

State of Arizona
Senate
Fifty-third Legislature
First Regular Session
2017

SENATE BILL 1401

AN ACT

AMENDING SECTION 33-1202, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 9, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 33-1262 AND 33-1263; AMENDING SECTION 33-1802, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 16, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 33-1819 AND 33-1820; RELATING TO CONDOMINIUMS AND PLANNED COMMUNITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 33-1202, Arizona Revised Statutes, is amended to
3 read:

4 33-1202. Definitions

5 In the condominium documents, unless specifically provided otherwise
6 or the context otherwise requires, and in this chapter:

7 1. "Affiliate of a declarant" means any person who controls, is
8 controlled by or is under common control with a declarant.

9 2. "Allocated interests" means the undivided interests in the
10 common elements, the common expense liability and votes in the association
11 allocated to each unit.

12 3. "Articles of incorporation" means the instrument by which an
13 incorporated association or unit owners' association is formed and
14 organized under this state's corporate statutes.

15 4. "Association" or "unit owners' association" means the unit
16 owners' association organized under section 33-1241.

17 5. "Board of directors" means the body, regardless of its name,
18 designated in the declaration and given general management powers to act
19 on behalf of the association.

20 6. "Bylaws" means the bylaws required by section 33-1246.

21 7. "Common elements" means all portions of a condominium other than
22 the units.

23 8. "Common expense liability" means the liability for common
24 expenses allocated to each unit pursuant to section 33-1217.

25 9. "Common expenses" means expenditures made by or financial
26 liabilities of the association, together with any allocations to reserves.

27 10. "COMMUNITY MANAGEMENT SERVICES" MEANS MANAGEMENT SERVICES
28 PROVIDED TO AN ASSOCIATION TO MANAGE, MAINTAIN OR IMPROVE THE CONDOMINIUM
29 AND ITS COMMON AREAS AND ELEMENTS, TO ENFORCE THE CONDOMINIUM DOCUMENTS
30 AND TO PROVIDE FOR THE COLLECTION OF ASSESSMENTS OR PAYMENT OF VENDORS AND
31 INCLUDES ANY OR ALL OF THOSE SERVICES.

32 11. "COMMUNITY MANAGER" MEANS A PERSON OR ENTITY THAT PROVIDES
33 COMMUNITY MANAGEMENT SERVICES TO AN ASSOCIATION.

34 ~~10.~~ 12. "Condominium" means real estate, portions of which are
35 designated for separate ownership and the remainder of which is designated
36 for common ownership solely by the owners of the separate portions. Real
37 estate is not a condominium unless the undivided interests in the common
38 elements are vested in the unit owners.

39 ~~11.~~ 13. "Condominium documents" means the declaration, bylaws,
40 articles of incorporation, if any, and rules, if any.

41 ~~12.~~ 14. "Declarant" means any person or group of persons who
42 reserves, is granted or succeeds to any special declarant right.

43 ~~13.~~ 15. "Declaration" means any instruments, however denominated,
44 that create a condominium and any amendments to those instruments.

1 ~~14.~~ 16. "Development rights" means any right or combination of
2 rights reserved by or granted to a declarant in the declaration to do any
3 of the following:

4 (a) Add real estate to a condominium.

5 (b) Create easements, units, common elements or limited common
6 elements within a condominium.

7 (c) Subdivide units, convert units into common elements or convert
8 common elements into units.

9 (d) Withdraw real estate from a condominium.

10 (e) Make the condominium part of a larger condominium or planned
11 community.

12 (f) Amend the declaration during any period of declarant control,
13 pursuant to section 33-1243, subsection E, to comply with applicable law
14 or to correct any error or inconsistency in the declaration, if the
15 amendment does not adversely affect the rights of any unit owner.

16 (g) Amend the declaration during any period of declarant control,
17 pursuant to section 33-1243, subsection E, to comply with the rules or
18 guidelines, in effect from time to time, of any governmental or
19 quasi-governmental entity or federal corporation guaranteeing or insuring
20 mortgage loans or governing transactions involving mortgage instruments.

21 ~~15.~~ 17. "Identifying number" means a symbol or address that
22 identifies one unit in a condominium.

