

REFERENCE TITLE: real property; purchaser dwelling actions

State of Arizona
House of Representatives
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2015

HB 2578

Introduced by

Representatives Mitchell, Allen J, Borrelli, Kern, Montenegro, Thorpe,
Senators Burges, Griffin, Pierce: Representatives Barton, Boyer, Campbell,
Carter, Fann, Finchem, Lawrence, Leach, Livingston, Olson, Shope,
Townsend, Senators Allen, Biggs, Dial, Farnsworth D, Shooter, Smith, Yee

AN ACT

AMENDING SECTIONS 12-552, 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 12-552, Arizona Revised Statutes, is amended to
3 read:

4 12-552. Actions involving development of real property design,
5 engineering and construction of improvements

6 A. Notwithstanding any other statute, no action or arbitration based
7 in contract may be instituted or maintained against a person who develops or
8 develops and sells real property, or performs or furnishes the design,
9 specifications, surveying, planning, supervision, testing, construction or
10 observation of construction of an improvement to real property more than
11 ~~eight~~ SIX years after substantial completion of the improvement to real
12 property.

13 B. Notwithstanding subsection A of this section, in the case of injury
14 to real property or an improvement to real property, if the injury occurred
15 during the ~~eighth~~ SIXTH year after the substantial completion, — or, in the
16 case of a latent CONSTRUCTION defect, was not discovered until the ~~eighth~~
17 SIXTH year after substantial completion, an action to recover damages for
18 injury to the real property may be brought within one year after the date on
19 which the injury to real property or an improvement to real property occurred
20 or a latent CONSTRUCTION defect was discovered, but in no event may an action
21 be brought more than ~~nine~~ SEVEN years after the substantial completion of the
22 improvement.

23 C. The limitations in subsections A and B of this section include any
24 action based on implied warranty arising out of the contract or the
25 construction, including implied warranties of habitability, fitness or
26 workmanship.

27 D. Nothing in this section applies to actions for personal injury or
28 death nor shall this section operate to shorten the period of warranty
29 provided in an express written warranty.

30 E. For the purposes of subsections A, B and C of this section, an
31 improvement to real property is considered substantially complete when any of
32 the following first occurs:

33 1. It is first used by the owner or occupant of the improvement.

34 2. It is first available for use after having been completed according
35 to the contract or agreement covering the improvement, including agreed
36 changes to the contract or agreement.

37 3. Final inspection, if required, by the governmental body ~~which~~ THAT
38 issued the building permit for the improvement.

39 F. In this section an action based in contract is an action based on a
40 written real estate contract, sales agreement, construction agreement,
41 conveyance or written agreement for construction or for the services set
42 forth in subsection A of this section. This section shall not be construed
43 to extend the period prescribed by the laws of this state for bringing any
44 action. If a shorter period of limitation is prescribed for a specific
45 action, the shorter period governs.

1 ~~G. With respect to an improvement to real property that was~~
2 ~~substantially complete on or before September 15, 1989, the eight and~~
3 ~~nine year periods established in subsections A and B of this section shall~~
4 ~~begin to run on September 15, 1989. Notwithstanding the provisions of~~
5 ~~subsection E of this section and section 12-505, subsection A, this~~
6 ~~subsection applies to claims that accrued before the effective date of this~~
7 ~~amendment to this section.~~

8 G. THE LIMITATIONS IN SUBSECTIONS A AND B OF THIS SECTION APPLY TO ANY
9 ACTION OR ARBITRATION WITH RESPECT TO AN IMPROVEMENT TO REAL PROPERTY THAT
10 WAS SUBSTANTIALLY COMPLETE ON OR AFTER THE EFFECTIVE DATE OF THIS AMENDMENT
11 TO THIS SECTION.

