Conference Engrossed

FILED
JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

CHAPTER 324

HOUSE BILL 2824

AN ACT

AMENDING SECTION 10-11602, ARIZONA REVISED STATUTES; AMENDING SECTION 33-1242, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2006, CHAPTER 71, SECTION 1; AMENDING SECTION 33-1803, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2006, CHAPTER 71, SECTION 5; AMENDING SECTION 33-1805, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2006, CHAPTER 71, SECTION 7; CHANGING THE DESIGNATION OF TITLE 41, CHAPTER 16, ARTICLE 5, ARIZONA REVISED STATUTES, TO "ADMINISTRATIVE HEARINGS"; AMENDING SECTION 41-2198, 41-2198.01, 41-2198.02, 41-2198.03 AND 41-2198.04, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 16, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-2198.05; RELATING TO HOMEOWNERS' ASSOCIATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 10-11602, Arizona Revised Statutes, is amended to read:

10-11602. Inspection of records by members; applicability

A. Subject to subsections E and F of this section, any member who has been a member of record at least six months immediately preceding its demand is entitled to inspect and copy any of the records of the corporation described in section 10-11601, subsection E during regular business hours at the corporation's principal office, if the member gives the corporation written notice of its demand as provided in section 10-3141 at least five business days before the date on which the member wishes to inspect and copy.

B. Subject to subsections E and F of this section, a member who has been a member of record at least six months immediately preceding its demand is entitled to inspect and copy any of the following records of the corporation during regular business hours at a reasonable location specified by the corporation, if the member meets the requirements of subsection C of this section and gives the corporation written notice of its demand as provided in section 10-3141 at least five business days before the date on which the member wishes to inspect and copy the following:

1. Excerpts from any records required to be maintained under section 10-11601, subsection A, to the extent not subject to inspection under subsection A of this section.

2. Accounting records of the corporation.

3. Subject to section 10-11605, the membership list described in section 10-11601, subsection C.

4. The corporation's most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations.

C. A member may inspect and copy the records identified in subsection B of this section only if the following conditions are met:

1. The member's demand is made in good faith and for a proper purpose.

2. The member describes with reasonable particularity the member's purpose and the records the member desires to inspect.

3. The records are directly connected with the member's purpose.

D. This section does not affect either:

1. The right of a member to inspect records under section 10-3720 or, if the member is in litigation with the corporation, to the same extent as any other litigant.

2. The power of a court, independently of chapters 24 through 40 of this title, to compel the production of corporate records for examination on proof by a member of proper purpose.

E. The articles of incorporation or bylaws of a corporation organized primarily for religious purposes may limit or abolish the right of a member under this section to inspect and copy any corporate record.

F. Unless the board of directors has provided express permission to the member, a member of a corporation that is a rural electric cooperative is not entitled to inspect or copy any records, documents or other materials that are maintained by or in the possession of the corporation and that relate to any of the following:

1. Personnel matters or a person's medical records.

2. Communications between an attorney for the corporation and the corporation.

3. Pending or contemplated litigation.

4. Pending or contemplated matters relating to enforcement of the corporation's documents or rules.

G. ~~Sections 33-1258 and 33-1805, relating to association financial and other records,~~ THIS SECTION DOES NOT apply to any corporation that is a condominium as defined in section 33-1202 or a planned community as defined in section 33-1802.

H. This section does not apply to timeshare plans or associations that are subject to title 33, chapter 20.

Sec. 2. Section 33-1242, Arizona Revised Statutes, as amended by Laws 2006, chapter 71, section 1, is amended to read:

33-1242. Powers of unit owners' association; notice to unit owner of violation

A. Subject to the provisions of the declaration, the association may:

1. Adopt and amend bylaws and rules.

2. Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from unit owners.

3. Hire and discharge managing agents and other employees, agents and independent contractors.

4. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium.

5. Make contracts and incur liabilities.

6. Regulate the use, maintenance, repair, replacement and modification of common elements.

7. Cause additional improvements to be made as a part of the common elements.

8. Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, except that common elements may be conveyed or subjected to a security interest only pursuant to section 33-1252.

9. Grant easements, leases, licenses and concessions through or over the common elements.

10. Impose and receive any payments, fees or charges for the use, rental or operation of the common elements other than limited common elements

described in section 33-1212, paragraphs 2 and 4 and for services provided to unit owners.

11. Impose charges for late payment of assessments and, after notice and an opportunity to be heard, impose reasonable monetary penalties upon unit owners for violations of the declaration, bylaws and rules of the association.

12. Impose reasonable charges for the preparation and recordation of amendments to the declaration or statements of unpaid assessments.

