

COMMITTEE ON GOVERNMENT  
HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2442  
(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 33-1202, 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. "Assessment" means the ~~share of monies that is required for the~~  
16 ~~payment of common expenses and that the association assesses periodically~~  
17 ~~against each unit~~ ASSOCIATION'S CHARGES APPLIED TO EACH UNIT OWNER TO FUND  
18 THE ANTICIPATED COMMON EXPENSES BASED ON THE APPROVED ANNUAL OR  
19 SUPPLEMENTAL BUDGET OR APPROVED SPECIAL EXPENDITURE, AND EACH UNIT OWNER'S  
20 COMMON EXPENSE LIABILITY.

21 5. "Association" or "unit owners' association" means the unit  
22 owners' association organized under section 33-1241.

23 6. "Board of directors" means the body, regardless of its name,  
24 designated in the declaration and given general management powers to act  
25 on behalf of the association.

26 7. "Bylaws" means the bylaws required by section 33-1246.

27 8. "Common elements" means all portions of a condominium other than  
28 the units.

1        9. "Common expense liability" means the liability for common  
2 expenses allocated to each unit pursuant to ~~section~~ SECTIONS 33-1217 AND  
3 33-1255.

4        10. "Common expense lien" means the lien for assessments, charges  
5 for late payment of assessments if authorized in the declaration,  
6 reasonable collection fees and costs incurred or applied by the  
7 association and reasonable attorney fees and costs that are incurred with  
8 respect to those assessments, if the attorney fees and costs are awarded  
9 by a court.

10       11. "Common expenses" means expenditures made by or financial  
11 liabilities of the association, together with any allocations to reserves.

12       12. "Condominium" means real estate, portions of which are  
13 designated for separate ownership and the remainder of which is designated  
14 for common ownership solely by the owners of the separate portions. Real  
15 estate is not a condominium unless the undivided interests in the common  
16 elements are vested in the unit owners.

17       13. "Condominium documents" means the declaration, bylaws, articles  
18 of incorporation, if any, and rules, if any.

19       14. "Declarant" means any person or group of persons who reserves,  
20 is granted or succeeds to any special declarant right.

21       15. "Declaration" means any instruments, however denominated, that  
22 create a condominium and any amendments to those instruments.

23       16. "Development rights" means any right or combination of rights  
24 reserved by or granted to a declarant in the declaration to do any of the  
25 following:

26       (a) Add real estate to a condominium.

27       (b) Create easements, units, common elements or limited common  
28 elements within a condominium.

29       (c) Subdivide units, convert units into common elements or convert  
30 common elements into units.

31       (d) Withdraw real estate from a condominium.

32       (e) Make the condominium part of a larger condominium or planned  
33 community.

34       (f) Amend the declaration during any period of declarant control,  
35 pursuant to section 33-1243, subsection ~~F~~ J, to comply with applicable  
36 law or to correct any error or inconsistency in the declaration, if the  
37 amendment does not adversely affect the rights of any unit owner.

38       (g) Amend the declaration during any period of declarant control,  
39 pursuant to section 33-1243, subsection ~~F~~ J, to comply with the rules or  
40 guidelines, in effect from time to time, of any governmental or  
41 quasi-governmental entity or federal corporation guaranteeing or insuring  
42 mortgage loans or governing transactions involving mortgage instruments.

43       17. "Identifying number" means a symbol or address that identifies  
44 one unit in a condominium.

45       18. "Leasehold condominium" means a condominium in which all or a  
46 portion of the real estate is subject to a lease the expiration or  
47 termination of which will terminate the condominium or reduce its size.

1       19. "Limited common element" means a portion of the common elements  
2 specifically designated as a limited common element in the declaration and  
3 allocated by the declaration or by operation of section 33-1212, paragraph  
4 2 or 4 for the exclusive use of one or more but fewer than all of the  
5 units.

6       20. "Person" means:

7       (a) A natural person, corporation, business trust, estate, trust,  
8 partnership, association, joint venture, government, governmental  
9 subdivision or agency, or other legal or commercial entity.

10       (b) In the case of a subdivision trust, as defined in section  
11 6-801, the beneficiary of the trust who holds the right to subdivide,  
12 develop or sell the real estate rather than the trust or trustee.

13       21. "Real estate":

14       (a) Means any legal, equitable, leasehold or other estate or  
15 interest in, over or under land, including structures, fixtures and other  
16 improvements and interests which by custom, usage or law pass with a  
17 conveyance of land though not described in the contract of sale or  
18 instrument of conveyance.

19       (b) Includes parcels with or without upper or lower boundaries and  
20 spaces that may be filled with air or water.

21       22. "Rules" means the provisions, if any, adopted pursuant to the  
22 declaration or bylaws governing maintenance and use of the units and  
23 common elements.

