

COMMITTEE ON JUDICIARY

HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1162

(Reference to Senate engrossed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Title 33, chapter 9, article 3, Arizona Revised Statutes,
3 is amended by adding section 33-1262, to read:

4 33-1262. Amendment to condominium documents; applicability

5 AN AMENDMENT TO THE CONDOMINIUM DOCUMENTS DOES NOT APPLY TO ANY COURT
6 OR ADMINISTRATIVE ACTION FILED BEFORE THE AMENDMENT IS ADOPTED.

7 Sec. 2. Title 33, chapter 16, article 1, Arizona Revised Statutes, is
8 amended by adding section 33-1817, to read:

9 33-1817. Amendment to community documents; applicability

10 AN AMENDMENT TO THE COMMUNITY DOCUMENTS DOES NOT APPLY TO ANY COURT OR
11 ADMINISTRATIVE ACTION FILED BEFORE THE AMENDMENT IS ADOPTED.

12 Sec. 3. Section 41-2198.02, Arizona Revised Statutes, is amended to
13 read:

14 41-2198.02. Orders; penalties; disposition; attorney fees

15 A. The administrative law judge may order any party to abide by the
16 statute, condominium documents, community documents or contract provision at
17 issue and may levy a civil penalty on the basis of each violation. For
18 purposes of actions brought under the Arizona mobile home parks residential
19 landlord and tenant act, the civil penalty shall not exceed five hundred
20 dollars. All monies collected pursuant to this article shall be deposited in
21 the state general fund to be used to offset the cost of administering the
22 administrative law judge function, except that monies collected from disputes
23 involving condominiums or planned communities as prescribed in section
24 41-2198.01, subsection B shall be deposited in the condominium and planned
25 community hearing office fund established by section 41-2198.05. If the
26 petitioner prevails, the administrative law judge shall order the respondent
27 to pay to the petitioner the filing fee required by section 41-2198.01.

1 B. The order issued by the administrative law judge is binding on the
2 parties unless a rehearing is granted pursuant to section 41-2198.04 based on
3 a petition setting forth the reasons for the request for rehearing, in which
4 case the order issued at the conclusion of the rehearing is binding on the
5 parties. Notwithstanding ~~sections~~ SECTION 41-1092.08, subsection B and
6 SECTION 41-1092.09, an order issued by the administrative law judge in an
7 action regarding a condominium or planned community is the final
8 administrative decision and is not subject to a request for rehearing. The
9 order issued by the administrative law judge is enforceable through contempt
10 of court proceedings.

11 C. IN AN ACTION REGARDING A CONDOMINIUM OR PLANNED COMMUNITY, THE
12 ADMINISTRATIVE LAW JUDGE SHALL NOT AWARD ATTORNEY FEES OR COSTS AND A COURT
13 SHALL NOT AWARD ATTORNEY FEES OR COSTS IN ANY APPEAL FROM AN ADMINISTRATIVE
14 ORDER UNLESS THE ADMINISTRATIVE LAW JUDGE OR COURT MAKES A FINDING THAT THE
15 ATTORNEY OR PARTY DID ANY OF THE FOLLOWING:

- 16 1. BROUGHT OR DEFENDED A CLAIM WITHOUT SUBSTANTIAL JUSTIFICATION.
- 17 2. BROUGHT OR DEFENDED A CLAIM SOLELY OR PRIMARILY FOR DELAY OR
18 HARASSMENT.
- 19 3. UNREASONABLY EXPANDED OR DELAYED THE PROCEEDING.
- 20 4. ENGAGED IN ABUSE OF DISCOVERY.

21 D. IF THE ADMINISTRATIVE LAW JUDGE OR COURT MAKES A FINDING PURSUANT
22 TO SUBSECTION C OF THIS SECTION, THE ADMINISTRATIVE LAW JUDGE OR COURT MAY
23 ALLOCATE THE PAYMENT OF ATTORNEY FEES AMONG THE OFFENDING ATTORNEYS AND
24 PARTIES, JOINTLY OR SEVERALLY, AND MAY ASSESS SEPARATE AMOUNTS AGAINST AN
25 OFFENDING ATTORNEY OR PARTY.

26 E. ATTORNEY FEES SHALL NOT BE ASSESSED PURSUANT TO SUBSECTION C OF
27 THIS SECTION IF AFTER FILING AN ACTION A VOLUNTARY DISMISSAL IS FILED FOR ANY
28 CLAIM OR DEFENSE WITHIN A REASONABLE TIME AFTER THE ATTORNEY OR PARTY FILING
29 THE DISMISSAL KNEW OR REASONABLY SHOULD HAVE KNOWN THAT THE CLAIM OR DEFENSE
30 WAS WITHOUT SUBSTANTIAL JUSTIFICATION.

31 F. IF THE ADMINISTRATIVE LAW JUDGE OR COURT MAKES A FINDING PURSUANT
32 TO SUBSECTION C OF THIS SECTION, THE ADMINISTRATIVE LAW JUDGE OR COURT IN ITS

1 DISCRETION MAY AWARD DOUBLE DAMAGES NOT TO EXCEED FIVE THOUSAND DOLLARS
2 AGAINST AN ATTORNEY OR A PARTY.

3 G. FOR THE PURPOSES OF SUBSECTION C OF THIS SECTION, "WITHOUT
4 SUBSTANTIAL JUSTIFICATION" MEANS THAT THE CLAIM OR DEFENSE CONSTITUTES
5 HARASSMENT, IS GROUNDLESS AND IS NOT MADE IN GOOD FAITH."

6 Amend title to conform

and, as so amended, it do pass

EDDIE FARNSWORTH
Chairman

1162-se-jud
4/10/08
10:01 AM
H:jmb

1162EF*
04/03/2008
9:44 AM
C: MYR