

REFERENCE TITLE: condominiums; planned communities; associations; disclosures

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

HB 2084

Introduced by
Representative Petersen

AN ACT

AMENDING SECTIONS 10-11622, 33-1242, 33-1256, 33-1803 AND 33-1807, 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 10-11622, Arizona Revised Statutes, is amended to
3 read:

4 10-11622. Annual report

5 A. Each domestic corporation and each foreign corporation authorized
6 to conduct affairs in this state shall deliver to the commission for filing
7 an annual report that sets forth all of the following:

8 1. The name of the corporation and the state or country under whose
9 law it is incorporated.

10 2. The address of its known place of business and the name and address
11 of its agent in this state.

12 3. The address of its principal office.

13 4. The names and business addresses of its directors and principal
14 officers.

15 5. A brief description of the nature of its activities.

16 6. Whether or not it has members.

17 7. A certificate of disclosure containing the information set forth in
18 section 10-3202, subsection D.

19 8. A statement that all corporate income tax returns required by title
20 43 have been filed with the department of revenue.

21 B. A UNIT OWNERS' ASSOCIATION THAT IS SUBJECT TO TITLE 33, CHAPTER 9
22 OR A PLANNED COMMUNITY ASSOCIATION THAT IS SUBJECT TO TITLE 33, CHAPTER 16
23 SHALL ATTACH TO AND SUBMIT WITH THE ANNUAL REPORT A SEPARATE STATEMENT
24 CONTAINING THE NAME OF THE DESIGNATED AGENT OR MANAGEMENT COMPANY FOR THE
25 ASSOCIATION, THE ADDRESS FOR THE ASSOCIATION AND THE TELEPHONE NUMBER, E-MAIL
26 ADDRESS IF ANY AND FAX NUMBER IF ANY OF THE ASSOCIATION OR ITS DESIGNATED
27 AGENT OR MANAGEMENT COMPANY.

28 ~~B.~~ C. The information in the annual report AND THE SEPARATE STATEMENT
29 THAT IS PRESCRIBED BY SUBSECTION B OF THIS SECTION shall be current as of the
30 date the annual report ~~is~~ AND SEPARATE STATEMENT ARE executed on behalf of
31 the corporation.

32 ~~C.~~ D. The annual report for all corporations shall be delivered to
33 the commission for filing, and the annual fee shall be paid on or before the
34 date assigned by the commission. The commission may stagger the annual
35 report filing date for all corporations and adjust the annual fee on a pro
36 rata basis. The corporation shall deliver the annual report to the
37 commission for filing each subsequent year in the anniversary month on the
38 date assigned by the commission. If a corporation is unable to file the
39 annual report required by this section on or before the date prescribed by
40 this section, the corporation may file, but only on or before this date, a
41 written request with the commission for an extension of time, not to exceed
42 six months, in which to file the annual report. The request for an extension
43 of time shall be accompanied by the annual registration fee required by
44 law. After filing the request for an extension of time and on receipt of the
45 annual registration fee, the commission shall grant the request.

1 ~~D.~~ E. If an annual report does not contain the information requested
 2 by this section, the commission shall promptly notify the reporting domestic
 3 or foreign corporation in writing and shall return the report to it for
 4 correction. If the report is corrected to contain the information required
 5 by this section and delivered to the commission within thirty days after the
 6 effective date of notice, it is deemed to be timely filed.

7 ~~E.~~ F. Any corporation that is exempt from the requirement of filing
 8 an annual report shall deliver annually a certificate of disclosure
 9 ~~containing~~ THAT CONTAINS the information set forth in section 10-3202,
 10 subsection D, ~~AND THAT IS~~ executed by any two executive officers or
 11 directors of the corporation on or before May 31. If the certificate is not
 12 delivered within ninety days after the due date of the annual report or
 13 within ninety days after May 31 in the case of any corporation that is exempt
 14 from the requirement of filing an annual report, the commission shall
 15 initiate administrative dissolution of that corporation or revoke the
 16 application for authority of that corporation ~~in accordance with~~ PURSUANT TO
 17 chapters 24 through 40 of this title.

18 Sec. 2. Section 33-1242, Arizona Revised Statutes, is amended to read:

19 33-1242. Powers of unit owners' association; notice to unit
 20 owner of violation

21 A. Subject to the provisions of the declaration, the association may:

22 1. Adopt and amend bylaws and rules.

23 2. Adopt and amend budgets for revenues, expenditures and reserves and
 24 collect assessments for common expenses from unit owners.

25 3. Hire and discharge managing agents and other employees, agents and
 26 independent contractors.

27 4. Institute, defend or intervene in litigation or administrative
 28 proceedings in its own name on behalf of itself or two or more unit owners on
 29 matters affecting the condominium.