12 H. NOTWITHSTANDING ANY OTHER LAW, WITH RESPECT TO AN IMPROVEMENT TO
13 REAL PROPERTY THAT WAS SUBSTANTIALLY COMPLETE BEFORE THE EFFECTIVE DATE OF
14 THIS AMENDMENT TO THIS SECTION, NO ACTION OR ARBITRATION BASED IN CONTRACT
15 MAY BE INSTITUTED OR MAINTAINED AGAINST A PERSON WHO DEVELOPS OR DEVELOPS AND
16 SELLS REAL PROPERTY OR WHO PERFORMS OR FURNISHES THE DESIGN, SPECIFICATIONS,
17 SURVEYING, PLANNING, SUPERVISION, TESTING, CONSTRUCTION OR OBSERVATION OF
18 CONSTRUCTION OF AN IMPROVEMENT TO REAL PROPERTY MORE THAN EIGHT YEARS AFTER
19 SUBSTANTIAL COMPLETION OF THE IMPROVEMENT TO REAL PROPERTY.

20 I. NOTWITHSTANDING SUBSECTION H OF THIS SECTION, WITH RESPECT TO AN
21 IMPROVEMENT TO REAL PROPERTY THAT WAS SUBSTANTIALLY COMPLETE BEFORE THE
22 EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION, IN THE CASE OF INJURY TO
23 REAL PROPERTY OR AN IMPROVEMENT TO REAL PROPERTY, IF THE INJURY OCCURRED
24 DURING THE EIGHTH YEAR AFTER THE SUBSTANTIAL COMPLETION, OR, IN THE CASE OF A
25 LATENT CONSTRUCTION DEFECT, WAS NOT DISCOVERED UNTIL THE EIGHTH YEAR AFTER
26 SUBSTANTIAL COMPLETION, AN ACTION TO RECOVER DAMAGES FOR INJURY TO THE REAL
27 PROPERTY MAY BE BROUGHT WITHIN ONE YEAR AFTER THE DATE ON WHICH THE INJURY TO
28 THE REAL PROPERTY OR AN IMPROVEMENT TO REAL PROPERTY OCCURRED OR A LATENT
29 CONSTRUCTION DEFECT WAS DISCOVERED, BUT IN NO EVENT MAY AN ACTION BE BROUGHT
30 MORE THAN SEVEN YEARS AFTER THE SUBSTANTIAL COMPLETION OF THE IMPROVEMENT.

31 Sec. 2. Section 12-1361, Arizona Revised Statutes, is amended to read:
32 12-1361. Definitions

33 In this article, unless the context otherwise requires:

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

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

36 (b) A nonprofit corporation or unincorporated association of owners
37 created pursuant to a declaration to own and operate portions of a planned
38 community and which has the power under the declaration to assess association
39 members to pay the costs and expenses incurred in the performance of the
40 association's obligations under the declaration.

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

43 3. "CONSTRUCTION CODES" MEANS THE BUILDING, PLUMBING, ELECTRICAL,
44 FIRE, MECHANICAL OR OTHER CODES OR ORDINANCES, INCLUDING THE INTERNATIONAL

1 RESIDENTIAL CODE HOWEVER DENOMINATED, AS ADOPTED, AMENDED AND ENFORCED BY THE
2 CITY, TOWN OR COUNTY IN WHICH THE DWELLING IS LOCATED.

3 4. "CONSTRUCTION DEFECT" MEANS A DEFICIENCY IN THE DESIGN,
4 CONSTRUCTION, MANUFACTURE, REPAIR, ALTERATION, REMODELING OR LANDSCAPING OF A
5 DWELLING THAT PROXIMATELY CAUSED ACTUAL PHYSICAL DAMAGE TO THE DWELLING THAT
6 IMPAIRS THE STRUCTURAL INTEGRITY OR SUBSTANTIALLY IMPAIRS THE FUNCTIONALITY
7 OF THE DWELLING AT THE TIME OF THE CLAIM AND IS THE RESULT OF EITHER OF THE
8 FOLLOWING:

9 (a) A VIOLATION OF LAW, INCLUDING CONSTRUCTION CODES, APPLICABLE TO
10 THE CONSTRUCTION OF THE DWELLING.

