

Revised October 15, 2017



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. The processing of HOA disputes by ADRE 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; RELATING TO THE DEPARTMENT OF HOMEOWNERS ASSOCIATIONS; REPEALING TITLE 32, CHAPTER 20, ARTICLE 11; RELATING TO HOMEOWNERS ASSOCIATIONS AND ADMINISTRATIVE HEARINGS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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3 **Be it enacted by the Legislature of the State of Arizona:**
4

5 Sec. 1. Title 32, Chapter 20, Article 11 is repealed.
6

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

8 **33-1242. Powers of unit owners' association; notice to unit owner of violation**

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

- 10 1. Adopt and amend bylaws and rules.
- 11 2. Adopt and amend budgets for revenues, expenditures and reserves and collect assessments
- 12 for common expenses from unit owners.
- 13 3. Hire and discharge managing agents and other employees, agents and independent
- 14 contractors.
- 15 4. Institute, defend or intervene in litigation or administrative proceedings in its own name
- 16 on behalf of itself or two or more unit owners on matters affecting the condominium.
- 17 5. Make contracts and incur liabilities.
- 18 6. Regulate the use, maintenance, repair, replacement and modification of common elements.
- 19 7. Cause additional improvements to be made as a part of the common elements.
- 20 8. Acquire, hold, encumber and convey in its own name any right, title or interest to real or
- 21 personal property, except that common elements may be conveyed or subjected to a
- 22 security interest only pursuant to section 33-1252.
- 23 9. Grant easements, leases, licenses and concessions through or over the common elements.
- 24 10. Impose and receive any payments, fees or charges for the use, rental or operation of the
- 25 common elements other than limited common elements described in section 33-1212,
- 26 paragraphs 2 and 4 and for services provided to unit owners.
- 27 11. Impose charges for late payment of assessments and, after notice and an opportunity to be
- 28 heard, impose reasonable monetary penalties upon unit owners for violations of the
- 29 declaration, bylaws and rules of the association.
- 30 12. Impose reasonable charges for the preparation and recordation of amendments to
- 31 the declaration or statements of unpaid assessments.
- 32 13. Provide for the indemnification of its officers and executive board of directors and
- 33 maintain directors' and officers' liability insurance.
- 34 14. Assign its right to future income, including the right to receive common
- 35 expense assessments, but only to the extent the declaration expressly provides.
- 36 15. Be a member of a master association or other entity owning, maintaining or governing in
- 37 any respect any portion of the common elements or other property benefitting or related to the
- 38 condominium or the unit owners in any respect.
- 39 16. Exercise any other powers conferred by the declaration or bylaws.
- 40 17. Exercise all other powers that may be exercised in this state by legal entities of the same
- 41 type as the association.
- 42 18. Exercise any other powers necessary and proper for the governance and operation of
- 43 the association.

44 B. A unit owner who receives a written notice that the condition of the property owned by the
45 unit owner is in violation of a requirement of the condominium documents without regard to
46 whether a monetary penalty is imposed by the notice may provide the association with a written

1 response by sending the response by certified mail within ten business days after the date of the
2 notice. The response shall be sent to the address contained in the notice or in the recorded
3 notice prescribed by section 33-1256, subsection J.

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

- 8 1. The provision of the condominium documents that has allegedly been violated.
- 9 2. The date of the violation or the date the violation was observed.
- 10 3. The first and last name of the person or persons who observed the violation.
- 11 4. The process the unit owner must follow to contest the notice.

12 D. Unless the information required in subsection C, paragraph 4 of this section is provided in
13 the notice of violation, the association shall not proceed with any action to enforce the
14 condominium documents, including the collection of attorney fees, before or during the time
15 prescribed by subsection C of this section regarding the exchange of information between the
16 association and the unit owner AND SHALL GIVE THE UNIT OWNER WRITTEN NOTICE
17 OF THE UNIT OWNER'S OPTION TO PETITION FOR AN ADMINISTRATIVE HEARING
18 ON THE MATTER IN THE STATE DEPARTMENT OF HOMEOWNERS ASSOCIATIONS
19 PURSUANT TO SECTION 41-2332. AT ANY TIME BEFORE OR AFTER COMPLETION
20 OF THE EXCHANGE OF INFORMATION PURSUANT TO THIS SECTION, THE UNIT
21 OWNER MAY PETITION FOR A HEARING PURSUANT TO SECTION 41-2332 IF THE
22 DISPUTE IS WITHIN THE JURISDICTION OF THE STATE DEPARTMENT OF
23 HOMEOWNERS ASSOCIATIONS AS PRESCRIBED IN SECTION 41-2332.

24
25 Sec. 3. Section 33-1803, Arizona Revised Statutes, is amended to read:

26 **33-1803. assessments; penalties; notice to member of violation**

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

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

1 C. A member who receives a written notice that the condition of the property owned by the
2 member is in violation of the community documents without regard to whether a monetary
3 penalty is imposed by the notice may provide the association with a written response by sending
4 the response by certified mail within ten business days after the date of the notice. The response
5 shall be sent to the address contained in the notice or in the recorded notice prescribed by
6 section 33-1807, subsection J.

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

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

15 E. Unless the information required in subsection D, paragraph 4 of this section is provided in
16 the notice of violation, the association shall not proceed with any action to enforce the
17 community documents, including the collection of attorney fees, before or during the time
18 prescribed by subsection D of this section regarding the exchange of information between the
19 association and the member and shall give the member written notice of the member's option to
20 petition for an administrative hearing on the matter in the **STATE DEPARTMENT OF**
21 **HOMEOWNERS ASSOCIATIONS PURSUANT TO SECTION 41-2332. AT ANY TIME**
22 **BEFORE OR AFTER COMPLETION OF THE EXCHANGE OF INFORMATION**
23 **PURSUANT TO THIS SECTION, THE MEMBER MAY PETITION FOR A HEARING**
24 **PURSUANT TO SECTION 41-2332 IF THE DISPUTE IS WITHIN THE JURISDICTION OF**
25 **THE STATE DEPARTMENT OF HOMEOWNERS ASSOCIATIONS AS PRESCRIBED IN**
26 **SECTION 41-2332.**

27
28 Sec.4. Title 41, Arizona Revised Statutes, is amended by adding,

29
30 **CHAPTER 20**
31 **DEPARTMENT OF HOMEOWNERS ASSOCIATIONS; RELATING TO CONDOMINIUMS**
32 **AND PLANNED COMMUNITIES**

33
34 **ARTICLE 1. COMMISSIONER ESTABLISHMENT; PURPOSES;**
35 **SECTION 41-2325, TO READ:**

36 **41-2325. DEPARTMENT OF HOMEOWNERS ASSOCIATIONS; COMMISSIONER**
37 **ESTABLISHMENT; PURPOSES**

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

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

43
44 **2. THIS CHAPTER SHALL BE ADMINISTERED BY THE DEPARTMENT OF**
45 **HOMEOWNERS ASSOCIATIONS UNDER THE DIRECTION OF THE**
46 **HOMEOWNERS ASSOCIATION COMMISSIONER. THE COMMISSIONER**