30 5. Make contracts and incur liabilities.

31 6. Regulate the use, maintenance, repair, replacement and modification
 32 of common elements.

33 7. Cause additional improvements to be made as a part of the common
 34 elements.

35 8. Acquire, hold, encumber and convey in its own name any right, title
 36 or interest to real or personal property, except that common elements may be
 37 conveyed or subjected to a security interest only pursuant to section
 38 33-1252.

39 9. Grant easements, leases, licenses and concessions through or over
 40 the common elements.

41 10. Impose and receive any payments, fees or charges for the use,
 42 rental or operation of the common elements other than limited common elements
 43 described in section 33-1212, paragraphs 2 and 4 and for services provided to
 44 unit owners.

1 11. Impose charges for late payment of assessments and, after notice
2 and an opportunity to be heard, impose reasonable monetary penalties upon
3 unit owners for violations of the declaration, bylaws and rules of the
4 association.

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

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

9 14. Assign its right to future income, including the right to receive
10 common expense assessments, but only to the extent the declaration expressly
11 provides.

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

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

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

19 18. Exercise any other powers necessary and proper for the governance
20 and operation of the association.

21 B. A unit owner who receives a written notice that the condition of
22 the property owned by the unit owner is in violation of a requirement of the
23 condominium documents without regard to whether a monetary penalty is imposed
24 by the notice may provide the association with a written response by sending
25 the response by certified mail within ten business days after the date of the
26 notice. The response shall be sent to the address contained in the notice or
27 in the ~~recorded notice prescribed by section 33-1256, subsection J~~ SEPARATE
28 STATEMENT THAT IS ATTACHED TO THE ANNUAL REPORT PRESCRIBED BY SECTION
29 10-11622.

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

35 1. The provision of the condominium documents that has allegedly been
36 violated.

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

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

40 4. The process the unit owner must follow to contest the notice.

41 D. Unless the information required in subsection C, paragraph 4 of
42 this section is provided in the notice of violation, the association shall
43 not proceed with any action to enforce the condominium documents, including
44 the collection of attorney fees, before or during the time prescribed by
45 subsection C of this section regarding the exchange of information between

1 the association and the unit owner. At any time before or after completion
2 of the exchange of information pursuant to this section, the unit owner may
3 petition for a hearing pursuant to section 41-2198.01 if the dispute is
4 within the jurisdiction of the department of fire, building and life safety
5 as prescribed in section 41-2198.01, subsection B.

6 Sec. 3. Section 33-1256, Arizona Revised Statutes, is amended to read:

7 33-1256. Lien for assessments; priority; mechanics' and
8 materialmen's liens; applicability

9 A. The association has a lien on a unit for any assessment levied
10 against that unit from the time the assessment becomes due. The
11 association's lien for assessments, for charges for late payment of those
12 assessments, for reasonable collection fees and for reasonable attorney fees
13 and costs incurred with respect to those assessments may be foreclosed in the
14 same manner as a mortgage on real estate but may be foreclosed only if the
15 owner has been delinquent in the payment of monies secured by the lien,
16 excluding reasonable collection fees, reasonable attorney fees and charges
17 for late payment of and costs incurred with respect to those assessments, for
18 a period of one year or in the amount of one thousand two hundred dollars or
19 more, whichever occurs first. Fees, charges, late charges, monetary
20 penalties and interest charged pursuant to section 33-1242, subsection A,
21 paragraphs 10, 11 and 12, other than charges for late payment of assessments,
22 are not enforceable as assessments under this section. If an assessment is
23 payable in installments, the full amount of the assessment is a lien from the
24 time the first installment of the assessment becomes due. The association
25 has a lien for fees, charges, late charges, other than charges for late
26 payment of assessments, monetary penalties or interest charged pursuant to
27 section 33-1242, subsection A, paragraphs 10, 11 and 12 after the entry of a
28 judgment in a civil suit for those fees, charges, late charges, monetary
29 penalties or interest from a court of competent jurisdiction and the
30 recording of that judgment in the office of the county recorder as otherwise
31 provided by law. The association's lien for monies other than for
32 assessments, for charges for late payment of those assessments, for
33 reasonable collection fees and for reasonable attorney fees and costs
34 incurred with respect to those assessments may not be foreclosed and is
35 effective only on conveyance of any interest in the real property.

36 B. A lien for assessments, for charges for late payment of those
37 assessments, for reasonable collection fees and for reasonable attorney fees
38 and costs incurred with respect to those assessments under this section is
39 prior to all other liens, interests and encumbrances on a unit except:

40 1. Liens and encumbrances recorded before the recordation of the
41 declaration.

