

State of Arizona
Senate
Fiftieth Legislature
Second Regular Session
2012

SENATE BILL 1222

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 AND
34 AFTER THE PERIOD OF DECLARANT CONTROL, A CONDOMINIUM ASSOCIATION WITH ONE
35 HUNDRED OR MORE UNITS SHALL NOTIFY ALL UNIT OWNERS THAT THE POSITION OF
36 COMMUNITY OMBUDSMAN EXISTS AND THAT A SPECIAL ELECTION SHALL BE HELD TO ELECT
37 A COMMUNITY OMBUDSMAN. THE ASSOCIATION SHALL NOTIFY THE UNIT OWNERS OF THE
38 ELECTION BY SEPTEMBER 1, 2012, THE ELECTION SHALL BE HELD ON OR BEFORE
39 OCTOBER 1, 2012, AND THE CANDIDATE WHO RECEIVES THE MAJORITY OF THE VOTES
40 CAST FOR THE OFFICE IS ELECTED. THE COMMUNITY OMBUDSMAN'S INITIAL TERM OF
41 OFFICE SHALL CONTINUE UNTIL THE NEXT REGULARLY SCHEDULED BOARD ELECTION.
42 THEREAFTER, THE OMBUDSMAN'S TERM OF OFFICE IS TWO YEARS, AND THE OMBUDSMAN'S
43 CONSECUTIVE SERVICE IS LIMITED TO NO MORE THAN TWO CONSECUTIVE TWO-YEAR
44 TERMS. THE OMBUDSMAN SHALL HAVE THE SAME ACCESS TO MEETINGS, DELIBERATIONS,
45 ADMINISTRATIVE SUPPORT AND INFORMATION THAT THE VOTING MEMBERS OF THE BOARD

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

5 1. SERVE AS AN IMPARTIAL HEARING OFFICER FOR DISPUTES INVOLVING FINES
6 AND RELATED COSTS AND FEES BETWEEN THE BOARD OF DIRECTORS AND ONE OR MORE
7 UNIT OWNERS OF THE CONDOMINIUM. A DISPUTE THAT IS SUBJECT TO THIS SUBSECTION
8 THAT WOULD REQUIRE ACTION OF THE BOARD SHALL BE REFERRED BY THE BOARD TO THE
9 OMBUDSMAN FOR A HEARING OR MEETING.

10 2. HAVE AUTHORITY TO CONDUCT A HEARING OR MEETING FOR ANY DISPUTE
11 REFERRED BY THE BOARD INVOLVING FINES AND RELATED COSTS AND FEES. WITHIN
12 THIRTY DAYS AFTER RECEIVING THE DISPUTE FROM THE BOARD, PROPERTY OWNER OR
13 DULY DESIGNATED REPRESENTATIVE, THE OMBUDSMAN SHALL DELIVER A DECISION TO THE
14 BOARD AND THE UNIT OWNER. DECISIONS OF THE OMBUDSMAN ARE FINAL, BUT THE
15 DISPUTE MAY BE TRIED AS A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION
16 AND HEARD AS A TRIAL DE NOVO.

17 3. REFRAIN FROM COMMUNICATING WITH ANY OF THE PARTIES TO THE DISPUTE
18 REGARDING THE DISPUTE OTHER THAN IN THE COURSE OF DISPUTE RESOLUTION.

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

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

29 6. AT ALL TIMES WHILE SERVING AS OMBUDSMAN, BE A UNIT OWNER IN GOOD
30 STANDING.

31 7. BE SUBJECT TO RECALL BY A PETITION SIGNED BY TEN PER CENT OF THE
32 UNIT OWNERS OF THE ASSOCIATION, AND IF RECALLED BY A SUFFICIENT NUMBER OF
33 PETITIONERS, SHALL BE SUBJECT TO A VOTE OF THE UNIT OWNERS AT WHICH ANY OTHER
34 UNIT OWNER MAY RUN IN OPPOSITION.

35 8. ON ELECTION, BE PROVIDED BY THE BOARD OF DIRECTORS WITH THE SAME
36 TRAINING RECEIVED BY BOARD MEMBERS AND APPROPRIATE TRAINING IN CONDOMINIUM
37 ASSOCIATION LAW, NEGOTIATION AND DISPUTE RESOLUTION TECHNIQUES AT NO COST TO
38 THE OMBUDSMAN. THE OMBUDSMAN SHALL SUCCESSFULLY COMPLETE THE TRAINING BEFORE
39 CONDUCTING A HEARING OR MEETING. UNTIL THE OMBUDSMAN SUCCESSFULLY COMPLETES
40 THE TRAINING, THE ASSOCIATION SHALL CONTINUE TO ADMINISTER DISPUTES IN THE
41 SAME MANNER AUTHORIZED BY THE CONDOMINIUM DOCUMENTS.

