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This Real Estate Law Book is intended for use solely as a desk reference tool and should not be used as a substitute for the Arizona Revised Statutes, which can be referenced at www.azleg.gov.

Arizona Real Estate Laws

Title 32, Chapter 20 REAL ESTATE

Article 2 Licensing

32-2121. Applicability of article; exemption

A. This article does not apply to:

1. A natural person, a corporation through its officers, a partnership through its partners or a limited liability company through its members or managers that deals in selling, exchanging, purchasing, renting, leasing, managing or pledging the person's or entity's own property, including cemetery property and membership camping contracts, and that does not receive special compensation for a sales transaction or does not receive special compensation or other consideration, including property management fees or consulting fees for any property management services performed, if the majority of an officer's, partner's, member's or manager's activities do not involve the acts of a real estate broker, cemetery broker or membership camping broker as defined in section 32-2101.
2. A person holding a valid power of attorney that is being used for a specific purpose in an isolated transaction and not as a method of conducting a real estate business.
3. An attorney performing the attorney's duties as an attorney. This paragraph does not allow an attorney to otherwise engage in any acts requiring a license under this article.
4. Any receiver, a trustee in bankruptcy or any other person acting under an order of a court.
5. A trustee selling under a deed of trust.
6. Natural persons who are acting as residential leasing agents or on-site managers of residential rental property, who are performing residential leasing activities on residential income property at not more than one location during the period of the agents' or on-site managers' regular workday, who do not receive special compensation for the acts described in subdivisions (a) through (e) of this paragraph and who are employed by the owner or the owner's licensed management agent to perform the duties customarily associated with that employment. A bonus that is paid to a residential leasing agent or on-site manager working under the supervision of a licensed real estate broker and that is based on performance, that is received not more frequently than monthly and that does not exceed one-half of the agent's or on-site manager's total compensation for the time period does not constitute special compensation for the acts described in subdivisions (a) through (e) of this paragraph. For the purposes of this paragraph, "residential leasing agents or on-site managers" means natural persons who are employed by the owner or the owner's licensed management agent and whose normal duties and responsibilities include any one or a combination of the following:
 - (a) Preparing and presenting to any person a residential lease, application or renewal or any amendment of the lease.
 - (b) Collecting or receiving a security deposit, a rental payment or any related payment for delivery to and made payable to a property, a property manager, an owner or the location.
 - (c) Showing a residential rental unit to any prospective tenant.
 - (d) Executing residential leases or rental agreements adopted under title 33, chapter 10.
 - (e) Acting on behalf of the owner or the owner's licensed management agent to deliver notice pursuant to title 12, chapter 8 and title 33, chapters 10 and 11.
7. Any officer or employee of a governmental agency who is not a contract or temporary employee of the agency in conducting the officer's or employee's official duties.
8. One natural person who acts as a property manager for one nonresidential income property or for two or more contiguous nonresidential income properties that are under common ownership and who is employed by the owner or the owner's licensed management agent to perform the duties customarily associated with that employment.
9. Natural persons who are employed by an employing broker, a person otherwise licensed under this chapter or a person or entity exempt under this section, who are unlicensed and perform

clerical, bookkeeping, accounting and other administrative and support duties, who are not engaged in any other acts requiring a license under this chapter and whose employment is not conditioned on or designed to perform duties otherwise requiring a license under this chapter.

10. Natural persons who are employed by an employing broker and who perform telemarketing services that are limited to soliciting interest in engaging the services of a licensee or broker or gathering demographic information that will be used by a licensee or broker to solicit prospective buyers, sellers, lessees and lessors.

11. Communications media or their representatives that are primarily engaged in advertising real estate and that perform no other acts requiring a real estate license, if:

(a) The communications media or their representatives do not, directly or indirectly, compile or represent that they compile information about specific prospective purchasers or tenants, except that general information about prospective purchasers or tenants, such as demographic and marketing information, may be compiled.

(b) The communications media or their representatives do not make representations to prospective real property sellers or landlords, or their representatives, concerning specific prospective purchasers or tenants or specific sales or leasing leads.

(c) The fee charged for advertising is based solely on the advertising services provided.

