

House Engrossed

~~homeowner's associations; fees; related parties~~
(now: real property)

State of Arizona
House of Representatives
Fifty-sixth Legislature
Second Regular Session
2024

HOUSE BILL 2119

AN ACT

AMENDING SECTION 33-442, 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 33-442, Arizona Revised Statutes, is amended to
3 read:

4 33-442. Prohibition on transfer fees; exceptions; definitions

5 A. A provision in a declaration, a covenant or any other document
6 relating to real property in this state is not binding or enforceable
7 against the real property or against any subsequent owner, purchaser,
8 lienholder or other claimant on the property if it purports to do both of
9 the following:

10 1. Bind successors in title to the specified real property.

11 2. Obligate the transferee or transferor of all or part of the
12 property to pay a fee or other charge to a declarant or a third person on
13 transfer of an interest in the property or in consideration for permitting
14 such a transfer. Regularly scheduled fees or charges shall not be
15 considered payable on transfer of an interest if the fees or charges will
16 be payable by the owner of the property regardless of whether or not the
17 property is transferred, even if the obligation to pay does not commence
18 until the trustee, declarant, builder or developer first conveys the
19 property to a retail purchaser.

20 B. A transfer fee provision prescribed by subsection A of this
21 section is unenforceable whether or not recorded and does not create a
22 lien right and any lien purportedly arising out of an unenforceable
23 provision prescribed by subsection A of this section is invalid and
24 unenforceable.

25 C. This section does not apply to any of the following:

26 1. Any provision of a purchase contract, option, mortgage, security
27 agreement, real property listing agreement or other agreement that
28 obligates one party to the agreement to pay the other party as full or
29 partial consideration for the agreement or for a waiver of rights under
30 the agreement if the amount to be paid is:

31 (a) A loan assumption fee or similar fee charged by a lender that
32 holds a lien on the property.

33 (b) A fee or commission paid to a licensed real estate broker for
34 brokerage services rendered in connection with the transfer of the
35 property for which the fee or commission is paid.

36 2. Any provision in a deed, memorandum or other document recorded
37 for the purpose of providing record notice of an agreement prescribed in
38 paragraph 1, subdivision (a) of this subsection.

39 3. Any provision of a document that requires payment of a fee or
40 charge to an association to be used exclusively for the purpose authorized
41 in the document if both of the following apply:

42 (a) The fee being charged touches and concerns the land.

1 (b) No portion of the charge or fee is required to be passed
2 through to a third party or declarant designated or identifiable by
3 description in the document or in another document that is referenced in
4 the document unless the third party is authorized in the document to
5 manage real property within the association or was part of an approved
6 development plan.

7 4. Any rent, reimbursement, charge, fee or other amount payable by
8 a lessee to a lessor under a lease, including any fee payable to the
9 lessor for consenting to an assignment, sublease, encumbrance or transfer
10 of the lease.

11 5. Any consideration payable to the holder of an option to purchase
12 an interest in the real property or to the holder of a right of first
13 refusal or first offer to purchase an interest in real property and paid
14 for waiving, releasing or not exercising the option or right on transfer
15 of the property to another person.

16 6. Any fee, charge, assessment, dues, contribution or other amount
17 relating to the purchase or transfer of a club membership related to the
18 real property owner by the transferor.

19 7. Any fee or charge that is imposed by a document and that is
20 payable to a nonprofit corporation for the sole purpose of supporting
21 recreational activities within the association.

22 8. Any fee, tax, assessment or other charge imposed by a
23 governmental authority pursuant to applicable laws, ordinances or
24 regulations.

25 9. Any consideration payable by the transferee to the transferor
26 for the interest in real property being transferred including any
27 subsequent additional consideration for the property payable by the
28 transferee based on any subsequent appreciation, development or sale of
29 the property.

30 D. Notwithstanding any provision in the document or purported lien,
31 a transfer fee covenant or other document prescribed by subsection A of
32 this section or a lien purporting to secure payment under a transfer fee
33 covenant or document prescribed by subsection A of this section that is
34 executed after July 29, 2010 is not binding or enforceable. This section
35 shall not be construed to imply that a transfer fee covenant or other
36 document prescribed by subsection A of this section that is executed
37 before July 29, 2010 is enforceable or valid.

38 E. AN ASSOCIATION SHALL NOT CHARGE A FEE AUTHORIZED UNDER
39 SUBSECTION C OF THIS SECTION FOR ANY CONVEYANCE BETWEEN PARTIES PRESCRIBED
40 BY SECTION 11-1134, SUBSECTION B, PARAGRAPHS 3 OR 7, EXCEPT FOR SERVICE
41 FEES AUTHORIZED IN ANY DOCUMENT TO MANAGE REAL PROPERTY WITHIN THE
42 ASSOCIATION.

43 ~~E.~~ F. For the purposes of this section:

44 1. "Association" means a nonprofit organization that is qualified
45 under section 501(c)(3) or section 501(c)(4) of the United States internal

1 revenue code or a nonprofit mandatory membership organization that is
2 created pursuant to a declaration, covenant or other applicable law and
3 that is composed of the owners of homes, condominiums, cooperatives or
4 manufactured homes or any other interest in real property.

5 2. "Transfer" means the sale, gift, conveyance, assignment,
6 inheritance or other transfer of an interest in real property located in
7 this state.