Senate Engrossed

FILED

JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

CHAPTER 221

SENATE BILL 1546

AN ACT

AMENDING TITLE 32, CHAPTER 20, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 5.1; RELATING TO THE CONDOMINIUM RECOVERY FUND.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Title 32, chapter 20, Arizona Revised Statutes, is amended by adding article 5.1, to read:

ARTICLE 5.1. CONDOMINIUM RECOVERY FUND

32-2193.31. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "CONDOMINIUM" HAS THE SAME MEANING PRESCRIBED IN SECTION 33-1202.

2. "DEPOSIT" MEANS THE MONEY PUT FORTH BY A BUYER TO SECURE PERFORMANCE UNDER AN AGREEMENT.

3. "JUDGMENT" MEANS ANY OF THE FOLLOWING:

(a) A FINAL JUDGMENT IN A COURT OF COMPETENT JURISDICTION.

(b) A CRIMINAL RESTITUTION ORDER ISSUED PURSUANT TO SECTION 13-603 OR 18 UNITED STATES CODE SECTION 3663.

(c) AN ARBITRATION AWARD THAT INCLUDES FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT HAS BEEN CONFIRMED AND REDUCED TO JUDGMENT PURSUANT TO SECTION 12-133 AND THAT WAS RENDERED ACCORDING TO TITLE 12 AND THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION OR ANOTHER RECOGNIZED ARBITRATION BODY.

4. "JUDGMENT DEBTOR" MEANS ANY DEFENDANT UNDER THIS ARTICLE WHO IS THE SUBJECT OF A JUDGMENT.

32-2193.32. Condominium recovery fund; award limits

A. THE COMMISSIONER SHALL ESTABLISH AND MAINTAIN THE CONDOMINIUM RECOVERY FUND FOR THE BENEFIT OF ANY BUYER AGGRIEVED BY THE FAILURE OF A SUBDIVIDER OF A CONDOMINIUM TO COMPLETE THE CONDOMINIUM PROJECT. THE FUND SHALL PAY ONLY FOR LOSSES TO THE AGGRIEVED PERSON DIRECTLY ARISING OUT OF THE REAL ESTATE TRANSACTION, INCLUDING REASONABLE ATTORNEY FEES AND COURT COSTS, IN WHICH BOTH OF THE FOLLOWING APPLY:

1. THE CONTRACT BETWEEN THE BUYER AND THE SUBDIVIDER IN CONNECTION WITH THE SALE OF A CONDOMINIUM IS TERMINATED WITHOUT DEFAULT BY THE BUYER AND THE SUBDIVIDER FAILS TO REFUND THE BUYER'S DEPOSIT IN ACCORDANCE WITH THE TERMS OF THE CONTRACT.

2. IN ACCORDANCE WITH THE TERMS OF THE CONTRACT BETWEEN THE SUBDIVIDER AND THE BUYER, THE SUBDIVIDER IS NOT REQUIRED TO AND HAS NOT PLACED THE DEPOSITS IN A NEUTRAL ESCROW ACCOUNT AT A COMPANY LICENSED TO PERFORM ESCROW BUSINESS IN THIS STATE PURSUANT TO TITLE 6, CHAPTER 7 OR IN THE TRUST ACCOUNT OF A REAL ESTATE BROKER LICENSED PURSUANT TO THIS CHAPTER FOR THE BENEFIT OF THE PURCHASER.

B. AN AWARD FROM THE FUND SHALL NOT EXCEED:

1. TWENTY PER CENT OF THE BASE PRICE FOR EACH UNIT, ACCORDING TO THE CONTRACT BETWEEN THE SUBDIVIDER AND THE AGGRIEVED BUYER IN THE TRANSACTION.

2. ONE MILLION DOLLARS FOR EACH PROJECT, REGARDLESS OF THE NUMBER OF BUYERS AGGRIEVED OR THE NUMBER OF UNITS INVOLVED.

C. WHEN AWARDS FROM THE FUND ARE MADE AND HAVE REACHED THE LIMITS PRESCRIBED BY SUBSECTION B, FURTHER AWARDS SHALL NOT BE MADE FROM THE FUND TO COMPENSATE A BUYER FOR THE ACTS OF A SUBDIVIDER.

