

REFERENCE TITLE: homeowners' associations; property covenants; disclosures

State of Arizona
House of Representatives
Fifty-seventh Legislature
Second Regular Session
2026

HB 2397

Introduced by
Representative Biasiucci

AN ACT

AMENDING SECTIONS 33-440, 33-1260, 33-1802, 33-1803 AND 33-1806, ARIZONA
REVISED STATUTES; RELATING TO REAL PROPERTY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 33-440, Arizona Revised Statutes, is amended to
3 read:

4 33-440. Enforceability of private covenants; amendment of
5 declaration; definitions

6 A. An owner of real property may enter into a private covenant
7 regarding that real property and the private covenant is valid and
8 enforceable according to its terms if all of the following apply:

9 1. The private covenant is not prohibited by any other existing
10 private covenant or declaration affecting the real property, ~~and~~ does not
11 violate any statute governing the subject matter of the private covenant
12 ~~that is in effect before September 26, 2008~~ AND DOES NOT VIOLATE PUBLIC
13 POLICY. COVENANTS THAT VIOLATE PUBLIC POLICY INCLUDE A COVENANT THAT:

14 (a) IS ARBITRARY, SPITEFUL OR CAPRICIOUS.

15 (b) UNREASONABLY BURDENS A FUNDAMENTAL RIGHT UNDER THE
16 CONSTITUTION.

17 (c) IMPOSES AN UNREASONABLE RESTRAINT ON ALIENATION OF PROPERTY.

18 (d) IMPOSES AN UNREASONABLE RESTRAINT ON TRADE OR COMPETITION.

19 (e) IS UNCONSCIONABLE.

20 2. The owner of the real property affected by the private covenant
21 and any person on whom the private covenant imposes any liability or
22 obligation have consented to the private covenant.

23 3. Any consent requirements contained in the express provisions of
24 any existing private covenant or declaration affecting the real property
25 have been met.

26 B. NOTWITHSTANDING ANY PROVISION OF A PRIVATE COVENANT TO THE
27 CONTRARY, ANY PROPERTY OWNER THAT IS SUBJECT TO THE PRIVATE COVENANT MAY
28 CHALLENGE THE VALIDITY OF ANY PROVISION IN THAT PRIVATE COVENANT IN A
29 COURT OF COMPETENT JURISDICTION.

30 ~~B.~~ C. A private covenant is deemed not to constitute an amendment
31 to any existing private covenant or declaration unless the private
32 covenant expressly violates an express provision of the existing private
33 covenant or declaration.

34 ~~C.~~ D. Except during the period of declarant control, or if during
35 the period of declarant control with the written consent of the declarant
36 in each instance, the following apply to an amendment to a declaration:

37 1. The declaration may be amended by the association, if any, or,
38 if there is no association or board, the owners of the property that is
39 subject to the declaration, by an affirmative vote or written consent of
40 the number of owners or eligible voters specified in the declaration,
41 including the assent of any individuals or entities that are specified in
42 the declaration.

43 2. An amendment to a declaration may apply to fewer than all of the
44 lots or less than all of the property that is bound by the declaration and

1 an amendment is deemed to conform to the general design and plan of the
2 community, if both of the following apply:

3 (a) The amendment receives the affirmative vote or written consent
4 of the number of owners or eligible voters specified in the declaration,
5 including the assent of any individuals or entities that are specified in
6 the declaration.

7 (b) The amendment receives the affirmative vote or written consent
8 of all of the owners of the lots or property to which the amendment
9 applies.

10 3. Within thirty days after the adoption of any amendment pursuant
11 to this subsection, the association or, if there is no association or
12 board, a property owner that is authorized by the affirmative vote on or
13 the written consent to the amendment shall prepare, execute and record a
14 written instrument setting forth the amendment.

15 4. Notwithstanding any provision in the declaration that provides
16 for periodic renewal of the declaration, an amendment to the declaration
17 is effective immediately on recordation of the instrument in the county in
18 which the property is located.

19 ~~D.~~ E. Subsection ~~E.~~ D of this section does not apply to a
20 condominium as defined in section 33-1202 or a timeshare plan or
21 association as defined in section 33-2202.

22 ~~E.~~ F. For the purposes of this section:

23 1. "Declaration" means any instrument, however denominated, that
24 establishes restrictive covenants on the development or use of real
25 property.

26 2. "Private covenant" means any uniform or nonuniform covenant,
27 restriction or condition regarding real property that is contained in any
28 deed, contract, agreement or other recorded instrument affecting real
29 property.

30 3. "SPITEFUL" MEANS THAT THE PURPOSE OF THE COVENANT WAS TO CAUSE
31 HARM TO ANOTHER RATHER THAN TO SECURE A BENEFIT TO THE CREATING PARTY.

32 4. "UNREASONABLE RESTRAINT ON ALIENATION" MEANS ANY RESTRAINT ON
33 ALIENATION TO WHICH EITHER OF THE FOLLOWING APPLIES:

34 (a) THE INJURIOUS CONSEQUENCES OF THE RESTRAINT OUTWEIGH THE
35 UTILITY OF THE RESTRAINT.

36 (b) THE RESTRAINT HAS NO RATIONAL JUSTIFICATION OR IS
37 UNCONSCIONABLE.

38 Sec. 2. Section 33-1260, Arizona Revised Statutes, is amended to
39 read:

40 33-1260. Sale of units; information required; fees; civil
41 penalty; applicability; definition

42 A. EXCEPT AS PRESCRIBED BY SUBSECTION I OF THIS SECTION, for
43 condominiums with fewer than fifty units, a unit owner shall ~~mail~~
44 ELECTRONICALLY TRANSMIT or deliver to a purchaser ~~or a purchaser's~~
45 ~~authorized agent~~ THE INFORMATION REQUIRED BY THIS SUBSECTION within ten

1 CALENDAR days after ~~receipt of a written notice of a pending sale of the~~
2 ~~unit, and~~ ACCEPTANCE OF THE PURCHASER'S OFFER TO PURCHASE. THE UNIT OWNER
3 MAY REQUEST THE ASSOCIATION TO PROVIDE THE UNIT OWNER WITH THE INFORMATION
4 REQUIRED BY THIS SUBSECTION ON LISTING THE UNIT FOR SALE. For
5 condominiums with fifty or more units, the association shall ~~mail~~
6 ELECTRONICALLY TRANSMIT or deliver to a purchaser ~~or a purchaser's~~
7 ~~authorized agent~~ within ten CALENDAR days after receipt of a written
8 notice of a pending sale that contains the name, EMAIL ADDRESS and MAILING
9 address of the purchaser all of the following in either paper or
10 electronic format:

11 1. A copy of the CURRENT bylaws and the CURRENT rules of the
12 association.