13. Provide for the indemnification of its officers and executive board of directors and maintain directors' and officers' liability insurance.

14. Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly provides.

15. Be a member of a master association or other entity owning, maintaining or governing in any respect any portion of the common elements or other property benefitting or related to the condominium or the unit owners in any respect.

16. Exercise any other powers conferred by the declaration or bylaws.

17. Exercise all other powers that may be exercised in this state by legal entities of the same type as the association.

18. Exercise any other powers necessary and proper for the governance and operation of the association.

B. ~~Before taking action to enforce the provisions of the condominium documents regarding the condition of the unit owner's property, the association shall provide the unit owner with written notice of the violation of the condominium documents and a description of the process the unit owner must follow to contest the notice.~~ A unit owner who receives a written notice that the condition of the property owned by the unit owner is in violation of a requirement of the condominium documents without regard to whether a monetary penalty is imposed by the notice may provide the association with a written response by sending the response by certified mail within ten business days after the date of the notice. The response shall be sent to the address contained IN THE NOTICE OR in the recorded notice prescribed by section 33-1256, subsection J.

C. Within ten business days after receipt of the certified mail containing the response from the unit owner, the association shall respond to the unit owner with a written explanation regarding the notice~~. The written explanation from the association~~ THAT shall provide at least the following information UNLESS PREVIOUSLY PROVIDED IN THE NOTICE OF VIOLATION:

1. The provision of the condominium documents that has allegedly been violated.

2. The date of the violation or the date the violation was observed.

3. The first and last name of the person or persons who observed the violation.

4. THE PROCESS THE UNIT OWNER MUST FOLLOW TO CONTEST THE NOTICE.

~~C.~~ D. UNLESS THE INFORMATION REQUIRED IN SUBSECTION C, PARAGRAPH 4 OF THIS SECTION IS PROVIDED IN THE NOTICE OF VIOLATION, the association shall not proceed with any action to enforce the condominium documents, including the collection of attorney fees, before or during the time prescribed by subsection ~~B~~ C of this section regarding the exchange of information between the association and the unit owner. AT ANY TIME BEFORE OR AFTER COMPLETION OF THE EXCHANGE OF INFORMATION PURSUANT TO THIS SECTION, THE UNIT OWNER MAY PETITION FOR A HEARING PURSUANT TO SECTION 41-2198.01 IF THE DISPUTE IS WITHIN THE JURISDICTION OF THE DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY AS PRESCRIBED IN SECTION 41-2198.01, SUBSECTION B.

Sec. 3. Section 33-1803, Arizona Revised Statutes, as amended by Laws 2006, chapter 71, section 5, is amended to read:

33-1803. Penalties; notice to member of violation

A. Unless limitations in the community documents would result in a lower limit for the assessment, the association shall not impose a regular assessment that is more than twenty per cent greater than the immediately preceding fiscal year's assessment without the approval of the majority of the members of the association. Unless reserved to the members of the association, the board of directors may impose reasonable charges for the late payment of assessments. A payment by a member is deemed late if it is unpaid fifteen or more days after its due date, unless the community documents provide for a longer period. Charges for the late payment of assessments are limited to the greater of fifteen dollars or ten per cent of the amount of the unpaid assessment. Any monies paid by the member for an unpaid assessment shall be applied first to the principal amount unpaid and then to the interest accrued.

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

C. ~~Before taking action to enforce the provisions of the community documents regarding the condition of the member's property, the association shall provide the member with written notice of the violation of the community documents and a description of the process the member must follow to contest the notice.~~ A member who receives a written notice that the

condition of the property owned by the member is in violation of the community documents without regard to whether a monetary penalty is imposed by the notice may provide the association with a written response by sending the response by certified mail within ten business days after the date of the notice. The response shall be sent to the address contained IN THE NOTICE OR in the recorded notice prescribed by section 33-1807, subsection J.

D. Within ten business days after receipt of the certified mail containing the response from the member, the association shall respond to the member with a written explanation regarding the notice~~. The written explanation from the association~~ THAT shall provide at least the following information UNLESS PREVIOUSLY PROVIDED IN THE NOTICE OF VIOLATION:

1. The provision of the community documents that has allegedly been violated.

2. The date of the violation or the date the violation was observed.

3. The first and last name of the person or persons who observed the violation.

4. THE PROCESS THE MEMBER MUST FOLLOW TO CONTEST THE NOTICE.

~~D.~~ E. UNLESS THE INFORMATION REQUIRED IN SUBSECTION D, PARAGRAPH 4 OF THIS SECTION IS PROVIDED IN THE NOTICE OF VIOLATION, the association shall not proceed with any action to enforce the community documents, including the collection of attorney fees, before or during the time prescribed by subsection ~~C~~ D of this section regarding the exchange of information between the association and the member. AT ANY TIME BEFORE OR AFTER COMPLETION OF THE EXCHANGE OF INFORMATION PURSUANT TO THIS SECTION, THE MEMBER MAY PETITION FOR A HEARING PURSUANT TO SECTION 41-2198.01 IF THE DISPUTE IS WITHIN THE JURISDICTION OF THE DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY AS PRESCRIBED IN SECTION 41-2198.01, SUBSECTION B.

