

Senate Engrossed House Bill
condominium termination; unit owners; percentage

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

HOUSE BILL 2275

AN ACT

AMENDING SECTIONS 33-1227 AND 33-1228, ARIZONA REVISED STATUTES; REPEALING LAWS 2021, CHAPTER 405, SECTION 51; RELATING TO TERMINATION OF CONDOMINIUMS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 33-1227, Arizona Revised Statutes, is amended to
3 read:

4 33-1227. Amendment of declaration

5 A. Except in cases of amendments that may be executed by a
6 declarant under section 33-1220, by the association under section 33-1206
7 or section 33-1216, subsection D, or by certain unit owners under section
8 33-1218, subsection B, section 33-1222, section 33-1223 or section
9 33-1228, subsection ~~B~~ D, and except to the extent ~~permitted~~ ALLOWED or
10 required by other provisions of this chapter, the declaration, including
11 the plat, may be amended only by a vote of the unit owners to which at
12 least sixty-seven ~~percent~~ PERCENT of the votes in the association are
13 allocated, or any larger majority the declaration specifies. The
14 declaration may specify a smaller percentage only if all of the units are
15 restricted exclusively to nonresidential use. The declaration may also
16 provide that the consent of the declarant is required to an amendment
17 during any period of declarant control pursuant to section 33-1243.
18 Within thirty days after the adoption of any amendment pursuant to this
19 subsection, the association shall prepare, execute and record a written
20 instrument setting forth the amendment.

21 B. An action to challenge the validity of an amendment adopted by
22 the association pursuant to this section shall not be brought more than
23 one year after the amendment is recorded.

24 C. An amendment to the declaration shall be recorded in each county
25 in which any portion of the condominium is located and is effective only
26 on recordation in the same manner as required for the declaration under
27 section 33-1211.

28 D. Except to the extent expressly ~~permitted~~ ALLOWED or required by
29 other provisions of this chapter, an amendment shall not create or
30 increase special declarant rights, increase the number of units or change
31 the boundaries of any unit, the allocated interests of a unit or the uses
32 to which any unit is restricted, in the absence of unanimous consent of
33 the unit owners.

34 E. An amendment shall not terminate or decrease any unexpired
35 development right, special declarant right or period of declarant control
36 unless the declarant approves.

37 F. Amendments to the declaration required by this chapter to be
38 executed by the association shall be executed on behalf of the association
39 by any officer of the association designated for that purpose or, in the
40 absence of designation, by the president of the association.

41 Sec. 2. Section 33-1228, Arizona Revised Statutes, is amended to
42 read:

43 33-1228. Termination of condominium

44 A. ~~Except in the case of a taking of all the units by eminent~~
45 ~~domain;~~ EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, A condominium

1 may be terminated only by agreement of unit owners of units to which at
2 least eighty percent of the votes in the association are allocated, or any
3 larger percentage the declaration specifies, EXCEPT:

4 1. IN THE CASE OF A TAKING OF ALL THE UNITS BY EMINENT DOMAIN.

5 2. IF the declaration ~~may specify~~ SPECIFIES a smaller percentage,
6 BUT only if all of the units in the condominium are restricted exclusively
7 to nonresidential uses.

8 B. A CONDOMINIUM CREATED ON OR AFTER THE EFFECTIVE DATE OF THIS
9 AMENDMENT TO THIS SECTION MAY BE TERMINATED ONLY BY AGREEMENT OF UNIT
10 OWNERS OF UNITS TO WHICH NINETY-FIVE PERCENT OF THE VOTES IN THE
11 ASSOCIATION ARE ALLOCATED, OR ANY LARGER PERCENTAGE THE DECLARATION
12 SPECIFIES, EXCEPT AS PROVIDED IN SUBSECTION A, PARAGRAPH 1 OR 2 OF THIS
13 SECTION.

14 C. At least thirty days before recording a termination agreement,
15 the board of directors of the association shall convene a regular or
16 special meeting of the board of directors at which a person or entity that
17 purports to have the agreement of at least ~~eighty percent~~ THE PERCENTAGE
18 of the votes in the association SPECIFIED IN SUBSECTION A OR B OF THIS
19 SECTION, AS APPLICABLE, or any larger percentage if required, shall
20 produce and make available to the unit owners copies of a signed notarized
21 statement that the owner of a unit has executed a termination agreement.
22 The person or entity shall produce copies of a statement for each unit
23 owner who has agreed to the termination, or may produce the signed
24 termination agreement that includes a sufficient number of unit owners.
25 Any meeting called pursuant to this subsection shall be noticed as
26 otherwise provided by law, except that the board may not take action by
27 written consent or any other method that does not provide for an actual
28 meeting that is open to all the unit owners. Any termination agreement
29 that is recorded without full compliance with this subsection is invalid.