13 2. A copy of the CURRENT RECORDED declaration AND PLAT.

14 3. A dated statement containing OR IDENTIFYING:

15 (a) The telephone number and address of a principal contact for the
16 association, which may be an association manager, an association
17 management company, an officer of the association or any other person
18 designated by the board of directors.

19 (b) The amount of the ANNUAL common expense assessment for the
20 unit, ~~and~~ THE REQUIRED INSTALLMENTS AND PAYMENT SCHEDULES ON ANY APPROVED
21 SPECIAL ASSESSMENT AND ANY REMAINING INSTALLMENTS ON THE SPECIAL
22 ASSESSMENT, IF ANY.

23 (c) THE ESTIMATED DOLLAR AMOUNT AND PURPOSE OF ANY CONTEMPLATED AND
24 EITHER APPROVED AND RATIFIED OR ANTICIPATED TO BE APPROVED AND RATIFIED
25 SPECIAL ASSESSMENT OR FINANCING BEING DEVELOPED BY THE ASSOCIATION FOR
26 ASSESSMENT WITHIN THE SUBSEQUENT SIX MONTHS, IF ANY.

27 (d) ANY KNOWN MATERIAL DEFICIENCY OR CONDITION OF THE LIMITED
28 COMMON ELEMENTS ASSOCIATED WITH THE UNIT OR COMMON ELEMENTS FOR WHICH THE
29 PURCHASER WILL BE LIABLE FOR THE DIRECTLY ASSESSED REPAIR COSTS WITHIN SIX
30 MONTHS OF THE PURCHASE, IF ANY.

31 (e) THE CURRENT AMOUNT OF any unpaid common expense
32 assessment, ~~special assessment or other assessment, fee or charge~~
33 ~~currently due and payable from the selling unit owner. If the request is~~
34 ~~made by a lienholder, escrow agent, unit owner or person designated by a~~
35 ~~unit owner pursuant to section 33-1256, failure to provide the information~~
36 ~~pursuant to this subdivision within the time provided for in this~~
37 ~~subsection shall extinguish any lien for any unpaid assessment then due~~
38 ~~against that unit~~ LIEN OR JUDGMENT LIEN ON THE UNIT DUE TO THE ASSOCIATION
39 PURSUANT TO SECTION 33-1256 AND ANY LIS PENDENS RECORDED BY THE
40 ASSOCIATION AGAINST THE UNIT.

41 ~~(c) A statement as to whether a portion of the unit is covered by~~
42 ~~insurance maintained by the association.~~

43 ~~(d) The total amount of money held by the association as reserves.~~

44 ~~(e) If the statement is being furnished by the association, a~~
45 ~~statement as to whether the records of the association reflect any~~

1 ~~alterations or improvements to the unit that violate the declaration. The~~
2 ~~association is not obligated to provide information regarding alterations~~
3 ~~or improvements that occurred more than six years before the proposed~~
4 ~~sale. Nothing in this subdivision relieves the seller of a unit from the~~
5 ~~obligation to disclose alterations or improvements to the unit that~~
6 ~~violate the declaration, nor precludes the association from taking action~~
7 ~~against the purchaser of a unit for violations that are apparent at the~~
8 ~~time of purchase and that are not reflected in the association's records.~~

9 ~~(f) If the statement is being furnished by the unit owner, a~~
10 ~~statement as to whether the unit owner has any knowledge of any~~
11 ~~alterations or improvements to the unit that violate the declaration.~~

12 ~~(g) A statement of case names and case numbers for pending~~
13 ~~litigation with respect to the unit filed by the association against the~~
14 ~~unit owner or filed by the unit owner against the association. The unit~~
15 ~~owner or the association shall not be required to disclose information~~
16 ~~concerning the pending litigation that would violate any applicable rule~~
17 ~~of attorney-client privilege under Arizona law.~~

18 ~~(h) A statement that provides "I hereby acknowledge that the~~
19 ~~declaration, bylaws and rules of the association constitute a contract~~
20 ~~between the association and me (the purchaser). By signing this~~
21 ~~statement, I acknowledge that I have read and understand the association's~~
22 ~~contract with me (the purchaser). I also understand that as a matter of~~
23 ~~Arizona law, if I fail to pay my association assessments, the association~~
24 ~~may foreclose on my property." The statement shall also include a~~
25 ~~signature line for the purchaser and shall be returned to the association~~
26 ~~within fourteen calendar days.~~

27 (f) THE AMOUNT AND PURPOSE OF ANY TITLE TRANSFER FEE OR OTHER
28 SIMILAR FEE, HOWEVER DENOMINATED, THAT IS AUTHORIZED IN THE DECLARATION
29 AND ESTABLISHED BY THE ASSOCIATION PURSUANT TO SECTION 33-442.

30 (g) A COPY OF THE ASSOCIATION'S MOST RECENT INCOME AND EXPENSES
31 FINANCIAL STATEMENT FOR ALL OPERATING AND RESERVE ACCOUNTS, AS APPLICABLE.

32 (h) ANY OUTSTANDING AND UNRESOLVED VIOLATION OF THE ASSOCIATION'S
33 CONDOMINIUM DOCUMENTS THAT WAS CITED AGAINST THE UNIT, IF ANY, AND THAT
34 THE SELLER IS RESPONSIBLE FOR APPEALING, RESOLVING OR ARRANGING FOR THE
35 RESOLUTION OF ALL CITED VIOLATIONS.