(d) The advertisements provide for direct contact between the seller or landlord and the prospective buyers or tenants, or for contact through a licensed real estate broker or property management firm. The communications media or their representatives shall not act as intermediaries or assist in any intermediary action between prospective parties to a real estate transaction, except that additional information about advertised properties may be provided to prospects on request.

12. Persons who perform residential property management services or marketing and promotional services solely for nursing care institutions as defined in section 36-401 or pursuant to life care contracts as defined in section 20-1801.

13. A person who offers to sell or lease property that constitutes a security as defined in section 44-1801 and that is offered, sold or leased in compliance with title 44, chapter 12 if the person is a registered securities dealer or salesperson pursuant to title 44, chapter 12, article 9.

14. A person who manages a hotel, motel or recreational vehicle park.

15. A person who, on behalf of another, solicits, arranges or accepts reservations or monies, or both, for occupancies of thirty-one or fewer days in a dwelling unit.

16. An escrow agent in performing the escrow agent's duties as an escrow agent, a title insurer in performing the title insurer's duties as a title insurer or a title insurance agent in performing the title insurance agent's duties as a title insurance agent. This paragraph does not allow an escrow agent, a title insurer or a title insurance agent to otherwise engage in acts requiring a license under this article.

17. Notwithstanding paragraph 1 of this subsection, a corporation through its officers and employees that purchases, sells, exchanges, rents, leases, manages or pledges its property if both of the following apply:

(a) The activity is only incidental to the business of the corporation.

(b) The officers and employees engaged in the activity do not receive special compensation or other consideration for the activity.

18. A trust company owned by a bank holding company regulated by the federal reserve board or a bank in exercising its fiduciary duties under the terms of a trust agreement to which real property is subject.

19. A person who receives a finder fee pursuant to section 32-2176 or 32-2197.21.

B. The commissioner may grant an exemption from the licensure requirements of this article to any corporation that applies for an exemption on a finding that both of the following apply:

1. The corporation is a nonprofit corporation that provides project-based housing services and operates solely as a charitable organization as defined in section 44-6551.

2. The corporation's sole activities related to real estate involve ownership or management of residential property owned or controlled by the corporation.

32-2123. Application for license as broker or salesperson

A. Every application for an original license shall be either submitted in writing and signed by the applicant or submitted electronically and contain an electronic or digital identifier that the commissioner deems appropriate. The application shall be accompanied by all applicable fees.

B. An application for an original license as a broker or salesperson shall set forth:

1. The applicant's residence address and legal name and any derivative of the applicant's first name or middle name or a nickname that the applicant regularly uses for advertising purposes.
2. The applicant's employers and employment history for the immediately preceding ten years and any experience in real estate sales, appraisals, transfers or similar business in which the applicant previously engaged, if the commissioner determines that this information is needed to reasonably evaluate the good moral character of the applicant.
3. The name and place of business of the applicant's present employer, if any.
4. Whether the applicant has ever been convicted of a felony and, if so, the nature of the felony, where and when committed and the disposition of the conviction, or whether the applicant has been disbarred or suspended from the practice of law.
5. Whether the applicant has ever been refused a broker's or salesperson's license or any other occupational license in this or any other state, whether the applicant's license as a broker or salesperson has been revoked or suspended in this or any other state or whether the applicant has had any other occupational or professional license, certificate or registration revoked or suspended in this or any other state.
6. The name of any corporation, company or partnership that is or ever has been licensed by the department in which the applicant exercised any control.
7. If the applicant is a natural person, the applicant's social security number. If the applicant, due to bona fide religious convictions or other bona fide reasons that the applicant documents on the application to the satisfaction of the commissioner, does not have a social security number, the applicant may provide the applicant's federal tax identification number with the application. The state real estate department shall use the applicant's social security number or federal tax identification number to aid the department of economic security in locating noncustodial parents or the assets of noncustodial parents, and for no other purpose.

C. An application for a license as a broker additionally shall set forth:

1. The name under which the business is to be conducted.
2. The situs and mailing address of the applicant's place of business, or if more than one, the situs and mailing addresses of each.

