



**Arizona HOA regulatory agency bill**

Proposed by George K. Staropoli  
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**Summary.** This bill establishes a department of homeowners associations with full direct regulatory authority over Ch.9 and Ch. 16 associations under the direction of a commissioner. It provides for receiving complaints, investigations, filing legal actions, issuing civil penalties, rulemaking, and education as well as establishing an Advisory Board to provide recommendations to the commissioner. Funding is provided by a \$4 per unit fee per year. The processing of HOA disputes by DFBLS is stricken and replaced by processing by the department of homeowner associations.

**AN ACT**

**AMENDING SECTION 33-1242 AND 33-1803; ADDING CHAPTER 20, SECTIONS 41-2325 THROUGH 41-2336; REPEALING SECTION 41-2198.05, ARIZONA REVISED STATUTES; RELATING TO THE DEPARTMENT OF HOMEOWNERS ASSOCIATIONS; AMENDING SECTION 41-2198.01; ARIZONA REVISED STATUTES; RELATING TO HOMEOWNERS ASSOCIATIONS AND ADMINISTRATIVE HEARINGS.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

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

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

1. Adopt and amend bylaws and rules.
2. Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from unit owners.
3. Hire and discharge managing agents and other employees, agents and independent contractors.
4. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium.
5. Make contracts and incur liabilities.

6. Regulate the use, maintenance, repair, replacement and modification of common elements.
  7. Cause additional improvements to be made as a part of the common elements.
  8. Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, except that common elements may be conveyed or subjected to a security interest only pursuant to section 33-1252.
  9. Grant easements, leases, licenses and concessions through or over the common elements.
  10. Impose and receive any payments, fees or charges for the use, rental or operation of the common elements other than limited common elements described in section 33-1212, paragraphs 2 and 4 and for services provided to unit owners.
  11. Impose charges for late payment of assessments and, after notice and an opportunity to be heard, impose reasonable monetary penalties upon unit owners for violations of the declaration, bylaws and rules of the association.
  12. Impose reasonable charges for the preparation and recordation of amendments to the declaration or statements of unpaid assessments.
  13. Provide for the indemnification of its officers and executive board of directors and maintain directors' and officers' liability insurance.
  14. Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly provides.
  15. Be a member of a master association or other entity owning, maintaining or governing in any respect any portion of the common elements or other property benefitting or related to the condominium or the unit owners in any respect.
  16. Exercise any other powers conferred by the declaration or bylaws.
  17. Exercise all other powers that may be exercised in this state by legal entities of the same type as the association.
  18. Exercise any other powers necessary and proper for the governance and operation of the association.
- B. A unit owner who receives a written notice that the condition of the property owned by the unit owner is in violation of a requirement of the condominium documents without regard to whether a monetary penalty is imposed by the notice may provide the association with a written response by sending the response by certified mail within ten business days after the date of the notice. The response shall be sent to the address contained in the notice or in the recorded notice prescribed by section 33-1256, subsection J.
- C. Within ten business days after receipt of the certified mail containing the response from the unit owner, the association shall respond to the unit owner with a written explanation regarding the notice that shall provide at least the following information unless previously provided in the notice of violation:
1. The provision of the condominium documents that has allegedly been violated.

2. The date of the violation or the date the violation was observed.
3. The first and last name of the person or persons who observed the violation.
4. The process the unit owner must follow to contest the notice.

D. Unless the information required in subsection C, paragraph 4 of this section is provided in the notice of violation, the association shall not proceed with any action to enforce the condominium documents, including the collection of attorney fees, before or during the time prescribed by subsection C of this section regarding the exchange of information between the association and the unit owner. At any time before or after completion of the exchange of information pursuant to this section, the unit owner may petition for a hearing pursuant to section 41-2098.01 if the dispute is within the jurisdiction of the department of fire, building and life safety as prescribed in section ~~41-2198.01~~ 41-2098.01, subsection B.

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

**33-1803. assessments; penalties; notice to member of violation**

A. Unless limitations in the community documents would result in a lower limit for the assessment, the association shall not impose a regular assessment that is more than twenty per cent greater than the immediately preceding fiscal year's assessment without the approval of the majority of the members of the association. Unless reserved to the members of the association, the board of directors may impose reasonable charges for the late payment of assessments. A payment by a member is deemed late if it is unpaid fifteen or more days after its due date, unless the community documents provide for a longer period. Charges for the late payment of assessments are limited to the greater of fifteen dollars or ten per cent of the amount of the unpaid assessment. Any monies paid by the member for an unpaid assessment shall be applied first to the principal amount unpaid and then to the interest accrued.

B. After notice and an opportunity to be heard, the board of directors may impose reasonable monetary penalties on members for violations of the declaration, bylaws and rules of the association. Notwithstanding any provision in the community documents, the board of directors shall not impose a charge for a late payment of a penalty that exceeds the greater of fifteen dollars or ten per cent of the amount of the unpaid penalty. A payment is deemed late if it is unpaid fifteen or more days after its due date, unless the declaration, bylaws or rules of the association provide for a longer period. Any monies paid by a member for an unpaid penalty shall be applied first to the principal amount unpaid and then to the interest accrued. Notice pursuant to this subsection shall include information pertaining to the manner in which the penalty shall be enforced.

C. A member who receives a written notice that the condition of the property owned by the member is in violation of the community documents without regard to whether a monetary penalty is imposed by the notice may provide the association with a written response by sending the response by certified mail within ten

business days after the date of the notice. The response shall be sent to the address contained in the notice or in the recorded notice prescribed by section 33-1807, subsection J.

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

1. The provision of the community documents that has allegedly been violated.
2. The date of the violation or the date the violation was observed.
3. The first and last name of the person or persons who observed the violation.
4. The process the member must follow to contest the notice.

E. Unless the information required in subsection D, paragraph 4 of this section is provided in the notice of violation, the association shall not proceed with any action to enforce the community documents, including the collection of attorney fees, before or during the time prescribed by subsection D of this section regarding the exchange of information between the association and the member. At any time before or after completion of the exchange of information pursuant to this section, the member may petition for a hearing pursuant to section 41-2098.01 if the dispute is within the jurisdiction of the department of fire, building and life safety as prescribed in section 41-2098.01, subsection B.

Section 3. Title 41, Arizona Revised Statutes, is amended by adding, Chapter 20, Department of Homeowners Association; Article 1. commissioner establishment; purposes; Section 41-2325, to read:

**41-2325. DEPARTMENT OF HOMEOWNERS ASSOCIATION; COMMISSIONER ESTABLISHMENT; PURPOSES**

**A. THE DEPARTMENT OF HOMEOWNERS ASSOCIATIONS:**

**1. IS ESTABLISHED TO FURTHER THE PUBLIC INTEREST OF SAFETY AND WELFARE FOR CONDOMINIUMS REGULATED BY TITLE 33, CHAPTER 9 AND PLANNED COMMUNITIES REGULATED BY TITLE 33, CHAPTER 16.**

**2. THIS CHAPTER SHALL BE ADMINISTERED BY THE DEPARTMENT OF HOMEOWNERS ASSOCIATIONS UNDER THE DIRECTION OF THE HOMEOWNERS ASSOCIATION COMMISSIONER. THE COMMISSIONER SHALL ADOPT A SEAL WHICH SHALL BEAR THE WORDS "HOMEOWNERS ASSOCIATION COMMISSIONER, STATE OF ARIZONA", WHICH SHALL BE USED FOR THE AUTHENTICATION OF PROCEEDINGS OF THE DEPARTMENT AND THE OFFICIAL DOCUMENTS THEREOF. THE COMMISSIONER'S PRINCIPAL OFFICE SHALL BE AT THE STATE CAPITOL. THE COMMISSIONER MAY HAVE BRANCH OFFICES THE COMMISSIONER DEEMS NECESSARY IN OTHER CITIES.**

3. THE DEPARTMENT, THROUGH ITS HEARING OFFICER FUNCTION, APPLIES AND ENFORCES THE STATUTES REGULATING THOSE COMMON INTEREST COMMUNITIES AND THE INTERPRETATION AND ENFORCEMENT OF THE GOVERNING DOCUMENTS AND RULES THAT GOVERN THOSE COMMUNITIES. IT IS ALSO THE PURPOSE OF THE COMMISSIONER TO ESTABLISH A PROCEDURE TO PROTECT THE CONSTITUTIONAL AND FUNDAMENTAL RIGHTS OF ASSOCIATION MEMBERS AND TO UPHOLD THE STATE OF ARIZONA'S DECLARATION OF RIGHTS, ARTICLE 2, ESPECIALLY SECTIONS 2, 4, 6, 8, 13, 21, 25 AND 32 BY REQUIRING SUBMISSION OF NEW AND AMENDED GOVERNING DOCUMENTS FOR APPROVAL BY THE COMMISSIONER IN ACCORDANCE WITH THESE CONSTITUTIONAL PROTECTIONS.

