

REFERENCE TITLE: homeowners' associations; hearings; attorney fees

State of Arizona  
Senate  
Fifty-third Legislature  
First Regular Session  
2017

## **SB 1289**

Introduced by  
Senators Farnsworth D: Allen S, Burges, Meza, Miranda, Smith;  
Representative Clodfelter

AN ACT

AMENDING SECTIONS 12-341.01 AND 32-2199.01, 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 12-341.01, Arizona Revised Statutes, is amended  
3 to read:

4 12-341.01. Recovery of attorney fees

5 A. In any contested action arising out of a contract, express or  
6 implied, the court may award the successful party reasonable attorney  
7 fees. If a written settlement offer is rejected and the judgment finally  
8 obtained is equal to or more favorable to the offeror than an offer made  
9 in writing to settle any contested action arising out of a contract, the  
10 offeror is deemed to be the successful party from the date of the offer  
11 and the court may award the successful party reasonable attorney  
12 fees. This section shall not be construed as altering, prohibiting or  
13 restricting present or future contracts or statutes that may provide  
14 for attorney fees.

15 B. The award of reasonable attorney fees pursuant to this section  
16 should be made to mitigate the burden of the expense of litigation to  
17 establish a just claim or a just defense. It need not equal or relate to  
18 the attorney fees actually paid or contracted, but the award may not  
19 exceed the amount paid or agreed to be paid.

20 C. The court and not a jury shall award reasonable attorney fees  
21 under this section.

22 D. THIS SECTION DOES NOT APPLY TO ADMINISTRATIVE HEARINGS HELD  
23 PURSUANT TO SECTION 32-2199.01 REGARDLESS OF WHICH PARTY IS THE SUCCESSFUL  
24 PARTY.

25 Sec. 2. Section 32-2199.01, Arizona Revised Statutes, is amended to  
26 read:

27 32-2199.01. Hearing; rights and procedures

28 A. For a dispute between an owner and a condominium association or  
29 planned community association that is regulated pursuant to title 33,  
30 chapter 9 or 16, the owner or association may petition the department for  
31 a hearing concerning violations of condominium documents or planned  
32 community documents or violations of the statutes that regulate  
33 condominiums or planned communities. The petitioner shall file a petition  
34 with the department and pay a filing fee in an amount to be established by  
35 the commissioner. The filing fee shall be deposited in the condominium  
36 and planned community hearing office fund established by section  
37 32-2199.05. On dismissal of a petition at the request of the petitioner  
38 before a hearing is scheduled or by stipulation of the parties before a  
39 hearing is scheduled, the filing fee shall be refunded to the petitioner.  
40 The department does not have jurisdiction to hear:

41 1. Any dispute among or between owners to which the association is  
42 not a party.

43 2. Any dispute between an owner and any person, firm, partnership,  
44 corporation, association or other organization that is engaged in the  
45 business of designing, constructing or selling a condominium as defined in

1 section 33-1202 or any property or improvements within a planned community  
2 as defined in section 33-1802, including any person, firm, partnership,  
3 corporation, association or other organization licensed pursuant to this  
4 chapter, arising out of or related to the design, construction, condition  
5 or sale of the condominium or any property or improvements within a  
6 planned community.

7 B. The petition shall be in writing on a form approved by the  
8 department, shall list the complaints and shall be signed by or on behalf  
9 of the persons filing and include their addresses, stating that a hearing  
10 is desired, and shall be filed with the department.

11 C. On receipt of the petition and the filing fee the department  
12 shall mail by certified mail a copy of the petition along with notice to  
13 the named respondent that a response is required within twenty days after  
14 mailing of the petition showing cause, if any, why the petition should be  
15 dismissed.

16 D. After receiving the response, the commissioner or the  
17 commissioner's designee shall promptly review the petition for hearing  
18 and, if justified, refer the petition to the office of administrative  
19 hearings. The commissioner may dismiss a petition for hearing if it  
20 appears to the commissioner's satisfaction that the disputed issue or  
21 issues have been resolved by the parties.

22 E. Failure of the respondent to answer is deemed an admission of  
23 the allegations made in the petition, and the commissioner shall issue a  
24 default decision.

25 F. Informal disposition may be made of any contested case.

26 G. Either party or the party's authorized agent may inspect any  
27 file of the department that pertains to the hearing, if the authorization  
28 is filed in writing with the department.

29 H. At a hearing conducted pursuant to this section, a corporation  
30 may be represented by a corporate officer, employee or contractor of the  
31 corporation who is not a member of the state bar if:

32 1. The corporation has specifically authorized the officer,  
33 employee or contractor of the corporation to represent it.

34 2. The representation is not the officer's, employee's or  
35 contractor of the corporation's primary duty to the corporation but is  
36 secondary or incidental to the officer's, employee's or contractor of the  
37 corporation's, limited liability company's, limited liability  
38 partnership's, sole proprietor's or other lawfully formed and operating  
39 entity's duties relating to the management or operation of the  
40 corporation.

41 I. NOTWITHSTANDING ANY PROVISION IN THE CONDOMINIUM DOCUMENTS AS  
42 DEFINED IN SECTION 33-1202 OR THE PLANNED COMMUNITY DOCUMENTS AS DEFINED  
43 IN SECTION 33-1802, THE ADMINISTRATIVE LAW JUDGE AND THE COMMISSIONER MAY  
44 NOT MAKE AN AWARD OF ATTORNEY FEES TO THE ASSOCIATION IN ANY MATTER FILED  
45 PURSUANT TO SUBSECTION A OF THIS SECTION.