D. THE FUND MAY PAY ONLY FOR LOSSES ARISING OUT OF A TRANSACTION IN WHICH THE DEFENDANT SUBDIVIDER FAILED TO COMPLETE THE CONDOMINIUM PROJECT. THE FUND SHALL NOT PAY FOR LOSSES IN A SUBDIVISION OF DETACHED, SINGLE-FAMILY HOMES.

E. THE FUND IS NOT LIABLE FOR DAMAGES OR LOSSES RESULTING FROM OR CAUSED BY ANY OF THE FOLLOWING:

1. SPECULATION, INCLUDING LOST PROFITS AND OTHER UNREALIZED LOSSES.

2. TRANSACTIONS FOR CONDOMINIUMS IN WHICH THE DEPOSITS WERE HELD BY A NEUTRAL ESCROW COMPANY LICENSED TO PERFORM ESCROW BUSINESS IN THIS STATE PURSUANT TO TITLE 6, CHAPTER 7 OR IN THE TRUST ACCOUNT OF A REAL ESTATE BROKER LICENSED PURSUANT TO THIS CHAPTER.

3. LOANS, NOTES, LIMITED PARTNERSHIPS OR OTHER SECURITIES, REGARDLESS OF WHETHER THE LOSS WAS CAUSED BY AN INVESTMENT IN OR WAS SECURED BY REAL PROPERTY.

4. A JUDGMENT ENTERED AGAINST A BONDING COMPANY IF THE BONDING COMPANY IS NOT A PRINCIPAL IN THE UNDERLYING REAL ESTATE TRANSACTION.

5. A TENANT'S CONDUCT OR NEGLECT.

6. VANDALISM.

7. NATURAL CAUSES.

8. PUNITIVE DAMAGES.

9. POSTJUDGMENT INTEREST.

10. UNDOCUMENTED TRANSACTIONS OR LOSSES.

32-2193.33. Payments to the condominium recovery fund

IN ADDITION TO ANY OTHER FEES, AN APPLICANT FOR A PUBLIC REPORT FOR A CONDOMINIUM SHALL PAY TO THE CONDOMINIUM RECOVERY FUND AN AMOUNT ESTABLISHED BY THE COMMISSIONER IF, ON JUNE 30 OF THE PREVIOUS FISCAL YEAR, THE BALANCE REMAINING IN THE CONDOMINIUM RECOVERY FUND IS LESS THAN FIVE MILLION DOLLARS.

32-2193.34. Statute of limitations; service of summons; application for payment; insufficient monies; definition

A. AN ACTION FOR A JUDGMENT THAT SUBSEQUENTLY RESULTS IN AN ORDER FOR PAYMENT FROM THE CONDOMINIUM RECOVERY FUND SHALL BE COMMENCED OR PROSECUTED WITHIN THREE YEARS AFTER THE CAUSE OF ACTION ACCRUES.

B. IF AN AGGRIEVED BUYER COMMENCES AN ACTION FOR A JUDGMENT THAT MAY RESULT IN AN ORDER FOR PAYMENT FROM THE CONDOMINIUM RECOVERY FUND AND THE DEFENDANT SUBDIVIDER CANNOT BE SERVED PROCESS PERSONALLY IN THIS STATE, THE SUMMONS MAY BE SERVED BY THE ALTERNATIVE METHODS OF SERVICE PROVIDED FOR BY THE ARIZONA RULES OF CIVIL PROCEDURE, INCLUDING SERVICE BY PUBLICATION. A JUDGMENT THAT COMPLIES WITH THIS SECTION AND THAT WAS OBTAINED AFTER SERVICE BY PUBLICATION ONLY APPLIES TO AND IS ENFORCEABLE AGAINST THE CONDOMINIUM RECOVERY FUND. THE DEPARTMENT MAY INTERVENE IN AND DEFEND ANY SUCH ACTION.

