

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

CHAPTER 235
HOUSE BILL 2262

AN ACT

AMENDING SECTION 33-1228, ARIZONA REVISED STATUTES; RELATING TO
CONDOMINIUMS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 33-1228, Arizona Revised Statutes, is amended to
3 read:

4 33-1228. Termination of condominium

5 A. Except in the case of a taking of all the units by eminent
6 domain, a condominium may be terminated only by agreement of unit owners
7 of units to which at least eighty ~~per cent~~ PERCENT of the votes in the
8 association are allocated, or any larger percentage the declaration
9 specifies. The declaration may specify a smaller percentage only if all
10 of the units in the condominium are restricted exclusively to
11 nonresidential uses.

12 B. An agreement to terminate shall be evidenced by the execution or
13 ratifications of a termination agreement, in the same manner as a deed, by
14 the requisite number of unit owners. The termination agreement shall
15 specify a date after which the agreement will be void unless it is
16 recorded before that date. A termination agreement and all ratifications
17 of a termination agreement shall be recorded in each county in which a
18 portion of the condominium is situated and is effective only on
19 recordation.

20 C. A termination agreement may provide that all the common elements
21 and units of the condominium shall be sold following termination. If,
22 pursuant to the agreement, any real estate in the condominium is to be
23 sold following termination, the termination agreement shall set forth the
24 minimum terms of the sale.

25 D. The association, on behalf of the unit owners, may contract for
26 the sale of real estate in the condominium, but the contract is not
27 binding on the unit owners until approved pursuant to subsections A and B
28 OF THIS SECTION. If any real estate in the condominium is to be sold
29 following termination, title to that real estate on termination vests in
30 the association as trustee for the holders of all interest in the units.
31 Thereafter, the association has all powers necessary and appropriate to
32 effect the sale. Until the sale has been concluded and the proceeds of
33 the sale distributed, the association continues in existence with all
34 powers it had before termination. Proceeds of the sale shall be
35 distributed to unit owners and lienholders as their interests may appear,
36 in proportion to the respective interests of unit owners as provided in
37 subsection G OF THIS SECTION. Unless otherwise specified in the
38 termination agreement, as long as the association holds title to the real
39 estate, each unit owner and ~~his~~ THE UNIT OWNER'S successors in interest
40 have an exclusive right to occupancy of the portion of the real estate
41 that formerly constituted ~~his~~ THE UNIT OWNER'S unit. During the period of
42 that occupancy, each unit owner and ~~his~~ THE successors in interest remain
43 liable for all assessments and other obligations imposed on unit owners by
44 this chapter or the declaration.

1 E. If the real estate constituting the condominium is not to be
2 sold following termination, title to all the real estate in the
3 condominium vests in the unit owners on termination as tenants in common
4 in proportion to their respective interests as provided in subsection G OF
5 THIS SECTION, and liens on the units shift accordingly. While the tenancy
6 in common exists, each unit owner and ~~his~~ THE UNIT OWNER'S successors in
7 interest have an exclusive right to occupancy of the portion of the real
8 estate that formerly constituted ~~his~~ THE UNIT OWNER'S unit.

9 F. Following termination of the condominium, the proceeds of any
10 sale of real estate, together with the assets of the association, are held
11 by the association as trustee for unit owners and holders of liens on the
12 units as their interests may appear. Following termination, creditors of
13 the association holding liens on the units ~~which~~ THAT were recorded before
14 termination may enforce those liens in the same manner as any lienholder.