1 SHALL ADOPT A SEAL WHICH SHALL BEAR THE WORDS "HOMEOWNERS
2 ASSOCIATION COMMISSIONER, STATE OF ARIZONA", WHICH SHALL BE
3 USED FOR THE AUTHENTICATION OF PROCEEDINGS OF THE DEPARTMENT
4 AND THE OFFICIAL DOCUMENTS THEREOF. THE COMMISSIONER'S
5 PRINCIPAL OFFICE SHALL BE AT THE STATE CAPITOL. THE
6 COMMISSIONER MAY HAVE BRANCH OFFICES THE COMMISSIONER DEEMS
7 NECESSARY IN OTHER CITIES.
8

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

22 B. THE PURPOSE OF THIS CHAPTER IS TO GIVE STATUTORY RECOGNITION TO
23 NOT-FOR-PROFIT CORPORATIONS THAT ADMINISTER OR OPERATE
24 RESIDENTIAL COMMUNITIES IN THIS STATE, TO PROVIDE REGULATIONS FOR
25 OPERATING HOMEOWNERS' ASSOCIATIONS, AND TO PROTECT THE RIGHTS OF
26 ASSOCIATION MEMBERS WITHOUT UNDULY IMPAIRING THE ABILITY OF SUCH
27 ASSOCIATIONS TO PERFORM THEIR FUNCTIONS AS AUTHORIZED BY FEDERAL,
28 STATE, AND LOCAL LAWS AND THE GOVERNING DOCUMENTS OF THE
29 ASSOCIATION.
30

31 C. HAVING PROVIDED CERTAIN POWERS AND AUTHORITY TO HOMEOWNERS'
32 ASSOCIATIONS AND IN DEED RESTRICTIONS CREATED BY DEVELOPERS OF
33 MANDATED PROPERTIES IN RESIDENTIAL COMMUNITIES, THE LEGISLATURE
34 RECOGNIZES THAT IT IS NECESSARY TO PROVIDE REGULATORY OVERSIGHT
35 OF SUCH ASSOCIATIONS TO ENSURE COMPLIANCE WITH FEDERAL AND STATE
36 LAWS AND LOCAL ORDINANCES. IT IS THE INTENT OF THE LEGISLATURE TO
37 PROTECT THE RIGHTS OF LOT OR UNIT OWNERS BY ENSURING THAT THE
38 POWERS AND AUTHORITY GRANTED TO HOMEOWNERS' ASSOCIATIONS AND
39 IN DEED RESTRICTIONS CREATED BY DEVELOPERS OF MANDATED
40 PROPERTIES IN RESIDENTIAL COMMUNITIES CONFORM TO A SYSTEM OF
41 CHECKS AND BALANCES IN ORDER TO PREVENT ABUSES BY THESE
42 GOVERNING AUTHORITIES.
43

44 D. "HOMEOWNERS' ASSOCIATION", "HOMEOWNERS ASSOCIATIONS,"
45 "ASSOCIATION" AND "HOA" AS USED WITHIN THIS CHAPTER SHALL HAVE

1 THE SAME MEANINGS AS ‘ASSOCIATION’ IN SECTIONS AND 33-1202(4) AND
2 33-1802(1).

3
4 Sec. 5. Title 41, Chapter 20, Article 1, Arizona Revised Statutes, is amended by adding
5 Section 41-2326 to read:

6 41-2326. COMMISSIONER POWERS AND DUTIES

7
8 A. THE COMMISSIONER HAS JURISDICTION FOR, AND MAY ENFORCE
9 COMPLIANCE WITH THIS CHAPTER, THE GOVERNING DOCUMENTS AND
10 ADOPTED RULES RELATING TO HOMEOWNERS’ ASSOCIATIONS. THE
11 COMMISSIONER MAY ALSO:

12 1. ISSUE A NOTICE TO SHOW CAUSE, WHICH MUST PROVIDE FOR A
13 HEARING, UPON WRITTEN REQUEST, IN ACCORDANCE CHAPTER 6,
14 ARTICLE 10 OF THIS TITLE.

15
16 2. ACCEPT GRANTS-IN-AID FROM ANY SOURCE.

17
18 3. PREPARE AND DISSEMINATE A PROSPECTUS AND OTHER INFORMATION
19 TO ASSIST PROSPECTIVE OWNERS, PURCHASERS, LESSEES, AND
20 DEVELOPERS OF HOMEOWNERS’ ASSOCIATIONS IN ASSESSING
21 ASSOCIATED RIGHTS, PRIVILEGES, AND DUTIES.

22
23 B. THE COMMISSIONER SHALL:

24 1. RESPOND TO COMPLAINTS, CONDUCT INVESTIGATIONS, AND
25 IMPOSE PENALTIES AS PROVIDED UNDER SECTION 41-2327.

26
27 2. ESTABLISH PROCEDURES FOR PROVIDING NOTICE TO AN
28 ASSOCIATION AND THE DEVELOPER, DURING THE PERIOD THE
29 DEVELOPER CONTROL, IF THE DIVISION IS CONSIDERING THE ISSUANCE
30 OF A DECLARATORY STATEMENT WITH RESPECT TO THE
31 HOMEOWNERS’ ASSOCIATION OR ANY RELATED DOCUMENT
32 GOVERNING SUCH COMMUNITY.

33
34 3. ANNUALLY PROVIDE EACH ASSOCIATION WITH A SUMMARY OF
35 DECLARATORY STATEMENTS AND FORMAL LEGAL OPINIONS RELATING
36 TO THE OPERATIONS OF HOMEOWNERS’ ASSOCIATIONS WHICH WERE
37 RENDERED BY THE COMMISSIONER DURING THE PREVIOUS YEAR.

38
39 4. PROVIDE TRAINING AND EDUCATIONAL PROGRAMS FOR
40 HOMEOWNERS’ ASSOCIATION BOARD MEMBERS AND LOT OR UNIT
41 OWNERS. THE TRAINING MAY INCLUDE WEB-BASED ELECTRONIC
42 MEDIA, LIVE TRAINING AND SEMINARS IN VARIOUS LOCATIONS
43 THROUGHOUT THE STATE. THE COMMISSIONER MAY REVIEW AND
44 APPROVE EDUCATION AND TRAINING PROGRAMS OFFERED BY
45 PROVIDERS AND SHALL MAINTAIN A CURRENT LIST OF APPROVED
46 PROGRAMS AND PROVIDERS AND MAKE SUCH LIST AVAILABLE TO

1 BOARD MEMBERS AND LOT OR UNIT OWNERS IN A REASONABLE AND
2 COST EFFECTIVE MANNER.

3
4 5. MAINTAIN A TOLL-FREE TELEPHONE NUMBER ACCESSIBLE TO
5 HOMEOWNERS' ASSOCIATION LOT OR UNIT OWNERS.