36 4. A copy of the current operating budget of the association.

37 5. A copy of the most recent annual ~~financial~~ AUDIT, REVIEW OR
38 COMPILATION report of the association PRESCRIBED BY SECTION 33-1243,
39 SUBSECTION J. If the report is more than ten pages, the association may
40 provide a summary of the report in lieu of the entire report.

41 6. A copy of the most recent reserve study OR LONG-RANGE PLAN AND
42 THE ASSOCIATED FUNDING STRATEGY of the association, if any. IF THE REPORT
43 IS MORE THAN TEN PAGES, THE ASSOCIATION MAY PROVIDE A SUMMARY OF THE
44 REPORT IN LIEU OF THE ENTIRE REPORT.

1 7. A statement summarizing any pending lawsuits, except those
2 relating to the collection of assessments owed by unit owners other than
3 the selling unit owner, in which the association is a named party,
4 including the amount of any money claimed.

5 8. A STATEMENT AS TO WHETHER A PORTION OF THE UNIT IS COVERED BY
6 INSURANCE MAINTAINED BY THE ASSOCIATION AND A COPY OF ALL INSURANCE
7 CERTIFICATES IDENTIFYING THE COVERAGE LIMITS AND DEDUCTIBLES MAINTAINED BY
8 THE ASSOCIATION PURSUANT TO SECTION 33-1253.

9 9. A STATEMENT AS TO WHETHER THE CONDOMINIUM IS UNDER DECLARANT
10 CONTROL AND THE PERCENTAGE OF UNITS IDENTIFIED ON THE RECORDED PLAT THAT
11 ARE CURRENTLY OWNED BY THE DECLARANT.

12 10. A STATEMENT IDENTIFYING WHETHER ANY OWNER OR ENTITY OTHER THAN
13 THE DECLARANT OWNS TWENTY-FIVE PERCENT OR MORE OF THE UNITS.

14 11. A STATEMENT THAT, FOR ANY REPORT PROVIDED IN SUMMARY FORMAT
15 PURSUANT TO THIS SUBSECTION, THE PURCHASER MAY REQUEST TO VIEW THE ENTIRE
16 REPORT FROM THE ASSOCIATION DIRECTLY, AND THE ASSOCIATION SHALL PROVIDE
17 ACCESS TO THAT REPORT WITHIN THREE BUSINESS DAYS AFTER A WRITTEN REQUEST.

18 12. A STATEMENT TO BE SIGNED BY THE PURCHASER AT THE CLOSE OF
19 ESCROW THAT PROVIDES "I HEREBY ACKNOWLEDGE THAT WITH THE PURCHASE OF THIS
20 HOME OR PROPERTY, I WILL BE CONTRACTUALLY BOUND TO THE VALID COVENANTS,
21 CONDITIONS AND RESTRICTIONS OF THE RECORDED DECLARATION, AND WILL BE BOUND
22 TO PAY ALL COMMON EXPENSE ASSESSMENTS APPLIED TO MY HOME OR PROPERTY AS
23 AUTHORIZED IN THE DECLARATION AND TITLE 33, CHAPTER 9 OR 16, ARIZONA
24 REVISED STATUTES, AS APPLICABLE. IF I FAIL TO PAY COMMON EXPENSE
25 ASSESSMENTS, I MAY BE SUBJECT TO COLLECTION ACTIVITY BY THE ASSOCIATION UP
26 TO AND INCLUDING FORECLOSURE ACTION, WITHOUT THE EQUITY PROTECTION OF THE
27 HOMESTEAD ACT PURSUANT TO TITLE 33, CHAPTER 8, ARIZONA REVISED STATUTES."

28 B. WITHIN FIVE CALENDAR DAYS AFTER THE RECEIPT OF THE DISCLOSURE
29 REPORT PRESCRIBED BY SUBSECTION A OF THIS SECTION, THE PURCHASER MAY
30 ACCEPT THE INFORMATION, PROPOSE A CURE TO ADDRESS ANY CONCERNS IDENTIFIED
31 IN THE REPORT OR WITHDRAW THE OFFER WITHOUT PENALTY OR LOSS OF EARNEST
32 MONEY. IF A CONTRACT IS CANCELED FOR ANY REASON, THE COMPLETE DISCLOSURE
33 REPORT SHALL BE RETURNED TO THE SELLER.

34 ~~B.~~ C. A purchaser or seller who is damaged by ~~the failure of~~ the
35 unit owner or the association FAILING to disclose the information
36 required by subsection A of this section OR PROVIDING MATERIALLY FALSE OR
37 MISLEADING STATEMENTS IN THE DISCLOSURE may pursue all remedies at law or
38 in equity against the unit owner, THE MANAGING AGENT FOR THE ASSOCIATION
39 or the association, whichever failed to comply with subsection A of this
40 section OR PROVIDED FALSE OR MISLEADING STATEMENTS IN THE DISCLOSURE,
41 including the recovery of reasonable attorney fees AS AWARDED BY THE
42 COURT.

43 D. THE ASSOCIATION SHALL PROVIDE TO AN ESCROW AGENT THAT IS
44 LICENSED PURSUANT TO TITLE 6, CHAPTER 7 AND THAT IS DESIGNATED FOR THE
45 TRANSACTION ANY REQUESTED INFORMATION THAT IS RELEVANT TO THE CLOSE OF

1 ESCROW, SUBJECT TO AND PURSUANT TO SECTION 33-1256 AT NO COST TO THE
 2 ESCROW AGENT OR ADDITIONAL COST TO THE SELLER OR BUYER.

