



Model HOA regulatory agency bill

Proposed by George K. Staropoli
Jan. 25, 2015

Summary. This bill establishes a department of homeowners associations with full direct regulatory authority over Ch.9 and Ch. 16 association under the direction of a commissioner. It provides for receiving complaints, investigations, filing legal actions, issuing civil penalties, rulemaking, and 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.

AN ACT

AMENDING SECTIONS 33-1242 AND 33-1803; TITLE 41, CHAPTER 27, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 20 TO TITLE 41; AMENDING SECTIONS 41-2198 THROUGH 41-2198.03; REPEALING SECTION 41-2198.05; RELATING TO HOMEOWNER ASSOCIATIONS COMMISSION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

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

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

6 1. Adopt and amend bylaws and rules.

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

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

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

12 5. Make contracts and incur liabilities.

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

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

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

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

19 10. Impose and receive any payments, fees or charges for the use, rental or operation of the
20 common elements other than limited common elements described in section 33-1212, paragraphs
21 2 and 4 and for services provided to unit owners.

22 11. Impose charges for late payment of assessments and, after notice and an opportunity to be
23 heard, impose reasonable monetary penalties upon unit owners for violations of the declaration,
24 bylaws and rules of the association.

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

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

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

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

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

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

7 18. Exercise any other powers necessary and proper for the governance and operation of the
8 association.

9 B. A unit owner who receives a written notice that the condition of the property owned by the
10 unit owner is in violation of a requirement of the condominium documents without regard to
11 whether a monetary penalty is imposed by the notice may provide the association with a written
12 response by sending the response by certified mail within ten business days after the date of the
13 notice. The response shall be sent to the address contained in the notice or in the recorded notice
14 prescribed by section 33-1256, subsection J.

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

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

20 2. The date of the violation or the date the violation was observed.

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

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

23 D. Unless the information required in subsection C, paragraph 4 of this section is provided in the
24 notice of violation, the association shall not proceed with any action to enforce the condominium
25 documents, including the collection of attorney fees, before or during the time prescribed by
26 subsection C of this section regarding the exchange of information between the association and
27 the unit owner. At any time before or after completion of the exchange of information pursuant
28 to this section, the unit owner may petition for a hearing pursuant to section ~~41-2198.01~~ [41-](#)
29 [2098.01](#) if the dispute is within the jurisdiction of the department of fire, building and life safety
30 as prescribed in section ~~41-2198.01~~ [41-2098.01](#), subsection B.

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

2 33-1803. Penalties; notice to member of violation

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

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

23 C. A member who receives a written notice that the condition of the property owned by the
24 member is in violation of the community documents without regard to whether a monetary
25 penalty is imposed by the notice may provide the association with a written response by sending
26 the response by certified mail within ten business days after the date of the notice. The response
27 shall be sent to the address contained in the notice or in the recorded notice prescribed by section
28 33-1807, subsection J.

29 D. Within ten business days after receipt of the certified mail containing the response from the
30 member, the association shall respond to the member with a written explanation regarding the

1 notice that shall provide at least the following information unless previously provided in the
2 notice of violation:

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

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

15
16 Section 3. Title 41, Arizona Revised Statutes, is amended by adding, Chapter 20, Department of
17 Homeowners Association; Article 1. COMMISSIONER ESTABLISHMENT; PURPOSES;
18 DUTIES; PENALTIES; Section 41-2001, to read:

19 41-2001. DEPARTMENT OF HOMEOWNERS ASSOCIATION ESTABLISHMENT;
20 PURPOSES

21 A. THE DEPARTMENT OF HOMEOWNERS ASSOCIATION

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

25 2. THIS CHAPTER SHALL BE ADMINISTERED BY THE DEPARTMENT OF
26 HOMEOWNERS ASSOCIATION UNDER THE DIRECTION OF THE HOMEOWNERS
27 ASSOCIATION COMMISSIONER. THE COMMISSIONER SHALL ADOPT A SEAL
28 WHICH SHALL BEAR THE WORDS "HOMEOWNERS ASSOCIATION COMMISSIONER,
29 STATE OF ARIZONA", WHICH SHALL BE USED FOR THE AUTHENTICATION OF
30 PROCEEDINGS OF THE DEPARTMENT AND THE OFFICIAL DOCUMENTS THEREOF.
31 THE COMMISSIONER'S PRINCIPAL OFFICE SHALL BE AT THE STATE CAPITOL. THE

1 COMMISSIONER MAY HAVE BRANCH OFFICES THE COMMISSIONER DEEMS
2 NECESSARY IN OTHER CITIES.

3 3. THE DEPARTMENT, THROUGH ITS HEARING OFFICER FUNCTION, APPLIES AND
4 ENFORCES THE STATUTES REGULATING THOSE COMMON INTEREST
5 COMMUNITIES AND THE INTERPRETATION AND ENFORCEMENT OF THE
6 OTHERWISE PRIVATE CONTRACTS AND RULES THAT GOVERN THOSE
7 COMMUNITIES. IT IS ALSO THE PURPOSE OF THE COMMISSIONER TO ESTABLISH
8 A PROCEDURE TO PROTECT THE CONSUMER OF SUCH PRODUCTS AND SERVICES.
9

10 B. THE PURPOSES OF THIS CHAPTER ARE TO GIVE STATUTORY RECOGNITION TO
11 CORPORATIONS NOT FOR PROFIT THAT ADMINISTER OR OPERATE RESIDENTIAL
12 COMMUNITIES IN THIS STATE, TO PROVIDE REGULATIONS FOR OPERATING
13 HOMEOWNERS' ASSOCIATIONS, AND TO PROTECT THE RIGHTS OF ASSOCIATION
14 MEMBERS WITHOUT UNDULY IMPAIRING THE ABILITY OF SUCH ASSOCIATIONS
15 TO PERFORM THEIR FUNCTIONS AS AUTHORIZED BY FEDERAL, STATE, AND
16 LOCAL LAWS AND THE GOVERNING DOCUMENTS OF THE ASSOCIATION.
17

