Resale Disclosure; Transfer Fees

Consistency:

1) Establishes the process consistent with every other state in the country that allows and requires that the disclosure of materially relevant information be provided to potential buyers directly from the seller. This information will be provided upon request to the potential buyer but no later than the acceptance of an offer contract to purchase the home. ***Arizona is the only state in the country that allows the information to be provided by a third party that is not privy to the purchase contract and that allows that information to be provided to an agent of the buyer and not the buyer. Arizona is also the only state in the country that requires that the request for the initiation of this disclosure information cannot be made until a contract to buy the home is signed. All of this results in the disclosure information being provided much too late in the purchase process and sometimes only at the closing itself, because the information was only provided to the escrow agent, and not to the buyer.***

2) Allows the seller to obtain the dated disclosure certificate from the association with a request by certified mail, within 10 days of receipt of that request. The seller is not responsible for the accuracy of the information provided by the association. Failure of the association to provide the information within the time prescribed will nullify any fees allowed for that service. ***The current statutes required a seller to provide the disclosure information (less than 50 units) but provided no mechanism for the seller to get that information from the association. Resulting in buyers getting outdated and sometimes misleading information. This mechanism is the same process described in every other state with a disclosure certificate.***

3) Revises the flat fee for the aggregate of preparation and delivery of the disclosure certificate and any lien estoppel or other services from $400 to a fee based on actual direct and reasonable cost up to $400. Requires that the association provide the seller with the detailed invoice of the actual direct cost, and excludes any indirect cost in this fee. ***Arizona has the highest allowed fee in the nation at $400. Many states allow no fees for this disclosure information especially if provided electronically, while some states mention no limits on this fee they do require the fee to be based on actual and direct cost. The next highest state is Washington and that fee is maxed at $275. Maryland has a max fee of $250 and all others have a max fee of $200 or less. If the association does not provide any information or fails to provide this information in a timely manner they are not eligible for any payments, unlike the current statutes that allow the association to charge a fee even if they provide no service for disclosure or estoppel*** **services. We did not change the dollar value for this max fee because the fee is an all in aggregate fee and self-managed association may incur more cost in generating and producing this documentation then so called professionally managed associations. This concept is also consistent with the Restatement that specifies that any association fee for services, must be based on actual and direct cost to the association for providing that service.**

4) Revises the exception to the private covenant transfer fee prohibition for HOAs, Condominiums and Recreations associations to be essentially consistent with the language contained in 28 of the 44 states that have such a prohibition as an unreasonable restraint on alienation. ***This language change will clarify that all normal fees due the association as part of the occupancy and payable on conveyance of the property are legitimate examples of fees that are not transfer fees, even though they are payable on conveyance of the property. That point is lost in the current language and why so many other states adopted this specific language. Legitimate***

covenant authorized transfer fees are part of this exception, so the general intent of the original language is maintained.

5) Adds a new clarifying provision that transfer fees used by associations must be fair and apply an equal benefit and burden to all unit owners or members under the requirements of Servitudes law to treat members fairly and the unconscionable servitude prohibition. *This new clarification specifically recognized the provision of servitudes law that allow the exception for common interest community transfer fees if they have a legitimate purpose and benefit to the community as a whole, treat members fairly, and are not unconscionable. With this provision a transfer fee authorized in the declaration and applied to the long term maintenance and reserve fund would be valid and enforceable, because all members benefit equally in the long run. But a transfer fee like in the community of Terravita in Scottsdale that charges new buyers over $3,000 to totally pay for a club house upgrade that all members get to use but no current member had to pay for, would be totally invalid as both unconscionable and unfair. Other example of transfer fees that could be challenged are those requiring a buyer or seller to pay a "Working Capital" fee. Working capital is simply a term used to describe the operating funds that were budgeted and fully funded by the annual assessment. This fee would have either the buyer or the seller pay more than his or her fair share of that assessment, without decreasing the assessment on everyone else.*

Transparency:

1) Requires the seller to maintain the most significant and variable information in the disclosure statement current and all other information current within 6 months, via an update of the entire disclosure certificate. *The information that is not required to be maintained current is either historical information or projections of anticipated cost or expenditures in the future that need not be updated any more frequently than every 6 months.*

2) Makes significant changes to the information required to be disclosed related to the financial health of the association, past and anticipated near term assessments increases and past and near term actual and anticipated expenditures from the reserve account. It also requires disclosure of control issues such as declarant control of the association and any individual owning greater than 10% of the homes or units. Many provisions are simply relocated and reorganized for clarity purposes. *The clearest example of the need for this information is from a homeowner that bought into a condo complex at the end of 2017. Within 1 week of her close she was assessed a $1,000 special assessment by the association that was never disclosed to her prior to her purchase. Then within 3 months of her close she was assessed another $7,000 special assessment again without any disclosure of that fact prior to purchase. With an annual assessment of $400 per month she was forced to sell her unit at a loss within 4 months of buying it because she could not pay the regular and special assessments, without taping her equity in the unit.*

3) Requires that all fees are payable at closing to the association directly for traceability and auditability reasons, And allows any contracts in place on the effective date of the legislation specifying payments other than those described in this legislation to continue until the next annual renewal of that contract. *If the funds are paid directly to the managing company as is the case now, auditability of those fees is impossible because the financial records of those companies are not available under records request by other homeowners or even the association.*