

REFERENCE TITLE: homeowners' associations; limitations; termination;
penalties

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

HB 2643

Introduced by
Representative Montenegro

AN ACT

AMENDING TITLE 9, CHAPTER 4, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 9-461.15; AMENDING TITLE 33, CHAPTER 16, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-1801.01; AMENDING SECTIONS 33-1803 AND 43-1022, ARIZONA REVISED STATUTES; RELATING TO PLANNED COMMUNITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 9, chapter 4, article 6, Arizona Revised Statutes, is
3 amended by adding section 9-461.15, to read:

4 9-461.15. Planned community residences; limitation;
5 enforcement; definition

6 A. BEGINNING IN 2014, FOR NEW HOUSING CONSTRUCTED IN THE MUNICIPALITY,
7 THE PLANNING AGENCY OF A MUNICIPALITY IN EXERCISING ITS AUTHORITY PURSUANT TO
8 THIS TITLE SHALL ENSURE THAT NOT MORE THAN ONE-HALF OF THE NUMBER OF NEW
9 RESIDENTIAL PROPERTIES IN THE MUNICIPALITY ARE LOCATED WITHIN A PLANNED
10 COMMUNITY.

11 B. A MUNICIPALITY THROUGH ITS PLANNING OR ZONING AUTHORITY SHALL
12 RECEIVE AND INVESTIGATE COMPLAINTS REGARDING THE OPERATION OF A HOMEOWNERS'
13 ASSOCIATION FOR A PLANNED COMMUNITY AND MAY REFER THOSE INVESTIGATIONS TO THE
14 OFFICE OF THE CITY ATTORNEY FOR CIVIL OR CRIMINAL ENFORCEMENT.

15 C. FOR THE PURPOSES OF THIS SECTION, "PLANNED COMMUNITY" HAS THE SAME
16 MEANING PRESCRIBED IN SECTION 33-1802.

17 Sec. 2. Title 33, chapter 16, article 1, Arizona Revised Statutes, is
18 amended by adding section 33-1801.01, to read:

19 33-1801.01. Election on planned community termination

20 BEGINNING IN 2014, AT LEAST ONCE EVERY EIGHT YEARS, THE BOARD OF
21 DIRECTORS SHALL CONDUCT AN ELECTION OF THE MEMBERSHIP ON THE QUESTION OF
22 WHETHER TO TERMINATE THE PLANNED COMMUNITY. THE QUESTION SHALL BE PRESENTED
23 ON A BALLOT AS "TERMINATE HOMEOWNERS' ASSOCIATION, YES" AND "TERMINATE
24 HOMEOWNERS' ASSOCIATION, NO". IF THE MAJORITY OF THOSE VOTING ON THE
25 QUESTION VOTE TO TERMINATE THE ASSOCIATION, THE PLANNED COMMUNITY IS
26 TERMINATED AND THE COMMUNITY DOCUMENTS ARE OF NO FURTHER LEGAL EFFECT. IF
27 THE MAJORITY OF THOSE VOTING ON THE QUESTION VOTE TO CONTINUE THE
28 ASSOCIATION, THE PLANNED COMMUNITY CONTINUES AND THE COMMUNITY DOCUMENTS
29 CONTINUE WITH FULL LEGAL EFFECT.

30 Sec. 3. Section 33-1803, Arizona Revised Statutes, is amended to read:

31 33-1803. Limits on assessments; penalties; notice to member of
32 violation

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. **AN ASSOCIATION MAY NOT CHARGE OR**
44 **ATTEMPT TO COLLECT ATTORNEY FEES RELATING TO LATE PAYMENT OF ASSESSMENTS**
45 **UNLESS THE ASSESSMENT IS AT LEAST SIXTY DAYS IN ARREARS.** Any monies paid by

1 the member for an unpaid assessment shall be applied first to the principal
2 amount unpaid and then to the interest accrued.

3 B. After notice and an opportunity to be heard, the board of directors
4 may impose reasonable monetary penalties on members for violations of the
5 declaration, bylaws and rules of the association **BUT MAY NOT IMPOSE A PENALTY**
6 **ON A MEMBER MORE OFTEN THAN TWICE EACH CALENDAR QUARTER, AND ANY PENALTY**
7 **SHALL NOT EXCEED THE MONTHLY DOLLAR AMOUNT OF THE REGULAR ASSESSMENTS OF THE**
8 **ASSOCIATION ON THAT PROPERTY.** Notwithstanding any provision in the community
9 documents, the board of directors shall not impose a charge for a late
10 payment of a penalty that exceeds the greater of fifteen dollars or ten per
11 cent of the amount of the unpaid penalty. A payment is deemed late if it is
12 unpaid fifteen or more days after its due date, unless the declaration,
13 bylaws or rules of the association provide for a longer period. Any monies
14 paid by a member for an unpaid penalty shall be applied first to the
15 principal amount unpaid and then to the interest accrued. Notice pursuant to
16 this subsection shall include information pertaining to the manner in which
17 the penalty shall be enforced.

