notice stating the name
32 of the association or designated agent or management company for the
33 association, the address for the association and the telephone number of the
34 association or its designated agent or management company. The notice shall
35 include the name of the condominium community, the date of the recording and
36 the recorded instrument number or book and page for the main document that
37 constitutes the declaration. If an association's address, designated agent
38 or management company changes, the association shall amend its notice or
39 record a new notice within ninety days after the change.

40 K. NOTWITHSTANDING ANY PROVISION IN THE CONDOMINIUM DOCUMENTS OR IN
41 ANY CONTRACT BETWEEN THE ASSOCIATION AND A MANAGEMENT COMPANY, UNLESS THE
42 MEMBER DIRECTS OTHERWISE, ALL PAYMENTS RECEIVED ON A MEMBER'S ACCOUNT SHALL
43 BE APPLIED FIRST TO ANY UNPAID ASSESSMENTS, FOR UNPAID CHARGES FOR LATE
44 PAYMENT OF THOSE ASSESSMENTS, FOR REASONABLE COLLECTION FEES AND FOR UNPAID
45 ATTORNEY FEES AND COSTS INCURRED WITH RESPECT TO THOSE ASSESSMENTS, IN THAT

1 ORDER, WITH ANY REMAINING AMOUNTS APPLIED NEXT TO OTHER UNPAID FEES, CHARGES
2 AND MONETARY PENALTIES OR INTEREST AND LATE CHARGES ON ANY OF THOSE AMOUNTS.

3 Sec. 4. Section 33-1260, Arizona Revised Statutes, is amended to read:

4 33-1260. Resale of units; information required; definition

5 A. ~~Except for a sale in which a public report shall be issued pursuant~~
6 ~~to section 32-2183 and section 32-2197.02, for an exempt sale pursuant to~~
7 ~~section 32-2181.02 or~~ For condominiums with fewer than fifty units, a unit
8 owner shall mail or deliver to a purchaser within ten days after receipt of a
9 written notice of a pending sale of the unit, and for condominiums with fifty
10 or more units, the association shall mail or deliver to a purchaser within
11 ten days after receipt of a written notice of a pending sale that contains
12 the name and address of the purchaser, all of the following:

13 1. A copy of the bylaws and the rules of the association.

14 2. A copy of the declaration.

15 3. A dated statement containing:

16 (a) The telephone number and address of a principal contact for the
17 association, which may be an association manager, an association management
18 company, an officer of the association or any other person designated by the
19 board of directors.

20 (b) The amount of the common expense assessment for the unit and any
21 unpaid common expense assessment, special assessment or other assessment, fee
22 or charge currently due and payable from the selling unit owner.

23 (c) A statement as to whether a portion of the unit is covered by
24 insurance maintained by the association.

25 (d) The total amount of money held by the association as reserves.

26 (e) If the statement is being furnished by the association, a
27 statement as to whether the records of the association reflect any
28 alterations or improvements to the unit that violate the declaration. The
29 association is not obligated to provide information regarding alterations or
30 improvements that occurred more than six years before the proposed
31 sale. Nothing in this subdivision relieves the seller of a unit from the
32 obligation to disclose alterations or improvements to the unit that violate
33 the declaration, nor precludes the association from taking action against the
34 purchaser of a unit for violations that are apparent at the time of purchase
35 and that are not reflected in the association's records.

36 (f) If the statement is being furnished by the unit owner, a statement
37 as to whether the unit owner has any knowledge of any alterations or
38 improvements to the unit that violate the declaration.

39 (g) A statement of case names and case numbers for pending litigation
40 with respect to the unit filed by the association against the unit owner or
41 filed by the unit owner against the association. The unit owner or the
42 association shall not be required to disclose information concerning the
43 pending litigation that would violate any applicable rule of attorney-client
44 privilege under Arizona law.