24       23. "Special declarant rights" means any right or combination of  
25 rights reserved by or granted to a declarant in the declaration to do any  
26 of the following:

27       (a) Construct improvements provided for in the declaration.

28       (b) Exercise any development right.

29       (c) Maintain sales offices, management offices, signs advertising  
30 the condominium, and models.

31       (d) Use easements through the common elements for the purpose of  
32 making improvements within the condominium or within real estate that may  
33 be added to the condominium.

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

36       24. "Unit" means a portion of the condominium designated for  
37 separate ownership or occupancy.

38       25. "Unit owner" means:

39       (a) A declarant or other person who owns a unit or, unless  
40 otherwise provided in the lease, a lessee of a unit in a leasehold  
41 condominium whose lease expires simultaneously with any lease the  
42 expiration or termination of which will remove the unit from the  
43 condominium but does not include a person having an interest in a unit  
44 solely as security for an obligation.

45       (b) In the case of a contract for conveyance, as defined in section  
46 33-741, of real property, the purchaser of the unit.

47       26. "Unit owner expenses":

1 (a) Means fees, charges, ~~late charges~~ and monetary penalties ~~or~~  
2 ~~interest~~ that ~~is~~ ARE imposed pursuant to ~~section 33-1242, subsection A,~~  
3 ~~paragraphs 10, 11 and 12~~ THE CONDOMINIUM DOCUMENTS.

4 (b) Does not include any amount that is included in a common  
5 expense lien.

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

8 33-1215. Contents of declaration

9 A. The declaration shall contain:

10 1. The name of the condominium, which shall include the word  
11 "condominium" or be followed by the words "a condominium", and the name of  
12 the association.

13 2. The name of every county in which any portion of the condominium  
14 is located.

15 3. A legal description of the real estate included in the  
16 condominium.

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

19 5. A description of any limited common elements, other than those  
20 specified in section 33-1212, paragraphs 2 and 4, but the declaration  
21 shall contain a description of any porches, balconies, patios and  
22 entryways, if any, as provided in section 33-1219, subsection B, paragraph  
23 11.

24 6. A description of any development rights and other special  
25 declarant rights, together with a legal description of the real estate to  
26 which each of those rights applies, any time limit within which each of  
27 those rights must be exercised and any other conditions or limitations  
28 under which the rights described in this paragraph may be exercised or  
29 will lapse.

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

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

33 9. All matters required by sections 33-1216, 33-1217, 33-1218,  
34 33-1219 and 33-1226 and section 33-1243, subsection ~~F~~ J.

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

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

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

42 (b) The date original construction was completed.

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

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

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

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

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

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

16 C. The declaration may contain any other matters the declarant  
17 deems appropriate.

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

20 33-1243. Board of directors and officers: conflict: powers:  
21 annual budget: limitations: removal: annual audit:  
22 applicability: definition

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

26 B. The board of directors shall not act on behalf of the  
27 association to amend the declaration, terminate the condominium, elect  
28 members of the board of directors or determine the qualifications, powers  
29 and duties or terms of office of board of directors members. Except as  
30 provided in subsection ~~H~~ M of this section, the board of directors may  
31 fill vacancies in its membership for the unexpired portion of any term.

32 C. If any contract, decision or other action for compensation taken  
33 by or on behalf of the board of directors would benefit any member of the  
34 board of directors or any person who is a parent, grandparent, spouse,  
35 child or sibling of a member of the board of directors or a parent or  
36 spouse of any of those persons, that member of the board of directors  
37 shall declare a conflict of interest for that issue. The member shall  
38 declare the conflict in an open meeting of the board before the board  
39 discusses or takes action on that issue and that member may then vote on  
40 that issue. Any contract entered into in violation of this subsection is  
41 void and unenforceable.

42 ~~D. Except as provided in the declaration,~~ NOTWITHSTANDING ANY  
43 PROVISION IN THE CONDOMINIUM DOCUMENTS, AFTER THE TERMINATION OF THE  
44 PERIOD OF DECLARANT CONTROL, THE BOARD OF DIRECTORS HAS A DUTY TO DEVELOP  
45 AN ANNUAL OPERATING BUDGET FOR THE FISCAL YEAR BASED ON A REASONABLY  
46 PRUDENT AND GOOD FAITH ESTIMATE OF THE COMMON EXPENSES NECESSARY TO  
47 SATISFY THE BOARD OF DIRECTORS' OBLIGATIONS TO THE UNIT OWNERS TO MANAGE

1 COSTS AND TO PROVIDE FOR THE ANNUAL MAINTENANCE AND OPERATION OF THE  
2 COMMON ELEMENTS AND THE ADMINISTRATIVE AND OPERATING EXPENSES OF THE  
3 ASSOCIATION, ALONG WITH ANY ALLOCATIONS TO RESERVE ACCOUNTS. A COPY OF ANY  
4 PROPOSED BUDGET SHALL BE MADE REASONABLY AVAILABLE FOR UNIT OWNER REVIEW  
5 AT LEAST FORTY-EIGHT HOURS BEFORE THE BOARD MEETING AT WHICH THE BOARD OF  
6 DIRECTORS WILL CONSIDER THE APPROVAL OF THAT BUDGET.

