

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)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 12-1361, Arizona Revised Statutes, is amended to
3 read:

4 12-1361. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Association" means either of the following:

7 (a) The unit owners' association organized under section 33-1241.

8 (b) A nonprofit corporation or unincorporated association of owners
9 created pursuant to a declaration to own and operate portions of a planned
10 community and which has the power under the declaration to assess association
11 members to pay the costs and expenses incurred in the performance of the
12 association's obligations under the declaration.

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

15 3. "CONSTRUCTION CODES" MEANS THE BUILDING, PLUMBING, ELECTRICAL,
16 FIRE, MECHANICAL OR OTHER CODES OR ORDINANCES, INCLUDING THE INTERNATIONAL
17 RESIDENTIAL CODE HOWEVER DENOMINATED, AS ADOPTED, AMENDED AND ENFORCED BY THE
18 CITY, TOWN OR COUNTY IN WHICH THE DWELLING IS LOCATED.

19 4. "CONSTRUCTION DEFECT" MEANS A MATERIAL DEFICIENCY IN THE DESIGN,
20 CONSTRUCTION, MANUFACTURE, REPAIR, ALTERATION, REMODELING OR LANDSCAPING OF A
21 DWELLING THAT IS THE RESULT OF ONE OF THE FOLLOWING:

22 (a) A VIOLATION OF CONSTRUCTION CODES APPLICABLE TO THE CONSTRUCTION
23 OF THE DWELLING.

24 (b) THE USE OF DEFECTIVE MATERIALS, PRODUCTS, COMPONENTS OR EQUIPMENT
25 IN THE DESIGN, CONSTRUCTION, MANUFACTURE, REPAIR, ALTERATION, REMODELING OR
26 LANDSCAPING OF THE DWELLING.

27 (c) THE FAILURE TO ADHERE TO GENERALLY ACCEPTED WORKMANSHIP STANDARDS
28 IN THE COMMUNITY.

29 5. "CONSTRUCTION PROFESSIONAL" MEANS AN ARCHITECT, CONTRACTOR,
30 SUBCONTRACTOR, DEVELOPER, BUILDER, BUILDER VENDOR, SUPPLIER, ENGINEER OR
31 INSPECTOR PERFORMING OR FURNISHING THE DESIGN, SUPERVISION, INSPECTION,
32 CONSTRUCTION OR OBSERVATION OF THE CONSTRUCTION OF ANY IMPROVEMENT TO REAL
33 PROPERTY.

34 ~~3-~~ 6. "Dwelling" means a single or multifamily unit designed for
35 residential use and common areas and improvements that are owned or
36 maintained by an association or by members of an association. A dwelling
37 includes the systems, other components and improvements that are part of a
38 single or multifamily unit at the time of construction.

39 ~~4-~~ 7. "Dwelling action" means any action INVOLVING A CONSTRUCTION
40 DEFECT brought by a purchaser against the seller of a dwelling arising out of
41 or related to the design, construction, condition or sale of the dwelling.

42 ~~5-~~ "Multiunit dwelling action" means a dwelling action brought by an
43 association or by or on behalf of the owners of five or more individual
44 dwelling units.

1 8. "MATERIAL DEFICIENCY" MEANS A DEFICIENCY THAT ACTUALLY IMPAIRS THE
2 STRUCTURAL INTEGRITY, THE FUNCTIONALITY OR THE APPEARANCE OF THE DWELLING AT
3 THE TIME OF THE CLAIM, OR IS REASONABLY LIKELY TO ACTUALLY IMPAIR THE
4 STRUCTURAL INTEGRITY, THE FUNCTIONALITY OR THE APPEARANCE OF THE DWELLING IN
5 THE FORESEEABLE FUTURE IF NOT REPAIRED OR REPLACED.

6 ~~6-~~ 9. "Purchaser" means any person or entity who files a dwelling
7 action.

8 ~~7-~~ 10. "Seller" means any person, firm, partnership, corporation,
9 association or other organization that is engaged in the business of
10 designing, constructing or selling dwellings, INCLUDING CONSTRUCTION
11 PROFESSIONALS. Seller does not include a real estate broker or real estate
12 salesperson as defined in ~~title 32, chapter 20~~ SECTION 32-2101 who provides
13 services in connection with the resale of a dwelling following its initial
14 sale.

