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

HOUSE BILL 2578  

AN ACT  

AMENDING SECTIONS 12-1361, 12-1362 AND 12-1363, ARIZONA REVISED STATUTES;  
REPEALING SECTION 12-1364, ARIZONA REVISED STATUTES; AMENDING SECTIONS  
12-1366, 33-2001 AND 33-2002, ARIZONA REVISED STATUTES; RELATING TO PURCHASER  
DWELLING ACTIONS.  

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 12-1361, Arizona Revised Statutes, is amended to read:

12-1361. Definitions
In this article, unless the context otherwise requires:

1. "Association" means either of the following:
   (a) The unit owners' association organized under section 33-1241.
   (b) A nonprofit corporation or unincorporated association of owners created pursuant to a declaration to own and operate portions of a planned community and which has the power under the declaration to assess association members to pay the costs and expenses incurred in the performance of the association's obligations under the declaration.

2. "Community documents" means the declaration, bylaws, articles of incorporation, if any, and rules, if any.

3. "Construction codes" means the building, plumbing, electrical, fire, mechanical or other codes or ordinances, including the International Residential Code however denominated, as adopted, amended and enforced by the city, town or county in which the dwelling is located.

4. "Construction defect" means a material deficiency in the design, construction, manufacture, repair, alteration, remodeling or landscaping of a dwelling that is the result of one of the following:
   (a) A violation of construction codes applicable to the construction of the dwelling.
   (b) The use of defective materials, products, components or equipment in the design, construction, manufacture, repair, alteration, remodeling or landscaping of the dwelling.
   (c) The failure to adhere to generally accepted workmanship standards in the community.

5. "Construction professional" means an architect, contractor, subcontractor, developer, builder, builder vendor, supplier, engineer or inspector performing or furnishing the design, supervision, inspection, construction or observation of the construction of any improvement to real property.

6. "Dwelling" means a single or multifamily unit designed for residential use and common areas and improvements that are owned or maintained by an association or by members of an association. A dwelling includes the systems, other components and improvements that are part of a single or multifamily unit at the time of construction.

7. "Dwelling action" means any action involving a construction defect brought by a purchaser against the seller of a dwelling arising out of or related to the design, construction, condition or sale of the dwelling.

8. "Multiunit dwelling action" means a dwelling action brought by an association or by or on behalf of the owners of five or more individual dwelling units.

9. "Purchaser" means any person or entity who files a dwelling action.

10. "Seller" means any person, firm, partnership, corporation, association or other organization that is engaged in the business of designing, constructing or selling dwellings, INCLUDING CONSTRUCTION PROFESSIONALS. Seller does not include a real estate broker or real estate salesperson as defined in title 32, chapter 20 SECTION 32-2101 who provides services in connection with the resale of a dwelling following its initial sale.

Sec. 2. Section 12-1362, Arizona Revised Statutes, is amended to read:

12-1362. Dwelling action; notice of intent to repair or replace; jurisdictional prerequisite; insurance

A. Except with respect to claims for alleged CONSTRUCTION defects involving an immediate threat to the life or safety of persons occupying or visiting the dwelling, a purchaser must first comply with this article before filing a dwelling action.

B. A SELLER WHO RECEIVES A WRITTEN NOTICE OF CLAIM PURSUANT TO SECTION 12-1363 HAS A RIGHT PURSUANT TO SECTION 12-1363 TO REPAIR OR REPLACE ANY ALLEGED CONSTRUCTION DEFECTS AFTER SENDING OR DELIVERING TO THE PURCHASER A WRITTEN NOTICE OF INTENT TO REPAIR OR REPLACE THE ALLEGED CONSTRUCTION DEFECTS. THE SELLER DOES NOT NEED TO REPAIR OR REPLACE ALL OF THE ALLEGED CONSTRUCTION DEFECTS. A PURCHASER MAY NOT FILE A DWELLING ACTION UNTIL THE SELLER HAS COMPLETED ALL INTENDED REPAIRS AND REPLACEMENTS OF THE ALLEGED CONSTRUCTION DEFECTS.