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

38 ~~C.~~ E. A termination agreement may provide that all the common
39 elements and units of the condominium shall be sold following
40 termination. If, pursuant to the agreement, any real estate in the
41 condominium is to be sold following termination, the termination agreement
42 shall set forth the minimum terms of the sale.

43 ~~D.~~ F. The association, on behalf of the unit owners, may contract
44 for the sale of real estate in the condominium, but the contract is not
45 binding on the unit owners until approved pursuant to subsections A, ~~and~~

1 B, C AND D of this section. If any real estate in the condominium is to
2 be sold following termination, title to that real estate on termination
3 vests in the association as trustee for the holders of all interest in the
4 units. Thereafter, the association has all powers necessary and
5 appropriate to effect the sale. Until the sale has been concluded and the
6 proceeds of the sale distributed, the association continues in existence
7 with all powers it had before termination. Proceeds of the sale shall be
8 distributed to unit owners and lienholders as their interests may appear,
9 in proportion to the respective interests of unit owners as provided in
10 subsection ~~G~~ I of this section. Unless otherwise specified in the
11 termination agreement, as long as the association holds title to the real
12 estate, each unit owner and the unit owner's successors in interest have
13 an exclusive right to occupancy of the portion of the real estate that
14 formerly constituted the unit owner's unit. During the period of that
15 occupancy, each unit owner and the successors in interest remain liable
16 for all assessments and other obligations imposed on unit owners by this
17 chapter or the declaration.

18 ~~F~~ G. If the real estate constituting the condominium is not to be
19 sold following termination, title to all the real estate in the
20 condominium vests in the unit owners on termination as tenants in common
21 in proportion to their respective interests as provided in subsection ~~G~~ I
22 of this section, and liens on the units shift accordingly. While the
23 tenancy in common exists, each unit owner and the unit owner's successors
24 in interest have an exclusive right to occupancy of the portion of the
25 real estate that formerly constituted the unit owner's unit.

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

32 ~~G~~ I. The respective interests of unit owners referred to in
33 subsections ~~D, E and~~ F, G AND H of this section are as follows:

34 1. Except as provided in paragraph 2 of this subsection, the
35 respective interests of unit owners are the fair market values of their
36 units, limited common elements and common element interests immediately
37 before the termination, their pro rata share of any monies in the
38 association's reserve fund and the operating account and an additional
39 five percent of that total amount for relocation costs. An independent
40 appraiser selected by the association shall determine the total fair
41 market values. The determination of the independent appraiser shall be
42 distributed to the unit owners and becomes final unless disapproved within
43 sixty days after distribution to the unit owner. Any unit owner may
44 obtain a second independent appraisal at the unit owner's expense and, if
45 the unit owner's independent appraisal amount differs from the

1 association's independent appraisal amount by five percent or less, the
2 higher appraisal is final. If the total amount of compensation owed as
3 determined by the second appraiser is more than five percent higher than
4 the amount determined by the association's appraiser, the unit owner shall
5 submit to arbitration by an arbitrator affiliated with a national
6 arbitration association and under the rules of that association at the
7 association's expense and the arbitration amount is the final sale
8 amount. As part of the arbitration process, the appraisers shall fully
9 disclose their appraisal methodologies and shall disclose any other
10 transaction occurring between the buyer and the sellers. An additional
11 five percent of the final sale amount shall be added for relocation costs.

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

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

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

32 ~~J.~~ L. The provisions of subsections ~~C, D, E, F, H and I~~ E, F, G,
33 H, J AND K of this section do not apply if the original declaration, an
34 amendment to the original declaration recorded before the conveyance of
35 any unit to an owner other than the declarant or an agreement by all of
36 the unit owners contains provisions inconsistent with these subsections.

37 ~~K.~~ M. Beginning on August 3, 2018, any provisions in the
38 declaration that conflict with subsection ~~G~~ I, paragraph 1 of this
39 section are void as a matter of public policy.

40 Sec. 3. Repeal

41 Laws 2021, chapter 405, section 51 is repealed.