

REFERENCE TITLE: **condominiums; terminations**

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

# **HB 2861**

Introduced by  
Representatives Schwiebert: Wilmeth

**AN ACT**

**AMENDING SECTIONS 33-1228 AND 33-1260, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 9, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-1262; 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

1 sold following termination, the termination agreement shall set forth the  
2 minimum terms of the sale.

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

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

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

37 I. The respective interests of unit owners referred to in  
38 subsections F, G and H of this section are as follows:

39 1. Except as provided in paragraph 2 of this subsection, the  
40 respective interests of unit owners are the fair market values of their  
41 units, limited common elements and common element interests immediately  
42 before the termination, ~~and~~ AND their pro rata share of any monies in the  
43 association's reserve fund and the operating account IMMEDIATELY BEFORE  
44 THE TERMINATION. ~~and~~ ONLY FOR A UNIT THAT IS OWNER-OCCUPIED, THE UNIT  
45 OWNER SHALL RECEIVE an additional five TEN percent of that total amount

1 for relocation costs ALONG WITH ALL CLOSING COSTS OF THE SALES  
2 TRANSACTION, INCLUDING COSTS FOR TITLE INSURANCE IF REQUESTED BY THE UNIT  
3 OWNER. FOR ALL UNIT OWNERS, THE FAIR MARKET VALUE OF THE UNIT SHALL BE  
4 DETERMINED BY AN INDEPENDENT APPRAISAL OF THE UNIT THAT IS MADE USING  
5 UNITS WITH A SIMILAR SQUARE FOOTAGE, A SIMILAR AGE, A SIMILAR NUMBER OF  
6 BEDROOMS AND BATHROOMS AND OTHER SIMILAR FEATURES, INCLUDING COMMON  
7 ELEMENT AMENITIES SUCH AS SWIMMING POOLS, RECREATIONAL COURTS AND  
8 CLUBHOUSES. THE APPRAISAL SHALL BE CONDUCTED BY A PERSON WHO IS A  
9 STATE-LICENSED REAL ESTATE APPRAISER, STATE-CERTIFIED RESIDENTIAL REAL  
10 ESTATE APPRAISER OR STATE-CERTIFIED GENERAL REAL ESTATE APPRAISER AS  
11 PRESCRIBED BY TITLE 32, CHAPTER 36 AND SHALL INCLUDE AT LEAST THREE  
12 COMPARABLE SALES, WITH ONE COMPARABLE SALE OF A UNIT FROM WITHIN THAT  
13 CONDOMINIUM COMPLEX, IF AVAILABLE, AND TWO COMPARABLE SALES FROM OUTSIDE  
14 THAT CONDOMINIUM COMPLEX. THE COMPARABLE SALES THAT ARE USED BY THE  
15 APPRAISER MUST BE COMPLETED TRANSACTIONS. ANY APPRAISAL USED FOR THIS  
16 PURPOSE IS AT THE UNIT OWNER'S OPTION, AND THE BUYER SHALL PAY FOR THE  
17 APPRAISAL. IF THE UNIT OWNER CHOOSES NOT TO USE AN APPRAISAL, THE FAIR  
18 MARKET VALUE SHALL BE DETERMINED WITHOUT IT AS PRESCRIBED BY THIS  
19 PARAGRAPH. THE FAIR MARKET VALUE SHALL NOT BE REDUCED BY ANY SPECIAL  
20 ASSESSMENTS, CAPITAL IMPROVEMENT FEES OR OTHER CHARGES IMPOSED BY THE  
21 ASSOCIATION DURING THE TWO-YEAR PERIOD IMMEDIATELY PRECEDING THE  
22 TERMINATION. ~~An independent appraiser selected by the association shall  
23 determine the total fair market values. The determination of the  
24 independent appraiser shall be distributed to the unit owners and becomes  
25 final unless disapproved within sixty days after distribution to the unit  
26 owner. Any unit owner may obtain a second independent appraisal at the  
27 unit owner's expense and, if the unit owner's independent appraisal amount  
28 differs from the association's independent appraisal amount by five  
29 percent or less, the higher appraisal is final. If the total amount of  
30 compensation owed as determined by the second appraiser is more than five  
31 percent higher than the amount determined by the association's appraiser,  
32 IF THE UNIT OWNER AND THE BUYER DO NOT AGREE ON THE FAIR MARKET VALUE OF  
33 THE UNIT AND, IF APPLICABLE, THE RELOCATION COSTS AND OTHER ADDITIONAL  
34 AMOUNTS DUE TO THE OWNER OF AN OWNER-OCCUPIED UNIT, the unit owner shall  
35 MAY submit THE ISSUES to arbitration by an arbitrator affiliated with a  
36 national arbitration association and under the rules of that association  
37 at the association's expense and the arbitration amount is the final sale  
38 amount. As part of the arbitration process, the appraisers shall fully  
39 disclose their appraisal methodologies and shall disclose any other  
40 transaction occurring between the buyer and the sellers. An additional  
41 five percent of the final sale amount shall be added for relocation costs.~~