1 (h) A statement that provides "I hereby acknowledge that the
2 declaration, bylaws and rules of the association constitute a contract
3 between the association and me (the purchaser). By signing this statement, I
4 acknowledge that I have read and understand the association's contract with
5 me (the purchaser). I also understand that ~~by accepting this contract, I may
6 be giving up my rights to the homestead exemption protection regarding a lien
7 of the association~~ AS A MATTER OF ARIZONA LAW, IF I FAIL TO PAY MY
8 ASSOCIATION ASSESSMENTS, THE ASSOCIATION MAY FORECLOSE ON MY PROPERTY." The
9 statement shall also include a signature line for the purchaser and shall be
10 returned to the association within fourteen calendar days.

11 4. A copy of the current operating budget of the association.

12 5. A copy of the most recent annual financial report of the
13 association. If the report is more than ten pages, the association may
14 provide a summary of the report in lieu of the entire report.

15 6. A copy of the most recent reserve study of the association, if any.

16 B. A purchaser or seller who is damaged by the failure of the unit
17 owner or the association to disclose the information required by subsection A
18 of this section may pursue all remedies at law or in equity against the unit
19 owner or the association, whichever failed to comply with subsection A of
20 this section, including the recovery of reasonable attorney fees.

21 C. The association may charge the unit owner a reasonable fee to
22 compensate the association for the costs incurred in the preparation of a
23 statement furnished by the association pursuant to this section. The
24 association shall make available to any interested party the amount of any
25 fee established from time to time by the association.

26 D. A SALE IN WHICH A PUBLIC REPORT IS ISSUED PURSUANT TO SECTIONS
27 32-2183 AND 32-2197.02 OR A SALE PURSUANT TO SECTION 32-2181.02 IS EXEMPT
28 FROM THIS SECTION.

29 ~~D.~~ E. For purposes of this section, unless the context otherwise
30 requires, "unit owner" means the seller of the condominium unit title and
31 excludes any real estate salesperson or real estate broker who is licensed
32 under title 32, chapter 20 and who is acting as a salesperson or broker and
33 also excludes a trustee of a deed of trust who is selling the property in a
34 trustee's sale pursuant to chapter 6.1 of this title.

35 Sec. 5. Section 33-1803, Arizona Revised Statutes, is amended to read:

36 33-1803. Penalties

37 A. Unless limitations in the community documents would result in a
38 lower limit for the assessment, the association shall not impose a regular
39 assessment that is more than twenty per cent greater than the immediately
40 preceding fiscal year's assessment without the approval of the majority of
41 the members of the association. Unless reserved to the members of the
42 association, the board of directors may impose reasonable charges for the
43 late payment of assessments. A payment by a member is deemed late if it is
44 unpaid fifteen or more days after its due date, unless the community
45 documents provide for a longer period. Charges for the late payment of

1 assessments are limited to the greater of fifteen dollars or ten per cent of
2 the amount of the unpaid assessment. Any monies paid by the member for an
3 unpaid assessment shall be applied first to the principal amount unpaid and
4 then to the interest accrued.

5 B. After notice and an opportunity to be heard, the board of directors
6 may impose reasonable monetary penalties on members for violations of the
7 declaration, bylaws and rules of the association. Notwithstanding any
8 provision in the community documents, the board of directors shall not impose
9 a charge for a late payment of a penalty that exceeds the greater of fifteen
10 dollars or ten per cent of the amount of the unpaid penalty. A payment is
11 deemed late if it is unpaid fifteen or more days after its due date, unless
12 the declaration, bylaws or rules of the association provide for a longer
13 period. Any monies paid by a member for an unpaid penalty shall be applied
14 first to the principal amount unpaid and then to the interest
15 accrued. Notice pursuant to this subsection shall include information
16 pertaining to the manner in which the penalty shall be enforced.

17 ~~C. The charges for late payment and penalties shall be enforceable in~~
18 ~~the same manner as unpaid assessments.~~

19 Sec. 6. Section 33-1806, Arizona Revised Statutes, is amended to read:

20 33-1806. Resale of units; information required; definition

21 A. ~~Except for a sale in which a public report shall be issued pursuant~~
22 ~~to section 32-2183 and section 32-2197.02, for a sale which is exempt~~
23 ~~pursuant to section 32-2181.02 or~~ For planned communities with fewer than
24 fifty units, a member shall mail or deliver to a purchaser within ten days
25 after receipt of a written notice of a pending sale of the unit, and for
26 planned communities with fifty or more units, the association shall mail or
27 deliver to a purchaser within ten days after receipt of a written notice of a
28 pending sale that contains the name and address of the purchaser, all of the
29 following:

30 1. A copy of the bylaws and the rules of the association.