C. AFTER AN AGGRIEVED BUYER OBTAINS A JUDGMENT AGAINST A SUBDIVIDER BASED ON THE SUBDIVIDER'S FAILURE TO PERFORM UNDER THE TERMS OF THE CONTRACT, THE AGGRIEVED BUYER MAY APPLY TO THE DEPARTMENT FOR PAYMENT FROM THE CONDOMINIUM RECOVERY FUND AND FOR A RETURN OF THE BUYER'S DEPOSIT. THE

1 CLAIMANT MUST FILE THE ORIGINAL APPLICATION, INCLUDING APPENDICES, WITHIN TWO
2 YEARS AFTER THE TERMINATION OF ALL PROCEEDINGS, REVIEWS AND APPEALS CONNECTED
3 WITH THE JUDGMENT. THE COMMISSIONER, IN THE COMMISSIONER'S SOLE DISCRETION,
4 MAY WAIVE THE TWO-YEAR APPLICATION DEADLINE IF THE COMMISSIONER DETERMINES
5 THAT THE WAIVER BEST SERVES THE PUBLIC INTEREST. DELIVERY OF THE APPLICATION
6 MUST BE BY PERSONAL SERVICE OR BY CERTIFIED MAIL.
7 D. THE APPLICATION MUST BE WITHIN THE LIMITATIONS PRESCRIBED IN
8 SECTION 32-2193.32 FOR THE AMOUNT UNPAID ON THE JUDGMENT THAT REPRESENTS THE
9 CLAIMANT'S LOSSES IN THE TRANSACTION.
10 E. THE DEPARTMENT SHALL PRESCRIBE AN APPLICATION FORM THAT INCLUDES
11 DETAILED INSTRUCTIONS WITH RESPECT TO DOCUMENTARY EVIDENCE, PLEADINGS, COURT
12 RULINGS, PRODUCTS OF DISCOVERY IN THE UNDERLYING LITIGATION AND NOTICE
13 REQUIREMENTS TO THE JUDGMENT DEBTOR UNDER SECTION 32-2193.35.
14 F. THE COMMISSIONER MAY WAIVE COMPLIANCE WITH ONE OR MORE OF THE
15 REQUIREMENTS OF THIS SECTION IF THE CLAIM IS BASED ON AN AWARD PURSUANT TO A
16 CRIMINAL RESTITUTION ORDER OR IF THE COMMISSIONER IS SATISFIED THAT THE
17 CLAIMANT HAS TAKEN ALL REASONABLE STEPS TO COLLECT THE AMOUNT OF THE JUDGMENT
18 OR THE UNSATISFIED PART OF THE JUDGMENT FROM ALL JUDGMENT DEBTORS BUT HAS
19 BEEN UNABLE TO COLLECT.
20 G. IF THE COMMISSIONER FINDS IT IS LIKELY THAT, TO PAY IN FULL THE
21 VALID CLAIMS OF ALL AGGRIEVED PERSONS WHO MAY HAVE CLAIMS AGAINST ANY ONE
22 SUBDIVIDER, THE AWARDS FROM THE FUND WILL EXCEED THE AWARD LIMITS PRESCRIBED
23 BY SECTION 32-2193.32, THE COMMISSIONER MAY PETITION THE COURT TO INITIATE A
24 PRORATION PROCEEDING. THE COURT SHALL GRANT THE PETITION AND ORDER A HEARING
25 TO DISTRIBUTE THE FUND AWARDS AMONG THE CLAIMANTS IN THE RATIO THAT THEIR
26 RESPECTIVE CLAIMS BEAR TO THE AGGREGATE OF THE VALID CLAIMS OR IN ANOTHER
27 MANNER AS THE COURT DEEMS EQUITABLE. THE COMMISSIONER OR ANY PARTY MAY FILE
28 A PROPOSED PLAN FOR EQUITABLE DISTRIBUTION OF THE AVAILABLE MONIES. THE
29 MONIES SHALL BE DISTRIBUTED AMONG THE PERSONS ENTITLED TO SHARE THEM WITHOUT
30 REGARD TO THE ORDER OF PRIORITY IN WHICH THEIR RESPECTIVE JUDGMENTS MAY HAVE
31 BEEN OBTAINED OR THEIR RESPECTIVE APPLICATIONS MAY HAVE BEEN FILED. THE COURT
32 MAY REQUIRE ALL CLAIMANTS AND PROSPECTIVE CLAIMANTS AGAINST ONE SUBDIVIDER TO
33 BE JOINED IN ONE ACTION SO THAT THE RESPECTIVE RIGHTS OF ALL CLAIMANTS TO THE
34 CONDOMINIUM RECOVERY FUND MAY BE EQUITABLY ADJUDICATED AND SETTLED. THE
35 COURT SHALL NOT INCLUDE IN THE CLAIMS FOR PRORATION THE CLAIM OF ANY PERSON
36 WHO, WITHIN NINETY DAYS AFTER THE COURT HAS ENTERED THE ORDER FOR PRORATION,
37 HAS NOT FILED A COMPLAINT WITH THE COURT, SERVED THE SUBDIVIDER AND PROVIDED
38 WRITTEN NOTICE OF THE CLAIM TO THE COMMISSIONER. THE LIABILITY OF THE FUND
39 ON ANY APPLICATION AFFECTED BY A PRORATION PROCEEDING IS BASED ON THE LIMITS
40 IN EFFECT ON THE DATE WHEN THE LAST APPLICATION FOR PAYMENT IS FILED. THE
41 COURT MAY REFUSE TO CONSIDER OR AWARD PRORATED RECOVERY TO ANY PERSON WHO
42 FAILS TO EXPEDITIOUSLY PROSECUTE A CLAIM AGAINST THE SUBDIVIDER OR PROMPTLY
43 FILE AN APPLICATION FOR PAYMENT AND SUBMIT SUPPORTING DOCUMENTATION AS
44 REQUIRED BY THIS ARTICLE.

