

REFERENCE TITLE: homeowners' associations; financial approvals; members

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

HB 2126

Introduced by
Representative Parker B

AN ACT

AMENDING SECTIONS 33-1202, 33-1215, 33-1243, 33-1245 AND 33-1803, 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" means real estate, portions of which are
28 designated for separate ownership and the remainder of which is designated
29 for common ownership solely by the owners of the separate portions. Real
30 estate is not a condominium unless the undivided interests in the common
31 elements are vested in the unit owners.

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

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

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

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

41 (a) Add real estate to a condominium.

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

44 (c) Subdivide units, convert units into common elements or convert
45 common elements into units.

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

1 (b) Exercise any development right.

2 (c) Maintain sales offices, management offices, signs advertising
3 the condominium, and models.

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

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

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

11 23. "Unit owner" means a declarant or other person who owns a unit
12 or, unless otherwise provided in the lease, a lessee of a unit in a
13 leasehold condominium whose lease expires simultaneously with any lease
14 the expiration or termination of which will remove the unit from the
15 condominium but does not include a person having an interest in a unit
16 solely as security for an obligation. In the case of a contract for
17 conveyance, as defined in section 33-741, of real property, unit owner
18 means the purchaser of the unit.

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

21 33-1215. Contents of declaration

22 A. The declaration shall contain:

23 1. The name of the condominium, which shall include the word
24 "condominium" or be followed by the words "a condominium", and the name of
25 the association.

26 2. The name of every county in which any portion of the condominium
27 is located.

28 3. A legal description of the real estate included in the
29 condominium.

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

32 5. A description of any limited common elements, other than those
33 specified in section 33-1212, paragraphs 2 and 4, but the declaration
34 shall contain a description of any porches, balconies, patios and
35 entryways, if any, as provided in section 33-1219, subsection B, paragraph
36 11.

37 6. A description of any development rights and other special
38 declarant rights, together with a legal description of the real estate to
39 which each of those rights applies, any time limit within which each of
40 those rights must be exercised and any other conditions or limitations
41 under which the rights described in this paragraph may be exercised or
42 will lapse.

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

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

1 9. All matters required by sections 33-1216, 33-1217, 33-1218,
2 33-1219 and 33-1226 and section 33-1243, subsection ~~F~~ F.

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

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

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

10 (b) The date original construction was completed.

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

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

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

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

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

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

29 C. The declaration may contain any other matters the declarant
30 deems appropriate.

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

33 33-1243. Board of directors and officers; conflict; powers;
34 limitations; removal; annual audit; applicability

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

38 B. The board of directors shall not act on behalf of the
39 association to amend the declaration, terminate the condominium, elect
40 members of the board of directors or determine the qualifications, powers
41 and duties or terms of office of board of directors members. Except as
42 provided in subsection ~~H~~ I of this section, the board of directors may
43 fill vacancies in its membership for the unexpired portion of any term.

44 C. If any contract, decision or other action for compensation taken
45 by or on behalf of the board of directors would benefit any member of the

1 board of directors or any person who is a parent, grandparent, spouse,
2 child or sibling of a member of the board of directors or a parent or
3 spouse of any of those persons, that member of the board of directors
4 shall declare a conflict of interest for that issue. The member shall
5 declare the conflict in an open meeting of the board before the board
6 discusses or takes action on that issue and that member may then vote on
7 that issue. Any contract entered into in violation of this subsection is
8 void and unenforceable.

9 D. ~~Except as provided in the declaration,~~ NOTWITHSTANDING ANY
10 PROVISION OF THE CONDOMINIUM DOCUMENTS, within thirty days after adoption
11 of any proposed budget for the condominium, the board of directors shall
12 provide a summary of the budget to all the unit owners. ~~Unless the board~~
13 ~~of directors is expressly authorized in the declaration to adopt and amend~~
14 ~~budgets from time to time,~~ Any budget or amendment shall be ratified by
15 the unit owners in accordance with the procedures set forth in this
16 subsection. ~~If ratification is required,~~ The board of directors shall set
17 a date AND PROVIDE NOTICE PURSUANT TO SECTION 33-1248 for a SPECIAL
18 meeting of the unit owners to consider ratification of the budget not
19 fewer than fourteen or more than thirty days after mailing of the summary.
20 ~~Unless at that meeting a majority of all the unit owners or any larger~~
21 ~~vote specified in the declaration rejects the budget, the budget is~~
22 ~~ratified,~~ THE PROPOSED BUDGET IS RATIFIED IF A MAJORITY OF ALL UNIT OWNERS
23 VOTING IN PERSON OR BY ABSENTEE BALLOT VOTE TO APPROVE THE BUDGET AS
24 PRESENTED, whether or not a quorum is present. If the proposed budget is
25 ~~rejected~~ NOT APPROVED, the periodic budget last ratified by the unit
26 owners shall be continued until such time as the unit owners ratify a
27 subsequent budget proposed by the board of directors. ANY BUDGET APPROVED
28 BY THE BOARD OF DIRECTORS BEFORE THE EFFECTIVE DATE OF THIS AMENDMENT TO
29 THIS SECTION IS DEEMED TO BE APPROVED BY THE UNIT OWNERS.

