

REFERENCE TITLE: homeowner's associations; board duties; indemnification

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SB 1387

Introduced by
Senator Kavanagh

AN ACT

AMENDING SECTIONS 33-1202, 33-1215, 33-1243, 33-1245 AND 33-1811, ARIZONA
REVISED STATUTES; RELATING TO CONDOMINIUMS AND PLANNED COMMUNITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 33-1202, Arizona Revised Statutes, is amended to
3 read:

4 33-1202. Definitions

5 In the condominium documents, unless specifically provided otherwise
6 or the context otherwise requires, and in this chapter:

7 1. "Affiliate of a declarant" means any person who controls, is
8 controlled by or is under common control with a declarant.

9 2. "Allocated interests" means the undivided interests in the
10 common elements, the common expense liability and votes in the association
11 allocated to each unit.

12 3. "Articles of incorporation" means the instrument by which an
13 incorporated association or unit owners' association is formed and
14 organized under this state's corporate statutes.

15 4. "Association" or "unit owners' association" means the unit
16 owners' association organized under section 33-1241.

17 5. "Board of directors" means the body, regardless of its name,
18 designated in the declaration and given general management powers to act
19 on behalf of the association.

20 6. "Bylaws" means the bylaws required by section 33-1246.

21 7. "Common elements" means all portions of a condominium other than
22 the units.

23 8. "Common expense liability" means the liability for common
24 expenses allocated to each unit pursuant to section 33-1217.

25 9. "Common expenses" means expenditures made by or financial
26 liabilities of the association, together with any allocations to reserves.

27 10. "Condominium":

28 (a) Means real estate, portions of which are designated for
29 separate ownership and the remainder of which is designated for common
30 ownership solely by the owners of the separate portions. ~~Real estate is~~

31 (b) DOES not INCLUDE a condominium unless the undivided interests
32 in the common elements are vested in the unit owners.

33 11. "Condominium documents" means the declaration, bylaws, articles
34 of incorporation, if any, and rules, if any.

35 12. "Declarant" means any person or group of persons who reserves,
36 is granted or succeeds to any special declarant right.

37 13. "Declaration" means any instruments, however denominated, that
38 create a condominium and any amendments to those instruments.

39 14. "Development rights" means any right or combination of rights
40 reserved by or granted to a declarant in the declaration to do any of the
41 following:

42 (a) Add real estate to a condominium.

43 (b) Create easements, units, common elements or limited common
44 elements within a condominium.

- 1 (c) Subdivide units, convert units into common elements or convert
2 common elements into units.
- 3 (d) Withdraw real estate from a condominium.
- 4 (e) Make the condominium part of a larger condominium or planned
5 community.
- 6 (f) Amend the declaration during any period of declarant control,
7 pursuant to section 33-1243, subsection ~~F~~ H, to comply with applicable
8 law or to correct any error or inconsistency in the declaration, if the
9 amendment does not adversely affect the rights of any unit owner.
- 10 (g) Amend the declaration during any period of declarant control,
11 pursuant to section 33-1243, subsection ~~F~~ H, to comply with the rules or
12 guidelines, in effect from time to time, of any governmental or
13 quasi-governmental entity or federal corporation guaranteeing or insuring
14 mortgage loans or governing transactions involving mortgage instruments.
- 15 15. "Identifying number" means a symbol or address that identifies
16 one unit in a condominium.
- 17 16. "Leasehold condominium" means a condominium in which all or a
18 portion of the real estate is subject to a lease the expiration or
19 termination of which will terminate the condominium or reduce its size.
- 20 17. "Limited common element" means a portion of the common elements
21 specifically designated as a limited common element in the declaration and
22 allocated by the declaration or by operation of section 33-1212, paragraph
23 2 or 4 for the exclusive use of one or more but fewer than all of the
24 units.
- 25 18. "Person" means:
- 26 (a) A natural person, corporation, business trust, estate, trust,
27 partnership, association, joint venture, government, governmental
28 subdivision or agency, or other legal or commercial entity.
- 29 (b) In the case of a subdivision trust, as defined in section
30 6-801, ~~person means~~ the beneficiary of the trust who holds the right to
31 subdivide, develop or sell the real estate rather than the trust or
32 trustee.
- 33 19. "Real estate":
- 34 (a) Means any legal, equitable, leasehold or other estate or
35 interest in, over or under land, including structures, fixtures and other
36 improvements and interests which by custom, usage or law pass with a
37 conveyance of land though not described in the contract of sale or
38 instrument of conveyance. ~~Real estate~~
- 39 (b) Includes parcels with or without upper or lower boundaries and
40 spaces that may be filled with air or water.
- 41 20. "Rules" means the provisions, if any, adopted pursuant to the
42 declaration or bylaws governing maintenance and use of the units and
43 common elements.