7 E. IF THE BOARD-APPROVED ANNUAL OPERATING BUDGET AND ANY  
8 SUPPLEMENTAL AMENDMENT TO THAT BUDGET, EXCLUDING CONSIDERATION OF LOAN  
9 INSTALLMENT PAYMENTS PREVIOUSLY APPROVED AS A SPECIAL ASSESSMENT OR  
10 FINANCING PURSUANT TO SUBSECTION H OF THIS SECTION, WOULD RESULT IN AN  
11 ANNUALIZED ASSESSMENT INCREASE FROM THE PREVIOUS YEAR'S INITIAL ANNUAL  
12 ASSESSMENT THAT IS GREATER THAN THE PERCENTAGE CHANGE IN THE CONSUMER  
13 PRICE INDEX FOR THE TWELVE MONTHS PRECEDING INITIAL BUDGET APPROVAL, THE  
14 BUDGET MUST BE RATIFIED BY THE UNIT OWNERS BEFORE IMPLEMENTATION AND  
15 ASSESSMENT AS FOLLOWS:

16 1. Within thirty days after adoption of any proposed budget for the  
17 condominium, the board of directors shall provide a summary AND  
18 JUSTIFICATION of the budget to all the unit owners. ~~Unless the board of~~  
19 ~~directors is expressly authorized in the declaration to adopt and amend~~  
20 ~~budgets from time to time, any budget or amendment shall be ratified by~~  
21 ~~the unit owners in accordance with the procedures set forth in this~~  
22 ~~subsection. If ratification is required,~~ The board of directors shall set  
23 a date AND PROVIDE NOTICE PURSUANT TO SECTION 33-1248 for a meeting of the  
24 unit owners to consider ratification of the budget. ~~not fewer than~~  
25 ~~fourteen or more than thirty days after mailing of the summary. Unless at~~  
26 ~~that meeting a majority of all the unit owners or any larger vote~~  
27 ~~specified in the declaration rejects the budget, the budget is ratified,~~  
28 THE PROPOSED BUDGET IS RATIFIED IF A MAJORITY OF UNIT OWNERS VOTING IN  
29 PERSON AND BY ABSENTEE BALLOT, OR AS OTHERWISE PROVIDED BY SECTION  
30 33-1250, VOTE TO APPROVE THE BUDGET AS PRESENTED whether or not ~~a~~ THE  
31 quorum REQUIREMENT is ~~present~~ MET.

32 2. If the proposed budget is rejected, ~~the periodic budget last~~  
33 ~~ratified by the unit owners shall be continued~~ THE BOARD OF DIRECTORS MAY  
34 EITHER RETAIN THE EXISTING BUDGET AND ASSESSMENT OR DEVELOP AND APPROVE A  
35 BUDGET THAT DOES NOT REQUIRE RATIFICATION, until such time as the unit  
36 owners ratify a subsequent budget proposed by the board of directors.

37 [3. IF THE BOARD OF DIRECTORS BELIEVES THAT THE UNIT OWNERS  
38 UNREASONABLY WITHHELD RATIFICATION OF THE APPROVED BUDGET, PREVENTING THE  
39 BOARD OF DIRECTORS FROM FULFILLING THEIR OBLIGATION UNDER THE DECLARATION  
40 TO MAINTAIN THE COMMON ELEMENTS, THE BOARD OF DIRECTORS MAY INITIATE A  
41 SUIT FOR INJUNCTIVE RELIEF IN A COURT OF COMPETENT JURISDICTION REQUESTING  
42 THE COURT TO OVERRIDE THE RATIFICATION VOTE AND IMPLEMENT THE BUDGET AS  
43 ADOPTED BY THE BOARD OF DIRECTORS. THE BOARD OF DIRECTORS BEARS THE  
44 BURDEN OF PROOF THAT THE APPROVED BUDGET SATISFIES THE BOARD'S OBLIGATION  
45 TO THE COMMUNITY DESCRIBED IN SUBSECTION A OF THIS SECTION AND THAT THE  
46 UNIT OWNER'S RATIFICATION WAS UNREASONABLE WITHHELD. ANY LITIGATION COSTS