30 E. NOTWITHSTANDING ANY PROVISION OF THE CONDOMINIUM DOCUMENTS, IF
31 THE BOARD OF DIRECTORS VOTES TO PROPOSE A SPECIAL ASSESSMENT OR TO SECURE
32 FINANCING OF MORE THAN ONE YEAR'S DURATION FOR ANY REASON, THAT SPECIAL
33 ASSESSMENT OR FINANCING MUST FIRST BE APPROVED BY THE AFFIRMATIVE VOTE OF
34 A MAJORITY OF ALL OF THE UNIT OWNERS OR BY ANY LARGER PERCENTAGE SPECIFIED
35 IN THE DECLARATION OR BYLAWS.

36 ~~E.~~ F. The declaration may provide for a period of declarant
37 control of the association, during which period a declarant or persons
38 designated by the declarant may appoint and remove the officers and
39 members of the board of directors. Regardless of the period provided in
40 the declaration, a period of declarant control terminates not later than
41 the earlier of:

- 42 1. Ninety days after conveyance of seventy-five percent of the
43 units that may be created to unit owners other than a declarant.
- 44 2. Four years after all declarants have ceased to offer units for
45 sale in the ordinary course of business.

1 ~~F.~~ G. A declarant may voluntarily surrender the right to appoint
2 and remove officers and members of the board of directors before
3 termination of the period prescribed in subsection ~~F~~ F of this section,
4 but in that event the declarant may require, for the duration of the
5 period of declarant control, that specified actions of the association or
6 board of directors, as described in a recorded instrument executed by the
7 declarant, be approved by the declarant before they become effective.

8 ~~G.~~ H. Not later than the termination of any period of declarant
9 control the unit owners shall elect a board of directors of at least three
10 members, at least a majority of whom must be unit owners. The board of
11 directors shall elect the officers. The board members and officers shall
12 take office on election.

13 ~~H.~~ I. Notwithstanding any provision of the declaration or bylaws
14 to the contrary, all of the following apply to a meeting at which a member
15 of the board of directors, other than a member appointed by the declarant,
16 is proposed to be removed from the board of directors:

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

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

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

25 4. For purposes of calling for removal of a member of the board of
26 directors, other than a member appointed by the declarant, the following
27 apply:

28 (a) In an association with one thousand or fewer members, on
29 receipt of a petition that calls for removal of a member of the board of
30 directors and that is signed by the number of persons who are eligible to
31 vote in the association at the time the person signs the petition equal to
32 at least twenty-five percent of the votes in the association or by the
33 number of persons who are eligible to vote in the association at the time
34 the person signs the petition equal to at least one hundred votes in the
35 association, whichever is less, the board shall call and provide written
36 notice of a special meeting of the association as prescribed by section
37 33-1248, subsection B.

38 (b) Notwithstanding section 33-1248, subsection B, in an
39 association with more than one thousand members, on receipt of a petition
40 that calls for removal of a member of the board of directors and that is
41 signed by the number of persons who are eligible to vote in the
42 association at the time the person signs the petition equal to at least
43 ten percent of the votes in the association or by the number of persons
44 who are eligible to vote in the association at the time the person signs
45 the petition equal to at least one thousand votes in the association,

1 whichever is less, the board shall call and provide written notice of a
2 special meeting of the association. The board shall provide written
3 notice of a special meeting as prescribed by section 33-1248,
4 subsection B.

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

7 (d) If all of the requirements of this subsection for calling a
8 special meeting are met and the board of directors fails to call, notice
9 and hold a special meeting within thirty days after receipt of the
10 petition, the members of the board of directors are deemed removed from
11 office effective at midnight of the thirty-first day.

12 (e) For purposes of a special meeting called pursuant to this
13 subsection, a quorum is present if the number of owners who are eligible
14 to vote in the association at the time the person attends the meeting
15 equal to at least twenty percent of the votes of the association or the
16 number of persons who are eligible to vote in the association at the time
17 the person attends the meeting equal to at least one thousand votes,
18 whichever is less, is present at the meeting in person or as otherwise
19 allowed by law.