B. THE PURPOSE OF THIS CHAPTER IS TO GIVE STATUTORY RECOGNITION TO NOT-FOR-PROFIT CORPORATIONS THAT ADMINISTER OR OPERATE RESIDENTIAL COMMUNITIES IN THIS STATE, TO PROVIDE REGULATIONS FOR OPERATING HOMEOWNERS' ASSOCIATIONS, AND TO PROTECT THE RIGHTS OF ASSOCIATION MEMBERS WITHOUT UNDULY IMPAIRING THE ABILITY OF SUCH ASSOCIATIONS TO PERFORM THEIR FUNCTIONS AS AUTHORIZED BY FEDERAL, STATE, AND LOCAL LAWS AND THE GOVERNING DOCUMENTS OF THE ASSOCIATION.

C. HAVING PROVIDED CERTAIN POWERS AND AUTHORITY TO HOMEOWNERS' ASSOCIATIONS AND IN DEED RESTRICTIONS CREATED BY DEVELOPERS OF MANDATED PROPERTIES IN RESIDENTIAL COMMUNITIES, THE LEGISLATURE RECOGNIZES THAT IT IS NECESSARY TO PROVIDE REGULATORY OVERSIGHT OF SUCH ASSOCIATIONS TO ENSURE COMPLIANCE WITH FEDERAL AND STATE LAWS AND LOCAL ORDINANCES. IT IS THE INTENT OF THE LEGISLATURE TO PROTECT THE RIGHTS OF PARCEL OWNERS BY ENSURING THAT THE POWERS AND AUTHORITY GRANTED TO HOMEOWNERS' ASSOCIATIONS AND IN DEED RESTRICTIONS CREATED BY DEVELOPERS OF MANDATED PROPERTIES IN RESIDENTIAL COMMUNITIES CONFORM TO A SYSTEM OF CHECKS AND BALANCES IN ORDER TO PREVENT ABUSES BY THESE GOVERNING AUTHORITIES.

D. "HOMEOWNERS' ASSOCIATION" AND THE ALTERNATIVE "HOMEOWNERS ASSOCIATION" AS USED WITHIN THIS CHAPTER SHALL HAVE THE SAME MEANINGS AS 'ASSOCIATION' IN SECTIONS AND 33-1202(4) AND 33-1802(1).

Section 4. Title 41, Chapter 20, Article 1, Arizona Revised Statutes, is amended by adding Section 41-2326 to read:

#### 41-2326. COMMISSIONER POWERS AND DUTIES

A. THE COMMISSIONER HAS JURISDICTION FOR, AND MAY ENFORCE COMPLIANCE WITH THIS CHAPTER, THE GOVERNING DOCUMENTS AND ADOPTED RULES RELATING TO HOMEOWNERS' ASSOCIATIONS. THE COMMISSIONER MAY ALSO:

1. ISSUE A NOTICE TO SHOW CAUSE, WHICH MUST PROVIDE FOR A HEARING, UPON WRITTEN REQUEST, IN ACCORDANCE CHAPTER 6, ARTICLE 10 OF THIS TITLE.
2. ACCEPT GRANTS-IN-AID FROM ANY SOURCE.
3. PREPARE AND DISSEMINATE A PROSPECTUS AND OTHER INFORMATION TO ASSIST PROSPECTIVE OWNERS, PURCHASERS, LESSEES, AND DEVELOPERS OF HOMEOWNERS' ASSOCIATIONS IN ASSESSING ASSOCIATED RIGHTS, PRIVILEGES, AND DUTIES.

B. THE COMMISSIONER SHALL:

1. RESPOND TO COMPLAINTS, CONDUCT INVESTIGATIONS, AND IMPOSE PENALTIES AS PROVIDED UNDER SECTION 41-2327.
2. ESTABLISH PROCEDURES FOR PROVIDING NOTICE TO AN ASSOCIATION AND THE DEVELOPER, DURING THE PERIOD THE DEVELOPER CONTROL, IF THE DIVISION IS CONSIDERING THE ISSUANCE OF A DECLARATORY STATEMENT WITH RESPECT TO THE HOMEOWNERS' ASSOCIATION OR ANY RELATED DOCUMENT GOVERNING SUCH COMMUNITY.
3. ANNUALLY PROVIDE EACH ASSOCIATION WITH A SUMMARY OF DECLARATORY STATEMENTS AND FORMAL LEGAL OPINIONS RELATING TO THE OPERATIONS OF HOMEOWNERS' ASSOCIATIONS WHICH WERE RENDERED BY THE COMMISSIONER DURING THE PREVIOUS YEAR.
4. PROVIDE TRAINING AND EDUCATIONAL PROGRAMS FOR HOMEOWNERS' ASSOCIATION BOARD MEMBERS AND PARCEL OWNERS. THE TRAINING MAY INCLUDE WEB-BASED ELECTRONIC MEDIA, LIVE TRAINING AND SEMINARS IN VARIOUS LOCATIONS THROUGHOUT THE STATE. THE COMMISSIONER MAY REVIEW AND APPROVE EDUCATION AND TRAINING PROGRAMS OFFERED BY PROVIDERS AND SHALL MAINTAIN A CURRENT LIST OF APPROVED PROGRAMS AND PROVIDERS AND MAKE SUCH LIST AVAILABLE TO BOARD MEMBERS AND PARCEL OWNERS IN A REASONABLE AND COST EFFECTIVE MANNER.
5. MAINTAIN A TOLL-FREE TELEPHONE NUMBER ACCESSIBLE TO HOMEOWNERS' ASSOCIATION PARCEL OWNERS.
6. SUBMIT TO THE GOVERNOR, THE PRESIDENT OF THE SENATE, AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AN ANNUAL REPORT THAT INCLUDES, AT A MINIMUM, THE NUMBER OF TRAINING PROGRAMS PROVIDED FOR HOMEOWNERS' ASSOCIATION BOARD MEMBERS AND PARCEL OWNERS UNDER PARAGRAPH (B)(4) OF THIS SECTION; THE NUMBER OF COMPLAINTS RECEIVED BY TYPE; THE NUMBER AND PERCENT OF COMPLAINTS ACKNOWLEDGED IN WRITING WITHIN THIRTY (30) DAYS; THE NUMBER AND PERCENT OF RESULTING INVESTIGATIONS CONDUCTED WITHIN NINETY (90) DAYS; AND

THE NUMBER OF INVESTIGATIONS EXCEEDING THE NINETY (90) DAY REQUIREMENT AS REQUIRED UNDER S. 720.3022(1). THE ANNUAL REPORT MUST ALSO INCLUDE AN EVALUATION OF THE DIVISION'S CORE BUSINESS PROCESSES AND MAKE RECOMMENDATIONS FOR IMPROVEMENTS, INCLUDING STATUTORY CHANGES. THE REPORT SHALL BE SUBMITTED BY SEPTEMBER 30TH FOLLOWING THE END OF THE FISCAL YEAR.