31 2. A copy of the declaration.

32 3. A dated statement containing:

33 (a) The telephone number and address of a principal contact for the
34 association, which may be an association manager, an association management
35 company, an officer of the association or any other person designated by the
36 board of directors.

37 (b) The amount of the common regular assessment and the unpaid common
38 regular assessment, special assessment or other assessment, fee or charge
39 currently due and payable from the selling member.

40 (c) A statement as to whether a portion of the unit is covered by
41 insurance maintained by the association.

42 (d) The total amount of money held by the association as reserves.

43 (e) If the statement is being furnished by the association, a
44 statement as to whether the records of the association reflect any
45 alterations or improvements to the unit that violate the declaration. The

1 association is not obligated to provide information regarding alterations or
2 improvements that occurred more than six years before the proposed sale.
3 Nothing in this subdivision relieves the seller of a unit from the obligation
4 to disclose alterations or improvements to the unit that violate the
5 declaration, nor precludes the association from taking action against the
6 purchaser of a unit for violations that are apparent at the time of purchase
7 and that are not reflected in the association's records.

8 (f) If the statement is being furnished by the member, a statement as
9 to whether the member has any knowledge of any alterations or improvements to
10 the unit that violate the declaration.

11 (g) A statement of case names and case numbers for pending litigation
12 with respect to the unit filed by the association against the member or filed
13 by the member against the association. The member shall not be required to
14 disclose information concerning such pending litigation which would violate
15 any applicable rule of attorney-client privilege under Arizona law.

16 (h) A statement that provides "I hereby acknowledge that the
17 declaration, bylaws and rules of the association constitute a contract
18 between the association and me (the purchaser). By signing this statement, I
19 acknowledge that I have read and understand the association's contract with
20 me (the purchaser). I also understand that ~~by accepting this contract, I may~~
21 ~~be giving up my rights to the homestead exemption protection regarding a lien~~
22 ~~of the association~~ AS A MATTER OF ARIZONA LAW, IF I FAIL TO PAY MY
23 ASSOCIATION ASSESSMENTS, THE ASSOCIATION MAY FORECLOSE ON MY PROPERTY." The
24 statement shall also include a signature line for the purchaser and shall be
25 returned to the association within fourteen calendar days.

26 4. A copy of the current operating budget of the association.

27 5. A copy of the most recent annual financial report of the
28 association. If the report is more than ten pages, the association may
29 provide a summary of the report in lieu of the entire report.

30 6. A copy of the most recent reserve study of the association, if any.

31 B. A purchaser or seller who is damaged by the failure of the member
32 or the association to disclose the information required by subsection A of
33 this section may pursue all remedies at law or in equity against the member
34 or the association, whichever failed to comply with subsection A of this
35 section, including the recovery of reasonable attorney fees.

36 C. The association may charge the member a reasonable fee to
37 compensate the association for the costs incurred in the preparation of a
38 statement furnished by the association pursuant to this section. The
39 association shall make available to any interested party the amount of any
40 fee established from time to time by the association.

41 D. A SALE IN WHICH A PUBLIC REPORT IS ISSUED PURSUANT TO SECTIONS
42 32-2183 AND 32-2197.02 OR A SALE PURSUANT TO SECTION 32-2181.02 IS EXEMPT
43 FROM THIS SECTION.

44 ~~D.~~ E. For purposes of this section, unless the context otherwise
45 requires, "member" means the seller of the unit title and excludes any real

1 estate salesperson or real estate broker who is licensed under title 32,
2 chapter 20 and who is acting as a salesperson or broker and also excludes a
3 trustee of a deed of trust who is selling the property in a trustee's sale
4 pursuant to chapter 6.1 of this title.

