

REFERENCE TITLE: condominiums; termination; agreement

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

HB 2780

Introduced by
Representatives Schwiebert: Wilmeth, Senator Kaiser

AN ACT

AMENDING SECTIONS 33-1228, 33-1241 AND 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 33-1228, Arizona Revised Statutes, is amended to
3 read:

4 33-1228. Termination of condominium and declaration

5 A. ~~Except as provided in subsection B of this section,~~ A
6 condominium AND ITS DECLARATION may be terminated only AS PRESCRIBED IN
7 THE DECLARATION, IF THE DECLARATION IS AVAILABLE, AND IF NOT AVAILABLE,
8 ONLY by THE agreement AND WRITTEN CONSENT of unit owners of units to which
9 at least eighty percent of the votes in the association are allocated, ~~or~~
10 ~~any larger percentage the declaration specifies as otherwise prescribed in~~
11 ~~the declaration,~~ except:—

12 ~~1. in the case of a taking of all the units by eminent domain.~~

13 ~~2. If the declaration specifies a smaller percentage, but only if~~
14 ~~all of the units in the condominium are restricted exclusively to~~
15 ~~nonresidential uses.~~

16 B. ~~A condominium created on or after September 24, 2022 may be~~
17 ~~terminated only by agreement of unit owners of units to which ninety-five~~
18 ~~percent of the votes in the association are allocated, or any larger~~
19 ~~percentage the declaration specifies, except as provided in subsection A,~~
20 ~~paragraph 1 or 2 of this section.~~

21 C. ~~At least thirty days before recording a termination agreement,~~
22 ~~the board of directors of the association shall convene a regular or~~
23 ~~special meeting of the board of directors at which a person or entity that~~
24 ~~purports to have the agreement of at least the percentage of the votes in~~
25 ~~the association specified in subsection A or B of this section, as~~
26 ~~applicable, or any larger percentage if required, shall produce and make~~
27 ~~available to the unit owners copies of a signed notarized statement that~~
28 ~~the owner of a unit has executed a termination agreement. The person or~~
29 ~~entity shall produce copies of a statement for each unit owner who has~~
30 ~~agreed to the termination, or may produce the signed termination agreement~~
31 ~~that includes a sufficient number of unit owners. Any meeting called~~
32 ~~pursuant to this subsection shall be noticed as otherwise provided by law,~~
33 ~~except that the board may not take action by written consent or any other~~
34 ~~method that does not provide for an actual meeting that is open to all the~~
35 ~~unit owners. Any termination agreement that is recorded without full~~
36 ~~compliance with this subsection is invalid.~~

37 B. ANY AGREEMENT TO TERMINATE THE CONDOMINIUM DECLARATION MUST
38 CONTAIN THE REQUISITE NUMBER OF UNIT OWNERS' SIGNATURES AS PRESCRIBED IN
39 SUBSECTION A OF THIS SECTION AND THEIR PRINTED NAMES AND UNIT NUMBERS.
40 THE TERMINATION AGREEMENT SHALL BE SIGNED AND NOTARIZED BY THE PERSON OR
41 ENTITY PRESENTING THE TERMINATION AGREEMENT TO BE A TRUE COLLECTION OF
42 SIGNATURES OF OWNERS WHO HAVE READ THE TERMINATION AGREEMENT AND FREELY
43 AGREED TO ITS CONTENT. THE TERMINATION AGREEMENT MUST DESCRIBE THE
44 PROPOSED ORGANIZATIONAL STRUCTURE FOR MAKING DECISIONS AND MANAGING THE
45 COMMON PROPERTY, INCLUDING THE CONTINUED OBLIGATION OF ANY UNIT OWNER TO

1 PAY ASSESSMENTS AND THE MAINTENANCE OF THE COMMON PROPERTY FOLLOWING
2 TERMINATION OF THE CURRENT DECLARATION. THE TERMINATION AGREEMENT MUST
3 CLEARLY STATE THAT THE TERMINATION AGREEMENT, ALONG WITH THE EXISTING
4 PLAT, WILL BECOME THE NEW DECLARATION FOR THE CONDOMINIUM. THE
5 TERMINATION AGREEMENT MUST SATISFY THE RELEVANT REQUIREMENTS OF SECTION
6 33-1215, BUT MAY NOT:

7 1. CHANGE THE VOTING RIGHTS OR ALLOCATED INTEREST OF THE UNIT
8 OWNERS AS PREVIOUSLY ESTABLISHED IN THE DECLARATION.