18 C. HAVING PROVIDED CERTAIN POWERS AND AUTHORITY TO HOMEOWNERS'
19 ASSOCIATIONS AND IN DEED RESTRICTIONS CREATED BY DEVELOPERS OF
20 MANDATED PROPERTIES IN RESIDENTIAL COMMUNITIES, THE LEGISLATURE
21 RECOGNIZES THAT IT IS NECESSARY TO PROVIDE REGULATORY OVERSIGHT OF
22 SUCH ASSOCIATIONS TO ENSURE COMPLIANCE WITH FEDERAL AND STATE
23 LAWS AND LOCAL ORDINANCES. IT IS THE INTENT OF THE LEGISLATURE TO
24 PROTECT THE RIGHTS OF PARCEL OWNERS BY ENSURING THAT THE POWERS
25 AND AUTHORITY GRANTED TO HOMEOWNERS' ASSOCIATIONS AND IN DEED
26 RESTRICTIONS CREATED BY DEVELOPERS OF MANDATED PROPERTIES IN
27 RESIDENTIAL COMMUNITIES CONFORM TO A SYSTEM OF CHECKS AND
28 BALANCES IN ORDER TO PREVENT ABUSES BY THESE GOVERNING AUTHORITIES.
29

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

5 Section 4. Title 41, Chapter 20, Article 1, Arizona Revised Statutes, is amended by adding
6 Section 41-2002, to read:

7 41-2002. COMMISSIONER POWERS AND DUTIES

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

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

18
19 B. THE COMMISSIONER SHALL:

- 20 1. RESPOND TO COMPLAINTS, CONDUCT INVESTIGATIONS, AND IMPOSE
21 PENALTIES AS PROVIDED UNDER 41-2003.
- 22 2. ESTABLISH PROCEDURES FOR PROVIDING NOTICE TO AN ASSOCIATION AND
23 THE DEVELOPER DURING THE PERIOD THE DEVELOPER CONTROLS THE
24 ASSOCIATION IF THE DIVISION IS CONSIDERING THE ISSUANCE OF A
25 DECLARATORY STATEMENT WITH RESPECT TO THE HOMEOWNERS'
26 ASSOCIATION OR ANY RELATED DOCUMENT GOVERNING SUCH COMMUNITY.
- 27 3. ANNUALLY PROVIDE EACH ASSOCIATION WITH A SUMMARY OF
28 DECLARATORY STATEMENTS AND FORMAL LEGAL OPINIONS RELATING TO THE
29 OPERATIONS OF HOMEOWNERS' ASSOCIATIONS WHICH WERE RENDERED BY
30 THE COMMISSIONER DURING THE PREVIOUS YEAR.

1 4. PROVIDE TRAINING AND EDUCATIONAL PROGRAMS FOR HOMEOWNERS'
2 ASSOCIATION BOARD MEMBERS AND PARCEL OWNERS. THE TRAINING MAY
3 INCLUDE WEB-BASED ELECTRONIC MEDIA AND LIVE TRAINING AND SEMINARS
4 IN VARIOUS LOCATIONS THROUGHOUT THE STATE. THE COMMISSIONER MAY
5 REVIEW AND APPROVE EDUCATION AND TRAINING PROGRAMS OFFERED BY
6 PROVIDERS AND SHALL MAINTAIN A CURRENT LIST OF APPROVED PROGRAMS
7 AND PROVIDERS AND MAKE SUCH LIST AVAILABLE TO BOARD MEMBERS AND
8 PARCEL OWNERS IN A REASONABLE AND COST EFFECTIVE MANNER.

9 5. MAINTAIN A TOLL-FREE TELEPHONE NUMBER ACCESSIBLE TO HOMEOWNERS'
10 ASSOCIATION PARCEL OWNERS.

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

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

26
27 Section 5. Title 41, Chapter 20, Article 2, Arizona Revised Statutes, is amended by adding
28 Section 41-2003, to read:

29 ARTICLE 2. COMPLAINTS; INVESTIGATIONS; PENALTY GUIDELINES
30 41-2003. COMPLAINTS;

1 A. COMPLAINTS.—THE COMMISSIONERMAY INVESTIGATE COMPLAINTS AND
2 ENFORCE COMPLIANCE WITH RESPECT TO HOMEOWNERS’ ASSOCIATIONS THAT
3 ARE STILL UNDER DEVELOPER CONTROL AND COMPLAINTS AGAINST
4 DEVELOPERS INVOLVING IMPROPER TURNOVER OR FAILURE TO TURNOVER
5 PURSUANT TO THE GOVERNING DOCUMENTS. AFTER TURNOVER HAS
6 OCCURRED, THE COMMISSIONERMAY ONLY INVESTIGATE COMPLAINTS
7 RELATED TO FINANCIAL ISSUES, ELECTIONS, AND PARCEL OWNER ACCESS TO
8 ASSOCIATION RECORDS PURSUANT TO THE GOVERNING DOCUMENTS. IF A
9 COMPLAINT IS MADE, THE COMMISSIONERMUST CONDUCT ITS INQUIRY WITH
10 DUE REGARD FOR THE INTERESTS OF THE AFFECTED PARTIES. WITHIN 30 DAYS
11 AFTER RECEIVING A COMPLAINT:

12 1. THE COMMISSIONERSHALL ACKNOWLEDGE THE COMPLAINT IN WRITING AND
13 NOTIFY THE COMPLAINANT AS TO WHETHER THE COMPLAINT IS WITHIN THE
14 JURISDICTION OF THE COMMISSIONERAND WHETHER ADDITIONAL
15 INFORMATION IS NEEDED BY THE COMMISSIONERFROM THE COMPLAINANT.