5 Sec. 7. Section 33-1807, Arizona Revised Statutes, is amended to read:
6 33-1807. Lien for assessments; priority; mechanics' and
7 materialmen's liens

8 A. The association has a lien on a unit for any assessment levied
9 against that unit from the time the assessment becomes due. The
10 association's lien for assessments, for charges for late payment of those
11 assessments, FOR REASONABLE COLLECTION FEES and for reasonable attorney fees
12 and costs incurred with respect to those assessments may be foreclosed in the
13 same manner as a mortgage on real estate. Fees, charges, late charges,
14 monetary penalties and interest charged pursuant to section 33-1803, other
15 than charges for late payment of assessments are not enforceable as
16 assessments under this section. If an assessment is payable in installments,
17 the full amount of the assessment is a lien from the time the first
18 installment of the assessment becomes due. The association has a lien for
19 fees, charges, late charges, other than charges for late payment of
20 assessments, monetary penalties or interest charged pursuant to section
21 33-1803 after the entry of a judgment in a civil suit for those fees,
22 charges, late charges, monetary penalties or interest from a court of
23 competent jurisdiction and the recording of that judgment in the office of
24 the county recorder as otherwise provided by law. The association's lien for
25 monies other than for assessments, for charges for late payment of those
26 assessments, FOR REASONABLE COLLECTION FEES and for reasonable attorney fees
27 and costs incurred with respect to those assessments may not be foreclosed
28 and is effective only on conveyance of any interest in the real property.
29 Nothing in this subsection or subsection E of this section shall be
30 interpreted to restrict an association for a timeshare plan ~~under~~ AS DEFINED
31 IN section 32-2197 from acquiring or foreclosing on a lien, whether the lien
32 is for assessments, fees, charges, late charges, monetary penalties or
33 interest charged pursuant to section 33-1803, and any lien shall be a first
34 lien as provided in subsection B of this section. An association for a
35 timeshare plan ~~under section 32-2197~~ may foreclose on a lien at any time
36 after the lien is acquired.

37 B. A lien for assessments, for charges for late payment of those
38 assessments, FOR REASONABLE COLLECTION FEES and for reasonable attorney fees
39 and costs incurred with respect to those assessments under this section is
40 prior to all other liens, interests and encumbrances on a unit except:

41 1. Liens and encumbrances recorded before the recordation of the
42 declaration.

43 2. A recorded first mortgage on the unit, a seller's interest in a
44 first contract for sale pursuant to chapter 6, article 3 of this title on the

1 unit recorded prior to the lien arising pursuant to subsection A of this
2 section or a recorded first deed of trust on the unit.

3 3. Liens for real estate taxes and other governmental assessments or
4 charges against the unit.

5 C. Subsection B of this section does not affect the priority of
6 mechanics' or materialmen's liens or the priority of liens for other
7 assessments made by the association. The lien under this section is not
8 subject to chapter 8 of this title.

9 D. Unless the declaration otherwise provides, if two or more
10 associations have liens for assessments created at any time on the same real
11 estate those liens have equal priority.

12 E. Recording of the declaration constitutes record notice and
13 perfection of the lien for assessments, for charges for late payment of
14 assessments, FOR REASONABLE COLLECTION FEES and for reasonable attorney fees
15 and costs incurred with respect to those assessments. Further recordation of
16 any claim of lien for assessments under this section is not required.

17 F. A lien for an unpaid assessment is extinguished unless proceedings
18 to enforce the lien are instituted within three years after the full amount
19 of the assessment becomes due.

20 G. This section does not prohibit:

21 1. Actions to recover amounts for which subsection A of this section
22 creates a lien.

23 2. An association from taking a deed in lieu of foreclosure.

24 H. A judgment or decree in any action brought under this section shall
25 include costs and reasonable attorney fees for the prevailing party.

