

Timeshare Owner's Association and Management Act

Arizona Revised Statutes Annotated [Currentness](#)

Title 33. Property

➡Chapter 20. Timeshare Owner's Association and Management Act ([Refs & Annos](#))

Article 1. General Provisions

§ 33-2201. Application

This chapter applies to all timeshare plans, timeshare property and associations in this state that are established on or after the effective date of this chapter. This chapter also applies, unless the timeshare instrument provides otherwise, to timeshare plans, timeshare property and associations in this state that are established at any time before the effective date of this chapter.

Notwithstanding this title or title 32 [FN1] this chapter governs if there is any conflict between this chapter and any other statute related to the operation and management of timeshare plans, timeshare property or associations in this state.

[FN1] [Section 32-101 et seq.](#)

§ 33-2202. Definitions

In this chapter, unless the context otherwise requires:

1. "Accommodation" means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room or other private or commercial structure that contains toilet facilities, that is designed and available for use and occupancy as a residence by one or more individuals and that is included in the offering of a timeshare plan.
2. "Assessment" means the share of monies that are required for the payment of common expenses and that the managing entity assesses periodically against each owner, and any other amount required to be paid by owners under a timeshare instrument.
3. "Association" means any organized body consisting solely of the owners of timeshare interests in a timeshare plan.
4. "Board" means the governing body designated in the timeshare instrument to act on behalf of an association.
5. "Common expenses" means the costs and expenses of and for operating the timeshare plan and timeshare property as set forth in the timeshare instrument.
6. "Developer" means either of the following:
 - (a) Any person, corporation, partnership, limited liability company, trust or other entity, other than a sales agent, that creates a timeshare plan.

(b) Any person or entity that succeeds to the interest of the developer by sale, lease, assignment, mortgage or other transfer if the person offers timeshare interests in a particular timeshare plan and the person is in the business of selling timeshare interests or employs sales agents to sell timeshare interests.

7. “Managing entity” means the association or other person that undertakes the duties, responsibilities and obligations of the management of a timeshare plan.

8. “Owner” means the owners of a timeshare interest in a timeshare plan, other than as security for an obligation. Owner includes developer to the extent the developer owns timeshare interests.

9. “Timeshare estate” means the right of occupancy in a timeshare property that is coupled with an estate in real property.

10. “Timeshare instrument” means one or more documents creating or governing the operation of a timeshare plan.

11. “Timeshare interest” means either a timeshare estate or a timeshare use.

12. “Timeshare period” means the period of time when the owner of a timeshare interest is afforded the opportunity to use the accommodations of a timeshare plan.

13. “Timeshare plan” means any arrangement, plan or similar device, other than an exchange program, whether by membership agreement, or sales, lease, deed, license or right-to-use agreement or by any other means, in which an owner, in exchange for consideration, receives ownership rights in or the right to use accommodations for a period of time that is less than a full year during any given year, but not necessarily for consecutive years, if the use rights extend for at least three years.

14. “Timeshare property” means one or more accommodations that are subject to the same timeshare instrument, together with any other property or rights to property appurtenant to those accommodations.

15. “Timeshare use” means the right to occupy a timeshare property that is not coupled with an estate in real property.

§ 33-2203. Management of timeshare plan and timeshare property

A. For each timeshare plan and timeshare property in this state, the developer shall provide in the timeshare instrument for a managing entity. The managing entity may be the developer, a separate manager or management firm or an association. There may be different managing entities for the timeshare plan and the timeshare property or for portions of the timeshare property. This section applies to a managing entity only to the extent of its authority to manage the timeshare plan or timeshare property under the timeshare instrument.

B. The managing entity shall act in the capacity of a fiduciary to the owners of timeshare interests in the timeshare plan.

C. The association or other managing entity may enter into a contract with a manager or management firm to provide some or all of the management services to the timeshare plan or timeshare property, but the manager or management firm shall not be considered the managing entity of the timeshare plan or timeshare property.

D. For any management contract entered into during any period of time in which the developer or an affiliate of the developer is the managing entity or controls a majority of the voting interests in the association, the initial term of the management contract shall expire no later than at the end of five years.

