

CORRECTED – reinstated omitted language on page 5, line 43

House Engrossed

condominiums; commercial structures; residential structures

State of Arizona
House of Representatives
Fifty-seventh Legislature
First Regular Session
2025

HOUSE BILL 2322

AN ACT

AMENDING SECTIONS 33-1202, 33-1217 AND 33-1255, 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 33-1202, 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. "Assessment" means the share of monies that is required for the
16 payment of common expenses and that the association assesses periodically
17 against each unit.

18 5. "Association" or "unit owners' association" means the unit
19 owners' association organized under section 33-1241.

20 6. "Board of directors" means the body, regardless of its name,
21 designated in the declaration and given general management powers to act
22 on behalf of the association.

23 7. "Bylaws" means the bylaws required by section 33-1246.

24 8. "Common elements" means all portions of a condominium other than
25 the units.

26 9. "Common expense liability" means the liability for common
27 expenses allocated to each unit pursuant to section 33-1217 OR 33-1255.

28 10. "Common expense lien" means the lien for assessments, charges
29 for late payment of assessments if authorized in the declaration,
30 reasonable collection fees and costs incurred or applied by the
31 association and reasonable attorney fees and costs that are incurred with
32 respect to those assessments, if the attorney fees and costs are awarded
33 by a court.

34 11. "Common expenses" means expenditures made by or financial
35 liabilities of the association, together with any allocations to reserves.

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

41 13. "Condominium documents" means the declaration, bylaws, articles
42 of incorporation, if any, and rules, if any.

43 14. "Declarant" means any person or group of persons who reserves,
44 is granted or succeeds to any special declarant right.

1 15. "Declaration" means any instruments, however denominated, that
2 create a condominium and any amendments to those instruments.

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

6 (a) Add real estate to a condominium.

7 (b) Create easements, units, common elements or limited common
8 elements within a condominium.

9 (c) Subdivide units, convert units into common elements or convert
10 common elements into units.

11 (d) Withdraw real estate from a condominium.

12 (e) Make the condominium part of a larger condominium or planned
13 community.

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

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

23 17. "Identifying number" means a symbol or address that identifies
24 one unit in a condominium.

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

28 19. "Limited common element" means a portion of the common elements
29 specifically designated as a limited common element in the declaration and
30 allocated by the declaration or by operation of section 33-1212, paragraph
31 2 or 4 for the exclusive use of one or more but fewer than all of the
32 units.

33 20. "Person" means:

34 (a) A natural person, corporation, business trust, estate, trust,
35 partnership, association, joint venture, government, governmental
36 subdivision or agency, or other legal or commercial entity.

37 (b) In the case of a subdivision trust, as defined in section
38 6-801, the beneficiary of the trust who holds the right to subdivide,
39 develop or sell the real estate rather than the trust or trustee.

40 21. "Real estate":

41 (a) Means any legal, equitable, leasehold or other estate or
42 interest in, over or under land, including structures, fixtures and other
43 improvements and interests which by custom, usage or law pass with a
44 conveyance of land though not described in the contract of sale or
45 instrument of conveyance.

1 (b) Includes parcels with or without upper or lower boundaries and
2 spaces that may be filled with air or water.

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

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

9 (a) Construct improvements provided for in the declaration.

10 (b) Exercise any development right.

11 (c) Maintain sales offices, management offices, signs advertising
12 the condominium, and models.

13 (d) Use easements through the common elements for the purpose of
14 making improvements within the condominium or within real estate that may
15 be added to the condominium.

16 (e) Appoint or remove any officer of the association or any board
17 member during any period of declarant control.

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

20 25. "Unit owner" means:

21 (a) A declarant or other person who owns a unit or, unless
22 otherwise provided in the lease, a lessee of a unit in a leasehold
23 condominium whose lease expires simultaneously with any lease the
24 expiration or termination of which will remove the unit from the
25 condominium but does not include a person having an interest in a unit
26 solely as security for an obligation.

27 (b) In the case of a contract for conveyance, as defined in section
28 33-741, of real property, the purchaser of the unit.

29 26. "Unit owner expenses":

30 (a) Means fees, charges, late charges and monetary penalties or
31 interest that is imposed pursuant to section 33-1242, subsection A,
32 paragraphs 10, 11 and 12.

33 (b) Does not include any amount that is included in a common
34 expense lien.