16 2. THE COMMISSIONERSHALL CONDUCT ITS INVESTIGATION AND, WITHIN 90
17 DAYS AFTER RECEIPT OF THE ORIGINAL COMPLAINT OR TIMELY REQUESTED
18 ADDITIONAL INFORMATION, TAKE ACTION UPON THE COMPLAINT. HOWEVER,
19 THE FAILURE TO COMPLETE THE INVESTIGATION WITHIN 90 DAYS DOES NOT
20 PREVENT THE COMMISSIONERFROM CONTINUING THE INVESTIGATION,
21 ACCEPTING OR CONSIDERING EVIDENCE OBTAINED OR RECEIVED AFTER 90
22 DAYS, OR TAKING ADMINISTRATIVE ACTION IF REASONABLE CAUSE EXISTS TO
23 BELIEVE THAT A VIOLATION OF THIS CHAPTER OR RELATED RULE HAS
24 OCCURRED.

25 3. IF AN INVESTIGATION IS NOT COMPLETED WITHIN THE TIME LIMITS
26 ESTABLISHED IN THIS SUBSECTION, THE COMMISSIONERSHALL, ON A MONTHLY
27 BASIS, NOTIFY THE COMPLAINANT IN WRITING OF THE STATUS OF THE
28 INVESTIGATION.

29 4. WHEN REPORTING ITS ACTION TO THE COMPLAINANT, THE
30 COMMISSIONERSHALL INFORM THE COMPLAINANT OF ANY RIGHT TO A

1 HEARING PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10, UNIFORM
2 ADMINISTRATIVE HEARING PROCEDURES.

3
4 Section 6. Title 41, Chapter 20, Article 2, Arizona Revised Statutes, is amended by adding
5 Section 41-2004, to read:

6 SECTION 41-2004. INVESTIGATIONS; SERVICE OF PROCESS;

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

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

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

29 3. THE COMMISSIONER MAY SUBMIT ANY OFFICIAL WRITTEN REPORT,
30 WORKSHEET, OR OTHER RELATED PAPER, OR A CERTIFIED COPY THEREOF,
31 COMPILED, PREPARED, DRAFTED, OR OTHERWISE MADE AND AUTHENTICATED
32 BY A FINANCIAL EXAMINER OR ANALYST TO BE ADMITTED AS COMPETENT

1 EVIDENCE IN ANY HEARING IN WHICH THE FINANCIAL EXAMINER OR ANALYST
2 IS AVAILABLE FOR CROSS-EXAMINATION AND ATTESTS UNDER OATH THAT
3 SUCH DOCUMENTS WERE PREPARED AS A RESULT OF AN EXAMINATION OR
4 INSPECTION CONDUCTED PURSUANT TO THIS CHAPTER.

5
6 4. NOTWITHSTANDING ANY REMEDIES AVAILABLE TO PARCEL OWNERS AND
7 ASSOCIATIONS, IF THE COMMISSIONER HAS REASONABLE CAUSE TO BELIEVE
8 THAT A VIOLATION OF THIS CHAPTER OR RELATED RULE HAS OCCURRED, THE
9 COMMISSIONER MAY INSTITUTE ENFORCEMENT PROCEEDINGS IN ITS OWN
10 NAME AGAINST ANY DEVELOPER, ASSOCIATION, OFFICER, OR MEMBER OF THE
11 BOARD OF ADMINISTRATION, OR ITS ASSIGNEES OR AGENTS, AS FOLLOWS:

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

17 (b). THE COMMISSIONER MAY ISSUE AN ORDER REQUIRING THE DEVELOPER,
18 ASSOCIATION, DEVELOPER-DESIGNATED OFFICER, OR DEVELOPER DESIGNATED
19 MEMBER OF THE BOARD OF ADMINISTRATION, DEVELOPER DESIGNATED
20 ASSIGNEES OR AGENTS, COMMUNITY ASSOCIATION MANAGER, OR COMMUNITY
21 ASSOCIATION MANAGEMENT FIRM TO CEASE AND DESIST FROM THE
22 UNLAWFUL PRACTICE AND TAKE SUCH AFFIRMATIVE ACTION AS THE
23 COMMISSIONER DETERMINES WILL CARRY OUT THE PURPOSES OF THIS
24 CHAPTER. IF THE COMMISSIONER FINDS THAT A DEVELOPER, ASSOCIATION,
25 OFFICER, OR MEMBER OF THE BOARD OF ADMINISTRATION, OR ITS ASSIGNEES
26 OR AGENTS, IS VIOLATING OR IS ABOUT TO VIOLATE THIS CHAPTER, ANY RULE
27 ADOPTED OR ORDER ISSUED BY THE COMMISSION, OR ANY WRITTEN
28 AGREEMENT ENTERED INTO WITH THE COMMISSION, AND SUCH VIOLATION
29 PRESENTS AN IMMEDIATE DANGER TO THE PUBLIC REQUIRING AN IMMEDIATE
30 FINAL ORDER, IT MAY ISSUE AN EMERGENCY CEASE AND DESIST ORDER
31 RECITING WITH PARTICULARITY THE FACTS UNDERLYING SUCH FINDINGS. THE

1 EMERGENCY CEASE AND DESIST ORDER IS EFFECTIVE FOR 90 DAYS. IF THE
2 COMMISSIONER BEGINS NONEMERGENCY CEASE AND DESIST PROCEEDINGS,
3 THE EMERGENCY CEASE AND DESIST ORDER REMAINS EFFECTIVE UNTIL THE
4 CONCLUSION OF THE PROCEEDINGS UNDER SS. 120.569 AND 120.57.

