

House Engrossed Senate Bill

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
Senate
Fiftieth Legislature
Second Regular Session
2012

CHAPTER 313

SENATE BILL 1476

AN ACT

AMENDING SECTIONS 33-1260 AND 33-1806, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 16, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-1817; RELATING TO 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 33-1260, Arizona Revised Statutes, is amended to
3 read:

4 33-1260. Resale of units; information required; fees; civil
5 penalty; applicability; definition

6 A. For condominiums with fewer than fifty units, a unit owner shall
7 mail or deliver to a purchaser or a purchaser's authorized agent within ten
8 days after receipt of a written notice of a pending sale of the unit, and for
9 condominiums with fifty or more units, the association shall mail or deliver
10 to a purchaser or a purchaser's authorized agent within ten days after
11 receipt of a written notice of a pending sale that contains the name and
12 address of the purchaser, all of the following in either paper or electronic
13 format:

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

15 2. A copy of the declaration.

16 3. A dated statement containing:

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

21 (b) The amount of the common expense assessment for the unit and any
22 unpaid common expense assessment, special assessment or other assessment, fee
23 or charge currently due and payable from the selling unit owner. If the
24 request is made by a lienholder, escrow agent, unit owner or person
25 designated by a unit owner pursuant to section 33-1256, failure to provide
26 the information pursuant to this subdivision within the time provided for in
27 this subsection shall extinguish any lien for any unpaid assessment then due
28 against that unit.

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

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

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

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

1 (g) A statement of case names and case numbers for pending litigation
2 with respect to the unit filed by the association against the unit owner or
3 filed by the unit owner against the association. The unit owner or the
4 association shall not be required to disclose information concerning the
5 pending litigation that would violate any applicable rule of attorney-client
6 privilege under Arizona law.

7 (h) A statement that provides "I hereby acknowledge that the
8 declaration, bylaws and rules of the association constitute a contract
9 between the association and me (the purchaser). By signing this statement, I
10 acknowledge that I have read and understand the association's contract with
11 me (the purchaser). I also understand that as a matter of Arizona law, if I
12 fail to pay my association assessments, the association may foreclose on my
13 property." The statement shall also include a signature line for the
14 purchaser and shall be returned to the association within fourteen calendar
15 days.

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

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

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

21 7. A statement summarizing any pending lawsuits, except those relating
22 to the collection of assessments owed by unit owners other than the selling
23 unit owner, in which the association is a named party, including the amount
24 of any money claimed.

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

30 C. The association may charge the unit owner a fee of no more than an
31 aggregate of four hundred dollars to compensate the association for the costs
32 incurred in the preparation of a statement or other documents furnished by
33 the association pursuant to this section for purposes of resale disclosure,
34 lien estoppel and any other services related to the transfer or use of the
35 property. In addition, the association may charge a rush fee of no more than
36 one hundred dollars if the rush services are required to be performed within
37 seventy-two hours after the request for rush services, and may charge a
38 statement or other documents update fee of no more than fifty dollars if
39 thirty days or more have passed since the date of the original disclosure
40 statement or THE DATE THE documents were delivered. The association shall
41 make available to any interested party the amount of any fee established from
42 time to time by the association. If the aggregate fee for purposes of resale
43 disclosure, lien estoppel and any other services related to the transfer or
44 use of a property is less than four hundred dollars on January 1, 2010, the
45 fee may increase at a rate of no more than twenty per cent per year based on

1 the immediately preceding fiscal year's amount not to exceed the four hundred
2 dollar aggregate fee. The association may charge the same fee without regard
3 to whether the association is furnishing the statement or other documents in
4 paper or electronic format.

5 D. The fees prescribed by this section shall be collected no earlier
6 than at the close of escrow and may only be charged once to a unit owner for
7 that transaction between the parties specified in the notice required
8 pursuant to subsection A of this section. An association shall not charge or
9 collect a fee relating to services for resale disclosure, lien estoppel and
10 any other services related to the transfer or use of a property except as
11 specifically authorized in this section. An association that charges or
12 collects a fee in violation of this section is subject to a civil penalty of
13 no more than one thousand two hundred dollars.

14 E. This section applies to a managing agent for an association that is
15 acting on behalf of the association.

16 F. A sale in which a public report is issued pursuant to sections
17 32-2183 and 32-2197.02 or a sale pursuant to section 32-2181.02 is exempt
18 from this section.