6
7 6. SUBMIT TO THE GOVERNOR, THE PRESIDENT OF THE SENATE, AND
8 THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AN ANNUAL
9 REPORT THAT INCLUDES, AT A MINIMUM, THE NUMBER OF TRAINING
10 PROGRAMS PROVIDED FOR HOMEOWNERS' ASSOCIATION BOARD
11 MEMBERS AND LOT OR UNIT OWNERS UNDER PARAGRAPH (B)(4) OF
12 THIS SECTION; THE NUMBER OF COMPLAINTS RECEIVED BY TYPE; THE
13 NUMBER AND PERCENT OF COMPLAINTS ACKNOWLEDGED IN WRITING
14 WITHIN THIRTY (30) DAYS; THE NUMBER AND PERCENT OF RESULTING
15 INVESTIGATIONS CONDUCTED WITHIN NINETY (90) DAYS; AND THE
16 NUMBER OF INVESTIGATIONS EXCEEDING THE NINETY (90) DAY
17 REQUIREMENT AS REQUIRED UNDER S. 720.3022(1). THE ANNUAL REPORT
18 MUST ALSO INCLUDE AN EVALUATION OF THE DIVISION'S CORE
19 BUSINESS PROCESSES AND MAKE RECOMMENDATIONS FOR
20 IMPROVEMENTS, INCLUDING STATUTORY CHANGES. THE REPORT
21 SHALL BE SUBMITTED BY SEPTEMBER 30TH FOLLOWING THE END OF
22 THE FISCAL YEAR.

23
24 C. THE COMMISSIONER MAY ADOPT RULES TO ADMINISTER AND ENFORCE
25 THIS CHAPTER.

26
27 Sec. 6. Title 41, Chapter 20, Article 2, Arizona Revised Statutes, is amended by adding
28 Section 41-2327, to read:

29 ARTICLE 2. COMPLAINTS
30 41-2327 COMPLAINTS

31
32 A. THE COMMISSIONER MAY INVESTIGATE COMPLAINTS AND ENFORCE
33 COMPLIANCE WITH RESPECT TO HOMEOWNERS' ASSOCIATIONS THAT ARE
34 STILL UNDER DEVELOPER CONTROL, INCLUDING COMPLAINTS AGAINST
35 DEVELOPERS INVOLVING IMPROPER TURNOVER OR FAILURE TO TURNOVER
36 PURSUANT TO THE GOVERNING DOCUMENTS. AFTER TURNOVER HAS
37 OCCURRED, THE COMMISSIONER MAY ONLY INVESTIGATE COMPLAINTS
38 RELATED TO FINANCIAL ISSUES, ELECTIONS, LOT OR UNIT OWNER ACCESS TO
39 ASSOCIATION RECORDS PURSUANT TO STATE LAW AND VIOLATIONS OF THE
40 COMMUNITY DOCUMENTS. IF A COMPLAINT IS MADE, THE COMMISSIONER
41 MUST CONDUCT ITS INQUIRY WITH DUE REGARD FOR THE INTERESTS OF THE
42 AFFECTED PARTIES. WITHIN THIRTY (30) DAYS AFTER RECEIVING A
43 COMPLAINT:

44 1. THE COMMISSIONER SHALL ACKNOWLEDGE THE COMPLAINT IN
45 WRITING AND NOTIFY THE COMPLAINANT AS TO WHETHER THE
46 COMPLAINT IS WITHIN THE JURISDICTION OF THE COMMISSIONER AND

1 WHETHER ADDITIONAL INFORMATION IS NEEDED BY THE
2 COMMISSIONER FROM THE COMPLAINANT.

3
4 2. THE COMMISSIONER SHALL CONDUCT ITS INVESTIGATION AND, WITHIN
5 90 DAYS AFTER RECEIPT OF THE ORIGINAL COMPLAINT OR TIMELY
6 REQUESTED ADDITIONAL INFORMATION, TAKE ACTION UPON THE
7 COMPLAINT. HOWEVER, THE FAILURE TO COMPLETE THE INVESTIGATION
8 WITHIN NINETY (90) DAYS DOES NOT PREVENT THE COMMISSIONER FROM
9 CONTINUING THE INVESTIGATION, ACCEPTING OR CONSIDERING
10 EVIDENCE OBTAINED OR RECEIVED AFTER NINETY (90) DAYS, OR TAKING
11 ADMINISTRATIVE ACTION IF REASONABLE CAUSE EXISTS TO BELIEVE
12 THAT A VIOLATION OF THIS CHAPTER OR RELATED RULE HAS OCCURRED.

13
14 3. IF AN INVESTIGATION IS NOT COMPLETED WITHIN THE TIME LIMITS
15 ESTABLISHED IN THIS SUBSECTION, THE COMMISSIONER SHALL, ON A
16 MONTHLY BASIS, NOTIFY THE COMPLAINANT IN WRITING OF THE STATUS
17 OF THE INVESTIGATION.

18
19 4. WHEN REPORTING ITS ACTION TO THE COMPLAINANT, THE
20 COMMISSIONER SHALL INFORM THE COMPLAINANT OF ANY
21 RIGHT TO A HEARING PURSUANT TO TITLE 41, CHAPTER 6,
22 ARTICLE 10, UNIFORM ADMINISTRATIVE HEARING PROCEDURES.

23
24 Sec. 7. Title 41, Chapter 20, Article 2, Arizona Revised Statutes, is amended by adding
25 Section 41-2328, to read:

26 SECTION 41-2328. INVESTIGATIONS

27
28 A. THE COMMISSIONER MAY CONDUCT NECESSARY PUBLIC OR PRIVATE
29 INVESTIGATIONS WITHIN OR OUTSIDE THIS STATE TO DETERMINE WHETHER
30 THERE HAS BEEN A VIOLATION OF THIS CHAPTER OR RELATED RULES OR
31 ORDERS, AND TO AID IN THE ADOPTION OF NEEDED RULES OR FORMS.

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

1
2 2. THE COMMISSIONER MAY REQUIRE OR PERMIT ANY PERSON TO FILE A
3 STATEMENT IN WRITING, UNDER OATH OR OTHERWISE, AS DETERMINED
4 BY THE COMMISSION, AS TO THE FACTS AND CIRCUMSTANCES
5 CONCERNING A MATTER TO BE INVESTIGATED.
6

7 3. THE COMMISSIONER MAY SUBMIT ANY OFFICIAL WRITTEN REPORT,
8 WORKSHEET, OR OTHER RELATED PAPER, OR A CERTIFIED COPY
9 THEREOF, COMPILED, PREPARED, DRAFTED, OR OTHERWISE MADE AND
10 AUTHENTICATED BY A FINANCIAL EXAMINER OR ANALYST TO BE
11 ADMITTED AS COMPETENT EVIDENCE IN ANY HEARING IN WHICH THE
12 FINANCIAL EXAMINER OR ANALYST IS AVAILABLE FOR CROSS-
13 EXAMINATION AND ATTESTS UNDER OATH THAT SUCH DOCUMENTS
14 WERE PREPARED AS A RESULT OF AN EXAMINATION OR INSPECTION
15 CONDUCTED PURSUANT TO THIS CHAPTER.
16

17 4. NOTWITHSTANDING ANY REMEDIES AVAILABLE TO LOT OR UNIT
18 OWNERS AND ASSOCIATIONS, IF THE COMMISSIONER HAS REASONABLE
19 CAUSE TO BELIEVE THAT A VIOLATION OF THIS CHAPTER, OR RELATED
20 RULE HAS OCCURRED, THE COMMISSIONER MAY INSTITUTE
21 ENFORCEMENT PROCEEDINGS IN ITS OWN NAME AGAINST ANY
22 DEVELOPER, ASSOCIATION, OFFICER, MEMBER OF THE BOARD OF
23 DIRECTORS, OR ITS ASSIGNEES OR AGENTS, AS FOLLOWS:
24

