Conference Engrossed

FILED
JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 245

HOUSE BILL 2380

AN ACT

AMENDING SECTIONS 33-1260 AND 33-1806, ARIZONA REVISED STATUTES; RELATING TO CONDOMINIUMS AND PLANNED COMMUNITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 33-1260, Arizona Revised Statutes, is amended to read:

33-1260. Resale of units; information required; definition

A. Except for a sale in which a public report shall be issued pursuant to section 32-2183 AND SECTION 32-2197.02, for an exempt sale pursuant to section 32-2181.02 or for condominiums with fewer than fifty units, a unit owner shall mail or deliver to a purchaser within ten days after receipt of a written notice of a pending sale of the unit, and for condominiums with fifty or more units, the association shall mail or deliver to a purchaser within ten days after receipt of a written notice of a pending sale that contains the name and address of the purchaser, all of the following:

1. A copy of the bylaws and the rules of the association.

2. A copy of the declaration.

3. A dated statement containing:

(a) The telephone number and address of a principal contact for the association, which may be an association manager, an association management company, an officer of the association or any other person designated by the board of directors.

(b) The amount of the common expense assessment for the unit and any unpaid common expense assessment, special assessment or other assessment, fee or charge currently due and payable from the selling unit owner.

(c) A statement as to whether a portion of the unit is covered by insurance maintained by the association.

(d) The total amount of money held by the association as reserves.

(e) If the statement is being furnished by the association, a statement as to whether the records of the association reflect any alterations or improvements to the unit that violate the declaration. The association is not obligated to provide information regarding alterations or improvements that occurred more than six years before the proposed sale. Nothing in this subdivision relieves the seller of a unit from the obligation to disclose alterations or improvements to the unit that violate the declaration, nor precludes the association from taking action against the purchaser of a unit for violations THAT ARE apparent at the time of purchase AND that are not reflected in the association's records.

(f) If the statement is being furnished by the unit owner, a statement as to whether the unit owner has any knowledge of any alterations or improvements to the unit that violate the declaration.

(g) A statement of case names and case numbers for pending litigation with respect to the unit filed by the association against the unit owner or filed by the unit owner against the association. The unit owner or the association shall not be required to disclose information concerning the pending litigation that would violate any applicable rule of attorney-client privilege under Arizona law.

(h) A STATEMENT THAT PROVIDES "I HEREBY ACKNOWLEDGE THAT THE DECLARATION, BYLAWS AND RULES OF THE ASSOCIATION CONSTITUTE A CONTRACT BETWEEN THE ASSOCIATION AND ME (THE PURCHASER). BY SIGNING THIS STATEMENT, I ACKNOWLEDGE THAT I HAVE READ AND UNDERSTAND THE ASSOCIATION'S CONTRACT WITH ME (THE PURCHASER). I ALSO UNDERSTAND THAT BY ACCEPTING THIS CONTRACT, I MAY BE GIVING UP MY RIGHTS TO THE HOMESTEAD EXEMPTION PROTECTION REGARDING A LIEN OF THE ASSOCIATION." THE STATEMENT SHALL ALSO INCLUDE A SIGNATURE LINE FOR THE PURCHASER AND SHALL BE RETURNED TO THE ASSOCIATION WITHIN FOURTEEN CALENDAR DAYS.

4. A copy of the current operating budget of the association.

5. A copy of the most recent annual financial report of the association. If the report is more than ten pages, the association may provide a summary of the report in lieu of the entire report.

6. A copy of the most recent reserve study of the association, if any.

B. A purchaser or seller who is damaged by the failure of the unit owner or the association to disclose the information required by subsection A of this section may pursue ~~any and~~ all remedies at law or in equity against the unit owner or the association, whichever failed to comply with subsection A of this section, including the recovery of reasonable attorney fees.

C. The association may charge the unit owner a reasonable fee to compensate the association for the costs incurred in the preparation of a statement furnished by the association pursuant to this section. The association shall make available to any interested party the amount of any fee established from time to time by the association.

D. For purposes of this section, unless the context otherwise requires, "unit owner" means the seller of the condominium unit title and excludes any real estate salesperson or real estate broker who is licensed under title 32, chapter 20 and who is acting as a salesperson or broker and also excludes a trustee of a deed of trust who is selling the property in a trustee's sale pursuant to chapter 6.1 of this title.

