

REFERENCE TITLE: real property; litigation; limitation

State of Arizona
Senate
Fifty-sixth Legislature
Second Regular Session
2024

SB 1641

Introduced by
Senators Hernandez: Borrelli, Farnsworth, Hatathlie; Representative Ortiz

AN ACT

AMENDING SECTIONS 12-552 AND 33-1242, ARIZONA REVISED STATUTES; RELATING
TO LIMITATION ON ACTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 12-552, Arizona Revised Statutes, is amended to
3 read:

4 12-552. Actions involving development of real property
5 design, engineering and construction of
6 improvements

7 A. Notwithstanding any other statute, an action or arbitration
8 based in contract may not be instituted or maintained against a person who
9 develops or develops and sells real property, or performs or furnishes the
10 design, specifications, surveying, planning, supervision, testing,
11 construction or observation of construction of an improvement to real
12 property more than ~~eight~~ FOUR years after substantial completion of the
13 improvement to real property.

14 B. Notwithstanding any other statute, a municipality or a county
15 may not institute or maintain an action or arbitration against a person
16 who develops or develops and sells real property or performs or furnishes
17 the design, specifications, surveying, planning, supervision, testing,
18 construction or observation of construction of an improvement to real
19 property that is dedicated to the municipality or county more than ~~eight~~
20 FOUR years after the improvement to real property has been accepted by the
21 municipality or county for ownership, operation and maintenance if the
22 action or arbitration is based on either:

23 1. A municipal or county code, ordinance or other legal
24 requirement.

25 2. A permit that is required as a condition of development.

26 C. The limitations of subsection B of this section do not apply to
27 an action or arbitration that is based on a claim of a wilful, reckless or
28 concealed violation of a municipal or county requirement.

29 D. Subsection B of this section does not limit any immunity or
30 defense that is available to a municipality or county pursuant to chapter
31 7, article 2 of this title.

32 E. Notwithstanding subsection A or B of this section, in the case
33 of injury to real property or an improvement to real property, if the
34 injury occurred during the ~~eighth~~ FOURTH year after the substantial
35 completion or, in the case of a latent defect, was not discovered until
36 the ~~eighth~~ FOURTH year after substantial completion, an action to recover
37 damages for injury to the real property may be brought within ~~one year~~ TWO
38 YEARS after the date on which the injury to real property or an
39 improvement to real property occurred or a latent defect was discovered,
40 but an action may not be brought more than ~~nine~~ SIX years after the
41 substantial completion of the improvement.

42 F. The limitations in subsections A, B and E of this section
43 include any action based on implied warranty arising out of the contract
44 or the construction, including implied warranties of habitability, fitness
45 or workmanship.

1 G. This section does not apply to actions for personal injury or
2 death or shorten the period of warranty provided in an express written
3 warranty.

4 H. For the purposes of subsections A, E and F of this section, an
5 improvement to real property is considered substantially complete when any
6 of the following first occurs:

7 1. It is first used by the owner or occupant of the improvement.

8 2. It is first available for use after having been completed
9 according to the contract or agreement covering the improvement, including
10 agreed changes to the contract or agreement.

11 3. Final inspection, if required, by the governmental body that
12 issued the building permit for the improvement.

13 I. In this section an action based in contract is an action based
14 on a written real estate contract, sales agreement, construction
15 agreement, conveyance or written agreement for construction or for the
16 services set forth in subsection A of this section. This section does not
17 extend the period prescribed by the laws of this state for bringing any
18 action. If a shorter period of limitation is prescribed for a specific
19 action, the shorter period governs.

20 ~~J. With respect to an improvement to real property that was~~
21 ~~substantially complete on or before September 15, 1989, the eight and~~
22 ~~nine-year periods established in subsections A and E of this section shall~~
23 ~~begin to run on September 15, 1989. Notwithstanding the provisions of~~
24 ~~subsection H of this section and section 12-505, subsection A, this~~
25 ~~subsection applies to claims that accrued before May 14, 1992.~~

26 Sec. 2. Section 33-1242, Arizona Revised Statutes, is amended to
27 read:

28 33-1242. Powers of unit owners' association; notice to unit
29 owner of violation

30 A. Subject to the provisions of the declaration, the association
31 may:

32 1. Adopt and amend bylaws and rules.