25 (a). THE COMMISSIONER MAY PERMIT A PERSON WHOSE CONDUCT OR
26 ACTIONS MAY BE UNDER INVESTIGATION TO WAIVE FORMAL
27 PROCEEDINGS AND ENTER INTO A CONSENT PROCEEDING WHEREBY
28 ORDERS, RULES, OR LETTERS OF CENSURE OR WARNING, WHETHER
29 FORMAL OR INFORMAL, MAY BE ENTERED AGAINST THE PERSON.
30

31 (b). THE COMMISSIONER MAY ISSUE AN ORDER REQUIRING THE
32 DEVELOPER, ASSOCIATION, OFFICER, MEMBER OF THE BOARD OF
33 DIRECTORS, OR ITS ASSIGNEES OR AGENTS, TO CEASE AND DESIST FROM
34 THE UNLAWFUL PRACTICE AND TAKE SUCH AFFIRMATIVE ACTION AS
35 THE COMMISSIONER DETERMINES WILL CARRY OUT THE PURPOSES OF
36 THIS CHAPTER. IF THE COMMISSIONER FINDS THAT A DEVELOPER,
37 ASSOCIATION, OFFICER, OR MEMBER OF THE BOARD OF DIRECTORS, OR
38 ITS ASSIGNEES OR AGENTS, IS VIOLATING OR IS ABOUT TO VIOLATE THIS
39 CHAPTER, ANY RULE ADOPTED OR ORDER ISSUED BY THE COMMISSION,
40 OR ANY WRITTEN AGREEMENT ENTERED INTO WITH THE COMMISSION,
41 AND SUCH VIOLATION PRESENTS AN IMMEDIATE DANGER TO THE PUBLIC
42 REQUIRING AN IMMEDIATE FINAL ORDER, IT MAY ISSUE AN EMERGENCY
43 CEASE AND DESIST ORDER RECITING WITH PARTICULARITY THE FACTS
44 UNDERLYING SUCH FINDINGS. THE EMERGENCY CEASE AND DESIST
45 ORDER IS EFFECTIVE FOR 90 DAYS. IF THE COMMISSIONER BEGINS
46 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.

1 (c). IF A DEVELOPER OR ASSOCIATION FAILS TO PAY RESTITUTION
2 DETERMINED BY THE COMMISSIONER TO BE OWED, PLUS ANY ACCRUED
3 INTEREST AT THE HIGHEST RATE PERMITTED BY LAW, WITHIN THIRTY
4 (30) DAYS OF EXPIRATION ANY APPELLATE TIME PERIOD OF A FINAL
5 ORDER REQUIRING PAYMENT OF RESTITUTION OR THE CONCLUSION OF
6 ANY APPEAL, WHICHEVER IS LATER, THE COMMISSIONER SHALL BRING
7 AN ACTION IN CIRCUIT OR COUNTY COURT ON BEHALF OF ANY
8 ASSOCIATION, CLASS OF LOT OR UNIT OWNERS, LESSEES, OR
9 PURCHASERS FOR RESTITUTION, DECLARATORY RELIEF, INJUNCTIVE
10 RELIEF, OR ANY OTHER AVAILABLE REMEDY. THE COMMISSIONER MAY
11 ALSO TEMPORARILY REVOKE ITS ACCEPTANCE OF THE FILING FOR THE
12 DEVELOPER TO WHICH THE RESTITUTION RELATES UNTIL PAYMENT OF
13 RESTITUTION IS MADE.

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

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

34 (f). THE COMMISSIONER MAY IMPOSE A CIVIL PENALTY AGAINST A
35 DEVELOPER OR ASSOCIATION, OR ITS ASSIGNEE OR AGENT, FOR ANY
36 VIOLATION OF THIS CHAPTER OR RELATED RULE. THE COMMISSIONER
37 MAY IMPOSE A CIVIL PENALTY INDIVIDUALLY AGAINST AN OFFICER OR
38 BOARD MEMBER WHO WILLFULLY AND KNOWINGLY VIOLATES THIS
39 CHAPTER, AN ADOPTED RULE, OR A FINAL ORDER OF THE COMMISSION;
40 MAY ORDER THE REMOVAL OF SUCH INDIVIDUAL AS AN OFFICER OR
41 MEMBER OF THE BOARD OF DIRECTORS OF THE ASSOCIATION; AND MAY
42 PROHIBIT SUCH INDIVIDUAL FROM SERVING AS AN OFFICER OR A
43 MEMBER OF THE BOARD OF DIRECTORS FOR A PERIOD OF TIME. FOR
44 PURPOSES OF THIS SECTION, THE TERM "WILLFULLY AND KNOWINGLY"
45 MEANS THAT THE COMMISSIONER INFORMED THE OFFICER OR BOARD
46 MEMBER THAT HIS OR HER ACTION OR INTENDED ACTION VIOLATES THIS

1 CHAPTER, A RELATED RULE, OR A FINAL ORDER OF THE COMMISSIONER
2 AND THAT THE OFFICER OR BOARD MEMBER REFUSED TO COMPLY WITH
3 THIS CHAPTER, THE RELATED RULE, OR THE FINAL ORDER OF THE
4 COMMISSION. BEFORE INITIATING FORMAL AGENCY ACTION UNDER
5 CHAPTER 20. THE COMMISSIONER MUST AFFORD THE OFFICER OR BOARD
6 MEMBER AN OPPORTUNITY TO VOLUNTARILY COMPLY, AND IF HE OR
7 SHE COMPLIES WITHIN 10 DAYS THE OFFICER OR BOARD MEMBER IS NOT
8 SUBJECT TO A CIVIL PENALTY. A PENALTY MAY BE IMPOSED FOR EACH
9 DAY OF CONTINUING VIOLATION, BUT MAY NOT EXCEED A TOTAL OF
10 \$5,000.

11 (g). IF A LOT OR UNIT OWNER PRESENTS THE COMMISSIONER WITH PROOF
12 THAT THE LOT OR UNIT OWNER HAS REQUESTED ACCESS TO OFFICIAL
13 RECORDS IN WRITING BY CERTIFIED MAIL, AND THAT AFTER TEN (10)
14 DAYS THE LOT OR UNIT OWNER AGAIN MADE THE SAME REQUEST FOR
15 ACCESS TO OFFICIAL RECORDS IN WRITING BY CERTIFIED MAIL, AND
16 THAT MORE THAN TEN (10) DAYS HAS ELAPSED SINCE THE SECOND
17 REQUEST AND THE ASSOCIATION HAS STILL FAILED OR REFUSED TO
18 PROVIDE ACCESS TO OFFICIAL RECORDS AS REQUIRED BY THIS CHAPTER,
19 THE COMMISSIONER SHALL ISSUE A SUBPOENA REQUIRING PRODUCTION
20 OF THE REQUESTED RECORDS WHERE THE RECORDS ARE KEPT
21 PURSUANT TO S. 720.303. (h). IN ADDITION TO SUBPARAGRAPH (G), OF THIS
22 SECTION, THE COMMISSIONER MAY SEEK THE IMPOSITION OF A CIVIL
23 PENALTY THROUGH THE CIRCUIT COURT FOR ANY VIOLATION FOR
24 WHICH THE COMMISSIONER MAY ISSUE A NOTICE TO SHOW CAUSE
25 UNDER SUBSECTION S. 720.302(11). THE CIVIL PENALTY MUST BE AT LEAST
26 \$500 BUT MAY NOT EXCEED \$5,000 FOR EACH VIOLATION. THE COURT
27 MAY ALSO AWARD TO THE PREVAILING PARTY COURT COSTS AND
28 REASONABLE ATTORNEY FEES AND, IF THE COMMISSIONER PREVAILS,
29 MAY ALSO AWARD REASONABLE COSTS OF INVESTIGATION.