E. Any management contract between the association and a manager or management firm may provide that it is automatically renewable for successive terms not exceeding five years each, unless the owners vote to discharge the manager or management firm. A discharge vote shall be conducted by the board of the association on written request of owners who hold at least two per cent of the voting interests in the association and who are not delinquent in assessments for common expenses, or such lower number as set forth in the timeshare instrument. The written request must be made no earlier than twelve months before the renewal date and no later than six months before the renewal date. The manager or management firm is deemed to be discharged if at least sixty-six per cent of the votes cast vote to discharge and those votes include at least fifty per cent of all votes allocated to owners, or such lesser percentages as are provided in the timeshare instrument.

F. The management contract shall contain the following provisions:

1. The management contract may be terminated for cause by a vote in favor of termination by a majority of the votes cast by owners concerning the issue and those votes include at least twenty-five per cent of all votes allocated to owners, or such lesser percentages as are provided in the timeshare instrument.

2. The resignation of the manager or management firm is not effective until one hundred twenty days after receipt of the written resignation by the board, or by the owners if there is no association, or such longer period after receipt as provided in the timeshare instrument except that the board or the owners may designate a shorter period in written notice to the manager or management firm.

G. The management contract may provide for other rights of termination by the association.

H. If a manager or management firm resigns or is discharged, the association, if any, or other managing entity shall remain responsible for operating and maintaining the applicable timeshare plan or timeshare property, or both, pursuant to the timeshare instrument and this chapter.

I. If the association or other managing entity fails to operate and maintain in any material respect

the timeshare plan or timeshare property pursuant to the timeshare instrument and this chapter and that failure materially and adversely affects the timeshare plan, the timeshare property or the owners, any owner may apply to the superior court in the county in which the timeshare plan or any timeshare property is located for the appointment of a receiver to manage the affairs of the association, timeshare plan or timeshare property. At least thirty days before applying to the court, the owner shall mail by certified mail to the board of the association or other managing entity and post in a conspicuous place on the timeshare property a notice describing the intended action. During that thirty day period, the association or other managing entity may attempt to cure the alleged failure. If a receiver is appointed, the association or other managing entity is responsible, as a common expense of the timeshare plan, for payment of the salary and expenses of the receiver relating to the discharge of the receiver's duties and obligations, together with the receiver's court costs, and reasonable attorney fees. The receiver has all powers and duties of the managing entity and serves until discharged by the court.

§ 33-2204. Powers of board; limitations; period of developer control; election of directors and officers; removal of directors

A. Except as provided in the timeshare instrument, subsection B or other provisions of this chapter, the board may act in all instances on behalf of the association.

B. Except as expressly authorized in the timeshare instrument, the board shall not act on behalf of the association to amend the timeshare instrument, terminate the timeshare plan, elect or remove members of the board or determine the qualifications, powers and duties or terms of office of directors. The board may fill vacancies in its membership for the unexpired portion of any term, subject to the timeshare instrument.

C. Except as otherwise provided in this section, the timeshare instrument may provide for a period of developer control of an association during which the developer, or a person designated by the developer, may appoint and remove the officers of the association and the members of the board. Notwithstanding the period provided in the timeshare instrument, the period of developer control of the association terminates no later than the earlier of:

1. One hundred twenty days after conveyance of ninety-five per cent of the timeshare interests that were created by the timeshare instrument to owners other than the developer.
2. Five years after the developer has ceased to offer timeshare interests for sale in the ordinary course of business, under either the timeshare plan itself or another timeshare plan in which the timeshare interests are included, whichever is later.

D. A developer may voluntarily surrender the right to appoint and remove officers of the association and members of the board before the end of the period provided for in subsection C by executing a written instrument declaring the surrender and providing a copy of the instrument to the owners. If the timeshare instrument is recorded, the developer's surrender instrument shall be recorded. In the developer's surrender instrument, the developer may require that, for the duration of the period of the developer's control, specified actions of the association or board as

described in the timeshare instrument be approved by the developer before they become effective.

E. If the timeshare instrument provides for a developer control period of shorter duration than any period prescribed by this section, the timeshare instrument controls.