Sec. 4. Section 33-1805, Arizona Revised Statutes, as amended by Laws 2006, chapter 71, section 7, is amended to read:

33-1805. <u>Association financial and other records</u>

A. Except as provided in subsection B of this section, all financial and other records of the association shall be made reasonably available for examination by any member or any person designated by the member in writing as the member's representative. The association shall not charge a member or any person designated by the member in writing for making material available for review. The association shall have ten business days to fulfill a request for examination. On request for purchase of copies of records by any member or any person designated by the member in writing as the member's representative, the association shall have ten business days to provide copies of the requested records. An association may charge a fee for making copies of not more than fifteen cents per page.

B. Books and records kept by or on behalf of the association and the board may be withheld from disclosure to the extent that the portion withheld relates to any of the following:

1. Privileged communication between an attorney for the association and the association.

2. Pending litigation.

3. Meeting minutes or other records of a session of a board meeting that is not required to be open to all members pursuant to section 33-1804.

4. Personal, health or financial records of an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association, including records of the association directly related to the personal, health or financial information ABOUT AN INDIVIDUAL MEMBER OF THE ASSOCIATION, AN INDIVIDUAL EMPLOYEE OF THE ASSOCIATION OR AN INDIVIDUAL EMPLOYEE OF A CONTRACTOR FOR THE ASSOCIATION.

5. Records relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association.

C. The association shall not be required to disclose financial and other records of the association if disclosure would violate any state or federal law.

Sec. 5. Heading change

The article heading of title 41, chapter 16, article 5, Arizona Revised Statutes, is changed from "MOBILE HOME PARKS HEARING OFFICER FUNCTION" to "ADMINISTRATIVE HEARINGS".

Sec. 6. Section 41-2198, Arizona Revised Statutes, is amended to read:

41-2198. Administrative adjudication of complaints

PURSUANT TO CHAPTER 6, ARTICLE 10 OF THIS TITLE, an administrative law judge shall adjudicate complaints regarding and ensure compliance with:

1. The Arizona mobile home parks residential landlord and tenant act ~~pursuant to title 41, chapter 6, article 10~~.

2. TITLE 33, CHAPTER 9 AND CONDOMINIUM DOCUMENTS.

3. TITLE 33, CHAPTER 16 AND PLANNED COMMUNITY DOCUMENTS.

Sec. 7. Section 41-2198.01, Arizona Revised Statutes, is amended to read:

41-2198.01. Hearing; rights and procedures

A. A person who is subject to title 33, chapter 11 or a party to a rental agreement entered into pursuant to title 33, chapter 11 may petition the department for a hearing concerning violations of the Arizona mobile home parks residential landlord and tenant act by filing a petition with the department and paying a ~~fifty dollar~~ NONREFUNDABLE filing fee IN AN AMOUNT TO BE ESTABLISHED BY THE DIRECTOR. All monies collected shall be deposited in the state general fund and are not refundable.

B. FOR A DISPUTE BETWEEN AN OWNER AND A CONDOMINIUM ASSOCIATION OR PLANNED COMMUNITY ASSOCIATION THAT IS REGULATED PURSUANT TO TITLE 33, CHAPTER 9 OR 16, THE OWNER OR ASSOCIATION MAY PETITION THE DEPARTMENT FOR A HEARING CONCERNING VIOLATIONS OF CONDOMINIUM DOCUMENTS OR PLANNED COMMUNITY DOCUMENTS

OR VIOLATIONS OF THE STATUTES THAT REGULATE CONDOMINIUMS OR PLANNED COMMUNITIES. THE PETITIONER SHALL FILE A PETITION WITH THE DEPARTMENT AND PAY A NONREFUNDABLE FILING FEE IN AN AMOUNT TO BE ESTABLISHED BY THE DIRECTOR. THE FILING FEE SHALL BE DEPOSITED IN THE CONDOMINIUM AND PLANNED COMMUNITY HEARING OFFICE FUND ESTABLISHED BY SECTION 41-2198.05. THE DEPARTMENT DOES NOT HAVE JURISDICTION TO HEAR:

1. ANY DISPUTE AMONG OR BETWEEN OWNERS TO WHICH THE ASSOCIATION IS NOT A PARTY.

2. ANY DISPUTE BETWEEN AN OWNER AND ANY PERSON, FIRM, PARTNERSHIP, CORPORATION, ASSOCIATION OR OTHER ORGANIZATION THAT IS ENGAGED IN THE BUSINESS OF DESIGNING, CONSTRUCTING OR SELLING A CONDOMINIUM AS DEFINED IN SECTION 33-1202 OR ANY PROPERTY OR IMPROVEMENTS WITHIN A PLANNED COMMUNITY AS DEFINED IN SECTION 33-1802, INCLUDING ANY PERSON, FIRM, PARTNERSHIP, CORPORATION, ASSOCIATION OR OTHER ORGANIZATION LICENSED PURSUANT TO TITLE 32, CHAPTER 20, ARISING OUT OF OR RELATED TO THE DESIGN, CONSTRUCTION, CONDITION OR SALE OF THE CONDOMINIUM OR ANY PROPERTY OR IMPROVEMENTS WITHIN A PLANNED COMMUNITY.

~~B.~~ C. The petition shall be in writing on a form approved by the department, shall list the complaints and shall be signed by or on behalf of the persons filing and include their addresses, stating that a hearing is desired, and shall be filed with the department.

~~C.~~ D. On receipt of the petition and the filing fee the department shall mail by certified mail a copy of the petition along with notice to the named respondent that a response is required within ~~ten~~ TWENTY days of mailing of the petition showing cause, if any, why the petition should be dismissed.

~~D.~~ E. After receiving the response, the director or ~~his~~ THE DIRECTOR'S designee shall promptly review the petition for hearing and, if justified, refer the petition to the office of administrative ~~appeals~~ HEARINGS. The director may dismiss a petition for hearing if it appears to ~~his~~ THE DIRECTOR'S satisfaction that the disputed issue or issues have been resolved by the parties.

~~E.~~ F. Failure of the respondent to answer is deemed an admission of the allegations made in the petition, and the ~~administrative law judge may proceed with a default hearing~~ DIRECTOR SHALL ISSUE A DEFAULT DECISION.

~~F.~~ G. Informal disposition may be made of any contested case.

~~G.~~ H. Either party or ~~his~~ THE PARTY'S authorized agent may inspect any file of the department that pertains to the hearing, if such authorization is filed in writing with the department.

~~H.~~ I. At a hearing conducted pursuant to this section, a corporation may be represented by a corporate officer, ~~or~~ employee OR CONTRACTOR OF THE CORPORATION who is not a member of the state bar if:

1. The corporation has specifically authorized the officer ~~or~~, employee OR CONTRACTOR OF THE CORPORATION to represent it.

2. The representation is not the officer's ~~or~~, employee's OR CONTRACTOR OF THE CORPORATION'S primary duty to the corporation but is secondary or incidental to the officer's or employee's duties relating to the management or operation of the corporation.

Sec. 8. Section 41-2198.02, Arizona Revised Statutes, is amended to read:

41-2198.02. Orders; penalties; disposition

A. The administrative law judge may order any party to abide by the statute, CONDOMINIUM DOCUMENTS, COMMUNITY DOCUMENTS or contract provision at issue and may levy a civil penalty on the basis of each violation. FOR PURPOSES OF ACTIONS BROUGHT UNDER THE ARIZONA MOBILE HOME PARKS RESIDENTIAL LANDLORD AND TENANT ACT, THE CIVIL PENALTY SHALL NOT EXCEED FIVE HUNDRED DOLLARS. All monies collected pursuant to this article shall be deposited in the state general fund to be used to offset the cost of administering the administrative law judge function, EXCEPT THAT MONIES COLLECTED FROM DISPUTES INVOLVING CONDOMINIUMS OR PLANNED COMMUNITIES AS PRESCRIBED IN SECTION 41-2198.01, SUBSECTION B SHALL BE DEPOSITED IN THE CONDOMINIUM AND PLANNED COMMUNITY HEARING OFFICE FUND ESTABLISHED BY SECTION 41-2198.05. If the petitioner prevails, the administrative law judge shall order the respondent to pay to the petitioner the filing fee required by section 41-2198.01.