26 I. On written request, the association shall furnish to a lienholder,
27 escrow agent, unit owner or person designated by a unit owner a statement
28 setting forth the amount of any unpaid assessment against the unit. The
29 association shall furnish the statement within fifteen days after receipt of
30 the request, and the statement is binding on the association, the board of
31 directors and every unit owner if the statement is requested by an escrow
32 agency that is licensed pursuant to title 6, chapter 7. Failure to provide
33 the statement to the escrow agent within the time provided for in this
34 subsection shall extinguish any lien for any unpaid assessment then due.

35 J. The association shall record in the office of the county recorder
36 in the county in which the planned community is located a notice stating the
37 name of the association or designated agent or management company for the
38 association, the address for the association and the telephone number of the
39 association or its designated agent or management company. The notice shall
40 include the name of the planned community, the date of the recording and the
41 recorded instrument number or book and page for the main document that
42 constitutes the declaration. If an association's address, designated agent
43 or management company changes, the association shall amend its notice or
44 record a new notice within ninety days after the change.

1 K. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS OR IN ANY
2 CONTRACT BETWEEN THE ASSOCIATION AND A MANAGEMENT COMPANY, UNLESS THE MEMBER
3 DIRECTS OTHERWISE, ALL PAYMENTS RECEIVED ON A MEMBER'S ACCOUNT SHALL BE
4 APPLIED FIRST TO ANY UNPAID ASSESSMENTS, FOR UNPAID CHARGES FOR LATE PAYMENT
5 OF THOSE ASSESSMENTS, FOR REASONABLE COLLECTION FEES AND FOR UNPAID ATTORNEY
6 FEES AND COSTS INCURRED WITH RESPECT TO THOSE ASSESSMENTS, IN THAT ORDER,
7 WITH ANY REMAINING AMOUNTS APPLIED NEXT TO OTHER UNPAID FEES, CHARGES AND
8 MONETARY PENALTIES OR INTEREST AND LATE CHARGES ON ANY OF THOSE AMOUNTS.

9 Sec. 8. Title 33, chapter 16, article 1, Arizona Revised Statutes, is
10 amended by adding sections 33-1812 and 33-1813, to read:

11 33-1812. Proxies; absentee ballots; definition

12 A. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS, AFTER
13 TERMINATION OF THE PERIOD OF DECLARANT CONTROL, VOTES ALLOCATED TO A UNIT MAY
14 NOT BE CAST PURSUANT TO A PROXY. THE ASSOCIATION SHALL PROVIDE FOR VOTES TO
15 BE CAST IN PERSON AND BY ABSENTEE BALLOT AND MAY PROVIDE FOR VOTING BY SOME
16 OTHER FORM OF DELIVERY. NOTWITHSTANDING SECTION 10-3708 OR THE PROVISIONS OF
17 THE COMMUNITY DOCUMENTS, ANY ACTION TAKEN AT AN ANNUAL, REGULAR OR SPECIAL
18 MEETING OF THE MEMBERS SHALL COMPLY WITH ALL OF THE FOLLOWING IF ABSENTEE
19 BALLOTS ARE USED:

- 20 1. THE ABSENTEE BALLOT SHALL SET FORTH EACH PROPOSED ACTION.
- 21 2. THE ABSENTEE BALLOT SHALL PROVIDE AN OPPORTUNITY TO VOTE FOR OR
22 AGAINST EACH PROPOSED ACTION.
- 23 3. THE ABSENTEE BALLOT IS VALID FOR ONLY ONE SPECIFIED ELECTION OR
24 MEETING OF THE MEMBERS AND EXPIRES AUTOMATICALLY AFTER THE COMPLETION OF THE
25 ELECTION OR MEETING.
- 26 4. THE ABSENTEE BALLOT SPECIFIES THE TIME AND DATE BY WHICH THE BALLOT
27 MUST BE DELIVERED TO THE BOARD OF DIRECTORS IN ORDER TO BE COUNTED, WHICH
28 SHALL BE AT LEAST SEVEN DAYS AFTER THE DATE THAT THE BOARD DELIVERS THE
29 UNVOTED ABSENTEE BALLOT TO THE MEMBER.