19 G. This section does not apply to timeshare plans or associations that
20 are subject to chapter 20 of this title.

21 H. For the purposes of this section, unless the context otherwise
22 requires, "unit owner" means the seller of the condominium unit title and
23 excludes any real estate salesperson or real estate broker who is licensed
24 under title 32, chapter 20 and who is acting as a salesperson or broker, ANY
25 ESCROW AGENT WHO IS LICENSED UNDER TITLE 6, CHAPTER 7 AND WHO IS ACTING AS AN
26 ESCROW AGENT and also excludes a trustee of a deed of trust who is selling
27 the property in a trustee's sale pursuant to chapter 6.1 of this title.

28 Sec. 2. Section 33-1806, Arizona Revised Statutes, is amended to read:
29 33-1806. Resale of units; information required; fees; civil
30 penalty; definition

31 A. For planned communities with fewer than fifty units, a member shall
32 mail or deliver to a purchaser or a purchaser's authorized agent within ten
33 days after receipt of a written notice of a pending sale of the unit, and for
34 planned communities with fifty or more units, the association shall mail or
35 deliver to a purchaser or a purchaser's authorized agent within ten days
36 after receipt of a written notice of a pending sale that contains the name
37 and address of the purchaser, all of the following in either paper or
38 electronic format:

- 39 1. A copy of the bylaws and the rules of the association.
- 40 2. A copy of the declaration.
- 41 3. A dated statement containing:

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

1 (b) The amount of the common regular assessment and the unpaid common
2 regular assessment, special assessment or other assessment, fee or charge
3 currently due and payable from the selling member. If the request is made by
4 a lienholder, escrow agent, member or person designated by a member pursuant
5 to section 33-1807, failure to provide the information pursuant to this
6 subdivision within the time provided for in this subsection shall extinguish
7 any lien for any unpaid assessment then due against that property.

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

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

11 (e) If the statement is being furnished by the association, a
12 statement as to whether the records of the association reflect any
13 alterations or improvements to the unit that violate the declaration. The
14 association is not obligated to provide information regarding alterations or
15 improvements that occurred more than six years before the proposed sale.
16 Nothing in this subdivision relieves the seller of a unit from the obligation
17 to disclose alterations or improvements to the unit that violate the
18 declaration, nor precludes the association from taking action against the
19 purchaser of a unit for violations that are apparent at the time of purchase
20 and that are not reflected in the association's records.

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

24 (g) A statement of case names and case numbers for pending litigation
25 with respect to the unit filed by the association against the member or filed
26 by the member against the association. The member shall not be required to
27 disclose information concerning such pending litigation that would violate
28 any applicable rule of attorney-client privilege under Arizona law.

29 (h) A statement that provides "I hereby acknowledge that the
30 declaration, bylaws and rules of the association constitute a contract
31 between the association and me (the purchaser). By signing this statement, I
32 acknowledge that I have read and understand the association's contract with
33 me (the purchaser). I also understand that as a matter of Arizona law, if I
34 fail to pay my association assessments, the association may foreclose on my
35 property." The statement shall also include a signature line for the
36 purchaser and shall be returned to the association within fourteen calendar
37 days.

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

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

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

43 7. A statement summarizing any pending lawsuits, except those relating
44 to the collection of assessments owed by members other than the selling

1 member, in which the association is a named party, including the amount of
2 any money claimed.

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

8 C. The association may charge the member a fee of no more than an
9 aggregate of four hundred dollars to compensate the association for the costs
10 incurred in the preparation of a statement or other documents furnished by
11 the association pursuant to this section for purposes of resale disclosure,
12 lien estoppel and any other services related to the transfer or use of the
13 property. In addition, the association may charge a rush fee of no more than
14 one hundred dollars if the rush services are required to be performed within
15 seventy-two hours after the request for rush services, and may charge a
16 statement or other documents update fee of no more than fifty dollars if
17 thirty days or more have passed since the date of the original disclosure
18 statement or THE DATE THE documents were delivered. The association shall
19 make available to any interested party the amount of any fee established from
20 time to time by the association. If the aggregate fee for purposes of resale
21 disclosure, lien estoppel and any other services related to the transfer or
22 use of a property is less than four hundred dollars on January 1, 2010, the
23 fee may increase at a rate of no more than twenty per cent per year based on
24 the immediately preceding fiscal year's amount not to exceed the four hundred
25 dollar aggregate fee. The association may charge the same fee without regard
26 to whether the association is furnishing the statement or other documents in
27 paper or electronic format.

28 D. The fees prescribed by this section shall be collected no earlier
29 than at the close of escrow and may only be charged once to a member for that
30 transaction between the parties specified in the notice required pursuant to
31 subsection A of this section. An association shall not charge or collect a
32 fee relating to services for resale disclosure, lien estoppel and any other
33 services related to the transfer or use of a property except as specifically
34 authorized in this section. An association that charges or collects a fee in
35 violation of this section is subject to a civil penalty of no more than one
36 thousand two hundred dollars.