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

25 D. Within ten business days after receipt of the certified mail
26 containing the response from the member, the association shall respond to the
27 member with a written explanation regarding the notice that shall provide at
28 least the following information unless previously provided in the notice of
29 violation:

30 1. The provision of the community documents that has allegedly been
31 violated.

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

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

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

36 E. Unless the information required in subsection D, paragraph 4 of
37 this section is provided in the notice of violation, the association shall
38 not proceed with any action to enforce the community documents, including the
39 collection of attorney fees, before or during the time prescribed by
40 subsection D of this section regarding the exchange of information between
41 the association and the member. At any time before or after completion of
42 the exchange of information pursuant to this section, the member may petition
43 for a hearing pursuant to section 41-2198.01 if the dispute is within the
44 jurisdiction of the department of fire, building and life safety as
45 prescribed in section 41-2198.01, subsection B.

1 Sec. 4. Section 43-1022, Arizona Revised Statutes, is amended to read:
2 43-1022. Subtractions from Arizona gross income

3 In computing Arizona adjusted gross income, the following amounts shall
4 be subtracted from Arizona gross income:

5 1. The amount of exemptions allowed by section 43-1023.

6 2. Benefits, annuities and pensions in an amount totaling not more
7 than two thousand five hundred dollars received from one or more of the
8 following:

9 (a) The United States government service retirement and disability
10 fund, retired or retainer pay of the uniformed services of the United States,
11 the United States foreign service retirement and disability system and any
12 other retirement system or plan established by federal law.

13 (b) The Arizona state retirement system, the corrections officer
14 retirement plan, the public safety personnel retirement system, the elected
15 officials' retirement plan, an optional retirement program established by the
16 Arizona board of regents under section 15-1628, an optional retirement
17 program established by a community college district board under section
18 15-1451 or a retirement plan established for employees of a county, city or
19 town in this state.

20 3. A beneficiary's share of the fiduciary adjustment to the extent
21 that the amount determined by section 43-1333 decreases the beneficiary's
22 Arizona gross income.

23 4. The amount of any distributions from an individual retirement
24 account as provided for in section 408 of the internal revenue code or from a
25 qualified retirement plan of a self-employed individual as provided for in
26 section 401 of the internal revenue code to the extent that total adjustments
27 made pursuant to this paragraph in all tax years do not exceed the total of
28 all contributions made by the taxpayer to such plans before December 31,
29 1975, which were included in computing Arizona taxable income.

30 5. The amount of income on an installment receivable that is
31 recognized pursuant to the internal revenue code and that has already been
32 recognized on the death of the taxpayer for purposes of this title for tax
33 years ending before January 1, 1990.

34 6. Interest income received on obligations of the United States, less
35 any interest on indebtedness, or other related expenses, and deducted in
36 arriving at Arizona gross income, which were incurred or continued to
37 purchase or carry such obligations.

38 7. The amount of any income tax refunds that were received from states
39 other than Arizona and that were included as income in computing federal
40 adjusted gross income.

41 8. Annuity income included in federal adjusted gross income pursuant
42 to section 72 of the internal revenue code if the first payment with respect
43 to such annuity was received before December 31, 1978.

1 9. The excess of a partner's share of income required to be included
2 under section 702(a)(8) of the internal revenue code over the income required
3 to be included under chapter 14, article 2 of this title.

4 10. The excess of a partner's share of partnership losses determined
5 pursuant to chapter 14, article 2 of this title over the losses allowable
6 under section 702(a)(8) of the internal revenue code.

7 11. The amount by which the adjusted basis of property described in
8 this paragraph and computed pursuant to this title and the income tax act of
9 1954, as amended, exceeds the adjusted basis of such property computed
10 pursuant to the internal revenue code. This paragraph shall apply to all
11 property that is held for the production of income and that is sold or
12 otherwise disposed of during the taxable year other than depreciable property
13 used in a trade or business.

14 12. The amount allowed by section 43-1024 for amortization, by a
15 qualified defense contractor certified by the Arizona commerce authority
16 under section 41-1508, of a capital investment for private commercial
17 activities.

18 13. The amount of gain included in federal adjusted gross income on the
19 sale or other disposition of a capital investment that a qualified defense
20 contractor has elected to amortize pursuant to section 43-1024.