1           2. If any unit or any limited common element is destroyed to the  
2 extent that an appraisal of the fair market value of the unit or element  
3 before destruction cannot be made, the interests of all unit owners are  
4 their respective common element interests immediately before the  
5 termination.

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

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

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

26           M. ~~Beginning on August 3, 2018,~~ Any provisions in the declaration  
27 that conflict with subsection I, paragraph 1 of this section are void as a  
28 matter of public policy.

29           Sec. 2. Section 33-1260, Arizona Revised Statutes, is amended to  
30 read:

31           33-1260. Resale of units; information required; fees; civil  
32           penalty; applicability; definition

33           A. For condominiums with fewer than fifty units, a unit owner shall  
34 mail or deliver to a purchaser or a purchaser's authorized agent within  
35 ten days after receipt of a written notice of a pending sale of the unit,  
36 and for condominiums with fifty or more units, the association shall mail  
37 or deliver to a purchaser or a purchaser's authorized agent within ten  
38 days after receipt of a written notice of a pending sale that contains the  
39 name and address of the purchaser all of the following in either paper or  
40 electronic format:

- 41           1. A copy of the bylaws and the rules of the association.
- 42           2. A copy of the declaration.
- 43           3. A dated statement containing:
  - 44           (a) The telephone number and address of a principal contact for the
  - 45           association, which may be an association manager, an association

1 management company, an officer of the association or any other person  
2 designated by the board of directors.

3 (b) The amount of the common expense assessment for the unit and  
4 any unpaid common expense assessment, special assessment or other  
5 assessment, fee or charge currently due and payable from the selling unit  
6 owner. If the request is made by a lienholder, escrow agent, unit owner  
7 or person designated by a unit owner pursuant to section 33-1256, failure  
8 to provide the information pursuant to this subdivision within the time  
9 provided for in this subsection shall extinguish any lien for any unpaid  
10 assessment then due against that unit.

11 (c) A statement as to whether a portion of the unit is covered by  
12 insurance maintained by the association.

13 (d) The total amount of money held by the association as reserves.

14 (e) If the statement is being furnished by the association, a  
15 statement as to whether the records of the association reflect any  
16 alterations or improvements to the unit that violate the declaration. The  
17 association is not obligated to provide information regarding alterations  
18 or improvements that occurred more than six years before the proposed  
19 sale. ~~Nothing in~~ This subdivision ~~relieves~~ **DOES NOT RELIEVE** the seller of  
20 a unit from the obligation to disclose alterations or improvements to the  
21 unit that violate the declaration, ~~nor precludes~~ **AND DOES NOT PRECLUDE** the  
22 association from taking action against the purchaser of a unit for  
23 violations that are apparent at the time of purchase and that are not  
24 reflected in the association's records.

25 (f) If the statement is being furnished by the unit owner, a  
26 statement as to whether the unit owner has any knowledge of any  
27 alterations or improvements to the unit that violate the declaration.

28 (g) A statement of case names and case numbers for pending  
29 litigation with respect to the unit filed by the association against the  
30 unit owner or filed by the unit owner against the association. The unit  
31 owner or the association shall not be required to disclose information  
32 concerning the pending litigation that would violate any applicable rule  
33 of attorney-client privilege under ~~Arizona~~ **STATE** law.

34 (h) A statement that provides "I hereby acknowledge that the  
35 declaration, bylaws and rules of the association constitute a contract  
36 between the association and me (the purchaser). By signing this  
37 statement, I acknowledge that I have read and understand the association's  
38 contract with me (the purchaser). I also understand that as a matter of  
39 Arizona law, if I fail to pay my association assessments, the association  
40 may foreclose on my property." The statement shall also include a  
41 signature line for the purchaser and shall be returned to the association  
42 within fourteen calendar days.

43 4. A copy of the current operating budget of the association.

1           5. A copy of the most recent annual financial report of the  
2 association. If the report is more than ten pages, the association may  
3 provide a summary of the report in lieu of the entire report.

