

Senate Engrossed House Bill
condominiums; insurance coverage; claims

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HOUSE BILL 2251

AN ACT

AMENDING SECTION 33-1253, 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 33-1253, Arizona Revised Statutes, is amended to
3 read:

4 33-1253. Insurance

5 A. Commencing not later than the time of the first conveyance of a
6 unit to a person other than a declarant, the association shall maintain,
7 to the extent reasonably available, both:

8 1. Property insurance on the common elements **AND, IF REQUIRED BY**
9 **THE CONDOMINIUM DOCUMENTS, THE UNITS**, insuring against all risks of direct
10 physical loss commonly insured against ~~or, as determined by the board of~~
11 ~~directors against fire and extended coverage perils~~. The total amount of
12 insurance after application of any deductibles shall be not less than
13 eighty ~~per cent~~ **PERCENT** of the actual cash value of the insured property
14 at the time the insurance is purchased and at each renewal date, exclusive
15 of land, excavations, foundations and other items normally excluded from
16 property policies.

17 2. Liability insurance in an amount determined by the board of
18 directors **OR THE ASSOCIATION** but not less than any amount specified in the
19 declaration, covering all occurrences commonly insured against for death,
20 bodily injury and property damage arising out of or in connection with the
21 use, ownership or maintenance of the common elements.

22 B. To the extent available, the insurance maintained under
23 subsection A, paragraph 1 of this section, ~~if determined by the board,~~
24 includes the units or any portion of those units but need not include
25 improvements and betterments installed by unit owners or the personal
26 property of unit owners.

27 C. If the insurance described in subsection A of this section is
28 not reasonably available, the association promptly shall cause notice of
29 that fact to be hand-delivered or sent prepaid by United States mail to
30 all unit owners. The declaration may require the association to carry any
31 other insurance, and the association in any event may carry any other
32 insurance it deems appropriate to protect the association or the unit
33 owners.

34 D. Insurance policies carried pursuant to subsection A of this
35 section shall provide the following:

36 1. Each unit owner is an insured person under the policy with
37 respect to liability **OR PROPERTY DAMAGE** arising out of ~~his~~ **THE UNIT**
38 **OWNER'S** interest in the common elements, **THE UNIT, IF REQUIRED BY THE**
39 **CONDOMINIUM DOCUMENTS**, or membership in the association.

40 2. The insurer waives its right to subrogation under the policy
41 against any unit owner or members of ~~his~~ **THE UNIT OWNER'S** household.

42 3. No act or omission by any unit owner, unless acting within the
43 scope of ~~his~~ **THE UNIT OWNER'S** authority on behalf of the association, will
44 void the policy or be a condition to recovery under the policy.

1 4. If, at the time of a loss under the policy, there is other
2 insurance in the name of a unit owner covering the same property covered
3 by the policy, the association's policy provides primary insurance.

4 5. AS AN INSURED PERSON UNDER THE ASSOCIATION'S POLICY WITH RESPECT
5 TO THE UNIT OWNER'S INTEREST IN THE COMMON ELEMENTS, THE UNIT OWNER'S
6 INDIVIDUAL UNIT OR MEMBERSHIP IN THE ASSOCIATION, EACH UNIT OWNER HAS THE
7 RIGHT TO REPORT A LOSS UNDER THE ASSOCIATION'S PROPERTY INSURANCE
8 POLICY. EACH UNIT OWNER SHALL ADDITIONALLY REPORT THE LOSS TO THE
9 ASSOCIATION.

10 E. PRIOR TO REPORTING A LOSS UNDER THE ASSOCIATION'S MASTER
11 PROPERTY INSURANCE POLICY, A UNIT OWNER SHALL REPORT THE LOSS TO THE
12 ASSOCIATION AND GIVE THE ASSOCIATION TEN BUSINESS DAYS TO PROVIDE THE UNIT
13 OWNER WITH A WRITTEN DECISION WHETHER THE ASSOCIATION WILL BE REPORTING A
14 CLAIM TO THE MASTER POLICY. IF THE ASSOCIATION DECIDES NOT TO REPORT A
15 CLAIM UNDER THE MASTER POLICY, THE ASSOCIATION SHALL PROVIDE THE REASON
16 FOR THE DECISION IN THE WRITTEN DECISION.