21 14. The amount allowed by section 43-1025 for contributions during the
22 taxable year of agricultural crops to charitable organizations.

23 15. The portion of any wages or salaries paid or incurred by the
24 taxpayer for the taxable year that is equal to the amount of the federal work
25 opportunity credit, the empowerment zone employment credit, the credit for
26 employer paid social security taxes on employee cash tips and the Indian
27 employment credit that the taxpayer received under sections 45A, 45B, 51(a)
28 and 1396 of the internal revenue code.

29 16. The amount of prizes or winnings less than five thousand dollars in
30 a single taxable year from any of the state lotteries established and
31 operated pursuant to title 5, chapter 5.1, article 1, except that all such
32 winnings before March 22, 1983, including periodic distributions from such
33 winnings made after March 22, 1983, may be subtracted.

34 17. The amount of exploration expenses that is determined pursuant to
35 section 617 of the internal revenue code, that has been deferred in a taxable
36 year ending before January 1, 1990 and for which a subtraction has not
37 previously been made. The subtraction shall be made on a ratable basis as
38 the units of produced ores or minerals discovered or explored as a result of
39 this exploration are sold.

40 18. The amount included in federal adjusted gross income pursuant to
41 section 86 of the internal revenue code, relating to taxation of social
42 security and railroad retirement benefits.

43 19. To the extent not already excluded from Arizona gross income under
44 the internal revenue code, compensation received for active service as a
45 member of the reserves, the national guard or the armed forces of the United

1 States, including compensation for service in a combat zone as determined
2 under section 112 of the internal revenue code.

3 20. The amount of unreimbursed medical and hospital costs, adoption
4 counseling, legal and agency fees and other nonrecurring costs of adoption
5 not to exceed three thousand dollars. In the case of a husband and wife who
6 file separate returns, the subtraction may be taken by either taxpayer or may
7 be divided between them, but the total subtractions allowed both husband and
8 wife shall not exceed three thousand dollars. The subtraction under this
9 paragraph may be taken for the costs that are described in this paragraph and
10 that are incurred in prior years, but the subtraction may be taken only in
11 the year during which the final adoption order is granted.

12 21. The amount authorized by section 43-1027 for the taxable year
13 relating to qualified wood stoves, wood fireplaces or gas fired fireplaces.

14 22. With respect to a medical savings account established pursuant to
15 section 43-1028:

16 (a) An eligible individual may subtract:

17 (i) The amount of contributions made by the individual's employer
18 during the taxable year to the individual's medical savings account pursuant
19 to section 43-1028 to the extent that the employer contributions are included
20 in the individual's federal adjusted gross income.

21 (ii) The amount deposited by the individual in the account during the
22 taxable year to the extent that the individual's contributions are included
23 in the individual's federal adjusted gross income.

24 (b) The individual's employer may subtract the amount of contributions
25 made by the employer to a medical savings account established on the
26 individual's behalf to the extent that the contributions are not deductible
27 under the internal revenue code.

28 23. The amount by which a net operating loss carryover or capital loss
29 carryover allowable pursuant to section 43-1029, subsection F exceeds the net
30 operating loss carryover or capital loss carryover allowable pursuant to
31 section 1341(b)(5) of the internal revenue code.

32 24. Any amount of qualified educational expenses that is distributed
33 from a qualified state tuition program determined pursuant to section 529 of
34 the internal revenue code and that is included in income in computing federal
35 adjusted gross income.

36 25. Any item of income resulting from an installment sale that has been
37 properly subjected to income tax in another state in a previous taxable year
38 and that is included in Arizona gross income in the current taxable year.

39 26. The amount authorized by section 43-1030 relating to holocaust
40 survivors.

41 27. For property placed in service:

42 (a) In taxable years ending through December 31, 2012, an amount equal
43 to the depreciation allowable pursuant to section 167(a) of the internal
44 revenue code for the taxable year computed as if the election described in

1 section 168(k)(2)(D)(iii) of the internal revenue code had been made for each
2 applicable class of property in the year the property was placed in service.

3 (b) In taxable years beginning from and after December 31, 2012
4 through December 31, 2013, an amount determined in the year the asset was
5 placed in service based on the calculation in subdivision (a) of this
6 paragraph. In the first taxable year beginning from and after December 31,
7 2013, the amount necessary to make the depreciation claimed to date for the
8 purposes of this title the same as it would have been if subdivision (c) of
9 this paragraph had applied for the entire time the asset was in service.
10 Subdivision (c) of this paragraph applies for the remainder of the asset's
11 life.

