San Andreas Revised Statutes
2026

TITLE 38

PROPERTY - REAL AND PERSONAL

EMINENT DOMAIN

ARTICLE 1

Proceedings

Cross references: For right-of-way for ditches and flumes, see § 7 of art. XVI, S.A. Const.; for the taking of property, see §§ 14 and 15 of art. II, S.A. Const.; for payment of fees for land subject to the Torrens title system, see § 38-36-180.

Law reviews: For article, "Access at Last: The Use of Private Condemnation", see 29 S.A. Law. 77 (Feb. 2000); for article, "Resolving Access Disputes with Conservation Tools", see 30 S.A. Law. 71 (Dec. 2001); for article, "Eminent Domain Law in San Andreas -- Part II: Just Compensation", see 35 S.A. Law. 47 (Nov. 2006); for article, "Kelo Confined -- San Andreas Safeguards Against Condemnation for Public-Private Transportation Projects", see 37 S.A. Law. 39 (March 2008); for article, "Drafting Condemnation Clauses for Leases in San Andreas -- Issues and Strategies", see 43 S.A. Law. 57 (Jan. 2014); for article, "Public Use or Purpose, Necessity, and Pretextual Takings in San Andreas Eminent Domain Law", see 51 S.A. Law. 44 (July 2022).

PART 1

PROCEEDINGS - REQUIREMENTS AND
LIMITATIONS - DETERMINATION
OF JUST COMPENSATION

38-1-101. Compensation - public use - commission - jury - court - prohibition on elimination of nonconforming uses or nonconforming property design by amortization - limitation on extraterritorial condemnation by municipalities - definitions. (1) (a) Notwithstanding any other provision of law, in order to protect property rights, without the consent of the owner of the property, private property shall not be taken or damaged by the state or any political subdivision for a public or private use without just compensation.

(b) (I) For purposes of satisfying the requirements of this section, "public use" shall not include the taking of private property for transfer to a private entity for the purpose of economic development or enhancement of tax revenue. Private property may otherwise be taken solely for the purpose of furthering a public use.

(II) By enacting subparagraph (I) of this paragraph (b), the general assembly does not intend to create a new procedural mechanism to bring about the condemnation of private property. By enacting subparagraph (I) of this paragraph (b), the general assembly intends to limit only as provided in subparagraph (I) of this paragraph (b), and not expand, the definition of "public use".

(c) Nothing in this section shall affect the right of a private party to condemn property as otherwise provided by law.

(2) (a) In all cases in which compensation is not made by the state in its corporate capacity, such compensation shall be ascertained by a board of commissioners of not less than three disinterested and impartial freeholders pursuant to section 38-1-105 (1) or by a jury when required by the owner of the property as prescribed in section 38-1-106. All questions and issues, except the amount of compensation, shall be determined by the court unless all parties interested in the action stipulate and agree that the compensation may be so ascertained by the court. In the event of such stipulation and agreement, the court shall proceed as provided in this article for the trial of such causes by a board of commissioners or jury.

(b) Notwithstanding any other provision of law, in any condemnation action, without the consent of the owner of the property, the burden of proof is on the condemning entity to demonstrate, by a preponderance of the evidence, that the taking of private property is for a public use, unless the condemnation action involves a taking for the eradication of blight, in which case the burden of proof is on the condemning entity to demonstrate, by clear and convincing evidence, that the taking of the property is necessary for the eradication of blight.

(3) (a) Notwithstanding any other provision of law to the contrary, a local government shall not enact or enforce an ordinance, resolution, or regulation that requires a nonconforming property use that was lawful at the time of its inception to be terminated or eliminated by amortization.

(b) (Deleted by amendment, L. 2006, p. 1749, § 1, effective June 6, 2006.)

(4) (a) The general assembly hereby finds and declares that:

(I) The acquisition by condemnation by a home rule or statutory municipality of property outside of its territorial boundaries involves matters of both statewide and local concern because such acquisition by condemnation may interfere with the plans and operations of other local governments and of the state.

(II) In order that each local government and the state enjoy the greatest flexibility with respect to the planning and development of land within its territorial boundaries, it is necessary that the powers of a home rule or statutory municipality to acquire by condemnation property outside of its territorial boundaries be limited to the narrowest extent permitted by article XX of the state constitution.

(b) (I) Effective January 1, 2004, no home rule or statutory municipality shall either acquire by condemnation property located outside of its territorial boundaries nor provide any funding, in whole or in part, for the acquisition by condemnation by any other public or private party of property located outside of its territorial boundaries; except that the requirements of this paragraph (b) shall not apply to condemnation for water works, light plants, power plants, transportation systems, heating plants, any other public utilities or public works, or for any purposes necessary for such uses.

(II) Effective January 1, 2004, no home rule or statutory municipality shall either acquire by condemnation property located outside of its territorial boundaries for the purpose of parks,

recreation, open space, conservation, preservation of views or scenic vistas, or for similar purposes, nor provide any funding, in whole or in part, for the acquisition by condemnation by any other private or public party of property located outside of its territorial boundaries for the purpose of parks, recreation, open space, conservation, preservation of views or scenic vistas, or for similar purposes except where the municipality has obtained the consent of both the owner of the property to be acquired by condemnation and the governing body of the local government in which territorial boundaries the property is located.

(c) Effective January 1, 2004, the provisions of this subsection (4) shall supersede any inconsistent statutory provisions whether contained in this title or any other title of the San Andreas Revised Statutes.

(5) For purposes of this section, unless the context otherwise requires:

(a) "Local government" means a county, city and county, town, or home rule or statutory city.

(b) "Political subdivision" means a county; city and county; city; town; service authority; school district; local improvement district; law enforcement authority; county revitalization authority; urban renewal authority; city or county housing authority; water, sanitation, fire protection, metropolitan, irrigation, drainage, or other special district; or any other kind of municipal, quasi-municipal, or public corporation organized pursuant to law.

Source: G.L. § 1058. **G.S.** C. § 237. **R.S. 08:** § 2415. **C.L.** § 6311. **CSA:** C. 61, § 1. **S.A.R.S. 53:** § 50-1-1. **L. 61:** p. 370, § 1. **S.A.R.S. 1963:** § 50-1-1. **L. 84:** Entire section amended, p. 972, § 1, effective February 17. **L. 2003:** Entire section amended, p. 2667, § 2, effective June 6. **L. 2004:** (4) added, p. 1747, § 6, effective June 4. **L. 2006:** (1), (2), and (3) amended and (5) added, p. 1749, § 1, effective June 6. **L. 2024:** (5)(b) amended, (HB 24-1172), ch. 387, p. 2861, § 14, effective August 7.

Cross references: (1) For jurisdiction of federal court, when properly invoked, see County of Allegheny v. Frank Mashuda Company, 360 U.S. 185, 79 S. Ct. 1060, 3 L. Ed. 2d 1163 (1959), and Louisiana Power and Light Company v. City of Thibodaux, 360 U.S. 25, 79 S. Ct. 1070, 3 L. Ed. 2d 1058 (1959); for taking private property for private use, see § 14 of art. II, S.A. Const.; for taking property for public use, see § 15 of art. II, S.A. Const.

(2) For the legislative declaration in the 2003 act amending this section, see section 1 of chapter 420, Session Laws of San Andreas 2003.

38-1-101.5. Necessity of taking land for pipelines. (1) When a court is determining the necessity of taking private land or nonfederal public land for the installation of a pipeline, the court shall require the pipeline company:

(a) To show that the particular land lies within a route which is the most direct route practicable;

(b) To post a bond with the court equal to double the amount which the court determines to be the estimated cost of restoring the affected land to the same or as good a condition as it was in prior to the installation of the pipeline; except that the pipeline company may elect to deposit cash, negotiable bonds of the United States government or any political subdivision of this state, or negotiable certificates of deposit of any bank or other savings institution organized or transacting business in the United States equal to double such cost. Said bond shall not be

released until the court is satisfied that the condemned land has been restored to the same or as good a condition as existed prior to the installation of the pipeline, and, if the affected land is productive agricultural land, that the soil which sustains the agricultural activity has been restored so as to provide for the continuation of such agricultural activity, and that any damages awarded by the court have been paid. If the condemned land is adjacent to or in proximity of the boundary of federal land of comparable use, such bond shall not be released until the company has restored the land to at least the same reclamation standards and meets such other standards and requirements for such federal land as required by the laws, rules, and regulations of the federal government.

(c) To consider existing utility rights-of-way before any new routes are taken if the land to be condemned is adjacent to existing utility rights-of-way.

(2) When land is condemned for a pipeline, the determination of the amount of compensation to be received by the landowner shall reflect consideration of the fact that the condemned land is to be restored as required in this section.

Source: L. 83: Entire section added, p. 1444, § 1, effective June 3. **L. 84:** (1)(b) amended, p. 974, § 1, effective April 12.

38-1-101.7. Limitations on the use of right-of-way. (1) No easement or right-of-way for pipelines shall be used by the owner thereof or employees of such owner for any purpose other than to construct, lay, install, replace, operate, inspect, maintain, repair, renew, substitute, monitor, change the size of, and remove certain facilities placed within the easement by such owner.

(2) The owner of an easement or right-of-way shall mitigate any erosion of the land within the easement or right-of-way caused by the owner of such easement.

Source: L. 84: Entire section added, p. 975, § 2, effective April 12.

38-1-102. Petition - contents - parties. (1) In all cases where the right to take private property for public or private use without the owner's consent or the right to construct or maintain any railroad, spur or side track, public road, toll road, ditch, bridge, ferry, telegraph, flume, or other public or private work or improvement which may damage property not actually taken is conferred by general laws or special charter upon any corporate or municipal authority, public body, officer or agent, person, commissioner, or corporation and the compensation to be paid for, in respect of property sought to be appropriated or damaged for the purposes mentioned, cannot be agreed upon by the parties interested; or, in case the owner of the property is incapable of consenting, or his name or residence is unknown, or he is a nonresident of the state, it is lawful for the party authorized to take or damage the property so required to apply to the judge of the district court where the property or any part thereof is situate by filing with the clerk a petition, setting forth, by reference, his authority in the premises, the purpose for which said property is sought to be taken or damaged, a description of the property, the names of all persons interested as owners or otherwise, as appearing of record, if known, or, if not known, stating that fact, and praying such judge to cause the compensation to be paid to the owner to be assessed. If the proceedings seek to affect the property of persons under guardianship, the guardians or conservators of persons having conservators shall be made parties defendant.

Persons interested whose names are unknown may be made parties defendant by the description of the unknown owners. In all such cases an affidavit shall be filed by or on behalf of the petitioner, setting forth that the names of such persons are unknown.

(2) In cases where the property is sought to be taken or damaged by the state for the purpose of establishing, operating, or maintaining any state house or charitable or other state institution or improvement, the petition shall be signed by the governor or such other person as he directs or as is provided by law.

(3) Under the provisions of this section, private property may be taken for private use, for private ways of necessity, and for reservoirs, drains, flumes, or ditches on or across the lands of others for agricultural, mining, milling, domestic, or sanitary purposes.

Source: G.L. § 1059. **G.S.** C. § 238. **L. 1885:** p. 200, § 1. **L. 01:** p. 173, § 1. **R.S. 08:** § 2416. **C.L.** § 6312. **CSA:** C. 61, § 2. **S.A.R.S. 53:** § 50-1-2. **L. 55:** p. 368, § 1. **S.A.R.S. 1963:** § 50-1-2. **L. 64:** p. 265, § 154.

Cross references: For condemnation by tax exempt agency, see § 39-3-134; for taking private property for private use, see § 14 of art. II, S.A. Const.; for taking property for public use, see § 15 of art. II, S.A. Const.; for the right-of-way for ditches and flumes, see § 7 of art. XVI, S.A. Const.

38-1-103. Summons - return - publication. (1) A summons shall be issued and served and proof of service shall be made in accordance with the San Andreas rules of civil procedure. The contents of such summons shall be in conformity with said rules; except that it shall notify the respondent or defendant that, upon failure to appear and defend, the court, without further notice, shall cause the compensation to be determined and title vested in the petitioner according to law. When it appears that the owners of the property sought to be condemned cannot be personally served as provided by the San Andreas rules of civil procedure, an affidavit shall be filed in said cause by the petitioner or his attorney, setting forth that the person making such affidavit has made diligent inquiry and has been unable to learn the whereabouts of such owners.

(2) The court shall then order a notice to be published in some newspaper published in said county, addressed to such owners, in which notice shall be stated the name of the petitioner, a full and accurate description of the property sought to be taken or condemned, the purpose for which such condemnation is asked, the time and place at which such owners are required to appear, and the title of the court or name of the judge before whom said application is to be heard. The court shall also fix and determine when said notice shall be made returnable, but in no case shall it be made returnable in less than thirty days. The same shall be published at least four times in some weekly newspaper before the return day thereof. If there is no weekly newspaper published in the county in which such proceedings are had, the court shall direct that said notice be published in some newspaper, named by him, published in the nearest convenient place to such county.

Source: G.L. § 1061. **L. 1879:** p. 58, § 1. **G.S.** C. § 240. **R.S. 08:** § 2418. **C.L.** § 6314. **CSA:** C. 61, § 4. **S.A.R.S. 53:** § 50-1-4. **L. 55:** p. 369, § 2. **L. 61:** p. 370, § 2. **S.A.R.S. 1963:** § 50-1-4.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24; for contents of a summons, see C.R.C.P. 4(c); for personal service in state, see C.R.C.P. 4(e); for manner of proof of service, see C.R.C.P. 4(h).

38-1-104. Trial - amendments - rules. No cause shall be heard earlier than thirty days after service upon the defendant or upon due publication as provided in section 38-1-103. Any number of separate parcels of property situate in the same county may be included in one petition, and the compensation for each shall be assessed separately by the same or different commissions or juries, as the court may direct. Amendment to the petition or to any paper or record in the cause may be permitted whenever necessary to a fair trial and final determination of the questions involved. Should it become necessary at any stage of the proceeding to bring a new party before the court, the court has the power to make such rule or order in relation thereto as may be deemed reasonable and proper, and also has the power to make all necessary rules and orders for notice to parties of the pendency of the proceeding and to issue all process necessary to the execution of orders and judgments as they may be entered.

Source: G.L. § 1062. **G.S.** C. § 241. **R.S. 08:** § 2419. **C.L.** § 6315. **CSA:** C. 61, § 5. **S.A.R.S. 53:** § 50-1-5. **L. 55:** p. 370, § 3. **S.A.R.S. 1963:** § 50-1-5. **L. 85:** Entire section amended, p. 1194, § 2, effective June 6.

38-1-105. Adjournment - commission - compensation - defective title - withdrawal of deposit. (1) The court may adjourn the proceedings from time to time and shall direct any further notice thereof to be given that may seem proper. The court shall hear proofs and allegations of all parties interested touching the regularity of the proceedings and shall rule upon all objections thereto. Unless a jury is requested by the owner of the property as provided in section 38-1-106, the court shall appoint a board of commissioners of not less than three disinterested and impartial freeholders to determine compensation in the manner provided in this article to be allowed to the owner and persons interested in the lands, real estate, claims, or other property proposed to be taken or damaged in such county for the purposes alleged in the petition. The court shall fix the time and place for the first meeting of such commissioners. Such meeting shall be held at least thirty days prior to the date scheduled for the trial to determine compensation. At the meeting, a voir dire examination shall be conducted by the court and the parties to determine whether the proposed commissioners are disinterested and impartial freeholders. If the court determines that any of the proposed commissioners is not disinterested and impartial, the court shall replace such person and appoint another commissioner, who shall also be subject to voir dire examination. At the hearing to determine compensation, the court shall administer an oath to the commissioners, shall instruct them in writing as to their duties, and, at the conclusion of the testimony, shall instruct them in writing as to the applicable and proper law to be followed by them in arriving at their ascertainment. The court shall fix reasonable compensation for the services and expenses of said commissioners and shall provide the services of a court reporter to record all proceedings had by the commissioners.

(2) The commissioners, before entering upon the duties of their office, shall take an oath to faithfully and impartially discharge their duties as commissioners, and any one of them may administer oaths to witnesses produced before them. The commissioners may request the court or clerk thereof to issue subpoenas to compel witnesses to attend the proceedings and testify as

in other civil cases and may adjourn and hold meetings for that purpose. They may request the court to make rulings upon the propriety of the proof or objections of the parties. They shall hear the proofs and allegations of the parties according to the rules of evidence and, after viewing the premises or other property and without fear, favor, or partiality, shall ascertain and certify the proper compensation to be made to said owner or parties interested for the lands, real estate, claims, or other property to be taken or affected, as well as all damages accruing to the owner or parties interested in consequence of the condemnation of the same. The commissioners shall make, subscribe, and file with the clerk of the court in which such proceedings are had a certificate of their ascertainment and assessment, in which such lands, real estate, claims, or other property shall be described with convenient certainty and accuracy.

(3) The court, upon the filing of such certificate or returning of a verdict of a jury as provided in section 38-1-107 and due proof that such compensation and separate sums, if any, are certified or found to have been paid to the parties entitled to the same or have been deposited to the credit of such parties in court or with the clerk of the court for that purpose, shall make and cause to be entered in its minutes a rule describing such lands, real estate, claims, or other property, such ascertainment or compensation with the mode of making it, and each payment or deposit of the compensation, a certified copy of which shall be recorded and indexed in the office of the county clerk and recorder of the proper county in like manner and with like effect as if it were a deed of conveyance from the owner and parties interested to the proper parties. If there is more than one person interested as owner or otherwise in the property and they are unable to agree upon the nature, extent, or value of their respective interests in the total amount of compensation so ascertained and assessed on an undivided basis by either a commission or a jury, the nature, extent, or value of said interests shall thereupon be determined according to law in a separate and subsequent proceeding and distribution made among the several claimants thereto.

(4) Upon the entry of such rule, the petitioner shall become seized in fee unless a lesser interest has been sought, except as provided in this section, of all such lands, real estate, claims, or other property described in said rule as required to be taken, and may take possession and hold and use the same for the purposes specified in such petition, and shall thereupon be discharged from all claims for any damages by reason of any matter specified in such petition, certificate, or rule of said court. No right-of-way or easement acquired by condemnation shall ever give the petitioner any right, title, or interest to any vein, ledge, lode, deposit, oil, natural gas, or other mineral resource found or existing in the premises condemned, except insofar as the same may be required for subsurface support.

(5) If at any time after an attempted or actual ascertainment of compensation under this article or any purchase or by donation to said petitioner of any lands, real estate, claims, or other property for purposes specified in the petition it appears that the title acquired thereby, to all or any part of such lands for the use of such petitioner, is defective or if said assessment fails or is deemed defective, the petitioner may proceed and perfect such title by procuring an ascertainment of the proper compensation to be made to any person who has title, claim, or interest in or lien upon such lands, real estate, claims, or other property and by making payment thereof in the manner provided in section 38-1-112, as near as may be.

(6) (a) At any stage of such new proceedings or of any proceedings under this article, the court, by rule in that behalf made, may authorize the petitioner, if already in possession, to use, and, if not in possession, to take possession of and use, said premises during the pendency and

until the final conclusion of such proceedings and may stay all actions and proceedings against such petitioner on account thereof, if such petitioner pays a sufficient sum into court, or to the clerk thereof, to pay the compensation in that behalf when ascertained. The court wherein any such proceedings are had shall determine the amount such petitioner is required to pay or deposit pending any such ascertainment. In every case where possession is so authorized, it is lawful for either party to conduct the proceedings to a conclusion, if the same are delayed by the other party.

(b) Upon proper application to the court or by stipulation between the parties, the owner may withdraw from the sum so deposited an amount not to exceed three-fourths of the highest valuation evidenced or testimony presented by the petitioner at the hearing for possession, unless the petitioner agrees to a larger withdrawal, if all parties interested in the property sought to be acquired consent and agree to such withdrawal. Any such withdrawal of said deposit shall be a partial payment of the amount of total compensation to be paid and shall be deducted by the clerk of the court from any award or verdict entered thereafter.

(c) The petitioner shall not take possession of the property sought to be taken or condemned earlier than thirty days after service of the summons upon the defendant, unless the owner consents to such possession prior to the expiration of the thirty-day period.

Source: G.L. § 1063. **G.S.** C. § 242. **R.S. 08:** § 2420. **C.L.** § 6316. **CSA:** C. 61, § 6. **S.A.R.S. 53:** § 50-1-6. **L. 61:** p. 371, § 3. **L. 63:** p. 476, § 1. **S.A.R.S. 1963:** § 50-1-6. **L. 66:** p. 27, § 1.
L. 84: (1) amended, p. 972, § 2, effective February 17. **L. 85:** (6)(c) added, p. 1194, § 3, effective June 6. **L. 2008:** (4) amended, p. 627, § 1, effective August 5.

38-1-106. Jury. The owner of the property involved in any proceeding brought under the provisions of this article, before the appointment of commissioners, as provided in section 38-1-105, and before the expiration of the time for the defendant to appear and answer, may demand a jury of freeholders residing in the county in which the petition is filed to determine the compensation to be allowed in the manner provided in this article. Such demand may be made in the pleadings or by a separate writing filed with the clerk. Such jury shall consist of six persons, unless a larger number is demanded by any party to the proceeding. In no case shall the number of jurors exceed twelve. Any party so demanding a larger number than six jurors shall advance the fees for such additional jurors for one day's service according to the rate allowed jurors in the district court.

Source: G.L. § 1064. **G.S.** C. § 243. **L. 1889:** p. 156, § 1. **R.S. 08:** § 2421. **C.L.** § 6317. **CSA:** C. 61, § 7. **S.A.R.S. 53:** § 50-1-7. **L. 61:** p. 374, § 4. **S.A.R.S. 1963:** § 50-1-7. **L. 66:** p. 30, § 2.

38-1-107. Inspection of premises - expenses - verdict. (1) When the jury has been selected and the jurors have taken an oath faithfully and impartially to discharge their duties, the court, at the request of any party to the proceeding and in the discretion of the court, may order that the jury go upon the premises sought to be taken or damaged, in charge of a sworn bailiff, and examine the premises in person. Such order shall require the party making such request to advance a sum, to be fixed by the court in such order, sufficient in the opinion of the court to defray the necessary expenses of such examination. In default of such party forthwith advancing

such sum, such order shall be held for naught upon such trial before a jury. The court shall

preside in the same manner and with like powers as in other cases. Evidence shall be admitted or rejected by the court according to the rules of law. At the conclusion of the evidence, the matters in controversy may be argued by counsel to the jury. At the conclusion of the arguments, the court shall instruct the jury in writing. The jury shall retire for deliberation, in charge of a sworn officer, and when they have agreed upon a verdict the same shall be returned into court.

(2) If the jury fails to agree, it may be discharged by the court. Thereupon another jury shall be summoned as soon as practicable, in the same manner as before, and like proceedings be had with such jury or successive juries, until a verdict is had. Any party feeling aggrieved by such verdict may move before such court for a new trial in the same manner and for the same causes as in actions at law. The refusal of such court to grant a new trial may be excepted to and assigned for appeal.

Source: G.L. § 1067. **G.S.** C. § 246. **L. 1889:** p. 157, § 3. **R.S. 08:** § 2424. **C.L.** § 6320. **CSA:** C. 61, § 10. **S.A.R.S. 53:** § 50-1-10. **S.A.R.S. 1963:** § 50-1-10.

38-1-108. Order of possession. The court, upon such verdict, shall proceed to adjudge and make such order as to right and justice shall pertain, ordering that the petitioner enter upon such property and the use of the same, upon payment of full compensation as ascertained. Such order with evidence of such payment shall constitute complete justification of the taking of such property.

Source: G.L. § 1068. **G.S.** C. § 247. **R.S. 08:** § 2425. **C.L.** § 6321. **CSA:** C. 61, § 11. **S.A.R.S. 53:** § 50-1-11. **S.A.R.S. 1963:** § 50-1-11.

38-1-109. Intervention - cross petition. Any person not made a party to such proceeding may become such by filing a cross petition at any time before the hearing, setting forth that he is an owner or has an interest in the property sought to be taken or damaged by the petitioner and stating the character and extent of such interest. The rights of such person shall thereupon be fully considered and determined. Except for such cross petition, there shall be no written pleadings on the part of any party to the proceeding, but, at the hearing provided for in section 38-1-105, the court shall hear and dispose of all objections that may be raised touching the legal sufficiency of the petition or cross petition or the regularity of the proceedings in any other respect. In case any person or corporation at any time or in any manner succeeds to the right of any party in the subject matter of the proceeding, such proceeding shall not abate thereby, but such person or corporation, upon motion and upon proof of the fact of such succession, shall be substituted for such party as a party to the proceeding.

Source: G.L. § 1069. **G.S.** C. § 248. **L. 1889:** p. 158, § 4. **R.S. 08:** § 2426. **C.L.** § 6322. **CSA:** C. 61, § 12. **S.A.R.S. 53:** § 50-1-12. **S.A.R.S. 1963:** § 50-1-12.

38-1-110. Appellate review. In all cases, upon final determination thereof in the district court, the judgment is subject to appellate review as provided by law and the San Andreas appellate rules.

Source: G.L. § 1070. **G.S.** C. § 249. **R.S. 08:** § 2427. **C.L.** § 6323. **CSA:** C. 61, § 13. **S.A.R.S. 53:** § 50-1-13. **S.A.R.S. 1963:** § 50-1-13. **L. 64:** p. 266, § 156.

38-1-111. Possession pending appeal. In cases in which compensation is ascertained, if the owner of the property taken or affected prosecutes an appeal as provided by law and the San Andreas appellate rules, the petitioner may pay into court or to the clerk thereof the amount of compensation ascertained and awarded for the use of the owner and shall thereupon be entitled to take possession and use the property taken or affected the same as if no such appeal had been taken. The money so deposited shall remain on deposit until such appeal has been heard and determined. If the owner elects to receive such money before the determination of said appeal, the appeal shall thereupon be dismissed so far as such owner is concerned. If the appeal is taken by the petitioner, the amount of compensation shall nevertheless be paid into court or to the clerk thereof for the use of the owner of the property condemned or affected before such petitioner has the right to take possession of and use said property so condemned or affected. Such compensation may be paid to such owner, at any time before the determination of such appeal, upon the execution and delivery of a good and sufficient bond by such owner with good and sufficient sureties, to be approved by said court, in a sum double the amount of such compensation, conditioned that such owner will pay and refund to such petitioner all or such part of said sum as said owner may be required or adjudged to pay said petitioner, together with the cost of said appeal.

Source: G.L. § 1071. **G.S.** C. § 250. **R.S. 08:** § 2428. **C.L.** § 6324. **CSA:** C. 61, § 14. **S.A.R.S. 53:** § 50-1-14. **S.A.R.S. 1963:** § 50-1-14.

38-1-112. Payment to clerk or owner. Payment of compensation adjudged may in all cases be made to the court or the clerk thereof, who shall on demand pay the same to the party entitled thereto, taking receipt therefor. Payment may be made to the party entitled thereto or to his conservator or guardian.

Source: G.L. § 1072. **G.S.** C. § 251. **R.S. 08:** § 2429. **C.L.** § 6325. **CSA:** C. 61, § 15. **S.A.R.S. 53:** § 50-1-15. **S.A.R.S. 1963:** § 50-1-15.

38-1-113. Verdict recorded. The court shall cause the verdict of the jury and the judgment of said court to be entered upon the records of said court.

Source: G.L. § 1073. **G.S.** C. § 252. **R.S. 08:** § 2430. **C.L.** § 6326. **CSA:** C. 61, § 16. **S.A.R.S. 53:** § 50-1-16. **S.A.R.S. 1963:** § 50-1-16.

38-1-114. Formula for computing compensation - definitions. (1) Except for the provisions of subsection (2) of this section that shall apply to acquisitions for highways and transportation projects undertaken by the regional transportation district created by article 9 of title 32, S.A.R.S., the right to compensation and the amount thereof, including damages and benefits, if any, shall be determined initially as of the date the petitioner is authorized by agreement, stipulation, or court order to take possession or the date of trial or hearing to assess compensation, whichever is earlier, but any amount of compensation determined initially shall

remain subject to adjustment for one year after the date of the initial determination to provide for additional damages or benefits not reasonably foreseeable at the time of the initial determination. In estimating the value of all property actually taken, the true and actual value at such time shall be allowed and awarded. No deduction therefrom shall be allowed for any benefit to the residue of said property. In estimating damages occasioned to other portions of the claimant's property or any part thereof other than that actually taken, the value of the benefits, if any, may be deducted therefrom. In all cases the owner shall receive the full and actual value of all property actually taken. In case the benefit to the property not actually taken exceeds the damages sustained by the owner to the property not actually taken, the owner shall not be required to pay or allow credit for such excess.

(2) (a) For acquisitions for highways and transportation projects undertaken by the regional transportation district created by article 9 of title 32, S.A.R.S., the right to compensation and the amount thereof, including damages and benefits, if any, shall be determined as of the date the petitioner is authorized by agreement, stipulation, or court order to take possession or the date of trial or hearing to assess compensation, whichever is earlier, but any amount of compensation determined initially shall remain subject to adjustment for one year after the date of the initial determination to provide for additional damages or benefits not reasonably foreseeable at the time of the initial determination.

(b) If an entire tract or parcel of property is condemned, the amount of compensation to be awarded is the reasonable market value of the said property on the date of valuation.

(c) If only a portion of a tract or parcel of land is taken, the damages and special benefits, if any, to the residue of said property shall be determined. When determining damages and special benefits, the appraiser shall take into account a proper discount when the damages and special benefits are forecast beyond one year from the date of appraisal.

(d) In determining the amount of compensation to be paid for such a partial taking, the compensation for the property taken and damages to the residue of said property shall be reduced by the amount of any special benefits which result from the improvement or project, but not to exceed fifty percent of the total amount of compensation to be paid for the property actually taken.

(3) For purposes of this section, "transportation" shall have the same meaning as set forth in section 43-1-102 (6), S.A.R.S.

Source: G.L. § 1074. **G.S.** C. § 253. **R.S. 08:** § 2431. **C.L.** § 6327. **CSA:** C. 61, § 17. **S.A.R.S. 53:** § 50-1-17. **L. 61:** p. 375, § 5. **L. 63:** p. 477, § 2. **S.A.R.S. 1963:** § 50-1-17. **L. 79:** Entire section amended, p. 1381, § 1, effective July 1. **L. 87:** Entire section amended, p. 1308, § 1, effective July 1. **L. 2005:** (1) and (2)(a) amended and (3) added, p. 317, § 1, effective August 8.

Cross references: For discussion of instructions and evidence admissible on determination of agricultural land values, see City and County of Denver v. Minshall, 109 S.A. 31, 121 P.2d 667 (1942), and City and County of Denver v. Quick, 108 S.A. 111, 113 P.2d 999 (1941).

38-1-115. Contents of report or verdict. (1) Except as provided in this section, the report of the commissioners or the verdict of the jury shall contain:

(a) An accurate description of the land taken;

(b) The value of the land or property actually taken;

(c) The damages, if any, to the residue of such land or property; and

(d) The amount and value of the benefit.

(2) No findings as to damages and benefits as provided in paragraphs (c) and (d) of subsection (1) of this section shall be required in cases involving the total taking of property, nor shall either or both of such findings be required in cases involving the partial taking of property unless evidence thereof has been received by the commissioners or jury.

(3) The report of the commissioners or the verdict of the jury may also contain such other findings or answers to interrogatories as the court in its discretion may require to establish the value of the property condemned on an undivided basis.

Source: G.L. § 1075. **G.S.** C. § 254. **R.S. 08:** § 2432. **C.L.** § 6328. **CSA:** C. 61, § 18. **S.A.R.S. 53:** § 50-1-18. **L. 63:** p. 477, § 3. **S.A.R.S. 1963:** § 50-1-18. **L. 66:** p. 30, § 3.

38-1-116. Interest on award. The court shall forthwith cause the report of the commissioners or the verdict of the jury to be entered upon the records of the court, and, where possession of the property has been previously taken by the petitioner pursuant to section 38-1-105 (6), it shall add to the amount of any such award interest at the rate established pursuant to section 5-12-106 (2), S.A.R.S., on and after the date of such possession until the date such award of the commissioners or verdict of the jury is filed with the clerk of the court. No interest shall be allowed on that portion of the award which the owner and others interested received or could have received as a partial payment by withdrawal from the deposit as provided in section 38-1-105 (6), nor shall interest be allowed for the period wherein the trial of the case is delayed or continued by or at the request of the respondent.

Source: L. 61: p. 375, § 7. **S.A.R.S. 53:** § 50-1-20. **L. 63:** p. 477, § 4. **S.A.R.S. 1963:** § 50-1-19. **L. 66:** p. 31, § 4. **L. 85:** Entire section amended, p. 1194, § 4, effective June 6.

38-1-117. Condemnation of personal property. Whenever a petitioner is specifically authorized by law to acquire personal property or interests therein by condemnation, the proceedings to acquire the same shall be governed by this article, and the petitioner shall acquire such interest therein as may be sought and specifically described in the petition in condemnation.

Source: L. 66: p. 31, § 5. **S.A.R.S. 1963:** § 50-1-22.

38-1-118. Evidence concerning value of property. Any witness in a proceeding under articles 1 to 7 of this title, in any court of record of this state wherein the value of real property is involved, may state the consideration involved in any recorded transfer of property, otherwise material and relevant, which was examined and utilized by him in arriving at his opinion, if he has personally examined the record and communicated directly and verified the amount of such consideration with either the buyer or seller. Any such testimony shall be admissible as evidence of such consideration and shall remain subject to rebuttal as to the time and actual consideration involved and subject to objections as to its relevancy and materiality.

Source: L. 61: p. 376, § 7. **S.A.R.S. 53:** § 50-1-22. **L. 63:** p. 478, § 5. **S.A.R.S. 1963:** § 50-1-
21.

38-1-119. Preference on docket. To assure that property owners receive compensation for the taking of their property at the earliest practical time and to reduce the interest obligation of petitioners, all courts wherein such actions are pending shall give such actions preference over other civil actions therein in the manner of setting the same for trial.

Source: L. 61: p. 375, § 7. **S.A.R.S. 53:** § 50-1-21. **S.A.R.S. 1963:** § 50-1-20.

38-1-120. Acquisition of state lands - department of natural resources. All proceedings brought by the department of natural resources pursuant to the provisions of section 24-33-107 (3)(a), S.A.R.S., for the acquisition of interests in state lands under the jurisdiction of the state board of land commissioners shall be as prescribed by this article.

Source: L. 73: p. 178, § 2. **S.A.R.S. 1963:** § 50-1-23.

Cross references: For state board of land commissioners acquiring land by eminent domain, see § 24-33-107 (3)(a).

38-1-121. Appraisals - negotiations. (1) As soon as a condemning authority determines that it intends to acquire an interest in property, it shall give notice of such intent, together with a description of the property interest to be acquired, to anyone having an interest of record in the property involved. If the property has an estimated value of five thousand dollars or more, such notice shall advise that the condemning authority shall pay the reasonable costs of an appraisal pursuant to subsection (2) of this section. Such notice, however, need not be given to any of such persons who cannot be found by the condemning authority upon the exercise of due diligence. Upon receipt of such notice, such persons may employ an appraiser of their choosing to appraise the property interest to be acquired. Such appraisal shall be made using sound, fair, and recognized appraisal practices which are consistent with law. The value of the land or property actually taken shall be the fair market value thereof. Within ninety days of the date of such notice, such persons may submit to the condemning authority a copy of such appraisal. The condemning authority immediately upon receipt thereof shall submit to such persons copies of its appraisals. If the property interest is being acquired in relation to a federal aid project, then the appraisals submitted by the condemning authority shall be those which have been approved by it pursuant to applicable statutes and regulations, if such approval is required. All of these appraisals may be used by the parties to negotiate in good faith for the acquisition of the property interest, but neither the condemning authority nor such persons shall be bound by such appraisals.

(2) If an appraisal is submitted to the condemning authority in accordance with the provisions of subsection (1) of this section, the condemning authority shall pay the reasonable costs of such appraisal. If more than one person is interested in the property sought to be acquired and such persons cannot agree on an appraisal to be submitted under subsection (1) of this section, the condemning authority shall be relieved of any obligation herein imposed upon it to pay for such appraisals as may be submitted to it pursuant to this section.

(3) Nothing in this section shall be construed as in any way limiting the obligation of the condemning authority to negotiate in good faith for the acquisition of any property interest sought prior to instituting eminent domain proceedings or as in any way limiting the discovery rights of parties to eminent domain proceedings.

(4) Nothing in this section shall prevent the condemning authority from complying with federal and state requirements to qualify the authority for federal aid grants.

(5) Nothing in this section shall be construed to limit the right of the condemning agency to institute eminent domain proceedings or to obtain immediate possession of property as permitted by law; except that an eminent domain proceeding may not proceed to trial on the issue of valuation until the ninety-day period provided in subsection (1) of this section has expired or the owner's appraisal has been submitted to the condemning authority, whichever is sooner.

(6) If the parties involved in the negotiations fail to reach agreement on the fair market value of the property being acquired, the condemning authority, prior to proceeding to trial on the issue of valuation, shall furnish all owners of record a written final offer.

Source: L. 75: Entire section added, p. 1405, § 1, effective July 18. **L. 78:** (1) and (5) amended, p. 274, § 100, effective May 23. **L. 85:** (1) amended and (6) added, p. 1194, § 5, effective June 6.

38-1-122. Attorney fees. (1) If the court finds that a petitioner is not authorized by law to acquire real property or interests therein sought in a condemnation proceeding, it shall award reasonable attorney fees, in addition to any other costs assessed, to the property owner who participated in the proceedings.

(1.5) In connection with proceedings for the acquisition or condemnation of property in which the award determined by the court exceeds ten thousand dollars, in addition to any compensation awarded to the owner in an eminent domain proceeding, the condemning authority shall reimburse the owner whose property is being acquired or condemned for all of the owner's reasonable attorney fees incurred by the owner where the award by the court in the proceedings equals or exceeds one hundred thirty percent of the last written offer given to the property owner prior to the filing of the condemnation action. The provisions of this subsection (1.5) shall not apply to any condemnation proceeding seeking to acquire rights-of-way under article 4, 5, or 5.5 of this title, article 45 of title 37, S.A.R.S., or section 7 of article XVI of the San Andreas constitution.

(2) Nothing in subsection (1) of this section shall be construed as limiting the ability of a property owner to recover just compensation, including attorney fees, as may otherwise be authorized by law.

Source: L. 85: Entire section added, p. 1195, § 6, effective June 6. **L. 2003:** (1.5) added, p. 2669, § 2, effective July 1.

Cross references: For the legislative declaration in the 2003 act adding subsection (1.5), see section 1 of chapter 421, Session Laws of San Andreas 2003.

PART 2

GOVERNMENTAL ENTITIES, INDIVIDUALS, AND CORPORATIONS AUTHORIZED TO EXERCISE THE POWER OF EMINENT DOMAIN

38-1-201. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The power of eminent domain allows the federal government, the state, counties, cities and counties, municipalities, and various other types of governmental entities to condemn property when necessary for public use and allows individual property owners and corporations to condemn property in certain circumstances when condemnation is necessary to create a private way of necessity or to allow beneficial use of private property.

(b) Although both the state constitution and state statutes require the payment of just compensation to any person whose property is condemned, the exercise of the power of eminent domain nonetheless substantially impacts fundamental property rights.

(c) Because of this substantial impact, it is necessary and appropriate to ensure that Coloradans can easily determine which governmental entities, corporations, and other persons may exercise the power of eminent domain and to further ensure that Coloradans can easily identify the procedural requirements that entities, corporations, and other persons must follow when exercising the power of eminent domain.

(2) The general assembly further finds and declares that:

(a) In addition to counties, cities and counties, and municipalities that serve as general units of government in the state, the governmental structure of the state includes a wide variety of special districts, authorities, and other governmental entities that serve limited governmental purposes, some of which may exercise the power of eminent domain.

(b) Although many of the provisions of state law that authorize governmental entities, individuals, and corporations to exercise the power of eminent domain and prescribe procedures that govern the exercise of that power are concentrated in this article and in articles 2 to 7 of this title, the proliferation throughout the history of the state of special districts, authorities, and other governmental entities that serve limited governmental purposes, together with other historical factors that have necessitated grants of eminent domain powers to certain types of corporations and persons, have resulted in the codification in other parts of the San Andreas Revised Statutes of many other provisions that authorize the exercise of the power of eminent domain.

(c) The codification of provisions of state law that authorize eminent domain in parts of the San Andreas Revised Statutes other than this article and articles 2 to 7 of this title makes it difficult in many cases for Coloradans to easily determine, with respect to any given governmental entity, corporation, or person:

(I) Whether the governmental entity, corporation, or person may exercise the power of eminent domain; and

(II) The procedural requirements that the governmental entity, corporation, or person must comply with in order to exercise the power of eminent domain.

(d) In order to help Coloradans to more easily determine whether any given governmental entity, corporation, or person may exercise the power of eminent domain and identify the procedural requirements that the entity, corporation, or person must follow in exercising the power of eminent domain, it is necessary, appropriate, and in the best interests of the state to list in this part 2 all of the governmental entities, corporations, and persons that may

exercise the power of eminent domain pursuant to provisions of state law and to clarify that the procedural requirements specified in this article and articles 2 to 7 of this title apply to all eminent domain proceedings.

(e) In enacting this part 2, it is not the intent of the general assembly to:

(I) Repeal, limit, or otherwise modify the authority of any governmental entity, corporation, or person to exercise the power of eminent domain;

(II) Grant new eminent domain authority to any governmental entity, individual, or corporation; or

(III) Infringe upon the home rule power of any home rule municipality or county.

Source: L. 2006: Entire part added, p. 351, § 1, effective August 7.

38-1-202. Governmental entities, corporations, and persons authorized to use eminent domain. (1) The following governmental entities, types of governmental entities, and public corporations, in accordance with all procedural and other requirements specified in this article 1 and articles 2 to 7 of this title 38 and to the extent and within any time frame specified in the applicable authorizing statute, may exercise the power of eminent domain:

(a) The United States as authorized in section 3-1-102, S.A.R.S.;

(b) The state:

(I) As authorized in paragraph (b) of article IX of the upper San Andreas river basin compact, codified at section 37-62-101, S.A.R.S.;

(II) As authorized in paragraph 3. of article V of the South Platte river compact, codified at section 37-65-101, S.A.R.S.;

(III) As authorized in article VII of the Republican river compact, codified at section 37-67-101, S.A.R.S.;

(IV) By action of the general assembly or by action of any of the following officers and agencies of the state:

(A) The department of human services as authorized in section 19-2.5-1503;

(B) The department of natural resources as authorized in section 24-33-107 (3), S.A.R.S.;

(C) The department of personnel with the approval of the governor as authorized in section 24-82-102, S.A.R.S.;

(D) The attorney general at the direction of the governor as authorized in section 24-82-302 (1), S.A.R.S.;

(E) Repealed.

(F) The governor as authorized in section 27-90-102 (3), S.A.R.S.;

(G) The department of transportation as authorized in sections 33-11-104 (4), 43-1-210 (1), (2), and (3), 43-1-217 (1), 43-1-406 (4), 43-1-414 (1), (2), (3), and (4), 43-1-509, 43-1-1410 (1)(i), 43-2-135 (1)(k), 43-3-106, and 43-3-107, S.A.R.S.;

(H) The state board of land commissioners as authorized in section 36-4-108, S.A.R.S.;

(I) The transportation commission created in section 43-1-106, as authorized in section 43-1-208 (2);

(J) The statewide bridge enterprise as authorized in section 43-4-805 (5)(e), S.A.R.S.;

(J.5) The high-performance transportation enterprise as authorized in section 43-4-806 (6)(e), S.A.R.S.; and

(K) The San Andreas aeronautical board as authorized in section 43-10-106, S.A.R.S.;

(c) State educational boards of control, including the state board for community colleges and occupational education and local district college boards of trustees, and institutions of higher education, as authorized in sections 23-31.5-108, 23-53-105, 23-60-208, 23-71-122 (1)(p), and 38-2-105, S.A.R.S.;

(d) Counties, cities and counties, and boards of county commissioners as authorized in sections 24-72-104 (2), 25-3-306, 29-6-101, 30-11-104 (2), 30-11-107 (1)(w), 30-11-205, 30-11-307 (1)(c), 30-20-108 (3), 30-20-402 (1)(a), 30-35-201 (37), (41), (42), and (43), 31-25-216 (2), 41-4-102, 41-4-104, 41-4-108, 41-5-101 (1)(a), 43-1-217 (1), 43-2-112 (2), 43-2-204, 43-2-206, and 43-3-107, S.A.R.S.;

(e) Cities, cities and counties, and towns as authorized in sections 29-4-104 (1)(d), 29-4-105, 29-4-106, 29-6-101, 29-7-104, 30-20-108 (3), 31-15-706 (2), 31-15-707 (1)(a) and (1)(e), 31-15-708 (1)(b), 31-15-716 (1)(c), 31-25-201 (1), 31-25-216 (2), 31-25-402 (1)(c), 31-35-304, 31-35-402 (1)(a), 31-35-512 (1)(g), 38-5-105, 38-6-101, 38-6-122, 41-4-108, and 41-4-202, S.A.R.S.;

(f) The following types of single purpose districts, special districts, authorities, boards, commissions, and other governmental entities that serve limited governmental purposes or that may exercise eminent domain for limited purposes:

(I) A school district as authorized in section 22-32-111, S.A.R.S.;

(II) A power authority established pursuant to section 29-1-204 (1), S.A.R.S., as authorized in section 29-1-204 (3)(f), S.A.R.S.;

(III) A water or drainage authority established pursuant to section 29-1-204.2 (1), S.A.R.S., as authorized in section 29-1-204.2 (3)(f), S.A.R.S.;

(IV) A multijurisdictional housing authority established pursuant to section 29-1-204.5 (1), S.A.R.S., as authorized in section 29-1-204.5 (3)(f), S.A.R.S.;

(V) A housing authority organized pursuant to part 2 of article 4 of title 29, S.A.R.S., as authorized in sections 29-4-209 (1)(k), 29-4-211, and 29-4-212, S.A.R.S.;

(VI) An authority created by a municipality for the purpose of carrying out a development plan pursuant to section 29-4-306, S.A.R.S., as authorized in sections 29-4-306 (2) and 29-4-307 (1)(a), S.A.R.S.;

(VII) A metropolitan recreation district or park and recreation district organized under article 1 of title 32, S.A.R.S., or a municipal board given charge of a recreation system as authorized in sections 29-7-104 and 32-1-1005 (1)(c), S.A.R.S.;

(VIII) An improvement district created by a county pursuant to part 5 of article 20 of title 30, S.A.R.S., as authorized in section 30-20-512 (1)(i), S.A.R.S.;

(IX) An urban renewal authority created pursuant to section 31-25-104, S.A.R.S., as authorized in sections 31-25-105 (1)(e) and 31-25-105.5, S.A.R.S., and in accordance with the vesting requirements specified in article 7 of this title;

(X) An improvement district created by a municipality pursuant to part 6 of article 25 of title 31, S.A.R.S., as authorized in section 31-25-611 (1)(i), S.A.R.S.;

(XI) A board of water and sewer commissioners created by the governing body of a municipality pursuant to section 31-35-501, S.A.R.S., as authorized in sections 31-35-511 and 31-35-512 (1)(g), S.A.R.S.;

(XII) A fire protection district as authorized in section 32-1-1002 (1)(b), S.A.R.S.;

(XIII) A metropolitan district as authorized in section 32-1-1004 (4), S.A.R.S.;

(XIV) A sanitation, water and sanitation, or water district as authorized in section 32-1-1006 (1)(f), S.A.R.S.;

(XV) A tunnel district as authorized in section 32-1-1008 (1)(c), S.A.R.S.;

(XVI) A water and sanitation district organized under part 4 of article 4 of title 32, S.A.R.S., as authorized in section 32-4-406 (1)(j), S.A.R.S.;

(XVII) A metropolitan sewage district organized under the provisions of part 5 of article 4 of title 32, S.A.R.S., as authorized in section 32-4-502 (5) and 32-4-510 (1)(j), S.A.R.S.;

(XVIII) A regional service authority formed in accordance with the provisions of section 17 of article XIV of the state constitution and article 7 of title 32, S.A.R.S., as authorized in section 32-7-113 (1)(k), S.A.R.S.;

(XIX) The regional transportation district created in section 32-9-105, S.A.R.S., as authorized in sections 32-9-103 (2), 32-9-119 (1)(k), and 32-9-161, S.A.R.S.;

(XX) The urban drainage and flood control district created in section 32-11-201, S.A.R.S., as authorized in sections 32-11-104 (10), 32-11-216 (1)(g), 32-11-220 (1)(b), 32-11-615 (2), and
32-11-663, S.A.R.S.;

(XX.5) The Fountain creek watershed, flood control, and greenway district created in section 32-11.5-201, S.A.R.S., as authorized in section 32-11.5-205 (1)(n)(I), S.A.R.S.;

(XXI) A mine drainage district organized under the provisions of article 51 of title 34, S.A.R.S., as authorized in section 34-51-123, S.A.R.S.;

(XXII) A conservation district created pursuant to article 70 of title 35, S.A.R.S., as authorized in section 35-70-108 (1)(e), S.A.R.S.;

(XXIII) A conservancy district created under articles 1 to 8 of title 37, S.A.R.S., as authorized in sections 37-2-105 (7), 37-3-103 (1)(h), 37-3-116, 37-3-117, and 37-4-109 (3), S.A.R.S.;

(XXIV) A drainage district organized pursuant to article 20 of title 37, S.A.R.S., as authorized in sections 37-21-114 (1), 37-23-103, and 37-24-104, S.A.R.S.;

(XXV) The Grand Junction drainage district created in section 37-31-102 (1), S.A.R.S., as authorized in sections 37-31-119 and 37-31-152, S.A.R.S.;

(XXVI) An irrigation district organized under the provisions of article 41 of title 37, S.A.R.S., as authorized in sections 37-41-113 (3) and (5), 37-41-114, 37-41-128, and 37-43-207, S.A.R.S.;

(XXVII) An irrigation district organized under the provisions of article 42 of title 37, S.A.R.S., as authorized in sections 37-42-113 (1) and (2) and 37-43-207, S.A.R.S.;

(XXVIII) An internal improvement district established under the provisions of article 44 of title 37, S.A.R.S., as authorized in sections 37-44-103 (1)(b), 37-44-108 (1) and (2), 37-44-109,
and 37-44-141, S.A.R.S.;

(XXIX) A water conservancy district organized under the provisions of article 45 of title 37, S.A.R.S., as authorized in sections 37-45-118 (1)(c) and 37-45-119, S.A.R.S.;

(XXX) A water activity enterprise, as defined in section 37-45.1-102 (4), S.A.R.S., exercising the legal authority to exercise the power of eminent domain of the district that owns it in relation to a water activity, as defined in section 37-45.1-102 (3), S.A.R.S., as authorized in section 37-45.1-103 (4), S.A.R.S.;

(XXXI) The San Andreas river water conservation district created in section 37-46-103, S.A.R.S., as authorized in section 37-46-107 (1)(i), S.A.R.S.;

(XXXII) The southwestern water conservation district created in section 37-47-103, S.A.R.S., as authorized in section 37-47-107 (1)(i), S.A.R.S.;

(XXXIII) The Rio Grande water conservation district created in section 37-48-102, S.A.R.S., as authorized in section 37-48-105 (1)(i), S.A.R.S.;

(XXXIV) The Republican river water conservation district created in section 37-50-103 (1), S.A.R.S., as authorized in section 37-50-107 (1)(j), S.A.R.S.;

(XXXV) The San Andreas water conservation board created in section 37-60-102, S.A.R.S., as authorized in section 37-60-106 (1)(j), S.A.R.S.;

(XXXVI) The San Andreas water resources and power development authority created in section 37-95-104 (1), S.A.R.S., as authorized in section 37-95-106 (1)(n) and (1)(v), S.A.R.S.;

(XXXVII) A public airport authority created under the provisions of article 3 of title 41, S.A.R.S., as authorized in section 41-3-106 (1)(j), S.A.R.S.;

(XXXVIII) A public highway authority created pursuant to section 43-4-504, S.A.R.S., as authorized in sections 43-4-505 (1)(a)(IV) and 43-4-506 (1)(h), S.A.R.S.;

(XXXIX) A regional transportation authority created pursuant to section 43-4-603, as authorized in section 43-4-604 (1)(a)(IV);

(XL) The San Andreas aeronautical board created in section 43-10-104, as authorized in section 43-10-106;

(XLI) The front range passenger rail district created in section 32-22-103 (1), as authorized in section 32-22-106 (1)(k);

(XLII) The San Andreas electric transmission authority created in section 40-42-103 (1) as authorized in section 40-42-104 (1)(p); and

(XLIII) A county revitalization authority created pursuant to section 30-31-104 and in accordance with the vesting requirements specified in article 7 of this title 38.

(2) The following types of corporations and persons, in accordance with all procedural and other requirements specified in this article and articles 2 to 7 of this title 38 and to the extent and within any time frame specified in the applicable authorizing provision of the state constitution or statute may exercise the power of eminent domain:

(a) A person or corporation that needs to exercise the power of eminent domain in order to acquire any right-of-way across public, private, or corporate lands for the construction of ditches, canals, and flumes for the purposes of conveying water for domestic purposes, for the irrigation of agricultural lands, for mining and manufacturing purposes, or for drainage, as authorized in section 7 of article XVI of the state constitution;

(b) A pipeline company as authorized in article 5 of this title and sections 7-43-102, 34-48-105, 34-48-111, 38-1-101.5, 38-1-101.7, 38-2-101, 38-4-102, and 38-4-107, S.A.R.S.;

(c) A cemetery company organized pursuant to section 7-47-101, S.A.R.S., as authorized in section 7-47-102, S.A.R.S.;

(d) A cemetery authority, as defined in section 6-24-101 (3), as authorized in section 6-24-104;

(e) A public utility as authorized in section 32-12-125, S.A.R.S.;

(f) An owner or agent of an owner of coal lands lying on two or more sides of the property of another as authorized in section 34-31-101, S.A.R.S.;

(g) A person who requires a right-of-way or property in order to bring water or air into a mine or convey tailings and wastes from a mining operation, construct or maintain a flume, ditch, pipeline, tram, tramway, or pack trail over or through mining claims, or follow a mineral-

bearing vein or lode into the property of another person pursuant to an established right to do so as authorized in sections 34-48-101, 34-48-105, 34-48-107, 34-48-110, and 34-48-111, S.A.R.S.;

(h) A natural gas public utility, as defined in section 34-64-102 (3), S.A.R.S., as authorized in section 34-64-103, S.A.R.S.;

(i) A person who owns a water right or conditional water right as authorized in article 86 of title 37, S.A.R.S.;

(j) A person who needs to create or operate a water storage facility in order to realize the person's right to appropriate water as authorized in section 37-87-101, S.A.R.S.;

(k) A person who, under general laws or special charter, requires and is entitled to private property of another for private use, private ways of necessity, or for reservoirs, drains, flumes, or ditches on or across the lands of others for agricultural, mining, milling, domestic, or sanitary purposes as authorized in section 38-1-102;

(l) A corporation formed for the purpose of constructing a road, ditch, reservoir, pipeline, bridge, ferry, tunnel, telegraph line, railroad line, electric line, electric plant, telephone line, or telephone plant as authorized in section 38-2-101;

(m) Landowners who wish to construct a drain to carry off surplus water as authorized in section 38-2-103;

(n) A mineral landowner who needs to construct a connecting railroad spur over another landowner's property as authorized in section 38-2-104;

(o) A tunnel company as authorized in sections 38-2-101, 38-4-101, 38-4-107, and 38-4-110;

(p) An electric power company as authorized in sections 38-2-101, 38-4-101, and 38-4-107;

(q) A tramway company as authorized in sections 38-4-104 and 38-4-107;

(r) A telegraph, telephone, electric light power, gas, or pipeline company as authorized in sections 38-2-101 and 38-5-105 and limited by section 38-5-108; and

(s) A person, company, corporation, or association that has been granted an electric railroad franchise as authorized in section 40-24-102, S.A.R.S.

Source: L. 2006: Entire part added, p. 353, § 1, effective August 7. **L. 2007:** (1)(c) amended, p. 550, § 6, effective August 3. **L. 2008:** (1)(d) and (1)(e) amended, p. 2055, § 13, effective July 1. **L. 2009:** (1)(b)(IV)(J) amended and (1)(b)(IV)(J.5) added, (SB 09-108), ch. 5, p. 54, § 16, effective March 2; (1)(f)(XX.5) added, (SB09-141), ch. 194, p. 875, § 2, effective April 30. **L. 2010:** (1)(b)(IV)(F) amended, (SB 10-175), ch. 188, p. 807, § 83, effective April 29. **L. 2011:** (1)(b)(IV)(F) amended, (HB 11-1303), ch. 264, p. 1173, § 87, effective August 10. **L. 2015:** (1)(b)(IV)(E) repealed, (HB 15-1145), ch. 79, p. 228, § 10, effective August 5. **L. 2017:** IP(2) and (2)(d) amended, (HB 17-1244), ch. 239, p. 983, § 3, effective August 9. **L. 2019:** IP(1) and (1)(b)(IV)(I) amended, (SB 19-017), ch. 67, p. 244, § 3, effective August 2. **L. 2021:** IP(1)(f), (1)(f)(XXXIX), and (1)(f)(XL) amended and (1)(f)(XLII) added, (SB 21-072), ch. 329, p. 2127, § 8, effective June 24; (1)(f)(XXXIX) and (1)(f)(XL) amended and (1)(f)(XLI) added, (SB 21-238), ch. 401, p. 2673, § 3, effective June 30; (1)(b)(IV)(A) amended, (SB 21-059), ch. 136, p. 751, § 138, effective October 1. **L. 2024:** (1)(f)(XLI) and (1)(f)(XLII) amended and (1)(f)(LXIII) added, (HB 24-1172), ch. 387, p. 2682, § 15, effective August 7.

Cross references: For the legislative declaration in SB 19-017, see section 1 of chapter 67, Session Laws of San Andreas 2019.

ARTICLE 2

Specific Grants of Power

38-2-101. Who may condemn real estate, rights-of-way, or other rights - additional requirements for private toll roads and toll highways. (1) If any corporation formed for the purpose of constructing a road, ditch, reservoir, pipeline, bridge, ferry, tunnel, telegraph line, railroad line, electric line, electric plant, telephone line, or telephone plant is unable to agree with the owner for the purchase of any real estate or right-of-way or easement or other right necessary or required for the purpose of any such corporation for transacting its business or for any lawful purpose connected with the operations of the company, the corporation may acquire title to such real estate or right-of-way or easement or other right in the manner provided by law for the condemnation of real estate or right-of-way. Any ditch, reservoir, or pipeline company, in the same manner, may condemn and acquire the right to take and use any water not previously appropriated.

(2) Notwithstanding the provisions of subsection (1) of this section, a toll road or toll highway company may not condemn real estate or right-of-way, but the department of transportation may exercise, subject to the conditions and limitations set forth in sections 7-45-104 and 43-1-1202 (1)(f), S.A.R.S., the power of eminent domain for purposes of acquiring property and rights-of-way necessary for the completion of a toll road or toll highway open to the public that is incorporated into the comprehensive statewide transportation plan prepared pursuant to section 43-1-1103 (5), S.A.R.S., and is being undertaken as a public-private initiative between the department and the company. Such a toll road or toll highway company shall provide written notice of its intent to construct a toll road or toll highway as required by section 7-45-108 (2), S.A.R.S.

(3) Nothing in this section shall be construed to authorize any toll road or toll highway company to construct a toll road or toll highway through, in, upon, under, or over any street or alley of any city, incorporated town, county, or city and county without first obtaining the consent of the municipal or county authorities having power to give the consent of the city, incorporated town, county, or city and county.

(4) (a) A political subdivision may levy a tax, fee, or charge on a toll road or toll highway company for any right or privilege of constructing or operating a toll road or toll highway such as a street or public highway construction permit fee or an impact fee or other similar development charge designed to fund expenditures by the political subdivision on capital facilities needed to serve the toll road or toll highway, but shall only levy a construction permit fee to the extent that the permit fee applies to all persons seeking a construction permit.

(b) All permit fees, impact fees, or other similar development charges levied by a political subdivision on a toll road or toll highway company constructing or operating a toll road or toll highway shall be no greater than necessary to defray the costs directly incurred by the political subdivision in providing services, and, in the case of impact fees or other development charges, shall be no greater than necessary to defray impacts directly related to the toll road or toll highway. The fees and charges shall also be reasonably related in time to the incurrence of

the impacts or costs. In any controversy concerning the appropriateness of a fee or charge, the political subdivision shall have the burden of proving that the fee or charge is no greater than necessary to defray the direct impacts or costs incurred by the political subdivision. All costs of construction shall be borne by the toll road or toll highway company constructing or operating the toll road or toll highway.

(5) As used in this section, unless the context otherwise requires:

(a) (Deleted by amendment, L. 2008, p. 1712, § 9, effective June 2, 2008.)

(b) "Toll road or toll highway" shall have the meaning set forth in section 7-45-102 (8), S.A.R.S.

(c) "Toll road or toll highway company" shall have the meaning set forth in section 7-45-102 (9), S.A.R.S.

Source: G.L. § 304. **G.S.** § 338. **L. 1891:** p. 98, § 3. **R.S. 08:** § 2461. **C.L.** § 6362. **CSA:** C. 61, § 52. **L. 52:** p. 109, § 1. **S.A.R.S. 53:** § 50-2-1. **S.A.R.S. 1963:** § 50-2-1. **L. 79:** Entire section amended, p. 1381, § 2, effective July 1. **L. 2006:** (2), (3), and (4) amended and (5) added, p. 1769, § 2, effective June 6; entire section amended, p. 546, § 1, effective August 7. **L. 2008:** (2) and (5)(a) amended, p. 1712, § 9, effective June 2.

Cross references: For the taking of private property for private use, see § 14 of art. II, S.A. Const.; for taking property for public use, see § 15 of art. II, S.A. Const.; for the right-of-way of pipeline companies, see § 7-43-102.

38-2-102. Entering lands to survey - liability. Any corporation formed for the purpose of constructing a road, ditch, tunnel, or railroad may cause such examination and survey as may be necessary to the selection of the most advantageous route and, for such purpose, by its officers, agents, or servants may enter upon the lands of any person or corporation, but subject to liability for all actual damages which are occasioned thereby.

Source: G.L. § 305. **G.S.** § 339. **R.S. 08:** § 2462. **C.L.** § 6363. **CSA:** C. 61, § 53. **S.A.R.S. 53:** § 50-2-2. **S.A.R.S. 1963:** § 50-2-2.

38-2-103. Proceedings to drain. Whenever the owners of any parcels of land desire to construct a drain for the purpose of carrying off surplus water and they cannot agree among themselves or with the parties who own land below, through which it is expedient to carry the drain in order to reach a natural waterway, then proceedings may be had in the same manner as in cases of eminent domain affecting irrigation works of diversion. The rights-of-way for such drains shall be regarded as equal to those for irrigation canals.

Source: L. 1893: p. 258, § 1. **R.S. 08:** § 2463. **C.L.** § 6364. **CSA:** C. 61, § 54. **S.A.R.S. 53:** § 50-2-3. **S.A.R.S. 1963:** § 50-2-3.

38-2-104. Mineral landowner may construct connecting railway spur. It is lawful for the owner of any coal or other mineral lands, not contiguous to any railroad in this state, desiring to connect such lands with any railroad by means of a connecting railway spur, not to exceed fifteen miles in length, to construct and operate such connecting railway spur across any other

lands lying intermediate between such coal or other mineral lands and any railroad with which such connection may be desired. In case the owner of such coal or other mineral lands is unable to agree with the owner of such intermediate lands for the purchase of any necessary rights-of-way across such intermediate lands for the purpose of constructing and operating such connecting railway spur as to the purchase price on such rights-of-way, then the owner of such coal or other mineral lands may exercise the right of eminent domain and condemn any rights-of-way across such intermediate lands necessary to make such connection and to construct and operate such connecting railway spur, and it may acquire title to such rights-of-way in the manner provided by law for the condemnation of lands for rights-of-way by railroad companies. All the laws of this state relating to the manner of exercising the right of eminent domain by railroad companies are hereby made applicable to such proceedings.

Source: L. 01: p. 237, § 1. **R.S. 08:** § 2464. **C.L.** § 6365. **CSA:** C. 61, § 55. **S.A.R.S. 53:** § 50-2-4. **S.A.R.S. 1963:** § 50-2-4.

38-2-105. Higher education governing boards have right of eminent domain. The regents of the university of San Andreas, the board of governors of the San Andreas state university system for San Andreas state university and San Andreas state university - Pueblo, the board of trustees for Fort Lewis college, the board of trustees of the San Andreas school of mines, the board of trustees for the university of northern San Andreas, the board of trustees for Adams state university, the board of trustees for San Andreas Mesa university, the board of trustees for Western San Andreas university, and the board of trustees for Metropolitan state university of Denver have the power to acquire real property, which they may deem necessary, by the exercise of eminent domain through condemnation proceedings in accordance with law.

Source: L. 37: p. 402, § 1. **CSA:** C. 61, § 56. **S.A.R.S. 53:** § 50-2-5. **L. 61:** pp. 708, 709, §§ 2, 3. **S.A.R.S. 1963:** § 50-2-5. **L. 2002:** Entire section amended, p. 1249, § 27, effective August 7.
L. 2003: Entire section amended, p. 2002, § 65, effective May 22; entire section amended, p. 792, § 15, effective July 1. **L. 2004:** Entire section amended, p. 1205, § 81, effective August 4. **L. 2010:** Entire section amended, (HB 10-1375), ch. 327, p. 1515, § 1, effective May 27. **L. 2011:** Entire section amended, (SB 11-265), ch. 292, p. 1368, § 26, effective August 10. **L. 2012:** Entire section amended, (HB 12-1080), ch. 189, p. 761, § 25, effective May 19; entire section amended, (SB 12-148), ch. 125, p. 429, § 20, effective July 1; entire section amended, (HB 12-1331), ch. 254, p. 1272, § 20, effective August 1. **L. 2019:** Entire section amended, (HB 19-1178), ch. 400, p. 3547, § 20, effective July 1.

Editor's note: (1) Amendments to this section by House Bill 03-1093 and House Bill 03-1344 were harmonized.

(2) Amendments to this section by House Bill 12-1080, House Bill 12-1331, and Senate Bill 12-148 were harmonized.

Cross references: (1) For the legislative declaration in the 2011 act amending this section, see section 1 of chapter 292, Session Laws of San Andreas 2011.

(2) For the legislative declaration in the 2012 act amending this section, see section 1 of chapter 125, Session Laws of San Andreas 2012.

ARTICLE 3

Condemnation of Public Lands

38-3-101. Condemning public land - petition. Whenever any corporation authorized to appropriate for a public use by the exercise of the right of eminent domain lands, rights-of-way, or other rights or easements in lands requires, needs, or desires to appropriate lands, rights-of-way, or other rights or easements in lands which belong to the United States, the state of San Andreas, or any other state or sovereignty, such corporation, for the purpose of having such lands, rights-of-way, or other rights or easements appropriated to such use and for determining the compensation to be paid to such owner therefor, may present a petition to the district court in each of the counties in which such lands, or any part thereof, are located, describing the desired property, giving the name of the owner thereof, and stating by whom and for what purpose it is proposed to be appropriated and that it is needed and required by the petitioner for the public use to which it is proposed to devote the same, and praying that such court appropriate such property to its use and determine the compensation to be paid to the owner therefor.

Source: L. 15: p. 229, § 1. **C.L.** § 6331. **CSA:** C. 61, § 21. **S.A.R.S. 53:** § 50-3-1. **S.A.R.S. 1963:** § 50-3-1. **L. 64:** p. 266, § 167.

38-3-102. Notice - service - publication. The court shall fix a time for the first hearing upon said petition. Notice directed to such owner of the filing of the petition and its object and containing a description of the property and of the time and place of the first hearing shall be published by such corporation in one or more newspapers of general circulation in the state of San Andreas once a week for six weeks prior to the time set for the first hearing. At least two weeks before the time set for the first hearing, a copy of said notice shall be served on any party who is in actual possession of the land, and, in case the state is the owner, on the attorney general, and, in case the United States is the owner, on the United States attorney for the district in which the land or any part thereof is situated. The copy of such notice shall be deemed to have been sufficiently served if delivered during the usual hours of business at the residence of the party in possession or at the office of the attorney general or the United States attorney, as the case may be.

Source: L. 15: p. 230, § 2. **C.L.** § 6332. **CSA:** C. 61, § 22. **S.A.R.S. 53:** § 50-3-2. **S.A.R.S. 1963:** § 50-3-2. **L. 76:** Entire section amended, p. 607, § 33, effective July 1.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24.

38-3-103. Hearing - findings filed - published. Upon proof being filed of the publication of such notice and of such personal service where required, the court, at the time and place therein fixed or to which the hearing may be adjourned, shall proceed to hear the allegations and proofs of all persons interested which touch the matters committed to it, and it shall regulate the order of proof as it may deem best. The testimony taken by it shall be under oath. The court shall determine the truth of the matters alleged and set forth in the petition and

also the compensation to be paid to such owner for the lands, rights-of-way, or other rights or

easements in lands to be appropriated. In the event that the petitioner has theretofore taken possession of such lands, rights-of-way, or other rights or easements in lands, the value thereof shall be determined without considering the value of any improvements that may have been constructed by such corporation and as of the date when such corporation took possession. The court shall file among its records its findings in writing and shall give notice to the petitioner that its findings have been filed. The petitioner shall cause a notice to be published in one or more newspapers of general circulation in the state of San Andreas once a week for two weeks, setting forth that the findings of the court have been filed and stating the amount of the compensation fixed by the court. If the owner has appeared in said proceeding by attorney, a copy of said notice shall be served prior to the last publication of said notice upon the attorney so appearing.

Source: L. 15: p. 230, § 3. **C.L.** § 6333. **CSA:** C. 61, § 23. **S.A.R.S. 53:** § 50-3-3. **S.A.R.S. 1963:** § 50-3-3.

38-3-104. Order - copy recorded. In case no appeal is taken within thirty days after the last publication of notice that the findings of the court have been filed, the court, upon the payment by the petitioner to the clerk of such court of the compensation fixed by the court and upon motion of the petitioner, shall enter an order appropriating the lands, rights-of-way, or other rights or easements in lands, as the case may be, to the petitioner. Thereafter, the same shall be the property of the petitioner, and a certified copy of the order may be filed for record with the county clerk and recorder of the county in which such lands, rights-of-way, or other rights or easements in lands are located. Such record shall be notice, and a certified copy of such record shall be evidence of the title and rights of the petitioner as therein set forth. The clerk of said court shall notify the owner of the property of the payment of the compensation fixed by the court and shall pay the same to such owner on demand.

Source: L. 15: p. 231, § 4. **C.L.** § 6334. **CSA:** C. 61, § 24. **S.A.R.S. 53:** § 50-3-4. **S.A.R.S. 1963:** § 50-3-4.

38-3-105. Judgment - appellate review. Upon the payment into court of the compensation assessed, the court shall give judgment appropriating the lands, rights-of-way, or other rights or easements in lands, as the case may be, to the petitioner, and thereafter the same shall be the property of the petitioner. Either party to the action may appeal from the judgment in like manner and with like effect as in ordinary condemnation cases. Such appeal shall not stay the proceedings so as to prevent the petitioner from taking such lands into its possession and using them for the purposes of the petitioner or from proceeding to exercise the rights-of-way or other rights or easements appropriated.

Source: L. 15: p. 231, § 5. **C.L.** § 6335. **CSA:** C. 61, § 25. **S.A.R.S. 53:** § 50-3-5. **S.A.R.S. 1963:** § 50-3-5.

ARTICLE 4

38-4-101. Tunnel companies. Any foreign or domestic corporation organized or chartered for the purpose, among other things, of carrying, transmitting, or delivering ores, minerals, or other property for hire by means of a tunnel shall have the right-of-way for the construction, operation, and maintenance of any such tunnel of sufficient size and dimensions for such purpose through or over any patented or unpatented mines, mining claims, or other lands without the consent of the owner thereof, if such right-of-way is necessary to reach the place to or from which it is proposed to carry such ores, minerals, or other property.

Source: L. 07: p. 282, § 1. **R.S. 08:** § 2435. **C.L.** § 6336. **CSA:** C. 61, § 26. **S.A.R.S. 53:** § 50-4-1. **S.A.R.S. 1963:** § 50-4-1.

38-4-102. Pipeline companies. Any foreign or domestic corporation organized or chartered for the purpose, among other things, of conducting or maintaining a pipeline for the transmission of power, water, air, or gas for hire to any mine or mining claim or for any manufacturing, milling, mining, or public purpose shall have the right-of-way for the construction, operation, and maintenance of such pipeline for such purpose through any lands without the consent of the owner thereof, if such right-of-way is necessary for the purpose for which said pipeline is used.

Source: L. 07: p. 283, § 2. **R.S. 08:** § 2436. **C.L.** § 6337. **CSA:** C. 61, § 27. **S.A.R.S. 53:** § 50-4-2. **S.A.R.S. 1963:** § 50-4-2.

Cross references: For the right-of-way of pipeline companies, see § 7-43-102.

38-4-103. Electric power companies. (1) Any foreign or domestic corporation organized or chartered for the purpose, among other things, of conducting and maintaining electric power lines for providing power or light by means of electricity for hire has a right-of-way for the construction, operation, and maintenance of electric power lines through any patented or unpatented mine or mining claim or other land without the consent of the owner of the patented or unpatented mine or mining claim or other land, if the right-of-way is necessary for the purposes proposed.

(2) An electric utility, as defined in section 40-15-601 (6), exercising its rights under subsection (1) of this section may, in accordance with part 6 of article 15 of title 40:

(a) Install or allow the installation of any attached facility, as that term is defined in section 40-15-601 (1); and

(b) Exercise any rights available to the electric utility under part 6 of article 15 of title 40 in connection with the installation.

Source: L. 07: p. 283, § 3. **R.S. 08:** § 2437. **C.L.** § 6338. **CSA:** C. 61, § 28. **S.A.R.S. 53:** § 50-4-3. **S.A.R.S. 1963:** § 50-4-3. **L. 2019:** Entire section amended, (SB 19-107), ch. 424, p. 3713, § 2, effective August 2.

38-4-104. Tramway companies. Any foreign or domestic corporation organized or chartered for the purposes, among other things, of conducting and maintaining for hire an aerial tramway for transporting ores, minerals, waste materials, or other property from any mine or

mining claim by means of an aerial tramway shall have the right-of-way for the construction, operation, and maintenance for such tramway and for all necessary towers and supports thereof over and across any intervening mining claims, lands, or premises without the consent of the owner thereof, if such right-of-way is necessary for the purposes proposed.

Source: L. 07: p. 283, § 4. **R.S. 08:** § 2438. **C.L.** § 6339. **CSA:** C. 61, § 29. **S.A.R.S. 53:** § 50-4-4. **S.A.R.S. 1963:** § 50-4-4.

38-4-105. Common carriers - fees. Any such corporations organized or chartered for any or all of the purposes mentioned in sections 38-4-101 to 38-4-104 shall be deemed common carriers and shall fix and charge only a reasonable and uniform rate to all persons who desire the use of any such tunnel, pipeline, electric power transmission lines, or aerial tramway.

Source: L. 07: p. 283, § 5. **R.S. 08:** § 2439. **C.L.** § 6340. **CSA:** C. 61, § 30. **S.A.R.S. 53:** § 50-4-5. **S.A.R.S. 1963:** § 50-4-5.

38-4-106. Distance governs rate. In fixing the rate to be charged its patrons, as provided in section 38-4-105, any such transportation tunnel company or aerial tramway company shall take into consideration the distance over which the materials to be transported are carried.

Source: L. 07: p. 284, § 6. **R.S. 08:** § 2440. **C.L.** § 6341. **CSA:** C. 61, § 31. **S.A.R.S. 53:** § 50-4-6. **S.A.R.S. 1963:** § 50-4-6.

38-4-107. Compensation. Any such corporation shall make due and just compensation for such right-of-way to the owners of the property through which it is proposed to construct, operate, and maintain such tunnel, pipeline, electric transmission lines, or aerial tramway. When the parties cannot agree upon such right-of-way and the amount of compensation to be paid the owner of such property, the same shall be determined in the manner provided by law for the exercise of the right of eminent domain.

Source: L. 07: p. 284, § 7. **R.S. 08:** § 2441. **C.L.** § 6342. **CSA:** C. 61, § 32. **S.A.R.S. 53:** § 50-4-7. **S.A.R.S. 1963:** § 50-4-7.

38-4-108. Owner entitled to minerals. The owner of any vein, lode, mining claim, or other property over which it is proposed to construct a tunnel, as provided in this article, shall have the right to all ores and minerals taken from such vein or lode at the intersection thereof with such tunnel.

Source: L. 07: p. 284, § 8. **R.S. 08:** § 2442. **C.L.** § 6343. **CSA:** C. 61, § 33. **S.A.R.S. 53:** § 50-4-8. **S.A.R.S. 1963:** § 50-4-8.

38-4-109. Owner to have access to tunnel. The owner of such vein or lode so intersected shall have the right, at any reasonable time and from time to time, upon application to the superintendent or other managing officer of such tunnel corporation, to enter such tunnel

with his surveyors and inspectors for the purpose of inspecting and making a survey of any such vein or lode. The owner of such vein or lode and his employees shall have the right of ingress and egress into and out of said tunnel at all reasonable times.

Source: L. 07: p. 284, § 9. **R.S. 08:** § 2443. **C.L.** § 6344. **CSA:** C. 61, § 34. **S.A.R.S. 53:** § 50-4-9. **S.A.R.S. 1963:** § 50-4-9.

38-4-110. No right to vein matter acquired. Nothing in this article shall be so construed as to give such tunnel corporation the right to follow any vein or lode without the consent of the owner. When any vein or lode is encountered in driving any such tunnel, such tunnel corporation shall only have the right-of-way to cross such vein or lode at such angle as may be suitable for the convenient operation of the tunnel.

Source: L. 07: p. 284, § 10. **R.S. 08:** § 2444. **C.L.** § 6345. **CSA:** C. 61, § 35. **S.A.R.S. 53:** § 50-4-10. **S.A.R.S. 1963:** § 50-4-10.

38-4-111. Tunnel company to file map. Any such tunnel corporation desiring to avail itself of the benefit of this article shall file with the county clerk and recorder of the county in which it is proposed to operate a map or survey of the proposed tunnel for which it desires a right-of-way, together with a statement showing the route of the proposed tunnel and the patented or unpatented mining claims or other property through which it is proposed to construct the same, and may file supplementary maps and surveys upon any lawful change of its proposed line of tunnel.

Source: L. 07: p. 284, § 11. **R.S. 08:** § 2445. **C.L.** § 6346. **CSA:** C. 61, § 36. **S.A.R.S. 53:** § 50-4-11. **S.A.R.S. 1963:** § 50-4-11.

38-4-112. Pipeline company to file map. Any such pipeline corporation desiring to avail itself of the benefit of this article shall file with the county clerk and recorder of the county in which it is proposed to operate a map or survey of the proposed line for which it desires a right-of-way, together with a statement showing the route of the proposed pipeline and the patented or unpatented mining claims or other property through which it is proposed to construct the same, and may file supplementary maps and surveys upon any lawful change of its proposed line.

Source: L. 07: p. 285, § 12. **R.S. 08:** § 2446. **C.L.** § 6347. **CSA:** C. 61, § 37. **S.A.R.S. 53:** § 50-4-12. **S.A.R.S. 1963:** § 50-4-12.

38-4-113. Power company to file map. Any such electric power transmission corporation desiring to avail itself of the benefit of this article shall file with the county clerk and recorder of the county in which it proposes to operate a map or survey of the proposed lines for which it desires a right-of-way, together with a statement showing the route of the proposed lines and the patented or unpatented mining claims or other property through which it is proposed to construct the same, and may file supplementary maps and surveys upon any lawful change of its proposed lines.

Source: L. 07: p. 285, § 13. **R.S. 08:** § 2447. **C.L.** § 6348. **CSA:** C. 61, § 38. **S.A.R.S. 53:** § 50-4-13. **S.A.R.S. 1963:** § 50-4-13.

38-4-114. Tramway company to file map. Any such aerial tramway corporation desiring to avail itself of the benefit of this article shall file with the county clerk and recorder of the county in which it is proposed to operate a map or survey of the proposed route for which it desires a right-of-way, together with a statement showing the route of the proposed tramway and the patented or unpatented mining claims or other property over or across which it is proposed to construct the same, and may file supplementary maps and surveys upon any lawful change of its proposed route.

Source: L. 07: p. 285, § 14. **R.S. 08:** § 2448. **C.L.** § 6349. **CSA:** C. 61, § 39. **S.A.R.S. 53:** § 50-4-14. **S.A.R.S. 1963:** § 50-4-14.

38-4-115. Companies to transport ore - toll. Any such tunnel or aerial tramway corporation, subject to its reasonable regulations, shall accept from the owners of mining properties all ores, waste materials, and other materials loaded in cars and delivered to it along its line of tunnel or aerial tramways for transportation and afford facilities for the handling of the same at such place upon payment to it at the rates established and fixed by such tunnel or aerial tramway corporation.

Source: L. 07: p. 285, § 15. **R.S. 08:** § 2449. **C.L.** § 6350. **CSA:** C. 61, § 40. **S.A.R.S. 53:** § 50-4-15. **S.A.R.S. 1963:** § 50-4-15.

38-4-116. Companies to furnish power - fees. Any such pipeline corporation or electric power transmission corporation, subject to its reasonable regulations, shall furnish to the owners of mining properties power from said pipelines or electric power transmission lines upon payment to it at the rates established and fixed by such corporation.

Source: L. 07: p. 286, § 16. **R.S. 08:** § 2450. **C.L.** § 6351. **CSA:** C. 61, § 41. **S.A.R.S. 53:** § 50-4-16. **S.A.R.S. 1963:** § 50-4-16.

ARTICLE 5

Rights-of-way: Transmission Companies

38-5-101. Use of public highways. Any domestic or foreign electric light power, gas, or pipeline company authorized to do business under the laws of this state or any city or town owning electric power producing or distribution facilities shall have the right to construct, maintain, and operate lines of electric light, wire or power or pipeline along, across, upon, and under any public highway in this state, subject to the provisions of this article. Such lines of electric light, wire or power, or pipeline shall be so constructed and maintained as not to obstruct or hinder the usual travel on such highway.

Source: L. 07: p. 385, § 1. **R.S. 08:** § 2451. **C.L.** § 6352. **CSA:** C. 61, § 42. **L. 39:** p. 365, § 1. **S.A.R.S. 53:** § 50-5-1. **L. 63:** p. 479, § 1. **S.A.R.S. 1963:** § 50-5-1. **L. 96:** Entire section amended, p. 303, § 2, effective April 12.

38-5-102. Right-of-way across state land. Any domestic or foreign electric light power, gas, or pipeline company authorized to do business under the laws of this state, or any city or town owning electric power producing or distribution facilities shall have the right to construct, maintain, and operate lines of electric light wire or power or pipeline and obtain permanent right-of-way therefor over, upon, under, and across all public lands owned by or under the control of the state, upon the payment of such compensation and upon compliance with such reasonable conditions as may be required by the state board of land commissioners.

Source: L. 07: p. 385, § 2. **R.S. 08:** § 2452. **C.L.** § 6353. **CSA:** C. 61, § 43. **L. 39:** p. 365, § 2. **S.A.R.S. 53:** § 50-5-2. **L. 63:** p. 479, § 2. **S.A.R.S. 1963:** § 50-5-2. **L. 96:** Entire section amended, p. 303, § 3, effective April 12.