17 ~~F.~~ F. NOTWITHSTANDING SUBSECTION D, PARAGRAPH 5 OF THIS SECTION,
18 any loss covered by the property policy under subsection A, paragraph 1
19 and subsection B of this section shall be adjusted with the association,
20 but the insurance proceeds for that loss are payable to any insurance
21 trustee designated for that purpose, or otherwise to the association, and
22 not to any mortgagee or beneficiary under a deed of trust. The insurance
23 trustee or the association shall hold any insurance proceeds in trust for
24 unit owners and lienholders as their interests may appear. Subject to ~~the~~
25 ~~provisions of~~ subsection H of this section, the proceeds shall be
26 disbursed first for the repair or restoration of the damaged property, and
27 unit owners and lienholders are not entitled to receive payment of any
28 portion of the proceeds unless there is a surplus of proceeds after the
29 property has been completely repaired or restored, or the condominium is
30 terminated.

31 ~~F.~~ G. An insurance policy issued to the association does not
32 prevent a unit owner from obtaining insurance for ~~his~~ THE UNIT OWNER'S own
33 benefit.

34 ~~G.~~ H. An insurer that has issued an insurance policy under this
35 section shall issue certificates or memoranda of insurance to the
36 association and, on written request, to any unit owner, mortgagee or
37 beneficiary under a deed of trust. The insurer issuing the policy shall
38 not cancel or refuse to renew it until thirty days after notice of the
39 proposed cancellation or nonrenewal has been mailed to the association,
40 each unit owner and each mortgagee or beneficiary under a deed of trust to
41 whom a certificate or memorandum of insurance has been issued at their
42 respective last known addresses.

43 ~~H.~~ I. Any portion of the condominium for which insurance is
44 required under this section ~~which~~ AND THAT is damaged or destroyed shall
45 be repaired or replaced promptly by the association unless any of the
46 following apply:

1 1. The condominium is terminated.
2 2. Repair or replacement would be illegal under any state or local
3 health or safety statute or ordinance.
4 3. Eighty ~~per cent~~ PERCENT of the unit owners, including every
5 owner of a unit or allocated limited common element ~~which~~ THAT will not be
6 rebuilt, vote not to rebuild.
7 ~~I.~~ J. The cost of repair or replacement in excess of insurance
8 proceeds and reserves is a common expense. If the entire condominium is
9 not repaired or replaced:
10 1. The insurance proceeds attributable to the damaged common
11 elements in proportion to their common element interests or as otherwise
12 provided in the declaration shall be used to restore the damaged area to a
13 condition compatible with the remainder of the condominium.
14 2. The insurance proceeds attributable to units and allocated
15 limited common elements ~~which~~ THAT are not rebuilt shall be distributed in
16 proportion to their common element interests or as otherwise provided in
17 the declaration to the owners of those units and the owners of the units
18 to which those limited common elements were allocated, or to lienholders
19 as their interests may appear.
20 3. The remainder of the proceeds shall be distributed to all the
21 unit owners or lienholders as their interests may appear in proportion to
22 the common element interests of all the units.
23 K. THE ASSOCIATION SHALL INFORM EACH UNIT OWNER ANNUALLY IN WRITING
24 OF BOTH:
25 1. THE UNIT OWNER'S RESPONSIBILITY FOR THE ASSOCIATION'S INSURANCE
26 DEDUCTIBLES FOR ALL PROPERTY AND LIABILITY COVERAGE.
27 2. THE AMOUNT OF EACH DEDUCTIBLE.
28 ~~J.~~ L. If the unit owners vote not to rebuild any unit, that unit's
29 allocated interests are automatically reallocated on the vote as if the
30 unit had been condemned under section 33-1206, subsection A, and the
31 association promptly shall prepare, execute and record an amendment to the
32 declaration reflecting the reallocations.
33 ~~K.~~ M. Notwithstanding ~~the provisions of~~ subsections H, I and ~~J~~ L
34 of this section, section 33-1228 governs the distribution of insurance
35 proceeds if the condominium is terminated.
36 ~~L.~~ N. If all units are restricted to nonresidential use, the
37 provisions of a subsection or paragraph of this section do not apply if
38 the declaration, articles of incorporation or amended bylaws contain
39 provisions inconsistent with such subsection or paragraph.
40 ~~M.~~ O. This section does not prohibit the declaration from
41 requiring additional or greater amounts of insurance coverage or does not
42 prohibit the board of directors from acquiring ~~additoma~~ ADDITIONAL or
43 greater amounts of coverage as it reasonably deems appropriate.