

REFERENCE TITLE: homeowners' associations; resale disclosure fees

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

HB 2092

Introduced by
Representative Brophy McGee

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; 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. BEGINNING WITH THE FEE IN EFFECT ON JANUARY 1, 2013,
3 THE ASSOCIATION SHALL NOT INCREASE THE FEE MORE THAN THREE PER CENT EACH
4 YEAR. The association may charge the same fee without regard to whether the
5 association is furnishing the statement or other documents in paper or
6 electronic format.

7 D. The fees prescribed by this section shall be collected no earlier
8 than at the close of escrow and may only be charged once to a unit owner for
9 that transaction between the parties specified in the notice required
10 pursuant to subsection A of this section. An association shall not charge or
11 collect a fee relating to services for resale disclosure, lien estoppel and
12 any other services related to the transfer or use of a property except as
13 specifically authorized in this section. An association that charges or
14 collects a fee in violation of this section is subject to a civil penalty of
15 no more than one thousand two hundred dollars.

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

18 F. A sale in which a public report is issued pursuant to sections
19 32-2183 and 32-2197.02 or a sale pursuant to section 32-2181.02 is exempt
20 from this section.

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

23 H. For the purposes of this section, unless the context otherwise
24 requires, "unit owner" means the seller of the condominium unit title and
25 excludes any real estate salesperson or real estate broker who is licensed
26 under title 32, chapter 20 and who is acting as a salesperson or broker, any
27 escrow agent who is licensed under title 6, chapter 7 and who is acting as an
28 escrow agent and ~~also excludes~~ a trustee of a deed of trust who is selling
29 the property in a trustee's sale pursuant to chapter 6.1 of this title.

30 Sec. 2. Section 33-1806, Arizona Revised Statutes, is amended to read:
31 33-1806. Resale of units; information required; fees; civil
32 penalty; definition

33 A. For planned communities with fewer than fifty units, a member shall
34 mail or deliver to a purchaser or a purchaser's authorized agent within ten
35 days after receipt of a written notice of a pending sale of the unit, and for
36 planned communities with fifty or more units, the association shall mail or
37 deliver to a purchaser or a purchaser's authorized agent within ten days
38 after receipt of a written notice of a pending sale that contains the name
39 and address of the purchaser, all of the following in either paper or
40 electronic format:

- 41 1. A copy of the bylaws and the rules of the association.
- 42 2. A copy of the declaration.
- 43 3. A dated statement containing:

44 (a) The telephone number and address of a principal contact for the
45 association, which may be an association manager, an association management

1 company, an officer of the association or any other person designated by the
2 board of directors.

3 (b) The amount of the common regular assessment and the unpaid common
4 regular assessment, special assessment or other assessment, fee or charge
5 currently due and payable from the selling member. If the request is made by
6 a lienholder, escrow agent, member or person designated by a member pursuant
7 to section 33-1807, failure to provide the information pursuant to this
8 subdivision within the time provided for in this subsection shall extinguish
9 any lien for any unpaid assessment then due against that property.

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

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

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

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

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

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

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

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

44 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. BEGINNING WITH THE FEE IN EFFECT ON JANUARY 1, 2013,
28 THE ASSOCIATION SHALL NOT INCREASE THE FEE MORE THAN THREE PER CENT EACH
29 YEAR. The association may charge the same fee without regard to whether the
30 association is furnishing the statement or other documents in paper or
31 electronic format.

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

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

43 F. A sale in which a public report is issued pursuant to sections
44 32-2183 and 32-2197.02 or a sale pursuant to section 32-2181.02 is exempt
45 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.