15 Sec. 2. Section 12-1362, Arizona Revised Statutes, is amended to read:
16 12-1362. Dwelling action; notice of intent to repair or
17 replace; jurisdictional prerequisite; insurance

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

22 B. A SELLER WHO RECEIVES A WRITTEN NOTICE OF CLAIM PURSUANT TO SECTION
23 12-1363 HAS A RIGHT PURSUANT TO SECTION 12-1363 TO REPAIR OR REPLACE ANY
24 ALLEGED CONSTRUCTION DEFECTS AFTER SENDING OR DELIVERING TO THE PURCHASER A
25 WRITTEN NOTICE OF INTENT TO REPAIR OR REPLACE THE ALLEGED CONSTRUCTION
26 DEFECTS. THE SELLER DOES NOT NEED TO REPAIR OR REPLACE ALL OF THE ALLEGED
27 CONSTRUCTION DEFECTS. A PURCHASER MAY NOT FILE A DWELLING ACTION UNTIL THE
28 SELLER HAS COMPLETED ALL INTENDED REPAIRS AND REPLACEMENTS OF THE ALLEGED
29 CONSTRUCTION DEFECTS.

30 ~~B-~~ C. If a seller presents a notice received pursuant to section
31 12-1363 to an insurer that has issued an insurance policy to the seller that
32 covers the seller's liability arising out of A CONSTRUCTION DEFECT OR the
33 design, construction or sale of the property that is the subject of the
34 notice, the insurer must treat the notice as a notice of a claim subject to
35 the terms and conditions of the policy of insurance. An insurer is obliged
36 to work cooperatively and in good faith with the insured seller within the
37 ~~timeframes~~ TIME FRAMES specified in this article to effectuate the purpose of
38 this article. Nothing in this subsection otherwise affects the coverage
39 available under the policy of insurance or creates a cause of action against
40 an insurer whose actions were reasonable under the circumstances,
41 notwithstanding its inability to comply with the ~~timeframes~~ TIME FRAMES
42 specified in section 12-1363.

1 Sec. 3. Section 12-1363, Arizona Revised Statutes, is amended to read:
2 12-1363. Notice and right to repair or replace; tolling of time
3 limits; admissible evidence; definition

4 A. ~~At least ninety days~~ Before filing a dwelling action, the purchaser
5 shall give written notice by certified mail, return receipt requested, to the
6 seller specifying in reasonable detail the basis of the dwelling action. ~~The~~
7 ~~notice in a multiunit dwelling action involving alleged defects that are~~
8 ~~substantially similar in multiple residential units may comply with this~~
9 ~~section by providing a reasonably detailed description of the alleged defects~~
10 ~~in a fair and representative sample of the affected residential units. For~~
11 ~~the purposes of this subsection, "reasonable detail" includes a detailed and~~
12 ~~itemized list that describes each alleged defect and the location that each~~
13 ~~alleged defect has been observed by the purchaser in each dwelling that is~~
14 ~~the subject of the notice.~~

15 B. After receipt of the notice described in subsection A of this
16 section, the seller may inspect the dwelling to determine the nature and
17 cause of the alleged CONSTRUCTION defects and the nature and extent of any
18 repairs or replacements necessary to remedy the alleged CONSTRUCTION defects.
19 The purchaser shall ensure that the dwelling is made available for inspection
20 no later than ten days after the purchaser receives the seller's request for
21 an inspection. The seller shall provide reasonable notice to the purchaser
22 before conducting the inspection. The inspection shall be conducted at a
23 reasonable time. The seller may use reasonable measures, including testing,
24 to determine the nature and cause of the alleged CONSTRUCTION defects and the
25 nature and extent of any repairs or replacements necessary to remedy the
26 alleged CONSTRUCTION defects. If the seller conducts testing pursuant to
27 this subsection, the seller shall restore the dwelling to its condition
28 before the testing.