15 G. The respective interests of unit owners referred to in
16 subsections D, E and F OF THIS SECTION are as follows:

17 1. Except as provided in paragraph 2 OF THIS SUBSECTION, the
18 respective interests of unit owners are the fair market values of their
19 units, limited common elements and common element interests immediately
20 before the termination ~~as determined by~~ AND AN ADDITIONAL FIVE PERCENT OF
21 THAT TOTAL AMOUNT FOR RELOCATION COSTS FOR OWNER-OCCUPIED UNITS. An
22 independent appraiser selected by the association SHALL DETERMINE THE
23 TOTAL FAIR MARKET VALUES. The determination of the independent appraiser
24 shall be distributed to the unit owners and becomes final unless
25 disapproved within ~~thirty~~ SIXTY days after distribution ~~by~~ TO THE unit
26 ~~owners of units to which fifty per cent of the votes in the association~~
27 ~~are allocated~~ OWNER. ANY UNIT OWNER MAY OBTAIN A SECOND INDEPENDENT
28 APPRAISAL AT THE UNIT OWNER'S EXPENSE AND, IF THE UNIT OWNER'S INDEPENDENT
29 APPRAISAL AMOUNT DIFFERS FROM THE ASSOCIATION'S INDEPENDENT APPRAISAL
30 AMOUNT BY FIVE PERCENT OR LESS, THE HIGHER APPRAISAL IS FINAL. IF THE
31 TOTAL AMOUNT OF COMPENSATION OWED AS DETERMINED BY THE SECOND APPRAISER IS
32 MORE THAN FIVE PERCENT HIGHER THAN THE AMOUNT DETERMINED BY THE
33 ASSOCIATION'S APPRAISER, THE UNIT OWNER SHALL SUBMIT TO ARBITRATION AT THE
34 ASSOCIATION'S EXPENSE AND THE ARBITRATION AMOUNT IS THE FINAL SALE
35 AMOUNT. AN ADDITIONAL FIVE PERCENT OF THE FINAL SALE AMOUNT SHALL BE
36 ADDED FOR RELOCATION COSTS FOR OWNER-OCCUPIED UNITS. ~~The proportion of~~
37 ~~any unit owner's interest to that of all unit owners is determined by~~
38 ~~dividing the fair market value of that unit owner's unit and common~~
39 ~~element interest by the total fair market values of all the units and~~
40 ~~common elements.~~

41 2. If any unit or any limited common element is destroyed to the
42 extent that an appraisal of the fair market value of the unit or element
43 before destruction cannot be made, the interests of all unit owners are
44 their respective common element interests immediately before the
45 termination.

1 H. Except as provided in subsection I **OF THIS SECTION**, foreclosure
2 or enforcement of a lien or encumbrance against the entire condominium
3 does not of itself terminate the condominium, and foreclosure or
4 enforcement of a lien or encumbrance against a portion of the condominium
5 does not withdraw that portion from the condominium. Foreclosure or
6 enforcement of a lien or encumbrance against withdrawable real estate does
7 not of itself withdraw that real estate from the condominium, but the
8 person taking title may require from the association, on request, an
9 amendment excluding the real estate from the condominium.

10 I. If a lien or encumbrance against a portion of the real estate
11 comprising the condominium has priority over the declaration, and the lien
12 or encumbrance has not been partially released, the parties foreclosing
13 the lien or encumbrance ~~may~~, on foreclosure, **MAY** record an instrument
14 excluding the real estate subject to that lien or encumbrance from the
15 condominium.

16 J. The provisions of subsections C, ~~through~~ **D, E, F, H AND I OF**
17 **THIS SECTION** do not apply if the original declaration, an amendment to the
18 original declaration recorded before the conveyance of any unit to an
19 owner other than the declarant or an agreement by all of the unit owners
20 ~~contain~~ **CONTAINS** provisions inconsistent with ~~such~~ **THESE** subsections.

21 **K. BEGINNING ON THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS**
22 **SECTION, ANY PROVISIONS IN THE DECLARATION THAT CONFLICT WITH SUBSECTION**
23 **G, PARAGRAPH 1 OF THIS SECTION ARE VOID AS A MATTER OF PUBLIC POLICY.**

24 Sec. 2. Applicability

25 This act applies to all condominiums created in this state without
26 regard to when the condominium was created.

APPROVED BY THE GOVERNOR APRIL 17, 2018.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 17, 2018.