30
31 5. HOMEOWNERS' ASSOCIATION DIRECTORS, OFFICERS, AND EMPLOYEES;
32 HOMEOWNERS' ASSOCIATION DEVELOPERS, COMMUNITY ASSOCIATION
33 MANAGERS; AND COMMUNITY ASSOCIATION MANAGEMENT FIRMS HAVE
34 AN ONGOING DUTY TO REASONABLY COOPERATE WITH THE
35 COMMISSIONER IN ANY INVESTIGATION PURSUANT TO THIS CHAPTER.
36 THE COMMISSIONER SHALL REFER TO LOCAL LAW ENFORCEMENT ANY
37 PERSON WHOM THE COMMISSIONER BELIEVES HAS ALTERED,
38 DESTROYED, CONCEALED, OR REMOVED ANY RECORD, DOCUMENT, OR
39 THING REQUIRED TO BE KEPT OR MAINTAINED UNDER THIS CHAPTER
40 FOR THE PURPOSE OF IMPAIRING ITS VERITY OR AVAILABILITY TO THE
41 DEPARTMENT'S INVESTIGATION.

42
43 Sec. 8. Title 41, Chapter 20, Article 2, Arizona Revised Statutes, is amended by adding
44 Section 41-2328, to read:

45 SECTION 41-2328. PENALTY GUIDELINES
46

1 A. THE DIVISION SHALL, BY RULE, ADOPT PENALTY GUIDELINES APPLICABLE
2 TO VIOLATIONS OR TO CATEGORIES OF VIOLATIONS OF THIS CHAPTER OR
3 RELATED RULES. THE GUIDELINES MUST SPECIFY A MEANINGFUL RANGE OF
4 CIVIL PENALTIES FOR EACH SUCH VIOLATION OF STATUTE AND RULE AND
5 MUST BE BASED UPON THE HARM CAUSED BY THE VIOLATION, THE
6 REPETITION OF THE VIOLATION, AND UPON SUCH OTHER FACTORS DEEMED
7 RELEVANT BY THE DIVISION, SUCH AS THE SIZE OF THE ASSOCIATION OR
8 WHETHER THE VIOLATIONS WERE COMMITTED BY A DEVELOPER- OR
9 OWNER-CONTROLLED ASSOCIATION. THE GUIDELINES MUST DESIGNATE
10 POSSIBLE MITIGATING OR AGGRAVATING CIRCUMSTANCES THAT MIGHT
11 JUSTIFY A DEPARTURE FROM THE RANGE OF PENALTIES PROVIDED BY THE
12 RULES. IT IS THE LEGISLATURE’S INTENT THAT MINOR VIOLATIONS BE
13 DISTINGUISHED FROM THOSE THAT ENDANGER THE HEALTH, SAFETY, OR
14 WELFARE OF LOT OR UNIT OWNERS OR OTHER PERSONS AND THAT SUCH
15 GUIDELINES PROVIDE REASONABLE AND MEANINGFUL NOTICE TO THE
16 PUBLIC OF LIKELY PENALTIES THAT MAY BE IMPOSED FOR THE PROSCRIBED
17 CONDUCT. THIS SUBSECTION DOES NOT LIMIT THE ABILITY OF THE
18 COMMISSIONER TO INFORMALLY DISPOSE OF ADMINISTRATIVE ACTIONS OR
19 COMPLAINTS BY STIPULATION, AGREED SETTLEMENT, OR CONSENT ORDER.
20 ALL AMOUNTS COLLECTED SHALL BE DEPOSITED WITH THE CONDOMINIUM
21 AND PLANNED COMMUNITY HEARING OFFICE FUND IN ACCORDANCE WITH
22 41-2336. IF A DEVELOPER FAILS TO PAY THE CIVIL PENALTY AND THE
23 AMOUNT OWED TO THE ASSOCIATION, THE DIVISION SHALL ISSUE AN ORDER
24 DIRECTING THAT SUCH DEVELOPER CEASE AND DESIST FROM FURTHER
25 OPERATION UNTIL THE CIVIL PENALTY IS PAID OR SHALL PURSUE
26 ENFORCEMENT OF THE PENALTY THROUGH COURT ORDER. IF AN
27 ASSOCIATION FAILS TO PAY THE CIVIL PENALTY, THE DIVISION SHALL
28 PURSUE ENFORCEMENT THROUGH COURT ORDER, AND THE ORDER
29 IMPOSING THE CIVIL PENALTY OR THE CEASE AND DESIST ORDER IS NOT
30 EFFECTIVE UNTIL 20 DAYS AFTER THE DATE OF SUCH ORDER. ANY ACTION
31 COMMENCED BY THE DIVISION SHALL BE BROUGHT IN THE COUNTY IN
32 WHICH THE COMMISSIONER HAS ITS EXECUTIVE OFFICES OR IN THE COUNTY
33 WHERE THE VIOLATION OCCURRED.

34
35 B. ALL FUNDS COLLECTED BY THE DIVISION AND ANY AMOUNTS PAID AS
36 FEES, FINES, OR PENALTIES OR FROM COSTS AWARDED TO THE DIVISION BY
37 A COURT OR ADMINISTRATIVE FINAL ORDER UNDER THIS CHAPTER SHALL
38 BE DEPOSITED WITH THE CONDOMINIUM AND PLANNED COMMUNITY
39 HEARING OFFICE FUND IN ACCORDANCE WITH 41-2336.

40
41 Section 9. Title 41, Chapter 20, Article 3, Arizona Revised Statutes, is amended by
42 adding Section 41-2329, to read:

43 ARTICLE 3. HOMEOWNER’ ASSOCIATION FEES
44 SECTION 41-2329 HOMEOWNERS’ ASSOCIATION FEES
45
46

1 A. THE PETITIONER SHALL FILE A PETITION WITH THE DEPARTMENT AND PAY
2 A FILING FEE IN AN AMOUNT AS SET FORTH IN THE THEN JUSTICE COURT FEE
3 STATUTE, A.R.S. 22-281, CLASS A AND B, AS APPROPRIATE. OTHER FEES SET
4 FORTH IN CLASS E, F AND G MAY APPLY AS APPROPRIATE. THE FILING FEE
5 SHALL BE DEPOSITED IN THE CONDOMINIUM AND PLANNED COMMUNITY
6 HEARING OFFICE FUND ESTABLISHED BY SECTION 41-2336. ON DISMISSAL OF A
7 PETITION AT THE REQUEST OF THE PETITIONER BEFORE A HEARING IS
8 SCHEDULED OR BY STIPULATION OF THE PARTIES BEFORE A HEARING IS
9 SCHEDULED, THE FILING FEE SHALL BE REFUNDED TO THE PETITIONER.