29 C. Within sixty days after receipt of the notice described in
30 subsection A of this section, the seller shall send to the purchaser a good
31 faith written response to the purchaser's notice by certified mail, return
32 receipt requested. The response may include ~~an offer~~ THE SELLER'S NOTICE OF
33 INTENT to repair or replace any alleged CONSTRUCTION defects, to have the
34 alleged CONSTRUCTION defects repaired or replaced at the seller's expense or
35 to provide monetary compensation to the purchaser. The ~~offer~~ WRITTEN NOTICE
36 OF INTENT TO REPAIR OR REPLACE shall describe in reasonable detail all
37 repairs or replacements that the seller ~~is offering~~ INTENDS to make or
38 provide to the dwelling and a reasonable estimate of the date by which the
39 repairs or replacements will be made ~~or monetary compensation will be~~
40 ~~provided.~~ THIS SUBSECTION DOES NOT PROHIBIT THE SELLER FROM OFFERING
41 MONETARY COMPENSATION OR OTHER CONSIDERATION INSTEAD OF OR IN ADDITION TO A
42 REPAIR OR REPLACEMENT. THE PURCHASER MAY ACCEPT OR REJECT AN OFFER OF
43 MONETARY COMPENSATION OR OTHER CONSIDERATION, OTHER THAN REPAIR OR
44 REPLACEMENT AND, IF REJECTED, MAY PROCEED WITH A DWELLING ACTION ON
45 COMPLETION OF ANY REPAIRS OR REPLACEMENTS THE SELLER INTENDS TO MAKE OR

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

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

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

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

20 ~~1. A purchaser's good faith notice given to the seller pursuant to~~
21 ~~subsection A of this section.~~

22 ~~2. A seller's good faith response or offer made pursuant to subsection~~
23 ~~C of this section.~~

24 ~~3. A purchaser's good faith response made to a seller's offer pursuant~~
25 ~~to subsection E of this section.~~

26 ~~4. A purchaser's good faith counteroffer to a seller's offer made~~
27 ~~pursuant to subsection E of this section.~~

28 ~~5. A seller's good faith best and final offer made pursuant to~~
29 ~~subsection E of this section.~~

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

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

43 2. REPAIRS OR REPLACEMENTS SHALL BEGIN AS AGREED BY THE PURCHASER AND
44 THE SELLER OR THE SELLER'S CONSTRUCTION PROFESSIONALS, WITH REASONABLE
45 EFFORTS TO BEGIN REPAIRS OR REPLACEMENTS WITHIN THIRTY-FIVE DAYS AFTER THE

1 SELLER'S NOTICE OF INTENT TO REPAIR OR REPLACE WAS SENT PURSUANT TO
2 SUBSECTION C OF THIS SECTION. IF A PERMIT IS REQUIRED TO PERFORM THE REPAIR
3 OR REPLACEMENT, REASONABLE EFFORTS SHALL BE MADE TO BEGIN REPAIRS OR
4 REPLACEMENTS WITHIN TEN DAYS AFTER RECEIPT OF THE PERMIT OR THIRTY-FIVE DAYS
5 AFTER THE SELLER'S NOTICE OF INTENT TO REPAIR OR REPLACE WAS SENT PURSUANT TO
6 SUBSECTION C OF THIS SECTION, WHICHEVER IS LATER.

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

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

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

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

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

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

38 ~~G.~~ H. A purchaser may amend the notice provided pursuant to
39 subsection A of this section to include alleged CONSTRUCTION defects
40 identified in good faith after submission of the original notice ~~during the~~
41 ~~ninety day notice period~~. The seller shall have a reasonable period of time
42 to conduct an inspection, if requested, and thereafter the parties shall
43 comply with the requirements of subsections B, C, D and E of this section for
44 the additional alleged CONSTRUCTION defects identified in reasonable detail
45 in the notice.