1 SHALL NOT BE TAKEN FROM ASSOCIATION MONIES IF THE BOARD OF DIRECTORS FAILS  
2 TO PREVAIL IN THIS LAWSUIT.]

3 F. IF AUTHORIZED IN THE DECLARATION, THE ASSOCIATION MAY ESTABLISH  
4 AND FUND RESERVE ACCOUNTS HOWEVER DENOMINATED AS NECESSARY TO ADDRESS  
5 ANTICIPATED LONG-TERM OR MAJOR MAINTENANCE AND UPGRADE OF THE COMMON  
6 ELEMENTS OR FOR ANY OTHER PURPOSE AUTHORIZED IN THE DECLARATION. EXCEPT  
7 FOR TEMPORARY CASH FLOW CONSIDERATIONS FOR BUDGETED EXPENSES, THE BOARD OF  
8 DIRECTORS OR THE BOARD'S MANAGING AGENT SHALL NOT SPEND OR TRANSFER ANY  
9 MONIES FROM THE ASSOCIATION'S RESERVE ACCOUNTS FOR ANY PURPOSE THAT IS NOT  
10 INCLUDED IN THE DECLARATION'S AUTHORIZED USE OF THAT RESERVE ACCOUNT  
11 WITHOUT THE PRIOR AUTHORIZATION OF THE UNIT OWNERS.

12 G. IF UNANTICIPATED AND UNBUDGETED OPERATING EXPENSES BECOME  
13 NECESSARY, THE ASSOCIATION SHALL DEVELOP, APPROVE AND, IF NECESSARY,  
14 RATIFY A SUPPLEMENTAL AMENDMENT TO THE ANNUAL BUDGET PURSUANT TO  
15 SUBSECTIONS D AND E OF THIS SECTION BEFORE INCURRING THE EXPENSES. THE  
16 ASSOCIATION'S BUDGET ALLOCATION TO RESERVE ACCOUNTS SHALL BE CONSIDERED  
17 COMMITTED EXPENSES AND SHALL NOT BE REDUCED TO ADDRESS UNBUDGETED EXPENSES  
18 WITHOUT THE PRIOR APPROVAL OF THE UNIT OWNERS.

19 H. IF THE BOARD OF DIRECTORS VOTES TO APPROVE A SPECIAL ASSESSMENT  
20 OR TO SECURE FINANCING FOR ANY REASON, THAT SPECIAL ASSESSMENT OR  
21 FINANCING MUST BE RATIFIED BY THE AFFIRMATIVE VOTE OF A MAJORITY OF ALL  
22 ALLOCATED VOTES IN THE CONDOMINIUM OR ANY LARGER PERCENTAGE SPECIFIED IN  
23 THE DECLARATION FOR SPECIAL ASSESSMENTS BEFORE THE APPLICATION OF THAT  
24 ASSESSMENT OR FINANCING COMMITMENT.

25 I. IF THE ASSOCIATION DOES NOT COMPLY WITH SUBSECTIONS D THROUGH H  
26 OF THIS SECTION, ANY RESULTING ACTION OR ASSESSMENT IS INVALID AND  
27 UNENFORCEABLE.

28 ~~F.~~ J. The declaration may provide for a period of declarant  
29 control of the association, during which period a declarant or persons  
30 designated by the declarant may appoint and remove the officers and  
31 members of the board of directors. Regardless of the period provided in  
32 the declaration, a period of declarant control terminates not later than  
33 the earlier of:

34 1. Ninety days after conveyance of seventy-five percent of the  
35 units that may be created to unit owners other than a declarant.

36 2. Four years after all declarants have ceased to offer units for  
37 sale in the ordinary course of business.

38 ~~F.~~ K. A declarant may voluntarily surrender the right to appoint  
39 and remove officers and members of the board of directors before  
40 termination of the period prescribed in subsection ~~F.~~ J of this section,  
41 but in that event the declarant may require, for the duration of the  
42 period of declarant control, that specified actions of the association or  
43 board of directors, as described in a recorded instrument executed by the  
44 declarant, be approved by the declarant before they become effective.

45 ~~G.~~ L. Not later than the termination of any period of declarant  
46 control the unit owners shall elect a board of directors of at least three  
47 members, at least a majority of whom must be unit owners. The board of

1 directors shall elect the officers. The board members and officers shall  
2 take office on election.