D. An applicant for a broker's or salesperson's license shall provide information that the commissioner determines is reasonably necessary to establish the character of the applicant. The information may include but shall not be limited to:

1. Prior criminal records.
2. A valid fingerprint clearance card issued pursuant to section 41-1758.03.
3. An affidavit setting out whether the applicant has participated in, operated or held an interest in any land development company which has filed, or is subject to, a petition under any chapter of the federal bankruptcy act.

E. Each person licensed pursuant to this article, whether the license is active or inactive, shall have available for the licensee's use a current copy of the department's statutes, rules and annotations pertaining to real estate laws. Failure to comply with this requirement shall not be deemed grounds for a civil penalty or for denial, suspension or revocation of a license.

Article 9 Real Estate Timeshares

32-2197.03. Purchase agreements; rescission of contract or agreement; cancellation or termination of timeshare interests

A. A purchase agreement shall be in writing and shall be signed by the purchaser. The developer shall give the purchaser a paper copy of the purchase agreement when the purchaser signs the purchase agreement.

B. The purchaser may rescind the purchase agreement without cause of any kind by sending or delivering a written notice of rescission by midnight of the tenth calendar day following the day on which the purchaser or prospective purchaser executed the purchase agreement. The rescission rights shall be conspicuously

disclosed in the purchase agreement. If the developer allows the rescission period to extend beyond ten calendar days, the rescission period disclosure in the purchase agreement shall reflect the longer period of time. The disclosure required by this subsection shall be printed immediately before the space reserved in the purchase agreement for the signature of the purchaser and shall include the following information:

1. The purchaser may cancel the purchase agreement without a penalty or obligation within ten calendar days, or another time period if applicable, after the purchaser signs the purchase agreement.
2. If the purchaser decides to cancel the purchase agreement, the purchaser shall notify the seller in writing of the purchaser's intent to cancel.
3. The purchaser's notice of cancellation is effective on the date the cancellation is sent and shall be sent to the seller at the seller's address. The seller's address and telephone number shall be listed in the purchase agreement.
4. The purchaser may execute all closing documents in advance. However, the closing, as evidenced by delivery of the deed or other document, is prohibited before the ten calendar day cancellation period expires.

C. The denial of a purchaser's rights under this section without a good faith legal basis constitutes an unlawful practice under section 44-1522. The attorney general may investigate and take appropriate action as prescribed by title 44, chapter 10, article 7.

D. This section applies to any timeshare plan approved by the commissioner pursuant to either article 4 of this chapter or this article, regardless of the date of issuance of the public report.

Footer

32-2197.16. Separate disclosures

A. The purchase agreement must contain a separate disclosure document that discloses all of the following in at least ten-point type:

1. If the purchaser signs the purchase agreement, the purchaser has ten days to cancel the purchase agreement without a penalty.
2. If the purchaser signs the purchase agreement, the purchaser may be responsible for paying maintenance fees, taxes and other assessments every year for the duration of ownership.
3. Timeshares are not investments.
4. The purchase agreement is final and any conflicting statements made by the seller are not part of the purchase agreement.
5. The purchaser has the right to file a consumer complaint with the attorney general.

B. Before entering into a purchase agreement, the seller must provide the purchaser with a separate disclosure document to adequately inform the purchaser of the purchaser's actual and potential liabilities under the purchase agreement. At a minimum, this separate disclosure document must conspicuously disclose all of the following:

1. The duration of the timeshare agreement entered into by the purchaser or whether the agreement has no set duration.
2. A good faith estimate of the total potential financial obligation of the purchaser during the first year of ownership that includes additional charges to which the purchaser may be subject during the first year of ownership, including all potential assessments. The disclosure shall be as follows:
 - (a) If the maximum amount of the first year's assessments is known at the time of purchase, the disclosure must disclose the maximum amount of these assessments and the assessments levied for each of the previous three years, if available.
 - (b) If the maximum amount of the first year's assessments is unknown at the time of purchase, the disclosure must provide the purchaser with the following:
 - (i) Notice that the purchaser will be required to pay assessments in addition to the disclosed purchase payment and that the amount of those assessments is currently unknown.
 - (ii) A statement disclosing the assessments levied for each of the previous three years, if available, and a good faith estimate of the first year's assessments that is at least the highest amount assessed during any of the previous three years based on the timeshare interest being offered.
 - (iii) Unless the purchase agreement provides for a limit on assessments during the first year of ownership, an affirmative statement that there is no limit on the assessments that the purchaser may be charged in the first year of ownership.