C. If a seller presents a notice received pursuant to section 12-1363 to an insurer that has issued an insurance policy to the seller that covers the seller's liability arising out of A CONSTRUCTION DEFECT OR the design, construction or sale of the property that is the subject of the notice, the insurer must treat the notice as a notice of a claim subject to the terms and conditions of the policy of insurance. An insurer is obliged to work cooperatively and in good faith with the insured seller within the timeframes TIME FRAMES specified in this article to effectuate the purpose of this article. Nothing in this subsection otherwise affects the coverage available under the policy of insurance or creates a cause of action against an insurer whose actions were reasonable under the circumstances, notwithstanding its inability to comply with the timeframes TIME FRAMES specified in section 12-1363.
Sec. 3. Section 12-1363, Arizona Revised Statutes, is amended to read:
12-1363. Notice and right to repair or replace; tolling of time limits; admissible evidence; definition
A. At least ninety days before filing a dwelling action, the purchaser shall give written notice by certified mail, return receipt requested, to the seller specifying in reasonable detail the basis of the dwelling action. The notice in a multiunit dwelling action involving alleged defects that are substantially similar in multiple residential units may comply with this section by providing a reasonably detailed description of the alleged defects in a fair and representative sample of the affected residential units. For the purposes of this subsection, "reasonable detail" includes a detailed and itemized list that describes each alleged defect and the location that each alleged defect has been observed by the purchaser in each dwelling that is the subject of the notice.
B. After receipt of the notice described in subsection A of this section, the seller may inspect the dwelling to determine the nature and cause of the alleged construction defects and the nature and extent of any repairs or replacements necessary to remedy the alleged construction defects. The purchaser shall ensure that the dwelling is made available for inspection no later than ten days after the purchaser receives the seller's request for an inspection. The seller shall provide reasonable notice to the purchaser before conducting the inspection. The inspection shall be conducted at a reasonable time. The seller may use reasonable measures, including testing, to determine the nature and cause of the alleged construction defects and the nature and extent of any repairs or replacements necessary to remedy the alleged construction defects. If the seller conducts testing pursuant to this subsection, the seller shall restore the dwelling to its condition before the testing.
C. Within sixty days after receipt of the notice described in subsection A of this section, the seller shall send to the purchaser a good faith written response to the purchaser's notice by certified mail, return receipt requested. The response may include an offer the seller's notice of intent to repair or replace any alleged construction defects, to have the alleged construction defects repaired or replaced at the seller's expense or to provide monetary compensation to the purchaser. The offer written notice of intent to repair or replace shall describe in reasonable detail all repairs or replacements that the seller is offering intends to make or provide to the dwelling and a reasonable estimate of the date by which the repairs or replacements will be made or monetary compensation will be provided. This subsection does not prohibit the seller from offering monetary compensation or other consideration instead of or in addition to a repair or replacement. The purchaser may accept or reject an offer of monetary compensation or other consideration, other than repair or replacement and, if rejected, may proceed with a dwelling action on completion of any repairs or replacements the seller intends to make or

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PROVIDE. THE PARTIES MAY NEGOTIATE FOR A RELEASE IF AN OFFER INVOLVING MONETARY COMPENSATION OR OTHER CONSIDERATION IS ACCEPTED.

D. If the seller does not provide a written response to the purchaser's notice within sixty days, the purchaser may file a dwelling action, without waiting for the expiration of ninety days as required by subsection A of this section.

E. Within twenty days after receipt of the seller's offer made pursuant to subsection C of this section, the purchaser shall provide a good faith written response. A purchaser who accepts the seller's offer made pursuant to subsection C of this section shall do so in writing by certified mail, return receipt requested. A purchaser who rejects the seller's offer made pursuant to subsection C of this section shall respond to the seller in writing by certified mail, return receipt requested. If the seller provides a specific factual basis for the offer, the response shall include the specific factual basis for the purchaser's rejection of the seller's offer and the purchaser's counteroffer, if any. Within ten days after receipt of the purchaser's response, the seller may make a best and final offer to the purchaser in writing by certified mail, return receipt requested.

F. The following are not admissible in any dwelling action:

1. A purchaser's good faith notice given to the seller pursuant to subsection A of this section.
2. A seller's good faith response or offer made pursuant to subsection C of this section.
3. A purchaser's good faith response made to a seller's offer pursuant to subsection E of this section.
4. A purchaser's good faith counteroffer to a seller's offer made pursuant to subsection E of this section.
5. A seller's good faith best and final offer made pursuant to subsection E of this section.

