

REFERENCE TITLE: homeowners' associations; penalties; attorney fees

State of Arizona  
House of Representatives  
Fiftieth Legislature  
First Regular Session  
2011

# HB 2717

Introduced by  
Representatives Carter: Urie

AN ACT

AMENDING SECTIONS 33-1242, 33-1261, 33-1803 AND 33-1808, 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. Section 33-1242, Arizona Revised Statutes, is amended to  
3 read:  
4 33-1242. Powers of unit owners' association; penalties; notice  
5 to unit owner of violation  
6 A. Subject to the provisions of the declaration, the association may:  
7 1. Adopt and amend bylaws and rules.  
8 2. Adopt and amend budgets for revenues, expenditures and reserves and  
9 collect assessments for common expenses from unit owners.  
10 3. Hire and discharge managing agents and other employees, agents and  
11 independent contractors.  
12 4. Institute, defend or intervene in litigation or administrative  
13 proceedings in its own name on behalf of itself or two or more unit owners on  
14 matters affecting the condominium.  
15 5. Make contracts and incur liabilities.  
16 6. Regulate the use, maintenance, repair, replacement and modification  
17 of common elements.  
18 7. Cause additional improvements to be made as a part of the common  
19 elements.  
20 8. Acquire, hold, encumber and convey in its own name any right, title  
21 or interest to real or personal property, except that common elements may be  
22 conveyed or subjected to a security interest only pursuant to section  
23 33-1252.  
24 9. Grant easements, leases, licenses and concessions through or over  
25 the common elements.  
26 10. Impose and receive any payments, fees or charges for the use,  
27 rental or operation of the common elements other than limited common elements  
28 described in section 33-1212, paragraphs 2 and 4 and for services provided to  
29 unit owners.  
30 11. Impose charges for late payment of assessments and, after notice  
31 and an opportunity to be heard, impose reasonable monetary penalties upon  
32 unit owners for violations of the declaration, bylaws and rules of the  
33 association. NOTWITHSTANDING ANY PROVISION IN THE CONDOMINIUM DOCUMENTS AND  
34 AFTER THE PERIOD OF DECLARANT CONTROL, THE BOARD OF DIRECTORS SHALL NOT  
35 IMPOSE A CHARGE FOR A LATE PAYMENT OF A PENALTY AND SHALL NOT IMPOSE OR  
36 COLLECT A PENALTY OF MORE THAN FIFTY DOLLARS FOR A VIOLATION, WHETHER THE  
37 VIOLATION IS A SINGLE VIOLATION OR AN ONGOING VIOLATION. NOTICE PURSUANT TO  
38 THIS PARAGRAPH SHALL INCLUDE INFORMATION PERTAINING TO THE MANNER IN WHICH  
39 THE PENALTY SHALL BE ENFORCED.  
40 12. Impose reasonable charges for the preparation and recordation of  
41 amendments to the declaration or statements of unpaid assessments.  
42 13. Provide for the indemnification of its officers and executive board  
43 of directors and maintain directors' and officers' liability insurance.

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

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

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

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

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

13           B. A unit owner who receives a written notice that the condition of  
14 the property owned by the unit owner is in violation of a requirement of the  
15 condominium documents without regard to whether a monetary penalty is imposed  
16 by the notice may provide the association with a written response by sending  
17 the response by certified mail within ten business days after the date of the  
18 notice. The response shall be sent to the address contained in the notice or  
19 in the recorded notice prescribed by section 33-1256, subsection J.

20           C. Within ten business days after receipt of the certified mail  
21 containing the response from the unit owner, the association shall respond to  
22 the unit owner with a written explanation regarding the notice that shall  
23 provide at least the following information unless previously provided in the  
24 notice of violation:

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

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

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

30           4. The process the unit owner must follow to contest the notice.

31           D. Unless the information required in subsection C, paragraph 4 of  
32 this section is provided in the notice of violation, the association shall  
33 not proceed with any action to enforce the condominium documents, ~~including~~  
34 ~~the collection of attorney fees,~~ before or during the time prescribed by  
35 subsection C of this section regarding the exchange of information between  
36 the association and the unit owner. At any time before or after completion  
37 of the exchange of information pursuant to this section, the unit owner may  
38 petition for a hearing pursuant to section 41-2198.01 if the dispute is  
39 within the jurisdiction of the department of fire, building and life safety  
40 as prescribed in section 41-2198.01, subsection B, **MAY REQUIRE THE**  
41 **ASSOCIATION TO PARTICIPATE IN AN ARBITRATION PROCESS OR MAY PROCEED AS**  
42 **OTHERWISE PROVIDED BY LAW.**

43           E. **AN ASSOCIATION MAY NOT COLLECT ATTORNEY FEES RELATING TO ANY**  
44 **VIOLATION OF THE CONDOMINIUM DOCUMENTS IN AN AMOUNT THAT IS HIGHER THAN TWO**  
45 **TIMES THE AMOUNT OF THE PENALTY IMPOSED FOR THE VIOLATION.**



1 and on or in the unit owner's property. If leasing of a unit is allowed, the  
2 association may prohibit open house leasing being held before 8:00 a.m. or  
3 after 6:00 p.m.