F. No later than the termination of any period of developer control, the owners shall elect a board of at least three members, which may include representatives of the developer. The board shall elect the officers of the association. The board members and officers of the association take office on election.

G. Notwithstanding any provision of a timeshare instrument or the bylaws of an association to the contrary, the owners, by a vote representing at least two-thirds of all voting rights of persons present in person or by proxy who are entitled to vote at any meeting of the owners at which a quorum is present, may remove any member of the board, with or without cause, other than a member appointed by the developer during the period of developer control under subsection C.

§ 33-2205. Quorums; votes

A. Unless the timeshare instrument provides for a higher quorum requirement, the percentage of voting interests required to make decisions and to constitute a quorum at a meeting of the members of an association shall be ten per cent of the voting interests of owners who are not delinquent in assessments for common expenses, in person or by proxy. If a quorum is not present at any meeting of the association at which members of the board are to be elected, the meeting may be adjourned and reconvened within ninety days for the sole purpose of electing members of the board, and the quorum for such adjourned meeting shall be ten per cent of the voting interests of owners who are not delinquent in assessments for common expenses, in person or by proxy.

B. Unless the timeshare instrument provides otherwise, a quorum shall be deemed to be present throughout a meeting of the board if persons entitled to cast a majority of the votes on that board are present at the beginning of the meeting.

C. If only one of the multiple owners of a timeshare interest is present at a meeting of the association, that owner is entitled to cast all the votes allocated to that timeshare interest. If more than one of the multiple owners are present, the votes allocated to that timeshare interest may be cast only in accordance with the agreement of a majority in interest of the multiple owners unless the timeshare interest expressly provides otherwise. There is a majority agreement if any one of the multiple owners casts the votes allocated to that timeshare interest without protest being made promptly to the person presiding over the meeting by any of the other owners of the timeshare interest.

D. Votes allocated to a timeshare interest may be cast pursuant to a proxy duly executed by an owner. A proxy shall expressly state its dates of execution and termination. An owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person

presiding over a meeting of the association. A proxy is revoked on presentation of a later dated proxy executed by the same owner. A proxy terminates twenty-five months after its date of execution, unless it specifies a shorter term or unless it states that it is coupled with an interest and is irrevocable.

E. Unless the timeshare instrument for a timeshare plan provides otherwise, votes allocated to a timeshare interest in that timeshare plan owned by the association for that timeshare plan shall not be cast.

F. The timeshare instrument for a timeshare plan may authorize votes of members of an association to be conducted by mail on compliance with all of the following:

1. Mail ballots are mailed or sent to all members in the manner prescribed for notices of special meetings pursuant to [§ 33-2208](#).
2. The period for return of mail ballots is at least thirty days after the date the ballots are mailed or sent to members.
3. The required minimum number of ballots that must be returned by members for the vote to be effective is at least equal to the quorum percentage prescribed in subsection A of this section.

G. Except as otherwise provided in the timeshare instrument, owners who are delinquent in assessments for common expenses do not have the right to cast votes.

H. Only timeshare interests included in the timeshare plan have voting rights.

[§ 33-2206. Duties of the managing entity](#)

A. The duties of the applicable managing entity for a timeshare plan or timeshare property may include, but are not limited to:

1. Management of the timeshare plan or management and maintenance of the timeshare property, or both, in accordance with the timeshare instrument.
2. Collection of all assessments for common expenses, including reserves, if applicable, in accordance with the timeshare instrument.
3. Making available annually to all owners an itemized annual budget that includes all estimated revenues and expenses. The budget shall be prepared by the managing entity for the current fiscal year and adopted as provided in the timeshare instrument. The managing entity shall notify the owners of the availability of the adopted annual budget not later than forty-five days after its adoption. The budget shall contain, as a footnote or otherwise, any related party transaction disclosures or notes related to the timeshare plan or timeshare property that appear in any audited financial statements of the managing entity, manager and management firm for the previous budget year. The budget prepared by any managing entity may be for a timeshare plan or only

for specified timeshare property as provided in the timeshare instrument.