35 Sec. 2. Section 33-1217, Arizona Revised Statutes, is amended to
36 read:

37 33-1217. Allocation of common element interests, votes and
38 common expense liabilities

39 A. EXCEPT AS REQUIRED BY SECTION 33-1255, the declaration shall
40 allocate a fraction or percentage of undivided interests in the common
41 elements and in the common expenses of the association, and a portion of
42 the votes in the association, to each unit and state the formulas used to
43 establish those allocations. Except as otherwise provided in this
44 chapter, the allocations shall not discriminate in favor of units owned by
45 the declarant.

1 B. If units may be added to or withdrawn from the condominium, the
2 declaration must state the formulas to be used to reallocate the allocated
3 interests among all units included in the condominium after the addition
4 or withdrawal.

5 C. The declaration may provide:

6 1. That different allocations of votes shall be made to the units
7 on particular matters specified in the declaration.

8 2. For cumulative voting only for the purpose of electing members
9 of the board of directors.

10 3. For class voting on specified issues affecting the class if
11 necessary to protect valid interests of the class.

12 D. Except for minor variations due to rounding, the sum of the
13 undivided interests in the common elements and common expense liabilities
14 allocated at any time to all the units must each equal one if stated as
15 fractions or one hundred per cent if stated as percentages. If a
16 discrepancy exists between an allocated interest and the result derived
17 from application of the pertinent formula, the allocated interest
18 prevails.

19 E. Except as otherwise permitted by the provisions of this chapter,
20 the common elements are not subject to partition, and any purported
21 conveyance, encumbrance, judicial sale or other voluntary or involuntary
22 transfer of an undivided interest in the common elements made without the
23 unit to which that interest is allocated is void.

24 Sec. 3. Section 33-1255, Arizona Revised Statutes, is amended to
25 read:

26 33-1255. Assessments for common expenses; commercial
27 structures; applicability; definitions

28 A. Until the association makes a common expense assessment, the
29 declarant shall pay all common expenses. After any assessment has been
30 made by the association, assessments shall be made at least annually,
31 based on a budget adopted at least annually by the association.

32 B. Except for assessments under subsections C, D, E, ~~and~~ F AND H of
33 this section, all common expenses shall be assessed against all the units
34 in accordance with the allocations set forth in the declaration pursuant
35 to section 33-1217, subsection A. Any past due common expense assessment
36 or installment bears interest at the rate established by the board subject
37 to the condominium documents.

38 C. Unless otherwise provided for in the declaration, all of the
39 following apply:

40 1. Any common expense associated with the maintenance, repair or
41 replacement of a limited common element shall be equally assessed against
42 the units to which the limited common element is assigned.

43 2. Any common expense or portion of a common expense benefitting
44 fewer than all of the units shall be assessed exclusively against the
45 units benefitted.

1 D. Assessments to pay a judgment against the association may be
2 made only against the units in the condominium at the time the judgment
3 was entered, in proportion to their common expense liabilities.

4 E. If any common expense is caused by the misconduct of any unit
5 owner, the association may assess that expense exclusively against that
6 unit.

7 F. If the declaration so provides, the common expense assessment
8 for any unit on which construction has not been substantially completed
9 may be an amount ~~which THAT is not less than~~ AT LEAST twenty-five ~~per cent~~
10 PERCENT of the common expense assessment for units ~~which THAT~~ have been
11 substantially completed. However, this reduced common expense assessment
12 shall not be ~~permitted;~~ ALLOWED unless the declarant is obligated under
13 the declaration to pay to the association any deficiency in monies due to
14 the declarant having paid a reduced common assessment and necessary for
15 the association to be able to timely pay all common expenses.

16 G. If common expense liabilities are reallocated, common expense
17 assessments and any installment on the assessments not yet due shall be
18 recalculated in accordance with the reallocated common expense
19 liabilities.

20 H. NOTWITHSTANDING ANY PROVISION IN THE CONDOMINIUM DOCUMENTS, IF A
21 CONDOMINIUM INCLUDES ONE OR MORE COMMERCIAL STRUCTURES THAT ARE SEPARATE
22 FROM ONE OR MORE RESIDENTIAL STRUCTURES, ALL OF THE FOLLOWING APPLY:

23 1. ANY COMMON EXPENSE OR PORTION OF A COMMON EXPENSE THAT
24 EXCLUSIVELY BENEFITS THE COMMERCIAL STRUCTURES SHALL BE ASSESSED
25 EXCLUSIVELY AGAINST THE UNITS IN THE COMMERCIAL STRUCTURES, WHETHER
26 ASSESSED IN A GENERAL ASSESSMENT OR SPECIAL ASSESSMENT OR OTHERWISE.