C. THE COMMISSIONER MAY ADOPT RULES TO ADMINISTER AND ENFORCE THIS CHAPTER.

Section 5. Title 41, Chapter 20, Article 2, Arizona Revised Statutes, is amended by adding

Section 41-2327, to read:

## ARTICLE 2. COMPLAINTS

### 41-2327 COMPLAINTS

A. THE COMMISSIONER MAY INVESTIGATE COMPLAINTS AND ENFORCE COMPLIANCE WITH RESPECT TO HOMEOWNERS' ASSOCIATIONS THAT ARE STILL UNDER DEVELOPER CONTROL, INCLUDING COMPLAINTS AGAINST DEVELOPERS INVOLVING IMPROPER TURNOVER OR FAILURE TO TURNOVER PURSUANT TO THE GOVERNING DOCUMENTS. AFTER TURNOVER HAS OCCURRED, THE COMMISSIONER MAY ONLY INVESTIGATE COMPLAINTS RELATED TO FINANCIAL ISSUES, ELECTIONS, PARCEL OWNER ACCESS TO ASSOCIATION RECORDS PURSUANT TO STATE LAW AND VIOLATIONS OF THE COMMUNITY DOCUMENTS. IF A COMPLAINT IS MADE, THE COMMISSIONER MUST CONDUCT ITS INQUIRY WITH DUE REGARD FOR THE INTERESTS OF THE AFFECTED PARTIES. WITHIN THIRTY (30) DAYS AFTER RECEIVING A COMPLAINT:

1. THE COMMISSIONER SHALL ACKNOWLEDGE THE COMPLAINT IN WRITING AND NOTIFY THE COMPLAINANT AS TO WHETHER THE COMPLAINT IS WITHIN THE JURISDICTION OF THE COMMISSIONER AND WHETHER ADDITIONAL INFORMATION IS NEEDED BY THE COMMISSIONER FROM THE COMPLAINANT.

2. THE COMMISSIONER SHALL CONDUCT ITS INVESTIGATION AND, WITHIN 90 DAYS AFTER RECEIPT OF THE ORIGINAL COMPLAINT OR TIMELY REQUESTED ADDITIONAL INFORMATION, TAKE ACTION UPON THE COMPLAINT. HOWEVER, THE FAILURE TO COMPLETE THE INVESTIGATION WITHIN NINETY (90) DAYS DOES NOT PREVENT THE COMMISSIONER FROM CONTINUING THE INVESTIGATION, ACCEPTING OR CONSIDERING EVIDENCE OBTAINED OR RECEIVED AFTER NINETY (90) DAYS, OR TAKING ADMINISTRATIVE ACTION IF REASONABLE CAUSE EXISTS TO BELIEVE THAT A VIOLATION OF THIS CHAPTER OR RELATED RULE HAS OCCURRED.

3. IF AN INVESTIGATION IS NOT COMPLETED WITHIN THE TIME LIMITS ESTABLISHED IN THIS SUBSECTION, THE COMMISSIONER SHALL, ON A MONTHLY BASIS, NOTIFY THE COMPLAINANT IN WRITING OF THE STATUS OF THE INVESTIGATION.

4. WHEN REPORTING ITS ACTION TO THE COMPLAINANT, THE COMMISSIONER SHALL INFORM THE COMPLAINANT OF ANY RIGHT TO A HEARING PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10, UNIFORM ADMINISTRATIVE HEARING PROCEDURES.

Section 6. Title 41, Chapter 20, Article 2, Arizona Revised Statutes, is amended by adding Section 41-2328, to read:

SECTION 41-2328. INVESTIGATIONS

A. THE COMMISSIONER MAY CONDUCT NECESSARY PUBLIC OR PRIVATE INVESTIGATIONS WITHIN OR OUTSIDE THIS STATE TO DETERMINE WHETHER THERE HAS BEEN A VIOLATION OF THIS CHAPTER OR RELATED RULES OR ORDERS, AND TO AID IN THE ADOPTION OF NEEDED RULES OR FORMS.

1. FOR THE PURPOSE OF CONDUCTING AN INVESTIGATION, THE COMMISSIONER OR OFFICER OR EMPLOYEE DESIGNATED BY THE COMMISSIONER MAY ADMINISTER OATHS OR AFFIRMATIONS, SUBPOENA WITNESSES AND COMPEL THEIR ATTENDANCE, TAKE EVIDENCE, AND REQUIRE THE PRODUCTION OF ANY MATTER THAT IS RELEVANT TO AN INVESTIGATION, INCLUDING THE EXISTENCE, DESCRIPTION, NATURE, CUSTODY, CONDITION, AND LOCATION OF ANY BOOKS, DOCUMENTS, OR OTHER TANGIBLE THINGS AND THE IDENTITY AND LOCATION OF PERSONS HAVING KNOWLEDGE OF RELEVANT FACTS OR ANY OTHER MATTER REASONABLY CALCULATED TO LEAD TO THE DISCOVERY OF MATERIAL EVIDENCE. UPON THE FAILURE BY A PERSON TO OBEY A SUBPOENA OR TO ANSWER QUESTIONS PROPOUNDED BY THE INVESTIGATING OFFICER AND UPON REASONABLE NOTICE TO ALL AFFECTED PERSONS, THEY MAY APPLY TO THE CIRCUIT COURT FOR AN ORDER COMPELLING COMPLIANCE.

2. THE COMMISSIONER MAY REQUIRE OR PERMIT ANY PERSON TO FILE A STATEMENT IN WRITING, UNDER OATH OR OTHERWISE, AS DETERMINED BY THE COMMISSION, AS TO THE FACTS AND CIRCUMSTANCES CONCERNING A MATTER TO BE INVESTIGATED.

3. THE COMMISSIONER MAY SUBMIT ANY OFFICIAL WRITTEN REPORT, WORKSHEET, OR OTHER RELATED PAPER, OR A CERTIFIED COPY THEREOF, COMPILED, PREPARED, DRAFTED, OR OTHERWISE MADE AND AUTHENTICATED BY A FINANCIAL EXAMINER OR ANALYST TO BE ADMITTED AS COMPETENT EVIDENCE IN ANY HEARING IN WHICH THE FINANCIAL EXAMINER OR ANALYST IS AVAILABLE FOR CROSS-EXAMINATION AND



ATTESTS UNDER OATH THAT SUCH DOCUMENTS WERE PREPARED AS A RESULT OF AN EXAMINATION OR INSPECTION CONDUCTED PURSUANT TO THIS CHAPTER.

4. NOTWITHSTANDING ANY REMEDIES AVAILABLE TO PARCEL OWNERS AND ASSOCIATIONS, IF THE COMMISSIONER HAS REASONABLE CAUSE TO BELIEVE THAT A VIOLATION OF THIS CHAPTER, OR RELATED RULE HAS OCCURRED, THE COMMISSIONER MAY INSTITUTE ENFORCEMENT PROCEEDINGS IN ITS OWN NAME AGAINST ANY DEVELOPER, ASSOCIATION, OFFICER, MEMBER OF THE BOARD OF DIRECTORS, OR ITS ASSIGNEES OR AGENTS, AS FOLLOWS:

(a). THE COMMISSIONER MAY PERMIT A PERSON WHOSE CONDUCT OR ACTIONS MAY BE UNDER INVESTIGATION TO WAIVE FORMAL PROCEEDINGS AND ENTER INTO A CONSENT PROCEEDING WHEREBY ORDERS, RULES, OR LETTERS OF CENSURE OR WARNING, WHETHER FORMAL OR INFORMAL, MAY BE ENTERED AGAINST THE PERSON.