1 21. "Special declarant rights" means any right or combination of
2 rights reserved by or granted to a declarant in the declaration to do any
3 of the following:

4 (a) Construct improvements provided for in the declaration.

5 (b) Exercise any development right.

6 (c) Maintain sales offices, management offices, signs advertising
7 the condominium, and models.

8 (d) Use easements through the common elements for the purpose of
9 making improvements within the condominium or within real estate ~~which~~
10 ~~THAT~~ may be added to the condominium.

11 (e) Appoint or remove any officer of the association or any board
12 member during any period of declarant control.

13 22. "Unit" means a portion of the condominium designated for
14 separate ownership or occupancy.

15 23. "Unit owner":

16 (a) Means a declarant or other person who owns a unit or, unless
17 otherwise provided in the lease, a lessee of a unit in a leasehold
18 condominium whose lease expires simultaneously with any lease the
19 expiration or termination of which will remove the unit from the
20 condominium. ~~But~~

21 (b) Does not include a person having an interest in a unit solely
22 as security for an obligation.

23 (c) In the case of a contract for conveyance, as defined in section
24 33-741, of real property, ~~unit owner~~ means the purchaser of the unit.

25 Sec. 2. Section 33-1215, Arizona Revised Statutes, is amended to
26 read:

27 33-1215. Contents of declaration

28 A. The declaration shall contain:

29 1. The name of the condominium, which shall include the word
30 "condominium" or be followed by the words "a condominium", and the name of
31 the association.

32 2. The name of every county in which any portion of the condominium
33 is located.

34 3. A legal description of the real estate included in the
35 condominium.

36 4. A description of the boundaries of each unit created by the
37 declaration, including each unit's identifying number.

38 5. A description of any limited common elements, other than those
39 specified in section 33-1212, paragraphs 2 and 4, but the declaration
40 shall contain a description of any porches, balconies, patios and
41 entryways, if any, as provided in section 33-1219, subsection B,
42 paragraph 11.

43 6. A description of any development rights and other special
44 declarant rights, together with a legal description of the real estate to
45 which each of those rights applies, any time limit within which each of

1 those rights must be exercised and any other conditions or limitations
2 under which the rights described in this paragraph may be exercised or
3 will lapse.

4 7. An allocation to each unit of the allocated interests in the
5 manner described in section 33-1217.

6 8. Any restrictions on use, occupancy and alienation of the units.

7 9. All matters required by sections 33-1216, 33-1217, 33-1218,
8 33-1219 and 33-1226 and section 33-1243, subsection ~~F~~ H.

9 10. A statement that the assessment obligation of the unit owner
10 under section 33-1255 is secured by a lien on the owner's unit in favor of
11 the association pursuant to section 33-1256.

12 11. If the condominium is a conversion from multifamily rental to
13 condominiums, a statement containing all of the following:

14 (a) A statement that the property is a conversion from multifamily
15 rental to condominiums.

16 (b) The date original construction was completed.

17 (c) The name and address of the original owner, builder, developer
18 and general contractor as shown on the applicable city, town or county
19 building permit.

20 (d) The name and address of each subsequent owner as determined by
21 a search of the county recorder's records in the county in which the
22 property is located.

23 (e) The subdivider's agreement to provide the following information
24 on request:

25 (i) The name and address of any builder, developer, general
26 contractor, subcontractor, architect and engineer who designed or made
27 improvements to the property immediately before the first condominium was
28 sold.

29 (ii) A specific description of all improvements made.