42 2. A recorded first mortgage on the unit, a seller's interest in a
43 first contract for sale pursuant to chapter 6, article 3 of this title on the
44 unit recorded prior to the lien arising pursuant to subsection A of this
45 section or a recorded first deed of trust on the unit.

1 3. Liens for real estate taxes and other governmental assessments or
2 charges against the unit.

3 C. Subsection B of this section does not affect the priority of
4 mechanics' or materialmen's liens or the priority of liens for other
5 assessments made by the association. The lien under this section is not
6 subject to chapter 8 of this title.

7 D. Unless the declaration otherwise provides, if two or more
8 associations have liens for assessments created at any time on the same real
9 estate, those liens have equal priority.

10 E. Recording of the declaration constitutes record notice and
11 perfection of the lien for assessments, for charges for late payment of those
12 assessments, for reasonable collection fees and for reasonable attorney fees
13 and costs incurred with respect to those assessments. Further recordation of
14 any claim of lien for assessments under this section is not required.

15 F. A lien for unpaid assessments is extinguished unless proceedings to
16 enforce the lien are instituted within three years after the full amount of
17 the assessments becomes due.

18 G. This section does not prohibit actions to recover sums for which
19 subsection A of this section creates a lien or does not prohibit an
20 association from taking a deed in lieu of foreclosure.

21 H. A judgment or decree in any action brought under this section shall
22 include costs and reasonable attorney fees for the prevailing party.

23 I. The association on written request shall furnish to a lienholder,
24 escrow agent, unit owner or person designated by a unit owner a statement
25 setting forth the amount of unpaid assessments against the unit. The
26 statement shall be furnished within ten days after receipt of the request and
27 the statement is binding on the association, the board of directors and every
28 unit owner if the statement is requested by an escrow agency that is licensed
29 pursuant to title 6, chapter 7. Failure to provide the statement to the
30 escrow agent within the time provided for in this subsection shall extinguish
31 any lien for any unpaid assessment then due.

32 ~~J. The association shall record in the office of the county recorder~~
33 ~~in the county in which the condominium is located a notice stating the name~~
34 ~~of the association or designated agent or management company for the~~
35 ~~association, the address for the association and the telephone number of the~~
36 ~~association or its designated agent or management company. The notice shall~~
37 ~~include the name of the condominium community, the date of the recording and~~
38 ~~the recorded instrument number or book and page for the main document that~~
39 ~~constitutes the declaration. If an association's address, designated agent~~
40 ~~or management company changes, the association shall amend its notice or~~
41 ~~record a new notice within ninety days after the change.~~

42 K. J. Notwithstanding any provision in the condominium documents or
43 in any contract between the association and a management company, unless the
44 member directs otherwise, all payments received on a member's account shall
45 be applied first to any unpaid assessments, for unpaid charges for late

1 payment of those assessments, for reasonable collection fees and for unpaid
 2 attorney fees and costs incurred with respect to those assessments, in that
 3 order, with any remaining amounts applied next to other unpaid fees, charges
 4 and monetary penalties or interest and late charges on any of those amounts.

5 ~~+~~ K. This section does not apply to timeshare plans or associations
 6 that are subject to chapter 20 of this title.

7 Sec. 4. Section 33-1803, Arizona Revised Statutes, is amended to read:

8 33-1803. Penalties; notice to member of violation

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

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

34 C. A member who receives a written notice that the condition of the
 35 property owned by the member is in violation of the community documents
 36 without regard to whether a monetary penalty is imposed by the notice may
 37 provide the association with a written response by sending the response by
 38 certified mail within ten business days after the date of the notice. The
 39 response shall be sent to the address contained in the notice or in the
 40 ~~recorded notice prescribed by section 33-1807, subsection J~~ SEPARATE
 41 STATEMENT THAT IS ATTACHED TO THE ANNUAL REPORT PRESCRIBED BY SECTION
 42 10-11622.

43 D. Within ten business days after receipt of the certified mail
 44 containing the response from the member, the association shall respond to the
 45 member with a written explanation regarding the notice that shall provide at

1 least the following information unless previously provided in the notice of
2 violation:

3 1. The provision of the community documents that has allegedly been
4 violated.