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

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

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

1 TO THE PERSONS WHOSE FUNDS OR ASSETS WERE OBTAINED IN VIOLATION OF
2 THIS CHAPTER.

3 (f). THE COMMISSIONER MAY IMPOSE A CIVIL PENALTY AGAINST A DEVELOPER
4 OR ASSOCIATION, OR ITS ASSIGNEE OR AGENT, FOR ANY VIOLATION OF THIS
5 CHAPTER OR RELATED RULE. THE COMMISSIONER MAY IMPOSE A CIVIL
6 PENALTY INDIVIDUALLY AGAINST AN OFFICER OR BOARD MEMBER WHO
7 WILLFULLY AND KNOWINGLY VIOLATES THIS CHAPTER, AN ADOPTED RULE, OR
8 A FINAL ORDER OF THE COMMISSION; MAY ORDER THE REMOVAL OF SUCH
9 INDIVIDUAL AS AN OFFICER OR FROM THE BOARD OF ADMINISTRATION OR AS
10 AN OFFICER OF THE ASSOCIATION; AND MAY PROHIBIT SUCH INDIVIDUAL FROM
11 SERVING AS AN OFFICER OR ON THE BOARD OF A COMMUNITY ASSOCIATION
12 FOR A PERIOD OF TIME. FOR PURPOSES OF THIS SECTION, THE TERM
13 “WILLFULLY AND KNOWINGLY” MEANS THAT THE COMMISSIONER INFORMED
14 THE OFFICER OR BOARD MEMBER THAT HIS OR HER ACTION OR INTENDED
15 ACTION VIOLATES THIS CHAPTER, A RELATED RULE, OR A FINAL ORDER OF THE
16 COMMISSIONER AND THAT THE OFFICER OR BOARD MEMBER REFUSED TO
17 COMPLY WITH THIS CHAPTER, THE RELATED RULE, OR THE FINAL ORDER OF
18 THE COMMISSION. BEFORE INITIATING FORMAL AGENCY ACTION UNDER
19 CHAPTER 120, THE COMMISSIONER MUST AFFORD THE OFFICER OR BOARD
20 MEMBER AN OPPORTUNITY TO VOLUNTARILY COMPLY, AND IF HE OR SHE
21 COMPLIES WITHIN 10 DAYS THE OFFICER OR BOARD MEMBER IS NOT SUBJECT
22 TO A CIVIL PENALTY. A PENALTY MAY BE IMPOSED FOR EACH DAY OF
23 CONTINUING VIOLATION, BUT MAY NOT EXCEED A TOTAL OF \$5,000.

24 (g). IF A PARCEL OWNER PRESENTS THE COMMISSIONER WITH PROOF THAT THE
25 PARCEL OWNER HAS REQUESTED ACCESS TO OFFICIAL RECORDS IN WRITING BY
26 CERTIFIED MAIL, AND THAT AFTER 10 DAYS THE PARCEL OWNER AGAIN MADE
27 THE SAME REQUEST FOR ACCESS TO OFFICIAL RECORDS IN WRITING BY
28 CERTIFIED MAIL, AND THAT MORE THAN 10 DAYS HAS ELAPSED SINCE THE
29 SECOND REQUEST AND THE ASSOCIATION HAS STILL FAILED OR REFUSED TO
30 PROVIDE ACCESS TO OFFICIAL RECORDS AS REQUIRED BY THIS CHAPTER, THE

1 COMMISSIONER SHALL ISSUE A SUBPOENA REQUIRING PRODUCTION OF THE
2 REQUESTED RECORDS WHERE THE RECORDS ARE KEPT PURSUANT TO S. 720.303.

3 (h). IN ADDITION TO SUBPARAGRAPH (G), THE COMMISSIONER MAY SEEK THE
4 IMPOSITION OF A CIVIL PENALTY THROUGH THE CIRCUIT COURT FOR ANY
5 VIOLATION FOR WHICH THE COMMISSIONER MAY ISSUE A NOTICE TO SHOW
6 CAUSE UNDER SUBSECTION S. 720.302(11). THE CIVIL PENALTY MUST BE AT
7 LEAST \$500 BUT MAY NOT EXCEED \$5,000 FOR EACH VIOLATION. THE COURT
8 MAY ALSO AWARD TO THE PREVAILING PARTY COURT COSTS AND
9 REASONABLE ATTORNEY FEES AND, IF THE COMMISSIONER PREVAILS, MAY
10 ALSO AWARD REASONABLE COSTS OF INVESTIGATION.

11
12 5. HOMEOWNERS' ASSOCIATION DIRECTORS, OFFICERS, AND EMPLOYEES;
13 HOMEOWNERS' ASSOCIATION DEVELOPERS AND COMMUNITY ASSOCIATION
14 MANAGERS; AND COMMUNITY ASSOCIATION MANAGEMENT FIRMS HAVE AN
15 ONGOING DUTY TO REASONABLY COOPERATE WITH THE COMMISSIONER IN
16 ANY INVESTIGATION PURSUANT TO THIS CHAPTER. THE COMMISSIONER SHALL
17 REFER TO LOCAL LAW ENFORCEMENT ANY PERSON WHOM THE COMMISSIONER
18 BELIEVES HAS ALTERED, DESTROYED, CONCEALED, OR REMOVED ANY RECORD,
19 DOCUMENT, OR THING REQUIRED TO BE KEPT OR MAINTAINED UNDER THIS
20 CHAPTER FOR THE PURPOSE OF IMPAIRING ITS VERITY OR AVAILABILITY TO
21 THE DEPARTMENT'S INVESTIGATION.