9 2. ADD OR ALTER A RESTRICTION ON THE USE OF PRIVATE OR COMMON
10 PROPERTY UNLESS REASONABLE NOTICE OF THAT RESTRICTION WAS PROVIDED IN THE
11 PREVIOUS DECLARATION.

12 C. ON NOTIFICATION THAT AN INDIVIDUAL OR ENTITY HAS OBTAINED THE
13 NECESSARY APPROVALS TO TERMINATE THE DECLARATION AND AFTER RECEIVING A
14 COPY OF THAT AGREEMENT, THE BOARD OF DIRECTORS SHALL CALL AND NOTICE A
15 SPECIAL OPEN MEETING OF THE BOARD PURSUANT TO SECTION 33-1248 TO BE HELD
16 AT LEAST FIFTEEN CALENDAR DAYS BUT NOT MORE THAN THIRTY CALENDAR DAYS
17 AFTER THE DATE OF THE NOTIFICATION. AT THE MEETING CALLED FOR THAT
18 PURPOSE, THE INDIVIDUAL OR ENTITY PRESENTING THE TERMINATION AGREEMENT
19 MUST PROVIDE THE ORIGINAL SIGNED AND NOTARIZED TERMINATION AGREEMENT TO
20 THE BOARD OF DIRECTORS. ANY UNIT OWNER PRESENT AT THE MEETING MUST BE
21 PROVIDED THE OPPORTUNITY TO SPEAK BEFORE A VOTE OF THE BOARD TO RATIFY THE
22 TERMINATION AGREEMENT. THE BOARD OF DIRECTORS SHALL CONFIRM THAT THE
23 TERMINATION AGREEMENT CONTAINS THE APPROVAL OF THE REQUISITE NUMBER OF
24 UNIT OWNERS, AND IF NO LEGITIMATE REASON HAS BEEN PRESENTED TO DELAY THE
25 RATIFICATION, THE BOARD MUST RATIFY THE AGREEMENT. ONCE RATIFIED, THE
26 ASSOCIATION MUST TAKE THE ACTIONS NECESSARY TO PREPARE FOR AND RECORD THE
27 TERMINATION AGREEMENT WITHIN FIFTY DAYS AFTER THE DATE OF RATIFICATION.

28 D. An agreement to terminate shall be evidenced by the execution or
29 ratifications of a termination agreement, ~~in the same manner as a deed,~~
30 ~~by the requisite number of unit owners. The termination agreement shall~~
31 ~~specify a date after which the agreement will be void unless it is~~
32 ~~recorded before that date.~~ A termination agreement and all ratifications
33 of a termination agreement shall be recorded in each county in which a
34 portion of the condominium is situated and is effective only on
35 ~~recordation~~ RECORDING AND SUBSEQUENTLY PROVIDING EVERY UNIT OWNER A COPY
36 OF THE RECORDED DOCUMENT.

37 ~~E. A termination agreement may provide that all the common elements~~
38 ~~and units of the condominium shall be sold following termination. If,~~
39 ~~pursuant to the agreement, any real estate in the condominium is to be~~
40 ~~sold following termination, the termination agreement shall set forth the~~
41 ~~minimum terms of the sale.~~

42 ~~F. The association, on behalf of the unit owners, may contract for~~
43 ~~the sale of real estate in the condominium, but the contract is not~~
44 ~~binding on the unit owners until approved pursuant to subsections A, B, C~~
45 ~~and D of this section. If any real estate in the condominium is to be~~