30 5. THE ABSENTEE BALLOT DOES NOT AUTHORIZE ANOTHER PERSON TO CAST VOTES
31 ON BEHALF OF THE MEMBER.

32 B. VOTES CAST BY ABSENTEE BALLOT OR OTHER FORM OF DELIVERY ARE VALID
33 FOR THE PURPOSE OF ESTABLISHING A QUORUM.

34 C. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, AN ASSOCIATION FOR A
35 TIMESHARE PLAN AS DEFINED IN SECTION 32-2197 MAY PERMIT VOTES BY A PROXY THAT
36 IS DULY EXECUTED BY A UNIT OWNER.

37 D. FOR THE PURPOSES OF THIS SECTION, "PERIOD OF DECLARANT CONTROL"
38 MEANS THE TIME DURING WHICH THE DECLARANT OR PERSONS DESIGNATED BY THE
39 DECLARANT MAY ELECT OR APPOINT THE MEMBERS OF THE BOARD OF DIRECTORS PURSUANT
40 TO THE COMMUNITY DOCUMENTS OR BY VIRTUE OF SUPERIOR VOTING POWER.

41 33-1813. Removal of board member; special meeting

42 A. NOTWITHSTANDING ANY PROVISION OF THE DECLARATION OR BYLAWS TO THE
43 CONTRARY, THE MEMBERS, BY A MAJORITY VOTE OF MEMBERS ENTITLED TO VOTE AND
44 VOTING ON THE MATTER AT A MEETING OF THE MEMBERS CALLED PURSUANT TO THIS
45 SECTION AT WHICH A QUORUM IS PRESENT, MAY REMOVE ANY MEMBER OF THE BOARD OF

1 DIRECTORS WITH OR WITHOUT CAUSE, OTHER THAN A MEMBER APPOINTED BY THE
2 DECLARANT. FOR PURPOSES OF CALLING FOR REMOVAL OF A MEMBER OF THE BOARD OF
3 DIRECTORS, OTHER THAN A MEMBER APPOINTED BY THE DECLARANT, THE FOLLOWING
4 APPLY:

5 1. IN AN ASSOCIATION WITH ONE THOUSAND OR FEWER MEMBERS, ON RECEIPT OF
6 A PETITION THAT CALLS FOR REMOVAL OF A MEMBER OF THE BOARD OF DIRECTORS AND
7 THAT IS SIGNED BY THE NUMBER OF PERSONS WHO ARE ENTITLED TO CAST AT LEAST
8 TWENTY-FIVE PER CENT OF THE VOTES IN THE ASSOCIATION OR ONE HUNDRED VOTES IN
9 THE ASSOCIATION, WHICHEVER IS LESS, THE BOARD SHALL CALL AND PROVIDE WRITTEN
10 NOTICE OF A SPECIAL MEETING OF THE ASSOCIATION AS PRESCRIBED BY SECTION
11 33-1804, SUBSECTION B.

12 2. NOTWITHSTANDING SECTION 33-1804, SUBSECTION B, IN AN ASSOCIATION
13 WITH MORE THAN ONE THOUSAND MEMBERS, ON RECEIPT OF A PETITION THAT CALLS FOR
14 REMOVAL OF A MEMBER OF THE BOARD OF DIRECTORS AND THAT IS SIGNED BY THE
15 NUMBER OF PERSONS WHO ARE ENTITLED TO CAST AT LEAST TEN PER CENT OF THE VOTES
16 IN THE ASSOCIATION OR ONE THOUSAND VOTES IN THE ASSOCIATION, WHICHEVER IS
17 LESS, THE BOARD SHALL CALL AND PROVIDE WRITTEN NOTICE OF A SPECIAL MEETING OF
18 THE ASSOCIATION. THE BOARD SHALL PROVIDE WRITTEN NOTICE OF A SPECIAL MEETING
19 AS PRESCRIBED BY SECTION 33-1804, SUBSECTION B.

20 3. THE SPECIAL MEETING SHALL BE CALLED, NOTICED AND HELD WITHIN THIRTY
21 DAYS AFTER RECEIPT OF THE PETITION.

