

REFERENCE TITLE: homeowner's associations; management companies

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

HB 2753

Introduced by
Representative McGuire

AN ACT

AMENDING TITLE 32, CHAPTER 20, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 11; AMENDING SECTIONS 33-1243 AND 33-1811, ARIZONA REVISED STATUTES; 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. Title 32, chapter 20, Arizona Revised Statutes, is amended
3 by adding article 11, to read:

4 ARTICLE 11. ASSOCIATION PROPERTY MANAGERS

5 32-2199. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "ASSOCIATION" MEANS A CONDOMINIUM ASSOCIATION AS DEFINED IN SECTION
8 33-1202 OR A PLANNED COMMUNITY ASSOCIATION AS DEFINED IN SECTION 33-1802.

9 2. "ASSOCIATION PROPERTY MANAGER" MEANS A PERSON WHO, FOR
10 COMPENSATION, PROVIDES FOR AN ASSOCIATION PROPERTY MANAGEMENT SERVICES THAT
11 MAY INCLUDE PURCHASING, CONTRACTING, BOOKKEEPING, MAINTENANCE OR
12 ADMINISTRATIVE FUNCTIONS ON BEHALF OF THE BOARD OF DIRECTORS OF THE
13 ASSOCIATION.

14 32-2199.01. Registration; renewal; fees; fund

15 A. A PERSON WHO WISHES TO ACT AS AN ASSOCIATION PROPERTY MANAGER FOR
16 AN ASSOCIATION SHALL APPLY FOR REGISTRATION BY SUBMITTING TO THE DEPARTMENT A
17 COMPLETED APPLICATION FORM PRESCRIBED BY THE DEPARTMENT WITH THE INITIAL
18 REGISTRATION FEE. THE APPLICANT SHALL ALSO FILE WITH THE DEPARTMENT AN
19 AFFIDAVIT STATING WHETHER THE APPLICANT HAS BEEN CONVICTED OF A FELONY OR ANY
20 MISDEMEANOR INVOLVING DISHONESTY OR MORAL TURPITUDE IN THIS OR ANY OTHER
21 STATE WITHIN THE LAST TEN YEARS. THE DEPARTMENT MAY REVIEW THE AFFIDAVIT AND
22 ISSUE OR DENY THE REGISTRATION BASED ON ITS FINDINGS.

23 B. REGISTRATION IS VALID FOR TWO YEARS. A PERSON MAY RENEW A
24 REGISTRATION BY SUBMITTING TO THE DEPARTMENT A RENEWAL FORM PRESCRIBED BY THE
25 DEPARTMENT WITH THE RENEWAL FEE ON OR BEFORE THE DATE THE REGISTRATION
26 EXPIRES.

27 C. A BROKER OR AGENT WHO IS LICENSED PURSUANT TO THIS CHAPTER MAY
28 REGISTER AND RENEW REGISTRATION AS AN ASSOCIATION PROPERTY MANAGER WITHOUT
29 PAYING THE FEE PRESCRIBED BY THIS SECTION.

30 D. THE DEPARTMENT SHALL ISSUE A CERTIFICATE OF REGISTRATION TO A
31 PERSON WHO COMPLIES WITH THIS SECTION.

32 E. A PERSON SHALL NOT ACT AS AN ASSOCIATION PROPERTY MANAGER IF THE
33 PERSON IS NOT REGISTERED PURSUANT TO THIS SECTION.

34 F. THE DEPARTMENT SHALL COLLECT FROM EACH PERSON A FEE FOR AN INITIAL
35 REGISTRATION, FOR A RENEWAL AND FOR A DUPLICATE REGISTRATION CERTIFICATE AS
36 DETERMINED BY THE DEPARTMENT BY RULE.

37 G. THE DEPARTMENT SHALL DEPOSIT MONIES COLLECTED PURSUANT TO
38 SUBSECTION F IN THE ASSOCIATION PROPERTY MANAGEMENT FUND ESTABLISHED BY
39 SUBSECTION H.

40 H. THE ASSOCIATION PROPERTY MANAGEMENT FUND IS ESTABLISHED CONSISTING
41 OF MONIES RECEIVED PURSUANT TO THIS SECTION. MONIES IN THE ASSOCIATION
42 PROPERTY MANAGEMENT FUND SHALL BE USED FOR THE PURPOSES OF IMPLEMENTING AND
43 ENFORCING THIS ARTICLE.

1 32-2199.02. Association property manager conduct: rules

2 AN ASSOCIATION PROPERTY MANAGER:

3 1. SHALL NOT KNOWINGLY MISREPRESENT ANY INFORMATION OR KNOWINGLY ACT
4 IN A FRAUDULENT MANNER.

5 2. SHALL PROPERLY ACCOUNT FOR AND MAINTAIN ALL MONIES RECEIVED AND
6 PAID ON BEHALF OF AN ASSOCIATION.

7 3. SHALL MAINTAIN APPROPRIATE BOOKS AND RECORDS TO DEMONSTRATE THAT
8 MONIES HAVE BEEN PROPERLY RECEIVED AND PAID ON BEHALF OF AN ASSOCIATION.

