

PROPOSED  
HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2397  
(Reference to printed bill)

Amendment instruction key:  
[GREEN UNDERLINING IN BRACKETS] indicates text added to statute or previously enacted session law.  
[Green underlining in brackets] indicates text added to new session law or text restoring existing law.  
[GREEN STRIKEOUT IN BRACKETS] indicates new text removed from statute or previously enacted session law.  
[Green strikeout in brackets] indicates text removed from existing statute, previously enacted session law or new session law.  
<<Green carets>> indicate a section added to the bill.  
<<Green strikeout in carets>> indicates a section removed from the bill.

1 The bill as proposed to be amended is reprinted as follows:

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

1 ~~CHALLENGE THE VALIDITY OF ANY PROVISION IN THAT PRIVATE COVENANT IN A~~  
2 ~~COURT OF COMPETENT JURISDICTION.~~

3 ~~B. C. A private covenant is deemed not to constitute an amendment~~  
4 ~~to any existing private covenant or declaration unless the private~~  
5 ~~covenant expressly violates an express provision of the existing private~~  
6 ~~covenant or declaration.~~

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

10 ~~1. The declaration may be amended by the association, if any, or,~~  
11 ~~if there is no association or board, the owners of the property that is~~  
12 ~~subject to the declaration, by an affirmative vote or written consent of~~  
13 ~~the number of owners or eligible voters specified in the declaration,~~  
14 ~~including the assent of any individuals or entities that are specified in~~  
15 ~~the declaration.~~

16 ~~2. An amendment to a declaration may apply to fewer than all of the~~  
17 ~~lots or less than all of the property that is bound by the declaration and~~  
18 ~~an amendment is deemed to conform to the general design and plan of the~~  
19 ~~community, if both of the following apply:~~

20 ~~(a) The amendment receives the affirmative vote or written consent~~  
21 ~~of the number of owners or eligible voters specified in the declaration,~~  
22 ~~including the assent of any individuals or entities that are specified in~~  
23 ~~the declaration.~~

24 ~~(b) The amendment receives the affirmative vote or written consent~~  
25 ~~of all of the owners of the lots or property to which the amendment~~  
26 ~~applies.~~

27 ~~3. Within thirty days after the adoption of any amendment pursuant~~  
28 ~~to this subsection, the association or, if there is no association or~~  
29 ~~board, a property owner that is authorized by the affirmative vote or~~  
30 ~~the written consent to the amendment shall prepare, execute and record a~~  
31 ~~written instrument setting forth the amendment.~~

32 ~~4. Notwithstanding any provision in the declaration that provides~~  
33 ~~for periodic renewal of the declaration, an amendment to the declaration~~  
34 ~~is effective immediately on recordation of the instrument in the county in~~  
35 ~~which the property is located.~~

36 ~~D. E. Subsection C D of this section does not apply to a~~  
37 ~~condominium as defined in section 33-1202 or a timeshare plan or~~  
38 ~~association as defined in section 33-2202.~~

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

40 ~~1. "Declaration" means any instrument, however denominated, that~~  
41 ~~establishes restrictive covenants on the development or use of real~~  
42 ~~property.~~

43 ~~2. "Private covenant" means any uniform or nonuniform covenant,~~  
44 ~~restriction or condition regarding real property that is contained in any~~  
45 ~~deed, contract, agreement or other recorded instrument affecting real~~  
46 ~~property.~~

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

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

5 ~~(a) THE INJURIOUS CONSEQUENCES OF THE RESTRAINT OUTWEIGH THE~~  
6 ~~UTILITY OF THE RESTRAINT.~~

7 ~~(b) THE RESTRAINT HAS NO RATIONAL JUSTIFICATION OR IS~~  
8 ~~UNCONSCIONABLE.>>~~

9 Section 1. Section 33-1260, Arizona Revised Statutes, is amended to  
10 read:

11 33-1260. Sale of units; information required; fees; civil  
12 penalty; applicability; definition

13 A. ~~[EXCEPT AS PRESCRIBED BY SUBSECTION I OF THIS SECTION,]~~ For  
14 condominiums with fewer than fifty units, a unit owner shall ~~mail~~  
15 ELECTRONICALLY TRANSMIT or deliver to a purchaser [or a purchaser's]  
16 authorized [DESIGNATED] [agent] THE INFORMATION REQUIRED BY THIS  
17 SUBSECTION within ten [CALENDAR] days after [receipt of a written notice  
18 of a pending sale of the unit], ~~and [ACCEPTANCE OF THE PURCHASER'S OFFER~~  
19 ~~TO PURCHASE. THE UNIT OWNER MAY REQUEST THE ASSOCIATION TO PROVIDE THE~~  
20 ~~UNIT OWNER WITH THE INFORMATION REQUIRED BY THIS SUBSECTION ON LISTING THE~~  
21 ~~UNIT FOR SALE].~~ For condominiums with fifty or more units, the  
22 association shall ~~mail~~ ELECTRONICALLY TRANSMIT or deliver to a purchaser  
23 [or a purchaser's] authorized [DESIGNATED] [agent] within ten [CALENDAR]  
24 days after receipt of a written notice of a pending sale that contains the  
25 name, EMAIL ADDRESS and MAILING address of the purchaser [OR THE  
26 PURCHASER'S DESIGNATED AGENT] all of the following in either paper or  
27 electronic format:

28 1. A copy of the CURRENT bylaws and the CURRENT rules of the  
29 association.

30 2. A copy of the CURRENT RECORDED declaration AND [FINAL] PLAT[, OR  
31 AN ELECTRONIC COPY OF THE FINAL PLAT, IF AVAILABLE].