10
11 B. FUNDS COLLECTED SHALL BE DEPOSITED INTO CONDOMINIUM AND
12 PLANNED COMMUNITY HEARING OFFICE FUND IN ACCORDANCE WITH 41-2336.

13
14 C. FUNDS SHALL BE USED BY THE COMMISSIONER FOR, BUT THEIR USE IS NOT
15 LIMITED TO, THE REVIEW AND APPROVAL OF DEED RESTRICTIONS BEFORE
16 BEING RECORDED AT THE COUNTY LEVEL BY THE DEVELOPER OR
17 ASSOCIATION; FOR EDUCATION, ENFORCEMENT, INVESTIGATION;
18 PROSECUTION OF POLICIES AND PROCEDURES RELATED TO MANDATED
19 PROPERTIES; TO OFFSET THE COST OF ADMINISTERING THE ADMINISTRATIVE
20 LAW JUDGE FUNCTION; AND FOR ANY OTHER USE CONSISTENT WITH THIS
21 CHAPTER AS DETERMINED BY THE COMMISSIONER.

22
23
24 Sec. 10. Title 41, Chapter 20, Article 4, Arizona Revised Statutes, is amended by adding
25 Section 41-2330, to read:

26 SECTION 41-2330 HOMEOWNERS ASSOCIATIONS ADVISORY BOARD; MEMBERS;
27 TERMS; QUALIFICATIONS; COMPENSATION; CHAIRMAN; DUTIES

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

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

44 1. THREE MEMBERS, EACH OF WHOM IS A VALID MEMBER OF A
45 HOMEOWNERS ASSOCIATION IN ARIZONA FOR THE PAST FIVE YEARS AND

1 WHO HAS NOT BEEN A BOARD DIRECTOR OR OFFICER IN THE PAST TWO
2 YEARS.

3
4 2. TWO MEMBERS EACH OF WHOM IS A VALID MEMBER OF A
5 HOMEOWNERS ASSOCIATION IN ARIZONA FOR THE PAST FIVE YEARS
6 AND HAS SERVED IN AN OFFICIAL CAPACITY AS AN OFFICER OR
7 DIRECTOR OF A HOMEOWNERS ASSOCIATION FOR AT LEAST THREE
8 YEARS.

9
10 C. MEMBERS OF THE BOARD SHALL RECEIVE NO COMPENSATION BUT SHALL
11 BE REIMBURSED FOR SUBSISTENCE EXPENSES PURSUANT TO SECTION 38-624
12 AND TRAVEL EXPENSES PURSUANT TO SECTION 38-623.

13
14 D. THE BOARD ANNUALLY SHALL SELECT FROM ITS MEMBERSHIP A
15 CHAIRPERSON FOR THE BOARD.

16
17 E. THE BOARD SHALL PROVIDE THE COMMISSIONER WITH SUCH
18 RECOMMENDATIONS AS IT DEEMS NECESSARY AND BENEFICIAL TO THE
19 BEST INTERESTS OF THE PUBLIC. THE BOARD SHALL ALSO PROVIDE
20 RECOMMENDATIONS ON SPECIFIC QUESTIONS OR PROPOSALS AS THE
21 BOARD DEEMS NECESSARY OR AS REQUESTED BY THE COMMISSIONER.

22
23 F. MEETINGS OF THE ADVISORY BOARD.

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

30
31 2. A MAJORITY OF THE BOARD SHALL CONSTITUTE A QUORUM. A
32 VACANCY ON THE BOARD SHALL NOT IMPAIR THE RIGHTS OR POWERS
33 OF THE REMAINING MEMBERS.

34
35 G. THE BOARD ANNUALLY SHALL PRESENT TO THE GOVERNOR AN
36 EVALUATION OF THE PERFORMANCE OF THE HOMEOWNER ASSOCIATION
37 COMMISSIONER AND THE HOMEOWNER ASSOCIATION DEPARTMENT.

38
39 Sec. 11. Title 41, Chapter 20, Article 4, Arizona Revised Statutes, is amended by adding
40 Section 41-2331 to read:

41 ARTICLE 4. ADMINISTRATIVE HEARINGS.

42 41-2331. ADMINISTRATIVE ADJUDICATION OF COMPLAINTS PURSUANT TO
43 CHAPTER 6, ARTICLE 10 OF THIS TITLE. AN ADMINISTRATIVE LAW JUDGE SHALL
44 ADJUDICATE COMPLAINTS REGARDING, AND ENSURE COMPLIANCE WITH:

45 1. TITLE 33, CHAPTER 9 AND CONDOMINIUM DOCUMENTS.

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

1
2 Sec. 12. Title 41, Chapter 20, Article 4, Arizona Revised Statutes, is amended by adding
3 Section 41-2332, to read:

4 41-2332. HEARING; RIGHTS AND PROCEDURES

5 A. FOR A DISPUTE BETWEEN AN OWNER AND A CONDOMINIUM ASSOCIATION
6 OR PLANNED COMMUNITY ASSOCIATION THAT IS REGULATED PURSUANT TO
7 TITLE 33, CHAPTER 9 OR 16, THE OWNER OR ASSOCIATION MAY PETITION THE
8 DEPARTMENT FOR A HEARING CONCERNING VIOLATIONS OF CONDOMINIUM
9 GOVERNING DOCUMENTS OR PLANNED COMMUNITY GOVERNING DOCUMENTS
10 OR VIOLATIONS OF THE STATUTES THAT REGULATE CONDOMINIUMS OR
11 PLANNED COMMUNITIES. THE DEPARTMENT DOES NOT HAVE JURISDICTION TO
12 HEAR:

- 13 1. ANY DISPUTE AMONG OR BETWEEN OWNERS TO WHICH THE
14 ASSOCIATION IS NOT A PARTY.
15 2. ANY DISPUTE BETWEEN AN OWNER AND ANY PERSON, FIRM,
16 PARTNERSHIP, CORPORATION, ASSOCIATION OR OTHER ORGANIZATION
17 THAT IS ENGAGED IN THE BUSINESS OF DESIGNING, CONSTRUCTING OR
18 SELLING A CONDOMINIUM AS DEFINED IN SECTION 33-1202 OR ANY
19 PROPERTY OR IMPROVEMENTS WITHIN A PLANNED COMMUNITY AS
20 DEFINED IN SECTION 33-1802, INCLUDING ANY PERSON, FIRM,
21 PARTNERSHIP, CORPORATION, ASSOCIATION OR OTHER ORGANIZATION
22 LICENSED PURSUANT TO TITLE 32, CHAPTER 20, ARISING OUT OF OR
23 RELATED TO THE DESIGN, CONSTRUCTION, CONDITION OR SALE OF THE
24 CONDOMINIUM OR ANY PROPERTY OR IMPROVEMENTS WITHIN A
25 PLANNED COMMUNITY.