22
23 Section 7. Title 41, Chapter 20, Article 2, Arizona Revised Statutes, is amended by adding
24 Section 41-2005, to read:

25 SECTION 41-2005. PENALTY GUIDELINES

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

1 FACTORS DEEMED RELEVANT BY THE DIVISION, SUCH AS THE SIZE OF THE
2 ASSOCIATION OR WHETHER THE VIOLATIONS WERE COMMITTED BY A
3 DEVELOPER- OR OWNER-CONTROLLED ASSOCIATION. THE GUIDELINES MUST
4 DESIGNATE POSSIBLE MITIGATING OR AGGRAVATING CIRCUMSTANCES THAT
5 MIGHT JUSTIFY A DEPARTURE FROM THE RANGE OF PENALTIES PROVIDED BY
6 THE RULES. IT IS THE LEGISLATURE’S INTENT THAT MINOR VIOLATIONS BE
7 DISTINGUISHED FROM THOSE THAT ENDANGER THE HEALTH, SAFETY, OR
8 WELFARE OF PARCEL OWNERS OR OTHER PERSONS AND THAT SUCH
9 GUIDELINES PROVIDE REASONABLE AND MEANINGFUL NOTICE TO THE PUBLIC
10 OF LIKELY PENALTIES THAT MAY BE IMPOSED FOR THE PROSCRIBED CONDUCT.
11 THIS SUBSECTION DOES NOT LIMIT THE ABILITY OF THE COMMISSIONER TO
12 INFORMALLY DISPOSE OF ADMINISTRATIVE ACTIONS OR COMPLAINTS BY
13 STIPULATION, AGREED SETTLEMENT, OR CONSENT ORDER. ALL AMOUNTS
14 COLLECTED SHALL BE DEPOSITED WITH THE CONDOMINIUM AND PLANNED
15 COMMUNITY HEARING OFFICE FUND IN ACCORDANCE WITH 41-2198.05. IF A
16 DEVELOPER FAILS TO PAY THE CIVIL PENALTY AND THE AMOUNT OWED TO THE
17 ASSOCIATION, THE DIVISION SHALL ISSUE AN ORDER DIRECTING THAT SUCH
18 DEVELOPER CEASE AND DESIST FROM FURTHER OPERATION UNTIL THE CIVIL
19 PENALTY IS PAID OR SHALL PURSUE ENFORCEMENT OF THE PENALTY THROUGH
20 COURT ORDER. IF AN ASSOCIATION FAILS TO PAY THE CIVIL PENALTY, THE
21 DIVISION SHALL PURSUE ENFORCEMENT THROUGH COURT ORDER, AND THE
22 ORDER IMPOSING THE CIVIL PENALTY OR THE CEASE AND DESIST ORDER IS NOT
23 EFFECTIVE UNTIL 20 DAYS AFTER THE DATE OF SUCH ORDER. ANY ACTION
24 COMMENCED BY THE DIVISION SHALL BE BROUGHT IN THE COUNTY IN WHICH
25 THE COMMISSIONER HAS ITS EXECUTIVE OFFICES OR IN THE COUNTY WHERE
26 THE VIOLATION OCCURRED.

27
28 B. DEPOSITING FUNDS.—ALL FUNDS COLLECTED BY THE DIVISION AND ANY
29 AMOUNTS PAID AS FEES, FINES, OR PENALTIES OR FROM COSTS AWARDED TO
30 THE DIVISION BY A COURT OR ADMINISTRATIVE FINAL ORDER UNDER THIS

1 CHAPTER SHALL BE DEPOSITED WITH THE CONDOMINIUM AND PLANNED
2 COMMUNITY HEARING OFFICE FUND IN ACCORDANCE WITH 41-2198.05.

3 Section 8. Title 41, Chapter 20, Article 3, Arizona Revised Statutes, is amended by adding
4 Section 41-2006, to read:

5 ARTICLE 3. HOMEOWNER' ASSOCIATION FEES

6 SECTION 41-2006. HOMEOWNERS' ASSOCIATION FEES.—

7 A. EFFECTIVE JANUARY 1, 2016, EACH HOMEOWNERS' ASSOCIATION THAT
8 OPERATES MORE THAN TWO PARCELS MUST PAY TO THE COMMISSIONER AN
9 ANNUAL FEE OF \$4 FOR EACH RESIDENTIAL PARCEL OPERATED BY THE
10 ASSOCIATION. BEGINNING JANUARY 1, 2017, THE COMMISSIONER MAY INCREASE
11 THE FEE TO REFLECT CHANGES IN THE COST OF LIVING UNDER S. 401(A)(17) OF
12 THE INTERNAL REVENUE CODE.

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

17 C. FUNDS COLLECTED SHALL BE DEPOSITED INTO CONDOMINIUM AND PLANNED
18 COMMUNITY HEARING OFFICE FUND IN ACCORDANCE WITH 41-2198.05.