E. IF THE RESPONSE PROVIDED PURSUANT TO SUBSECTION C OF THIS SECTION INCLUDES A NOTICE OF INTENT TO REPAIR OR REPLACE THE ALLEGED CONSTRUCTION DEFECTS, THE PURCHASER SHALL ALLOW THE SELLER A REASONABLE OPPORTUNITY TO REPAIR OR REPLACE THE CONSTRUCTION DEFECTS OR CAUSE THE CONSTRUCTION DEFECTS TO BE REPAIRED OR REPLACED PURSUANT TO THE FOLLOWING:

1. THE PURCHASER AND THE SELLER OR THE SELLER'S CONSTRUCTION PROFESSIONALS SHALL COORDINATE REPAIRS OR REPLACEMENTS WITHIN THIRTY DAYS AFTER THE SELLER'S NOTICE OF INTENT TO REPAIR OR REPLACE WAS SENT PURSUANT TO SUBSECTION C OF THIS SECTION. IF REQUESTED BY THE PURCHASER, REPAIR OR REPLACEMENT OF ALLEGED CONSTRUCTION DEFECTS UNDERTAKEN BY THE SELLER SHALL BE PERFORMED BY A CONSTRUCTION PROFESSIONAL SELECTED BY THE PURCHASER AND CONSENTED TO BY THE PURCHASER, WHOSE CONSENT SHALL NOT BE UNREASONABLY WITHHELD, THAT WAS NOT INVOLVED IN THE CONSTRUCTION OR DESIGN OF THE DWELLING.

2. REPAIRS OR REPLACEMENTS SHALL BEGIN AS AGREED BY THE PURCHASER AND THE SELLER OR THE SELLER'S CONSTRUCTION PROFESSIONALS, WITH REASONABLE EFFORTS TO BEGIN REPAIRS OR REPLACEMENTS WITHIN THIRTY-FIVE DAYS AFTER THE
SELLER'S NOTICE OF INTENT TO REPAIR OR REPLACE WAS SENT PURSUANT TO SUBSECTION C OF THIS SECTION. IF A PERMIT IS REQUIRED TO PERFORM THE REPAIR OR REPLACEMENT, REASONABLE EFFORTS SHALL BE MADE TO BEGIN REPAIRS OR REPLACEMENTS WITHIN TEN DAYS AFTER RECEIPT OF THE PERMIT OR THIRTY-FIVE DAYS AFTER THE SELLER'S NOTICE OF INTENT TO REPAIR OR REPLACE WAS SENT PURSUANT TO SUBSECTION C OF THIS SECTION, WHICHEVER IS LATER.

3. ALL REPAIRS OR REPLACEMENTS SHALL BE COMPLETED USING REASONABLE CARE UNDER THE CIRCUMSTANCES AND WITHIN A COMMERCIAL REASONABLE TIME FRAME CONSIDERING THE NATURE OF THE REPAIR OR REPLACEMENT, ANY ACCESS ISSUES OR UNFORESEEN EVENTS THAT ARE NOT CAUSED BY THE SELLER OR THE SELLER'S CONSTRUCTION PROFESSIONALS.

4. THE PURCHASER SHALL PROVIDE REASONABLE ACCESS FOR THE REPAIRS OR REPLACEMENTS.

5. THE SELLER IS NOT ENTITLED TO A RELEASE OR WAIVER SOLELY IN EXCHANGE FOR ANY REPAIR OR REPLACEMENT MADE PURSUANT TO THIS SUBSECTION, EXCEPT THAT THE PURCHASER AND SELLER MAY NEGOTIATE A RELEASE OR WAIVER IN EXCHANGE FOR MONETARY COMPENSATION OR OTHER CONSIDERATION.

6. AT THE CONCLUSION OF ANY REPAIRS OR REPLACEMENTS, THE PURCHASER MAY COMMENCE A DWELLING ACTION OR, IF THE CONTRACT FOR THE SALE OF THE DWELLING OR THE COMMUNITY DOCUMENTS CONTAIN A COMMERCIAL REASONABLE ALTERNATIVE DISPUTE RESOLUTION PROCEDURE THAT COMPLIES WITH SECTION 12-1366, SUBSECTION C, MAY INITIATE THE DISPUTE RESOLUTION PROCESS INCLUDING ANY CLAIM FOR INADEQUATE REPAIR OR REPLACEMENT.

F. DURING THE NOTICE AND REPAIR OR REPLACEMENT PROCESS, AND FOR THIRTY DAYS AFTER SUBSTANTIAL COMPLETION OF THE REPAIR OR REPLACEMENT, THE STATUTE OF LIMITATIONS AND STATUTE OF REPOSE, INCLUDING SECTION 12-552, APPLICABLE TO THE PURCHASER, INCLUDING ANY CONSTRUCTION PROFESSIONALS INVOLVED IN THE CONSTRUCTION OR DESIGN, ARE TOLLED AS TO THE SELLER AND THE SELLER'S CONSTRUCTION PROFESSIONALS WHO WERE INVOLVED IN THE CONSTRUCTION OR DESIGN OF THE DWELLING FOR ALL ALLEGED CONSTRUCTION DEFECTS DESCRIBED IN REASONABLE DETAIL IN THE WRITTEN NOTICE SENT TO THE SELLER PURSUANT TO SUBSECTION A OF THIS SECTION.