1 ~~sold following termination, title to that real estate on termination vests~~
2 ~~in the association as trustee for the holders of all interest in the~~
3 ~~units. Thereafter, the association has all powers necessary and~~
4 ~~appropriate to effect the sale. Until the sale has been concluded and the~~
5 ~~proceeds of the sale distributed, the association continues in existence~~
6 ~~with all powers it had before termination. Proceeds of the sale shall be~~
7 ~~distributed to unit owners and lienholders as their interests may appear,~~
8 ~~in proportion to the respective interests of unit owners as provided in~~
9 ~~subsection I of this section. Unless otherwise specified in the~~
10 ~~termination agreement, as long as the association holds title to the real~~
11 ~~estate, each unit owner and the unit owner's successors in interest have~~
12 ~~an exclusive right to occupancy of the portion of the real estate that~~
13 ~~formerly constituted the unit owner's unit. During the period of that~~
14 ~~occupancy, each unit owner and the successors in interest remain liable~~
15 ~~for all assessments and other obligations imposed on unit owners by this~~
16 ~~chapter or the declaration.~~

17 ~~G. E. If the real estate constituting the condominium is not to be~~
18 ~~sold~~ Following termination, title to all the real estate in the
19 condominium vests in the unit owners on termination as tenants in common
20 in proportion to their respective interests as provided in ~~subsection I of~~
21 ~~this section, and liens on the units shift accordingly~~ THE TERMINATED
22 DECLARATION. ~~While the tenancy in common exists, each unit owner and the~~
23 ~~unit owner's successors in interest have an exclusive right to occupancy~~
24 ~~of the portion of the real estate that formerly constituted the unit~~
25 ~~owner's unit.~~ EACH UNIT OWNER MAY SELL THE UNIT OWNER'S INTEREST IN THE
26 INDIVIDUAL UNIT, ITS REAL ESTATE AND THE UNIT OWNER'S INTEREST IN THE
27 COMMON PROPERTY AS A SINGLE PARCEL THAT IS SUBJECT TO THE RECORDED
28 TERMINATION AGREEMENT.

29 ~~H. Following termination of the condominium, the proceeds of any~~
30 ~~sale of real estate, together with the assets of the association, are held~~
31 ~~by the association as trustee for unit owners and holders of liens on the~~
32 ~~units as their interests may appear. Following termination, creditors of~~
33 ~~the association holding liens on the units that were recorded before~~
34 ~~termination may enforce those liens in the same manner as any lienholder.~~

35 ~~i. The respective interests of unit owners referred to in~~
36 ~~subsections F, G and H of this section are as follows:~~

37 ~~1. Except as provided in paragraph 2 of this subsection, the~~
38 ~~respective interests of unit owners are the fair market values of their~~
39 ~~units, limited common elements and common element interests immediately~~
40 ~~before the termination, their pro rata share of any monies in the~~
41 ~~association's reserve fund and the operating account and an additional~~
42 ~~five percent of that total amount for relocation costs. An independent~~
43 ~~appraiser selected by the association shall determine the total fair~~
44 ~~market values. The determination of the independent appraiser shall be~~
45 ~~distributed to the unit owners and becomes final unless disapproved within~~

1 ~~sixty days after distribution to the unit owner. Any unit owner may~~
2 ~~obtain a second independent appraisal at the unit owner's expense and, if~~
3 ~~the unit owner's independent appraisal amount differs from the~~
4 ~~association's independent appraisal amount by five percent or less, the~~
5 ~~higher appraisal is final. If the total amount of compensation owed as~~
6 ~~determined by the second appraiser is more than five percent higher than~~
7 ~~the amount determined by the association's appraiser, the unit owner shall~~
8 ~~submit to arbitration by an arbitrator affiliated with a national~~
9 ~~arbitration association and under the rules of that association at the~~
10 ~~association's expense and the arbitration amount is the final sale~~
11 ~~amount. As part of the arbitration process, the appraisers shall fully~~
12 ~~disclose their appraisal methodologies and shall disclose any other~~
13 ~~transaction occurring between the buyer and the sellers. An additional~~
14 ~~five percent of the final sale amount shall be added for relocation costs.~~