20 (f) If a civil action is filed regarding the removal of a board
21 member, the prevailing party in the civil action shall be awarded its
22 reasonable attorney fees and costs.

23 (g) The board of directors shall retain all documents and other
24 records relating to the proposed removal of the member of the board of
25 directors and any election or other action taken for that director's
26 replacement for at least one year after the date of the special meeting
27 and shall allow members to inspect those documents and records pursuant to
28 section 33-1258.

29 (h) A petition that calls for the removal of the same member of the
30 board of directors shall not be submitted more than once during each term
31 of office for that member.

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

36 6. On removal of a majority of the members of the board of
37 directors at a special meeting of the membership called pursuant to this
38 subsection, or if the condominium documents do not provide a method for
39 filling board vacancies, the association shall hold an election for the
40 replacement of the removed directors at a separate meeting of the members
41 of the association that is held not later than thirty days after the
42 meeting at which the members of the board of directors were removed.

43 7. A member of the board of directors who is removed pursuant to
44 this subsection is not eligible to serve on the board of directors again
45 until after the expiration of the removed board member's term of office,

1 unless the condominium documents specifically provide for a longer period
2 of ineligibility.

3 ~~J.~~ J. For an association in which board members are elected from
4 separately designated voting districts, a member of the board of
5 directors, other than a member appointed by the declarant, may be removed
6 only by a vote of the members from that voting district, and only the
7 members from that voting district are eligible to vote on the matter or be
8 counted for purposes of determining a quorum.

9 ~~K.~~ K. Unless any provision in the condominium documents requires
10 an annual audit by a certified public accountant, the board of directors
11 shall provide for an annual financial audit, review or compilation of the
12 association. The audit, review or compilation shall be completed no later
13 than one hundred eighty days after the end of the association's fiscal
14 year and shall be made available on request to the unit owners within
15 thirty days after its completion.

16 ~~L.~~ L. This section does not apply to timeshare plans or
17 associations, or the period of declarant control under timeshare
18 instruments, that are subject to chapter 20 of this title.

19 Sec. 4. Section 33-1245, Arizona Revised Statutes, is amended to
20 read:

21 33-1245. Termination of contracts and leases of declarant;
22 applicability

23 A. A contract for any of the following, if entered into before the
24 board of directors elected by the unit owners pursuant to section 33-1243,
25 subsection ~~H~~ H takes office, shall contain a provision in the contract
26 that the contract may be terminated without penalty by the association at
27 any time after the board of directors elected by the unit owners takes
28 office:

29 1. Any management contract or employment contract.

30 2. Any other contract or lease between the association and a
31 declarant or an affiliate of a declarant.

32 3. Any contract or lease that is not bona fide or was
33 unconscionable to the unit owners at the time entered into under the
34 circumstances then prevailing.

35 B. The board of directors shall notify the appropriate contractual
36 party of the termination at least thirty days before termination.

37 C. This section does not apply to any lease if the termination of
38 the lease would terminate the condominium or reduce its size.

39 D. If a contract covered by this section fails to contain the
40 provisions required by subsection A of this section, the contract is
41 voidable at the option of the association.

42 E. This section does not apply to timeshare plans or associations
43 that are subject to chapter 20 of this title.

1 ~~E~~. D. A member who receives a written notice that the condition of
2 the property owned by the member is in violation of the community
3 documents without regard to whether a monetary penalty is imposed by the
4 notice may provide the association with a written response by sending the
5 response by certified mail within twenty-one calendar days after the date
6 of the notice. The response shall be sent to the address identified in
7 the notice.

8 ~~D~~. E. Within ten business days after receipt of the certified mail
9 containing the response from the member, the association shall respond to
10 the member with a written explanation regarding the notice that shall
11 provide at least the following information unless previously provided in
12 the notice of violation:

13 1. The provision of the community documents that has allegedly been
14 violated.

15 2. The date of the violation or the date the violation was
16 observed.

17 3. The first and last name of the person or persons who observed
18 the violation.

19 4. The process the member must follow to contest the notice.

20 ~~E~~. F. Unless the information required in subsection ~~D~~ E,
21 paragraph 4 of this section is provided in the notice of violation, the
22 association shall not proceed with any action to enforce the community
23 documents, including the collection of attorney fees, before or during the
24 time prescribed by subsection ~~D~~ E of this section regarding the exchange
25 of information between the association and the member and shall give the
26 member written notice of the member's option to petition for an
27 administrative hearing on the matter in the state real estate department
28 pursuant to section 32-2199.01. At any time before or after completion of
29 the exchange of information pursuant to this section, the member may
30 petition for a hearing pursuant to section 32-2199.01 if the dispute is
31 within the jurisdiction of the state real estate department as prescribed
32 in section 32-2199.01.