4. Maintenance of all books and records concerning the timeshare plan or timeshare property, or both.

5. If owners are not entitled to use specific timeshare periods, scheduling occupancy of the accommodation in accordance with the timeshare instrument. A timeshare instrument may provide timeshare owners with the use rights to accommodations beyond the owners' timeshare interests as an incident of ownership on terms set forth in the timeshare instrument.

6. Maintaining insurance policies in accordance with the timeshare instrument.

7. Acting as agent of the owners pursuant to [§ 42-13454](#).

8. Performing any other functions and duties that are necessary and proper to maintain the timeshare plan or timeshare property, as provided in the timeshare instrument. The timeshare instrument may impose requirements on the managing entity beyond those set forth in this chapter.

B. Monies in any deferred maintenance or capital expenditure reserve account may not be transferred to an operating account for any purpose other than to pay for deferred maintenance or capital expenditures without the consent of owners of a majority of the timeshare interests in the timeshare property. Except as provided in the timeshare instrument, the managing entity may transfer monies in any operating account to any deferred maintenance or capital expenditure reserve account without the vote or approval of owners of the timeshare interests. The managing entity or board may transfer monies from one reserve account to another reserve account without the vote or approval of the owners of the timeshare interests.

C. The managing entity may invest the operating and reserve monies of the timeshare plan or timeshare property but the managing entity shall give safety of capital greater weight than production of income. The managing entity shall not invest timeshare plan or timeshare property monies with a developer or with any entity that is not independent of any developer or any managing entity, and the managing entity shall not invest timeshare plan or timeshare property monies in notes and mortgages related in any way to the timeshare plan or timeshare property.

D. The managing entity of a timeshare plan or timeshare property shall not commingle operating monies with reserve monies but the managing entity may maintain operating and reserve monies within a single account for a period not to exceed ninety days after the date on which the managing entity received payment of those monies.

E. A managing entity that serves as managing entity of more than one timeshare plan shall not commingle the common expense monies of any one timeshare plan with the common expense monies of any other timeshare plan.

F. The managing entity may levy and enforce assessments on any timeshare interests in accordance with the timeshare instrument, and the assessment constitutes a debt of the owner of

the interest at the time the assessment is made. Assessments and other monetary obligations are governed as follows:

1. The timeshare instrument shall provide for the allocation of common expenses among timeshare interests, as assessments, on a reasonable basis. The timeshare instrument may allocate expenses differently between accommodations that are part of the timeshare plan and facilities that are not part of the timeshare plan if the different allocations are based on reasonable differences in the benefit provided to each type of property. The timeshare instrument shall allocate common expenses to timeshare interests owned or not yet sold by a developer on the same basis that common expenses are allocated to similar or equivalent timeshare interests sold to purchasers, as assessments, except if a subsidy agreement or similar document is in place that provides for the developer to pay no, or a lesser share of, common expenses in return for subsidizing any deficits or shortfalls in the operating monies of the timeshare plan, and if that exclusion from or reduced assessments and subsidy agreement or other document are referred to in the public reports issued under [§ 32-2197.08](#).
2. The managing entity may impose reasonable monetary penalties for violation of the timeshare instrument, as an assessment, as authorized by the timeshare instrument.
3. Assessments may include personal charges and other amounts as authorized by the timeshare instrument.
4. The managing entity may assign to the delinquent owners the costs of collection, including attorney fees, administrative fees, late fees, interest and penalties as authorized by the timeshare instrument.
5. The amount of any assessment plus any other charges such as interest, collection costs, attorney fees, administrative fees, late fees, interest and penalties, as may be provided for in the timeshare instrument, are a lien on the timeshare interest assessed from the time the assessment became due. The lien has priority over other liens as provided in the timeshare instrument. The lien may be enforced, foreclosed or realized on as provided in the timeshare instrument.
6. On the receipt of a written request, the managing entity shall furnish to an owner or any lender who has a security interest in a timeshare interest or the timeshare property a statement setting forth the amount of unpaid assessments made against the owner's timeshare interest. The statement must be furnished within ten business days after receipt of the request and is binding on the managing entity, the association, the board and every owner.

