

REFERENCE TITLE: homeowners' associations; community ombudsman

State of Arizona
Senate
Fiftieth Legislature
Second Regular Session
2012

SB 1222

Introduced by
Senators Klein, Murphy, Schapira, Smith: Aboud, Allen, Antenori, Barto,
Biggs, Cajero Bedford, Driggs, Gallardo, Gray, Griffin, Lewis, Lujan,
McComish, Melvin, Meza, Pierce S, Reagan, Shooter, Yarbrough;
Representatives Dial, Gowan, Kavanagh

AN ACT

AMENDING SECTIONS 33-1242 AND 33-1803, 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; notice to unit
5 owner of violation; ombudsman

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.

34 12. Impose reasonable charges for the preparation and recordation of
35 amendments to the declaration or statements of unpaid assessments.

36 13. Provide for the indemnification of its officers and executive board
37 of directors and maintain directors' and officers' liability insurance.

38 14. Assign its right to future income, including the right to receive
39 common expense assessments, but only to the extent the declaration expressly
40 provides.

41 15. Be a member of a master association or other entity owning,
42 maintaining or governing in any respect any portion of the common elements or
43 other property benefitting or related to the condominium or the unit owners
44 in any respect.

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

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

3 18. Exercise any other powers necessary and proper for the governance
4 and operation of the association.

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

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

17 1. The provision of the condominium 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 unit owner must follow to contest the notice.

23 D. Unless the information required in subsection C, 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 condominium documents, including
26 the collection of attorney fees, before or during the time prescribed by
27 subsection C of this section regarding the exchange of information between
28 the association and the unit owner. At any time before or after completion
29 of the exchange of information pursuant to this section, the unit owner may
30 petition for a hearing pursuant to section 41-2198.01 if the dispute is
31 within the jurisdiction of the department of fire, building and life safety
32 as prescribed in section 41-2198.01, subsection B.

33 E. NOTWITHSTANDING ANY PROVISION IN THE CONDOMINIUM DOCUMENTS, THE
34 ASSOCIATION SHALL HAVE AN OMBUDSMAN WITH THE POWERS AND DUTIES PRESCRIBED IN
35 THIS SECTION AND WHO SHALL BE ELECTED IN THE SAME MANNER AND AT THE SAME TIME
36 AS OTHER MEMBERS OF THE BOARD OF DIRECTORS. THE OMBUDSMAN SHALL HAVE THE
37 SAME ACCESS TO MEETINGS, DELIBERATIONS, ADMINISTRATIVE SUPPORT AND
38 INFORMATION THAT THE VOTING MEMBERS OF THE BOARD OF DIRECTORS HAVE, BUT THE
39 OMBUDSMAN IS NOT A MEMBER OF THE BOARD OF DIRECTORS AND HAS NO AUTHORITY TO
40 MANAGE OR DIRECT THE AFFAIRS OF THE ASSOCIATION AND SHALL HAVE ONLY THE
41 AUTHORITY PRESCRIBED IN THIS SECTION. THE OMBUDSMAN SHALL:

42 1. SERVE AS AN IMPARTIAL DECISION MAKER IN RESOLVING DISPUTES BETWEEN
43 THE BOARD OF DIRECTORS AND ONE OR MORE UNIT OWNERS OF THE CONDOMINIUM. ANY
44 DISPUTE THAT WOULD REQUIRE ACTION OF THE BOARD SHALL BE REFERRED BY THE BOARD
45 TO THE OMBUDSMAN FOR RESOLUTION.

1 2. HAVE AUTHORITY TO RESOLVE ANY DISPUTE REFERRED BY THE BOARD, AFTER
2 MEDIATION, ARBITRATION OR HEARING CONDUCTED BY THE OMBUDSMAN. THE OMBUDSMAN
3 MAY REQUEST THE PARTICIPATION OF RELEVANT PARTIES IN THE DISPUTE AND ORDER
4 ANY APPROPRIATE RELIEF, INCLUDING ISSUING AN ORDER FOR THE PAYMENT OF MONIES
5 OR TO COMPEL OR CEASE ACTION BY ANY PARTY TO THE DISPUTE. DECISIONS OF THE
6 OMBUDSMAN ARE FINAL WITHIN THE CONDOMINIUM AND ARE NOT APPEALABLE TO THE
7 BOARD OF DIRECTORS, BUT THE DISPUTE MAY BE TRIED AS A CIVIL ACTION IN A COURT
8 OF COMPETENT JURISDICTION AND HEARD AS A TRIAL DE NOVO.

9 3. ISSUE A DETERMINATION OF ANY DISPUTE WITHIN FIFTEEN DAYS AFTER
10 COMPLETION OF ANY HEARINGS OR OTHER MEETINGS ON THE DISPUTE. DURING THE
11 COURSE OF THE DISPUTE, THE OMBUDSMAN SHALL NOT MEET WITH ANY OF THE PARTIES
12 TO THE DISPUTE OTHER THAN IN THE COURSE OF DISPUTE RESOLUTION.