4           6. A copy of the most recent reserve study of the association, if  
5 any.

6           7. A statement summarizing any pending lawsuits, except those  
7 relating to the collection of assessments owed by unit owners other than  
8 the selling unit owner, in which the association is a named party,  
9 including the amount of any money claimed.

10           8. A STATEMENT NOTIFYING THE PURCHASER THAT UNDER THE LAWS OF THIS  
11 STATE, THE CONDOMINIUM MAY BE TERMINATED BY A VOTE OF EIGHTY PERCENT OR  
12 MORE OF THE OWNERS OF THE UNITS IN THE CONDOMINIUM AND IF A SUFFICIENT  
13 NUMBER OF UNITS ARE ACQUIRED BY A POTENTIAL BUYER FOR THE ENTIRE PROPERTY,  
14 THE UNIT OWNERS MAY BE REQUIRED TO SELL THEIR UNITS.

15           9. A STATEMENT THAT THE CONDOMINIUM IS GOVERNED BY RECORDED  
16 COVENANTS, CONDITIONS AND RESTRICTIONS THAT REGULATE THE USE OF THE  
17 PROPERTY.

18           B. A purchaser or seller who is damaged by the failure of the unit  
19 owner or the association to disclose the information required by  
20 subsection A of this section may pursue all remedies at law or in equity  
21 against the unit owner or the association, whichever failed to comply with  
22 subsection A of this section, including the recovery of reasonable  
23 attorney fees.

24           C. The association may charge the unit owner a fee of not more than  
25 an aggregate of ~~four hundred dollars~~ \$400 to compensate the association  
26 for the costs incurred in the preparation and delivery of a statement or  
27 other documents furnished by the association pursuant to this section for  
28 purposes of resale disclosure, lien estoppel and any other services  
29 related to the transfer or use of the property. In addition, the  
30 association may charge a rush fee of not more than ~~one hundred dollars~~  
31 \$100 if the rush services are required to be performed within seventy-two  
32 hours after the request for rush services, and may charge a statement or  
33 other documents update fee of not more than ~~fifty dollars~~ \$50 if thirty  
34 days or more have passed since the date of the original disclosure  
35 statement or the date the documents were delivered. The association shall  
36 make available to any interested party the amount of any fee established  
37 from time to time by the association. If the aggregate fee for purposes  
38 of resale disclosure, lien estoppel and any other services related to the  
39 transfer or use of a property is less than ~~four hundred dollars~~ \$400 on  
40 January 1, 2010, the fee may increase at a rate of not more than twenty  
41 percent per year based on the immediately preceding fiscal year's amount,  
42 not to exceed the ~~four hundred dollar~~ \$400 aggregate fee. The association  
43 may charge the same fee without regard to whether the association is  
44 furnishing the statement or other documents in paper or electronic format.

1 D. The fees prescribed by this section shall be collected ~~no~~ NOT  
2 earlier than at the close of escrow and may only be charged once to a unit  
3 owner for that transaction between the parties specified in the notice  
4 required pursuant to subsection A of this section. An association shall  
5 not charge or collect a fee relating to services for resale disclosure,  
6 lien estoppel and any other services related to the transfer or use of a  
7 property except as specifically authorized in this section. An  
8 association that charges or collects a fee in violation of this section is  
9 subject to a civil penalty of not more than ~~one thousand two hundred~~  
10 ~~dollars~~ \$1,200.

11 E. This section applies to a managing agent for an association that  
12 is acting on behalf of the association.

13 F. The following are exempt from this section:

14 1. A sale in which a public report is issued pursuant to section  
15 32-2183 or 32-2197.02.

16 2. A sale pursuant to section 32-2181.02.

17 3. A conveyance by recorded deed that bears an exemption listed in  
18 section 11-1134, subsection B, paragraph 3 or 7. On recordation of the  
19 deed and for no additional charge, the unit owner shall provide the  
20 association with the changes in ownership, including the unit owner's  
21 name, billing address and phone number. Failure to provide the  
22 information shall not prevent the unit owner from qualifying for the  
23 exemption pursuant to this section.

24 G. This section does not apply to timeshare plans or associations  
25 that are subject to chapter 20 of this title.

26 H. For the purposes of this section, unless the context otherwise  
27 requires, "unit owner":

28 1. Means the seller of the condominium unit title. ~~and excludes~~

29 2. DOES NOT INCLUDE:

30 (a) Any real estate salesperson or real estate broker who is  
31 licensed under title 32, chapter 20 and who is acting as a salesperson or  
32 broker. ~~,~~

33 (b) Any escrow agent who is licensed under title 6, chapter 7 and  
34 who is acting as an escrow agent. ~~and also excludes~~

35 (c) A trustee of a deed of trust who is selling the property in a  
36 trustee's sale pursuant to chapter 6.1 of this title.