23 ~~16.~~ 18. "Leasehold condominium" means a condominium in which all
24 or a portion of the real estate is subject to a lease the expiration or
25 termination of which will terminate the condominium or reduce its size.

26 ~~17.~~ 19. "Limited common element" means a portion of the common
27 elements specifically designated as a limited common element in the
28 declaration and allocated by the declaration or by operation of section
29 33-1212, paragraph 2 or 4 for the exclusive use of one or more but fewer
30 than all of the units.

31 ~~18.~~ 20. "Person" means a natural person, corporation, business
32 trust, estate, trust, partnership, association, joint venture, government,
33 governmental subdivision or agency, or other legal or commercial entity.
34 In the case of a subdivision trust, as defined in section 6-801, person
35 means the beneficiary of the trust who holds the right to subdivide,
36 develop or sell the real estate rather than the trust or trustee.

37 ~~19.~~ 21. "Real estate" means any legal, equitable, leasehold or
38 other estate or interest in, over or under land, including structures,
39 fixtures and other improvements and interests ~~which~~ THAT by custom, usage
40 or law pass with a conveyance of land though not described in the contract
41 of sale or instrument of conveyance. Real estate includes parcels with or
42 without upper or lower boundaries and spaces that may be filled with air
43 or water.

~~20.~~ 22. "Rules" means the provisions, if any, adopted pursuant to the declaration or bylaws governing maintenance and use of the units and common elements.

~~21.~~ 23. "Special declarant rights" means any right or combination of rights reserved by or granted to a declarant in the declaration to do any of the following:

- (a) Construct improvements provided for in the declaration.
- (b) Exercise any development right.
- (c) Maintain sales offices, management offices, signs advertising the condominium, and models.
- (d) Use easements through the common elements for the purpose of making improvements within the condominium or within real estate ~~which~~ **THAT** may be added to the condominium.
- (e) Appoint or remove any officer of the association or any board member during any period of declarant control.

~~22.~~ 24. "Unit" means a portion of the condominium designated for separate ownership or occupancy.

~~23.~~ 25. "Unit owner" means a declarant or other person who owns a unit or, unless otherwise provided in the lease, a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the condominium but does not include a person having an interest in a unit solely as security for an obligation. In the case of a contract for conveyance, as defined in section 33-741, of real property, unit owner means the purchaser of the unit.

Sec. 2. Title 33, chapter 9, article 3, Arizona Revised Statutes, is amended by adding sections 33-1262 and 33-1263, to read:

33-1262. Association employees and contractors; compensation and gratuity; prohibition

THE ASSOCIATION'S EMPLOYEES AND INDEPENDENT CONTRACTORS, INCLUDING COMMUNITY MANAGERS, AND ANY EMPLOYEE OF ANY INDEPENDENT CONTRACTOR MAY NOT SOLICIT, RECEIVE OR ACCEPT ANY UNDISCLOSED FEE, COMPENSATION, COMMISSION OR GRATUITY WHETHER IN CASH OR IN KIND FROM ANY THIRD PARTY THAT PROVIDES OR SOLICITS TO PROVIDE GOODS OR SERVICES TO THE ASSOCIATION OR THE CONDOMINIUM.

33-1263. Community managers' duties; compliance

A. A COMMUNITY MANAGER SHALL:

1. BE FAMILIAR WITH THE CONDOMINIUM DOCUMENTS FOR THE CONDOMINIUM AND WITH THE APPLICABLE LAW.
2. ACT IN GOOD FAITH, WITH THE APPROPRIATE AUTHORIZATION OF THE ASSOCIATION AND IN COMPLIANCE WITH THE CONDOMINIUM DOCUMENTS AND APPLICABLE LAW.
- B. A COMMUNITY MANAGER WHO VIOLATES THIS SECTION IS LIABLE FOR DAMAGES IN AN ACTION BROUGHT BY A UNIT OWNER AND MAY BE SUBJECT TO AN ORDER TO COMPLY WITH THE CONDOMINIUM DOCUMENTS AND APPLICABLE LAW. THE