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

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

28 Section 9. Title 41, Chapter 20, Article 4, Arizona Revised Statutes, is amended by adding
29 Section 41-2007, to read:

1 HOMEOWNERS ASSOCIATION ADVISORY BOARD; MEMBERS; TERMS;

2 QUALIFICATIONS; COMPENSATION; CHAIRMAN; DUTIES

3 A. THE HOMEOWNERS ASSOCIATION ADVISORY BOARD IS ESTABLISHED
4 COMPOSED OF FIVE MEMBERS WHO ARE APPOINTED BY THE GOVERNOR. THE
5 TERM OF OFFICE OF EACH MEMBER IS FOUR YEARS, AND THE TERMS OF TWO
6 MEMBERS EXPIRE ON JANUARY 31 OF EACH ODD NUMBERED YEAR. APPOINTMENT
7 TO FILL A VACANCY OCCURRING OTHER THAN BY EXPIRATION OF TERM SHALL BE
8 FILLED BY APPOINTMENT FOR THE UNEXPIRED PORTION OF THE TERM ONLY.

9 B. IN VIEW OF THE PURPOSES OF THE DEPARTMENT AS STATED IN 41-2001(B)
10 AND (C), THE MEMBERSHIP OF THE BOARD SHALL CONSIST OF:

11 1. THREE MEMBERS, EACH OF WHOM IS A VALID MEMBER OF HOMEOWNERS
12 ASSOCIATION IN ARIZONA FOR THE PAST FIVE YEARS. NOT MORE THAN ONE
13 MEMBER SHALL BE APPOINTED FROM ANY ONE HOMEOWNERS ASSOCIATION, AND
14 WHO HAS NOT BEEN A BOARD DIRECTOR OR OFFICER IN THE PAST TWO YEARS.

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

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

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

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

29 F. MEETINGS OF THE STATE REAL ESTATE ADVISORY BOARD

30 1. THE BOARD SHALL MEET FOR THE TRANSACTION OF BUSINESS NOT LESS
31 THAN ONCE EACH QUARTER-YEAR AT A PLACE WITHIN THE STATE IT
32 DESIGNATES. THE BOARD MAY HOLD OTHER MEETINGS IT DEEMS ADVISABLE

1 UPON FIVE DAYS' WRITTEN NOTICE OF THE TIME AND PLACE OF THE MEETING,
2 SIGNED BY THE COMMISSIONER OR A MAJORITY OF THE MEMBERS OF THE
3 BOARD.

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

7 G. THE BOARD ANNUALLY SHALL PRESENT TO THE GOVERNOR AN EVALUATION OF
8 THE PERFORMANCE OF THE REAL ESTATE COMMISSIONER AND THE REAL ESTATE
9 DEPARTMENT.

10
11 Section 10. Title 41, Chapter 20, Article 4, Arizona Revised Statutes, is amended by adding
12 Section 41-2098, to read:

13 ARTICLE 4. ADMINISTRATIVE HEARINGS.

14 41-2098. ADMINISTRATIVE ADJUDICATION OF COMPLAINTS

15 PURSUANT TO CHAPTER 6, ARTICLE 10 OF THIS TITLE, AN ADMINISTRATIVE LAW
16 JUDGE SHALL ADJUDICATE COMPLAINTS REGARDING AND ENSURE
17 COMPLIANCE WITH:

18 ~~1. THE ARIZONA MOBILE HOME PARKS RESIDENTIAL LANDLORD AND TENANT~~
19 ~~ACT.~~

20 2. 1. TITLE 33, CHAPTER 9 AND CONDOMINIUM DOCUMENTS.

21 3. 2. TITLE 33, CHAPTER 16 AND PLANNED COMMUNITY DOCUMENTS.

22
23 Section 11. Title 41, Chapter 20, Article 4, Arizona Revised Statutes, is amended by adding
24 Section 41-2098.01, to read:

25 41-2098.01. HEARING; RIGHTS AND PROCEDURES

26 A. A PERSON WHO IS SUBJECT TO TITLE 33, CHAPTER 11 OR A PARTY TO A
27 RENTAL AGREEMENT ENTERED INTO PURSUANT TO TITLE 33, CHAPTER 11 MAY
28 PETITION THE DEPARTMENT FOR A HEARING CONCERNING VIOLATIONS OF THE
29 ARIZONA MOBILE HOME PARKS RESIDENTIAL LANDLORD AND TENANT ACT BY

1 FILING A PETITION WITH THE DEPARTMENT AND PAYING A NONREFUNDABLE
2 FILING FEE IN AN AMOUNT TO BE ESTABLISHED BY THE DIRECTOR. ALL MONIES
3 COLLECTED SHALL BE DEPOSITED IN THE STATE GENERAL FUND AND ARE NOT
4 REFUNDABLE.

5 B. FOR A DISPUTE BETWEEN AN OWNER AND A CONDOMINIUM ASSOCIATION OR
6 PLANNED COMMUNITY ASSOCIATION THAT IS REGULATED PURSUANT TO TITLE
7 33, CHAPTER 9 OR 16, THE OWNER OR ASSOCIATION MAY PETITION THE
8 DEPARTMENT FOR A HEARING CONCERNING VIOLATIONS OF CONDOMINIUM
9 DOCUMENTS OR PLANNED COMMUNITY DOCUMENTS OR VIOLATIONS OF THE
10 STATUTES THAT REGULATE CONDOMINIUMS OR PLANNED COMMUNITIES. THE
11 PETITIONER SHALL FILE A PETITION WITH THE DEPARTMENT AND PAY A FILING
12 FEE IN AN AMOUNT TO BE ESTABLISHED BY THE DIRECTOR. THE FILING FEE
13 SHALL BE DEPOSITED IN THE CONDOMINIUM AND PLANNED COMMUNITY
14 HEARING OFFICE FUND ESTABLISHED BY SECTION 41-2198.05. ON DISMISSAL OF
15 A PETITION AT THE REQUEST OF THE PETITIONER BEFORE A HEARING IS
16 SCHEDULED OR BY STIPULATION OF THE PARTIES BEFORE A HEARING IS
17 SCHEDULED, THE FILING FEE SHALL BE REFUNDED TO THE PETITIONER. THE
18 DEPARTMENT DOES NOT HAVE JURISDICTION TO HEAR:

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

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

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

5 D. ON RECEIPT OF THE PETITION AND THE FILING FEE THE DEPARTMENT SHALL
6 MAIL BY CERTIFIED MAIL A COPY OF THE PETITION ALONG WITH NOTICE TO
7 THE NAMED RESPONDENT THAT A RESPONSE IS REQUIRED WITHIN TWENTY
8 DAYS OF MAILING OF THE PETITION SHOWING CAUSE, IF ANY, WHY THE
9 PETITION SHOULD BE DISMISSED.