27 2. ANY COMMON EXPENSE OR PORTION OF A COMMON EXPENSE THAT
28 EXCLUSIVELY BENEFITS THE RESIDENTIAL STRUCTURES SHALL BE ASSESSED
29 EXCLUSIVELY AGAINST THE UNITS IN THE RESIDENTIAL STRUCTURES, WHETHER
30 ASSESSED IN A GENERAL ASSESSMENT OR SPECIAL ASSESSMENT OR OTHERWISE.

31 3. ANY COMMON EXPENSE OR PORTION OF A COMMON EXPENSE THAT BENEFITS
32 BOTH THE COMMERCIAL STRUCTURES AND THE RESIDENTIAL STRUCTURES SHALL BE
33 ASSESSED IN PROPORTION TO THE CATEGORY OF THE STRUCTURES BENEFITTED,
34 WHETHER ASSESSED IN A GENERAL ASSESSMENT OR SPECIAL ASSESSMENT OR
35 OTHERWISE. THE PROPORTIONAL SHARE OF THE COMMON EXPENSES THAT BENEFIT THE
36 COMMERCIAL STRUCTURES SHALL THEREAFTER BE ASSESSED AGAINST THE UNITS IN
37 THE COMMERCIAL STRUCTURES ON A PRO RATA BASIS, AND THE PROPORTIONAL SHARE
38 OF THE COMMON EXPENSES THAT BENEFIT THE RESIDENTIAL STRUCTURES SHALL
39 THEREAFTER BE ASSESSED AGAINST THE UNITS IN THE RESIDENTIAL STRUCTURES ON
40 A PRO RATA BASIS.

41 4. IN ANY DISPUTE OVER THE ALLOCATION OF A COMMON EXPENSE OR
42 PORTION OF A COMMON EXPENSE, THE ASSOCIATION SHALL MAKE AVAILABLE AS
43 PRESCRIBED BY SECTION 33-1258 ALL RECORDS RELATING TO THE ASSOCIATION'S
44 ALLOCATION OF A COMMON EXPENSE OR PORTION OF A COMMON EXPENSE. THE
45 ASSOCIATION MAY NOT WITHHOLD A RECORD BASED ON THE PENDENCY OF LITIGATION

1 RELATING TO THE ALLOCATION OF A COMMON EXPENSE OR PORTION OF A COMMON
2 EXPENSE IF THE RECORD WOULD OTHERWISE BE AVAILABLE TO A UNIT OWNER UNDER
3 SECTION 33-1258.

4 5. AFTER ANY PERIOD OF DECLARANT CONTROL ENDS, THE UNIT OWNERS MAY
5 APPROVE ONLY BY A UNANIMOUS VOTE A DIFFERENT ALLOCATION OF A COMMON
6 EXPENSE OR PORTION OF A COMMON EXPENSE THAN IS PRESCRIBED BY THIS
7 SUBSECTION.

8 ~~H.~~ I. This section does not apply to timeshare plans or
9 associations that are subject to chapter 20 of this title.

10 J. FOR THE PURPOSES OF THIS SECTION:

11 1. "COMMERCIAL STRUCTURE" MEANS A STRUCTURE IN WHICH A MAJORITY OF
12 THE UNITS ARE DESIGNATED FOR COMMERCIAL OR WORK PURPOSES AND IS SEPARATE
13 FROM A RESIDENTIAL STRUCTURE IF NO RESIDENTIAL UNITS ARE LOCATED ON TOP OF
14 OR BELOW THE COMMERCIAL STRUCTURE.

15 2. "COMMON EXPENSES" HAS THE SAME MEANING PRESCRIBED IN SECTION
16 33-1202.

17 3. "RESIDENTIAL STRUCTURE" MEANS A STRUCTURE IN WHICH A MAJORITY OF
18 THE UNITS ARE DESIGNATED FOR RESIDENTIAL PURPOSES.

19 Sec. 4. Applicability

20 Section 33-1255, Arizona Revised Statutes, as amended by this act,
21 applies to any condominium existing on or after the effective date of this
22 act.