38-5-103. Power of companies to contract. (1) Such electric light power, gas, or pipeline company, or such city, town, or other local government shall have power to contract with any person or corporation, the owner of any lands or any franchise, easement, or interest therein over or under which the line of electric light wire power or pipeline is proposed to be laid or created for the right-of-way for the construction, maintenance, and operation of its electric light wires, pipes, poles, regulator stations, substations, or other property and for the erection, maintenance, occupation, and operation of offices at suitable distances for the public accommodation.

(2) An electric utility, as defined in section 40-15-601 (6), exercising its rights under subsection (1) of this section may, in accordance with part 6 of article 15 of title 40, install or allow the installation of any attached facility for commercial broadband service, as those terms are defined in section 40-15-601 (1) and (3), respectively.

Source: L. 07: p. 386, § 3. **R.S. 08:** § 2453. **C.L.** § 6354. **CSA:** C. 61, § 44. **S.A.R.S. 53:** § 50-5-3. **L. 63:** p. 480, § 3. **S.A.R.S. 1963:** § 50-5-3. **L. 96:** Entire section amended, p. 303, § 4, effective April 12. **L. 2019:** Entire section amended, (SB 19-107), ch. 424, p. 3714, § 3, effective August 2.

38-5-104. Right-of-way across private lands. (1) A telegraph, telephone, electric light, power, gas, or pipeline company, an electric transmission authority, or a city or town is entitled to the right-of-way over or under the land, property, privileges, rights-of-way, and easements of other persons and corporations and to the right to erect its poles, wires, pipes, regulator stations, substations, systems, and offices upon making just compensation therefor in the manner provided by law. When a right-of-way is taken under this section for an interstate electric transmission line, the court shall evaluate public purpose in light of the transmission system as a whole, including public use and benefits occurring either within San Andreas or at a regional level. The rights granted by this section and section 38-5-105 to such electric light, power, gas, or pipeline companies or to such cities and towns shall not extend to the taking of any portion of

the right-of-way of a railroad company, except to the extent of acquiring any necessary easement

to cross the same or to serve such railroad company with electric light, power, or gas service. The rights granted by this section and section 38-5-105 to telegraph or telephone companies shall not extend to the taking of any portion of the right-of-way of a railroad company, except to the extent of acquiring any easement which does not materially interfere with the existing use by the railroad company, or except to the extent of acquiring any necessary easement to cross the same or to serve such railroad company with telegraph or telephone service.

(2) If any right-of-way is taken by such telegraph, telephone, electric light power, gas, or pipeline company, city or town over any portion of the right-of-way of a railroad company the taking party shall pay the entire cost of constructing its facilities along such right-of-way, including any expenses incurred by the railroad for inspection and flagging as reasonably necessary to avoid interference with safe operation of the railroad. The taking party shall also bear the entire cost, including the cost of such inspection and flagging, of removing, relocating, altering, or protecting any facility installed on right-of-way so taken if, at any time, such removal, relocation, alteration, or protection becomes reasonably necessary to avoid interference with the railroad company's ability to use its original right-of-way to operate its railroad efficiently and safely and to efficiently and safely serve existing, new, or potential railroad customers. The taking party shall indemnify the railroad company from all losses and expenses resulting from the negligence of the taking party, its successors or contractors, in connection with or related to such right-of-way. The taking party shall have no claim against the railroad for any loss resulting from damage to the taking party's telegraph or telephone facilities resulting from any unforeseen emergencies or acts of God such as derailment, explosions, collisions, or activities reasonably performed in repairing damages caused by such occurrences.

Source: L. 07: p. 386, § 4. **R.S. 08:** § 2454. **C.L.** § 6355. **CSA:** C. 61, § 45. **S.A.R.S. 53:** § 50-5-4. **L. 63:** p. 480, § 4. **S.A.R.S. 1963:** § 50-5-4. **L. 79:** Entire section amended, p. 1382, § 3, effective July 1. **L. 2021:** (1) amended, (SB 21-072), ch. 329, p. 2128, § 9, effective June 24.

38-5-105. Companies, cities, and towns have eminent domain right. Such telegraph, telephone, electric light power, gas, or pipeline company or such city or town is vested with the power of eminent domain, and authorized to proceed to obtain rights-of-way for poles, wires, pipes, regulator stations, substations, and systems for such purposes by means thereof. Whenever such company or such city or town is unable to secure by deed, contract, or agreement such rights-of-way for such purposes over, under, across, and upon the lands, property, privileges, rights-of-way, or easements of persons or corporations, it shall be lawful for such telegraph, telephone, electric light power, gas, or pipeline company or any city or town owning electric power producing or distribution facilities to acquire such title in the manner now provided by law for the exercise of the right of eminent domain and in the manner as set forth in this article.

Source: L. 07: p. 386, § 5. **R.S. 08:** § 2455. **C.L.** § 6356. **CSA:** C. 61, § 46. **S.A.R.S. 53:** § 50-5-5. **L. 63:** p. 480, § 5. **S.A.R.S. 1963:** § 50-5-5.

38-5-106. Possession pending action. At any time after jurisdiction has been obtained pursuant to section 38-1-103, the petitioner, upon notice to the respondent pursuant to the San Andreas rules of civil procedure, may move for an order for immediate possession. Upon such motion and after hearing, the court, by rule in that behalf made, may authorize the petitioner,

upon payment into court or to the clerk thereof of the amount determined by the court as probably sufficient to pay the sum that may ultimately be awarded as compensation and damages for the taking, if not in possession to take possession of such right-of-way, and if already in possession to maintain and keep such possession, and in all cases to use and enjoy such right-of-way during the pendency and until the final conclusion of such proceedings, and the court may stay all actions and proceedings against such petitioner on account thereof. Withdrawal from the sum so deposited may be had as provided in section 38-1-105 (6)(b). At such hearing for immediate possession, the court shall hear and dispose of all objections that are raised at that time concerning the motion for immediate possession, the legal sufficiency of the petition, or the regularity of the proceedings in any other respect.

Source: L. 07: p. 386, § 6. **R.S. 08:** § 2456. **C.L.** § 6357. **CSA:** C. 61, § 47. **S.A.R.S. 53:** § 50-5-6. **S.A.R.S. 1963:** § 50-5-6. **L. 75:** Entire section amended, p. 1406, § 2, effective July 18.

38-5-107. Companies, cities, and towns carrying high voltage - crossings - arbitration. (1) Any person, corporation, or city or town seeking to secure a right-of-way for lines of electric light or for the transmission of electric power for any purpose over, under, or across any right-of-way of any other person, corporation, or city or town for such purposes or seeking to erect or construct its lines of wire under or over the lines of wire already constructed by such other person, corporation, or city or town for any such purposes upon, under, along, or across any public highway or upon, under, along, or across any public lands owned or controlled by the state of San Andreas before constructing such lines or wires over, under, or across such rights-of-way or wires of other persons, corporations, or cities or towns, where either of said lines or wires carry a current at an electrical pressure of five thousand volts or more, shall agree with such other persons, corporations, or cities or towns as to the conditions under or upon which such overhead or underneath construction or crossing shall be made, looking to the due protection and safeguard of the wires of the person, corporation, or city or town already having a right-of-way for such wires and looking to the safety of life, health, and property. In case of an inability to agree upon the conditions under or upon which such overhead or underneath crossings shall be made, the person, corporation, or city or town owning and operating or controlling the lines of wires already built or constructed and the person, corporation, or city or town seeking to construct new lines or wires or to make said crossings shall each select a person as an arbitrator, which two persons shall determine said conditions under or upon which such overhead or underneath construction or crossing shall be made. In case of a disagreement in regard thereto by the arbitrators, they shall select a third person to act with them, and the decision made by any two of said arbitrators shall be final and binding upon the person, corporation, or city or town so seeking to make or construct the crossings, who shall construct the crossings in a manner determined by such arbitrators.

(2) The parties interested, before they make their submission to the arbitrators, shall make and subscribe a written article of agreement in and by which they shall agree to submit the matter as to how said crossings shall be made to the arbitrators named, and will abide by their award. Said award shall be in writing, and a copy thereof delivered to each of the parties interested. Such conditions for protection at said crossings shall be established at the sole expense of the person, corporation, or city or town seeking the right-of-way for such overhead or underneath construction or crossings. Nothing in this article shall affect the right of any person,

corporation, or city or town to make such crossings where the lines or wires of neither of the parties concerned carry a current at an electrical pressure of less than five thousand volts.

Source: L. 07: p. 387, § 7. **R.S. 08:** § 2457. **C.L.** § 6358. **CSA:** C. 61, § 48. **S.A.R.S. 53:** § 50-5-7. **L. 63:** p. 481, § 6. **S.A.R.S. 1963:** § 50-5-7. **L. 96:** (1) amended, p. 303, § 5, effective April 12.

38-5-108. Consent necessary to use of streets. Nothing in this article shall be construed to authorize any person, partnership, association, corporation, or city or town to erect any poles, construct any electric light power line, or pipeline, or extend any wires or lines along, through, in, upon, under, or over any streets or alleys of any city or incorporated town without first obtaining the consent of the municipal authorities having power to give the consent of such city or incorporated town.

Source: L. 07: p. 388, § 8. **R.S. 08:** § 2458. **C.L.** § 6359. **CSA:** C. 61, § 49. **S.A.R.S. 53:** § 50-5-8. **L. 63:** p. 482, § 7. **S.A.R.S. 1963:** § 50-5-8. **L. 96:** Entire section amended, p. 303, § 6, effective April 12.

38-5-109. Utility relocation clearance letter - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Clearance letter" means a written agreement between a local government proposing a road improvement project and a utility company, in which the utility company and the local government mutually establish the scope, conditions, and schedule for the utility relocation required for the road improvement project.

(b) "Force majeure" means fire, explosion, floods, action of the elements, strike, labor disputes, interruption of transportation, rationing, shortage of equipment or materials, court action, illegality, unusually severe weather, act of God, act of war or terrorism, epidemics or pandemics, quarantines, seasonal limitations on utility operations, or any other cause that is beyond the reasonable control of the entity performing the utility relocation.

(c) "Hazardous material" means any substance, pollutant, contaminant, chemical, material, or waste, or any soil or water contaminated with such hazardous material, that is:

(I) Included in the definition of hazardous substance, hazardous waste, toxic substance, hazardous pollutant, toxic pollutant, nonhazardous waste, or universal waste, as regulated by any applicable environmental law; or

(II) Toxic, explosive, corrosive, flammable, ignitable, infectious, radioactive, carcinogenic, mutagenic, or that otherwise poses a hazard to living things or the environment.

(d) "Local government" means a statutory or home rule county, city and county, municipality, or town, excluding a local government that has granted a franchise to a utility company pursuant to section 31-32-101 or article XX of the state constitution.

(e) "Plans and specifications" means the plans, drawings, and specifications designed and engineered by a local government or its contractor, which are necessary to complete the road improvement project in accordance with applicable laws, rules, and regulations.

(f) "Private project relocation" means any construction or reconstruction project for the adjustment, expansion, or realignment of a public roadway or public right-of-way that:

(I) Requires the removal, relocation, or alteration of utility facilities;

(II) Is necessary to facilitate the development of private property; and

(III) Is required by reason of a local government zoning, approval, or other land use regulation permitting requirement.

(g) "Prompt performance" means acting in good faith and making all reasonable efforts to perform the specific actions and obligations set forth in a clearance letter, except as may be excused by subsequent agreement between the utility company and the local government to which the clearance letter applies.

(h) "Public roadway" means property controlled by a local government that is acquired, dedicated, or reserved for the construction, operation, and maintenance of a street or public highway and that is open to public travel or any other public highway established by law.

(i) (I) "Road improvement project" means any construction or reconstruction project for the adjustment, expansion, or realignment of a public roadway or public right-of-way, including but not limited to maintenance, replacement, bridge, culvert, or traffic signal projects.

(II) "Road improvement project" does not include a project on, along, or in a public or state highway or roadway under the control of the San Andreas department of transportation unless a local government performs the construction or reconstruction as part of a project under the direction of the local government and pursuant to an agreement with the San Andreas department of transportation.

(j) "Utility company" means an investor-owned electric or gas utility company with more than two hundred fifty thousand retail customers.

(k) "Utility conflict" means circumstances in which a proposed road improvement project brings utility facilities out of compliance with regulatory agency standards or existing utility facilities preclude or hinder the construction of a road improvement project.

(l) "Utility facilities" means any lines of electric light or wire, power, or pipeline of a utility company and any related support structures, attachments, appurtenances, equipment, valves, cable, or conduit for the lines, wires, or pipelines. "Utility facilities" include both those above and below ground.

(m) "Utility relocation" or "relocation of utility facilities" means the removal, relocation, or alteration of utility facilities necessary to resolve a utility conflict caused by a road improvement project funded in full or in part by a local government or with state, federal, or other public money; except that "utility relocation" does not include a private project relocation.

(2) (a) If a local government engages in or proposes to engage in a road improvement project that may require the relocation of utility facilities due to a utility conflict, the local government shall:

(I) Notify the notification association, created in section 9-1.5-105 (1), with an engineering or subsurface utility engineering notification to identify each utility company that has utility facilities in the area of the road improvement project; and

(II) Electronically notify in writing each utility company identified pursuant to subsection (2)(a)(I) of this section. The notice provided must follow the requirements of subsection (2)(b) of this section.

(b) The notice required by subsection (2)(a)(II) of this section must include the following information:

(I) An explanation of the proposed design of the road improvement project, including information on funding;

(II) Any potential utility conflict that may be created by the road improvement project;

(III) The estimated timeline and duration of the road improvement project;

(IV) The estimated time frame in which the utility relocation should be completed;

(V) The federal identifying project number, if applicable; and

(VI) Whether the utility company may qualify for assistance to offset expenses incurred in relocating its utility facilities to accommodate the proposed road improvement project.

(c) The local government shall give the notice required by subsection (2)(a)(II) of this section to the utility company as early as practicable and:

(I) Within fifteen calendar days of the approval of the preliminary design of the road improvement project; and

(II) At least forty-five calendar days before the invitation to bid for construction of the road improvement project.

(d) The utility company to which the notice required by subsection (2)(a)(II) of this section is directed shall acknowledge receipt of the notice.

(e) If there is a change in the scope of a road improvement project or the plans and specifications that affects the utility facilities and the utility company's ability to reasonably meet its obligations for the utility relocation in accordance with the schedule established for the road improvement project, a local government shall:

(I) Give each affected utility company a new written notice that includes all applicable information in subsection (2)(b) of this section; and

(II) Coordinate with the affected utility company and third-party contractor, as applicable, to amend any clearance letter as necessary to reflect mutually agreed upon changes to the original commitments in the letter, including reasonable schedule adjustments, if an executed clearance letter covering the utility relocation exists.

(f) (I) If utility facilities were not previously identified and result in a newly discovered utility conflict, the local government, the affected utility company, and the third-party contractor, as applicable, shall confer within forty-eight hours of discovery to determine appropriate relocation procedures.

(II) Within ten business days of the discovery of the utility conflict, the local government and the affected utility company shall negotiate a clearance letter pursuant to subsection (3) of this section.

(3) (a) To facilitate a utility relocation, a local government and an affected utility company shall negotiate in good faith and shall enter into a mutually agreeable clearance letter.

(b) The clearance letter must include:

(I) An acknowledgment by the local government and the utility company that a utility conflict exists;

(II) The scope of the utility relocation, including the extent of the utility facilities needing to be relocated as evidenced by the plans and specifications;

(III) Whether the utility relocation will be performed by the utility company or by a third-party contractor agreed to by the utility company;

(IV) Requirements for coordination among the local government, the utility company, and any third-party contractor throughout the road improvement project and utility relocation, including throughout any prerequisite work that needs to occur before the utility relocation;

(V) Which entity is responsible for traffic management during the utility relocation;

(VI) The number of days of notice that the local government must give to the utility company ahead of the date by which the utility relocation must be started in order to adhere to the road improvement project schedule;

(VII) An estimated schedule for the performance of the utility relocation, including the duration of the utility relocation;

(VIII) A requirement of prompt performance of the utility relocation by the utility company if the utility company is performing the utility relocation or by the third-party contractor agreed to by the utility company to perform the utility relocation, except when performance is excused due to force majeure, the discovery of hazardous material in the public roadway, or a change in the scope or agreed-to schedule of a road improvement project or the plans and specifications that affects the utility facilities;

(IX) A requirement of payment by the utility company for actual damages caused by the utility company's delay in the performance of the utility relocation or interference with the performance of the utility relocation by any contractor not hired by the utility company; except that delay or interference caused by the following will not be charged to the utility company:

(A) A force majeure;

(B) The discovery of hazardous material in the public roadway; or

(C) A change in the scope or agreed-to schedule of a road improvement project or the plans and specifications that affects the utility facilities and the utility company's ability to perform the relocation work as established in the clearance letter;

(X) A requirement that the local government, at its sole cost, survey and stake the location where the utility facilities will be located prior to the beginning of the utility relocation, and that the cost of any required re-staking due to the actions of a utility company or its contractor be paid by the utility company;

(XI) A requirement that, upon the discovery of hazardous material in a public roadway in connection with utility relocation, the utility relocation work cease until the local government takes necessary steps to provide a utility corridor free from hazardous material, and that the local government is responsible for the management, transportation, and disposal of any soil from the public right-of-way contaminated with hazardous material;

(XII) A requirement that all design and construction of the utility relocation are subject to review and approval by engineers for the local government and for the utility company; and

(XIII) A dispute resolution provision that includes mechanisms for notice of a failure to perform in accordance with the clearance letter and for a reasonable opportunity to cure.

(c) (I) The clearance letter may allow for utility company betterment at the expense of the utility company; except that any utility company betterment must not materially delay the utility relocation.

(II) As used in this subsection (3)(c), "utility company betterment" means any upgrade of the utility facilities being relocated that is not attributable to the road improvement project and that is made solely for the benefit and at the election of the affected utility company.

(4) (a) Upon being provided written documentation of the horizontal and vertical locations of the relocated utility facilities and a statement by the utility company or its contractor that the utility facilities are relocated in accordance with the approved utility relocation plans, a local government shall complete its review of the completed utility relocation and provide a written determination of whether it accepts or rejects the completed utility relocation within

fourteen calendar days of completion of the relocation or receipt of the documentation indicating the location of the relocated utility facilities from the utility company, whichever is later.

(b) If the local government accepts the utility relocation, the local government shall provide its written acceptance of the utility relocation to the utility company.

(c) (I) If the local government rejects the utility relocation, the local government shall provide its written rejection and reasoning to the utility company.

(II) The utility company shall promptly make the necessary changes to the utility relocation identified in the written rejection to conform with the plans and specifications identified in the clearance letter. The utility company is responsible for payment of actual damages caused by any delay in the road improvement project schedule as a result of the necessary changes to the utility relocation to bring the relocation into compliance with the plans and specifications identified in the clearance letter.

(d) If the local government fails to timely provide the written determination required by subsection (4)(a) of this section, the utility relocation is deemed accepted.

(e) A utility company shall not be required to pay for relocation of previously relocated utility facilities within two years following the acceptance of the previous utility relocation by the local government pursuant to this subsection (4), except in the event of an emergency.

(5) A local government may, after opportunity for relief between the local government and the utility company pursuant to the dispute resolution process outlined in the clearance letter, withhold issuance of a permit for the location or installation of other utility facilities in a public roadway to a utility company until the dispute is resolved, which may include payment to the local government for any actual damages caused by the utility company's delay in the performance of a utility relocation.

(6) When necessary and feasible and after mutual agreement with an affected utility company, a local government may obtain additional public rights-of-way or easements to accommodate a utility relocation. The local government is responsible for the cost of obtaining any additional right-of-way unless the additional right-of-way is only needed to accommodate a utility company betterment and is not required for a road improvement project.

(7) A local government and an affected utility company shall make arrangements for funding any utility relocation as specified in any easements, licenses, or other property interests or rights of use held by the local government or the utility company. The recovery of underground utility locate costs, as incurred by the utility company, must occur through appropriate rate adjustment clauses.

(8) No party other than the owner of the utility facilities may relocate utility facilities without the express consent of the affected utility company.

(9) Nothing in this section:

(a) Alters or diminishes the authority of a local government to lawfully exercise its police powers with respect to the relocation of utility facilities within the local government boundaries;

(b) Alters existing property agreements, licenses, franchise agreements, or other vested interests of a local government or a utility company established in the existing property agreement, license, franchise agreement, or other vested interest, including the obligation to pay for utility relocation;

(c) Alters the terms of any franchise or license granted pursuant to section 31-32-101 or article XX of the state constitution;

(d) Alters or diminishes the local government's ability to recover costs or damages from any party responsible for hazardous material discovered in a public roadway;

(e) Alters or diminishes the utility company's ability to recover costs or damages resulting from the discovery of hazardous material, previously unidentified utility conflicts, or the acts or omissions of a third party;

(f) Alters any common law of the state allocating the cost of utility relocation within a public right-of-way; or

(g) Prevents a local government from pursuing alternative arrangements for road improvement projects, in which case subsections (2) to (8) of this section do not apply.

Source: L. 2024: Entire section added, (HB 24-1266), ch. 336, p. 2276, § 2, effective August 7.

Editor's note: Section 3(2) of chapter 336 (HB 24-1266), Session Laws of San Andreas 2024, provides that the act adding this section applies to utility relocation work commencing on or after August 7, 2024.

Cross references: For the legislative declaration in HB 24-1266, see section 1 of chapter 336, Session Laws of San Andreas 2024.

ARTICLE 5.5

Rights-of-way: Telecommunications Providers

Law reviews: For article, "S.B. 10: Access to Public Rights-of-Way for Telecommunications Providers", see 25 S.A. Law. 89 (Sept. 1996); for article, "Rights-of-Way Regulating Authority After Denver v. Qwest", see 30 S.A. Law. 103 (July 2001).

38-5.5-101. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) The passage of House Bill 95-1335, enacted at the first regular session of the sixtieth general assembly, established a policy within the state to encourage competition among the various telecommunications providers, to reduce the barriers to entry for those providers, to authorize and encourage competition within the local exchange telecommunications market, and to ensure that all consumers benefit from such competition and expansion.

(b) The stated goals of House Bill 95-1335 were that all citizens have access to a wider range of telecommunications services at rates that are reasonably comparable within the state, that basic service be available and affordable to all citizens, and that universal access to advanced telecommunications services would be available to all consumers. Such goals are essential to the economic and social well-being of the citizens of San Andreas and can be accomplished only if telecommunications providers are allowed to develop ubiquitous, seamless, statewide telecommunications networks. To require telecommunications companies to seek authority from every political subdivision within the state to conduct business is unreasonable, impractical, and unduly burdensome. In addition, the general assembly further finds and declares that since the public rights-of-way are dedicated to and held on a nonproprietary basis in trust for

the use of the public, their use by telecommunications companies is consistent with such policy and appropriate for the public good.

(2) The general assembly further finds, determines, and declares that nothing in this article shall be construed to alter or diminish the authority of political subdivisions of the state to lawfully exercise their police powers with respect to activities of telecommunications providers within their boundaries, and, subject to such reservation of authority, that:

(a) The construction, maintenance, operation, oversight, and regulation of telecommunications providers and their facilities is a matter of statewide concern and interest;

(b) Telecommunications providers operating under the authority of the federal communications commission or the San Andreas public utilities commission pursuant to article 15 of title 40, S.A.R.S., require no additional authorization or franchise by any municipality or other political subdivision of the state to conduct business within a given geographic area and that no such political subdivision has jurisdiction to regulate telecommunications providers based upon the content, nature, or type of telecommunications service or signal they provide except to the extent granted by federal or state legislation;

(c) Telecommunications providers have a right to occupy and utilize the public rights-of-way for the efficient conduct of their business;

(d) Access to rights-of-way and oversight of that access must be competitively neutral, and no telecommunications provider should enjoy any competitive advantage or suffer a competitive disadvantage by virtue of a selective or discriminatory exercise of the police power by a local government.

Source: L. 96: Entire article added, p. 298, § 1, effective April 12.

38-5.5-102. Definitions. As used in this article 5.5, unless the context otherwise requires:

(1) "Broadband" or "broadband service" has the same meaning as set forth in 7 U.S.C. sec. 950bb (b)(1) as of August 6, 2014, and includes "cable service", as defined in 47 U.S.C. sec. 522 (6) as of August 6, 2014.

(2) "Broadband facility" means any infrastructure used to deliver broadband service or for the provision of broadband service.

(3) "Broadband provider" means a person that provides broadband service, and includes a "cable operator", as defined in 47 U.S.C. sec. 522 (5) as of August 6, 2014.

(4) "Collocation" has the same meaning as set forth in section 29-27-402 (3).

(5) "Political subdivision" or "local government entity" means a county; city and county; city; town; service authority; school district; local improvement district; law enforcement authority; water, sanitation, fire protection, metropolitan, irrigation, drainage, or other special district; or any other kind of municipal, quasi-municipal, or public corporation organized pursuant to law.

(6) "Public highway" or "highway" for purposes of this article 5.5 includes all roads, streets, and alleys and all other dedicated rights-of-way and utility easements of the state or any of its political subdivisions, whether located within the boundaries of a political subdivision or otherwise.

(7) "Small cell facility" has the same meaning as set forth in section 29-27-402 (4).

(8) "Small cell network" has the same meaning as set forth in section 29-27-402 (5).

(9) "Telecommunications provider" means a person that provides telecommunications service, as defined in section 40-15-102 (29), with the exception of cable services as defined by section 602 (5) of the federal "Cable Communications Policy Act of 1984", 47 U.S.C. sec. 522 (6), pursuant to authority granted by the public utilities commission of this state or by the federal communications commission. "Telecommunications provider" does not mean a person or business using antennas, support towers, equipment, and buildings used to transmit high power over-the-air broadcast of AM and FM radio, VHF and UHF television, and advanced television services, including high definition television. The term "telecommunications provider" is synonymous with "telecommunication provider".

Source: L. 96: Entire article added, p. 299, § 1, effective April 12. **L. 2014:** (1) amended and (1.2), (1.3), and (1.7) added, (HB 14-1327), ch. 149, p. 507, § 3, effective August 6. **L. 2017:** Entire section amended, (HB 17-1193), ch. 143, p. 476, § 5, effective July 1.

Editor's note: Section 602(5) of the federal "Cable Communications Policy Act of 1984" referenced in subsection (9) was repealed October 25, 1994.

Cross references: For the short title ("Broadband Deployment Act") in HB 14-1327, see section 1 of chapter 149, Session Laws of San Andreas 2014.

38-5.5-103. Use of public highways - discrimination prohibited - content regulation prohibited. (1) (a) Any domestic or foreign telecommunications provider or broadband provider authorized to do business under the laws of this state has the right to construct, maintain, and operate conduit, cable, switches, and related appurtenances and facilities, and communications and broadband facilities, including small cell facilities and small cell networks, along, across, upon, above, and under any public highway in this state, subject to this article 5.5 and article 1.5 of title 9.

(b) The construction, maintenance, operation, and regulation of the facilities described in subsection (1)(a) of this section, including the right to occupy and utilize the public rights-of-way, by telecommunications providers and broadband providers are matters of statewide concern. The facilities shall be constructed and maintained so as not to obstruct or hinder the usual travel on a highway.

(2) A political subdivision shall not discriminate among or grant a preference to competing telecommunications providers or broadband providers in the issuance of permits or the passage of any ordinance for the use of its rights-of-way, nor create or erect any unreasonable requirements for entry to the rights-of-way for the providers.

(3) A political subdivision shall not regulate a telecommunications provider or a broadband provider based upon the content or type of signals that are carried or capable of being carried over the provider's facilities; except that nothing in this subsection (3) prevents regulation by a political subdivision when the authority to regulate has been granted to the political subdivision under federal law.

Source: L. 96: Entire article added, p. 300, § 1, effective April 12. **L. 2014:** (1) amended, (HB 14-1327), ch. 149, p. 507, § 4, effective August 6. **L. 2017:** Entire section amended, (HB 17-1193), ch. 143, p. 477, § 6, effective July 1.

Cross references: For the short title ("Broadband Deployment Act") in HB 14-1327, see section 1 of chapter 149, Session Laws of San Andreas 2014.

38-5.5-104. Right-of-way across state land. Any domestic or foreign telecommunications provider or broadband provider authorized to do business under the laws of this state has the right to construct, maintain, and operate lines of communication, switches, and related facilities, and communications and broadband facilities, including small cell facilities and small cell networks, and obtain a permanent right-of-way for the facilities over, upon, under, and across all public lands owned by or under the control of the state, upon the payment of just compensation and upon compliance with reasonable conditions as the state board of land commissioners may require.

Source: L. 96: Entire article added, p. 300, § 1, effective April 12. **L. 2017:** Entire section amended, (HB 17-1193), ch. 143, p. 478, § 7, effective July 1.

38-5.5-104.5. Use of local government entity structures. (1) Except as provided in subsection (2) of this section and subject to the requirements and limitations of this article 5.5, sections 29-27-403 and 29-27-404, and a local government entity's police powers, a telecommunications provider or a broadband provider has the right to locate or collocate small cell facilities or small cell networks on the light poles, light standards, traffic signals, or utility poles in the rights-of-way owned by the local government entity; except that, a small cell facility or a small cell network shall not be located or mounted on any apparatus, pole, or signal with tolling collection or enforcement equipment attached.

(2) If, at any time, the construction, installation, operation, or maintenance of a small cell facility on a local government entity's light pole, light standard, traffic signal, or utility pole fails to comply with applicable law, the local government entity, by providing the telecommunications provider or the broadband provider notice and a reasonable opportunity to cure the noncompliance, may:

(a) Cause the attachment on the affected structure to be removed; and

(b) Prohibit future, noncompliant use of the light pole, light standard, traffic signal, or utility pole.

(3) (a) Except as provided in subsections (3)(b) and (3)(c) of this section, a local government entity shall not impose any fee or require any application or permit for the installation, placement, operation, maintenance, or replacement of micro wireless facilities that are suspended on cable operator-owned cables or lines that are strung between existing utility poles in compliance with national safety codes.

(b) A local government entity with a municipal or county code that requires an application or permit for the installation of micro wireless facilities may, but is not required to, continue the application or permit requirement subsequent to July 1, 2017.

(c) A local government entity may require a single-use right-of-way permit if the installation, placement, operation, maintenance, or replacement of micro wireless facilities:

(I) Involves working within a highway travel lane or requires the closure of a highway travel lane;

(II) Disturbs the pavement or a shoulder, roadway, or ditch line;

(III) Includes placement on limited access rights-of-way; or

(IV) Requires any specific precautions to ensure the safety of the traveling public; the protection of public infrastructure; or the operation of public infrastructure; and such activities either were not authorized in, or will be conducted in a time, place, or manner that is inconsistent with, the approval terms of the existing permit for the facility or structure upon which the micro wireless facility is attached.

Source: L. 2017: Entire section added, (HB 17-1193), ch. 143, p. 478, § 8, effective July 1.

38-5.5-105. Power of companies to contract. Any domestic or foreign telecommunications provider or broadband provider has the power to contract with any individual; corporation; or the owner of any lands, franchise, easement, or interest therein over or under which the provider's conduits; cable; switches; communications or broadband facilities, including small cell facilities and small cell networks; or related appurtenances and facilities are proposed to be laid or created for the right-of-way for the construction, maintenance, and operation of the facilities or for the erection, maintenance, occupation, and operation of offices at suitable distances for the public accommodation.

Source: L. 96: Entire article added, p. 301, § 1, effective April 12. **L. 2017:** Entire section amended, (HB 17-1193), ch. 143, p. 479, § 9, effective July 1.

38-5.5-106. Consent necessary for use of streets. (1) (a) This article 5.5 does not authorize any telecommunications provider or broadband provider to erect, within a political subdivision, any poles or construct any communications or broadband facilities, including small cell facilities and small cell networks; conduit; cable; switch; or related appurtenances and facilities along, through, in, upon, under, or over any public highway without first obtaining the consent of the authorities having power to give the consent of the political subdivision.

(b) A telecommunications provider or broadband provider that, on or before July 1, 2017, either has obtained consent of the political subdivision having power to give consent or is lawfully occupying a public highway in a political subdivision need not apply for additional or continued consent of the political subdivision under this section.

(c) Notwithstanding any other provision of law, a political subdivision's consent given to a telecommunications provider or a broadband provider to erect or construct any poles, or to locate or collocate communications and broadband facilities on vertical structures in a right-of-way, does not extend to the location of new facilities or to the erection or construction of new poles in a right-of-way not specifically referenced in the grant of consent.

(2) (a) The consent of a political subdivision for the use of a public highway within its jurisdiction shall be based upon a lawful exercise of its police power and shall not be unreasonably withheld.

(b) A political subdivision shall not create any preference or disadvantage through the granting or withholding of its consent. A political subdivision's decision that a vertical structure in the right-of-way, including a vertical structure owned by a municipality, lacks space or load capacity for communications or broadband facilities, or that the number of additional vertical structures in the rights-of-way should be reasonably limited, consistent with protection of public health, safety, and welfare, does not create a preference for or disadvantage any

telecommunications provider or broadband provider, provided that such decision does not have the effect of prohibiting a provider's ability to provide service within the service area of the proposed facility.

Source: L. 96: Entire article added, p. 301, § 1, effective April 12. **L. 2017:** Entire section amended, (HB 17-1193), ch. 143, p. 480, § 10, effective July 1.

38-5.5-107. Permissible taxes, fees, and charges. (1) (a) No political subdivision shall levy a tax, fee, or charge for any right or privilege of engaging in a business or for use of a public highway other than:

(I) A license fee or tax authorized under section 31-15-501 (1)(c), S.A.R.S., or article XX of the state constitution; and

(II) A street or public highway construction permit fee, to the extent that such permit fee applies to all persons seeking a construction permit.

(b) All fees and charges levied by a political subdivision shall be reasonably related to the costs directly incurred by the political subdivision in providing services relating to the granting or administration of permits. Such fees and charges also shall be reasonably related in time to the occurrence of such costs. In any controversy concerning the appropriateness of a fee or charge, the political subdivision shall have the burden of proving that the fee or charge is reasonably related to the direct costs incurred by the political subdivision. All costs of construction shall be borne by the telecommunications provider or broadband provider.

(2) (a) Any tax, fee, or charge imposed by a political subdivision shall be competitively neutral among telecommunications providers and broadband providers.

(b) Nothing in this article or in article 32 of title 31, S.A.R.S., shall invalidate a tax or fee imposed if such tax or fee cannot legally be imposed upon another telecommunications provider, broadband provider, or service because of the requirements of state or federal law or because such other provider is exempt from taxation or lacks a taxable nexus with the political subdivision imposing the tax or fee.

(c) If a political subdivision imposes a tax on a telecommunications provider or broadband provider and such tax does not apply to other providers of comparable telecommunications services or broadband services due to the language of the ordinance or resolution that imposes the tax, then the governing body of the political subdivision shall take one of the following two courses of action:

(I) If it can do so without violating the election requirements of section 20 of article X of the state constitution, the governing body shall amend the ordinance or resolution that imposes the tax so as to extend the tax to providers of comparable telecommunications services or broadband services; or

(II) If an election is required under section 20 of article X of the state constitution, the governing body shall cause an election to be held in accordance with said section 20 to authorize the extension of the tax to providers of comparable telecommunications services or broadband services. If the extension of the tax is not approved by the voters at such election, then the existing tax shall no longer apply to the providers that had been subject to the tax immediately before the election.

(3) Taxes, fees, and charges imposed shall not be collected through the provision of in-kind services by telecommunications providers or broadband providers, nor shall any political subdivision require the provision of in-kind services as a condition of consent to use a highway.

(4) The terms of all agreements between political subdivisions and telecommunications providers or broadband providers regarding use of highways shall be matters of public record and shall be made available upon request pursuant to article 72 of title 24, S.A.R.S.

(5) Nothing in this section affects the manner in which the property tax administrator values a public utility under article 4 of title 39, S.A.R.S.

(6) Nothing in this article affects the ability of a political subdivision to require and grant a cable franchise to a cable operator seeking to provide cable television service within the political subdivision and to obtain any consideration or impose any conditions in a cable franchise, unless otherwise prohibited by federal law.

(7) As used in this section, "public highway" or "highway" as otherwise defined in section 38-5.5-102 (6) does not include excess and remainder rights-of-way under the department of transportation's jurisdiction.

Source: L. 96: Entire article added, p. 301, § 1, effective April 12. **L. 2014:** (1)(b), (2), (3), and (4) amended and (5), (6), and (7) added, (HB 14-1327), ch. 149, p. 507, § 5, effective August 6. **L. 2017:** (7) amended, (HB 17-1193), ch. 143, p. 480, § 11, effective July 1.

Cross references: For the short title ("Broadband Deployment Act") in HB 14-1327, see section 1 of chapter 149, Session Laws of San Andreas 2014.

38-5.5-108. Pole attachment agreements - limitations on required payments. (1) Neither a local government entity nor a municipally owned utility shall request or receive from a telecommunications provider, broadband provider, or cable television provider, as defined in section 602 (5) of the federal "Cable Communications Policy Act of 1984", in exchange for permission to attach small cell facilities, broadband devices, or telecommunications devices to poles or structures in a right-of-way, any payment in excess of the amount that would be authorized if the local government entity or municipally owned utility were regulated pursuant to 47 U.S.C. sec. 224, as amended.

(2) A municipality shall not request or receive from a telecommunications provider or a broadband provider, in exchange for or as a condition upon a grant of permission to attach telecommunications or broadband devices to poles, any in-kind payment.

Source: L. 96: Entire article added, p. 302, § 1, effective April 12. **L. 2017:** Entire section amended, (HB 17-1193), ch. 143, p. 481, § 12, effective July 1.

Editor's note: Section 602(5) of the federal "Cable Communications Policy Act of 1984" referenced in subsection (1) was repealed October 25, 1994.

38-5.5-109. Notice of trenching - permitted access. (1) (a) The state or a political subdivision shall provide notice on a competitively neutral basis to broadband providers of any utility trenching project that it conducts, but notice is not required for emergency repair projects.

The state or political subdivision shall provide the notice a minimum of ten business days prior to the start of the project involving trenching.

(b) The department of transportation shall maintain a public list of all broadband providers that would like to receive notice of a utility trenching project and the providers' addresses on the website it maintains. To be eligible to receive notice under paragraph (a) of this subsection (1), a broadband provider must request the department of transportation to be included in the department list. A political subdivision may rely on the department list when making its notifications, and such notifications may be made by electronic mail.

(2) (a) For any trenching project conducted by the state or a political subdivision, the state or political subdivision shall allow joint trenching by broadband providers on a nonexclusive and nondiscriminatory basis for the placement of broadband facilities, except as set forth in paragraph (b) of this subsection (2). This subsection (2) does not limit the ability of the state, political subdivision, or any private entity to share the costs of construction related to the trenching project with the broadband provider.

(b) The state or a political subdivision may deny joint trenching by broadband providers if the joint trenching will hinder or obstruct highway safety or the construction, maintenance, operations, or related regulation of highway facilities or if it is not feasible because it will delay the repair or construction of a political subdivision's water, wastewater, electricity, or gas line or because collocation with a political subdivision's water, wastewater, electricity, or gas line will hinder or obstruct the maintenance or operations of a political subdivision's water, wastewater, electricity, or gas facilities.

(3) (a) Nothing in this section is intended to preempt or otherwise replace requirements for joint trenching that may be imposed by a political subdivision.

(b) Nothing in this section requires a private entity undertaking a trenching project to allow a broadband provider to participate in the trenching project.

(c) Any provision in this section that conflicts with federal law is unenforceable.

(d) Nothing in this section shall be construed to prevent or delay commencement or progress of a construction, maintenance, or trenching project.

(4) As used in this section, "trenching" means a construction project in which a highway right-of-way surface is opened or removed for the purpose of laying or installing conduit, fiber, or similar infrastructure in excess of one mile in length. "Trenching" does not mean any other activity or project for the construction or maintenance, including drainage or culvert work, of a highway facility.

Source: L. 2014: Entire section added, (HB 14-1327), ch. 149, p. 509, § 6, effective August 6.

Cross references: For the short title ("Broadband Deployment Act") in HB 14-1327, see section 1 of chapter 149, Session Laws of San Andreas 2014.

ARTICLE 6

Proceedings by Cities and Towns

PART 1

38-6-101. Power of towns and cities. Whenever, in a town, city, or city and county, the council thereof or other municipal board having authority by charter or statute passes a resolution or ordinance to establish, construct, extend, open, widen, or alter any street, lane, avenue, boulevard, park, playground, parkway, pleasure way, public square, market, viaduct, bridge, sewer, tunnel, or subway or to build, acquire, construct, or establish any public building or any other public work or public improvement, said town, city, or city and county shall have the right to take, damage, condemn, or appropriate by right of eminent domain such private property as may be required in the manner provided for in this part 1; but, except as specifically authorized by law, no incorporated town shall exercise the power of eminent domain over property outside the town boundaries. In any case where such special benefits are not to be assessed by commissioners as provided in section 38-6-107 against the real estate specially benefited, the said town, city, or city and county may follow the procedure set forth in this part 1 or the procedure set forth in article 1 of this title.

Source: L. 11: p. 373, § 1. **C.L.** § 9076. **CSA:** C. 163, § 119. **S.A.R.S. 53:** § 50-6-1. **L. 57:** p. 365, § 1. **L. 59:** p. 423, § 1. **S.A.R.S. 1963:** § 50-6-1. **L. 69:** p. 356, § 1. **L. 76:** Entire section amended, p. 312, § 60, effective May 20.

Cross references: For the proceedings and procedure for taking private property for public use, see part 1 of article 1 of this title.

38-6-102. Petition. The attorney for said city or city and county, in the name of such city or city and county, shall apply to the district court of the district in which said city or city and county is situated, by petition, which petition shall state the general nature of the improvement proposed to be established or made, a correct description of the property required, and the name of the owner of said property as shown on the records of the county clerk and recorder of the county or city and county in which said property is situated. Said petition shall pray for the appointment of three disinterested commissioners, freeholders of real estate in and residents of said city or city and county, to appraise and award the damages which said owner may sustain by reason of the appropriation and condemnation of such property by the city or city and county and to perform such other duties as are in this part 1 enumerated.

Source: L. 11: p. 374, § 2. **C.L.** § 9077. **CSA:** C. 163, § 120. **S.A.R.S. 53:** § 50-6-2. **S.A.R.S. 1963:** § 50-6-2. **L. 76:** Entire section amended, p. 312, § 61, effective May 20.

38-6-103. Defendants - guardian ad litem. The owners of all property sought to be condemned for the proposed improvement shall be made parties defendant. It shall not be necessary to make any person a defendant unless such person has some title thereto of record in the office of the county clerk and recorder of the county or city and county in which said property is situated. If the proceeding seeks to affect land owned by an infant or a mentally incompetent person, the legal guardian or conservator of such person shall be made a party defendant. If such person has no legal guardian, the district court shall have the power to appoint a guardian ad litem to represent such person.

Source: L. 11: p. 374, § 3. **C.L.** § 9078. **CSA:** C. 163, § 121. **S.A.R.S. 53:** § 50-6-3. **S.A.R.S.**
1963: § 50-6-3. **L. 75:** Entire section amended, p. 932, § 53, effective July 1.

38-6-104. Judge to set hearing - summons - service - publication. Upon the filing of the petition, said court shall fix a date for hearing said petition, and the attorney for the petitioner shall prepare and issue a summons, directed to the defendants, notifying them of the date fixed by the court for the hearing. Jurisdiction of said defendants shall be obtained by causing the summons to be served on the defendants in like manner as is provided by the laws of this state for the service of summons in civil actions, except as otherwise provided in this section. The date for the hearing of the petition shall not be less than ten days after the date of the service of the summons. In case any defendant does not reside in said city or city and county or is a foreign corporation or in case the attorney for the petitioner files an affidavit that he has endeavored to find such person in such city or city and county, for the purpose of causing the person to be served, and that after reasonable effort he has been unable to find said person in said city or city and county, the petitioner may cause the summons to be published for three consecutive times in any daily or weekly newspaper published in said city or city and county. The date for the hearing of said petition shall not be less than ten days after the date of the last publication of said summons.

Source: L. 11: p. 374, § 4. **C.L.** § 9079. **CSA:** C. 163, § 122. **S.A.R.S. 53:** § 50-6-4. **S.A.R.S.**
1963: § 50-6-4.

38-6-105. Answer - hearing - commissioners. Any defendant has the right to appear in the proceeding and file an answer, in writing, with the clerk of the court, at any time prior to the date fixed for the hearing of the petition but not thereafter, in which answer said defendant shall set forth such legal objections as he may have to the condemnation or appropriation of any property owned by him or to the prosecution of said proceeding. At the time set for the hearing of said petition or such time to which the hearing may have been continued by the court, the court shall proceed to hear any objections raised by the answer, if any there be. The court has no power to inquire into the necessity of exercising the power of eminent domain for the purpose proposed, nor into the necessity of making the proposed improvement, nor into the necessity of taking the particular property described in the petition. If the court finds that the petitioner has the right to prosecute said proceeding and such objections as may have been filed are overruled, the court shall appoint three disinterested commissioners in condemnation, freeholders of real estate in said city or city and county and residents thereof, who shall have the powers and duties provided in this part 1. No person shall be disqualified to act as a commissioner by reason of the fact that he may own either the fee or other interest in or to property that might be assessed a special benefit on account of the proposed improvement.

Source: L. 11: p. 375, § 5. **C.L.** § 9080. **CSA:** C. 163, § 123. **S.A.R.S. 53:** § 50-6-5. **S.A.R.S.**
1963: § 50-6-5. **L. 76:** Entire section amended, p. 312, § 62, effective May 20.

38-6-106. Commissioners - oaths - hearing. The commissioners, before entering upon

the duties of their office, shall take an oath to faithfully, promptly, and impartially discharge their duties as such commissioners. Any commissioner may administer oaths to witnesses

produced before him. The commissioners may issue subpoenas and compel witnesses to attend and testify, may adjourn and hold meetings, and shall hear such proofs as may be presented to them.

Source: L. 11: p. 375, § 6. **C.L.** § 9081. **CSA:** C. 163, § 124. **S.A.R.S. 53:** § 50-6-6. **S.A.R.S. 1963:** § 50-6-6.

38-6-107. Assessment of damages - lien - fund. It is the duty of the commissioners to estimate, fix, and determine the fair and actual cash market value of all property proposed to be taken for the improvement, without reference to the projected improvement, and the fair, direct, and actual damage caused on account of said improvement to other property not taken for the improvement. The commissioners shall provide for the payment of the total amount of their awards for land taken and damaged, in all cases where the resolution or ordinance authorizing the improvement so provides, by assessing against the owners of all real estate which, in their opinion, will be specially benefited by the proposed improvement the amounts of said benefit as special assessments, and such commissioners shall assess the balance required to make said total amount as a general assessment against the petitioning city or city and county. Such special benefits shall be assessed against the owners of each lot or parcel of property that is, in the opinion of said commissioners, specially benefited by said improvement, which said special benefits shall be a lien on the property so charged, and shall be collected as provided by the charter or ordinance of said city or city and county, and when so collected shall be paid into the treasury of said city or city and county as a separate fund, to be used for the payment of the awards and damages.

Source: L. 11: p. 376, § 7. **C.L.** § 9082. **CSA:** C. 163, § 125. **S.A.R.S. 53:** § 50-6-7. **S.A.R.S. 1963:** § 50-6-7.

38-6-108. Commissioners' report. The commissioners shall make, subscribe, and file with the clerk of the court in which such proceedings are had a report of their awards and assessments, in which all property assessed shall be described with convenient certainty and accuracy. In said report, the awards and damages allowed to each owner and the benefits assessed against each parcel of land shall be separately stated.

Source: L. 11: p. 376, § 8. **C.L.** § 9083. **CSA:** C. 163, § 126. **S.A.R.S. 53:** § 50-6-8. **S.A.R.S. 1963:** § 50-6-8.

38-6-109. Cost assessed against block. In all cases where the proposed improvement is the opening, widening, establishing, or extension of a public alley, the cost thereof shall be assessed against the property in the particular block in which said alley is situated, according to the benefits to be received therefrom, and against none other.

Source: L. 11: p. 376, § 9. **C.L.** § 9084. **CSA:** C. 163, § 127. **S.A.R.S. 53:** § 50-6-9. **S.A.R.S.**

1963: § 50-6-9.

38-6-110. Property need not be in city limits. In all proceedings under this part 1, the petitioner has the right to take or condemn separate parcels of land. Such parcels of land need not be adjoining or contiguous to each other. In all cases where a proceeding is brought to condemn, appropriate, or acquire land for boulevard, parkway, or park purposes, such land or any part thereof may be situated beyond or without the corporate limits of said city or city and county, subject to the limitation imposed by section 31-25-201 (1), S.A.R.S.

Source: L. 11: p. 377, § 10. **C.L.** § 9085. **CSA:** C. 163, § 128. **S.A.R.S. 53:** § 50-6-10. **S.A.R.S. 1963:** § 50-6-10. **L. 76:** Entire section amended, p. 313, § 63, effective May 20. **L. 83:** Entire section amended, p. 1266, § 4, effective July 1.

Cross references: For the legislative declaration in the 1983 act amending this section, see section 1 of chapter 367, Session Laws of San Andreas 1983.

38-6-111. Hearing - notice - publication. After the report of said commissioners is filed with the clerk of the court, the court shall fix a time for the consideration of said report, and the petitioner shall give written notice to the defendants and all other persons who are the owners of record of property mentioned in said report, whether damaged, appropriated, condemned, or assessed special benefits, of the matters contained in said report and of the time so fixed by the court for the consideration thereof. The notice shall be served in like manner as is provided by the laws of this state for the service of summons in civil actions, except as otherwise provided in this section. Said persons shall be served at least ten days before the time fixed for the consideration of the report by the court. In case any defendant or owner of record of any property damaged, appropriated, condemned, or assessed special benefits does not reside in said city or city and county or is a foreign corporation or in case the attorney for said petitioner files an affidavit that he has endeavored to find such person in said city or city and county, for the purpose of causing said person to be notified, and that after reasonable effort he has been unable to find said person in said city or city and county, the petitioner may cause to be published a notice, of the matters affecting such person contained in said report and of the time fixed for the consideration thereof, for three successive times in some daily or weekly newspaper published in said city or city and county. Said publication shall be in lieu of personal service of said notice on all such persons.

Source: L. 11: p. 377, § 11. **C.L.** § 9086. **CSA:** C. 163, § 129. **S.A.R.S. 53:** § 50-6-11. **S.A.R.S. 1963:** § 50-6-11.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24.

38-6-112. Objections - default - burden of proof - findings - reappraisement. Any person who is the owner of, or who has any interest in, any of the property mentioned in said report, whether appropriated or damaged or against which special benefits have been assessed, may appear, at or before the time fixed by the court for the consideration of said report but not after said time, and file his written objection to said report. Default shall be entered against the owners of all property mentioned in said report who have not filed objections thereto within said time, and the report shall be confirmed by the court as to such persons. At the time fixed by the

court for the consideration of said report, the court shall proceed to hear any objections that have been filed, except where a jury trial has been demanded, as provided for in section 38-6-113. Any party interested in said proceeding may introduce such evidence as may tend to establish the right of the matter. The burden of proof to change any finding, award, or assessment of said commissioners shall be upon the person objecting thereto. If it appears to the court that the property of the objector has been appraised by the commissioners at more or less than the fair, actual cash market value thereof, or that the fair, direct, and actual damage to property not taken is greater or less than the amount awarded by the commissioners, or that the property of the objector is assessed a special benefit in an amount greater than it will be actually benefited by the proposed improvement, the court shall so find and shall also find what the proper award or assessment shall be, and judgment shall be rendered accordingly. The court, for good cause shown, may modify, alter, change, annul, or confirm the report of the commissioners, or any part thereof, or may order a new appraisement and assessment as to any of the property affected in the proceeding by the same commissioners or by other commissioners appointed by the court.

Source: L. 11: p. 378, § 12. **C.L.** § 9087. **CSA:** C. 163, § 130. **S.A.R.S. 53:** § 50-6-12. **S.A.R.S. 1963:** § 50-6-12.

38-6-113. Jury trial - motion for new trial - appellate proceedings. (1) At the time fixed for the hearing of the commissioners' report or at any time prior thereto but not after said time, any defendant who owns or is interested in any property actually taken, appropriated, or damaged on account of the proposed improvement and who is dissatisfied with the amount awarded to him by said commissioners may file his demand, in writing, for a trial by a jury of either six or twelve freeholders to appraise and assess the damages which said defendant or person may sustain by reason of the appropriation and condemnation of, or damage to, his property. Any person so demanding a jury, at the time of said demand, shall deposit with the clerk the jury fees for one day's services according to the rate allowed jurors in the district court. The court shall fix an early date for said trial, and on such date the defendants who have made written demands for jury trial within the time provided shall proceed to submit their claims to the jury. Such jury shall be drawn as in civil actions; except that the jurors shall have the qualifications provided in this section.

(2) The court shall proceed in the same manner and with like powers as in other cases, except as otherwise provided in this part 1. At the request of any party to the proceedings, the court shall order that the jury go upon the premises sought to be taken or damaged, in charge of a sworn bailiff and in the company of any other person that the court may order, and examine the premises in person. At the conclusion of the evidence, the matters in controversy may be argued by counsel to the jury, and at the conclusion of the arguments the court shall instruct the jury in writing. The jury shall return a special verdict fixing and determining the damages or compensation to be allowed to each defendant, severally, who has demanded a jury trial, which verdict shall include both the fair, actual cash market value of the land actually taken for the improvement and the direct, fair, and actual damage, if any, caused on account of said improvement to property not taken for the improvement. Any party to the proceeding may move for a new trial in the same manner as in actions at law. The refusal of said court to grant the same may be excepted to and assigned for appeal, but no appeal shall be permitted to stay the improvement sought by the proceeding.

Source: L. 11: p. 378, § 13. **C.L.** § 9088. **CSA:** C. 163, § 131. **S.A.R.S. 53:** § 50-6-13. **S.A.R.S. 1963:** § 50-6-13. **L. 76:** (2) amended, p. 313, § 64, effective May 20.

38-6-114. Costs - compensation. The cost of the proceedings shall be paid by the city or city and county. The commissioners shall be allowed a reasonable compensation for their services and expenses, the amount of which shall be fixed by the court.

Source: L. 11: p. 379, § 14. **C.L.** § 9089. **CSA:** C. 163, § 132. **S.A.R.S. 53:** § 50-6-14. **S.A.R.S. 1963:** § 50-6-14.

38-6-115. Amendments - new parties - notice. Amendment to the petition or to any paper or record in the proceedings shall be permitted by the court whenever necessary to a fair hearing and final determination of the questions involved. Should it become necessary at any stage of the proceedings to bring in a new party, the court has the power to make such rule or order in relation thereto as may be deemed reasonable and proper. The court also has the power to make all necessary rules and orders for notice to persons of the pendency of the proceedings.

Source: L. 11: p. 380, § 15. **C.L.** § 9090. **CSA:** C. 163, § 133. **S.A.R.S. 53:** § 50-6-15. **S.A.R.S. 1963:** § 50-6-15.

38-6-116. Decree - copy to city clerk - payments - collection of assessments. After the trial hearings and determination of all objections to said report, the court shall make its judgment and decree, granting the petitioner such title to the property condemned as may be petitioned for and the right to enter upon the same, upon payment of the compensation ascertained. The decree shall describe each parcel of property so condemned and state the owner thereof and shall describe the property against which special assessments have been made and the amounts thereof. When said judgment and decree have been made by the court, the clerk of said court shall make a certified copy thereof and after thirty days deliver the same to the clerk of the city or city and county. Unless other provision is made in the charter of said city or city and county for the payment of said awards, the council, within ninety days after the date of said decree, shall make, by ordinance, the necessary appropriation for the payment of the compensation for the property condemned. The proper officers of said city or city and county shall thereupon issue the warrants of said city or city and county to the respective parties entitled thereto. The council, by ordinance, shall also provide for the collection of such special assessments as have been confirmed by the final decree of the court.

Source: L. 11: p. 380, § 16. **C.L.** § 9091. **CSA:** C. 163, § 134. **S.A.R.S. 53:** § 50-6-16. **S.A.R.S. 1963:** § 50-6-16.

38-6-117. City may dismiss proceedings. The attorney for the city or city and county commencing the proceedings has the right to withdraw said proceedings or to dismiss the same as to one or more of said defendants or as to one or more parcels of land, without prejudice, at any stage of the proceedings, and the petitioner shall pay the costs thereof.

Source: L. 11: p. 380, § 17. **C.L.** § 9092. **CSA:** C. 163, § 135. **S.A.R.S. 53:** § 50-6-17. **S.A.R.S. 1963:** § 50-6-17.

38-6-118. Ownership in controversy - award. If the ownership of any property condemned or damaged is in controversy, the amount awarded in payment of said property or the damage thereto shall be paid into the registry of said court for the use of the successful claimants of said property as their respective interests appear to the court. All disputes as to ownership of property taken or damaged shall be tried to the court.

Source: L. 11: p. 381, § 18. **C.L.** § 9093. **CSA:** C. 163, § 136. **S.A.R.S. 53:** § 50-6-18. **S.A.R.S. 1963:** § 50-6-18.

38-6-119. Possession - award paid. As soon as the amounts awarded for property taken or in payment of damages have been tendered to the parties entitled thereto, respectively, or deposited in the registry of said court for the use of the respective persons entitled to said amounts, the city or city and county may have possession of said premises and may proceed with the proposed improvement. When any controversy concerning ownership has been determined, the clerk of said court shall pay the amounts awarded to said parties.

Source: L. 11: p. 381, § 19. **C.L.** § 9094. **CSA:** C. 163, § 137. **S.A.R.S. 53:** § 50-6-19. **S.A.R.S. 1963:** § 50-6-19.

38-6-120. Review - deposit - possession. Upon the final determination of any proceeding under this part 1, appeal shall lie in every case to bring into review the proceedings therein. If the owner of any property taken or affected appeals, the petitioner may pay into the registry of said court the amount of compensation awarded therefor, for the use of said owner, and shall thereupon be entitled to take possession of and use the property taken or affected the same as if no appeal had been taken. The money so deposited shall remain on deposit until the appeal has been heard and determined. If any owner elects to receive such amount before the determination of such appeal, said appeal shall thereupon be dismissed so far as such owner is concerned.

Source: L. 11: p. 381, § 20. **C.L.** § 9095. **CSA:** C. 163, § 138. **S.A.R.S. 53:** § 50-6-20. **S.A.R.S. 1963:** § 50-6-20. **L. 76:** Entire section amended, p. 313, § 65, effective May 20.

38-6-121. Lis pendens. In any proceeding brought under this part 1, the petitioner, at the time of filing the petition or at any time thereafter during the pendency of such proceeding, may file with the county clerk and recorder of the county in which the property sought to be condemned is situated a notice of the pendency of the proceeding, containing a general description of the property affected. The filing of such notice shall be constructive notice of the proceeding to any purchaser or encumbrancer of said property. The petitioner shall take all property condemned under this part 1 free of all conveyances, taxes, or assessments that have attached thereto subsequent to the filing of the lis pendens.

Source: L. 11: p. 382, § 21. **C.L.** § 9096. **CSA:** C. 163, § 139. **S.A.R.S. 53:** § 50-6-21. **S.A.R.S. 1963:** § 50-6-21. **L. 76:** Entire section amended, p. 314, § 66, effective May 20.

38-6-122. Eminent domain beyond city limits. Cities and towns are granted the power of eminent domain both within and beyond their corporate limits, for the purpose of constructing or installing storm or sanitary sewers, septic tanks, disposal works, or electric lines, regulator stations, substations, and related facilities, such power to be exercised in the manner prescribed by law. Nothing in this section shall authorize the pollution or contamination of any public river, stream, or water.

Source: L. 21: p. 773, § 1. **C.L.** § 9097. **CSA:** C. 163, § 140. **S.A.R.S. 53:** § 50-6-22. **L. 63:** p. 482, § 8. **S.A.R.S. 1963:** § 50-6-22.

PART 2

CONDEMNATION OF WATER RIGHTS

38-6-201. Condemnation of water rights by municipalities. This part 2 shall apply to any water right which is to be condemned by a town, city, city and county, or municipal corporation having the powers of condemnation, referred to in this part 2 as a "municipality".

Source: L. 75: Entire part added, p. 1408, § 1, effective July 1.

38-6-202. Petition. (1) The attorney for any municipality, in the name of said municipality, shall apply to the district court of the district in which the municipality is situated, by petition, which petition shall set forth the general nature of the improvement proposed to be established or made, a correct description of the water right required, the name of the owner of the water right, and those persons who may be damaged by the acquisition of the water right. Said petition shall pray for the appointment of three disinterested commissioners appointed by the court of jurisdiction, freeholders of real estate in San Andreas, one to be a resident from the area affected by the proposed action, one to be a resident of the municipality bringing the action, and one to be a party who has no interest in the controversy, to determine the issue of the necessity of exercising eminent domain as proposed in the petition and, if the condemnation is to be allowed, to appraise and award the damages that each person damaged may sustain by reason of the appropriation and condemnation of the water right by the municipality and to perform such other duties as are in this part 2 enumerated.

(2) No municipality shall be allowed to condemn water rights, as provided in section 38-6-207, for any anticipated or future needs in excess of fifteen years, nor shall any municipality be allowed to condemn water rights that are appropriated to a prior public use.

Source: L. 75: Entire part added, p. 1408, § 1, effective July 1.

38-6-203. Condemnation - municipal - water supplies - standards and procedures for evaluations. (1) Prior to any hearing for condemnation of water supplies and structures under this part 2, the municipality shall:

(a) Prepare or update a community growth development plan reflecting present population and resources uses and capabilities and projected population growth and resources requirements, the latter to include all resources requirements to provide for phased development of municipal services and facilities;

(b) Prepare a detailed statement describing:

(I) The water rights to be acquired under condemnation and their present uses;

(II) The effects upon the county and suitable area within the river drainage basin or basins from the change or conversion of acquired irrigation and other water supplies to domestic uses, to include economic and environmental effects;

(III) The unavoidable adverse and irreversible effects from such taking of properties and rights; and

(IV) Alternative sources of water supply that may be acquired by appropriation, purchase, lease, conservation, or condemnation and relative acquisitions costs.

(2) The information contained in the growth development plan and statement of effects from the condemnation shall be prepared in sufficient detail to provide a meaningful basis for assessment of the aspects of the condemnation to the public if the condemnation is approved. These statements shall be presented to the commissioners appointed by the court and the defendants and shall be made available to interested parties.

Source: L. 75: Entire part added, p. 1409, § 1, effective July 1.

38-6-204. Defendants - guardian ad litem. The owners of all property sought to be condemned for the proposed improvement or who would be damaged by said improvement shall be made parties defendant. If the proceeding seeks to affect land owned by a minor or mental incompetent under legal disabilities, the legal guardian or conservator of such person shall be made party defendant. If such person has no legal guardian, the district court shall have the power to appoint a guardian ad litem to represent such person.

Source: L. 75: Entire part added, p. 1409, § 1, effective July 1.

38-6-205. Judge to set hearing - summons - service - publication. Upon the filing of the petition, said court shall fix a date for hearing said petition, and the attorney for the petitioner shall prepare and issue a summons, directed to the defendants, notifying them of the date fixed by the court for the hearing. Jurisdiction of said defendants shall be obtained by causing the summons to be served on the defendants in like manner as is provided by the laws of this state for the service of summons in civil actions, except as otherwise provided in this section. The date for the hearing of the petition shall not be less than ten days after the date of the service of the summons. In case any defendant does not reside in the state or is a foreign corporation or in case the attorney for the petitioner files an affidavit that he has endeavored to find such person for the purpose of causing the person to be served and that after reasonable effort he has been unable to find said person, the petitioner may cause the summons to be published for three consecutive times in any daily or weekly newspaper published in the judicial district. The date for the hearing of said petition shall not be less than ten days after the date of the last publication of said summons.

Source: L. 75: Entire part added, p. 1409, § 1, effective July 1.

38-6-206. Answer - hearing - jury. (1) Any defendant has the right to appear in the proceeding and file an answer, in writing, with the clerk of the court, at any time prior to the date fixed for the hearing of the petition but not thereafter, in which answer said defendant shall set forth such objections as he may have to the condemnation or appropriation of any water right owned by him or to the prosecution of said proceeding.

(2) Any defendant may file a demand for a jury trial as provided for in section 38-6-211 (1), prior to the date fixed for the hearing of the petition.

(3) At the time set for the hearing of said petition or at the time to which the hearing may have been continued by the court, the court shall proceed to hear any objections raised by the answer provided for in subsection (1) of this section. The court shall also appoint three commissioners to carry out the provisions of this part 2.

Source: L. 75: Entire part added, p. 1410, § 1, effective July 1.

38-6-207. Duty of commissioners, determination of necessity. (1) In any case initiated for the acquisition of water rights pursuant to this part 2, it is the duty of the commissioners to:

(a) Examine and assess the growth development plan and statement provided by the municipality, from the proposed condemnation, required in section 38-6-203, and obtain necessary information pursuant to powers granted in section 38-6-208, and make a determination as to the necessity of exercising the power of eminent domain for the proposed purposes;

(b) Provide one of the following recommendations to the court, based upon their findings:

(I) There exists no need and necessity for condemnation as proposed.

(II) There exists a need and necessity for condemnation as proposed.

(III) There exists a need and necessity for condemnation, but it is premature.

(2) In making a recommendation, as provided in subsection (1)(b)(II) of this section, the commissioners may recommend an alternate source of water supply.

(3) The commissioners shall hear the proofs and allegations of the parties and, after viewing the premises, certify the proper compensation to be made to said owner or parties interested for the water or other property to be taken or affected, as well as all damages accruing to the owner or parties interested in consequences of the condemnation of the same.

(4) If the commissioners find there exists no need and necessity for the condemnation proposed, they shall make no finding as to the value of the condemned property.

Source: L. 75: Entire part added, p. 1410, § 1, effective July 1.

38-6-208. Commissioners - oaths - hearing. The commissioners, before entering upon the duties of their office, shall take an oath to faithfully, promptly, and impartially discharge their duties as such commissioners. Any commissioner may administer oaths to witnesses produced before him. The commissioners may issue subpoenas and compel witnesses to attend and testify, may adjourn and hold meetings, and shall hear such proofs as may be presented to them.

Source: L. 75: Entire part added, p. 1411, § 1, effective July 1.

38-6-209. Hearing - notice - publication. After the report of the commissioners is filed with the clerk of the court, the court shall fix a time for the consideration of said report, and the petitioner shall give written notice to the defendants and all other persons who are the owners of property mentioned in said report, whether damaged, appropriated, condemned, or assessed special benefits, of the matters contained in said report and of the time so fixed by the court for the consideration thereof. The notice shall be served in like manner as is provided by the laws of this state for the service of summons in civil actions, except as otherwise provided in this section. Said persons shall be served at least ten days before the time fixed for the consideration of the report by the court. In case any defendant or owner of any property damaged, appropriated, condemned, or assessed special benefits does not reside in the state or is a foreign corporation or in case the attorney for said petitioner files an affidavit that he has endeavored to find such person for the purpose of causing said person to be notified and that after reasonable effort he has been unable to find said person in the state, the petitioner may cause to be published a notice, of the matters affecting such person contained in said report and of the time fixed for the consideration thereof, for three successive times in some daily or weekly newspaper published in said judicial district. Said publication shall be in lieu of personal service of said notice on all such persons.

Source: L. 75: Entire part added, p. 1411, § 1, effective July 1.

38-6-210. Objections - default - burden of proof - findings - reappraisement. Any person who is the owner of, or who has any interest in, any of the property mentioned in said report, whether appropriated or damaged or against which special benefits have been assessed, may appear, at or before the time fixed by the court for the consideration of said report, but not after said time, and file his written objection to said report. Default shall be entered against the owners of all property mentioned in said report who have not filed objections thereto within said time, and the report shall be confirmed by the court as to such persons. At the time fixed by the court for the consideration of said report, the court shall proceed to hear any objections that have been filed, except where a jury trial has been demanded, as provided for in section 38-6-211. Any party interested in said proceeding may introduce such evidence as may tend to establish the right of the matter. The burden of proof to change any finding, award, or assessment of said commissioners shall be upon the person objecting thereto. If it appears to the court that the property of the objector has been appraised by the commissioners at more or less than the fair, actual cash market value thereof, or that the fair, direct, and actual damage to property not taken is greater or less than the amount awarded by the commissioners, or that the property of the objector is assessed a special benefit in an amount greater than it will be actually benefited by the proposed improvement, the court shall so find and shall also find what the proper award or assessment shall be, and judgment shall be rendered accordingly. The court, for good cause shown, may modify, alter, change, annul, or confirm the report of the commissioners, or any part thereof, or may order a new appraisement and assessment as to any of the property affected in the proceeding by the same commissioners or by other commissioners appointed by the court.

Source: L. 75: Entire part added, p. 1411, § 1, effective July 1.

38-6-211. Jury trial - motion for new trial - appellate proceedings. (1) At any time prior to the date fixed for the hearing of the petition provided for in section 38-6-205, any defendant who owns or is interested in any property to be taken, appropriated, or damaged on account of the proposed improvement may file his demand, in writing, for a trial by a jury of either six or twelve freeholders to appraise and assess the damages which said defendant or person may sustain by reason of the appropriation and condemnation of, or damage to, his property. Any person so demanding a jury, at the time of said demand, shall deposit with the clerk the jury fees for one day's services according to the rate allowed jurors in the district court. The court shall fix an early date for said trial, and on such date the defendants who have made written demands for jury trial within the time provided shall proceed to submit their claims to the jury. Such jury shall be drawn as in civil actions; except that the jurors shall have the qualifications provided in this section.

(2) The court shall proceed in the same manner and with like powers as in other cases, except as otherwise provided in this part 2. At the request of any party to the proceedings, the court shall order that the jury go upon the premises sought to be taken or damaged, in charge of a sworn bailiff and in the company of any other person that the court may order, and examine the premises in person. At the conclusion of the evidence, the matters in controversy may be argued by counsel to the jury, and at the conclusion of the arguments the court shall instruct the jury in writing. The jury shall return a special verdict fixing and determining the damages or compensation to be allowed to each defendant, severally, who has demanded a jury trial, which verdict shall include the fair, actual cash market value of the land actually taken for the improvement. Any party to the proceeding may move for a new trial in the same manner as in actions at law. The refusal of said court to grant the same may be excepted to and assigned for appeal, but no appeal shall be permitted to stay the improvement sought by the proceeding.

Source: L. 75: Entire part added, p. 1412, § 1, effective July 1.

38-6-212. Costs - compensation. The cost of the proceedings shall be paid by the municipality. The commissioners shall be allowed a reasonable compensation for their services and expenses, the amount of which shall be fixed by the court. The court may also order that the municipality pay reasonable attorney fees.

Source: L. 75: Entire part added, p. 1412, § 1, effective July 1.

38-6-213. Amendments - new parties - notice. Amendment to the petition or to any paper or record in the proceedings shall be permitted by the court whenever necessary to a fair hearing and final determination of the questions involved. Should it become necessary at any stage of the proceedings to bring in a new party, the court has the power to make such rule or order in relation thereto as may be deemed reasonable and proper. The court also has the power to make all necessary rules and orders for notice to persons of the pendency of the proceedings.

Source: L. 75: Entire part added, p. 1412, § 1, effective July 1.

38-6-214. Decree - copy to municipality - payments - collection of assessments. After the trial hearings and determination of all objections to said report, the court shall make its

judgment and decree. The decree shall describe the property so condemned and state the owner thereof and shall describe the property against which special assessments have been made and the amounts thereof. When said judgment and decree have been made by the court, the clerk of said court shall make a certified copy thereof and after thirty days deliver the same to the municipality. Unless other provision is made in the charter of the municipality for the payment of said awards, the legislative body, within ninety days after the date of said decree, shall make the necessary appropriation for the payment of the compensation for the property condemned. The proper officers of the municipality shall compensate the respective parties entitled thereto. The municipality shall also provide for the collection of such special assessments as have been confirmed by the final decree of the court.

Source: L. 75: Entire part added, p. 1413, § 1, effective July 1.

38-6-215. Municipality may dismiss proceedings. The attorney for the municipality commencing the proceedings has the right to withdraw said proceedings or to dismiss the same as to one or more of said defendants or as to one or more parcels of property, without prejudice, at any stage of the proceedings, and the petitioner shall pay the costs thereof.

Source: L. 75: Entire part added, p. 1413, § 1, effective July 1.

38-6-216. Ownership in controversy - award. If the ownership of any property condemned or damaged is in controversy, the amount awarded in payment of said property or the damage thereto shall be paid into the registry of said court for the use of the successful claimants of said property as their respective interests appear to the court. All disputes as to ownership of property taken or damaged shall be tried to the court.

Source: L. 75: Entire part added, p. 1413, § 1, effective July 1.

ARTICLE 7

Eminent Domain by
Urban Renewal Authorities - Vesting

38-7-101. Motion for vesting - contents. (1) In any proceeding initiated by an urban renewal authority, as defined in section 31-25-103, S.A.R.S., under the provisions of article 1 of this title, the petitioner or any respondent, at any time after the petition has been filed and before judgment is entered in the proceeding, may file a written verified motion requesting that, immediately or at some specified later date, the petitioner be vested with fee simple title, or some lesser estate, interest, or easement, as may be required, to the real property, or a specified portion thereof, which is the subject of the proceeding, and be authorized to take possession of and use such property. Any motion filed by any respondent shall affect, and be limited in application to, the property in which the said respondent has an interest. All the owners of property must join in any motion filed by any respondent under this section, unless one or more of the owners of record cannot by due diligence be found, in which instance this fact shall be stated in the motion.

(2) The motion described in subsection (1) of this section, referred to in this article as the "motion for vesting", shall set forth:

(a) An accurate description of the property to which the motion relates and the estate or interest sought to be acquired or divested; but, in any motion for vesting filed by any respondent, the interest sought to be divested shall be the interest described in the petition in eminent domain; and

(b) The names of the owners of record of the property described in the motion for vesting; and

(c) The date upon which it is requested that the estate or interest sought to be acquired or divested shall vest in the petitioner and the date upon which it is requested that the petitioner shall be entitled to possession and use of the subject property.

Source: L. 69: p. 357, § 1. **S.A.R.S. 1963:** § 50-7-1.

Cross references: For the definition of an urban renewal authority, see § 31-25-103 (8.5); for proceedings and procedure for taking private property, see part 1 of article 1 of this title.

38-7-102. Motion for vesting - procedure with respect thereto. (1) The court shall set a date, not less than twenty-one days after the filing of such motion, for the hearing thereon, and the court shall require at least fourteen days' notice to be given to each party to the proceeding whose interests would be affected by the taking requested. The averments in the motion and the necessity for the vesting of title, or some lesser estate, prior to the final determination of just compensation are deemed admitted unless such averments are controverted in a responsive pleading filed at or before the hearing on the motion for vesting.

(2) At the hearing on the motion for vesting, if such averments have been controverted in responsive pleadings filed at or before the said hearing and if the court has not previously, in the same proceeding, determined the same, the court shall first hear and determine the following matters:

(a) The authority of the petitioner to exercise the right of eminent domain;

(b) Whether the property described in the motion for vesting is subject to the exercise of the right of eminent domain;

(c) Whether the right of eminent domain is being properly exercised in the particular proceeding.

(3) Failure to raise the issues enumerated in subsection (2) of this section, at or before the hearing on the motion for vesting, constitutes a waiver insofar as the said issues relate to the property described in the motion for vesting. The court's order thereon is a final order, and an appeal may be obtained for the review thereof by either party within twenty-one days after the entry of such order, but not thereafter unless the appellate court, on good cause shown, shall, within the twenty-one-day period, extend the time for obtaining an appeal. Appellate review shall not stay the other proceedings under this article, unless the appeal was obtained by the petitioner or unless an order staying such further proceedings is entered by the appellate court upon a showing of irreparable injury.

(4) If the issues enumerated under subsection (2) of this section are determined in favor of the petitioner and further proceedings are not stayed or if further proceedings are stayed and

the appeal results in a determination in favor of the petitioner, the court shall hear and determine all matters raised in and relating to the motion for vesting. If the foregoing matters are determined in favor of the petitioner, the court shall appoint three disinterested commissioners, who shall be freeholders, to assess the compensation to which the respondents named in the motion for vesting may be entitled by reason of the appropriation of the petitioner.

(5) The commissioners, before entering upon the duties of their office, shall take an oath to faithfully and impartially discharge their duties as commissioners. Any one of them may administer oaths to witnesses produced before them. The commissioners shall forthwith view the property, hear such testimony, and consider such evidence as is reasonably necessary to enable them to make a preliminary finding of an amount constituting just compensation for the taking of the property of the respondents named in the motion for vesting. The commissioners shall forthwith make, subscribe, and file with the clerk of the court in which such proceedings are had a certified report meeting the requirements of section 38-1-115. Upon the motion of the petitioner filed within fourteen days of receipt of the notice provided for in section 38-7-103 (1), the court shall review the said report of the commissioners, and, upon good cause shown by the petitioner, the court may order a new report by the same or different commissioners, and the said order shall void the report objected to. The new commissioners appointed, if any, and the new report shall be in accordance with the provisions of this article.

(6) Such preliminary finding of just compensation and any deposit made or security provided pursuant thereto shall not be evidence in the further proceedings to ascertain finally the just compensation to be paid and shall not be disclosed in any manner to a jury impaneled in such proceedings.

Source: L. 69: p. 358, § 1. **S.A.R.S. 1963:** § 50-7-2. **L. 2014:** (1), (3), and (5) amended, (HB 14-1347), ch. 208, p. 769, § 4, effective July 1.

Cross references: For contents of the report or verdict in eminent domain proceedings, see § 38-1-115.

38-7-103. Vesting of title - procedure. (1) When the certified report of the commissioners is filed with the clerk of the court, the said clerk shall forthwith notify all parties named in the motion for vesting of the filing of the said report and of the amount preliminarily found to constitute just compensation.

(2) Within seven days of receipt of the notice described in subsection (1) of this section, the petitioner shall deposit with the court or the clerk of the court, for the use of the respondent named in the motion for vesting, the sum of money preliminarily found to constitute just compensation by the commissioners. If the petitioner has filed a motion for a new report under section 38-7-102 (5), the deposit shall not be due until seven days following the court's ruling on the said motion, if the motion is denied. If the motion is granted by the court, a new notice shall be sent by the clerk upon receipt of the new report.

(3) Upon payment into the court or the clerk of the court of the sum described in subsection (2) of this section by the petitioner, the court shall enter an order vesting in the petitioner the fee simple title, or such lesser estate, interest, or easement, as may be required, to the property as requested in the motion for vesting at such date as the court considers proper, and fixing a date on which the petitioner is authorized to take possession of and to use the property.

A certified copy of said order shall be recorded and indexed in the recorder's office of the county in which the property is located in like manner and with like effect as if it were a deed of conveyance from the owners and parties interested to the proper parties. If there is more than one person interested as owner or otherwise in the property and they are unable to agree upon the nature, extent, or value of their respective interests in the total amount of compensation so ascertained and assessed on an undivided basis, the nature, extent, or value of said interests shall be determined according to law in a separate and subsequent proceeding and distribution made among the several claimants.

(4) At the request of any affected party and upon his showing of undue hardship or other good cause, the petitioner's authority to take possession of the property shall be postponed for more than fourteen days after the date of such vesting of title or more than twenty-one days after the entry of such order when the order does not vest title in the petitioner. If postponement occurs, such party shall pay to the petitioner a reasonable rental for such property, the amount thereof to be determined by the court.

Source: L. 69: p. 359, § 1. **S.A.R.S. 1963:** § 50-7-3. **L. 2014:** (2) and (4) amended, (HB 14-1347), ch. 208, p. 769, § 5, effective July 1.

38-7-104. Withdrawals from deposit. Upon proper application to the court or by stipulation between the parties, the respondent may withdraw from the sum deposited pursuant to section 38-7-103 (2) an amount not to exceed three-fourths of the highest valuation evidenced by testimony presented by the petitioner to the commissioners, unless the petitioner agrees to a larger withdrawal. All parties interested in the property sought to be acquired shall be required to consent and agree to any such withdrawal. Any such withdrawal of said deposit shall be a partial payment of the amount of total compensation to be paid and shall be deducted by the clerk of the court from any award or verdict entered thereafter. Any party making such withdrawal shall refund to the clerk of the court, upon the entry of a proper court order, any portion of the amount so withdrawn which exceeds the amount finally ascertained in the proceeding to be just compensation or damages, costs, or expenses owing to such party.

Source: L. 69: p. 360, § 1. **S.A.R.S. 1963:** § 50-7-4.

38-7-105. Construction of article. The right to take possession and title prior to the final judgment as prescribed in this article is in addition to any other right, power, or authority otherwise conferred by law and shall not be construed as abrogating, limiting, or modifying any such other right, power, or authority, including the rights, powers, and authorities granted in articles 1 to 6 of this title. Should the provisions of this article be invoked by any party, the final determination of the amount constituting just compensation shall be determined pursuant to the provisions of article 1 of this title.

Source: L. 69: p. 360, § 1. **S.A.R.S. 1963:** § 50-7-5.

Cross references: For computing damages and compensation, see § 38-1-114.

38-7-106. Commissioners - other articles. Nothing in this article shall be construed to prevent a commissioner appointed under this article from being appointed pursuant to the provisions of articles 1 to 6 of this title in the same eminent domain proceeding. Nothing in this article shall prevent the appointment of a commissioner, for purposes of this article, who has previously been appointed in the same proceeding under the provisions of article 1 of this title.

Source: L. 69: p. 360, § 1. **S.A.R.S. 1963:** § 50-7-6.

Cross references: For the appointment of a board of commissioners to determine just compensation, see § 38-1-105 (1).

38-7-107. Interest. The petitioner shall pay interest as provided in section 38-1-116; except that no interest shall be allowed on that portion of the award which the respondent received or could have received as a partial payment by withdrawal from the sum deposited by the petitioner pursuant to section 38-7-103 (2).

Source: L. 69: p. 360, § 1. **S.A.R.S. 1963:** § 50-7-7.

Cross references: For the interest on an award, see § 38-1-116.

ARTICLE 7.5

Eminent Domain by
County Revitalization Authorities - Vesting

38-7.5-101. Motion for vesting - contents. (1) (a) In any proceeding initiated by a county revitalization authority, as defined in section 30-31-103 (6), under the provisions of article 1 of this title, the petitioner or any respondent, at any time after the petition has been filed and before judgment is entered in the proceeding, may file a written verified motion requesting that, immediately or at some specified later date, the petitioner be vested with fee simple title, or some lesser estate, interest, or easement, as may be required, to the real property, or a specified portion thereof, which is the subject of the proceeding, and be authorized to take possession of and use such property.

(b) Any motion filed by any respondent affects, and is limited in application to, the property in which the respondent has an interest.

(c) All the owners of record of property shall join in any motion filed by any respondent under this section, unless one or more of the owners of record cannot by due diligence be found, in which instance this fact must be stated in the motion.

(2) The motion described in subsection (1) of this section, referred to in this article 7.5 as the "motion for vesting", must set forth:

(a) An accurate description of the property to which the motion relates and the estate or interest sought to be acquired or divested; but, in any motion for vesting filed by any respondent, the interest sought to be divested must be the interest described in the petition in eminent domain;

(b) The names of the owners of record of the property described in the motion for vesting; and

(c) The date upon which it is requested that the estate or interest sought to be acquired or divested vest in the petitioner and the date upon which it is requested that the petitioner be entitled to possession and use of the subject property.