(b). THE COMMISSIONER MAY ISSUE AN ORDER REQUIRING THE DEVELOPER, ASSOCIATION, OFFICER, MEMBER OF THE BOARD OF DIRECTORS, OR ITS ASSIGNEES OR AGENTS, TO CEASE AND DESIST FROM THE UNLAWFUL PRACTICE AND TAKE SUCH AFFIRMATIVE ACTION AS THE COMMISSIONER DETERMINES WILL CARRY OUT THE PURPOSES OF THIS CHAPTER. IF THE COMMISSIONER FINDS THAT A DEVELOPER, ASSOCIATION, OFFICER, OR MEMBER OF THE BOARD OF DIRECTORS, OR ITS ASSIGNEES OR AGENTS, IS VIOLATING OR IS ABOUT TO VIOLATE THIS CHAPTER, ANY RULE ADOPTED OR ORDER ISSUED BY THE COMMISSION, OR ANY WRITTEN AGREEMENT ENTERED INTO WITH THE COMMISSION, AND SUCH VIOLATION PRESENTS AN IMMEDIATE DANGER TO THE PUBLIC REQUIRING AN IMMEDIATE FINAL ORDER, IT MAY ISSUE AN EMERGENCY CEASE AND DESIST ORDER RECITING WITH PARTICULARITY THE FACTS UNDERLYING SUCH FINDINGS. THE EMERGENCY CEASE AND DESIST ORDER IS EFFECTIVE FOR 90 DAYS. IF THE COMMISSIONER BEGINS NONEMERGENCY CEASE AND DESIST PROCEEDINGS, THE EMERGENCY CEASE AND DESIST ORDER REMAINS EFFECTIVE UNTIL THE CONCLUSION OF THE PROCEEDINGS UNDER SS. 120.569 AND 120.57.

(c). IF A DEVELOPER OR ASSOCIATION FAILS TO PAY RESTITUTION DETERMINED BY THE COMMISSIONER TO BE OWED, PLUS ANY ACCRUED INTEREST AT THE HIGHEST RATE PERMITTED BY LAW, WITHIN THIRTY (30) DAYS OF EXPIRATION ANY APPELLATE TIME PERIOD OF A FINAL ORDER REQUIRING PAYMENT OF RESTITUTION OR THE CONCLUSION OF ANY APPEAL, WHICHEVER IS LATER, THE COMMISSIONER SHALL BRING AN ACTION IN CIRCUIT OR COUNTY COURT ON BEHALF OF ANY ASSOCIATION, CLASS OF PARCEL OWNERS, LESSEES, OR PURCHASERS FOR RESTITUTION, DECLARATORY RELIEF, INJUNCTIVE RELIEF, OR ANY OTHER AVAILABLE REMEDY. THE COMMISSIONER MAY ALSO

TEMPORARILY REVOKE ITS ACCEPTANCE OF THE FILING FOR THE DEVELOPER TO WHICH THE RESTITUTION RELATES UNTIL PAYMENT OF RESTITUTION IS MADE.

(d). THE COMMISSIONER MAY PETITION THE COURT FOR THE APPOINTMENT OF A RECEIVER OR CONSERVATOR. IF APPOINTED, THE RECEIVER OR CONSERVATOR MAY TAKE ACTION TO IMPLEMENT THE COURT ORDER TO ENSURE THE PERFORMANCE OF AND TO REMEDY ANY BREACH OF THE ORDER. IN ADDITION TO ALL OTHER MEANS PROVIDED BY LAW FOR THE ENFORCEMENT OF AN INJUNCTION OR TEMPORARY RESTRAINING ORDER, THE CIRCUIT COURT MAY IMPOUND OR SEQUESTER THE PROPERTY OF A PARTY DEFENDANT, INCLUDING BOOKS, PAPERS, DOCUMENTS, AND RELATED RECORDS, AND ALLOW THE EXAMINATION AND USE OF THE PROPERTY BY THE COMMISSIONER AND A COURT-APPOINTED RECEIVER OR CONSERVATOR.

(e). THE COMMISSIONER MAY APPLY TO THE CIRCUIT COURT FOR AN ORDER OF RESTITUTION WHEREBY THE DEFENDANT IN AN ACTION BROUGHT PURSUANT TO SUBPARAGRAPH (D) OF THIS SECTION IS ORDERED TO MAKE RESTITUTION OF THOSE SUMS SHOWN BY THE COMMISSIONER TO HAVE BEEN OBTAINED BY THE DEFENDANT IN VIOLATION OF THIS CHAPTER. AT THE OPTION OF THE COURT, SUCH RESTITUTION IS PAYABLE TO THE CONSERVATOR OR RECEIVER OR DIRECTLY TO THE PERSONS WHOSE FUNDS OR ASSETS WERE OBTAINED IN VIOLATION OF THIS CHAPTER.

(f). THE COMMISSIONER MAY IMPOSE A CIVIL PENALTY AGAINST A DEVELOPER OR ASSOCIATION, OR ITS ASSIGNEE OR AGENT, FOR ANY VIOLATION OF THIS CHAPTER OR RELATED RULE. THE COMMISSIONER MAY IMPOSE A CIVIL PENALTY INDIVIDUALLY AGAINST AN OFFICER OR BOARD MEMBER WHO WILLFULLY AND KNOWINGLY VIOLATES THIS CHAPTER, AN ADOPTED RULE, OR A FINAL ORDER OF THE COMMISSION; MAY ORDER THE REMOVAL OF SUCH INDIVIDUAL AS AN OFFICER OR MEMBER OF THE BOARD OF DIRECTORS OF THE ASSOCIATION; AND MAY PROHIBIT SUCH INDIVIDUAL FROM SERVING AS AN OFFICER OR A MEMBER OF THE BOARD OF DIRECTORS FOR A PERIOD OF TIME. FOR PURPOSES OF THIS SECTION, THE TERM "WILLFULLY AND KNOWINGLY" MEANS THAT THE COMMISSIONER INFORMED THE OFFICER OR BOARD MEMBER THAT HIS OR HER ACTION OR INTENDED ACTION VIOLATES THIS CHAPTER, A RELATED RULE, OR A FINAL ORDER OF THE COMMISSIONER AND THAT THE OFFICER OR BOARD MEMBER REFUSED TO COMPLY WITH THIS CHAPTER, THE RELATED RULE, OR THE FINAL ORDER OF THE COMMISSION. BEFORE INITIATING FORMAL AGENCY ACTION UNDER CHAPTER 20. THE COMMISSIONER MUST AFFORD THE OFFICER OR BOARD MEMBER AN OPPORTUNITY TO VOLUNTARILY COMPLY, AND IF HE OR SHE COMPLIES WITHIN 10 DAYS THE OFFICER OR BOARD MEMBER IS NOT

SUBJECT TO A CIVIL PENALTY. A PENALTY MAY BE IMPOSED FOR EACH DAY OF CONTINUING VIOLATION, BUT MAY NOT EXCEED A TOTAL OF \$5,000.

(g). IF A PARCEL OWNER PRESENTS THE COMMISSIONER WITH PROOF THAT THE PARCEL OWNER HAS REQUESTED ACCESS TO OFFICIAL RECORDS IN WRITING BY CERTIFIED MAIL, AND THAT AFTER TEN (10) DAYS THE PARCEL OWNER AGAIN MADE THE SAME REQUEST FOR ACCESS TO OFFICIAL RECORDS IN WRITING BY CERTIFIED MAIL, AND THAT MORE THAN TEN (10) DAYS HAS ELAPSED SINCE THE SECOND REQUEST AND THE ASSOCIATION HAS STILL FAILED OR REFUSED TO PROVIDE ACCESS TO OFFICIAL RECORDS AS REQUIRED BY THIS CHAPTER, THE COMMISSIONER SHALL ISSUE A SUBPOENA REQUIRING PRODUCTION OF THE REQUESTED RECORDS WHERE THE RECORDS ARE KEPT PURSUANT TO S. 720.303. (h). IN ADDITION TO SUBPARAGRAPH (G), OF THIS SECTION, THE COMMISSIONER MAY SEEK THE IMPOSITION OF A CIVIL PENALTY THROUGH THE CIRCUIT COURT FOR ANY VIOLATION FOR WHICH THE COMMISSIONER MAY ISSUE A NOTICE TO SHOW CAUSE UNDER SUBSECTION S. 720.302(11). THE CIVIL PENALTY MUST BE AT LEAST \$500 BUT MAY NOT EXCEED \$5,000 FOR EACH VIOLATION. THE COURT MAY ALSO AWARD TO THE PREVAILING PARTY COURT COSTS AND REASONABLE ATTORNEY FEES AND, IF THE COMMISSIONER PREVAILS, MAY ALSO AWARD REASONABLE COSTS OF INVESTIGATION.