37 E. This section applies to a managing agent for an association that is
38 acting on behalf of the association.

39 F. A sale in which a public report is issued pursuant to sections
40 32-2183 and 32-2197.02 or a sale pursuant to section 32-2181.02 is exempt
41 from this section.

42 G. For the purposes of this section, unless the context otherwise
43 requires, "member" means the seller of the unit title and excludes any real
44 estate salesperson or real estate broker who is licensed under title 32,
45 chapter 20 and who is acting as a salesperson or broker, ANY ESCROW AGENT WHO

1 IS LICENSED UNDER TITLE 6, CHAPTER 7 AND WHO IS ACTING AS AN ESCROW AGENT and
2 also excludes a trustee of a deed of trust who is selling the property in a
3 trustee's sale pursuant to chapter 6.1 of this title.

4 Sec. 3. Title 33, chapter 16, article 1, Arizona Revised Statutes, is
5 amended by adding section 33-1817, to read:

6 33-1817. Declaration amendment: design, architectural
7 committees; review

8 NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS:

9 1. MEMBERSHIP ON A DESIGN REVIEW COMMITTEE, AN ARCHITECTURAL COMMITTEE
10 OR A COMMITTEE THAT PERFORMS SIMILAR FUNCTIONS, HOWEVER DENOMINATED, FOR THE
11 PLANNED COMMUNITY SHALL INCLUDE AT LEAST ONE MEMBER OF THE BOARD OF DIRECTORS
12 WHO SHALL SERVE AS CHAIRPERSON OF THE COMMITTEE.

13 2. FOR NEW CONSTRUCTION OF THE MAIN RESIDENTIAL STRUCTURE ON A LOT OR
14 FOR REBUILDS OF THE MAIN RESIDENTIAL STRUCTURE ON A LOT AND ONLY IN A PLANNED
15 COMMUNITY THAT HAS ENACTED DESIGN GUIDELINES, ARCHITECTURAL GUIDELINES OR
16 OTHER SIMILAR RULES, HOWEVER DENOMINATED, IF THE ASSOCIATION DOCUMENTS PERMIT
17 THE ASSOCIATION TO CHARGE THE MEMBER A SECURITY DEPOSIT AND IF THE
18 ASSOCIATION REQUIRES THE MEMBER TO PAY A SECURITY DEPOSIT TO SECURE
19 COMPLETION OF THE MEMBER'S CONSTRUCTION PROJECT OR COMPLIANCE WITH APPROVED
20 PLANS, THE DEPOSIT SHALL BE PLACED IN A TRUST ACCOUNT WITH THE FOLLOWING
21 INSTRUCTIONS:

22 (a) THE COST OF THE TRUST ACCOUNT SHALL BE SHARED EQUALLY BETWEEN THE
23 ASSOCIATION AND THE MEMBER.

24 (b) IF THE CONSTRUCTION PROJECT IS ABANDONED, THE BOARD OF DIRECTORS
25 MAY DETERMINE THE APPROPRIATE USE OF ANY DEPOSIT MONIES.

26 3. ANY INTEREST EARNED ON THE REFUNDABLE SECURITY DEPOSIT SHALL BECOME
27 PART OF THE SECURITY DEPOSIT.

28 4. THE ASSOCIATION OR THE DESIGN REVIEW COMMITTEE MUST HOLD A FINAL
29 DESIGN APPROVAL MEETING FOR THE PURPOSE OF ISSUING APPROVAL OF THE PLANS, AND
30 THE MEMBER OR MEMBER'S AGENT MUST HAVE THE OPPORTUNITY TO ATTEND THE MEETING.
31 IF THE PLANS ARE APPROVED, THE ASSOCIATION'S DESIGN REVIEW REPRESENTATIVE
32 SHALL PROVIDE WRITTEN ACKNOWLEDGEMENT THAT THE APPROVED PLANS, INCLUDING ANY
33 APPROVED AMENDMENTS, ARE IN COMPLIANCE WITH ALL RULES AND GUIDELINES IN
34 EFFECT AT THE TIME OF THE APPROVAL AND THAT THE REFUND OF THE DEPOSIT
35 REQUIRES THAT CONSTRUCTION BE COMPLETED IN ACCORDANCE WITH THOSE APPROVED
36 PLANS.