1 COURT SHALL AWARD REASONABLE ATTORNEY FEES AND COSTS TO THE PREVAILING
2 PARTY IN AN ACTION PURSUANT TO THIS SECTION.

3 Sec. 3. Section 33-1802, Arizona Revised Statutes, is amended to
4 read:

5 33-1802. Definitions

6 In this chapter and in the community documents, unless the context
7 otherwise requires:

8 1. "Association" means a nonprofit corporation or unincorporated
9 association of owners that is created pursuant to a declaration to own and
10 operate portions of a planned community and that has the power under the
11 declaration to assess association members to pay the costs and expenses
12 incurred in the performance of the association's obligations under the
13 declaration.

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

16 3. "COMMUNITY MANAGEMENT SERVICES" MEANS MANAGEMENT SERVICES
17 PROVIDED TO AN ASSOCIATION TO MANAGE, MAINTAIN OR IMPROVE THE PLANNED
18 COMMUNITY AND ITS COMMON AREAS, TO ENFORCE THE COMMUNITY DOCUMENTS AND TO
19 PROVIDE FOR THE COLLECTION OF ASSESSMENTS OR PAYMENT OF VENDORS AND
20 INCLUDES ANY OR ALL OF THOSE SERVICES.

21 4. "COMMUNITY MANAGER" MEANS A PERSON OR ENTITY THAT PROVIDES
22 COMMUNITY MANAGEMENT SERVICES TO AN ASSOCIATION.

23 ~~5.~~ 5. "Declaration" means any instruments, however denominated,
24 that establish a planned community and any amendment to those instruments.

25 ~~6.~~ 6. "Planned community" means a real estate development that
26 includes real estate owned and operated by or real estate on which an
27 easement to maintain roadways or a covenant to maintain roadways is held
28 by a nonprofit corporation or unincorporated association of owners, that
29 is created for the purpose of managing, maintaining or improving the
30 property and in which the owners of separately owned lots, parcels or
31 units are mandatory members and are required to pay assessments to the
32 association for these purposes. Planned community does not include a
33 timeshare plan or a timeshare association that is governed by chapter 20
34 of this title or a condominium that is governed by chapter 9 of this
35 title.

36 Sec. 4. Title 33, chapter 16, article 1, Arizona Revised Statutes,
37 is amended by adding sections 33-1819 and 33-1820, to read:

38 33-1819. Association employees and contractors; compensation
39 and gratuity; prohibition

40 THE ASSOCIATION'S EMPLOYEES AND INDEPENDENT CONTRACTORS, INCLUDING
41 COMMUNITY MANAGERS, AND ANY EMPLOYEE OF ANY INDEPENDENT CONTRACTOR MAY NOT
42 SOLICIT, RECEIVE OR ACCEPT ANY UNDISCLOSED FEE, COMPENSATION, COMMISSION
43 OR GRATUITY WHETHER IN CASH OR IN KIND FROM ANY THIRD PARTY THAT PROVIDES
44 OR SOLICITS TO PROVIDE GOODS OR SERVICES TO THE ASSOCIATION OR THE PLANNED
45 COMMUNITY.

33-1820. Community managers' duties; compliance

A. A COMMUNITY MANAGER SHALL:

1. BE FAMILIAR WITH THE COMMUNITY DOCUMENTS FOR THE PLANNED COMMUNITY AND WITH THE APPLICABLE LAW.

2. ACT IN GOOD FAITH, WITH THE APPROPRIATE AUTHORIZATION OF THE ASSOCIATION AND IN COMPLIANCE WITH THE COMMUNITY DOCUMENTS AND APPLICABLE LAW.

B. A COMMUNITY MANAGER WHO VIOLATES THIS SECTION IS LIABLE FOR DAMAGES IN AN ACTION BROUGHT BY A MEMBER AND MAY BE SUBJECT TO AN ORDER TO COMPLY WITH THE COMMUNITY DOCUMENTS AND APPLICABLE LAW. THE COURT SHALL AWARD REASONABLE ATTORNEY FEES AND COSTS TO THE PREVAILING PARTY IN AN ACTION PURSUANT TO THIS SECTION.