12 (c) In taxable years beginning from and after December 31, 2013, an
13 amount equal to the depreciation allowable pursuant to section 167(a) of the
14 internal revenue code for the taxable year as computed as if the additional
15 allowance for depreciation had been ten per cent of the amount allowed
16 pursuant to section 168(k) of the internal revenue code.

17 28. With respect to property that is sold or otherwise disposed of
18 during the taxable year by a taxpayer that complied with section 43-1021,
19 paragraph 25 with respect to that property, the amount of depreciation that
20 has been allowed pursuant to section 167(a) of the internal revenue code to
21 the extent that the amount has not already reduced Arizona taxable income in
22 the current or prior taxable years.

23 29. With respect to property for which an adjustment was made under
24 section 43-1021, paragraph 26, an amount equal to one-fifth of the amount of
25 the adjustment pursuant to section 43-1021, paragraph 26 in the year in which
26 the amount was adjusted under section 43-1021, paragraph 26 and in each of
27 the following four years.

28 30. The amount contributed during the taxable year to college savings
29 plans established pursuant to section 529 of the internal revenue code to the
30 extent that the contributions were not deducted in computing federal adjusted
31 gross income. The amount subtracted shall not exceed:

32 (a) Seven hundred fifty dollars for a single individual or a head of
33 household.

34 (b) One thousand five hundred dollars for a married couple filing a
35 joint return. In the case of a husband and wife who file separate returns,
36 the subtraction may be taken by either taxpayer or may be divided between
37 them, but the total subtractions allowed both husband and wife shall not
38 exceed one thousand five hundred dollars.

39 31. The amount of any original issue discount that was deferred and not
40 allowed to be deducted in computing federal adjusted gross income or federal
41 taxable income in the current taxable year pursuant to section 108(i) of the
42 internal revenue code as added by section 1231 of the American recovery and
43 reinvestment act of 2009 (P.L. 111-5).

44 32. The amount of previously deferred discharge of indebtedness income
45 that is included in the computation of federal adjusted gross income or

1 federal taxable income in the current taxable year pursuant to section 108(i)
2 of the internal revenue code as added by section 1231 of the American
3 recovery and reinvestment act of 2009 (P.L. 111-5), to the extent that the
4 amount was previously added to Arizona gross income pursuant to section
5 43-1021, paragraph 32.

6 33. The portion of the net operating loss carryforward that would have
7 been allowed as a deduction in the current year pursuant to section 172 of
8 the internal revenue code if the election described in section 172(b)(1)(H)
9 of the internal revenue code had not been made in the year of the loss that
10 exceeds the actual net operating loss carryforward that was deducted in
11 arriving at federal adjusted gross income. This subtraction only applies to
12 taxpayers who made an election under section 172(b)(1)(H) of the internal
13 revenue code as amended by section 1211 of the American recovery and
14 reinvestment act of 2009 (P.L. 111-5) or as amended by section 13 of the
15 worker, homeownership, and business assistance act of 2009 (P.L. 111-92).

16 34. For taxable years beginning from and after December 31, 2013, the
17 amount of any net capital gain included in federal adjusted gross income for
18 the taxable year derived from investment in a qualified small business as
19 determined by the Arizona commerce authority pursuant to section 41-1518.

20 35. An amount of any net long-term capital gain included in federal
21 adjusted gross income for the taxable year that is derived from an investment
22 in an asset acquired after December 31, 2011, as follows:

23 (a) For taxable years beginning from and after December 31, 2012
24 through December 31, 2013, ten per cent of the net long-term capital gain
25 included in federal adjusted gross income.

26 (b) For taxable years beginning from and after December 31, 2013
27 through December 31, 2014, twenty per cent of the net long-term capital gain
28 included in federal adjusted gross income.

29 (c) For taxable years beginning from and after December 31, 2014,
30 twenty-five per cent of the net long-term capital gain included in federal
31 adjusted gross income.

32 36. If an individual is not claiming itemized deductions pursuant to
33 section 43-1042, the amount of premium costs for long-term care insurance, as
34 defined in section 20-1691.

35 37. With respect to a long-term health care savings account established
36 pursuant to section 43-1032, the amount deposited by the taxpayer in the
37 account during the taxable year to the extent that the taxpayer's
38 contributions are included in the taxpayer's federal adjusted gross income.

39 38. WITH RESPECT TO REAL PROPERTY IN A PLANNED COMMUNITY AS DEFINED IN
40 SECTION 33-1802, THE AMOUNT OF DUES AND ASSESSMENTS PAID TO THE PLANNED
41 COMMUNITY ASSOCIATION, WHETHER REGULAR DUES OR ASSESSMENTS OR SPECIAL
42 ASSESSMENTS.