26
27 B. THE PETITION SHALL BE IN WRITING ON A FORM APPROVED BY THE
28 DEPARTMENT, SHALL LIST THE COMPLAINTS AND SHALL BE SIGNED BY OR
29 ON BEHALF OF THE PERSONS FILING AND INCLUDE THEIR ADDRESSES,
30 STATING THAT A HEARING IS DESIRED, AND SHALL BE FILED WITH THE
31 DEPARTMENT.

32
33 C. ON RECEIPT OF THE PETITION AND THE FILING FEE THE DEPARTMENT
34 SHALL MAIL BY CERTIFIED MAIL A COPY OF THE PETITION ALONG WITH
35 NOTICE TO THE NAMED RESPONDENT THAT A RESPONSE IS REQUIRED WITHIN
36 TWENTY (20) DAYS OF MAILING OF THE PETITION SHOWING CAUSE, IF ANY,
37 WHY THE PETITION SHOULD BE DISMISSED.

38
39 D. AFTER RECEIVING THE RESPONSE, THE COMMISSIONER OR THE
40 COMMISSIONER'S DESIGNEE SHALL PROMPTLY REVIEW THE PETITION FOR
41 HEARING AND, IF JUSTIFIED, REFER THE PETITION TO THE OFFICE OF
42 ADMINISTRATIVE HEARINGS. THE COMMISSIONER MAY DISMISS A PETITION
43 FOR HEARING IF IT APPEARS TO THE COMMISSIONER'S SATISFACTION THAT
44 THE DISPUTED ISSUE OR ISSUES HAVE BEEN RESOLVED BY THE PARTIES.
45

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

4
5 F. INFORMAL DISPOSITION MAY BE MADE OF ANY CONTESTED CASE.

6
7 G. EITHER PARTY OR THE PARTY'S AUTHORIZED AGENT MAY INSPECT ANY FILE
8 OF THE DEPARTMENT THAT PERTAINS TO THE HEARING, IF THE
9 AUTHORIZATION IS FILED IN WRITING WITH THE DEPARTMENT.

10
11 H. AT A HEARING CONDUCTED PURSUANT TO THIS SECTION, A CORPORATION
12 MAY BE REPRESENTED BY A CORPORATE OFFICER, EMPLOYEE OR
13 CONTRACTOR OF THE CORPORATION WHO IS NOT A MEMBER OF THE STATE
14 BAR IF:

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

17
18 2. THE REPRESENTATION IS NOT THE OFFICER'S, EMPLOYEE'S OR
19 CONTRACTOR OF THE CORPORATION'S PRIMARY DUTY TO THE
20 CORPORATION BUT IS SECONDARY OR INCIDENTAL TO THE OFFICER'S,
21 EMPLOYEE'S OR CONTRACTOR OF THE CORPORATION'S, LIMITED
22 LIABILITY COMPANY'S, LIMITED LIABILITY PARTNERSHIP'S, SOLE
23 PROPRIETOR'S OR OTHER LAWFULLY FORMED AND OPERATING
24 ENTITY'S DUTIES RELATING TO THE MANAGEMENT OR OPERATION OF
25 THE CORPORATION.

26
27 Sec. 13. Title 41, Chapter 20, Article 4, Arizona Revised Statutes, is amended by adding
28 Section 41-2333, to read

29 41-2333. ORDERS; PENALTIES; DISPOSITION

30 A. THE ADMINISTRATIVE LAW JUDGE MAY ORDER ANY PARTY TO ABIDE BY
31 THE STATUTE, CONDOMINIUM DOCUMENTS, COMMUNITY DOCUMENTS OR
32 CONTRACT PROVISION AT ISSUE AND MAY LEVY A CIVIL PENALTY ON THE
33 BASIS OF EACH VIOLATION. FOR PURPOSES OF ACTIONS BROUGHT UNDER
34 TITLE 33, CHAPTER 9 CONDOMINIUMS AND TITLE 16, PLANNED COMMUNITIES
35 CIVIL PENALTY SHALL NOT EXCEED FIVE HUNDRED DOLLARS. ALL MONIES
36 COLLECTED PURSUANT TO THIS ARTICLE SHALL BE DEPOSITED IN THE
37 CONDOMINIUM AND PLANNED COMMUNITY HEARING OFFICE FUND
38 ESTABLISHED BY SECTION 41-2098.05. IF THE PETITIONER PREVAILS, THE
39 ADMINISTRATIVE LAW JUDGE SHALL ORDER THE RESPONDENT TO PAY TO THE
40 PETITIONER THE FILING FEE REQUIRED BY SECTION 41-2098.01.

41
42 B. THE ORDER ISSUED BY THE ADMINISTRATIVE LAW JUDGE IS BINDING ON
43 THE PARTIES UNLESS A REHEARING IS GRANTED PURSUANT TO SECTION 41-
44 1092.09. BASED ON A PETITION SETTING FORTH THE REASONS FOR THE
45 REQUEST FOR REHEARING, IN WHICH CASE THE ORDER ISSUED AT THE
46 CONCLUSION OF THE REHEARING IS BINDING ON THE PARTIES. THE ORDER

1 ISSUED BY THE ADMINISTRATIVE LAW JUDGE IS ENFORCEABLE THROUGH
2 CONTEMPT OF COURT PROCEEDINGS AND IS SUBJECT TO JUDICIAL REVIEW AS
3 PRESCRIBED BY SECTION 41-1092.08.
4

5 Sec. 14. Title 41, Chapter 20, Article 4 Arizona Revised Statutes, is amended by adding
6 Section 41-2334, to read

7 41-2334. SCOPE OF HEARING

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

10
11 B. THIS SECTION SHALL NOT BE CONSTRUED TO LIMIT THE JURISDICTION OF
12 THE COURTS OF THIS STATE TO HEAR AND DECIDE MATTERS PURSUANT TO
13 THE STATUTES OR CONDOMINIUM DOCUMENTS THAT REGULATE
14 CONDOMINIUMS OR THE STATUTES OR COMMUNITY DOCUMENTS THAT
15 REGULATE PLANNED COMMUNITIES.
16

17 Sec. 15. Title 41, Chapter 20, Article 4, Arizona Revised Statutes, is amended by adding
18 Section 41-2335, to read

19 41-2335. REHEARING; APPEAL

20 A. A PERSON AGGRIEVED BY A DECISION OF THE ADMINISTRATIVE LAW
21 JUDGE. MAY APPLY FOR A REHEARING BY FILING WITH THE COMMISSIONER
22 A PETITION IN WRITING PURSUANT TO SECTION 41-1092.09. WITHIN TEN DAYS
23 AFTER FILING SUCH PETITION, THE COMMISSIONER SHALL SERVE NOTICE OF
24 THE REQUEST ON THE OTHER PARTY BY MAILING A COPY OF THE PETITION IN
25 THE MANNER PRESCRIBED IN SECTION 41-1092.04 FOR NOTICE OF HEARING.
26

27 B. THE FILING OF A PETITION FOR REHEARING TEMPORARILY SUSPENDS THE
28 OPERATION OF THE ADMINISTRATIVE LAW JUDGE ACTION. IF THE PETITION IS
29 GRANTED, THE ADMINISTRATIVE LAW JUDGE ACTION IS SUSPENDED PENDING
30 THE DECISION ON THE REHEARING.
31