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

16 F. FAILURE OF THE RESPONDENT TO ANSWER IS DEEMED AN ADMISSION OF THE
17 ALLEGATIONS MADE IN THE PETITION, AND THE DIRECTOR SHALL ISSUE A
18 DEFAULT DECISION.

19 G. INFORMAL DISPOSITION MAY BE MADE OF ANY CONTESTED CASE.

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

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

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

28 2. THE REPRESENTATION IS NOT THE OFFICER'S, EMPLOYEE'S OR CONTRACTOR
29 OF THE CORPORATION'S PRIMARY DUTY TO THE CORPORATION BUT IS
30 SECONDARY OR INCIDENTAL TO THE OFFICER'S, EMPLOYEE'S OR CONTRACTOR
31 OF THE CORPORATION'S, LIMITED LIABILITY COMPANY'S, LIMITED LIABILITY

1 PARTNERSHIP'S, SOLE PROPRIETOR'S OR OTHER LAWFULLY FORMED AND
2 OPERATING ENTITY'S DUTIES RELATING TO THE MANAGEMENT OR OPERATION
3 OF THE CORPORATION.

4
5 Section 12. Title 41, Chapter 20, Article 4, Arizona Revised Statutes, is amended by adding
6 Section 41-2098.02, to read

7 41-2098.02. ORDERS; PENALTIES; DISPOSITION

8 A. THE ADMINISTRATIVE LAW JUDGE MAY ORDER ANY PARTY TO ABIDE BY THE
9 STATUTE, CONDOMINIUM DOCUMENTS, COMMUNITY DOCUMENTS OR
10 CONTRACT PROVISION AT ISSUE AND MAY LEVY A CIVIL PENALTY ON THE
11 BASIS OF EACH VIOLATION. FOR PURPOSES OF ACTIONS BROUGHT UNDER THE
12 ARIZONA MOBILE HOME PARKS RESIDENTIAL LANDLORD AND TENANT ACT,
13 THE CIVIL PENALTY SHALL NOT EXCEED FIVE HUNDRED DOLLARS. ALL MONIES
14 COLLECTED PURSUANT TO THIS ARTICLE SHALL BE DEPOSITED IN THE STATE
15 GENERAL FUND TO BE USED TO OFFSET THE COST OF ADMINISTERING THE
16 ADMINISTRATIVE LAW JUDGE FUNCTION, EXCEPT THAT MONIES COLLECTED
17 FROM DISPUTES INVOLVING CONDOMINIUMS OR PLANNED COMMUNITIES AS
18 PRESCRIBED IN SECTION 41-2198.01, SUBSECTION B SHALL BE DEPOSITED IN THE
19 CONDOMINIUM AND PLANNED COMMUNITY HEARING OFFICE FUND
20 ESTABLISHED BY SECTION 41-2098.05. IF THE PETITIONER PREVAILS, THE
21 ADMINISTRATIVE LAW JUDGE SHALL ORDER THE RESPONDENT TO PAY TO THE
22 PETITIONER THE FILING FEE REQUIRED BY SECTION 41-2098.01.

23 B. THE ORDER ISSUED BY THE ADMINISTRATIVE LAW JUDGE IS BINDING ON THE
24 PARTIES UNLESS A REHEARING IS GRANTED PURSUANT TO SECTION 41-2098.04
25 BASED ON A PETITION SETTING FORTH THE REASONS FOR THE REQUEST FOR
26 REHEARING, IN WHICH CASE THE ORDER ISSUED AT THE CONCLUSION OF THE
27 REHEARING IS BINDING ON THE PARTIES. THE ORDER ISSUED BY THE
28 ADMINISTRATIVE LAW JUDGE IS ENFORCEABLE THROUGH CONTEMPT OF COURT
29 PROCEEDINGS AND IS SUBJECT TO JUDICIAL REVIEW AS PRESCRIBED BY
30 SECTION 41-1092.08.

1 Section 13. Title 41, Chapter 20, Article 4 Arizona Revised Statutes, is amended by adding
2 Section 41-2098.03, to read

3 41-2098.03. SCOPE OF HEARING

4 A. THE ADMINISTRATIVE LAW JUDGE MAY HEAR AND ADJUDICATE ALL
5 MATTERS RELATING TO THE ARIZONA MOBILE HOME PARKS RESIDENTIAL
6 LANDLORD AND TENANT ACT AND RULES ADOPTED PURSUANT TO THIS
7 ARTICLE, EXCEPT THAT THE ADMINISTRATIVE LAW JUDGE SHALL NOT HEAR
8 MATTERS PERTAINING TO RENTAL INCREASES PURSUANT TO SECTION 33-1413,
9 SUBSECTION G OR I.

