

REFERENCE TITLE: planned communities; condominiums; document fees

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SB 1149

Introduced by
Senator Biggs

AN ACT

AMENDING SECTIONS 33-1260 AND 33-1806, 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 33-1260, Arizona Revised Statutes, is amended to
3 read:

4 33-1260. Resale of units: information required: applicability:
5 definition

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

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

13 2. A copy of the declaration.

14 3. A dated statement containing:

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

19 (b) The amount of the common expense assessment for the unit and any
20 unpaid common expense assessment, special assessment or other assessment, fee
21 or charge currently due and payable from the selling unit owner.

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

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

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

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

38 (g) A statement of case names and case numbers for pending litigation
39 with respect to the unit filed by the association against the unit owner or
40 filed by the unit owner against the association. The unit owner or the
41 association shall not be required to disclose information concerning the
42 pending litigation that would violate any applicable rule of attorney-client
43 privilege under Arizona law.

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

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

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

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

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

C. The association may charge the unit owner a ~~reasonable~~ fee ~~OF NO MORE THAN~~ _____ to compensate the association for the costs incurred in the preparation of a statement furnished by the association pursuant to this section. The association shall make available to any interested party the amount of any fee established from time to time by the association.

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

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

F. For the purposes of this section, unless the context otherwise requires, "unit owner" means the seller of the condominium unit title and excludes any real estate salesperson or real estate broker who is licensed under title 32, chapter 20 and who is acting as a salesperson or broker and also excludes a trustee of a deed of trust who is selling the property in a trustee's sale pursuant to chapter 6.1 of this title.

Sec. 2. Section 33-1806, Arizona Revised Statutes, is amended to read:

33-1806. Resale of units; information required; definition

A. For planned communities with fewer than fifty units, a member shall mail or deliver to a purchaser within ten days after receipt of a written notice of a pending sale of the unit, and for planned communities with fifty or more units, the association shall mail or deliver to a purchaser within ten days after receipt of a written notice of a pending sale that contains the name and address of the purchaser, all of the following:

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

2. A copy of the declaration.

1 3. A dated statement containing:

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

6 (b) The amount of the common regular assessment and the unpaid common
7 regular assessment, special assessment or other assessment, fee or charge
8 currently due and payable from the selling member.

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

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

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

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

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

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

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

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

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

44 B. A purchaser or seller who is damaged by the failure of the member
45 or the association to disclose the information required by subsection A of

1 this section may pursue all remedies at law or in equity against the member
2 or the association, whichever failed to comply with subsection A of this
3 section, including the recovery of reasonable attorney fees.

4 C. The association may charge the member a ~~reasonable~~ fee OF NO MORE
5 THAN _____ to compensate the association for the costs incurred in the
6 preparation of a statement furnished by the association pursuant to this
7 section. The association shall make available to any interested party the
8 amount of any fee established from time to time by the association.

9 D. A sale in which a public report is issued pursuant to sections
10 32-2183 and 32-2197.02 or a sale pursuant to section 32-2181.02 is exempt
11 from this section.

12 E. For THE purposes of this section, unless the context otherwise
13 requires, "member" means the seller of the unit title and excludes any real
14 estate salesperson or real estate broker who is licensed under title 32,
15 chapter 20 and who is acting as a salesperson or broker and also excludes a
16 trustee of a deed of trust who is selling the property in a trustee's sale
17 pursuant to chapter 6.1 of this title.