C. If there are blank spaces in the purchase agreement or the disclosure documents prescribed by this section, the contract is voidable.

D. The purchaser must separately initial each disclosure prescribed by subsection A of this section, sign the separate disclosure prescribed by subsection B of this section and verify that the purchaser has read and understands the information presented in the separate disclosures. An initialed copy of the separate disclosure prescribed by subsection A of this section and a signed copy of the separate disclosure prescribed by subsection B of this section shall be provided to the purchaser for the purchaser's records at the time of signing, and the seller shall keep a signed copy of the separate disclosures.

E. The commissioner may recommend or require that the separate disclosures be in a specified form. The form must contain the information required by this section.

SUBSTANTIVE POLICY STATEMENTS

No. 2019.01

Short Title: **Online Pre Licensing Education Course and Learning Guidelines**

Description: This Substantive Policy Statement is to inform the real estate education industry of the Department's current approach to, and opinion of, the requirements of education statutes and rules regarding Online Pre Licensing Education which applies solely to the delivery of Online Pre Licensing Education courses (A.R.S. §§ 32-2135, 32-2101, 32-2124).

Effective Date: January 3, 2019

Note: For the complete text of this Substantive Policy Statement please refer to the ADRE website at www.azre.gov or go to this url (<https://www.azre.gov/LawBook/SubstantivePolicyStatements.aspx>)

Title 11, Chapter 8 DEVELOPMENT FEES

Article 2 Real Estate Transfer Affidavit and Fee

11-1132. Real estate transfer fee; collection; disposition of proceeds

A. Before recording a deed or contract relating to the sale or transfer of real property, the county recorder shall collect a fee of two dollars for the deed or contract.

B. The fee prescribed in subsection A of this section is included in the amount charged pursuant to section 11-475, subsection A.

C. The county shall retain all monies collected pursuant to this section in the same manner as monies collected under section 11-475.

Title 33, Chapter 9 CONDOMINIUMS

Article 1 General Provisions

33-1228. Termination of condominium

A. Except in the case of a taking of all the units by eminent domain, a condominium may be terminated only by agreement of unit owners of units to which at least eighty percent of the votes in the association are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to nonresidential uses. At least thirty days before recording a termination agreement, the board of directors of the association shall convene a regular or special meeting of the board of directors at which a person or entity that purports to have the agreement of at least eighty percent of the votes in the association, or any larger percentage if required, shall produce and make available to the unit owners copies of a signed notarized statement that the owner of a unit has executed a termination agreement. The person or entity shall produce copies of a statement for each unit owner who has agreed to the termination, or may produce the signed termination agreement that includes a sufficient number of unit owners. Any meeting called pursuant to this subsection shall be noticed as otherwise provided by law, except that the board may not take action by written consent

or any other method that does not provide for an actual meeting that is open to all the unit owners. Any termination agreement that is recorded without full compliance with this subsection is invalid.

B. An agreement to terminate shall be evidenced by the execution or ratifications of a termination agreement, in the same manner as a deed, by the requisite number of unit owners. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications of a termination agreement shall be recorded in each county in which a portion of the condominium is situated and is effective only on recordation.

C. A termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real estate in the condominium is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

D. The association, on behalf of the unit owners, may contract for the sale of real estate in the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections A and B of this section. If any real estate in the condominium is to be sold following termination, title to that real estate on termination vests in the association as trustee for the holders of all interest in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to unit owners and lienholders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection G of this section. Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit owner's unit. During the period of that occupancy, each unit owner and the successors in interest remain liable for all assessments and other obligations imposed on unit owners by this chapter or the declaration.

E. If the real estate constituting the condominium is not to be sold following termination, title to all the real estate in the condominium vests in the unit owners on termination as tenants in common in proportion to their respective interests as provided in subsection G of this section, and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit owner's unit.