5. HOMEOWNERS' ASSOCIATION DIRECTORS, OFFICERS, AND EMPLOYEES; HOMEOWNERS' ASSOCIATION DEVELOPERS, COMMUNITY ASSOCIATION MANAGERS; AND COMMUNITY ASSOCIATION MANAGEMENT FIRMS HAVE AN ONGOING DUTY TO REASONABLY COOPERATE WITH THE COMMISSIONER IN ANY INVESTIGATION PURSUANT TO THIS CHAPTER. THE COMMISSIONER SHALL REFER TO LOCAL LAW ENFORCEMENT ANY PERSON WHOM THE COMMISSIONER BELIEVES HAS ALTERED, DESTROYED, CONCEALED, OR REMOVED ANY RECORD, DOCUMENT, OR THING REQUIRED TO BE KEPT OR MAINTAINED UNDER THIS CHAPTER FOR THE PURPOSE OF IMPAIRING ITS VERITY OR AVAILABILITY TO THE DEPARTMENT'S INVESTIGATION.

Section 7. Title 41, Chapter 20, Article 2, Arizona Revised Statutes, is amended by adding Section 41-2328, to read:

#### SECTION 41-2328. PENALTY GUIDELINES

A. THE DIVISION SHALL, BY RULE, ADOPT PENALTY GUIDELINES APPLICABLE TO VIOLATIONS OR TO CATEGORIES OF VIOLATIONS OF THIS CHAPTER OR RELATED RULES. THE GUIDELINES MUST SPECIFY A MEANINGFUL RANGE OF CIVIL PENALTIES FOR EACH SUCH VIOLATION OF STATUTE AND RULE AND MUST BE BASED UPON THE HARM CAUSED BY THE VIOLATION, THE REPETITION OF THE VIOLATION, AND UPON SUCH OTHER

FACTORS DEEMED RELEVANT BY THE DIVISION, SUCH AS THE SIZE OF THE ASSOCIATION OR WHETHER THE VIOLATIONS WERE COMMITTED BY A DEVELOPER- OR OWNER- CONTROLLED ASSOCIATION. THE GUIDELINES MUST DESIGNATE POSSIBLE MITIGATING OR AGGRAVATING CIRCUMSTANCES THAT MIGHT JUSTIFY A DEPARTURE FROM THE RANGE OF PENALTIES PROVIDED BY THE RULES. IT IS THE LEGISLATURE'S INTENT THAT MINOR VIOLATIONS BE DISTINGUISHED FROM THOSE THAT ENDANGER THE HEALTH, SAFETY, OR WELFARE OF PARCEL OWNERS OR OTHER PERSONS AND THAT SUCH GUIDELINES PROVIDE REASONABLE AND MEANINGFUL NOTICE TO THE PUBLIC OF LIKELY PENALTIES THAT MAY BE IMPOSED FOR THE PROSCRIBED CONDUCT. THIS SUBSECTION DOES NOT LIMIT THE ABILITY OF THE COMMISSIONER TO INFORMALLY DISPOSE OF ADMINISTRATIVE ACTIONS OR COMPLAINTS BY STIPULATION, AGREED SETTLEMENT, OR CONSENT ORDER. ALL AMOUNTS COLLECTED SHALL BE DEPOSITED WITH THE CONDOMINIUM AND PLANNED COMMUNITY HEARING OFFICE FUND IN ACCORDANCE WITH 41-2336. IF A DEVELOPER FAILS TO PAY THE CIVIL PENALTY AND THE AMOUNT OWED TO THE ASSOCIATION, THE DIVISION SHALL ISSUE AN ORDER DIRECTING THAT SUCH DEVELOPER CEASE AND DESIST FROM FURTHER OPERATION UNTIL THE CIVIL PENALTY IS PAID OR SHALL PURSUE ENFORCEMENT OF THE PENALTY THROUGH COURT ORDER. IF AN ASSOCIATION FAILS TO PAY THE CIVIL PENALTY, THE DIVISION SHALL PURSUE ENFORCEMENT THROUGH COURT ORDER, AND THE ORDER IMPOSING THE CIVIL PENALTY OR THE CEASE AND DESIST ORDER IS NOT EFFECTIVE UNTIL 20 DAYS AFTER THE DATE OF SUCH ORDER. ANY ACTION COMMENCED BY THE DIVISION SHALL BE BROUGHT IN THE COUNTY IN WHICH THE COMMISSIONER HAS ITS EXECUTIVE OFFICES OR IN THE COUNTY WHERE THE VIOLATION OCCURRED.

B. ALL FUNDS COLLECTED BY THE DIVISION AND ANY AMOUNTS PAID AS FEES, FINES, OR PENALTIES OR FROM COSTS AWARDED TO THE DIVISION BY A COURT OR ADMINISTRATIVE FINAL ORDER UNDER THIS CHAPTER SHALL BE DEPOSITED WITH THE CONDOMINIUM AND PLANNED COMMUNITY HEARING OFFICE FUND IN ACCORDANCE WITH 41-2336.

Section 8. Title 41, Chapter 20, Article 3, Arizona Revised Statutes, is amended by adding Section 41-2329, to read:

#### ARTICLE 3. HOMEOWNER' ASSOCIATION FEES

##### SECTION 41-2329 HOMEOWNERS' ASSOCIATION FEES

A. EFFECTIVE JANUARY 1, 2016, EACH HOMEOWNERS' ASSOCIATION THAT OPERATES MORE THAN TWO PARCELS MUST PAY TO THE COMMISSIONER AN ANNUAL FEE OF \$4 FOR EACH RESIDENTIAL PARCEL OPERATED BY THE ASSOCIATION. BEGINNING JANUARY 1, 2017, THE

COMMISSIONER MAY INCREASE THE FEE TO REFLECT CHANGES IN THE COST OF LIVING UNDER S. 401(A)(17) OF THE INTERNAL REVENUE CODE.

B. IF THE FEE IS NOT PAID BY MARCH 1, THE ASSOCIATION SHALL BE ASSESSED A PENALTY OF 10 PERCENT OF THE AMOUNT DUE AND WILL NOT HAVE STANDING TO MAINTAIN OR DEFEND ANY ACTION IN THE COURTS OF THIS STATE UNTIL THE AMOUNT DUE, PLUS ANY PENALTY, IS PAID.

C. FUNDS COLLECTED SHALL BE DEPOSITED INTO CONDOMINIUM AND PLANNED COMMUNITY HEARING OFFICE FUND IN ACCORDANCE WITH 41-2336.

D. FUNDS SHALL BE USED BY THE COMMISSIONER FOR, BUT THEIR USE IS NOT LIMITED TO, THE REVIEW AND APPROVAL OF DEED RESTRICTIONS BEFORE BEING RECORDED AT THE COUNTY LEVEL BY THE DEVELOPER OR OWNER OF THE INITIAL LOTS TO BE DEVELOPED; EDUCATION; ENFORCEMENT; INVESTIGATION; AND PROSECUTION OF POLICIES AND PROCEDURES RELATED TO MANDATED PROPERTIES.