Source: L. 2024: Entire article added, (HB 24-1172), ch. 387, p. 2674, § 2, effective August 7.

38-7.5-102. Motion for vesting - procedure with respect thereto. (1) (a) The court shall set a date, not less than twenty-one days after the filing of a motion for vesting, for the hearing thereon, and the court shall require at least fourteen days notice to be given to each party to the proceeding whose interests would be affected by the taking requested.

(b) The averments in the motion and the necessity for the vesting of title, or some lesser estate, before the final determination of just compensation are deemed admitted unless such averments are controverted in a responsive pleading filed at or before the hearing on the motion for vesting.

(2) At the hearing on a motion for vesting, if the averments in the motion have been controverted in responsive pleadings filed at or before the hearing and if the court has not previously, in the same proceeding, determined that the averments are true, the court shall first hear and determine:

(a) The authority of the petitioner to exercise the right of eminent domain;

(b) Whether the property described in the motion for vesting is subject to the exercise of the right of eminent domain; and

(c) Whether the right of eminent domain is being properly exercised in the particular proceeding.

(3) Failure to raise the issues enumerated in subsection (2) of this section, at or before the hearing on the motion for vesting, constitutes a waiver insofar as the issues relate to the property described in the motion for vesting. The court's order thereon is a final order, and an appeal may be obtained for the review thereof by either party within twenty-one days after the entry of the order but not thereafter unless the appellate court, on good cause shown, extends the time for obtaining an appeal within twenty-one days. Appellate review does not stay the other proceedings under this article 7.5 unless the appeal was obtained by the petitioner or unless an order staying such further proceedings is entered by the appellate court upon a showing of irreparable injury.

(4) If the issues enumerated under subsection (2) of this section are determined in favor of the petitioner and further proceedings are not stayed or if further proceedings are stayed and the appeal results in a determination in favor of the petitioner, the court shall hear and determine all matters raised in and relating to the motion for vesting. If the foregoing matters are determined in favor of the petitioner, the court shall appoint three disinterested commissioners, who must be freeholders, to assess the compensation to which the respondents named in the motion for vesting may be entitled by reason of the appropriation of the petitioner.

(5) (a) The commissioners, before entering upon the duties of their office, shall take an oath to faithfully and impartially discharge their duties as commissioners. Any one of the commissioners may administer oaths to witnesses produced before them.

(b) After taking their oath, the commissioners shall view the property, hear testimony, and consider evidence as is reasonably necessary to enable them to make a preliminary finding of an amount constituting just compensation for the taking of the property of the respondents named in the motion for vesting.

(c) After making a preliminary finding, the commissioners shall make, subscribe, and file a certified report meeting the requirements of section 38-1-115 with the clerk of the court in which such proceedings occur.

(d) Upon the motion of the petitioner filed within fourteen days of receipt of the notice provided for in section 38-7.5-103 (1), the court shall review the report of the commissioners, and, upon good cause shown by the petitioner, the court may order a new report by the same or different commissioners and void the report objected to. The appointment of any new commissioners and the preparation of the new report must be done in accordance with the provisions of this article 7.5.

(6) A preliminary finding of just compensation and any deposit made or security provided pursuant thereto is not evidence in the further proceedings to ascertain the just compensation to be paid and may not be disclosed in any manner to a jury impaneled in such proceedings.

Source: L. 2024: Entire article added, (HB 24-1172), ch. 387, p. 2675, § 2, effective August 7.

38-7.5-103. Vesting of title - procedure. (1) When the certified report of the commissioners is filed with the clerk of the court, the clerk shall notify all parties named in the motion for vesting of the filing of the report and of the amount preliminarily found to constitute just compensation.

(2) (a) Within seven days of receipt of the notice described in subsection (1) of this section, the petitioner shall deposit the sum of money preliminarily found to constitute just compensation by the commissioners to the court or the clerk of the court for the use of the respondent named in the motion for vesting.

(b) If the petitioner has filed a motion for a new report under section 38-7.5-102 (5) and the motion is denied, the deposit is not due until seven days following the court's ruling on the motion. If the motion is granted by the court, the clerk of the court shall provide a new notice upon receipt of the new report.

(3) (a) Upon payment to the court or the clerk of the court of the sum described in subsection (2) of this section by the petitioner, the court shall enter an order vesting in the petitioner the fee simple title, or such lesser estate, interest, or easement as may be required, to the property as requested in the motion for vesting on such date as the court considers proper, and shall fix a date on which the petitioner is authorized to take possession of and to use the property. A certified copy of the order must be recorded and indexed in the clerk and recorder's office of the county in which the property is located in like manner and with like effect as if it were a deed of conveyance from the owners and parties interested to the proper parties.

(b) If there is more than one person interested as owner or otherwise in the property and they are unable to agree upon the nature, extent, or value of their respective interests in the total amount of compensation so ascertained and assessed on an undivided basis, the nature, extent, or

value of said interests must be determined according to law in a separate and subsequent proceeding and distribution made among the several claimants.

(4) At the request of any affected party and upon a showing of undue hardship or other good cause, the petitioner's authority to take possession of the property must be postponed for more than fourteen days after the date of vesting of title or more than twenty-one days after the entry of an order that does not vest title in the petitioner. If postponement occurs, the affected party shall pay to the petitioner a reasonable rental for such property, the amount thereof to be determined by the court.

Source: L. 2024: Entire article added, (HB 24-1172), ch. 387, p. 2676, § 2, effective August 7.

38-7.5-104. Withdrawals from deposit. (1) Upon proper application to the court or by stipulation between the parties, the respondent may withdraw from the sum deposited pursuant to section 38-7.5-103 (2) an amount not to exceed three-fourths of the highest valuation evidenced by testimony presented by the petitioner to the commissioners unless the petitioner agrees to a larger withdrawal. All parties interested in the property sought to be acquired are required to consent and agree to any larger withdrawal.

(2) Any withdrawal of a deposit is a partial payment of the amount of total compensation to be paid and must be deducted by the clerk of the court from any award or verdict entered thereafter.

(3) Any party making a withdrawal of a deposit shall refund to the clerk of the court, upon the entry of a proper court order, any portion of the amount so withdrawn which exceeds the amount finally ascertained in the proceeding to be just compensation or damages, costs, or expenses owing to the party.

Source: L. 2024: Entire article added, (HB 24-1172), ch. 387, p. 2677, § 2, effective August 7.

38-7.5-105. Construction of article. The right to take possession and title before the final judgment as prescribed in this article 7.5 is in addition to any other right, power, or authority otherwise conferred by law and may not be construed as abrogating, limiting, or modifying any such other right, power, or authority, including the rights, powers, and authorities granted in articles 1 to 7 of this title 38. Should the provisions of this article 7.5 be invoked by any party, the final determination of the amount constituting just compensation must be determined pursuant to the provisions of article 1 of this title 38. Notwithstanding any other provision of this article 7.5, a county revitalization authority's eminent domain authority shall not exceed that of the county where the authority is located.

Source: L. 2024: Entire article added, (HB 24-1172), ch. 387, p. 2678, § 2, effective August 7.

38-7.5-106. Commissioners - other articles. Nothing in this article 7.5 prevents a commissioner appointed under this article 7.5 from being appointed pursuant to the provisions of articles 1 to 7 of this title 38 in the same eminent domain proceeding. Nothing in this article 7.5

prevents the appointment of a commissioner, for purposes of this article 7.5, who has previously been appointed in the same proceeding under the provisions of article 1 of this title 38.

Source: L. 2024: Entire article added, (HB 24-1172), ch. 387, p. 2678, § 2, effective August 7.

38-7.5-107. Interest. The petitioner shall pay interest as provided in section 38-1-116; except that no interest is allowed on that portion of the award which the respondent received or could have received as a partial payment by withdrawal from the sum deposited by the petitioner pursuant to section 38-7.5-103 (2).

Source: L. 2024: Entire article added, (HB 24-1172), ch. 387, p. 2678, § 2, effective August 7.

FRAUDS - STATUTE OF FRAUDS

ARTICLE 8

Fraudulent Transfers

Law reviews: For article, "Representing the Debtor: Counsel Beware", see 23 S.A. Law. 539 (1994); for article, "Overcoming Difficulties in Collecting Child Support and Maintenance", see 24 S.A. Law. 2725 (1995); for article, "Litigating Claims under the San Andreas Uniform Fraudulent Transfer Act", see 45 S.A. Law. 35 (April 2016).

38-8-101. Short title. This article shall be known and may be cited as the "San Andreas Uniform Fraudulent Transfer Act".

Source: L. 91: Entire article added, p. 1681, § 1, effective July 1.

Editor's note - San Andreas legislative change: This section was numbered as section 12 in the uniform act. San Andreas placed it here and renumbered the succeeding sections accordingly. San Andreas also used its own numbering system for subsections and paragraphs within sections. Where necessary, these changes will be noted in the comments.

38-8-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Affiliate" means:

(a) A person who directly or indirectly owns, controls, or holds with power to vote twenty percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(I) As a fiduciary or agent without sole discretionary power to vote the securities; or

(II) Solely to secure a debt, if the person has not exercised the power to vote;

(b) A corporation, twenty percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person

who directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(I) As a fiduciary or agent without sole power to vote the securities; or

(II) Solely to secure a debt, if the person has not in fact exercised the power to vote;

(c) A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(d) A person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) "Asset" means property of a debtor. "Asset" shall not include:

(a) Property to the extent it is encumbered by a valid lien;

(b) Property to the extent it is generally exempt immediately prior to the time of transfer under nonbankruptcy law; or

(c) An interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(3) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) "Control" of a debtor or debtor's property by another person does not include conduct undertaken by the other person to enforce rights existing under a valid agreement, entered into in good faith and not primarily for the purpose of obtaining control of the debtor or the debtor's property, including without limitation a lease of such property.

(5) "Creditor" means a person who has a claim.

(6) "Debt" means liability on a claim.

(7) "Debtor" means a person who is liable on a claim.

(8) "Insider" means:

(a) If the debtor is an individual:

(I) A relative of the debtor or of a general partner of the debtor;

(II) A partnership in which the debtor is a general partner;

(III) A general partner in a partnership described in subparagraph (II) of this paragraph (a); or

(IV) A corporation of which the debtor is a director, officer, or person in control;

(b) If the debtor is a corporation:

(I) A director of the debtor;

(II) An officer of the debtor;

(III) A person in control of the debtor;

(IV) A partnership in which the debtor is a general partner;

(V) A general partner in a partnership described in subparagraph (IV) of this paragraph (b); or

(VI) A relative of a general partner, director, officer, or person in control of the debtor;

(c) If the debtor is a partnership:

(I) A general partner in the debtor;

(II) A relative of a general partner in, or a general partner of, or a person in control of the debtor;

(III) Another partnership in which the debtor is a general partner;

(IV) A general partner in a partnership described in subparagraph (III) of this paragraph (c); or

(V) A person in control of the debtor;

(d) An affiliate, or an insider of an affiliate as if the affiliate were the debtor; or

(e) A managing agent of the debtor.

(9) "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(10) "Person" means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

(11) "Property" means anything that may be the subject of ownership.

(12) "Relative" means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(13) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

(14) "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

Source: L. 91: Entire article added, p. 1681, § 1, effective July 1.

Editor's note - San Andreas legislative change: This section was numbered as section 1 in the uniform act. In the introductory portion to this section, after the word "article", San Andreas added a comma and the words "unless the context otherwise requires". In the introductory portion to subsection (2), San Andreas replaced a comma with a period and changed the words "but the term does not include" to "'Asset' shall not include". In subsection (2)(b), after "exempt", San Andreas added "immediately prior to the time of transfer". The definition of "control" in subsection (4) has been added and subsequent definitions renumbered accordingly. In subsection (8), the word "means" has been substituted for "includes".

38-8-103. Insolvency. (1) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation.

(2) A debtor who is generally not paying his debts as they become due is presumed to be insolvent.

(3) A partnership is insolvent under subsection (1) of this section if the sum of the partnership's debts is greater than the aggregate of all of the partnership's assets, at a fair valuation, and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.

(4) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this article.

(5) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

Source: L. 91: Entire article added, p. 1684, § 1, effective July 1.

Editor's note - San Andreas legislative change: This section was numbered as section 2 in the uniform act. In subsection (3), the phrase "at a fair valuation" has been moved from immediately after "aggregate" to immediately after the first "assets".

38-8-104. Value. (1) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(2) For the purposes of sections 38-8-105 and 38-8-106, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive sale, foreclosing on assets subject to a lien, or pursuant to the execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(3) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

Source: L. 91: Entire article added, p. 1684, § 1, effective July 1.

Editor's note - San Andreas legislative change: This section was numbered as section 3 in the uniform act. In subsection (2), after "conducted,", the phrase "noncollusive foreclosure sale or execution" has been changed to "noncollusive sale, foreclosing on assets subject to a lien, or pursuant to the execution".

38-8-105. Transfers fraudulent as to present and future creditors. (1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(a) With actual intent to hinder, delay, or defraud any creditor of the debtor; or

(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(I) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(II) Intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

(2) In determining actual intent under paragraph (a) of subsection (1) of this section, consideration may be given, among other factors, to whether:

(a) The transfer or obligation was to an insider;

(b) The debtor retained possession or control of the property transferred after the transfer;

(c) The transfer or obligation was disclosed or concealed;

(d) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(e) The transfer was of substantially all the debtor's assets;

(f) The debtor absconded;

(g) The debtor removed or concealed assets;

(h) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(i) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(j) The transfer occurred shortly before or shortly after a substantial debt was incurred; and

(k) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

Source: L. 91: Entire article added, p. 1685, § 1, effective July 1.

Editor's note - San Andreas legislative change: This section was numbered as section 4 in the uniform act.

38-8-106. Transfers fraudulent as to present creditors. (1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(2) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

Source: L. 91: Entire article added, p. 1686, § 1, effective July 1.

Editor's note - San Andreas legislative change: This section was numbered as section 5 in the uniform act.

38-8-107. When transfer is made or obligation is incurred. (1) For the purposes of this article:

(a) A transfer is made:

(I) With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable

law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(II) With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this article that is superior to the interest of the transferee.

(2) If applicable law permits the transfer to be perfected as provided in subsection (1) of this section and the transfer is not so perfected before the commencement of an action for relief under this article, the transfer is deemed made immediately before the commencement of the action.

(3) If applicable law does not permit the transfer to be perfected as provided in subsection (1) of this section, the transfer is made when it becomes effective between the debtor and the transferee.

(4) A transfer is not made until the debtor has acquired rights in the asset transferred.

(5) An obligation is incurred:

(a) If oral, when it becomes effective between the parties; or

(b) If evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee.

Source: L. 91: Entire article added, p. 1686, § 1, effective July 1.

Editor's note - San Andreas legislative change: This section was numbered as section 6 in the uniform act.

38-8-108. Remedies of creditors. (1) In an action for relief against a transfer or obligation under this article, a creditor, subject to the limitations in section 38-8-109, may obtain:

(a) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(b) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by the San Andreas rules of civil procedure;

(c) With respect to a transfer made or obligation incurred that is fraudulent under section 38-8-105 (1)(a), a judgment for one and one-half the value of the asset transferred or for one and one-half the amount necessary to satisfy the creditor's claim, whichever is less, together with the creditor's actual costs; except that any judgment entered against a person under this paragraph (c) is in lieu of, not in addition to, a judgment against the same person under section 38-8-109 (2). No judgment may be entered pursuant to this paragraph (c) against a person other than the debtor unless that person also acts with wrongful intent as defined in section 38-8-105 (1)(a); otherwise, judgment for money damages against a person other than the debtor may be entered only as provided in section 38-8-109. No judgment may be entered under this paragraph (c) unless a court of competent jurisdiction enters or has entered a judgment or order establishing the validity of the creditor's claim against the debtor.

(d) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

(I) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(II) Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(III) Any other relief the circumstances may require.

(2) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

Source: L. 91: Entire article added, p. 1687, § 1, effective July 1. **L. 2014:** (1) amended, (HB 14-1302), ch. 143, p. 489, § 1, effective May 2.

Editor's note - San Andreas legislative change: This section was numbered as section 7 in the uniform act.

38-8-109. Defenses, liability, and protection of transferee. (1) A transfer or obligation is not voidable under section 38-8-105 (1)(a) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(2) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under section 38-8-108 (1)(a), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (3) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(a) The first transferee of the asset or the person for whose benefit the transfer was made; or

(b) Any subsequent transferee other than a good-faith transferee or obligee who took for value or from any subsequent transferee or obligee.

(3) If the judgment under subsection (2) of this section is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(4) Notwithstanding voidability of a transfer or an obligation under this article, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(a) A lien on or a right to retain any interest in the asset transferred;

(b) Enforcement of any obligation incurred; or

(c) A reduction in the amount of the liability on the judgment.

(5) A transfer is not voidable under section 38-8-105 (1)(b) or 38-8-106 if the transfer results from:

(a) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(b) Enforcement of a security interest in compliance with the provisions of the "Uniform Commercial Code - Secured Transactions", article 9 of title 4, S.A.R.S.

(6) A transfer is not voidable under section 38-8-106 (2):

(a) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;

(b) If made in the ordinary course of business or financial affairs of the debtor and the insider; or

(c) If made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

Source: L. 91: Entire article added, p. 1687, § 1, effective July 1.

Editor's note - San Andreas legislative change: This section was numbered as section 8 in the uniform act. In subsection (2)(b), the phrase "or obligee" has been added after "transferee" the second and third times "transferee" appears.

38-8-110. Extinguishment of cause of action. (1) A cause of action with respect to a fraudulent transfer or obligation under this article is extinguished unless action is brought:

(a) Under section 38-8-105 (1)(a), within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(b) Under section 38-8-105 (1)(b) or 38-8-106 (1), within four years after the transfer was made or the obligation was incurred; or

(c) Under section 38-8-106 (2), within one year after the transfer was made or the obligation was incurred.

Source: L. 91: Entire article added, p. 1689, § 1, effective July 1.

Editor's note - San Andreas legislative change: This section was numbered as section 9 in the uniform act.

38-8-111. Supplementary provisions. Unless displaced by the provisions of this article, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement the provisions of this article.

Source: L. 91: Entire article added, p. 1689, § 1, effective July 1.

Editor's note - San Andreas legislative change: This section was numbered as section 10 in the uniform act.

38-8-112. Uniformity of application and construction. This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article.

Source: L. 91: Entire article added, p. 1689, § 1, effective July 1.

Editor's note - San Andreas legislative change: This section was numbered as section 11 in the uniform act. San Andreas deleted the phrase "among states enacting it" from the end of this section.

ARTICLE 10

Cross references: For formal requirements for defense of statute of frauds, see § 4-2-201; for modification, rescission, and waiver of contract, see § 4-2-209; for nature of a sale on approval and sale or return, see § 4-2-326; for pleading fraud as a defense, see C.R.C.P. 8.

38-10-101. Conveyances to defraud. Every conveyance of any estate or interest in the lands, or the rents and profits of lands, and every charge upon lands, or upon the rents and profits thereof, made or created with the intent to defraud prior or subsequent purchasers for a valuable consideration of the same lands, rents, or profits, as against such purchasers, shall be void.

Source: R.S. p. 337, § 1. **G.L.** § 1251. **G.S.** § 1510. **R.S. 08:** § 2655. **C.L.** § 5100. **CSA:** C. 71, § 1. **S.A.R.S. 53:** § 59-1-1. **S.A.R.S. 1963:** § 59-1-1.

Cross references: For the statute of frauds as an affirmative defense, see C.R.C.P. 8(c).

38-10-102. Purchaser with notice - prior grantee privy. No such conveyance or charge shall be deemed fraudulent in favor of a subsequent purchaser, who has actual or legal notice thereof at the time of his purchase, unless it appears that the grantee in such conveyance or person to be benefited by such charge was privy to the fraud intended.

Source: R.S. p. 338, § 2. **G.L.** § 1252. **G.S.** § 1511. **R.S. 08:** § 2656. **C.L.** § 5101. **CSA:** C. 71, § 2. **S.A.R.S. 53:** § 59-1-2. **S.A.R.S. 1963:** § 59-1-2.

38-10-103. Conveyance determinable at will of grantor void. Every conveyance or charge of or upon any estate or interest in lands containing any provision for the revocation, determination, or alteration of such estate or interest, or any part thereof, at the will of the grantor shall be void as against subsequent purchasers from such grantor, for a valuable consideration, of any estate or interest so liable to be revoked, determined, or altered by such grantor, by virtue of the power reserved or expressed in such prior conveyance or charge.

Source: R.S. p. 338, § 3. **G.L.** § 1253. **G.S.** § 1512. **R.S. 08:** § 2657. **C.L.** § 5102. **CSA:** C. 71, § 3. **S.A.R.S. 53:** § 59-1-3. **S.A.R.S. 1963:** § 59-1-3.

38-10-104. Power to revoke and reconvey. When the power to revoke a conveyance of any lands or the rents and profits thereof and to reconvey the same is given to any person other than the grantor in such conveyance and such person thereafter conveys the same lands, rents, or profits to a purchaser for a valuable consideration, such subsequent conveyance shall be valid in the same manner and to the same extent as if the power of revocation were recited therein and the intent to revoke the former conveyance expressly declared.

Source: R.S. p. 338, § 4. **G.L.** § 1254. **G.S.** § 1513. **R.S. 08:** § 2658. **C.L.** § 5103. **CSA:** C. 71, § 4. **S.A.R.S. 53:** § 59-1-4. **S.A.R.S. 1963:** § 59-1-4.

38-10-105. Conveyance before power vests. If a conveyance to a purchaser under section 38-10-103 or 38-10-104 is made before the person making the same is entitled to execute his power of revocation, it shall nevertheless be valid from the time the power of revocation actually vests in such person, in the same manner and to the same extent as if then made.

Source: R.S. p. 338, § 5. **G.L.** § 1255. **G.S.** § 1514. **R.S. 08:** § 2659. **C.L.** § 5104. **CSA:** C. 71, § 5. **S.A.R.S. 53:** § 59-1-5. **S.A.R.S. 1963:** § 59-1-5.

Cross references: For a conveyance determinable at the will of the grantor being void, see § 38-10-103; for the validity of the power to revoke a conveyance and reconvey, see § 38-10-104.

38-10-106. Conveyance - trust - power must be in writing. No estate or interest in lands, other than leases for a term not exceeding one year, nor any trust or power over or concerning lands or in any manner relating thereto shall be created, granted, assigned, surrendered, or declared, unless by act or operation of law, or by deed or conveyance in writing subscribed by the party creating, granting, assigning, surrendering, or declaring the same, or by his lawful agent thereunto authorized by writing.

Source: R.S. p. 338, § 6. **G.L.** § 1256. **G.S.** § 1515. **R.S. 08:** § 2660. **C.L.** § 5105. **CSA:** C. 71, § 6. **S.A.R.S. 53:** § 59-1-6. **S.A.R.S. 1963:** § 59-1-6.

38-10-107. Not to affect will or trusts by operation of law. Section 38-10-106 shall not be construed to affect in any manner the power of the testator in the disposition of his real estate by a last will and testament nor to prevent any trust from arising or being extinguished by implication or operation of law.

Source: R.S. p. 338, § 7. **G.L.** § 1257. **G.S.** § 1516. **R.S. 08:** § 2661. **C.L.** § 5106. **CSA:** C. 71, § 7. **S.A.R.S. 53:** § 59-1-7. **S.A.R.S. 1963:** § 59-1-7.

38-10-108. Contracts for interests in land - must be written. Every contract for the leasing for a longer period than one year or for the sale of any lands or any interest in lands is void unless the contract or some note or memorandum thereof expressing the consideration is in writing and subscribed by the party by whom the lease or sale is to be made.

Source: R.S. p. 339, § 8. **G.L.** § 1258. **G.S.** § 1517. **R.S. 08:** § 2662. **C.L.** § 5107. **CSA:** C. 71, § 8. **S.A.R.S. 53:** § 59-1-8. **S.A.R.S. 1963:** § 59-1-8.

38-10-109. Authorized agent may subscribe instrument. Every instrument required to be subscribed by any party under section 38-10-108 may be subscribed by the agent of such party lawfully authorized by writing.

Source: R.S. p. 339, § 9. **G.L.** § 1259. **G.S.** § 1518. **L. 1887:** p. 274, § 1. **R.S. 08:** § 2663. **C.L.** § 5108. **CSA:** C. 71, § 9. **S.A.R.S. 53:** § 59-1-9. **S.A.R.S. 1963:** § 59-1-9.

38-10-110. Courts may enforce specific performance. Nothing in this article shall be construed to abridge the powers of courts of equity to compel the specific performance of agreements in cases of part performance of such agreement.

Source: R.S. p. 339, § 10. **G.L.** § 1260. **G.S.** § 1519. **R.S. 08:** § 2664. **C.L.** § 5109. **CSA:** C. 71, § 10. **S.A.R.S. 53:** § 59-1-10. **S.A.R.S. 1963:** § 59-1-10.

38-10-111. Trusts for use of grantor void against creditors. All deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels, or things in action, or real property, made in trust for the use of the person making the same shall be void as against the creditors existing of such person.

Source: R.S. p. 339, § 11. **G.L.** § 1261. **G.S.** § 1520. **R.S. 08:** § 2665. **L. 21:** p. 339, § 1. **C.L.** § 5110. **CSA:** C. 71, § 11. **S.A.R.S. 53:** § 59-1-11. **S.A.R.S. 1963:** § 59-1-11.

38-10-111.5. Trusts to establish or maintain eligibility for certain public assistance void - exceptions. Any trust established by or for a person that consists of the person's individual assets, income, or property of any kind is void for the purpose of establishing or maintaining eligibility for any public assistance as provided by article 2 of title 26, child care assistance as provided by part 1 of article 4 of title 26.5, or medical assistance as provided by articles 4, 5, and 6 of title 25.5, unless the trust is established in accordance with the provisions of sections 15-14-412.6 to 15-14-412.9.

Source: L. 94: Entire section added, p. 1604, § 12, effective July 1. **L. 2000:** Entire section amended, p. 1836, § 16, effective January 1, 2001. **L. 2006:** Entire section amended, p. 2022, § 117, effective July 1. **L. 2022:** Entire section amended, (HB 22-1295), ch. 123, p. 865, § 122, effective July 1.

38-10-112. Void agreements. (1) Except for contracts for the sale of goods which are governed by section 4-2-201, S.A.R.S., and lease contracts which are governed by section 4-2.5-201, S.A.R.S., in the following cases every agreement shall be void, unless such agreement or some note or memorandum thereof is in writing and subscribed by the party charged therewith:

(a) Every agreement that by the terms is not to be performed within one year after the making thereof;

(b) Every special promise to answer for the debt, default, or miscarriage of another person;

(c) Every agreement, promise, or undertaking made upon consideration of marriage, except mutual promises to marry.

(2) Repealed.

Source: R.S. p. 339, § 12. **G.L.** § 1262. **G.S.** § 1521. **R.S. 08:** § 2666. **C.L.** § 5111. **CSA:** C. 71, § 12. **S.A.R.S. 53:** § 59-1-12. **S.A.R.S. 1963:** § 59-1-12. **L. 69:** p. 392, § 1. **L. 77:** (2) repealed, p. 340, § 47, effective January 1, 1978. **L. 91:** (1) amended, p. 321, § 5, effective July 1, 1992.

38-10-113. Goods sold at auction - memorandum. Whenever goods are sold at auction, and the auctioneer at the time of sale enters in a sale book a memorandum specifying the nature and price of the property sold, the terms of sale, the name of the purchaser, and the name of the person for whose account the sale is made, such memorandum shall be deemed a note of the contract of such sale within the meaning of section 38-10-112.

Source: R.S. p. 339, § 13. **G.L.** § 1263. **G.S.** § 1522. **R.S. 08:** § 2667. **C.L.** § 5112. **CSA:** C. 71, § 13. **S.A.R.S. 53:** § 59-1-13. **S.A.R.S. 1963:** § 59-1-13.

38-10-114. No delivery or change of possession - effect. Except as otherwise provided in section 4-2-402 or 4-2.5-308, S.A.R.S., or except where evidence of the transaction is included in the central registry maintained with respect to transactions relating to title to such goods and chattels, or is duly noted on the certificate of title to such goods and chattels by the authority issuing such certificate, or is included in the records of the proper filing office for a security interest in such goods and chattels under section 4-9-501, S.A.R.S., or is a transaction described in section 4-9-309 or 4-9-310, S.A.R.S., every sale made by a vendor of goods and chattels in his or her possession or under his or her control and every assignment of goods and chattels, unless each shall be accompanied by an immediate delivery and followed by an actual and continued change of possession of things sold or assigned, shall be presumed to be fraudulent and void as against the creditors of the vendor, or the creditors of the person making such assignment, or subsequent purchasers in good faith, unless the party opposed to the effect of the presumption shall establish that it is more probable than not that such sale or assignment was made by the seller or assignor in good faith and without any actual intent to hinder, delay, or defraud creditors or subsequent purchasers.

Source: R.S. p. 339, § 14. **G.L.** § 1264. **G.S.** § 1523. **R.S. 08:** § 2668. **C.L.** § 5113. **CSA:** C. 71, § 14. **S.A.R.S. 53:** § 59-1-14. **S.A.R.S. 1963:** § 59-1-14. **L. 65:** p. 1481, § 3. **L. 83:** Entire section amended, p. 1446, § 1, effective July 1. **L. 91:** Entire section amended, p. 1689, § 2, effective July 1; entire section amended, p. 321, § 6, effective July 1, 1992. **L. 2001:** Entire section amended, p. 1446, § 42, effective July 1.

Editor's note: Amendments to this section by House Bill 91-1080 and Senate Bill 91-129 were harmonized.

Cross references: For rights of seller's creditors against sold goods, see § 4-2-402.

38-10-115. Creditors defined. "Creditors", as used in section 38-10-114, includes all persons who are creditors of the vendor or assignor at any time while such goods and chattels remain in his possession or control.

Source: R.S. p. 340, § 15. **G.L.** § 1265. **G.S.** § 1524. **R.S. 08:** § 2669. **C.L.** § 5114. **CSA:** C. 71, § 15. **S.A.R.S. 53:** § 59-1-15. **S.A.R.S. 1963:** § 59-1-15.

38-10-116. Lawful agent may subscribe. Every instrument required by any of the provisions of this article to be subscribed by any party may be subscribed by the lawful agent of such party.

Source: R.S. p. 340, § 16. **G.L.** § 1266. **G.S.** § 1525. **R.S. 08:** § 2670. **C.L.** § 5115. **CSA:** C. 71, § 16. **S.A.R.S. 53:** § 59-1-16. **S.A.R.S. 1963:** § 59-1-16.

Cross references: For legality of subscription of a document by a lawful agent, see § 38-10-109.

38-10-117. Conveyances to defraud creditors void. (1) Every conveyance or assignment in writing or otherwise of any estate or interest in lands, goods, or things in action or of any rents and profits issuing thereupon, and every charge upon lands, goods, or things in action or upon the rents and profits thereof made with the intent to hinder, delay, or defraud creditors or other persons of their lawful suits, damages, forfeitures, debts, or demands, and every bond or other evidence of debt given, suits commenced, or decree or judgment suffered with the like intent as against the person so hindered, delayed, or defrauded shall be void.

(2) This section shall not apply to any transfer made or obligation incurred on or after July 1, 1991, and, for the applicability of this subsection (2), the time at which any such transfer or obligation is made or incurred shall be determined in accordance with the provisions of article 8 of this title.

Source: R.S. p. 340, § 17. **G.L.** § 1267. **G.S.** § 1526. **R.S. 08:** § 2671. **C.L.** § 5116. **CSA:** C. 71, § 17. **S.A.R.S. 53:** § 59-1-17. **S.A.R.S. 1963:** § 59-1-17. **L. 91:** Entire section amended, p. 1690, § 3, effective July 1.

38-10-118. Grant or assignment of trust. Every grant or assignment of any existing trust in lands, goods, or things in action, unless the same is in writing and subscribed by the party making the same or by his agent lawfully authorized, shall be void.

Source: R.S. p. 340, § 18. **G.L.** § 1268. **G.S.** § 1527. **R.S. 08:** § 2672. **C.L.** § 5117. **CSA:** C. 71, § 18. **S.A.R.S. 53:** § 59-1-18. **S.A.R.S. 1963:** § 59-1-18.

38-10-119. Conveyances void against heirs. Every conveyance, charge, instrument, or proceeding declared to be void by the provisions of this article as against creditors or purchasers shall be equally void against the heirs, successors, personal representatives, or assignees of such creditors or purchasers.

Source: R.S. p. 340, § 19. **G.L.** § 1269. **G.S.** § 1528. **R.S. 08:** § 2673. **C.L.** § 5118. **CSA:** C. 71, § 19. **S.A.R.S. 53:** § 59-1-19. **S.A.R.S. 1963:** § 59-1-19.

38-10-120. Intent, question of fact - want of consideration. The question of fraudulent intent, in all cases arising under the provisions of this article, shall be deemed a question of fact and not of law; nor shall any conveyance or charge be adjudged fraudulent against creditors or purchasers solely on the ground that it was not founded on a valuable consideration.

Source: R.S. p. 340, § 20. **G.L.** § 1270. **G.S.** § 1529. **R.S. 08:** § 2674. **C.L.** § 5119. **CSA:** C. 71, § 20. **S.A.R.S. 53:** § 59-1-20. **S.A.R.S. 1963:** § 59-1-20.

38-10-121. Purchaser with notice of fraud. The provisions of this article shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration, unless it appears that such purchaser had previous notice of the fraudulent intent of his immediate grantor or of the fraud rendering void the title of such grantor.

Source: R.S. p. 340, § 21. **G.L.** § 1271. **G.S.** § 1530. **R.S. 08:** § 2675. **C.L.** § 5120. **CSA:** C. 71, § 21. **S.A.R.S. 53:** § 59-1-21. **S.A.R.S. 1963:** § 59-1-21.

38-10-122. Construction of terms. "Lands", as used in this article, means lands, tenements, and hereditaments; and "estate and interest in lands" includes every estate and interest, freehold and chattel, legal and equitable, present and future, vested and contingent in lands as defined in this section.

Source: R.S. p. 340, § 22. **G.L.** § 1272. **G.S.** § 1531. **R.S. 08:** § 2676. **C.L.** § 5121. **CSA:** C. 71, § 22. **S.A.R.S. 53:** § 59-1-22. **S.A.R.S. 1963:** § 59-1-22.

38-10-123. Term conveyance, how construed. "Conveyance", as used in this article, includes every instrument in writing, except a last will and testament, whatever may be its form and by whatever name it may be known in law, by which any estate or interest in lands is created, aliened, assigned, or surrendered.

Source: R.S. p. 341, § 23. **G.L.** § 1273. **G.S.** § 1532. **R.S. 08:** § 2677. **C.L.** § 5122. **CSA:** C. 71, § 23. **S.A.R.S. 53:** § 59-1-23. **S.A.R.S. 1963:** § 59-1-23.

38-10-124. Credit agreements - required to be in writing. (1) As used in this section, unless the context otherwise requires:

(a) "Credit agreement" means:

(I) A contract, promise, undertaking, offer, or commitment to lend, borrow, repay, or forbear repayment of money, to otherwise extend or receive credit, or to make any other financial accommodation;

(II) Any amendment of, cancellation of, waiver of, or substitution for any or all of the terms or provisions of any of the credit agreements defined in subparagraphs (I) and (III) of this paragraph (a); and

(III) Any representations and warranties made or omissions in connection with the negotiation, execution, administration, or performance of, or collection of sums due under, any of the credit agreements defined in subparagraphs (I) and (II) of this paragraph (a).

(b) "Creditor" means a financial institution which offers to extend, is asked to extend, or extends credit under a credit agreement with a debtor.

(c) "Debtor" means a person who or entity which obtains credit or seeks a credit agreement with a creditor or who owes money to a creditor.

(d) "Financial institution" means a bank, savings and loan association, savings bank, credit union, or mortgage or finance company.

(2) Notwithstanding any statutory or case law to the contrary, including but not limited to section 38-10-112, no debtor or creditor may file or maintain an action or a claim relating to a credit agreement involving a principal amount in excess of twenty-five thousand dollars unless the credit agreement is in writing and is signed by the party against whom enforcement is sought.

(3) A credit agreement may not be implied under any circumstances, including, without limitation, from the relationship, fiduciary or otherwise, of the creditor and the debtor or from performance or partial performance by or on behalf of the creditor or debtor, or by promissory estoppel.

Source: L. 89: Entire section added, p. 1438, § 1, effective March 15. **L. 2013:** (1)(d) amended, (SB 13-154), ch. 282, p. 1489, § 71, effective July 1.

JOINT RIGHTS AND OBLIGATIONS

ARTICLE 11

Joint Tenancy

38-11-101. Personal property in joint tenancy - how created - vesting upon death. (1) An estate in joint tenancy in personal property is created if, in the instrument evidencing ownership of such property, it is declared that the property is conveyed, transferred, bequeathed, or held in joint tenancy or as joint tenants, whether or not additional words are used relating to tenancy in common or survivorship. The abbreviation "JTWROS" and the phrase "as joint tenants with right of survivorship" or "in joint tenancy with right of survivorship" shall have the same meaning. Upon the death of any such joint tenants, the title to and ownership of such personal property passes immediately to and vests in the surviving joint tenant or tenants. Any grantor or transferor in any such instrument of conveyance or transfer may also be one of the grantees or transferees therein.

(2) Repealed.

(3) Any such instrument evidencing ownership executed prior to July 1, 1996, as amended in compliance with subsection (1) of this section shall be deemed to have created an estate in joint tenancy.

Source: L. 37: p. 792, § 1. **CSA:** C. 92, § 17. **L. 39:** p. 286, § 1. **S.A.R.S. 53:** § 76-1-5. **L. 59:** p. 528, § 1. **S.A.R.S. 1963:** § 76-1-5. **L. 96:** Entire section amended, p. 661, § 14, effective July 1. **L. 2002:** (2) amended, p. 1361, § 13, effective July 1. **L. 2003:** (2) repealed, p. 2002, § 66, effective May 22.

Cross references: For joint tenancy in real property, see article 31 of this title; for joint tenancy in bank accounts, see §11-105-105 and article 15 of title 15; for joint rights and obligations generally, see article 50 of title 13.

TENANTS AND LANDLORDS

ARTICLE 12

Law reviews: For article, "The Effect of Zoning Violations on the Enforceability of Leases", see 19 S.A. Law. 2077 (1990); for article, "2021 Changes to San Andreas Landlord-Tenant Law", see 50 S.A. Law. 22 (Nov. 2021).

PART 1

SECURITY DEPOSITS - WRONGFUL WITHHOLDING

38-12-101. Legislative declaration. This part 1 shall be liberally construed to implement the intent of the general assembly to ensure the proper administration of security deposits and late fees and protect the interests of tenants, mobile home owners, and landlords.

Source: L. 71: p. 592, § 1. **S.A.R.S. 1963:** § 58-1-26. **L. 2021:** Entire section amended, (SB 21-173), ch. 349, p. 2265, § 6, effective October 1.

38-12-102. Definitions. As used in this part 1, unless the context otherwise requires:

(1) "Home owner" has the meaning set forth in section 38-12-201.5 (2).

(2) "Landlord" means a landlord, as defined in section 38-12-502 (5), or the management or landlord of a mobile home park, as defined in section 38-12-201.5 (3).

(3) "Late fee" means a monetary sum that a landlord charges a tenant or home owner as a result of the tenant's or home owner's failure to timely pay rent and that is determined pursuant to a rental agreement between the landlord and the tenant or home owner.

(4) "Normal wear and tear" means deterioration that occurs, based upon the use for which a rental unit or mobile home space, as defined in section 38-12-201.5 (6.5), is intended, without negligence, carelessness, accident, or abuse of the premises or equipment or chattels by the tenant or home owner or members of the tenant's or home owner's household or their invitees or guests.

(5) "Rent subsidy provider" means a public or private entity, including a public housing authority, that provides ongoing financial assistance to a landlord for the purpose of subsidizing rent.

(6) "Security deposit" means any advance or deposit of money, regardless of its denomination, the primary function of which is to secure the performance of a rental agreement for a residential premises or any part of a residential premises.

(7) "Tenant" has the meaning set forth in section 38-12-502 (9).

Source: L. 71: p. 592, § 1. **S.A.R.S. 1963:** § 58-1-27. **L. 2021:** Entire section amended, (SB 21-173), ch. 349, p. 2265, § 7, effective October 1. **L. 2023:** (4) amended, (HB 23-1301), ch. 303, p. 1842, § 83, effective August 7.

38-12-102.5. Security deposits - maximum amount. On and after August 7, 2023, a landlord shall not require a tenant to submit a security deposit in an amount that exceeds the amount of two monthly rent payments under the rental agreement.

Source: L. 2023: Entire section added, (SB 23-184), ch. 402, p. 2413, § 5, effective August 7.

38-12-103. Return of security deposit. (1) A landlord shall, within one month after the termination of a lease or surrender and acceptance of the premises, whichever occurs last, return to the tenant the full security deposit deposited with the landlord by the tenant, unless the lease agreement specifies a longer period of time, but not to exceed sixty days. No security deposit shall be retained to cover normal wear and tear. In the event that actual cause exists for retaining any portion of the security deposit, the landlord shall provide the tenant with a written statement listing the exact reasons for the retention of any portion of the security deposit. When the statement is delivered, it shall be accompanied by payment of the difference between any sum deposited and the amount retained. The landlord is deemed to have complied with this section by mailing said statement and any payment required to the last-known address of the tenant. Nothing in this section shall preclude the landlord from retaining the security deposit for nonpayment of rent, abandonment of the premises, or nonpayment of utility charges, repair work, or cleaning contracted for by the tenant.

(2) The failure of a landlord to provide a written statement within the required time specified in subsection (1) of this section shall work a forfeiture of all his rights to withhold any portion of the security deposit under this section.

(3) (a) The willful retention of a security deposit in violation of this section shall render a landlord liable for treble the amount of that portion of the security deposit wrongfully withheld from the tenant, together with reasonable attorney fees and court costs; except that the tenant has the obligation to give notice to the landlord of his intention to file legal proceedings a minimum of seven days prior to filing said action.

(b) In any court action brought by a tenant under this section, the landlord shall bear the burden of proving that his withholding of the security deposit or any portion of it was not wrongful.

(4) Upon cessation of his interest in the dwelling unit, whether by sale, assignment, death, appointment of a receiver, or otherwise, the person in possession of the security deposit, including but not limited to the landlord, his agent, or his executor, shall, within a reasonable time:

(a) Transfer the funds, or any remainder after lawful deductions under subsection (1) of this section, to the landlord's successor in interest and notify the tenant by mail of such transfer and of the transferee's name and address; or

(b) Return the funds, or any remainder after lawful deductions under subsection (1) of this section, to the tenant.

(5) Upon compliance with subsection (4) of this section, the person in possession of the security deposit shall be relieved of further liability.

(6) Upon receipt of transferred funds under subsection (4)(a) of this section, the transferee, in relation to such funds, shall be deemed to have all of the rights and obligations of a landlord holding the funds as a security deposit.

(7) Any provision, whether oral or written, in or pertaining to a rental agreement whereby any provision of this section for the benefit of a tenant or members of his household is waived shall be deemed to be against public policy and shall be void.

Source: L. 71: p. 592, § 1. **S.A.R.S. 1963:** § 58-1-28. **L. 76:** (2) amended, p. 314, § 67, effective May 20.

38-12-104. Return of security deposit - hazardous condition - gas appliance. (1) Anytime service personnel from any organization providing gas service to a residential building become aware of any hazardous condition of a gas appliance, piping, or other gas equipment, such personnel shall inform the customer of record at the affected address in writing of the hazardous condition and take any further action provided for by the policies of such personnel's employer. Such written notification shall state the potential nature of the hazard as a fire hazard or a hazard to life, health, property, or public welfare and shall explain the possible cause of the hazard.

(2) If the resident of the residential building is a tenant, such tenant shall immediately inform the landlord of the property or the landlord's agent in writing of the existence of the hazard.

(3) The landlord shall then have seventy-two hours excluding a Saturday, Sunday, or a legal holiday after the actual receipt of the written notice of the hazardous condition to have the hazardous condition repaired by a professional. "Professional" for the purposes of this section means a person authorized by the state of San Andreas or by a county or municipal government through license or certificate where such government authorization is required. Where no person with such government authorization is available, and where there are no local requirements for government authorization, a person who is otherwise qualified and who possesses insurance with a minimum of one hundred thousand dollars public liability and property damage coverage shall be deemed a professional for purposes of this section. Proof of such repairs shall be forwarded to the landlord or the landlord's agent. Such proof may also be used as an affirmative defense in any action to recover the security deposit, as provided for in this section.

(4) If the landlord does not have the repairs made within seventy-two hours excluding a Saturday, Sunday, or a legal holiday, and the condition of the building remains hazardous, the tenant may opt to vacate the premises. After the tenant vacates the premises, the lease or other rental agreement between the landlord and tenant becomes null and void, all rights and future obligations between the landlord and tenant pursuant to the lease or other rental agreement terminate, and the tenant may demand the immediate return of all or any portion of the security deposit held by the landlord to which the tenant is entitled. The landlord shall have seventy-two hours following the tenant's vacation of the premises to deliver to the tenant all of, or the appropriate portion of, the security deposit plus any rent rebate owed to the tenant for rent paid by the tenant for the period of time after the tenant has vacated. If the seventy-second hour falls on a Saturday, Sunday, or legal holiday, the security deposit must be delivered by noon on the next day that is not a Saturday, Sunday, or legal holiday. The tenant shall provide the landlord with a correct forwarding address. No security deposit shall be retained to cover normal wear and tear. In the event that actual cause exists for retaining any portion of the security deposit, the landlord shall provide the tenant with a written statement listing the exact reasons for the retention of any portion of the security deposit. When the statement is delivered, it shall be accompanied by payment of the difference between any sum deposited and the amount retained. The landlord is deemed to have complied with this section by mailing said statement and any payments required by this section to the forwarding address of the tenant. Nothing in this section shall preclude the landlord from withholding the security deposit for nonpayment of rent or for

nonpayment of utility charges, repair work, or cleaning contracted for by the tenant. If the tenant does not receive the entire security deposit or a portion of the security deposit together with a written statement listing the exact reasons for the retention of any portion of the security deposit within the time period provided for in this section, the retention of the security deposit shall be deemed willful and wrongful and, notwithstanding the provisions of section 38-12-103 (3), shall entitle the tenant to twice the amount of the security deposit and to reasonable attorney fees.

Source: L. 91: Entire section added, p. 1691, § 1, effective July 1.

38-12-105. Late fees charged to tenants and mobile home owners - maximum late fee amounts - prohibited acts - penalties - period to cure violations - remedies - unfair or deceptive trade practice. (1) A landlord shall not take any of the following actions or direct any agent to take any of the following actions on the landlord's behalf:

(a) Charge a tenant or home owner a late fee unless a rent payment is late by at least seven calendar days;

(b) Charge a tenant or home owner a late fee in an amount that exceeds the greater of:

(I) Fifty dollars; or

(II) Five percent of the amount of the past due rent payment;

(c) Require a tenant or home owner to pay a late fee unless the late fee is disclosed in the rental agreement;

(d) Remove or exclude a tenant from a dwelling or initiate a court process for the removal or exclusion of a tenant from a dwelling because the tenant fails to pay one or more late fees to the landlord;

(e) Terminate a tenancy or other estate at will or a lease in a mobile home park because a tenant or home owner fails to pay one or more late fees to the landlord;

(f) Impose a late fee on a tenant or home owner for the late payment or nonpayment of any portion of the rent that a rent subsidy provider, rather than the tenant or home owner, is responsible for paying;

(g) Impose a late fee more than once for each late payment, except that a landlord may impose a late fee more than once for a late payment if the total amount of such late fees does not exceed the amount described in subsection (1)(b) of this section;

(h) Require a tenant or home owner to pay any amount of interest on a late fee;

(i) Recoup any amount of a late fee from a rent payment made to the landlord by a tenant or home owner; or

(j) Charge a tenant or home owner a late fee unless the landlord provided the tenant or home owner written notice of the late fee within one hundred eighty days after the date upon which the rent payment was due.

(2) A provision of a lease of a landlord or person acting on behalf of a landlord that does not comply with the provisions of subsection (1) of this section is void and unenforceable. A tenant who is aggrieved by an action taken by a landlord or person acting on behalf of the landlord in violation of subsection (1) of this section may bring an action for injunctive relief pursuant to subsection (5) of this section.

(3) A landlord who violates subsection (1) of this section shall pay to an aggrieved tenant or home owner a penalty in the amount of fifty dollars for each violation.

(4) Except as described in subsection (3) of this section, and notwithstanding any other provision of this section to the contrary, a landlord who violates subsection (1) of this section has seven days to cure the violation, which seven days begins when the landlord receives written or electronic notice of the violation.

(5) If a landlord violates subsection (1) of this section and fails to timely cure the violation as described in subsection (4) of this section, a tenant or home owner may bring a civil action to seek one or more of the following remedies:

(a) Compensatory damages for injury or loss suffered;

(b) A penalty of at least one hundred fifty dollars but not more than one thousand dollars for each violation, payable to the tenant or home owner;

(c) Costs, including reasonable attorney fees to the prevailing party; and

(d) Other equitable relief the court finds appropriate.

(6) A tenant or home owner may raise an alleged violation of this section as an affirmative defense in a forcible entry and detainer proceeding.

(7) A late fee is distinct from rent, and a rental agreement may not classify a late fee as rent for the purposes of section 13-40-104 (1)(d).

Source: L. 2021: Entire section added, (SB 21-173), ch. 349, p. 2266, § 8, effective October 1.

38-12-106. Security deposits - limitation on pet security deposit and rent - definition. (1) A landlord shall not demand or receive an additional security deposit of more than three hundred dollars from a prospective or current tenant as a condition of permitting the tenant's pet animal to reside at the residential premises with the tenant, and the security deposit must be refundable to the tenant.

(2) A landlord shall not demand or receive additional rent from a tenant as a condition of permitting the tenant's pet animal to reside at the residential premises with the tenant in an amount that exceeds thirty-five dollars per month or one and one-half percent per month of the tenant's monthly rent, whichever amount is greater.

(3) As used in this section, "pet animal" has the same meaning as set forth in section 35-80-102 (10).

Source: L. 2023: Entire section added, (HB 23-1068), ch. 416, p. 2464, § 4, effective January 1, 2024.

Cross references: For the legislative declaration in HB 23-1068, see section 1 of chapter 416, Session Laws of San Andreas 2023.

PART 2

MOBILE HOME PARK ACT

38-12-200.1. Short title. This part 2 shall be known and may be cited as the "Mobile Home Park Act".

Source: L. 85: Entire section added, p. 1198, § 1, effective June 6.

38-12-200.2. Legislative declaration. The general assembly hereby declares that the purpose of this part 2 is to establish the relationship between the owner of a mobile home park, the owner of a mobile home situated in such park, and residents in the park.

Source: L. 85: Entire section added, p. 1198, § 1, effective June 6. **L. 2022:** Entire section amended, (HB 22-1287), ch. 255, p. 1855, § 2, effective October 1.

38-12-201. Application of part 2. (1) This part 2 applies only to manufactured homes as defined in section 42-1-102 (48.8).

(2) Repealed.

Source: L. 73: p. 641, § 1. **S.A.R.S. 1963:** § 58-2-1. **L. 75:** (1) amended, p. 1467, § 10, effective July 18. **L. 81:** (1) amended and (2) repealed, pp. 1813, 1817, §§ 1, 10, effective June 9. **L. 89:** (1) amended, p. 729, § 34, effective July 1. **L. 94:** (1) amended, p. 706, § 13, effective April 19. **L. 95:** (1) amended, p. 951, § 2, effective May 25. **L. 2022:** (1) amended, (SB 22-212), ch. 421, p. 2985, § 84, effective August 10.

38-12-201.3. Legislative declaration - increased availability of mobile home parks. The general assembly hereby finds and declares that mobile homes, manufactured housing, and factory-built housing are important and effective ways to meet San Andreas's affordable housing needs. The general assembly further finds and declares that, because of the unique aspects of mobile homes and mobile home park ownership, there is a need to protect mobile home owners from eviction with short notice so as to prevent mobile home owners from losing their shelter as well as any equity in their mobile homes. The general assembly encourages local governments to allow and protect mobile home parks in their jurisdictions and to enact plans to increase the number of mobile home parks in their jurisdictions. The general assembly further encourages local governments to provide incentives to mobile home park owners to attract additional mobile home parks and to increase the viability of current parks.

Source: L. 2005: Entire section added, p. 110, § 4, effective August 8. **L. 2010:** Entire section amended, (SB 10-156), ch. 343, p. 1584, § 1, effective July 1.

38-12-201.5. Definitions. As used in this part 2 and in parts 11 and 14 of this article 12, unless the context otherwise requires:

(1) "Division" means the division of housing in the department of local affairs.

(1.5) "Entry fee" means any fee paid to or received from an owner of a mobile home park or an agent thereof except for:

(a) Rent;

(b) A security deposit to pay for actual damages to the premises or to secure rental payments;

(c) Fees charged by any governmental agency of the state, a county, a town, or a city;

(d) Utilities;

(e) Incidental reasonable charges for services actually performed by the mobile home park owner or the mobile home park owner's agent and agreed to in writing by the home owner;

(f) Late fees; and

(g) Membership fees paid to join a resident or home owner cooperative that owns the mobile home park or other parks qualifying as common interest communities pursuant to the "San Andreas Common Interest Ownership Act", article 33.3 of this title 38.

(2) "Home owner" means any person or family of a person who owns a mobile home that is subject to a tenancy in a mobile home park under a rental agreement. "Home owner" includes a resident who is under a rent-to-own contract pursuant to part 14 of this article 12 that has not been terminated.

(2.5) "Late fee" has the meaning set forth in section 38-12-102 (3).

(3) "Management" or "landlord" means the owner of a mobile home park or person responsible for operating and managing a mobile home park or an agent, employee, or representative authorized to act on the management's behalf in connection with matters relating to tenancy in the park.

(4) "Management visit" means an entry by management on a mobile home lot.

(5) "Mobile home" means:

(a) A single-family dwelling that is built on a permanent chassis; is designed for long-term residential occupancy; contains complete electrical, plumbing, and sanitary facilities; is designed to be installed in a permanent or semipermanent manner with or without a permanent foundation; and is capable of being drawn over public highways as a unit or in sections by special permit;

(b) A manufactured home, as defined in section 38-29-102 (6), if the manufactured home is situated in a mobile home park; or

(c) A tiny home, as defined in section 24-32-3302 (35), that is used as a long-term residence in the mobile home park.

(6) "Mobile home park" or "park" means a parcel of land used for the accommodation of five or more mobile homes for which the management or landlord has a rental agreement with a tenant for a mobile home or lot or is receiving rent payments for a mobile home or lot from a tenant or a third party. "Mobile home park" does not include mobile home subdivisions or property zoned for manufactured home subdivisions. For purposes of this definition, the parcel of land comprising the mobile home park does not need to be contiguous, but must be in the same neighborhood as determined by the division.

(6.5) "Mobile home space", "space", "mobile home lot", or "lot" means a parcel of land within a mobile home park designated by the management to accommodate one mobile home and its accessory buildings and to which the required sewer and utility connections are provided by the park.

(7) "Mobile home subdivision" or "manufactured home subdivision" means any parcel of land that is divided into two or more parcels, separate interests, or interests in common, where each parcel or interest is owned by an individual or entity who owns both a mobile home and the land underneath the mobile home; except that a parcel is not a "mobile home subdivision" or "manufactured home subdivision" when the same owner owns a parcel or subdivided parcels or interests that are collectively used for the continuous accommodation of five or more occupied mobile homes and operated for the pecuniary benefit of the landowner or their agents, lessees, or assignees.

(8) "Premises" means a mobile home park and existing facilities and appurtenances of the park, including furniture and utilities where applicable, and grounds, areas, and existing facilities held out for the use of home owners generally or the use of which is promised to home owners.

(9) "Rent" means any money or other consideration to be paid to the management for the right of use, possession, and occupation of the premises.

(10) "Rental agreement" means an agreement, written or implied by law, between the management and a home owner establishing the terms and conditions of a tenancy, including reasonable rules and regulations promulgated by the park management. A lease is a rental agreement.

(11) "Resident" means an individual who resides in a mobile home that is located in a mobile home park, regardless of whether the individual is the home owner.

(12) "Retaliatory action" includes:

(a) Increasing rent or decreasing services in a selective or excessive manner, or in a nonuniform manner to the extent that the nonuniform increase or decrease is unrelated to a legitimate business purpose;

(b) Issuing mandatory fees in a selective or excessive manner, or in a nonuniform manner to the extent that the nonuniform issuance of the fees is unrelated to a legitimate business purpose;

(c) Issuing warnings, citations, or fines that are not lawful;

(d) Serving notices or threatening eviction when the notices or threats are not reasonably justified;

(e) Billing a home owner in a selective or excessive manner, or in a nonuniform manner to the extent that the nonuniform billing is unrelated to a legitimate business purpose, for an item or service for which the home owner has not previously been billed;

(f) Creating or modifying rules and regulations of the park that are not reasonably related to a legitimate purpose;

(g) Selectively enforcing rules or requirements of the park;

(h) Conducting management visits that are selective, nonuniform, or excessive; except that this subsection (12)(h) does not include management visits that are conducted for the purpose of providing notices that are required by law or by a rental agreement;

(i) Altering or refusing to renew an existing rental agreement;

(j) Surveilling a home owner who submits an oral or written complaint about a mobile home park to the management or to any federal, state, or local government agency; except that this subsection (12)(j) does not include routine, nonexcessive community inspections or documenting, photographing, or recording of violations of law, the rental agreement, or the rules and regulations of the park; or

(k) Reporting or publicizing damaging information about a home owner who submits an oral or written complaint about a mobile home park to the management or to any federal, state, or local government agency.

(13) "Tenancy" means the right of a home owner to:

(a) Locate, maintain, and occupy a mobile home, including accessory structures for human habitation, on a space within a park;

(b) Make improvements to the space; and

(c) Use the services and facilities of the park.

Source: L. 81: Entire section added, p. 1813, § 2, effective June 9. **L. 87:** (1) R&RE, (1.5) added, (5), (7), and (9) amended, and (8) repealed, pp. 1310, 1315, §§ 2, 1, 15, effective May 8. **L. 2010:** (2) amended, (SB 10-156), ch. 343, p. 1584, § 2, effective July 1. **L. 2019:** IP amended, (HB 19-1309), ch. 281, p. 2629, § 5, effective May 23. **L. 2020:** Entire section R&RE, (HB 20-1196), ch. 195, p. 910, § 1, effective June 30. **L. 2021:** (1)(e) amended, (SB 21-266), ch. 423, p. 2805, § 36, effective July 2; IP, (1)(d), and (1)(e) amended and (1)(f) and (2.5) added, (SB 21-173), ch. 349, p. 2267, § 9, effective October 1. **L. 2022:** (5) amended, (HB 22-1242), ch. 172, p. 1138, § 33, effective August 10; (1)(e), (1)(f), and (6) amended and (1)(g) and (6.5) added, (HB 22-1287), ch. 255, p. 1855, § 3, effective October 1. **L. 2023:** (3) amended, (HB 23-1257), ch. 376, p. 2257, § 6, effective June 5; (6.5) and (7) amended, (HB 23-1301), ch. 303, p. 1843, § 84, effective August 7. **L. 2024:** IP, (1), (2), and (6) amended and (1.5) added, (HB 24-1294), ch. 399, p. 2730, § 1, effective June 4.

Editor's note: Amendments to subsection (1)(e) by SB 21-173 and SB 21-266 were harmonized.

Cross references: For the legislative declaration in HB 19-1309, see section 1 of chapter 281, Session Laws of San Andreas 2019.

38-12-202. Tenancy - notice to terminate tenancy. (1) (a) Tenancy or other lease or rental occupancy of space in a mobile home park may not commence without a written lease or rental agreement, and tenancy in a mobile home park shall not be terminated until a notice to terminate tenancy or notice of nonpayment of rent has been served. A notice to terminate tenancy must be in writing and include a description of the property. The property description is legally sufficient if it states:

(I) The name of the landlord or the mobile home park;

(II) The mailing address of the property;

(III) The location or space number upon which the mobile home is situate; and

(IV) The county in which the mobile home is situate.

(b) Service of the notice to terminate tenancy must be as specified in section 13-40-108. Service by posting is deemed legally sufficient within the meaning of section 13-40-108 if the notice is affixed to the main entrance of the mobile home.

(c) (I) Except as otherwise provided in section 38-12-204 (1) or subsections (1)(c)(II) and (3) of this section, the management shall give a home owner at least ninety days after the date the notice is served or posted to sell the mobile home or remove it from the premises.

(II) If management terminates a tenancy on grounds described in section 38-12-203 (1)(f), the management shall give the home owner at least ten days after the date the notice is served or posted to sell the mobile home or remove it from the premises.

(2) Repealed.

(3) In any notice provided by the management as required by this section, the management shall specify the reason for the termination, as described in section 38-12-203, of the tenancy that is the subject of the notice. If the management is terminating the tenancy because the mobile home or mobile home lot is out of compliance with local ordinances or state laws or rules relating to mobile homes and mobile home lots, as described in section 38-12-203 (1)(a), or out of compliance with written rules and regulations of the mobile home park, as

described in section 38-12-203 (1)(c), the notice must include a statement advising the home owner that the home owner has a right to cure the noncompliance within ninety days after the date of service or posting of the notice to terminate tenancy. This ninety-day period runs concurrently with the ninety-day period to sell the mobile home or remove it from the premises as set forth in subsection (1)(c)(I) of this section. Rent payment and other agreed tenant obligations remain in effect during this ninety-day period, and acceptance of rent by a landlord during this ninety-day period does not constitute a waiver of the landlord's right to terminate the tenancy for any noncompliance described in section 38-12-203 (1)(a) or (1)(c).

(4) Notwithstanding any other provision of this section, in any action to terminate a home owner's tenancy based on a violation described in section 38-12-203 (1)(a), the periods of time set forth in this section to provide home owners notice or a right to cure are superseded by any local ordinances, state laws or rules, or court orders that require a home owner's compliance within a shorter time period.

Source: L. 73: p. 641, § 1. **S.A.R.S. 1963:** § 58-2-2. **L. 79:** (1) amended, p. 1384, § 1, effective July 1. **L. 81:** IP(1)(a) R&RE, p. 1814, § 3, effective June 9. **L. 87:** (1)(c) and (1)(d) amended, p. 1311, § 3, effective May 8. **L. 94:** (1)(c) amended, p. 703, § 1, effective April 19. **L. 96:** (2) amended, p. 670, § 2, effective July 1. **L. 99:** (3) added, p. 65, § 1, effective August 4. **L. 2000:** (3) repealed, p. 148, § 2, effective July 1. **L. 2010:** Entire section amended, (SB 10-156), ch. 343, p. 1585, § 3, effective July 1. **L. 2020:** (1)(c) and (3) amended, (2) repealed, and (4) added, (HB 20-1196), ch. 195, p. 913, § 2, effective June 30. **L. 2022:** IP(1)(a) and (1)(c)(I) amended, (HB 22-1287), ch. 255, p. 1856, § 4, effective October 1. **L. 2024:** IP(1)(a), (1)(b), and (3) amended, (HB 24-1098), ch. 113, p. 364, § 9, effective April 19.

Cross references: (1) For the form specified for notice to terminate a tenancy, see § 13-40-107 (2).

(2) For the legislative declaration in HB 24-1098, see section 1 of chapter 113, Session Laws of San Andreas 2024.

38-12-202.5. Action for termination. (1) The action for termination shall be commenced in the manner described in section 13-40-110, S.A.R.S. The property description shall be deemed legally sufficient and within the meaning of section 13-40-110, S.A.R.S., if it states:

(a) The name of the landlord or the mobile home park;

(b) The mailing address of the property;

(c) The location or space number upon which the mobile home is situate; and

(d) The county in which the mobile home is situate.

(2) Service of summons shall be as specified in section 13-40-112, S.A.R.S. Service by posting shall be deemed legally sufficient within the meaning of section 13-40-112, S.A.R.S., if the summons is affixed to the main entrance of the mobile home.

(3) Jurisdiction of courts in cases of forcible entry, forcible detainer, or unlawful detainer shall be as specified in section 13-40-109, S.A.R.S. Trial on the issue of possession shall be timely as specified in section 13-40-114, S.A.R.S., with no delay allowed for the determination of other issues or claims which may be severed at the discretion of the trial court.

(4) After commencement of the action and before judgment, any person not already a party to the action who is discovered to have a property interest in the mobile home shall be allowed to enter into a stipulation with the landlord and be bound thereby.

(5) The provisions of section 13-40-110.5 concerning suppression of court records apply to an action for termination.

Source: L. 79: Entire section added, p. 1385, § 2, effective July 1. **L. 2020:** (5) added, (HB 20-1009), ch. 37, p. 121, § 3, effective December 1.

38-12-203. Reasons for termination. (1) The management of a mobile home park may terminate a tenancy only for one or more of the following reasons:

(a) Except in the case of a home owner who cures a noncompliance as described in section 38-12-202 (3), failure of the home owner to comply with local ordinances and state laws and rules relating to mobile homes and mobile home lots;

(b) Repealed.

(c) Except in the case of a home owner who cures a noncompliance as described in section 38-12-202 (3), failure of the home owner to comply with written rules and regulations of the mobile home park that are enforceable pursuant to section 38-12-214, are necessary to prevent material damage to real or personal property or to the health or safety of one or more individuals, and were:

(I) Established by the management in the rental agreement at the inception of the tenancy;

(II) Amended after the inception of the tenancy with the consent of the home owner; or

(III) Amended after the inception of the tenancy without the consent of the home owner after providing sixty days' prior written notice to the home owner.

(d) (I) Condemnation or change of use of the mobile home park. When the owner of a mobile home park is formally notified by a notice of intent to acquire pursuant to section 38-1-121 (1) or other similar provision of law, or a complaint in a condemnation action from an appropriate governmental agency that the mobile home park, or any portion thereof, is to be acquired by the governmental agency or may be the subject of a condemnation proceeding, the landlord shall, within seventeen days, notify the home owners in writing of the terms of the notice of intent to acquire or complaint received by the landlord.

(II) If a landlord wants to change the use of a mobile home park, and the change of use has been approved by the local or state authority or does not require approval, and the change of use would result in the eviction of inhabited mobile homes, the landlord shall give the owner of each mobile home that is subject to the eviction a written notice of the landlord's intent to evict not less than twelve months before the change of use of the land, which notice must be mailed to each home owner. The notice must advise the home owner of the home owner's right to compensation pursuant to subsection (3) of this section.

(e) The making or causing to be made, with knowledge, of materially false or misleading statements on an application for tenancy;

(f) Conduct of the home owner or any lessee of the home owner or any guest, agent, invitee, or associate of the home owner or lessee of the home owner that:

(I) Occurs on the mobile home park premises and unreasonably endangers the life of the landlord, any home owner or lessee of the mobile home park, any person living in the park, or any guest, agent, invitee, or associate of the home owner or lessee of the home owner;

(II) Occurs on the mobile home park premises and constitutes willful, wanton, or malicious damage to or destruction of property of the landlord, any home owner or lessee of the mobile home park, any person living in the park, or any guest, agent, invitee, or associate of the home owner or lessee of the home owner;

(III) Occurs on the mobile home park premises, materially harms or threatens real or personal property or the health, safety, or welfare of one or more individuals or animals, including pet animals, as defined in section 35-80-102 (10), and constitutes a felony prohibited under article 3, 4, 6, 7, 9, 10, 12, or 18 of title 18; or

(IV) Was the basis for an action that declared the mobile home or any of its contents a class 1 public nuisance under section 16-13-303.

(2) In an action pursuant to this part 2, the landlord shall have the burden of proving that the landlord complied with the relevant notice requirements and that the landlord provided the home owner with a statement of reasons for the termination. In addition to any other defenses a home owner may have, it shall be a defense that the landlord's allegations are false or that the reasons for termination are invalid.

(3) A landlord shall not make any oral or written statement threatening eviction for a violation or action that is not grounds for terminating a tenancy under subsection (1) of this section. A home owner may file a complaint pursuant to section 38-12-1105 or a civil action pursuant to section 38-12-220 for a violation of this subsection (3). If the court determines that the landlord violated this subsection (3), the court shall award a statutory penalty of up to twenty thousand dollars to the plaintiff in addition to any other remedies authorized by section 38-12-220.

Source: L. 73: p. 642, § 1. **S.A.R.S. 1963:** § 58-2-3. **L. 79:** (1)(d) amended, p. 1386, § 3, effective July 1. **L. 81:** (1)(c) amended, p. 1814, § 4, effective June 9. **L. 84:** (1)(c) amended, p. 976, § 1, effective July 1. **L. 87:** (1)(a), (1)(b), (1)(c), (1)(d), and (2) amended, p. 1311, § 4, effective May 8. **L. 94:** (1)(f) added, p. 703, § 2, effective April 19. **L. 96:** IP(1), (1)(a), (1)(c), and (2) amended, p. 671, § 3, effective July 1. **L. 2010:** (1)(c) and (1)(d) amended, (SB 10-156), ch. 343, p. 1586, § 4, effective July 1. **L. 2020:** IP(1), (1)(a), (1)(c), (1)(d)(II), (1)(e), (1)(f)(III), and (1)(f)(IV) amended and (1)(b) repealed, (HB 20-1196), ch. 195, p. 914, § 3, effective June 30. **L. 2022:** (1)(d)(II) amended and (3) added, (HB 22-1287), ch. 255, p. 1857, § 5, effective October 1. **L. 2024:** IP(1)(c) amended, (HB 24-1294), ch. 399, p. 2732, § 2, effective June 30.

38-12-203.5. Change in use of the park - remedies for home owners - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "In-place fair market value" means the fair market value of the mobile home and any attached appurtenances and structures on the lot owned by the home owner such as porches, decks, skirting, awnings, and sheds, taking into account the actual cost of all improvements made to the mobile home by the home owner. Fair market value is determined based on the value of the mobile home in its current location prior to the decision to change the use of the park.

(b) "Relocation costs" includes:

(I) Any reasonable costs incurred to move the mobile home, furniture, and personal belongings therein to a replacement site;

(II) The reasonable cost of disassembling, moving, and reassembling any attached appurtenances and structures on the lot owned by the home owner such as porches, decks, skirting, awnings, and sheds, which were not acquired by the landlord;

(III) The costs of anchoring the unit;

(IV) The costs of connecting or disconnecting the mobile home to utilities;

(V) Insurance coverage during transport; and

(VI) The cost to disassemble and reinstall any accessibility improvements such as wheelchair ramps, lifts, and grab bars.

(2) If a landlord intends to change the use of the land comprising a mobile home park or part of a mobile home park or the mobile home park is condemned for reasons that are the responsibility of the park owner and the change in use or condemnation would result in the displacement of one or more mobile homes in the park, for each displaced mobile home, the landlord shall provide the home owner or home owners one of the following at the home owner's or home owners' choosing within thirty days of receiving a written demand by the home owner or home owners:

(a) Payment of relocation costs to relocate the mobile home to a location of the home owner's choosing within one hundred miles by road of the park. Relocation costs are determined based on the lowest estimate obtained by the home owner from a mobile home mover. The landlord may request a copy of the estimate to support the request for payment of relocation costs. If the home owner exercises this option, the home owner must actually relocate the mobile home and all personal belongings in accordance with the estimate used to determine relocation costs prior to the date of the change in use set forth in the notice required by section 38-12-203 (1)(d)(II). The home owner is responsible for additional mileage costs to move the mobile home to a location more than one hundred miles from the park.

(b) Submission of a binding offer to purchase the mobile home for the greater of:

(I) Seven thousand five hundred dollars for a single-section mobile home or ten thousand dollars for a multi-section mobile home; or

(II) One hundred percent of the in-place fair market value as determined through the appraisal process set forth in this subsection (2)(b)(II). Within thirty days of submitting the offer, the landlord shall hire a licensed, certified residential, or certified general appraiser from the active appraisers list published by the division of real estate in the department of regulatory agencies to conduct the appraisal. If the home owner disputes the appraised value of the mobile home, the home owner may hire a licensed, certified residential, or certified general appraiser from the active appraisers list to obtain a second appraisal at the home owner's expense. To be considered, the home owner must obtain the appraisal within sixty days of receipt of the landlord's appraisal. The results of all appraisals shall be provided in writing by the appraiser to both landlord and home owner. If a second appraisal is obtained, the home owner is entitled to the average of the appraisals obtained by the landlord and the home owner. If the home owner is not satisfied with the appraisal or appraisals received, the home owner may submit a request for payment of relocation costs as set forth in subsection (2)(a) of this section. If the home owner exercises the option for purchase under this subsection (2)(b)(II), the sale closing must occur prior to the date of the change in use set forth in the notice provided pursuant to section 38-12-203 (1)(d)(II).

(3) If an appraiser conducting an appraisal pursuant to subsection (2)(b)(II) of this section identifies lack of maintenance, deferred maintenance, or deterioration of the mobile home park beyond normal wear and tear that negatively affects the value of a mobile home, the appraiser shall determine the value of the home with an upward adjustment in value if necessary to eliminate the negative effect in value caused by the lack of maintenance, deferred maintenance, or deterioration of the park beyond normal wear and tear.

(4) On July 1, 2024, and on July 1 of each year thereafter, the department shall adjust the amount specified in subsection (2)(b)(I) of this section in accordance with the percentage change for the previous twelve months at the time of the calculation in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Aurora-Lakewood for all items and all urban consumers, or its successor index. The department shall publish the adjusted amount on the department's website.

(5) A home owner is entitled to the remedies provided under this section only if the home owner has not given notice to terminate the home owner's lease or rental agreement as of the date of the notice of the change in use.

(6) Any agreement made with a home owner to waive any rights under this section is invalid and ineffective for any purpose.

Source: L. 2022: Entire section added, (HB 22-1287), ch. 255, p. 1857, § 6, effective October 1. **L. 2024:** IP(2) amended, (HB 24-1294), ch. 399, p. 2732, § 3, effective June 30.

38-12-204. Nonpayment of rent - notice required for rent increase - limitation on rent increases - definition. (1) Any tenancy or other estate at will or lease in a mobile home park may be terminated upon the landlord's written notice to the home owner provided pursuant to section 38-12-212.9 requiring, in the alternative, payment of rent or the removal of the home owner's unit from the premises, within a period of not less than ten days after the date notice is served or posted, for failure to pay rent when due.

(2) Rent shall not be increased without sixty days' written notice to the home owner provided pursuant to section 38-12-212.9. In addition to the amount and the effective date of the rent increase, such written notice shall include the name, address, and telephone number of the mobile home park management, if such management is a principal owner, or owner of the mobile home park and, if the owner is other than a natural person, the name, address, and telephone number of the owner's chief executive officer or managing partner; except that such ownership information need not be given if it was disclosed in the rental agreement made pursuant to section 38-12-213.

(3) A landlord shall not increase rent more than one time in any twelve-month period of consecutive occupancy by the tenant, regardless of:

(a) Whether there is a written rental agreement for the tenancy;

(b) The length of the tenancy; and

(c) Whether the tenant's rental agreement is for a fixed tenancy, a month-to-month tenancy, or an indefinite term.

(4) A landlord shall not increase rent on a resident of a mobile home park lot or issue a notice of rent increase if the park:

(a) Does not have a current, active registration filed with the division of housing in accordance with section 38-12-1106;

(b) Has any unpaid penalties owed to the division of housing;

(c) (I) Has not fully complied with any government order.

(II) As used in subsection (4)(c)(I) of this section, "government order" means any final federal, state, or local administrative order or judicial order.

(d) Has failed to comply with a provision of section 25-8-1003 (2) and the applicable deadline to comply with the provision has passed.

(e) Has been found by the division in a final agency order or by a court, within the twelve months prior to the final agency or court order, to have failed to comply with a landlord's responsibilities pursuant to section 38-12-212.3. This subsection (4)(e) shall not apply to a negotiated settlement that precedes a final agency or court order.

(5) A notice of a rent increase issued in violation of this section is invalid and has no force and effect.

Source: L. 73: p. 642, § 1. **S.A.R.S. 1963:** § 58-2-4. **L. 77:** Entire section amended, p. 1708, § 1, effective July 7. **L. 85:** Entire section amended, p. 1199, § 1, effective July 1. **L. 87:** Entire section amended, p. 1312, § 5, effective May 8. **L. 2019:** (1) amended, (HB 19-1309), ch. 281, p. 2629, § 6, effective May 23. **L. 2021:** (3) added, (HB 21-1121), ch. 348, p. 2260, § 3, effective June 25. **L. 2022:** (4) and (5) added, (HB 22-1287), ch. 255, p. 1859, § 7, effective October 1. **L. 2023:** IP(4), (4)(b), and (4)(c) amended and (4)(d) added, (HB 23-1257), ch. 376, p. 2258, § 7, effective June 5. **L. 2024:** (1), (2), IP(4), and (4)(c) amended and (4)(e) added, (HB 24-1294), ch. 399, p. 2732, § 4, effective June 30.

Cross references: For the legislative declaration in HB 19-1309, see section 1 of chapter 281, Session Laws of San Andreas 2019.

38-12-204.3. Notice required for termination. (1) Where the tenancy of a mobile home owner is being terminated under section 38-12-202 or section 38-12-204, the landlord or mobile home park owner shall provide such mobile home owner with written notice as provided for in subsection (2) of this section. Service of such notice must occur at the same time and in the same manner as service of:

(a) The notice to terminate tenancy as provided in section 38-12-202 (1); or

(b) The notice of nonpayment of rent as provided in section 38-12-204 (1).

(2) The notice required under this section must be provided pursuant to section 38-12-212.9 in at least twelve-point type and must read as follows:

IMPORTANT NOTICE TO THE HOME OWNER:

This notice and the accompanying notice to terminate tenancy/notice of nonpayment of rent are the first steps in the eviction process. Any dispute you may have regarding the grounds for eviction should be addressed with your landlord or the management of the mobile home park or in the courts if an eviction action is filed. Please be advised that the "Mobile Home Park Act", part 2 of article 12 of title 38, San Andreas Revised Statutes, and the "Mobile Home Park Act Dispute Resolution and Enforcement Program" created in section 38-12-1104, San Andreas Revised Statutes, may provide you with legal protection.

NOTICE TO TERMINATE TENANCY: In order to terminate a home owner's tenancy, the landlord or management of a mobile home park must serve to a home owner a notice to terminate tenancy. The notice must be in writing and must contain certain information, including:

M The grounds for the termination of the tenancy;

M Whether or not the home owner has a right to cure under the "Mobile Home Park Act"; and

M That the home owner has the option of mediation pursuant to section 38-12-216, San Andreas Revised Statutes, of the "Mobile Home Park Act" and the option of filing a complaint through the "Mobile Home Park Act Dispute Resolution and Enforcement Program" created in section 38-12-1104, San Andreas Revised Statutes.

NOTICE OF NONPAYMENT OF RENT: In order to terminate a home owner's tenancy due to nonpayment of rent, the landlord or management of a mobile home park must serve to a home owner a notice of nonpayment of rent. The notice must be in writing and must require that the home owner either make payment of rent or sell the owner's unit or remove it from the premises within a period of not less than ten days after the date the notice is served or posted, for failure to pay rent when due.

CURE PERIODS: If the home owner has a right to cure under the "Mobile Home Park Act", the landlord or management of a mobile home park cannot terminate a home owner's tenancy without first providing the home owner with a time period to cure the noncompliance. "Cure" refers to a home owner remedying, fixing, or otherwise correcting the situation or problem that made the tenancy subject to termination pursuant to sections 38-12-202, 38-12-203, or 38-12-204, San Andreas Revised Statutes.

COMMENCEMENT OF LEGAL ACTION TO TERMINATE THE TENANCY: After the last day of the applicable notice period required by section 38-12-202 (1)(c), San Andreas Revised Statutes, a legal action may be commenced to take possession of the space leased by the home owner. In order to evict a home owner, the landlord or management of the mobile home park must prove:

M The landlord or management complied with the notice requirements of the "Mobile Home Park Act";

M The landlord or management provided the home owner with a statement of reasons for termination of the tenancy; and

M The reasons for termination of the tenancy are true and valid under the "Mobile Home Park Act".

To defend against an eviction action, a home owner must appear in court. If the court rules in favor of the landlord or management of the mobile home park, the home owner has not

less than thirty days from the time of the ruling to either remove or sell the mobile home and to vacate the premises. If the home owner wishes to extend such period beyond thirty days but not more than sixty days from the date of the ruling, the home owner shall prepay to the landlord an amount equal to a pro rata share of rent for each day following the expiration of the initial thirty-day period after the court's ruling that the mobile home owner will remain on the premises. All prepayments shall be paid no later than thirty days after the court ruling. This section does not preclude earlier removal by law enforcement officers of a mobile home or one or more mobile home owners or occupants from the mobile home park if a mobile home owner violates article 3, 4, 6, 7, 9, 10, 12, or 18 of title 18 or section 16-13-303, San Andreas Revised Statutes.

Source: L. 2000: Entire section added, p. 146, § 1, effective July 1. **L. 2010:** (2) amended, (SB 10-156), ch. 343, p. 1587, § 5, effective July 1. **L. 2019:** (2) amended, (HB 19-1309), ch. 281, p. 2629, § 7, effective May 23. **L. 2020:** (2) amended, (HB 20-1196), ch. 195, p. 915, § 4, effective June 30. **L. 2024:** IP(1), (1)(a), and (2) amended, (HB 24-1098), ch. 113, p. 365, § 10, effective April 19; (2) amended, (HB 24-1294), ch. 399, p. 2733, § 5, effective June 30.

Editor's note: Amendments to subsection (2) by HB 24-1098 and HB 24-1294 were harmonized.

Cross references: For the legislative declaration in HB 19-1309, see section 1 of chapter 281, Session Laws of San Andreas 2019. For the legislative declaration in HB 24-1098, see section 1 of chapter 113, Session Laws of San Andreas 2024.

38-12-204.5. Eviction for rule violation - stay of eviction proceeding - rules challenge. If a resident is a defendant in a forcible entry and detainer complaint filed in either county or district court, and the resident has also submitted a pending complaint through the "Mobile Home Park Act Dispute Resolution and Enforcement Program", created in section 38-12-1104, that is related to the forcible entry and detainer action, the resident may provide a copy of their administrative complaint to the appropriate court of jurisdiction. Upon receiving confirmation of the pending administrative complaint, the court shall automatically stay any hearing on the forcible entry and detainer complaint for at least twenty-one calendar days, during which the division is encouraged to review and conduct an initial assessment of the complaint. The court at its discretion may stay the forcible entry and detainer complaint for longer than twenty-one calendar days to allow for appropriate investigation and adjudication of the pending administrative complaint. The resident shall also make reasonable efforts to inform administrators of the dispute resolution program of the pending forcible entry and detainer action, for the dispute resolution program to prioritize expedient resolution of the pending administrative complaint. This section does not apply to evictions filed pursuant to section 38-12-203 (1)(f).

Source: L. 2024: Entire section added, (HB 24-1294), ch. 399, p. 2734, § 6, effective June 4.

38-12-205. Termination prohibited. A tenancy or other estate at will or lease in a mobile home park may not be terminated solely for the purpose of making the home owner's space in the park available for another mobile home or trailer coach.