B. The order issued by the administrative law judge is binding on the parties unless a rehearing is granted pursuant to section 41-2198.04 based on a petition setting forth the reasons for the request for rehearing, in which case the order issued at the conclusion of the rehearing is binding on the parties. NOTWITHSTANDING SECTIONS 41-1092.08, SUBSECTION B AND 41-1092.09, AN ORDER ISSUED BY THE ADMINISTRATIVE LAW JUDGE IN AN ACTION REGARDING A CONDOMINIUM OR PLANNED COMMUNITY IS THE FINAL ADMINISTRATIVE DECISION AND IS NOT SUBJECT TO A REQUEST FOR REHEARING. The order issued by the administrative law judge is enforceable through contempt of court proceedings.

Sec. 9. Section 41-2198.03, Arizona Revised Statutes, is amended to read:

41-2198.03. Scope of hearing

A. The administrative law judge may hear and adjudicate all matters relating to the Arizona mobile home parks residential landlord and tenant act and rules adopted pursuant to this article, except that the administrative law judge shall not hear matters pertaining to rental increases pursuant to section 33-1413, subsection G or I. ~~and does not have the authority to impose civil penalties.~~

B. This section shall not be construed to limit the jurisdiction of the courts of this state to hear and decide matters pursuant to the Arizona mobile home parks residential landlord and tenant act, THE STATUTES OR CONDOMINIUM DOCUMENTS THAT REGULATE CONDOMINIUMS OR THE STATUTES OR COMMUNITY DOCUMENTS THAT REGULATE PLANNED COMMUNITIES.

Sec. 10. Section 41-2198.04, Arizona Revised Statutes, is amended to read:

41-2198.04. Rehearing; appeal

A. EXCEPT FOR AN ACTION RELATING TO CONDOMINIUM DOCUMENTS OR PLANNED COMMUNITY DOCUMENTS OR THE STATUTES REGULATING CONDOMINIUMS OR PLANNED COMMUNITIES, a person aggrieved by a decision of the administrative law judge may apply for a rehearing by filing with the director a petition in writing pursuant to section 41-1092.09. Within ten days after filing such petition, the director shall serve notice of the request on the other party by mailing a copy of the petition in the manner prescribed in section 41-2198.01 for notice of hearing.

B. The filing of a petition for rehearing temporarily suspends the operation of the administrative law judge's action. If the petition is granted, the administrative law judge's action is suspended pending the decision on the rehearing.

C. In the order granting or denying a rehearing, the director shall include a statement of the particular grounds and reasons for the director's action on the petition and shall promptly mail a copy of the order to the parties who have appeared in support of or in opposition to the petition for rehearing.

D. In a rehearing conducted pursuant to this section, a corporation may be represented by a corporate officer or employee who is not a member of the state bar if:

1. The corporation has specifically authorized such officer or employee to represent it.

2. Such representation is not the officer's or employee's primary duty to the corporation but is secondary or incidental to such officer's or employee's duties relating to the management or operation of the corporation.

Sec. 11. Title 41, chapter 16, article 5, Arizona Revised Statutes, is amended by adding section 41-2198.05, to read:

41-2198.05. Condominium and planned community hearing office fund

A. THE CONDOMINIUM AND PLANNED COMMUNITY HEARING OFFICE FUND IS ESTABLISHED IN THE DEPARTMENT TO BE ADMINISTERED BY THE DIRECTOR. MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED. ON NOTICE FROM THE DIRECTOR, THE STATE TREASURER SHALL INVEST AND DIVEST MONIES IN THE FUND AS PROVIDED BY SECTION 35-313, AND MONIES EARNED FROM INVESTMENT SHALL BE CREDITED TO THE FUND.

B. MONIES IN THE CONDOMINIUM AND PLANNED COMMUNITY HEARING OFFICE FUND SHALL BE USED TO REIMBURSE THE ACTUAL COSTS OF THE OFFICE OF ADMINISTRATIVE HEARINGS IN CONDUCTING HEARINGS PURSUANT TO SECTION 41-2198.01, SUBSECTION B. MONIES REMAINING IN THE FUND MAY BE USED BY THE DEPARTMENT TO OFFSET THE COSTS OF ADMINISTERING CASES FILED PURSUANT TO SECTION 41-2198.01, SUBSECTION B.

1 Sec. 12. Joint legislative budget committee review; condominium
2 and planned community fees
3 On or before December 1, 2007, the joint legislative budget committee
4 shall review and make recommendations to the legislature regarding the filing
5 fees charged to parties filing for an administrative hearing pursuant to
6 section 41-2198.01, subsection B, Arizona Revised Statutes, as amended by
7 this act, regarding condominiums and planned communities. The joint
8 legislative budget committee shall recommend a level of filing fee
9 appropriate to ensure the hearing officer program is fiscally sound and
10 self-supporting.

APPROVED BY THE GOVERNOR JUNE 15, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 15, 2006.