3 ~~H.~~ M. Notwithstanding any provision of the declaration or bylaws  
4 to the contrary, all of the following apply to a meeting at which a member  
5 of the board of directors, other than a member appointed by the declarant,  
6 is proposed to be removed from the board of directors:

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

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

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

15 4. For purposes of calling for removal of a member of the board of  
16 directors, other than a member appointed by the declarant, the following  
17 apply:

18 (a) In an association with one thousand or fewer members, on  
19 receipt of a petition that calls for removal of a member of the board of  
20 directors and that is signed by the number of persons who are eligible to  
21 vote in the association at the time the person signs the petition equal to  
22 at least twenty-five percent of the votes in the association or by the  
23 number of persons who are eligible to vote in the association at the time  
24 the person signs the petition equal to at least one hundred votes in the  
25 association, whichever is less, the board shall call and provide written  
26 notice of a special meeting of the association as prescribed by section  
27 33-1248, subsection B.

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

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

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



1 (e) For purposes of a special meeting called pursuant to this  
2 subsection, a quorum is present if the number of owners who are eligible  
3 to vote in the association at the time the person attends the meeting  
4 equal to at least twenty percent of the votes of the association or the  
5 number of persons who are eligible to vote in the association at the time  
6 the person attends the meeting equal to at least one thousand votes,  
7 whichever is less, is present at the meeting in person or as otherwise  
8 allowed by law.

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

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

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

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

25 6. On removal of a majority of the members of the board of  
26 directors at a special meeting of the membership called pursuant to this  
27 subsection, or if the condominium documents do not provide a method for  
28 filling board vacancies, the association shall hold an election for the  
29 replacement of the removed directors at a separate meeting of the members  
30 of the association that is held not later than thirty days after the  
31 meeting at which the members of the board of directors were removed.

32 7. A member of the board of directors who is removed pursuant to  
33 this subsection is not eligible to serve on the board of directors again  
34 until after the expiration of the removed board member's term of office,  
35 unless the condominium documents specifically provide for a longer period  
36 of ineligibility.

37 ~~1.~~ N. For an association in which board members are elected from  
38 separately designated voting districts, a member of the board of  
39 directors, other than a member appointed by the declarant, may be removed  
40 only by a vote of the members from that voting district, and only the  
41 members from that voting district are eligible to vote on the matter or be  
42 counted for purposes of determining a quorum.

43 ~~2.~~ O. Unless any provision in the condominium documents requires  
44 an annual audit by a certified public accountant, the board of directors  
45 shall provide for an annual financial audit, review or compilation of the  
46 association. The audit, review or compilation shall be completed no later  
47 than one hundred eighty days after the end of the association's fiscal

1 year and shall be made available on request to the unit owners within thirty days after its completion.

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

Q. FOR THE PURPOSES OF THIS SECTION, "CONSUMER PRICE INDEX" MEANS THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, INDEX FOR URBAN WAGE EARNERS AND CLERICAL WORKERS THAT IS DESIGNATED AS "CPI-W".

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

33-1245. Termination of contracts and leases of declarant: applicability

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

1. Any management contract or employment contract.

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

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

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

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

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

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

Sec. 5. Section 33-1802, Arizona Revised Statutes, is amended to read:

33-1802. Definitions

In this chapter and in the community documents, unless the context otherwise requires:

1. "ASSESSMENT" MEANS THE ASSOCIATION'S CHARGES APPLIED TO EACH MEMBER TO FUND THE ANTICIPATED COMMON EXPENSES BASED ON THE APPROVED ANNUAL OR SUPPLEMENTAL BUDGET OR APPROVED SPECIAL EXPENDITURE, AND EACH MEMBER'S COMMON EXPENSE LIABILITY.

~~I~~ 2. "Association":

(a) Means a nonprofit corporation or unincorporated association of owners that is created pursuant to a declaration to own and operate portions of a planned community and that has the power under the declaration to assess association members to pay the costs and expenses

1 incurred in the performance of the association's obligations under the  
2 declaration.

3 (b) Does not include a nonprofit corporation or unincorporated  
4 association of owners that is created or incorporated before January 1,  
5 1974 and that does not have authority to enforce covenants, conditions or  
6 restrictions related to the use, occupancy or appearance of the separately  
7 owned lots, parcels or units in a real estate development, unless the  
8 nonprofit corporation or unincorporated association of owners elects to be  
9 subject to this chapter pursuant to section 33-1801, subsection D.

10 3. "COMMON EXPENSE LIABILITY" MEANS THE SHARE OR ASSIGNMENT OF  
11 COMMON EXPENSES ALLOCATED TO EACH MEMBER BY THE DECLARATION.

12 ~~2.~~ 4. "Common expense lien" means the lien for assessments,  
13 charges for late payment of assessments if authorized in the declaration,  
14 reasonable collection fees and costs incurred or applied by the  
15 association and reasonable attorney fees and costs that are incurred with  
16 respect to those assessments, if the attorney fees and costs are awarded  
17 by a court.