Source: L. 73: p. 642, § 1. **S.A.R.S. 1963:** § 58-2-5. **L. 87:** Entire section amended, p. 1312, § 6, effective May 8.

38-12-206. Home owner meetings - assembly in common areas - meeting hosted by landlord. (1) Home owners shall have the right to meet and establish a homeowners' association. Meetings of home owners or the homeowners' association relating to mobile home living and affairs in their park common area, community hall, or recreation hall, if such a facility or similar facility exists, shall not be subject to prohibition by the park management if the common area or hall is reserved according to the park rules and such meetings are held at reasonable hours and when the facility is not otherwise in use; except that no such meetings shall be held in the streets or thoroughfares of the mobile home park.

(2) The management shall not charge home owners or residents a fee to meet in common buildings or spaces in the park, including any common area, community hall, or recreation hall; except that the management may charge for the reasonable costs of cleaning or repairing actual damages incurred. The management may recuperate the cost of repairs for actual damages beyond normal wear and tear that were caused by a home owner by retaining a portion of a home owner's security deposit.

(3) If requested by a home owner or resident, the landlord of a mobile home park shall, within thirty days of receiving the request, host and attend a free, public, accessible meeting for residents of the park; except that a landlord is not required to host and attend more than two meetings in a calendar year. Notice of the date, time, and location of the meeting must be posted in English, Spanish, and any other language reasonably known to be spoken by more than one resident in the park in a clearly visible location in common areas of the mobile home park, including any community hall or recreation hall, for a period of seven days before the meeting and must be provided by mail at least fourteen days before the meeting to each home owners' association, residents' association, or similar body that represents the residents of the park. In addition to mailing the notice as required by this section, the landlord shall provide notice of the meeting by e-mail to each home owner and resident who has an e-mail address on file with the landlord. Upon the reasonable request of a home owner or resident that is made at least seven days before the scheduled meeting, a landlord shall provide an interpreter for any meeting that is held pursuant to this section pursuant to section 38-12-212.9. If an interpreter is provided, the landlord shall provide any documents or materials for the meeting pursuant to section 38-12-212.9. The landlord shall bear the costs of providing the interpreter and for translating any documents or materials provided for the meeting. A landlord may use a virtual language line or other means of providing live interpretation virtually or online to satisfy the requirements of this section. The division is encouraged to publish a list of available virtual, online, and remote interpretation services that are offered by trained interpreters.

Source: L. 73: p. 642, § 1. **S.A.R.S. 1963:** § 58-2-6. **L. 87:** Entire section amended, p. 1313, § 7, effective May 8. **L. 2005:** Entire section amended, p. 109, § 1, effective August 8. **L. 2010:** Entire section amended, (SB 10-156), ch. 343, p. 1588, § 6, effective July 1. **L. 2022:**

Entire section amended, (HB 22-1287), ch. 255, p. 1860, § 8, effective October 1. **L. 2024:** (3) amended, (HB 24-1294), ch. 399, p. 2735, § 7, effective June 30.

38-12-207. Security deposits - legal process. (1) The owner of a mobile home park or the owner's agents may charge a security deposit in an amount not greater than one month's rent.

(2) Legal process, other than eviction, shall be used for the collection of utility charges and incidental service charges other than those provided by the rental agreement.

(3) A security deposit remains the property of the home owner, and a landlord shall deposit each security deposit into a separate trust account to be administered by the landlord as a private trustee. For the purpose of preserving the corpus, the landlord shall not commingle the trust funds with other money; however, the landlord may keep the interest and profits earned from the corpus as compensation for administering the trust account.

Source: L. 73: p. 642, § 1. **S.A.R.S. 1963:** § 58-2-7. **L. 81:** (1) R&RE, p. 1815, § 5, effective June 9. **L. 2020:** (1) amended and (3) added, (HB 20-1196), ch. 195, p. 917, § 5, effective June 30.

38-12-208. Remedies. (1) (a) Upon granting judgment for possession by the landlord in a forcible entry and detainer action, the court shall immediately issue a writ of restitution which the landlord shall take to the sheriff. In addition, if a money judgment has been requested in the complaint and if service was accomplished by personal service, the court shall determine and enter judgment for any amounts due to the landlord and shall calculate a pro rata daily rent amount that must be paid for the home to remain in the park. The court may rely upon information provided by the landlord or the landlord's attorney when determining the pro rata daily rent amount to be paid by the home owner. Upon receipt of the writ of restitution, the sheriff shall serve notice in accordance with the requirements of section 13-40-108, S.A.R.S., to the home owner of the court's decision and entry of judgment.

(b) The notice of judgment must state that, at a specified time not less than thirty days from the entry of judgment, which may be extended to not more than sixty days after the entry of judgment if the home owner has prepaid no later than thirty days after the court ruling to the landlord an amount equal to a pro rata share of rent for each day following the expiration of the initial thirty-day period after the court's ruling that the mobile home owner will remain on the premises, and in instances where the mobile home must be removed from the mobile home lot, the sheriff shall return to serve a writ of restitution and superintend the peaceful and orderly removal of the mobile home under that order of court. The notice of judgment must also advise the home owner, in instances where the mobile home must be removed from the mobile home lot, to prepare the mobile home for removal from the premises by removing the skirting, disconnecting utilities, attaching tires, and otherwise making the mobile home safe and ready for highway travel.

(c) Should the home owner fail to have the mobile home safe and ready for physical removal from the premises or should inclement weather or other unforeseen problems occur at the time specified in the notice of judgment, the landlord and the sheriff may, by written agreement, extend the time for the execution of the writ of restitution to allow time for the landlord to arrange to have the necessary work done or to permit the sheriff's execution of the

writ of restitution at a time when weather or other conditions will make removal less hazardous to the mobile home.

(d) If the mobile home is not removed from the landlord's land on behalf of the mobile home owner within the time permitted by the writ of restitution, then the landlord and the sheriff shall have the right to take possession of the mobile home for the purposes of removal and storage. The liability of the landlord and the sheriff in such event shall be limited to gross negligence or willful and wanton disregard of the property rights of the home owner. The responsibility to prevent freezing and to prevent wind and weather damage to the mobile home lies exclusively with those persons who have a property interest in the mobile home; except that the landlord may take appropriate action to prevent freezing, to prevent wind and weather damage, and to prevent damage caused by vandals.

(e) Reasonable removal and storage charges and the costs associated with preventing damage caused by wind, weather, or vandals can be paid by any party in interest. Those charges will run with the mobile home, and whoever ultimately claims the mobile home will owe that sum to the person who paid it.

(2) (a) Prior to the issuance of said writ of restitution, the court shall make a finding of fact based upon evidence or statements of counsel that there is or is not a security agreement on the mobile home being subjected to the writ of restitution. A written statement on the mobile home owner's application for tenancy with the landlord that there is no security agreement on the mobile home shall be prima facie evidence of the nonexistence of such security agreement.

(b) In those cases where the court finds there is a security agreement on the mobile home subject to the writ of restitution and where that holder of the security agreement can be identified with reasonable certainty, then, upon receipt of the writ of restitution, the plaintiff shall promptly inform the holder of such security agreement as to the location of the mobile home, the name of the landlord who obtained the writ of restitution, and the time when the mobile home will be subject to removal by the sheriff and the landlord.

(3) The remedies provided in part 1 of this article and article 40 of title 13, S.A.R.S., except as inconsistent with this part 2, shall be applicable to this part 2.

Source: L. 73: p. 643, § 1. **S.A.R.S. 1963:** § 58-2-8. **L. 79:** Entire section R&RE, p. 1386, § 4, effective July 1. **L. 87:** (1)(a) to (1)(d) amended, p. 1313, § 8, effective May 8. **L. 91:** (1)(d) and (1)(e) amended, p. 1695, § 3, effective July 1. **L. 2010:** (1)(a) and (1)(b) amended, (SB 10-156), ch. 343, p. 1589, § 7, effective July 1. **L. 2019:** (1)(b) amended, (HB 19-1309), ch. 281, p. 2630, § 8, effective May 23.

Cross references: (1) For security deposits to secure the performance of a rental agreement and the wrongful withholding of such, see §§ 38-12-101 to 38-12-104; for the general provisions for forcible entry and detainer, see §§ 13-40-101 to 13-40-123 and § 13-40-127.

(2) For the legislative declaration in HB 19-1309, see section 1 of chapter 281, Session Laws of San Andreas 2019.

38-12-209. Entry fees prohibited. (1) The owner of a mobile home park, or the agent of such owner, shall neither pay to nor receive from an owner or a seller of a mobile home an entry fee of any type as a condition of tenancy in a mobile home park.

(2) to (4) Repealed.

(5) A landlord shall not charge a resident or a home owner any fee, penalty, or any other cost for refusing to sign a new lease or for residing under a month-to-month or other periodic tenancy.

Source: L. 75: Entire section added, p. 1414, § 1, effective July 1. **L. 79:** (1), IP(2), and (2)(b) amended and (3) added, p. 1387, § 5, effective July 1. **L. 81:** (2)(b) amended and (4) added, p. 1815, §§ 6, 7, effective June 9. **L. 87:** (2)(b) and (2)(e) amended, p. 1313, § 9, effective May 8. **L. 2020:** (2) repealed and (4) amended, (HB 20-1196), ch. 195, p. 917, § 6, effective June 30. **L. 2022:** (3) and (4) repealed, (HB 22-1287), ch. 255, p. 1860, § 9, effective October 1. **L. 2024:** (5) added, (HB 24-1294), ch. 399, p. 2735, § 8, effective June 4.

38-12-210. Closed parks prohibited. (1) Neither the owner of a mobile home park nor the owner's agent may require as a condition of tenancy in a mobile home park that a prospective home owner has purchased a mobile home from any particular seller or from any one of a particular group of sellers.

(2) Such owner or agent shall not give any special preference in renting to a prospective home owner who has purchased a mobile home from a particular seller.

(3) A seller of mobile homes shall not require as a condition of sale that a purchaser locate in a particular mobile home park or in any one of a particular group of mobile home parks.

(4) The owner or operator of a mobile home park shall treat all persons equally in renting or leasing available space. Notwithstanding the foregoing, nothing in this subsection (4) shall be construed to preclude owners and operators of mobile home parks from providing housing for older persons as defined in section 24-34-502 (7)(b), S.A.R.S.

Source: L. 75: Entire section added, p. 1414, § 1, effective July 1. **L. 81:** (4) added, p. 1815, § 8, effective June 9. **L. 87:** (1) and (2) amended, p. 1314, § 10, effective May 8. **L. 92:** (4) amended, p. 1128, § 12, effective July 1. **L. 2020:** (1) amended, (HB 20-1196), ch. 195, p. 918, § 7, effective June 30.

38-12-211. Selling and transfer fees prohibited - "for sale" signs permitted. (1) A landlord shall not require payment of any type of selling fee or transfer fee by a home owner in the park wishing to sell the home owner's mobile home to another party, a home owner wishing to remove the home owner's mobile home from the park, or any party wishing to buy a mobile home from a home owner in the park as a condition of tenancy in a park for the prospective buyer. This subsection (1) does not prohibit the landlord from charging a rental application fee that complies with section 38-12-903 if the prospective buyer is buying the mobile home in place and is applying for tenancy in the park.

(2) (a) This section does not prevent the owner of a mobile home park or the owner's agent from applying the normal park standards to prospective buyers before granting or denying tenancy or from charging a reasonable selling fee or transfer fee for services actually performed and agreed to in writing by a home owner.

(b) Nothing in this section shall be construed to affect the rent charged by a landlord to a home owner pursuant to a rental agreement.

(3) The owner of a mobile home may place a "for sale" sign on or in the owner's mobile home. The size, placement, and character of the sign is subject to reasonable rules and regulations of the mobile home park.

Source: L. 75: Entire section added, p. 1415, § 1, effective July 1. **L. 79:** Entire section amended, p. 1388, § 6, effective July 1. **L. 87:** Entire section amended, p. 1314, § 11, effective May 8. **L. 2020:** Entire section amended, (HB 20-1196), ch. 195, p. 918, § 8, effective June 30. **L. 2022:** (1) amended, (HB 22-1287), ch. 255, p. 1860, § 10, effective October 1.

38-12-212. Certain types of landlord-seller agreements prohibited. A seller of mobile homes shall not pay or offer cash or other consideration to the owner of a mobile home park or the park owner's agent for the purpose of reserving spaces or otherwise inducing acceptance of one or more mobile homes in a mobile home park.

Source: L. 75: Entire section added, p. 1415, § 1, effective July 1. **L. 2020:** Entire section amended, (HB 20-1196), ch. 195, p. 918, § 9, effective June 30.

38-12-212.3. Responsibilities of landlord - acts prohibited. (1) (a) Except as otherwise provided in this section:

(I) In any rental agreement, the landlord is deemed to covenant, warrant, and maintain, throughout the period of the tenancy described in the rental agreement, premises that are safe, clean, fit for human habitation and reasonable use, and accessible to people with disabilities;

(II) A landlord is responsible for and shall pay the cost of the maintenance and repair of any sewer lines, water lines, utility service lines, or related connections owned and provided by the landlord to the utility pedestal or pad space for a mobile home located in the park; and

(III) A landlord shall ensure that:

(A) All plumbing lines and other utility connections owned and provided by the landlord to the utility pedestal or pad space for each mobile home in the park have plumbing and utility connections that conformed to applicable law in effect at the time they were installed and are maintained in good working order;

(B) Each pad space is connected to a sewage disposal system approved under applicable law; and

(C) Running water and reasonable amounts of water are furnished at all times to each utility pedestal or pad space; except that a landlord need not satisfy the conditions described in this subsection (1)(a)(III)(C) if a mobile home is individually metered and the tenant occupying the mobile home fails to pay for water services; the local government in which the mobile home park is situated shuts off water service to a mobile home for any reason; a third-party water provider shuts off water for the mobile home park for any reason that is unrelated to the landlord's actions or inactions; weather conditions present a likelihood that water pipes will freeze, water pipes to a mobile home are wrapped in heated pipe tape, and the utility company has shut off electrical service to a mobile home for any reason or the heat tape malfunctions for any reason; running water is not available for any other reason outside the landlord's control to prevent through reasonable and timely maintenance; or the landlord is making repairs or improvements to the items described in subsection (1)(a)(II) of this section, the landlord has provided reasonable advance notice to the mobile home residents of a service disruption that is

required in connection with the repairs or improvements, and the service disruption continues for no longer than twenty-four hours.

(b) If a landlord fails to maintain or repair the items described in subsection (1)(a)(II) or (2)(b) of this section:

(I) The landlord is responsible for and shall pay the cost of repairing any damage to a mobile home or mobile home lot that results from the failure;

(II) The landlord is responsible for and shall pay the cost of providing alternative sources of potable water reasonably sufficient for drinking and cooking no later than twelve hours after a service disruption begins and reasonably sufficient for bathing and all other essential hygiene for all members of the household no later than seventy-two hours after a service disruption begins and for maintaining portable toilets that are located reasonably near affected mobile homes in a manner that renders them accessible to people with disabilities no later than twelve hours after the service disruption begins unless conditions beyond the landlord's control reasonably prevent compliance with this subsection (1)(b)(II); and

(III) The landlord shall reimburse residents for any damages to their persons or property, for any loss of use of their property, and for any expenses that they reasonably incur as a result of the failure.

(c) A landlord shall give a minimum of forty-eight hours' notice to residents if water service will be disrupted for more than two hours for planned improvements, maintenance, or repairs. The landlord shall attempt to give a reasonable amount of notice to residents if water service will be disrupted for any other reasons unless conditions are such that providing the notice would result in property damage, health, or safety concerns or when conditions otherwise require emergency repair.

(d) In addition to the requirements of subsection (1)(b) of this section, a landlord must also provide a resident with potable water reasonably sufficient for drinking, cooking, bathing, and all other essential hygiene within the time frames specified in subsection (1)(b)(II) of this section if the mobile home park or the resident or home owner's lot in the park is subject to a boil water advisory that was caused due to maintenance or repairs to the park performed or ordered by a park owner or a park owner's agent or contractor until the advisory has been rescinded by the issuing agency. A landlord shall also provide a notice, posted in a conspicuous place on each mobile home lot in both English and Spanish, of a boil water advisory as soon as possible but not later than twenty-four hours after the landlord receives the boil water advisory. Notices that are required to be reissued must also be posted in compliance with this subsection (1)(d).

(2) In addition to the responsibilities described in subsection (1)(a) of this section, a landlord is responsible for:

(a) Any accessory buildings or structures, including sheds and carports, that are owned by the landlord and provided for the use of the residents; and

(b) The premises, including:

(I) Maintaining all common areas in clean condition, good repair, and in compliance with applicable health and safety laws; keeping common areas and facilities generally available for use by park residents; and keeping common areas accessible to people with disabilities;

(II) Maintaining roads, existing or constructed sidewalks, and other pavement owned by the landlord in a passable, safe condition that is sufficient to provide access for residents' vehicles, emergency vehicles, vans providing transportation services to persons who are elderly or disabled, and school buses, if applicable, which maintenance includes ensuring adequate

drainage, maintaining pavement above water lines, and snow removal for all roadways and for all pedestrian sidewalks and other pavements that provide access to mailboxes, public notice areas, and public buildings;

(III) Maintaining lot grades, regrading lots as necessary to prevent the accumulation of stagnant water and the detrimental effects of moving water, and taking reasonably necessary steps to maintain the integrity of the foundation of each mobile home's utility pedestal or pad space in order to prevent structural damage to the mobile home, except in circumstances where the need for such maintenance is caused by a resident's actions;

(IV) Maintaining trees on the premises in a manner that protects the safety of residents of the park and their property, including the preservation of healthy, mature trees that home owners reasonably expected to remain on the premises when they signed their rental agreements, so long as such preservation does not pose a safety risk to any person, property, or infrastructure; and

(V) Complying with the provisions of part 10 of article 8 of title 25.

(3) A landlord shall not require a resident to assume any of the responsibilities described in subsection (1) or (2) of this section as a condition of tenancy in the park.

(4) Nothing in this section may be construed as:

(a) Limiting the liability of an individual for the cost of repairing any damage caused by the individual to the landlord's property or other property located in the park; or

(b) Restricting a landlord from requiring a home owner or resident to comply with rules and regulations of the park that are enforceable pursuant to section 38-12-214 or with terms of the rental agreement and any covenants binding upon the landlord or home owner or resident, including covenants running with the land that pertain to the cleanliness of the home owner's or resident's lot and routine lawn and yard maintenance and excluding major landscaping projects.

(5) A landlord shall establish and maintain an emergency contact number, post the number in common areas of the park, and communicate the number to home owners and residents in each rental agreement and each revision of the park rules and regulations. A home owner or resident who uses the emergency contact number in a timely manner to report a problem with a condition described in subsection (1) or (2) of this section is deemed to have provided notice to the landlord of the problem.

(5.5) A landlord shall establish a unique mailing address and mailbox for each mobile home park lot to provide access to United States mail service and shall include the mailing address in the rental agreement. The mailboxes provided under this section may be located in one or more common areas located within the park or on individual lots. The requirements of this subsection (5.5) do not apply if United States mail service is not available in the geographic area where the park is located.

(6) If a landlord fails to comply with the requirements of this section, a home owner of the park may file a complaint with the division of housing pursuant to the "Mobile Home Park Act Dispute Resolution and Enforcement Program" created in section 38-12-1104. On and after July 1, 2024, or earlier if allowed by the division, a resident who does not own a mobile home in the park, a local government, or a nonprofit may file such a complaint. If the division finds by a written determination that the landlord has violated this section, the division may:

(a) Impose penalties, as described in section 38-12-1105 (5);

(b) Issue an order to cease and desist, as described in section 38-12-1105 (6);

(c) Require the landlord to reduce the rent owed by a home owner or resident on a prorated basis to reflect the home owner's or resident's loss of use of the mobile home space; or

(d) Require the landlord to compensate a home owner or resident for housing expenses on a per diem basis if the home owner or resident is displaced from the mobile home as a result of the landlord's violation.

Source: L. 91: Entire section added, p. 1679, § 1, effective April 19. **L. 2010:** (1)(a)(I) and (1)(b) amended and (1)(c) added, (SB 10-156), ch. 343, p. 1589, § 8, effective July 1. **L. 2020:** Entire section amended, (HB 20-1196), ch. 195, p. 919, § 10, effective June 30. **L. 2022:** IP(1)(b), (1)(b)(II), (3), (4)(b), (5), IP(6), (6)(c), and (6)(d) amended, (HB 22-1287), ch. 255, p. 1861, § 11, effective October 1. **L. 2023:** (2)(b)(III) and (2)(b)(IV) amended and (2)(b)(V) added, (HB 23-1257), ch. 376, p. 2258, § 8, effective June 5. **L. 2024:** (1)(a)(III)(C), (1)(b)(II), and (2)(b)(II) amended and (1)(d) added, (HB 24-1294), ch. 399, p. 2735, § 9, effective June 4; (5.5) added, (HB 24-1294), ch. 399, p. 2735, § 9, effective June 30.

38-12-212.4. Required disclosure and notice of water usage and billing - responsibility for leaks. (1) If the management charges home owners or residents individually for water usage in the park, then, on or before January 31 of each year, the management shall provide to each home owner and resident and post in both English and Spanish in a clearly visible location in at least one common area of the mobile home park the following information:

(a) The methodology by which the management calculates the amount charged to each home owner or resident for water usage on the home owner's or resident's lot;

(b) The methodology by which the management calculates the amount charged to each home owner or resident for water usage in common areas of the mobile home park; and

(c) The current residential water rate schedule of the water utility or municipal water service provider that supplies water to the park.

(2) If the management charges home owners or residents for water usage in the park, whether individually or in an aggregate amount, the management shall provide to each home owner or resident a monthly water bill that indicates the amount owed by the home owner or resident, the total amount owed by all the residents in the mobile home park, and, if the management purchases the water from a provider, the total amount paid by the management to the provider.

(3) The management shall not charge a home owner or resident for any costs in addition to the actual cost of water billed to the management.

(4) The management shall use a methodology that is reasonable, equitable, and consistent for billing home owners or residents for any type of water usage.

(5) If the management learns of a leak in a water line inside the park, the management shall notify each home owner and resident of the leak within twenty-four hours.

(6) The management shall not bill a home owner or resident for any water usage that is caused by a leak in a water line inside the park.

Source: L. 2020: Entire section added, (HB 20-1196), ch. 195, p. 922, § 11, effective June 30. **L. 2022:** IP(1), (1)(a), (1)(b), (2), (3), (4), (5), and (6) amended, (HB 22-1287), ch. 255, p. 1862, § 12, effective October 1.

38-12-212.5. Prohibition on retaliation and harassment - definition. (1) The management shall not take retaliatory action against a home owner or resident who exercises any right conferred upon the home owner or resident by this part 2, part 11 of this article 12, or any other provision of law.

(2) Except as described in subsection (3) of this section, in an action or administrative proceeding by or against a home owner or resident, the management's action is presumed to be retaliatory if, within the one hundred twenty days preceding the management's action, the home owner or resident:

(a) Complained or expressed an intention to complain to a governmental agency about a matter relating to the mobile home park;

(b) Submitted a complaint to the management about a violation described in this part 2;

(c) Organized or became a member of a tenants' association or similar organization;

(d) Made any other effort to secure or enforce any of the rights or remedies provided by this part 2 or any other provision of law;

(e) Participated in a vote or decision-making process concerning the opportunity to purchase the mobile home park pursuant to section 38-12-217;

(f) Filed a water quality complaint or requested remediation to address a water quality issue under part 10 of article 8 of title 25; or

(g) Requested that the landlord provide communications required in this part 2 or part 11 or 14 of this article 12 in a language other than English.

(3) The presumption of retaliatory action described in subsection (2) of this section does not apply to an action or administrative hearing where the management:

(a) Addresses nonpayment of rent by a home owner or resident, as described in section 38-12-204; or

(b) Was notified by a peace officer or otherwise became aware that the mobile home that is the basis of the administrative hearing was being operated as an illegal drug laboratory, as defined in section 25-18.5-101 (8).

(4) The management may rebut a presumption of retaliation with sufficient evidence of a nonretaliatory purpose.

(4.5) The management shall not:

(a) Harass, intimidate, or threaten, or attempt to harass, intimidate, or threaten, any person for filing or attempting to file a complaint, joining or attempting to join an association of residents or home owners, engaging in activities to promote the organizing and education of residents and home owners, or voting or attempting to vote on a matter before the association of residents or home owners; or

(b) Coerce or require a person to sign an agreement.

(5) The rights and remedies provided by this section are available to home owners and residents in addition to the anti-retaliation protection provided in section 38-12-1105 (13).

(6) As used in this section, unless the context otherwise requires, "organizing" includes:

(a) Facilitating or attending a meeting for purposes of forming a tenants' organization or filing a complaint, even if the organization is not yet formed or the complaint has not yet been filed when the retaliation occurs; or

(b) Distribution of flyers or other promotional or educational materials related to tenant organization efforts.

Source: L. 2020: Entire section added, (HB 20-1196), ch. 195, p. 922, § 11, effective June 30. **L. 2022:** (1), IP(2), (3)(a), and (5) amended and (2)(e) and (4.5) added, (HB 22-1287), ch. 255, p. 1863, § 13, effective October 1. **L. 2023:** (2)(d) and (2)(e) amended and (2)(f) and (6) added, (HB 23-1257), ch. 376, p. 2258, § 9, effective June 5. **L. 2024:** (2)(e) and (2)(f) amended and (2)(g) added, (HB 24-1294), ch. 399, p. 2737, § 10, effective June 30.

38-12-212.7. Landlord utilities account. (1) Whenever a landlord contracts with a utility for service to be provided to a resident, the usage of which is to be measured by a master meter or other composite measurement device, such landlord shall remit to the utility all moneys collected from each resident as payment for the resident's share of the charges for such utility service within forty-five days of the landlord's receipt of payment.

(2) If a landlord fails to timely remit utility moneys collected from residents as required by subsection (1) of this section, such utility may, after written demand therefor is served upon the landlord, require the landlord to deposit an amount equal to the average daily charge for the usage of such utility service for the preceding twelve months multiplied by the sum of ninety.

(3) Any utility which prevails in an action brought to enforce the provisions of this section shall be entitled to an award of its reasonable attorney fees and court costs.

Source: L. 91: Entire section added, p. 1679, § 1, effective April 19.

38-12-212.9. Language access requirements. (1) Except as otherwise provided in this part 2 or part 11 or 14 of this article 12, a landlord shall provide any notice, disclosure, or other communication that a landlord is required to provide to a resident pursuant to this part 2 or part 11 or 14 of this article 12, in English and Spanish. At any time, a resident may request that a landlord provide a notice, disclosure, or other communication in one additional language, other than English or Spanish, spoken by the resident. If a landlord receives a request to provide a notice, disclosure, or communication in one additional language other than English or Spanish, the landlord shall provide any subsequent notices, disclosures, or communications required pursuant to this part 2 or part 11 or 14 of this article 12 to the resident in the requested language. A landlord may provide a translation pursuant to this section virtually or through the use of an online translation program, including programs that may be published by the division, so long as the translated written notice, disclosure, or communication satisfies all applicable legal requirements.

(2) At any time, a resident may request that a landlord provide a written notice, disclosure, or other communication verbally in English one time to the resident in addition to providing the resident with a written notice, disclosure, or other communication. If the landlord receives a request to provide a notice, disclosure, or other communication verbally, the landlord shall read the notice, disclosure, or other communication aloud to the resident within seventy-two hours of the resident making the request. To satisfy the requirement of this subsection (2), a landlord may also provide an audio or video recording of the notice, disclosure, or other communication being read aloud.

(3) A landlord shall ensure that any notice, disclosure, or other communication required pursuant to this part 2 or part 11 or 14 of this article 12 is written in clear and plain language and includes all information reasonably necessary for the resident to understand the resident's rights and responsibilities. A translated notice, disclosure, or other communication must accurately

convey the meaning of the original English notice, disclosure, or other communication. Each notice, disclosure, or other communication, regardless of the language, must be clear and unambiguous to ensure that it is easily understood by all park residents. A landlord shall make reasonable efforts to provide a notice, disclosure, or other communication in the simplest language practicable to convey the required message.

(4) A resident may respond in English or Spanish to any notice, disclosure, or other communication provided by a landlord. A resident who has requested that a landlord provide a notice, disclosure, or other communication in a language other than English or Spanish may respond to the notice, disclosure, or other communication in the requested language.

(5) A resident may request that a landlord provide an interpreter in one language in addition to English and Spanish that the resident uses for any non-written notice, disclosure, or other communication with residents, including in a meeting required pursuant to section 38-12-206. A landlord shall provide an interpreter in the requested language and may provide the interpretation in person or virtually through an interpretation service, including a virtual or remote language line that provides live interpretation by a trained interpreter. Non-written language includes American sign language.

Source: L. 2024: Entire section added, (HB 24-1294), ch. 399, p. 2737, § 11, effective June 30.

38-12-213. Rental agreement - disclosure of terms in writing - prohibited provisions. (1) The management shall adequately disclose the terms and conditions of a tenancy in writing in a rental agreement in English, or upon request in both English and Spanish, to any prospective home owner before the rental or occupancy of a mobile home space or lot. The disclosures must include:

(a) The term of the tenancy and the amount of rent therefor, subject to the requirements of subsection (4) of this section;

(b) The day rental payment is due and payable;

(c) The day when unpaid rent is considered in default for the purpose of establishing a late fee, which day may not be less than ten calendar days after the day rent is due and payable;

(d) The rules and regulations of the park then in effect;

(e) The name and mailing address where a manager's decision can be appealed; and

(f) All charges to the home owner other than rent, including late fees.

(2) Said rental agreement shall be signed by both the management and the home owner, and each party shall receive a copy thereof.

(3) The management and the home owner may include in a rental agreement terms and conditions not prohibited by this part 2.

(4) The terms of tenancy shall be specified in a written rental agreement subject to the following conditions:

(a) The standard rental agreement shall be for a month-to-month tenancy.

(b) Upon written request by the home owner to the landlord, the landlord shall allow a rental agreement for a fixed tenancy of not less than one year if the home owner is current on all rent payments and is not in violation of the terms of the then-current rental agreement; except that an initial rental agreement for a fixed tenancy may be for less than one year in order to

ensure conformity with a standard anniversary date. A landlord shall not evict or otherwise penalize a home owner for requesting a rental agreement for a fixed period.

(c) A landlord may, in the landlord's discretion, allow a lease for a fixed period of longer than one year. In such circumstances, the requirements of paragraphs (a) and (b) of this subsection (4) shall not apply.

(5) A rental agreement shall not include any provision:

(a) By which a home owner waives any rights created by this part 2 or part 11 of this article 12;

(b) That requires a home owner to agree to a possessory lien;

(b.5) That requires a home owner to waive the opportunity to purchase the park allowed under section 38-12-217;

(c) That binds a home owner to arbitration in lieu of a civil trial; or

(d) That authorizes a third person to confess judgment on a claim that arises from the rental agreement, this part 2, or part 11 of this article 12.

(6) Any provision of a rental agreement that is prohibited by subsection (5) of this section is against public policy, unenforceable, and void.

(7) It is a violation of this part 2 for the management to require a home owner to sign a new lease or agreement in violation of this section or to mislead a home owner about the home owner's obligation to sign a new lease or agreement.

Source: L. 81: Entire section added, p. 1815, § 9, effective June 9. **L. 87:** IP(1), (1)(f), (2), and (3) amended, p. 1314, § 12, effective May 8. **L. 2005:** (1)(a) amended and (4) added, p. 109, § 2, effective August 8. **L. 2020:** (5) and (6) added, (HB 20-1196), ch. 195, p. 924, § 12, effective June 30. **L. 2021:** (6) amended, (SB 21-266), ch. 423, p. 2806, § 37, effective July 2; IP(1), (1)(c), (1)(e), and (1)(f) amended, (SB 21-173), ch. 349, p. 2268, § 10, effective October 1. **L. 2022:** IP(5) amended and (5)(b.5) and (7) added, (HB 22-1287), ch. 255, p. 1863, § 14, effective October 1. **L. 2024:** IP(1) amended, (HB 24-1294), ch. 399, p. 2738, § 12, effective June 30.

38-12-214. Rules and regulations - amendments - notice - complaints. (1) The management shall adopt written rules and regulations concerning residents' or home owners' use and occupancy of the premises. The management shall provide a resident or home owner with a written copy of the adopted rules and regulations in English and Spanish. Except as otherwise provided in this section, such rules and regulations are enforceable against a resident or home owner only if:

(a) Their purpose is to promote the safety or welfare of the home owners, protect and preserve the premises from abuse, or make a fair distribution of services and facilities held out for the home owners generally;

(b) They are reasonably related to a legitimate purpose, for which they are adopted;

(c) They are not arbitrary, capricious, unreasonable, retaliatory, or discriminatory in nature;

(d) They are sufficiently explicit in prohibition, direction, or limitation of each home owner's conduct to fairly inform each home owner of what the home owner must do or not do to comply; and

(e) They are established in the rental agreement at the inception of the tenancy, amended subsequently with the written consent of the home owner, or, except as described in subsection (2) of this section, amended subsequently without the written consent of the home owner after the management has provided written notice, in both English and Spanish, of the amendments to the home owner in a common area and in a conspicuous place on each home owner's mobile home lot at least sixty days before the amendments become effective, and, if applicable, enforced in compliance with subsection (3) of this section.

(2) (a) When a mobile home or any accessory building or structure is owned by a person other than the owner of the mobile home park in which the mobile home is located, the mobile home and the accessory building or structure are each a separate unit of ownership. The accessory building or structure are each presumed to be owned by the owner of the mobile home unless there is a written agreement establishing ownership by another person.

(b) If a rule or regulation requires a home owner to incur a cost or imposes restrictions or requirements on the home owner's right to control what happens in or to the mobile home or any accessory building or structure, the rule or regulation is presumed unreasonable pursuant to subsection (1)(c) of this section unless management demonstrates that the rule or regulation:

(I) Is strictly necessary to protect the health and safety of park residents and the rule or regulation provides the protection at the lowest expense to home owners as is reasonably possible;

(II) Is strictly necessary to comply with or enforce a federal, state, or local government requirement, including local nuisance laws enforced for the welfare of other residents;

(III) Is voluntarily agreed to by the home owner, without coercion or misrepresentation by management, in which case the rule or regulation is only binding upon home owners who have communicated their written consent to the rule or regulation; or

(IV) In a mobile home park managed by home owners, was established by the managing home owner organization in accordance with the organization's bylaws and more than fifty percent of the home owners are members of the organization.

(c) (I) Rules or regulations that impose restrictions or requirements on the home owner's right to control what happens in or to a home owner's mobile home or any accessory building or structure include, but are not limited to, those that impose requirements related to the following:

(A) The structure and appearance of the mobile home, building, or structure, including rules or regulations requiring aesthetic improvements;

(B) Who may visit the mobile home, building, or structure, or who may reside at the mobile home;

(C) Lawful activities taking place in the mobile home, building, or structure; and

(D) Resident occupancy limits that are stricter than applicable federal, state, and local occupancy laws.

(II) This subsection (2)(c) does not preclude a landlord from conducting any lawful screening of a rental application.

(d) Beginning on June 4, 2024, any notice to quit served pursuant to section 38-12-204.3 or any complaint to terminate tenancy pursuant to section 38-12-203 (1)(c) shall include a statement that specifically sets forth the basis for enforceability pursuant to subsection (1) of this section and section 38-12-203 (1)(c), including the specific purpose required pursuant to subsection (1)(a) of this section and how the rule or regulation is reasonably related to the stated purpose as required pursuant to subsection (1)(b) of this section. A general statement that a rule

or regulation promotes safety or welfare is not sufficient to meet the requirements of this subsection (2)(d) or section 38-12-203 (1)(c).

(e) The division is authorized to promulgate rules that:

(I) Specify additional park rules and regulations that are not strictly necessary pursuant to this section and are unenforceable or presumptively unenforceable; and

(II) Specify additional park rules and regulations that are strictly necessary pursuant to this section and are enforceable or presumptively enforceable.

(2.5) (a) Subsection (2) of this section does not prohibit the management from requiring compliance by a new home owner with park rules and regulations that were not enforceable against the previous home owner after the sale or transfer of a mobile home or accessory building or structure as described in subsection (2.5)(b) of this section if the rules or regulations comply with this section and have been duly noticed, in both English and Spanish, to all home owners and residents, including the seller, pursuant to subsection (1)(e) of this section; except that, as used in this subsection (2.5), "transfer" does not include a transfer of ownership pursuant to death or divorce or a transfer of ownership to a new co-owner who is an immediate family member, spouse, or domestic partner of the home owner.

(b) The management shall not require a home owner selling a mobile home or accessory building or structure to ensure that the mobile home or accessory building or structure complies with any rules or regulations by the closing date of the sale or to bear the costs of compliance with any such rules or regulations. If the management requires all prospective buyers to comply with such rules and regulations as a condition of gaining tenancy in the park, the management shall promptly provide a written list of items for which the management requires action to the seller upon receiving notice that the mobile home is for sale. The seller shall provide the list to all prospective buyers, and the management shall provide the list to the buyer upon receiving an application for tenancy. The management shall allow a reasonable amount of time after closing for the buyer to bring the mobile home or accessory building or structure into compliance, which must be at least thirty days from the closing date. During the period in which the buyer may bring the mobile home or accessory building or structure into compliance, the management shall provide the buyer with reasonable access to the mobile home or accessory building or structure, including access to the mobile home or accessory building or structure for the purpose of storing belongings until the buyer is able to reside in the mobile home.

(2.7) (a) Notwithstanding any rental agreement, the management shall not interfere with a home owner's right to sell a mobile home or accessory building or structure, in place or otherwise, to a buyer of the home owner's choosing, regardless of the age of the home, except as necessary for the management to ensure:

(I) Compliance with park-wide affordability restrictions, including requirements for owner occupancy;

(II) The financial ability of the home buyer to comply with the buyer's obligations as a new tenant pursuant to subsection (2.7)(c) of this section;

(III) Compliance with applicable local, state, or federal law; and

(IV) The absence of a home buyer's relevant criminal history that would indicate a reasonable chance of risk to other residents in accordance with section 38-12-904 (1)(b).

(b) A provision in a rental agreement that limits or restricts a home owner's right to sell a mobile home or accessory building or structure to a buyer of the home owner's choosing other than as allowed by this subsection (2.7) is unenforceable.

(c) A buyer demonstrates the buyer's financial ability to comply with the provisions of subsection (2.7)(a)(II) of this section if the buyer can demonstrate that:

(I) The buyer has a monthly income that is at least two hundred percent of the seller's current monthly lot rent for one month; or

(II) The buyer has other cash assets that are at least two hundred percent of the seller's current monthly lot rent for six months.

(3) (a) If the management provides each home owner written notice, in both English and Spanish, of the management's intent to add or amend any written rule or regulation as described in subsection (1)(e) of this section, or if the management indicates that it will begin enforcing a rule or regulation that was previously unenforced, a home owner may file a complaint challenging the rule, regulation, or amendment pursuant to section 38-12-1105 within sixty days after receiving the notice. If a home owner files such a complaint and the new or amended rule or regulation will increase a cost to the home owner in an amount that equals or exceeds ten percent of the home owner's monthly rent obligation under the rental agreement, the management shall not enforce the rule, regulation, or amendment unless and until the parties reach an agreement concerning the rule, regulation, or amendment or the dispute resolution process concludes and the division issues a written determination, pursuant to section 38-12-1105 (4), that the rule, regulation, or amendment does not constitute a violation of this part 2 and may be enforced. Notwithstanding any provision of part 11 of this article 12 to the contrary, as part of the complaint process described in section 38-12-1105, the management has the burden of establishing that the rule, regulation, or amendment satisfies the requirements described in subsections (1) and (2) of this section.

(b) Nothing in this section precludes a home owner from filing a complaint, pursuant to section 38-12-1105, concerning a rule or regulation at any time after the rule or regulation takes effect.

(4) Rules and regulations that concern recreational facilities may be amended at the reasonable discretion of the management.

Source: L. 81: Entire section added, p. 1816, § 9, effective June 9. **L. 87:** IP(1), (1)(a), and (1)(d) amended, p. 1315, § 13, effective May 8. **L. 92:** (1)(c) amended, p. 1128, § 13, effective July 1. **L. 2020:** Entire section amended, (HB 20-1196), ch. 195, p. 924, § 13, effective June 30. **L. 2022:** IP(1), (1)(e), (2), and (3)(a) amended and (2.5) and (2.7) added, (HB 22-1287), ch. 255, p. 1864, § 15, effective October 1. **L. 2024:** (2) R&RE, (2.5), (2.7)(a)(II), and (3)(a) amended, and (2.7)(c) added, (HB 24-1294), ch. 399, p. 2739, § 13, effective June 4; IP(1) and (1)(e) amended, (HB 24-1294), ch. 399, p. 2739, § 13, effective June 30.

38-12-215. New developments and parks - rental of sites to dealers authorized. (1) The management of a new mobile home park or manufactured housing community development may require as a condition of leasing a mobile home site or manufactured home site for the first time such site is offered for lease that the prospective lessee has purchased a mobile home or manufactured home from a particular seller or from any one of a particular group of sellers.

(2) A licensed mobile home dealer or a manufactured home dealer may, by contract with the management of a new mobile home park or manufactured housing community development, be granted the exclusive right to first-time rental of one or more mobile home sites or manufactured home sites.

Source: L. 81: Entire section added, p. 1816, § 9, effective June 9.

38-12-216. Mediation, when permitted - court actions. (1) In any controversy between the management and a home owner of a mobile home park arising out of the provisions of this part 2, except for the nonpayment of rent or in cases in which the health or safety of other home owners is in imminent danger, such controversy may be submitted to mediation by either party prior to the filing of a forcible entry and detainer lawsuit upon agreement of the parties.

(2) The agreement, if one is reached, shall be presented to the court as a stipulation. Either party to the mediation may terminate the mediation process at any time without prejudice.

(3) If either party subsequently violates the stipulation, the other party may apply immediately to the court for relief.

Source: L. 81: Entire section added, p. 1815, § 9, effective June 9; (2) amended, p. 2034, § 54, effective July 14. **L. 87:** (1) amended, p. 1315, § 14, effective May 8.

38-12-217. Notice of change of use - notice of sale or closure of park - opportunity for home owners to purchase - procedures - exemptions - enforcement - private right of action - definitions. (1) Except as specified in subsection (12) of this section:

(a) (I) A landlord shall provide notice of the landlord's intent to sell the park within fourteen days of a triggering event demonstrating the landlord's intent to sell. The notice must be given in accordance with the requirements of subsection (2) of this section.

(II) A triggering event requiring notice under this subsection (1)(a) includes any time the landlord:

(A) Signs a contract with a real estate broker or brokerage firm to list the park for sale or to sell or transfer the park;

(B) Signs a letter of intent, option to sell or buy, or other conditional written agreement with a potential buyer for the sale or transfer of the park, which includes the estimated price, terms, and conditions of the proposed sale or transfer, even if such price, terms, or conditions are subject to change;

(C) Signs a contract with a potential buyer's real estate broker or brokerage firm related to the potential sale or transfer of the park;

(D) Accepts an earnest money promissory note or deposit from a potential buyer for the sale or transfer of the park;

(E) Responds to a potential buyer's due diligence request for the park;

(F) Provides a signed property disclosure form for the park to a potential buyer;

(G) Lists the park for sale;

(H) Makes a conditional acceptance of an offer for the sale or transfer of the park;

(I) Takes any other action demonstrating an intent to sell the park; or

(J) Receives a notice of election and demand or lis pendens related to foreclosure of the park pursuant to part 1 of article 38 of this title 38 or a notice that a certificate of levy has been filed related to the park pursuant to section 13-56-101.

(b) A landlord shall provide notice of the landlord's intent to change the use of the land comprising the mobile home park in accordance with the requirements of subsection (2) of this section at least twelve months before the change in use will occur.

(c) No earlier than ninety days after giving the notice required by subsection (1)(a) of this section, a landlord may post information in a public space in the mobile home park describing the method for providing a signed writing to the mobile home park owner related to the opportunity to purchase. The posting must include standard forms created by the department of local affairs related to the opportunity to purchase and the rights of mobile home park owners related to the opportunity to purchase, including a standardized form developed by the department of local affairs for the landlord to use to request the signatures of home owners who decline to participate in efforts to purchase a community. If, no earlier than ninety days after a landlord provides the notice required by subsection (1)(a) of this section, at least fifty percent of the home owners who reside in the park provide signed writings to the landlord declining to participate in purchasing the park, then the opportunity to purchase provided by subsection (4) of this section terminates even if the one-hundred-twenty-day period provided for in subsection (4)(a) of this section has not yet elapsed.

(d) A landlord shall not solicit or request a home owner's intention or a signed writing related to the opportunity to purchase during the initial ninety days after giving notice pursuant to subsection (1)(a) of this section. During the time period for considering an opportunity to purchase, a landlord shall not attempt to coerce, threaten, or intimidate a home owner or provide any financial or in-kind incentives to a home owner to influence the home owner's vote or decision and shall not take retaliatory action against a home owner after the home owner's vote or decision. Any complaints alleging violation of this subsection (1) may be resolved under part 11 of this article 12 and subsection (15) of this section.

(2) **Notice - requirements.** (a) To provide notice as required by subsection (1)(a) or (1)(b) of this section, the landlord shall mail the notice in both English and Spanish by certified mail to:

(I) Each home owner, using the most recent address of the home owner, and shall post a copy of the notice in a conspicuous place on the mobile home or at the main point of entry to the lot;

(II) The municipality or, if the park is in an unincorporated area, the county within which the park is located;

(III) The division of housing in the department of local affairs; and

(IV) Each home owners' association, residents' association, or similar body that represents the residents of the park.

(b) In addition to mailing the notice, the landlord shall:

(I) Provide the notice in both English and Spanish by e-mail to each resident who has an e-mail address on file with the landlord; and

(II) (A) Post the notice in both English and Spanish in a clearly visible location in common areas of the mobile home park, including any community hall or recreation hall. The notice must remain publicly posted for a period of at least one hundred twenty days from the date it is posted or until the opportunity to purchase has expired.

(B) The landlord shall make a good faith effort to comply with the notice requirement in subsection (2)(b)(II)(A) of this section. A good faith effort by the landlord to comply with the notice requirement in subsection (2)(b)(II)(A) of this section will not render a sale of a park to be out of compliance with this section.

(3) **Contents of notice.** The notice given pursuant to subsection (1)(a) of this section must include notice of home owners' rights and remedies under this section. If the triggering

event involves a potential sale, the notice must also include a description of the property to be purchased; the price, terms, and conditions of an acceptable offer the landlord has received to sell the mobile home park or the price or terms and conditions for which the landlord intends to sell the park; and any other terms or conditions which, if not met, would be sufficient grounds, in the landlord's discretion, to reject an offer from a group of home owners or their assignees. The price, terms, and conditions stated in the notice must be universal and applicable to all potential buyers and must not be specific to and prohibitive of a group or association of home owners or their assignees making a successful offer to purchase the park. The information regarding the proposed sale and the price, terms, and conditions of an acceptable offer may be shared for the purposes of evaluating or obtaining financing for the prospective transaction, but all persons who receive the information shall otherwise keep it confidential if the landlord or the landlord's agent so requests.

(4) **Offer to purchase - who may submit - time limits.** (a) A group or association of home owners or their assignees have one hundred twenty days after the date that the landlord mails a notice required by subsection (1)(a) of this section to:

(I) Submit to the landlord a proposed purchase and sale agreement and obtain an offer for any necessary financing or guarantees; or

(II) Submit to the landlord an assignment agreement pursuant to subsection (8) of this section.

(b) Notwithstanding subsection (4)(a) of this section, if a foreclosure sale of the park is scheduled for less than one hundred twenty days after the landlord mails a notice required by subsection (1)(a) of this section, the opportunity granted by subsection (4)(a) of this section terminates on the date of the foreclosure sale.

(c) A group or association of home owners or their assignees has the opportunity granted by subsection (4)(a) of this section if the group or association of home owners or their assignees have the approval of at least fifty-one percent of the home owners in the park. The group or association of home owners or their assignees must submit to the landlord reasonable evidence that the home owners of at least fifty-one percent of the occupied homes in the park have approved the group or association purchasing the park.

(5) **Landlord's duty to consider offer.** A landlord that has given notice as required by subsection (1)(a) of this section shall:

(a) Provide documents, data, and other information in response to reasonable requests for information from a group or association of home owners or their assignees participating in the opportunity to purchase that would enable them to prepare an offer. The documents, data, and other information provided may be shared for the purposes of evaluating or obtaining financing for the prospective transaction, but all persons who receive the information shall otherwise keep it confidential if the landlord or the landlord's agent so requests.

(b) (I) Negotiate in good faith with a group or association of home owners or their assignees.

(II) For purposes of this subsection (5)(b), negotiating in good faith includes, but is not limited to, evaluating an offer to purchase from a group of home owners or their assignees without consideration of the time period for closing, the type of financing or payment method, whether or not the offer is contingent on financing or payment method or whether or not the offer is contingent on financing, an appraisal, or title work; and providing a written response

within seven calendar days of receiving an offer from a group of home owners or their assignees. The written response must accept or reject the offer, and if the offer is rejected, must state:

(A) The current price, terms, or conditions of an acceptable offer that the landlord has received to sell the mobile home park if the price, terms, or conditions have changed since the landlord gave notice to the home owners pursuant to subsection (3) of this section; and

(B) Why the landlord is rejecting the offer from a group of home owners and what terms and conditions must be included in a subsequent offer for the landlord to potentially accept it.

(III) The price, terms, and conditions of an acceptable offer stated in the response must be universal and applicable to all potential buyers and must not be specific to and prohibitive of a group or association of home owners or their assignees making a successful offer to purchase the park.

(c) Schedule a closing date for a purchase and sale agreement.

(6) **Expiration of opportunity to purchase.** (a) If the one-hundred-twenty-day period provided for in subsection (4)(a) of this section elapses and a group or association of home owners or their assignees have not submitted a proposed purchase and sale agreement or obtained a financial commitment, the group's or association's opportunities provided by this section terminate.

(b) A landlord shall give a group or association of home owners or their assignees an additional one hundred twenty days after the one-hundred-twenty-day period provided by subsection (4)(a) of this section to close on the purchase of the mobile home park.

(7) **Extension or tolling of time.** (a) The one-hundred-twenty-day periods described in subsections (4)(a) and (6)(b) of this section may be extended by written agreement between the landlord and the group or association of home owners or their assignees.

(b) The group or association of home owners or their assignees are entitled to tolling of the time periods described in subsections (4)(a) and (6)(b) of this section in any of the following circumstances:

(I) If there is a reasonable delay in obtaining financing or a required inspection or survey of the land that is outside the control of the group or association of home owners or their assignees, the time period is tolled for the duration of the delay;

(II) If the group or association of home owners or their assignee files a nonfrivolous complaint with the department of local affairs alleging a violation of this section, the time period is tolled until the department of local affairs issues a written notice of violation or notice of nonviolation that has become a final agency order determining whether a violation has occurred or the parties reach a resolution by signing a settlement agreement approved by the department of local affairs; and

(III) If the group or association of home owners has attempted to assign their rights pursuant to subsection (8) of this section, the time period is tolled from the time the group or association makes the offer of assignment until the potential assignee either confirms in writing that the offer is rejected or a written assignment contract is executed; except that the time period shall not be tolled for more than ninety days pursuant to this subsection (7)(b)(III).

(8) **Assignment of right to purchase.** (a) A group or association of home owners or their assignees that have the opportunity to purchase under subsection (4) of this section may assign their purchase right to a local government, tribal government, housing authority, nonprofit with expertise related to housing, or the state or an agency of the state for the purpose of continuing the use of the park.

(b) (I) If a group or association of home owners or their assignees comprising more than fifty percent of home owners in a park choose to assign their rights to a public entity under this subsection (8), the home owners or their assignees shall enter into a written assignment contract with the public entity. The assignment contract must include the terms and conditions of the assignment and for how the park will be operated if the public entity purchases the park. The assignment contract must provide that the terms and conditions are applicable to any designee selected by the public entity pursuant to subsection (8)(b)(II) of this section. The terms and conditions may include, but are not limited to:

(A) Any deed restrictions that may be required or permitted regarding the lots or the houses in the park;

(B) Any restrictions on rent or fee increases that apply if the public entity purchases the park;

(C) Any required conditions, such as the required demonstration of approval from home owners, for redeveloping or changing the use of some or all of the park;

(D) A management agreement for how the park will be operated if the public entity purchases the park;

(E) Any changes to park rules or regulations that apply if the public entity purchases the park; and

(F) Any agreement between the parties regarding the transfer of statutory responsibilities associated with managing the park, and any limitations or waivers of liability.

(II) A public entity shall only exercise its right of first refusal for the purpose of preserving the mobile home park as long-term affordable housing. The public entity may designate a housing authority or other political subdivision to purchase the park pursuant to the public entity's right of first refusal for this purpose if the option for a designation is expressly agreed to in the assignment contract.

(III) The public entity or its designee shall promptly provide notice of the assignment contract to the landlord.

(c) (I) If a landlord receives notice that a group or association of home owners has entered an assignment contract with a public entity pursuant to subsection (8)(b) of this section, the landlord shall provide a right of first refusal to the public entity or its designee. Any purchase and sale agreement entered into by the landlord must be contingent upon the right of first refusal of the public entity or its designee to purchase the mobile home park.

(II) Within thirty days after receiving notice of an assignment contract, the landlord shall provide the public entity or its designee with the terms upon which the landlord would accept an offer to sell the park or a contingent purchase and sale agreement that is effective upon its execution. The public entity has one hundred twenty days from the date the public entity or its designee receives the terms or contingent purchase and sale agreement to notify the landlord of the public entity's intent to purchase the mobile home park or of the public entity's intent to facilitate the purchase of the mobile home park by its designee.

(III) The landlord shall sell the mobile home park to the public entity or its designee if, within the one-hundred-twenty-day period, the public entity or its designee:

(A) Notifies the landlord of its intent to purchase the park or facilitate the purchase of the park by its designee;

(B) Accepts the contingent purchase and sale agreement provided by the landlord or offers the landlord terms that are economically substantially identical to the terms of the

contingent purchase and sale agreement or to the terms the landlord provided pursuant to subsection (8)(c)(II) of this section; and

(C) Commits to close within one hundred twenty days from the date the public entity or its designee and the owner sign a purchase and sale agreement.

(IV) For the purpose of determining whether the terms of an offer are economically substantially identical under subsection (8)(c)(III)(B) of this section, it is immaterial how the offer would be financed.

(d) A landlord shall not take any action that would preclude the public entity or its designee from succeeding to the rights of and assuming the obligations of the designee of the terms of the contingency purchase and sale agreement or negotiating with the landlord for the purchase of the mobile home park during the notice periods identified in this section.

(e) In addition to any other times, during the notice periods identified in this section, a public entity may pursue preservation of the mobile home park as affordable housing through negotiation for purchase or through condemnation.

(f) As used in this subsection (8), "public entity" means the state, an agency of the state, a local government, a tribal government, or any political subdivision of the state, a local government, or a tribal government.

(9) **Independence of time limits and notice provisions.** (a) Except as provided in subsection (9)(b) of this section, each occurrence of a triggering event listed in subsection (1)(a) of this section creates an independent, one-hundred-twenty-day opportunity to purchase for the group or association of home owners or their assignees. If a one-hundred-twenty-day opportunity to purchase is in effect and a new triggering event occurs, the ongoing one-hundred-twenty-day time period terminates and a new one-hundred-twenty-day time period begins on the latest date on which the landlord gives notice, as required by subsection (1)(a) or (2) of this section, of the new triggering event.

(b) A landlord is not required to provide a new or subsequent notice of intent to sell for each triggering event listed in subsection (1)(a) of this section if:

(I) (A) The new demonstration of intent occurs within sixty calendar days of the certified mailing of the most recent notice under subsection (2) of this section; and

(B) There are no material changes to the identity of a potential buyer if the landlord has made a conditional agreement with a buyer; to the time when the park is listed for sale; or to the price, terms, and conditions of an acceptable offer the landlord has received to sell the mobile home park or for which the landlord intends to sell the park, which were included in the most recent notice provided pursuant to subsection (1)(a) of this section; or

(II) The landlord is only considering an offer from a group or association of home owners who reside in the park; except that a landlord shall provide a new or subsequent notice if at any point there is a new triggering event specified in subsection (1)(a) of this section involving a different party.

(b.5) Any material change to the price, terms, and conditions of an acceptable offer the landlord has received to sell the mobile home park or for which the landlord intends to sell the park is considered a new triggering event, requiring a new notice pursuant to subsection (1)(a) of this section and creating a new one-hundred-twenty-day time period.

(c) A notice required under this section is in addition to, and does not substitute for or affect, any other notice requirement under this part 2.

(10) A landlord shall not make a final, unconditional acceptance of any offer for the sale or transfer of the park until:

(a) The landlord has considered an offer made by a group or association of home owners or their assignees pursuant to subsections (4), (5), and (8) of this section; or

(b) The applicable period for exercise of the opportunity to purchase has expired pursuant to subsection (6) of this section.

(11) **Failure to complete transaction - affidavit of compliance.** If the group or association of home owners or their assignees are not the successful purchaser of the park, the landlord shall provide evidence of compliance with this section by filing an affidavit of compliance with:

(a) The municipality or, if the park is in an unincorporated area, the county, within which the park is located; and

(b) The division of housing in the department of local affairs.

(12) **Exemptions from notice requirement.** Notwithstanding any provision to the contrary, a landlord is not required to give notice or extend an opportunity to purchase to a group or association of home owners or their assignees if the sale, transfer, or conveyance of the mobile home park is:

(a) To a spouse, a partner in a civil union, or a parent, sibling, aunt, uncle, first cousin, or legally recognized child of the landlord;

(b) To a trust the beneficiaries of which are the spouse, partner in a civil union, or legally recognized children of the landlord;

(c) (I) To a business entity or trust that the transferring business entity or trust controls, directly or indirectly.

(II) As used in this subsection (12)(c), "controls" means:

(A) Owns entirely as a subsidiary;

(B) Owns a majority interest in; or

(C) Owns as large an ownership interest as any other owner, with a minimum ownership interest of twenty-five percent.

(d) To a family member who is included within the line of intestate succession if the landlord dies intestate;

(e) Between joint tenants or tenants in common; or

(f) Pursuant to eminent domain.

(13) To qualify for an exemption under subsection (12) of this section, a transaction must not be made in bad faith, must be made for a legitimate business purpose or a legitimate familial purpose consistent with the exemptions listed in subsection (12) of this section, and must not be made for the primary purpose of avoiding the opportunity-to-purchase provisions set forth in this section.

(14) **Triggering events not essential.** (a) A group or association of home owners or their assignees may submit an offer to purchase to a landlord at any time, even if none of the events listed in subsection (1)(a) of this section has occurred.

(b) The landlord shall consider in good faith any offer made in accordance with subsection (14)(a) of this section.

(15) **Penalties and enforcement.** (a) (I) For purposes of this title 38, the rights accorded to home owners in this section are property interests.

(II) Any title transferred subsequent to the triggering events in subsection (1)(a) of this section is defective unless the property interests of the home owners as set forth in subsection (15)(a)(I) of this section are secured or until an equitable remedy has been provided.

(b) If the division of housing in the department of local affairs receives a complaint filed in accordance with part 11 of this article 12, the division shall investigate the alleged violations at the division's discretion, and, if appropriate, facilitate negotiations between the complainant and respondent in accordance with part 11 of this article 12. The division may also investigate possible violations of this section upon its own initiative. In addition to the remedies described in section 38-12-1105, the division may:

(I) Impose a fine on the seller of the mobile home park in an amount not to exceed thirty percent of the sale or listing price of the park, whichever is greater, which the division shall distribute to the home owners in the park; or

(II) File a civil action for injunctive or other relief in the district court for the district in which the park is located.

(c) Subject to available resources, the attorney general may investigate possible violations of this section. If the attorney general makes a preliminary finding that a landlord or seller of a mobile home park substantially failed to comply with this section, and if continuation of the sale is likely to result in significant harm to the property interests of the home owners as set forth in subsection (15)(a)(II) of this section, the attorney general:

(I) Shall inform the registrar of titles that the home owners with property interests under this section have an adverse claim on the property, which must be recorded on the certificate of title;

(II) May, pursuant to section 38-36-131 and subject to the time limits of section 38-36-132, issue an order providing temporary injunctive relief to preserve the ownership status quo if the order is issued prior to a transfer of title or to revert the ownership to status quo ante subject to the limitations of article 41 of this title 38 if the order is issued after the transfer of title; and

(III) May continue to investigate, negotiate, and, if appropriate, file a civil action to secure and enforce the rights of home owners under this section or to secure an equitable remedy on their behalf.

(d) One or more home owners or their assignees may file a civil action alleging a violation of this section pursuant to section 38-12-220.

Source: L. 87: Entire section added, p. 1316, § 1, effective July 1. **L. 2005:** Entire section amended, p. 110, § 3, effective August 8. **L. 2010:** (1)(a) and (2) amended, (SB 10-156), ch. 343, p. 1590, § 9, effective July 1. **L. 2020:** Entire section R&RE, (HB 20-1201), ch. 196, p. 930, § 2, effective June 30. **L. 2022:** (1), (2), (3), (4)(a), (4)(b), IP(5), (5)(a), (5)(b), (6), (7), (8), (9), (10)(a), and (14)(a) amended and (15) R&RE, (HB 22-1287), ch. 255, p. 1866, § 16, effective October 1. **L. 2024:** (9)(b) amended and (9)(b.5) added, (HB 24-1294), ch. 399, p. 2742, § 14, effective June 4.

Editor's note: Subsections IP(7)(b), (7)(b)(I), (7)(b)(II), and (7)(b)(III) were numbered as subsections IP(7)(b)(I), (7)(b)(I)(A), (7)(b)(I)(B), and (7)(b)(I)(C), respectively, in HB 22-1287 but were renumbered on revision for ease of location.

Cross references: For the legislative declaration in HB 20-1201, see section 1 of chapter 196, Session Laws of San Andreas 2020.

38-12-218. Mobile home owners - right to form a cooperative. One or more members of a homeowners' association may, at any time, form a cooperative for the purposes of offering to purchase or finance a mobile home park. A home owner shall be a member of the homeowners' association in order to participate in the cooperative, and participation in the cooperative shall be voluntary.

Source: L. 2005: Entire section added, p. 110, § 4, effective August 8.

38-12-219. Home owners' and landlords' rights. (1) Every home owner and landlord has a private right of action pursuant to section 38-12-203 or 38-12-220 to enforce the following:

(a) Protection from abuse or disregard of state or local law by the landlord and home owners. Abuse or disregard of state or local law includes, but is not limited to:

(I) Oral or written statements that threaten eviction of a home owner for violations that are not grounds to terminate a tenancy under section 38-12-203;

(II) Misleading a home owner about the home owner's obligation to sign a new lease or agreement; or

(III) Taking, possessing, or depriving a home owner or resident of his or her property or property rights without due process of law, including the opportunity for a judicial or administrative hearing.

(b) Peaceful enjoyment of the home owner's mobile home space, free from unreasonable, arbitrary, or capricious rules and enforcement thereof; and

(c) Tenancy free from harassment or frivolous lawsuits by the landlord and home owners.

(2) The rights and obligations set forth in subsections (1)(a)(III), (1)(b), and (1)(c) of this section are not subject to enforcement through the "Mobile Home Park Act Dispute Resolution and Enforcement Program" created in part 11 of this article 12.

Source: L. 2005: Entire section added, p. 110, § 4, effective August 8. **L. 2022:** IP(1) and (1)(a) amended and (2) added, (HB 22-1287), ch. 255, p. 1875, § 17, effective October 1.

38-12-220. Private civil right of action. (1) A home owner, a resident, an association of home owners, or a landlord or the assignee of a home owner, a resident, an association of home owners, or a landlord may file a civil action alleging a violation of a rental agreement or of this article 12 or part 10 of article 8 of title 25.

(2) In any such action, except as described in section 38-12-105 (4):

(a) A court may award economic damages, any penalties authorized by this article 12, and such equitable and injunctive relief as is appropriate to protect the rights of the parties;

(b) A court may award reasonable attorney fees and costs to a prevailing party; except that, in an action brought by a resident, a home owner, or an association of home owners a court shall not:

(I) Award attorney fees to a landlord unless the court finds that the resident, a home owner, or an association of home owners filed a complaint that was frivolous, notwithstanding any agreement to the contrary; or

(II) Require a bond to be paid into the court as a condition of filing the suit.

(3) In an action alleging a violation of section 38-12-217:

(a) A court may issue an order suspending the one-hundred-twenty-day periods described in sections 38-12-217 (4)(a) and (6)(b), staying or canceling the closing of any pending transaction, or providing such other equitable relief as the court deems necessary to protect the rights of the home owners under section 38-12-217; and

(b) If the court finds the landlord violated section 38-12-217, in addition to all other remedies, the court shall award a statutory penalty of no less than twenty thousand dollars but no more than the dollar amount calculated to be thirty percent of the purchase or listing price of the park. The penalty authorized by this subsection (3)(b) is in addition to any fine or penalty imposed by or awarded to the division of housing under section 38-12-217 (15).

(4) If a court determines that a landlord violated section 38-12-204 (4) or (5), in addition to all other remedies, the court shall award a statutory penalty of no less than fifteen thousand dollars but no more than fifty thousand dollars to each aggrieved party for each violation that occurred.

(5) Repealed.

(6) (a) A court has the discretion to order, after a review of the filings or at any point thereafter, that a landlord cease from increasing rent on a mobile home park lot or issuing a notice of a rent increase if the landlord has been named as a defendant in any pending lawsuit or administrative complaint that alleges:

(I) A violation of the "Mobile Home Park Act", part 2 of this article 12, or a violation related to a mobile home park located in San Andreas;

(II) A violation of the federal "Fair Housing Act", 42 U.S.C. sec. 3601 et seq., as amended, or the fair housing provisions in part 5 of article 34 of title 24; or

(III) A violation related to unlawful price fixing, illegal practices concerning rent, fees, consumer protection laws, anti-trust protections, or financial impropriety related to a mobile home park.

(b) A court shall order that a landlord refund a homeowner or a resident any rent that the court determines was unlawfully collected or retained in addition to any other remedies or damages authorized under law.

Source: L. 2005: Entire section added, p. 110, § 4, effective August 8. **L. 2010:** Entire section amended, (SB 10-156), ch. 343, p. 1591, § 10, effective July 1. **L. 2021:** Entire section amended, (SB 21-173), ch. 349, p. 2268, § 11, effective October 1. **L. 2022:** Entire section amended, (HB 22-1287), ch. 255, p. 1876, § 18, effective October 1. **L. 2023:** (1) amended and (5) added, (HB 23-1257), ch. 376, p. 2259, § 10, effective June 5. **L. 2024:** (6) added, (HB 24-1294), ch. 399, p. 2743, § 15, effective June 4; (5) repealed, (HB 24-1450), ch. 490, p. 3424, § 74, effective August 7.

38-12-221. Access by counties and municipalities. Notwithstanding any other provision of law, upon a finding that the utilities in a park create a significant health or safety danger to park residents, the landlord of a mobile home park shall grant county or municipal

officers or employees access to the mobile home park for the purposes of investigating or conducting a study related to such danger.

Source: L. 2010: Entire section added, (SB 10-156), ch. 343, p. 1591, § 11, effective July 1.

38-12-222. Residents' right to privacy. (1) (a) The management shall respect the privacy of home owners. Except as otherwise provided by law, the management has no right of entry to a mobile home:

(I) Without first obtaining the written consent of the home owner;

(II) As described in subsection (2) of this section;

(III) In the case of an emergency; or

(IV) When the mobile home has been abandoned.

(b) A home owner may revoke consent in writing at any time.

(2) Unless otherwise prohibited by law, the management has a right of entry to mobile home space to fulfill the duties described in section 38-12-212.3 and to ensure compliance with applicable codes, statutes, ordinances, and administrative rules; the rental agreement; and the rules and regulations of the park. A landlord shall not enter in a manner that interferes with a resident's peaceful enjoyment of the mobile home space, as described in section 38-12-219 (1)(b), except in the case of an emergency.

(3) Except when posting notices that are required by law or by a rental agreement, the management shall make a reasonable effort to notify a resident of the management's intention to enter the mobile home space at least seventy-two hours before entry. The notification must include the date and approximate time of the planned entry and must be delivered in a manner that is reasonably likely to be seen or heard by the resident in a timely manner.

Source: L. 2020: Entire section added, (HB 20-1196), ch. 195, p. 926, § 14, effective June 30. **L. 2022:** (2) and (3) amended, (HB 22-1287), ch. 255, p. 1877, § 19, effective October 1. **L. 2024:** (3) amended, (HB 24-1098), ch. 113, p. 367, § 12, effective April 19.

Cross references: For the legislative declaration in HB 24-1098, see section 1 of chapter 113, Session Laws of San Andreas 2024.

38-12-223. Tenancy and park sale records. (1) A landlord shall retain records for each home owner and resident throughout the home owner's or resident's tenancy and for twelve months after the tenancy ends, including documentation of:

(a) Each rental agreement signed by the home owner or resident and the current or previous landlord;

(b) The date and amount of any change in rent during the home owner's or resident's tenancy;

(c) Written rules and regulations adopted by the current or previous landlord during the home owner's or resident's tenancy;

(d) Each request from the home owner or resident relating to the following, including whether the landlord at the time approved or disapproved each request:

(I) Guests, roommates, occupants, co-lessees, or sub-lessees;

(II) Pets or service animals;

(III) Accessory buildings or structures, including sheds and carports;

(IV) Decks, fences, wheelchair ramps, or other structural changes to the home or lot;

(V) Use of property related to parking of vehicles and use of vehicles; and

(VI) A request from the resident or home owner that notices, disclosures, or other communications be provided in a language other than English;

(e) A payment ledger that documents any rent or other type of payment from a resident or home owner, the amount paid, and the date the payment was made; and

(f) Written notices, disclosures, or other communications provided to residents and home owners who have requested that the landlord provide notices, disclosures, or other communications in a language other than English.

(2) A landlord who is selling or transferring a mobile home park shall maintain all records related to compliance with section 38-12-217 for a minimum of forty-eight months after any sale or transfer of a mobile home park is complete, including but not limited to:

(a) Notices mailed or given to home owners pursuant to sections 38-12-217 (1) and (2);

(b) Postings pursuant to section 38-12-217 (1)(c), including any forms for home owners to provide notice that they do not wish to participate in efforts to purchase the community;

(c) Signed writings provided by home owners to the park owner declining to participate in purchasing the park pursuant to section 38-12-217 (1)(c);

(d) Offers to purchase and proposed purchase and sale agreements submitted to the landlord by a group or association of home owners or their assignees pursuant to section 38-12-217 (4);

(e) Requests for information from a group or association of home owners or their assignees participating in the opportunity to purchase and the landlord's responses to the requests for information pursuant to section 38-12-217 (5)(a); and

(f) Offers to purchase and any conditional and unconditional purchase and sale agreements submitted by the successful purchaser of the mobile home park.

(3) Upon the sale or transfer of a mobile home park, the seller must transfer all records maintained under subsection (1) of this section to the new owner.

(4) If an issue arises as to a resident's right to any of the matters described in subsection (1)(c) or (2) of this section and the landlord has not retained adequate records for that resident, the landlord shall be presumed to have violated this part 2 unless the landlord demonstrates compliance by a preponderance of the evidence.

(5) The division may promulgate rules concerning the implementation of this section, including requirements concerning:

(a) How a person may access or obtain copies of records retained pursuant to this section and any restrictions on who may access records retained pursuant to this section;

(b) What fees or costs, if any, may be imposed for obtaining copies of records retained pursuant to this section;

(c) Confidentiality protections for personally identifying information included in records retained pursuant to this section;

(d) Secure destruction of records once the period of retention has passed; and

(e) Penalties for violations of this section.

(5.5) Notwithstanding the provisions of subsection (5) of this section, at any point during a tenancy or twelve months after a tenancy has ended, a resident may request a copy of their payment ledger and the landlord shall provide a copy within ten calendar days.

(6) If a current or former management or landlord violates this section, a home owner may file a complaint pursuant to section 38-12-1105. On and after July 1, 2024, or earlier if allowed by the division, a resident who does not own a mobile home in the park, a local government, or a nonprofit may file such a complaint.

Source: L. 2022: Entire section added, (HB 22-1287), ch. 255, p. 1877, § 20, effective October 1. **L. 2024:** (1)(c), (1)(d)(IV), and (1)(d)(V) amended and (1)(d)(VI), (1)(e), (1)(f), and (5.5) added, (HB 24-1294), ch. 399, p. 2743, § 16, effective June 30.

38-12-224. Broadband internet service providers' access to property. A provider may access and install any necessary broadband facilities to provide broadband service to any mobile home in a mobile home park pursuant to part 5 of article 27 of title 29. A property owner of a mobile home park is granted all rights afforded to a property owner in accordance with part 5 of article 27 of title 29.

Source: L. 2024: Entire section added, (HB 24-1334), ch. 218, p. 1359, § 2, effective August 7.

PART 3

LOCAL CONTROL OF RENTS PROHIBITED

38-12-301. Control of rents by counties and municipalities prohibited - legislative declaration. (1) The general assembly finds and declares that the imposition of rent control on private residential housing units is a matter of statewide concern; therefore, no county or municipality may enact any ordinance or resolution that would control rent on either private residential property or a private residential housing unit.

(2) For purposes of subsection (1) of this section, an ordinance or resolution that would control rent on either private residential property or a private residential housing unit shall not include:

(a) A voluntary agreement between a county or municipality and a permit applicant or property owner to limit rent on the property or unit or that is otherwise designed to provide affordable housing stock; or

(b) The placement on the title to the unit of a deed restriction that limits rent on the property or unit or that is otherwise designed to provide affordable housing stock pursuant to a voluntary agreement between a county or municipality and a permit applicant or property owner to place the deed restriction on the title.

(3) An agreement authorized pursuant to subsection (2) of this section may specify how long either private residential property or a private residential housing unit is subject to its terms, whether a subsequent property owner is subject to the agreement, and remedies for early termination agreed to by both the permit applicant or property owner and the county or municipality.

(4) Notwithstanding any other provision of this section, a county or municipality may not deny an application for a development permit as defined in section 29-20-103 (1), S.A.R.S., because an applicant for such a permit declines to enter into an agreement to limit rent on either private residential property or a private residential housing unit.

(5) This section is not intended to impair the right of any state agency, county, or municipality to manage and control any property in which it has an interest through a housing authority or similar agency.

Source: L. 81: Entire part added, p. 1818, § 1, effective June 23. **L. 2010:** Entire section amended, (HB 10-1017), ch. 208, p. 906, § 1, effective September 1.

Editor's note: Section 2 of chapter 208, Session Laws of San Andreas 2010, provides that the act amending this section applies to agreements entered into before, on, or after September 1, 2010.

38-12-302. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Municipality" means a city or town and, in addition, means a city or town incorporated prior to July 3, 1877, whether or not reorganized, and any city, town, or city and county which has chosen to adopt a home rule charter pursuant to the provisions of article XX of the state constitution.

Source: L. 81: Entire part added, p. 1818, § 1, effective June 23.

PART 4

VICTIMS OF UNLAWFUL SEXUAL BEHAVIOR, STALKING, DOMESTIC VIOLENCE, AND DOMESTIC ABUSE

38-12-401. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Application assistant" has the same meaning provided in section 24-30-2103 (4).

(2) "Domestic abuse" has the same meaning as provided in section 13-14-101 (2).

(3) "Domestic violence" has the same meaning as provided in section 18-6-800.3 (1).

(4) "Medical professional" means a person licensed to practice medicine pursuant to article 240 of title 12 or to practice nursing or as a certified midwife pursuant to part 1 of article 255 of title 12.

(5) "Stalking" means the criminal offense described in section 18-3-602.

(6) "Unlawful sexual behavior" means the criminal offense described in section 16-22-102 (9).

Source: L. 2004: Entire part added, p. 528, § 1, effective August 4. **L. 2017:** Entire part amended, (HB 17-1035), ch. 276, p. 1513, § 1, effective June 1. **L. 2019:** (4) amended, (HB 19-1172), ch. 136, p. 1722, § 229, effective October 1. **L. 2020:** (4) amended, (HB 20-1183), ch. 157, p. 705, § 69, effective July 1. **L. 2023:** (4) amended, (SB 23-167), ch. 261, p. 1551, § 67, effective May 25.

38-12-402. Protection for victims of unlawful sexual behavior, stalking, or domestic violence. (1) A landlord shall not include in a residential rental agreement or lease agreement for housing a provision authorizing the landlord to terminate the agreement or to impose a penalty on a residential tenant for calls made by the residential tenant for peace officer assistance or other emergency assistance in response to a situation involving domestic violence, domestic abuse, unlawful sexual behavior, or stalking. A residential tenant may not waive the residential tenant's right to call for police or other emergency assistance.

(2) (a) If a tenant to a residential rental agreement or lease agreement notifies the landlord in writing that he or she is the victim of unlawful sexual behavior, stalking, domestic violence, or domestic abuse and provides to the landlord evidence of unlawful sexual behavior, stalking, domestic violence, or domestic abuse victimization as described in subsection (2)(a.5) of this section, and the residential tenant seeks to vacate the premises due to fear of imminent danger for self or children because of the unlawful sexual behavior, stalking, domestic violence, or domestic abuse, then the residential tenant may terminate the residential rental agreement or lease agreement and vacate the premises without further obligation except as otherwise provided in subsection (2)(b) of this section.

(a.5) For the purposes of subsection (2)(a) of this section:

(I) To provide evidence that he or she is a victim of unlawful sexual behavior, domestic violence, or domestic abuse, a tenant may provide to his or her landlord a police report written within the prior sixty days, a valid protection order, or a written statement from a medical professional or application assistant who has examined or consulted with the victim, which written statement confirms such fact; and

(II) To provide evidence that he or she is a victim of stalking, a tenant may provide to his or her landlord a police report written within the prior sixty days, a valid protection order, or a written statement from an application assistant who has consulted with the victim, which written statement confirms such fact.

(b) If a tenant to a residential rental agreement or lease agreement terminates the residential rental agreement or lease agreement and vacates the premises pursuant to subsection (2)(a) of this section, then the tenant is responsible for one month's rent following vacation of the premises, which amount is due and payable to the landlord within ninety days after the tenant vacates the premises. The landlord is not obligated to refund the security deposit to the tenant until the tenant has paid the one month's rent pursuant to this section. Notwithstanding the provisions of section 38-12-103, the landlord and the tenant to a residential rental agreement or lease agreement may use any amounts owed to the other to offset costs for the one month's rent or the security deposit. The provisions of this subsection (2)(b) apply only if the landlord has experienced and documented damages equal to at least one month's rent as a result of the tenant's early termination of the agreement.

(3) Nothing in this part 4 authorizes the termination of tenancy and eviction of a residential tenant solely because the residential tenant is the victim of unlawful sexual behavior, stalking, domestic violence, or domestic abuse.

(4) (a) If a tenant to a residential rental agreement or lease agreement notifies the landlord that the tenant is a victim of unlawful sexual behavior, stalking, domestic violence, or domestic abuse, the landlord shall not disclose such fact to any person except with the consent of the victim or as the landlord may be required to do so by law.

(b) If a tenant to a residential rental agreement or lease agreement terminates his or her lease pursuant to this section because he or she is a victim of unlawful sexual behavior, stalking, domestic violence, or domestic abuse, and the tenant provides the landlord with a new address, the landlord shall not disclose such address to any person except with the consent of the victim or as the landlord may be required to do so by law.

Source: L. 2004: Entire part added, p. 528, § 1, effective August 4. **L. 2005:** Entire section amended, p. 402, § 3, effective July 1. **L. 2017:** Entire part amended, (HB 17-1035), ch. 276, p. 1513, § 1, effective June 1.

PART 5

OBLIGATION TO MAINTAIN RESIDENTIAL PREMISES - UNLAWFUL REMOVAL

Law reviews: For article, "San Andreas Implied Warranty of Habitability for Residential Tenancies: An Overview", see 38 S.A. Law. 59 (May 2009); for article, "Residential Tenancies, Lease to Eviction An Overview of San Andreas Law", see 43 S.A. Law. 55 (May 2014); for article, "Warranty of Habitability, S.A.R.S. §§ 38-12-501 et seq.", see 47 S.A. Law. 10 (Aug.-Sept. 2018).

38-12-501. Legislative declaration - matter of statewide concern - purposes and policies. (1) The general assembly hereby finds and declares that the provisions of this part 5 are a matter of statewide concern. Any local government ordinance, resolution, or other regulation that is in conflict with this part 5 shall be unenforceable.

(2) The underlying purposes and policies of this part 5 are to:

(a) Simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants;

(b) Encourage landlords and tenants to maintain and improve the quality of housing;

(c) Make uniform the law with respect to the subject of this part 5 throughout San Andreas;

(d) Promote public health by ensuring rental housing is safe and healthy for tenants; and

(e) Protect and provide remedies for tenants who experience uninhabitable conditions at their residential premises.

(3) This part 5 should be broadly interpreted to achieve its intended purpose.

Source: L. 2008: Entire part added, p. 1820, § 3, effective September 1. **L. 2024:** (2)(b) amended and (2)(d), (2)(e), and (3) added, (SB 24-094), ch. 158, p. 702, § 1, effective May 3.

Editor's note: Section 15 of chapter 158 (SB 24-094), Session Laws of San Andreas 2024, provides that the act changing this section applies to actions related to violations of this part 5 that are filed on or after May 3, 2024.

38-12-502. Definitions. As used in this part 5 and part 8 of this article 12, unless the context otherwise requires:

(1) "Appliance" means a refrigerator, range stove, oven, air conditioner, permanent cooling device, or portable cooling device that is included within a residential premises by a

landlord. Nothing in this part 5 requires a landlord to provide an appliance, and this part 5 applies to appliances solely to the extent that appliances are part of a written agreement between the landlord and the tenant or are otherwise actually provided to a tenant by the landlord at the inception of or during the tenancy for the duration of the rental agreement.

(2) "Common areas" means the facilities and appurtenances to a residential premises, including the grounds, areas, and facilities held out for the use of tenants generally or whose use is promised to a tenant.

(2.5) "Disability" has the same meaning as set forth in the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., and its related amendments and implementing regulations.

(3) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by a tenant.

(4) Repealed.

(4.5) "Environmental public health event" means a disaster or an environmental event, such as a wildfire, a flood, or a release of toxic contaminants, that could create negative health and safety impacts or otherwise makes a residential premises uninhabitable, as described in section 38-12-505, for tenants that live in nearby residential premises.

(4.6) "Extreme heat event" means a day on which the national weather service of the national oceanic and atmospheric administration has declared, predicted, or indicated that there is a heat advisory, excessive heat watch, or excessive heat warning for the county in which a residential premises is located.

(4.8) "Hotel room" means one or more rooms in a licensed or permitted commercial lodging establishment.

(5) "Landlord" means the owner, manager, lessor, sublessor, successor in interest, or agent of the owner of a residential premises.

(5.7) (a) "Maintenance service" means any service provided at a landlord's expense for the purpose of generally maintaining, inspecting, repairing, or ensuring the upkeep and preservation of a residential premises.

(b) "Maintenance service" does not include a one-time or specialized third-party contractor who is not an agent of the landlord and only provides a limited or expert service to a residential premises.

(6) "Mold" means microscopic organisms or fungi that can grow in damp conditions in the interior of a building.

