

REFERENCE TITLE: condominiums; insurance coverage; claims

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

# HB 2251

Introduced by  
Representative Wilmeth

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

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

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

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

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

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

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

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

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

1           5. AS AN INSURED PERSON UNDER THE ASSOCIATION'S POLICY WITH RESPECT  
2 TO THE UNIT OWNER'S INTEREST IN THE COMMON ELEMENTS, THE UNIT OWNER'S  
3 INDIVIDUAL UNIT OR MEMBERSHIP IN THE ASSOCIATION, EACH UNIT OWNER HAS THE  
4 RIGHT TO REPORT A LOSS UNDER THE ASSOCIATION'S PROPERTY INSURANCE POLICY.

5           E. NOTWITHSTANDING SUBSECTION D, PARAGRAPH 5 OF THIS SECTION, any  
6 loss covered by the property policy under subsection A, paragraph 1 and  
7 subsection B of this section shall be adjusted with the association, but  
8 the insurance proceeds for that loss are payable to any insurance trustee  
9 designated for that purpose, or otherwise to the association, and not to  
10 any mortgagee or beneficiary under a deed of trust. The insurance trustee  
11 or the association shall hold any insurance proceeds in trust for unit  
12 owners and lienholders as their interests may appear. Subject to ~~the~~  
13 ~~provisions~~ of subsection H of this section, the proceeds shall be  
14 disbursed first for the repair or restoration of the damaged property, and  
15 unit owners and lienholders are not entitled to receive payment of any  
16 portion of the proceeds unless there is a surplus of proceeds after the  
17 property has been completely repaired or restored, or the condominium is  
18 terminated.

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

21           G. An insurer that has issued an insurance policy under this  
22 section shall issue certificates or memoranda of insurance to the  
23 association and, on written request, to any unit owner, mortgagee or  
24 beneficiary under a deed of trust. The insurer issuing the policy shall  
25 not cancel or refuse to renew it until thirty days after notice of the  
26 proposed cancellation or nonrenewal has been mailed to the association,  
27 each unit owner and each mortgagee or beneficiary under a deed of trust to  
28 whom a certificate or memorandum of insurance has been issued at their  
29 respective last known addresses.

30           H. Any portion of the condominium for which insurance is required  
31 under this section ~~which~~ AND THAT is damaged or destroyed shall be  
32 repaired or replaced promptly by the association unless any of the  
33 following apply:

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

40           I. The cost of repair or replacement in excess of insurance  
41 proceeds and reserves is a common expense. If the entire condominium is  
42 not repaired or replaced:

- 43           1. The insurance proceeds attributable to the damaged common  
44 elements in proportion to their common element interests or as otherwise  
45 provided in the declaration shall be used to restore the damaged area to a  
46 condition compatible with the remainder of the condominium.

1           2. The insurance proceeds attributable to units and allocated  
2 limited common elements ~~which~~ THAT are not rebuilt shall be distributed in  
3 proportion to their common element interests or as otherwise provided in  
4 the declaration to the owners of those units and the owners of the units  
5 to which those limited common elements were allocated, or to lienholders  
6 as their interests may appear.

7           3. The remainder of the proceeds shall be distributed to all the  
8 unit owners or lienholders as their interests may appear in proportion to  
9 the common element interests of all the units.

10           J. IF THE CAUSE OF ANY DAMAGE TO OR DESTRUCTION OF ANY PORTION OF  
11 THE CONDOMINIUM ORIGINATES FROM THE COMMON ELEMENTS OR AN EVENT OUTSIDE OF  
12 THE UNITS AND COMMON ELEMENTS, THE ASSOCIATION'S PROPERTY INSURANCE  
13 DEDUCTIBLE IS A COMMON EXPENSE.

14           K. IF THE CAUSE OF ANY DAMAGE TO OR DESTRUCTION OF ANY PORTION OF  
15 THE CONDOMINIUM ORIGINATES FROM A UNIT, THE OWNER OF THE UNIT IN WHICH THE  
16 CAUSE OF THE DAMAGE OR DESTRUCTION ORIGINATED IS RESPONSIBLE FOR THE  
17 ASSOCIATION'S PROPERTY INSURANCE DEDUCTIBLE OF NOT MORE THAN \$10,000.

18           L. THE ASSOCIATION SHALL INFORM EACH UNIT OWNER ANNUALLY IN WRITING  
19 OF BOTH:

20           1. THE UNIT OWNER'S RESPONSIBILITY FOR THE ASSOCIATION'S PROPERTY  
21 INSURANCE DEDUCTIBLE PURSUANT TO SUBSECTION K OF THIS SECTION.

22           2. THE AMOUNT OF THE DEDUCTIBLE.

23           M. THE ASSOCIATION'S PROPERTY INSURANCE DEDUCTIBLE AMOUNT OF MORE  
24 THAN THE \$10,000 RESPONSIBILITY OF THE UNIT OWNER IS A COMMON EXPENSE.

25           N. THE ASSOCIATION MAY MAKE AN ANNUAL ASSESSMENT AS PRESCRIBED BY  
26 SECTION 33-1255 AGAINST THE UNIT OWNER WHO IS RESPONSIBLE PURSUANT TO  
27 SUBSECTION K OF THIS SECTION.

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

33           ~~K.~~ P. Notwithstanding ~~the provisions of~~ subsections H, I and ~~J.~~ O  
34 of this section, section 33-1228 governs the distribution of insurance  
35 proceeds if the condominium is terminated.

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

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