H. IF THE COMMISSIONER PAYS FROM THE CONDOMINIUM RECOVERY FUND ANY AMOUNT IN SETTLEMENT OF A CLAIMANT'S CLAIM OR TOWARD SATISFACTION OF A JUDGMENT AGAINST A SUBDIVIDER, THE PUBLIC REPORT ISSUED TO THAT SUBDIVIDER FOR THE CONDOMINIUM SUBJECT TO THE JUDGMENT SHALL BE AUTOMATICALLY TERMINATED ON THE ISSUANCE OF AN ORDER AUTHORIZING PAYMENT FROM THE CONDOMINIUM RECOVERY FUND.

I. IF AT ANY TIME THE MONIES DEPOSITED IN THE CONDOMINIUM RECOVERY FUND ARE INSUFFICIENT TO SATISFY ANY DULY AUTHORIZED CLAIM OR PORTION OF A CLAIM, THE COMMISSIONER, WHEN SUFFICIENT MONEY HAS BEEN DEPOSITED IN THE FUND, SHALL SATISFY THE UNPAID CLAIMS OR PORTIONS OF CLAIMS IN THE ORDER THAT THEY WERE ORIGINALLY FILED, PLUS ACCUMULATED INTEREST AT THE RATE OF FOUR PER CENT PER YEAR.

J. FOR THE PURPOSES OF THIS SECTION, "COMPLAINT" MEANS THE FACTS OF THE TRANSACTION ON WHICH THE JUDGMENT IS BASED.

32-2193.35. Notice of claim to judgment debtor; written response

A. WITHIN THE SAME TIME PRESCRIBED BY SECTION 32-2193.34, SUBSECTION C FOR APPLYING FOR PAYMENT FROM THE CONDOMINIUM RECOVERY FUND, AN AGGRIEVED BUYER WHO APPLIES FOR PAYMENT SHALL SERVE NOTICE OF THE CLAIM ON THE JUDGMENT DEBTOR, TOGETHER WITH A COPY OF THE APPLICATION. THE NOTICE SHALL BE IN THE FORM PRESCRIBED BY THE COMMISSIONER.