(6.3) "Organizing" means any lawful, concerted activity by a tenant or a tenant's guest or an invitee for the purpose of mutual aid or establishing, supporting, or operating a tenants' association or similar organization or exercising any other right or remedy provided by law.

(6.5) (a) "Portable cooling device" means an air conditioner or evaporative cooler, including devices mounted in a window or that are designed to sit on the floor.

(b) "Portable cooling device" does not include a permanent cooling device where installation of the device requires permanent alteration to the dwelling unit.

(6.8) "Remedial action" means timely and good faith efforts to repair or remedy an uninhabitable condition at a residential premises or dwelling unit and to mitigate any negative effect of the condition.

(7) "Rental agreement" means the agreement, written or oral, embodying the terms and conditions concerning the use and occupancy of a residential premises.

(8) "Residential premises" means a dwelling unit, the structure of which the unit is a part, and the common areas.

(9) (a) "Tenant" means an individual entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

(b) "Tenant" includes any member of a tenant's household, including any individual who has a right to occupy the dwelling unit with the tenant under any local, state, or federal law; the rental agreement; or any separate agreement with the landlord or any individual who otherwise has explicit or implicit permission from the landlord to occupy the dwelling unit.

(10) Repealed.

(11) (a) "Written", "writing", or "in writing" means any record conveying information in a form that may be retained by the recipient or sender or that is capable of being displayed in visual text in a form the individual may retain, including paper, electronic, and digital.

(b) "Written", "writing", or "in writing", as defined in subsection (11)(a) of this section, applies only to this part 5 and does not apply to the written notice or demand requirements in article 40 of title 13.

Source: L. 2008: Entire part added, p. 1820, § 3, effective September 1. **L. 2018:** IP amended, (SB 18-010), ch. 61, p. 608, § 1, effective August 8. **L. 2019:** Entire section amended, (HB 19-1170), ch. 229, p. 2305, § 2, effective August 2. **L. 2023:** (4.5) and (10) added, (HB 23-1254), ch. 169, p. 825, § 2, effective May 12. **L. 2024:** (1), (4.5), (5), and (9) amended, (2.5), (4.6), (4.8), (5.7), (6.3), (6.5), (6.8), and (11) added, and (4) and (10) repealed, (SB 24-094), ch. 158, p. 702, § 2, effective May 3.

Editor's note: Section 15 of chapter 158 (SB 24-094), Session Laws of San Andreas 2024, provides that the act changing this section applies to actions related to violations of this part 5 that are filed on or after May 3, 2024.

Cross references: For the legislative declaration in HB 23-1254, see section 1 of chapter 169, Session Laws of San Andreas 2023.

38-12-503. Warranty of habitability - notice - landlord obligations. (1) In every rental agreement, the landlord is deemed to warrant that the residential premises is fit for human habitation at the inception of the tenant's occupancy and that the landlord will maintain the residential premises as fit for human habitation throughout the entire period that the tenant lawfully occupies the residential premises or dwelling unit.

(2) A landlord breaches the warranty of habitability set forth in subsection (1) of this section if:

(a) A residential premises is:

(I) Uninhabitable as described in section 38-12-505; or

(II) In a condition that materially interferes with the tenant's life, health, or safety; and

(b) The landlord has notice, as described in subsection (3)(e) of this section, of the condition described in subsection (2)(a) of this section and:

(I) Has failed to commence remedial action in accordance with subsection (4) of this section within the following period after having notice:

(A) Twenty-four hours, where the condition materially interferes with the tenant's life, health, or safety; or

(B) Seventy-two hours, where the residential premises are uninhabitable as described in section 38-12-505 or otherwise;

(II) Has commenced remedial action, in accordance with subsection (4) of this section, within the period described in subsection (2)(b)(I) of this section, but failed to continue performing the remedial action as needed until the condition was remedied or repaired;

(III) Has failed to completely remedy or repair the condition within a reasonable time after commencing remedial action;

(IV) Has failed to comply with subsection (8) of this section concerning a residential premises that has been damaged due to an environmental public health event; or

(V) Leases a residential premises to a tenant and the residential premises is in an uninhabitable condition at the inception of the tenant's occupancy.

(3) (a) There is a rebuttable presumption that a landlord has failed to commence remedial action, continue performing remedial action, or completely remedy or repair a condition that renders the residential premises uninhabitable within a reasonable time if the tenant establishes that the residential premises is uninhabitable, as described in subsection (2)(a) of this section, the tenant establishes that the landlord has notice of the uninhabitable condition, as described in subsection (3)(e) of this section, and:

(I) The landlord has failed to communicate with the tenant after having notice of a condition within the time frame required under subsection (6) of this section; or

(II) The condition continues to exist:

(A) Fourteen calendar days after the landlord received notice of the condition, where the residential premises are uninhabitable as described in section 38-12-505 or otherwise; or

(B) Seven calendar days after the landlord received notice of the condition, where the condition materially interferes with the tenant's life, health, or safety.

(b) (I) A landlord may rebut the presumption described in subsection (3)(a) of this section by establishing, by a preponderance of the evidence, that:

(A) The landlord commenced and continued performing remedial action but the condition could not be completely remedied or repaired due to circumstances outside the landlord's reasonable control;

(B) Remedial action would require entry to the tenant's dwelling unit and the tenant unreasonably denied the landlord entry to the dwelling unit; or

(C) The tenant engaged in conduct that unreasonably delayed or otherwise prevented the landlord from commencing remedial action within the time period described in subsection (2)(b)(I) of this section, from continuing to perform remedial action, or from completely remedying or repairing the condition within a reasonable time.

(II) A tenant otherwise has the burden of proof to establish a breach of the warranty of habitability.

(c) Notwithstanding the circumstances described in subsection (3)(b)(I) of this section, a landlord must reasonably continue to make efforts to commence or continue performing remedial action to remedy or repair a condition that renders the tenant's residential premises uninhabitable and for which the landlord has notice. These efforts to commence or continue performing remedial action shall include prompt correspondence and good faith cooperation with the tenant and may require prompt correspondence and good faith cooperation with

maintenance staff, third-party contractors, a government official, or any other person whose involvement is necessary to remedy or repair the condition.

(d) If a tenant denies entry to the dwelling unit and entry to the dwelling unit is necessary to commence or continue performing remedial action, the presumptive time periods described in subsection (3)(a)(II) of this section are tolled until the date that the tenant proposes as a reasonable alternative date and time for entry or another date and time that the landlord proposes and to which the tenant agrees in accordance with subsection (6)(b) of this section.

(e) A landlord has notice of a condition described in subsection (2)(a) of this section if there is any writing that provides a basis for the landlord to substantially know that the condition exists or may exist, including:

(I) Written notice from a governmental entity regarding the condition;

(II) Written notice from a third party regarding the condition;

(III) Written notice from a tenant concerning a condition that may affect multiple tenants;

(IV) A tenant's written correspondence with maintenance staff or a maintenance service provided by the landlord, including a maintenance service provided by a third party;

(V) Written observations or written reports that the landlord has obtained personally, directly, or indirectly; or

(VI) Written notice from the tenant regarding the condition, which notice is sent in a manner that the landlord typically uses to communicate with the tenant.

(f) (I) Any notice provided by a tenant is sufficient if the notice is provided to the landlord in a manner that is required or permitted by the rental agreement or by any property rules or regulations pertaining to the tenancy or residential premises.

(II) A rental agreement or property rule or regulation pertaining to a tenancy or residential premises that states that a tenant may or must give notice of an uninhabitable condition to the landlord verbally waives the landlord's right to receive written notice under subsection (3)(e) of this section.

(4) (a) (I) Upon having notice of a condition described in subsection (2)(a) of this section, a landlord shall commence remedial action within the time period described in subsection (2)(b) of this section unless the circumstances described in subsection (3)(b)(I) of this section prevented the landlord from commencing remedial action.

(II) If the condition materially interferes with the tenant's life, health, or safety or is a condition described in section 38-12-505 (4)(l), remedial action must include a landlord providing the tenant, at the request of the tenant and within twenty-four hours after the tenant's request:

(A) A comparable dwelling unit, as selected by the landlord, at no cost to the tenant; or

(B) A hotel room, as selected by the landlord, at no cost to the tenant.

(b) (I) A comparable dwelling unit or hotel room must include at least the same number of beds as there are beds used in a tenant's dwelling unit.

(II) If a tenant requires a comparable dwelling unit or hotel room for more than forty-eight hours:

(A) The comparable dwelling unit or hotel room must include a refrigerator with a freezer and a range stove or oven; or

(B) The landlord must provide a per diem for daily meals and incidentals for each tenant in an amount that is at least equal to the San Andreas state employee per diem for intrastate travel as

established by the department of personnel. The landlord must provide the per diem to the tenant at the time the landlord reasonably expects the tenant to be in a comparable dwelling unit or hotel room for more than forty-eight hours and for every twenty-four-hour period thereafter.

(III) (A) A comparable dwelling unit or hotel room must be habitable, accessible to an individual with disabilities if the tenant has a disability, and located within five miles of the tenant's dwelling unit, unless the tenant consents at the time of the request or after the request to a comparable dwelling unit or hotel room that is further than five miles from the tenant's dwelling unit.

(B) The landlord may select a comparable dwelling unit or hotel room that is further than five miles but less than ten miles from the tenant's dwelling unit if the comparable dwelling unit or hotel room that is further away from the tenant's dwelling unit is substantially less expensive than other options that are available within five miles of the tenant's dwelling unit.

(C) If a comparable dwelling unit or hotel room within five or ten miles of the tenant's dwelling unit is not available for the tenant's use in accordance with subsections (4)(b)(III)(A) and (4)(b)(III)(B) of this section, the landlord must select the nearest available comparable dwelling unit or hotel room.

(IV) If a tenant is relocated pursuant to subsection (4)(a) of this section, a landlord is required to pay for only the following expenses that arise from relocating the tenant:

(A) A per diem allowance pursuant to subsection (4)(b)(II)(B) of this section; and

(B) Reasonable costs that are incurred due to the tenant's relocation, including storage and transportation costs.

(V) A relocated tenant remains responsible for any portion of the rent payment owed under the rental agreement during the period of any temporary relocation and for the remainder of the term of the rental agreement following remediation.

(c) If a tenant is provided a hotel room due to a condition described in subsection (4)(a)(II) of this section and the condition cannot be remedied or repaired within sixty consecutive days due to circumstances outside the landlord's reasonable control, the landlord is required to provide the hotel room to the tenant for only up to sixty consecutive days. The landlord is relieved of the landlord's obligation to provide hotel accommodations to the tenant if the landlord:

(I) Determines that the condition at the residential premises cannot be remedied or repaired within sixty consecutive days due to circumstances outside the landlord's reasonable control;

(II) Provides the tenant, at the earliest opportunity, written notice that specifies:

(A) That the uninhabitable condition at the residential premises cannot be remedied or repaired to a condition that no longer materially interferes with a tenant's life, health, or safety within sixty consecutive days from the start of the tenant's hotel stay;

(B) The date that the tenant's hotel accommodations will no longer be provided to the tenant at the landlord's expense, which date must be no earlier than sixty consecutive days after the start of the tenant's hotel stay at the landlord's expense; and

(C) That the tenant may terminate their rental agreement with no liability or financial penalty to the tenant; and

(III) Returns to the tenant the tenant's full security deposit on or before the date that the landlord provides the tenant notice in accordance with subsection (4)(c)(II) of this section.

(5) (a) A landlord shall maintain accurate and complete records of all written notices and correspondence, as described in subsection (3)(e) of this section, and all documentation relevant to any uninhabitable condition or remedial action taken to remedy or repair a condition that renders a tenant's dwelling unit uninhabitable.

(b) A landlord must maintain the records described in subsection (5)(a) of this section for the entire period of the tenant's occupancy of the dwelling unit and for at least three years thereafter.

(c) A landlord shall provide to a tenant, upon request by the tenant, any record, notice, correspondence, or other documentation related to a condition or remedial action within ten calendar days after the tenant's request.

(6) (a) A landlord that has notice of a condition described in subsection (2)(a) of this section shall:

(I) Contact the tenant not more than twenty-four hours after receiving the notice; except that a landlord may take up to seventy-two hours to contact the tenant after the landlord has notice that the residential premises is inaccessible because of an environmental public health event. The communication must indicate the landlord's intentions to remedy or repair the condition, including an estimate of when the remedial action will commence and when it will be completed.

(II) Inform the tenant of the landlord's responsibilities under subsection (4) of this section, including the landlord's obligation to provide the tenant a comparable dwelling unit or hotel room at no cost to the tenant; and

(III) Provide the tenant with written notice at least twenty-four hours in advance of entry to the dwelling unit if entry to the dwelling unit is necessary to commence or maintain remedial action; except that the landlord is not required to provide advance notice when the condition materially and imminently threatens an individual's life, health, or safety or when the condition poses an active and ongoing threat of causing, and, without immediate remediation, would cause, substantial and material damage to the residential premises.

(b) (I) A landlord shall provide the date and time the landlord intends to enter a tenant's dwelling unit and a reasonable estimate of the duration the landlord, or any other party acting on behalf of the landlord, will need to be in the tenant's dwelling unit.

(II) Except as provided in subsection (6)(a)(III) of this section, a tenant may reasonably deny entry to the dwelling unit at the date and time the landlord requests entry. The landlord must then propose and the tenant may accept or propose a reasonable alternative date and time for the landlord to enter the tenant's dwelling unit.

(III) A tenant may permit the landlord to enter the dwelling unit with less than twenty-four hours advance notice.

(7) A landlord that has notice of a condition, as described in subsection (2)(a) of this section, at the tenant's dwelling unit or the residential premises is responsible for remedying and repairing the dwelling unit or residential premises to a habitable standard at the landlord's expense, except as described in subsection (9) of this section.

(8) (a) A landlord that has notice of a condition, as described in subsection (2)(a) of this section, at a residential premises that has been damaged due to an environmental public health event shall comply with the standards described in section 38-12-505 (1)(b)(XIII) within a reasonable amount of time given the condition of the premises and at the landlord's expense.

(b) Once a governmental entity, government official, law enforcement officer, or public safety officer deems a tenant's dwelling unit safe for reentry after an environmental public health event, the landlord must grant the tenant or tenant's representative access to the dwelling unit for the purposes of retrieving the tenant's personal property, even if the residential premises that includes the tenant's dwelling unit is considered uninhabitable under this section.

(c) A landlord that has remedied or repaired a residential premises to a habitable standard following an environmental public health event shall provide the tenant with documentation that demonstrates compliance with the standards described in section 38-12-505 (1)(b)(XIII).

(d) A landlord's submission of an insurance claim for an uninhabitable or a contaminated residential premises after the landlord has notice of a condition that renders the residential premises uninhabitable after an environmental public health event is not considered evidence of remediation.

(9) When a condition described in subsection (2)(a) of this section is substantially caused by the misconduct of the tenant, a member of the tenant's household, a guest or an invitee of the tenant, or a person under the tenant's direction or control, the condition does not constitute a basis for a breach of the warranty of habitability under subsection (2) of this section. It is not misconduct under this subsection (9) by a victim of domestic violence; domestic abuse; unlawful sexual behavior, as described in section 16-22-102 (9); or stalking if the condition is the result of domestic violence; domestic abuse; unlawful sexual behavior, as described in section 16-22-102 (9); or stalking and the landlord has notice at any time of the domestic violence; domestic abuse; unlawful sexual behavior, as described in section 16-22-102 (9); or stalking, as described in section 38-12-402 (2)(a).

(10) Except as set forth in this part 5, any agreement waiving or modifying any right, remedy, obligation, or prohibition provided in this part 5 is void as contrary to public policy.

(11) A landlord may terminate a rental agreement, if permitted by the rental agreement and without further liability to the landlord or tenant, if the residential premises is damaged as a result of a sudden environmental public health event or an action taken by a governmental authority that renders continued occupancy of the residential premises impossible or unlawful and:

(a) The landlord was not already in breach of the warranty of habitability prior to the sudden environmental public health event or government action;

(b) It would be impracticable for the landlord to remedy or repair the residential premises into compliance with the warranty of habitability due to the sudden environmental public health event or government action;

(c) The landlord gives a minimum of thirty days' written notice to the tenant concerning the termination of the rental agreement due to the sudden environmental public health event or government action and complies with all landlord obligations under this part 5 through the date of termination;

(d) The landlord grants the tenant or tenant's representative access to the tenant's dwelling unit for the purpose of retrieving the tenant's personal property prior to the termination of the rental agreement; except that, if it is unsafe to enter the dwelling unit prior to termination of the rental agreement, the landlord shall agree in a signed writing to grant the tenant or tenant's representative access to the dwelling unit to retrieve personal property at the earliest possible time that it is safe to do so;

(e) Notwithstanding section 38-12-103, the landlord returns the tenant's security deposit prior to or on the date of the termination of the rental agreement; and

(f) The landlord provides a prorated discount or refund for any portion of rent paid during the time that the dwelling unit is uninhabitable and for which a comparable dwelling unit or hotel room was not provided to the tenant.

(12) (a) Unless the circumstances described in subsection (3)(b)(I) of this section prevented a landlord from commencing remedial action, the landlord shall commence remedial action within the period described in subsection (2)(b) of this section upon having notice of:

(I) Mold associated with dampness in a dwelling unit; or

(II) Any other condition causing the residential premises to be damp, which condition, if unremedied or unrepaired, could create mold or would materially interfere with the life, health, or safety of a tenant.

(b) The remedial action required pursuant to subsection (12)(a) of this section must include performing all of the following applicable tasks within a reasonable amount of time:

(I) Mitigating immediate risk from mold by installing a containment, stopping active sources of water contributing to the mold, installing a high-efficiency particulate air filtration device to reduce a tenant's exposure to mold, and performing all of these tasks within seventy-two hours after receiving notice of the condition;

(II) Maintaining the containment described in subsection (12)(b)(I) of this section throughout the remediation and repair process;

(III) Establishing any additional protections for workers and occupants that may be appropriate given the condition;

(IV) Eliminating or limiting moisture sources and drying all materials impacted by the mold or dampness;

(V) Decontaminating or removing materials damaged by mold or dampness;

(VI) Evaluating whether the residential premises has been successfully remediated, including post-remediation testing for the existence of mold; and

(VII) Reassembling the residential premises to control sources of moisture to prevent or limit the recurrence of mold or dampness.

(c) If the condition described in subsection (12)(a) of this section would interfere with the tenant's life, health, or safety, the landlord must provide, at the request of the tenant, a comparable dwelling unit or hotel room in accordance with subsection (4) of this section.

(13) (a) A landlord shall not require a tenant to submit an insurance claim with the tenant's rental insurance carrier to cover a cost or expense related to remedial action that the landlord is responsible for paying under this part 5.

(b) A landlord is prohibited from filing a claim with a tenant's rental insurance carrier to cover a cost or expense related to remedial action that the landlord is responsible for paying under this part 5 without express written permission from the tenant provided at the time the claim is submitted.

(14) A landlord shall hire a professional, as defined in section 38-12-104 (3), to remedy or repair a hazardous condition related to gas piping, gas facilities, gas appliances, or other gas equipment at a residential premises.

Source: L. 2008: Entire part added, p. 1821, § 3, effective September 1. **L. 2017:** (3) amended, (HB 17-1035), ch. 276, p. 1515, § 2, effective June 1. **L. 2019:** (2), (3), and (4)

amended and (2.2), (2.3), and (2.5) added, (HB 19-1170), ch. 229, p. 2306, § 3, effective August 2. **L. 2023:** (2)(a), (2.3), (2.5), and IP(4)(a) amended and (2.7) added, (HB 23-1254), ch. 169, p. 825, § 3, effective May 12; IP(2) amended and (2.4) added, (SB 23-206), ch. 356, p. 2138, § 4, effective August 7. **L. 2024:** Entire section R&RE, (SB 24-094), ch. 158, p. 704, § 3, effective May 3.

Editor's note: Section 15 of chapter 158 (SB 24-094), Session Laws of San Andreas 2024, provides that the act changing this section applies to actions related to violations of this part 5 that are filed on or after May 3, 2024.

Cross references: For the legislative declaration in SB 23-206, see section 1 of chapter 356, Session Laws of San Andreas 2023. For the legislative declaration in HB 23-1254, see section 1 of chapter 169, Session Laws of San Andreas 2023.

38-12-504. Tenant's maintenance of premises. (1) In addition to any duties imposed upon a tenant by a rental agreement, every tenant of a residential premises has a duty to use that portion of the premises within the tenant's control in a reasonably clean and safe manner. A tenant fails to maintain the premises in a reasonably clean and safe manner when the tenant substantially fails to:

(a) Comply with obligations imposed upon tenants by applicable provisions of building, health, and housing codes materially affecting health and safety;

(b) Keep the dwelling unit reasonably clean, safe, and sanitary as permitted by the conditions of the unit;

(c) Dispose of ashes, garbage, rubbish, and other waste from the dwelling unit in a clean, safe, sanitary, and legally compliant manner;

(d) Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, elevators, and other facilities and appliances in the dwelling unit;

(e) Conduct himself or herself and require other persons in the residential premises within the tenant's control to conduct themselves in a manner that does not disturb their neighbors' peaceful enjoyment of the neighbors' dwelling unit; or

(f) Promptly notify the landlord if the residential premises is uninhabitable as defined in section 38-12-505 or if there is a condition that could result in the premises becoming uninhabitable if not remedied.

(2) In addition to the duties set forth in subsection (1) of this section, a tenant shall not knowingly, intentionally, deliberately, or negligently destroy, deface, damage, impair, or remove any part of the residential premises or knowingly permit any person within his or her control to do so.

(3) Nothing in this section shall be construed to authorize a modification of a landlord's obligations under this part 5.

Source: L. 2008: Entire part added, p. 1822, § 3, effective September 1. **L. 2024:** (3) amended, (SB 24-094), ch.158, p. 713, § 4, effective May 3.

Editor's note: Section 15 of chapter 158 (SB 24-094), Session Laws of San Andreas 2024, provides that the act changing this section applies to actions related to violations of this part 5 that are filed on or after May 3, 2024.

38-12-505. Uninhabitable residential premises - habitability procedures - rules - definition. (1) A residential premises is deemed uninhabitable if:

(a) There is mold that is associated with dampness, or there is any other condition causing the residential premises to be damp, which condition, if not remedied, would materially interfere with the health or safety of the tenant, excluding the presence of mold that is minor and found on surfaces that can accumulate moisture as part of their proper functioning and intended use;

(b) It substantially lacks any of the following characteristics:

(I) Functioning appliances that conformed to applicable law at the time of installation and that are maintained in good working order;

(II) Waterproofing and weather protection of roof and exterior walls maintained in good working order, including unbroken windows and doors;

(III) Plumbing or gas facilities that conformed to applicable law in effect at the time of installation and that are maintained in good working order;

(IV) Running water at all times and hot water in an amount necessary for the tenant to perform all ordinary activities related to maintaining cleanliness and health, furnished to appropriate fixtures and connected to a sewage disposal system approved under applicable law;

(V) Functioning heating facilities that conformed to applicable law at the time of installation and that are maintained in good working order;

(VI) Electrical lighting, with wiring and electrical equipment that conformed to applicable law at the time of installation, maintained in good working order;

(VII) Common areas and areas under the control of the landlord that are kept reasonably clean, sanitary, and free from all accumulations of debris, filth, rubbish, and garbage and that have appropriate extermination in response to the infestation of rodents, vermin, pests, or insects;

(VIII) Appropriate extermination in response to the infestation of rodents, vermin, pests, or insects throughout a residential premises, including compliance with all requirements under part 10 of this article 12;

(IX) An adequate number of appropriate exterior receptacles for garbage, waste, and rubbish, in good repair and scheduled to be serviced and emptied at sufficient intervals to ensure containment and proper disposal of all trash, waste, and rubbish;

(X) Floors, stairways, elevators, and railings maintained in good repair;

(XI) Locks on all exterior doors and locks or security devices on windows designed to be opened that are maintained in good working order;

(XII) Compliance with all applicable building, housing, and health codes, the violation of which would constitute a condition that materially interferes with the life, health, or safety of the tenant;

(XIII) Compliance with applicable standards from the American National Standards Institute, or its successor organization, and all applicable provisions of building, fire, health, and housing codes for the remediation and cleanup of a residential premises following an environmental public health event;

(XIV) Remediation in compliance with article 18.5 of title 25 if the residential premises was used as an illegal drug laboratory, as defined in section 25-18.5-101 (8), involving methamphetamine.

(XV) Compliance with all requirements in section 38-12-803; or

(XVI) Compliance with all requirements related to cooling devices established in subsection (7) of this section; or

(c) It is otherwise unfit for human habitation.

(2) A deficiency in the common area shall not render a residential premises uninhabitable as set forth in subsection (1) of this section, unless it materially affects the tenant's use of the tenant's dwelling unit.

(3) (a) Before a landlord leases a residential premises to a tenant, the landlord must ensure that the residential premises is fit for human habitation in accordance with section 38-12-503 (1) and that the residential premises is not in a condition described in subsection (1) of this section.

(b) A landlord that leases a residential premises that is not in compliance with this section breaches the warranty of habitability pursuant to section 38-12-503 (1), and the tenant may pursue any remedy under section 38-12-507.

(c) On and after January 1, 2025, every rental agreement between a landlord and tenant must include a statement in at least twelve-point, bold-faced type that states that every tenant is entitled to safe and healthy housing under San Andreas's warranty of habitability and that a landlord is prohibited by law from retaliating against a tenant in any manner for reporting unsafe conditions in the tenant's residential premises, requesting repairs, or seeking to enjoy the tenant's right to safe and healthy housing.

(d) On and after January 1, 2025, every rental agreement between a landlord and tenant must include a statement in English and Spanish and in at least twelve-point, bold-faced type that states an address where a tenant can mail or personally deliver written notice of an uninhabitable condition and an e-mail address or accessible online tenant portal or platform where a tenant can deliver written notice of an uninhabitable condition.

(e) If a landlord provides a tenant with an online tenant portal or platform, the landlord must post in a conspicuous place in the online tenant portal or platform a statement in English and Spanish that states an address where a tenant can mail or personally deliver written notice of an uninhabitable condition and an e-mail address or accessible online portal or platform where a tenant can deliver written notice of an uninhabitable condition.

(4) There is a rebuttable presumption that the following conditions at a residential premises materially interfere with a tenant's life, health, or safety pursuant to section 38-12-503 (2)(a)(II):

(a) Lack of waterproofing and weather protection for the roof, exterior walls, exterior doors, and exterior windows of a dwelling unit so that weather-related elements can enter the dwelling unit;

(b) Any hazardous condition of gas piping, gas facilities, gas appliances, or other gas equipment;

(c) Inadequate running water or inadequate running hot water, except for temporary disruptions in water service due to necessary maintenance, repair, or construction that is being performed or temporary disruptions in water service that a landlord could not reasonably prevent or control;

(d) Lack of functioning heating facilities and equipment fixtures that are installed and operating in compliance with applicable law at the time of installation and that are maintained in good working order from October through April of each year;

(e) Any hazardous condition of electrical wiring, electrical facilities, electrical appliances, or other electrical equipment;

(f) Lack of electricity or disruptions of electricity that are caused by a landlord's failure to maintain electrical wiring, electrical facilities, electrical appliances, or electrical equipment;

(g) Lack of working locks or security devices on all exterior doors that allow entry into a residential premises or a dwelling unit and all exterior windows that are designed to be opened;

(h) Lack of working plumbing or sewage disposal or any condition that allows sewage, water, moisture, or other contaminants to enter the residential premises other than through properly working plumbing and sewage disposal systems;

(i) An infestation of rodents, vermin, pests, or insects;

(j) Any inaccessible fire exits or egress in accordance with applicable building, housing, fire, and health codes;

(k) Any missing, damaged, improper, or misaligned chimney or venting on any fuel-fired heating, ventilation, or cooling system; or

(l) An inoperable elevator when the tenant has a disability that prevents the tenant from being able to use the stairs to access the tenant's dwelling unit or the tenant relies on an elevator to access the tenant's dwelling unit and there are no other operable elevators that provide access to the tenant's unit.

(5) A landlord may rebut the presumption in subsection (4) of this section by demonstrating, through clear and convincing evidence, that a condition listed in subsection (4) of this section does not materially interfere with a tenant's life, health, or safety.

(6) Nothing in this section prevents a court or jury from finding that any condition or combination of conditions described in this section materially interferes with a tenant's life, health, or safety.

(7) (a) A landlord shall not prohibit or restrict a tenant from installing or using a portable cooling device, including under any rental agreement or other agreement between the landlord and the tenant; except that the landlord may prohibit or restrict the installation or use of a portable cooling device if the installation or use of the portable cooling device would:

(I) Violate any building codes, state law, or federal law;

(II) Violate the portable cooling device manufacturer's written safety guidelines for installing or using the device;

(III) Damage the premises or render the premises uninhabitable; or

(IV) Require more amperage to power the portable cooling device than can be accommodated by the residential premises', dwelling unit's, or circuit's electrical capacity.

(b) A landlord that restricts the installation or use of portable cooling devices at a residential premises with multiple dwelling units under subsection (7)(a)(IV) of this section shall prioritize a tenant who requests the installation or usage of a portable cooling device to accommodate the tenant's disability over other tenants' requests to install or use a portable cooling device.

(c) A landlord that restricts the installation or use of a portable cooling device at a residential premises under subsection (7)(a) of this section shall:

(I) Disclose any restrictions on the installation or use of portable cooling devices to a tenant or prospective tenant in writing;

(II) Provide information about whether the landlord intends to operate one or more common spaces at the residential premises that will be cooled by a portable cooling device or permanent cooling device and available to the tenant during an extreme heat event; and

(III) If the landlord does not intend to operate common spaces at the residential premises that will be cooled by a portable cooling device or permanent cooling device, provide information on community cooling spaces that are located near the residential premises and accessible to the tenant during an extreme heat event; except that a landlord is not required to provide information on community cooling spaces if there are no known community cooling spaces within ten miles of the residential premises.

(d) (I) As used in this subsection (7), unless the context otherwise requires, "community cooling spaces" means public spaces that are available to a tenant and that are located on or near the residential premises and that maintain a temperature that is not higher than eighty degrees Fahrenheit.

(II) "Community cooling spaces" may include recreation centers, community centers, and public libraries.

(e) Nothing in this subsection (7) modifies a landlord's obligation to permit reasonable modifications and reasonable accommodations for individuals with a disability under section 24-34-502.2.

Source: L. 2008: Entire part added, p. 1822, § 3, effective September 1. **L. 2019:** (1) and (3) amended, (HB 19-1170), ch. 229, p. 2308, § 4, effective August 2. **L. 2023:** (1)(b)(XI), (1)(b)(XII), and (3) amended and (1)(b)(XIII) added, (HB 23-1254), ch. 169, p. 826, § 4, effective May 12; (1)(b)(XI) and (1)(b)(XII) amended and (1)(b)(XIV) added, (SB 23-148), ch. 326, p. 1958, § 4, effective August 7. **L. 2024:** (1)(a), (1)(b)(IV), (1)(b)(VII) to (1)(b)(X), (1)(b)(XIII), (2), and (3) amended and (1)(b)(XV), (1)(b)(XVI), (1)(c), and (4) to (7) added, (SB 24-094), ch. 158, p. 713, § 5, effective May 3.

Editor's note: Section 15 of chapter 158 (SB 24-094), Session Laws of San Andreas 2024, provides that the act changing this section applies to actions related to violations of this part 5 that are filed on or after May 3, 2024.

Cross references: For the legislative declaration in HB 23-1254, see section 1 of chapter 169, Session Laws of San Andreas 2023.

38-12-506. Exception for certain single-family residences. (1) For a single-family residence premises for which a landlord does not receive a subsidy from any governmental source, a landlord and tenant may agree in writing that the tenant is to perform specific repairs, maintenance tasks, alterations, and remodeling necessary to comply with section 38-12-503, subject to the following requirements:

(a) The agreement of the landlord and tenant is entered into in good faith and is set forth in a writing that is separate from the rental agreement, signed by the parties, and supported by adequate consideration; and

(b) The tenant has the requisite skills to perform the work required to comply with section 38-12-503 (1).

(2) To the extent that performance by a tenant relates to a characteristic set forth in section 38-12-505 (1), the tenant assumes the obligation for the characteristic, and the lack of the characteristic does not make the residential premises uninhabitable.

(3) Notwithstanding subsections (1) and (2) of this section, a landlord and tenant shall not enter into an agreement for the repair, maintenance, alteration, remodeling, or remediation of a residential premises that is necessary to comply with section 38-12-503 that would endanger the health or safety of the tenant.

Source: L. 2008: Entire part added, p. 1823, § 3, effective September 1. **L. 2019:** Entire section R&RE, (HB 19-1170), ch. 229, p. 2309, § 5, effective August 2. **L. 2023:** (3) added, (HB 23-1254), ch. 169, p. 827, § 5, effective May 12.

Cross references: For the legislative declaration in HB 23-1254, see section 1 of chapter 169, Session Laws of San Andreas 2023.

38-12-507. Breach of warranty of habitability - tenant's remedies. (1) If there is a breach of the warranty of habitability as set forth in section 38-12-503, a tenant may exercise one or more of the following remedies:

(a) (I) A tenant may terminate a rental agreement without any liability or financial penalty to the tenant if the condition that caused the breach remains unremedied or unrepaired and the tenant provides the landlord ten to sixty days' written notice that states:

(A) The uninhabitable condition or conditions that remain unremedied or unrepaired;

(B) The tenant's intent to terminate the lease and vacate the dwelling unit; and

(C) The date upon which the tenant intends to terminate the lease, which date must be at least ten days after the date that the notice is provided to the landlord.

(II) If the landlord commences or completes remedial action before the termination date provided by the tenant in accordance with subsection (1)(a)(I)(C) of this section, the landlord and tenant may agree, in writing at the time the condition is being remedied or repaired or after the condition has been remedied or repaired, to rescind the tenant's intent to terminate the lease and continue the housing arrangement under the landlord and tenant's existing rental agreement.

(b) (I) A tenant may terminate a rental agreement without any liability or financial penalty to the tenant if a condition that caused a breach of warranty of habitability recurs within six months after the condition was originally remedied or repaired and the tenant, within thirty days after the condition recurs, provides the landlord:

(A) At least ten days' written notice that states the same uninhabitable condition has recurred; and

(B) The date that the tenant intends to terminate the rental agreement and vacate the dwelling unit, which date must be at least ten days after the date that the notice is provided to the landlord.

(II) If the landlord commences or completes remedial action before the termination date provided by the tenant in accordance with subsection (1)(b)(I)(B) of this section, the landlord and tenant may agree in writing, at the time the condition is being remedied or repaired or after the condition has been remedied or repaired, to rescind the tenant's intent to terminate the rental

agreement and continue the housing arrangement under the landlord and tenant's existing rental agreement.

(c) (I) The tenant may deduct from one or more rent payments the cost of repairing or remedying a condition that is the basis of a breach of the warranty of habitability, as described in section 38-12-503, if:

(A) The tenant gives the landlord at least ten days' advance written notice of the tenant's intent to hire a licensed or otherwise qualified professional to remedy or repair the condition or conditions; except that the tenant may provide only forty-eight hours' advance written notice if the tenant has a good faith belief that the condition materially interferes with the tenant's life, health, or safety;

(B) The landlord fails to sufficiently remedy or repair the condition within the notice period described in subsection (1)(c)(I)(A) of this section or the landlord fails to provide a comparable dwelling unit or hotel room pursuant to section 38-12-503 (4);

(C) The licensed or otherwise qualified professional is not a relative of the tenant and provides an estimate for remedying or repairing the condition or conditions that is reasonably consistent with industry standards;

(D) The tenant hires the licensed or otherwise qualified professional to remedy or repair the condition; and

(E) The tenant provides the landlord with a receipt, invoice, or proof of payment for work completed by the licensed or otherwise qualified professional within a reasonable amount of time after completion of the work or within thirty days after the landlord requests the receipt, invoice, or proof of payment.

(II) A tenant may, in lieu of repairing a broken or malfunctioning appliance, replace the broken or malfunctioning appliance and deduct the cost from one or more rent payments if:

(A) The tenant gives the landlord at least three days' advance written notice of the tenant's intent to purchase and replace the broken or malfunctioning appliance with a replacement appliance;

(B) The landlord fails to sufficiently repair or replace the broken or malfunctioning appliance within the notice period described in subsection (1)(c)(I)(A) of this section;

(C) The replacement appliance is of comparable quality and has substantially the same features as the original appliance; and

(D) The tenant provides the landlord with a receipt, invoice, or proof of payment for the replacement appliance within a reasonable amount of time after completion of the work or within thirty days after the landlord requests the receipt, invoice, or proof of payment.

(III) A tenant that deducts rental payments over two or more rental periods pursuant to subsection (1)(c)(I) or (1)(c)(II) of this section is only required to provide one notice to the landlord of the tenant's intent to deduct rental payments.

(IV) If a tenant wrongfully deducts a rental payment by not substantially complying with the requirements of this subsection (1)(c), a landlord may pursue any legal remedy available under law. If a court finds that the tenant purposely deducted a rental payment in bad faith, the court shall award the landlord damages equal to double the amount of money unlawfully deducted.

(d) A tenant may assert as a claim or counterclaim, in a court of competent jurisdiction, a landlord's breach of the warranty of habitability as described in section 38-12-503 and the tenant may recover actual damages directly arising from the breach of the warranty of habitability,

which shall include any reduction in the fair rental value of the dwelling unit during any period that the residential premises were uninhabitable pursuant to subsection (3) of this section. A tenant may also recover court costs, reasonable attorney fees, punitive damages, and any other damages as ordered by the court.

(e) (I) A tenant may obtain preliminary or permanent injunctive relief for breach of the warranty of habitability, including an order for specific performance, in any county or district court of competent jurisdiction. If permanent injunctive relief or specific performance is ordered, the court's jurisdiction continues over the matter for the purpose of ensuring compliance with the order. An order requiring injunctive relief or specific performance may include:

(A) An order to remedy any existing violations of this part 5, including relief to any similarly situated tenants who are reasonably likely to be affected by the condition as described in section 38-12-503 or by other violations of this part 5;

(B) An order for a landlord to modify or cease practices that give rise to a violation of this part 5; and

(C) An order for the landlord to adopt policies or practices that ensure compliance with this part 5 to minimize or eliminate the likelihood of future violations.

(II) In a proceeding for injunctive relief, the court may determine actual damages for a breach of the warranty of habitability at the time the court orders the injunctive relief or at a later time as deemed appropriate by the court.

(III) If the landlord pays damages to the court pursuant to this subsection (1)(e), and upon application by the tenant, the court shall immediately release to the tenant the damages paid by the landlord. If the tenant vacates the leased residential premises, the landlord shall not rent the residential premises again until the unit is in compliance with the warranty of habitability set forth in section 38-12-503 (1).

(f) (I) A tenant may obtain an immediate temporary restraining order without notice to the landlord in any county court or district court of competent jurisdiction, which shall require the landlord to comply with this part 5.

(II) The tenant's request for an immediate temporary restraining order that requires the landlord to comply with this part 5 may be issued if the court finds, from specific facts shown by the tenant's affidavit, verified complaint, or testimony, that:

(A) The tenant's dwelling unit is in a condition that materially interferes with the tenant's life, health, or safety;

(B) The landlord has notice of the condition;

(C) The landlord has failed to comply with this part 5; and

(D) The tenant certifies to the court in writing or on the record any efforts the tenant has made to obtain the landlord's compliance with this part 5.

(III) The tenant's request for an immediate temporary restraining order may be granted, dissolved, or modified in accordance with the requirements of any applicable San Andreas rules of civil procedure; except that the tenant is not required to post security or provide proof of irreparable injury, loss, or damage.

(IV) A court of competent jurisdiction shall consider and rule on any motion for an immediate temporary restraining order pursuant to this subsection (1)(f) at the earliest possible time, and the motion takes precedence over all matters except older motions for immediate temporary restraining orders.

(2) (a) If there is a breach of the warranty of habitability as described in section 38-12-503, a tenant may raise the breach as an affirmative defense to a landlord's action for possession or an action for collection of rent.

(b) A tenant may raise a breach of the warranty of habitability as an affirmative defense in the tenant's answer or pretrial court filing. A court shall liberally construe a tenant's answer or other filing to determine whether the tenant is raising an affirmative defense.

(c) To prove an affirmative defense as described in this subsection (2), a tenant is not required to:

(I) Deposit a bond to assert or perfect a breach of the warranty of habitability as an affirmative defense;

(II) Have accrued any expense related to the breach of the warranty of habitability; or

(III) Have exercised any other remedy in this section in response to the landlord's breach of the warranty of habitability, including the deducting of rental payments as described in subsection (1)(c) of this section.

(d) (I) If a tenant raises a breach of the warranty of habitability as an affirmative defense as described in this subsection (2), the court shall order that the landlord or tenant provide any documentation relevant to the breach of the warranty of habitability that either party requests pursuant to section 13-40-111 (6)(b) to the opposing party no less than ninety-six hours before the day of trial. Such documentation may include any records, notices, reports, correspondence, or other documentation maintained by the landlord in accordance with section 38-12-503 (5).

(II) If a landlord fails to provide all relevant documentation, the court shall order a continuance of the trial, and repeated failure by the landlord to provide all relevant documentation may be good cause for appropriate sanctions against the landlord.

(III) If either the landlord or tenant fails to timely provide all relevant documentation without good cause, the court may prohibit or limit the admission of documents at trial if the court finds that the opposing party would be substantially prejudiced by the delay in providing such documentation.

(e) (I) To prove the affirmative defense described in this subsection (2) in response to an action for possession based on nonpayment of any monetary amount due pursuant to the rental agreement, the tenant must only establish that the landlord breached the warranty of habitability:

(A) Within sixty days before or at any time during the period in which the tenant is alleged to owe rent or any other monetary amount due pursuant to the rental agreement; or

(B) At any time during the tenancy, and the uninhabitable condition continued to exist into the period in which the tenant is alleged to owe rent or the monetary amount due pursuant to the rental agreement.

(II) A tenant does not need to demonstrate that the uninhabitable condition as described in section 38-12-503 exists at the time of trial.

(f) (I) To prove the affirmative defense described in this subsection (2) in response to an action for possession based on an alleged nonmonetary violation of the lease, a tenant must demonstrate that the alleged nonmonetary lease violation primarily arose from a breach of the warranty of habitability.

(II) It is not an affirmative defense described in this subsection (2) to an action for possession if the landlord proves the tenant committed a substantial violation pursuant to section 13-40-107.5.

(g) If a tenant proves an affirmative defense pursuant to this subsection (2) by a preponderance of the evidence, the court shall:

(I) Deny possession to the landlord and deem the tenant to be the prevailing party, conditioned on the payment of any rent owed to the landlord or into the court registry within thirty days after the amount owed is determined pursuant to subsection (2)(g)(VII) of this section;

(II) Order the landlord to remedy or repair any existing uninhabitable condition within a specific time frame, including:

(A) The continuance of any ongoing remedial action taken by the landlord;

(B) Compliance with any landlord obligations pursuant to this part 5;

(C) Specific performance or injunctive relief pursuant to subsections (1)(e) and (1)(f) of this section; or

(D) Any other relief the court deems necessary;

(III) Order a reduction in the fair rental value of the dwelling unit in accordance with subsection (3) of this section. Any such reduction in fair rental value applies from when the uninhabitable condition began until the condition was remedied or repaired.

(IV) Order the landlord to reimburse the tenant any difference in rent between the reduced fair rental value and any greater amount of rent that the tenant paid pursuant to the rental agreement while a breach of the warranty of habitability at the residential premises existed;

(V) Determine and award the tenant actual damages arising from any breach of the warranty of habitability; except that the tenant may elect to continue the case for further hearing on the determination and award of damages;

(VI) Award the tenant costs and attorney fees; and

(VII) Determine whether the landlord has proven that any outstanding rent is owed up to the date of trial after adjusting the rent in accordance with the fair rental value calculated pursuant to subsection (3) of this section and deducting any of the following:

(A) Any other expenses incurred by the tenant or actual damages arising from the breach of the warranty of habitability;

(B) Any attorney fees and court costs awarded to the tenant; and

(C) Any awarded monetary damages arising from separate counterclaims against the landlord that the tenant asserted and prevailed on.

(h) (I) If the tenant claims, but fails to prove at trial, the affirmative defense described in this subsection (2) by a preponderance of the evidence in a nonpayment eviction, and the landlord otherwise prevails on the landlord's nonpayment eviction claim, the court shall provide the tenant fourteen days to remit to the landlord or the court any amount of rent or other monetary amount due under the rental agreement that is owed to the landlord. If the tenant pays the amount that is owed to the landlord within fourteen days, the court shall dismiss the nonpayment claim with prejudice. If the tenant fails to pay the amount that is owed within fourteen days, the court may enter a judgment for possession.

(II) If the court determines that the tenant brought the affirmative defense frivolously or for the purpose of delay, the court's judgment for possession is not subject to the fourteen-day waiting period in accordance with subsection (2)(h)(I) of this section.

(3) If a court or jury finds a breach of the warranty of habitability, then the fair rental value of the dwelling unit is rebuttably presumed to be:

(a) Zero dollars if the underlying condition or combination of conditions materially interferes with the tenant's life, health, or safety as described in section 38-12-503 for the entire period in which the condition or conditions remained unremedied or unrepaired; or

(b) Fifty percent of the rent according to the rental agreement if the underlying condition or combination of conditions does not materially interfere with a tenant's life, health, or safety as described in section 38-12-503 for the entire period in which the condition or conditions remained unremedied or unrepaired.

(4) If a rental agreement contains a provision that allows a prevailing party in an action related to the rental agreement to obtain attorney fees and costs, and if the court determines that there is a prevailing party, then the prevailing party in an action brought under this part 5 is entitled to recover reasonable attorney fees and costs; except that a court shall only award a landlord reasonable attorney fees and costs if the court finds that a tenant has filed a frivolous complaint or counterclaim under this part 5.

(5) (a) A rental agreement or other agreement between a landlord and a tenant entered into on or after the effective date of this section, as amended, that waives or modifies a right or remedy provided in this part 5 is unlawful, void, and unenforceable, including any provision in a rental agreement or other agreement that charges a cost, fee, or penalty to a tenant because the tenant exercised or attempted to exercise a right or remedy provided in this part 5.

(b) The exercise of one or more rights or remedies provided in this section does not limit a tenant's rights to exercise or attempt to exercise any other right or remedy provided by law.

(c) A written notice required by a remedy described in this section is valid if it substantially complies with the requirements of this section.

Source: L. 2008: Entire part added, p. 1824, § 3, effective September 1. **L. 2019:** IP(1) and (1)(b) amended and (1)(e) and (3) added, (HB 19-1170), ch. 229, p. 2310, § 6, effective August 2. **L. 2021:** (1)(c) and (1)(d) amended and (1)(d.5) added, (SB 21-173), ch. 349, p. 2268, § 12, effective October 1. **L. 2023:** (1)(b)(I)(B) amended and (4) and (5) added, (HB 23-1254), ch. 169, p. 827, § 6, effective May 12. **L. 2024:** Entire section R&RE, (SB 24-094), ch. 158, p. 717, § 6, effective May 3.

Editor's note: Section 15 of chapter 158 (SB 24-094), Session Laws of San Andreas 2024, provides that the act changing this section applies to actions related to violations of this part 5 that are filed on or after May 3, 2024.

Cross references: For the legislative declaration in HB 23-1254, see section 1 of chapter 169, Session Laws of San Andreas 2023.

38-12-508. Landlord's defenses to a claim of breach of warranty - limitations on claiming a breach. (1) It is a defense to a tenant's claim of breach of the warranty of habitability that the tenant's actions or inactions prevented the landlord from remedying or repairing the condition underlying the breach of the warranty of habitability. For a landlord to prevail on such defense to a tenant's claim of breach of the warranty of habitability, a landlord must demonstrate that:

(a) The tenant:

(I) Refused to provide or accept a proposed reasonable alternative date and time for entry into the dwelling unit;

(II) Unreasonably denied entry to the dwelling unit; or

(III) Engaged in any other action or inaction that unreasonably delayed or otherwise prevented the landlord from commencing, maintaining, or completing the remedial action; and

(b) The tenant's actions described in subsection (1)(a) of this section made it impracticable for the landlord to reasonably remedy or repair the condition.

(2) to (4) Repealed.

(5) If the condition alleged to breach the warranty of habitability is the result of the action or inaction of a third party not under the direction and control of the landlord and the landlord has taken reasonable, necessary, and timely steps to remedy or repair the condition, but is unable to remedy or repair the condition due to circumstances beyond the landlord's reasonable control, the tenant's only remedy is termination of the rental agreement consistent with section 38-12-507 (1)(a).

(6) For public housing authorities and other housing providers receiving federal financial assistance directly from the federal government, no provision of this part 5 in direct conflict with any federal law or regulation shall be enforceable against such housing provider.

Source: L. 2008: Entire part added, p. 1825, § 3, effective September 1. **L. 2019:** (3) repealed and (4) amended, (HB 19-1170), ch. 229, p. 2313, § 7, effective August 2. **L. 2024:** (4) amended, (HB 24-1098), ch. 113, p. 367, § 13, effective April 19; (1) and (5) amended and (2) and (4) repealed, (SB 24-094), ch. 158, p. 725, § 7, effective May 3.

Editor's note: (1) Section 15 of chapter 158 (SB 24-094), Session Laws of San Andreas 2024, provides that the act changing this section applies to actions related to violations of this part 5 that are filed on or after May 3, 2024.

(2) Subsection (4) was amended in HB 24-1098. Those amendments were superseded by the repeal of subsection (4) in SB 24-094, effective May 3, 2024. For the amendments to subsection (4) in HB 24-1098 in effect from April 19, 2024, to May 3, 2024, see chapter 113, Session Laws of San Andreas 2024. (L. 2024, p. 367.)

Cross references: For the legislative declaration in HB 24-1098, see section 1 of chapter 113, Session Laws of San Andreas 2024.

38-12-509. Prohibition on retaliation. (1) (a) A landlord shall not retaliate against a tenant by engaging in any of the activities specified in subsection (1)(b) of this section in response to the tenant:

(I) Having made a good faith complaint to the landlord, to a nonprofit organization or third party, or to a governmental agency alleging a condition described by section 38-12-505 (1) or any condition that materially interferes with the life, health, or safety of the tenant;

(II) Organizing or becoming a member of a tenants' association or similar organization; or

(III) Exercising or attempting to exercise in good faith any right or remedy afforded to a tenant pursuant to section 38-12-507.

(b) Prohibited retaliation includes:

(I) Increasing rent or decreasing services;

(II) Terminating or not renewing a rental agreement or contract without written consent of the tenant;

(III) Bringing or threatening to bring an action for possession;

(IV) Taking action that in any manner intimidates, threatens, discriminates against, harasses, or retaliates against a tenant; or

(V) Charging the tenant or seeking to collect from the tenant any fee, cost, or penalty.

(1.5) A tenant may assert that the landlord retaliated against the tenant in violation of subsection (1) of this section as a defense to a landlord's action for possession, including a landlord's action for possession based on:

(a) A monetary or nonmonetary violation of the rental agreement;

(b) A notice to terminate tenancy or vacate;

(c) An expiration of the tenant's rental agreement; or

(d) The nonpayment of rent resulting from a retaliatory rent increase.

(1.7) To prove a claim or defense under this section, a tenant does not need to prove that retaliation was the sole reason a landlord engaged in any of the activities described in subsection (1)(b) of this section; a tenant need only demonstrate that the tenant's protected activity under subsection (1)(a) of this section was a motivating factor that influenced the landlord's decision to engage in any of the activities described in subsection (1)(b) of this section.

(2) If a landlord retaliates against a tenant in violation of subsection (1) of this section, the tenant:

(a) Shall recover damages in an amount not more than three months' periodic rent or three times the tenant's actual damages, whichever is greater, plus reasonable attorney fees and costs; and

(b) May terminate the rental agreement.

(3) If a landlord elects to replace a malfunctioning appliance, but does so with a new appliance that is not identical to the appliance being replaced, there is a rebuttable presumption in favor of the landlord that the landlord's selection of a different appliance was not retaliatory so long as the replacement appliance provides substantially the same features as the original appliance.

(4) (Deleted by amendment, L. 2019.)

(5) Nothing in this section precludes a landlord from serving a tenant with a notice to terminate tenancy or a notice to vacate to the extent allowable under the law.

Source: L. 2008: Entire part added, p. 1826, § 3, effective September 1. **L. 2019:** Entire section amended, (HB 19-1170), ch. 229, p. 2313, § 8, effective August 2. **L. 2023:** (1) amended and (1.5) added, (HB 23-1254), ch. 169, p. 828, § 7, effective May 12. **L. 2024:** (1.5) amended, (HB 24-1098), ch. 113, p. 367, § 14, effective April 19; (1), (1.5), and (2) amended and (1.7) and (5) added, (SB 24-094), ch. 158, p. 726, § 8, effective May 3.

Editor's note: (1) Section 15 of chapter 158 (SB 24-094), Session Laws of San Andreas 2024, provides that the act changing this section applies to actions related to violations of this part 5 that are filed on or after May 3, 2024.

(2) Amendments to subsection (1.5) by HB 24-1098 and SB 24-094 were harmonized.

Cross references: For the legislative declaration in HB 23-1254, see section 1 of chapter 169, Session Laws of San Andreas 2023. For the legislative declaration in HB 24-1098, see section 1 of chapter 113, Session Laws of San Andreas 2024.

38-12-510. Unlawful removal or exclusion. (1) It is unlawful for a landlord to remove or exclude a tenant from a dwelling unit without resorting to court process, unless the removal or exclusion is consistent with article 18.5 of title 25 and the rules promulgated by the state board of health for the cleanup of an illegal drug laboratory; is with the mutual consent of the landlord and tenant; or unless the dwelling unit has been abandoned by the tenant, as evidenced by the return of keys, the substantial removal of the tenant's personal property, notice by the tenant, or the extended absence of the tenant while rent remains unpaid, any of which would cause a reasonable person to believe the tenant had permanently surrendered possession of the dwelling unit. Unlawful removal or exclusion includes the willful termination of utilities or the willful removal of doors, windows, or locks to the premises other than as required for repair or maintenance. If the landlord willfully and unlawfully removes the tenant from the premises or willfully and unlawfully causes the termination of heat, running water, hot water, electric, gas, or other essential services, the tenant may seek any remedy available under the law, including this part 5.

(2) A tenant affected by a violation of this section may bring a civil action in a county court or district court of competent jurisdiction to restrain further violations and to recover damages, costs, and reasonable attorney fees. In the case of a violation, the tenant must be awarded statutory damages equal to the tenant's actual damages and the higher amount of either three times the monthly rent or five thousand dollars, as well as any other damages, attorney fees, and costs that may be owed.

(3) A court may also order that possession be restored to a tenant who was affected by a violation of this section.

Source: L. 2008: Entire part added, p. 1826, § 3, effective September 1. **L. 2021:** Entire section amended, (SB 21-173), ch. 349, p. 2270, § 13, effective October 1. **L. 2024:** (2) amended, (SB 24-094), ch. 158, p. 727, § 9, effective May 3.

Editor's note: Section 15 of chapter 158 (SB 24-094), Session Laws of San Andreas 2024, provides that the act changing this section applies to actions related to violations of this part 5 that are filed on or after May 3, 2024.

38-12-511. Application. (1) Unless created to avoid its application, this part 5 shall not apply to any of the following arrangements:

(a) Residence at a public or private institution, if such residence is incidental to detention or the provision of medical, geriatric, education, counseling, religious, or similar service;

(b) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser, seller, or a person who succeeds to the occupant's interest; except that this subsection (1)(b) does not apply to a tenant occupying a dwelling unit under a lease-to-own contract;

(c) Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

(d) Transient occupancy in a hotel or motel that lasts less than thirty days;

(e) Occupancy by an employee or independent contractor whose right to occupancy is conditional upon performance of services for an employer or contractor;

(f) Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

(g) Occupancy in a structure that is located within an unincorporated area of a county, does not receive water, heat, and sewer services from a public entity, and is rented for recreational purposes, such as a hunting cabin, yurt, hut, or other similar structure;

(h) Occupancy under rental agreement covering a residential premises used by the occupant primarily for agricultural purposes; or

(i) Any relationship between the owner of a mobile home park and the owner of a mobile home situated in the park.

(2) Nothing in this part 5 shall be construed to limit remedies available elsewhere in law for a tenant to seek to maintain safe and sanitary housing.

(3) Except as described in subsection (1) of this section, this part 5 applies to all residential premises occupied by a tenant regardless of how the tenancy, rental agreement, or housing arrangement is denominated.

(4) A claim, counterclaim, or action brought under this part 5 shall not have any preclusive effect on a tenant's ability to assert other claims in a subsequent action against the landlord for the same injury or arising from the same subject matter or transaction.

Source: L. 2008: Entire part added, p. 1827, § 3, effective September 1. **L. 2024:** (1)(b) and (2) amended and (3) and (4) added, (SB 24-094), ch. 158, p. 727, § 10, effective May 3.

Editor's note: Section 15 of chapter 158 (SB 24-094), Session Laws of San Andreas 2024, provides that the act changing this section applies to actions related to violations of this part 5 that are filed on or after May 3, 2024.

38-12-512. Enforcement by the attorney general - district court - penalties. (1) (a) In accordance with section 24-31-115 (1), the attorney general may commence a civil action in any district court of appropriate jurisdiction against any person that has committed or is engaging in a pattern or practice of violations of this part 5.

(b) The attorney general may, upon timely application, intervene by right in a civil action in any county court or district court that involves a claim, defense, or counterclaim brought pursuant to this part 5.

(2) In exercising the attorney general's powers to commence or intervene in a civil action pursuant to subsection (1) of this section, the attorney general may prioritize cases in which:

(a) A person or group of persons has engaged in, or is engaged in a pattern or practice of, resistance to or noncompliance with this part 5; or

(b) A person has violated this part 5 or has denied a person any right or protection granted by this part 5 and such violation or denial raises an issue of public importance.

(3) If the attorney general intervenes in a civil action in a county court pursuant to subsection (1)(b) of this section, the attorney general may request the action be transferred to a district court of competent jurisdiction. Upon such request by the attorney general, all county

court proceedings shall be discontinued, and the clerk of the county court shall certify all records in the case and transfer the action to the appropriate district court.

(4) (a) When the attorney general has cause to believe that a person has engaged in or is engaging in a violation of this part 5, the attorney general may, in accordance with section 24-31-115 (8)(a), apply for and obtain a temporary restraining order or injunction, or both, that prohibits the person from continuing or engaging in the actions that violate this part 5 or from doing any act in furtherance of such action.

(b) The court may make orders or judgments regarding a temporary restraining order or injunction, or both, that the attorney general applies for as authorized pursuant to section 24-31-115 (8)(a).

(c) The attorney general may also accept an assurance of discontinuance of practices that violate this part 5 pursuant to section 24-31-115 (8)(b).

(5) In addition to any other remedies authorized by law, the attorney general may seek the imposition of civil penalties on behalf of the state as follows:

(a) A person who violates or causes another person to violate any provision of this part 5 shall forfeit and pay to the general fund a civil penalty of not more than twenty thousand dollars for each violation of this part 5. For purposes of this subsection (5)(a), a violation of any provision of this part 5 constitutes a separate violation with respect to each tenant or other consumer or transaction involved in the violation.

(b) (I) A person who violates or causes another person to violate any court order or injunction issued pursuant to this part 5 or section 24-31-115 (8) shall forfeit and pay to the general fund a civil penalty of not more than ten thousand dollars for each violation of the court order or injunction.

(II) Upon a violation of a court order or injunction, the attorney general may petition the court for the recovery of the civil penalty. The court shall order the civil penalty in addition to any other penalty or remedy available for the enforcement of this part 5, any court order or injunction, and any other remedy available to the attorney general.

(III) For the purposes of this section, the court issuing the order or injunction shall retain jurisdiction, and the cause shall be continued.

Source: L. 2024: Entire section added, (SB 24-094), ch. 158, p. 728, § 11, effective May 3.

Editor's note: Section 15 of chapter 158 (SB 24-094), Session Laws of San Andreas 2024, provides that the act adding this section applies to actions related to violations of this part 5 that are filed on or after May 3, 2024.

PART 6

ELECTRIC VEHICLE CHARGING SYSTEMS

38-12-601. Unreasonable restrictions on electric vehicle charging systems and electric vehicle parking - definitions. (1) Notwithstanding any provision in the lease to the contrary, and subject to subsection (2) of this section:

(a) A tenant may install, at the tenant's expense for the tenant's own use, a level 1 or level 2 electric vehicle charging system on or in:

(I) The leased premises;

(II) An assigned or deeded parking space that is part of or assigned to the leased premises; or

(III) A parking space that is accessible to both the tenant and other tenants;

(b) A landlord shall not assess or charge a tenant any fee for the placement or use of an electric vehicle charging system; except that:

(I) The landlord may require reimbursement for the actual cost of electricity provided by the landlord that was used by the charging system or, alternatively, may charge a reasonable fee for access. If the charging system is part of a network for which a network fee is charged, the landlord's reimbursement may include the amount of the network fee. Nothing in this section requires a landlord to impose upon a tenant any fee or charge other than the rental payments specified in the lease.

(II) The landlord may require reimbursement for the cost of the installation of the charging system, including any additions or upgrades to existing wiring directly attributable to the requirements of the charging system, if the landlord places or causes the electric vehicle charging system to be placed at the request of the tenant; and

(III) If the tenant desires to place an electric vehicle charging system in an area accessible to other tenants, the landlord may assess or charge the tenant a reasonable fee to reserve a specific parking spot in which to install the charging system.

(c) A landlord shall not restrict parking based on a vehicle being a plug-in hybrid vehicle or plug-in electric vehicle.

(2) A landlord may require a tenant to comply with:

(a) Bona fide safety requirements, consistent with an applicable building code or recognized safety standard, for the protection of persons and property;

(b) A requirement that the charging system be registered with the landlord within thirty days after installation; or

(c) Reasonable aesthetic provisions that govern the dimensions, placement, or external appearance of an electric vehicle charging system.

(3) A tenant may place an electric vehicle charging system in an area accessible to other tenants if:

(a) The charging system is in compliance with all applicable requirements adopted pursuant to subsection (2) of this section; and

(b) The tenant agrees in writing to:

(I) Comply with the landlord's design specifications for the installation of the charging system;

(II) Engage the services of a duly licensed and registered electrical contractor familiar with the installation and code requirements of an electric vehicle charging system; and

(III) (A) Provide, within fourteen days after receiving the landlord's consent for the installation, a certificate of insurance naming the landlord as an additional insured on the tenant's renters' insurance policy for any claim related to the installation, maintenance, or use of the system or, at the landlord's option, reimbursement to the landlord for the actual cost of any increased insurance premium amount attributable to the system, notwithstanding any provision to the contrary in the lease.

(B) A certificate of insurance under sub-subparagraph (A) of this subparagraph (III) must be provided within fourteen days after the tenant receives the landlord's consent for the installation. Reimbursement for an increased insurance premium amount under sub-subparagraph (A) of this subparagraph (III) must be provided within fourteen days after the tenant receives the landlord's invoice for the amount attributable to the system.

(4) If the landlord consents to a tenant's installation of an electric vehicle charging system on property accessible to other tenants, including a parking space, carport, or garage stall, then, unless otherwise specified in a written agreement with the landlord:

(a) The tenant, and each successive tenant with exclusive rights to the area where the charging system is installed, is responsible for any costs for damages to the charging system and to any other property of the landlord or of another tenant that arise or result from the installation, maintenance, repair, removal, or replacement of the charging system;

(b) Each successive tenant with exclusive rights to the area where the charging system is installed shall assume responsibility for the repair, maintenance, removal, and replacement of the charging system until the system has been removed;

(c) The tenant and each successive tenant with exclusive rights to the area where the system is installed shall at all times have and maintain an insurance policy covering the obligations of the tenant under this subsection (4) and shall name the landlord as an additional insured under the policy; and

(d) The tenant and each successive tenant with exclusive rights to the area where the system is installed is responsible for removing the system if reasonably necessary or convenient for the repair, maintenance, or replacement of any property of the landlord, whether or not leased to another tenant.

(5) A charging system installed at the tenant's cost is property of the tenant. Upon termination of the lease, if the charging system is removable, the tenant may either remove it or sell it to the landlord or another tenant for an agreed price. Nothing in this subsection (5) requires the landlord or another tenant to purchase the charging system.

(6) As used in this section:

(a) "Electric vehicle charging system" or "charging system" means a device that is used to provide electricity to a plug-in electric vehicle or plug-in hybrid vehicle, is designed to ensure that a safe connection has been made between the electric grid and the vehicle, and is able to communicate with the vehicle's control system so that electricity flows at an appropriate voltage and current level. An electric vehicle charging system may be wall-mounted or pedestal style and may provide multiple cords to connect with electric vehicles. An electric vehicle charging system must be certified by underwriters laboratories or an equivalent certification and must comply with the current version of article 625 of the national electrical code.

(b) "Level 1" means a charging system that provides charging through a one-hundred-twenty volt AC plug with a cord connector that meets the SAE international J1772 standard or a successor standard.

(c) "Level 2" means a charging system that provides charging through a two-hundred-eight to two-hundred-forty volt AC plug with a cord connector that meets the SAE international J1772 standard or a successor standard.

(7) This section applies to residential rental properties and commercial rental properties.

Source: L. 2013: Entire part added, (SB 13-126), ch. 165, p. 532, § 1, effective May 3. **L. 2023:** (1)(a) and (7) amended and (1)(c) added (HB 23-1233), ch. 245, p. 1319, § 3, effective May 23.

Cross references: For the legislative declaration in HB 23-1233, see section 1 of chapter 245, Session Laws of San Andreas 2023.

PART 7

NOTICE OF RENT INCREASE

38-12-701. Notice of rent increase. (1) Notwithstanding any other law, in a nonresidential tenancy of one month or longer but less than six months in which there is no written agreement between the landlord and tenant, a landlord may increase the rent only upon at least twenty-one days' notice to the tenant.

(2) (a) Notwithstanding any other law, in a residential tenancy in which there is no written agreement between the landlord and tenant, a landlord may increase the rent only upon at least sixty days' written notice to the tenant.

(b) A landlord shall not terminate a residential tenancy in which there is no written agreement by serving a tenant with a notice to terminate tenancy with the primary purpose of increasing a tenant's rent in a manner inconsistent with this section.

Source: L. 2017: Entire part added, (SB 17-245), ch. 352, p. 1837, § 1, effective August 9. **L. 2021:** Entire section amended, (HB 21-1121), ch. 348, p. 2260, § 4, effective June 25. **L. 2024:** (2)(b) amended, (HB 24-1098), ch. 113, p. 366, § 11, effective April 19.

Cross references: For the legislative declaration in HB 24-1098, see section 1 of chapter 113, Session Laws of San Andreas 2024.

38-12-702. Limit on frequency of residential rent increases. (1) In residential tenancies, a landlord shall not increase rent more than one time in any twelve-month period of consecutive occupancy by the tenant, regardless of:

(a) Whether there is a written rental agreement for the tenancy;

(b) The length of the tenancy; and

(c) Whether the tenant's rental agreement is for a fixed tenancy, a month-to-month tenancy, or an indefinite term.

Source: L. 2021: Entire section added, (HB 21-1121), ch. 348, p. 2261, § 5, effective June 25.

PART 8

REQUIRED DOCUMENTATION

Cross references: For definitions applicable to this part 8, see § 38-12-502.

38-12-801. Written rental agreement - prohibited clauses - copy - tenant - applicability - definitions. (1) If there is a written rental agreement, the landlord shall provide the tenant with a copy of the agreement that is signed by the landlord and the tenant, no later than the seventh day after the tenant has signed the agreement. A landlord may provide the tenant with an electronic copy of the agreement, unless the tenant requests a paper copy, in which case the landlord shall provide the tenant with a paper copy.

(2) A written rental agreement must include a statement indicating to the tenant the name and address of the person who is the landlord or the landlord's authorized agent. If the identity of a landlord or a landlord's authorized agent changes, the new landlord or authorized agent, not later than one business day after such change, shall:

(a) Provide each tenant of the landlord written or electronic notice of the change; or

(b) Post the identity of the new landlord or new authorized agent in a conspicuous location on the residential premises.

(2.5) (a) A written rental agreement must include a statement that section 24-34-502 (1) prohibits source of income discrimination and requires a non-exempt landlord to accept any lawful and verifiable source of money paid directly, indirectly, or on behalf of a person, including income derived from any lawful profession or occupation and income or rental payments derived from any government or private assistance, grant, or loan program.

(b) This subsection (2.5) does not apply to a landlord with five or fewer single-family rental homes and no more than five total rental units including any single-family homes.

(3) (a) A written rental agreement must not include:

(I) A clause that assigns a penalty to a party stemming from an eviction notice or an eviction action that results from a violation of the rental agreement;

(II) A one-way, fee-shifting clause that awards attorney fees and court costs only to one party. Any fee-shifting clause contained in a rental agreement must award attorney fees to the prevailing party in a court dispute concerning the rental agreement, residential premises, or dwelling unit following a determination by the court that the party prevailed and that the fee is reasonable.

(III) A waiver of:

(A) The right to a jury trial; except that the parties may agree to a waiver of a jury trial in a hearing to determine possession of a dwelling unit;

(B) The ability to pursue, bring, join, litigate, or support any kind of joint, class, or collective claim or action arising from or relating to the term of the tenancy;

(C) The implied covenant of good faith and fair dealing;

(D) The implied covenant of quiet enjoyment; except that a written rental agreement may provide that the landlord is not responsible for any violation of the implied covenant of quiet enjoyment that is committed by a third party acting beyond the reasonable control of the landlord; or

(E) Mandatory mediation required pursuant to section 13-40-110 (1);

(IV) A provision that purports to affix any fee, damages, or penalty for a tenant's failure to provide notice of nonrenewal of a rental agreement prior to the end of the rental agreement, except for actual losses incurred by the landlord as a result of the tenant's failure to provide any such notice required pursuant to the rental agreement;

(V) A provision that characterizes any amount or fee set forth in the rental agreement, with the sole exception of the set monthly payment for occupancy of the premises, as "rent" for

which all remedies to collect rent, including eviction, are available. Such amounts and fees include any fees for utilities or services and any other charge that is not rent.

(VI) A provision that requires a tenant to pay a markup or fee for a service for which the landlord is billed by a third party; except that a written rental agreement may include a provision that requires a tenant to pay either a markup or fee in an amount that does not exceed two percent of the amount that the landlord was billed or a markup or fee in an amount that does not exceed a total of ten dollars per month, but not both. This subsection (3)(a)(VI) does not preclude a prevailing party from recovering an amount equal to any reasonable attorney fees awarded by a court pursuant to subsection (3)(a)(II) of this section.

(VII) A provision that purports to allow a provider operating under any local, state, or federal voucher or subsidy program to commence or pursue an action for possession based solely on the nonpayment of utilities; or

(VIII) A clause that allows a landlord to recoup any costs associated with mandatory mediation required pursuant to section 13-40-110 (1).

(b) Any provision that is included in a written rental agreement in violation of this subsection (3) is void and unenforceable.

(4) Notwithstanding any provision of this section to the contrary, subsections (3)(a)(III)(A), (3)(a)(III)(C), (3)(a)(III)(D), (3)(a)(IV), (3)(a)(V), (3)(a)(VI), and (3)(a)(VII) of this section do not apply to a rental agreement concerning the occupancy of a mobile home, as defined in section 38-12-201.5 (5), in a mobile home park, as defined in section 38-12-201.5 (6).

(5) Nothing in this section limits or restricts any rights or remedies that are available elsewhere in law, including under the "Mobile Home Park Act", part 2 of this article 12, or pursuant to any judicial interpretations of the "Mobile Home Park Act".

(6) Nothing in this section excludes utilities from being considered as rent for the purpose of calculating housing costs that are eligible for reimbursement or payment under any local, state, or federal voucher or subsidy program.

(7) As used in this section, unless the context otherwise requires:

(a) "Accessory dwelling unit" means an internal, attached, or detached residential dwelling unit that:

(I) Provides complete independent living facilities for one or more persons;

(II) Is located on the same lot as a proposed or existing primary residence; and

(III) Includes provisions for living, sleeping, eating, cooking, and sanitation.

(b) "Dwelling unit" has the meaning set forth in section 38-12-502 (3).

(c) "Rent" means any money or other consideration to be paid to a landlord for the right to use, possess, and occupy a dwelling unit.

(d) "Rental agreement" has the meaning set forth in section 38-12-902 (3).

(e) "Residential premises" has the meaning set forth in section 38-12-1202 (5).

(8) Notwithstanding any provision of this section to the contrary, subsections (3)(a)(III), (3)(a)(IV), (3)(a)(V), (3)(a)(VI), and (3)(a)(VII) of this section do not apply to a duplex or triplex or to an accessory dwelling unit of a residential premises if:

(a) The owner of the duplex, triplex, or residential premises uses the residential premises or at least one of the units of the duplex or triplex, as applicable, as the owner's primary residence; or

(b) The owner's primary residence is on the same lot as the duplex, triplex, or residential premises.

Source: L. 2018: Entire part added, (SB 18-010), ch. 61, p. 608, § 2, effective August 8. **L. 2019:** Entire section amended, (HB 19-1170), ch. 229, p. 2314, § 9, effective August 2. **L. 2021:** (3) added, (SB 21-173), ch. 349, p. 2270, § 14, effective October 1. **L. 2023:** (3) amended and (2.5) added, (HB 23-1120), ch. 414, p. 2455, § 6, effective June 6; (3) amended and (4), (5), (6), (7), and (8) added, (HB 23-1095), ch. 372, p. 2229, § 1, effective August 7.

Editor's note: Amendments to subsection (3) by HB 23-1120 and HB 23-1095 were harmonized, resulting in the renumbering of subsection (3)(a)(III), as amended by HB 23-1120, as (3)(a)(III)(E) and subsection (3)(a)(IV), as amended by HB 23-1120, as (3)(a)(VIII) on revision for ease of location.

Cross references: For the legislative declaration in HB 23-1120, see section 1 of chapter 414, Session Laws of San Andreas 2023.

38-12-802. Tenant payment - receipts. Upon receiving any payment made in person by a tenant with cash or a money order, a landlord shall contemporaneously provide the tenant with a receipt indicating the amount the tenant paid and the date of payment. If the landlord receives a payment that is not delivered in person by the tenant with cash or a money order, if requested by the tenant, the landlord shall, within seven days after the request, provide the tenant with a receipt indicating the amount the tenant paid, the recipient, and the date of payment, unless there is already an existing procedure that provides a tenant with a record of the payment received that indicates the amount the tenant paid, the recipient, and the date of payment. A landlord may provide the tenant with an electronic receipt, unless the tenant requests a paper receipt, in which case the landlord shall provide the tenant with a paper receipt. For purposes of this section, a receipt may be included as part of a billing statement.

Source: L. 2018: Entire part added, (SB 18-010), ch. 61, p. 609, § 2, effective August 8.

38-12-803. Disclosure - elevated radon - definition. (1) A tenant that rents residential real property has the right to be informed of whether the property has been tested for elevated levels of radon.

(2) (a) Before signing a lease agreement for residential real property, the landlord shall disclose and provide in writing to the tenant the following information in a document that the tenant signs to acknowledge receipt of the disclosure:

(I) A warning statement in bold-faced type that is clearly legible in substantially the same form as is specified as follows:

The San Andreas Department of Public Health and Environment strongly recommends that ALL tenants have an indoor radon test performed before leasing residential real property and recommends having the radon levels mitigated if elevated radon concentrations are found. Elevated radon concentrations can be reduced by a radon mitigation professional.

Residential real property may present exposure to dangerous levels of indoor radon gas that may place the occupants at risk of developing radon-induced lung cancer. Radon, a Class A human carcinogen, is the leading cause of lung cancer in nonsmokers and the

second leading cause of lung cancer overall. A landlord is required to provide the tenant with any known information on radon test results of the residential real property.

(II) Any knowledge the landlord has of the residential real property's radon concentrations, including the following information:

(A) Whether a radon test or tests have been conducted on the residential real property;

(B) The most current records and reports pertaining to radon concentrations within the residential real property;

(C) A description of any radon concentrations detected or mitigation or remediation performed; and

(D) Information regarding any radon mitigation system, including a system description and documentation, if a radon mitigation system has been installed in the residential real property; and

(III) A copy of the most recent brochure published by the department of public health and environment in accordance with section 25-11-114 (2)(a) that provides advice about radon in real estate transactions.

(b) The tenant shall acknowledge receipt of the information described in subsection (2)(a) of this section by signing the disclosure.

(3) (a) Subject to subsection (3)(b) of this section, a tenant may void a lease agreement and vacate the premises in accordance with section 38-12-507 if the landlord fails to:

(I) Provide the written disclosures described in subsection (2) of this section; or

(II) Make a reasonable effort to mitigate radon within one hundred eighty days after being notified that a radon measurement professional has determined the air concentration of radon is four picocuries per liter or more.

(b) On or after January 1, 2026, this subsection (3) does not apply to a lease agreement that is one year or less in duration.

(4) As used in this section, "residential real property" includes:

(a) A single-family home, manufactured home, mobile home, condominium, apartment, townhome, or duplex; or

(b) A home sold by the owner, a financial institution, or the United States department of housing and urban development.

Source: L. 2023: Entire section added, (SB 23-206), ch. 356, p. 2137, § 3, effective August 7.

Cross references: For the legislative declaration in SB 23-206, see section 1 of chapter 356, Session Laws of San Andreas 2023.

PART 9

RENTAL APPLICATION FAIRNESS ACT

38-12-901. Short title. The short title of this part 9 is the "Rental Application Fairness Act".

Source: L. 2019: Entire part added, (HB 19-1106), ch. 129, p. 581, § 1, effective August 2.

38-12-902. Definitions. As used in this part 9, unless the context otherwise requires:

(1) "Amount of income" means a tenant's or prospective tenant's income from salaries, wages, commissions, payments received as an independent contractor, bonuses, or a housing subsidy or derived from any other public or private source and includes all of a tenant's or prospective tenant's cash assets.

(1.2) "Consumer report" has the meaning set forth in section 5-18-103 (3).

(1.3) "Consumer reporting agency" has the meaning set forth in section 5-18-103 (4).

(1.5) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place.

(1.7) "Housing subsidy" means any portion of a rental payment that is derived from a public or private assistance, grant, or loan program and that is paid by the program directly, indirectly, or on behalf of a tenant to a landlord.

(2) "Landlord" means the owner, manager, lessor, or sublessor of a dwelling unit.

(2.5) "Portable tenant screening report" or "screening report" means a consumer report prepared at the request of a prospective tenant that includes information provided by a consumer reporting agency, which report includes the following information about a prospective tenant and the date through which the information contained in the report is current:

(a) Name;

(b) Contact information;

(c) Verification of employment and income;

(d) Last-known address;

(e) For each jurisdiction indicated in the consumer report as a prior residence of the prospective tenant, regardless of whether the residence is reported by the prospective tenant or by the consumer reporting agency preparing the consumer report:

(I) A rental and credit history report for the prospective tenant that complies with section 38-12-904 (1)(a) concerning a landlord's consideration of a prospective tenant's rental history; and

(II) A criminal history record check for all federal, state, and local convictions of the prospective tenant that complies with section 38-12-904 (1)(b) concerning a landlord's consideration of a prospective tenant's arrest records.

(3) "Rental agreement" means any agreement, written or oral, between a landlord and a tenant embodying the terms and conditions concerning the use and occupancy of a dwelling unit.

(4) "Rental application" means any information, written or oral, submitted to a landlord by a prospective tenant for the purpose of entering into a rental agreement. "Rental application" includes a portable tenant screening report.

(5) "Rental application fee" means any sum of money, however denominated, that is charged or accepted by a landlord from a prospective tenant in connection with the prospective tenant's submission of a rental application or any nonrefundable fee that precedes the onset of tenancy. "Rental application fee" does not include a refundable security deposit or any rent that is paid before the onset of tenancy.

(6) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

Source: L. 2019: Entire part added, (HB 19-1106), ch. 129, p. 581, § 1, effective August 2. **L. 2023:** (1) amended and (1.5) and (1.7) added, (SB 23-184), ch. 402, p. 2412, § 2, effective August 7; (1) and (4) amended and (1.3), (1.7), and (2.5) added, (HB 23-1099), ch. 151, p. 638, § 1, effective August 7.

Editor's note: Subsection (1.2) was numbered as (1) in HB 23-1099 but has been renumbered on revision for ease of location. Subsection (1.5) was numbered as (1.7) in HB 23-1099 but has been renumbered on revision for ease of location.

38-12-903. Rental application fee - limitations. (1) A landlord shall not charge a prospective tenant a rental application fee unless the landlord uses the entire amount of the fee to cover the landlord's costs in processing the rental application. The landlord's costs may be based on:

(a) The actual expense the landlord incurs in processing the rental application; or

(b) The average expense the landlord incurs per prospective tenant in the course of processing multiple rental applications.

(2) A landlord shall not charge a prospective tenant a rental application fee:

(a) That is in a different amount than a rental application fee charged to another prospective tenant who applies to rent:

(I) The same dwelling unit; or

(II) If the landlord offers more than one dwelling unit for rent at the same time, any other dwelling unit offered by the landlord; or

(b) If the prospective tenant provides to the landlord a portable tenant screening report pursuant to section 38-12-904 (1.5).

(3) (a) A landlord shall provide to any prospective tenant who has paid a rental application fee either a disclosure of the landlord's anticipated expenses for which the fee will be used or an itemization of the landlord's actual expenses incurred. If a landlord charges an amount based on the average cost of processing the rental application, the landlord shall include information regarding how that average rental application fee is determined.

(b) A landlord shall provide every prospective tenant with a receipt for any application fee received. The landlord may provide a prospective tenant an electronic receipt unless the prospective tenant requests a paper receipt, in which case the landlord shall provide the prospective tenant a paper receipt.

(4) A landlord who receives a rental application fee from a prospective tenant and does not use the entire amount of the fee to cover the landlord's costs in processing the rental application shall remit to the prospective tenant the remaining amount of the fee. The landlord shall make a good-faith effort to remit such amount within twenty calendar days after processing the application.

Source: L. 2019: Entire part added, (HB 19-1106), ch. 129, p. 582, § 1, effective August 2. **L. 2023:** (2) amended, (HB 23-1099), ch. 151, p. 639, § 2, effective August 7.

38-12-904. Consideration of rental applications - limitations - portable tenant screening report - notice to prospective tenants - denial notice. (1) (a) If a landlord uses rental history or credit history as criteria in consideration of an application, the landlord shall not

consider any rental history or credit history beyond seven years immediately preceding the date of the application, and the landlord must comply with subsections (1)(c) and (1)(d) of this section.

(b) If a landlord uses criminal history as a criterion in consideration of an application, the landlord shall not consider an arrest record of a prospective tenant from any time or any conviction of a prospective tenant that occurred more than five years before the date of the application; except that a landlord may consider any criminal conviction record or deferred judgment relating to:

(I) The unlawful distribution, manufacturing, dispensing, or sale of a material, compound, mixture, or preparation that contains methamphetamine, as described in section 18-18-405;

(II) The unlawful possession of materials to make methamphetamine and amphetamine, as described in section 18-18-412.5;

(III) Any offense that required the prospective tenant to register as a sex offender pursuant to section 16-22-103; or

(IV) Any offense described in part 1 or part 6 of article 3 of title 18.