[§ 33-2207. Foreclosure of assessment liens](#)

A. If an association, developer or other managing entity files an action to foreclose the assessment lien on timeshare interests, the association, developer or other managing entity may join in the same action multiple defendant obligors and junior interest holders of separate timeshare interests, on compliance with all of the following:

1. The foreclosure proceeding involves a single timeshare plan.
2. The foreclosure proceeding is filed by a single plaintiff.
3. The default and remedy provisions in the written instruments on which the foreclosure proceeding is based are substantially the same for each defendant.
4. The nature of the defaults alleged is the same for each defendant.

B. In any foreclosure proceeding involving multiple defendants filed pursuant to subsection A, the court shall sever for separate trial any count of the complaint in which a defense or counterclaim is timely raised by a defendant.

§ 33-2208. Association open meetings; exceptions; notices

A. Notwithstanding any provision in the timeshare instrument to the contrary and except as provided in this section, after the period of developer control under [§ 33-2204](#), all meetings of the association and board are open to all members of the association and all members so desiring shall be permitted to attend and listen to the deliberations and proceedings. Meetings shall be conducted as provided in the timeshare instrument. The board may close any portion of a meeting of the board if that portion of the meeting is limited to consideration of one or more of the following:

1. Legal advice from an attorney for the board or the association. On final resolution of any matter for which the board received legal advice or that concerned pending or contemplated litigation, the board may disclose information about that matter in an open meeting except for matters that are required to remain confidential by the terms of a settlement agreement or judgment.
2. Pending or contemplated litigation.
3. Financial information about an individual member of the association, an individual employee of the association, an individual employee of the managing entity or an individual employee of a contractor for the association or managing entity.
4. Matters relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association, an individual employee of the managing entity or an individual employee of a contractor of the association or managing entity who works under the direction of the association or the managing entity.

B. A meeting of the members of the association shall be held at least once each year after the period of developer control under [§ 33-2204](#). Special meetings of the members of the association may be called by the president, by a majority of the board or by owners having at least twenty-five per cent of the votes in the association, or any lower percentage specified in the timeshare instrument. Unless otherwise provided in the timeshare instrument, not fewer than thirty nor

more than ninety days in advance of any regular meeting of the owners, and not fewer than ten nor more than sixty days in advance of any special meeting of the owners, the association or managing entity shall cause notice of the meeting to be sent or provided to the mailing address of each owner on record with the association. The notice of any meeting of the owners shall state the time and place of the meeting. The notice of any special meeting of the owners shall also state the purpose for which the meeting is called. Notices of meetings may be in the form of an annual or other list of upcoming meetings and need not be specific to one meeting. The failure of any owner to receive actual notice of a meeting of the owners does not affect the validity of any action taken at that meeting.

C. Unless otherwise provided in the timeshare instrument, for meetings of the board of directors that are held after the termination of developer control of the association, at least ten days in advance of any meeting of the board, the association or managing entity shall cause notice of the meeting to be sent to the mailing address of each owner on record with the association. Notice to owners of meetings of the board is not required if emergency circumstances require action by the board before notice can be given. Any notice of a board meeting shall state the time and place of the meeting. Notices of meetings may be in the form of an annual or other list of upcoming meetings and need not be specific to one meeting. The failure of any owner to receive actual notice of a meeting of the board does not affect the validity of any action taken at that meeting.

D. Notices may be in newsletters or similar mailings. Mailing shall occur by prepaid United States mail or electronic mail for those owners who have provided electronic mail addresses or any other reasonable method selected by the board. An affidavit of notice by an officer of the association or by the managing entity is prima facie evidence that notice was given as prescribed by this section.

§ 33-2209. Financial and other records

A. Except as provided in this section and [§ 33-2210](#), any owner or any person designated by the owner in writing as the owner's representative may inspect and copy all financial and other records of the association or other managing entity that are directly related to the timeshare plan at the location where such records are normally kept, or at another location reasonably specified by the association or other managing entity, during normal business hours.

B. An owner may inspect and copy the records identified in subsection A of this section only if the following conditions are met:

1. The owner's request is in writing and is received by the managing entity in care of the person and at the address designated by the managing entity for receipt of such requests.
2. The owner's written request is made in good faith and for a proper purpose.
3. The owner's written request describes with reasonable particularity the owner's purpose and the records the owner desires to inspect.