B. TO CONTEST PAYMENT FROM THE CONDOMINIUM RECOVERY FUND, THE JUDGMENT DEBTOR MUST FILE A WRITTEN RESPONSE WITH THE COMMISSIONER WITHIN THIRTY-FIVE CALENDAR DAYS AFTER SERVICE OF THE NOTICE ON THE JUDGMENT DEBTOR AND SEND A COPY OF THE RESPONSE TO THE CLAIMANT. FAILURE BY THE JUDGMENT DEBTOR TO TIMELY FILE A RESPONSE CONSTITUTES A WAIVER OF OBJECTION.

C. IF THE JUDGMENT DEBTOR HOLDS A CURRENT LICENSE, THE NOTICE AND COPY OF THE APPLICATION MAY BE SERVED BY CERTIFIED MAIL ADDRESSED TO THE JUDGMENT DEBTOR'S LATEST BUSINESS OR RESIDENCE ADDRESS ON FILE WITH THE DEPARTMENT. IF THE JUDGMENT DEBTOR DOES NOT HOLD A CURRENT LICENSE AND IF BY EXERCISING REASONABLE DILIGENCE THE CLAIMANT CANNOT EFFECT PERSONAL SERVICE OR SERVICE ON THE JUDGMENT DEBTOR'S STATUTORY AGENT, THE CLAIMANT MUST PUBLISH THE NOTICE ONCE A WEEK FOR TWO CONSECUTIVE WEEKS IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY IN WHICH THE JUDGMENT DEBTOR WAS LAST KNOWN TO RESIDE.

D. IF THE JUDGMENT DEBTOR FAILS TO FILE A WRITTEN RESPONSE TO THE APPLICATION WITH THE DEPARTMENT WITHIN THIRTY-FIVE CALENDAR DAYS AFTER SERVICE PURSUANT TO SUBSECTION B OF THIS SECTION OR AFTER THE FIRST PUBLICATION OF THE NOTICE, THE JUDGMENT DEBTOR IS NOT ENTITLED TO NOTICE OF ANY ACTION TAKEN OR PROPOSED TO BE TAKEN BY THE COMMISSIONER WITH RESPECT TO THE CLAIM.

32-2193.36. Correction of deficiencies in the application

A. IF THE COMMISSIONER DETERMINES THAT A CLAIMANT'S APPLICATION FAILS TO COMPLY SUBSTANTIALLY WITH THE REQUIREMENTS OF SECTION 32-2193.34 OR RULES ADOPTED PURSUANT TO THIS ARTICLE, THE COMMISSIONER, WITHIN THIRTY CALENDAR

DAYS AFTER RECEIVING THE APPLICATION, SHALL MAIL AN ITEMIZED LIST OF DEFICIENCIES TO THE CLAIMANT. FOR THE PURPOSES OF THIS SUBSECTION, "COMPLY SUBSTANTIALLY" MEANS FILING WITH THE DEPARTMENT THE DOCUMENTS THAT ARE MINIMALLY NECESSARY TO PROCESS A CLAIM, INCLUDING AT LEAST A CERTIFIED COPY OF THE JUDGMENT, LEGIBLE COPIES OF DOCUMENTS ESTABLISHING THE UNDERLYING TRANSACTION AND AMOUNTS OF LOSSES SUFFERED AND A STATEMENT CONCERNING AMOUNTS RECOVERED FROM OR ON BEHALF OF THE JUDGMENT DEBTOR.

B. THE CLAIMANT MUST RESPOND WITHIN SIXTY CALENDAR DAYS AFTER RECEIVING THE LIST OF DEFICIENCIES BY PROVIDING THE INFORMATION IDENTIFIED BY THE COMMISSIONER. IF THE CLAIMANT FAILS TO CORRECT THE DEFICIENCIES WITHIN SIXTY CALENDAR DAYS, THE DEPARTMENT SHALL CLOSE THE FILE UNLESS THE CLAIMANT REQUESTS AN EXTENSION IN WRITING. A CLAIMANT WHOSE FILE HAS BEEN CLOSED MAY SUBMIT A NEW APPLICATION AS PROVIDED BY SECTION 32-2193.34.