18 5. "COMMON EXPENSES" MEANS EXPENDITURES MADE BY OR FINANCIAL  
19 LIABILITIES OF THE ASSOCIATION FOR THE MAINTENANCE, OPERATION, UPGRADE AND  
20 REPLACEMENT OF COMMON PROPERTY AND THE ASSOCIATION'S ADMINISTRATIVE AND  
21 OPERATING EXPENSES, TOGETHER WITH ANY ALLOCATIONS TO RESERVES.

22 ~~3.~~ 6. "Community documents" means the declaration, bylaws,  
23 articles of incorporation, if any, and rules, if any.

24 ~~4.~~ 7. "Declaration" means any instruments, however denominated,  
25 that establish a planned community and any amendment to those instruments.

26 ~~5.~~ 8. "Member expenses":

27 (a) Means fees, charges, ~~late charges~~ and monetary penalties ~~or~~  
28 ~~interest~~ THAT ARE IMPOSED PURSUANT TO THE COMMUNITY DOCUMENTS.

29 (b) Does not include any amount that is included in a common  
30 expense lien.

31 ~~6.~~ 9. "Planned community":

32 (a) Means a real estate development that includes real estate owned  
33 and operated by or real estate on which an easement to maintain roadways  
34 or a covenant to maintain roadways is held by a nonprofit corporation or  
35 unincorporated association of owners, that is created for the purpose of  
36 managing, maintaining or improving the property and in which the  
37 declaration expressly states both that the owners of separately owned  
38 lots, parcels or units are mandatory members and that the owners are  
39 required to pay assessments to the association for these purposes.

40 (b) Does not include any of the following:

41 (i) A timeshare plan or a timeshare association that is governed by  
42 chapter 20 of this title.

43 (ii) A condominium that is governed by chapter 9 of this title.

44 (iii) A real estate development that is not managed or maintained  
45 by an association.

46 Sec. 6. Section 33-1803, Arizona Revised Statutes, is amended to  
47 read:

1       33-1803. Annual budget; assessment limitation; penalties;  
2               notice to member of violation; definition

3       ~~A. Unless limitations in the community documents would result in a~~  
4 ~~lower limit for the assessment, the association shall not impose a regular~~  
5 ~~assessment that is more than twenty percent greater than the immediately~~  
6 ~~preceding fiscal year's assessment without the approval of the majority of~~  
7 ~~the members of the association.~~

8       A. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS, AFTER  
9 THE TERMINATION OF THE PERIOD OF DECLARANT CONTROL, THE ASSOCIATION'S  
10 BOARD OF DIRECTORS HAS A DUTY TO DEVELOP AN ANNUAL OPERATING BUDGET FOR  
11 THE FISCAL YEAR BASED ON A REASONABLY PRUDENT AND GOOD FAITH ESTIMATE OF  
12 THE COMMON EXPENSES NECESSARY TO SATISFY THE BOARD OF DIRECTORS'  
13 OBLIGATIONS TO THE MEMBERS TO MANAGE COSTS AND TO PROVIDE FOR THE ANNUAL  
14 MAINTENANCE AND OPERATION OF THE COMMON PROPERTY AND THE ADMINISTRATIVE  
15 AND OPERATING EXPENSES OF THE ASSOCIATION, ALONG WITH ANY ALLOCATIONS TO  
16 RESERVE ACCOUNTS. A COPY OF ANY PROPOSED BUDGET SHALL BE MADE REASONABLY  
17 AVAILABLE FOR MEMBER REVIEW AT LEAST FORTY-EIGHT HOURS BEFORE THE BOARD  
18 MEETING AT WHICH THE BOARD OF DIRECTORS WILL CONSIDER THE APPROVAL OF THAT  
19 BUDGET.

20       B. IF THE BOARD-APPROVED ANNUAL OPERATING BUDGET AND ANY  
21 SUPPLEMENTAL AMENDMENT TO THAT BUDGET, EXCLUDING CONSIDERATION OF LOAN  
22 INSTALLMENT PAYMENTS PREVIOUSLY APPROVED AS A SPECIAL ASSESSMENT OR  
23 FINANCING PURSUANT TO SUBSECTION F OF THIS SECTION, WOULD RESULT IN AN  
24 ANNUALIZED ASSESSMENT INCREASE FROM THE PREVIOUS YEAR'S INITIAL ANNUAL  
25 ASSESSMENT THAT IS GREATER THAN THE PERCENTAGE CHANGE IN THE CONSUMER  
26 PRICE INDEX FOR THE TWELVE MONTHS PRECEDING INITIAL BUDGET APPROVAL, THE  
27 BUDGET MUST BE RATIFIED BY THE MEMBERS BEFORE IMPLEMENTATION AND  
28 ASSESSMENT AS FOLLOWS:

29       1. WITHIN THIRTY DAYS AFTER ADOPTION OF ANY PROPOSED BUDGET FOR THE  
30 PLANNED COMMUNITY, THE BOARD OF DIRECTORS SHALL PROVIDE A SUMMARY AND  
31 JUSTIFICATION OF THE BUDGET TO ALL THE MEMBERS. [THE BOARD OF DIRECTORS  
32 SHALL SET A DATE AND PROVIDE NOTICE PURSUANT TO SECTION 33-1804 FOR A  
33 MEETING OF THE MEMBERS TO CONSIDER THE RATIFICATION OF THE BUDGET. THE  
34 PROPOSED BUDGET IS RATIFIED IF A MAJORITY OF MEMBERS VOTING IN PERSON AND  
35 BY ABSENTEE BALLOT OR, AS OTHERWISE PROVIDED BY SECTION 33-1812, APPROVE  
36 THE BUDGET AS PRESENTED WHETHER OR NOT A QUORUM IS ACHIEVED.]

37       2. IF THE PROPOSED BUDGET IS REJECTED, THE BOARD OF DIRECTORS MAY  
38 EITHER RETAIN THE EXISTING BUDGET AND ASSESSMENT OR DEVELOP AND APPROVE A  
39 BUDGET THAT DOES NOT REQUIRE RATIFICATION, UNTIL SUCH TIME AS THE MEMBERS  
40 RATIFY A SUBSEQUENT BUDGET PROPOSED BY THE BOARD OF DIRECTORS.

41       [3. IF THE BOARD OF DIRECTORS BELIEVES THAT THE MEMBERS  
42 UNREASONABLY WITHHELD RATIFICATION OF THE APPROVED BUDGET, PREVENTING THE  
43 BOARD OF DIRECTORS FROM FULFILLING THE BOARD'S OBLIGATION UNDER THE  
44 DECLARATION TO MAINTAIN THE COMMON PROPERTY, THE BOARD OF DIRECTORS MAY  
45 INITIATE A SUIT FOR INJUNCTIVE RELIEF IN A COURT OF COMPETENT JURISDICTION  
46 REQUESTING THE COURT TO OVERRIDE THE RATIFICATION VOTE AND IMPLEMENT THE  
47 BUDGET AS ADOPTED BY THE BOARD OF DIRECTORS. THE BOARD OF DIRECTORS BEARS

1 THE BURDEN OF PROOF THAT THE APPROVED BUDGET SATISFIES THE BOARD'S  
2 OBLIGATION TO THE COMMUNITY DESCRIBED IN SUBSECTION A OF THIS SECTION AND  
3 THAT THE MEMBER'S RATIFICATION WAS UNREASONABLE WITHHELD. ANY LITIGATION  
4 COSTS SHALL NOT BE TAKEN FROM ASSOCIATION MONIES IF THE BOARD OF DIRECTORS  
5 FAILS TO PREVAIL IN THIS LAWSUIT.]

6 C. PURSUANT TO THE DECLARATION, THE ASSOCIATION MAY ESTABLISH AND  
7 FUND RESERVE ACCOUNTS HOWEVER DENOMINATED AS NECESSARY TO ADDRESS  
8 ANTICIPATED LONG-TERM OR MAJOR MAINTENANCE AND UPGRADE OF THE COMMON  
9 PROPERTY OR FOR ANY OTHER PURPOSE AUTHORIZED IN THE DECLARATION. EXCEPT  
10 FOR TEMPORARY CASH FLOW CONSIDERATIONS FOR BUDGETED EXPENSES, THE  
11 ASSOCIATION'S BOARD OF DIRECTORS OR THE BOARD'S MANAGING AGENT SHALL NOT  
12 SPEND OR TRANSFER ANY MONIES FROM THE ASSOCIATION'S RESERVE ACCOUNTS FOR  
13 ANY PURPOSE THAT IS NOT INCLUDED IN THE DECLARATION'S AUTHORIZED USE OF  
14 THAT RESERVE ACCOUNT WITHOUT THE PRIOR AUTHORIZATION OF THE MEMBERS.

15 D. IF UNANTICIPATED AND UNBUDGETED OPERATING EXPENSES BECOME  
16 NECESSARY, THE ASSOCIATION SHALL DEVELOP, APPROVE AND, IF NECESSARY,  
17 RATIFY A SUPPLEMENTAL AMENDMENT TO THE ANNUAL BUDGET PURSUANT TO  
18 SUBSECTIONS A AND B OF THIS SECTION BEFORE INCURRING THE EXPENSES. THE  
19 ASSOCIATION'S BUDGET ALLOCATION TO RESERVE ACCOUNTS SHALL BE CONSIDERED  
20 COMMITTED EXPENSES AND SHALL NOT BE REDUCED TO ADDRESS UNBUDGETED EXPENSES  
21 WITHOUT THE PRIOR APPROVAL OF THE MEMBERS.