37 5. THE ASSOCIATION MUST PROVIDE FOR AT LEAST TWO ON-SITE FORMAL
38 REVIEWS DURING CONSTRUCTION FOR THE PURPOSE OF DETERMINING COMPLIANCE WITH
39 THE APPROVED PLANS. THE MEMBER OR MEMBER'S AGENT SHALL BE PROVIDED THE
40 OPPORTUNITY TO ATTEND BOTH FORMAL REVIEWS. WITHIN FIVE BUSINESS DAYS AFTER
41 THE FORMAL REVIEWS, THE ASSOCIATION SHALL CAUSE A WRITTEN REPORT TO BE
42 PROVIDED TO THE MEMBER OR MEMBER'S AGENT SPECIFYING ANY DEFICIENCIES,
43 VIOLATIONS OR UNAPPROVED VARIATIONS FROM THE APPROVED PLANS AS AMENDED AND
44 THAT HAVE COME TO THE ATTENTION OF THE ASSOCIATION.

1 6. WITHIN THIRTY BUSINESS DAYS AFTER THE SECOND FORMAL REVIEW, THE
2 ASSOCIATION SHALL PROVIDE TO THE MEMBER, A COPY OF THE WRITTEN REPORT
3 SPECIFYING ANY DEFICIENCIES, VIOLATIONS OR UNAPPROVED VARIATIONS FROM THE
4 APPROVED PLANS AS AMENDED THAT HAVE COME TO THE ATTENTION OF THE ASSOCIATION.
5 IF THE WRITTEN REPORT DOES NOT SPECIFY ANY DEFICIENCIES, VIOLATIONS OR
6 UNAPPROVED VARIATIONS FROM THE APPROVED PLANS, AS AMENDED, THAT HAVE COME TO
7 THE ATTENTION OF THE ASSOCIATION, THE ASSOCIATION SHALL PROMPTLY RELEASE THE
8 DEPOSIT MONIES TO THE MEMBER. IF THE REPORT IDENTIFIES ANY DEFICIENCIES,
9 VIOLATIONS OR UNAPPROVED VARIATIONS FROM THE APPROVED PLANS, AS AMENDED, THE
10 ASSOCIATION MAY HOLD THE DEPOSIT FOR ONE HUNDRED EIGHTY DAYS OR UNTIL RECEIPT
11 OF A SUBSEQUENT REPORT OF CONSTRUCTION COMPLIANCE, WHICHEVER IS LESS. IF A
12 REPORT OF CONSTRUCTION COMPLIANCE IS RECEIVED BEFORE THE ONE HUNDRED
13 EIGHTIETH DAY, THE ASSOCIATION SHALL PROMPTLY RELEASE THE DEPOSIT MONIES TO
14 THE MEMBER. IF A COMPLIANCE REPORT IS NOT RECEIVED WITHIN ONE HUNDRED EIGHTY
15 DAYS, THE ASSOCIATION SHALL RELEASE THE DEPOSIT MONIES PROMPTLY FROM THE
16 TRUST ACCOUNT TO THE ASSOCIATION.

17 7. NEITHER THE APPROVAL OF THE PLANS NOR THE APPROVAL OF THE ACTUAL
18 CONSTRUCTION BY THE ASSOCIATION OR THE DESIGN REVIEW COMMITTEE SHALL
19 CONSTITUTE A REPRESENTATION OR WARRANTY THAT THE PLANS OR CONSTRUCTION COMPLY
20 WITH APPLICABLE GOVERNMENTAL REQUIREMENTS OR APPLICABLE ENGINEERING, DESIGN
21 OR SAFETY STANDARDS. THE ASSOCIATION IN ITS DISCRETION MAY RELEASE ALL OR
22 ANY PART OF THE DEPOSIT TO THE MEMBER BEFORE RECEIVING A COMPLIANCE REPORT.
23 RELEASE OF THE DEPOSIT TO THE MEMBER DOES NOT CONSTITUTE A REPRESENTATION OR
24 WARRANTY FROM THE ASSOCIATION THAT THE CONSTRUCTION COMPLIES WITH THE
25 APPROVED PLANS.

APPROVED BY THE GOVERNOR MAY 9, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 10, 2012.

Passed the House April 12, 20 12,

Passed the Senate February 16, 20 12,

by the following vote: 45 Ayes,

by the following vote: 25 Ayes,

5 Nays, 9 Not Voting
vacant

5 Nays, 0 Not Voting

[Signature]

[Signature]

Speaker of the House

President of the Senate

[Signature]
Chief Clerk of the House

[Signature]
Assistant 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~~

S.B. 1476

~~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~~

SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 24, 20 12

by the following vote: 27 Ayes,

1 Nays, 2 Not Voting

Steve Pierce LV
President of the Senate

Charmain Bullington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

1 day of May, 20 12

at 9:30 o'clock A M.

Michael D
Secretary to the Governor

Approved this 9th day of

May

at 5:05 o'clock P M.

Janice K. Brewer
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 10th day of May, 20 12

at 8:27 o'clock a M.

Klu Blum
Secretary of State