33 2. Adopt and amend budgets for revenues, expenditures and reserves
34 and collect assessments for common expenses from unit owners.

35 3. Hire and discharge managing agents and other employees, agents
36 and independent contractors.

37 4. Institute, defend or intervene in litigation or administrative
38 proceedings in its own name on behalf of itself or two or more unit owners
39 on matters affecting the condominium. **IN LITIGATION MATTERS BROUGHT**
40 **PURSUANT TO SECTION 12-552, THE BOARD OF DIRECTORS SHALL OBTAIN A**
41 **TWO-THIRDS VOTE OF THE UNIT OWNERS BEFORE THE BOARD OF DIRECTORS MAY**
42 **INSTITUTE, DEFEND OR INTERVENE IN LITIGATION OR ADMINISTRATIVE**
43 **PROCEEDINGS.**

44 5. Make contracts and incur liabilities.

- 1 6. Regulate the use, maintenance, repair, replacement and
2 modification of common elements.
- 3 7. Cause additional improvements to be made as a part of the common
4 elements.
- 5 8. Acquire, hold, encumber and convey in its own name any right,
6 title or interest to real or personal property, except that common
7 elements may be conveyed or subjected to a security interest only pursuant
8 to section 33-1252.
- 9 9. Grant easements, leases, licenses and concessions through or
10 over the common elements.
- 11 10. Impose and receive any payments, fees or charges for the use,
12 rental or operation of the common elements other than limited common
13 elements described in section 33-1212, paragraphs 2 and 4 and for services
14 provided to unit owners.
- 15 11. Impose charges for late payment of assessments after the
16 association has provided notice that the assessment is overdue or provided
17 notice that the assessment is considered overdue after a certain date and,
18 after notice and an opportunity to be heard, impose reasonable monetary
19 penalties on unit owners for violations of the declaration, bylaws and
20 rules of the association.
- 21 12. Impose reasonable charges for the preparation and recordation
22 of amendments to the declaration or statements of unpaid assessments.
- 23 13. Provide for the indemnification of its officers and executive
24 board of directors and maintain directors' and officers' liability
25 insurance.
- 26 14. Assign its right to future income, including the right to
27 receive common expense assessments, but only to the extent the declaration
28 expressly provides.
- 29 15. Be a member of a master association or other entity owning,
30 maintaining or governing in any respect any portion of the common elements
31 or other property benefitting or related to the condominium or the unit
32 owners in any respect.
- 33 16. Exercise any other powers conferred by the declaration or
34 bylaws.
- 35 17. Exercise all other powers that may be exercised in this state
36 by legal entities of the same type as the association.
- 37 18. Exercise any other powers necessary and proper for the
38 governance and operation of the association.
- 39 B. A unit owner who receives a written notice that the condition of
40 the property owned by the unit owner is in violation of a requirement of
41 the condominium documents without regard to whether a monetary penalty is
42 imposed by the notice may provide the association with a written response
43 by sending the response by certified mail within twenty-one calendar days
44 after the date of the notice. The response shall be sent to the address
45 identified in the notice.

1 C. Within ten business days after receipt of the certified mail
2 containing the response from the unit owner, the association shall respond
3 to the unit owner with a written explanation regarding the notice that
4 shall provide at least the following information unless previously
5 provided in the notice of violation:

6 1. The provision of the condominium documents that has allegedly
7 been violated.

8 2. The date of the violation or the date the violation was
9 observed.

10 3. The first and last name of the person or persons who observed
11 the violation.

12 4. The process the unit owner must follow to contest the notice.

13 D. Unless the information required in subsection C, paragraph 4 of
14 this section is provided in the notice of violation, the association shall
15 not proceed with any action to enforce the condominium documents,
16 including the collection of attorney fees, before or during the time
17 prescribed by subsection C of this section regarding the exchange of
18 information between the association and the unit owner and shall give the
19 unit owner written notice of the unit owner's option to petition for an
20 administrative hearing on the matter in the state real estate department
21 pursuant to section 32-2199.01. At any time before or after completion
22 of the exchange of information pursuant to this section, the unit owner
23 may petition for a hearing pursuant to section 32-2199.01 if the dispute
24 is within the jurisdiction of the state real estate department as
25 prescribed in section 32-2199.01.