C. THE DEADLINE PRESCRIBED BY SECTION 32-2193.38 FOR THE COMMISSIONER TO MAKE A DECISION ON THE APPLICATION IS SUSPENDED FROM THE DATE THE COMMISSIONER MAILS THE LIST OF DEFICIENCIES TO THE APPLICANT UNTIL THE DATE THE DEPARTMENT RECEIVES THE REQUESTED INFORMATION.

32-2193.37. Investigation and discovery

IN CONSIDERING AND INVESTIGATING AN APPLICATION, THE DEPARTMENT MAY USE ALL APPROPRIATE MEANS OF INVESTIGATION AND DISCOVERY THAT ARE AVAILABLE PURSUANT TO THIS ARTICLE IN ORDER TO DETERMINE IF A JUDGMENT COMPLIES WITH THIS ARTICLE AND IS SUPPORTED BY THE EVIDENCE.

32-2193.38. Final decision and order on claim; notice

A. THE COMMISSIONER SHALL MAKE A FINAL WRITTEN DECISION AND ORDER ON A CLAIM WITHIN NINETY CALENDAR DAYS AFTER THE DATE THE COMMISSIONER RECEIVES A COMPLETED APPLICATION EXCEPT IN THE FOLLOWING CASES:

1. A PRORATION HEARING IS PENDING UNDER SECTION 32-2193.34, SUBSECTION G.

2. AN APPLICATION IS DEFICIENT OR FAILS TO COMPLY SUBSTANTIALLY WITH THE REQUIREMENTS OF SECTION 32-2193.34 OR RULES ADOPTED PURSUANT TO THIS ARTICLE AS DETERMINED PURSUANT TO SECTION 32-2193.36. THE NINETY DAY TIME PERIOD BEGINS UNDER THIS SUBSECTION ON THE DATE THE DEPARTMENT RECEIVES AN APPLICATION THAT IS SUBSTANTIALLY COMPLETE.

3. THE CLAIMANT AGREES IN WRITING TO EXTEND THE TIME FOR MAKING A DECISION.

B. IF THE COMMISSIONER FAILS TO RENDER A WRITTEN DECISION AND ORDER ON A CLAIM WITHIN NINETY CALENDAR DAYS OR WITHIN AN EXTENDED PERIOD OF TIME PROVIDED UNDER SUBSECTION A OF THIS SECTION, THE CLAIM IS CONSIDERED TO BE APPROVED ON THE DAY FOLLOWING THE FINAL DAY FOR RENDERING THE DECISION.

C. THE COMMISSIONER SHALL GIVE NOTICE OF A DECISION AND ORDER WITH RESPECT TO THE CLAIM TO THE CLAIMANT AND TO ANY JUDGMENT DEBTOR WHO HAS FILED A TIMELY RESPONSE TO THE CLAIM PURSUANT TO SECTION 32-2193.35 AS FOLLOWS:

1. IF THE COMMISSIONER DENIES THE APPLICATION, THE NOTICE SHALL STATE THAT:

THE CLAIMANT'S APPLICATION HAS BEEN DENIED AND THE CLAIMANT MAY PURSUE THE APPLICATION IN COURT PURSUANT TO SECTION 32-2193.39, ARIZONA REVISED STATUTES.

2. IF THE COMMISSIONER APPROVES A PAYMENT TO THE CLAIMANT FROM THE CONDOMINIUM RECOVERY FUND, THE COMMISSIONER SHALL GIVE NOTICE OF THE DECISION TO THE JUDGMENT DEBTOR WITH A COPY OF THE DECISION AND ORDER AND SHALL ADVISE THE SUBDIVIDER THAT THE SUBDIVIDER'S PUBLIC REPORT WILL BE AUTOMATICALLY SUSPENDED, PENDING REPAYMENT TO THE FUND, PLUS INTEREST AT THE RATE PROVIDED BY SECTION 44-1201, SUBSECTION A. THIS NOTICE SHALL DESCRIBE THE SUBDIVIDER'S RIGHT TO APPEAL THE DETERMINATION, IF ANY, AND SHALL STATE THAT FAILURE BY THE JUDGMENT DEBTOR TO TIMELY FILE A RESPONSE CONSTITUTES A WAIVER OF OBJECTION.