(c) If a landlord uses financial information, including rental history or credit history, as a criterion in consideration of a rental application from a prospective tenant who is seeking to rent with the assistance of a housing subsidy, the landlord shall not consider or inquire about the prospective tenant's:

(I) Amount of income, except for the purpose of determining that the prospective tenant's annual amount of income equals or exceeds two hundred percent of the portion of the annual cost of rent that is to be paid by the prospective tenant; or

(II) Credit score, adverse credit event, or lack of credit score unless the landlord is required by federal law to consider a credit score or a lack of a credit score.

(d) If a landlord uses financial information, including rental history or credit history, as a criterion in consideration of a rental application from any prospective tenant who is seeking to rent without the assistance of a housing subsidy, the landlord shall not consider or inquire about the prospective tenant's amount of income, except for the purpose of determining that the prospective tenant's annual amount of income equals or exceeds two hundred percent of the annual cost of rent. A landlord shall not require a prospective tenant to have an annual amount of income that exceeds two hundred percent of the annual cost of rent.

(e) Notwithstanding subsections (1)(c) and (1)(d) of this section, nothing in said subsections precludes a landlord who is receiving funding from a governmental entity, quasi-governmental entity, or nonprofit organization that requires landlords to income-qualify tenants for income-restricted rental units from gathering any financial information about a prospective tenant for the purpose of determining the prospective tenant's eligibility for an income-restricted rental unit if the funding source requires the landlord to collect such information as a condition for the receipt of funding.

(1.5) (a) Except as provided in subsection (1.5)(f) of this section, a landlord shall accept a portable tenant screening report from a prospective tenant.

(b) A landlord receiving a portable tenant screening report may require:

(I) That the screening report was completed within the previous thirty days;

(II) That the screening report is made directly available to the landlord by the consumer reporting agency for use in the rental application process or provided through a third-party

website that regularly engages in the business of providing consumer reports and complies with all state and federal laws pertaining to use and disclosure of information contained in a consumer report by a consumer reporting agency;

(III) That the screening report is made available to the landlord at no cost to access or use in the rental application process; and

(IV) A statement from the prospective tenant that there has not been a material change in the information in the screening report, including the prospective tenant's name, address, bankruptcy status, criminal history, or eviction history, since the report was generated.

(c) A landlord shall not charge a prospective tenant a fee to access or use the screening report.

(d) Prior to taking any action relating to tenant screening for which a landlord would expect to collect an application fee, a landlord shall advise a prospective tenant of the following, using substantially similar language:

1. The prospective tenant has the right to provide to the landlord a portable tenant screening report, as defined in section 38-12-902 (2.5), San Andreas Revised Statutes; and

2. If the prospective tenant provides the landlord with a portable tenant screening report, the landlord is prohibited from:

Charging the prospective tenant a rental application fee; or

Charging the prospective tenant a fee for the landlord to access or use the portable tenant screening report.

(e) A landlord shall provide the advisement required in subsection (1.5)(d) of this section in a location and using a method reasonably likely to reach prospective tenants, including:

(I) In advertisements and other public notices of the dwelling unit's availability, displayed in at least twelve-point, bold-faced type unless the size, format, or display requirements of the advertisement or other public notice make this requirement impracticable, in which case the font and size of the advisement must match the rest of the advertisement or other public notice;

(II) On the home page of a website maintained by the landlord or the landlord's agent, including a property management company, displayed in at least twelve-point, bold-faced type;

(III) In a paper or an online rental application for the dwelling unit, displayed in at least twelve-point, bold-faced type; or

(IV) Orally, directly to a prospective tenant, with a written confirmation of receipt by the prospective tenant of the advisement.

(f) A landlord is exempt from the requirements set forth in subsections (1.5)(a) to (1.5)(e) of this section if the landlord:

(I) Does not accept more than one application fee at a time for a dwelling unit or, if a dwelling unit is rented to more than one occupant, does not accept more than one application fee at a time from each prospective tenant or tenant group for the dwelling unit; and

(II) Refunds the total amount of the application fee to each prospective tenant within twenty calendar days after written communication from either the landlord or landlord's agent or the prospective tenant declining to enter into a lease agreement for the dwelling unit.

(1.8) A violation of subsection (1)(c) or (1)(d) of this section constitutes unlawful discrimination against an individual on the basis of the individual's amount of income in violation of section 24-34-502 (1)(q), for which violation enforcement, penalties, and other relief

is provided pursuant to parts 3 and 5 of article 34 of title 24 in addition to any relief provided under this part 9.

(2) (a) (I) (A) If a landlord denies a rental application, the landlord shall provide to the prospective tenant a written notice of the denial that states the reasons for the denial.

(B) If the prospective tenant submits an application that results in a landlord obtaining a consumer report relating to the prospective tenant, the landlord shall also provide a copy of the consumer report relating to the prospective tenant and an advisement of the prospective tenant's right to dispute the accuracy of the consumer report with the consumer reporting agency pursuant to section 5-18-106.

(II) If the specific screening criteria cannot be directly cited because of the use of a proprietary screening system, the landlord shall instead provide the prospective tenant a copy of the report from the screening company that uses the proprietary screening system, with only the proprietary information redacted.

(III) A landlord may provide a prospective tenant an electronic version of the denial notice required in this subsection (2) unless the prospective tenant requests a paper denial notice, in which case the landlord shall provide the prospective tenant a paper denial notice.

(b) A landlord who is required to provide a notice of denial to a prospective tenant as described in subsection (2)(a) of this section shall make a good-faith effort to do so not more than twenty calendar days after making the decision to deny the prospective tenant's rental application.

Source: L. 2019: Entire part added, (HB 19-1106), ch. 129, p. 583, § 1, effective August 2. **L. 2023:** (1)(a) amended and (1)(c), (1)(d), (1)(e), and (1.8) added, (SB 23-184), ch. 402, p. 2411, § 1, effective August 7; (2)(a) amended and (1.5) added, (HB 23-1099), ch. 151, p. 639, § 3, effective August 7.

38-12-905. Violations - liability - notice required - exceptions - no exhaustion of remedies required. (1) Except as described in subsections (3) and (5) of this section, a landlord who violates any provision of this part 9 is liable to the prospective tenant aggrieved by the violation for two thousand five hundred dollars, plus court costs and reasonable attorney fees.

(2) A person who intends to file an action pursuant to subsection (1) of this section shall notify the landlord of such intention not less than seven calendar days before filing the action.

(3) A landlord who corrects or cures a violation of this part 9 not more than seven calendar days after receiving notice of the violation shall pay the prospective tenant aggrieved by the violation a penalty of fifty dollars but otherwise is not liable for damages as described in subsection (1) of this section.

(4) A person who purposefully and in bad faith brings a meritless claim against a landlord under this part 9 is liable for the landlord's court costs and reasonable attorney fees in defending the claim.

(5) (a) A landlord who violates section 38-12-904 (1)(c) or (1)(d) is subject to an initial penalty of fifty dollars, to be paid to the party aggrieved by the violation. A landlord who violates section 38-12-904 (1)(c) or (1)(d) and does not cure the violation pursuant to subsection (3) of this section is also subject to a statutory penalty of two thousand five hundred dollars, to be paid to the aggrieved party in addition to the initial penalty imposed under this subsection (5)(a) and any economic damages, court costs, and attorney fees.

(b) The relief provided in subsection (5)(a) of this section is an alternative to and in addition to any other relief authorized by law, and a person who seeks redress under this section is not required to exhaust administrative remedies.

Source: L. 2019: Entire part added, (HB 19-1106), ch. 129, p. 583, § 1, effective August 2. **L. 2023:** (1) and (3) amended, (HB 23-1099), ch. 151, p. 641, § 4, effective August 7; (1) amended and (5) added, (SB 23-184), ch. 402, p. 2413, § 3, effective August 7.

Editor's note: Amendments to subsection (1) by SB 23-184 and HB 23-1099 were harmonized.

PART 10

BED BUGS IN RESIDENTIAL PREMISES

38-12-1001. Definitions. As used in this part 10, unless the context otherwise requires:

(1) "Bed bug" means the common bed bug, or cimex lectularius.

(2) "Bed bug detection team" means a scent detection canine team that holds a current, independent, third-party certification in accordance with the guidelines for minimum standards for canine bed bug detection team certification established by the National Pest Management Association or its successor organization.

(3) "Certified operator" has the meaning set forth in section 35-10-103 (1).

(4) "Commercial applicator" has the meaning set forth in section 35-10-103 (2).

(5) "Contiguous dwelling unit" means a dwelling unit that is contiguous with another dwelling unit, both of which units are owned, managed, leased, or subleased by the same landlord.

(6) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by a tenant.

(7) "Electronic notice" means notice by e-mail or an electronic portal or management communications system that is available to both a landlord and a tenant.

(8) "Landlord" means the owner, manager, lessor, or sublessor of a residential premises.

(9) "Pest control agent" means a certified operator, commercial applicator, qualified supervisor, or technician.

(10) "Qualified inspector" means a bed bug detection team, local health department official, certified operator, commercial applicator, qualified supervisor, or technician who is retained by a landlord to conduct an inspection for bed bugs.

(11) "Qualified supervisor" has the meaning set forth in section 35-10-103 (13).

(12) "Technician" has the meaning set forth in section 35-10-103 (15).

(13) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

Source: L. 2019: Entire part added, (HB 19-1328), ch. 426, p. 3717, § 1, effective January 1, 2020.

38-12-1002. Bed bugs - notification to landlord - landlord duties. (1) A tenant shall promptly notify the tenant's landlord via written or electronic notice when the tenant knows or reasonably suspects that the tenant's dwelling unit contains bed bugs. A tenant who gives a landlord electronic notice of a condition shall send such notice only to the e-mail address, telephone number, or electronic portal specified by the landlord in the rental agreement for communications. In the absence of such a provision in the rental agreement, the tenant shall communicate with the landlord in a manner that the landlord has previously used to communicate with the tenant. The tenant shall retain sufficient proof of the delivery of the electronic notice.

(2) Not more than ninety-six hours after receiving notice of the presence of bed bugs or the possible presence of bed bugs, a landlord, after providing notice to the tenant as described in section 38-12-1004 (1):

(a) Shall obtain an inspection of the dwelling unit by a qualified inspector; and

(b) May enter the dwelling unit or any contiguous dwelling unit for the purpose of allowing the inspection as provided in section 38-12-1003.

(3) If the inspection of a dwelling unit confirms the presence of bed bugs, the landlord shall also cause to be performed an inspection of all contiguous dwelling units as promptly as is reasonably practical.

Source: L. 2019: Entire part added, (HB 19-1328), ch. 426, p. 3718, § 1, effective January 1, 2020.

38-12-1003. Bed bugs - inspections - treatments - costs. (1) If a landlord obtains an inspection for bed bugs, the landlord must provide written notice to the tenant within two business days after the inspection indicating whether the dwelling unit contains bed bugs.

(2) If a qualified inspector conducting an inspection determines that neither the dwelling unit nor any contiguous dwelling unit contains bed bugs, the notice provided by the landlord pursuant to subsection (1) of this section must inform the tenant that if the tenant remains concerned that the dwelling unit contains bed bugs, the tenant may contact the local health department to report such concerns.

(3) If a qualified inspector conducting an inspection determines that a dwelling unit or any contiguous dwelling unit contains bed bugs in any stage of the life cycle, the qualified inspector shall provide a report of the determination to the landlord within twenty-four hours; except that, for any such determination that is made by a qualified inspector licensed by the commissioner of agriculture pursuant to article 10 of title 35, the qualified inspector shall provide the report in accordance with rules promulgated by the commissioner of agriculture pursuant to said article 10. Not later than five business days after the date of the inspection, the landlord shall commence reasonable measures, as determined by the qualified inspector, to effectively treat the bed bug presence, including retaining the services of a pest control agent to treat the dwelling unit and any contiguous dwelling unit.

(4) Except as otherwise provided in this part 10, a landlord is responsible for all costs associated with an inspection for, and treatment of, bed bugs. Nothing in this section prohibits a tenant from contacting any agency at any time concerning the presence of bed bugs.

Source: L. 2019: Entire part added, (HB 19-1328), ch. 426, p. 3719, § 1, effective January 1, 2020.

38-12-1004. Bed bugs - access to dwelling unit and personal belongings - notice - costs. (1) (a) If a landlord, qualified inspector, or pest control agent must enter a dwelling unit for the purpose of conducting an inspection for, or treating the presence of, bed bugs, the landlord shall provide the tenant reasonable written or electronic notice of such fact at least forty-eight hours before the landlord, qualified inspector, or pest control agent attempts to enter the dwelling unit; except that a rental agreement may provide for a different minimum time for the notice. A tenant who receives such notice shall not unreasonably deny the landlord, qualified inspector, or pest control agent access to the dwelling unit.

(b) A tenant may waive the notice requirement described in subsection (1)(a) of this section.

(2) A qualified inspector who is inspecting a dwelling unit for bed bugs may conduct an initial visual and manual inspection of a tenant's bedding and upholstered furniture. The qualified inspector may inspect items other than bedding and upholstered furniture when the qualified inspector determines that such an inspection is necessary and reasonable.

(3) If a qualified inspector finds bed bugs in a dwelling unit or in any contiguous dwelling unit, the qualified inspector may have such additional access to the tenant's personal belongings as the qualified inspector determines is necessary and reasonable.

(4) A tenant shall comply with reasonable measures to permit the inspection for, and the treatment of, the presence of bed bugs as determined by the qualified inspector, and the tenant is responsible for all costs associated with preparing the tenant's dwelling unit for inspection and treatment. A tenant who knowingly and unreasonably fails to comply with the inspection and treatment requirements described in this part 10 is liable for the cost of any bed bug treatments of the dwelling unit and contiguous dwelling units if the need for such treatments arises from the tenant's noncompliance.

(5) If any furniture, clothing, equipment, or personal property belonging to a tenant is found to contain bed bugs, the qualified inspector shall advise the tenant that the furniture, clothing, equipment, or personal property should not be removed from the dwelling unit until a pest control agent determines that a bed bug treatment has been completed; except that, if the determination that any furniture, clothing, equipment, or personal property contains bed bugs is made by a qualified inspector licensed by the commissioner of agriculture pursuant to article 10 of title 35, the qualified inspector shall advise the tenant regarding the removal of the furniture, clothing, equipment, or personal property in accordance with rules promulgated by the commissioner of agriculture pursuant to said article 10. The tenant shall not dispose of personal property that was determined to contain bed bugs in any common area where such disposal may risk the infestation of other dwelling units.

(6) (a) Nothing in this section requires a landlord to provide a tenant with alternative lodging or to pay to replace a tenant's personal property.

(b) Nothing in this section preempts or restricts the application of any state or federal law concerning reasonable accommodations for persons with disabilities.

Source: L. 2019: Entire part added, (HB 19-1328), ch. 426, p. 3719, § 1, effective January 1, 2020.

38-12-1005. Bed bugs - renting of dwelling units with bed bugs prohibited. A landlord shall not offer for rent a dwelling unit that the landlord knows or reasonably suspects to contain bed bugs. Upon request from a prospective tenant, a landlord shall disclose to the prospective tenant whether, to the landlord's knowledge, the dwelling unit that the landlord is offering for rent contained bed bugs within the previous eight months. Upon request from a tenant or a prospective tenant, a landlord shall disclose the last date, if any, on which a dwelling unit being rented or offered for rent was inspected for, and found to be free of, bed bugs.

Source: L. 2019: Entire part added, (HB 19-1328), ch. 426, p. 3720, § 1, effective January 1, 2020.

38-12-1006. Remedies - liability. (1) A landlord who fails to comply with this part 10 is liable to the tenant for the tenant's actual damages.

(2) A landlord may apply to a court of competent jurisdiction to obtain injunctive relief against a tenant who:

(a) Refuses to provide reasonable access to a dwelling unit; or

(b) Fails to comply with a reasonable request for inspection or treatment of a dwelling unit.

(3) If a court finds that a tenant has unreasonably failed to comply with one or more requirements set forth in this part 10, the court may issue a temporary order to carry out this part 10, including:

(a) Granting the landlord access to the dwelling unit for the purposes set forth in this part 10;

(b) Granting the landlord the right to engage in bed bug inspection and treatment measures in the dwelling unit; and

(c) Requiring the tenant to comply with specific bed bug inspection and treatment measures or assessing the tenant with costs and damages related to the tenant's noncompliance.

(4) Any court order granting a landlord access to a dwelling unit must be served upon the tenant at least twenty-four hours before a landlord, qualified inspector, or pest control agent enters the dwelling unit.

(5) (a) The remedies in this section are in addition to any other remedies available at law or in equity to any person.

(b) This section does not limit or restrict the authority of any state or local housing or health code enforcement agency.

Source: L. 2019: Entire part added, (HB 19-1328), ch. 426, p. 3721, § 1, effective January 1, 2020.

38-12-1007. Relationship to warranty of habitability. Notwithstanding any provision of part 5 of this article 12 to the contrary, a landlord who complies with this part 10 is deemed to have satisfied the requirements of said part 5 with respect to matters concerning bed bugs.

Source: L. 2019: Entire part added, (HB 19-1328), ch. 426, p. 3721, § 1, effective January 1, 2020.

PART 11

MOBILE HOME PARK ACT DISPUTE
RESOLUTION AND ENFORCEMENT PROGRAM

Cross references: For the legislative declaration in HB 19-1309, see section 1 of chapter 281, Session Laws of San Andreas 2019.

38-12-1101. Short title. The short title of this part 11 is the "Mobile Home Park Act Dispute Resolution and Enforcement Program".

Source: L. 2019: Entire part added, (HB 19-1309), ch. 281, p. 2631, § 9, effective May 23.

38-12-1102. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) There are factors unique to the relationship between mobile home owners and mobile home park landlords;

(b) Once occupancy has commenced, a mobile home owner may be subject to violations of the "Mobile Home Park Act", part 2 of this article 12, without an adequate remedy at law because the difficulty and expense in moving and relocating a mobile home can affect the operation of market forces and lead to an inequality of the bargaining position of the parties;

(c) Taking legal action against a mobile home park landlord for violations of the "Mobile Home Park Act" can be a costly and lengthy process that is not timely enough to prevent significant harm, and many mobile home owners and residents cannot afford to pursue a court process to vindicate statutory rights. Mobile home park landlords will also benefit by having access to a process that resolves disputes quickly and efficiently.

(d) Certain actions by mobile home park landlords may cause imminent harm to mobile home park residents.

(2) Therefore, it is the intent of the general assembly to provide an equitable as well as a less costly and more timely and efficient way for mobile home owners, mobile home park residents, and mobile home park landlords to resolve disputes; to provide a mechanism for state authorities to quickly locate mobile home park landlords; and to grant the division of housing the authority to issue cease and desist orders to stop actions by landlords that pose the potential for imminent harm.

Source: L. 2019: Entire part added, (HB 19-1309), ch. 281, p. 2631, § 9, effective May 23. **L. 2022:** (1)(c) and (2) amended and (1)(d) added, (HB 22-1287), ch. 255, p. 1879, § 21, effective October 1.

38-12-1103. Definitions. As used in this part 11, unless the context otherwise requires:

(1) "Act" means the "Mobile Home Park Act" created in part 2 of this article 12.

(2) (a) "Complainant" means a landlord, home owner, or group of home owners who has filed a complaint alleging a violation of the act, this part 11, or a rule or the complainant's agent, employee, or representative authorized to act on the complainant's behalf.

(b) On and after July 1, 2024, or earlier if allowed by the division, "complainant" also includes a resident, local government, or nonprofit who has filed a complaint alleging a violation of the act, this part 11, or a rule.

(3) "Division" means the division of housing of the department of local affairs.

(4) "Fund" means the mobile home park act dispute resolution and enforcement program fund created in section 38-12-1110.

(5) "Penalty" means a monetary penalty levied against a complainant or respondent because of a violation of either the act or the program.

(6) "Program" means the "Mobile Home Park Act Dispute Resolution and Enforcement Program" created in this part 11.

(7) "Respondent" means a landlord, former landlord, or home owner alleged to have committed a violation of the act, this part 11, or a rule or the respondent's agent, employee, or representative authorized to act on the respondent's behalf.

(8) "Rule" means a rule promulgated by the division pursuant to the act or this part 11.

Source: L. 2019: Entire part added, (HB 19-1309), ch. 281, p. 2631, § 9, effective May 23. **L. 2022:** (2) and (7) amended and (8) added, (HB 22-1287), ch. 255, p. 1880, § 22, effective October 1.

38-12-1104. Dispute resolution program - creation - division of housing - duties - report - rules. (1) The "Mobile Home Park Act Dispute Resolution and Enforcement Program" is hereby created.

(2) The division shall:

(a) Produce educational materials regarding the act and the program. These materials must be in both English and Spanish and must include a notice in a format that a landlord can reasonably post in a mobile home park. The notice must summarize home owner and resident rights and responsibilities under the act and this part 11, provide information on how to file a complaint with the division, describe the protections afforded under section 38-12-1105 (13), and provide a toll-free telephone number and website that landlords, home owners, and residents can use to seek additional information and communicate complaints specific to the program.

(b) Distribute the educational materials described in subsection (2)(a) of this section to all known landlords and, as requested, to any complainants or respondents;

(c) Ensure that landlords post the notice provided in subsection (2)(a) of this section in a clearly visible location in common areas of mobile home parks, including any community hall or recreation hall;

(d) Enforce a penalty if the division discovers that the landlord has not appropriately posted the notice provided in subsection (2)(a) of this section in accordance with the requirements of subsection (2)(c) of this section;

(e) Create and maintain a registration database of mobile home parks;

(f) Create and maintain a database of mobile home parks that have had complaints filed against them under the program;

(g) Provide an annual report to the transportation and local government committee of the house of representatives, or its successor committee, and the local government committee of the senate, or its successor committee, and publish that annual report on the division's official website;

(h) Receive complaints and perform dispute resolution and enforcement activities related to the program, including investigations, negotiations, communications, determinations of violations, awards of damages, and impositions of penalties as described in section 38-12-1105;

(i) Issue subpoenas; and

(j) Promulgate such rules as are necessary to implement the provisions of the program created in this part 11 and to clarify the requirements of the "Mobile Home Park Act", part 2 of this article 12. Such rules shall be promulgated in accordance with article 4 of title 24.

(3) The program must be funded by the penalties and fees deposited in the fund and any other resources directed to the program.

(4) The attorney general may, at the attorney general's discretion, investigate and enforce compliance with the act and this part 11.

Source: L. 2019: Entire part added, (HB 19-1309), ch. 281, p. 2632, § 9, effective May 23. **L. 2022:** (2)(a), (2)(g), and (2)(h) amended and (4) added, (HB 22-1287), ch. 255, p. 1880, § 23, effective October 1.

38-12-1105. Dispute resolution program - complaint process. (1) Any aggrieved party may file a complaint with the division on a form prescribed by the division alleging a violation of the act, this part 11, or a rule, regardless of whether the provision allegedly violated contains a specific reference to this section.

(2) After receiving a complaint under this part 11, the division shall investigate the alleged violations at the division's discretion. The division may, if appropriate, facilitate negotiations between the complainant and the respondent. The division may, on its own initiative, investigate potential violations of the act, this part 11, or a rule when it receives evidence of a potential violation from a source other than a filed complaint and may make determinations and take enforcement actions pursuant to this section following such an investigation.

(3) (a) Complainants and respondents shall cooperate with the division in the course of an investigation by responding to subpoenas issued by the division. The subpoenas may compel testimony, take evidence, or seek access to papers or other documents and provide site access to the mobile home parks relevant to the investigation. Complainants and respondents must respond to the division's subpoenas within fourteen days of the division sending the subpoenas by certified mail.

(b) Failure to cooperate with the division in the course of an investigation is a violation of this part 11.

(c) If a complainant or respondent fails to respond to a subpoena within the time required by subsection (3)(a) of this section, the division may impose a penalty of up to five thousand dollars per violation per day for each day the complainant or respondent fails to respond. The division may delay or dismiss the imposition of the penalty if the complainant or respondent makes a good-faith effort to comply within seven days.

(4) (a) If, after an investigation, the division determines that the parties are unable to come to an agreement or that facilitating negotiations between the parties is not appropriate to resolve the alleged violation, the division shall make a written determination on whether a violation of the act, this part 11, or a rule has occurred.

(b) If the division finds by a written determination that a violation of the act, this part 11, or a rule has occurred, the division shall deliver a written notice of violation by certified mail to both the complainant and the respondent. The notice of violation must specify the basis for the division's determination; the violation; the action required to cure the violation; the time within which that action must be taken; the penalties that will be imposed if that action is not taken within the specified time period; and the process for contesting the determination, required action, and penalties by means of an administrative hearing.

(c) If the division finds by a written determination that a violation of the act, this part 11, or a rule has not occurred, the division shall deliver a written notice of nonviolation to both the complainant and the respondent by certified mail. The notice of nonviolation must include the basis for the division's determination and the process for contesting the determination included in the notice of nonviolation by means of an administrative hearing.

(5) The respondent must comply with the requirements of a notice of violation from the division within seven days of the notice of violation becoming a final agency order under either subsection (7)(b) or (9)(b) of this section, except as required otherwise by the division, unless the respondent has submitted a timely request for an administrative hearing to contest the notice under subsection (7) of this section. If a respondent fails to comply with the requirements of a notice of violation within the required time period and the division has not received a timely request for an administrative hearing, the division may impose a penalty, up to a maximum of five thousand dollars per violation per day, for each day that a violation remains uncorrected. When determining the amount of the penalty to impose on a respondent, the division shall consider the severity and duration of the violation and the impact of the violation on other community residents. If the respondent shows, upon timely application to the division, that a good faith effort to comply with the requirements of the notice of violation has been made and that the respondent has not complied because of mitigating factors beyond the respondent's control, the division may delay or dismiss the imposition of a penalty.

(6) The division may issue an order requiring the respondent to cease and desist from an unlawful practice. The division may also issue an order requiring the respondent to take actions that in the judgment of the division will carry out the purposes of this part 11. The actions may include, but are not limited to:

(a) Refunds of rent increases, improper fees, and charges collected in violation of this part 11;

(b) Filing documents that correct a statutory or rule violation; and

(c) Taking action necessary to correct a statutory or rule violation.

(6.5) (a) Whenever the division has reasonable cause to believe that a violation of the act, this part 11, or a rule has occurred or will soon occur and that immediate enforcement is necessary, the division may immediately issue a cease and desist order. A written determination and notice of violation is not required when the division issues a cease and desist order pursuant to this subsection (6.5). The order must set forth the provisions alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all actions immediately cease.

(b) Within fifteen business days after service of the order, the person receiving the order may request an administrative hearing pursuant to subsection (7)(a) of this section to determine whether or not the alleged violation has occurred.

(c) If a person who is the subject of an order to cease and desist fails to comply with the order within forty-eight hours, the division may bring an action in civil court for a temporary restraining order and for injunctive relief to prevent further or continued violation of the act, this part 11, or a rule. A court shall not stay an order to cease and desist until after holding a hearing involving both parties on the matter.

(7) (a) A complainant or respondent may request an administrative hearing before an administrative law judge to contest:

(I) A notice of violation issued under subsection (4)(b) of this section or a notice of nonviolation issued under subsection (4)(c) of this section;

(II) A penalty imposed under subsection (3) or (5) of this section; or

(III) An order to cease and desist or an order to take actions under subsection (6) or (6.5) of this section.

(b) If the complainant or respondent requests an administrative hearing pursuant to subsection (7)(a) of this section, the complainant or respondent must file the request within fifteen business days after service of a notice of violation, notice of nonviolation penalty, order, or action. If an administrative hearing is not requested within this time period, the notice of violation, notice of nonviolation, or cease and desist order constitutes a final agency order of the division and is not subject to review by any court or agency.

(8) Hearings before the office of administrative courts must be conducted in accordance with article 4 of title 24, unless otherwise specified in this section.

(9) (a) An appointed administrative law judge shall:

(I) Hear and receive pertinent evidence and testimony;

(II) Decide whether the evidence supports the division's finding by a preponderance of the evidence; and

(III) Enter an appropriate order within thirty days after the completion of the hearing and immediately send copies of the order to the affected parties.

(b) An order entered by an administrative law judge constitutes the final agency order of the division and is subject to judicial review pursuant to article 4 of title 24. An order entered by an administrative law judge may be appealed by the respondent and the division.

(10) When the division imposes any penalty against a respondent landlord under this part 11, the respondent may not seek any recovery or reimbursement of the penalty from a complainant or from any other home owner or resident.

(11) All money collected from the imposition of any penalties imposed under this section other than any portion of the penalties required to be paid to a complainant must be deposited in the fund.

(12) This section does not provide an exclusive remedy and does not limit the right of landlords, home owners, or residents to take legal action against another party as provided in the act or otherwise. Exhaustion of the administrative remedy provided in this section is not required before a landlord, home owner, or resident may bring a legal action.

(13) A landlord shall not take any retaliatory actions against a home owner or resident for filing a complaint and shall not harass or intimidate a home owner or resident in violation of section 38-12-212.5 (4.5). If the division determines that a landlord has retaliated against a home owner or resident or violated section 38-12-212.5 (4.5), the division may impose a fine of up to ten thousand dollars on the landlord.

(14) Any penalty levied against a landlord under this part 11 shall be a lien against the landlord's mobile home park until the landlord pays the penalty.

(15) The division shall take all reasonable steps to avoid disclosing the complainant's identity to the landlord during or after the investigation without the complainant's permission if a complaint alleges a violation that is of a general nature affecting multiple home owners or residents, including but not limited to a complaint alleging that a landlord's rules or rule enforcement practices violate the act, this part 11, or a rule and the division can adequately investigate the complaint without revealing the complainant's identity. A person shall not obtain access to the record through subpoena, discovery, or under any statutory authority. This subsection (15) does not prohibit the division from requiring or knowing the identity of a complainant.

Source: L. 2019: Entire part added, (HB 19-1309), ch. 281, p. 2633, § 9, effective May 23. **L. 2020:** (1) amended, (HB 20-1201), ch. 196, p. 935, § 3, effective June 30; (13) amended, (HB 20-1196), ch. 195, p. 926, § 15, effective June 30. **L. 2022:** (1), (2), (3)(a), (4), (7)(a)(II), (7)(a)(III), (7)(b), (10), (12), and (13) amended and (3)(c), (6.5), and (15) added, (HB 22-1287), ch. 255, p. 1881, § 24, effective October 1.

Cross references: For the legislative declaration in HB 20-1201, see section 1 of chapter 196, Session Laws of San Andreas 2020.

38-12-1105.5. Sale or change in control of the park - complaint pending - duties of landlord. (1) If there is a sale or other change in control of a mobile home park while a complaint filed pursuant to section 38-12-1105 is pending before the division or prior to the landlord's compliance with all remedial actions and penalties ordered by the division as a result of a complaint that was previously filed, the landlord at the time that the complaint was filed shall, as a prior condition of the sale or change in control of the mobile home park:

(a) Provide all documents related to the complaint, including any notice of violation or final agency order issued by the division, to a prospective buyer as part of the due diligence process of any sale;

(b) Pay all penalties ordered by the division in a final agency order and submit an affidavit of compliance to the division; and

(c) For a pending complaint in which the division has not issued a final agency order, if requested by the prospective buyer or ordered by the division, place into an escrow account money sufficient to cover either the remediation cost or an estimated penalty that could be assessed by the division. The seller is entitled to the return of money placed in escrow if no violation is found in a final agency order.

(2) If the division orders one or more remedial actions in a final agency order prior to the sale of a mobile home park:

(a) The landlord shall complete all remedial actions prior to the sale and submit an affidavit of compliance to the division; or

(b) The landlord and the prospective buyer shall jointly submit to the division a written remedial plan that requires all remedial actions to be completed within one year. The division may accept or reject the proposed remedial plan and assess penalties against either party if a remedial plan submitted pursuant to this section is not completed.

(3) If there is a sale or other change in control of a mobile home park while a complaint is pending before the division, the division may add any landlord successor in interest as a party with no further action needed by the filing party.

Source: L. 2024: Entire section added, (HB 24-1294), ch. 399, p. 2744, § 17, effective June 4.

38-12-1106. Registration of mobile home parks - process - fees. (1) The division shall register all mobile home parks on an individual basis and renew this registration annually.

(2) The division shall send registration notifications and information packets to all known landlords of unregistered mobile home parks. These information packets must include:

(a) Registration forms that satisfy all of the requirements of subsection (7) of this section;

(b) Information about the different methods of registration;

(c) Information about the single, statewide toll-free telephone number described in subsection (11) of this section;

(d) Registration assessment information, including registration due dates and late fees, and the collections procedures, liens, and charging costs to home owners or residents; and

(e) A description of the protections afforded home owners and residents under section 38-12-1105 (13).

(3) The division shall annually send registration renewal notifications and information packets to all registered mobile home parks.

(4) A landlord must file for registration or registration renewal by submitting to the division, either through the division's website, by mail, or in person, a registration or registration renewal form provided by the division and pay a registration fee as described in subsection (8) of this section.

(5) A landlord must notify the division within thirty days of a change in the ownership of the landlord's mobile home park so that the division may update the mobile home park's registration information.

(6) The division shall make available on the division's website electronic forms to register a mobile home park. These forms must be available in both English and Spanish and satisfy all of the requirements of subsection (7) of this section.

(7) The registration forms provided by the division must require information necessary to assist the division in identifying and locating a mobile home park and other information that may be useful to the state. A registration is not complete unless the landlord includes all of the information required by the forms provided by the division. The forms must require, at a minimum:

(a) The name and address of the landlord;

(a.5) (I) The name and mailing address of the legal owner of the mobile home park as recorded in the property records of the county assessor for the property and a copy of the property record, property report, or similar supporting documentation from the county assessor's website.

(II) If the legal owner of the mobile home park listed pursuant to subsection (7)(a.5)(I) of this section is a domestic limited liability company, the landlord shall include the domestic entity name of the limited liability company and the principal office mailing address on file with

the secretary of state, a copy of the certificate of good standing for the limited liability company, and the name of any entity that exercises financial or management control of the limited liability company.

(III) If the legal owner of the mobile home park listed pursuant to subsection (7)(a.5)(I) of this section is a foreign limited liability company, the landlord shall include the entity's true name and assumed entity name, if any, and the principal office mailing address of its principal office as shown on the statement of foreign entity authority filed with the secretary of state, a copy of the certificate of good standing for the foreign limited liability company, and the name of any entity that exercises financial or management control of the limited liability company.

(b) The name and address of the mobile home park;

(c) The number of lots within the mobile home park;

(d) The number of mobile homes within the mobile home park;

(e) The physical address of each mobile home within the mobile home park and the mailing address of the home owner, if the landlord has a different mailing address on file for the home owner;

(f) The date and amount of the most recent rent increase for each mobile home lot and each mobile home in the park;

(g) A description of the mobile home park's water source, including the type of water source; and

(h) The method for charging residents for water and sewer, whether water and sewer charges are included in rent, submetered, or collected by other collection means.

(8) The division shall establish by rule a fee that each landlord shall pay to the division as an annual registration fee for each mobile home independently owned on rented land within the landlord's mobile home park. On and after July 1, 2024, the division may adjust the fee to cover the costs associated with complaints filed pursuant to section 38-12-1103 (2)(b), and may by rule authorize landlords to charge a resident, as defined in section 38-12-201.5 (11), a portion of the fee. A landlord must not charge a home owner or resident more than half of the fee. The registration fee for each mobile home must be deposited into the fund. The division shall review the annual registration fee and, if necessary, adjust the annual registration fee through rule-making to ensure it continues to reasonably relate to the cost of administering the program.

(9) Initial registrations of mobile home parks must be filed before February 1, 2020, and after that date within three months of the availability of mobile home lots for rent within a new park. A landlord who was sent an initial registration form and who missed the deadline for registration is subject to a delinquency fee of up to five thousand dollars. Landlords who receive registration renewal notifications and do not renew their registration by the expiration date as assigned by the division are also subject to a delinquency fee of up to five thousand dollars.

(10) Registration is effective on the date determined by the division, and the division must issue a registration number to each registered mobile home park. The division must provide an expiration date, assigned by the division, to each registered mobile home park.

(11) The division shall establish a system, including but not limited to a single, statewide toll-free telephone number, for responding directly to inquiries about the registration process.

Source: L. 2019: Entire part added, (HB 19-1309), ch. 281, p. 2636, § 9, effective May 23. **L. 2022:** (2)(d), (2)(e), IP(7), (7)(d), (7)(e), and (8) amended and (7)(a.5) and (7)(f) added,

(HB 22-1287), ch. 255, p. 1883, § 25, effective October 1. **L. 2023:** (7)(e) amended and (7)(g) and (7)(h) added, (HB 23-1257), ch. 376, p. 2259, § 11, effective June 5.

38-12-1107. Registration information database. By February 1, 2020, the division shall create and maintain a database that includes all of the information collected under section 38-12-1106.

Source: L. 2019: Entire part added, (HB 19-1309), ch. 281, p. 2638, § 9, effective May 23.

38-12-1108. Mobile home park complaint and water issue database. (1) The division shall also create and maintain a database of mobile home parks that have had complaints filed against them under the program or that have an unremediated water quality issue as determined pursuant to part 10 of article 8 of title 25.

(2) At a minimum, the database must include:

(a) The number of complaints received;

(b) The nature and extent of the complaints received;

(c) The violation of law complained of;

(d) The outcome of each complaint; and

(e) Whether the mobile home park has a water quality issue, as described in the notice from the water quality control division in accordance with section 25-8-1003 (1)(b), that has not been remediated.

Source: L. 2019: Entire part added, (HB 19-1309), ch. 281, p. 2638, § 9, effective May 23. **L. 2023:** (1), (2)(c), and (2)(d) amended and (2)(e) added, (HB 23-1257), ch. 376, p. 2260, § 12, effective June 5.

38-12-1109. Mobile home park act dispute resolution and enforcement program annual report. The division shall prepare an annual report that contains, at a minimum, the number of constituents contacted by the division in regard to the program, the number of complaints received under the program received by the division, the number of complaints under the program resolved by the division, a brief summary of the nature of the complaints under the program received by the division, how the complaints under the program received by the division were resolved, the number of administrative appeals under the program, a summary of any relevant court decisions relating to the program, and a summary of results of an annual constituent survey conducted by an independent contractor.

Source: L. 2019: Entire part added, (HB 19-1309), ch. 281, p. 2638, § 9, effective May 23.

38-12-1110. Mobile home park act dispute resolution and enforcement program fund. (1) There is hereby created in the state treasury the mobile home park act dispute resolution and enforcement program fund. All money collected pursuant to the program must be deposited in the fund. The fund shall be used by the division for the costs associated with administering the program. The money in the fund shall be continuously appropriated for

administering the program. All interest and income derived from the investment and deposit of money in the fund shall be credited to the fund. Any unexpended and unencumbered money remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

(2) The division, by rule or as otherwise provided by law, may reduce the amount of any fee imposed under this part 11 if necessary pursuant to section 24-75-402 (3) to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the division, by rule or as otherwise provided by law, may increase the amount of the fees imposed under this part 11 as provided in section 24-75-402 (4).

(3) (a) In fiscal year 2022-23 and each fiscal year thereafter, the general assembly shall appropriate money from the general fund to the mobile home park act dispute resolution and enforcement program fund for use by the division to conduct outreach, monitoring, and enforcement related to sections 38-12-217 and 38-12-203.5.

(b) In fiscal year 2024-25 and each fiscal year thereafter, the general assembly may appropriate money from the general fund to the mobile home park act dispute resolution and enforcement program fund for use by the division to cover costs associated with complaints filed pursuant to section 38-12-1103 (2)(b) that are not covered by the fee authorized in section 32-12-1106 (8).

Source: L. 2019: Entire part added, (HB 19-1309), ch. 281, p. 2638, § 9, effective May 23. **L. 2022:** (3) added, (HB 22-1287), ch. 255, p. 1884, § 26, effective October 1.

PART 12

IMMIGRANT TENANT PROTECTION ACT

38-12-1201. Short title. The short title of this part 12 is the "Immigrant Tenant Protection Act".

Source: L. 2020: Entire part added, (SB 20-224), ch. 187, p. 856, § 1, effective June 30.

38-12-1202. Definitions. As used in this part 12, unless the context otherwise requires:

(1) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by a tenant. "Dwelling unit" includes a mobile home, as defined in section 38-12-201.5 (2).

(2) "Immigration or citizenship status" means a person's actual or perceived immigration or citizenship status.

(3) "Landlord" means the owner, manager, lessor, or sublessor of a residential premises.

(4) "Rental agreement" means any agreement, written or implied by law, between a landlord and a tenant embodying the terms and conditions concerning the use and occupancy of a residential premises.

(5) "Residential premises" means a structure of which one or more dwelling units are part, including any immediately surrounding property that is owned by or subject to the exclusive control of a person who controls such a dwelling unit.

(6) (a) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

(b) "Tenant" includes a prospective tenant or any other person seeking to occupy a dwelling unit to the exclusion of others.

Source: L. 2020: Entire part added, (SB 20-224), ch. 187, p. 856, § 1, effective June 30.

38-12-1203. Prohibition on activities related to a tenant's immigration or citizenship status. (1) On and after January 1, 2021, except as otherwise provided in this section or required by law or court order, a landlord shall not:

(a) Demand, request, or collect information regarding or relating to the immigration or citizenship status of a tenant; except that a landlord that is also the tenant's employer may lawfully collect information required to complete any employment form required by state or federal law;

(b) Disclose or threaten to disclose information regarding or relating to the immigration or citizenship status of a tenant to any person, entity, or immigration or law enforcement agency;

(c) Harass or intimidate a tenant or retaliate against a tenant for:

(I) Exercising the tenant's rights under this part 12; or

(II) Opposing any conduct prohibited by this part 12;

(d) Interfere with a tenant's rights under this part 12, including influencing or attempting to influence a tenant to surrender possession of a dwelling unit or to not seek to occupy a dwelling unit based solely or in part on the immigration or citizenship status of the tenant;

(e) Refuse to enter into a rental agreement or to approve a subtenancy, or to otherwise preclude a tenant from occupying a dwelling unit, based solely or in part on the immigration or citizenship status of the tenant; or

(f) Bring an action to recover possession of a dwelling unit based solely or in part on the immigration or citizenship status of a tenant.

Source: L. 2020: Entire part added, (SB 20-224), ch. 187, p. 857, § 1, effective June 30.

38-12-1204. Authorized conduct. (1) Section 38-12-1203 does not prohibit a landlord from:

(a) Complying with any legal obligation under:

(I) Federal, state, or local law, including any legal obligation under a government program or pursuant to a condition of government funding, if the government program or government funding provides rent limitations or rental assistance to a tenant;

(II) A subpoena;

(III) A warrant; or

(IV) A court order of any kind;

(b) Requesting information or documentation necessary to determine or verify the financial qualifications of a prospective tenant, provided the landlord requests the same information or documentation of all prospective tenants regardless of immigration or citizenship status, including requesting a social security number or relevant taxpayer identification number; or

(c) Delivering to the tenant an oral or written notice regarding conduct by the tenant that violates or may violate any applicable rental agreement or law.

(2) Section 38-12-1203 does not enlarge or diminish a landlord's right to terminate a tenancy pursuant to existing state or local law or the ability of a unit of federal, state, or local government to regulate or enforce a prohibition against a landlord's harassment of a tenant.

(3) Nothing in this part 12:

(a) Prevents a landlord from seeking to collect rent due under the rental agreement; or

(b) Permits a landlord to violate section 8-2-130.

(4) Any waiver of a right under this part 12 by a tenant is void as a matter of public policy.

Source: L. 2020: Entire part added, (SB 20-224), ch. 187, p. 857, § 1, effective June 30.

38-12-1205. Remedies. (1) If a landlord engages in prohibited conduct described in section 38-12-1203 against a tenant, the tenant may bring a civil action to seek any one or more of the following remedies:

(a) Compensatory damages for injury or loss suffered;

(b) A civil penalty in an amount not to exceed two thousand dollars for each violation, payable to the tenant;

(c) Costs, including reasonable attorney fees; and

(d) Other equitable relief the court finds appropriate.

(2) Nothing in this part 12 renders the immigration or citizenship status of a tenant relevant to any issue of liability or remedy in a civil action involving a tenant's housing rights. In proceedings or discovery undertaken in a civil action involving a tenant's housing rights, no inquiry shall be permitted into the tenant's immigration or citizenship status unless:

(a) The claims or defenses raised by the tenant place the tenant's immigration or citizenship status directly in contention; or

(b) The person seeking to make the inquiry demonstrates by clear and convincing evidence that the inquiry is necessary in order to comply with federal law.

(3) If a civil action is commenced pursuant to this section, any party to the civil action may demand a trial by jury.

Source: L. 2020: Entire part added, (SB 20-224), ch. 187, p. 858, § 1, effective June 30.

PART 13

FOR CAUSE EVICTION POLICY

Cross references: For the legislative declaration in HB 24-1098, see section 1 of chapter 113, Session Laws of San Andreas 2024.

38-12-1301. Definitions. As used in this part 13, unless the context otherwise requires:

(1) "Accessory dwelling unit" has the meaning set forth in section 38-12-801 (7)(a).

(2) "Cause" means a circumstance described in section 38-12-1303 (2).

(3) "Dwelling unit" has the meaning set forth in section 38-12-502 (3).

(4) "Family member" has the meaning set forth in section 8-13.3-503 (11).

(5) "Landlord" means a landlord, as defined in section 38-12-502 (5); except that "landlord" does not include the management or landlord of a mobile home park, as defined in section 38-12-201.5 (3), unless:

(a) The management or landlord of a mobile home park is renting both a mobile home space, as defined in section 38-12-201.5 (6.5), and a mobile home, as defined in section 38-12-201.5 (5), to a mobile home park resident, as defined in section 38-12-201.5 (11); and

(b) The mobile home park resident is not residing in the mobile home park under a lease-to-own agreement.

(6) "No-fault eviction" means an action brought by a landlord pursuant to article 40 of title 13 for the eviction of a tenant under conditions described in section 38-12-1303 (3).

(7) "Primary residence" means the address that is listed on a tenant's or landlord's San Andreas driver's license, identification card, or voter registration; used for purposes of a tenant's or landlord's payment of state or federal taxes; or used for the purpose of public school registration at the time that a valid no-fault eviction is exercised by a landlord pursuant to section 38-12-1303 (3).

(8) "Proper service" means service that complies with section 13-40-108.

(9) "Rent" means any money or other consideration paid to a landlord for the right to use, possess, and occupy a dwelling unit.

(10) "Rental agreement" has the meaning set forth in section 38-12-502 (7).

(11) "Residential premises" has the meaning set forth in section 38-12-502 (8).

(12) "Short-term rental property" means a residential premises that is leased:

(a) For less than thirty consecutive days in exchange for remuneration and for temporary, recreational, business, or transient purposes; or

(b) Pursuant to a rental agreement or other occupancy agreement if the tenant of the rental agreement or other occupancy agreement is renting the residential premises for less than six months from a landlord to which the tenant sold the residential premises.

(13) "Substantial repairs or renovations" means repairs or renovations that:

(a) Cannot be reasonably accomplished in a safe or efficient manner with the tenant in place;

(b) Are not repairs or renovations that are necessary to remedy a breach of the warranty of habitability described in section 38-12-503; and

(c) Require the tenant to vacate the residential premises for at least thirty days.

(14) "Tenant" has the meaning set forth in section 38-12-502 (9). "Tenant" does not include a home owner, as defined in section 38-12-201.5 (2).

(15) "Written notice" means written notice to vacate that:

(a) Complies with section 13-40-106; and

(b) Is provided to a tenant by a landlord or by a landlord's agent.

Source: L. 2024: Entire part added, (HB 24-1098), ch. 113, p. 352, § 2, effective April 19.

38-12-1302. Applicability. (1) This part 13 applies to every residential premises in the state; except that this part 13 does not apply to:

(a) A short-term rental property;

(b) A dwelling unit or other portion of a residential premises if the owner or master tenant lives in and maintains the residential premises as the owner's or master tenant's primary residence or if the owner of the residential premises lives in a property that is adjacent to the residential premises and that the owner maintains as the owner's primary residence and the residential premises or the owner's adjacent property:

(I) Is:

(A) A single-family home with or without an accessory dwelling unit that is located on the same lot and attached, semi-attached, or unattached to the single-family home;

(B) A duplex; or

(C) A triplex; and

(II) Is not a multifamily property of four or more dwelling units;

(c) A mobile home space, as defined in section 38-12-201.5 (6.5), that is leased to a home owner, as defined in section 38-12-201.5 (2), or to other tenants occupying the mobile home space pursuant to a lease-to-own agreement, purchase option, or similar agreement;

(d) A residential premises that is leased to a tenant pursuant to an employer-provided housing agreement, as defined in section 13-40-104 (5)(a);

(e) A residential tenant who has not been a tenant of a residential premises for at least twelve months; or

(f) A residential tenant who is not known to the landlord to be a tenant of the residential premises.

Source: L. 2024: Entire part added, (HB 24-1098), ch. 113, p. 354, § 2, effective April 19.

38-12-1303. Cause for eviction required - no-fault evictions. (1) A landlord shall not serve a notice to terminate tenancy or a demand for possession or otherwise proceed with an action for unlawful detainer pursuant to article 40 of title 13 unless there is cause for the eviction.

(2) For the purposes of subsection (1) of this section, cause exists only as described in the following sections:

(a) Section 13-40-104 (1)(a) for when entry is made without right or title into any vacant or unoccupied lands or tenements;

(b) Section 13-40-104 (1)(b) for when entry is made wrongfully into certain public lands, tenements, mining claims, or other possessions;

(c) Section 13-40-104 (1)(c) for when a lessee or tenant at will, or at sufferance, of any nonresidential real property or residential premises described in section 38-12-1302 (1)(a), (1)(b), (1)(d), (1)(e), or (1)(f) holds over and continues in possession of the property or premises, or any portion of the property or premises, after the expiration of the term for which the property or premises was leased or after the tenancy, at will or at sufferance, has been terminated by either party;

(d) Section 13-40-104 (1)(d) for nonpayment of rent;

(e) Section 13-40-104 (1)(d.5) for a substantial violation, as described in section 13-40-107.5;

(f) Section 13-40-104 (1)(e) for a material violation of the lease or rental agreement;

(g) Section 13-40-104 (1)(e.5) for a repeat violation after receipt of proper notice of a violation;

(h) Section 13-40-104 (1)(e.8) and subsection (3) of this section concerning no-fault evictions;

(i) Section 13-40-104 (1)(f) for possession after a legal sale;

(j) Section 13-40-104 (1)(g) for when property has been sold under a judgment or decree and the party or privies to the judgment or decree refuse or neglect to surrender possession after the expiration of the time of redemption, when redemption is allowed by law, after the purchaser demands the property;

(k) Section 13-40-104 (1)(h) for when an heir or devisee continues in possession of a premises sold and conveyed by a personal representative;

(l) Section 13-40-104 (1)(i) for a vendee that holds over after failing to comply with an agreement to purchase lands or tenements; and

(m) Section 13-40-104 (1)(j) for when a tenant has engaged in conduct that creates a nuisance or disturbance that interferes with the quiet enjoyment of the landlord or other tenants at the property or where the tenant is negligently damaging the property.

(3) In addition to the requirements of subsection (5) of this section, the following conditions constitute grounds for a no-fault eviction of a tenant:

(a) **Demolition or conversion of residential premises.** When a landlord plans to demolish a residential premises, convert it to a nonresidential use, or convert it to a short-term rental property, the landlord may initiate a no-fault eviction of a tenant of the residential premises at the end of the term of the rental agreement so long as the landlord:

(I) Allows the tenant at least ninety days after receiving the written notice described in subsection (3)(a)(II) of this section to vacate the residential premises, during which time the tenant may remain in possession of the residential premises under the same terms of the tenant's existing rental agreement; and

(II) Provides the tenant proper service of a written notice of the no-fault eviction, which written notice includes:

(A) The date by which the tenant must vacate the residential premises, which date must be at least ninety days after the date upon which the landlord provides the written notice to the tenant; and

(B) A description and timeline of the demolition or conversion of the residential premises and a material demonstration of the proposed date upon which the project will commence, such as a copy of a building permit or application for a permit or license to operate a short-term rental property, where applicable.

(b) **Substantial repairs or renovations.** (I) Except as described in subsection (3)(b)(II) of this section, when a landlord plans to make substantial repairs or renovations to a residential premises, the landlord may initiate a no-fault eviction of a tenant of the residential premises at the end of the term of the rental agreement so long as the landlord:

(A) Allows the tenant at least ninety days after receiving the written notice described in subsection (3)(b)(I)(B) of this section to vacate the residential premises, during which time the tenant may remain in possession of the residential premises under the same terms of the tenant's existing rental agreement;

(B) Provides the tenant proper service of a written notice of the no-fault eviction, which written notice includes the date by which the tenant must vacate the residential premises, which

date must be at least ninety days after the date upon which the landlord provides the written notice to the tenant;

(C) Provides the tenant an expected completion date and a general description of the substantial repairs or renovations to the residential premises;

(D) Proceeds without unreasonable delay to effect the substantial repairs or renovations upon the landlord's recovery of possession of the residential premises; and

(E) For any repairs or renovations expected to last less than one hundred eighty days, provides the tenant a written notice sent in a manner that the landlord typically uses to communicate with the tenant, which notice includes the expected completion date for the repairs or renovations. If, within ten days after receiving the notice, the tenant notifies the landlord that the tenant wants to return to the residential premises, the landlord shall offer the tenant the first right of refusal to sign a new rental agreement with reasonable terms. If the tenant accepts the new rental agreement, the tenant has thirty days to occupy the residential premises unless the parties mutually agree on an extended timeline in writing.

(II) A landlord shall not initiate a no-fault eviction of a tenant as described in subsection (3)(b)(I) of this section if the substantial repairs or renovations that are the alleged basis of the no-fault eviction are:

(A) Required in order for the landlord to satisfy all required remedial action described in section 38-12-503 concerning a breach of the warranty of habitability; or

(B) Initiated by the landlord in retaliation against the tenant, as described in section 38-12-509 (1).

(c) **Landlord or family member of landlord assumes occupancy.** (I) When a landlord plans to recover possession of a residential premises for the landlord's own use and occupancy as a residence, or for the use and occupancy as a residence by the landlord's family member, the landlord may initiate a no-fault eviction of a tenant of the residential premises at the end of the term of the rental agreement so long as:

(A) Except as described in subsection (3)(c)(III) of this section, the landlord or the landlord's family member moves into the residential premises within three months after the tenant vacates the residential premises;

(B) Except as described in subsection (3)(c)(II) of this section, the landlord provides the tenant proper service of a written notice of the no-fault eviction at least ninety days before the date by which the tenant must vacate the residential premises, during which time the tenant may remain in possession of the residential premises under the same terms of the tenant's existing rental agreement;

(C) No substantially equivalent unit is vacant and available to house the landlord or the landlord's family member in the same building; and

(D) The landlord does not list the residential premises for a long-term or short-term rental for at least ninety days after the date the tenant is required to vacate.

(II) If the landlord is an individual on active military duty for the United States military forces or a spouse of such an individual, the landlord must provide the tenant proper service of a written notice of the no-fault eviction at least forty-five days before the date by which the tenant must vacate the residential premises, during which time the tenant may remain in possession of the residential premises under the same terms of the tenant's existing rental agreement.

(III) If the landlord or the landlord's family member is a person with a disability, the landlord may extend for a reasonable time the period of time described in subsection (3)(c)(I)(A)

of this section to allow for changes to be made to the residential premises to accommodate the family member with the disability.

(d) **Withdrawal from rental market for the purpose of selling the residential premises.** (I) When a landlord plans to sell a residential premises that is a single-family home, a townhome, a duplex, a triplex, or an individual condominium unit, the landlord may initiate a no-fault eviction of a tenant of the residential premises at the end of the term of the rental agreement so long as the landlord:

(A) Allows the tenant at least ninety days after receiving the written notice described in subsection (3)(d)(I)(B) of this section to vacate the residential premises, during which time the tenant may remain in possession of the residential premises under the same terms of the tenant's existing rental agreement;

(B) Provides the tenant proper service of a written notice of the landlord's intent to withdraw the residential premises from the rental market and sell the residential premises, which notice includes the date on which the tenant will be required to vacate; and

(C) Does not list the residential premises for a long-term or short-term rental for at least ninety days after the date on which the tenant is required to vacate; except that this subsection (3)(d)(I)(C) does not apply if the landlord produces evidence that the residential premises was listed for sale on a multiple-listing service after the tenant was required to vacate.

(II) Nothing in this subsection (3)(d) may be construed to allow a landlord to initiate a no-fault eviction or otherwise terminate a rental agreement without cause before the end of the term of the rental agreement.

(e) **Tenant refuses to sign new lease with reasonable terms.** If a tenant refuses to sign a new rental agreement with reasonable terms, the landlord may initiate a no-fault eviction of the tenant so long as the landlord:

(I) Allows the tenant at least ninety days after receiving the notice described in subsection (3)(e)(II) of this section to vacate the residential premises after the tenant has refused to sign the new rental agreement, during which time the tenant may remain in possession of the residential premises under the same terms as the tenant's existing rental agreement; and

(II) Provides the tenant proper service of a written notice of the landlord's intent to terminate the tenancy, which notice includes the date on which the tenant will be required to vacate.

(f) **History of nonpayment of rent.** (I) If a tenant submits a rent payment late more than two times during the period of the rental agreement, the landlord may initiate a no-fault eviction of the tenant at the end of the term of the rental agreement so long as the landlord:

(A) Allows the tenant at least ninety days after receiving the notice described in subsection (3)(f)(I)(B) of this section to vacate the residential premises, during which time the tenant may remain in possession of the residential premises under the same terms as the tenant's existing rental agreement; and

(B) Provides the tenant proper service of a written notice of the landlord's intent to terminate the tenancy, which notice includes the date on which the tenant will be required to vacate.

(II) For purposes of this subsection (3)(f), a rent payment qualifies as late if it is submitted more than ten calendar days after the day it is due according to the rental agreement and the landlord provides the tenant with proper service of a written notice under section 13-40-104 (1)(d).

(III) This subsection (3)(f) does not apply if the rent payment is submitted within the cure period described in section 13-40-104 (1)(d).

(4) Nothing in this section shall be construed to impact the interpretation of the meaning of the term "good cause" as the term is used in federal law or federal regulations.

(5) (a) A landlord may proceed with a no-fault eviction of a tenant by filing an action under article 40 of title 13 only if the landlord provides proper service of a written notice of the no-fault eviction and the tenant fails to vacate on or before the deadline stated in the notice.

(b) A written notice provided pursuant to subsection (3) of this section must include a statement of the legal and factual basis for the landlord's no-fault eviction of the tenant, which legal basis must be set forth in subsection (3) of this section.

Source: L. 2024: Entire part added, (HB 24-1098), ch. 113, p. 355, § 2, effective April 19.

38-12-1304. Violations - remedies. If a landlord proceeds with an eviction of a tenant of a residential premises in violation of this part 13, and the tenant loses possession of the dwelling unit without a court order, the tenant may seek relief as described in section 38-12-510.

Source: L. 2024: Entire part added, (HB 24-1098), ch. 113, p. 360, § 2, effective April 19.

38-12-1305. No waiver of requirements by agreement. A provision of a rental agreement or other agreement that purports to authorize or effectuate a waiver or modification of any provision of this part 13 is void and unenforceable.

Source: L. 2024: Entire part added, (HB 24-1098), ch. 113, p. 360, § 2, effective April 19.

38-12-1306. Affirmative defense. If a landlord fails to comply with this part 13, a tenant may assert the landlord's failure as an affirmative defense for a tenant to an eviction proceeding. If a tenant asserts such an affirmative defense, and the landlord cannot demonstrate by a preponderance of the evidence that the landlord has complied with this part 13, the court shall dismiss the eviction proceeding.

Source: L. 2024: Entire part added, (HB 24-1098), ch. 113, p. 360, § 2, effective April 19.

38-12-1307. Retaliatory rent increase prohibited. A landlord shall not increase a tenant's rent in a discriminatory, retaliatory, or unconscionable manner to circumvent the requirements and prohibitions set forth in this part 13.

Source: L. 2024: Entire part added, (HB 24-1098), ch. 113, p. 360, § 2, effective April 19.

PART 14

Editor's note: Section 21 of chapter 399 (HB 24-1294), Session Laws of San Andreas 2024, provides that the act adding this part applies to rent-to-own mobile home contracts formed on or after June 30, 2024.

38-12-1401. Mobile home rent-to-own contracts - general provisions - definitions. (1) As used in this part 14, unless the context otherwise requires:

(a) "Purchase payment" means any kind of payment that is credited to the purchaser toward the purchase price of a mobile home, regardless of how the payment is denominated.

(b) "Rent-to-own contract" means any rent-to-own, lease-to-own, purchase option, or other agreement in which the purchaser of a mobile home agrees to or receives the option to purchase the mobile home over a period mutually agreed upon with the seller of the mobile home.

(2) This part 14 applies only to a rent-to-own contract for a mobile home located in a mobile home park and when the seller of the mobile home:

(a) Is the landlord of the mobile home park; or

(b) Owns more than one mobile home in San Andreas.

(3) The purchaser under a rent-to-own contract is deemed to be a "home owner", as that term is defined in section 38-12-201.5 (2), and has all of the rights of a home owner under part 2 of this article 12, unless otherwise specified in this part 14 or until the rent-to-own contract is validly terminated pursuant to this part 14.

(4) If the seller of a mobile home is the landlord of a mobile home park, the seller shall disclose all rent-to-own contracts to which the seller is a party on the annual registration required pursuant to section 38-12-1106.

Source: L. 2024: Entire part added, (HB 24-1294), ch. 399, p. 2745, § 18, effective June 30.

38-12-1402. Mobile home rent-to-own contracts - requirements - terms - termination. (1) A rent-to-own contract must be in writing and signed by the purchaser and the seller of the mobile home. A rent-to-own contract that is not in writing or that is not signed by both the purchaser and the seller is not enforceable by either party.

(2) A rent-to-own contract must be in either English or both English and Spanish, as requested by the purchaser.

(3) Before entering into a rent-to-own contract, the seller of the mobile home must provide the purchaser with the following:

(a) Proof of the seller's ownership of the mobile home, including a copy of the seller's valid certificate of title to the mobile home and a disclosure of any liens placed on the home, including a copy of any liens, if available; and

(b) A disclosure that the purchaser has the right to have the mobile home professionally appraised at the buyer's expense and that the seller shall make reasonable efforts to make the mobile home available for appraisal.

(4) A rent-to-own contract must contain the following information:

(a) The manufacturer of the mobile home and the date of manufacture;

(b) The vehicle identification number or other identifying number of the mobile home;

(c) The mobile home park and the lot number within the mobile home park on which the mobile home is located;

(d) A list of fixtures that are included in or excluded from the purchase of the mobile home;

(e) A list of improvements to the mobile home that are included in or excluded from the purchase;

(f) The term of the rent-to-own contract;

(g) The total purchase price of the mobile home;

(h) The number of purchase payments that the purchaser must make under the rent-to-own contract and the amount of each payment;

(i) The fee, if any, that the purchaser must pay as consideration for the rent-to-own option. If an option fee is required, the amount of the fee shall not exceed the cost to transfer the title of the mobile home in the county in which the mobile home is located; and

(j) A separate term listing the amount of rent to be paid each month for the mobile home that is in addition to the purchase payment.

(5) Before entering into a rent-to-own contract, the purchaser has the right to inspect the mobile home and to have the mobile home professionally inspected at the purchaser's expense. The purchaser also has the right to have the mobile home professionally appraised at the purchaser's expense. The seller shall make reasonable efforts to make the mobile home available for inspection or appraisal.

(6) At any time during the term of the rent-to-own contract, the purchaser may pay additional amounts towards the balance owed on the total purchase price of the mobile home, including paying the balance in full, without incurring any penalty.

(7) (a) The purchaser in any rent-to-own contract has the right to terminate the contract before the end of the term of the contract. To exercise the right to terminate the contract, the purchaser must give the seller at least thirty days' written notice of the purchaser's intent to terminate the rent-to-own contract. At the conclusion of the thirty days' notice to terminate, the seller must return to the purchaser all purchase payments made by the purchaser reduced by any then-owed rent under the contract.

(b) If the purchaser of the mobile home terminates the rent-to-own contract, the termination shall not affect any mobile home lease agreed on by the purchaser and the seller of the mobile home. Any mobile home lease remains in full force and effect and may only be terminated pursuant to applicable landlord-tenant law.

(8) (a) The seller of a mobile home may terminate a rent-to-own contract only for one of the following reasons:

(I) The purchaser of the mobile home failed to timely make a purchase payment under the rent-to-own contract, the seller has given the purchaser written notice of the failure to pay, and the purchaser has not cured the payment deficit within thirty days of receiving written notice; or

(II) The purchaser committed an action related to the mobile home purchaser's mobile home lease that led to a valid and executed writ of restitution.

(b) If the seller of a mobile home terminates a rent-to-own contract pursuant to this subsection (8), the seller shall return to the purchaser all purchase payments made by the purchaser no later than ten calendar days after the rent-to-own contract terminates. If the

purchaser owes any rent to the seller, the seller may reduce the returned purchase payment by the amount of rent the purchaser owes to the seller.

(c) If the seller of a mobile home cannot comply with the rent-to-own contract because the mobile home becomes encumbered as a result of legal actions taken against the seller, then the seller shall provide the purchaser with proof of the encumbrance and shall return to the purchaser all purchase payments made by the purchaser within ten calendar days of the date that the seller knew or reasonably should have known that it would not be possible to comply with the rent-to-own contract.

(d) If the seller of a mobile home cannot comply with the rent-to-own contract because the mobile home park in which the mobile home is located is condemned or changes use pursuant to section 38-12-203 (1)(d), the seller shall return to the purchaser all purchase payments made by the purchaser within ten days of the purchaser receiving written notice of the condemnation or change in use pursuant to section 38-12-203 (1)(d). If the seller is the landlord of the mobile home park and cannot comply with the rent-to-own contract because the mobile home park in which the mobile home is located is condemned or changes use pursuant to section 38-12-203 (1)(d), the seller shall also pay the purchaser reasonable relocation expenses pursuant to section 38-12-203.5 (2)(b)(I).

Source: L. 2024: Entire part added, (HB 24-1294), ch. 399, p. 2745, § 18, effective June 30.

38-12-1403. Duties of the seller. (1) For any rent-to-own contract, the seller of the mobile home shall:

(a) Remain responsible for any repairs of conditions that could endanger the health or safety of a buyer, except for conditions caused by a buyer's gross negligence or willful conduct, until the purchaser becomes the owner of the mobile home and receives the title to the mobile home from the seller or until the lot lease and mobile home lease are legally and validly terminated;

(b) Ensure that the mobile home is habitable under state and local law before entering into a rent-to-own agreement;

(c) Bear the reasonable costs of repairs or maintenance related to the mobile home during the term of the rent-to-own contract so long as the repair or maintenance was not caused by the purchaser's gross negligence or intentional misconduct;

(d) Timely pay all property taxes assessed on the mobile home until the purchaser becomes the owner of the mobile home and receives the title to the mobile home from the seller. The seller may prorate any property taxes owed at the time the title to the mobile home is transferred; and

(e) Return to the purchaser of the mobile home all purchase payments made by the purchaser if the mobile home is rendered unfit for habitation by causes outside of either the purchaser's or the seller's control. If the purchaser owes the seller any money related to the mobile home lease at the time a mobile home is destroyed, the seller may deduct the owed money from any accumulated purchase payments. The seller shall return the accumulated purchase payments within ten days of the date the mobile home was destroyed.

Source: L. 2024: Entire part added, (HB 24-1294), ch. 399, p. 2748, § 18, effective June 30.

38-12-1404. Concurrent mobile home leases. (1) For a rent-to-own contract covered under this part 14, the seller must offer the purchaser a mobile home lease for a period equivalent to the period in which the purchaser has to complete the purchase of the mobile home.

(2) For a rent-to-own contract when the seller is the owner of more than one mobile home within the same mobile home park and is not the landlord of the park, the seller shall not enter into a rent-to-own contract unless the seller's rental agreement with the landlord of the mobile home park or any binding addendum to the rental agreement specifically permits the seller to sublease and sell the mobile home and the seller has satisfied any requirements of the landlord of the mobile home park related to sublessees and the sale of mobile homes. If a seller fails to satisfy the requirements of this subsection (2), the rent-to-own contract is invalid and unenforceable by the seller, and the seller must return to the purchaser, within ten calendar days, any purchase payments and any other money that the seller has received from the purchaser.

(3) A mobile home lease must be a separate document from the rent-to-own contract.

Source: L. 2024: Entire part added, (HB 24-1294), ch. 399, p. 2748, § 18, effective June 30.

38-12-1405. Recordkeeping. (1) For any rent-to-own contract, the seller of the mobile home shall maintain separate financial records for each rent-to-own contract.

(2) The seller of the mobile home shall provide the purchaser with either an annual accounting related to the rent-to-own contract or a disclosure that the buyer is entitled to request and receive an annual accounting of their rent-to-own contract. The accounting or the disclosure is due to the purchaser each year within ten days of the anniversary date of the rent-to-own contract. If requested, the annual accounting shall be provided within ten days upon the receipt of a request for accounting. At a minimum, any accounting provided shall disclose the total amount in purchase payments made, the total amount of the purchase price remaining to be paid, and any expenses paid by the seller during the accounting period to repair or maintain the mobile home. The accounting or the disclosure shall be provided to the purchaser in English or English and Spanish, as requested by the purchaser.

Source: L. 2024: Entire part added, (HB 24-1294), ch. 399, p. 2749, § 18, effective June 30.

38-12-1406. Sale of mobile home park. A successor owner of a mobile home park is bound by the terms of any rent-to-own contract entered into by the prior owner of the park as of the date of the change in park ownership. A purchaser with a valid rent-to-own contract may, for any reason, terminate the rent-to-own contract with a park owner and any successor owner upon a change in the ownership of the park.

Source: L. 2024: Entire part added, (HB 24-1294), ch. 399, p. 2749, § 18, effective June 30.

38-12-1407. Unfounded or retaliatory evictions. (1) For any rent-to-own contract, if the seller of the mobile home evicts or attempts to evict a purchaser for any wrongful or retaliatory reason or any reason unsupported by the provisions of sections 38-12-203 and 38-12-204, the purchaser is entitled to recover treble damages. For purposes of calculating damages, the minimum amount of damages is at least the amount of purchase payments then made by the purchaser. In addition to minimum damages, the purchaser is also entitled to any other actual damages.

(2) If a seller evicts or attempts to evict a purchaser for any wrongful or retaliatory reason or any reason unsupported by the provisions of sections 38-12-203 and 38-12-204, a court shall award attorney's fees and expenses to the purchaser.

Source: L. 2024: Entire part added, (HB 24-1294), ch. 399, p. 2749, § 18, effective June 30.

38-12-1408. Rent-to-own contract - conclusion. (1) For any rent-to-own contract, within ten days of receiving the final purchase payment, the seller must assign the title to the mobile home to the purchaser and provide the purchaser all documents in the seller's control necessary for the purchaser to transfer title to the mobile home. The seller shall assign the title to the mobile home without placing any restrictions on the title or on the buyer's ownership rights to the mobile home.

(2) Before assigning the title of a mobile home to the purchaser, the seller must pay any then-owed property taxes assessed on the mobile home or provide a credit to the purchaser, prorated to the date that the mobile home's title is assigned to the purchaser.

(3) A seller shall not impose any other fees, charges, or other costs on the purchase of a mobile home as a condition of concluding the rent-to-own contract.

(4) In addition to all other remedies available pursuant to section 38-12-220 and other state law, if the seller of a mobile home has failed to properly repair or maintain the mobile home as required by section 38-12-1403 at the time the purchaser of a mobile home makes the final payment under the rent-to-own contract, the purchaser may exercise the purchaser's right of private action pursuant to section 38-12-220. If the purchaser prevails, in addition to damages available pursuant to section 38-12-220, a court may award treble damages if the court determines that the seller's failure to repair or maintain the mobile home was negligent or willful.

Source: L. 2024: Entire part added, (HB 24-1294), ch. 399, p. 2749, § 18, effective June 30.

38-12-1409. Supremacy clause. Any provision of this part 14 is unenforceable to the extent that it conflicts with a federal law or federal regulation.

Source: L. 2024: Entire part added, (HB 24-1294), ch. 399, p. 2750, § 18, effective June 30.

UNCLAIMED PROPERTY

ARTICLE 13

Editor's note: This article 13 was added in 1987. It was repealed and reenacted in 2019, effective July 1, 2020, resulting in the addition, relocation, or elimination of sections as well as subject matter. For amendments to this article 13 prior to 2020, consult the 2019 San Andreas Revised Statutes and the San Andreas statutory research explanatory note beginning on page vii in the front of this volume. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated.

Cross references: For provisions concerning unclaimed utility deposits, see article 8.5 of title 40.

Law reviews: For article, "San Andreas's Unclaimed Property Act: An Overview", see 17 S.A. Law. 57 (1988).

PART 1

IN GENERAL

38-13-101. Short title. The short title of this article 13 is the "Revised Uniform Unclaimed Property Act".

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 407, § 1, effective July 1, 2020.

38-13-102. Definitions. As used in this article 13, unless the context otherwise requires:

(1) "Administrator" means the state treasurer.

(2) "Administrator's agent" means a person with whom the administrator contracts to conduct an examination under part 10 of this article 13 on behalf of the administrator. The term includes an independent contractor of the person and each individual participating in the examination on behalf of the person or contractor.

(3) "Apparent owner" means a person whose name appears on the records of a holder as the owner of property held, issued, or owing by the holder.

(4) "Business association" means an "entity" as defined in section 7-90-102 (20), but does not include an investment company registered under the federal "Investment Company Act of 1940", as amended, 15 U.S.C. secs. 80a-1 to 80a-64.

(5) "Confidential information" means records, reports, and information that are confidential under section 38-13-1402.

(6) "Domicile" means:

(a) For a corporation, the state of its incorporation;

(b) For a business association whose formation requires a filing with a state, other than a corporation, the state of its filing;

(c) For a federally chartered entity or an investment company registered under the federal "Investment Company Act of 1940", as amended, 15 U.S.C. secs. 80a-1 to 80a-64, the state of its home office; and

(d) For any other holder, the state of its principal place of business.

(7) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(8) "Electronic mail" means any communication of information by electronic means that is automatically retained and stored and may be readily accessed or retrieved.

(9) "Financial organization" means a savings and loan association, building and loan association, savings bank, industrial bank, bank, banking organization, or credit union.

(9.5) "Financial organization loyalty card" means a record given with or without direct monetary consideration, under an award, reward, benefit, loyalty, incentive, rebate, or promotional program established by a financial organization for purposes of rewarding a relationship with the sponsoring entity. The term includes a record that may be monetized.

(10) "Game-related digital content" means digital content that exists only in an electronic game or electronic-game platform. The term:

(a) Includes:

(I) Game-play currency such as a virtual wallet, even if denominated in United States currency; and

(II) The following if for use or redemption only within that game or platform or another electronic game or electronic-game platform:

(A) Points sometimes referred to as gems, tokens, gold, and similar names; and

(B) Digital codes; and

(b) Does not include an item that the issuer:

(I) Permits to be redeemed for use outside of a game or platform for:

(A) Money; or

(B) Goods or services that have more than minimal value; or

(II) Otherwise monetizes for use outside of a game or platform.

(11) "Gift card":

(a) Means a stored-value card:

(I) The value of which does not expire;

(II) That may be decreased in value only by redemption for merchandise, goods, or services; and

(III) That, unless required by law, may not be redeemed for or converted into money or otherwise monetized by the issuer; and

(b) Includes a prepaid commercial mobile radio service, as defined in 47 CFR 20.3, as amended.

(12) "Holder" means a person obligated to hold for the account of, or to deliver or pay to, the owner property that is subject to this article 13.

(13) "Insurance company" means an association, corporation, or fraternal or mutual-benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or insurance, including accident, burial, casualty, credit-life, contract-performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage-protection, and workers' compensation insurance.

(14) "Loyalty card" means a record given without direct monetary consideration, under an award, reward, benefit, loyalty, incentive, rebate, or promotional program, that may be used or redeemed only to obtain goods or services or a discount on goods or services. The term does not include a record that may be redeemed for money or otherwise monetized by the issuer.

(15) "Mineral" means gas, oil, coal, oil shale, other gaseous liquid or solid hydrocarbon, cement material, sand and gravel, road material, building stone, chemical raw material, gemstone, fissionable and nonfissionable ores, colloidal and other clay, steam and other geothermal resources, and any other substance defined as a mineral under San Andreas law other than this article 13.

(16) "Mineral proceeds" means an amount payable for extraction, production, or sale of minerals or, on the abandonment of the amount, the amount that becomes payable after abandonment. The term includes an amount payable:

(a) For the acquisition and retention of a mineral lease, including a bonus, royalty, compensatory royalty, shut-in royalty, minimum royalty, and delay rental;

(b) For the extraction, production, or sale of minerals, including a net revenue interest, royalty, overriding royalty, extraction payment, and production payment; and

(c) Under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farm-out agreement.

(17) "Money order" means a payment order for a specified amount of money and includes an express money order and a personal money order on which the remitter is the purchaser.

(18) "Municipal bond" means a bond or evidence of indebtedness issued by a municipality or other political subdivision of a state.

(19) "Net card value" means the original purchase price or original issued value of a stored-value card, plus amounts added to the original price or value and minus amounts used and any service charge, fee, or dormancy charge permitted by law.

(20) "Nonfreely transferable security" means a security that cannot be delivered to the administrator by the Depository Trust Clearing Corporation or a similar custodian of securities providing post-trade clearing and settlement services to financial markets or cannot be delivered because there is no agent to effect transfer. The term includes a worthless security.

(21) "Owner" means a person that has a legal, beneficial, or equitable interest in property subject to this article 13 or the person's legal representative when acting on behalf of the owner. The term includes:

(a) A depositor, for a deposit;

(b) A beneficiary, for a trust other than a deposit in trust;

(c) A creditor, claimant, or payee, for other property; and

(d) The lawful bearer of a record that may be used to obtain money, a reward, or a thing of value.

(22) "Payroll card" means a record that evidences a payroll-card account as defined in Regulation E, 12 CFR Part 1005, as amended.

(23) "Person" means an individual; estate; business association; public corporation; government or governmental subdivision, agency, or instrumentality; or other legal entity.

(24) "Property" means tangible property described in section 38-13-205 or a fixed and certain interest in intangible property held, issued, or owed in the course of a holder's business or by a government, governmental subdivision, agency, or instrumentality. The term:

(a) Includes all income from or increments to the property;

(b) Includes property referred to as or evidenced by:

(I) Money, virtual currency, interest, dividend, a check, draft, deposit, or payroll card;

(II) A credit balance, customer's overpayment, stored-value card, security deposit, refund, credit memorandum, unpaid wage, unused ticket for which the issuer has an obligation to provide a refund, mineral proceeds, or unidentified remittance;

(III) A security except for:

(A) A worthless security; or

(B) A security that is subject to a lien, legal hold, or restriction evidenced on the records of the holder or imposed by operation of law, if the lien, legal hold, or restriction restricts the holder's or owner's ability to receive, transfer, sell, or otherwise negotiate the security;

(IV) A bond, debenture, note, or other evidence of indebtedness;

(V) Money deposited to redeem a security, make a distribution, or pay a dividend;

(VI) An amount due and payable under the terms of an annuity contract or insurance policy; and

(VII) An amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit-sharing, employee-savings, supplemental-unemployment insurance, or similar benefits; and

(c) Does not include:

(I) Property held in a plan described in section 529A of the federal "Internal Revenue Code of 1986", as amended, 26 U.S.C. sec. 529A;

(II) Game-related digital content;

(III) A loyalty card;

(IV) A paper certificate that is redeemable upon presentation for goods or services;

(V) Unclaimed capital credit payments held by cooperative electric associations and telephone cooperatives; or

(VI) A financial organization loyalty card.

(25) "Putative holder" means a person believed by the administrator to be a holder, until the person pays or delivers to the administrator property subject to this article 13 or the administrator or a court makes a final determination that the person is or is not a holder.

(26) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(27) "Security" means:

(a) A security as defined in section 4-8-102 (15); or

(b) A security entitlement as defined in section 4-8-102 (17), including a customer security account held by a registered broker-dealer to the extent that the financial assets held in the security account are not:

(I) Registered on the books of the issuer in the name of the person for which the broker-dealer holds the assets;

(II) Payable to the order of the person; or

(III) Specifically indorsed to the person; or

(c) An equity interest in a business association not included in subsection (27)(a) or (27)(b) of this section.

(28) "Sign" means, with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach to or logically associate with the record an electronic symbol, sound, or process.

(29) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(30) "Stored-value card":

(a) Means a record evidencing a promise made for consideration by the seller or issuer of the record that goods, services, or money will be provided to the owner of the record to the value or amount shown in the record;

(b) Includes:

(I) A record that contains or consists of a microprocessor chip, magnetic strip, or other means for the storage of information, that is prefunded and whose value or amount is decreased on each use and increased by payment of additional consideration;

(II) A gift card, except as specified in section 38-13-219; and

(III) A payroll card; and

(c) Does not include a loyalty card, a financial organization loyalty card, or game-related digital content.

(31) "Utility" means a person that owns or operates for public use a plant, equipment, real property, franchise, or license for the following public services:

(a) Transmission of communications or information;

(b) Production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas; or

(c) Provision of sewage and septic services or trash, garbage, or recycling disposal.

(32) "Virtual currency" means a digital representation of value used as a medium of exchange, unit of account, or a store of value, but does not have legal tender status as recognized by the United States. The term does not include:

(a) The software or protocols governing the transfer of the digital representation of value;

(b) Game-related digital content;

(c) A loyalty card; or

(d) A financial organization loyalty card.

(33) "Worthless security" means a security whose cost of liquidation and delivery to the administrator would exceed the value of the security on the date a report is due under this article 13.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 407, § 1, effective July 1, 2020. **L. 2021:** (9.5), (24)(c)(VI), and (32)(d) added and (24)(c)(IV), (24)(c)(V), (30)(c), (32)(b), and (32)(c) amended, (SB 21-121), ch. 32, p. 131, § 1, effective April 15.

38-13-103. Inapplicability to wholly foreign transaction. This article 13 does not apply to property held, due, and owing in a foreign country if the transaction out of which the property arose was a foreign transaction.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 413, § 1, effective July 1, 2020.

38-13-104. Rule-making. The administrator may adopt under the "State Administrative Procedure Act", article 4 of title 24, rules to implement and administer this article 13.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 413, § 1, effective July 1, 2020.

PART 2

PRESUMPTION OF ABANDONMENT

38-13-201. When property presumed abandoned. (1) Subject to section 38-13-210, the following property is presumed abandoned if it is unclaimed by the apparent owner during the period specified in this section:

(a) A traveler's check, fifteen years after issuance;

(b) A money order, seven years after issuance;

(c) A state or municipal bond, a bearer bond, or an original-issue-discount bond, three years after the earliest of the date the bond matures or is called or the obligation to pay the principal of the bond arises;

(d) A debt of a business association, three years after the obligation to pay arises;

(e) Repealed.