3 ~~E.~~ E. IF THE ASSOCIATION PROVIDED THE DISCLOSURE REPORT REQUESTED
 4 BY THE UNIT OWNER, the association may charge the unit owner a fee of not
 5 more than an aggregate of ~~four hundred dollars~~ \$400 to compensate the
 6 association for the costs incurred in the preparation and delivery of a
 7 ~~statement~~ REPORT or other documents furnished by the association pursuant
 8 to this section for purposes of resale disclosure, lien estoppel and any
 9 other services related to the transfer or use of the property. In
 10 addition, the association may charge a rush fee of not more than ~~one~~
 11 ~~hundred dollars~~ \$100 if the rush services are required to be performed
 12 within seventy-two hours after the request for rush services. ~~, and THE~~
 13 ~~UNIT OWNER~~ may REQUEST THE ASSOCIATION TO UPDATE THE REPORT IF THIRTY DAYS
 14 OR MORE HAVE PASSED SINCE THE DATE OF THE ORIGINAL DISCLOSURE REPORT. THE
 15 ASSOCIATION MAY charge a ~~statement or other documents~~ DOCUMENT update fee
 16 of not more than ~~fifty dollars if thirty days or more have passed since~~
 17 ~~the date of the original disclosure statement or the date the documents~~
 18 ~~were delivered~~ \$50. The association shall make available to any
 19 interested party the amount of any fee established from time to time by
 20 the association. ~~If the aggregate fee for purposes of resale disclosure,~~
 21 ~~lien estoppel and any other services related to the transfer or use of a~~
 22 ~~property is less than four hundred dollars on January 1, 2010, the fee may~~
 23 ~~increase at a rate of not more than twenty percent per year based on the~~
 24 ~~immediately preceding fiscal year's amount not to exceed the four hundred~~
 25 ~~dollar aggregate fee.~~ The association may charge the same fee without
 26 regard to whether the association is furnishing the statement or other
 27 documents in paper or electronic format.

28 F. IF THE ASSOCIATION WAS NOT REQUESTED TO PROVIDE THE DISCLOSURE
 29 REPORT PRESCRIBED BY SUBSECTION A OF THIS SECTION, THE ASSOCIATION MAY
 30 CHARGE A NOMINAL FEE TO THE PURCHASER TO COMPENSATE THE ASSOCIATION FOR
 31 THE COST OF UPDATING THE NEW OWNER INFORMATION IN THE ASSOCIATION RECORDS,
 32 COMMENSURATE WITH THE DIRECT COST INCURRED.

33 ~~F.~~ G. The fees prescribed by this section shall be collected ~~no~~
 34 NOT earlier than at the close of escrow and may only be charged once to a
 35 unit owner OR PURCHASER for that transaction between the parties ~~specified~~
 36 ~~in the notice required pursuant to subsection A of this section.~~ ANY
 37 PAYMENT SHALL BE MADE DIRECTLY AND ONLY TO THE ASSOCIATION. An
 38 association shall not charge or collect a fee relating to services for
 39 resale disclosure, lien estoppel and any other services related to the
 40 transfer or use of a property except as specifically authorized in this
 41 section. An association that charges or collects a fee in violation of
 42 this section is subject to a civil penalty of not more than ~~one thousand~~
 43 ~~two hundred dollars~~ \$1,200.

44 ~~F.~~ H. This section applies to a managing agent for an association
 45 that is acting on behalf of the association.

1 I. FOR THE INITIAL SALE OF A CONDOMINIUM UNIT FROM THE DECLARANT,
2 THE DECLARANT SHALL PROVIDE TO ANY PURCHASER WITHIN THE TIME PRESCRIBED BY
3 SUBSECTION A OF THIS SECTION THE DOCUMENTS PRESCRIBED IN SUBSECTION A,
4 PARAGRAPHS 1, 2 AND 12 OF THIS SECTION.

5 ~~F.~~ J. The following are exempt from this section:

6 1. A sale in which a public report is issued pursuant to section
7 32-2183 or 32-2197.02.

8 2. A sale pursuant to section 32-2181.02.

9 3. A conveyance by recorded deed that bears an exemption listed in
10 section 11-1134, subsection B, paragraph 3 or 7. On recordation of the
11 deed ~~and for no additional charge~~, the ~~unit owner~~ PURCHASER shall provide
12 the association with the changes in ownership, including the unit owner's
13 name, billing address and phone number. Failure to provide the
14 information shall not prevent the unit owner from qualifying for the
15 exemption pursuant to this section.

16 ~~G.~~ K. This section does not apply to timeshare plans or
17 associations that are subject to chapter 20 of this title.

18 ~~H.~~ L. For the purposes of this section, unless the context
19 otherwise requires, "unit owner":

20 1. Means the seller of the condominium unit title. ~~and excludes~~

21 2. DOES NOT INCLUDE:

22 (a) Any real estate salesperson or real estate broker who is
23 licensed under title 32, chapter 20 and who is acting as a salesperson or
24 broker. ~~,~~

25 (b) Any escrow agent who is licensed under title 6, chapter 7 and
26 who is acting as an escrow agent. ~~and also excludes~~

27 (c) A trustee of a deed of trust who is selling the property in a
28 trustee's sale pursuant to chapter 6.1 of this title.

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

31 33-1802. Definitions

32 In this chapter and in the community documents, unless the context
33 otherwise requires:

34 1. "Association":

35 (a) Means a nonprofit corporation or unincorporated association of
36 owners that is created pursuant to a declaration to own and operate
37 portions of a planned community and that has the power under the
38 declaration to assess association members to pay the costs and expenses
39 incurred in the performance of the association's obligations under the
40 declaration.

41 (b) Does not include a nonprofit corporation or unincorporated
42 association of owners that is created or incorporated before January 1,
43 1974 and that does not have authority to enforce covenants, conditions or
44 restrictions related to the use, occupancy or appearance of the separately
45 owned lots, parcels or units in a real estate development, unless the

1 nonprofit corporation or unincorporated association of owners elects to be
2 subject to this chapter pursuant to section 33-1801, subsection D.

3 2. "Common expense lien" means the lien for assessments, charges
4 for late payment of assessments if authorized in the declaration,
5 reasonable collection fees and costs THAT ARE incurred or applied by the
6 association and reasonable attorney fees and costs that are incurred with
7 respect to those assessments, if the attorney fees and costs are awarded
8 by a court.