42 9. BE PROVIDED WITH THE SAME INDEMNIFICATION, BONDING AND OTHER
43 PROTECTIONS AFFORDED TO MEMBERS OF THE BOARD OF DIRECTORS, ASSOCIATION
44 EXECUTIVES AND ASSOCIATION MANAGERS.

1 F. THE OMBUDSMAN SHALL NOT INITIATE ANY MEASURE OR PARTICIPATE IN ANY
2 ACTION EXCEPT IN RESPONSE TO A DISPUTE RESOLUTION REQUEST BY THE ASSOCIATION
3 OR THE UNIT OWNER.

4 Sec. 2. Section 33-1803, Arizona Revised Statutes, is amended to read:
5 33-1803. Assessment limit; penalties; notice to member of
6 violation; ombudsman

7 A. Unless limitations in the community documents would result in a
8 lower limit for the assessment, the association shall not impose a regular
9 assessment that is more than twenty per cent greater than the immediately
10 preceding fiscal year's assessment without the approval of the majority of
11 the members of the association. Unless reserved to the members of the
12 association, the board of directors may impose reasonable charges for the
13 late payment of assessments. A payment by a member is deemed late if it is
14 unpaid fifteen or more days after its due date, unless the community
15 documents provide for a longer period. Charges for the late payment of
16 assessments are limited to the greater of fifteen dollars or ten per cent of
17 the amount of the unpaid assessment. Any monies paid by the member for an
18 unpaid assessment shall be applied first to the principal amount unpaid and
19 then to the interest accrued.

20 B. After notice and an opportunity to be heard, the board of directors
21 may impose reasonable monetary penalties on members for violations of the
22 declaration, bylaws and rules of the association. Notwithstanding any
23 provision in the community documents, the board of directors shall not impose
24 a charge for a late payment of a penalty that exceeds the greater of fifteen
25 dollars or ten per cent of the amount of the unpaid penalty. A payment is
26 deemed late if it is unpaid fifteen or more days after its due date, unless
27 the declaration, bylaws or rules of the association provide for a longer
28 period. Any monies paid by a member for an unpaid penalty shall be applied
29 first to the principal amount unpaid and then to the interest accrued.
30 Notice pursuant to this subsection shall include information pertaining to
31 the manner in which the penalty shall be enforced.

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

39 D. Within ten business days after receipt of the certified mail
40 containing the response from the member, the association shall respond to the
41 member with a written explanation regarding the notice that shall provide at
42 least the following information unless previously provided in the notice of
43 violation:

44 1. The provision of the community documents that has allegedly been
45 violated.

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

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

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

5 E. Unless the information required in subsection D, paragraph 4 of
6 this section is provided in the notice of violation, the association shall
7 not proceed with any action to enforce the community documents, including the
8 collection of attorney fees, before or during the time prescribed by
9 subsection D of this section regarding the exchange of information between
10 the association and the member. At any time before or after completion of
11 the exchange of information pursuant to this section, the member may petition
12 for a hearing pursuant to section 41-2198.01 if the dispute is within the
13 jurisdiction of the department of fire, building and life safety as
14 prescribed in section 41-2198.01, subsection B.

15 F. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS AND AFTER
16 THE PERIOD OF DECLARANT CONTROL, A PLANNED COMMUNITY ASSOCIATION WITH ONE
17 HUNDRED OR MORE MEMBERS SHALL NOTIFY ALL MEMBERS THAT THE POSITION OF
18 COMMUNITY OMBUDSMAN EXISTS AND THAT A SPECIAL ELECTION SHALL BE HELD TO ELECT
19 A COMMUNITY OMBUDSMAN. THE ASSOCIATION SHALL NOTIFY THE MEMBERS OF THE
20 ELECTION BY SEPTEMBER 1, 2012, THE ELECTION SHALL BE HELD ON OR BEFORE
21 OCTOBER 1, 2012, AND THE CANDIDATE WHO RECEIVES THE MAJORITY OF THE VOTES
22 CAST FOR THE OFFICE IS ELECTED. THE COMMUNITY OMBUDSMAN'S INITIAL TERM OF
23 OFFICE SHALL CONTINUE UNTIL THE NEXT REGULARLY SCHEDULED BOARD ELECTION.
24 THEREAFTER, THE OMBUDSMAN'S TERM OF OFFICE IS TWO YEARS, AND THE OMBUDSMAN'S
25 CONSECUTIVE SERVICE IS LIMITED TO NO MORE THAN TWO CONSECUTIVE TWO-YEAR
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27 ADMINISTRATIVE SUPPORT AND INFORMATION THAT THE VOTING MEMBERS OF THE BOARD
28 OF DIRECTORS HAVE, BUT THE OMBUDSMAN IS NOT A MEMBER OF THE BOARD OF
29 DIRECTORS AND HAS NO AUTHORITY TO MANAGE OR DIRECT THE AFFAIRS OF THE
30 ASSOCIATION AND SHALL HAVE ONLY THE AUTHORITY PRESCRIBED IN THIS SECTION.
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32 1. SERVE AS AN IMPARTIAL HEARING OFFICER FOR DISPUTES INVOLVING FINES
33 AND RELATED COSTS AND FEES BETWEEN THE BOARD OF DIRECTORS AND ONE OR MORE
34 MEMBERS OF THE PLANNED COMMUNITY. A DISPUTE THAT IS SUBJECT TO THIS
35 SUBSECTION THAT WOULD REQUIRE ACTION OF THE BOARD SHALL BE REFERRED BY THE
36 BOARD TO THE OMBUDSMAN FOR A HEARING OR MEETING.