37 Sec. 3. Title 33, chapter 9, article 3, Arizona Revised Statutes,  
38 is amended by adding section 33-1262, to read:

39 33-1262. Annual notice to unit owners; termination; ownership

40 THE BOARD OF DIRECTORS SHALL PROVIDE AN ANNUAL NOTICE TO ALL UNIT  
41 OWNERS THAT INCLUDES THE FOLLOWING:

42 1. A STATEMENT THAT, UNDER THE LAWS OF THIS STATE, THE CONDOMINIUM  
43 MAY BE TERMINATED BY A VOTE OF EIGHTY PERCENT OR MORE OF THE OWNERS OF THE  
44 UNITS IN THE CONDOMINIUM AND IF A SUFFICIENT NUMBER OF UNITS ARE ACQUIRED



1 BY A POTENTIAL BUYER FOR THE ENTIRE PROPERTY, THE UNIT OWNERS MAY BE  
2 REQUIRED TO SELL THEIR UNITS.

3 2. A STATEMENT THAT PROVIDES THE TOTAL NUMBER OF UNITS IN THE  
4 CONDOMINIUM, THE NUMBER OF UNITS OWNED BY EACH UNIT OWNER AND THE NAME OF  
5 EACH UNIT OWNER.

6 Sec. 4. Legislative intent; condominium terminations;  
7 retroactivity

8 A. The legislature finds that in recent years, numerous condominium  
9 owners in this state have been forced to sell their residences at a  
10 significantly reduced price to investors that have acquired a substantial  
11 interest in the condominium units in that community and that are  
12 terminating the condominium over the objection of those same owners and,  
13 in most cases, converting the condominiums to rental property. These  
14 condominium owners have been financially harmed by the inequitable system  
15 used by the investors acquiring the condominium units at an extreme  
16 discount in a forced sale. Some of these investors have further harmed  
17 these condominium owners by levying special assessments or other similar  
18 charges against the unit owners once the investors have control of the  
19 association board of directors, thus requiring the special assessments and  
20 charges to be paid on termination, reducing the net sales proceeds for the  
21 unit owners even further. These inequities are compounded by recent real  
22 estate market forces that have made condominium termination and conversion  
23 a more favored investment option.

24 B. The statutory provisions that govern the acquisition and  
25 termination of a condominium, originally written in 1977, have been in  
26 place in this state since 1985 and have been unchanged for many years.  
27 Beginning in 2018, the legislature recognized the inequities in the old  
28 statutory scheme that leaves these condominium owners with unequal  
29 bargaining power and has attempted to provide more protections for  
30 condominium owners who are subject to a forced termination. A recent  
31 decision in this state's courts, Cao v. PFP Dorsey Investments, LLC, 253  
32 Ariz. 552 (Az. App. 2022), has reduced or eliminated the effectiveness of  
33 the legislature's recent enactments, resulting in continuing harm to  
34 condominium owners' private property rights.

35 C. Based on the foregoing and after careful consideration of the  
36 case Cao v. PFP Dorsey Investments, LLC, 253 Ariz. 552 (Az. App. 2022),  
37 the legislature finds and declares that there is a vital public interest  
38 in maintaining these forms of private property ownership as affordable and  
39 essential housing and in ensuring through a lawful exercise of its police  
40 powers that condominium unit owners are properly compensated for their  
41 private property ownership rights and receive fair compensation for any  
42 condominium units that are forced to be sold under the termination  
43 process. The legislature further finds that even if this enactment does  
44 constitute a substantial impairment to one or more contractual rights,  
45 this enactment is a valid exercise of this state's police power in that it

1 provides a safeguard to the vital public interest in protecting these  
2 property rights and is a reasonable and appropriate minor adjustment to  
3 the inherently unequal bargaining position of the parties and furthers  
4 this significant and legitimate public purpose. Therefore, the  
5 legislature intends for this act to be retroactively applied to all  
6 condominiums in this state, whether established before or after the  
7 effective date of this act.

8       Sec. 5. Retroactivity

9       Section 33-1228, subsection I, Arizona Revised Statutes, as amended  
10 by this act, applies retroactively to all condominiums in this state,  
11 whether established before or after the effective date of this act.