15 ~~2. If any unit or any limited common element is destroyed to the~~
16 ~~extent that an appraisal of the fair market value of the unit or element~~
17 ~~before destruction cannot be made, the interests of all unit owners are~~
18 ~~their respective common element interests immediately before the~~
19 ~~termination.~~

20 F. FOLLOWING TERMINATION OF THE CONDOMINIUM, ALL FINANCIAL ASSETS
21 AND LOANS OR CONTINUING OBLIGATIONS OF THE PREVIOUS CONDOMINIUM
22 ASSOCIATION, IF ANY, TRANSFER TO THE OWNERS IN COMMON AS ORGANIZED UNDER
23 THE TERMINATION AGREEMENT.

24 G. RECORDING THE TERMINATION AGREEMENT EXTINGUISHES ALL OF THE
25 FOLLOWING:

26 1. THE DECLARATION AND ALL AMENDMENTS, EXCEPT THE PLAT DEFINING THE
27 REAL ESTATE.

28 2. THE PREVIOUS CONDOMINIUM ASSOCIATION HOWEVER ORGANIZED AND ANY
29 POWER OR AUTHORITY OF ITS BOARD OF DIRECTORS. IF THE CONDOMINIUM
30 ASSOCIATION WAS INCORPORATED, THE BOARD OF DIRECTORS IS RESPONSIBLE TO
31 TAKE ANY ACTIONS REASONABLY NECESSARY TO TERMINATE THE CORPORATION
32 PURSUANT TO TITLE 10 BEFORE RECORDING THE TERMINATION AGREEMENT.

33 3. ALL OTHER CONDOMINIUM DOCUMENTS, INCLUDING ARTICLES OF
34 INCORPORATION, BYLAWS, RULES AND DESIGN CONTROL STANDARDS.

35 4. ALL EXISTING CONTRACTS ENTERED INTO BY THE PREVIOUS CONDOMINIUM
36 ASSOCIATION, WITHIN THE TERMINATION CLAUSES OF THOSE CONTRACTS.

37 5. ALL OUTSTANDING FINES, PENALTIES OR FEES THAT ARE APPLIED TO
38 INDIVIDUAL UNITS BY THE PREVIOUS CONDOMINIUM ASSOCIATION, OTHER THAN
39 COMMON EXPENSE ASSESSMENTS.

40 6. ALL NONCOMMON EXPENSE ASSESSMENT LIENS ESTABLISHED BY THE
41 PREVIOUS CONDOMINIUM ASSOCIATION ON INDIVIDUAL UNITS.

42 H. FOLLOWING TERMINATION, THE COMMUNITY IS DEEMED TO SATISFY THE
43 DEFINITION OF A CONDOMINIUM IN SECTION 33-1202 AND REMAINS SUBJECT TO THE
44 PROTECTIONS AND OBLIGATIONS OF THIS CHAPTER. THE RECORDED TERMINATION

1 AGREEMENT, ALONG WITH THE PREVIOUSLY RECORDED PLAT, BECOMES THE NEW
2 DECLARATION FOR THE PROPERTY.

3 ~~J~~. I. Except as provided in subsection ~~K~~ J of this section,
4 foreclosure or enforcement of a lien or encumbrance against the entire
5 condominium does not of itself terminate the condominium, and foreclosure
6 or enforcement of a lien or encumbrance against a portion of the
7 condominium does not withdraw that portion from the condominium.
8 Foreclosure or enforcement of a lien or encumbrance against withdrawable
9 real estate does not of itself withdraw that real estate from the
10 condominium, but the person taking title may require from the association,
11 on request, an amendment excluding the real estate from the condominium.

12 ~~K~~. J. If a lien or encumbrance against a portion of the real
13 estate comprising the condominium has priority over the declaration, and
14 the lien or encumbrance has not been partially released, the parties
15 foreclosing the lien or encumbrance, on foreclosure, may record an
16 instrument excluding the real estate subject to that lien or encumbrance
17 from the condominium.