G. BOTH PARTIES' CONDUCT DURING THE REPAIR OR REPLACEMENT PROCESS PRESCRIBED IN SUBSECTIONS B, C, D AND E OF THIS SECTION MAY BE INTRODUCED IN ANY SUBSEQUENT DWELLING ACTION. ANY REPAIR OR REPLACEMENT EFFORTS UNDERTAKEN BY THE SELLER ARE NOT CONSIDERED SETTLEMENT COMMUNICATIONS OR OFFERS OF SETTLEMENT AND ARE ADMISSIBLE IN EVIDENCE.

G. H. A purchaser may amend the notice provided pursuant to subsection A of this section to include alleged CONSTRUCTION defects identified in good faith after submission of the original notice during the ninety day notice period. The seller shall have a reasonable period of time to conduct an inspection, if requested, and thereafter the parties shall comply with the requirements of subsections B, C, D and E of this section for the additional alleged CONSTRUCTION defects identified in reasonable detail in the notice.
H. A purchaser’s written notice made pursuant to subsection A of this section or an amended notice made pursuant to subsection G of this section tolls the applicable statute of limitations, including section 12-552, until ninety days after the seller receives the notice or for a reasonable period agreed to in writing by the purchaser and seller.

I. Subject to Arizona rules of court, during the pendency of a dwelling action the purchaser may supplement the list of alleged CONSTRUCTION defects to include additional alleged CONSTRUCTION defects identified in good faith after filing of the original dwelling action that have been identified in reasonable detail as required by this section. The court shall provide the seller a reasonable amount of time to inspect the dwelling to determine the nature and cause of the additional alleged CONSTRUCTION defects, and the nature and extent of any repairs or replacements necessary to remedy the additional alleged CONSTRUCTION defects AND, ON REQUEST OF THE SELLER, SUFFICIENT TIME TO REPAIR OR REPLACE THE ADDITIONAL ALLEGED CONSTRUCTION DEFECTS. The parties shall comply with the requirements of subsections B, C, D and E of this section for the additional alleged CONSTRUCTION defects identified in reasonable detail in the notice.

J. The service of an amended notice identifying in reasonable detail the alleged CONSTRUCTION defects during the pendency of a dwelling action shall relate back to the original notice of alleged CONSTRUCTION defects for the purpose of tolling applicable statutes of limitations AND STATUTES OF REPOSE, including section 12-552.

K. By written agreement of the seller and purchaser, the time periods provided in this section may be extended.

L. For the sale of a dwelling that occurs within the statutory period set forth in section 12-552, the escrow agent, as defined in section 6-801, shall provide notice to the purchaser of the provisions of this section and sections 12-1361 and 12-1362. Nothing in this subsection creates a fiduciary duty or provides any person or entity with a private right or cause of action or administrative action.

M. IF THE SELLER DOES NOT COMPLY WITH THE REQUIREMENTS OF THIS SECTION AND THE FAILURE IS NOT DUE TO ANY FAULT OF THE PURCHASER OR AS A RESULT OF AN UNFORESEEN CONDITION, INCLUDING AN UNFORESEEN WEATHER CONDITION OR GOVERNMENT DELAY, THE PURCHASER MAY COMMENCE A DWELLING ACTION.

N. IF THE PURCHASER FAILS TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION BEFORE BRINGING A DWELLING ACTION, THE DWELLING ACTION SHALL BE DISMISSED. IF THE DWELLING ACTION IS DISMISSED AFTER THE STATUTE OF LIMITATIONS OR STATUTE OF REPOSE, INCLUDING SECTION 12-552, APPLICABLE TO THE PURCHASER, ANY SUBSEQUENT DWELLING ACTION BROUGHT BY THE PURCHASER IS TIME BARRED AS TO THE SELLER AND THE SELLER’S CONSTRUCTION PROFESSIONALS INVOLVED IN THE CONSTRUCTION OR DESIGN OF THE DWELLING.