11 (b) THE USE OF DEFECTIVE MATERIALS, PRODUCTS, COMPONENTS OR EQUIPMENT
12 IN THE DESIGN, CONSTRUCTION, MANUFACTURE, REPAIR, ALTERATION, REMODELING OR
13 LANDSCAPING OF THE DWELLING.

14 5. "CONSTRUCTION PROFESSIONAL" MEANS AN ARCHITECT, CONTRACTOR,
15 SUBCONTRACTOR, DEVELOPER, BUILDER, BUILDER VENDOR, SUPPLIER, ENGINEER OR
16 INSPECTOR PERFORMING OR FURNISHING THE DESIGN, SUPERVISION, INSPECTION,
17 CONSTRUCTION OR OBSERVATION OF THE CONSTRUCTION OF ANY IMPROVEMENT TO REAL
18 PROPERTY.

19 ~~3-~~ 6. "Dwelling" means a single or multifamily unit designed for
20 residential use and common areas and improvements that are owned or
21 maintained by an association or by members of an association. A dwelling
22 includes the systems, other components and improvements that are part of a
23 single or multifamily unit at the time of construction.

24 ~~4-~~ 7. "Dwelling action" means any action brought by a purchaser
25 against the seller of a dwelling arising out of or related to A CONSTRUCTION
26 DEFECT OR the design, construction, condition or sale of the dwelling.

27 ~~5-~~ "Multiunit dwelling action" means a dwelling action brought by an
28 association or by or on behalf of the owners of five or more individual
29 dwelling units.

30 ~~6-~~ 8. "Purchaser" means any person or entity who files a dwelling
31 action.

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

38 Sec. 3. Section 12-1362, Arizona Revised Statutes, is amended to read:
39 12-1362. Dwelling action; notice of intent to repair or
40 replace; jurisdictional prerequisite; insurance

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

1 B. A SELLER WHO RECEIVES A WRITTEN NOTICE OF CLAIM PURSUANT TO SECTION
2 12-1363 HAS A RIGHT PURSUANT TO SECTION 12-1363 TO REPAIR OR REPLACE ANY
3 ALLEGED CONSTRUCTION DEFECTS AFTER SENDING OR DELIVERING TO THE PURCHASER A
4 WRITTEN NOTICE OF INTENT TO REPAIR OR REPLACE THE ALLEGED CONSTRUCTION
5 DEFECTS. THE SELLER DOES NOT NEED TO REPAIR OR REPLACE ALL OF THE ALLEGED
6 CONSTRUCTION DEFECTS. A PURCHASER MAY NOT FILE A DWELLING ACTION UNTIL THE
7 SELLER HAS COMPLETED ALL INTENDED REPAIRS AND REPLACEMENTS OF THE ALLEGED
8 CONSTRUCTION DEFECTS.

9 ~~B.~~ C. If a seller presents a notice received pursuant to section
10 12-1363 to an insurer that has issued an insurance policy to the seller that
11 covers the seller's liability arising out of A CONSTRUCTION DEFECT OR the
12 design, construction or sale of the property that is the subject of the
13 notice, the insurer must treat the notice as a notice of a claim subject to
14 the terms and conditions of the policy of insurance. An insurer is obliged
15 to work cooperatively and in good faith with the insured seller within the
16 ~~timeframes~~ TIME FRAMES specified in this article to effectuate the purpose of
17 this article. Nothing in this subsection otherwise affects the coverage
18 available under the policy of insurance or creates a cause of action against
19 an insurer whose actions were reasonable under the circumstances,
20 notwithstanding its inability to comply with the ~~timeframes~~ TIME FRAMES
21 specified in section 12-1363.