22 4. FOR PURPOSES OF A SPECIAL MEETING CALLED PURSUANT TO THIS
23 SUBSECTION, A QUORUM IS PRESENT IF THE NUMBER OF OWNERS TO WHOM AT LEAST
24 TWENTY PER CENT OF THE VOTES OR ONE THOUSAND VOTES, WHICHEVER IS LESS, ARE
25 ALLOCATED IS PRESENT AT THE MEETING IN PERSON OR AS OTHERWISE PERMITTED BY
26 LAW.

27 5. IF A CIVIL ACTION IS FILED REGARDING THE REMOVAL OF A BOARD MEMBER,
28 THE PREVAILING PARTY IN THE CIVIL ACTION SHALL BE AWARDED ITS REASONABLE
29 ATTORNEY FEES AND COSTS.

30 6. THE BOARD OF DIRECTORS SHALL RETAIN ALL DOCUMENTS AND OTHER RECORDS
31 RELATING TO THE PROPOSED REMOVAL OF THE MEMBER OF THE BOARD OF DIRECTORS FOR
32 AT LEAST ONE YEAR AFTER THE DATE OF THE SPECIAL MEETING AND SHALL PERMIT
33 MEMBERS TO INSPECT THOSE DOCUMENTS AND RECORDS PURSUANT TO SECTION 33-1805.

34 7. A PETITION THAT CALLS FOR THE REMOVAL OF THE SAME MEMBER OF THE
35 BOARD OF DIRECTORS SHALL NOT BE SUBMITTED MORE THAN ONCE DURING EACH TERM OF
36 OFFICE FOR THAT MEMBER.

37 B. FOR AN ASSOCIATION IN WHICH BOARD MEMBERS ARE ELECTED FROM
38 SEPARATELY DESIGNATED VOTING DISTRICTS, A MEMBER OF THE BOARD OF DIRECTORS,
39 OTHER THAN A MEMBER APPOINTED BY THE DECLARANT, MAY BE REMOVED ONLY BY A VOTE
40 OF THE MEMBERS FROM THAT VOTING DISTRICT, AND ONLY THE MEMBERS FROM THAT
41 VOTING DISTRICT ARE ELIGIBLE TO VOTE ON THE MATTER OR BE COUNTED FOR PURPOSES
42 OF DETERMINING A QUORUM.

~~APPROVED BY THE GOVERNOR MAY 9, 2005.~~

~~FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 10, 2005.~~

Passed the House March 3, 2005,

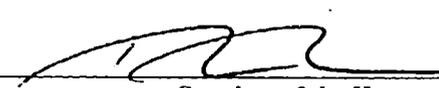
Passed the Senate April 14, 2005,

by the following vote: 55 Ayes,

by the following vote: 29 Ayes,

0 Nays, 5 Not Voting

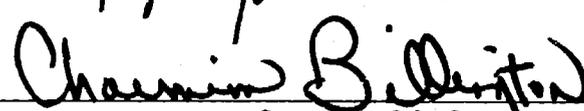
1 Nays, 0 Not Voting



Speaker of the House
pro Tempore


Herman L. Moore
Chief Clerk of the House



President of the Senate


Chairman Billington
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

HOUSE FINAL PASSAGE
as per Joint Conference

Passed the House April 28, 2005,
by the following vote: 53 Ayes,

0 Nays, 7 Not Voting



Speaker of the House
Pro Tempore

Thomas L. Moore
Chief Clerk of the House

SENATE FINAL PASSAGE
as per Joint Conference

Passed the Senate May 2, 2005,
by the following vote: 28 Ayes,

1 Nays, 1 Not Voting



President of the Senate

Charmine Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor

this 3rd day of May, 2005

at 9:15 o'clock A. M.

Wennifer Ibarra
Secretary to the Governor

Approved this 9 day of

May, 2005,

at 4⁰⁰ o'clock P. M.

Jon R. Roush
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 10 day of May, 2005,

at 9:26 o'clock A. M.

James K. Brewer
Secretary of State

H.B. 2154