

State of Arizona
House of Representatives
Fifty-fourth Legislature
First Regular Session
2019

HOUSE BILL 2687

AN ACT

AMENDING SECTION 33-1228, ARIZONA REVISED STATUTES, AS ADDED BY LAWS 1985, CHAPTER 192, SECTION 3; REPEALING SECTION 33-1228, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2018, CHAPTER 235, SECTION 1; 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, as added by
3 Laws 1985, chapter 192, section 3, is amended to 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 ~~percent~~ 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. AT LEAST THIRTY DAYS BEFORE RECORDING A TERMINATION
12 AGREEMENT, THE BOARD OF DIRECTORS OF THE ASSOCIATION SHALL CONVENE A
13 REGULAR OR SPECIAL MEETING OF THE BOARD OF DIRECTORS AT WHICH A PERSON OR
14 ENTITY THAT PURPORTS TO HAVE THE AGREEMENT OF AT LEAST EIGHTY PERCENT OF
15 THE VOTES IN THE ASSOCIATION, OR ANY LARGER PERCENTAGE IF REQUIRED, SHALL
16 PRODUCE AND MAKE AVAILABLE TO THE UNIT OWNERS COPIES OF A SIGNED NOTARIZED
17 STATEMENT THAT THE OWNER OF A UNIT HAS EXECUTED A TERMINATION AGREEMENT.
18 THE PERSON OR ENTITY SHALL PRODUCE COPIES OF A STATEMENT FOR EACH UNIT
19 OWNER WHO HAS AGREED TO THE TERMINATION, OR MAY PRODUCE THE SIGNED
20 TERMINATION AGREEMENT THAT INCLUDES A SUFFICIENT NUMBER OF UNIT OWNERS.
21 ANY MEETING CALLED PURSUANT TO THIS SUBSECTION SHALL BE NOTICED AS
22 OTHERWISE PROVIDED BY LAW, EXCEPT THAT THE BOARD MAY NOT TAKE ACTION BY
23 WRITTEN CONSENT OR ANY OTHER METHOD THAT DOES NOT PROVIDE FOR AN ACTUAL
24 MEETING THAT IS OPEN TO ALL THE UNIT OWNERS. ANY TERMINATION AGREEMENT
25 THAT IS RECORDED WITHOUT FULL COMPLIANCE WITH THIS SUBSECTION IS INVALID.

26 B. An agreement to terminate shall be evidenced by the execution or
27 ratifications of a termination agreement, in the same manner as a deed, by
28 the requisite number of unit owners. The termination agreement shall
29 specify a date after which the agreement will be void unless it is
30 recorded before that date. A termination agreement and all ratifications
31 of a termination agreement shall be recorded in each county in which a
32 portion of the condominium is situated and is effective only on
33 recordation.

34 C. A termination agreement may provide that all the common elements
35 and units of the condominium shall be sold following termination. If,
36 pursuant to the agreement, any real estate in the condominium is to be
37 sold following termination, the termination agreement shall set forth the
38 minimum terms of the sale.

39 D. The association, on behalf of the unit owners, may contract for
40 the sale of real estate in the condominium, but the contract is not
41 binding on the unit owners until approved pursuant to subsections A and B
42 OF THIS SECTION. If any real estate in the condominium is to be sold
43 following termination, title to that real estate on termination vests in
44 the association as trustee for the holders of all interest in the units.
45 Thereafter, the association has all powers necessary and appropriate to

1 effect the sale. Until the sale has been concluded and the proceeds of
2 the sale distributed, the association continues in existence with all
3 powers it had before termination. Proceeds of the sale shall be
4 distributed to unit owners and lienholders as their interests may appear,
5 in proportion to the respective interests of unit owners as provided in
6 subsection G OF THIS SECTION. Unless otherwise specified in the
7 termination agreement, as long as the association holds title to the real
8 estate, each unit owner and ~~his~~ THE UNIT OWNER'S successors in interest
9 have an exclusive right to occupancy of the portion of the real estate
10 that formerly constituted ~~his~~ THE UNIT OWNER'S unit. During the period of
11 that occupancy, each unit owner and ~~his~~ THE successors in interest remain
12 liable for all assessments and other obligations imposed on unit owners by
13 this chapter or the declaration.