22 Sec. 4. Section 12-1363, Arizona Revised Statutes, is amended to read:
23 12-1363. Notice and right to repair or replace; tolling of time
24 limits; admissible evidence; definition

25 A. ~~At least ninety days~~ Before filing a dwelling action, the purchaser
26 shall give written notice by certified mail, return receipt requested, to the
27 seller specifying in reasonable detail the basis of the dwelling action. ~~The~~
28 ~~notice in a multiunit dwelling action involving alleged defects that are~~
29 ~~substantially similar in multiple residential units may comply with this~~
30 ~~section by providing a reasonably detailed description of the alleged defects~~
31 ~~in a fair and representative sample of the affected residential units. For~~
32 ~~the purposes of this subsection, "reasonable detail" includes a detailed and~~
33 ~~itemized list that describes each alleged defect and the location that each~~
34 ~~alleged defect has been observed by the purchaser in each dwelling that is~~
35 ~~the subject of the notice.~~

36 B. After receipt of the notice described in subsection A of this
37 section, the seller may inspect the dwelling to determine the nature and
38 cause of the alleged CONSTRUCTION defects and the nature and extent of any
39 repairs or replacements necessary to remedy the alleged CONSTRUCTION defects.
40 The purchaser shall ensure that the dwelling is made available for inspection
41 no later than ten days after the purchaser receives the seller's request for
42 an inspection. The seller shall provide reasonable notice to the purchaser
43 before conducting the inspection. The inspection shall be conducted at a
44 reasonable time. The seller may use reasonable measures, including testing,
45 to determine the nature and cause of the alleged CONSTRUCTION defects and the

1 nature and extent of any repairs or replacements necessary to remedy the
2 alleged CONSTRUCTION defects. If the seller conducts testing pursuant to
3 this subsection, the seller shall restore the dwelling to its condition
4 before the testing.

5 C. Within sixty days after receipt of the notice described in
6 subsection A of this section, the seller shall send to the purchaser a good
7 faith written response to the purchaser's notice by certified mail, return
8 receipt requested. The response may include ~~an offer~~ THE SELLER'S NOTICE OF
9 INTENT to repair or replace any alleged CONSTRUCTION defects, to have the
10 alleged CONSTRUCTION defects repaired or replaced at the seller's expense or
11 to provide monetary compensation to the purchaser. The ~~offer~~ WRITTEN NOTICE
12 OF INTENT TO REPAIR OR REPLACE shall describe in reasonable detail all
13 repairs or replacements that the seller ~~is offering~~ INTENDS to make or
14 provide to the dwelling and a reasonable estimate of the date by which the
15 repairs or replacements will be made ~~or monetary compensation will be~~
16 ~~provided~~. THIS SUBSECTION DOES NOT PROHIBIT THE SELLER FROM OFFERING CASH OR
17 OTHER CONSIDERATION INSTEAD OF OR IN ADDITION TO A REPAIR OR REPLACEMENT.
18 THE PURCHASER MAY ACCEPT OR REJECT AN OFFER OF CASH OR OTHER CONSIDERATION,
19 OTHER THAN REPAIR OR REPLACEMENT AND, IF REJECTED, MAY PROCEED WITH A
20 DWELLING ACTION ON COMPLETION OF ANY REPAIRS OR REPLACEMENTS THE SELLER
21 INTENDS TO MAKE OR PROVIDE. THE PARTIES MAY NEGOTIATE FOR A RELEASE IF AN
22 OFFER INVOLVING CASH OR OTHER CONSIDERATION IS ACCEPTED.

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

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

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

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

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

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

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

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

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

10 1. THE PURCHASER AND THE SELLER OR THE SELLER'S CONSTRUCTION
11 PROFESSIONALS SHALL COORDINATE REPAIRS OR REPLACEMENTS WITHIN THIRTY DAYS
12 AFTER THE SELLER'S NOTICE OF INTENT TO REPAIR OR REPLACE WAS SENT PURSUANT TO
13 SUBSECTION C OF THIS SECTION.