4. The records are directly connected with the owner's purpose.

5. The owner agrees in writing not to use the records for any purpose other than the purpose described in the written request.

C. The board of the association or other managing entity is responsible for determining the appropriateness of any owner request under this section, and shall provide a written response within thirty days after receipt of the request. If the owner's request includes copies pursuant to subsection E of this section, the copies shall be provided within thirty days after the later of the board's or other managing entity's determination under this subsection or the owner making suitable financial arrangements pursuant to subsection E of this section.

D. This section does not affect either:

1. Inspection of records under [§ 10-3720](#), if applicable, or, if the owner is in litigation with the association or other managing entity, inspection of records to the same extent as any other litigant.

2. The power of a court, independently of this chapter, to compel the production of records for examination on proof by an owner of proper purpose.

E. A request to copy records under this section includes, if reasonable, receiving copies made by photographic, xerographic or other means. The association or other managing entity may impose a reasonable charge covering the cost of labor and materials for copies of any documents provided to the owner or the owner's representative. The charge shall not exceed the estimated cost of production or reproduction of the records.

F. In addition to subsection B of this section, books and records kept by or on behalf of the association and the board or other managing entity may be withheld from disclosure to the extent that the portion withheld relates to any of the following:

1. Privileged communication between an attorney for the association or other managing entity and the association or managing entity.

2. Pending or contemplated litigation.

3. Meeting minutes or other records of a session of a board meeting that is not required to be open to all members pursuant to [§ 33-2208](#).

4. Personal, health and financial records of an individual owner, an individual employee of the association or managing entity or an individual employee of a contractor of the association or managing entity.

5. Records relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association or managing entity or an individual employee of a contractor of the association or managing entity who works under the direction of

the association or managing entity.

G. The association or other managing entity shall not be required to disclose financial and other records of the association or other managing entity if disclosure would violate any state or federal law.

H. The timeshare instrument may provide for greater access of owners to records of the association or other managing entity.

§ 33-2210. List of owners

A. The association or other managing entity shall maintain among its records a complete list of the names and addresses of all owners of timeshare interests in the timeshare plan. The association or other managing entity shall update this list no less frequently than quarterly. Neither the association nor other managing entity may publish this owners' list or provide a copy of it to any owner or to any third party.

B. The association or other managing entity shall mail to those persons listed on the owners' list prescribed by subsection A any materials provided by any owner, on the written request of that owner, if the purpose of the mailing is to advance legitimate association business, such as a proxy solicitation for any purpose, including the recall of one or more board members elected by the owners or the discharge of the manager or management firm. The use of any proxies solicited in this manner must comply with the timeshare instrument and this chapter. A mailing requested for the purpose of advancing legitimate association business shall occur within thirty days after receipt of a request from an owner. The board of the association or the managing entity is responsible for determining the appropriateness of any mailing requested pursuant to this subsection and for establishing reasonable procedures for the exercise of the rights provided in this section. The association or other managing entity does not have an obligation to mail items that the association or other managing entity reasonably believes may be libelous or otherwise actionable or on advice of legal counsel. The owner who requests the mailing shall reimburse the association or other managing entity in advance for the actual costs in performing the mailing or a proportionate share of actual costs if the mailing is included in a mailing that includes other items.

C. If the requesting owner has complied with the reasonable procedures established by the board or managing entity for mailing requests, it is a violation of this chapter for the association or other managing entity to refuse to mail any material requested by the owner to be mailed, if the sole purpose of the materials is to advance legitimate association business and the requesting owner has either tendered to the association or managing entity payment of the cost pursuant to subsection B or has requested an invoice for that cost and has not received an invoice within ten days after delivering that request to the association or managing entity. If the purpose of the mailing is a proxy solicitation to recall one or more board members elected by the owners or to discharge the manager or management firm and the association or other managing entity does not mail the materials within thirty days after receipt of a request from an owner, the superior court in the county in which the timeshare plan or property is located, on application from the

requesting owner, may summarily order the mailing of the materials solely related to the recall of one or more board members elected by the owners or the discharge of the manager or managing firm. The court shall dispose of an application on an expedited basis. In the event of such an order, the court may order the association or other managing entity to pay the owner's costs, including attorney fees reasonably incurred to enforce the owner's rights, unless the managing entity can demonstrate it refused the mailing in good faith because of a reasonable basis for doubt about the legitimacy of the mailing.