9 4. SHALL MAINTAIN A PERFORMANCE BOND, FINANCIAL RESERVES OR ANOTHER
10 FORM OF FINANCIAL ASSURANCE AS DETERMINED BY THE DEPARTMENT BY RULE. THE
11 DEPARTMENT MAY ADOPT RULES THAT CONSIDER THE SIZE OF THE COMMUNITY OR AMOUNT
12 OF MONEY BEING MANAGED, OR BOTH, THE LEVEL OF AUTHORITY EXERCISED BY THE
13 ASSOCIATION PROPERTY MANAGER AND ANY OTHER FACTORS THE DEPARTMENT DEEMS
14 APPROPRIATE.

15 32-2199.03. Disciplinary actions

16 A. ON THE COMPLAINT OF ANY PERSON OR ON ITS OWN MOTION, THE DEPARTMENT
17 SHALL INVESTIGATE ANY SUSPECTED VIOLATION OF THIS ARTICLE BY AN ASSOCIATION
18 PROPERTY MANAGER. IF THE DEPARTMENT FINDS A VIOLATION IT MAY ISSUE A LETTER
19 OF CONCERN.

20 B. THE DEPARTMENT SHALL REVOKE OR SUSPEND AN ASSOCIATION PROPERTY
21 MANAGER'S REGISTRATION IF THE DEPARTMENT FINDS THAT THE ASSOCIATION PROPERTY
22 MANAGER HAS COMMITTED ANY OF THE FOLLOWING:

23 1. SECURED REGISTRATION BY FRAUD OR DECEIT.

24 2. COMMITTED AN ACT OR IS RESPONSIBLE FOR AN OMISSION INVOLVING FRAUD
25 OR KNOWING MISREPRESENTATION WITH THE INTENT TO OBTAIN A BENEFIT.

26 3. KNOWINGLY VIOLATED SECTION 32-2199.02.

27 C. THE DEPARTMENT SHALL:

28 1. SUSPEND THE ASSOCIATION PROPERTY MANAGER'S REGISTRATION FOR AT
29 LEAST SIX MONTHS ON THE FINDING OF A FIRST VIOLATION PURSUANT TO SUBSECTION B
30 OF THIS SECTION.

31 2. SUSPEND THE ASSOCIATION PROPERTY MANAGER'S REGISTRATION FOR AT
32 LEAST TWELVE MONTHS ON THE FINDING OF A SECOND VIOLATION PURSUANT TO
33 SUBSECTION B OF THIS SECTION.

34 3. REVOKE THE ASSOCIATION PROPERTY MANAGER'S REGISTRATION ON THE
35 FINDING OF A THIRD OR SUBSEQUENT VIOLATION PURSUANT TO SUBSECTION B OF THIS
36 SECTION.

37 D. THE DEPARTMENT SHALL NOT IMPOSE DISCIPLINE UNTIL THE ASSOCIATION
38 PROPERTY MANAGER HAS BEEN PROVIDED AN OPPORTUNITY FOR A HEARING BEFORE THE
39 DEPARTMENT PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10. THE DEPARTMENT SHALL
40 NOTIFY THE ASSOCIATION PROPERTY MANAGER OF THE CHARGES AND THE DATE AND TIME
41 OF THE HEARING. THE NOTICE MAY BE PERSONALLY SERVED OR SENT BY CERTIFIED
42 MAIL TO THE ASSOCIATION PROPERTY MANAGER'S LAST KNOWN ADDRESS. EXCEPT AS
43 PROVIDED IN SECTION 41-1092.08, SUBSECTION H, THE FINAL DECISION OF THE
44 DEPARTMENT IS SUBJECT TO JUDICIAL REVIEW PURSUANT TO TITLE 12, CHAPTER 7,
45 ARTICLE 6.

1 E. THE DEPARTMENT SHALL NOT RENEW AN ASSOCIATION PROPERTY MANAGER'S
2 REGISTRATION DURING THE TIME THE REGISTRATION IS SUSPENDED OR REVOKED.

3 32-2199.04. Rules

4 THE DEPARTMENT SHALL ADOPT RULES FOR THE PURPOSE OF ADMINISTERING THIS
5 ARTICLE.

6 32-2199.05. Confidential records

7 EXCEPT AS OTHERWISE PROVIDED BY LAW, ALL DOCUMENTS ASSOCIATED WITH A
8 COMPLAINT PURSUANT TO THIS ARTICLE ARE CONFIDENTIAL UNTIL THE COMPLAINT IS
9 RESOLVED.

10 Sec. 2. Section 33-1243, Arizona Revised Statutes, is amended to read:

11 33-1243. Board of directors and officers; conflict; powers;
12 limitations; removal; annual audit; applicability

13 A. Except as provided in the declaration, the bylaws, subsection B OF
14 THIS SECTION or other provisions of this chapter, the board of directors may
15 act in all instances on behalf of the association.