9 3. "Community documents" means the declaration, bylaws, articles of
10 incorporation, if any, and rules, if any.

11 4. "Declaration" means any instruments, however denominated, that
12 establish a planned community and any amendment to those instruments.

13 5. "MEMBER" MEANS THE OWNER OF RECORD OF ANY INDIVIDUALLY OWNED
14 PROPERTY THAT IS SUBJECT TO THE DECLARATION IN A PLANNED COMMUNITY.

15 ~~5.~~ 6. "Member expenses":

16 (a) Means fees, charges, late charges and monetary penalties or
17 interest.

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

20 ~~6.~~ 7. "Planned community":

21 (a) Means a real estate development that includes real estate THAT
22 IS SUBJECT TO A DECLARATION AND THAT IS owned and operated by or real
23 estate on which an easement to maintain roadways or a covenant to maintain
24 roadways is held by a nonprofit corporation or unincorporated association
25 of owners, that is created for the purpose of managing, maintaining or
26 improving the property and in which the declaration expressly states both
27 that the owners of separately owned lots, parcels or units are ~~mandatory~~
28 ~~members and that the owners are~~ required to pay MANDATORY assessments to
29 the association for these purposes.

30 (b) Does not include any of the following:

31 (i) A timeshare plan or a timeshare association that is governed by
32 chapter 20 of this title.

33 (ii) A condominium that is governed by chapter 9 of this title.

34 (iii) A real estate development that is not managed or maintained
35 by an association.

36 Sec. 4. Section 33-1803, Arizona Revised Statutes, is amended to
37 read:

38 33-1803. Third-party property; voluntary assessments;
39 assessment limitation; penalties; notice to member
40 of violation

41 A. ANY PROVISION OF A DECLARATION THAT WOULD IMPOSE MANDATORY
42 ASSESSMENTS FOR MEMBERSHIP IN A PRIVATE RECREATIONAL CLUB OR FOR THE
43 MAINTENANCE OR USE OF SEPARATE PUBLIC OR PRIVATE PROPERTY THAT IS NOT
44 OWNED BY THE ASSOCIATION IS INVALID AND UNENFORCEABLE AS A MATTER OF LAW.
45 ANY PROVISION PRESCRIBED BY THIS SUBSECTION CREATES BOTH AN UNREASONABLE

1 RESTRAINT ON ALIENATION AND AN UNREASONABLE RESTRAINT ON TRADE OR
2 COMPETITION AND THE FOLLOWING APPLY:

3 1. ON THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION, THE
4 BOARD OF DIRECTORS OF ANY ASSOCIATION THAT HAS A DECLARATION THAT CONTAINS
5 SUCH A PROVISION SHALL REMOVE THAT PROVISION BY AMENDMENT TO THE
6 DECLARATION.

7 2. NOTWITHSTANDING ANY PROVISION OF THE COMMUNITY DOCUMENTS, THE
8 ASSOCIATION MAY NOT USE COMMON EXPENSE ASSESSMENTS FOR THE MAINTENANCE,
9 USE OR SUBSIDY OF THIRD-PARTY PUBLIC OR PRIVATE PROPERTY THAT IS NOT
10 DIRECTLY OWNED BY THE ASSOCIATION.

11 B. IF EMERGENCY MEASURES MUST BE TAKEN WITH RESPECT TO THIRD-PARTY
12 PUBLIC OR PRIVATE PROPERTY TO MAINTAIN ACCESS TO THE ASSOCIATION'S
13 PROPERTY, THE ASSOCIATION MAY AUTHORIZE THE USE OF ASSOCIATION RESOURCES
14 OR MONIES TO EFFECT THE EMERGENCY REPAIRS, BUT SHALL BILL THE PUBLIC OR
15 PRIVATE ENTITY THAT OWNS THE SEPARATE PROPERTY FOR THE COSTS OF THE
16 REPAIRS.

17 C. THE ASSOCIATION MAY PROVIDE FOR VOLUNTARY ASSESSMENTS ON
18 INDIVIDUAL PROPERTY FOR THE USE OF THIRD-PARTY PROPERTY, RECREATIONAL
19 FACILITIES OR OTHER FACILITIES.

20 ~~A.~~ D. Unless limitations in the community documents would result
21 in a lower limit for the assessment, the association shall not impose a
22 regular assessment that is more than twenty percent greater than the
23 immediately preceding fiscal year's assessment without the approval of the
24 majority of the members of the association. Unless reserved to the
25 members of the association, the board of directors may impose reasonable
26 charges for the late payment of assessments. A payment by a member is
27 deemed late if it is unpaid fifteen or more days after its due date,
28 unless the community documents provide for a longer period. Charges for
29 the late payment of assessments are limited to the greater of ~~fifteen~~
30 ~~dollars~~ \$15 or ten percent of the amount of the unpaid assessment and may
31 be imposed only after the association has provided notice that the
32 assessment is overdue or provided notice that the assessment is considered
33 overdue after a certain date. Any monies paid by the member for an unpaid
34 assessment shall be applied first to the principal amount unpaid and then
35 to the interest accrued.

36 ~~B.~~ E. After notice and an opportunity to be heard, the board of
37 directors may impose reasonable monetary penalties on members for
38 violations of the declaration, bylaws and rules of the
39 association. Notwithstanding any provision in the community documents,
40 the board of directors shall not impose a charge for a late payment of a
41 penalty that exceeds the greater of ~~fifteen dollars~~ \$15 or ten percent of
42 the amount of the unpaid penalty. A payment is deemed late if it is
43 unpaid fifteen or more days after its due date, unless the declaration,
44 bylaws or rules of the association provide for a longer period. Any
45 monies paid by a member for an unpaid penalty shall be applied first to

1 the principal amount unpaid and then to the interest accrued. Notice
2 pursuant to this subsection shall include information pertaining to the
3 manner in which the penalty shall be enforced.