32 ~~[3. A COPY OF THE MINUTES OF ALL OPEN MEETINGS OF THE BOARD OF~~  
33 ~~DIRECTORS FOR THE PREVIOUS THREE MONTHS.]~~

34 ~~[3.] [4.]~~ A dated statement containing ~~[OR IDENTIFYING]:~~

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

39 (b) The amount of the ANNUAL common expense assessment for the  
40 unit, ~~and~~ THE REQUIRED INSTALLMENTS AND PAYMENT SCHEDULES ON ANY APPROVED  
41 SPECIAL ASSESSMENT [AND ANY REMAINING INSTALLMENTS ON THE SPECIAL  
42 ASSESSMENT], IF ANY.

43 (c) THE ESTIMATED [DOLLAR] AMOUNT AND PURPOSE OF ANY [CONTEMPLATED  
44 AND EITHER] APPROVED [AND RATIFIED OR ANTICIPATED TO BE APPROVED AND  
45 RATIFIED] [BUT UNRATIFIED] SPECIAL ASSESSMENT [OR FINANCING BEING  
46 DEVELOPED BY THE ASSOCIATION FOR ASSESSMENT] WITHIN THE [SUBSEQUENT]  
47 [PREVIOUS] SIX MONTHS[, IF ANY].

1 (d) ANY KNOWN MATERIAL DEFICIENCY OR CONDITION OF THE LIMITED  
2 COMMON ELEMENTS ASSOCIATED WITH THE UNIT OR COMMON ELEMENTS [KNOWN BY THE  
3 ASSOCIATION] FOR WHICH THE PURCHASER WILL BE LIABLE FOR THE DIRECTLY  
4 ASSESSED REPAIR COSTS WITHIN SIX MONTHS OF THE PURCHASE, IF ANY.

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

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

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

18 ~~(e) If the statement is being furnished by the association, a~~  
19 ~~statement as to whether the records of the association reflect any~~  
20 ~~alterations or improvements to the unit that violate the declaration. The~~  
21 ~~association is not obligated to provide information regarding alterations~~  
22 ~~or improvements that occurred more than six years before the proposed~~  
23 ~~sale. Nothing in this subdivision relieves the seller of a unit from the~~  
24 ~~obligation to disclose alterations or improvements to the unit that~~  
25 ~~violate the declaration, nor precludes the association from taking action~~  
26 ~~against the purchaser of a unit for violations that are apparent at the~~  
27 ~~time of purchase and that are not reflected in the association's records.~~

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

31 ~~(g) A statement of case names and case numbers for pending~~  
32 ~~litigation with respect to the unit filed by the association against the~~  
33 ~~unit owner or filed by the unit owner against the association. The unit~~  
34 ~~owner or the association shall not be required to disclose information~~  
35 ~~concerning the pending litigation that would violate any applicable rule~~  
36 ~~of attorney-client privilege under Arizona law.~~

37 ~~(h) A statement that provides "I hereby acknowledge that the~~  
38 ~~declaration, bylaws and rules of the association constitute a contract~~  
39 ~~between the association and me (the purchaser). By signing this~~  
40 ~~statement, I acknowledge that I have read and understand the association's~~  
41 ~~contract with me (the purchaser). I also understand that as a matter of~~  
42 ~~Arizona law, if I fail to pay my association assessments, the association~~  
43 ~~may foreclose on my property." The statement shall also include a~~  
44 ~~signature line for the purchaser and shall be returned to the association~~  
45 ~~within fourteen calendar days.~~

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

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

6 (h) ANY OUTSTANDING AND UNRESOLVED VIOLATION OF THE ASSOCIATION'S  
7 CONDOMINIUM DOCUMENTS THAT WAS CITED AGAINST THE UNIT, IF ANY~~[, AND THAT~~  
8 ~~THE SELLER IS RESPONSIBLE FOR APPEALING, RESOLVING OR ARRANGING FOR THE~~  
9 ~~RESOLUTION OF ALL CITED VIOLATIONS]~~.

10 ~~[4.]~~ [5.] A copy of the current operating budget of the  
11 association.

12 ~~[5.]~~ [6.] A copy of the most recent annual ~~financial~~ AUDIT, REVIEW  
13 OR COMPILATION report of the association PRESCRIBED BY SECTION 33-1243,  
14 SUBSECTION J. If the report is more than ten pages, the association may  
15 provide a summary of the report in lieu of the entire report.

16 ~~[6.]~~ [7.] A copy of the most recent reserve study OR LONG-RANGE  
17 PLAN AND THE ASSOCIATED FUNDING STRATEGY of the association, if any. IF  
18 THE REPORT IS MORE THAN TEN PAGES, THE ASSOCIATION MAY PROVIDE A SUMMARY  
19 OF THE REPORT IN LIEU OF THE ENTIRE REPORT.

20 ~~[7.]~~ [8.] A statement summarizing any pending lawsuits, except  
21 those relating to the collection of assessments owed by unit owners other  
22 than the selling unit owner, in which the association is a named party,  
23 including the amount of any money claimed.

24 ~~[8.]~~ [9.] A STATEMENT AS TO WHETHER A PORTION OF THE UNIT IS  
25 COVERED BY INSURANCE MAINTAINED BY THE ASSOCIATION AND A COPY OF ALL  
26 INSURANCE CERTIFICATES IDENTIFYING THE COVERAGE LIMITS AND DEDUCTIBLES  
27 MAINTAINED BY THE ASSOCIATION PURSUANT TO SECTION 33-1253.

28 ~~[9.]~~ [10.] A STATEMENT AS TO WHETHER THE CONDOMINIUM IS UNDER  
29 DECLARANT CONTROL AND THE PERCENTAGE OF UNITS IDENTIFIED ON THE RECORDED  
30 PLAT THAT ARE CURRENTLY OWNED BY THE DECLARANT.