30 B. If a city, town or county is unable to produce a building permit
31 as required in subsection A, paragraph 11, subdivision (c) of this
32 section, the subdivider shall submit a letter from the applicable city,
33 town or county stating that the information required by subsection A,
34 paragraph 11, subdivision (c) of this section is not available.

35 C. The declaration may contain any other matters the declarant
36 deems appropriate.

37 Sec. 3. Section 33-1243, Arizona Revised Statutes, is amended to
38 read:

39 33-1243. Board of directors and officers; conflict; powers;
40 limitations; duties; indemnification; removal;
41 annual audit; applicability

42 A. Except as provided in the declaration, the bylaws, subsection B
43 of this section or other provisions of this chapter, the board of
44 directors may act in all instances on behalf of the association.

1 B. The board of directors shall not act on behalf of the
2 association to amend the declaration, terminate the condominium, elect
3 members of the board of directors or determine the qualifications, powers
4 and duties or terms of office of board of directors members. Except as
5 provided in subsection ~~H~~ K of this section, the board of directors may
6 fill vacancies in its membership for the unexpired portion of any term.

7 C. If any contract, decision or other action for compensation taken
8 by or on behalf of the board of directors would benefit any member of the
9 board of directors or any person who is a parent, ~~grandparent~~, spouse,
10 child or sibling of a member of the board of directors or a parent or
11 spouse of any of those persons, that member of the board of directors
12 shall declare a conflict of interest for that issue. The member shall
13 declare the conflict in an open meeting of the board before the board
14 discusses or takes action on that issue and that member may NOT then vote
15 on that issue. THE DECLARATION OF THE CONFLICT OF INTEREST SHALL BE
16 RECORDED IN THE MINUTES OF THE MEETING. Any contract entered into in
17 violation of this subsection is void and unenforceable.

18 D. IN ADDITION TO THE DUTIES IMPOSED BY THIS CHAPTER AND THE
19 CONDOMINIUM DOCUMENTS, THE ASSOCIATION THROUGH ITS BOARD OF DIRECTORS HAS
20 THE FOLLOWING DUTIES TO THE UNIT OWNERS OF THE CONDOMINIUM AS A WHOLE:

21 1. TO ACT WITH THE CARE AN ORDINARILY PRUDENT PERSON IN A LIKE
22 POSITION WOULD EXERCISE UNDER SIMILAR CIRCUMSTANCES IN MANAGING AND
23 MAINTAINING THE COMMON PROPERTY AND IN PROTECTING AND MANAGING THE
24 FINANCIAL ASSETS AND AFFAIRS OF THE ASSOCIATION.

25 2. TO TREAT UNIT OWNERS FAIRLY AND TO ENSURE THAT THIS DUTY IS
26 REQUIRED OF ANY AGENT ACTING ON ITS BEHALF.

27 3. TO ACT REASONABLY IN THE EXERCISE OF ITS DISCRETIONARY POWERS,
28 INCLUDING RULEMAKING, ENFORCEMENT AND DESIGN-CONTROL POWERS.

29 E. THE DIRECTORS AND OFFICERS OF A CONDOMINIUM ASSOCIATION HAVE A
30 DUTY TO THE ASSOCIATION TO ACT IN GOOD FAITH, TO ACT IN COMPLIANCE WITH
31 AND WITHIN THE AUTHORITY OF THIS CHAPTER AND THE CONDOMINIUM DOCUMENTS, TO
32 DEAL FAIRLY WITH THE ASSOCIATION AND ITS UNIT OWNERS AND TO USE ORDINARY
33 CARE AND PRUDENCE IN PERFORMING THEIR FUNCTIONS.