4 D. Notwithstanding any provision in the condominium documents, an  
5 association shall not prohibit but may reasonably regulate the circulation of  
6 political petitions, including candidate nomination petitions or petitions in  
7 support of or opposition to an initiative, referendum or recall or other  
8 political issue on property dedicated to the public within the association.  
9 A condominium is not required to comply with this subsection if the  
10 condominium restricts vehicular or pedestrian access to the condominium.  
11 Nothing in this subsection requires a condominium to make its common elements  
12 available for the circulation of political petitions to anyone who is not an  
13 owner or resident of the community.

14 E. ANY ASSOCIATION, DECLARANT OR PROPERTY MANAGEMENT COMPANY THAT  
15 VIOLATES THIS SECTION FORFEITS THE LIEN RIGHTS AUTHORIZED UNDER SECTION  
16 33-1256 FOR A PERIOD OF SIX CONSECUTIVE MONTHS AFTER THE DATE OF THE  
17 VIOLATION.

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

20 Sec. 3. Section 33-1803, Arizona Revised Statutes, is amended to read:  
21 33-1803. Penalties; notice to member of violation

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

35 B. After notice and an opportunity to be heard, the board of directors  
36 may impose reasonable monetary penalties on members for violations of the  
37 declaration, bylaws and rules of the association. Notwithstanding any  
38 provision in the community documents ~~AND AFTER THE PERIOD OF DECLARANT~~  
39 ~~CONTROL~~, the board of directors shall not impose a charge for a late payment  
40 of a penalty ~~that exceeds the greater of fifteen dollars or ten per cent of~~  
41 ~~the amount of the unpaid penalty~~ AND SHALL NOT IMPOSE OR COLLECT A PENALTY OF  
42 MORE THAN FIFTY DOLLARS FOR A VIOLATION, WHETHER THE VIOLATION IS A SINGLE  
43 VIOLATION OR AN ONGOING VIOLATION. ~~A payment is deemed late if it is unpaid~~  
44 ~~fifteen or more days after its due date, unless the declaration, bylaws or~~  
45 ~~rules of the association provide for a longer period. Any monies paid by a~~

1 ~~member for an unpaid penalty shall be applied first to the principal amount~~  
2 ~~unpaid and then to the interest accrued.~~ Notice pursuant to this subsection  
3 shall include information pertaining to the manner in which the penalty shall  
4 be enforced.

5 C. A member who receives a written notice that the condition of the  
6 property owned by the member is in violation of the community documents  
7 without regard to whether a monetary penalty is imposed by the notice may  
8 provide the association with a written response by sending the response by  
9 certified mail within ten business days after the date of the notice. The  
10 response shall be sent to the address contained in the notice or in the  
11 recorded notice prescribed by section 33-1807, subsection J.

12 D. Within ten business days after receipt of the certified mail  
13 containing the response from the member, the association shall respond to the  
14 member with a written explanation regarding the notice that shall provide at  
15 least the following information unless previously provided in the notice of  
16 violation:

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

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

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

22 4. The process the member must follow to contest the notice.

23 E. Unless the information required in subsection D, paragraph 4 of  
24 this section is provided in the notice of violation, the association shall  
25 not proceed with any action to enforce the community documents, ~~including the~~  
26 ~~collection of attorney fees,~~ before or during the time prescribed by  
27 subsection D of this section regarding the exchange of information between  
28 the association and the member. At any time before or after completion of  
29 the exchange of information pursuant to this section, the member may petition  
30 for a hearing pursuant to section 41-2198.01 if the dispute is within the  
31 jurisdiction of the department of fire, building and life safety as  
32 prescribed in section 41-2198.01, subsection B, **MAY REQUIRE THE ASSOCIATION**  
33 **TO PARTICIPATE IN AN ARBITRATION PROCESS OR MAY PROCEED AS OTHERWISE PROVIDED**  
34 **BY LAW.**

35 **F. AN ASSOCIATION MAY NOT COLLECT ATTORNEY FEES RELATING TO ANY**  
36 **VIOLATION OF THE COMMUNITY DOCUMENTS IN AN AMOUNT THAT IS HIGHER THAN TWO**  
37 **TIMES THE AMOUNT OF THE PENALTY IMPOSED FOR THE VIOLATION.**

38 Sec. 4. Section 33-1808, Arizona Revised Statutes, is amended to read:

39 **33-1808. Flag display; political signs; caution signs; for sale**  
40 **signs; political petitions**

41 A. Notwithstanding any provision in the community documents, an  
42 association shall not prohibit the outdoor display of any of the following:

43 1. The American flag or an official or replica of a flag of the United  
44 States army, navy, air force, marine corps or coast guard by an association  
45 member on that member's property if the American flag or military flag is

1 displayed in a manner consistent with the federal flag code (P.L. 94-344; 90  
2 Stat. 810; 4 United States Code sections 4 through 10).

3 2. The POW/MIA flag.