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

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

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

1 E. The declaration may provide for a period of declarant control of
2 the association, during which period a declarant or persons designated by the
3 declarant may appoint and remove the officers and members of the board of
4 directors. Regardless of the period provided in the declaration, a period of
5 declarant control terminates no later than the earlier of:

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

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

10 F. A declarant may voluntarily surrender the right to appoint and
11 remove officers and members of the board of directors before termination of
12 the period prescribed in subsection E OF THIS SECTION, but in that event the
13 declarant may require, for the duration of the period of declarant control,
14 that specified actions of the association or board of directors, as described
15 in a recorded instrument executed by the declarant, be approved by the
16 declarant before they become effective.

17 G. Not later than the termination of any period of declarant control,
18 the unit owners shall elect a board of directors of at least three members,
19 at least a majority of whom must be unit owners. The board of directors
20 shall elect the officers. The board members and officers shall take office
21 upon election.

22 H. Notwithstanding any provision of the declaration or bylaws to the
23 contrary, the unit owners, by a majority vote of members entitled to vote and
24 voting on the matter at a meeting of the members called pursuant to this
25 section at which a quorum is present, may remove any member of the board of
26 directors with or without cause, other than a member appointed by the
27 declarant. For purposes of calling for removal of a member of the board of
28 directors, other than a member appointed by the declarant, the following
29 apply:

30 1. In an association with one thousand or fewer members, on receipt of
31 a petition that calls for removal of a member of the board of directors and
32 that is signed by the number of persons who are entitled to cast at least
33 twenty-five per cent of the votes in the association or one hundred votes in
34 the association, whichever is less, the board shall call and provide written
35 notice of a special meeting of the association as prescribed by section
36 33-1248, subsection B.

37 2. Notwithstanding section 33-1248, subsection B, in an association
38 with more than one thousand members, on receipt of a petition that calls for
39 removal of a member of the board of directors and that is signed by the
40 number of persons who are entitled to cast at least ten per cent of the votes
41 in the association or one thousand votes in the association, whichever is
42 less, the board shall call and provide written notice of a special meeting of
43 the association. The board shall provide written notice of a special meeting
44 as prescribed by section 33-1248, subsection B.

1 3. The special meeting shall be called, noticed and held within thirty
2 days after receipt of the petition.

3 4. For purposes of a special meeting called pursuant to this
4 subsection, a quorum is present if the number of owners to whom at least
5 twenty per cent of the votes or one thousand votes, whichever is less, are
6 allocated is present at the meeting in person or as otherwise permitted by
7 law.

8 5. If a civil action is filed regarding the removal of a board member,
9 the prevailing party in the civil action shall be awarded its reasonable
10 attorney fees and costs.

11 6. The board of directors shall retain all documents and other records
12 relating to the proposed removal of the member of the board of directors for
13 at least one year after the date of the special meeting and shall permit
14 members to inspect those documents and records pursuant to section 33-1258.

15 7. A petition that calls for the removal of the same member of the
16 board of directors shall not be submitted more than once during each term of
17 office for that member.

18 I. For an association in which board members are elected from
19 separately designated voting districts, a member of the board of directors,
20 other than a member appointed by the declarant, may be removed only by a vote
21 of the members from that voting district, and only the members from that
22 voting district are eligible to vote on the matter or be counted for purposes
23 of determining a quorum.

24 J. Unless any provision in the condominium documents requires an
25 annual audit by a certified public accountant, the board of directors shall
26 provide for an annual financial audit, review or compilation of the
27 association. The audit, review or compilation shall be completed no later
28 than one hundred eighty days after the end of the association's fiscal year
29 and shall be made available upon request to the unit owners within thirty
30 days after its completion.

31 K. THE ASSOCIATION SHALL NOT EMPLOY OR OTHERWISE PROVIDE COMPENSATION
32 TO A PERSON FOR PROVIDING ASSOCIATION PROPERTY MANAGEMENT SERVICES UNLESS
33 THAT PERSON IS REGISTERED AS REQUIRED BY TITLE 32, CHAPTER 20, ARTICLE 11.

34 ~~L.~~ L. This section does not apply to timeshare plans or associations,
35 or the period of declarant control under timeshare instruments, that are
36 subject to chapter 20 of this title.

37 Sec. 3. Section 33-1811, Arizona Revised Statutes, is amended to read:
38 33-1811. Board of directors; contracts; conflict

39 A. THE ASSOCIATION SHALL NOT EMPLOY OR OTHERWISE PROVIDE COMPENSATION
40 TO A PERSON FOR PROVIDING ASSOCIATION PROPERTY MANAGEMENT SERVICES UNLESS
41 THAT PERSON IS REGISTERED AS REQUIRED BY TITLE 32, CHAPTER 20, ARTICLE 11.

42 B. If any contract, decision or other action for compensation taken by
43 or on behalf of the board of directors would benefit any member of the board
44 of directors or any person who is a parent, grandparent, spouse, child or
45 sibling of a member of the board of directors or a parent or spouse of any of

1 those persons, that member of the board of directors shall declare a conflict
2 of interest for that issue. The member shall declare the conflict in an open
3 meeting of the board before the board discusses or takes action on that
4 issue, and that member may then vote on that issue. Any contract entered
5 into in violation of this section is void and unenforceable.

6 Sec. 4. Effective date

7 This act is effective from and after December 31, 2010.