31 ~~[10.]~~ [11.] A STATEMENT IDENTIFYING WHETHER ANY ~~[OWNER OR ENTITY~~  
32 ~~OTHER THAN THE DECLARANT]~~ [CORPORATION, LIMITED LIABILITY COMPANY OR  
33 TRUST] OWNS ~~[TWENTY-FIVE]~~ [THIRTY-FIVE] PERCENT OR MORE OF THE UNITS.

34 ~~[11.]~~ [12.] A STATEMENT THAT, FOR ANY REPORT PROVIDED IN SUMMARY  
35 FORMAT PURSUANT TO THIS SUBSECTION, THE PURCHASER MAY REQUEST TO VIEW THE  
36 ENTIRE REPORT FROM THE ASSOCIATION DIRECTLY, AND THE ASSOCIATION SHALL  
37 PROVIDE ACCESS TO THAT REPORT WITHIN THREE BUSINESS DAYS AFTER A WRITTEN  
38 REQUEST.

39 ~~[12.]~~ [13.] A STATEMENT TO BE SIGNED BY THE PURCHASER AT THE CLOSE  
40 OF ESCROW THAT PROVIDES "I HEREBY ACKNOWLEDGE THAT WITH THE PURCHASE OF  
41 THIS HOME OR PROPERTY, I WILL BE CONTRACTUALLY BOUND TO THE VALID  
42 COVENANTS, CONDITIONS AND RESTRICTIONS OF THE RECORDED DECLARATION, AND  
43 WILL BE [CONTRACTUALLY] BOUND TO PAY ALL COMMON EXPENSE ASSESSMENTS  
44 APPLIED TO MY HOME OR PROPERTY AS AUTHORIZED IN THE DECLARATION AND TITLE  
45 33, CHAPTER 9 OR 16, ARIZONA REVISED STATUTES, AS APPLICABLE. IF I FAIL  
46 TO PAY COMMON EXPENSE ASSESSMENTS, I MAY BE SUBJECT TO COLLECTION ACTIVITY  
47 BY THE ASSOCIATION UP TO AND INCLUDING FORECLOSURE ACTION, WITHOUT THE

1 EQUITY PROTECTION OF THE HOMESTEAD ACT PURSUANT TO TITLE 33, CHAPTER 8,  
2 ARIZONA REVISED STATUTES."

3 ~~[B. WITHIN FIVE CALENDAR DAYS AFTER THE RECEIPT OF THE DISCLOSURE~~  
4 ~~REPORT PRESCRIBED BY SUBSECTION A OF THIS SECTION, THE PURCHASER MAY~~  
5 ~~ACCEPT THE INFORMATION, PROPOSE A CURE TO ADDRESS ANY CONCERNS IDENTIFIED~~  
6 ~~IN THE REPORT OR WITHDRAW THE OFFER WITHOUT PENALTY OR LOSS OF EARNEST~~  
7 ~~MONEY. IF A CONTRACT IS CANCELED FOR ANY REASON, THE COMPLETE DISCLOSURE~~  
8 ~~REPORT SHALL BE RETURNED TO THE SELLER.]~~

9 ~~[B.] [C.]~~ A purchaser or seller who is damaged by ~~the failure of~~  
10 the unit owner or the association ~~[KNOWINGLY OR RECKLESSLY]~~ FAILING to  
11 disclose the information required by subsection A of this section OR  
12 ~~[KNOWINGLY OR RECKLESSLY]~~ PROVIDING MATERIALLY FALSE OR MISLEADING  
13 STATEMENTS IN THE DISCLOSURE may pursue all remedies at law or in equity  
14 against the unit owner~~[, THE MANAGING AGENT FOR THE ASSOCIATION]~~ or the  
15 association, whichever failed to comply with subsection A of this section  
16 ~~[OR PROVIDED FALSE OR MISLEADING STATEMENTS IN THE DISCLOSURE]~~, including  
17 the recovery of reasonable attorney fees AS AWARDED BY THE COURT.

18 ~~[D.] [C.]~~ THE ASSOCIATION SHALL PROVIDE TO AN ESCROW AGENT THAT IS  
19 LICENSED PURSUANT TO TITLE 6, CHAPTER 7 AND THAT IS DESIGNATED FOR THE  
20 TRANSACTION ANY REQUESTED INFORMATION THAT IS RELEVANT TO THE CLOSE OF  
21 ESCROW, SUBJECT TO AND PURSUANT TO SECTION 33-1256 ~~[AT NO COST TO THE~~  
22 ~~ESCROW AGENT OR ADDITIONAL COST TO THE SELLER OR BUYER]~~ ~~[AND MAY CHARGE~~  
23 ~~THE FEES AUTHORIZED BY THIS SECTION].~~

24 ~~C. [E.] [D.] [IF THE ASSOCIATION PROVIDED THE DISCLOSURE REPORT~~  
25 ~~REQUESTED BY THE UNIT OWNER,]~~ The association may charge the unit owner a  
26 fee of not more than an aggregate of ~~four hundred dollars~~ \$400 to  
27 compensate the association for the costs incurred in the preparation and  
28 delivery of a ~~statement~~ REPORT or other documents furnished by the  
29 association pursuant to this section for purposes of resale disclosure,  
30 lien estoppel and any other services related to the transfer or use of the  
31 property. In addition, the association may charge a rush fee of not more  
32 than ~~one hundred dollars~~ \$100 if the rush services are required to be  
33 performed within seventy-two hours after the request for rush services.  
34 ~~, and~~ THE UNIT OWNER may REQUEST THE ASSOCIATION TO UPDATE THE REPORT IF  
35 THIRTY DAYS OR MORE HAVE PASSED SINCE THE DATE OF THE ORIGINAL DISCLOSURE  
36 REPORT. THE ASSOCIATION MAY charge a ~~statement or other documents~~  
37 DOCUMENT update fee of not more than ~~fifty dollars if thirty days or more~~  
38 ~~have passed since the date of the original disclosure statement or the~~  
39 ~~date the documents were delivered~~ \$50. The association shall make  
40 available to any interested party the amount of any fee established from  
41 time to time by the association. ~~If the aggregate fee for purposes of~~  
42 ~~resale disclosure, lien estoppel and any other services related to the~~  
43 ~~transfer or use of a property is less than four hundred dollars on January~~  
44 ~~1, 2010, the fee may increase at a rate of not more than twenty percent~~  
45 ~~per year based on the immediately preceding fiscal year's amount not to~~  
46 ~~exceed the four hundred dollar aggregate fee.~~ The association may charge

1 the same fee without regard to whether the association is furnishing the  
2 statement or other documents in paper or electronic format.