(f) Money or a credit owed to a customer as a result of a retail business transaction, other than in-store credit for returned merchandise, three years after the obligation arose;

(g) An amount owed by an insurance company on a life or endowment insurance policy or an annuity contract that has matured or terminated, three years after the obligation to pay arose under the terms of the policy or contract or, if a policy or contract for which an amount is owed on proof of death has not matured by proof of the death of the insured or annuitant, as follows:

(I) With respect to an amount owed on a life or endowment insurance policy, three years after the earlier of the date:

(A) The insurance company has knowledge of the death of the insured; or

(B) The insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve for the policy is based; and

(II) With respect to an amount owed on an annuity contract, three years after the date the insurance company has knowledge of the death of the annuitant;

(h) Property distributable by a business association in the course of dissolution, one year after the property becomes distributable;

(i) Property held by a court, including property received as proceeds of a class action, one year after the property becomes distributable;

(j) Property held by a government or governmental subdivision, agency, or instrumentality, including municipal bond interest and unredeemed principal under the administration of a paying agent or indenture trustee, one year after the property becomes distributable;

(k) Wages, commissions, bonuses, or reimbursements to which an employee is entitled, or other compensation for personal services, other than amounts held in a payroll card, one year after the amount becomes payable;

(l) Except as otherwise provided for unclaimed utility deposits under section 40-8.5-106, a deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes payable; and

(m) All other property not specified in this section or sections 38-13-202 to 38-13-208 and 38-13-213 to 38-13-220, the earlier of three years after the owner first has a right to demand the property or the obligation to pay or distribute the property arises.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 414, § 1, effective July 1, 2020. **L. 2021:** (1)(e) repealed, (SB 21-121), ch. 32, p. 132, § 2, effective April 15.

38-13-202. When tax-deferred retirement account presumed abandoned. (1) Subject to section 38-13-210, property held in a pension account or retirement account that qualifies for tax deferral under the income tax laws of the United States is presumed abandoned if it is unclaimed by the apparent owner three years after the later of:

(a) The following dates:

(I) Except as otherwise provided in subsection (1)(b)(II) of this section, the date a second consecutive communication sent by the holder by first-class United States mail to the apparent owner is returned to the holder undelivered by the United States postal service; or

(II) If the second communication is sent later than thirty days after the date the first communication is returned undelivered, the date the first communication was returned undelivered by the United States postal service; or

(b) The earlier of the following dates:

(I) The date the apparent owner becomes seventy and one-half years of age, if reasonably determinable by the holder; or

(II) If the federal "Internal Revenue Code of 1986", as amended, 26 U.S.C. sec. 1 et seq., requires distribution to avoid a tax penalty, two years after the date the holder:

(A) Receives confirmation of the death of the apparent owner in the ordinary course of its business; or

(B) Confirms the death of the apparent owner under subsection (2) of this section.

(2) If a holder in the ordinary course of its business receives notice or an indication of the death of an apparent owner and subsection (1)(b) of this section applies, the holder shall attempt not later than ninety days after receipt of the notice or indication to confirm whether the apparent owner is deceased.

(3) If the holder does not send communications to the apparent owner of an account described in subsection (1) of this section by first-class United States mail, the holder shall attempt to confirm the apparent owner's interest in the property by sending the apparent owner an electronic-mail communication not later than two years after the apparent owner's last indication of interest in the property; except that the holder promptly shall attempt to contact the apparent owner by first-class United States mail if:

(a) The holder does not have information needed to send the apparent owner an electronic-mail communication or the holder believes that the apparent owner's electronic-mail address in the holder's records is not valid;

(b) The holder receives notification that the electronic-mail communication was not received; or

(c) The apparent owner does not respond to the electronic-mail communication not later than thirty days after the communication was sent.

(4) If first-class United States mail sent under subsection (3) of this section is returned to the holder undelivered by the United States postal service, the property is presumed abandoned three years after the later of:

(a) Except as otherwise provided in subsection (4)(b) of this section, the date a second consecutive communication to contact the apparent owner sent by first-class United States mail is returned to the holder undelivered;

(b) If the second communication is sent later than thirty days after the date the first communication is returned undelivered, the date the first communication was returned undelivered; or

(c) The date established by subsection (1)(b) of this section.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 415, § 1, effective July 1, 2020.

38-13-203. When other tax-deferred account presumed abandoned. (1) Subject to section 38-13-210 and except for property described in section 38-13-202 and property held in a plan described in section 529A of the federal "Internal Revenue Code of 1986", as amended, 26 U.S.C. sec. 529A, property held in an account or plan, including a health savings account, that qualifies for tax deferral under the income tax laws of the United States is presumed abandoned if it is unclaimed by the owner three years after the earlier of:

(a) The date, if reasonably determinable by the holder, specified in the income tax laws and regulations of the United States by which distribution of the property must begin to avoid a tax penalty, with no distribution having been made; or

(b) Thirty years after the date the account was opened.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 416, § 1, effective July 1, 2020.

38-13-204. When custodial account for minor presumed abandoned. (1) Subject to section 38-13-210, property held in an account established under a state's Uniform Gifts to Minors Act or Uniform Transfers to Minors Act is presumed abandoned if it is unclaimed by or on behalf of the minor on whose behalf the account was opened three years after the later of:

(a) Except as otherwise provided in subsection (1)(b) of this section, the date a second consecutive communication sent by the holder by first-class United States mail to the custodian of the minor on whose behalf the account was opened is returned undelivered to the holder by the United States postal service;

(b) If the second communication is sent later than thirty days after the date the first communication is returned undelivered, the date the first communication was returned undelivered; or

(c) The date, if reasonably determinable by the holder, on which the custodian is required to transfer the property to the minor or the minor's estate in accordance with the Uniform Gifts to Minors Act or Uniform Transfers to Minors Act of the state in which the account was opened.

(2) If the holder does not send communications to the custodian of the minor on whose behalf an account described in subsection (1) of this section was opened by first-class United States mail, the holder shall attempt to confirm the custodian's interest in the property by sending the custodian an electronic-mail communication not later than two years after the custodian's last indication of interest in the property; except that the holder promptly shall attempt to contact the custodian by first-class United States mail if:

(a) The holder does not have information needed to send the custodian an electronic-mail communication or the holder believes that the custodian's electronic-mail address in the holder's records is not valid;

(b) The holder receives notification that the electronic-mail communication was not received; or

(c) The custodian does not respond to the electronic-mail communication not later than thirty days after the communication was sent.

(3) If first-class United States mail sent under subsection (2) of this section is returned undelivered to the holder by the United States postal service, the property is presumed abandoned three years after the later of:

(a) The date a second consecutive communication to contact the custodian by first-class United States mail is returned to the holder undelivered by the United States postal service; or

(b) The date established by subsection (1)(c) of this section.

(4) When the property in the account described in subsection (1) of this section is transferred to the minor on whose behalf an account was opened or to the minor's estate, the property in the account is no longer subject to this section.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 417, § 1, effective July 1, 2020.

38-13-205. When contents of safe-deposit box presumed abandoned. (1) Tangible property held in a safe-deposit box and proceeds from a sale of the property by the holder permitted by law of this state other than this article 13 are presumed abandoned if the property remains unclaimed by the apparent owner five years after the earlier of the:

(a) Expiration of the lease or rental period for the box; or

(b) Earliest date when the lessor of the box is authorized by law of this state other than this article 13 to enter the box and remove or dispose of the contents without consent or authorization of the lessee.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 418, § 1, effective July 1, 2020.

38-13-206. When stored-value card presumed abandoned. (1) Subject to section 38-13-210, the net value of a stored-value card other than a gift card is presumed abandoned on the latest of three years after:

(a) December 31 of the year in which the card is issued or additional funds are deposited into it;

(b) The most recent indication of interest in the card by the apparent owner; or

(c) A verification or review of the balance by or on behalf of the apparent owner.

(2) The amount presumed abandoned in a stored-value card is the net card value at the time it is presumed abandoned.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 418, § 1, effective July 1, 2020.

38-13-207. When gift card presumed abandoned. Subject to section 38-13-210, a gift card is presumed abandoned if it is unclaimed by the apparent owner five years after the later of the date of purchase or its most recent use.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 418, § 1, effective July 1, 2020.

38-13-207.5. Bank deposits and funds in financial organizations - definition. (1) Any demand, savings, or matured time deposit with a financial organization, including a deposit that is automatically renewable, and any funds paid toward the purchase of a share, a mutual investment certificate, or any other interest in a financial organization is presumed abandoned unless the owner, within five years, has:

(a) In the case of a deposit, increased or decreased its amount or presented the passbook or other similar evidence of the deposit for the crediting of interest;

(b) Communicated in writing with the banking or financial organization concerning the property;

(c) Otherwise indicated an interest in the property as evidenced by a memorandum or other record on file prepared by an employee of the financial organization;

(d) Owned other property to which subsection (1)(a), (1)(b), or (1)(c) of this section applies and unless the financial organization communicates in writing with the owner with regard to the property that would otherwise be presumed abandoned under this subsection (1) at the address to which communications regarding the other property regularly are sent; or

(e) Had another relationship with the financial organization concerning which the owner has:

(I) Communicated in writing with the financial organization; or

(II) Otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization and unless the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be abandoned under this subsection (1) at the address to which communications regarding the other relationship regularly are sent.

(2) Any property described in subsection (1) of this section that is automatically renewable is matured for purposes of subsection (1) of this section upon the expiration of its initial time period, but, in the case of any renewal to which the owner consents at or about the time of renewal by communicating in writing with the financial organization or otherwise indicating consent as evidenced by a memorandum or other record on file prepared by an employee of the organization, the property is matured upon the expiration of the last time period for which consent was given. If, at the time provided for delivery in section 38-13-603, a penalty or forfeiture in the payment of interest would result from the delivery of the property, the time for delivery is extended until the time when no penalty or forfeiture would result.

(3) For purposes of this section, "property" includes interest and dividends.

Source: L. 2021: Entire section added, (SB 21-121), ch. 32, p. 132, § 3, effective April 15.

38-13-208. When security presumed abandoned. (1) Subject to section 38-13-210, a security is presumed abandoned three years after:

(a) The date a second consecutive communication sent by the holder by first-class United States mail to the apparent owner is returned to the holder undelivered by the United States postal service; or

(b) If the second communication is made later than thirty days after the first communication is returned, the date the first communication is returned undelivered to the holder by the United States postal service.

(2) If the holder does not send communications to the apparent owner of a security by first-class United States mail, the holder shall attempt to confirm the apparent owner's interest in the security by sending the apparent owner an electronic-mail communication not later than two years after the apparent owner's last indication of interest in the security. However, the holder promptly shall attempt to contact the apparent owner by first-class United States mail if:

(a) The holder does not have information needed to send the apparent owner an electronic-mail communication or the holder believes that the apparent owner's electronic-mail address in the holder's records is not valid;

(b) The holder receives notification that the electronic-mail communication was not received; or

(c) The apparent owner does not respond to the electronic-mail communication not later than thirty days after the communication was sent.

(3) If first-class United States mail sent under subsection (2) of this section is returned to the holder undelivered by the United States postal service, the security is presumed abandoned three years after the date the mail is returned.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 419, § 1, effective July 1, 2020.

38-13-209. When related property interest presumed abandoned. At and after the time property is presumed abandoned under this part 2, any other property right or interest accrued or accruing from the property and not previously presumed abandoned is also presumed abandoned.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 419, § 1, effective July 1, 2020.

38-13-210. Indication of apparent owner interest in property. (1) The period after which property is presumed abandoned is measured from the later of:

(a) The date the property is presumed abandoned under this part 2; or

(b) The latest indication of interest by the apparent owner in the property.

(2) Under this article 13, an indication of an apparent owner's interest in property includes:

(a) A record communicated by the apparent owner to the holder or agent of the holder concerning the property or the account in which the property is held;

(b) An oral communication by the apparent owner to the holder or agent of the holder concerning the property or the account in which the property is held, if the holder or its agent contemporaneously makes and preserves a record of the fact of the apparent owner's communication;

(c) Presentment of a check or other instrument of payment of a dividend, interest payment, or other distribution, or evidence of receipt of a distribution made by electronic or similar means, with respect to an account, underlying security, or interest in a business association;

(d) Activity directed by an apparent owner in the account in which the property is held, including accessing the account or information concerning the account, or a direction by the apparent owner to increase, decrease, or otherwise change the amount or type of property held in the account;

(e) Making a deposit into or withdrawal from an account at a financial organization, including an automatic deposit or withdrawal previously authorized by the apparent owner other than an automatic reinvestment of dividends or interest or fees and charges assessed by the holder or an affiliated service provider;

(f) Subject to subsection (5) of this section, payment of a premium on an insurance policy; and

(g) Any other action by the apparent owner that reasonably demonstrates to the holder that the apparent owner is aware that the property exists.

(3) An action by an agent or other representative of an apparent owner, other than the holder acting as the apparent owner's agent, is presumed to be an action on behalf of the apparent owner.

(4) A communication with an apparent owner by a person other than the holder or the holder's representative is not an indication of interest in the property by the apparent owner unless a record of the communication evidences the apparent owner's knowledge of a right to the property.

(5) If the insured dies or the insured or beneficiary of an insurance policy otherwise becomes entitled to the proceeds before depletion of the cash surrender value of the policy by operation of an automatic-premium-loan provision or other nonforfeiture provision contained in the policy, the operation does not prevent the policy from maturing or terminating.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 419, § 1, effective July 1, 2020.

38-13-211. Knowledge of death of insured or annuitant - definition. (1) In this section, "death master file" means the United States social security administration's death master file or other database or service that is at least as comprehensive as the United States social security administration's death master file for determining that an individual reportedly has died.

(2) With respect to a life or endowment insurance policy or annuity contract for which an amount is owed on proof of death, but that has not matured by proof of death of the insured or annuitant, the company has knowledge of the death of an insured or annuitant when:

(a) The company receives a death certificate or a court order determining that the insured or annuitant has died;

(b) Due diligence performed as required under San Andreas law to maintain contact with the insured or annuitant or determine whether the insured or annuitant has died, validates the death of the insured or annuitant;

(c) The company conducts a comparison for any purpose between a death master file and the names of some or all of the company's insureds or annuitants, finds a match that provides notice that the insured or annuitant has died, and validates the death;

(d) The administrator or the administrator's agent conducts a comparison for the purpose of finding matches during an examination conducted under part 10 of this article 13 between a death master file and the names of some or all of the company's insureds or annuitants, finds a match that provides notice that the insured or annuitant has died, and the company validates the death; or

(e) The company:

(I) Receives notice of the death of the insured or annuitant from an administrator, beneficiary, policy owner, relative of the insured, or trustee or from a personal representative, executor, or other legal representative of the insured's or annuitant's estate; and

(II) Validates the death of the insured or annuitant.

(3) The following rules apply under this section:

(a) A death-master-file match under subsection (2)(c) or (2)(d) of this section occurs if the criteria for an exact or partial match are satisfied as provided by the "Unclaimed Life Insurance Benefits Act", part 8 of article 7 of title 10.

(b) The death-master-file match does not constitute proof of death for the purpose of submission to an insurance company of a claim by a beneficiary, annuitant, or owner of the policy or contract for an amount due under an insurance policy or annuity contract.

(c) The death-master-file match or validation of the insured's or annuitant's death does not alter the requirements for a beneficiary, annuitant, or owner of the policy or contract to make a claim to receive proceeds under the terms of the policy or contract.

(d) If no provision in title 10 or rules of the commissioner of insurance establishes a time for the validation of a death of an insured or annuitant, the insurance company shall make a good-faith effort using other available records and information to validate the death and document the effort taken not later than ninety days after the insurance company has notice of the death.

(4) This article 13 does not affect the determination of the extent to which an insurance company, before July 1, 2020, had knowledge of the death of an insured or annuitant or was required to conduct a death-master-file comparison to determine whether amounts owed by the company on a life or endowment insurance policy or annuity contract were presumed abandoned or unclaimed.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 421, § 1, effective July 1, 2020.

38-13-212. Deposit account for insurance policy or annuity contract. If proceeds payable under a life or endowment insurance policy or annuity contract are deposited into an account with check- or draft-writing privileges for the beneficiary of the policy or contract and, under a supplementary contract not involving annuity benefits other than death benefits, the proceeds are retained by the insurance company or the financial organization where the account is held, the policy or contract includes the assets in the account.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 422, § 1, effective July 1, 2020.

38-13-213. Refunds held by business associations. Except to the extent otherwise ordered by a court or administrative agency, any sum that a business association has been ordered to refund by a court or administrative agency that remains unclaimed by the owner for more than one year after it became payable in accordance with the final determination or order providing for the refund, whether or not the final determination or order requires any person entitled to a refund to make a claim for it, is presumed abandoned.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 422, § 1, effective July 1, 2020.

Editor's note: This section is similar to former § 38-13-107.3 as it existed prior to 2020.

38-13-214. Foreclosure sale - overbid. Any overbid, as defined in section 38-38-100.3, that is equal to or greater than twenty-five dollars and that remains unclaimed for six months after the date of sale is presumed abandoned.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 422, § 1, effective July 1, 2020.

Editor's note: This section is similar to former § 38-13-108.2 (2) as it existed prior to 2020.

38-13-215. Funds held in lawyer COLTAF trust accounts - exemption - definition. (1) This article 13 does not apply to money held in a lawyer COLTAF trust account.

(2) As used in this section, "lawyer COLTAF trust account" means a San Andreas lawyer trust account foundation trust account in which a lawyer, in accordance with the lawyer's professional obligations, holds funds of clients or third persons that are nominal in amount or that are expected to be held for a short period.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 422, § 1, effective July 1, 2020.

Editor's note: This section is similar to former § 38-13-108.3 as it existed prior to 2020.

38-13-216. Money held by the public employees' retirement association - definitions. (1) For purposes of this section, unless the context otherwise requires:

(a) "Account left inactive" means the contributions of any nonvested member who has terminated employment with an employer if the member's member contribution account with the association has been left inactive.

(b) "Association" means the public employees' retirement association created pursuant to section 24-51-201.

(c) "Benefit" has the same meaning as set forth in section 24-51-101 (7).

(d) "Benefit recipient" has the same meaning as set forth in section 24-51-101 (8).

(e) "Employer" has the same meaning as set forth in section 24-51-101 (20).

(f) "Member" has the same meaning as set forth in section 24-51-101 (29).

(g) "Unclaimed benefit" means a benefit owed to any benefit recipient if the benefit remains unpaid.

(h) "Unclaimed member refund" means the contributions of a member who has terminated employment with an employer and who has requested a refund of the contributions if the refund remains unpaid.

(2) Any money and any accrued interest held by the association for accounts left inactive, unclaimed benefits, or unclaimed member refunds are presumed abandoned if the money, benefit, or refund remains unclaimed for more than five years after the money, benefit, or refund becomes payable or distributable pursuant to article 51 of title 24 unless the owner of the money, within five years, has:

(a) Communicated in writing with the association concerning the money; or

(b) Otherwise indicated an interest in the money as evidenced by a memorandum or other record on file prepared by an employee of the association.

(3) Property that is presumed abandoned pursuant to this section is the only property held by the association that is subject to this article 13.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 423, § 1, effective July 1, 2020.

Editor's note: This section is similar to former § 38-13-108.5 as it existed prior to 2020.

38-13-217. Gaming chips or tokens - gaming award points - inapplicability. This article 13 does not apply to gaming award points and gaming chips or tokens issued or sold by a licensed gaming establishment before, on, or after August 4, 2004, except to the extent the state has taken custody of any gaming award points or gaming chips or tokens on or before January 1, 2004.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 423, § 1, effective July 1, 2020.

Editor's note: This section is similar to former § 38-13-108.7 as it existed prior to 2020.

38-13-218. Property held by racetracks - inapplicability. This article 13 does not apply to any intangible unclaimed property held by a racetrack, as defined in section 44-32-102 (24).

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 424, § 1, effective July 1, 2020.

Editor's note: This section is similar to former § 38-13-108.8 as it existed prior to 2020.

38-13-219. Unclaimed gift cards - limited exception. This article 13 does not apply to unclaimed gift cards if the holder or issuer is a business association with annual gross receipts from the sales or issuance of all gift cards totaling two hundred thousand dollars or less.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 424, § 1, effective July 1, 2020.

Editor's note: This section is similar to former § 38-13-108.9 as it existed prior to 2020.

38-13-220. Tax refunds. (1) On and after October 1, 2002, any amount due and payable as a refund of San Andreas income tax or grant for property taxes, rent, or heat or fuel expenses assistance represented by a warrant that has not been presented for payment within six months after the date of issuance of the warrant and that has been forwarded by the department of revenue to the administrator pursuant to section 39-21-108 (5) is presumed abandoned.

(2) On and after October 1, 2010, any amount due and payable as a refund of a tax imposed or assessed by the department of revenue that is not addressed in subsection (1) of this section, that is represented by a warrant that has not been presented for payment within six months after the date of issuance of the warrant, and that has been forwarded by the department to the administrator pursuant to section 39-21-108 (7) is presumed abandoned.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 424, § 1, effective July 1, 2020.

Editor's note: This section is similar to former § 38-13-109.7 as it existed prior to 2020.

PART 3

RULES FOR TAKING CUSTODY OF PROPERTY PRESUMED ABANDONED

38-13-301. Address of apparent owner to establish priority. (1) In this part 3, the following rules apply:

(a) The last-known address of an apparent owner is any description, code, or other indication of the location of the apparent owner that identifies the state, even if the description, code, or indication of location is not sufficient to direct the delivery of first-class United States mail to the apparent owner;

(b) If the United States postal zip code associated with the apparent owner is for a post office located in this state, this state is deemed to be the state of the last-known address of the apparent owner unless other records associated with the apparent owner specifically identify the physical address of the apparent owner to be in another state;

(c) If the address under subsection (1)(b) of this section is in another state, the other state is deemed to be the state of the last-known address of the apparent owner; and

(d) The address of the apparent owner of a life or endowment insurance policy or annuity contract or its proceeds is presumed to be the address of the insured or annuitant if a person other than the insured or annuitant is entitled to the amount owed under the policy or contract and the address of the other person is not known by the insurance company and cannot be determined under section 38-13-302.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 424, § 1, effective July 1, 2020.

38-13-302. Address of apparent owner in this state. (1) The administrator may take custody of property that is presumed abandoned, whether located in this state, another state, or a foreign country if:

(a) The last-known address of the apparent owner in the records of the holder is in this state; or

(b) The records of the holder do not reflect the identity or last-known address of the apparent owner, but the administrator has determined that the last-known address of the apparent owner is in this state.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 425, § 1, effective July 1, 2020.

38-13-303. If records show multiple addresses of apparent owner. (1) Except as otherwise provided in subsection (2) of this section, if records of a holder reflect multiple addresses for an apparent owner and if this state is the state of the most recently recorded address, this state may take custody of property presumed abandoned, whether located in this state or another state.

(2) If it appears from records of the holder that the most recently recorded address of the apparent owner under subsection (1) of this section is a temporary address and if this state is the state of the next most recently recorded address that is not a temporary address, this state may take custody of the property presumed abandoned.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 425, § 1, effective July 1, 2020.

38-13-304. Holder domiciled in this state. (1) Except as otherwise provided in subsection (2) of this section or in section 38-13-302 or 38-13-303, the administrator may take custody of property presumed abandoned, whether located in this state, another state, or a foreign country, if the holder is domiciled in this state or is this state or a governmental subdivision, agency, or instrumentality of this state, and:

(a) Another state or foreign country is not entitled to the property because there is no last-known address in the records of the holder of the apparent owner or other person entitled to the property; or

(b) The state or foreign country of the last-known address of the apparent owner or other person entitled to the property does not provide for custodial taking of the property.

(2) Property is not subject to the custody of the administrator under subsection (1) of this section if the property is specifically exempt from custodial taking under the law of this state or the state or foreign country of the last-known address of the apparent owner.

(3) If a holder's state of domicile has changed since the time property was presumed abandoned, the holder's state of domicile in this section is deemed to be the state where the holder was domiciled at the time the property was presumed abandoned.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 425, § 1, effective July 1, 2020.

38-13-305. Custody if transaction took place in this state. (1) Except as otherwise provided in sections 38-13-302, 38-13-303, and 38-13-304, the administrator may take custody of property presumed abandoned whether located in this state or another state if:

(a) The transaction out of which the property arose took place in this state;

(b) The holder is domiciled in a state that does not provide for the custodial taking of the property; except that, if the property is specifically exempt from custodial taking under the law of the state of the holder's domicile, the property is not subject to the custody of the administrator; and

(c) The last-known address of the apparent owner or other person entitled to the property is unknown or in a state that does not provide for the custodial taking of the property; except that, if the property is specifically exempt from custodial taking under the law of the state of the last-known address, the property is not subject to the custody of the administrator.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 426, § 1, effective July 1, 2020.

38-13-306. Traveler's check, money order, or similar instrument. The administrator may take custody of sums payable on a traveler's check, money order, or similar instrument presumed abandoned to the extent permissible under federal law.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 426, § 1, effective July 1, 2020.

38-13-307. Burden of proof to establish administrator's right to custody. (1) If the administrator asserts a right to custody of unclaimed property, the administrator has the burden to prove:

(a) The existence and amount of the property;

(b) That the property is presumed abandoned; and

(c) That the property is subject to the custody of the administrator.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 426, § 1, effective July 1, 2020.

PART 4

REPORT BY HOLDER

38-13-401. Report required by holder. (1) A holder of property presumed abandoned and subject to the custody of the administrator shall report in a record to the administrator concerning the property. The administrator shall not require a holder to file a paper report.

(2) A holder may contract with a third party to make the report required under subsection (1) of this section.

(3) Whether or not a holder contracts with a third party under subsection (2) of this section, the holder is responsible:

(a) To the administrator for the complete, accurate, and timely reporting of property presumed abandoned; and

(b) For paying or delivering to the administrator property described in the report.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 426, § 1, effective July 1, 2020.

38-13-402. Content of report. (1) The report required under section 38-13-401 must:

(a) Be signed by or on behalf of the holder and verified as to its completeness and accuracy;

(b) If filed electronically, be in a secure format approved by the administrator that protects confidential information of the apparent owner in the same manner as required of the administrator and the administrator's agent under part 14 of this article 13;

(c) Describe the property;

(d) Except for a traveler's check, money order, or similar instrument, contain the name, if known; last-known address, if known; and social security number or taxpayer identification number, if known or readily ascertainable, of the apparent owner of property with a value of twenty-five dollars or more;

(e) For an amount held or owing under a life or endowment insurance policy or annuity contract, contain the full name and last-known address of the insured, annuitant, or other apparent owner of the policy or contract and of the beneficiary;

(f) For property held in or removed from a safe-deposit box, indicate the location of the property and where it may be inspected by the administrator;

(g) Contain the commencement date for determining abandonment under part 2 of this article 13;

(h) State that the holder has complied with the notice requirements of section 38-13-501;

(i) Identify property that is a nonfreely transferable security, and explain why it is a nonfreely transferable security; and

(j) Contain other information the administrator prescribes by rules necessary for the administrator.

(2) A report under section 38-13-401 may include in the aggregate items valued under twenty-five dollars each. If the report includes items in the aggregate valued under twenty-five dollars each, the administrator shall not require the holder to provide the name and address of an apparent owner of an item unless the information is necessary to verify or process a claim in progress by the apparent owner.

(3) A report under section 38-13-401 may include personal information as defined in section 38-13-1401 about the apparent owner or the apparent owner's property to the extent not otherwise prohibited by federal law.

(4) If a holder has changed its name while holding property presumed abandoned or is a successor to another person that previously held the property for the apparent owner, the holder shall include in the report under section 38-13-401 its former name or the name of the previous holder, if any, and the known name and address of each previous holder of the property.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 427, § 1, effective July 1, 2020.

38-13-403. When report to be filed. (1) Except as otherwise provided in subsection (2) of this section and subject to subsection (3) of this section, the report under section 38-13-401 must be filed before November 1 of each year and cover the twelve months preceding July 1 of that year.

(2) Subject to subsection (3) of this section, the report to be filed by an insurance company under section 38-13-401 must be filed before May 1 of each year for the immediately preceding calendar year.

(3) Before the date for filing the report under section 38-13-401, the holder of property presumed abandoned may request the administrator to extend the time for filing. The administrator may grant an extension. If the extension is granted, the holder may pay or make a partial payment of the amount the holder estimates ultimately will be due. The payment or partial payment terminates accrual of interest on the amount paid.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 428, § 1, effective July 1, 2020.

38-13-404. Retention of records by holder. (1) A holder required to file a report under section 38-13-401 shall retain records for ten years after the later of the date the report was filed or the last date a timely report was due to be filed, unless a shorter period is provided by rule of the administrator. A holder may satisfy the requirement to retain records under this section through an agent. The records must contain:

(a) The information required to be included in the report;

(b) The date, place, and nature of the circumstances that gave rise to the property right;

(c) The amount or value of the property;

(d) The last address of the apparent owner, if known to the holder; and

(e) If the holder sells, issues, or provides to others for sale or issue in this state traveler's checks, money orders, or similar instruments, other than third-party bank checks, on which the holder is directly liable, a record of the instruments while they remain outstanding indicating the state and date of issue.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 428, § 1, effective July 1, 2020.

38-13-405. When property reportable and payable or deliverable. Property is reportable and payable or deliverable under this article 13 even if the owner fails to make demand or present an instrument or document otherwise required to obtain payment.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 429, § 1, effective July 1, 2020.

PART 5

NOTICE TO APPARENT OWNER OF
PROPERTY PRESUMED ABANDONED

38-13-501. Notice to apparent owner by holder. (1) Subject to subsection (2) of this section, the holder of property presumed abandoned shall send to the apparent owner notice that complies with section 38-13-502 in a format acceptable to the administrator, by first-class United States mail, not more than one hundred eighty days nor less than sixty days before filing the report under section 38-13-401 if:

(a) The holder has in its records an address for the apparent owner that the holder's records do not disclose to be invalid and that is sufficient to direct the delivery of first-class United States mail to the apparent owner; and

(b) The value of the property is twenty-five dollars or more.

(2) If an apparent owner has consented to receive electronic-mail delivery from the holder, the holder may send the notice described in subsection (1) of this section by electronic mail and not by first-class United States mail; except that, if the holder has evidence that the electronic mail could not be delivered, then the holder shall send the notice in accordance with subsection (1) of this section.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 429, § 1, effective July 1, 2020.

38-13-502. Contents of notice by holder. (1) The notice under section 38-13-501 must contain a heading that reads substantially as follows: "Notice. The State of San Andreas requires us to notify you that your property may be transferred to the custody of the state treasurer if you do not contact us before [insert date that is thirty days after the date of this notice].".

(2) The notice under section 38-13-501 must:

(a) Identify the nature and, except for property that does not have a fixed value, the value of the property that is the subject of the notice;

(b) State that the property will be turned over to the administrator;

(c) State that after the property is turned over to the administrator an apparent owner that seeks return of the property must file a claim with the administrator;

(d) State that property that is not legal tender of the United States may be sold by the administrator; and

(e) Provide instructions that the apparent owner must follow to prevent the holder from reporting and paying or delivering the property to the administrator.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 429, § 1, effective July 1, 2020.

38-13-503. Notice by administrator. (1) The administrator shall give notice to an apparent owner that property that is presumed abandoned and appears to be owned by the apparent owner is held by the administrator under this article 13.

(2) In providing notice under subsection (1) of this section, the administrator shall send the notice to the apparent owner's electronic-mail address if the administrator has an electronic-mail address that the administrator does not know to be invalid.

(3) In addition to the notice under subsection (2) of this section, the administrator shall maintain a website or database accessible by the public and electronically searchable that contains the names reported to the administrator of all apparent owners for whom property is being held by the administrator.

(4) The website or database maintained under subsection (3) of this section must include instructions for filing with the administrator a claim to property and a printable claim form with instructions for its use.

(5) In addition to giving notice under subsection (2) of this section and maintaining the website or database under subsection (3) of this section, the administrator may use first-class mail, electronic mail, other printed publication, telecommunication, the internet, other media, or public events to inform the public of the existence of unclaimed property held by the administrator.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 430, § 1, effective July 1, 2020.

38-13-504. Cooperation among state officers and agencies to locate apparent owner. Unless prohibited by law of this state other than this article 13, on request of the administrator, each officer, agency, board, commission, division, and department of this state, any body politic and corporate created by this state for a public purpose, and each political subdivision of this state shall make its books and records available to the administrator and cooperate with the administrator to determine the current address of an apparent owner of property held by the administrator under this article 13.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 430, § 1, effective July 1, 2020.

PART 6

TAKING CUSTODY OF PROPERTY BY ADMINISTRATOR

38-13-601. Definition of good faith. (1) In this part 6, payment or delivery of property is made in good faith if a holder:

(a) Had a reasonable basis for believing, based on the facts then known, that the property was required or permitted to be paid or delivered to the administrator under this article 13; or

(b) Made payment or delivery:

(I) In response to a demand by the administrator or administrator's agent; or

(II) Under a guidance or ruling issued by the administrator that the holder reasonably believed required or permitted the property to be paid or delivered.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 431, § 1, effective July 1, 2020.

38-13-602. Dormancy charge. (1) A holder may deduct a dormancy charge from property required to be paid or delivered to the administrator if:

(a) A valid contract between the holder and the apparent owner authorizes imposition of the charge for the apparent owner's failure to claim the property within a specified time; and

(b) The holder regularly imposes the charge and regularly does not reverse or otherwise cancel the charge.

(2) The amount of the deduction under subsection (1) of this section is limited to an amount that is not unconscionable considering all relevant factors, including the marginal transactional costs incurred by the holder in maintaining the apparent owner's property and any services received by the apparent owner.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 431, § 1, effective July 1, 2020.

38-13-603. Payment or delivery of property to administrator. (1) Except as otherwise provided in this section, on filing a report under section 38-13-401, the holder shall pay or deliver to the administrator the property described in the report.

(2) If property in a report under section 38-13-401 is an automatically renewable deposit and a penalty or forfeiture in the payment of interest would result from paying the deposit to the administrator at the time of the report, the date for payment of the property to the administrator is extended until a penalty or forfeiture no longer would result from payment, if the holder informs the administrator of the extended date.

(3) Tangible property in a safe-deposit box shall not be delivered to the administrator until one hundred twenty days after filing the report under section 38-13-401.

(4) If property reported to the administrator under section 38-13-401 is a security, the administrator may:

(a) Make an endorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer, its transfer agent, or the securities intermediary to transfer the security; or

(b) Dispose of the security under section 38-13-702.

(5) If the holder of property reported to the administrator under section 38-13-401 is the issuer of a certificated security, the administrator may obtain a replacement certificate in physical or book-entry form under section 4-8-405. An indemnity bond is not required.

(6) The administrator shall establish procedures for the registration, issuance, method of delivery, transfer, and maintenance of securities delivered to the administrator by a holder.

(7) An issuer, holder, and transfer agent or other person acting under this section under instructions of and on behalf of the issuer or holder is not liable to the apparent owner for, and shall be indemnified by the state against, a claim arising with respect to property after the property has been delivered to the administrator.

(8) A holder is not required to deliver to the administrator a security identified by the holder as a nonfreely transferable security. If the administrator or holder determines that a security is no longer a nonfreely transferable security, the holder shall deliver the security on the next regular date prescribed for delivery of securities under this article 13. The holder shall make a determination annually whether a security identified in a report filed under section 38-13-401 as a nonfreely transferable security is no longer a nonfreely transferable security.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 431, § 1, effective July 1, 2020.

38-13-604. Effect of payment or delivery of property to administrator. On payment or delivery of property to the administrator under this article 13, the administrator as agent for the state assumes custody and responsibility for the safekeeping of the property. A holder that pays or delivers property to the administrator in good faith and that substantially complies with sections 38-13-501 and 38-13-502 is relieved of liability arising thereafter with respect to payment or delivery of the property to the administrator.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 432, § 1, effective July 1, 2020.

38-13-605. Recovery of property by holder from administrator. (1) A holder that pays money to the administrator under this article 13 may file a claim for reimbursement from the administrator of the amount paid if the holder:

(a) Paid the money in error; or

(b) After paying the money to the administrator, paid the money to a person the holder reasonably believed to be entitled to the money.

(2) If a claim for reimbursement under subsection (1) of this section is made for a payment made on a negotiable instrument, including a traveler's check, money order, or similar instrument, the holder must submit proof that the instrument was presented and that payment was made to a person the holder reasonably believed to be entitled to payment. The holder may claim reimbursement even if the payment was made to a person whose claim was made after expiration of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute, or court order.

(3) If a holder is reimbursed by the administrator under subsection (1)(b) of this section, the holder may also recover from the administrator income or gain under section 38-13-606 that would have been paid to the owner if the money had been claimed from the administrator by the owner to the extent the income or gain was paid by the holder to the owner.

(4) (a) A holder that delivers property other than money to the administrator under this article 13 may file a claim for return of the property from the administrator if:

(I) The holder delivered the property in error; or

(II) The apparent owner has claimed the property from the holder.

(b) If a claim for return of property under subsection (4)(a) of this section is made, the holder shall include with the claim evidence sufficient to establish that the apparent owner has claimed the property from the holder or that the property was delivered by the holder to the administrator in error.

(5) The administrator may determine that an affidavit submitted by a holder is evidence sufficient to establish that the holder is entitled to reimbursement or to recover property under this section.

(6) A holder is not required to pay a fee or other charge for reimbursement or return of property under this section.

(7) Not later than ninety days after a claim is filed under subsection (1) or (4) of this section, the administrator shall allow or deny the claim and give the claimant notice of the decision in a record. If the administrator does not take action on a claim during the ninety-day period, the claim is deemed denied.

(8) The claimant may initiate a proceeding under the "State Administrative Procedure Act", article 4 of title 24, for review of the administrator's decision or the deemed denial under subsection (7) of this section not later than:

(a) Thirty days following receipt of the notice of the administrator's decision; or

(b) One hundred twenty days following the filing of a claim under subsection (1) or (4) of this section in the case of a deemed denial under subsection (7) of this section.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 432, § 1, effective July 1, 2020.

38-13-606. Crediting income or gain to owner's account. If property other than money is delivered to the administrator, the owner is entitled to receive from the administrator income or gain realized or accrued on the property before the property is sold.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 434, § 1, effective July 1, 2020.

38-13-607. Administrator's options as to custody. (1) The administrator may decline to take custody of property reported under section 38-13-401 if the administrator determines that:

(a) The property has a value less than the estimated expenses of notice and sale of the property; or

(b) Taking custody of the property would be unlawful.

(2) A holder may pay or deliver property to the administrator before the property is presumed abandoned under this article 13 if the holder:

(a) Sends the apparent owner of the property the notice or notices required by section 38-13-501 and provides the administrator evidence of the holder's compliance with this subsection (2)(a);

(b) Includes with the payment or delivery a report regarding the property conforming to section 38-13-402; and

(c) First obtains the administrator's consent in a record to accept payment or delivery.

(3) A holder's request for the administrator's consent under subsection (2)(c) of this section must be in a record. If the administrator fails to respond to the request not later than thirty days after receipt of the request, the administrator is deemed to consent to the payment or delivery of the property and the payment or delivery is considered to have been made in good faith.

(4) On payment or delivery of property under subsection (2) of this section, the property is presumed abandoned.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 434, § 1, effective July 1, 2020.

38-13-608. Disposition of property having no substantial value - immunity from liability. (1) If the administrator takes custody of property delivered under this article 13 and later determines that the property has no substantial commercial value or that the cost of disposing of the property will exceed the value of the property, the administrator may return the property to the holder or destroy or otherwise dispose of the property.

(2) An action or proceeding shall not be commenced against the state, an agency of the state, the administrator, another officer, employee, or agent of the state, or a holder for or because of an act of the administrator under this section, except for intentional misconduct or malfeasance.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 434, § 1, effective July 1, 2020.

38-13-609. Periods of limitation and repose. (1) Expiration, before, on, or after July 1, 2020, of a period of limitation on an owner's right to receive or recover property, whether specified by contract, statute, or court order does not prevent the property from being presumed abandoned or affect the duty of a holder to file a report or pay or deliver property to the administrator under this article 13.

(2) The administrator shall not commence an action or proceeding to enforce this article 13 with respect to the reporting, payment, or delivery of property more than five years after the holder filed a nonfraudulent report with the administrator under section 38-13-401. The parties may agree in a record to extend the limitation in this subsection (2).

(3) The administrator shall not commence an action, proceeding, or examination with respect to a duty of a holder under this article 13 more than ten years after the duty arose.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 435, § 1, effective July 1, 2020.

PART 7

SALE OF PROPERTY BY ADMINISTRATOR

38-13-701. Public sale of property. (1) Subject to section 38-13-702, not earlier than three years after receipt of property that is presumed abandoned, the administrator may sell the property.

(2) Before selling property under subsection (1) of this section, the administrator shall give notice to the public of:

(a) The date of sale; and

(b) A reasonable description of the property.

(3) A sale under subsection (1) of this section must be to the highest bidder:

(a) At public sale at a location in this state that the administrator determines to be the most favorable market for the property; or

(b) On the internet; or

(c) On another forum the administrator determines is likely to yield the highest net proceeds of sale.

(4) The administrator may decline the highest bid at a sale under subsection (1) of this section and reoffer the property for sale if the administrator determines the highest bid is insufficient.

(5) If a sale held under this section is to be conducted other than on the internet, the administrator must publish at least one notice of the sale at least three weeks but not more than five weeks before the sale in a newspaper of general circulation in the county in which the property is sold.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 435, § 1, effective July 1, 2020.

38-13-702. Disposal of securities. (1) The administrator shall not sell or otherwise liquidate a security until three years after the administrator receives the security and gives the apparent owner notice under section 38-13-503 that the administrator holds the security. This subsection (1) applies to any security presumed abandoned under section 38-13-208 with a commencement date, reported under section 38-13-402, that is on or after July 1, 2014.

(2) The administrator shall not sell a security listed on an established stock exchange for less than the price prevailing on the exchange at the time of sale. The administrator may sell a security not listed on an established exchange by any commercially reasonable method.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 436, § 1, effective July 1, 2020.

38-13-703. Recovery of securities or value by owner. (1) A person that makes a valid claim under this article 13 of ownership of a security is entitled to receive:

(a) The security the holder delivered to the administrator, if it is in the custody of the administrator, plus dividends, interest, and other increments on the security up to the time the administrator delivers the security to the person; or

(b) The net proceeds of the sale of the security, plus dividends, interest, and other increments on the security up to the time the security was sold.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 436, § 1, effective July 1, 2020.

38-13-704. Purchaser owns property after sale. A purchaser of property at a sale conducted by the administrator under this article 13 takes the property free of all claims of the owner, a previous holder, or a person claiming through the owner or holder. The administrator shall execute documents necessary to complete the transfer of ownership to the purchaser.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 436, § 1, effective July 1, 2020.

38-13-705. Military medal or decoration. (1) The administrator shall not sell a medal or decoration awarded for military service in the armed forces of the United States.

(2) The administrator, with the consent of the respective organization under subsection (2)(a) of this section, agency under subsection (2)(c) of this section, or entity under subsection (2)(d) of this section, may deliver a medal or decoration described in subsection (1) of this section to be held in custody for the owner, to:

(a) A military veterans' organization qualified under section 501 (c)(19) of the federal "Internal Revenue Code of 1986", as amended, 26 U.S.C. sec. 501 (c)(19);

(b) The San Andreas veterans community living center at Homelake;

(c) The agency that awarded the medal or decoration; or

(d) A governmental entity.

(3) On delivery under subsection (2) of this section, the administrator is not responsible for safekeeping of the medal or decoration.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 436, § 1, effective July 1, 2020.

PART 8

ADMINISTRATION OF PROPERTY

38-13-801. Unclaimed property trust fund - creation - payments - interest - appropriations - records - rules. (1) (a) There is hereby created in the state treasury the unclaimed property trust fund. The principal in the trust fund consists of all money received by the administrator from sales of unclaimed property pursuant to part 7 of this article 13 or otherwise collected by the administrator under this article 13 other than from the sale of securities as contemplated by section 38-13-801.5.

(b) Except as provided in subsections (2), (3), and (3.5) of this section, the principal of the trust fund shall not be expended except to pay claims made pursuant to this article 13. Money constituting the principal of the trust fund is not fiscal year spending of the state for purposes of section 20 of article X of the state constitution and is not subject to appropriation by the general assembly.

(c) All interest derived from the deposit and investment of money in the trust fund shall be credited to the trust fund.

(d) The money in the unclaimed property trust fund does not revert to the general fund at the end of any fiscal year.

(2) (a) The general assembly shall make annual appropriations out of the principal of the unclaimed property trust fund for the direct and indirect costs of administering this article 13, except as provided for the payment of contract auditor services in subsection (2)(b) of this section.

(b) Money in the unclaimed property trust fund is continuously appropriated to the administrator for the payment of contract auditor services and for fees of security custodians for properties that are securities. Any money appropriated for the payment of contract auditor services shall be paid from revenues collected by contract auditors.

(c) The administrator shall promulgate rules in accordance with article 4 of title 24 as necessary to administer payment for contract auditor services, including any rules necessary to:

(I) Specify the requirements or expertise of contract auditors;

(II) Adequately protect unclaimed property while the property is in the possession of the contract auditor; and

(III) Prevent identity theft and the sale or transfer of personal identifying information obtained by the contract auditor during the course of the contract auditor's duties.

(d) The following amounts constitute fiscal year spending for purposes of section 20 of article X of the state constitution:

(I) Any money that is appropriated to the department of the treasury as required by this subsection (2);

(II) Any money that is credited to the adult dental fund created in section 25.5-5-207 (4) as required by subsection (3) of this section;

(III) Any money that is credited to the housing development grant fund created in section 24-32-721 (1) as required by subsection (3.5) of this section;

(IV) Any money that is transferred to the general fund as required by subsection (5) of this section; and

(V) Any money appropriated to the San Andreas long-term works reserve created in section 26-2-721 in accordance with subsection (5) of the section.

(2.5) (a) Notwithstanding any provision of this section to the contrary, on July 1, 2020, the state treasurer shall transfer one million one hundred thirty-nine thousand four hundred two dollars from the unclaimed property trust fund to the general fund.

(b) On June 30, 2021, the state treasurer shall transfer one million one hundred thirty-nine thousand four hundred two dollars from the general fund to the unclaimed property trust fund.

(3) (a) After reserving the amounts described in subsection (3)(b) of this section, the state treasurer shall transmit to the adult dental fund created in section 25.5-5-207 (4) an amount of principal and interest in the trust fund sufficient to implement the adult dental benefit pursuant to section 25.5-5-202 (1)(w).

(b) The administrator shall reserve in the trust fund and shall not transfer any money necessary for:

(I) The claims paid pursuant to this article 13 for each fiscal year;

(II) The reserve amount necessary to pay anticipated claims; and

(III) Publications and correspondence expenses pursuant to section 38-13-503.

(3.5) (a) Notwithstanding any other provision of this section, if, based upon the estimate described in subsection (3.5)(b)(I) of this section, state revenues for the 2022-23 state fiscal year through the 2024-25 state fiscal year are less than the transfer cutoff amount, the state treasurer shall transfer from the unclaimed property trust fund to the division of housing to be deposited into the housing development grant fund created in section 24-32-721 (1) no later than June 30 of the year in which the economic and revenue forecast is made the amount of thirty million dollars.

(b) (I) In its annual June forecast, legislative council staff shall report estimates for the current state fiscal year of state revenues, the transfer cutoff amount, and the amount of the transfer required by this section based on those estimates. Legislative council staff shall include the amount of the anticipated transfer in its estimate of fiscal year spending for the state fiscal year.

(II) On June 1 of each year, the state treasurer shall notify legislative council staff of the amount available in the unclaimed property trust fund to be transferred on June 30 of the year under this section if the amount is less than thirty million dollars.

(c) As used in this subsection (3.5):

(I) "Excess state revenues cap" has the same meaning as set forth in section 24-77-103.6 (6)(b).

(II) "June forecast" means the economic and revenue forecast prepared by legislative council staff each June.

(III) "State revenues" has the same meaning as set forth in section 24-77-103.6 (6)(c); except that it does not include any amount for the anticipated transfer permitted by subsection (3.5)(a) of this section.

(IV) "Transfer cutoff amount" means, for a given fiscal year, an amount equal to the excess state revenues cap for the fiscal year minus thirty million dollars.

(d) All of the money to be transferred pursuant to subsection (3.5)(a) of this section must be deposited by the division of housing into the housing development grant fund created in section 24-32-721 (1) to finance the uses described in section 24-32-721.

(e) Notwithstanding any other provision of this section, for each state fiscal year that a transfer is not made, the last year in which a transfer may be made as specified in subsection (3.5)(a) of this section is extended for an additional state fiscal year. Any transfer permitted by subsection (3.5)(a) of this section shall not be made in more than three total state fiscal years.

(4) Before crediting any money to the trust fund pursuant to subsection (1) of this section, the administrator shall record the name and last-known address of each person appearing from the holders' reports to be entitled to the property.

(5) Notwithstanding any other provision of this section, on July 1, 2020, the state treasurer shall transfer forty-three million dollars from the unclaimed property trust fund to the general fund.

Source: L. 2019: (1)(b) and (2)(d) amended and (3.5) added, (HB 19-1322), ch. 201, p. 2166, § 1, effective August 2; Entire article R&RE, (SB 19-088), ch. 110, p. 437, § 1, effective July 1, 2020. **L. 2020:** (2)(d)(II) and (2)(d)(III) amended and (2)(d)(IV) and (5) added, (HB 20-1381), ch. 171, p. 787, § 9, effective June 29; (2.5) added, (HB 20-1361), ch. 161, p. 758, § 3, effective June 29; (3.5)(a) amended, (HB 20-1370), ch. 164, p. 762, § 1, effective June 29. **L. 2021:** (4) amended, (SB 21-121), ch. 32, p. 133, § 4, effective April 15; (2.5)(b) amended, (SB

21-211), ch. 86, p. 360, § 3, effective May 4. **L. 2022:** (2)(d)(III) and (2)(d)(IV) amended and (2)(d)(V) added, (HB 22-1259), ch. 348, p. 2490, § 13, effective June 3.

Editor's note: This section is similar to former § 38-13-116.5 as it existed prior to 2020.

Cross references: For the legislative declaration in HB 22-1259, see section 1 of chapter 348, Session Laws of San Andreas 2022.

38-13-801.5. Unclaimed property tourism promotion trust fund - creation - payments - interest - transfers - definition. (1) There is hereby created in the state treasury the unclaimed property tourism promotion trust fund. The principal in the trust fund consists of all proceeds collected by the administrator from the sale of securities under this article 13.

(2) The principal of the unclaimed property tourism promotion trust fund shall not be expended except to pay claims made pursuant to this article 13. Money constituting the principal of the trust fund that is credited to or expended from the trust fund to pay claims is not fiscal year spending of the state for purposes of section 20 of article X of the state constitution, and such money is deemed custodial funds that are not subject to appropriation by the general assembly.

(3) (a) After reserving the amounts described in subsection (3)(b) of this section, the interest derived from the deposit and investment of money in the unclaimed property tourism promotion trust fund shall be credited to the following funds:

(I) Twenty-five percent of the interest to the San Andreas state fair authority cash fund created in section 35-65-107 (1), subject to appropriation by the general assembly pursuant to section 35-65-107 (3)(b);

(II) Sixty-five percent of the interest to the agriculture management fund created in section 35-1-106.9, subject to appropriation by the general assembly pursuant to section 35-1-106.9; and

(III) (A) Ten percent of the interest to the San Andreas travel and tourism promotion fund created in section 24-49.7-106 (1), subject to appropriation by the general assembly pursuant to section 24-49.7-106 (3) for use in the promotion of agritourism in the state. For purposes of this subsection (3)(a)(III), "agritourism" means the practice of engaging in activities, events, and services that have been provided to consumers for recreational, entertainment, or educational purposes at a farm, ranch, or other agricultural, horticultural, or agribusiness operation in order to allow consumers to experience, learn about, and participate in various facets of agricultural industry, culinary pursuits, natural resources, and heritage.

(B) The board of directors of the San Andreas tourism office created in section 24-49.7-103 shall consult annually, and execute a memorandum of understanding, with the commissioner of agriculture regarding the expenditure of money credited pursuant to subsection (3)(a)(III)(A) of this section in order to coordinate agritourism promotion efforts.

(b) The administrator shall reserve in the unclaimed property tourism promotion trust fund and shall not transfer any money necessary for:

(I) The claims paid pursuant to this article 13 for each fiscal year; and

(II) The reserve amount necessary to pay anticipated claims.

(c) Any money that is credited to and expended from the San Andreas state fair authority cash fund, the agriculture management fund, or the travel and tourism promotion fund pursuant

to this subsection (3) constitutes fiscal year spending of the state for purposes of section 20 of article X of the state constitution.

(4) The money in the unclaimed property tourism promotion trust fund does not revert to the general fund at the end of any fiscal year.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 438, § 1, effective July 1, 2020.

Editor's note: This section is similar to former § 38-13-116.7 as it existed prior to 2020.

38-13-802. Administrator to retain records of property. (1) The administrator shall:

(a) Record and retain the name and last-known address of each person shown on a report filed under section 38-13-401 to be the apparent owner of the property delivered to the administrator;

(b) Record and retain the name and last-known address of each insured or annuitant and beneficiary shown on the report;

(c) With respect to each policy of insurance or annuity contract listed in the report of an insurance company, record and retain the policy or account number, the name of the company, and the amount due or paid; and

(d) With respect to each apparent owner listed in the report, record and retain the name of the holder who filed the report and the amount due or paid.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 440, § 1, effective July 1, 2020.

38-13-803. Administrator holds property as custodian for owner. Property received by the administrator under this article 13 is held in custody for the benefit of the owner and is not owned by the state.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 440, § 1, effective July 1, 2020.

PART 9

CLAIM TO RECOVER PROPERTY FROM ADMINISTRATOR

38-13-901. Claim of another state to recover property. (1) If the administrator knows that property held by the administrator under this article 13 is subject to a superior claim of another state, the administrator shall:

(a) Report and pay or deliver the property to the other state; or

(b) Return the property to the holder so that the holder may pay or deliver the property to the other state.

(2) The administrator is not required to enter into an agreement to transfer property to the other state under subsection (1) of this section.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 440, § 1, effective July 1, 2020.

38-13-902. When property subject to recovery by another state. (1) Property held by the administrator under this article 13 is subject to the right of another state to take custody of the property if:

(a) The property was paid or delivered to the administrator because the records of the holder did not reflect a last-known address in the other state of the apparent owner and:

(I) The other state establishes that the last-known address of the apparent owner or other person entitled to the property was in the other state; or

(II) Under the law of the other state, the property has become subject to a claim of abandonment by the other state;

(b) The records of the holder did not accurately identify the owner of the property, the last-known address of the owner was in another state, and, under the law of the other state, the property has become subject to a claim of abandonment by the other state;

(c) The property was subject to the custody of the administrator of this state under section 38-13-305 and, under the law of the state of domicile of the holder, the property has become subject to a claim of abandonment by the state of domicile of the holder; or

(d) The property:

(I) Is a sum payable on a traveler's check, money order, or similar instrument that was purchased in the other state and delivered to the administrator under section 38-13-306; and

(II) Under the law of the other state, has become subject to a claim of abandonment by the other state.

(2) A claim by another state to recover property under this section must be presented in a form prescribed by the administrator unless the administrator waives presentation of the form.

(3) The administrator shall decide a claim under this section not later than ninety days after it is presented. If the administrator determines that the other state is entitled under subsection (1) of this section to custody of the property, the administrator shall allow the claim and pay or deliver the property to the other state.

(4) The administrator may require another state, before recovering property under this section, to agree to indemnify this state and its officers and employees against any liability on a claim to the property.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 440, § 1, effective July 1, 2020.

38-13-902.1. Claims offset for child support. (1) Before paying a claim pursuant to section 38-13-905 in an amount exceeding six hundred dollars, the administrator shall offset against the amount of the claim the claimant's obligations to pay current child support, child support debt, retroactive child support, child support arrearages, child support costs, or child support when combined with maintenance. The administrator may enter into a memorandum of understanding with the department of human services to implement this section and section 26-13-118.5.

(2) (a) If a claimant owes current child support, child support debt, retroactive child support, child support arrearages, child support costs, or child support when combined with

maintenance, and also owes restitution or fines, fees, costs, or surcharges as described in section 38-13-902.2, delinquent state taxes, penalties, or interest as described in section 38-13-902.3, or both, the unclaimed property offset against the current child support, child support debt, retroactive child support, child support arrearages, child support costs, or child support when combined with maintenance takes priority and shall be applied first.

(b) If a claimant owes both restitution or fines, fees, costs, or surcharges and delinquent state taxes, penalties, or interest, after payment in accordance with subsection (2)(a) of this section, if applicable, any remaining unclaimed property shall be applied first toward the payment of the outstanding restitution or fines, fees, costs, or surcharges and processed in accordance with section 38-13-902.2 and then applied to the payment of delinquent state taxes, penalties, or interest and processed in accordance with section 38-13-902.3.

(c) If a claimant owes restitution or fines, fees, costs, or surcharges or delinquent state taxes, penalties, or interest, after payment in accordance with subsection (2)(a) of this section, if applicable, any remaining unclaimed property shall be applied toward the payment of the outstanding restitution or fines, fees, costs, or surcharges and processed in accordance with section 38-13-902.2 or toward the delinquent state taxes, penalties, or interest and processed in accordance with section 38-13-902.3, whichever is applicable.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 441, § 1, effective July 1, 2020.

Editor's note: This section is similar to former § 38-13-117.3 as it existed prior to 2020.

38-13-902.2. Claims offset for judicial restitution, fines, fees, costs, or surcharges. (1) Before paying a claim pursuant to section 38-13-905 in an amount exceeding six hundred dollars, the administrator shall offset against the amount of the claim the claimant's outstanding court fines, fees, costs, or surcharges or restitution. The administrator may enter into a memorandum of understanding with the judicial department to implement this section and sections 16-11-101.6 (6) and 16-18.5-106.7.

(2) If a claimant owes fines, fees, costs, or surcharges or restitution as described in this section and also owes current child support, child support debt, retroactive child support, child support arrearages, child support costs, or child support when combined with maintenance as described in section 38-13-902.1, delinquent state taxes, penalties, or interest as described in section 38-13-902.3, or both, the unclaimed property offsets shall be applied in accordance with the priority set forth in section 38-13-902.1 (2).

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 442, § 1, effective July 1, 2020.

Editor's note: This section is similar to former § 38-13-117.5 as it existed prior to 2020.

38-13-902.3. Claims offset for state tax delinquencies. (1) Before paying a claim pursuant to section 38-13-905 in an amount exceeding six hundred dollars, the administrator shall compare the social security number or federal employer identification number of the

claimant with the numbers certified by the department of revenue for the purpose of the unclaimed property offset as provided in section 39-21-121.

(2) If the social security number or federal employer identification number of a claimant appears among the numbers certified by the department of revenue pursuant to section 39-21-121, the administrator shall suspend the payment of the claim until the requirements of section 39-21-121 are met. If, after consulting with the department, the administrator determines that the claimant is obligated to pay the amounts certified under section 39-21-121, the administrator shall withhold from the amount of the unclaimed property paid to the claimant an amount equal to the amount of delinquent state taxes, penalties, or interest. If the amount of the unclaimed property is less than or equal to the amount of delinquent state taxes, penalties, or interest, the administrator shall withhold the entire amount of the unclaimed property. The administrator shall transmit any unclaimed property so withheld to the department for disbursement as directed in section 39-21-121.

(3) If a claimant owes delinquent state taxes, penalties, or interest as described in this section and also owes current child support, child support debt, retroactive child support, child support arrearages, child support costs, or child support when combined with maintenance as described in section 38-13-902.1, restitution or fines, fees, costs, or surcharges as described in section 38-13-902.2, or both, the unclaimed property offset shall be applied in accordance with the priority set forth in section 38-13-902.1 (2).

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 442, § 1, effective July 1, 2020.

Editor's note: This section is similar to former § 38-13-117.7 as it existed prior to 2020.

38-13-902.4. Claim of the state or governmental agency. At any time after property has been paid or delivered to the administrator under this article 13, if the administrator determines that the state or a state governmental agency owns the property, the administrator may transfer the property to an operating account of the state or the agency.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 443, § 1, effective July 1, 2020.

Editor's note: This section is similar to former § 38-13-118.5 as it existed prior to 2020.

38-13-903. Claim for property by person claiming to be owner. (1) A person claiming to be the owner of property held by the administrator under this article 13 may file a claim for the property on a form prescribed by the administrator.

(2) The administrator may waive the requirement in subsection (1) of this section and may pay or deliver property directly to a person if:

(a) The person receiving the property or payment is shown to be the apparent owner included on a report filed under section 38-13-401; and

(b) The administrator reasonably believes the person is entitled to receive the property or payment.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 443, § 1, effective July 1, 2020.

38-13-904. When administrator must honor claim for property. (1) The administrator shall pay or deliver property to a claimant under section 38-13-903 if the administrator receives evidence sufficient to establish to the satisfaction of the administrator that the claimant is the owner of the property.

(2) Not later than ninety days after a claim is filed under section 38-13-903, the administrator shall allow or deny the claim and give the claimant notice of the decision in a record. If the claim is denied:

(a) The administrator shall inform the claimant of the reason for the denial and specify what additional evidence, if any, is required for the claim to be allowed;

(b) The claimant may file an amended claim with the administrator or commence an action under section 38-13-906; and

(c) The administrator shall consider an amended claim filed under subsection (2)(b) of this section as an initial claim.

(3) If the administrator does not take action on a claim during the ninety-day period following the filing of a claim under section 38-13-903 (1), the claim is deemed denied.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 443, § 1, effective July 1, 2020.

38-13-905. Allowance of claim for property. (1) Not later than thirty days after a claim is allowed under section 38-13-904 (2) or, in the case of a security, not later than forty-five days after the claim is allowed under section 39-13-904 (2), the administrator shall pay or deliver to the owner the property or pay to the owner the net proceeds of a sale of the property, together with income or gain to which the owner is entitled under section 38-13-606.

(2) Before delivery or payment to an owner under subsection (1) of this section of property or payment to the owner of net proceeds of a sale of the property, the administrator first shall apply the property or net proceeds in accordance with sections 38-13-902.2 to 38-13-902.4. The administrator shall pay the amount to the appropriate state agency and notify the owner of the payment.

(3) The administrator may make periodic inquiries of state agencies in the absence of a claim filed under section 38-13-903 to determine whether an apparent owner included in the unclaimed property records of this state has an enforceable debt described in sections 38-13-902.2 to 38-13-902.4. The administrator first shall apply the property or net proceeds of a sale of property held by the administrator to a debt under sections 38-13-902.2 to 38-13-902.4 of an apparent owner that appears in the records of the administrator and deliver the amount to the appropriate state agency. The administrator shall notify the apparent owner of the payment.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 444, § 1, effective July 1, 2020.

38-13-906. Action by person whose claim is denied. Not later than one year after filing a claim with the administrator under section 38-13-903, the claimant may commence an action

against the administrator in the district court for the city and county of Denver to establish a claim that has been denied or deemed denied under section 38-13-904. On final determination of the action, the court may, on application, award to the plaintiff their reasonable attorney's fees, costs, and expenses of litigation.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 444, § 1, effective July 1, 2020.

PART 10

VERIFIED REPORT OF PROPERTY - EXAMINATION OF RECORDS

38-13-1001. Verified report of property. (1) If a person does not file a report required by section 38-13-401 or the administrator believes that a person may have filed an inaccurate, incomplete, or false report, the administrator may require the person to file a verified report in a form prescribed by the administrator. The report must:

(a) State whether the person is holding property reportable under this article 13;

(b) Describe property not previously reported or about which the administrator has inquired;

(c) Specifically identify property described under subsection (1)(b) of this section about which there is a dispute whether it is reportable under this article 13; and

(d) State the amount or value of the property.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 445, § 1, effective July 1, 2020.

38-13-1002. Examination of records to determine compliance. (1) The administrator, at reasonable times and on reasonable notice, may:

(a) Examine the records of a person, including examination of appropriate records in the possession of an agent of the person under examination, if such records are reasonably necessary to determine whether the person has complied with this article 13;

(b) Issue an administrative subpoena requiring the person or an agent of the person to make records available for examination; and

(c) Bring an action seeking judicial enforcement of the subpoena.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 445, § 1, effective July 1, 2020.

38-13-1003. Rules for conducting examination. (1) The administrator shall adopt rules governing procedures and standards for an examination under section 38-13-1002, including rules for use of an estimation, extrapolation, and statistical sampling in conducting an examination.

(2) An examination under section 38-13-1002 must be performed under rules adopted under subsection (1) of this section and with generally accepted examination practices and standards applicable to an unclaimed-property examination.

(3) If a person subject to examination under section 38-13-1002 has filed the reports required by sections 38-13-401 and 38-13-1001 and has retained the records required by section 38-13-404, the following rules apply:

(a) The examination must include a review of the person's records;

(b) The examination must not be based on an estimate unless the person expressly consents in a record to the use of an estimate; and

(c) The person conducting the examination shall consider the evidence presented in good faith by the person in preparing the findings of the examination under section 38-13-1007.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 445, § 1, effective July 1, 2020.

38-13-1004. Records obtained in examination. (1) Records obtained and records, including work papers, compiled by the administrator in the course of conducting an examination under section 38-13-1002:

(a) Are subject to the confidentiality and security provisions of part 14 of this article 13 and are not public records;

(b) May be used by the administrator in an action to collect property or otherwise enforce this article 13;

(c) May be used in a joint examination conducted with another state, the United States, a foreign country or subordinate unit of a foreign country, or any other governmental entity if the governmental entity conducting the examination is legally bound to maintain the confidentiality and security of information obtained from a person subject to examination in a manner substantially equivalent to part 14 of this article 13;

(d) Must be disclosed, on request, to the person that administers the unclaimed property law of another state for that state's use in circumstances equivalent to circumstances described in this part 10, if the other state is required to maintain the confidentiality and security of information obtained in a manner substantially equivalent to part 14 of this article 13;

(e) Shall be produced by the administrator under an administrative or judicial subpoena or administrative or court order; and

(f) Shall be produced by the administrator on request of the person subject to the examination in an administrative or judicial proceeding relating to the property.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 446, § 1, effective July 1, 2020.

38-13-1005. Evidence of unpaid debt or undischarged obligation. (1) A record of a putative holder showing an unpaid debt or undischarged obligation is prima facie evidence of the debt or obligation.

(2) A putative holder may establish by a preponderance of the evidence that there is no unpaid debt or undischarged obligation for a debt or obligation described in subsection (1) of this

section or that the debt or obligation was not, or no longer is, a fixed and certain obligation of the putative holder.

(3) A putative holder may overcome prima facie evidence under subsection (1) of this section by establishing by a preponderance of the evidence that a check, draft, or similar instrument was:

(a) Issued as an unaccepted offer in settlement of an unliquidated amount;

(b) Issued but later was replaced with another instrument because the earlier instrument was lost or contained an error that was corrected;

(c) Issued to a party affiliated with the issuer;

(d) Paid, satisfied, or discharged;

(e) Issued in error;

(f) Issued without consideration;

(g) Issued but there was a failure of consideration;

(h) Voided not later than ninety days after issuance for a valid business reason set forth in a contemporaneous record; or

(i) Issued but not delivered to the third-party payee for a sufficient reason recorded within a reasonable time after issuance.

(4) In asserting a defense under this section, a putative holder may present evidence of a course of dealing between the putative holder and the apparent owner or of custom and practice.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 446, § 1, effective July 1, 2020.

38-13-1006. Failure of person examined to retain records. If a person subject to examination under section 38-13-1002 does not retain the records required by section 38-13-404, the administrator may determine the value of property due using a reasonable method of estimation based on all information available to the administrator, including extrapolation and use of statistical sampling when appropriate and necessary, consistent with examination procedures and standards adopted under section 38-13-1003 (1) and in accordance with section 38-13-1003 (2).

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 447, § 1, effective July 1, 2020.

38-13-1007. Report to person whose records were examined. (1) At the conclusion of an examination under section 38-13-1002, the administrator shall provide to the person whose records were examined a complete and unredacted examination report that specifies:

(a) The work performed;

(b) The property types reviewed;

(c) The methodology of any estimation technique, extrapolation, or statistical sampling used in conducting the examination;

(d) Each calculation showing the value of property determined to be due; and

(e) The findings of the person conducting the examination.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 447, § 1, effective July 1, 2020.

38-13-1008. Complaint to administrator about conduct of person conducting examination. (1) If a person subject to examination under section 38-13-1002 believes the person conducting the examination has made an unreasonable or unauthorized request or is not proceeding expeditiously to complete the examination, the person in a record may ask the administrator to intervene and take appropriate remedial action, including countermanding the request of the person conducting the examination, imposing a time limit for completion of the examination, or reassigning the examination to another person.

(2) If a person in a record requests a conference with the administrator to present matters that are the basis of a request under subsection (1) of this section, the administrator shall hold the conference not later than thirty days after receiving the request. The administrator may hold the conference in person, by telephone, or by electronic means.

(3) If a conference is held under subsection (2) of this section, not later than thirty days after the conference ends, the administrator shall provide a report in a record of the conference to the person that requested the conference.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 448, § 1, effective July 1, 2020.

38-13-1009. Administrator's contract with another to conduct examination - definition. (1) In this section, "related to the administrator" refers to an individual who is:

(a) The administrator's spouse, partner in a civil union, domestic partner, or reciprocal beneficiary;

(b) The administrator's child, stepchild, grandchild, parent, stepparent, sibling, stepsibling, half-sibling, aunt, uncle, niece, or nephew;

(c) A spouse, partner in a civil union, domestic partner, or reciprocal beneficiary of an individual listed in subsection (1)(b) of this section; or

(d) Any individual residing in the administrator's household.

(2) The administrator may contract with a person to conduct an examination under this part 10. The contract may be awarded only under the "Procurement Code", articles 101 to 112 of title 24.

(3) If the person with which the administrator contracts under subsection (2) of this section is:

(a) An individual, the individual must not be related to the administrator; or

(b) A business entity, the entity must not be owned in whole or in part by the administrator or an individual related to the administrator.

(4) At least sixty days before assigning a person under contract with the administrator under subsection (2) of this section to conduct an examination, the administrator shall demand in a record that the person to be examined submit a report and deliver property that is previously unreported.

(5) If the administrator contracts with a person under subsection (2) of this section:

(a) The contract may provide for compensation of the person based on a fixed fee, hourly fee, or contingent fee;

(b) A contingent fee arrangement must include a provision that:

(I) Requires the person under contract with the administrator, upon completion of the examination, to provide the administrator with a statement of the amount of the contingent fee, the hours spent on the examination, and the average hourly rate for services provided by the person based on the contingent fee; and

(II) Specifies an alternative hourly rate, not to exceed five hundred dollars per hour, at which the person under contract with the administrator is compensated in the event that the statement provided by the person under subsection (5)(b)(I) of this section indicates an average hourly rate for the examination of more than five hundred dollars per hour;

(c) A contingent fee arrangement must not provide for a payment that exceeds twelve percent of the amount or value of property paid or delivered as a result of the examination; and

(d) On request by a person subject to examination by a contractor, the administrator shall deliver to the person a complete and unredacted copy of the contract and any contract between the contractor and a person employed or engaged by the contractor to conduct the examination.

(6) A contract under subsection (2) of this section is subject to public disclosure without redaction under the "San Andreas Open Records Act", part 2 of article 72 of title 24.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 448, § 1, effective July 1, 2020.

38-13-1010. Limit on future employment. The administrator or an individual employed by the administrator who participates in, recommends, or approves the award of a contract under section 38-13-1009 (2) on or after July 1, 2020, must not be employed by, contracted with, or compensated in any capacity by the contractor or an affiliate of the contractor for two years after the latest of participation in, recommendation of, or approval of the award or conclusion of the contract.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 449, § 1, effective July 1, 2020.

38-13-1011. Determination of liability for unreported reportable property. If the administrator determines from an examination conducted under section 38-13-1002 that a putative holder has failed or refused to pay or deliver property to the administrator that is reportable under this article 13, the administrator shall issue a determination of the putative holder's liability to pay or deliver and provide to the putative holder notice in a record of the determination.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 450, § 1, effective July 1, 2020.

PART 11

DETERMINATION OF LIABILITY - PUTATIVE HOLDER REMEDIES

38-13-1101. Informal conference. (1) Not later than thirty days after receipt of a notice under section 38-13-1011, a putative holder may request an informal conference with the administrator to review the determination. Except as otherwise provided in this section, the administrator may designate an employee to act on behalf of the administrator.

(2) If a putative holder makes a timely request under subsection (1) of this section for an informal conference:

(a) Not later than twenty days after the date of the request, the administrator shall set the time and place of the conference;

(b) The administrator shall give the putative holder notice in a record of the time and place of the conference;

(c) The conference may be held in person, by telephone, or by electronic means, as determined by the administrator;

(d) The request tolls the ninety-day period under sections 38-13-1103 and 38-13-1104 until notice of a decision under subsection (2)(g) of this section has been given to the putative holder or the putative holder withdraws the request for the conference;

(e) The conference may be postponed, adjourned, and reconvened as the administrator determines appropriate;

(f) The administrator or administrator's designee, with the approval of the administrator, may modify a determination made under section 38-13-1011 or withdraw it; and

(g) The administrator shall issue a decision in a record and provide a copy of the record to the putative holder and examiner not later than twenty days after the conference ends.

(3) A conference under subsection (2) of this section is not an administrative remedy and is not a contested case subject to the "State Administrative Procedure Act", article 4 of title 24. An oath is not required and the rules of evidence do not apply in the conference.

(4) At a conference under subsection (2) of this section, the putative holder shall be given an opportunity to confer informally with the administrator and the person that examined the records of the putative holder to:

(a) Discuss the determination made under section 38-13-1011; and

(b) Present any issue concerning the validity of the determination.

(5) If the administrator fails to act within the period prescribed in subsection (2) of this section, the failure does not affect a right of the administrator; except that interest does not accrue on the amount for which the putative holder was determined to be liable under section 38-13-1011 during the period in which the administrator failed to act until the earlier of:

(a) The date under section 38-13-1103 when the putative holder initiates administrative review or files an action under section 38-13-1104; or

(b) Ninety days after the putative holder received notice of the administrator's determination under section 38-13-1011 if no review was initiated under section 38-13-1103 and no action was filed under section 38-13-1104.

(6) The administrator may hold an informal conference with a putative holder about a determination under section 38-13-1011 without a request at any time before the putative holder initiates administrative review under section 38-13-1103 or files an action under section 38-13-1104.

(7) Interest and penalties under section 38-13-1204 continue to accrue on property not reported, paid, or delivered as required by this article 13 after the initiation, and during the pendency, of an informal conference under this section.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 450, § 1, effective July 1, 2020.

38-13-1102. Review of administrator's determination. (1) A putative holder may seek relief from a determination under section 38-13-1011 or 38-13-1205 by:

(a) Administrative review under section 38-13-1103; or

(b) Judicial review under section 38-13-1104.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 451, § 1, effective July 1, 2020.

38-13-1103. Administrative review. (1) Not later than ninety days after receiving notice of the administrator's determination under section 38-13-1011 or that a civil penalty has been imposed under section 38-13-1205, a putative holder or a holder may initiate a proceeding under the "State Administrative Procedure Act", article 4 of title 24, for review of the administrator's determination.

(2) A final decision in an administrative proceeding initiated under subsection (1) of this section is subject to judicial review by the district court for the city and county of Denver.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 451, § 1, effective July 1, 2020.

38-13-1104. Judicial remedy. (1) Not later than ninety days after receiving notice of the administrator's determination under section 38-13-1011 or that a civil penalty has been imposed under section 38-13-1205, a putative holder or a holder may:

(a) File an action against the administrator in the district court for the city and county of Denver, challenging all or part of the administrator's determination of liability or imposition of a civil penalty and seeking a declaration that the determination or imposition is unenforceable, in whole or in part; or

(b) Pay the civil penalty or pay the amount or deliver the property the administrator determined must be paid or delivered to the administrator and, not later than six months after payment or delivery, file an action against the administrator in the district court for the city and county of Denver for a refund of all or part of the amount paid or return of all or part of the property delivered.

(2) If a holder pays a civil penalty or a putative holder pays or delivers property determined by the administrator to be paid or delivered to the administrator at any time after the holder or putative holder files an action under subsection (1)(a) of this section, the court shall continue the action as if it had been filed originally as an action for a refund or return of property under subsection (1)(b) of this section.

(3) On the final determination of an action filed under subsection (1) of this section, the court may, on application, award to the plaintiff their reasonable attorney fees, costs, and expenses of litigation.

(4) A holder or putative holder that is the prevailing party in an action under subsection (1) of this section for refund of money paid to the administrator is entitled to interest on the

amount refunded, at the same rate a holder is required to pay to the administrator under section 38-13-1204 (1), from the date paid to the administrator until the date of the refund.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 452, § 1, effective July 1, 2020.

PART 12

ENFORCEMENT BY ADMINISTRATOR

38-13-1201. Judicial action to enforce liability. (1) If a determination under section 38-13-1011 becomes final and is not subject to administrative or judicial review, the administrator may commence an action in the district court for the city and county of Denver or in an appropriate court of another state to enforce the determination and secure payment or delivery of past due, unpaid, or undelivered property. The action must be brought not later than one year after the determination becomes final.

(2) In an action under subsection (1) of this section, if no court in this state has jurisdiction over the defendant, the administrator may commence an action in any court having jurisdiction over the defendant.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 452, § 1, effective July 1, 2020.

38-13-1202. Interstate and international agreement - cooperation. (1) Subject to subsection (2) of this section, the administrator may:

(a) Exchange information with another state or foreign country relating to property presumed abandoned or relating to the possible existence of property presumed abandoned; and

(b) Authorize in a record another state or foreign country or a person acting on behalf of the other state or country to examine its records of a putative holder as provided in part 10 of this article 13.

(2) An exchange or examination under subsection (1) of this section may be done only if the state or foreign country has confidentiality and security requirements substantially equivalent to those in part 14 of this article 13 or agrees in a record to be bound by this state's confidentiality and security requirements.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 453, § 1, effective July 1, 2020.

38-13-1203. Action involving another state or foreign country. (1) The administrator may join another state or foreign country to examine and seek enforcement of this article 13 against a putative holder.

(2) On request of another state or foreign country, the attorney general may commence an action on behalf of the other state or country to enforce, in this state, the law of the other state or country against a putative holder subject to a claim by the other state or country, if the other state or country agrees to pay costs incurred by the attorney general in the action.

(3) The administrator may request the official authorized to enforce the unclaimed property law of another state or foreign country to commence an action to recover property in the other state or country on behalf of the administrator. This state shall pay the costs, including reasonable attorney fees and expenses, incurred by the other state or foreign country in an action under this subsection (3).

(4) The administrator may pursue an action on behalf of this state to recover property subject to this article 13 but delivered to the custody of another state if the administrator believes the property is subject to the custody of the administrator.

(5) The administrator may retain an attorney in this state, another state, or a foreign country to commence an action to recover property on behalf of the administrator and may agree to pay attorney fees based in whole or in part on a fixed fee, hourly fee, or percentage of the amount or value of property recovered in the action.

(6) Expenses incurred by this state in an action under this section may be paid from property received under this article 13 or the net proceeds of the property. Expenses paid to recover property shall not be deducted from the amount that is subject to a claim under this article 13 by the owner.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 453, § 1, effective July 1, 2020.

38-13-1204. Interest and penalty for failure to act in timely manner. (1) A holder that fails to report, pay, or deliver property within the time prescribed by this article 13 shall pay to the administrator interest at the annual rate specified in section 39-21-110.5 on the property or value of the property from the date the property should have been reported, paid, or delivered to the administrator until the date reported, paid, or delivered.

(2) Except as otherwise provided in section 38-13-1205 or 38-13-1206, the administrator may require a holder that fails to report, pay, or deliver property within the time prescribed by this article 13 to pay to the administrator, in addition to interest included under subsection (1) of this section, a civil penalty of two hundred dollars for each day the duty is not performed, up to a cumulative maximum amount of five thousand dollars.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 454, § 1, effective July 1, 2020.

38-13-1205. Other civil penalties. (1) If a holder enters into a contract or other arrangement for the purpose of evading an obligation under this article 13 or otherwise willfully fails to perform a duty imposed on the holder under this article 13, the administrator may require the holder to pay the administrator, in addition to interest as provided in section 38-13-1204 (1), a civil penalty of one thousand dollars for each day the obligation is evaded or the duty is not performed, up to a cumulative maximum amount of twenty-five thousand dollars, plus twenty-five percent of the amount or value of property that should have been but was not reported, paid, or delivered as a result of the evasion or failure to perform.

(2) If a holder makes a fraudulent report under this article 13, the administrator may require the holder to pay to the administrator, in addition to interest under section 38-13-1204 (1), a civil penalty of one thousand dollars for each day from the date the report was made until

corrected, up to a cumulative maximum amount of twenty-five thousand dollars, plus twenty-five percent of the amount or value of any property that should have been reported but was not included in the report or was underreported.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 454, § 1, effective July 1, 2020.

38-13-1206. Waiver of interest and penalty. The administrator shall waive a penalty under section 38-13-1204 (2) if the administrator determines that the holder acted in good faith and without negligence.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 454, § 1, effective July 1, 2020.

PART 13

AGREEMENT TO LOCATE PROPERTY OF
APPARENT OWNER HELD BY ADMINISTRATOR

38-13-1301. When agreement to locate property enforceable. (1) An agreement by an apparent owner and another person, the primary purpose of which is to locate, deliver, recover, or assist in the location, delivery, or recovery of property held by the administrator, is enforceable only if the agreement:

(a) Is in a record that clearly states the nature of the property and the services to be provided;

(b) Is signed by or on behalf of the apparent owner;

(c) States the amount or value of the property reasonably expected to be recovered, computed before and after a fee or other compensation to be paid to the person has been deducted; and

(d) States that the apparent owner may directly file a claim for property with the administrator of a state's unclaimed property act, who in San Andreas is the state treasurer, without being charged a fee by the administrator.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 454, § 1, effective July 1, 2020.

38-13-1302. When agreement to locate property void - rules. (1) Subject to subsection (2) of this section, an agreement under section 38-13-1301 is void if it is entered into during the period beginning on the date the property was paid or delivered by a holder to the administrator and ending twenty-four months after the payment or delivery.

(2) If a provision in an agreement described in subsection (1) of this section applies to mineral proceeds for which compensation is to be paid to the other person based in whole or in part on a part of the underlying minerals or mineral proceeds not then presumed abandoned, the provision is void regardless of when the agreement was entered into.

(3) The administrator shall adopt rules governing the maximum compensation in an agreement under subsection (1) of this section. An agreement that provides for compensation in an amount that exceeds the maximum amount established by rule is unenforceable except by the apparent owner. An apparent owner or the administrator, acting on behalf of an apparent owner, or both, may file an action in the district court for the city and county of Denver to reduce the compensation to the maximum amount. On the final determination of an action filed under this subsection (3), the court may, on application, award the plaintiff its reasonable attorney fees, costs, and expenses of litigation.

(4) An apparent owner or the administrator may assert that an agreement described in this section is void on a ground other than it provides for payment of unconscionable compensation.

(5) This section does not apply to an apparent owner's agreement with an attorney to pursue a claim for recovery of specifically identified property held by the administrator or to contest the administrator's denial of a claim for recovery of the property.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 455, § 1, effective July 1, 2020.

38-13-1303. Right of agent of apparent owner to recover property held by administrator. (1) An apparent owner that contracts with a person to locate, deliver, recover, or assist in the location, delivery, or recovery of property of the apparent owner that is held by the administrator may designate the person as the agent of the apparent owner. The designation must be in a record signed by the apparent owner.

(2) The administrator shall give the agent of the apparent owner nonconfidential status updates. The administrator shall not provide the agent of the apparent owner with any personal information as defined in section 38-13-1401 or confidential information described in section 38-13-1402.