D. Notwithstanding any law to the contrary, the association or other managing entity may not furnish the name, address, telephone number or electronic mail address of any owner to any other owner or authorized agent of an owner unless the owner whose name, address, phone number or electronic mail address is requested first approves the disclosure in writing.

§ 33-2211. Trustee's sale of timeshare estates; notice; cure; notice to prevent sale; definitions

A. The association or other managing entity may cause a trustee's sale of the timeshare estate, of an owner who is delinquent in the payment of assessments for that timeshare estate to that association or managing entity, under a timeshare instrument pursuant to this section, but only if that owner has been delinquent in the payment of assessments for that timeshare estate for a period of one year.

B. An association or other managing entity that desires to use a trustee's sale shall prepare, execute and acknowledge a notice of delinquency identifying the owner of the timeshare estate, the nature and amount of the owner's current delinquency in payment of assessments, the legal description of the owner's timeshare estate, the name and address of the association or other managing entity and the name and address of the trustee designated by the association or managing entity to conduct the trustee's sale.

C. A notice of delinquency may apply to multiple timeshare estates owned by an owner if the owner is delinquent in payment of assessments for all of the timeshare estates included in the notice of delinquency and the notice of delinquency states separately the delinquent assessments for each timeshare estate. A notice of delinquency may apply to multiple delinquent owners if each owner's delinquency or delinquencies are listed separately and the notice includes the information required by subsection B of this section for each owner.

D. The association or managing entity shall record the notice of delinquency with the county recorder of the county in which the timeshare property relating to the timeshare estate or estates is located and shall mail by certified mail, return receipt requested, a copy of the notice of delinquency to the owner or owners listed in the notice at the last address for each delinquent owner according to the records of the association or managing entity. The association or other managing entity shall post a summary of the notice of delinquency on an owners' bulletin board or other owner notice board provided by the association or other managing entity at the timeshare property, subject to other applicable law.

E. A trustee appointed in a notice of delinquency and any properly appointed substitute trustee may conduct a trustee's sale of a timeshare estate under this section. The recording of a notice of delinquency shall satisfy all requirements for the trustee, or any properly appointed substitute trustee, to appear in the chain of title for the timeshare estate in order for the trustee to be entitled to issue a trustee's deed on completion of a trustee's sale for the timeshare estate.

F. If the delinquencies identified in a notice of delinquency are not cured within thirty days after the association or managing entity mails the notice of delinquency to the delinquent owner under subsection D of this section, the association or managing entity may cause the trustee to conduct a trustee's sale of the delinquent owner's timeshare estate pursuant to [§§ 33-803.01, 33-804, 33-807, 33-808, 33-809, 33-810, 33-811, 33-812, 33-813](#) and [33-820](#), except as otherwise provided in this section. For the purposes of a trustee's sale of a delinquent owner's timeshare estate pursuant to chapter 6.1 of this title: [FN1]

1. "Contract secured by the trust deed" means a specific owner's obligation to pay delinquent assessments for a specific timeshare estate.

2. "Deed of trust" means a specific owner's obligation for payment of assessments under the timeshare instrument and the lien securing payment of that obligation, however denominated.

3. "Trust property" means the timeshare estate or estates for which a specific owner is delinquent in the payment of assessments.

4. "Trustee" means a person who is qualified to serve as trustee as prescribed by [§ 33-803](#) and who is appointed as trustee pursuant to this section or any substitute trustee appointed by the beneficiary in accordance with [§ 33-804](#).

