

COMMITTEE ON COMMERCE
HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2866
(Reference to printed bill)

Amendment instruction key:

[GREEN UNDERLINING IN BRACKETS] indicates text added to statute or previously enacted session law.

[Green underlining in brackets] indicates text added to new session law or text restoring existing law.

~~[GREEN STRIKEOUT IN BRACKETS]~~ indicates new text removed from statute or previously enacted session law.

~~[Green strikeout in brackets]~~ indicates text removed from existing statute, previously enacted session law or new session law.

<<Green carets>> indicate a section added to the bill.

~~<<Green strikeout in carets>>~~ indicates a section removed from the bill.

1 The bill as proposed to be amended is reprinted as follows:

2 Section 1. Section 33-1242, Arizona Revised Statutes, is amended to
3 read:

4 33-1242. Powers of unit owners' association; notice to unit
5 owner of violation; enforcement; damages

6 A. Subject to the provisions of the declaration, the association
7 may:

8 1. Adopt and amend bylaws and rules.

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

11 3. Hire and discharge managing agents and other employees, agents
12 and independent contractors.

13 4. Institute, defend or intervene in litigation or administrative
14 proceedings in its own name on behalf of itself or two or more unit owners
15 on matters affecting the condominium.

16 5. Make contracts and incur liabilities.

17 6. Regulate the use, maintenance, repair, replacement and
18 modification of common elements.

19 7. Cause additional improvements to be made as a part of the common
20 elements.

21 8. Acquire, hold, encumber and convey in its own name any right,
22 title or interest to real or personal property, except that common
23 elements may be conveyed or subjected to a security interest only pursuant
24 to section 33-1252.

25 9. Grant easements, leases, licenses and concessions through or
26 over the common elements.

27 10. Impose and receive any payments, fees or charges for the use,
28 rental or operation of the common elements other than limited common

1 elements described in section 33-1212, paragraphs 2 and 4 and for services
2 provided to unit owners.

3 11. Impose charges for late payment of assessments after the
4 association has provided notice that the assessment is overdue or provided
5 notice that the assessment is considered overdue after a certain date and,
6 after notice and an opportunity to be heard, impose reasonable monetary
7 penalties on unit owners for violations of the declaration, bylaws and
8 rules of the association.

9 12. Impose reasonable charges for the preparation and recordation
10 of amendments to the declaration or statements of unpaid assessments.

11 13. Provide for the indemnification of its officers and executive
12 board of directors and maintain directors' and officers' liability
13 insurance.

14 14. Assign its right to future income, including the right to
15 receive common expense assessments, but only to the extent the declaration
16 expressly provides.

17 15. Be a member of a master association or other entity owning,
18 maintaining or governing in any respect any portion of the common elements
19 or other property benefitting or related to the condominium or the unit
20 owners in any respect.

21 16. Exercise any other powers conferred by the declaration or
22 bylaws.

23 17. Exercise all other powers that may be exercised in this state
24 by legal entities of the same type as the association.

25 18. Exercise any other powers necessary and proper for the
26 governance and operation of the association.

27 B. A unit owner who receives a written notice that the condition of
28 the property owned by the unit owner is in violation of a requirement of
29 the condominium documents without regard to whether a monetary penalty is
30 imposed by the notice may provide the association with a written response
31 by sending the response by certified mail within twenty-one calendar days
32 after the date of the notice. The response shall be sent to the address
33 identified in the notice.

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

39 1. The provision of the condominium documents that has allegedly
40 been violated.

41 2. The date of the violation or the date the violation was
42 observed.

43 3. The first and last name of the person or persons who observed
44 the violation.

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

46 D. Unless the information required in subsection C, paragraph 4 of
47 this section is provided in the notice of violation, the association shall

1 not proceed with any action to enforce the condominium documents,
2 including the collection of attorney fees, before or during the time
3 prescribed by subsection C of this section regarding the exchange of
4 information between the association and the unit owner and shall give the
5 unit owner written notice of the unit owner's option to petition for an
6 administrative hearing on the matter in the state real estate department
7 pursuant to section 32-2199.01. At any time before or after completion
8 of the exchange of information pursuant to this section, the unit owner
9 may petition for a hearing pursuant to section 32-2199.01 if the dispute
10 is within the jurisdiction of the state real estate department as
11 prescribed in section 32-2199.01.

12 E. IF AN ASSOCIATION ATTEMPTS TO ENFORCE ANY PROVISION OF THE
13 DECLARATION, BYLAWS OR RULES OF THE ASSOCIATION THAT IS PROHIBITED BY LAW,
14 THE ASSOCIATION IS LIABLE FOR DAMAGES TO THE UNIT OWNER AS FOLLOWS:

15 1. FOR A FIRST ATTEMPT TO ENFORCE, \$1,000.

16 ~~[2. FOR A SECOND ATTEMPT TO ENFORCE, \$10,000.]~~

17 ~~[3.]~~ [2.] FOR A [THIRD] [SECOND] AND ANY ADDITIONAL ATTEMPTS TO
18 ENFORCE, ~~[\$100,000]~~ [\$2,500].

