

House Engrossed

condominiums; insurance coverage; claims

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

# HOUSE BILL 2251

AN ACT

AMENDING SECTION 33-1253, ARIZONA REVISED STATUTES; RELATING TO  
CONDOMINIUMS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 33-1253, Arizona Revised Statutes, is amended to  
3 read:

4 33-1253. Insurance

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

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

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

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

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

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

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

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

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

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

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

10          E. PRIOR TO REPORTING A LOSS UNDER THE ASSOCIATION'S PROPERTY  
11 INSURANCE POLICY, A UNIT OWNER SHALL REPORT THE LOSS TO THE ASSOCIATION  
12 AND GIVE THE ASSOCIATION FIVE BUSINESS DAYS TO PROVIDE THE UNIT OWNER WITH  
13 A COPY OF ITS WRITTEN DECISION STATING WHETHER THE ASSOCIATION WILL BE  
14 REPORTING A CLAIM TO THE MASTER CARRIER OR PAYING FOR THE ASSOCIATION'S  
15 PORTION OF THE LOSS WITHOUT REPORTING A CLAIM. IF THE ASSOCIATION DECIDES  
16 NOT TO REPORT A CLAIM TO THE MASTER CARRIER, THE WRITTEN DECISION SHALL  
17 PROVIDE FOR HOW THE PORTION OF THE REPAIRS FOR WHICH THE ASSOCIATION IS  
18 RESPONSIBLE WILL BE ACCOMPLISHED AND FUNDED.

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

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

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

45          ~~H.~~ I. Any portion of the condominium for which insurance is  
46 required under this section ~~which~~ AND THAT is damaged or destroyed shall

1 be repaired or replaced promptly by the association unless any of the  
2 following apply:

- 3 1. The condominium is terminated.
- 4 2. Repair or replacement would be illegal under any state or local  
5 health or safety statute or ordinance.
- 6 3. Eighty ~~per cent~~ PERCENT of the unit owners, including every  
7 owner of a unit or allocated limited common element ~~which~~ THAT will not be  
8 rebuilt, vote not to rebuild.

9 ~~I.~~ J. The cost of repair or replacement in excess of insurance  
10 proceeds and reserves is a common expense. If the entire condominium is  
11 not repaired or replaced:

- 12 1. The insurance proceeds attributable to the damaged common  
13 elements in proportion to their common element interests or as otherwise  
14 provided in the declaration shall be used to restore the damaged area to a  
15 condition compatible with the remainder of the condominium.
- 16 2. The insurance proceeds attributable to units and allocated  
17 limited common elements ~~which~~ THAT are not rebuilt shall be distributed in  
18 proportion to their common element interests or as otherwise provided in  
19 the declaration to the owners of those units and the owners of the units  
20 to which those limited common elements were allocated, or to lienholders  
21 as their interests may appear.
- 22 3. The remainder of the proceeds shall be distributed to all the  
23 unit owners or lienholders as their interests may appear in proportion to  
24 the common element interests of all the units.

25 K. THE ASSOCIATION SHALL INFORM EACH UNIT OWNER ANNUALLY IN WRITING  
26 OF BOTH:

- 27 1. THE UNIT OWNER'S RESPONSIBILITY FOR THE ASSOCIATION'S INSURANCE  
28 DEDUCTIBLES FOR ALL PROPERTY AND LIABILITY COVERAGE.
- 29 2. THE AMOUNT OF EACH DEDUCTIBLE.

30 ~~J.~~ L. If the unit owners vote not to rebuild any unit, that unit's  
31 allocated interests are automatically reallocated on the vote as if the  
32 unit had been condemned under section 33-1206, subsection A, and the  
33 association promptly shall prepare, execute and record an amendment to the  
34 declaration reflecting the reallocations.

35 ~~K.~~ M. Notwithstanding ~~the provisions of~~ subsections H, I and ~~J~~ L  
36 of this section, section 33-1228 governs the distribution of insurance  
37 proceeds if the condominium is terminated.

38 ~~L.~~ N. If all units are restricted to nonresidential use, the  
39 provisions of a subsection or paragraph of this section do not apply if  
40 the declaration, articles of incorporation or amended bylaws contain  
41 provisions inconsistent with such subsection or paragraph.

42 ~~M.~~ O. This section does not prohibit the declaration from  
43 requiring additional or greater amounts of insurance coverage or does not  
44 prohibit the board of directors from acquiring ~~additional~~ ADDITIONAL or  
45 greater amounts of coverage as it reasonably deems appropriate.