1 ~~H. A purchaser's written notice made pursuant to subsection A of this~~
2 ~~section or an amended notice made pursuant to subsection G of this section~~
3 ~~tolls the applicable statute of limitations, including section 12-552, until~~
4 ~~ninety days after the seller receives the notice or for a reasonable period~~
5 ~~agreed to in writing by the purchaser and seller.~~

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

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

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

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

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

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

43 O. FOR THE PURPOSES OF THIS SECTION, "REASONABLE DETAIL" INCLUDES A
44 DETAILED AND ITEMIZED LIST THAT DESCRIBES EACH ALLEGED CONSTRUCTION DEFECT,
45 THE LOCATION THAT EACH ALLEGED CONSTRUCTION DEFECT HAS BEEN OBSERVED BY THE

1 PURCHASER IN EACH DWELLING THAT IS THE SUBJECT OF THE NOTICE AND THE
2 IMPAIRMENT TO THE DWELLING THAT HAS OCCURRED AS A RESULT OF EACH OF THE
3 ALLEGED CONSTRUCTION DEFECTS OR IS REASONABLY LIKELY TO OCCUR IF THE ALLEGED
4 CONSTRUCTION DEFECTS ARE NOT REPAIRED OR REPLACED.

5 Sec. 4. Repeal

6 Section 12-1364, Arizona Revised Statutes, is repealed.

7 Sec. 5. Section 12-1366, Arizona Revised Statutes, is amended to read:
8 12-1366. Applicability; claims and actions

9 A. This article does not apply:

10 ~~1. If a contract for the sale of a dwelling or an association's~~
11 ~~community documents contain commercially reasonable alternative dispute~~
12 ~~resolution procedures. If the contract for the sale of a dwelling contains~~
13 ~~the procedures, the procedures shall conspicuously appear in the contract in~~
14 ~~bold and capital letters. If the contract for sale of a dwelling contains~~
15 ~~the procedures, a disclosure statement in at least twelve point font, bold~~
16 ~~and capital letters shall appear on the face of the contract and shall~~
17 ~~describe the location of the alternative dispute resolution procedures within~~
18 ~~the contract.~~

19 ~~2.~~ 1. To personal injury claims.

20 ~~3.~~ 2. To death claims.

21 ~~4.~~ 3. To claims for damage to property other than a dwelling.

22 ~~5.~~ 4. To common law fraud claims.

23 ~~6.~~ 5. To proceedings brought pursuant to title 32, chapter 10.

24 ~~7.~~ 6. To claims solely seeking recovery of monies expended for
25 repairs to alleged defects that have been repaired by the purchaser.

26 B. A dwelling action brought by an association is also subject to
27 title 33, chapter 18.

28 C. AFTER THE REPAIR OR REPLACEMENT PROCESS HAS BEEN COMPLETED AS
29 PRESCRIBED BY SECTION 12-1363, THIS ARTICLE DOES NOT AFFECT EITHER PARTY'S
30 ABILITY TO ENFORCE ANY COMMERCIALY REASONABLE ALTERNATIVE DISPUTE RESOLUTION
31 PROCEDURES CONTAINED IN THE CONTRACT FOR THE SALE OF THE DWELLING OR AN
32 ASSOCIATION'S COMMUNITY DOCUMENTS. THE SELLER'S ELECTION TO ENFORCE ANY
33 COMMERCIALY REASONABLE ALTERNATIVE DISPUTE RESOLUTION PROCEDURES CONTAINED
34 IN THE CONTRACT FOR THE SALE OF THE DWELLING OR AN ASSOCIATION'S COMMUNITY
35 DOCUMENTS DOES NOT NEGATE, ABRIDGE OR OTHERWISE REDUCE THE SELLER'S RIGHT TO
36 REPAIR OR REPLACE ANY ALLEGED CONSTRUCTION DEFECTS PURSUANT TO SECTION
37 12-1363. IF THE CONTRACT FOR THE SALE OF A DWELLING CONTAINS THE PROCEDURES,
38 THE PROCEDURES SHALL CONSPICUOUSLY APPEAR IN THE CONTRACT IN BOLD AND CAPITAL
39 LETTERS AND A DISCLOSURE STATEMENT IN AT LEAST TWELVE-POINT FONT, BOLD AND
40 CAPITAL LETTERS SHALL APPEAR ON THE FACE OF THE CONTRACT AND SHALL DESCRIBE
41 THE LOCATION OF THE ALTERNATIVE DISPUTE RESOLUTION PROCEDURES WITHIN THE
42 CONTRACT.