37 2. HAVE AUTHORITY TO CONDUCT A HEARING OR MEETING FOR ANY DISPUTE
38 REFERRED BY THE BOARD INVOLVING FINES AND RELATED COSTS AND FEES. WITHIN
39 THIRTY DAYS AFTER RECEIVING THE DISPUTE FROM THE BOARD, PROPERTY OWNER OR
40 DULY DESIGNATED REPRESENTATIVE, THE OMBUDSMAN SHALL DELIVER A DECISION TO THE
41 BOARD AND THE MEMBER. DECISIONS OF THE OMBUDSMAN ARE FINAL, BUT THE DISPUTE
42 MAY BE TRIED AS A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION AND HEARD
43 AS A TRIAL DE NOVO.

44 3. REFRAIN FROM COMMUNICATING WITH ANY OF THE PARTIES TO THE DISPUTE
45 REGARDING THE DISPUTE OTHER THAN IN THE COURSE OF DISPUTE RESOLUTION.

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

3 5. BE A MEMBER OF THE PLANNED COMMUNITY WHO RESIDES IN THE PLANNED
4 COMMUNITY AND WHO HAS NOT SERVED ON THE BOARD OF DIRECTORS FOR AT LEAST TWO
5 YEARS BEFORE TAKING OFFICE. A MEMBER IS NOT ELIGIBLE TO SERVE AS THE
6 OMBUDSMAN IF AN IMMEDIATE FAMILY MEMBER IS ALSO SERVING AS A MEMBER OF THE
7 BOARD OF DIRECTORS OF THE ASSOCIATION. SERVICE AS OMBUDSMAN IS UNPAID, BUT
8 THE ASSOCIATION SHALL PROVIDE APPROPRIATE ADMINISTRATIVE, CLERICAL OR OTHER
9 SUPPORT AS PROVIDED TO THE MEMBERS OF THE BOARD OF DIRECTORS FOR THE PURPOSES
10 OF DISPUTE RESOLUTION.

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12 STANDING.

13 7. BE SUBJECT TO RECALL BY A PETITION SIGNED BY TEN PER CENT OF THE
14 MEMBERS OF THE ASSOCIATION, AND IF RECALLED BY A SUFFICIENT NUMBER OF
15 PETITIONERS, SHALL BE SUBJECT TO A VOTE OF THE MEMBERSHIP AT WHICH ANY OTHER
16 MEMBER MAY RUN IN OPPOSITION.

17 8. ON ELECTION, BE PROVIDED BY THE BOARD OF DIRECTORS WITH THE SAME
18 TRAINING RECEIVED BY BOARD MEMBERS AND APPROPRIATE TRAINING IN PLANNED
19 COMMUNITY ASSOCIATION LAW, NEGOTIATION AND DISPUTE RESOLUTION TECHNIQUES AT
20 NO COST TO THE OMBUDSMAN. THE OMBUDSMAN SHALL SUCCESSFULLY COMPLETE THE
21 TRAINING BEFORE CONDUCTING A HEARING OR MEETING. UNTIL THE OMBUDSMAN
22 SUCCESSFULLY COMPLETES THE TRAINING, THE ASSOCIATION SHALL CONTINUE TO
23 ADMINISTER DISPUTES IN THE SAME MANNER AUTHORIZED BY THE PLANNED COMMUNITY
24 DOCUMENTS.

25 9. BE PROVIDED WITH THE SAME INDEMNIFICATION, BONDING AND OTHER
26 PROTECTIONS AFFORDED TO MEMBERS OF THE BOARD OF DIRECTORS, ASSOCIATION
27 EXECUTIVES AND ASSOCIATION MANAGERS.

28 G. THE OMBUDSMAN SHALL NOT INITIATE ANY MEASURE OR PARTICIPATE IN ANY
29 ACTION EXCEPT IN RESPONSE TO A DISPUTE RESOLUTION REQUEST BY THE ASSOCIATION
30 OR THE MEMBER.

31 Sec. 3. Applicability: special election

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