F. Following termination of the condominium, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear. Following termination, creditors of the association holding liens on the units that were recorded before termination may enforce those liens in the same manner as any lienholder.

G. The respective interests of unit owners referred to in subsections D, E and F of this section are as follows:

1. Except as provided in paragraph 2 of this subsection, the respective interests of unit owners are the fair market values of their units, limited common elements and common element interests immediately before the termination, their pro rata share of any monies in the association's reserve fund and the operating account and an additional five percent of that total amount for relocation costs. An independent appraiser selected by the association shall determine the total fair market values. The determination of the independent appraiser shall be distributed to the unit owners and becomes final unless disapproved within sixty days after distribution to the unit owner. Any unit owner may obtain a second independent appraisal at the unit owner's expense and, if the unit owner's independent appraisal amount differs from the association's independent appraisal amount by five percent or less, the higher appraisal is final. If the total amount of compensation owed as determined by the second appraiser is more than five percent higher than the amount determined by the association's appraiser, the unit owner shall submit to arbitration by an arbitrator affiliated with a national arbitration association and under the rules of that association at the association's expense and the arbitration amount is the final sale amount. As part of the arbitration process, the appraisers shall fully disclose their appraisal methodologies and shall disclose any other transaction occurring between the buyer and the sellers. An additional five percent of the final sale amount shall be added for relocation costs.

2. If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value of the unit or element before destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination.

H. Except as provided in subsection I of this section, foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or

enforcement of a lien or encumbrance against a portion of the condominium does not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not of itself withdraw that real estate from the condominium, but the person taking title may require from the association, on request, an amendment excluding the real estate from the condominium.

I. If a lien or encumbrance against a portion of the real estate comprising the condominium has priority over the declaration, and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance, on foreclosure, may record an instrument excluding the real estate subject to that lien or encumbrance from the condominium.

J. The provisions of subsections C, D, E, F, H and I of this section do not apply if the original declaration, an amendment to the original declaration recorded before the conveyance of any unit to an owner other than the declarant or an agreement by all of the unit owners contains provisions inconsistent with these subsections.

K. Beginning on August 3, 2018, any provisions in the declaration that conflict with subsection G, paragraph 1 of this section are void as a matter of public policy.

33-1256. Lien for assessments; priority; mechanics' and materialmen's liens; applicability

A. The association has a lien on a unit for any assessment levied against that unit from the time the assessment becomes due. The association's lien for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments may be foreclosed in the same manner as a mortgage on real estate but may be foreclosed only if the owner has been delinquent in the payment of monies secured by the lien, excluding reasonable collection fees, reasonable attorney fees and charges for late payment of and costs incurred with respect to those assessments, for a period of one year or in the amount of \$1,200 or more, whichever occurs first, as determined on the date the action is filed. Fees, charges, late charges, monetary penalties and interest charged pursuant to section 33-1242, subsection A, paragraphs 10, 11 and 12, other than charges for late payment of assessments, are not enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment of the assessment becomes due. The association has a lien for fees, charges, late charges, other than charges for late payment of assessments, monetary penalties or interest charged pursuant to section 33-1242, subsection A, paragraphs 10, 11 and 12 after the entry of a judgment in a civil suit for those fees, charges, late charges, monetary penalties or interest from a court of competent jurisdiction and the recording of that judgment in the office of the county recorder as otherwise provided by law. The association's lien for monies other than for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments may not be foreclosed and is effective only on conveyance of any interest in the real property.

B. A lien for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments under this section is prior to all other liens, interests and encumbrances on a unit except:

1. Liens and encumbrances recorded before the recordation of the declaration.
2. A recorded first mortgage on the unit, a seller's interest in a first contract for sale pursuant to chapter 6, article 3 of this title on the unit recorded prior to the lien arising pursuant to subsection A of this section or a recorded first deed of trust on the unit.
3. Liens for real estate taxes and other governmental assessments or charges against the unit.

C. Subsection B of this section does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the association. The lien under this section is not subject to chapter 8 of this title.

D. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

E. Recording of the declaration constitutes record notice and perfection of the lien for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments. Further recordation of any claim of lien for assessments under this section is not required.

F. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six years after the full amount of the assessments becomes due.

G. This section does not prohibit:

1. Actions to recover sums for which subsection A of this section creates a lien.
 2. An association from taking a deed in lieu of foreclosure.
- H. A judgment or decree in any action brought under this section shall include costs and reasonable attorney fees for the prevailing party.
- I. The association on written request shall furnish to a lienholder, escrow agent, unit owner or person designated by a unit owner a statement setting forth the amount of unpaid assessments against the unit. The statement shall be furnished within ten days after receipt of the request and the statement is binding on the association, the board of directors and every unit owner if the statement is requested by an escrow agency that is licensed pursuant to title 6, chapter 7. Failure to provide the statement to the escrow agent within the time provided for in this subsection extinguishes any lien for any unpaid assessment then due.
- J. Notwithstanding any provision in the condominium documents or in any contract between the association and a management company, unless the unit owner directs otherwise, all payments received on a unit owner's account shall be applied first to any unpaid assessments, unpaid charges for late payment of those assessments, unpaid reasonable collection fees and unpaid attorney fees and costs incurred with respect to those assessments, in that order, with any remaining amounts applied next to other unpaid fees, charges and monetary penalties or interest and late charges on any of those amounts.
- K. For a delinquent account for unpaid assessments or for charges related to unpaid assessments, the association shall provide the following written notice to the unit owner at the unit owner's address as provided to the association at least thirty days before authorizing an attorney, or a collection agency that is not acting as the association's managing agent, to begin collection activity on behalf of the association:
Your account is delinquent. If you do not bring your account current or make arrangements that are approved by the association to bring your account current within thirty days after the date of this notice, your account will be turned over for further collection proceedings. Such collection proceedings could include bringing a foreclosure action against your property.
The notice shall be in boldfaced type or all capital letters and shall include the contact information FOR the person that the unit owner may contact to discuss payment. The notice shall be sent by certified mail, return receipt requested, and may be included within other correspondence sent to the unit owner regarding the unit owner's delinquent account.
- L. Beginning January 1, 2020, except for condominiums that have fewer than fifty units and that do not contract with a third party to perform management services on behalf of the association, the association shall provide a statement of account in lieu of a periodic payment book to the unit owner with the same frequency that assessments are provided for in the declaration. The statement of account shall include the current account balance due and the immediately preceding ledger history. If the association offers the statement of account by electronic means, a unit owner may opt to receive the statement electronically. The association may stop providing any further statements of account to a unit owner if collection activity begins by an attorney, or a collection agency that is not acting as the association's managing agent, regarding that unit owner's unpaid account. After collection activity begins, a unit owner may request statements of account by written request to the attorney or collection agency. Any request by a unit owner for a statement of account after collection activity begins by an attorney or a collection agency that is not acting as the association's managing agent must be fulfilled by the attorney or the collection agency responsible for the collection. The statement of account provided by the attorney or collection agency responsible for the collection shall include all amounts claimed to be owing to resolve the delinquency through the date set forth in the statement, including attorney fees and costs, regardless of whether such amounts have been reduced to judgment.
- M. An agent for the association may collect on behalf of the association directly from a unit owner the assessments and other amounts owed by cash or check, by mailed or hand-delivered bank drafts, checks, cashier's checks or money orders, by credit, charge or debit card or by other electronic means. For any form of payment other than for cash or for mailed or hand-delivered bank drafts, checks, cashier's checks or money orders, the agent may charge a convenience fee to the unit owner that is approximately the amount charged to the agent by a third-party service provider.
- N. This section does not apply to timeshare plans or associations that are subject to chapter 20 of this title.

Title 33, Chapter 16 PLANNED COMMUNITIES

Article 1 General Provisions

33-1801. Applicability; exemption; voluntary election to be subjected to chapter

A. This chapter applies to all planned communities.

B. Notwithstanding any provisions in the community documents, this chapter does not apply to any school that receives monies from this state, including a charter school, and a school is exempt from regulation or any enforcement action by any homeowners' association that is subject to this chapter. With the exception of homeschools as defined in section 15-802, schools shall not be established within the living units of a homeowners' association. The homeowners' association may enter into a contractual agreement with a school district or charter school to allow use of the homeowners' association's common areas by the school district or charter school.