E. THE COMMISSIONER SHALL FURNISH EACH ASSOCIATION THAT PAYS FEES UNDER THIS SECTION WITH A COPY OF THIS CHAPTER, AS AMENDED, AND RELATED RULES ON AN ANNUAL BASIS.

Section 9. Title 41, Chapter 20, Article 4, Arizona Revised Statutes, is amended by adding Section 41-2330, to read:

SECTION 41-2330 HOMEOWNERS ASSOCIATION ADVISORY BOARD; MEMBERS; TERMS; QUALIFICATIONS; COMPENSATION; CHAIRMAN; DUTIES

A. THE HOMEOWNERS ASSOCIATION ADVISORY BOARD IS ESTABLISHED AND IS COMPOSED OF FIVE MEMBERS WHO ARE APPOINTED BY THE GOVERNOR. THE TERM OF OFFICE OF EACH MEMBER IS FOUR YEARS. STARTING WITH THE APPOINTMENT OF ADVISORY BOARD MEMBERS ON JANUARY 1, 2017, ADVISORY BOARD MEMBERS SHALL BE DIVIDED INTO THREE (3) CLASSES WITH STAGGERED TERMS OF OFFICE. TWO ADVISORY BOARD MEMBERS SHALL BE APPOINTED FOR A TERM OF FOUR (4) YEARS; TWO ADVISORY BOARD MEMBERS SHALL BE APPOINTED FOR A TERM OF THREE (3) YEARS AND ONE ADVISORY BOARD MEMBER SHALL BE APPOINTED FOR A TERM OF TWO (2) YEARS. FOR EACH APPOINTMENT THEREAFTER, ADVISORY BOARD MEMBERS SHALL BE APPOINTED TO A FOUR (4) YEAR TERM. APPOINTMENT TO FILL A VACANCY OCCURRING OTHER THAN BY EXPIRATION OF TERM SHALL BE FILLED BY APPOINTMENT FOR THE UNEXPIRED PORTION OF THE TERM ONLY.

B. IN VIEW OF THE PURPOSES OF THE DEPARTMENT AS STATED IN 41-2325(B) AND (C), THE MEMBERSHIP OF THE BOARD SHALL CONSIST OF:

1. THREE MEMBERS, EACH OF WHOM IS A VALID MEMBER OF A HOMEOWNERS ASSOCIATION IN ARIZONA FOR THE PAST FIVE YEARS AND WHO HAS NOT BEEN A BOARD DIRECTOR OR OFFICER IN THE PAST TWO YEARS.

2. TWO MEMBERS EACH OF WHOM IS A VALID MEMBER OF A HOMEOWNERS ASSOCIATION IN ARIZONA FOR THE PAST FIVE YEARS AND HAS SERVED IN AN OFFICIAL CAPACITY AS AN OFFICER OR DIRECTOR OF A HOMEOWNERS ASSOCIATION FOR AT LAST THREE YEARS.

C. MEMBERS OF THE BOARD SHALL RECEIVE NO COMPENSATION BUT SHALL BE REIMBURSED FOR SUBSISTENCE EXPENSES PURSUANT TO SECTION 38-624 AND TRAVEL EXPENSES PURSUANT TO SECTION 38-623.

D. THE BOARD ANNUALLY SHALL SELECT FROM ITS MEMBERSHIP A CHAIRPERSON FOR THE BOARD.

E. THE BOARD SHALL PROVIDE THE COMMISSIONER WITH SUCH RECOMMENDATIONS AS IT DEEMS NECESSARY AND BENEFICIAL TO THE BEST INTERESTS OF THE PUBLIC. THE BOARD SHALL ALSO PROVIDE RECOMMENDATIONS ON SPECIFIC QUESTIONS OR PROPOSALS AS THE BOARD DEEMS NECESSARY OR AS REQUESTED BY THE COMMISSIONER.

F. MEETINGS OF THE ADVISORY BOARD.

1. THE BOARD SHALL MEET FOR THE TRANSACTION OF BUSINESS NOT LESS THAN ONCE EACH QUARTER-YEAR AT THE STATE CAPITOL. THE BOARD MAY HOLD OTHER MEETINGS IT DEEMS ADVISABLE UPON FIVE DAYS' WRITTEN NOTICE OF THE TIME AND PLACE OF THE MEETING, SIGNED BY THE COMMISSIONER OR A MAJORITY OF THE MEMBERS OF THE BOARD.

2. A MAJORITY OF THE BOARD SHALL CONSTITUTE A QUORUM. A VACANCY ON THE BOARD SHALL NOT IMPAIR THE RIGHTS OR POWERS OF THE REMAINING MEMBERS.

G. THE BOARD ANNUALLY SHALL PRESENT TO THE GOVERNOR AN EVALUATION OF THE PERFORMANCE OF THE HOMEOWNER ASSOCIATION COMMISSIONER AND THE HOMEOWNER ASSOCIATION DEPARTMENT.

Section 10. Title 41, Chapter 20, Article 4, Arizona Revised Statutes, is amended by adding Section 41-2331 to read:

ARTICLE 4. ADMINISTRATIVE HEARINGS.

41-2331. ADMINISTRATIVE ADJUDICATION OF COMPLAINTS PURSUANT TO CHAPTER 6, ARTICLE 10 OF THIS TITLE. AN ADMINISTRATIVE LAW JUDGE SHALL ADJUDICATE COMPLAINTS REGARDING, AND ENSURE COMPLIANCE WITH:

1. TITLE 33, CHAPTER 9 AND CONDOMINIUM DOCUMENTS.

2. TITLE 33, CHAPTER 16 AND PLANNED COMMUNITY DOCUMENTS.

Section 11. Title 41, Chapter 20, Article 4, Arizona Revised Statutes, is amended by adding Section 41-2332, to read:

41-2332. HEARING; RIGHTS AND PROCEDURES

A. FOR A DISPUTE BETWEEN AN OWNER AND A CONDOMINIUM ASSOCIATION OR PLANNED COMMUNITY ASSOCIATION THAT IS REGULATED PURSUANT TO TITLE 33, CHAPTER 9 OR 16, THE OWNER OR ASSOCIATION MAY PETITION THE DEPARTMENT FOR A HEARING CONCERNING VIOLATIONS OF CONDOMINIUM GOVERNING DOCUMENTS OR PLANNED COMMUNITY GOVERNING DOCUMENTS OR VIOLATIONS OF THE STATUTES THAT REGULATE CONDOMINIUMS OR PLANNED COMMUNITIES. THE PETITIONER SHALL FILE A PETITION WITH THE DEPARTMENT AND PAY A FILING FEE IN AN AMOUNT TO BE ESTABLISHED BY THE DIRECTOR. THE FILING FEE SHALL BE DEPOSITED IN THE CONDOMINIUM AND PLANNED COMMUNITY HEARING OFFICE FUND ESTABLISHED BY SECTION 41-2336. ON DISMISSAL OF A PETITION AT THE REQUEST OF THE PETITIONER BEFORE A HEARING IS SCHEDULED OR BY STIPULATION OF THE PARTIES BEFORE A HEARING IS SCHEDULED, THE FILING FEE SHALL BE REFUNDED TO THE PETITIONER. THE DEPARTMENT DOES NOT HAVE JURISDICTION TO HEAR:

1. ANY DISPUTE AMONG OR BETWEEN OWNERS TO WHICH THE ASSOCIATION IS NOT A PARTY.

2. ANY DISPUTE BETWEEN AN OWNER AND ANY PERSON, FIRM, PARTNERSHIP, CORPORATION, ASSOCIATION OR OTHER ORGANIZATION THAT IS ENGAGED IN THE BUSINESS OF DESIGNING, CONSTRUCTING OR SELLING A CONDOMINIUM AS DEFINED IN SECTION 33-1202 OR ANY PROPERTY OR IMPROVEMENTS WITHIN A PLANNED COMMUNITY AS DEFINED IN SECTION 33-1802, INCLUDING ANY PERSON, FIRM, PARTNERSHIP, CORPORATION, ASSOCIATION OR OTHER ORGANIZATION LICENSED PURSUANT TO TITLE 32, CHAPTER 20, ARISING OUT OF OR RELATED TO THE DESIGN, CONSTRUCTION, CONDITION OR SALE OF THE CONDOMINIUM OR ANY PROPERTY OR IMPROVEMENTS WITHIN A PLANNED COMMUNITY.

