

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

HOUSE BILL 2170

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 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; 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.

1 7. A statement summarizing any pending lawsuits, except those relating
2 to the collection of assessments owed by members other than the selling
3 member, in which the association is a named party, including the amount of
4 any money claimed.

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

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

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

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

41 F. A sale in which a public report is issued pursuant to sections
42 32-2183 and 32-2197.02 or a sale pursuant to section 32-2181.02 is exempt
43 from this section.

1 G. For the purposes of this section, unless the context otherwise
2 requires, "member" means the seller of the unit title and excludes any real
3 estate salesperson or real estate broker who is licensed under title 32,
4 chapter 20 and who is acting as a salesperson or broker, ANY ESCROW AGENT WHO
5 IS LICENSED UNDER TITLE 6, CHAPTER 7 AND WHO IS ACTING AS AN ESCROW AGENT and
6 also excludes a trustee of a deed of trust who is selling the property in a
7 trustee's sale pursuant to chapter 6.1 of this title.

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

10 33-1817. Declaration amendment; design, architectural
11 committees; review

12 NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS:

13 1. MEMBERSHIP ON A DESIGN REVIEW COMMITTEE, AN ARCHITECTURAL COMMITTEE
14 OR A COMMITTEE THAT PERFORMS SIMILAR FUNCTIONS, HOWEVER DENOMINATED, FOR THE
15 PLANNED COMMUNITY SHALL INCLUDE AT LEAST ONE MEMBER OF THE BOARD OF DIRECTORS
16 WHO SHALL SERVE AS CHAIR OF THE COMMITTEE.

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

26 (a) THE COST OF THE FIDUCIARY TRUST ACCOUNT SHALL BE SHARED EQUALLY
27 BETWEEN THE ASSOCIATION AND THE MEMBER.

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

30 3. ANY INTEREST EARNED ON THE REFUNDABLE SECURITY DEPOSIT SHALL BECOME
31 PART OF THE SECURITY DEPOSIT.

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

41 5. THE ASSOCIATION MUST PROVIDE FOR AT LEAST TWO ON-SITE FORMAL
42 REVIEWS DURING CONSTRUCTION FOR THE PURPOSE OF DETERMINING COMPLIANCE WITH
43 THE APPROVED PLANS. THE MEMBER OR MEMBER'S AGENT SHALL BE PROVIDED THE
44 OPPORTUNITY TO ATTEND BOTH FORMAL REVIEWS. WITHIN FIVE BUSINESS DAYS AFTER
45 THE FORMAL REVIEWS, THE ASSOCIATION SHALL CAUSE A WRITTEN REPORT TO BE

1 PROVIDED TO THE MEMBER OR MEMBER'S AGENT SPECIFYING ANY DEFICIENCIES,
2 VIOLATIONS OR UNAPPROVED VARIATIONS FROM THE APPROVED PLANS AS AMENDED AND
3 THAT HAVE COME TO THE ATTENTION OF THE ASSOCIATION.

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

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