

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

HOUSE BILL 2382

AN ACT

AMENDING SECTIONS 33-440 AND 33-1817, ARIZONA REVISED STATUTES; RELATING TO
REAL ESTATE COVENANTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 33-440, Arizona Revised Statutes, is amended to
3 read:

4 33-440. Enforceability of private covenants: amendment of
5 declaration: definitions

6 A. An owner of real property may enter into a private covenant
7 regarding that real property and the private covenant is valid and
8 enforceable according to its terms if all of the following apply:

9 1. The private covenant is not prohibited by any other existing
10 private covenant or declaration affecting the real property and does not
11 violate any statute governing the subject matter of the private covenant that
12 is in effect before ~~the effective date of this section~~ SEPTEMBER 26, 2008.

13 2. The owner of the real property affected by the private covenant and
14 any person on whom the private covenant imposes any liability or obligation
15 have consented to the private covenant.

16 3. Any consent requirements contained in the express provisions of any
17 existing private covenant or declaration affecting the real property have
18 been met.

19 B. A private covenant is deemed not to constitute an amendment to any
20 existing private covenant or declaration unless the private covenant
21 expressly violates an express provision of the existing private covenant or
22 declaration.

23 C. EXCEPT DURING THE PERIOD OF DECLARANT CONTROL, OR IF DURING THE
24 PERIOD OF DECLARANT CONTROL WITH THE WRITTEN CONSENT OF THE DECLARANT IN EACH
25 INSTANCE, THE FOLLOWING APPLY TO AN AMENDMENT TO A DECLARATION:

26 1. THE DECLARATION MAY BE AMENDED BY THE ASSOCIATION, IF ANY, OR, IF
27 THERE IS NO BOARD, THE OWNERS OF THE PROPERTY THAT IS SUBJECT TO THE
28 DECLARATION BY AN AFFIRMATIVE VOTE OR WRITTEN CONSENT OF THE NUMBER OF OWNERS
29 OR ELIGIBLE VOTERS SPECIFIED IN THE DECLARATION, INCLUDING THE ASSENT OF ANY
30 INDIVIDUALS OR ENTITIES THAT ARE SPECIFIED IN THE DECLARATION.

31 2. AN AMENDMENT TO A DECLARATION MAY APPLY TO FEWER THAN ALL OF THE
32 LOTS OR LESS THAN ALL OF THE PROPERTY THAT IS BOUND BY THE DECLARATION OR AN
33 AMENDMENT IS DEEMED TO CONFORM TO THE GENERAL DESIGN AND PLAN OF THE
34 COMMUNITY, IF BOTH OF THE FOLLOWING APPLY:

35 (a) THE AMENDMENT RECEIVES THE AFFIRMATIVE VOTE OR WRITTEN CONSENT OF
36 THE NUMBER OF OWNERS OR ELIGIBLE VOTERS SPECIFIED IN THE DECLARATION,
37 INCLUDING THE ASSENT OF ANY INDIVIDUALS OR ENTITIES THAT ARE SPECIFIED IN THE
38 DECLARATION.

39 (b) THE AMENDMENT RECEIVES THE AFFIRMATIVE VOTE OR WRITTEN CONSENT OF
40 ALL OF THE OWNERS OF THE LOTS OR PROPERTY TO WHICH THE AMENDMENT APPLIES.

41 3. WITHIN THIRTY DAYS AFTER THE ADOPTION OF ANY AMENDMENT PURSUANT TO
42 THIS SUBSECTION, THE ASSOCIATION OR, IF THERE IS NO BOARD, A PROPERTY OWNER
43 THAT IS AUTHORIZED BY THE AFFIRMATIVE VOTE OR THE WRITTEN CONSENT TO THE

1 AMENDMENT SHALL PREPARE, EXECUTE AND RECORD A WRITTEN INSTRUMENT SETTING
2 FORTH THE AMENDMENT.

3 4. NOTWITHSTANDING ANY PROVISION IN THE DECLARATION THAT PROVIDES FOR
4 PERIODIC RENEWAL OF THE DECLARATION, AN AMENDMENT TO THE DECLARATION IS
5 EFFECTIVE IMMEDIATELY ON RECORDATION OF THE INSTRUMENT IN THE COUNTY IN WHICH
6 THE PROPERTY IS LOCATED.

7 D. THIS SECTION DOES NOT APPLY TO A CONDOMINIUM AS DEFINED IN SECTION
8 33-1202, A PLANNED COMMUNITY AS DEFINED IN SECTION 33-1802 OR A TIMESHARE
9 PLAN OR ASSOCIATION AS DEFINED IN SECTION 33-2202.

10 ~~C.~~ E. For the purposes of this section:

11 1. "Declaration" has the same meaning prescribed in section 33-1802.

12 2. "Private covenant" means any uniform or nonuniform covenant,
13 restriction or condition regarding real property that is contained in any
14 deed, contract, agreement or other recorded instrument affecting real
15 property.

16 Sec. 2. Section 33-1817, Arizona Revised Statutes, is amended to read:

17 ~~33-1817.~~ Declaration amendment; design, architectural
18 committees; review

19 A. EXCEPT DURING THE PERIOD OF DECLARANT CONTROL, OR IF DURING THE
20 PERIOD OF DECLARANT CONTROL WITH THE WRITTEN CONSENT OF THE DECLARANT IN EACH
21 INSTANCE, THE FOLLOWING APPLY TO AN AMENDMENT TO A DECLARATION:

22 1. THE DECLARATION MAY BE AMENDED BY THE ASSOCIATION, IF ANY, OR, IF
23 THERE IS NO BOARD, THE OWNERS OF THE PROPERTY THAT IS SUBJECT TO THE
24 DECLARATION BY AN AFFIRMATIVE VOTE OR WRITTEN CONSENT OF THE NUMBER OF OWNERS
25 OR ELIGIBLE VOTERS SPECIFIED IN THE DECLARATION, INCLUDING THE ASSENT OF ANY
26 INDIVIDUALS OR ENTITIES THAT ARE SPECIFIED IN THE DECLARATION.