32-2193.39. <u>Claimant's right to appeal denial of claim; service of notice of appeal; response; failure to file response</u>

A. A CLAIMANT WHOSE APPLICATION IS DENIED PURSUANT TO SECTION 32-2193.38 MAY FILE, WITHIN SIX MONTHS AFTER RECEIVING NOTICE OF A DENIAL OF THE CLAIM, A VERIFIED APPLICATION IN THE COURT IN WHICH JUDGMENT WAS ENTERED IN THE CLAIMANT'S FAVOR FOR AN ORDER DIRECTING PAYMENT FROM THE CONDOMINIUM RECOVERY FUND BASED ON THE GROUNDS SET FORTH IN THE CLAIMANT'S APPLICATION TO THE COMMISSIONER.

B. THE CLAIMANT SHALL SERVE A COPY OF THE VERIFIED APPLICATION ON THE COMMISSIONER AND ON THE JUDGMENT DEBTOR AND SHALL FILE A CERTIFICATE OR AFFIDAVIT OF SERVICE WITH THE COURT. SERVICE ON THE COMMISSIONER SHALL BE MADE BY CERTIFIED MAIL ADDRESSED TO THE COMMISSIONER. SERVICE ON A JUDGMENT DEBTOR SHALL BE MADE PURSUANT TO SECTION 32-2193.35 AND SHALL INCLUDE NOTICE THAT AN APPLICATION HAS BEEN FILED WITH THE COURT FOR A CLAIM AGAINST THE CONDOMINIUM RECOVERY FUND THAT WAS PREVIOUSLY DENIED BY THE COMMISSIONER.

C. THE COMMISSIONER SHALL ADVISE THE SUBDIVIDER THAT, IF PAYMENT IS AWARDED, THE SUBDIVIDER'S PUBLIC REPORT WILL BE AUTOMATICALLY SUSPENDED, PENDING REPAYMENT TO THE FUND, PLUS INTEREST AT THE RATE PROVIDED BY SECTION 44-1201, SUBSECTION A. THE COMMISSIONER SHALL INCLUDE A DESCRIPTION OF THE SUBDIVIDER'S RIGHT TO APPEAR AND DEFEND THE ACTION AND THAT FAILURE BY THE JUDGMENT DEBTOR TO TIMELY FILE A RESPONSE CONSTITUTES A WAIVER OF OBJECTION.

D. THE COMMISSIONER AND THE JUDGMENT DEBTOR EACH MUST FILE A WRITTEN RESPONSE WITHIN THIRTY CALENDAR DAYS AFTER BEING SERVED WITH THE APPLICATION PURSUANT TO SUBSECTION B OF THIS SECTION. THE COURT SHALL SET THE MATTER FOR HEARING ON THE PETITION OF THE CLAIMANT. THE COURT MAY GRANT A REQUEST OF THE COMMISSIONER FOR A CONTINUANCE OF UP TO THIRTY CALENDAR DAYS AND, ON A SHOWING OF GOOD CAUSE BY ANY PARTY, MAY CONTINUE THE HEARING FOR A TIME THAT THE COURT CONSIDERS APPROPRIATE.

E. AT THE HEARING, THE CLAIMANT MUST ESTABLISH COMPLIANCE WITH THE REQUIREMENTS OF SECTION 32-2193.34.

F. IF THE JUDGMENT DEBTOR FAILS TO FILE A WRITTEN RESPONSE TO THE APPLICATION, THE COMMISSIONER MAY COMPROMISE OR SETTLE THE CLAIM AT ANY TIME

DURING THE COURT PROCEEDINGS AND, ON JOINT PETITION OF THE APPLICANT AND THE COMMISSIONER, THE COURT SHALL ISSUE AN ORDER DIRECTING PAYMENT FROM THE CONDOMINIUM RECOVERY FUND.