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

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

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

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

34 6. AT THE CONCLUSION OF ANY REPAIRS OR REPLACEMENTS, THE PURCHASER MAY
35 COMMENCE A DWELLING ACTION, INCLUDING ANY CLAIM FOR INADEQUATE REPAIR OR
36 REPLACEMENT.

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

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

6 ~~G.~~ H. A purchaser may amend the notice provided pursuant to
7 subsection A of this section to include alleged CONSTRUCTION defects
8 identified in good faith after submission of the original notice ~~during the~~
9 ~~ninety day notice period.~~ The seller shall have a reasonable period of time
10 to conduct an inspection, if requested, and thereafter the parties shall
11 comply with the requirements of subsections B, C, D and E of this section for
12 the additional alleged CONSTRUCTION defects identified in reasonable detail
13 in the notice.

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

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

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

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

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

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

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

12 O. FOR THE PURPOSES OF THIS SECTION, "REASONABLE DETAIL" INCLUDES A
13 DETAILED AND ITEMIZED LIST THAT DESCRIBES EACH ALLEGED CONSTRUCTION DEFECT,
14 THE LOCATION THAT EACH ALLEGED CONSTRUCTION DEFECT HAS BEEN OBSERVED BY THE
15 PURCHASER IN EACH DWELLING THAT IS THE SUBJECT OF THE NOTICE, THE PHYSICAL
16 DAMAGE PROXIMATELY CAUSED BY EACH ALLEGED CONSTRUCTION DEFECT AND THE
17 LOCATION THAT PHYSICAL DAMAGE PROXIMATELY CAUSED BY EACH ALLEGED CONSTRUCTION
18 DEFECT HAS BEEN OBSERVED.

19 Sec. 5. Repeal

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

21 Sec. 6. Section 12-1366, Arizona Revised Statutes, is amended to read:
22 12-1366. Applicability; claims and actions

23 A. This article does not apply:

24 ~~1. If a contract for the sale of a dwelling or an association's~~
25 ~~community documents contain commercially reasonable alternative dispute~~
26 ~~resolution procedures. If the contract for the sale of a dwelling contains~~
27 ~~the procedures, the procedures shall conspicuously appear in the contract in~~
28 ~~bold and capital letters. If the contract for sale of a dwelling contains~~
29 ~~the procedures, a disclosure statement in at least twelve point font, bold~~
30 ~~and capital letters shall appear on the face of the contract and shall~~
31 ~~describe the location of the alternative dispute resolution procedures within~~
32 ~~the contract.~~

33 ~~2.~~ 1. To personal injury claims.

34 ~~3.~~ 2. To death claims.

35 ~~4.~~ 3. To claims for damage to property other than a dwelling.

36 ~~5.~~ 4. To common law fraud claims.

37 ~~6.~~ 5. To proceedings brought pursuant to title 32, chapter 10.

38 ~~7.~~ 6. To claims solely seeking recovery of monies expended for
39 repairs to alleged defects that have been repaired by the purchaser.

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

42 C. AFTER THE REPAIR OR REPLACEMENT PROCESS HAS BEEN COMPLETED AND A
43 DWELLING ACTION HAS BEEN FILED AS PRESCRIBED BY SECTION 12-1363, THIS ARTICLE
44 DOES NOT AFFECT EITHER PARTY'S ABILITY TO ENFORCE ANY COMMERCIALY REASONABLE
45 ALTERNATIVE DISPUTE RESOLUTION PROCEDURES CONTAINED IN THE CONTRACT FOR THE