B. THE PETITION SHALL BE IN WRITING ON A FORM APPROVED BY THE DEPARTMENT, SHALL LIST THE COMPLAINTS AND SHALL BE SIGNED BY OR ON BEHALF OF THE PERSONS FILING AND INCLUDE THEIR ADDRESSES, STATING THAT A HEARING IS DESIRED, AND SHALL BE FILED WITH THE DEPARTMENT.

C. ON RECEIPT OF THE PETITION AND THE FILING FEE THE DEPARTMENT SHALL MAIL BY CERTIFIED MAIL A COPY OF THE PETITION ALONG WITH NOTICE TO THE NAMED RESPONDENT THAT A RESPONSE IS REQUIRED WITHIN TWENTY (20) DAYS OF MAILING OF THE PETITION SHOWING CAUSE, IF ANY, WHY THE PETITION SHOULD BE DISMISSED.

D. AFTER RECEIVING THE RESPONSE, THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE SHALL PROMPTLY REVIEW THE PETITION FOR HEARING AND, IF JUSTIFIED, REFER THE PETITION TO THE OFFICE OF ADMINISTRATIVE HEARINGS. THE COMMISSIONER MAY DISMISS A PETITION FOR HEARING IF IT APPEARS TO THE COMMISSIONER'S SATISFACTION THAT THE DISPUTED ISSUE OR ISSUES HAVE BEEN RESOLVED BY THE PARTIES.

E. FAILURE OF THE RESPONDENT TO ANSWER IS DEEMED AN ADMISSION OF THE ALLEGATIONS MADE IN THE PETITION, AND THE COMMISSIONER SHALL ISSUE A DEFAULT DECISION.

F. INFORMAL DISPOSITION MAY BE MADE OF ANY CONTESTED CASE.

G. EITHER PARTY OR THE PARTY'S AUTHORIZED AGENT MAY INSPECT ANY FILE OF THE DEPARTMENT THAT PERTAINS TO THE HEARING, IF THE AUTHORIZATION IS FILED IN WRITING WITH THE DEPARTMENT.

H. AT A HEARING CONDUCTED PURSUANT TO THIS SECTION, A CORPORATION MAY BE REPRESENTED BY A CORPORATE OFFICER, EMPLOYEE OR CONTRACTOR OF THE CORPORATION WHO IS NOT A MEMBER OF THE STATE BAR IF:

1. THE CORPORATION HAS SPECIFICALLY AUTHORIZED THE OFFICER, EMPLOYEE OR CONTRACTOR OF THE CORPORATION TO REPRESENT IT.

2. THE REPRESENTATION IS NOT THE OFFICER'S, EMPLOYEE'S OR CONTRACTOR OF THE CORPORATION'S PRIMARY DUTY TO THE CORPORATION BUT IS SECONDARY OR INCIDENTAL TO THE OFFICER'S, EMPLOYEE'S OR CONTRACTOR OF THE CORPORATION'S, LIMITED LIABILITY COMPANY'S, LIMITED LIABILITY PARTNERSHIP'S, SOLE PROPRIETOR'S OR OTHER LAWFULLY FORMED AND OPERATING ENTITY'S DUTIES RELATING TO THE MANAGEMENT OR OPERATION OF THE CORPORATION.

Section 12. Title 41, Chapter 20, Article 4, Arizona Revised Statutes, is amended by adding Section 41-2333, to read

41-2333. ORDERS; PENALTIES; DISPOSITION

A. THE ADMINISTRATIVE LAW JUDGE MAY ORDER ANY PARTY TO ABIDE BY THE STATUTE, CONDOMINIUM DOCUMENTS, COMMUNITY DOCUMENTS OR CONTRACT PROVISION AT ISSUE AND MAY LEVY A CIVIL PENALTY ON THE BASIS OF EACH VIOLATION. FOR



PURPOSES OF ACTIONS BROUGHT UNDER TITLE 33, CHAPTER 9 CONDOMINIUMS AND TITLE 16, PLANNED COMMUNITIES CIVIL PENALTY SHALL NOT EXCEED FIVE HUNDRED DOLLARS. ALL MONIES COLLECTED PURSUANT TO THIS ARTICLE SHALL BE DEPOSITED IN THE CONDOMINIUM AND PLANNED COMMUNITY HEARING OFFICE FUND ESTABLISHED BY SECTION 41-2098.05. IF THE PETITIONER PREVAILS, THE ADMINISTRATIVE LAW JUDGE SHALL ORDER THE RESPONDENT TO PAY TO THE PETITIONER THE FILING FEE REQUIRED BY SECTION 41-2098.01.

B. THE ORDER ISSUED BY THE ADMINISTRATIVE LAW JUDGE IS BINDING ON THE PARTIES UNLESS A REHEARING IS GRANTED PURSUANT TO SECTION 41-1092.09. BASED ON A PETITION SETTING FORTH THE REASONS FOR THE REQUEST FOR REHEARING, IN WHICH CASE THE ORDER ISSUED AT THE CONCLUSION OF THE REHEARING IS BINDING ON THE PARTIES. THE ORDER ISSUED BY THE ADMINISTRATIVE LAW JUDGE IS ENFORCEABLE THROUGH CONTEMPT OF COURT PROCEEDINGS AND IS SUBJECT TO JUDICIAL REVIEW AS PRESCRIBED BY SECTION 41-1092.08.

Section 13. Title 41, Chapter 20, Article 4 Arizona Revised Statutes, is amended by adding Section 41-2334, to read

41-2334. SCOPE OF HEARING

A. THE ADMINISTRATIVE LAW JUDGE MAY HEAR AND ADJUDICATE ALL MATTERS RELATING TO CONDOMINIUMS AND PLANNED COMMUNITIES.;

B. THIS SECTION SHALL NOT BE CONSTRUED TO LIMIT THE JURISDICTION OF THE COURTS OF THIS STATE TO HEAR AND DECIDE MATTERS PURSUANT TO THE STATUTES OR CONDOMINIUM DOCUMENTS THAT REGULATE CONDOMINIUMS OR THE STATUTES OR COMMUNITY DOCUMENTS THAT REGULATE PLANNED COMMUNITIES.

Section 14. Title 41, Chapter 20, Article 4, Arizona Revised Statutes, is amended by adding Section 41-2335, to read

41-2335. REHEARING; APPEAL

A. A PERSON AGGRIEVED BY A DECISION OF THE ADMINISTRATIVE LAW JUDGE. MAY APPLY FOR A REHEARING BY FILING WITH THE COMMISSIONER A PETITION IN WRITING PURSUANT TO SECTION 41-1092.09. WITHIN TEN DAYS AFTER FILING SUCH PETITION, THE COMMISSIONER SHALL SERVE NOTICE OF THE REQUEST ON THE OTHER PARTY BY MAILING A COPY OF THE PETITION IN THE MANNER PRESCRIBED IN SECTION 41-1092.04 FOR NOTICE OF HEARING.

B. THE FILING OF A PETITION FOR REHEARING TEMPORARILY SUSPENDS THE OPERATION OF THE ADMINISTRATIVE LAW JUDGE ACTION. IF THE PETITION IS GRANTED, THE ADMINISTRATIVE LAW JUDGE ACTION IS SUSPENDED PENDING THE DECISION ON THE REHEARING.