3 ~~[F. IF THE ASSOCIATION WAS NOT REQUESTED TO PROVIDE THE DISCLOSURE~~  
4 ~~REPORT PRESCRIBED BY SUBSECTION A OF THIS SECTION, THE ASSOCIATION MAY~~  
5 ~~CHARGE A NOMINAL FEE TO THE PURCHASER TO COMPENSATE THE ASSOCIATION FOR~~  
6 ~~THE COST OF UPDATING THE NEW OWNER INFORMATION IN THE ASSOCIATION RECORDS,~~  
7 ~~COMMENSURATE WITH THE DIRECT COST INCURRED.]~~

8 ~~D. [G.] [E.]~~ The fees prescribed by this section shall be  
9 collected ~~no~~ NOT earlier than at the close of escrow and may only be  
10 charged once to a unit owner OR PURCHASER for that transaction between the  
11 parties ~~specified in the notice required pursuant to subsection A of this~~  
12 ~~section. [ANY PAYMENT SHALL BE MADE DIRECTLY AND ONLY TO THE~~  
13 ~~ASSOCIATION.]~~ An association shall not charge or collect a fee relating  
14 to services for resale disclosure, lien estoppel and any other services  
15 related to the transfer or use of a property except as specifically  
16 authorized in this section. An association that charges or collects a fee  
17 in violation of this section is subject to a civil penalty of not more  
18 than ~~one thousand two hundred dollars~~ \$1,200.

19 ~~E. [H.] [F.]~~ This section applies to a managing agent for an  
20 association that is acting on behalf of the association.

21 ~~[I. FOR THE INITIAL SALE OF A CONDOMINIUM UNIT FROM THE DECLARANT,~~  
22 ~~THE DECLARANT SHALL PROVIDE TO ANY PURCHASER WITHIN THE TIME PRESCRIBED BY~~  
23 ~~SUBSECTION A OF THIS SECTION THE DOCUMENTS PRESCRIBED IN SUBSECTION A,~~  
24 ~~PARAGRAPHS 1, 2 AND 12 OF THIS SECTION.]~~

25 ~~F. [J.] [G.]~~ The following are exempt from this section:

- 26 1. A sale in which a public report is issued pursuant to section  
27 32-2183 or 32-2197.02.
- 28 2. A sale pursuant to section 32-2181.02.
- 29 3. A conveyance by recorded deed that bears an exemption listed in  
30 section 11-1134, subsection B, paragraph 3 or 7. On recordation of the  
31 deed ~~and for no additional charge~~, the ~~unit owner~~ PURCHASER shall provide  
32 the association with the changes in ownership, including the unit owner's  
33 name, billing address and phone number. Failure to provide the  
34 information shall not prevent the unit owner from qualifying for the  
35 exemption pursuant to this section.

36 ~~G. [K.] [H.]~~ This section does not apply to timeshare plans or  
37 associations that are subject to chapter 20 of this title.

38 ~~H. [L.] [I.]~~ For the purposes of this section, unless the context  
39 otherwise requires, "unit owner":

- 40 1. Means the seller of the condominium unit title. ~~and excludes~~
- 41 2. DOES NOT INCLUDE:
  - 42 (a) Any real estate salesperson or real estate broker who is  
43 licensed under title 32, chapter 20 and who is acting as a salesperson or  
44 broker. ~~;~~
  - 45 (b) Any escrow agent who is licensed under title 6, chapter 7 and  
46 who is acting as an escrow agent. ~~and also excludes~~

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

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

5 ~~33-1802. Definitions~~

6 ~~In this chapter and in the community documents, unless the context~~  
7 ~~otherwise requires:~~

8 ~~1. "Association":~~

9 ~~(a) Means a nonprofit corporation or unincorporated association of~~  
10 ~~owners that is created pursuant to a declaration to own and operate~~  
11 ~~portions of a planned community and that has the power under the~~  
12 ~~declaration to assess association members to pay the costs and expenses~~  
13 ~~incurred in the performance of the association's obligations under the~~  
14 ~~declaration.~~

15 ~~(b) Does not include a nonprofit corporation or unincorporated~~  
16 ~~association of owners that is created or incorporated before January 1,~~  
17 ~~1974 and that does not have authority to enforce covenants, conditions or~~  
18 ~~restrictions related to the use, occupancy or appearance of the separately~~  
19 ~~owned lots, parcels or units in a real estate development, unless the~~  
20 ~~nonprofit corporation or unincorporated association of owners elects to be~~  
21 ~~subject to this chapter pursuant to section 33-1801, subsection D.~~

22 ~~2. "Common expense lien" means the lien for assessments, charges~~  
23 ~~for late payment of assessments if authorized in the declaration,~~  
24 ~~reasonable collection fees and costs THAT ARE incurred or applied by the~~  
25 ~~association and reasonable attorney fees and costs that are incurred with~~  
26 ~~respect to those assessments, if the attorney fees and costs are awarded~~  
27 ~~by a court.~~

28 ~~3. "Community documents" means the declaration, bylaws, articles of~~  
29 ~~incorporation, if any, and rules, if any.~~