13 4. BE ELECTED TO A TWO-YEAR TERM, AND SHALL SERVE NO MORE THAN TWO
14 CONSECUTIVE TWO-YEAR TERMS.

15 5. BE A UNIT OWNER OF THE CONDOMINIUM WHO RESIDES IN THE CONDOMINIUM
16 AND WHO HAS NOT SERVED ON THE BOARD OF DIRECTORS FOR AT LEAST TWO YEARS
17 BEFORE TAKING OFFICE. A UNIT OWNER IS NOT ELIGIBLE TO SERVE AS THE OMBUDSMAN
18 IF AN IMMEDIATE FAMILY MEMBER IS ALSO SERVING AS A MEMBER OF THE BOARD OF
19 DIRECTORS OF THE ASSOCIATION. SERVICE AS OMBUDSMAN IS UNPAID TO THE SAME
20 EXTENT AS OTHER MEMBERS OF THE BOARD OF DIRECTORS, BUT THE ASSOCIATION SHALL
21 PROVIDE APPROPRIATE ADMINISTRATIVE, CLERICAL OR OTHER SUPPORT AS PROVIDED TO
22 THE MEMBERS OF THE BOARD OF DIRECTORS.

23 6. BE SUBJECT TO RECALL BY A PETITION SIGNED BY TWENTY PER CENT OF THE
24 UNIT OWNERS OF THE ASSOCIATION, AND IF RECALLED BY A SUFFICIENT NUMBER OF
25 PETITIONERS, SHALL BE SUBJECT TO A VOTE OF THE UNIT OWNERS AT WHICH ANY OTHER
26 UNIT OWNER MAY RUN IN OPPOSITION.

27 7. ON ELECTION, BE PROVIDED BY THE BOARD OF DIRECTORS WITH APPROPRIATE
28 TRAINING IN NEGOTIATION, ARBITRATION, MEDIATION OR OTHER DISPUTE RESOLUTION
29 TECHNIQUES AT NO COST TO THE OMBUDSMAN.

30 Sec. 2. Section 33-1803, Arizona Revised Statutes, is amended to read:

31 33-1803. Assessment limit; penalties; notice to member of
32 violation; ombudsman

33 A. Unless limitations in the community documents would result in a
34 lower limit for the assessment, the association shall not impose a regular
35 assessment that is more than twenty per cent greater than the immediately
36 preceding fiscal year's assessment without the approval of the majority of
37 the members of the association. Unless reserved to the members of the
38 association, the board of directors may impose reasonable charges for the
39 late payment of assessments. A payment by a member is deemed late if it is
40 unpaid fifteen or more days after its due date, unless the community
41 documents provide for a longer period. Charges for the late payment of
42 assessments are limited to the greater of fifteen dollars or ten per cent of
43 the amount of the unpaid assessment. Any monies paid by the member for an
44 unpaid assessment shall be applied first to the principal amount unpaid and
45 then to the interest accrued.

1 B. After notice and an opportunity to be heard, the board of directors
2 may impose reasonable monetary penalties on members for violations of the
3 declaration, bylaws and rules of the association. Notwithstanding any
4 provision in the community documents, the board of directors shall not impose
5 a charge for a late payment of a penalty that exceeds the greater of fifteen
6 dollars or ten per cent of the amount of the unpaid penalty. A payment is
7 deemed late if it is unpaid fifteen or more days after its due date, unless
8 the declaration, bylaws or rules of the association provide for a longer
9 period. Any monies paid by a member for an unpaid penalty shall be applied
10 first to the principal amount unpaid and then to the interest accrued.
11 Notice pursuant to this subsection shall include information pertaining to
12 the manner in which the penalty shall be enforced.

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

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

25 1. The provision of the community 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 member must follow to contest the notice.

31 E. Unless the information required in subsection D, 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 community documents, including the
34 collection of attorney fees, before or during the time prescribed by
35 subsection D of this section regarding the exchange of information between
36 the association and the member. At any time before or after completion of
37 the exchange of information pursuant to this section, the member may petition
38 for a hearing pursuant to section 41-2198.01 if the dispute is within the
39 jurisdiction of the department of fire, building and life safety as
40 prescribed in section 41-2198.01, subsection B.