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

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

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

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

19 Sec. 5. Section 33-1807, Arizona Revised Statutes, is amended to read:

20 33-1807. Lien for assessments; priority; mechanics' and
21 materialmen's liens

22 A. The association has a lien on a unit for any assessment levied
23 against that unit from the time the assessment becomes due. The
24 association's lien for assessments, for charges for late payment of those
25 assessments, for reasonable collection fees and for reasonable attorney fees
26 and costs incurred with respect to those assessments may be foreclosed in the
27 same manner as a mortgage on real estate but may be foreclosed only if the
28 owner has been delinquent in the payment of monies secured by the lien,
29 excluding reasonable collection fees, reasonable attorney fees and charges
30 for late payment of and costs incurred with respect to those assessments, for
31 a period of one year or in the amount of one thousand two hundred dollars or
32 more, whichever occurs first. Fees, charges, late charges, monetary
33 penalties and interest charged pursuant to section 33-1803, other than
34 charges for late payment of assessments are not enforceable as assessments
35 under this section. If an assessment is payable in installments, the full
36 amount of the assessment is a lien from the time the first installment of the
37 assessment becomes due. The association has a lien for fees, charges, late
38 charges, other than charges for late payment of assessments, monetary
39 penalties or interest charged pursuant to section 33-1803 after the entry of
40 a judgment in a civil suit for those fees, charges, late charges, monetary
41 penalties or interest from a court of competent jurisdiction and the
42 recording of that judgment in the office of the county recorder as otherwise
43 provided by law. The association's lien for monies other than for
44 assessments, for charges for late payment of those assessments, for
45 reasonable collection fees and for reasonable attorney fees and costs

1 incurred with respect to those assessments may not be foreclosed and is
2 effective only on conveyance of any interest in the real property.

3 B. A lien for assessments, for charges for late payment of those
4 assessments, for reasonable collection fees and for reasonable attorney fees
5 and costs incurred with respect to those assessments under this section is
6 prior to all other liens, interests and encumbrances on a unit except:

7 1. Liens and encumbrances recorded before the recordation of the
8 declaration.

9 2. A recorded first mortgage on the unit, a seller's interest in a
10 first contract for sale pursuant to chapter 6, article 3 of this title on the
11 unit recorded prior to the lien arising pursuant to subsection A of this
12 section or a recorded first deed of trust on the unit.

13 3. Liens for real estate taxes and other governmental assessments or
14 charges against the unit.

15 C. Subsection B of this section does not affect the priority of
16 mechanics' or materialmen's liens or the priority of liens for other
17 assessments made by the association. The lien under this section is not
18 subject to chapter 8 of this title.

19 D. Unless the declaration otherwise provides, if two or more
20 associations have liens for assessments created at any time on the same real
21 estate those liens have equal priority.

22 E. Recording of the declaration constitutes record notice and
23 perfection of the lien for assessments, for charges for late payment of
24 assessments, for reasonable collection fees and for reasonable attorney fees
25 and costs incurred with respect to those assessments. Further recordation of
26 any claim of lien for assessments under this section is not required.

27 F. A lien for an unpaid assessment is extinguished unless proceedings
28 to enforce the lien are instituted within three years after the full amount
29 of the assessment becomes due.

30 G. This section does not prohibit:

31 1. Actions to recover amounts for which subsection A of this section
32 creates a lien.

33 2. An association from taking a deed in lieu of foreclosure.

34 H. A judgment or decree in any action brought under this section shall
35 include costs and reasonable attorney fees for the prevailing party.

36 I. On written request, the association shall furnish to a lienholder,
37 escrow agent, unit owner or person designated by a unit owner a statement
38 setting forth the amount of any unpaid assessment against the unit. The
39 association shall furnish the statement within ten days after receipt of the
40 request, and the statement is binding on the association, the board of
41 directors and every unit owner if the statement is requested by an escrow
42 agency that is licensed pursuant to title 6, chapter 7. Failure to provide
43 the statement to the escrow agent within the time provided for in this
44 subsection shall extinguish any lien for any unpaid assessment then due.

1 ~~J. The association shall record in the office of the county recorder~~
2 ~~in the county in which the planned community is located a notice stating the~~
3 ~~name of the association or designated agent or management company for the~~
4 ~~association, the address for the association and the telephone number of the~~
5 ~~association or its designated agent or management company. The notice shall~~
6 ~~include the name of the planned community, the date of the recording and the~~
7 ~~recorded instrument number or book and page for the main document that~~
8 ~~constitutes the declaration. If an association's address, designated agent~~
9 ~~or management company changes, the association shall amend its notice or~~
10 ~~record a new notice within ninety days after the change.~~

11 ~~K.~~ J. Notwithstanding any provision in the community documents or in
12 any contract between the association and a management company, unless the
13 member directs otherwise, all payments received on a member's account shall
14 be applied first to any unpaid assessments, for unpaid charges for late
15 payment of those assessments, for reasonable collection fees and for unpaid
16 attorney fees and costs incurred with respect to those assessments, in that
17 order, with any remaining amounts applied next to other unpaid fees, charges
18 and monetary penalties or interest and late charges on any of those amounts.