

State of Arizona
Senate
Fifty-first Legislature
Second Regular Session
2014

SENATE BILL 1334

AN ACT

AMENDING SECTIONS 12-341.01 AND 41-2198.01, 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 to
3 read:

4 12-341.01. Recovery of attorney fees; exemption

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

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

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

21 D. THIS SECTION DOES NOT APPLY TO ADMINISTRATIVE HEARINGS HELD
22 PURSUANT TO SECTION 41-2198.01, SUBSECTION B REGARDLESS OF WHICH PARTY IS THE
23 SUCCESSFUL PARTY.

24 Sec. 2. Section 41-2198.01, Arizona Revised Statutes, is amended to
25 read:

26 41-2198.01. Hearing; rights and procedures; award of attorney
27 fees prohibited

28 A. A person who is subject to title 33, chapter 11 or a party to a
29 rental agreement entered into pursuant to title 33, chapter 11 may petition
30 the department for a hearing concerning violations of the Arizona mobile home
31 parks residential landlord and tenant act by filing a petition with the
32 department and paying a nonrefundable filing fee in an amount to be
33 established by the director. All monies collected shall be deposited in the
34 state general fund and are not refundable.

35 B. For a dispute between an owner and a condominium association or
36 planned community association that is regulated pursuant to title 33, chapter
37 9 or 16, the owner or association may petition the department for a hearing
38 concerning violations of condominium documents or planned community documents
39 or violations of the statutes that regulate condominiums or planned
40 communities. The petitioner shall file a petition with the department and
41 pay a filing fee in an amount to be established by the director. The filing
42 fee shall be deposited in the condominium and planned community hearing
43 office fund established by section 41-2198.05. On dismissal of a petition at
44 the request of the petitioner before a hearing is scheduled or by stipulation

1 of the parties before a hearing is scheduled, the filing fee shall be
2 refunded to the petitioner. The department does not have jurisdiction to
3 hear:

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

6 2. Any dispute between an owner and any person, firm, partnership,
7 corporation, association or other organization that is engaged in the
8 business of designing, constructing or selling a condominium as defined in
9 section 33-1202 or any property or improvements within a planned community as
10 defined in section 33-1802, including any person, firm, partnership,
11 corporation, association or other organization licensed pursuant to title 32,
12 chapter 20, arising out of or related to the design, construction, condition
13 or sale of the condominium or any property or improvements within a planned
14 community.

15 C. The petition shall be in writing on a form approved by the
16 department, shall list the complaints and shall be signed by or on behalf of
17 the persons filing and include their addresses, stating that a hearing is
18 desired, and shall be filed with the department.

19 D. On receipt of the petition and the filing fee the department shall
20 mail by certified mail a copy of the petition along with notice to the named
21 respondent that a response is required within twenty days of mailing of the
22 petition showing cause, if any, why the petition should be dismissed.

23 E. After receiving the response, the director or the director's
24 designee shall promptly review the petition for hearing and, if justified,
25 refer the petition to the office of administrative hearings. The director
26 may dismiss a petition for hearing if it appears to the director's
27 satisfaction that the disputed issue or issues have been resolved by the
28 parties.

29 F. Failure of the respondent to answer is deemed an admission of the
30 allegations made in the petition, and the director shall issue a default
31 decision.

32 G. Informal disposition may be made of any contested case.

33 H. Either party or the party's authorized agent may inspect any file
34 of the department that pertains to the hearing, if the authorization is filed
35 in writing with the department.

36 I. At a hearing conducted pursuant to this section, a corporation may
37 be represented by a corporate officer, employee or contractor of the
38 corporation who is not a member of the state bar if:

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

41 2. The representation is not the officer's, employee's or contractor
42 of the corporation's primary duty to the corporation but is secondary or
43 incidental to the officer's, employee's or contractor of the corporation's,
44 limited liability company's, limited liability partnership's, sole

1 proprietor's or other lawfully formed and operating entity's duties relating
2 to the management or operation of the corporation.

3 J. NOTWITHSTANDING ANY PROVISION IN THE CONDOMINIUM DOCUMENTS AS
4 DEFINED IN SECTION 33-1202 OR THE PLANNED COMMUNITY DOCUMENTS AS DEFINED IN
5 SECTION 33-1802, THE ADMINISTRATIVE HEARING OFFICER AND THE DEPARTMENT MAY
6 NOT MAKE AN AWARD OF ATTORNEY FEES TO THE ASSOCIATION IN ANY MATTER FILED
7 PURSUANT TO SUBSECTION B OF THIS SECTION.