34 F. THE ASSOCIATION AND ITS DIRECTORS AND OFFICERS ARE INDEMNIFIED
35 FROM ANY LIABILITY FOR ANY ACTION TAKEN OR ANY FAILURE TO TAKE ANY ACTION
36 IF THE DUTIES WERE PERFORMED IN COMPLIANCE WITH SUBSECTIONS D AND E OF
37 THIS SECTION. IN ANY PROCEEDING FILED PURSUANT TO THIS SECTION, A
38 DIRECTOR HAS ALL OF THE DEFENSES AND PRESUMPTIONS ORDINARILY AVAILABLE TO
39 A DIRECTOR. A DIRECTOR IS PRESUMED IN ALL CASES TO HAVE ACTED, FAILED TO
40 ACT OR OTHERWISE DISCHARGED THE DIRECTOR'S DUTIES IN ACCORDANCE WITH
41 SUBSECTIONS D AND E OF THIS SECTION. THE PARTY CHALLENGING THE
42 ASSOCIATION'S OR DIRECTOR'S ACTION, FAILURE TO ACT OR OTHER DISCHARGE OF
43 DUTIES HAS THE BURDEN TO ESTABLISH A BREACH OF DUTY BY CLEAR AND
44 CONVINCING EVIDENCE OF FACTS REBUTTING THE PRESUMPTION. UNLESS THE BREACH
45 OF DUTY IS BASED ON ANY ACTION OUTSIDE THE AUTHORITY OF THE BOARD OF

1 DIRECTORS OR INDIVIDUAL DIRECTORS, THE CHALLENGER HAS AN ADDITIONAL BURDEN
2 OF PROVING THAT THE ACTION BY THE ASSOCIATION OR DIRECTOR CAUSED OR
3 THREATENS TO CAUSE HARM TO THE UNIT OWNER INDIVIDUALLY OR TO THE INTEREST
4 OF THE CONDOMINIUM COMMUNITY.

5 ~~D.~~ G. Except as provided in the declaration, within thirty days
6 after adoption of any proposed budget for the condominium, the board of
7 directors shall provide a summary of the budget to all the unit owners.
8 Unless the board of directors is expressly authorized in the declaration
9 to adopt and amend budgets from time to time, any budget or amendment
10 shall be ratified by the unit owners in accordance with the procedures set
11 forth in this subsection. If ratification is required, the board of
12 directors shall set a date for a meeting of the unit owners to consider
13 ratification of the budget not fewer than fourteen ~~not~~ OR more than thirty
14 days after mailing of the summary. Unless at that meeting a majority of
15 all the unit owners or any larger vote specified in the declaration
16 rejects the budget, the budget is ratified, whether or not a quorum is
17 present. If the proposed budget is rejected, the periodic budget last
18 ratified by the unit owners shall be continued until such time as the unit
19 owners ratify a subsequent budget proposed by the board of directors.

20 ~~E.~~ H. The declaration may provide for a period of declarant
21 control of the association, during which period a declarant or persons
22 designated by the declarant may appoint and remove the officers and
23 members of the board of directors. Regardless of the period provided in
24 the declaration, a period of declarant control terminates ~~not~~ NOT later
25 than the earlier of:

26 1. Ninety days after conveyance of seventy-five percent of the
27 units that may be created to unit owners other than a declarant.

28 2. Four years after all declarants have ceased to offer units for
29 sale in the ordinary course of business.

30 ~~F.~~ I. A declarant may voluntarily surrender the right to appoint
31 and remove officers and members of the board of directors before
32 termination of the period prescribed in subsection ~~E.~~ H of this section,
33 but in that event the declarant may require, for the duration of the
34 period of declarant control, that specified actions of the association or
35 board of directors, as described in a recorded instrument executed by the
36 declarant, be approved by the declarant before they become effective.

37 ~~G.~~ J. Not later than the termination of any period of declarant
38 control the unit owners shall elect a board of directors of at least three
39 members, at least a majority of whom must be unit owners. The board of
40 directors shall elect the officers. The board members and officers shall
41 take office on election.

42 ~~H.~~ K. Notwithstanding any provision of the declaration or bylaws
43 to the contrary, all of the following apply to a meeting at which a member
44 of the board of directors, other than a member appointed by the declarant,
45 is proposed to be removed from the board of directors:

1 1. The unit owners who are eligible to vote at the time of the
2 meeting may remove any member of the board of directors, other than a
3 member appointed by the declarant, by a majority vote of those voting on
4 the matter at a meeting of the unit owners.

5 2. The meeting of the unit owners shall be called pursuant to this
6 section and action may be taken only if a quorum is present.

7 3. The unit owners may remove any member of the board of directors
8 with or without cause, other than a member appointed by the declarant.