4 3. The Arizona state flag.

5 4. An Arizona Indian nations flag.

6 B. The association shall adopt reasonable rules and regulations  
7 regarding the placement and manner of display of the American flag, the  
8 military flag, the POW/MIA flag, the Arizona state flag or an Arizona Indian  
9 nations flag. The association rules may regulate the location and size of  
10 flagpoles but shall not prohibit the installation of a flagpole.

11 C. Notwithstanding any provision in the community documents, an  
12 association shall not prohibit the indoor or outdoor display of a political  
13 sign by an association member on that member's property, except that an  
14 association may prohibit the display of political signs earlier than  
15 forty-five days before the day of an election and later than seven days after  
16 an election day. An association may regulate the size and number of  
17 political signs that may be placed on a member's property if the  
18 association's regulation is no more restrictive than any applicable city,  
19 town or county ordinance that regulates the size and number of political  
20 signs on residential property. If the city, town or county in which the  
21 property is located does not regulate the size and number of political signs  
22 on residential property, the association shall permit at least one political  
23 sign with the maximum dimensions of twenty-four inches by twenty-four inches  
24 on a member's property. For the purposes of this subsection, "political  
25 sign" means a sign that attempts to influence the outcome of an election,  
26 including supporting or opposing the recall of a public officer or supporting  
27 or opposing the circulation of a petition for a ballot measure, question or  
28 proposition or the recall of a public officer.

29 D. Notwithstanding any provision in the community documents, an  
30 association shall not prohibit the use of cautionary signs regarding children  
31 if the signs are used and displayed as follows:

32 1. The signs are displayed in residential areas only.

33 2. The signs are removed within one hour of children ceasing to play.

34 3. The signs are displayed only when children are actually present  
35 within fifty feet of the sign.

36 4. The temporary signs are no taller than three feet in height.

37 5. The signs are professionally manufactured or produced.

38 E. Notwithstanding any provision in the community documents, an  
39 association shall not prohibit children who reside in the planned community  
40 from engaging in recreational activity on residential roadways that are under  
41 the jurisdiction of the association and on which the posted speed limit is  
42 twenty-five miles per hour or less.

43 F. Notwithstanding any provision in the community documents, an  
44 association shall not prohibit **OR CHARGE A FEE FOR THE USE OR PLACEMENT OF**  
45 the indoor or outdoor display of a for sale sign and a sign rider by an

1 association member on that member's property, including a sign that indicates  
2 the member is offering the property for sale by owner. The size of a sign  
3 offering a property for sale shall be in conformance with the industry  
4 standard size sign, which shall not exceed eighteen by twenty-four inches,  
5 and the industry standard size sign rider, which shall not exceed six by  
6 twenty-four inches. With respect to real estate for sale or lease in the  
7 planned community, an association shall not prohibit **IN ANY WAY OTHER THAN AS**  
8 **SPECIFICALLY AUTHORIZED BY THIS SECTION** or otherwise regulate any of the  
9 following:

10 1. Temporary open house signs or a ~~unit-owner's~~ **MEMBER'S** for sale  
11 sign. The association shall not require the use of particular signs  
12 indicating an open house or real property for sale and may not further  
13 regulate the use of temporary open house or for sale signs that are industry  
14 standard size and that are owned or used by the seller or the seller's agent.

15 2. Open house hours. The association may not limit the hours for an  
16 open house for real estate that is for sale in the planned community, except  
17 that the association may prohibit an open house being held before 8:00 a.m.  
18 or after 6:00 p.m. and may prohibit open house signs on the common areas of  
19 the planned community.

20 3. An owner's or an owner's agent's for lease sign unless an  
21 association's documents prohibit or restrict leasing of a member's property.  
22 An association shall not further regulate a for lease sign or require the use  
23 of a particular for lease sign other than the for lease sign shall not be any  
24 larger than the industry standard size sign of eighteen by twenty-four inches  
25 on or in the member's property. If leasing of a member's property is not  
26 prohibited or restricted, the association may prohibit open house leasing  
27 being held before 8:00 a.m. or after 6:00 p.m.

28 G. Notwithstanding any provision in the community documents, an  
29 association shall not prohibit but may reasonably regulate the circulation of  
30 political petitions, including candidate nomination petitions or petitions in  
31 support of or opposition to an initiative, referendum or recall or other  
32 political issue on property dedicated to the public within the association.  
33 A planned community is not required to comply with this subsection if the  
34 planned community restricts vehicular or pedestrian access to the planned  
35 community. Nothing in this subsection requires a planned community to make  
36 its common elements available for the circulation of political petitions to  
37 anyone who is not an owner or resident of the community.

38 **H. ANY ASSOCIATION, DECLARANT OR PROPERTY MANAGEMENT COMPANY THAT**  
39 **VIOLATES THIS SECTION FORFEITS THE LIEN RIGHTS AUTHORIZED UNDER SECTION**  
40 **33-1807 FOR A PERIOD OF SIX CONSECUTIVE MONTHS AFTER THE DATE OF VIOLATION.**