32-2193.40. Management of fund

A. THE COMMISSIONER SHALL DEPOSIT, PURSUANT TO SECTIONS 35-146 AND 35-147, MONIES RECEIVED PURSUANT TO THIS ARTICLE IN THE CONDOMINIUM RECOVERY FUND. THE MONIES SHALL BE HELD BY THE COMMISSIONER IN TRUST FOR CARRYING OUT THE PURPOSES OF THIS ARTICLE.

B. ON NOTICE FROM THE COMMISSIONER, 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.

C. NOTWITHSTANDING ANY OTHER LAW, THE COMMISSIONER MAY SPEND MONIES FROM THE FUND NECESSARY TO ADMINISTER THE FUND AND TO INCREASE PUBLIC AWARENESS OF THE FUND, NOT TO EXCEED FIFTY THOUSAND DOLLARS IN ANY FISCAL YEAR.

32-2193.41. Commissioner's standing in court

THE COMMISSIONER MAY ENTER AN APPEARANCE, FILE AN ANSWER, APPEAR AT THE COURT HEARING, DEFEND THE ACTION OR TAKE ANY OTHER ACTION THE COMMISSIONER CONSIDERS APPROPRIATE ON BEHALF AND IN THE NAME OF THE CONDOMINIUM RECOVERY FUND.

32-2193.42. Subrogation of rights

A. BEFORE RECEIVING PAYMENT FROM THE FUND, A CLAIMANT MUST COMPLETE AND EXECUTE, AS JUDGMENT CREDITOR, AN ASSIGNMENT OF JUDGMENT LIEN AND NOTICE OF SUBROGATION AND ASSIGNMENT OF RIGHTS TO THE CLAIMANT'S JUDGMENT ON A FORM PROVIDED BY THE DEPARTMENT.

B. IF THE COMMISSIONER HAS PAID FROM THE CONDOMINIUM RECOVERY FUND ANY SUM TO THE CLAIMANT, THE COMMISSIONER SHALL BE SUBROGATED TO ALL OF THE RIGHTS OF THE CLAIMANT AND THE CLAIMANT SHALL ASSIGN ALL THE RIGHTS, TITLE AND INTEREST IN THE JUDGMENT TO THE COMMISSIONER. THE COMMISSIONER MAY RECORD THE ASSIGNMENT OF JUDGMENT LIEN AND NOTICE OF SUBROGATION AND ASSIGNMENT OF RIGHTS. ANY AMOUNT AND INTEREST RECOVERED BY THE COMMISSIONER ON THE JUDGMENT SHALL BE DEPOSITED TO THE FUND.

C. IF THE COMMISSIONER IS SUBROGATED TO A CLAIMANT'S RIGHTS AS JUDGMENT CREDITOR, THE CLAIMANT SHALL NOT FILE A FULL OR PARTIAL SATISFACTION OF JUDGMENT WITHOUT THE COMMISSIONER'S PRIOR WRITTEN CONSENT.

32-2193.43. Waiver of rights

THE FAILURE OF AN AGGRIEVED PERSON TO COMPLY WITH THIS ARTICLE CONSTITUTES A WAIVER OF ANY RIGHTS UNDER THIS ARTICLE.

APPROVED BY THE GOVERNOR MAY 18, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 18, 2007.

Passed the House May 7, 20 07,

by the following vote: 39 Ayes,

18 Nays, 3 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate March 5, 20 07,

by the following vote: 27 Ayes,

1 Nays, 2 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

15th day of May, 2007,

at 11:00 o'clock a. M.

Secretary to the Governor

Approved this 18 day of

May, 20 07,

at 8:45 o'clock A. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 18 day of May, 2007,

at 9:35 o'clock A. M.

Secretary of State

S.B. 1546