27 2. AN AMENDMENT TO A DECLARATION MAY APPLY TO FEWER THAN ALL OF THE
28 LOTS OR LESS THAN ALL OF THE PROPERTY THAT IS BOUND BY THE DECLARATION OR AN
29 AMENDMENT IS DEEMED TO CONFORM TO THE GENERAL DESIGN AND PLAN OF THE
30 COMMUNITY, IF BOTH OF THE FOLLOWING APPLY:

31 (a) THE AMENDMENT RECEIVES THE AFFIRMATIVE VOTE OR WRITTEN CONSENT OF
32 THE NUMBER OF OWNERS OR ELIGIBLE VOTERS SPECIFIED IN THE DECLARATION,
33 INCLUDING THE ASSENT OF ANY INDIVIDUALS OR ENTITIES THAT ARE SPECIFIED IN THE
34 DECLARATION.

35 (b) THE AMENDMENT RECEIVES THE AFFIRMATIVE VOTE OR WRITTEN CONSENT OF
36 ALL OF THE OWNERS OF THE LOTS OR PROPERTY TO WHICH THE AMENDMENT APPLIES.

37 3. WITHIN THIRTY DAYS AFTER THE ADOPTION OF ANY AMENDMENT PURSUANT TO
38 THIS SECTION, THE ASSOCIATION OR, IF THERE IS NO BOARD, AN OWNER THAT IS
39 AUTHORIZED BY THE AFFIRMATIVE VOTE OR THE WRITTEN CONSENT TO THE AMENDMENT
40 SHALL PREPARE, EXECUTE AND RECORD A WRITTEN INSTRUMENT SETTING FORTH THE
41 AMENDMENT.

42 4. NOTWITHSTANDING ANY PROVISION IN THE DECLARATION THAT PROVIDES FOR
43 PERIODIC RENEWAL OF THE DECLARATION, AN AMENDMENT TO THE DECLARATION IS

1 EFFECTIVE IMMEDIATELY ON RECORDATION OF THE INSTRUMENT IN THE COUNTY IN WHICH
2 THE PROPERTY IS LOCATED.

3 B. Notwithstanding any provision in the community documents:

4 1. Membership on a design review committee, an architectural committee
5 or a committee that performs similar functions, however denominated, for the
6 planned community shall include at least one member of the board of directors
7 who shall serve as chairperson of the committee.

8 2. For new construction of the main residential structure on a lot or
9 for rebuilds of the main residential structure on a lot and only in a planned
10 community that has enacted design guidelines, architectural guidelines or
11 other similar rules, however denominated, and if the association documents
12 permit the association to charge the member a security deposit and the
13 association requires the member to pay a security deposit to secure
14 completion of the member's construction project or compliance with approved
15 plans, all of the following apply:

16 (a) The deposit shall be placed in a trust account with the following
17 instructions:

18 (i) The cost of the trust account shall be shared equally between the
19 association and the member.

20 (ii) If the construction project is abandoned, the board of directors
21 may determine the appropriate use of any deposit monies.

22 (iii) Any interest earned on the refundable security deposit shall
23 become part of the security deposit.

24 (b) The association or the design review committee must hold a final
25 design approval meeting for the purpose of issuing approval of the plans, and
26 the member or member's agent must have the opportunity to attend the meeting.
27 If the plans are approved, the association's design review representative
28 shall provide written acknowledgement that the approved plans, including any
29 approved amendments, are in compliance with all rules and guidelines in
30 effect at the time of the approval and that the refund of the deposit
31 requires that construction be completed in accordance with those approved
32 plans.

33 (c) The association must provide for at least two on-site formal
34 reviews during construction for the purpose of determining compliance with
35 the approved plans. The member or member's agent shall be provided the
36 opportunity to attend both formal reviews. Within five business days after
37 the formal reviews, the association shall cause a written report to be
38 provided to the member or member's agent specifying any deficiencies,
39 violations or unapproved variations from the approved plans, as amended, that
40 have come to the attention of the association.

41 (d) Within thirty business days after the second formal review, the
42 association shall provide to the member a copy of the written report
43 specifying any deficiencies, violations or unapproved variations from the
44 approved plans as amended that have come to the attention of the association.

1 If the written report does not specify any deficiencies, violations or
2 unapproved variations from the approved plans, as amended, that have come to
3 the attention of the association, the association shall promptly release the
4 deposit monies to the member. If the report identifies any deficiencies,
5 violations or unapproved variations from the approved plans, as amended, the
6 association may hold the deposit for one hundred eighty days or until receipt
7 of a subsequent report of construction compliance, whichever is less. If a
8 report of construction compliance is received before the one hundred
9 eightieth day, the association shall promptly release the deposit monies to
10 the member. If a compliance report is not received within one hundred eighty
11 days, the association shall release the deposit monies promptly from the
12 trust account to the association.

13 (e) Neither the approval of the plans nor the approval of the actual
14 construction by the association or the design review committee shall
15 constitute a representation or warranty that the plans or construction comply
16 with applicable governmental requirements or applicable engineering, design
17 or safety standards. The association in its discretion may release all or
18 any part of the deposit to the member before receiving a compliance report.
19 Release of the deposit to the member does not constitute a representation or
20 warranty from the association that the construction complies with the
21 approved plans.