O. FOR THE PURPOSES OF THIS SECTION, “REASONABLE DETAIL” INCLUDES A DETAILED AND ITEMIZED LIST THAT DESCRIBES EACH ALLEGED CONSTRUCTION DEFECT, THE LOCATION THAT EACH ALLEGED CONSTRUCTION DEFECT HAS BEEN OBSERVED BY THE
PURCHASER IN EACH DWELLING THAT IS THE SUBJECT OF THE NOTICE AND THE
IMPAIRMENT TO THE DWELLING THAT HAS OCCURRED AS A RESULT OF EACH OF THE
ALLEGED CONSTRUCTION DEFECTS OR IS REASONABLY LIKELY TO OCCUR IF THE ALLEGED
CONSTRUCTION DEFECTS ARE NOT REPAIRED OR REPLACED.

Sec. 4. Repeal
Section 12-1364, Arizona Revised Statutes, is repealed.
Sec. 5. Section 12-1366, Arizona Revised Statutes, is amended to read:
12-1366. Applicability; claims and actions
A. This article does not apply:
1. If a contract for the sale of a dwelling or an association's
community documents contain commercially reasonable alternative dispute
resolution procedures. If the contract for the sale of a dwelling contains
the procedures, the procedures shall conspicuously appear in the contract in
bold and capital letters. If the contract for sale of a dwelling contains
the procedures, a disclosure statement in at least twelve point font, bold
and capital letters shall appear on the face of the contract and shall
describe the location of the alternative dispute resolution procedures within
the contract.
2. 1. To personal injury claims.
3. 2. To death claims.
4. 3. To claims for damage to property other than a dwelling.
5. 4. To common law fraud claims.
6. 5. To proceedings brought pursuant to title 32, chapter 10.
7. 6. To claims solely seeking recovery of monies expended for
reparis to alleged defects that have been repaired by the purchaser.
B. A dwelling action brought by an association is also subject to
AFTER THE REPAIR OR REPLACEMENT PROCESS HAS BEEN COMPLETED AS
PRESCRIBED BY SECTION 12-1363, THIS ARTICLE DOES NOT AFFECT EITHER PARTY'S
ABILITY TO ENFORCE ANY COMMERCIIALLY REASONABLE ALTERNATIVE DISPUTE RESOLUTION
PROCEDURES CONTAINED IN THE CONTRACT FOR THE SALE OF THE DWELLING OR AN
ASSOCIATION'S COMMUNITY DOCUMENTS. THE SELLER'S ELECTION TO ENFORCE ANY
COMMERCIIALLY REASONABLE ALTERNATIVE DISPUTE RESOLUTION PROCEDURES CONTAINED
IN THE CONTRACT FOR THE SALE OF THE DWELLING OR AN ASSOCIATION'S COMMUNITY
DOCUMENTS DOES NOT NEGATE, ABRIDGE OR OTHERWISE REDUCE THE SELLER'S RIGHT TO
REPAIR OR REPLACE ANY ALLEGED CONSTRUCTION DEFECTS PURSUANT TO SECTION
12-1363. IF THE CONTRACT FOR THE SALE OF A DWELLING CONTAINS THE PROCEDURES,
THE PROCEDURES SHALL CONSPICUOUSLY APPEAR IN THE CONTRACT IN BOLD AND CAPITAL
LETTERS AND A DISCLOSURE STATEMENT IN AT LEAST TWELVE-POINT FONT, BOLD AND
CAPITAL LETTERS SHALL APPEAR ON THE FACE OF THE CONTRACT AND SHALL DESCRIBE
THE LOCATION OF THE ALTERNATIVE DISPUTE RESOLUTION PROCEDURES WITHIN THE
CONTRACT.
Sec. 6. Section 33-2001, Arizona Revised Statutes, is amended to read:
33-2001. Definitions
In this chapter, unless the context otherwise requires:
1. "Community documents" means condominium documents as defined in section 33-1202 or community documents as defined in section 33-1802, including covenants, conditions and restrictions and deed restrictions applicable to the dwelling.

2. "Dwelling" means a newly constructed single family or multifamily unit designed for residential use and property and improvements that are either owned by a homeowners' association or jointly by all of the members of a homeowners' association. Dwelling includes the systems, other components and improvements that are part of a newly constructed single family or multifamily unit at the time of construction.

3. "Good faith" means honesty in fact in the conduct or transaction concerned.

4. "Homeowners' association" means an association as defined in section 33-1202 or 33-1802.

5. "Homeowners' association dwelling action" means any action involving a construction defect as defined in section 12-1361 filed by a homeowners' association against the seller of a dwelling arising out of or related to the design, construction, condition or sale of the dwelling.