4 ~~F.~~ F. A member who receives a written notice that the condition of
5 the property owned by the member is in violation of the community
6 documents without regard to whether a monetary penalty is imposed by the
7 notice may provide the association with a written response by sending the
8 response by certified mail within twenty-one calendar days after the date
9 of the notice. The response shall be sent to the address identified in
10 the notice.

11 ~~G.~~ G. Within ten business days after receipt of the certified mail
12 containing the response from the member, the association shall respond to
13 the member with a written explanation regarding the notice that shall
14 provide at least the following information unless previously provided in
15 the notice of violation:

16 1. The provision of the community documents that has allegedly been
17 violated.

18 2. The date of the violation or the date the violation was
19 observed.

20 3. The first and last name of the person or persons who observed
21 the violation.

22 4. The process the member must follow to contest the notice.

23 ~~H.~~ H. Unless the information required in subsection ~~G.~~ G,
24 paragraph 4 of this section is provided in the notice of violation, the
25 association shall not proceed with any action to enforce the community
26 documents, including the collection of attorney fees, before or during the
27 time prescribed by subsection ~~G.~~ G of this section regarding the exchange
28 of information between the association and the member and shall give the
29 member written notice of the member's option to petition for an
30 administrative hearing on the matter in the state real estate department
31 pursuant to section 32-2199.01. At any time before or after completion of
32 the exchange of information pursuant to this section, the member may
33 petition for a hearing pursuant to section 32-2199.01 if the dispute is
34 within the jurisdiction of the state real estate department as prescribed
35 in section 32-2199.01.

36 Sec. 5. Section 33-1806, Arizona Revised Statutes, is amended to
37 read:

38 33-1806. Sale of properties; information required; fees;
39 civil penalty; definition

40 A. EXCEPT AS PRESCRIBED BY SUBSECTION I OF THIS SECTION, for
41 planned communities with fewer than fifty ~~units~~ PROPERTIES, a member shall
42 ~~may~~ ELECTRONICALLY TRANSMIT or deliver to a purchaser ~~or a purchaser's~~
43 ~~authorized agent~~ THE INFORMATION REQUIRED BY THIS SUBSECTION within ten
44 CALENDAR days after ~~receipt of a written notice of a pending sale of the~~
45 ~~unit, and~~ ACCEPTANCE OF THE PURCHASER'S OFFER TO PURCHASE. THE MEMBER MAY

1 REQUEST THE ASSOCIATION TO PROVIDE THE MEMBER WITH THE INFORMATION
2 REQUIRED BY THIS SUBSECTION ON LISTING THE MEMBER'S PROPERTY FOR SALE.
3 For planned communities with fifty or more ~~units~~ PROPERTIES, the
4 association shall ~~mail~~ ELECTRONICALLY TRANSMIT or deliver to a purchaser
5 ~~or a purchaser's authorized agent~~ within ten CALENDAR days after receipt
6 of a written notice of a pending sale that contains the name, EMAIL
7 ADDRESS and MAILING address of the purchaser all of the following in
8 either paper or electronic format:

9 1. A copy of the CURRENT bylaws and the CURRENT rules of the
10 association.

11 2. A copy of the CURRENT declaration AND PLAT.

12 3. A dated statement containing OR IDENTIFYING:

13 (a) The telephone number and address of a principal contact for the
14 association, which may be an association manager, an association
15 management company, an officer of the association or any other person
16 designated by the board of directors.

17 (b) The amount of the ANNUAL common regular assessment and the
18 REQUIRED INSTALLMENTS AND PAYMENT SCHEDULES ON ANY APPROVED SPECIAL
19 ASSESSMENT AND ANY REMAINING INSTALLMENTS ON THE SPECIAL ASSESSMENT, IF
20 ANY.

21 (c) THE ESTIMATED DOLLAR AMOUNT AND PURPOSE OF ANY CONTEMPLATED,
22 AND EITHER APPROVED AND RATIFIED OR ANTICIPATED TO BE APPROVED AND
23 RATIFIED SPECIAL ASSESSMENT OR FINANCING BEING DEVELOPED BY THE
24 ASSOCIATION FOR ASSESSMENT WITHIN THE SUBSEQUENT SIX MONTHS, IF ANY.

25 (d) THE CURRENT AMOUNT OF ANY unpaid common regular
26 assessment, ~~special assessment or other assessment, fee or charge~~
27 ~~currently due and payable from the selling member. If the request is made~~
28 ~~by a lienholder, escrow agent, member or person designated by a member~~
29 ~~pursuant to section 33-1807, failure to provide the information pursuant~~
30 ~~to this subdivision within the time provided for in this subsection shall~~
31 ~~extinguish any lien for any unpaid assessment then due against that~~
32 ~~property~~ LIEN OR JUDGMENT LIEN ON THE PROPERTY DUE TO THE ASSOCIATION
33 PURSUANT TO SECTION 33-1807 AND ANY LIS PENDENS RECORDED BY THE
34 ASSOCIATION AGAINST THE PROPERTY.

35 ~~(c) A statement as to whether a portion of the unit is covered by~~
36 ~~insurance maintained by the association.~~

37 ~~(d) The total amount of money held by the association as reserves.~~

38 ~~(e) If the statement is being furnished by the association, a~~
39 ~~statement as to whether the records of the association reflect any~~
40 ~~alterations or improvements to the unit that violate the declaration. The~~
41 ~~association is not obligated to provide information regarding alterations~~
42 ~~or improvements that occurred more than six years before the proposed~~
43 ~~sale. Nothing in this subdivision relieves the seller of a unit from the~~
44 ~~obligation to disclose alterations or improvements to the unit that~~
45 ~~violate the declaration, nor precludes the association from taking action~~

1 ~~against the purchaser of a unit for violations that are apparent at the~~
2 ~~time of purchase and that are not reflected in the association's records.~~

3 ~~(f) If the statement is being furnished by the member, a statement~~
4 ~~as to whether the member has any knowledge of any alterations or~~
5 ~~improvements to the unit that violate the declaration.~~