C. This chapter does not apply to either of the following:

1. Timeshare plans or associations that are subject to chapter 20 of this title.

2. Notwithstanding any provision in the community documents, a nonprofit corporation or unincorporated association of owners that is created or incorporated before January 1, 1974 and that does not have authority to enforce covenants, conditions and restrictions related to the use, occupancy or appearance of the separately owned lots, parcels or units in a real estate development, unless a majority of all the members of such a nonprofit corporation or unincorporated association of owners elect in writing to subject the corporation or association to this chapter by recording a notice of election pursuant to subsection D of this section.

D. A nonprofit corporation or unincorporated association of owners that has the power under recorded covenants to assess members to pay the costs and expenses incurred in the performance of obligations created by recorded covenants for a real estate development that does not qualify as a planned community may elect to subject the nonprofit corporation or unincorporated association of owners to this chapter with the written approval of a majority of all the members. A notice of election to be subject to this chapter shall be recorded by the nonprofit corporation or unincorporated association of owners with the county recorder of the county or counties in which the real estate development is located. The notice is effective as of the date of the recording of the notice. Any such election may be rescinded in the same manner as an election and is effective as of the date of the recording of the notice of rescission.

33-1802. Definitions

In this chapter and in the community documents, unless the context otherwise requires:

1. "Association" means a nonprofit corporation or unincorporated association of owners that is created pursuant to a declaration to own and operate portions of a planned community and that has the power under the declaration to assess association members to pay the costs and expenses incurred in the performance of the association's obligations under the declaration. Association does not include a nonprofit corporation or unincorporated association of owners that is created or incorporated before January 1, 1974 and that does not have authority to enforce covenants, conditions or restrictions related to the use, occupancy or appearance of the separately owned lots, parcels or units in a real estate development, unless the nonprofit corporation or unincorporated association of owners elects to be subject to this chapter pursuant to section 33-1801, subsection D.

2. "Community documents" means the declaration, bylaws, articles of incorporation, if any, and rules, if any.

3. "Declaration" means any instruments, however denominated, that establish a planned community and any amendment to those instruments.

4. "Planned community" means a real estate development that includes real estate owned and operated by or real estate on which an easement to maintain roadways or a covenant to maintain roadways is held by a nonprofit corporation or unincorporated association of owners, that is created for the purpose of managing, maintaining or improving the property and in which the declaration expressly states both that the owners of separately owned lots, parcels or units are mandatory members and that the owners are required to pay assessments to the association for these purposes. Planned community does not include any of the following:

(a) A timeshare plan or a timeshare association that is governed by chapter 20 of this title.

(b) A condominium that is governed by chapter 9 of this title.

(c) A real estate development that is not managed or maintained by an association.

33-1807. Lien for assessments; priority; mechanics' and materialmen's liens; notice

A. The association has a lien on a unit for any assessment levied against that unit from the time the assessment becomes due. The association's lien for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments may be foreclosed in the same manner as a mortgage on real estate but may be foreclosed only if the owner has been delinquent in the payment of monies secured by the lien, excluding reasonable collection fees, reasonable attorney fees and charges for late payment of and costs incurred with respect to those assessments, for a period of one year or in the amount of \$1,200 or more, whichever occurs first, as determined on the date the action is filed. Fees, charges, late charges, monetary penalties and interest charged pursuant to section 33-1803, other than charges for late payment of assessments are not enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment of the assessment becomes due. The association has a lien for fees, charges, late charges, other than charges for late payment of assessments, monetary penalties or interest charged pursuant to section 33-1803 after the entry of a judgment in a civil suit for those fees, charges, late charges, monetary penalties or interest from a court of competent jurisdiction and the recording of that judgment in the office of the county recorder as otherwise provided by law. The association's lien for monies other than for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments may not be foreclosed and is effective only on conveyance of any interest in the real property.