G. The posting of the notice of the time and place of sale required by [§ 33-808, subsection A](#), paragraph 3 shall occur on an owners' bulletin board or other owner notice board provided by the association or other managing entity at the timeshare property, on the association's or other managing entity's website for the timeshare property, if any, and in the association's or other managing entity's next newsletter, if any. Any format of notice of trustee's sale may be used if the required information stated in [§ 33-808, subsection C](#) is provided. A request for notice under [§ 33-809](#) must identify a specific trustor and timeshare estate and the recorded timeshare instrument, if any. The mailing of the notice of the time and place of sale required by [§ 33-809, subsection B](#), shall include a return receipt requested. A copy of the notice of delinquency under subsection B of this section constitutes the statement of breach or nonperformance under [§ 33-809, subsection C](#), and the trustor's address for mailing is the address stated in the notice of delinquency. The bid deposit under [§ 33-810, subsection A](#) is one thousand dollars, as a single deposit for all timeshare estates included in the notice of trustee's sale. Only the beneficiary or its assignee may make a credit bid in place of cash at the sale. The proceeds of a trustee's sale shall be applied as provided in [§ 33-812](#), including the payment of all remaining excess proceeds to the trustor under [§ 33-812, subsection A](#). The trustor and junior lienholders may reinstate by paying all amounts due in accordance with [§ 33-813](#).

H. The trustee's sale may include multiple timeshare estates owned by an owner if the owner is

delinquent in payment of assessments for all of the timeshare estates included in the trustee's sale proceeding. The trustee's sale may include timeshare estates owned by multiple owners if the notice of trustee's sale provides all information required by [§ 33-808, subsection D](#) for each owner and timeshare estate and each timeshare estate is sold separately.

I. If fee title to a timeshare estate was acquired by an owner before January 1, 2009, the trustee shall proceed as follows and the owner may prevent a trustee's sale as to that timeshare estate as follows:

1. The notice of delinquency for any timeshare estate acquired by the owner before January 1, 2009 shall include a statement informing the owner of the owner's right to prevent a trustee's sale as to that timeshare estate by returning the form that is described in paragraph 2 of this subsection and that is signed by the owner, by certified mail, return receipt requested, to the trustee and to the association or other managing entity at the addresses stated in the notice of delinquency within thirty days after the association or other managing entity sends the notice of delinquency to the owner.

2. The notice of delinquency shall be accompanied by a form of notice in substantially the following form:

Notice of election to prevent

Trustee's sale

The undersigned, (name(s)), is (are) the owner(s) of timeshare estate nos. _____ at (timeshare plan name). The undersigned has received a notice of delinquency dated _____, ____ from (association or other managing entity). The undersigned hereby exercises the undersigned's right to prevent a trustee sale of the timeshare estate(s) that was (were) acquired by me (us) before January 1, 2009, pursuant to Arizona Revised Statutes § 33-2211, subsection i.

Dated: _____

OWNER'S SIGNATURE(S)

3. If an owner returns the signed form described in paragraph 2 of this subsection To the trustee and the association or other managing entity as required by paragraph 1 of this subsection, the association or other managing entity and the trustee shall desist from any trustee's sale proceedings with respect to the timeshare estate that was acquired by the owner before January 1, 2009 and described in the notice, but the association or managing entity may continue to use other available remedies to collect delinquent assessments for the timeshare estate. If the owner does not timely return the signed form as prescribed by this subsection, the owner waives any rights under this subsection.

J. The remedy provided by this section does not exclude the use of any other available remedy of the association or managing entity for delinquency by a timeshare estate owner, unless an owner's timeshare estate is sold pursuant to a trustee's power of sale, in which case an action may

not be maintained to recover any difference between the amount obtained by sale and the amount of the indebtedness and any interest, costs and expenses in connection with that timeshare estate. This section does not prohibit an association or other managing entity from taking a deed in lieu of foreclosure executed by an owner of a timeshare estate.

K. This section shall not apply to any timeshare property for which the timeshare instrument expressly mandates that judicial foreclosure is the sole method for the association or other managing entity to foreclose or realize upon a lien securing payment of assessments due to that association or other managing entity.

L. For the purposes of this section:

1. “Beneficiary” means the association or other managing entity entitled to collect assessments.
2. “Trustor” means a specific owner who is delinquent in payment of assessments for a timeshare estate or estates.

[FN1] [Section 33-801 et seq.](#)

Current through the end of the Forty-Eighth Legislature, Second Regular Session (2008)

END OF DOCUMENT