30 ~~4. "Declaration" means any instruments, however denominated, that~~  
31 ~~establish a planned community and any amendment to those instruments.~~

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

34 ~~5. 6. "Member expenses":~~

35 ~~(a) Means fees, charges, late charges and monetary penalties or~~  
36 ~~interest.~~

37 ~~(b) Does not include any amount that is included in a common~~  
38 ~~expense lien.~~

39 ~~6. 7. "Planned community":~~

40 ~~(a) Means a real estate development that includes real estate THAT~~  
41 ~~IS SUBJECT TO A DECLARATION AND THAT IS owned and operated by or real~~  
42 ~~estate on which an easement to maintain roadways or a covenant to maintain~~  
43 ~~roadways is held by a nonprofit corporation or unincorporated association~~  
44 ~~of owners, that is created for the purpose of managing, maintaining or~~  
45 ~~improving the property and in which the declaration expressly states both~~  
46 ~~that the owners of separately owned lots, parcels or units are mandatory~~

1 ~~members and that the owners are required to pay MANDATORY assessments to~~  
2 ~~the association for these purposes.~~

3 ~~(b) Does not include any of the following:~~

4 ~~(i) A timeshare plan or a timeshare association that is governed by~~  
5 ~~chapter 20 of this title.~~

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

7 ~~(iii) A real estate development that is not managed or maintained~~  
8 ~~by an association.>>~~

9 <<Sec. 4. Section 33-1803, Arizona Revised Statutes, is amended to  
10 read:

11 33-1803. ~~Third-party property; voluntary assessments;~~  
12 ~~assessment limitation; penalties; notice to member~~  
13 ~~of violation~~

14 ~~A. ANY PROVISION OF A DECLARATION THAT WOULD IMPOSE MANDATORY~~  
15 ~~ASSESSMENTS FOR MEMBERSHIP IN A PRIVATE RECREATIONAL CLUB OR FOR THE~~  
16 ~~MAINTENANCE OR USE OF SEPARATE PUBLIC OR PRIVATE PROPERTY THAT IS NOT~~  
17 ~~OWNED BY THE ASSOCIATION IS INVALID AND UNENFORCEABLE AS A MATTER OF LAW.~~  
18 ~~ANY PROVISION PRESCRIBED BY THIS SUBSECTION CREATES BOTH AN UNREASONABLE~~  
19 ~~RESTRAINT ON ALIENATION AND AN UNREASONABLE RESTRAINT ON TRADE OR~~  
20 ~~COMPETITION AND THE FOLLOWING APPLY:~~

21 ~~1. ON THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION, THE~~  
22 ~~BOARD OF DIRECTORS OF ANY ASSOCIATION THAT HAS A DECLARATION THAT CONTAINS~~  
23 ~~SUCH A PROVISION SHALL REMOVE THAT PROVISION BY AMENDMENT TO THE~~  
24 ~~DECLARATION.~~

25 ~~2. NOTWITHSTANDING ANY PROVISION OF THE COMMUNITY DOCUMENTS, THE~~  
26 ~~ASSOCIATION MAY NOT USE COMMON EXPENSE ASSESSMENTS FOR THE MAINTENANCE,~~  
27 ~~USE OR SUBSIDY OF THIRD-PARTY PUBLIC OR PRIVATE PROPERTY THAT IS NOT~~  
28 ~~DIRECTLY OWNED BY THE ASSOCIATION.~~

29 ~~B. IF EMERGENCY MEASURES MUST BE TAKEN WITH RESPECT TO THIRD-PARTY~~  
30 ~~PUBLIC OR PRIVATE PROPERTY TO MAINTAIN ACCESS TO THE ASSOCIATION'S~~  
31 ~~PROPERTY, THE ASSOCIATION MAY AUTHORIZE THE USE OF ASSOCIATION RESOURCES~~  
32 ~~OR MONIES TO EFFECT THE EMERGENCY REPAIRS, BUT SHALL BILL THE PUBLIC OR~~  
33 ~~PRIVATE ENTITY THAT OWNS THE SEPARATE PROPERTY FOR THE COSTS OF THE~~  
34 ~~REPAIRS.~~

35 ~~C. THE ASSOCIATION MAY PROVIDE FOR VOLUNTARY ASSESSMENTS ON~~  
36 ~~INDIVIDUAL PROPERTY FOR THE USE OF THIRD-PARTY PROPERTY, RECREATIONAL~~  
37 ~~FACILITIES OR OTHER FACILITIES.~~

38 ~~A. D. Unless limitations in the community documents would result~~  
39 ~~in a lower limit for the assessment, the association shall not impose a~~  
40 ~~regular assessment that is more than twenty percent greater than the~~  
41 ~~immediately preceding fiscal year's assessment without the approval of the~~  
42 ~~majority of the members of the association. Unless reserved to the~~  
43 ~~members of the association, the board of directors may impose reasonable~~  
44 ~~charges for the late payment of assessments. A payment by a member is~~  
45 ~~deemed late if it is unpaid fifteen or more days after its due date,~~  
46 ~~unless the community documents provide for a longer period. Charges for~~  
47 ~~the late payment of assessments are limited to the greater of fifteen~~

1 dollars ~~\$15~~ or ten percent of the amount of the unpaid assessment and may  
2 be imposed only after the association has provided notice that the  
3 assessment is overdue or provided notice that the assessment is considered  
4 overdue after a certain date. Any monies paid by the member for an unpaid  
5 assessment shall be applied first to the principal amount unpaid and then  
6 to the interest accrued.