32 C. IN THE ORDER GRANTING OR DENYING A REHEARING, THE COMMISSIONER
33 SHALL INCLUDE A STATEMENT OF THE PARTICULAR GROUNDS AND REASONS
34 FOR THE COMMISSIONER'S ACTION ON THE PETITION AND SHALL PROMPTLY
35 MAIL A COPY OF THE ORDER TO THE PARTIES WHO HAVE APPEARED IN
36 SUPPORT OF OR IN OPPOSITION TO THE PETITION FOR REHEARING.
37

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

41 1. THE CORPORATION HAS SPECIFICALLY AUTHORIZED SUCH
42 OFFICER OR EMPLOYEE TO REPRESENT IT.
43

44 2. SUCH REPRESENTATION IS NOT THE OFFICER'S OR EMPLOYEE'S
45 PRIMARY DUTY TO THE CORPORATION BUT IS SECONDARY OR

1 INCIDENTAL TO SUCH OFFICER'S OR EMPLOYEE'S DUTIES RELATING
2 TO THE MANAGEMENT OR OPERATION OF THE CORPORATION.
3

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

6 41-2336. CONDOMINIUM AND PLANNED COMMUNITY HEARING OFFICE FUND

7 A. THE CONDOMINIUM AND PLANNED COMMUNITY HEARING OFFICE FUND IS
8 ESTABLISHED IN THE DEPARTMENT TO BE ADMINISTERED BY THE
9 COMMISSIONER. MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED.
10 ON NOTICE FROM THE COMMISSIONER. THE STATE TREASURER SHALL
11 INVEST AND DIVEST MONIES IN THE FUND AS PROVIDED BY SECTION 35-313,
12 AND MONIES EARNED FROM INVESTMENT SHALL BE CREDITED TO THE FUND.
13

14 B. MONIES IN THE CONDOMINIUM AND PLANNED COMMUNITY HEARING OFFICE
15 FUND SHALL BE USED TO REIMBURSE THE ACTUAL COSTS OF THE OFFICE OF
16 ADMINISTRATIVE HEARINGS IN CONDUCTING HEARINGS PURSUANT TO
17 SECTION 41-2332, SUBSECTION B. MONIES REMAINING IN THE FUND MAY BE
18 USED BY THE DEPARTMENT TO OFFSET THE COSTS OF ADMINISTERING CASES
19 FILED PURSUANT TO SECTION 41-2332, SUBSECTION B.
20

21 C. ALL FEES COLLECTED FOR CASES ADJUDICATED BY THE OFFICE
22 OF ADMINISTRATIVE HEARINGS SHALL BE SENT TO THE DEPARTMENT TO BE
23 DEPOSITED INTO THE CONDOMINIUM AND PLANNED COMMUNITY HEARING
24 OFFICE FUND.
25

26
27 Sec. 16. Title 41, Chapter 20, Article 4, Arizona Revised Statutes, is amended by adding
28 Section 41-2336 to read
29

30 1. IT IS THE INTENT OF THE LEGISLATURE TO FIND, DETERMINE AND
31 CLARIFY ALL OF THE FOLLOWING AFTER A CAREFUL CONSIDERATION
32 OF THE LONG HISTORY OF THE LEGAL STRUCTURE AND SCHEME OF
33 HOAS, RAISING SIGNIFICANT QUESTIONS OF CONSTITUTIONAL
34 VIOLATIONS OF DUE PROCESS AND THE EQUAL PROTECTION OF THE
35 LAW:
36

37 2. THE LEGISLATURE DETERMINES AND FINDS THAT OVER THE YEARS
38 OWNERS IN CONDOMINIUMS AND PLANNED COMMUNITIES ARE
39 FREQUENTLY SUBJECTED TO INCONSISTENT, UNREASONABLE AND
40 OFTEN UNLAWFUL ENFORCEMENT AND APPLICATION OF THE
41 DECLARATIONS, RULES AND BYLAWS THAT GOVERN THEIR
42 COMMUNITIES; THAT THEIR MANAGERS AND THEIR BOARDS OF
43 DIRECTORS, AND OWNERS ARE OFTEN UNABLE TO AFFORD THE COST OF
44 FORMALLY LITIGATING THEIR DISPUTES IN THE SUPERIOR COURT;
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3. THE LEGISLATURE FURTHER DETERMINES AND FINDS THAT EXISTING STATUTES FAIL TO PROTECT THE HOMEOWNER AGAINST THE DEFECTS IN THE HOA LEGAL STRUCTURE AND SCHEME THAT DENY THE HOMEOWNER THE PRIVILEGES, IMMUNITIES, AND RIGHTS AND FREEDOMS GUARANTEED TO ALL CITIZENS OF ARIZONA;

4. THE LEGISLATURE FURTHER DETERMINES AND FINDS THAT, SIMILAR TO THE PURPOSES AND FUNCTIONS OF THE NATIONAL LABOR RELATIONS BOARD, A DEPARTMENT OF HOMEOWNERS ASSOCIATIONS IS NECESSARY TO PROTECT HOMEOWNERS FROM REPRISALS, SOCIAL OSTRACIZATION, HARASSMENT, SLANDER, AND ASSAULT BY HOA BOARDS AND MANAGEMENT COMPANIES; AND TO GUARANTEE HOMEOWNERS THE RIGHT TO FORM ENTITIES AND TO JOIN TOGETHER TO ADDRESS HOA RELATED ISSUES; TO BARGAIN COLLECTIVELY TO IMPROVE TERMS AND CONDITIONS OF THE GOVERNING DOCUMENTS;

5. THE LEGISLATURE FURTHER FINDS THE NECESSITY OF CREATING AN INDEPENDENT STATE AGENCY WHOSE FUNCTION IS TO PROVIDE IMPORTANT CONSUMER PROTECTION FOR OWNERS IN AND PROSPECTIVE BUYERS OF CONDOMINIUMS AND PLANNED COMMUNITIES; A STATE AGENCY THAT WILL EFFICIENTLY AND EFFECTIVELY PROVIDE FOR RESOLUTION OF THESE COMMON INTEREST COMMUNITY DISPUTES WITHOUT THE EXPENSE, FORMALITY AND DIFFICULTY OF REQUIRING A TRIAL IN THE SUPERIOR COURT IN EVERY INSTANCE, WHILE STILL MAINTAINING THE ABILITY AND RIGHT TO RECOURSE IN THE SUPERIOR COURT, AND WITHOUT THREAT TO THE CORE FUNCTIONS OF THE JUDICIARY.

1 **APPROPRIATIONS BILL**

2
3 Sec. 1. Title 41, Chapter 20, Article 5, Arizona Revised Statutes, is amended by adding
4 Section 41-2337 to read:

5
6 **APPROPRIATION; DEPARTMENT OF HOMEOWNERS ASSOCIATIONS**
7 **THE SUM OF _____ IS APPROPRIATED FROM THE STATE GENERAL FUND IN YEAR**
8 **2019 – 20 ____ TO THE DEPARTMENT OF HOMEOWNER ASSOCIATIONS TO MEET**
9 **GENERAL OPERATING EXPENDITURES.**

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12