1 SALE OF THE DWELLING OR AN ASSOCIATION'S COMMUNITY DOCUMENTS. THE SELLER'S
2 ELECTION TO ENFORCE ANY COMMERCIALY REASONABLE ALTERNATIVE DISPUTE
3 RESOLUTION PROCEDURES CONTAINED IN THE CONTRACT FOR THE SALE OF THE DWELLING
4 OR AN ASSOCIATION'S COMMUNITY DOCUMENTS DOES NOT NEGATE, ABRIDGE OR OTHERWISE
5 REDUCE THE SELLER'S RIGHT TO REPAIR OR REPLACE ANY ALLEGED CONSTRUCTION
6 DEFECTS PURSUANT TO SECTION 12-1363. IF THE CONTRACT FOR THE SALE OF A
7 DWELLING CONTAINS THE PROCEDURES, THE PROCEDURES SHALL CONSPICUOUSLY APPEAR
8 IN THE CONTRACT IN BOLD AND CAPITAL LETTERS AND A DISCLOSURE STATEMENT IN AT
9 LEAST TWELVE-POINT FONT, BOLD AND CAPITAL LETTERS SHALL APPEAR ON THE FACE OF
10 THE CONTRACT AND SHALL DESCRIBE THE LOCATION OF THE ALTERNATIVE DISPUTE
11 RESOLUTION PROCEDURES WITHIN THE CONTRACT.

12 Sec. 7. Section 33-2001, Arizona Revised Statutes, is amended to read:
13 33-2001. Definitions

14 In this chapter, unless the context otherwise requires:

15 1. "Community documents" means condominium documents as defined in
16 section 33-1202 or community documents as defined in section 33-1802.

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

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

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

27 5. "Homeowners' association dwelling action" means any action filed by
28 a homeowners' association against the seller of a dwelling arising out of or
29 related to **A CONSTRUCTION DEFECT AS DEFINED IN SECTION 12-1361 OR** the design,
30 construction, condition or sale of the dwelling.

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

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

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

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

40 Sec. 8. Section 33-2002, Arizona Revised Statutes, is amended to read:
41 33-2002. Homeowners' association dwelling actions; conditions

42 A. Notwithstanding any provision to the contrary in title 10, chapter
43 39 or ~~chapters~~ CHAPTER 9 ~~and~~ OR 16 of this title and in addition to any
44 requirements prescribed in the community documents of a homeowners'

1 association, a homeowners' association may file a homeowners' association
2 dwelling action only after all of the following have occurred:

3 1. The board of directors has provided full disclosure in writing to
4 all members of the association of all material information relating to the
5 filing of the action. The material information shall include a statement
6 that describes ~~the manner in which the action will be funded and a statement~~
7 ~~describing~~ THE NATURE OF THE ACTION AND THE RELIEF SOUGHT INCLUDING any
8 demands, notices, offers to settle or responses to offers to settle made
9 either by the association or the seller AND THE EXPENSES AND FEES THAT THE
10 ASSOCIATION ANTICIPATES WILL BE INCURRED, DIRECTLY OR INDIRECTLY, IN
11 PROSECUTING THE ACTION INCLUDING ATTORNEY FEES, CONSULTANT FEES, EXPERT
12 WITNESS FEES, COURT COSTS AND IMPACTS ON THE VALUES OF THE DWELLINGS THAT ARE
13 THE SUBJECT OF THE ACTION AND THOSE THAT ARE NOT. The material information
14 described by this paragraph shall be distributed to all members before the
15 meeting described in paragraph 2 OF THIS SUBSECTION occurs.

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

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

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

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

37 C. Notwithstanding any provision to the contrary in title 10, chapter
38 39 or in ~~chapters~~ CHAPTER 9 ~~and~~ OR 16 of this title and in addition to any
39 requirements prescribed in the community documents of a homeowners'
40 association, the board of directors of a homeowners' association or its
41 authorized representative shall disclose in writing to the members of the
42 association a plan that describes the manner in which the proceeds of a
43 homeowners' association dwelling action, whether obtained by way of judgment,
44 settlement or other means, have been or will be allocated. The plan shall be
45 disclosed within thirty days after the association receives the proceeds of

1 any homeowners' association dwelling action. The plan is not binding on the
2 homeowners' association, but the board of directors or its authorized
3 representative must disclose any material changes to the plan to the members
4 of the association within thirty days of making the changes.

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

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

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

18 Sec. 9. Severability

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