7 ~~B. E.~~ After notice and an opportunity to be heard, the board of  
8 directors may impose reasonable monetary penalties on members for  
9 violations of the declaration, bylaws and rules of the  
10 association. Notwithstanding any provision in the community documents,  
11 the board of directors shall not impose a charge for a late payment of a  
12 penalty that exceeds the greater of fifteen dollars ~~\$15~~ or ten percent of  
13 the amount of the unpaid penalty. A payment is deemed late if it is  
14 unpaid fifteen or more days after its due date, unless the declaration,  
15 bylaws or rules of the association provide for a longer period. Any  
16 monies paid by a member for an unpaid penalty shall be applied first to  
17 the principal amount unpaid and then to the interest accrued. Notice  
18 pursuant to this subsection shall include information pertaining to the  
19 manner in which the penalty shall be enforced.

20 ~~C. F.~~ A member who receives a written notice that the condition of  
21 the property owned by the member is in violation of the community  
22 documents without regard to whether a monetary penalty is imposed by the  
23 notice may provide the association with a written response by sending the  
24 response by certified mail within twenty-one calendar days after the date  
25 of the notice. The response shall be sent to the address identified in  
26 the notice.

27 ~~D. G.~~ Within ten business days after receipt of the certified mail  
28 containing the response from the member, the association shall respond to  
29 the member with a written explanation regarding the notice that shall  
30 provide at least the following information unless previously provided in  
31 the notice of violation:

32 1. The provision of the community documents that has allegedly been  
33 violated.

34 2. The date of the violation or the date the violation was  
35 observed.

36 3. The first and last name of the person or persons who observed  
37 the violation.

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

39 ~~E. H.~~ Unless the information required in subsection ~~D G~~,  
40 paragraph 4 of this section is provided in the notice of violation, the  
41 association shall not proceed with any action to enforce the community  
42 documents, including the collection of attorney fees, before or during the  
43 time prescribed by subsection ~~D G~~ of this section regarding the exchange  
44 of information between the association and the member and shall give the  
45 member written notice of the member's option to petition for an  
46 administrative hearing on the matter in the state real estate department  
47 pursuant to section 32-2199.01. At any time before or after completion of

1 ~~the exchange of information pursuant to this section, the member may~~  
2 ~~petition for a hearing pursuant to section 32-2199.01 if the dispute is~~  
3 ~~within the jurisdiction of the state real estate department as prescribed~~  
4 ~~in section 32-2199.01.>>~~

5 Sec. 2. Section 33-1806, Arizona Revised Statutes, is amended to  
6 read:

7 33-1806. Sale of properties; information required; fees;  
8 civil penalty; definition

9 A. ~~[EXCEPT AS PRESCRIBED BY SUBSECTION I OF THIS SECTION,]~~ For  
10 planned communities with fewer than fifty ~~units~~ PROPERTIES, a member shall  
11 ~~mail~~ ELECTRONICALLY TRANSMIT or deliver to a purchaser ~~[or a purchaser's]~~  
12 ~~authorized~~ ~~[DESIGNATED]~~ ~~[agent]~~ THE INFORMATION REQUIRED BY THIS  
13 SUBSECTION within ten ~~[CALENDAR]~~ days after ~~[receipt of a written notice~~  
14 ~~of a pending sale of the] unit, and [PROPERTY] [ACCEPTANCE OF THE~~  
15 ~~PURCHASER'S OFFER TO PURCHASE. THE MEMBER MAY REQUEST THE ASSOCIATION TO~~  
16 ~~PROVIDE THE MEMBER WITH THE INFORMATION REQUIRED BY THIS SUBSECTION ON~~  
17 ~~LISTING THE MEMBER'S PROPERTY FOR SALE].~~ For planned communities with  
18 fifty or more ~~units~~ PROPERTIES, the association shall ~~mail~~ ELECTRONICALLY  
19 TRANSMIT or deliver to a purchaser ~~[or a purchaser's]~~ ~~authorized~~  
20 ~~[DESIGNATED]~~ ~~[agent]~~ within ten ~~[calendar]~~ days after receipt of a written  
21 notice of a pending sale that contains the name, EMAIL ADDRESS and MAILING  
22 address of the purchaser ~~[OR THE PURCHASER'S DESIGNATED AGENT]~~ all of the  
23 following in either paper or electronic format:

24 1. A copy of the CURRENT bylaws and the CURRENT rules of the  
25 association.

26 2. A copy of the CURRENT declaration AND ~~[FINAL]~~ PLAT~~[, OR AN~~  
27 ~~ELECTRONIC COPY OF THE FINAL PLAT, IF AVAILABLE].~~

28 ~~[3. A COPY OF THE MINUTES OF ALL OPEN MEETINGS OF THE BOARD OF~~  
29 ~~DIRECTORS FOR THE PREVIOUS THREE MONTHS.]~~

30 ~~[3.] [4.]~~ A dated statement containing ~~[OR IDENTIFYING]:~~

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

35 (b) The amount of the ANNUAL common regular assessment and the  
36 REQUIRED INSTALLMENTS AND PAYMENT SCHEDULES ON ANY APPROVED SPECIAL  
37 ASSESSMENT ~~[AND ANY REMAINING INSTALLMENTS ON THE SPECIAL ASSESSMENT, IF~~  
38 ~~ANY].~~

39 (c) THE ESTIMATED ~~[DOLLAR]~~ AMOUNT AND PURPOSE OF ANY ~~[CONTEMPLATED,~~  
40 ~~AND EITHER]~~ APPROVED ~~[AND RATIFIED OR ANTICIPATED TO BE APPROVED AND~~  
41 ~~RATIFIED]~~ ~~[BUT UNRATIFIED]~~ SPECIAL ASSESSMENT ~~[OR FINANCING BEING~~  
42 ~~DEVELOPED BY THE ASSOCIATION FOR ASSESSMENT]~~ WITHIN THE ~~[SUBSEQUENT]~~  
43 ~~[PREVIOUS]~~ SIX MONTHS~~[, IF ANY].~~

44 (d) THE CURRENT AMOUNT OF ANY unpaid common regular  
45 assessment, ~~special assessment or other assessment, fee or charge~~  
46 ~~currently due and payable from the selling member. If the request is made~~  
47 ~~by a lienholder, escrow agent, member or person designated by a member~~

1 ~~pursuant to section 33-1807, failure to provide the information pursuant~~  
2 ~~to this subdivision within the time provided for in this subsection shall~~  
3 ~~extinguish any lien for any unpaid assessment then due against that~~  
4 ~~property~~ LIEN OR JUDGMENT LIEN ON THE PROPERTY DUE TO THE ASSOCIATION  
5 PURSUANT TO SECTION 33-1807 AND ANY LIS PENDENS RECORDED BY THE  
6 ASSOCIATION AGAINST THE PROPERTY.