6 ~~(g) A statement of case names and case numbers for pending~~
7 ~~litigation with respect to the unit filed by the association against the~~
8 ~~member or filed by the member against the association. The member shall~~
9 ~~not be required to disclose information concerning such pending litigation~~
10 ~~that would violate any applicable rule of attorney-client privilege under~~
11 ~~Arizona law.~~

12 ~~(h) A statement that provides "I hereby acknowledge that the~~
13 ~~declaration, bylaws and rules of the association constitute a contract~~
14 ~~between the association and me (the purchaser). By signing this~~
15 ~~statement, I acknowledge that I have read and understand the association's~~
16 ~~contract with me (the purchaser). I also understand that as a matter of~~
17 ~~Arizona law, if I fail to pay my association assessments, the association~~
18 ~~may foreclose on my property." The statement shall also include a~~
19 ~~signature line for the purchaser and shall be returned to the association~~
20 ~~within fourteen calendar days.~~

21 (e) THE AMOUNT AND PURPOSE OF ANY TITLE TRANSFER FEE OR OTHER
22 SIMILAR FEE, HOWEVER DENOMINATED, THAT IS AUTHORIZED IN THE DECLARATION
23 AND ESTABLISHED BY THE ASSOCIATION PURSUANT TO SECTION 33-442.

24 (f) A COPY OF THE ASSOCIATION'S MOST RECENT INCOME AND EXPENSES
25 FINANCIAL STATEMENT FOR ALL OPERATING AND RESERVE ACCOUNTS, AS APPLICABLE.

26 (g) ANY OUTSTANDING AND UNRESOLVED VIOLATION OF THE ASSOCIATION'S
27 COMMUNITY DOCUMENTS THAT WAS CITED AGAINST THE PROPERTY, IF ANY, AND THAT
28 THE SELLER IS RESPONSIBLE FOR APPEALING, RESOLVING OR ARRANGING FOR THE
29 RESOLUTION OF ALL CITED VIOLATIONS.

30 4. A copy of the current operating budget of the association.

31 5. A copy of the most recent annual ~~financial~~ AUDIT, REVIEW OR
32 COIMPILATION report of the association PURSUANT TO SECTION 33-1810. If
33 the report is more than ten pages, ~~the association may provide~~ a summary
34 of the report ~~in lieu~~ MAY BE PROVIDED IN PLACE of the entire report.

35 6. A copy of the most recent reserve study OR LONG-RANGE PLAN AND
36 ASSOCIATED FUNDING STRATEGY of the association, if any. IF THE REPORT IS
37 MORE THAN TEN PAGES, THE ASSOCIATION MAY PROVIDE A SUMMARY OF THE REPORT
38 IN PLACE OF THE ENTIRE REPORT.

39 7. A statement summarizing any pending lawsuits, except those
40 relating to the collection of assessments owed by members other than the
41 selling member, in which the association is a named party, including the
42 amount of any money claimed.

43 8. A STATEMENT AS TO WHETHER THE PLANNED COMMUNITY IS UNDER
44 DECLARANT CONTROL AND THE PERCENTAGE OF LOTS IDENTIFIED ON THE RECORDED
45 PLAT THAT ARE CURRENTLY OWNED BY THE DECLARANT.

1 9. A STATEMENT THAT, FOR ANY REPORT PROVIDED IN SUMMARY FORMAT
2 PURSUANT TO THIS SUBSECTION, THE PURCHASER MAY REQUEST TO VIEW THE ENTIRE
3 REPORT FROM THE ASSOCIATION DIRECTLY, AND THE ASSOCIATION SHALL PROVIDE
4 ACCESS TO THAT REPORT WITHIN THREE BUSINESS DAYS AFTER A WRITTEN REQUEST.

5 10. A STATEMENT TO BE SIGNED BY THE PURCHASER AT THE CLOSE OF
6 ESCROW THAT PROVIDES "I HEREBY ACKNOWLEDGE THAT WITH THE PURCHASE OF THIS
7 HOME OR PROPERTY, I WILL BE CONTRACTUALLY BOUND TO THE VALID COVENANTS,
8 CONDITIONS AND RESTRICTIONS OF THE RECORDED DECLARATION, AND WILL BE BOUND
9 TO PAY ALL COMMON EXPENSE ASSESSMENTS APPLIED TO MY HOME OR PROPERTY AS
10 AUTHORIZED IN THE DECLARATION AND TITLE 33, CHAPTER 9 OR 16, ARIZONA
11 REVISED STATUTES, AS APPLICABLE. IF I FAIL TO PAY COMMON EXPENSE
12 ASSESSMENTS, I MAY BE SUBJECT TO COLLECTION ACTIVITY BY THE ASSOCIATION UP
13 TO AND INCLUDING FORECLOSURE ACTION, WITHOUT THE EQUITY PROTECTION OF THE
14 HOMESTEAD ACT PURSUANT TO TITLE 33, CHAPTER 8, ARIZONA REVISED STATUTES."

15 B. WITHIN FIVE CALENDAR DAYS AFTER THE RECEIPT OF THE DISCLOSURE
16 REPORT PRESCRIBED BY SUBSECTION A OF THIS SECTION, THE PURCHASER MAY
17 ACCEPT THE INFORMATION, PROPOSE A CURE TO ADDRESS ANY CONCERNS IDENTIFIED
18 IN THE REPORT OR WITHDRAW THE OFFER WITHOUT PENALTY OR LOSS OF EARNEST
19 MONEY. IF A CONTRACT IS CANCELED FOR ANY REASON, THE COMPLETE DISCLOSURE
20 REPORT SHALL BE RETURNED TO THE SELLER.

21 ~~B.~~ C. A purchaser or seller who is damaged by ~~the failure of~~ the
22 member or the association FAILING to disclose the information required by
23 subsection A of this section OR PROVIDING MATERIALLY FALSE OR MISLEADING
24 STATEMENTS IN THE DISCLOSURE may pursue all remedies at law or in equity
25 against the member, THE MANAGING AGENT FOR THE ASSOCIATION or the
26 association, whichever failed to comply with subsection A of this section
27 OR PROVIDED MATERIALLY FALSE OR MISLEADING STATEMENTS IN THE DISCLOSURE,
28 including the recovery of reasonable attorney fees AS AWARDED BY THE
29 COURT.