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

15
16 Section 14. Title 41, Chapter 20, Article 4, Arizona Revised Statutes, is amended by adding
17 Section 41-2098.04, to read

18 41-2098.04. REHEARING; APPEAL

19 A. A PERSON AGGRIEVED BY A DECISION OF THE ADMINISTRATIVE LAW JUDGE
20 MAY APPLY FOR A REHEARING BY FILING WITH THE DIRECTOR A PETITION IN
21 WRITING PURSUANT TO SECTION 41-1092.09. WITHIN TEN DAYS AFTER FILING
22 SUCH PETITION, THE DIRECTOR SHALL SERVE NOTICE OF THE REQUEST ON THE
23 OTHER PARTY BY MAILING A COPY OF THE PETITION IN THE MANNER
24 PRESCRIBED IN SECTION 41-2098.01 FOR NOTICE OF HEARING.

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

29 C. IN THE ORDER GRANTING OR DENYING A REHEARING, THE DIRECTOR SHALL
30 INCLUDE A STATEMENT OF THE PARTICULAR GROUNDS AND REASONS FOR THE
31 DIRECTOR'S ACTION ON THE PETITION AND SHALL PROMPTLY MAIL A COPY OF

1 THE ORDER TO THE PARTIES WHO HAVE APPEARED IN SUPPORT OF OR IN
2 OPPOSITION TO THE PETITION FOR REHEARING.

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

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

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

12
13 Section 15. Title 41, Chapter 20, Article 4, Arizona Revised Statutes, is amended by adding
14 Section 41-2098.05, to read

15 41-2098.05. CONDOMINIUM AND PLANNED COMMUNITY HEARING OFFICE FUND

16 A. THE CONDOMINIUM AND PLANNED COMMUNITY HEARING OFFICE FUND IS
17 ESTABLISHED IN THE DEPARTMENT TO BE ADMINISTERED BY THE DIRECTOR.

18 MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED. ON NOTICE FROM
19 THE DIRECTOR, THE STATE TREASURER SHALL INVEST AND DIVEST MONIES IN
20 THE FUND AS PROVIDED BY SECTION 35-313, AND MONIES EARNED FROM
21 INVESTMENT SHALL BE CREDITED TO THE FUND.

22 B. MONIES IN THE CONDOMINIUM AND PLANNED COMMUNITY HEARING OFFICE
23 FUND SHALL BE USED TO REIMBURSE THE ACTUAL COSTS OF THE OFFICE OF
24 ADMINISTRATIVE HEARINGS IN CONDUCTING HEARINGS PURSUANT TO SECTION
25 41-2098.01, SUBSECTION B. MONIES REMAINING IN THE FUND MAY BE USED BY
26 THE DEPARTMENT TO OFFSET THE COSTS OF ADMINISTERING CASES FILED
27 PURSUANT TO SECTION 41-2098.01, SUBSECTION B.

28
29 Section 16. Section 41-2198, Arizona Revised Statutes, is amended to read:

30 41-2198. Administrative adjudication of complaints

1 Pursuant to chapter 6, article 10 of this title, an administrative law judge shall adjudicate
2 complaints regarding and ensure compliance with:

3 1. The Arizona mobile home parks residential landlord and tenant act.

4 ~~2. Title 33, chapter 9 and condominium documents.~~

5 ~~3. Title 33, chapter 16 and planned community documents.~~

6
7 Section 17. Section 41-2198.01, Arizona Revised Statutes, is amended to read:

8 41-2198.01. Hearing; rights and procedures

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

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

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

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

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

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

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

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

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

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

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

20 1. The corporation has specifically authorized the officer, employee or contractor of the
21 corporation to represent it.

22 2. The representation is not the officer's, employee's or contractor of the corporation's primary
23 duty to the corporation but is secondary or incidental to the officer's, employee's or contractor of
24 the corporation's, limited liability company's, limited liability partnership's, sole proprietor's or
25 other lawfully formed and operating entity's duties relating to the management or operation of
26 the corporation.

27
28 Section 18. Section 41-2198.02, Arizona Revised Statutes, is amended to read:

29 41-2198.02. Orders; penalties; disposition

30 A. ~~The administrative law judge may order any party to abide by the statute, condominium~~
31 ~~documents, community documents or contract provision at issue and may levy a civil penalty on~~

1 ~~the basis of each violation.~~ For purposes of actions brought under the Arizona mobile home
2 parks residential landlord and tenant act, the civil penalty shall not exceed five hundred dollars.
3 All monies collected pursuant to this article shall be deposited in the state general fund to be
4 used to offset the cost of administering the administrative law judge function, ~~except that monies~~
5 ~~collected from disputes involving condominiums or planned communities as prescribed in~~
6 ~~section 41-2198.01, subsection B shall be deposited in the condominium and planned community~~
7 ~~hearing office fund established by section 41-2198.05.~~ If the petitioner prevails, the
8 administrative law judge shall order the respondent to pay to the petitioner the filing fee required
9 by section 41-2198.01.

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

15
16 Section 19. Section 41-2198.03, Arizona Revised Statutes, is amended to read:

17 41-2198.03. Scope of hearing

18 A. The administrative law judge may hear and adjudicate all matters relating to the Arizona
19 mobile home parks residential landlord and tenant act and rules adopted pursuant to this article,
20 except that the administrative law judge shall not hear matters pertaining to rental increases
21 pursuant to section 33-1413, subsection G or I.

22 B. This section shall not be construed to limit the jurisdiction of the courts of this state to hear
23 and decide matters pursuant to the Arizona mobile home parks residential landlord and tenant
24 act, ~~the statutes or condominium documents that regulate condominiums or the statutes or~~
25 ~~community documents that regulate planned communities.~~

26
27 Section 20. Section 41-2198.05, Arizona Revised Statutes, is REPEALED:

28 41-2198.05. Condominium and planned community hearing office fund

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

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

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

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