9 4. For purposes of calling for removal of a member of the board of
10 directors, other than a member appointed by the declarant, the following
11 apply:

12 (a) In an association with one thousand or fewer members, on
13 receipt of a petition that calls for removal of a member of the board of
14 directors and that is signed by the number of persons who are eligible to
15 vote in the association at the time the person signs the petition equal to
16 at least twenty-five percent of the votes in the association or by the
17 number of persons who are eligible to vote in the association at the time
18 the person signs the petition equal to at least one hundred votes in the
19 association, whichever is less, the board shall call and provide written
20 notice of a special meeting of the association as prescribed by section
21 33-1248, subsection B.

22 (b) Notwithstanding section 33-1248, subsection B, in an
23 association with more than one thousand members, on receipt of a petition
24 that calls for removal of a member of the board of directors and that is
25 signed by the number of persons who are eligible to vote in the
26 association at the time the person signs the petition equal to at least
27 ten percent of the votes in the association or by the number of persons
28 who are eligible to vote in the association at the time the person signs
29 the petition equal to at least one thousand votes in the association,
30 whichever is less, the board shall call and provide written notice of a
31 special meeting of the association. The board shall provide written
32 notice of a special meeting as prescribed by section 33-1248,
33 subsection B.

34 (c) The special meeting shall be called, noticed and held within
35 thirty days after receipt of the petition.

36 (d) For purposes of a special meeting called pursuant to this
37 subsection, a quorum is present if the number of owners who are eligible
38 to vote in the association at the time the person attends the meeting
39 equal to at least twenty percent of the votes of the association or the
40 number of persons who are eligible to vote in the association at the time
41 the person attends the meeting equal to at least one thousand votes,
42 whichever is less, is present at the meeting in person or as otherwise
43 ~~permitted~~ ALLOWED by law.

1 (e) If a civil action is filed regarding the removal of a board
2 member, the prevailing party in the civil action shall be awarded its
3 reasonable attorney fees and costs.

4 (f) The board of directors shall retain all documents and other
5 records relating to the proposed removal of the member of the board of
6 directors and any election or other action taken for that director's
7 replacement for at least one year after the date of the special meeting
8 and shall ~~permit~~ ALLOW members to inspect those documents and records
9 pursuant to section 33-1258.

10 (g) A petition that calls for the removal of the same member of the
11 board of directors shall not be submitted more than once during each term
12 of office for that member.

13 5. On removal of at least one but fewer than a majority of the
14 members of the board of directors at a special meeting of the membership
15 called pursuant to this subsection, the vacancies shall be filled as
16 provided in the condominium documents.

17 6. On removal of a majority of the members of the board of
18 directors at a special meeting of the membership called pursuant to this
19 subsection, or if the condominium documents do not provide a method for
20 filling board vacancies, the association shall hold an election for the
21 replacement of the removed directors at a separate meeting of the members
22 of the association that is held not later than thirty days after the
23 meeting at which the members of the board of directors were removed.

24 7. A member of the board of directors who is removed pursuant to
25 this subsection is not eligible to serve on the board of directors again
26 until after the expiration of the removed board member's term of office,
27 unless the condominium documents specifically provide for a longer period
28 of ineligibility.

29 ~~I.~~ L. For an association in which board members are elected from
30 separately designated voting districts, a member of the board of
31 directors, other than a member appointed by the declarant, may be removed
32 only by a vote of the members from that voting district, and only the
33 members from that voting district are eligible to vote on the matter or be
34 counted for purposes of determining a quorum.

35 ~~J.~~ M. Unless any provision in the condominium documents requires
36 an annual audit by a certified public accountant, the board of directors
37 shall provide for an annual financial audit, review or compilation of the
38 association. The audit, review or compilation shall be completed no later
39 than one hundred eighty days after the end of the association's fiscal
40 year and shall be made available on request to the unit owners within
41 thirty days after its completion.

42 ~~K.~~ N. This section does not apply to timeshare plans or
43 associations, or the period of declarant control under timeshare
44 instruments, that are subject to chapter 20 of this title.

1 RECORDED IN THE MINUTES OF THE MEETING. Any contract entered into in
2 violation of this ~~section~~ SUBSECTION is void and unenforceable.