22 E. IF THE ASSOCIATION OWNS AND OPERATES A COMMERCIAL FACILITY THAT  
23 IS OPEN TO THE GENERAL PUBLIC, THAT FAILS OR HAS FAILED TO GENERATE A  
24 PROFIT FOR THREE SUCCESSIVE FISCAL YEARS AND THAT CREATES A BURDEN ON THE  
25 MEMBERS TO SUBSIDIZE THE EXPENSES OF THAT COMMERCIAL FACILITY, THE  
26 ASSOCIATION SHALL SEND THE QUESTION OF THE CONTINUED OPERATION OF THAT  
27 FACILITY TO A VOTE OF THE MEMBERS.

28 F. IF THE BOARD OF DIRECTORS VOTES TO APPROVE A SPECIAL ASSESSMENT  
29 OR TO SECURE FINANCING FOR ANY REASON, THAT SPECIAL ASSESSMENT OR  
30 FINANCING MUST BE RATIFIED BY THE AFFIRMATIVE VOTE OF A MAJORITY OF ALL  
31 ALLOCATED VOTES IN THE PLANNED COMMUNITY OR ANY LARGER PERCENTAGE  
32 SPECIFIED IN THE DECLARATION FOR SPECIAL ASSESSMENTS BEFORE THE  
33 APPLICATION OF THAT ASSESSMENT OR FINANCING COMMITMENT.

34 G. IF THE ASSOCIATION DOES NOT COMPLY WITH SUBSECTIONS A THROUGH F  
35 OF THIS SECTION, ANY RESULTING ACTION OR ASSESSMENT IS INVALID AND  
36 UNENFORCEABLE.

37 H. Unless reserved to the members of the association, the board of  
38 directors may impose reasonable charges for the late payment of  
39 assessments. A payment by a member is deemed late if it is unpaid fifteen  
40 or more days after its due date, unless the community documents provide  
41 for a longer period. Charges for the late payment of assessments are  
42 limited to the greater of ~~fifteen dollars~~ \$15 or ten percent of the amount  
43 of the unpaid assessment INSTALLMENT and may be imposed only after the  
44 association has provided notice that the assessment INSTALLMENT is overdue  
45 or provided notice that the assessment INSTALLMENT is considered overdue  
46 after a certain date. Any monies paid by the member for an unpaid

1 assessment shall be applied ~~first to the principal amount unpaid and then~~  
2 ~~to the interest accrued~~ AS PRESCRIBED BY SECTION 33-1807.

3 ~~B.~~ I. After notice and an opportunity to be heard, the board of  
4 directors may impose reasonable monetary penalties on members for  
5 violations of the declaration, bylaws and rules of the association.  
6 Notwithstanding any provision in the community documents, the board of  
7 directors shall not impose a charge for a late payment of a penalty that  
8 exceeds the greater of ~~fifteen dollars~~ \$15 or ten percent of the amount of  
9 the unpaid penalty. A payment is deemed late if it is unpaid fifteen or  
10 more days after its due date, unless the declaration, bylaws or rules of  
11 the association provide for a longer period. Any monies paid by a member  
12 for an unpaid penalty shall be applied ~~first to the principal amount~~  
13 ~~unpaid and then to the interest accrued~~ AS PRESCRIBED BY SECTION 33-1807.  
14 Notice pursuant to this subsection shall include information pertaining to  
15 the manner in which the penalty shall be enforced.

16 ~~C.~~ J. A member who receives a written notice that the condition of  
17 the property owned by the member is in violation of the community  
18 documents without regard to whether a monetary penalty is imposed by the  
19 notice may provide the association with a written response by sending the  
20 response by certified mail within twenty-one calendar days after the date  
21 of the notice. The response shall be sent to the address identified in  
22 the notice.

23 ~~D.~~ K. Within ten business days after receipt of the certified mail  
24 containing the response from the member, the association shall respond to  
25 the member with a written explanation regarding the notice that shall  
26 provide at least the following information unless previously provided in  
27 the notice of violation:

28 1. The provision of the community documents that has allegedly been  
29 violated.

30 2. The date of the violation or the date the violation was  
31 observed.

32 3. The first and last name of the person or persons who observed  
33 the violation.

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

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

1 M. FOR THE PURPOSES OF THIS SECTION, "CONSUMER PRICE INDEX" MEANS  
2 THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, INDEX  
3 FOR URBAN WAGE EARNERS AND CLERICAL WORKERS THAT IS DESIGNATED AS "CPI-W".

4 Enroll and engross to conform

5 Amend title to conform

And, as so amended, it do pass

WALT BLACKMAN  
CHAIRMAN

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