B. A lien for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments under this section is prior to all other liens, interests and encumbrances on a unit except:

1. Liens and encumbrances recorded before the recordation of the declaration.
2. A recorded first mortgage on the unit, a seller's interest in a first contract for sale pursuant to chapter 6, article 3 of this title on the unit recorded prior to the lien arising pursuant to subsection A of this section or a recorded first deed of trust on the unit.
3. Liens for real estate taxes and other governmental assessments or charges against the unit.

C. Subsection B of this section does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the association. The lien under this section is not subject to chapter 8 of this title.

D. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same real estate those liens have equal priority.

E. Recording of the declaration constitutes record notice and perfection of the lien for assessments, for charges for late payment of assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments. Further recordation of any claim of lien for assessments under this section is not required.

F. A lien for an unpaid assessment is extinguished unless proceedings to enforce the lien are instituted within six years after the full amount of the assessment becomes due.

G. This section does not prohibit:

1. Actions to recover amounts for which subsection A of this section creates a lien.
2. An association from taking a deed in lieu of foreclosure.

H. A judgment or decree in any action brought under this section shall include costs and reasonable attorney fees for the prevailing party.

I. On written request, the association shall furnish to a lienholder, escrow agent, unit owner or person designated by a unit owner a statement setting forth the amount of any unpaid assessment against the unit. The association shall furnish the statement within ten days after receipt of the request, and the statement is binding on the association, the board of directors and every unit owner if the statement is requested by an escrow agency that is licensed pursuant to title 6, chapter 7. Failure to provide the statement to the escrow agent within the time provided for in this subsection extinguishes any lien for any unpaid assessment then due.

J. Notwithstanding any provision in the community documents or in any contract between the association and a management company, unless the member directs otherwise, all payments received on a member's account shall be applied first to any unpaid assessments, unpaid charges for late payment of those

assessments, unpaid reasonable collection fees and unpaid attorney fees and costs incurred with respect to those assessments, in that order, with any remaining amounts applied next to other unpaid fees, charges and monetary penalties or interest and late charges on any of those amounts.

K. For a delinquent account for unpaid assessments or for charges related to unpaid assessments, the association shall provide the following written notice to the member at the member's address as provided to the association at least thirty days before authorizing an attorney, or a collection agency that is not acting as the association's managing agent, to begin collection activity on behalf of the association:

Your account is delinquent. If you do not bring your account current or make arrangements that are approved by the association to bring your account current within thirty days after the date of this notice, your account will be turned over for further collection proceedings. Such collection proceedings could include bringing a foreclosure action against your property.

The notice shall be in boldfaced type or all capital letters and shall include the contact information for the person that the member may contact to discuss payment. The notice shall be sent by certified mail, return receipt requested, and may be included within other correspondence sent to the member regarding the member's delinquent account.

L. Beginning January 1, 2020, except for planned communities that have fewer than fifty lots and that do not contract with a third party to perform management services on behalf of the association, the association shall provide a statement of account in lieu of a periodic payment book to the member with the same frequency that assessments are provided for in the declaration. The statement of account shall include the current account balance due and the immediately preceding ledger history. If the association offers the statement of account by electronic means, a member may opt to receive the statement electronically. The association may stop providing any further statements of account to a member if collection activity begins by an attorney, or a collection agency that is not acting as the association's managing agent, regarding that member's unpaid account. After collection activity begins, a member may request statements of account by written request to the attorney or collection agency. Any request by a member for a statement of account after collection activity begins by an attorney or a collection agency that is not acting as the association's managing agent must be fulfilled by the attorney or the collection agency responsible for the collection. The statement of account provided by the attorney or collection agency responsible for the collection shall include all amounts claimed to be owing to resolve the delinquency through the date set forth in the statement, including attorney fees and costs, regardless of whether such amounts have been reduced to judgment.

M. An agent for the association may collect on behalf of the association directly from a member the assessments and other amounts owed by cash or check, by mailed or hand-delivered bank drafts, checks, cashier's checks or money orders, by credit, charge or debit card or by other electronic means. For any form of payment other than for cash or for mailed or hand-delivered bank drafts, checks, cashier's checks or money orders, the agent may charge a convenience fee to the member that is approximately the amount charged to the agent by a third-party service provider.