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

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

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

30 1. Except as provided in paragraph 2 OF THIS SUBSECTION, the
31 respective interests of unit owners are the fair market values of their
32 units, limited common elements and common element interests immediately
33 before the termination, ~~as determined by~~ THEIR PRO RATA SHARE OF ANY
34 MONIES IN THE ASSOCIATION'S RESERVE FUND AND THE OPERATING ACCOUNT AND AN
35 ADDITIONAL FIVE PERCENT OF THAT TOTAL AMOUNT FOR RELOCATION COSTS. An
36 independent appraiser selected by the association SHALL DETERMINE THE
37 TOTAL FAIR MARKET VALUES. The determination of the independent appraiser
38 shall be distributed to the unit owners and becomes final unless
39 disapproved within ~~thirty~~ SIXTY days after distribution ~~by~~ TO THE unit
40 ~~owners of units to which fifty per cent of the votes in the association~~
41 ~~are allocated~~ OWNER. ANY UNIT OWNER MAY OBTAIN A SECOND INDEPENDENT
42 APPRAISAL AT THE UNIT OWNER'S EXPENSE AND, IF THE UNIT OWNER'S INDEPENDENT
43 APPRAISAL AMOUNT DIFFERS FROM THE ASSOCIATION'S INDEPENDENT APPRAISAL
44 AMOUNT BY FIVE PERCENT OR LESS, THE HIGHER APPRAISAL IS FINAL. IF THE
45 TOTAL AMOUNT OF COMPENSATION OWED AS DETERMINED BY THE SECOND APPRAISER IS

1 MORE THAN FIVE PERCENT HIGHER THAN THE AMOUNT DETERMINED BY THE
2 ASSOCIATION'S APPRAISER, THE UNIT OWNER SHALL SUBMIT TO ARBITRATION BY AN
3 ARBITRATOR AFFILIATED WITH A NATIONAL ARBITRATION ASSOCIATION AND UNDER
4 THE RULES OF THAT ASSOCIATION AT THE ASSOCIATION'S EXPENSE AND THE
5 ARBITRATION AMOUNT IS THE FINAL SALE AMOUNT. AS PART OF THE ARBITRATION
6 PROCESS, THE APPRAISERS SHALL FULLY DISCLOSE THEIR APPRAISAL METHODOLOGIES
7 AND SHALL DISCLOSE ANY OTHER TRANSACTION OCCURRING BETWEEN THE BUYER AND
8 THE SELLERS. AN ADDITIONAL FIVE PERCENT OF THE FINAL SALE AMOUNT SHALL BE
9 ADDED FOR RELOCATION COSTS. ~~The proportion of any unit owner's interest~~
10 ~~to that of all unit owners is determined by dividing the fair market value~~
11 ~~of that unit owner's unit and common element interest by the total fair~~
12 ~~market values of all the units and common elements.~~

13 2. If any unit or any limited common element is destroyed to the
14 extent that an appraisal of the fair market value of the unit or element
15 before destruction cannot be made, the interests of all unit owners are
16 their respective common element interests immediately before the
17 termination.

18 H. Except as provided in subsection I OF THIS SECTION, foreclosure
19 or enforcement of a lien or encumbrance against the entire condominium
20 does not of itself terminate the condominium, and foreclosure or
21 enforcement of a lien or encumbrance against a portion of the condominium
22 does not withdraw that portion from the condominium. Foreclosure or
23 enforcement of a lien or encumbrance against withdrawable real estate does
24 not of itself withdraw that real estate from the condominium, but the
25 person taking title may require from the association, on request, an
26 amendment excluding the real estate from the condominium.

27 I. If a lien or encumbrance against a portion of the real estate
28 comprising the condominium has priority over the declaration, and the lien
29 or encumbrance has not been partially released, the parties foreclosing
30 the lien or encumbrance ~~may~~, on foreclosure, MAY record an instrument
31 excluding the real estate subject to that lien or encumbrance from the
32 condominium.

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

38 K. BEGINNING ON AUGUST 3, 2018, ANY PROVISIONS IN THE DECLARATION
39 THAT CONFLICT WITH SUBSECTION G, PARAGRAPH 1 OF THIS SECTION ARE VOID AS A
40 MATTER OF PUBLIC POLICY.

41 Sec. 2. Repeal

42 Section 33-1228, Arizona Revised Statutes, as amended by Laws 2018,
43 chapter 235, section 1, is repealed.