C. IN THE ORDER GRANTING OR DENYING A REHEARING, THE COMMISSIONER SHALL INCLUDE A STATEMENT OF THE PARTICULAR GROUNDS AND REASONS FOR THE COMMISSIONER'S ACTION ON THE PETITION AND SHALL PROMPTLY MAIL A COPY OF THE ORDER TO THE PARTIES WHO HAVE APPEARED IN SUPPORT OF OR IN OPPOSITION TO THE PETITION FOR REHEARING.

D. IN A REHEARING CONDUCTED PURSUANT TO THIS SECTION, A CORPORATION MAY BE REPRESENTED BY A CORPORATE OFFICER OR EMPLOYEE WHO IS NOT A MEMBER OF THE STATE BAR IF:

1. THE CORPORATION HAS SPECIFICALLY AUTHORIZED SUCH OFFICER OR EMPLOYEE TO REPRESENT IT.

2. SUCH REPRESENTATION IS NOT THE OFFICER'S OR EMPLOYEE'S PRIMARY DUTY TO THE CORPORATION BUT IS SECONDARY OR INCIDENTAL TO SUCH OFFICER'S OR EMPLOYEE'S DUTIES RELATING TO THE MANAGEMENT OR OPERATION OF THE CORPORATION.

Section 15. Title 41, Chapter 20, Article 4, Arizona Revised Statutes, is amended by adding Section 41-2336 to read

41-2336. CONDOMINIUM AND PLANNED COMMUNITY HEARING OFFICE FUND

A. THE CONDOMINIUM AND PLANNED COMMUNITY HEARING OFFICE FUND IS ESTABLISHED IN THE DEPARTMENT TO BE ADMINISTERED BY THE COMMISSIONER. MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED. ON NOTICE FROM THE COMMISSIONER. THE STATE TREASURER SHALL INVEST AND DIVEST MONIES IN THE FUND AS PROVIDED BY SECTION 35-313, AND MONIES EARNED FROM INVESTMENT SHALL BE CREDITED TO THE FUND.

B. MONIES IN THE CONDOMINIUM AND PLANNED COMMUNITY HEARING OFFICE FUND SHALL BE USED TO REIMBURSE THE ACTUAL COSTS OF THE OFFICE OF ADMINISTRATIVE HEARINGS IN CONDUCTING HEARINGS PURSUANT TO SECTION 41-2332, SUBSECTION B. MONIES REMAINING IN THE FUND MAY BE USED BY THE DEPARTMENT TO OFFSET THE COSTS OF ADMINISTERING CASES FILED PURSUANT TO SECTION 41-2332, SUBSECTION B.

C. ALL FEES COLLECTED FOR CASES ADJUDICATED BY THE OFFICE OF ADMINISTRATIVE HEARINGS SHALL BE SENT TO THE DEPARTMENT TO BE DEPOSITED INTO THE CONDOMINIUM AND PLANNED COMMUNITY HEARING OFFICE FUND.

Section 17. Section 41-2198.01, Arizona Revised Statutes, is amended to read:

41-2198.01. Hearing; rights and procedures

A. A person who is subject to title 33, chapter 11 or a party to a rental agreement entered into pursuant to title 33, chapter 11 may petition the department for a hearing concerning violations of the Arizona mobile home parks residential landlord and tenant act by filing a petition with the department and paying a nonrefundable filing fee in an amount to be established by the director. All monies collected shall be deposited in the state general fund and are not refundable.

~~B. For a dispute between an owner and a condominium association or planned community association that is regulated pursuant to title 33, chapter 9 or 16, the owner or association may petition the department for a hearing concerning violations of condominium documents or planned community documents or violations of the statutes that regulate condominiums or planned communities. The petitioner shall file a petition with the department and pay a filing fee in an amount to be established by the director. The filing fee shall be deposited in the condominium and planned community hearing office fund established by section 41-2198.05. On dismissal of a petition at the request of the petitioner before a hearing is scheduled or by stipulation of the parties before a hearing is scheduled, the filing fee shall be refunded to the petitioner. The department does not have jurisdiction to hear:~~

~~1. Any dispute among or between owners to which the association is not a party.~~

~~2. Any dispute between an owner and any person, firm, partnership, corporation, association or other organization that is engaged in the business of designing, constructing or selling a condominium as defined in section 33-1202 or any property or improvements within a planned community as defined in section 33-1802, including any person, firm, partnership, corporation, association or other organization licensed pursuant to title 32, chapter 20, arising out of or related to the design, construction, condition or sale of the condominium or any property or improvements within a planned community.~~

**B. THE DEPARTMENT MAY ADJUDICATE CASES REFERRED BY THE DEPARTMENT OF HOMEOWNERS ASSOCIATIONS.**

C-A. The petition shall be in writing on a form approved by the department, shall list the complaints and shall be signed by or on behalf of the persons filing and include their addresses, stating that a hearing is desired, and shall be filed with the department.

~~D~~ B. On receipt of the petition and the filing fee the department shall mail by certified mail a copy of the petition along with notice to the named respondent that a response is required within twenty days of mailing of the petition showing cause, if any, why the petition should be dismissed.

~~E~~ C. After receiving the response, the director or the director's designee shall promptly review the petition for hearing and, if justified, refer the petition to the office of administrative hearings. The director may dismiss a petition for hearing if it appears to the director's satisfaction that the disputed issue or issues have been resolved by the parties.

**F D.** Failure of the respondent to answer is deemed an admission of the allegations made in the petition, and the director shall issue a default decision.

**G E.** Informal disposition may be made of any contested case.

**H F.** Either party or the party's authorized agent may inspect any file of the department that pertains to the hearing, if the authorization is filed in writing with the department.

**I G.** At a hearing conducted pursuant to this section, a corporation may be represented by a corporate officer, employee or contractor of the corporation who is not a member of the state bar if:

1. The corporation has specifically authorized the officer, employee or contractor of the corporation to represent it.
2. The representation is not the officer's, employee's or contractor of the corporation's primary duty to the corporation but is secondary or incidental to the officer's, employee's or contractor of the corporation's, limited liability company's, limited liability partnership's, sole proprietor's or other lawfully formed and operating entity's duties relating to the management or operation of the corporation.

Section 18. Section 41-2198.02, Arizona Revised Statutes, is amended to read:

41-2198.02. Orders; penalties; disposition

A. The administrative law judge may order any party to abide by the statute, condominium documents, community documents or contract provision at issue and may levy a civil penalty pursuant to 41-2328 on the basis of each violation. For purposes of actions brought under the Arizona mobile home parks residential landlord and tenant act, the civil penalty shall not exceed five hundred dollars. All monies collected pursuant to this article shall be deposited in the state general fund to be used to offset the cost of administering the administrative law judge function, except that monies collected from disputes involving condominiums or planned communities as prescribed in section 41-2328 shall be deposited in the condominium and planned community hearing office fund established by section 41-2336. If the petitioner prevails, the administrative law judge shall order the respondent to pay to the petitioner the filing fee required by section 41-2198.01.

B. The order issued by the administrative law judge is binding on the parties unless a rehearing is granted pursuant to section 41-2198.04 based on a petition setting forth the reasons for the request for rehearing, in which case the order issued at the conclusion of the rehearing is binding on the parties. The order issued by the administrative law judge is enforceable through contempt of court proceedings and is subject to judicial review as prescribed by section 41-1092.08.

Section 20. Section 41-2198.05, Arizona Revised Statutes, is REPEALED:

41-2198.05. Condominium and planned community hearing office fund

A. The condominium and planned community hearing office fund is established in the department to be administered by the director. Monies in the fund are continuously appropriated.

On notice from the director, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund. B. Monies in the

condominium and planned community hearing office fund shall be used to reimburse the actual costs of the office of administrative hearings in conducting hearings pursuant to section 41-2198.01, subsection B. Monies remaining in the fund may be used by the department to offset the costs of administering cases filed pursuant to section 41-2198.01, subsection B.