Sec. 2. Section 33-1806, Arizona Revised Statutes, is amended to read:

33-1806. <u>Resale of units; information required; definition</u>

A. Except for a sale in which a public report shall be issued pursuant to section 32-2183 AND SECTION 32-2197.02, for a sale which is exempt pursuant to section 32-2181.02 or for planned communities with fewer than fifty units, a member shall mail or deliver to a purchaser within ten days after receipt of a written notice of a pending sale of the unit, and for planned communities with fifty or more units, the association shall mail or deliver to a purchaser within ten days after receipt of a written notice of a pending sale that contains the name and address of the purchaser, all of the following:

1. A copy of the bylaws and the rules of the association.

2. A copy of the declaration.

3. A dated statement containing:

(a) The telephone number and address of a principal contact for the association, which may be an association manager, an association management company, an officer of the association or any other person designated by the board of directors.

(b) The amount of the common regular assessment and the unpaid common regular assessment, special assessment or other assessment, fee or charge currently due and payable from the selling member.

(c) A statement as to whether a portion of the unit is covered by insurance maintained by the association.

(d) The total amount of money held by the association as reserves.

(e) If the statement is being furnished by the association, a statement as to whether the records of the association reflect any alterations or improvements to the unit that violate the declaration. The association is not obligated to provide information regarding alterations or improvements that occurred more than six years before the proposed sale. Nothing in this subdivision relieves the seller of a unit from the obligation to disclose alterations or improvements to the unit that violate the declaration, nor precludes the association from taking action against the purchaser of a unit for violations THAT ARE apparent at the time of purchase AND that are not reflected in the association's records.

(f) If the statement is being furnished by the member, a statement as to whether the member has any knowledge of any alterations or improvements to the unit that violate the declaration.

(g) A statement of case names and case numbers for pending litigation with respect to the unit filed by the association against the member or filed by the member against the association. The member shall not be required to disclose information concerning such pending litigation which would violate any applicable rule of attorney-client privilege under Arizona law.

(h) A STATEMENT THAT PROVIDES "I HEREBY ACKNOWLEDGE THAT THE DECLARATION, BYLAWS AND RULES OF THE ASSOCIATION CONSTITUTE A CONTRACT BETWEEN THE ASSOCIATION AND ME (THE PURCHASER). BY SIGNING THIS STATEMENT, I ACKNOWLEDGE THAT I HAVE READ AND UNDERSTAND THE ASSOCIATION'S CONTRACT WITH ME (THE PURCHASER). I ALSO UNDERSTAND THAT BY ACCEPTING THIS CONTRACT, I MAY BE GIVING UP MY RIGHTS TO THE HOMESTEAD EXEMPTION PROTECTION REGARDING A LIEN OF THE ASSOCIATION." THE STATEMENT SHALL ALSO INCLUDE A SIGNATURE LINE FOR THE PURCHASER AND SHALL BE RETURNED TO THE ASSOCIATION WITHIN FOURTEEN CALENDAR DAYS.

4. A copy of the current operating budget of the association.

5. A copy of the most recent annual financial report of the association. If the report is more than ten pages, the association may provide a summary of the report in lieu of the entire report.

6. A copy of the most recent reserve study of the association, if any.

B. A purchaser or seller who is damaged by the failure of the member or the association to disclose the information required by subsection A of this section may pursue ~~any and~~ all remedies at law or in equity against the

member or the association, whichever failed to comply with subsection A of this section, including the recovery of reasonable attorney fees.

C. The association may charge the member a reasonable fee to compensate the association for the costs incurred in the preparation of a statement furnished by the association pursuant to this section. The association shall make available to any interested party the amount of any fee established from time to time by the association.

D. For purposes of this section, unless the context otherwise requires, "member" means the seller of the unit title and excludes any real estate salesperson or real estate broker who is licensed under title 32, chapter 20~~,~~ and who is acting as a salesperson or broker and also excludes a trustee of a deed of trust who is selling the property in a trustee's sale pursuant to chapter 6.1 of this title.

APPROVED BY THE GOVERNOR MAY 18, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 18, 2004.