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

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

10 ~~(e) If the statement is being furnished by the association, a~~  
11 ~~statement as to whether the records of the association reflect any~~  
12 ~~alterations or improvements to the unit that violate the declaration. The~~  
13 ~~association is not obligated to provide information regarding alterations~~  
14 ~~or improvements that occurred more than six years before the proposed~~  
15 ~~sale. Nothing in this subdivision relieves the seller of a unit from the~~  
16 ~~obligation to disclose alterations or improvements to the unit that~~  
17 ~~violate the declaration, nor precludes the association from taking action~~  
18 ~~against the purchaser of a unit for violations that are apparent at the~~  
19 ~~time of purchase and that are not reflected in the association's records.~~

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

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

29 ~~(h) A statement that provides "I hereby acknowledge that the~~  
30 ~~declaration, bylaws and rules of the association constitute a contract~~  
31 ~~between the association and me (the purchaser). By signing this~~  
32 ~~statement, I acknowledge that I have read and understand the association's~~  
33 ~~contract with me (the purchaser). I also understand that as a matter of~~  
34 ~~Arizona law, if I fail to pay my association assessments, the association~~  
35 ~~may foreclose on my property." The statement shall also include a~~  
36 ~~signature line for the purchaser and shall be returned to the association~~  
37 ~~within fourteen calendar days.~~

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

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

43 (g) ANY OUTSTANDING AND UNRESOLVED VIOLATION OF THE ASSOCIATION'S  
44 COMMUNITY DOCUMENTS THAT WAS CITED AGAINST THE PROPERTY, IF ANY[, AND THAT  
45 THE SELLER IS RESPONSIBLE FOR APPEALING, RESOLVING OR ARRANGING FOR THE  
46 RESOLUTION OF ALL CITED VIOLATIONS].

1           ~~[4.]~~ [5.] A copy of the current operating budget of the  
2 association.

3           ~~[5.]~~ [6.] A copy of the most recent annual ~~financial~~ AUDIT, REVIEW  
4 OR ~~[COMPILED]~~ [COMPILED] report of the association PURSUANT TO  
5 SECTION 33-1810. If the report is more than ten pages, ~~the association~~  
6 ~~may provide~~ a summary of the report ~~in lieu~~ MAY BE PROVIDED IN PLACE of  
7 the entire report.

8           ~~[6.]~~ [7.] A copy of the most recent reserve study OR LONG-RANGE  
9 PLAN AND ASSOCIATED FUNDING STRATEGY of the association, if any. IF THE  
10 REPORT IS MORE THAN TEN PAGES, THE ASSOCIATION MAY PROVIDE A SUMMARY OF  
11 THE REPORT IN PLACE OF THE ENTIRE REPORT.

12           ~~[7.]~~ [8.] A statement summarizing any pending lawsuits, except  
13 those relating to the collection of assessments owed by members other than  
14 the selling member, in which the association is a named party, including  
15 the amount of any money claimed.

16           ~~[8.]~~ [9.] A STATEMENT AS TO WHETHER THE PLANNED COMMUNITY IS UNDER  
17 DECLARANT CONTROL AND THE PERCENTAGE OF LOTS IDENTIFIED ON THE RECORDED  
18 PLAT THAT ARE CURRENTLY OWNED BY THE DECLARANT.

19           ~~[9.]~~ [10.] A STATEMENT THAT, FOR ANY REPORT PROVIDED IN SUMMARY  
20 FORMAT PURSUANT TO THIS SUBSECTION, THE PURCHASER MAY REQUEST TO VIEW THE  
21 ENTIRE REPORT FROM THE ASSOCIATION DIRECTLY, AND THE ASSOCIATION SHALL  
22 PROVIDE ACCESS TO THAT REPORT WITHIN THREE BUSINESS DAYS AFTER A WRITTEN  
23 REQUEST.

24           ~~[10.]~~ [11.] A STATEMENT TO BE SIGNED BY THE PURCHASER AT THE CLOSE  
25 OF ESCROW THAT PROVIDES "I HEREBY ACKNOWLEDGE THAT WITH THE PURCHASE OF  
26 THIS HOME OR PROPERTY, I WILL BE CONTRACTUALLY BOUND TO THE VALID  
27 COVENANTS, CONDITIONS AND RESTRICTIONS OF THE RECORDED DECLARATION, AND  
28 WILL BE [CONTRACTUALLY] BOUND TO PAY ALL COMMON EXPENSE ASSESSMENTS  
29 APPLIED TO MY HOME OR PROPERTY AS AUTHORIZED IN THE DECLARATION AND TITLE  
30 33, CHAPTER 9 OR 16, ARIZONA REVISED STATUTES, AS APPLICABLE. IF I FAIL  
31 TO PAY COMMON EXPENSE ASSESSMENTS, I MAY BE SUBJECT TO COLLECTION ACTIVITY  
32 BY THE ASSOCIATION UP TO AND INCLUDING FORECLOSURE ACTION, WITHOUT THE  
33 EQUITY PROTECTION OF THE HOMESTEAD ACT PURSUANT TO TITLE 33, CHAPTER 8,  
34 ARIZONA REVISED STATUTES."

