

REFERENCE TITLE: **condominiums; unit sales; termination**

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

HB 2784

Introduced by
Representatives Schwiebert: Wilmeth, Senator Kaiser

AN ACT

**AMENDING SECTION 33-1228, 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

5 A. Except as provided in subsection B of this section, a
6 condominium may be terminated only by agreement of unit owners of units to
7 which at least eighty percent of the votes in the association are
8 allocated, or any larger percentage the declaration specifies, except:

9 1. In the case of a taking of all the units by eminent domain.

10 2. If the declaration specifies a smaller percentage, but only if
11 all of the units in the condominium are restricted exclusively to
12 nonresidential uses.

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

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

34 D. An agreement to terminate shall be evidenced by the execution or
35 ratifications of a termination agreement, in the same manner as a deed, by
36 the requisite number of unit owners. The termination agreement shall
37 specify a date after which the agreement will be void unless it is
38 recorded before that date. A termination agreement and all ratifications
39 of a termination agreement shall be recorded in each county in which a
40 portion of the condominium is situated and is effective only on
41 recordation.

42 E. A termination agreement may provide that all the common elements
43 and units of the condominium shall be sold following termination. If,
44 pursuant to the agreement, any real estate in the condominium is to be
45 sold following termination, the termination agreement shall set forth the
46 minimum terms of the sale.

1 F. The association, on behalf of the unit owners, may contract for
2 the sale of real estate in the condominium, but the contract is not
3 binding on the unit owners until approved pursuant to subsections A, B, C
4 and D of this section. If any real estate in the condominium is to be
5 sold following termination, title to that real estate on termination vests
6 in the association as trustee for the holders of all interest in the
7 units. Thereafter, the association has all powers necessary and
8 appropriate to effect the sale. Until the sale has been concluded and the
9 proceeds of the sale distributed, the association continues in existence
10 with all powers it had before termination. Proceeds of the sale shall be
11 distributed to unit owners and lienholders as their interests may appear,
12 in proportion to the respective interests of unit owners as provided in
13 subsection I of this section. Unless otherwise specified in the
14 termination agreement, as long as the association holds title to the real
15 estate, each unit owner and the unit owner's successors in interest have
16 an exclusive right to occupancy of the portion of the real estate that
17 formerly constituted the unit owner's unit. During the period of that
18 occupancy, each unit owner and the successors in interest remain liable
19 for all assessments and other obligations imposed on unit owners by this
20 chapter or the declaration.

21 G. If the real estate constituting the condominium is not to be
22 sold following termination, title to all the real estate in the
23 condominium vests in the unit owners on termination as tenants in common
24 in proportion to their respective interests as provided in subsection I of
25 this section, and liens on the units shift accordingly. While the tenancy
26 in common exists, each unit owner and the unit owner's successors in
27 interest have an exclusive right to occupancy of the portion of the real
28 estate that formerly constituted the unit owner's unit.

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~~ **SHALL BE THE SALES**
43 **PRICE OF EACH UNIT AS NEGOTIATED IN A SALE BETWEEN THE UNIT OWNER AND THE**
44 **ASSOCIATION. A TRANSFER OF TITLE FOR A UNIT MAY NOT OCCUR BEFORE THE UNIT**
45 **OWNER AND THE ASSOCIATION AGREE ON THE SALES PRICE. An independent**
46 ~~appraiser selected by the association shall determine the total fair~~

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

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

22 J. Except as provided in subsection K of this section, foreclosure
23 or enforcement of a lien or encumbrance against the entire condominium
24 does not of itself terminate the condominium, and foreclosure or
25 enforcement of a lien or encumbrance against a portion of the condominium
26 does not withdraw that portion from the condominium. Foreclosure or
27 enforcement of a lien or encumbrance against withdrawable real estate does
28 not of itself withdraw that real estate from the condominium, but the
29 person taking title may require from the association, on request, an
30 amendment excluding the real estate from the condominium.

31 K. If a lien or encumbrance against a portion of the real estate
32 comprising the condominium has priority over the declaration, and the lien
33 or encumbrance has not been partially released, the parties foreclosing
34 the lien or encumbrance, on foreclosure, may record an instrument
35 excluding the real estate subject to that lien or encumbrance from the
36 condominium.

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

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