18 ~~L. The provisions of subsections E, F, G, H, J and K of this~~
19 ~~section do not apply if the original declaration, an amendment to the~~
20 ~~original declaration recorded before the conveyance of any unit to an~~
21 ~~owner other than the declarant or an agreement by all of the unit owners~~
22 ~~contains provisions inconsistent with these subsections.~~

23 ~~M. Beginning on August 3, 2018, any provisions in the declaration~~
24 ~~that conflict with subsection I, paragraph 1 of this section are void as a~~
25 ~~matter of public policy.~~

26 K. A PERSON OR ENTITY MAY PURCHASE THE ENTIRE CONDOMINIUM PROPERTY
27 BY ACQUIRING TITLE FROM ALL UNIT OWNERS AND TENANTS IN COMMON, IF ANY, BY
28 NEGOTIATING THE PURCHASE OF EACH PROPERTY AND EITHER TERMINATING THE
29 DECLARATION OR WITHOUT TERMINATING THE DECLARATION. ON COMPLETING THE
30 PURCHASE OF THE ENTIRE CONDOMINIUM PROPERTY, THE PURCHASER MAY RECORD A
31 DOCUMENT TO TERMINATE THE DECLARATION FOR THE CONDOMINIUM AND ANY
32 AMENDMENTS TO AND RESTATEMENTS OF THE DECLARATION, AND THE CONDOMINIUM IS
33 THEREBY TERMINATED.

34 Sec. 2. Section 33-1241, Arizona Revised Statutes, is amended to
35 read:

36 33-1241. Organization of unit owners' association

37 A unit owners' association shall be organized ~~no~~ NOT later than the
38 date the first unit in the condominium is INITIALLY conveyed. The
39 membership of the association at all times shall consist exclusively of
40 all the unit owners or, following termination of the condominium, of all
41 former unit owners ~~entitled to distributions of proceeds under section~~
42 ~~33-1228~~, or their heirs, successors or assigns. The association shall be
43 organized as a profit or nonprofit corporation or as an unincorporated
44 association.

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

3 33-1253. Insurance

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

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

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

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

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

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

34 1. Each unit owner is an insured person under the policy with
35 respect to liability arising out of ~~his~~ THE PERSON'S interest in the
36 common elements or membership in the association.

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

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

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

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

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

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

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

- 29 1. The condominium is terminated.
30 2. Repair or replacement would be illegal under any state or local
31 health or safety statute or ordinance.

32 3. Eighty ~~per cent~~ PERCENT of the unit owners, including every
33 owner of a unit or allocated limited common element ~~which~~ THAT will not be
34 rebuilt, vote not to rebuild.

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

38 1. The insurance proceeds attributable to the damaged common
39 elements in proportion to their common element interests or as otherwise
40 provided in the declaration shall be used to restore the damaged area to a
41 condition compatible with the remainder of the condominium.

42 2. The insurance proceeds attributable to units and allocated
43 limited common elements which are not rebuilt shall be distributed in
44 proportion to their common element interests or as otherwise provided in
45 the declaration to the owners of those units and the owners of the units

1 to which those limited common elements were allocated, or to lienholders
2 as their interests may appear.

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

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

11 K. Notwithstanding ~~the provisions of~~ subsections H, I and J of this
12 section, ~~section 33-1228 governs the distribution of~~ insurance proceeds
13 **SHALL BE DISTRIBUTED IN PROPORTION TO THE UNIT OWNERS' RESPECTIVE**
14 **INTERESTS IN THE CONDOMINIUM AS PRESCRIBED IN THE TERMINATED DECLARATION**
15 if the condominium is terminated.

16 L. If all units are restricted to nonresidential use, the
17 provisions of a subsection or paragraph of this section do not apply if
18 the declaration, articles of incorporation or amended bylaws contain
19 provisions inconsistent with such subsection or paragraph.

20 M. This section does not prohibit the declaration from requiring
21 additional or greater amounts of insurance coverage or does not prohibit
22 the board of directors from acquiring ~~additonal~~ **ADDITIONAL** or greater
23 amounts of coverage as it reasonably deems appropriate.