

REFERENCE TITLE: homeowners' associations; alternative dispute resolution

State of Arizona
House of Representatives
Fifty-first Legislature
Second Regular Session
2014

HB 2556

Introduced by
Representatives Meyer, Alston

AN ACT

AMENDING SECTIONS 33-1242, 33-1258, 33-1803 AND 33-1805, 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; dispute resolution
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. **EXCEPT AS PROVIDED IN SUBSECTION E OF**
29 **THIS SECTION**, at any time before or after completion of the exchange of
30 information pursuant to this section, the unit owner may petition for a
31 hearing pursuant to section 41-2198.01 if the dispute is within the
32 jurisdiction of the department of fire, building and life safety as
33 prescribed in section 41-2198.01, subsection B.

34 **E. THE BOARD SHALL ADOPT A FORMAL ALTERNATIVE DISPUTE RESOLUTION**
35 **POLICY FOR EVERY DISPUTE ARISING UNDER THE CONDOMINIUM DOCUMENTS THAT**
36 **REQUIRES THE PARTIES TO THE DISPUTE, INCLUDING THE BOARD, TO PARTICIPATE IN**
37 **ALTERNATIVE DISPUTE RESOLUTION IN GOOD FAITH PURSUANT TO THE ADOPTED POLICY.**
38 **THE ALTERNATIVE DISPUTE RESOLUTION POLICY MUST REQUIRE CONCILIATION,**
39 **MEDIATION OR ARBITRATION AND MAY ALLOW MORE THAN ONE OF THOSE FORMS OF**
40 **ALTERNATIVE DISPUTE RESOLUTION. THE PARTIES TO A DISPUTE SHALL COMPLY WITH**
41 **THE ALTERNATIVE DISPUTE RESOLUTION POLICY AND COMPLETE THE REQUIRED**
42 **ALTERNATIVE DISPUTE RESOLUTION BEFORE PETITIONING FOR A HEARING PURSUANT TO**
43 **SECTION 41-2198.01 AND BEFORE FILING ANY COURT ACTION REGARDING THE DISPUTE.**

1 the members of the association. Unless reserved to the members of the
2 association, the board of directors may impose reasonable charges for the
3 late payment of assessments. A payment by a member is deemed late if it is
4 unpaid fifteen or more days after its due date, unless the community
5 documents provide for a longer period. Charges for the late payment of
6 assessments are limited to the greater of fifteen dollars or ten per cent of
7 the amount of the unpaid assessment. Any monies paid by the member for an
8 unpaid assessment shall be applied first to the principal amount unpaid and
9 then to the interest accrued.

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

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

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

34 1. The provision of the community documents that has allegedly been
35 violated.

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

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

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

40 E. Unless the information required in subsection D, paragraph 4 of
41 this section is provided in the notice of violation, the association shall
42 not proceed with any action to enforce the community documents, including the
43 collection of attorney fees, before or during the time prescribed by
44 subsection D of this section regarding the exchange of information between
45 the association and the member. EXCEPT AS PROVIDED IN SUBSECTION F OF THIS

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

6 F. THE BOARD SHALL ADOPT A FORMAL ALTERNATIVE DISPUTE RESOLUTION
7 POLICY FOR EVERY DISPUTE ARISING UNDER THE COMMUNITY DOCUMENTS THAT REQUIRES
8 THE PARTIES TO THE DISPUTE, INCLUDING THE BOARD, TO PARTICIPATE IN
9 ALTERNATIVE DISPUTE RESOLUTION IN GOOD FAITH PURSUANT TO THE ADOPTED POLICY.
10 THE ALTERNATIVE DISPUTE RESOLUTION POLICY MUST REQUIRE CONCILIATION,
11 MEDIATION OR ARBITRATION AND MAY ALLOW MORE THAN ONE OF THOSE FORMS OF
12 ALTERNATIVE DISPUTE RESOLUTION. THE PARTIES TO A DISPUTE SHALL COMPLY WITH
13 THE ALTERNATIVE DISPUTE RESOLUTION POLICY AND COMPLETE THE REQUIRED
14 ALTERNATIVE DISPUTE RESOLUTION BEFORE PETITIONING FOR A HEARING PURSUANT TO
15 SECTION 41-2198.01 AND BEFORE FILING ANY COURT ACTION REGARDING THE DISPUTE.

16 Sec. 4. Section 33-1805, Arizona Revised Statutes, is amended to read:
17 33-1805. Association financial and other records

18 A. Except as provided in subsection B of this section, all financial
19 and other records of the association shall be made reasonably available for
20 examination by any member or any person designated by the member in writing
21 as the member's representative. The association shall not charge a member or
22 any person designated by the member in writing for making material available
23 for review. The association shall have ten business days to fulfill a
24 request for examination. On request for purchase of copies of records by any
25 member or any person designated by the member in writing as the member's
26 representative, the association shall have ten business days to provide
27 copies of the requested records. An association may charge a fee for making
28 copies of not more than fifteen cents per page.

29 B. Books and records kept by or on behalf of the association and the
30 board may be withheld from disclosure to the extent that the portion withheld
31 relates to any of the following:

32 1. Privileged communication between an attorney for the association
33 and the association, **BUT ONLY TO THE EXTENT THAT THE SPECIFIC COMMUNICATION**
34 **IS ACTUALLY PRIVILEGED PURSUANT TO LAW AND DOES NOT CONSTITUTE ROUTINE**
35 **BUSINESS OF THE ASSOCIATION OR THE BOARD.**

36 2. Pending litigation.

37 3. Meeting minutes or other records of a session of a board meeting
38 that is not required to be open to all members pursuant to section 33-1804.

39 4. Personal, health or financial records of an individual member of
40 the association, an individual employee of the association or an individual
41 employee of a contractor for the association, including records of the
42 association directly related to the personal, health or financial information
43 about an individual member of the association, an individual employee of the
44 association or an individual employee of a contractor for the association.

1 5. Records relating to the job performance of, compensation of, health
2 records of or specific complaints against an individual employee of the
3 association or an individual employee of a contractor of the association who
4 works under the direction of the association.

5 C. The association shall not be required to disclose financial and
6 other records of the association if disclosure would violate any state or
7 federal law.