41 F. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS, THE
42 ASSOCIATION SHALL HAVE AN OMBUDSMAN WITH THE POWERS AND DUTIES PRESCRIBED IN
43 THIS SECTION AND WHO SHALL BE ELECTED IN THE SAME MANNER AND AT THE SAME TIME
44 AS OTHER MEMBERS OF THE BOARD OF DIRECTORS. THE OMBUDSMAN SHALL HAVE THE
45 SAME ACCESS TO MEETINGS, DELIBERATIONS, ADMINISTRATIVE SUPPORT AND

1 INFORMATION THAT THE VOTING MEMBERS OF THE BOARD OF DIRECTORS HAVE, BUT THE
2 OMBUDSMAN IS NOT A MEMBER OF THE BOARD OF DIRECTORS AND HAS NO AUTHORITY TO
3 MANAGE OR DIRECT THE AFFAIRS OF THE ASSOCIATION AND SHALL HAVE ONLY THE
4 AUTHORITY PRESCRIBED IN THIS SECTION. THE OMBUDSMAN SHALL:

5 1. SERVE AS AN IMPARTIAL DECISION MAKER IN RESOLVING DISPUTES BETWEEN
6 THE BOARD OF DIRECTORS AND ONE OR MORE MEMBERS OF THE PLANNED COMMUNITY. ANY
7 DISPUTE THAT WOULD REQUIRE ACTION OF THE BOARD SHALL BE REFERRED BY THE BOARD
8 TO THE OMBUDSMAN FOR RESOLUTION.

9 2. HAVE AUTHORITY TO RESOLVE ANY DISPUTE REFERRED BY THE BOARD, AFTER
10 MEDIATION, ARBITRATION OR HEARING CONDUCTED BY THE OMBUDSMAN. THE OMBUDSMAN
11 MAY REQUEST THE PARTICIPATION OF RELEVANT PARTIES IN THE DISPUTE AND ORDER
12 ANY APPROPRIATE RELIEF, INCLUDING ISSUING AN ORDER FOR THE PAYMENT OF MONIES
13 OR TO COMPEL OR CEASE ACTION BY ANY PARTY TO THE DISPUTE. DECISIONS OF THE
14 OMBUDSMAN ARE FINAL WITHIN THE PLANNED COMMUNITY AND ARE NOT APPEALABLE TO
15 THE BOARD OF DIRECTORS, BUT THE DISPUTE MAY BE TRIED AS A CIVIL ACTION IN A
16 COURT OF COMPETENT JURISDICTION AND HEARD AS A TRIAL DE NOVO.

17 3. ISSUE A DETERMINATION OF ANY DISPUTE WITHIN FIFTEEN DAYS AFTER
18 COMPLETION OF ANY HEARINGS OR OTHER MEETINGS ON THE DISPUTE. DURING THE
19 COURSE OF THE DISPUTE, THE OMBUDSMAN SHALL NOT MEET WITH ANY OF THE PARTIES
20 TO THE DISPUTE OTHER THAN IN THE COURSE OF DISPUTE RESOLUTION.

21 4. BE ELECTED TO A TWO-YEAR TERM, AND SHALL SERVE NO MORE THAN TWO
22 CONSECUTIVE TWO-YEAR TERMS.

23 5. BE A MEMBER OF THE PLANNED COMMUNITY WHO RESIDES IN THE PLANNED
24 COMMUNITY AND WHO HAS NOT SERVED ON THE BOARD OF DIRECTORS FOR AT LEAST TWO
25 YEARS BEFORE TAKING OFFICE. A MEMBER IS NOT ELIGIBLE TO SERVE AS THE
26 OMBUDSMAN IF AN IMMEDIATE FAMILY MEMBER IS ALSO SERVING AS A MEMBER OF THE
27 BOARD OF DIRECTORS OF THE ASSOCIATION. SERVICE AS OMBUDSMAN IS UNPAID TO THE
28 SAME EXTENT AS OTHER MEMBERS OF THE BOARD OF DIRECTORS, BUT THE ASSOCIATION
29 SHALL PROVIDE APPROPRIATE ADMINISTRATIVE, CLERICAL OR OTHER SUPPORT AS
30 PROVIDED TO THE MEMBERS OF THE BOARD OF DIRECTORS.

31 6. BE SUBJECT TO RECALL BY A PETITION SIGNED BY TWENTY PER CENT OF THE
32 MEMBERS OF THE ASSOCIATION, AND IF RECALLED BY A SUFFICIENT NUMBER OF
33 PETITIONERS, SHALL BE SUBJECT TO A VOTE OF THE MEMBERSHIP AT WHICH ANY OTHER
34 MEMBER MAY RUN IN OPPOSITION.

35 7. ON ELECTION, BE PROVIDED BY THE BOARD OF DIRECTORS WITH APPROPRIATE
36 TRAINING IN NEGOTIATION, ARBITRATION, MEDIATION OR OTHER DISPUTE RESOLUTION
37 TECHNIQUES AT NO COST TO THE OMBUDSMAN.

38 Sec. 3. Applicability; special election

39 For any condominium or planned community in which the regularly
40 scheduled election for board of directors occurs in 2012 before October 2012,
41 the condominium or planned community shall hold a special election within
42 sixty days after the effective date of this act to elect an ombudsman.