30 D. THE ASSOCIATION SHALL PROVIDE TO AN ESCROW AGENT THAT IS
31 LICENSED PURSUANT TO TITLE 6, CHAPTER 7 AND THAT IS DESIGNATED FOR THE
32 TRANSACTION ANY REQUESTED INFORMATION THAT IS RELEVANT TO THE CLOSE OF
33 ESCROW, SUBJECT TO AND PURSUANT TO SECTION 33-1807 AT NO COST TO THE
34 ESCROW AGENT OR ADDITIONAL COST TO THE SELLER OR BUYER.

35 ~~C.~~ E. IF THE ASSOCIATION PROVIDED THE DISCLOSURE REPORT REQUESTED
36 BY THE MEMBER, the association may charge the member a fee of not more
37 than an aggregate of ~~four hundred dollars~~ \$400 to compensate the
38 association for the costs incurred in the preparation and delivery of a
39 ~~statement~~ REPORT or other documents furnished by the association pursuant
40 to this section for purposes of resale disclosure, lien estoppel and any
41 other services related to the transfer or use of the property. In
42 addition, the association may charge a rush fee of not more than ~~one~~
43 ~~hundred dollars~~ \$100 if the rush services are required to be performed
44 within seventy-two hours after the request for rush services. ~~, and~~ THE
45 MEMBER may REQUEST THE ASSOCIATION TO UPDATE THE REPORT IF THIRTY DAYS OR

1 MORE HAVE PASSED SINCE THE DATE OF THE ORIGINAL DISCLOSURE REPORT. THE
 2 ASSOCIATION MAY charge a ~~statement or other documents~~ DOCUMENT update fee
 3 of not more than ~~fifty dollars if thirty days or more have passed since~~
 4 ~~the date of the original disclosure statement or the date the documents~~
 5 ~~were delivered~~ \$50. The association shall make available to any
 6 interested party the amount of any fee established from time to time by
 7 the association. ~~If the aggregate fee for purposes of resale disclosure,~~
 8 ~~lien estoppel and any other services related to the transfer or use of a~~
 9 ~~property is less than four hundred dollars on January 1, 2010, the fee may~~
 10 ~~increase at a rate of not more than twenty percent per year based on the~~
 11 ~~immediately preceding fiscal year's amount not to exceed the four hundred~~
 12 ~~dollar aggregate fee.~~ The association may charge the same fee without
 13 regard to whether the association is furnishing the statement or other
 14 documents in paper or electronic format.

15 F. IF THE ASSOCIATION WAS NOT REQUESTED TO PROVIDE THE DISCLOSURE
 16 REPORT PRESCRIBED BY SUBSECTION A OF THIS SECTION, THE ASSOCIATION MAY
 17 CHARGE A NOMINAL FEE TO THE PURCHASER TO COMPENSATE THE ASSOCIATION FOR
 18 THE COST OF UPDATING THE NEW OWNER INFORMATION IN THE ASSOCIATION RECORDS,
 19 COMMENSURATE WITH THE DIRECT COST INCURRED.

20 ~~D.~~ G. The fees prescribed by this section shall be collected ~~no~~
 21 NOT earlier than at the close of escrow and may only be charged once to a
 22 member OR PURCHASER for that transaction between the parties ~~specified in~~
 23 ~~the notice required pursuant to subsection A of this section.~~ ANY PAYMENT
 24 SHALL BE MADE DIRECTLY AND ONLY TO THE ASSOCIATION. An association shall
 25 not charge or collect a fee relating to services for resale disclosure,
 26 lien estoppel and any other services related to the transfer or use of a
 27 property except as specifically authorized in this section. An
 28 association that charges or collects a fee in violation of this section is
 29 subject to a civil penalty of not more than ~~one thousand two hundred~~
 30 ~~dollars~~ \$1,200.

31 ~~E.~~ H. This section applies to a managing agent for an association
 32 that is acting on behalf of the association.

33 I. FOR THE INITIAL SALE OF A PROPERTY FROM THE DECLARANT, THE
 34 DECLARANT SHALL PROVIDE TO ANY PURCHASER WITHIN THE TIME PRESCRIBED BY
 35 SUBSECTION A OF THIS SECTION THE DOCUMENTS PRESCRIBED IN SUBSECTION A,
 36 PARAGRAPHS 1, 2 AND 10.

37 ~~F.~~ J. The following are exempt from this section:

38 1. A sale in which a public report is issued pursuant to section
 39 32-2183 or 32-2197.02.

40 2. A sale pursuant to section 32-2181.02.

41 3. A conveyance by recorded deed that bears an exemption listed in
 42 section 11-1134, subsection B, paragraph 3 or 7. On recordation of the
 43 deed ~~and for no additional charge,~~ the ~~member~~ PURCHASER shall provide the
 44 association with the changes in ownership, including the member's name,
 45 billing address and phone number. Failure to provide the information

1 shall not prevent the member from qualifying for the exemption pursuant to
2 this section.
3 ~~G.~~ K. For the purposes of this section, unless the context
4 otherwise requires: ~~,~~
5 1. "ASSOCIATION" INCLUDES ANY MASTER AND LOCAL ASSOCIATION WITH
6 RECORDED COVENANTS AFFECTING THE PROPERTY, AS APPLICABLE.
7 2. "Member":
8 (a) Means the seller of the ~~unit~~ PROPERTY title. ~~and excludes~~
9 (b) DOES NOT INCLUDE:
10 (i) Any real estate salesperson or real estate broker who is
11 licensed under title 32, chapter 20 and who is acting as a salesperson or
12 broker. ~~,~~
13 (ii) Any escrow agent who is licensed under title 6, chapter 7 and
14 who is acting as an escrow agent. ~~and also excludes~~
15 (iii) A trustee of a deed of trust who is selling the property in a
16 trustee's sale pursuant to chapter 6.1 of this title.