43 Sec. 6. Section 33-2001, Arizona Revised Statutes, is amended to read:
44 33-2001. Definitions

45 In this chapter, unless the context otherwise requires:

1 1. "Community documents" means condominium documents as defined in
2 section 33-1202 or community documents as defined in section 33-1802,
3 **INCLUDING COVENANTS, CONDITIONS AND RESTRICTIONS AND DEED RESTRICTIONS**
4 **APPLICABLE TO THE DWELLING.**

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

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

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

15 5. "Homeowners' association dwelling action" means any action
16 **INVOLVING A CONSTRUCTION DEFECT AS DEFINED IN SECTION 12-1361** filed by a
17 homeowners' association against the seller of a dwelling arising out of or
18 related to the design, construction, condition or sale of the dwelling.

19 6. "Seller" means any of the following:

20 (a) Any person, firm, partnership, corporation, association or other
21 organization that is engaged in the business of building or selling
22 dwellings.

23 (b) Any person, firm, partnership, corporation, association or other
24 organization that performs functions relating to or furnishes the design,
25 specifications, surveying, planning, supervising, testing, constructing or
26 observation of the constructing of a dwelling.

27 (c) A real estate broker or salesperson as defined in section 32-2101.

28 Sec. 7. Section 33-2002, Arizona Revised Statutes, is amended to read:
29 **33-2002. Homeowners' association dwelling actions; conditions**

30 A. Notwithstanding any provision to the contrary in title 10, chapter
31 39 or ~~chapters~~ **CHAPTER 9 and OR** 16 of this title and in addition to any
32 requirements prescribed in the community documents of a homeowners'
33 association, a homeowners' association may file a homeowners' association
34 dwelling action only after all of the following have occurred:

35 1. The board of directors has provided full disclosure in writing to
36 all members of the association of all material information relating to the
37 filing of the action. The material information shall include a statement
38 that describes ~~the manner in which the action will be funded and a statement~~
39 ~~describing~~ **THE NATURE OF THE ACTION AND THE RELIEF SOUGHT INCLUDING** any
40 demands, notices, offers to settle or responses to offers to settle made
41 either by the association or the seller **AND THE EXPENSES AND FEES THAT THE**
42 **ASSOCIATION ANTICIPATES WILL BE INCURRED, DIRECTLY OR INDIRECTLY, IN**
43 **PROSECUTING THE ACTION INCLUDING ATTORNEY FEES, CONSULTANT FEES, EXPERT**
44 **WITNESS FEES, COURT COSTS AND IMPACTS ON THE VALUES OF THE DWELLINGS THAT ARE**
45 **THE SUBJECT OF THE ACTION AND THOSE THAT ARE NOT.** The material information

1 described by this paragraph shall be distributed to all members before the
2 meeting described in paragraph 2 OF THIS SUBSECTION occurs.

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

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

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

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

24 C. Notwithstanding any provision to the contrary in title 10, chapter
25 39 or in ~~chapters~~ CHAPTER 9 and OR 16 of this title and in addition to any
26 requirements prescribed in the community documents of a homeowners'
27 association, the board of directors of a homeowners' association or its
28 authorized representative shall disclose in writing to the members of the
29 association a plan that describes the manner in which the proceeds of a
30 homeowners' association dwelling action, whether obtained by way of judgment,
31 settlement or other means, have been or will be allocated. The plan shall be
32 disclosed within thirty days after the association receives the proceeds of
33 any homeowners' association dwelling action. The plan is not binding on the
34 homeowners' association, but the board of directors or its authorized
35 representative must disclose any material changes to the plan to the members
36 of the association within thirty days of making the changes.

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

40 E. A director who acts in good faith pursuant to this chapter is not
41 liable for any act or failure to act pursuant to this chapter. In any action
42 filed against a director arising out of any act or failure to act pursuant to
43 this chapter, a director is presumed in all cases to have acted in good
44 faith. The burden is on the party challenging a director's conduct to

1 establish by clear and convincing evidence facts that rebut the good faith
2 presumption.

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

6 Sec. 8. Severability

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