6. "Seller" means any of the following:
   (a) Any person, firm, partnership, corporation, association or other organization that is engaged in the business of building or selling dwellings.
   (b) Any person, firm, partnership, corporation, association or other organization that performs functions relating to or furnishes the design, specifications, surveying, planning, supervising, testing, constructing or observation of the constructing of a dwelling.
   (c) A real estate broker or salesperson as defined in section 32-2101.

Sec. 7. Section 33-2002, Arizona Revised Statutes, is amended to read:

33-2002. Homeowners' association dwelling actions; conditions

A. Notwithstanding any provision to the contrary in title 10, chapter 39 or chapters CHAPTER 9 and OR 16 of this title and in addition to any requirements prescribed in the community documents of a homeowners' association, a homeowners' association may file a homeowners' association dwelling action only after all of the following have occurred:

1. The board of directors has provided full disclosure in writing to all members of the association of all material information relating to the filing of the action. The material information shall include a statement describing the manner in which the action will be funded and a statement describing the nature of the action and the relief sought including any demands, notices, offers to settle or responses to offers to settle made either by the association or the seller and the expenses and fees that the association anticipates will be incurred, directly or indirectly, in prosecuting the action including attorney fees, consultant fees, expert witness fees, court costs and impacts on the values of the dwellings that are the subject of the action and those that are not. The material information
described by this paragraph shall be distributed to all members before the
meeting described in paragraph 2 OF THIS SUBSECTION occurs.

2. The association has held a meeting of its members and board of
directors for which reasonable and adequate notice was provided to all
members in the manner prescribed in section 33-1248 or 33-1804, as
applicable.

3. The board of directors of the homeowners' association authorizes
the filing of the action PURSUANT TO THE PROCEDURES PRESCRIBED IN THE
COMMUNITY DOCUMENTS. AT THE TIME OF COMMENCING A DWELLING ACTION OR AMENDING
A COMPLAINT TO ADD A CAUSE OF ACTION FOR A CONSTRUCTION DEFECT, THE
HOMEOWNERS' ASSOCIATION HAS AN AFFIRMATIVE DUTY TO DEMONSTRATE COMPLIANCE
WITH THE PROCEDURES PRESCRIBED IN THE COMMUNITY DOCUMENTS AND THE
REQUIREMENTS OF THIS SECTION.

4. THE ASSOCIATION PROVIDES THE SELLER WITH NOTICE OF THE ALLEGED
CONSTRUCTION DEFECTS AND THE RIGHT TO REPAIR OR REPLACE THE ALLEGED
CONSTRUCTION DEFECTS PURSUANT TO SECTION 12-1363.

B. If the notice required by subsection A, paragraph 2 of this section
is provided to the homeowners' association's members less than sixty days
before the expiration of a statute of limitations affecting the right of the
association to bring a homeowners' association dwelling action, the statute
of limitations is tolled for sixty days. The homeowners' association may
meet the remaining requirements of subsection A of this section during the
tolling period.

C. Notwithstanding any provision to the contrary in title 10, chapter
39 or in chapters CHAPTER 9 and OR 16 of this title and in addition to any
requirements prescribed in the community documents of a homeowners'
association, the board of directors of a homeowners' association or its
authorized representative shall disclose in writing to the members of the
association a plan that describes the manner in which the proceeds of a
homeowners' association dwelling action, whether obtained by way of judgment,
settlement or other means, have been or will be allocated. The plan shall be
disclosed within thirty days after the association receives the proceeds of
any homeowners' association dwelling action. The plan is not binding on the
homeowners' association, but the board of directors or its authorized
representative must disclose any material changes to the plan to the members
of the association within thirty days of making the changes.

D. A homeowners' association shall prepare and preserve for a period
of five years records that are adequate to demonstrate its compliance with
this section.

E. A director who acts in good faith pursuant to this chapter is not
liable for any act or failure to act pursuant to this chapter. In any action
filed against a director arising out of any act or failure to act pursuant to
this chapter, a director is presumed in all cases to have acted in good
faith. The burden is on the party challenging a director's conduct to
establish by clear and convincing evidence facts that rebut the good faith presumption.

F. IN ANY CONTESTED DWELLING ACTION, THE SELLER HAS STANDING TO ASSERT A FAILURE OF THE HOMEOWNERS' ASSOCIATION TO COMPLY WITH THE PROCEDURES PRESCRIBED BY THE COMMUNITY DOCUMENTS AND THE REQUIREMENTS OF THIS SECTION.

Sec. 8. **Severability**

If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.