3 D. IN ADDITION TO THE DUTIES IMPOSED BY THIS CHAPTER AND THE
4 COMMUNITY DOCUMENTS, THE ASSOCIATION THROUGH ITS BOARD OF DIRECTORS HAS
5 THE FOLLOWING DUTIES TO THE MEMBERS OF THE PLANNED COMMUNITY AS A WHOLE:

6 1. TO ACT WITH THE CARE AN ORDINARILY PRUDENT PERSON IN A LIKE
7 POSITION WOULD EXERCISE UNDER SIMILAR CIRCUMSTANCES IN MANAGING AND
8 MAINTAINING THE COMMON PROPERTY AND IN PROTECTING AND MANAGING THE
9 FINANCIAL ASSETS AND AFFAIRS OF THE ASSOCIATION.

10 2. TO TREAT MEMBERS FAIRLY AND TO ENSURE THAT THIS DUTY IS REQUIRED
11 OF ANY AGENT ACTING ON ITS BEHALF.

12 3. TO ACT REASONABLY IN THE EXERCISE OF ITS DISCRETIONARY POWERS,
13 INCLUDING RULEMAKING, ENFORCEMENT AND DESIGN-CONTROL POWERS.

14 E. THE DIRECTORS AND OFFICERS OF A PLANNED COMMUNITY ASSOCIATION
15 HAVE A DUTY TO THE ASSOCIATION TO ACT IN GOOD FAITH, TO ACT IN COMPLIANCE
16 WITH AND WITHIN THE AUTHORITY OF THIS CHAPTER AND THE COMMUNITY DOCUMENTS,
17 TO DEAL FAIRLY WITH THE ASSOCIATION AND ITS MEMBERS AND TO USE ORDINARY
18 CARE AND PRUDENCE IN PERFORMING THEIR FUNCTIONS.

19 F. THE ASSOCIATION AND ITS DIRECTORS AND OFFICERS ARE INDEMNIFIED
20 FROM ANY LIABILITY FOR ANY ACTION TAKEN OR ANY FAILURE TO TAKE ANY ACTION
21 IF THE DUTIES WERE PERFORMED IN COMPLIANCE WITH SUBSECTIONS D AND E OF
22 THIS SECTION. IN ANY PROCEEDING FILED PURSUANT TO THIS SECTION, A
23 DIRECTOR HAS ALL OF THE DEFENSES AND PRESUMPTIONS ORDINARILY AVAILABLE TO
24 A DIRECTOR. A DIRECTOR IS PRESUMED IN ALL CASES TO HAVE ACTED, FAILED TO
25 ACT OR OTHERWISE DISCHARGED THE DIRECTOR'S DUTIES IN ACCORDANCE WITH
26 SUBSECTIONS D AND E OF THIS SECTION. THE PARTY CHALLENGING THE
27 ASSOCIATION'S OR DIRECTOR'S ACTION, FAILURE TO ACT OR OTHER DISCHARGE OF
28 DUTIES HAS THE BURDEN TO ESTABLISH A BREACH OF DUTY BY CLEAR AND
29 CONVINCING EVIDENCE OF FACTS REBUTTING THE PRESUMPTION. UNLESS THE BREACH
30 OF DUTY IS BASED ON ANY ACTION OUTSIDE THE AUTHORITY OF THE BOARD OF
31 DIRECTORS OR INDIVIDUAL DIRECTORS, THE CHALLENGER HAS AN ADDITIONAL BURDEN
32 OF PROVING THAT THE ACTION BY THE ASSOCIATION OR DIRECTOR CAUSED OR
33 THREATENS TO CAUSE HARM TO THE MEMBER INDIVIDUALLY OR TO THE INTEREST OF
34 THE PLANNED COMMUNITY.

35 Sec. 6. Legislative intent; duty to members; clarifying
36 changes

37 The legislature finds that Tierra Ranchos Homeowners Association v.
38 Kitchukov, 216 Ariz. 195 (Ct. App. 2007) governs the nature and extent of
39 the duty owed by the board of directors of a homeowners' association to
40 its members. The legislature intends that the amendments made to sections
41 33-1243 and 33-1811, Arizona Revised Statutes, are clarifying changes and
42 do not provide any substantive change in the law, and that the remaining
43 provisions of the act are intended to further these clarifying changes.