19 F. THE ASSOCIATION'S LIABILITY PRESCRIBED BY SUBSECTION E OF THIS
20 SECTION ACCRUES BASED ON THE NUMBER OF ATTEMPTS TO ENFORCE WITHOUT REGARD
21 TO WHETHER ENFORCEMENT IS ATTEMPTED AGAINST THE SAME OR DIFFERENT UNIT
22 OWNERS OF THE CONDOMINIUM. A UNIT OWNER HAS RECOURSE FOR DAMAGES AGAINST
23 THE ASSOCIATION IN ANY COURT OF COMPETENT JURISDICTION.

24 Sec. 2. Section 33-1803, Arizona Revised Statutes, is amended to
25 read:

26 33-1803. Assessment limitation; penalties; notice to member
27 of violation; enforcement; damages

28 A. Unless limitations in the community documents would result in a
29 lower limit for the assessment, the association shall not impose a regular
30 assessment that is more than twenty percent greater than the immediately
31 preceding fiscal year's assessment without the approval of the majority of
32 the members of the association. Unless reserved to the members of the
33 association, the board of directors may impose reasonable charges for the
34 late payment of assessments. A payment by a member is deemed late if it
35 is unpaid fifteen or more days after its due date, unless the community
36 documents provide for a longer period. Charges for the late payment of
37 assessments are limited to the greater of ~~fifteen dollars~~ \$15 or ten
38 percent of the amount of the unpaid assessment and may be imposed only
39 after the association has provided notice that the assessment is overdue
40 or provided notice that the assessment is considered overdue after a
41 certain date. Any monies paid by the member for an unpaid assessment
42 shall be applied first to the principal amount unpaid and then to the
43 interest accrued.

44 B. After notice and an opportunity to be heard, the board of
45 directors may impose reasonable monetary penalties on members for
46 violations of the declaration, bylaws and rules of the association.
47 Notwithstanding any provision in the community documents, the board of

1 directors shall not impose a charge for a late payment of a penalty that
2 exceeds the greater of ~~fifteen dollars~~ \$15 or ten percent of the amount of
3 the unpaid penalty. A payment is deemed late if it is unpaid fifteen or
4 more days after its due date, unless the declaration, bylaws or rules of
5 the association provide for a longer period. Any monies paid by a member
6 for an unpaid penalty shall be applied first to the principal amount
7 unpaid and then to the interest accrued. Notice pursuant to this
8 subsection shall include information pertaining to the manner in which the
9 penalty shall be enforced.

10 C. A member who receives a written notice that the condition of the
11 property owned by the member is in violation of the community documents
12 without regard to whether a monetary penalty is imposed by the notice may
13 provide the association with a written response by sending the response by
14 certified mail within twenty-one calendar days after the date of the
15 notice. The response shall be sent to the address identified in the
16 notice.

17 D. Within ten business days after receipt of the certified mail
18 containing the response from the member, the association shall respond to
19 the member with a written explanation regarding the notice that shall
20 provide at least the following information unless previously provided in
21 the notice of violation:

22 1. The provision of the community documents that has allegedly been
23 violated.

24 2. The date of the violation or the date the violation was
25 observed.

26 3. The first and last name of the person or persons who observed
27 the violation.

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

29 E. Unless the information required in subsection D, paragraph 4 of
30 this section is provided in the notice of violation, the association shall
31 not proceed with any action to enforce the community documents, including
32 the collection of attorney fees, before or during the time prescribed by
33 subsection D of this section regarding the exchange of information between
34 the association and the member and shall give the member written notice of
35 the member's option to petition for an administrative hearing on the
36 matter in the state real estate department pursuant to section
37 32-2199.01. At any time before or after completion of the exchange of
38 information pursuant to this section, the member may petition for a
39 hearing pursuant to section 32-2199.01 if the dispute is within the
40 jurisdiction of the state real estate department as prescribed in section
41 32-2199.01.

42 F. IF AN ASSOCIATION ATTEMPTS TO ENFORCE ANY PROVISION OF THE
43 DECLARATION, BYLAWS OR RULES OF THE ASSOCIATION THAT IS PROHIBITED BY LAW,
44 THE ASSOCIATION IS LIABLE FOR DAMAGES TO THE MEMBER AS FOLLOWS:

45 1. FOR A FIRST ATTEMPT TO ENFORCE, \$1,000.

46 ~~2. FOR A SECOND ATTEMPT TO ENFORCE, \$10,000.~~

1 ~~[3.]~~ [2.] FOR A ~~[THIRD]~~ [SECOND] AND ANY ADDITIONAL ATTEMPTS TO
2 ENFORCE, ~~[\$100,000]~~ [\$2,500].

3 G. THE ASSOCIATION'S LIABILITY PRESCRIBED BY SUBSECTION F OF THIS
4 SECTION ACCRUES BASED ON THE NUMBER OF ATTEMPTS TO ENFORCE WITHOUT REGARD
5 TO WHETHER ENFORCEMENT IS ATTEMPTED AGAINST THE SAME OR DIFFERENT MEMBERS
6 OF THE PLANNED COMMUNITY. A MEMBER HAS RECOURSE FOR DAMAGES AGAINST THE
7 ASSOCIATION IN ANY COURT OF COMPETENT JURISDICTION.

8 Enroll and engross to conform

9 Amend title to conform

And, as so amended, it do pass

JEFF WENINGER
CHAIRMAN

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