35           ~~[B. WITHIN FIVE CALENDAR DAYS AFTER THE RECEIPT OF THE DISCLOSURE~~  
36 ~~REPORT PRESCRIBED BY SUBSECTION A OF THIS SECTION, THE PURCHASER MAY~~  
37 ~~ACCEPT THE INFORMATION, PROPOSE A CURE TO ADDRESS ANY CONCERNS IDENTIFIED~~  
38 ~~IN THE REPORT OR WITHDRAW THE OFFER WITHOUT PENALTY OR LOSS OF EARNEST~~  
39 ~~MONEY. IF A CONTRACT IS CANCELED FOR ANY REASON, THE COMPLETE DISCLOSURE~~  
40 ~~REPORT SHALL BE RETURNED TO THE SELLER.]~~

41           ~~[C.]~~ [B.] A purchaser or seller who is damaged by ~~the failure of~~  
42 the member or the association [KNOWINGLY OR RECKLESSLY] FAILING to  
43 disclose the information required by subsection A of this section OR  
44 [KNOWINGLY OR RECKLESSLY] PROVIDING MATERIALLY FALSE OR MISLEADING  
45 STATEMENTS IN THE DISCLOSURE may pursue all remedies at law or in equity  
46 against the member~~[, THE MANAGING AGENT FOR THE ASSOCIATION]~~ or the  
47 association, whichever failed to comply with subsection A of this section

1 ~~[OR PROVIDED MATERIALLY FALSE OR MISLEADING STATEMENTS IN THE DISCLOSURE],~~  
2 including the recovery of reasonable attorney fees AS AWARDED BY THE  
3 COURT.

4 ~~[D.] [C.]~~ THE ASSOCIATION SHALL PROVIDE TO AN ESCROW AGENT THAT IS  
5 LICENSED PURSUANT TO TITLE 6, CHAPTER 7 AND THAT IS DESIGNATED FOR THE  
6 TRANSACTION ANY REQUESTED INFORMATION THAT IS RELEVANT TO THE CLOSE OF  
7 ESCROW, SUBJECT TO AND PURSUANT TO SECTION 33-1807 ~~[AT NO COST TO THE~~  
8 ~~ESCROW AGENT OR ADDITIONAL COST TO THE SELLER OR BUYER]~~ [AND MAY CHARGE  
9 THE FEES AUTHORIZED BY THIS SECTION].

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

35 ~~[F. IF THE ASSOCIATION WAS NOT REQUESTED TO PROVIDE THE DISCLOSURE~~  
36 ~~REPORT PRESCRIBED BY SUBSECTION A OF THIS SECTION, THE ASSOCIATION MAY~~  
37 ~~CHARGE A NOMINAL FEE TO THE PURCHASER TO COMPENSATE THE ASSOCIATION FOR~~  
38 ~~THE COST OF UPDATING THE NEW OWNER INFORMATION IN THE ASSOCIATION RECORDS,~~  
39 ~~COMMENSURATE WITH THE DIRECT COST INCURRED.]~~

40 ~~D. [G.] [E.]~~ The fees prescribed by this section shall be  
41 collected ~~no~~ NOT earlier than at the close of escrow and may only be  
42 charged once to a member OR PURCHASER for that transaction between the  
43 parties ~~specified in the notice required pursuant to subsection A of this~~  
44 ~~section.~~ ~~[ANY PAYMENT SHALL BE MADE DIRECTLY AND ONLY TO THE~~  
45 ~~ASSOCIATION.]~~ An association shall not charge or collect a fee relating  
46 to services for resale disclosure, lien estoppel and any other services  
47 related to the transfer or use of a property except as specifically

1 authorized in this section. An association that charges or collects a fee  
2 in violation of this section is subject to a civil penalty of not more  
3 than ~~one thousand two hundred dollars~~ \$1,200.

4 ~~F.~~ [H.] [E.] This section applies to a managing agent for an  
5 association that is acting on behalf of the association.

6 ~~[I. FOR THE INITIAL SALE OF A PROPERTY FROM THE DECLARANT, THE  
7 DECLARANT SHALL PROVIDE TO ANY PURCHASER WITHIN THE TIME PRESCRIBED BY  
8 SUBSECTION A OF THIS SECTION THE DOCUMENTS PRESCRIBED IN SUBSECTION A,  
9 PARAGRAPHS 1, 2 AND 10.]~~

10 ~~F.~~ [J.] [G.] The following are exempt from this section:

11 1. A sale in which a public report is issued pursuant to section  
12 32-2183 or 32-2197.02.

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

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

21 ~~G.~~ [K.] [H.] For the purposes of this section, unless the context  
22 otherwise requires [L.] [I.]

23 ~~[1. "ASSOCIATION" INCLUDES ANY MASTER AND LOCAL ASSOCIATION WITH  
24 RECORDED COVENANTS AFFECTING THE PROPERTY, AS APPLICABLE.]~~

25 ~~2.~~ "Member":

26 ~~(a)~~ [1.] Means the seller of the ~~unit~~ PROPERTY title. ~~and~~  
27 ~~excludes~~

28 ~~(b)~~ [2.] DOES NOT INCLUDE:

29 ~~(i)~~ [(a)] Any real estate salesperson or real estate broker who  
30 is licensed under title 32, chapter 20 and who is acting as a salesperson  
31 or broker. ~~,~~

32 ~~(ii)~~ [(b)] Any escrow agent who is licensed under title 6,  
33 chapter 7 and who is acting as an escrow agent. ~~and also excludes~~

34 ~~(iii)~~ [(c)] A trustee of a deed of trust who is selling the  
35 property in a trustee's sale pursuant to chapter 6.1 of this title.

36 Enroll and engross to conform

37 Amend title to conform

JEFF WENINGER

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02/13/2026

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C: MR

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