(3) If authorized by the apparent owner, the agent of the apparent owner may bring an action against the administrator on behalf of and in the name of the apparent owner.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 456, § 1, effective July 1, 2020.

38-13-1304. Agreements to locate reported property - overbids from foreclosure sales. (1) Notwithstanding any provision of section 38-13-1303 to the contrary, an agreement to pay compensation to recover or assist in recovering an unclaimed overbid transferred to the administrator under section 38-38-111 is:

(a) Not enforceable unless entered into at least two years after the date of the transfer;

(b) Enforceable if:

(I) The agreement is in writing and signed by the owner, as defined in section 38-38-111 (5);

(II) The agreement describes the property and the date of the foreclosure sale from which the overbid was derived;

(III) The agreement sets forth the nature of the services to be provided;

(IV) The compensation to be paid under the terms of the agreement does not exceed:

(A) Twenty percent of the amount of the overbid if entered into at least two years, but not more than three years, after the date of the transfer; or

(B) Thirty percent of the amount of the overbid if entered into more than three years after the date of the transfer; and

(V) States that the apparent owner may directly file a claim for property with the administrator, who in San Andreas is the state treasurer, without being charged a fee by the administrator.

(2) A person who induces or attempts to induce another person to enter into an agreement described in this section that does not comply with all requirements of subsection (1) of this section commits a class 2 misdemeanor.

(3) Nothing in subsection (1) of this section prohibits an owner from asserting, at any time, that a written, signed agreement to recover or assist in recovering an overbid is based on excessive or unjust consideration.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 456, § 1, effective July 1, 2020. **L. 2021:** (2) amended, (SB 21-271), ch. 462, p. 3292, § 681, effective March 1, 2022.

Editor's note: This section is similar to former § 38-13-128.5 as it existed prior to 2020.

PART 14

CONFIDENTIALITY AND SECURITY OF INFORMATION

38-13-1401. Definitions - applicability. (1) In this part 14, "personal information" means:

(a) Information that identifies or reasonably can be used to identify an individual, such as first and last name in combination with the individual's:

(I) Social security number or other government-issued number or identifier;

(II) Date of birth;

(III) Home or physical address;

(IV) Electronic-mail address or other online contact information or internet provider address;

(V) Financial account number or credit or debit card number;

(VI) Biometric data, health or medical data, or insurance information; or

(VII) Passwords or other credentials that permit access to an online or other account;

(b) Personally identifiable financial or insurance information, including nonpublic personal information defined by applicable federal law; and

(c) Any combination of data that, if accessed, disclosed, modified, or destroyed without authorization of the owner of the data or is lost or misused, would require notice or reporting under applicable federal and state privacy and data security law, whether or not the administrator or the administrator's agent is subject to the law.

(2) Provisions of this part 14 applicable to the administrator or the administrator's records apply to an administrator's agent.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 457, § 1, effective July 1, 2020.

38-13-1402. Confidential information. (1) Except as otherwise provided in this article 13, the following are confidential and exempt from public inspection or disclosure:

(a) Records of the administrator and the administrator's agent related to the administration of this article 13;

(b) Reports and records of a holder in possession of the administrator or the administrator's agent; and

(c) Personal information and other information derived or otherwise obtained by or communicated to the administrator or the administrator's agent from an examination under this article 13 of the records of a person.

(2) A record or other information that is confidential under the law of this state other than this article 13, another state, or the United States continues to be confidential when disclosed or delivered under this article 13 to the administrator or administrator's agent.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 458, § 1, effective July 1, 2020.

38-13-1403. When confidential information may be disclosed. (1) When reasonably necessary to enforce or implement this article 13, the administrator may disclose confidential information concerning property held by the administrator or the administrator's agent only to:

(a) Another department or agency of this state or the United States;

(b) The person that administers the unclaimed property law of another state, if the other state accords substantially reciprocal privileges to the administrator of this state and if the other state is required to maintain the confidentiality and security of information obtained in a manner substantially equivalent to the requirements of this part 14; and

(c) A person subject to an examination as required by section 38-13-1004 (1)(f).

(2) Except as otherwise provided in section 38-13-1402 (1), the administrator shall include in published notices and on a website or database required by section 38-13-503 (3) the name of each apparent owner of property held by the administrator. The administrator may include in published notices, printed publications, telecommunications, the internet, or other media and on the website or in the database additional information concerning the apparent owner's property if the administrator believes the information will assist in identifying and returning property to the owner and does not disclose personal information.

(3) The administrator and the administrator's agent shall not use confidential information provided to them or in their possession except as expressly authorized by this article 13 or required by law other than this article 13.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 458, § 1, effective July 1, 2020. **L. 2021:** (2) amended, (SB 21-121), ch. 32, p. 133, § 5, effective April 15.

38-13-1404. Confidentiality agreement. (1) A person to be examined under section 38-13-1002 may require, as a condition of disclosure of the records of the person to be

examined, that each person having access to the records disclosed in the examination execute and deliver to the person to be examined a confidentiality agreement that:

(a) Is in a form that is reasonably satisfactory to the administrator; and

(b) Requires the person having access to records to comply with the provisions of this part 14 applicable to the person.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 459, § 1, effective July 1, 2020.

38-13-1405. No confidential information in notice. Except as otherwise provided in sections 38-13-501 and 38-13-502, a holder is not required under this article 13 to include confidential information in a notice the holder is required to provide to an apparent owner under this article 13.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 459, § 1, effective July 1, 2020.

38-13-1406. Security of information. (1) If a holder is required to include confidential information in a report to the administrator, the information must be provided by secure means.

(2) If confidential information in a record is provided to and maintained by the administrator or administrator's agent as required by this article 13, the administrator or administrator's agent shall:

(a) Implement administrative, technical, and physical safeguards designed to protect the security, confidentiality, and integrity of the information as required by the law of this state and federal law whether or not the administrator or the administrator's agent is subject to the law;

(b) Protect against reasonably anticipated threats or hazards to the security, confidentiality, or integrity of the information; and

(c) Protect against unauthorized access to or use of the information that could result in substantial harm or inconvenience to a holder or the holder's customers, including insureds, annuitants, and policy or contract owners and their beneficiaries.

(3) The administrator:

(a) After notice and comment, shall adopt and implement a security plan that identifies and assesses reasonably foreseeable internal and external risks to confidential information in the administrator's possession and seeks to mitigate the risks; and

(b) Shall ensure that an administrator's agent adopts and implements a similar plan with respect to confidential information in the agent's possession.

(4) The administrator and the administrator's agent shall educate and train their employees regarding the plan adopted under subsection (3) of this section.

(5) The administrator and the administrator's agent shall in a secure manner return or destroy all confidential information no longer reasonably needed under this article 13.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 459, § 1, effective July 1, 2020.

38-13-1407. Security breach. (1) Except to the extent prohibited by law other than this article 13, the administrator or administrator's agent shall notify a holder as soon as practicable of:

(a) Suspected loss, misuse, or unauthorized access, disclosure, modification, or destruction of confidential information obtained from the holder in the possession of the administrator or an administrator's agent; and

(b) Any interference with operations in any system hosting or housing confidential information that:

(I) Compromises the security, confidentiality, or integrity of the information; or

(II) Creates a substantial risk of identity fraud or theft.

(2) Except as necessary to inform an insurer, attorney, investigator, or others as required by law, the administrator and an administrator's agent shall not disclose, without the express consent in a record of the holder, an event described in subsection (1) of this section to a person whose confidential information was supplied by the holder.

(3) If an event described in subsection (1) of this section occurs, the administrator and the administrator's agent shall:

(a) Take action necessary for the holder to understand and minimize the effects of the event and determine its scope; and

(b) Cooperate with the holder with respect to:

(I) Any notification required by law concerning a data or other security breach; and

(II) A regulatory inquiry, litigation, or similar action.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 460, § 1, effective July 1, 2020.

38-13-1408. Indemnification for breach. (1) If a claim is made or action commenced arising out of an event described in section 38-13-1407 (1) relating to confidential information possessed by an administrator's agent, the administrator's agent shall indemnify, defend, and hold harmless a holder and the holder's affiliates, officers, directors, employees, and agents as to:

(a) Any claim or action; and

(b) A liability, obligation, loss, damage, cost, fee, penalty, fine, settlement, charge, or other expense, including reasonable attorney's fees and costs, established by the claim or action.

(2) The administrator shall require an administrator's agent that will receive confidential information required under this article 13 to maintain adequate insurance for indemnification obligations of the administrator's agent under subsection (1) of this section. The agent required to maintain the insurance shall provide evidence of the insurance to:

(a) The administrator not less frequently than annually; and

(b) The holder on commencement of an examination and annually thereafter until all confidential information is returned or destroyed under section 38-13-1406 (5).

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 460, § 1, effective July 1, 2020.

PART 15

38-13-1501. Uniformity of application and construction. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 461, § 1, effective July 1, 2020.

38-13-1502. Relation to electronic signatures in global and national commerce act. This article 13 modifies, limits, or supersedes the "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. sec. 7001 et seq., but does not modify, limit, or supersede section 101 (c) of that act, 15 U.S.C. sec. 7001 (c), or authorize electronic delivery of any of the notices described in section 103 (b) of that act, 15 U.S.C. sec. 7003 (b).

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 461, § 1, effective July 1, 2020.

38-13-1503. Transitional provision. (1) An initial report filed under this article 13 for property that was not required to be reported before July 1, 2020, but that is required to be reported under this article 13, must include all items of property that would have been presumed abandoned during the five-year period preceding July 1, 2020, as if this article 13 had been in effect during that period.

(2) This article 13 does not relieve a holder of a duty that arose before July 1, 2020, to report, pay, or deliver property. Subject to section 38-13-609, a holder that did not comply with the law governing unclaimed property before July 1, 2020, is subject to applicable provisions for enforcement and penalties in effect before July 1, 2020.

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 461, § 1, effective July 1, 2020.

38-13-1504. Application of article - local government - exemption - notice of property. (1) Except as otherwise provided in this section, the provisions of this article 13 do not apply to a local government that is a holder of property if:

(a) The local government has a local ordinance or resolution relating to the disposition of property that conflicts with this article 13;

(b) The local ordinance or resolution described in subsection (1)(a) of this section requires the local government to hold the property for the owner for at least five years after the date it is presumed abandoned under section 38-13-201 (1)(j); and

(c) The local government provides the administrator with the information described in subsection (2) of this section in the same electronic format as a holder is required to use to report unclaimed property.

(2) To satisfy subsection (1)(c) of this section, a local government must provide the administrator with the following information on or before November 1 of each year:

(a) An alphabetical list of the owners for whom the local government holds property that is presumed abandoned under section 38-13-201 (1)(j); and

(b) The value of the abandoned property that the exempt local government holds for each owner.

(3) The administrator shall include the information received in accordance with subsection (2) of this section, along with a statement that a person claiming to be the owner must file a claim for the property with the specific local government that has the property, as part of the website or database maintained under section 38-13-503 (3).

Source: L. 2019: Entire article R&RE, (SB 19-088), ch. 110, p. 461, § 1, effective July 1, 2020.

LOANED PROPERTY

ARTICLE 14

Loans to Museums

38-14-101. Legislative declaration. The general assembly hereby finds and declares that the growth and maintenance of museum collections, both public and private, is a matter of general public interest to the citizens of San Andreas. Because museums of all kinds depend upon loans of various articles of property to augment their collections and because uncertainty regarding title to and responsibility for loaned property is a hindrance to museums in their efforts to maintain, repair, and dispose of property in their possession, it is the purpose of this article to fairly and reasonably allocate responsibilities and to provide rules for the determination of title and financial responsibilities in certain cases.

Source: L. 88: Entire article added, p. 1250, § 1, effective April 14.

38-14-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Loaned property" means any property accepted by a museum which is not accompanied by a transfer of title.

(2) "Museum" means a nonprofit or public institution which is organized and operated primarily for the purpose of collecting, cataloging, exhibiting, or archiving objects of educational, scientific, historical, or aesthetic interest and the collection of which is generally open to the public. The term includes, without limitation, historical societies, parks, monuments, and libraries.

(3) "Owner" and "lender" mean the actual owner of loaned property or his duly authorized agent, trustee, conservator, custodian, heir, or fiduciary, whether an individual, association, trust, partnership, corporation, or any similar organization capable of having an interest in property.

(4) "Property" means all tangible objects, animate and inanimate, collected or maintained by a museum for educational, historic, or exhibition purposes.

Source: L. 88: Entire article added, p. 1250, § 1, effective April 14.

38-14-103. Limitations on recovery of loaned property. (1) Subject to the contrary terms of any written agreement, no action may be brought for damages or the recovery of any loaned property when:

(a) Seven years have passed without written contact between the museum and the lender and the lender's identity or current address is unknown to the museum; or

(b) More than one hundred twenty days have passed since a museum has given written notice of termination of a loan pursuant to section 38-14-104 and the lender has not reclaimed the loaned property; except that no lender shall be prejudiced in this regard for want of reasonable cooperation from the museum holding his loaned property.

Source: L. 88: Entire article added, p. 1251, § 1, effective April 14.

38-14-104. Termination of loans by museums. (1) A museum may give written notice of termination of a loan at any time after the expiration of a loan made for a specified period or at any time if the loan is for an indefinite period. Any loan not evidenced by a writing stating the term of the loan and signed by the lender shall be deemed a loan for an indefinite period.

(2) Notice given under this section shall contain:

(a) A description of the loaned property sufficient to identify it;

(b) The last-known name and address of the lender;

(c) The date of the loan or the date the loaned property was accepted by the museum if the loan was not evidenced by a writing;

(d) The name, address, and telephone number of the appropriate officer or official at the museum to be contacted regarding the loan;

(e) A statement referring the lender to this article and informing him that failure to reclaim his loaned property within one hundred twenty days shall result in the loss of all rights in said property.

Source: L. 88: Entire article added, p. 1251, § 1, effective April 14.

38-14-105. Manner of giving notice. The notice required in section 38-14-103 (1)(b) shall be sufficient when mailed by certified mail, return receipt requested, delivery restricted to owner as defined in section 38-14-102 (3), to the last-known address of the lender as reflected in the records of the museum.

Source: L. 88: Entire article added, p. 1251, § 1, effective April 14.

38-14-106. Notice upon accepting loaned property. On and after July 1, 1988, when a museum accepts loaned property or receives written notice of a change in ownership of loaned property, the museum shall inform the lender or new lender within thirty days, in writing, of the provisions of section 38-14-103. Where notice is not given in accordance with this section, the provisions of section 38-14-103 (1)(b) shall not apply.

Source: L. 88: Entire article added, p. 1251, § 1, effective April 14.

38-14-107. Responsibilities of owners of loaned property. In all cases it shall be the responsibility of the owner of loaned property to notify the museum in writing of his identity and current address. It shall be the responsibility of any new owner acquiring loaned property to notify the museum within sixty days of his name and address. Any owner of loaned property shall, upon request from a museum holding loaned property, promptly provide evidence of ownership satisfactory to the museum. This section shall apply to all changes in ownership, whether by sale, gift, devise, operation of law, or any other means. So long as a museum deals honestly and in good faith, no museum shall be prejudiced by reason of any failure to deal with the true owner of any loaned property if the owner has failed to comply with the requirements of this section.

Source: L. 88: Entire article added, p. 1252, § 1, effective April 14.

38-14-108. Museum's lien for expenses. When the lender of loaned property is unknown, a museum shall have a lien against the value of specific loaned property for expenses reasonably necessary to protect the loaned property from ordinary decay and deterioration due to natural causes, from theft, or from vandalism.

Source: L. 88: Entire article added, p. 1252, § 1, effective April 14.

38-14-109. Representations as to ownership. A museum shall not be liable for actions taken in reasonable reliance upon the representations of one who first transfers an item of property to the museum that he is the true owner of the loaned property.

Source: L. 88: Entire article added, p. 1252, § 1, effective April 14.

38-14-110. Disputed ownership. In cases of disputed ownership of loaned property, a museum shall not be held liable for its refusal to surrender loaned property in its possession except in reliance upon a court order or judgment.

Source: L. 88: Entire article added, p. 1252, § 1, effective April 14.

38-14-111. Title of property purchased from museum. When a museum which acquired title to loaned property pursuant to section 38-14-103 sells said property, the purchaser shall acquire good title free of all claims and defenses.

Source: L. 88: Entire article added, p. 1252, § 1, effective April 14.

38-14-112. Property not to escheat. Loaned property in the possession of a museum at the time of the owner's death which would otherwise escheat to the state under section 15-11-105 or 15-12-914, S.A.R.S., shall not so escheat but shall become the property of the museum to which it is then loaned.

Source: L. 88: Entire article added, p. 1252, § 1, effective April 14.

LIENS

ARTICLE 20

Lien on Personal Property

Cross references: For general tax liens, see articles 1, 3, 3.5, 10, 11, 12, and 13 of title 39; for enforcement of tax liens, see article 20 of title 39; for mortgages and trust deeds on real property, see articles 35 and 37 to 40 of this title; for judgment liens, see article 52 of title 13; for liens on motor vehicles, see article 6 of title 42; for partido contracts, see § 35-54-106.

PART 1

LIEN ON PERSONAL PROPERTY

38-20-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Customer" means any person who:

(a) Hires a molder to fabricate, cast, or otherwise prepare a die, tool, mold, form, or pattern for the purpose of manufacturing, assembling, casting, fabricating, or otherwise making a product; or

(b) Provides a molder with a die, tool, mold, form, or pattern for the purpose of manufacturing, assembling, casting, fabricating, or otherwise making a product.

(2) "Mold" means a die, tool, mold, form, or pattern.

(3) "Molder" means any person who fabricates, casts, or otherwise prepares or uses a die, tool, mold, form, or pattern for the purpose of manufacturing, assembling, casting, fabricating, or otherwise preparing a product. "Molder" includes, but is not limited to, a tool or die maker. A molder shall not be deemed to be a warehouse as defined in section 4-7-102 (a)(13), S.A.R.S.

(3.5) "Pet animals" means dogs, cats, or other domestic animals, except livestock as defined in section 38-20-202 (6).

(4) "Rent temporary shelter" or "rent temporary trailer space" means shelter or trailer space that is rented for a fee for a period of time not exceeding one month, but excluding month to month tenancies that have been in effect at least four months.

Source: L. 71: p. 951, § 3. **S.A.R.S. 1963:** § 86-1-15. **L. 98:** Entire section amended, p. 363, § 1, effective September 30. **L. 2005:** (3.5) added, p. 637, § 1, effective May 27. **L. 2006:** (3) amended, p. 505, § 56, effective September 1.

38-20-102. Lien for care and feeding of pet animals - lien for lodging and boarding services for transient guests - landlord lien on tenant's personal property. (1) (a) Any feeder, veterinarian, or other person to whom pet animals are entrusted for the purpose of feeding, keeping, boarding, or medical care shall have a lien, which shall be superior to all other liens, upon such pet animals for the amount that may be due for such feeding, keeping, boarding, or medical care and for all costs incurred in enforcing such lien.

(b) If the lienholder complies with the provisions of section 38-20-103 and the pet animals referred to in paragraph (a) of this subsection (1) are sold, exchanged, or otherwise disposed of to another from the premises of the lienholder by anyone other than the lienholder acting on his or her own behalf, the lien created by this subsection (1) shall continue and attach to the proceeds received or receivable therefrom. This lien shall also be superior to all other liens.

(2) The keeper of any hotel, motel, inn, or boardinghouse or any other person who rents temporary shelter to transient guests shall have a lien upon the personal property of such transient guests found upon the premises for the amount that may be due for lodging and boarding services rendered and for all costs incurred in enforcing such lien, and such liens shall apply to the personal property of transient guests who rent temporary trailer space in any trailer court or auto court in this state. The provisions of this section shall not apply to motor vehicles owned by such transient guests parked on the premises of such hotel, motel, inn, or boardinghouse or to stolen property.

(3) (a) Any person who rents furnished or unfurnished rooms or apartments for the housekeeping purposes of the person's tenants, as well as the keeper of a trailer court who rents trailer space, shall have a lien upon the tenant's personal property that is then on or in the rental premises. The value of the lien shall be for the amount of unpaid board, lodging, or rent and for reasonable costs incurred in enforcing the lien, not including attorney fees. The lien shall be upon the household furniture, goods, appliances, and other personal property of the tenant and members of the tenant's household then being upon the rental premises but exclusive of pet animals, small kitchen appliances, cooking utensils, beds, bedding, necessary wearing apparel, personal or business records and documents, and the personal effects of the tenant and the members of the tenant's household.

(b) In the event the tenant has vacated the premises, the landlord shall allow the tenant and members of his household access to the premises at any reasonable time and in a reasonable manner to remove any property not covered by the lien.

(c) In the event the tenant has not vacated the premises, the landlord or his agent may enter upon the premises at any reasonable time for the purpose of asserting the lien and, in a reasonable manner and peaceably, the landlord may assert dominion over the personal property covered by the lien. Assertion of the lien provided in this section in a manner which substantially interferes with the tenant's right to reasonably occupy and enjoy the premises is unlawful and shall cause forfeiture of the lien and shall give rise to an action for damages.

Source: L. 1883: p. 237, § 1. **G.S.** § 2118. **R.S. 08:** § 4013. **C.L.** § 6428. **L. 29:** p. 440, § 1. **CSA:** C. 101, § 1. **S.A.R.S. 53:** § 86-1-1. **L. 61:** p. 512, § 1. **S.A.R.S. 1963:** § 86-1-1. **L. 71:** p. 949, § 1. **L. 77:** (1) amended, p. 1709, § 1, effective May 18. **L. 2005:** (1) amended, p. 637, § 2, effective May 27. **L. 2023:** (3)(a) amended, (HB 23-1068), ch. 416, p. 2464, § 5, effective January 1, 2024.

Cross references: For the legislative declaration in HB 23-1068, see section 1 of chapter 416, Session Laws of San Andreas 2023.

38-20-103. Pet animal contract to be filed. All contracts, or copies thereof, made by the owner of any pet animal with any other person, including a feeder, for the caring for the

same for pay, or on shares, or in any other manner may be filed with the county clerk and recorder of the county where the owners or either of them reside, if they reside in the state, and, if the owners or either of them do not reside in the state, the copies may be filed with the county clerk and recorder of the county in which the contract was made. When such copies are so filed they shall be notice to everyone of the contents of such contracts and of the legal effect thereof.

Source: L. 1887: p. 417, § 1. **R.S. 08:** § 6381. **C.L.** § 6429. **CSA:** C. 101, § 2. **S.A.R.S. 53:** § 86-1-2. **S.A.R.S. 1963:** § 86-1-2. **L. 77:** Entire section amended, p. 1709, § 2, effective May 18. **L. 2005:** Entire section amended, p. 638, § 3, effective May 27.

38-20-104. Landlord to retain property - sale. (Repealed)

Source: L. 1889: p. 188, § 4. **R.S. 08:** § 3006. **C.L.** § 6430. **L. 29:** p. 441, § 2. **CSA:** C. 101, § 3. **S.A.R.S. 53:** § 86-1-3. **S.A.R.S. 1963:** § 86-1-3. **L. 71:** p. 950, § 2. **L. 75:** Entire section repealed, p. 1419, § 9, effective April 24.

38-20-105. Lien of common carrier. (1) Except as provided in subsection (2) of this section, every common carrier of goods or passengers who, at the request of the owner of any personal goods, carries, conveys, or transports the same from one place to another and every other person who safely keeps or stores any personal property at the request of the owner or person lawfully in possession of the personal property has a lien upon the personal property for reasonable charges for the transportation, storage, or keeping of the personal property and for all reasonable and proper advances made by the common carrier or warehouse, in accordance with the usage and custom of common carriers and warehouses.

(2) In accordance with section 40-10.1-405 (5)(a), this section does not grant a towing carrier a lien on the contents of a vehicle if the vehicle was towed nonconsensually, as defined in section 40-10.1-101 (13).

Source: L. 1883: p. 237, § 2. **G.S.** § 2119. **R.S. 08:** § 4014. **C.L.** § 6431. **CSA:** C. 101, § 4. **S.A.R.S. 53:** § 86-1-4. **S.A.R.S. 1963:** § 86-1-4. **L. 76:** Entire section amended, p. 314, § 68, effective May 20. **L. 2022:** Entire section amended, (HB 22-1314), ch. 416, p. 2948, § 13, effective August 10.

Cross references: For liens of warehousemen and enforcement thereof, see §§ 4-7-209 and 4-7-210; for lien of a carrier on goods covered by a bill of lading and enforcement thereof, see §§ 4-7-307 and 4-7-308.

38-20-106. Lien for labor. Any mechanic or other person who makes, alters, repairs, or bestows labor upon any article of personal property, at the request of the owner of such personal property or his agent shall have a lien upon such property for the amount due for such labor done or material furnished and for all costs incurred in enforcing such lien.

Source: L. 1883: p. 237, § 3. **G.S.** § 2120. **L. 1889:** p. 233, § 2. **R.S. 08:** § 4015. **C.L.** §

6432. **CSA:** C. 101, § 5. **S.A.R.S. 53:** § 86-1-5. **S.A.R.S. 1963:** § 86-1-5.

Cross references: For mechanic's liens on land and fixtures, see article 22 of this title.

38-20-106.2. Molders' liens - creation - notice. (1) A molders' lien shall attach to all of a customer's molds in a molder's possession for which a balance is due from such customer for any manufacturing or fabrication work performed and materials furnished. A molders' lien shall be for the amount due for any such work performed or materials furnished, including interest at the rate specified in section 38-22-101 (5), unless otherwise agreed, and for all costs incurred in enforcing such lien, including attorney fees if specified by contract. The amount of such lien shall be determined by the value of any such manufacturing or fabrication work performed and material furnished unless the cost of such work and materials is otherwise specified by contract. A molder may retain possession of a mold until all charges are paid for such lien, unless a claim is made to such mold by the holder of a prior lien or by the holder of a lien of public record.

(2) A molders' lien created pursuant to this section shall be considered a security interest for the purposes of section 18-5-206, S.A.R.S.

(3) No lien created by this section shall have priority over a lien of public record, including a lien filed pursuant to title 4, S.A.R.S., regardless of when the financing statement or notice of lien was filed or recorded.

Source: L. 98: Entire section added, p. 364, § 2, effective September 30.

38-20-106.5. Motor vehicle repair garages - restoration of liens. (1) A motor vehicle repair garage which is entitled to a lien under section 38-20-106 for motor vehicle repairs and which has released the motor vehicle upon receipt of payment for such repairs in the form of a check, draft, or order for the payment of money upon any bank, depository, person, firm, or corporation shall be entitled to the restoration of the lien if the check, draft, or order is not honored for full payment or is dishonored upon its presentment and if the maker, issuer, or drawer fails, within twelve days after receiving notice from the motor vehicle repair garage of nonpayment or dishonor, to pay the check, draft, or order. In the event such motor vehicle repair garage has released the motor vehicle upon an open account, the motor vehicle repair garage shall be entitled to restoration of the lien if the total amount as agreed upon by the parties is not paid when due as agreed upon by the parties and if the debtor fails, within twelve days after receiving notice from the motor vehicle repair garage of nonpayment, to pay the amount due. Restoration of such lien shall entitle the motor vehicle repair garage to regain possession of the motor vehicle. In regaining possession, the motor vehicle repair garage may proceed without judicial process if this can be done without breach of the peace or may proceed by action.

(2) "Notice", as used in subsection (1) of this section, means notice given to the person entitled thereto, either in person or in writing. Such notice in writing shall be conclusively presumed to have been given when deposited by registered or certified mail, return receipt requested and postage prepaid, in the United States mail and addressed to such person at his address as it appears on the invoice or such check, draft, or order or, in the case of an open account, as it appears on the account records of the motor vehicle repair garage. Any notice regarding an open account may only be given subsequent to nonpayment.

Source: L. 77: Entire section added, p. 1924, § 2, effective January 1, 1978. **L. 81:** Entire section amended, p. 1820, § 1, effective July 1.

38-20-107. Commencement of foreclosure action. (1) If any such charges for which a lien is given by section 38-20-102, 38-20-105, 38-20-106, or 38-20-106.2 or for which a lien is restored by section 38-20-106.5 are not paid within thirty days after the same become due and payable, the mechanic, innkeeper, or other person to whom such lien is given may file a foreclosure action in the county or district court of the county or city and county in which the contract or agreement between the lienholder and the owner of the property was signed or entered into, in which the owner resided at the time the contract or agreement was entered into, in which the owner resides at the time the foreclosure action is commenced or in which the work was performed, or, in the case of a lien created pursuant to section 38-20-106.2, in which any work was performed or materials were furnished. In the event that the lienholder does not foreclose the lien by commencing a judicial action within sixty days and if, under section 38-20-106, within ninety days after charges become due and payable, the lien shall terminate. However, such period of limitation may be extended by agreement between the parties for an additional period not to exceed thirty days. For the purposes of this subsection (1), if the contract between the owner and the lienholder provides for installment or continuing payments, installments or continuing payments shall be deemed to be due after default of any installment or payment or at the time the final installment or payment is due and payable at the option of the lienholder.

(2) If the lienholder sells or otherwise disposes of the property of the owner without substantially complying with this article, the owner is entitled to recover from the lienholder the value of the property, but in no event less than one hundred dollars, and reasonable attorney fees.

(3) Nothing in this article shall require a lienholder to commence a judicial action to foreclose his lien if the property held is abandoned as defined in section 38-20-116.

Source: L. 1883: p. 238, § 4. **G.S.** § 2121. **R.S. 08:** § 4016. **C.L.** § 6433. **CSA:** C. 101, § 6. **S.A.R.S. 53:** § 86-1-6. **S.A.R.S. 1963:** § 86-1-6. **L. 64:** p. 289, § 222. **L. 75:** Entire section amended, p. 1416, § 1, effective April 24. **L. 77:** (1) amended, p. 1710, § 3, effective May 18. **L. 81:** (1) amended, p. 1821, § 2, effective July 1. **L. 87:** (1) amended, p. 1583, § 44, effective July 10. **L. 98:** (1) amended, p. 364, § 3, effective September 30. **L. 2005:** (1) amended, p. 638, § 4, effective May 27.

38-20-108. Foreclosure action - procedure. (1) In any foreclosure action, the lienholder or the lienholder's attorney, by complaint, shall show to the court the following:

(a) That the lienholder did perform a specified service for the defendant which entitles such lienholder to a lien on personal property owned by the defendant pursuant to the provisions of section 38-20-102, 38-20-105, 38-20-106, or 38-20-106.2;

(b) That said service was performed at the request of the defendant or his agent;

(c) A particular description of the property upon which the lien is claimed and a statement of its actual value;

(d) That the defendant has failed to pay charges within thirty days after the same became due and payable;

(e) That notice of demand for charges has been given to the owner personally or by registered mail at the owner's last-known address;

(f) An itemized description of the charges for labor performed and parts replaced if a lien is claimed under section 38-20-106;

(g) An itemized description of the charges for any work performed and materials furnished, including interest at the rate specified in section 38-22-101 (5), unless otherwise agreed, and for all costs incurred in enforcing such lien, including attorney fees if specified by contract if a lien is claimed under section 38-20-106.2.

(2) Upon filing the complaint, the clerk of the court shall issue a summons as in other cases; except that it shall command the defendant to appear before the court at a place named in such summons and at a time and on a day which shall be not less than three nor more than five days from the day of issuing the same to answer the complaint of plaintiff. The summons shall also contain a statement addressed to the defendant stating: "If you fail to file with the court, at or before the time for appearance specified in the summons, an answer to the complaint, denying or admitting all of the material allegations of the complaint, judgment by default may be taken against you for the lien charges described in the complaint, for costs as provided in this article, and for any other relief to which the plaintiff is entitled."

(3) If either party requests a delay in trial longer than five days, the court, in its discretion, upon good cause shown, may require either of the parties to give bond in an amount to be fixed by the court for the payment to the opposing party of such amount as he may be entitled to due to the delay. The bond shall be secured by two or more sureties, by one corporate surety authorized to do business in this state, or by cash bond, to be approved by the court.

Source: L. 1883: p. 238, § 5. **G.S.** § 2122. **R.S. 08:** § 4017. **C.L.** § 6434. **CSA:** C. 101, § 7. **S.A.R.S. 53:** § 86-1-7. **S.A.R.S. 1963:** § 86-1-7. **L. 64:** p. 289, § 223. **L. 75:** Entire section R&RE,
p. 1417, § 2, effective April 24. **L. 77:** (2) R&RE, p. 1710, § 4, effective May 18. **L. 98:** IP(1) and (1)(a) amended and (1)(g) added, p. 365, § 4, effective September 30.

38-20-109. Lienor may sell - procedure. (1) When the lienor has received a judgment and after giving ten days' prior notice of the time and place of such sale, with a description of the property to be sold, by one publication in some newspaper published in the county wherein he or she resides or, if there is no such newspaper, by posting in three public places within such county and after delivering to the owner of such personal property or, if he or she does not reside in the county, transmitting by mail to him or her at his or her usual place of abode, if known, a copy of such notice, he or she may proceed to sell all such personal property, or so much thereof as may be necessary, at public auction, for cash in hand, at any public place within such county between the hours of 10 a.m. and 4 p.m. of the day appointed. From the proceeds thereof he or she may pay the reasonable costs of such foreclosure, notice, and sale and any necessary and reasonable charges for the preserving, maintaining, feeding, boarding, or caring for the property on which he or she has a lien, together with the reasonable cost of keeping such property up to the time of sale, but the reasonable costs of keeping such property up to the time of sale shall not exceed ninety dollars. He or she shall render the residue of the proceeds and of the property unsold to the owner.

(2) Where property upon which the lien is being foreclosed is in danger of serious and immediate decay or waste or is likely to depreciate rapidly in value pending the determination of the issue or where the keeping of it will be attended with great expense, the lienholder, as plaintiff to the action, may apply to the court, upon due notice as the court may direct, for a sale thereof; and, thereupon, the court in its discretion may order the property sold in the manner provided for in said order, and the proceeds of said sale shall be deposited with the clerk of the

court to abide the further order of the court. Upon application for such order for sale, the court in its discretion, upon good cause shown, may require the plaintiff to give bond in an amount to be fixed by the court for the payment to the defendant of such amount as the defendant may be entitled to for damages sustained by the defendant in the event of wrongful foreclosure. The bond shall be secured by two or more sureties, by one corporate surety authorized to do business in this state, or by cash bond, to be approved by the court.

Source: L. 1883: p. 238, § 6. **G.S.** § 2123. **R.S. 08:** § 4018. **C.L.** § 6435. **CSA:** C. 101, § 8. **S.A.R.S. 53:** § 86-1-8. **S.A.R.S. 1963:** § 86-1-8. **L. 75:** Entire section amended, p. 1417, § 3, effective April 24. **L. 77:** Entire section amended, p. 1710, § 5, effective May 18. **L. 2005:** (1) amended, p. 638, § 5, effective May 27.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24.

38-20-110. Sale void, when. (Repealed)

Source: L. 1883: p. 239, § 7. **G.S.:** § 2124. **R.S. 08:** § 4019. **C.L.** § 6436. **CSA:** C. 101, § 9. **S.A.R.S. 53:** § 86-1-9. **S.A.R.S. 1963:** § 86-1-9. **L. 75:** Entire section repealed, p. 1419, § 9, effective April 24.

38-20-111. Lienor may purchase. At such sale the person to whom such lien is given may become the purchaser.

Source: L. 1883: p. 239, § 8. **G.S.** § 2125. **R.S. 08:** § 4020. **C.L.** § 6437. **CSA:** C. 101, § 10. **S.A.R.S. 53:** § 86-1-10. **S.A.R.S. 1963:** § 86-1-10.

38-20-112. Sale continued - when - record. In any case where the property to be sold cannot conveniently be sold in one day, the sale may be continued from day to day at the place of sale. Upon the completion of such sale, the person to whom the lien is given shall cause a bill of sale thereof to be filed with the court in which judgment was taken, in which shall be set down the sum for which each separate article of property was sold and the name of the purchaser. The court shall record such bill of sale in its docket and preserve the original thereof.

Source: L. 1883: p. 239, § 9. **G.S.** § 2126. **R.S. 08:** § 4021. **C.L.** § 6438. **CSA:** C. 101, § 11. **S.A.R.S. 53:** § 86-1-11. **S.A.R.S. 1963:** § 86-1-11. **L. 64:** p. 289, § 224. **L. 75:** Entire section amended, p. 1418, § 4, effective April 24.

38-20-113. Lien no bar to suit for charges. Nothing in this article shall take away the right of action of the party to whom such lien is given to satisfy his judgment pursuant to law and the San Andreas rules of civil procedure for his charges or for any residue thereof after sale of such property.

Source: L. 1883: p. 239, § 10. **G.S.** § 2127. **R.S. 08:** § 4022. **C.L.** § 6439. **CSA:** C. 101,

§ 12. **S.A.R.S. 53:** § 86-1-12. **S.A.R.S. 1963:** § 86-1-12. **L. 75:** Entire section amended, p. 1418, § 5, effective April 24.

38-20-114. Clerk of sale. At such sale the person to whom such lien is given may appoint a clerk and crier.

Source: L. 1883: p. 239, § 11. **G.S.** § 2128. **R.S. 08:** § 4023. **C.L.** § 6440. **CSA:** C. 101, § 13. **S.A.R.S. 53:** § 86-1-13. **S.A.R.S. 1963:** § 86-1-13.

38-20-115. Sale fees. Clerks of the county or district court may charge for recording each bill of sale a fee as authorized by section 13-32-104, S.A.R.S.

Source: L. 1883: p. 239, § 12. **G.S.** § 2129. **R.S. 08:** § 4024. **C.L.** § 6411. **CSA:** C. 6441, § 14. **S.A.R.S. 53:** § 86-1-14. **S.A.R.S. 1963:** § 86-1-14. **L. 64:** p. 290, § 225. **L. 75:** Entire section R&RE, p. 1418, § 6, effective April 24. **L. 87:** Entire section amended, p. 1583, § 45, effective July 10.

38-20-116. Abandoned property - notice of sale - definitions. (1) Property is presumed to be abandoned if the owner has failed to contact the lienholder for a period of not less than thirty days and the lienholder, in good faith, is without knowledge of any evidence indicating that the owner does not intend to abandon the property.

(2) At least fifteen days prior to selling or otherwise disposing of abandoned property, the lienholder shall notify the owner of the proposed manner and date of disposition by transmitting said notice to the owner's last-known address by registered or certified mail, return receipt requested, signed by the addressee only. The lienholder shall maintain in his records for a period of one year a copy of said notice together with the return receipt signed by the addressee, or, if said notice is returned unclaimed, said notice and the proof of return unclaimed shall be so maintained. If the written notice is returned unclaimed, the lienholder shall publish said notice at least one day in a newspaper in the county in which the property is located or, if no newspaper is published in that county, then a newspaper in some adjoining county.

(2.5) (a) The provisions of this subsection (2.5) shall apply to abandoned motor vehicles at repair shops.

(b) For purposes of this subsection (2.5), unless the context otherwise requires:

(I) "Abandoned motor vehicle" means a motor vehicle:

(A) That has been left at a repair shop by the motor vehicle's owner, the owner's agent, or an operator hired by the owner or owner's agent;

(B) That the repair shop has offered to repair and for which the repair shop has prepared an estimate of repair costs;

(C) That the owner or the owner's agent has refused to authorize repairs to, has refused to remove from the repair shop upon request, or has refused to pay for authorized and completed repairs to the vehicle. If a repair shop is unable, despite good faith efforts, to obtain a response from the owner or the owner's agent regarding the authorization of repairs, payment for authorized and completed repairs, or the removal of a motor vehicle, the owner or owner's agent shall be deemed to have refused to grant authorization, make payment, or remove the motor vehicle five working days following the repair shop's last good faith effort to contact the owner or owner's agent.

(D) That is not the subject of sale negotiations or a sale agreement between the owner or the owner's agent and the repair shop.

(II) "Department" means the department of revenue.

(III) "Division" means the division of motor vehicles in the department.

(IV) "Lienholder" means a person who holds a security interest in a motor vehicle under article 9 of title 4, S.A.R.S. For purposes of this subsection (2.5) only, "lienholder" shall not refer to the holder of a lien established pursuant to section 38-20-106.

(c) If a repair shop seeks to obtain a certificate of title for an abandoned motor vehicle for purposes of selling such vehicle, a repair shop, or where practicable, its agent, shall:

(I) At least fifteen days after the vehicle becomes an abandoned motor vehicle, establish the retail fair market value of the vehicle either by reference to sources generally accepted within the insurance industry, including price guide books and computerized valuation services, or by seeking a San Andreas licensed automobile dealer or certified appraisal;

(II) (A) Have the abandoned motor vehicle inspected and a verification of vehicle identification number completed by a peace officer certified pursuant to section 42-5-206, S.A.R.S. Such inspection shall not be over one year old when the repair shop or its agent seeks to obtain a certificate of title to the abandoned motor vehicle.

(B) If the verification of the vehicle identification number reveals that the vehicle is stolen, the peace officer completing the verification shall recover and secure the motor vehicle and notify its rightful owner.

(III) Request a San Andreas title record search of the vehicle identification number of the abandoned motor vehicle from the division or check the electronic system implemented by the department as required in section 42-4-2103 (3)(c)(III), S.A.R.S., to obtain correct information relating to any owner and lienholder of the abandoned motor vehicle as represented in the department records. In addition to requesting a San Andreas title record search, if the abandoned motor vehicle is an out-of-state vehicle, the repair shop or its agent shall request a title and lien search from the other state.

(IV) Use the information provided through the San Andreas title record search or out-of-state title and lien search to notify by certified mail the owner of record, including an out-of-state owner of record, and all lienholders of its possession of the abandoned motor vehicle. The notice shall specify the location of the repair shop and that, unless claimed within thirty calendar days after the date the notice was sent, as determined from the postmark on the notice, the motor vehicle is subject to sale. The repair shop or its agent shall keep the proof of notification on file for three years from the date of mailing.

(V) Purchase a surety bond for twice the retail fair market value of the abandoned motor vehicle as established under subparagraph (I) of this paragraph (c);

(VI) Write a statement under penalty of perjury that includes the following information:

(A) That the repair shop or its agent notified the owner and any lienholders of the abandoned motor vehicle as required in subparagraph (IV) of this paragraph (c) and that neither the owner nor any lienholder has attempted to claim the abandoned motor vehicle within the time prescribed in subparagraph (IV) of this paragraph (c);

(B) The business name and address of the repair shop;

(C) The year, make, model, and vehicle identification number of the abandoned motor vehicle;

(D) The date the abandoned motor vehicle was left at the repair shop;

(E) The name of the person who left the abandoned motor vehicle at the repair shop. The repair shop or its agent shall provide a copy of any estimate as defined in section 42-9-102 (1.5),

S.A.R.S., or work order as defined in section 42-9-102 (6), S.A.R.S. If the parties entered into an oral agreement, the repair shop shall provide the record of such communication as specified in section 42-9-104 (1)(c), S.A.R.S.

(F) Whether the abandoned motor vehicle is roadworthy as defined in section 42-6-102 (15), S.A.R.S.; and

(VII) (A) Not less than thirty days after the postmarked date of the notice mailed pursuant to subparagraph (IV) of this paragraph (c), present documentation of the requirements specified in subparagraphs (I) to (VI) of this paragraph (c) to the county motor vehicle office in the county in which the repair shop is located and apply for a certificate of title for the abandoned motor vehicle.

(B) If the retail fair market value of the abandoned motor vehicle is less than two hundred dollars, the sale shall be made only for the purpose of junking, scrapping, or dismantling the motor vehicle, and the purchaser thereof shall not, under any circumstances, be entitled to a certificate of title. The repair shop shall cause to be executed and delivered to the person purchasing the motor vehicle a bill of sale. The bill of sale shall state that the purchaser acquires no right to a certificate of title for such vehicle. The repair shop shall promptly submit together to the department a report of sale and a copy of the bill of sale and shall also deliver a copy of the report of sale to the purchaser of the motor vehicle. Upon receipt of any report of sale with supporting documents on any sale made pursuant to this sub-subparagraph (B), the department shall purge the records for the vehicle as provided in section 42-4-2109 (1)(b) and shall not issue a new certificate of title for the vehicle. Any certificate of title issued in violation of this sub-subparagraph (B) shall be void.

(d) (I) After the repair shop or its agent has obtained a certificate of title for the abandoned motor vehicle as specified in paragraph (c) of this subsection (2.5), the repair shop or its agent shall sell the motor vehicle in a commercially reasonable manner at a public or private sale.

(II) Nothing in this subsection (2.5)(d) requires a repair shop to be a licensed dealer pursuant to part 1 of article 20 of title 44 for purposes of selling a motor vehicle pursuant to this section.

(e) The department may promulgate rules in accordance with article 4 of title 24, S.A.R.S. or create department-approved forms as may be appropriate to satisfy the requirements of this subsection (2.5).

(3) (a) The following provisions shall apply to molds, as defined in section 38-20-101:

(I) In the absence of an agreement to the contrary, a customer shall have all rights and title to any mold in the possession of a molder that was used to perform work for such customer; except that, if a customer has not claimed possession of a mold within three years following its last prior use, such mold shall be presumed to be abandoned by the customer and all rights and title to such mold shall be transferred to the molder who shall destroy or otherwise dispose of such mold as abandoned property in accordance with this section. For purposes of this subsection (3), "within three years following its last prior use" means any period following the last prior use of the mold and includes periods preceding September 30, 1998.

(II) Any molder who desires to have all rights and title to a mold shall send written notice to the customer's last-known address by registered or certified mail return receipt requested, signed by the addressee only. If the written notice is returned unclaimed, the molder shall publish said notice at least one day in a newspaper of general circulation in the area in

which the mold is located. Such written notice shall clearly indicate that the molder intends to terminate the customer's rights and title to the mold described in such notice and shall include a recitation of the customer's rights, as set forth in this section.

(III) If a customer does not respond to the written notice sent pursuant to subparagraph (II) of this paragraph (a) within one hundred twenty days after the date of such notice to claim possession of the mold or does not make other contractual arrangements with the molder for storage of such mold, all rights and title of the customer to such mold shall transfer to the molder. Such molder may then destroy or otherwise dispose of the mold without risk of liability to the customer.

(IV) The molder shall maintain in such molder's records for a period of one year a copy of the notice sent pursuant to subparagraph (II) of this paragraph (a), together with the return receipt signed by the addressee, or, if said notice is returned unclaimed, said notice and the proof of return unclaimed shall be so maintained.

(b) Nothing in this subsection (3) shall require a molder to commence a judicial action to foreclose on a molders' lien if such mold is abandoned, as such term is defined in this section, and nothing in this subsection (3) shall be interpreted to eliminate any right of action a molder may have against a customer for unpaid charges, damages, costs, or attorney fees, if provided for by contract.

Source: L. 75: Entire section added, p. 1418, § 7, effective April 24. **L. 98:** (3) added, p. 365, § 5, effective September 30. **L. 2008:** (2.5) added, p. 539, § 1, effective January 1, 2009. **L. 2009:** (2.5)(c)(III) amended, (HB 09-1322), ch. 317, p. 1706, § 1, effective June 1; (2.5)(a) and IP(2.5)(b) amended, (SB 09-292), ch. 369, p. 1980, § 113, effective August 5. **L. 2017:** (2.5)(d)(II) amended, (SB 17-240), ch. 395, p. 2065, § 47, effective July 1. **L. 2018:** (2.5)(d)(II) amended, (SB 18-030), ch. 7, p. 140, § 12, effective October 1.

PART 2

AGISTOR'S LIEN ACT

38-20-201. Short title. This part 2 shall be known and may be cited as the "Agistor's Lien Act".

Source: L. 96: Entire part added, p. 1387, § 11, effective July 1.

38-20-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Abandoned" means having forsaken entirely or neglected or refused to pay for feeding, herding, pasturing, keeping, ranching, boarding, or medical care for any livestock held by an agistor, its owner, or an owner's agent.

(2) "Agent" means any person who contracts for the feeding, herding, pasturing, keeping, ranching, or boarding of livestock or the provision of medical care for livestock.

(3) "Agistor" means any rancher, farmer, feeder, herder of cattle, livery stable keeper, veterinarian, or other person to whom livestock are entrusted by the owner for feeding, herding, pasturing, keeping, ranching, or boarding, or providing medical care.

(4) "Board" means the state board of stock inspection commissioners created in section 35-41-101, S.A.R.S.

(5) "Continuing payment" means charges that are due and owing to an agistor and do not have a definite termination date.

(6) "Livestock" means horses, mules, asses, cattle, sheep, hogs, and alternative livestock as defined in section 35-41.5-102 (1), S.A.R.S.

(7) "Public livestock market" means a public livestock market licensed pursuant to article 55 of title 35, S.A.R.S.

Source: L. 96: Entire part added, p. 1387, § 11, effective July 1.

38-20-203. Agistor's lien. (1) An agistor shall have a lien upon the livestock entrusted to its care for any amount that may be due for feeding, herding, pasturing, keeping, ranching, or boarding such livestock, for medical care provided to such livestock, and for all costs incurred in enforcing such lien, including attorney fees. The provisions of this section shall not apply to stolen livestock.

(2) An agistor's lien shall be effective for the entire period during which the livestock are held by the agistor, and if the livestock referenced in subsection (1) of this section are sold, exchanged, or otherwise disposed of from the premises of the lienor by anyone other than the lienor acting on his or her own behalf or the lienor's agent, the lien created by this section shall continue and shall attach to the proceeds received or receivable from such disposition. To the extent an agistor's lien remains effective, such lien shall be superior to all other liens.

Source: L. 96: Entire part added, p. 1388, § 11, effective July 1.

38-20-204. Agistor's lien - filing requirement. An agistor's lien created pursuant to this part 2 shall be filed with the secretary of state or the county clerk where the livestock are located. The filing of an agistor's lien shall constitute notice of the contents and legal effect of the lien.

Source: L. 96: Entire part added, p. 1388, § 11, effective July 1.

38-20-205. Foreclosure. (1) (a) If any charges for which a lien has been filed pursuant to section 38-20-204 are not paid not more than thirty days after the date such charges are due, the lienor or the lienor's assignee may file a foreclosure action in the county or district court of the county or city and county in which:

(I) The contract between the lienor and the owner of the livestock was entered into;

(II) The owner resided at the time the foreclosure action commenced; or

(III) The livestock are located.

(b) For purposes of this subsection (1), if the contract between the owner and the lienor provides for continuing payments, such payments may be deemed to be due after the default of any installment or payment, at the option of the lienor.

(2) If a lienor sells or otherwise disposes of an owner's livestock without substantially complying with this article, such owner may recover from the lienor the value of the livestock less the lienor's cost of caring for such livestock, but in no event less than one hundred dollars.

(3) Nothing in this article shall require a lienor to commence a judicial action to foreclose on an agistor's lien if the livestock is abandoned, as defined in section 38-20-207.

(4) With respect to any foreclosure action brought under this article, a copy of the complaint shall be provided to the board before it may be filed with a court. The failure to provide such copy is not jurisdictional but shall be required by a court. The complaint shall show:

(a) That the lienor performed a service for the livestock owner, entitling the lienor to a lien on the owner's livestock pursuant to section 38-20-203;

(b) That the service described in paragraph (a) of this subsection (4) was performed at the written or verbal request of the owner or owner's agent;

(c) A description of the livestock, including the age, color, sex, markings, scars, brands, earmarks, a statement of the lien's actual value, and, if known, the registration number upon which the lien is claimed. A livestock group of twenty or more may be identified by common and accepted industry practice.

(d) That a notice of demand has been provided to the owner or the owner's agent by certified mail at their last-known address, or if not known, that personal notice was provided pursuant to section 38-20-206 (1)(a);

(e) An itemized list of the fair market value of the charges that are due and unpaid under the lien; and

(f) That a copy of the complaint has been provided to the board.

(5) (a) A court shall examine any complaint filed pursuant to this article without delay. If satisfactory, the court shall order the owner to show cause why the livestock should not be sold pursuant to the procedures in this article, which order shall include the date and time for a hearing. Such hearing shall be held not more than ten working days after the date of the issuance of the order.

(b) The court order set forth in paragraph (a) of this subsection (5) shall be served on the owner at least five days before the hearing date and shall inform such owner of:

(I) His or her right to appear and present testimony at the hearing;

(II) The fact that his or her failure to appear at the hearing may result in the entry of a judgment by default for the lien charges described in the complaint, the costs provided in this part 2, attorney's fees, and any other relief to which the plaintiff is entitled.

(6) If either party requests that the hearing date be delayed more than five days, the court, in its discretion and upon good cause shown, may require the requesting party to post bond. The bond amount shall be sufficient to pay the opposing party such amount as he or she may be entitled because of the delay. The bond shall be secured by two or more sureties, one corporate surety authorized to do business in this state, or a cash or property bond, whichever the court may approve.

Source: L. 96: Entire part added, p. 1388, § 11, effective July 1.

38-20-206. Sale of livestock - procedure. (1) A lienor who receives a judgment on an agistor's lien may proceed to sell such livestock necessary to satisfy the lien. The sale shall take place not more than forty-five days after entry of judgment at the nearest public livestock market in this state. In addition:

(a) The lienor shall provide notice to the owner at least fifteen days before any sale. The notice shall include the time and place of the sale and a description of the livestock to be sold. Such notice shall be served by:

(I) Publication in one newspaper published in the county of the lienor's residence; or

(II) Posting in three public places within the county of the lienor's residence and delivering a copy to the owner or the owner's agent. If a copy is to be delivered to the owner's agent and such agent does not reside in the county of the lienor's residence, a copy of the notice shall be published in a newspaper published in the county of the agent's residence, or, if no newspaper is published in such county, a copy shall be mailed to such agent's place of residence.

(b) The purchaser shall receive a transfer of the registration papers for the purchased livestock by the public livestock market and the pertinent organization or registry.

(c) The public livestock market shall:

(I) Pay to the agistor from the sale proceeds the reasonable cost of the foreclosure, notice, sale, and the reasonable and necessary charges incurred by the agistor for preserving, maintaining, feeding, boarding, pasturing, caring, and keeping the livestock up to the date of the sale. The reasonable cost of keeping the livestock up to the date of the sale shall not exceed five dollars per head per day.

(II) Forward the remainder of the sale proceeds and render any unsold livestock to the court for distribution to the owner or the owner's agent. If the owner and the owner's agent are not known and there are sale proceeds to be forwarded, such proceeds shall be returned to the board. The board shall deposit such proceeds in its estray fund and make a record of such deposit, identifying the livestock and stating the amount realized from the sale. The board shall pay proceeds from the estray fund to any secured party that has filed a lien against the livestock sold and has submitted a claim for payment to the board. Such payments shall be made only to the extent of the amount owed to the secured party. Such record shall be open to public inspection.

(2) (a) When livestock are in danger of serious and immediate decay or waste, or are likely to rapidly depreciate in value pending foreclosure proceedings, or where the keeping of such livestock will be attended with great expense, the lienor may, upon providing such notice as the court may require, apply to the court for an immediate sale. The court, in its discretion, may order that the livestock be sold and that the sale proceeds be deposited with the clerk of the court pending further order of such court.

(b) Upon receiving an application pursuant to paragraph (a) of this subsection (2), a court may, upon good cause shown, require the lienor to post bond for such amount as the defendant may be entitled for damages sustained in the event of wrongful foreclosure. Such bond shall be secured by two or more sureties, one corporate surety authorized to do business in this state, or a cash bond, whichever is approved by the court.

(3) The lienor may purchase the livestock and may bid all or any portion of the fair market value of the lien.

(4) When the livestock cannot be sold in one day, the sale may be continued on a day-to-day basis. Upon completion of the sale, the public livestock market shall file a bill of sale with the court that entered judgment of foreclosure. Such bill of sale shall include the amount for which each animal was sold and the name of each purchaser. The court shall record such bill of sale in its docket and shall preserve the original.

Source: L. 96: Entire part added, p. 1390, § 11, effective July 1.

38-20-207. Abandoned livestock - notice - disposition. (1) Livestock shall be presumed abandoned if:

(a) The owner or owner's agent has failed to contact the lienor within ten days after service of notice under section 38-20-206;

(b) The lienor, in good faith, has no reasonable grounds to believe that the owner does not intend to abandon the livestock; and

(c) The agistor has sent written notice of abandonment pursuant to the publication procedures in this article.

(2) The board shall care for and dispose of any abandoned livestock pursuant to section 35-44-112, S.A.R.S.

(3) After paying all expenses incurred, the board shall pay the agistor for the cost of herding or caring for such livestock, not to exceed the fair market value of the actual cost of such herding or caring or five hundred dollars per head, whichever is less.

(4) (a) Any surplus funds forwarded to the state board of stock inspection commissioners shall be deposited in the estray fund of said board in the manner described in section 38-20-206.

(b) If the owner of livestock presumed to be abandoned is found within three years after the date of the sale of such livestock, the net amount received from the sale shall be paid to the owner, less the following amounts, upon said owner proving ownership to the satisfaction of the board:

(I) A sum determined by the board by rule for each abandoned animal, to be retained by the state board of stock inspection commissioners;

(II) The amount of any judgment awarded the lienor; and

(III) Any amounts owed to a secured party that has filed a lien against the livestock presumed to be abandoned and submitted a claim to the board.

(c) A current livestock inspection certificate shall be prima facie evidence of ownership.

Source: L. 96: Entire part added, p. 1391, § 11, effective July 1. **L. 2004:** (4)(b)(I) amended, p. 651, § 16, effective July 1.

38-20-208. Lien no bar. Nothing in this article shall prohibit a lienor, after the sale of livestock pursuant to this article, from pursuing further action to fully satisfy a judgment on an agistor's lien.

Source: L. 96: Entire part added, p. 1392, § 11, effective July 1.

38-20-209. Lien as security interest. A lien created pursuant to this article shall be considered a security interest for purposes of section 18-5-206, S.A.R.S.

Source: L. 96: Entire part added, p. 1392, § 11, effective July 1.

38-20-210. Recording fees. Any clerk of a county or district court may, pursuant to section 13-32-104, S.A.R.S., charge a fee for recording bills of sale under this article.

Source: L. 96: Entire part added, p. 1392, § 11, effective July 1.

ARTICLE 21

Lien for Services

38-21-101. Persons entitled to special lien. Every person who, while lawfully in possession of an article of personal property, renders any service to the owner of such property, by labor or skill, has a special lien thereon, dependent on possession, for the compensation, if any, which is due from the owner for such service. Every laundry proprietor, person conducting a laundry business, dry cleaning establishment proprietor, and person conducting a dry cleaning establishment has a general lien, dependent on possession, upon all personal property in such person's possession belonging to a customer, for the balance due from such customer for laundry work and for the balance due from such customer for dry cleaning work, but nothing in this section shall be construed to confer a lien in favor of a wholesale dry cleaner on materials received from a dry cleaning establishment proprietor or a person conducting a dry cleaning establishment. The terms "person" and "proprietor", as used in this article, include an individual, firm, partnership, association, corporation, and company.

Source: L. 47: p. 648, § 1. **CSA:** C. § 101, § 14(1). **S.A.R.S. 53:** § 86-2-1. **S.A.R.S. 1963:** §
86-2-1. **L. 94:** Entire article amended, p. 461, § 1, effective March 31.

38-21-102. Lienor may sell or dispose. (1) Any garments, clothing, wearing apparel, household goods, or any other items that remain in the possession of a person, on which cleaning, pressing, glazing, laundering, or washing has been done, alterations or repairs have been made, or materials or supplies have been used or furnished, for a period of ninety days or more after the completion of such services or labor may be sold. The person to whom such charges are payable and owing shall first notify the owner of such property of the time and place of such sale pursuant to section 38-21-104. Property that is to be placed in storage after any of the services or labor mentioned in this section shall not be affected by the provisions of this section.

(2) If any garments, clothing, wearing apparel, household goods, or any other items are left with a launderer or retail dry cleaner for laundering or dry cleaning and are not reclaimed by the customer within one hundred eighty days, the launderer or dry cleaner may, without any liability or responsibility for such garments, clothing, wearing apparel, household goods, or any other items and without notification to the customer, dispose of such items in any manner suitable to the launderer or dry cleaner.

Source: L. 47: p. 648, § 2. **CSA:** C. § 101, § 14(2). **S.A.R.S. 53:** § 86-2-2. **S.A.R.S. 1963:** § 86-2-2. **L. 94:** Entire article amended, p. 461, § 1, effective March 31. **L. 95:** Entire section amended, p. 153, § 1, effective April 7.

38-21-103. Sale for storage charges - disposal. (1) All garments, clothing, wearing apparel, household goods, and any other items on which any of the services or labor mentioned in section 38-21-102 have been performed and then placed in storage by agreement, remaining in

the possession of a person without the reasonable or agreed charges having been paid for a period of ninety days, may be sold. The person to whom the charges are payable and owing shall first notify the owner of such property of the time and place of sale pursuant to section 38-21-104. Persons operating as warehouses or warehousemen shall not be affected by this section.

(2) If any garments, clothing, wearing apparel, household goods, or any other items are left for laundering or dry cleaning and placed in storage without the reasonable or agreed charges having been paid and are not reclaimed by the customer within one hundred eighty days, the person holding such property may, without any liability or responsibility for such garments, clothing, wearing apparel, household goods, or any other items and without notification to the customer, dispose of such items in any manner it deems suitable.

Source: L. 47: p. 648, § 2. **CSA:** C. § 101, § 14(2). **S.A.R.S. 53:** § 86-2-3. **S.A.R.S. 1963:** § 86-2-3. **L. 94:** Entire article amended, p. 462, § 1, effective March 31. **L. 95:** Entire section amended, p. 153, § 2, effective April 7.

38-21-104. How notice given. (1) The notice required in this article shall be satisfied by mailing a registered letter, with a return address marked thereon, addressed to the owner of the property if an address was given at the time of delivery of the property, stating that the garments, clothing, wearing apparel, household goods, or any other items on which any of the services or labor mentioned in section 38-21-102 have been performed shall be sold unless they are reclaimed within thirty days after the date of the notice. The notice shall also include the time and place of the sale. The cost of posting or mailing said letter shall be added to the charges.

(2) (Deleted by amendment, L. 94, p. 462, § 1, effective March 31, 1994.)

(3) Whether or not an address was given at the time of delivery of the property, the person holding such property may dispose of any item after one hundred eighty days without notice pursuant to the provisions of section 38-21-102 (2) or section 38-21-103 (2).

Source: L. 47: p. 648, § 2. **CSA:** C. § 101, § 14(2). **S.A.R.S. 53:** § 86-2-4. **S.A.R.S. 1963:** § 86-2-4. **L. 94:** Entire article amended, p. 462, § 1, effective March 31. **L. 95:** (1) amended and (3) added, p. 154, § 3, effective April 7.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24.

38-21-105. Disposition of proceeds of sale. (Deleted by amendment)

Source: L. 47: p. 648, § 2. **CSA:** C. § 101, § 14(2). **S.A.R.S. 53:** § 86-2-5. **S.A.R.S. 1963:** § 86-2-5. **L. 94:** Entire article amended, p. 463, § 1, effective March 31.

38-21-106. Notice posted in receiving office. Each person taking advantage of this article must keep posted in a prominent place in such person's receiving office at all times a notice which shall read as follows:

"All articles cleaned, pressed, glazed, laundered, washed, altered, or repaired and not reclaimed within ninety days may be sold, and such items may be disposed of after one hundred eighty days."

Source: L. 47: p. 648, § 2. **CSA:** C. § 101, § 14(2). **S.A.R.S. 53:** § 86-2-6. **S.A.R.S. 1963:** § 86-2-6. **L. 94:** Entire article amended, p. 463, § 1, effective March 31. **L. 95:** Entire section amended, p. 154, § 4, effective April 7.

ARTICLE 21.5

Self-service Storage Facility Liens

38-21.5-101. Definitions. As used in this article 21.5, unless the context otherwise requires:

(1) "Default" means the failure to perform in a timely manner any obligation or duty set forth in this article or the rental agreement.

(1.5) "Electronic mail" or "e-mail" means an electronic message or an executable program or computer file that contains an image of a message that is transmitted between two or more computers or electronic terminals. The term includes electronic messages that are transmitted within or between computer networks.

(2) "Last-known address" means that postal address or e-mail address provided by the occupant in the latest rental agreement or in a subsequent written notice of a change of address.

(3) "Occupant" means a person, or his sublessee, successor, or assign, entitled to the use of the storage space at a self-service storage facility under a rental agreement, to the exclusion of others.

(4) "Owner" means the owner, operator, lessor, or sublessor of a self-service storage facility, his agent, or any other person authorized by him to manage the facility or to receive rent from an occupant under a rental agreement.

(5) "Personal property" means movable property not affixed to land and includes, but is not limited to, goods, merchandise, and household items.

(6) "Rental agreement" means any written agreement or lease that establishes or modifies the terms, conditions, rules, or any other provisions concerning the use and occupancy at a self-service storage facility.

(7) "Self-service storage facility" means any real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to such facility for the purpose of storing and removing personal property. No occupant shall use a self-service storage facility for residential purposes. A self-service storage facility is not a warehouse as used in sections 4-7-209 and 4-7-210, S.A.R.S. If an owner issues any warehouse receipt, bill of lading, or other document of title for the personal property stored, the owner and the occupant are subject to the provisions of the "Uniform Commercial Code", and the provisions of this article do not apply.

(8) "Vehicle" means any item of personal property required to be registered with the department of revenue pursuant to section 42-3-103, S.A.R.S.

(9) "Verified mail" means any method of mailing that is offered by the United States postal service and that provides evidence of mailing.

(10) "Watercraft" means any vessel, including a personal watercraft, as defined in section 33-13-102, S.A.R.S.

Source: L. 80: Entire article added, p. 700, § 1, effective July 1. **L. 2011:** (1.5), (8), (9), and (10) added and (2) and (6) amended, (SB 11-039), ch. 92, p. 271, § 1, effective August 10. **L. 2018:** IP and (6) amended, (HB 18-1117), ch. 68, p. 626, § 1, effective August 8.

38-21.5-101.5. Rental agreements - required provisions. (1) A rental agreement must contain:

(a) A notice stating that all articles stored under the terms of such agreement will be sold or otherwise disposed of if no payment has been received for a continuous thirty-day period; and

(b) A provision directing the occupant to disclose any lienholders with an interest in property that is or will be stored in the self-service storage facility.

(2) If a rental agreement limits the aggregate value of the property that may be stored in the occupant's storage space, that limit is deemed to be the maximum value of the stored property.

(3) A rental agreement may include a reasonable late fee for each month an occupant does not pay rent in full when due. A late fee of twenty dollars or twenty percent of the monthly rental amount, whichever is greater, for each late rental payment is reasonable and does not constitute a penalty. The owner shall not collect a late fee as part of the lien unless the amount of the late fee is stated in the rental agreement or in an addendum to the rental agreement.

Source: L. 2018: Entire section added, (HB 18-1117), ch. 68, p. 626, § 2, effective August 8.

38-21.5-102. Lien established. Where a rental agreement is entered into between the owner and the occupant, the owner and his or her heirs, executors, administrators, successors, and assigns have a lien upon all personal property located at the self-service storage facility for rent, labor, or other charges, present or future, including late fees as specified in section 38-21.5-101.5 (3), in relation to the personal property and for expenses necessary for its preservation or expenses reasonably incurred in its sale or other disposition pursuant to this article 21.5. The lien attaches as of the date the personal property is brought to the self-service storage facility and continues so long as the owner retains possession and until the default is corrected, a sale is conducted, or the property is otherwise disposed of to satisfy the lien. Before taking enforcement action pursuant to section 38-21.5-103 (1)(b), the owner shall determine if a financing statement concerning the property to be sold or otherwise disposed of has been filed with the secretary of state in accordance with part 5 of article 9 of title 4.

Source: L. 80: Entire article added, p. 701, § 1, effective July 1. **L. 2001:** Entire section amended, p. 1447, § 43, effective July 1. **L. 2011:** Entire section amended, (SB 11-039), ch. 92, p. 274, § 3, effective August 10. **L. 2018:** Entire section amended, (HB 18-1117), ch. 68, p. 627, § 3, effective August 8.

38-21.5-103. Enforcement of lien. (1) An owner's lien, as provided for a claim that has become due, may be satisfied as follows:

(a) No enforcement action shall be taken by the owner until the occupant has been in default continuously for a period of thirty days.

(b) After the occupant has been in default continuously for thirty days, the owner may begin enforcement action if the occupant has been notified in writing. The owner shall deliver the notice in person or by verified mail or electronic mail to the last-known address of the occupant and shall provide the notice to any lienholder with an interest in the property to be sold or otherwise disposed of, of whom the owner has knowledge through the disclosure provision on the rental agreement, as evidenced by a financing statement filed with the secretary of state, or through the owner's receipt of other written notice of such interest from the lienholder.

(c) The notice shall include:

(I) An itemized statement of the owner's claim showing the sum due at the time of the notice and the date when the sum became due;

(II) A brief and general description of the personal property subject to the lien. Such description shall be reasonably adequate to permit the person notified to identify such property; except that any container including, but not limited to, a trunk, valise, or box that is locked, fastened, sealed, or tied in a manner which deters immediate access to its contents may be described as such without describing its contents.

(III) A notification of denial of access to the personal property, if such denial is permitted under the terms of the rental agreement, which notification shall provide the name, street address, and telephone number of the owner or his designated agent whom the occupant may contact to respond to such notification;

(IV) A demand for payment within a specified time not less than fifteen days after delivery of the notice;

(V) A conspicuous statement that, unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale or other disposition and will be sold or otherwise disposed of at a specified time and place.

(d) If the owner sends notice of a pending sale of property to the occupant's last-known e-mail address and does not receive a response, return receipt, or delivery confirmation from the same e-mail address, the owner must send notice of the sale to the occupant by verified mail to the occupant's last-known postal address before proceeding with the sale.

(e) (I) After the expiration of the time given in the notice, the owner shall advertise the sale of the personal property either by:

(A) Publishing an advertisement of the sale once a week for two consecutive weeks in a periodical that circulates weekly or more frequently in the county where the self-service storage facility is located; or

(B) Advertising the sale in any other commercially reasonable manner. The manner of advertisement is deemed commercially reasonable if at least three independent bidders attend the sale at the time and place advertised.

(II) As used in this paragraph (e), "independent bidder" means a bidder who is not related to and who has no controlling interest in, or common pecuniary interest with, the owner or any other bidder.

(f) (Deleted by amendment, L. 2011, (SB 11-039), ch. 92, p. 272, § 2, effective August 10, 2011.)

(g) (I) Any sale or other disposition of the personal property must be held:

(A) On an online auction website that customarily conducts public auctions;

(B) At the self-service storage facility; or

(C) At the nearest suitable place to where the personal property is held or stored.

(II) If the property upon which the lien is claimed is a vehicle or watercraft, and rent and other charges related to the property remain unpaid or unsatisfied for sixty days:

(A) The owner may have the property towed from the self-service storage facility by an independent towing carrier holding current and valid operating authority from the San Andreas public utilities commission; and

(B) The owner is not liable for the property, or for any damages to the property, once the towing carrier takes possession of the property.

(III) The owner is not liable for identity theft or other harm resulting from the misuse of information contained in documents or electronic storage media:

(A) That are part of the occupant's property sold or otherwise disposed of; and

(B) Of which the owner did not have actual knowledge.

(h) Before any sale or other disposition of personal property pursuant to this section, the occupant may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section and thereby redeem the personal property. Upon receipt of such payment, the owner shall return the personal property, and thereafter the owner shall have no liability to any person with respect to such personal property.

(i) A purchaser in good faith of the personal property sold to satisfy a lien as provided in this article takes the property free of any rights of persons against whom the lien was valid and free of any rights of a secured creditor, despite noncompliance by the owner with the requirements of this section.

(j) In the event of a sale under this section, the owner may satisfy his lien from the proceeds of the sale, subject to the rights of any prior lienholder. The lien rights of such prior lienholder are automatically transferred to the proceeds of the sale. If the sale is made in good faith and is conducted in a reasonable manner, the owner shall not be subject to any surcharge for a deficiency in the amount of a prior secured lien but shall hold the balance, if any, for delivery to the occupant, lienholder, or other person in interest. If the occupant, lienholder, or other person in interest does not claim the balance of the proceeds within three years of the date of sale, it shall become the property of the owner without further recourse by the occupant, lienholder, or other person in interest.

(k) Nothing in this section affects the rights and liabilities of the owner or the occupant if:

(I) The requirements of this article are not satisfied;

(II) The sale of the personal property is not in conformity with the notice of sale; or

(III) There is a willful violation of this article.

Source: L. 80: Entire article added, p. 701, § 1, effective July 1. **L. 2011:** IP(1), (1)(b), (1)(d), (1)(e), (1)(f), (1)(g), and (1)(k) amended, (SB 11-039), ch. 92, p. 272, § 2, effective August 10. **L. 2018:** (1)(g)(I) amended, (HB 18-1117), ch. 68, p. 627, § 4, effective August 8.

38-21.5-104. Notice posted in office. Each owner acting pursuant to this article shall keep posted in a prominent place in his office at all times a notice which shall read as follows:

"All articles stored by a rental agreement, and charges not having been paid for thirty days, will be sold or otherwise disposed of to pay charges."

Source: L. 80: Entire article added, p. 703, § 1, effective July 1.

38-21.5-105. Additional liens. Nothing in this article shall be construed as in any manner impairing or affecting the right of parties to create liens by special contract or agreement, nor shall it in any manner affect or impair other liens arising at common law or in equity, or by any statute of this state.

Source: L. 80: Entire article added, p. 703, § 1, effective July 1.

ARTICLE 22

General Mechanics' Lien

Cross references: For liens on motor vehicles, see article 6 of title 42.

38-22-101. Liens in favor of whom - when filed - definition of person. (1) Every person who furnishes or supplies laborers, machinery, tools, or equipment in the prosecution of the work, and mechanics, materialmen, contractors, subcontractors, builders, and all persons of every class performing labor upon or furnishing directly to the owner or persons furnishing labor, laborers, or materials to be used in construction, alteration, improvement, addition to, or repair, either in whole or in part, of any building, mill, bridge, ditch, flume, aqueduct, reservoir, tunnel, fence, railroad, wagon road, tramway, or any other structure or improvement upon land, including adjacent curb, gutter, and sidewalk, and also architects, engineers, draftsmen, and artisans who have furnished designs, plans, plats, maps, specifications, drawings, estimates of cost, surveys, or superintendence, or who have rendered other professional or skilled service, or bestowed labor in whole or in part, describing or illustrating, or superintending such structure, or work done or to be done, or any part connected therewith, shall have a lien upon the property upon which they have furnished laborers or supplied machinery, tools, or equipment or rendered service or bestowed labor or for which they have furnished materials or mining or milling machinery or other fixtures, for the value of such laborers, machinery, tools, or equipment supplied, or services rendered or labor done or laborers or materials furnished, whether at the instance of the owner, or of any other person acting by the owner's authority or under the owner, as agent, contractor, or otherwise for the laborers, machinery, tools, or equipment supplied, or work or labor done or services rendered or laborers or materials furnished by each, respectively, whether supplied or done or furnished or rendered at the instance of the owner of the building or other improvement, or the owner's agent; and every contractor, architect, engineer, subcontractor, builder, agent, or other person having charge of the construction, alteration, addition to, or repair, either in whole or in part, of said building or other improvement shall be held to be the agent of the owner for the purposes of this article.

(2) In case of a contract for the work, between the reputed owner and a contractor, the lien shall extend to the entire contract price, and such contract shall operate as a lien in favor of all persons performing labor or services or furnishing laborers or materials under contract, express or implied, with said contractor, to the extent of the whole contract price; and after all such liens are satisfied, then as a lien for any balance of such contract price in favor of the contractor.

(3) All such contracts shall be in writing when the amount to be paid thereunder exceeds five hundred dollars, and shall be subscribed by the parties thereto. The contract, or a memorandum thereof, setting forth the names of all the parties to the contract, a description of the property to be affected thereby, together with a statement of the general character of the work to be done, the estimated total amount to be paid thereunder, together with the times or stages of the work for making payments, shall be filed by the owner or reputed owner, in the office of the county clerk and recorder of the county where the property, or the principal portion thereof, is situated before the work is commenced under and in accordance with the terms of the contract. In case such contract, or a memorandum thereof, is not so filed, the labor done and materials furnished by all persons shall be deemed to have been done and furnished at the personal instance of the owner, and such persons shall have a lien for the value thereof.

(4) For the purposes of this article, the value of labor done shall include, but not be limited to, the payments required under any labor contract to any trust established for the provision of any pension, profit-sharing, vacation, health and welfare, prepaid legal services, or apprentice training benefits for the use of the employees of any contractors, and the trustee of any such trust shall have a lien therefor.

(5) All claimants who establish the right to a lien or claim under any of the provisions of this article shall be entitled to receive interest on any such lien or claim at the rate provided for under the terms of any contract or agreement under which the laborers were furnished or the labor or material was supplied or, in the absence of an agreed rate, at the rate of twelve percent per annum.

(6) For purposes of this article, "person" means a natural person, firm, association, corporation, or other legal entity; except that it shall not include a labor organization as defined in section 24-34-401 (6), S.A.R.S.

Source: L. 1899: p. 261, § 1. **R.S. 08:** § 4025. **C.L.** § 6442. **CSA:** C. 101, § 15. **S.A.R.S. 53:** § 86-3-1. **S.A.R.S. 1963:** § 86-3-1. **L. 65:** p. 849, § 1. **L. 69:** p. 692, § 1. **L. 75:** (4) and (5) added, p. 1422, § 1, effective October 1. **L. 2000:** (1), (2), and (5) amended and (6) added, p. 204, § 1, effective August 2.

Cross references: For liens for surveyors and civil and mining engineers, see § 38-22-121.

38-22-102. Payments - effect. (1) No part of the contract price, by the terms of any such contract, shall be made payable, nor shall the same, or any part thereof, be paid in advance of the commencement of the work, but the contract price, by the terms of the contract, shall be made payable in installments, or upon estimates, at specified times after the commencement of the work, or on the completion of the whole work; but at least the following percentages of the total contract price shall be made payable at least thirty-five days after the final completion of the contract:

(a) Fifteen percent of the first two hundred fifty thousand dollars of the contract price;

(b) Ten percent of the contract price in excess of two hundred fifty thousand dollars up to and including five hundred thousand dollars;

(c) Five percent of the contract price in excess of five hundred thousand dollars up to and including seven hundred fifty thousand dollars;

(d) Two percent of the contract price in excess of seven hundred fifty thousand dollars.

(2) No payment made prior to the time when the same is due, under the terms and conditions of the contract, shall be valid for the purpose of defeating, diminishing, or discharging any lien in favor of any person, except the contractor or other person to or for whom the payment is made, but as to such liens, such payment shall be deemed as if not made and shall be applicable to such liens, notwithstanding that the contractor or other person to or for whom it was paid may thereafter abandon his contract, or be or become indebted to the reputed owner in any amount for damages or otherwise or for nonperformance of his contract or otherwise.

(3) As to all liens, except those of principal contractors, the whole contract price shall be payable in money, and shall not be diminished by any prior or subsequent indebtedness, offset, or counterclaim in favor of the reputed owner and against the principal contractor, and no alteration of such contract shall affect any lien acquired under the provisions of this article. In case such contracts and alterations thereof do not conform substantially to the provisions of this section, the labor done and laborers or materials furnished by all persons other than the principal contractor shall be deemed to have been done and furnished at the personal instance and request of the person who contracted with the principal contractor, they shall have a lien for the value thereof.

(3.5) Any provisions of this section to the contrary notwithstanding, it shall be an affirmative defense in any action to enforce a lien pursuant to this article that the owner or some person acting on the owner's behalf has paid an amount sufficient to satisfy the contractual and legal obligations of the owner, including the initial purchase price or contract amount plus any additions or change orders, to the principal contractor or any subcontractor for the purpose of payment to the subcontractors or suppliers of laborers, materials, or services to the job, when:

(a) The property is an existing single-family dwelling unit;

(b) The property is a residence constructed by the owner or under a contract entered into by the owner prior to its occupancy as the owner's primary residence; or

(c) The property is a single-family, owner-occupied dwelling unit, including a residence constructed and sold for occupancy as a primary residence. This paragraph (c) shall not apply to a developer or builder of multiple residences except for the residence that is occupied as the primary residence of the developer or builder.

(4) Any of the persons mentioned in section 38-22-101, except a principal contractor, at any time may give to the owner, or reputed owner, or to the superintendent of construction, agent, architect, or to the financing institution or other person disbursing construction funds, a written notice that they have performed labor or furnished laborers or materials to or for a principal contractor, or any person acting by authority of the owner or reputed owner, or that they have agreed to and will do so, stating in general terms the kind of labor, laborers, or materials and the name of the person to or for whom the same was or is to be done, or performed, or both, and the estimated or agreed amount in value, as near as may be, of that already done or furnished, or both, and also of the whole agreed to be done or furnished, or both.

(5) Such notice may be given by delivering the same to the owner or reputed owner personally, or by leaving it at his residence or place of business with some person in charge; or by delivering it either to his superintendent of construction, agent, architect, or to the financing institution or other person disbursing construction funds, or by leaving it either at their residence or place of business with some person in charge. No such notice shall be invalid or insufficient

by reason of any defect of form, provided it is sufficient to inform the owner or reputed owner of the substantial matters provided for in this section, or to put him upon inquiry as to such matters.

(6) Upon such notice being given, it is the duty of the person who contracted with the principal contractor to withhold from such principal contractor, or from any other person acting under such owner or reputed owner, and to whom, by said notice, the said labor, laborers, or materials, have been furnished or agreed to be furnished, sufficient money due or that may become due to said principal contractor, or other persons, to satisfy such claim and any lien that may be filed therefor for record under this article, including reasonable costs provided for in this article.

(7) The payment of any such lien, which has been acknowledged by such principal contractor, or other person acting under such owner or reputed owner in writing to be correct, or which has been established by judicial determination, shall be taken and allowed as an offset against any moneys which may be due from the owner, or reputed owner to such principal contractor, or the person for whom such work and labor was performed or furnished.

Source: L. 1899: p. 263, § 2. **R.S. 08:** § 4026. **C.L.** § 6443. **CSA:** C. 101, § 16. **S.A.R.S. 53:** § 86-3-2. **S.A.R.S. 1963:** § 86-3-2. **L. 65:** p. 850, § 2. **L. 69:** p. 692, § 2. **L. 87:** (3.5) added, p. 1336, § 1, effective May 25. **L. 2000:** (3), IP(3.5), (3.5)(b), (4), (6), and (7) amended, p. 205, § 2, effective August 2.

38-22-103. Attaching of lien - enforcement. (1) The liens granted by this article shall extend to and cover so much of the lands whereon such building, structure, or improvement is made as may be necessary for the convenient use and occupation of such building, structure, or improvement, and the same shall be subject to such liens. In case any such building occupies two or more lots or other subdivisions of land, such several lots or other subdivisions shall be deemed one lot for the purposes of this article, and the same rule shall hold in cases of any other such improvements that are practically indivisible, and shall attach to all machinery and other fixtures used in connection with any such lands, buildings, mills, structures, or improvements.

(2) When the lien is for work done or labor or material furnished for any entire structure, erection, or improvement, such lien shall attach to such building, erection, or improvement for or upon which the work was done, or laborers or materials furnished in preference to any prior lien or encumbrance, or mortgage upon the land upon which the same is erected or put, and any person enforcing such lien may have such building, erection, or improvement sold under execution and the purchaser at any such sale may remove the same within thirty days after such sale.

(3) Any lien provided for by this article shall extend to and embrace any additional or greater interest in any of such property acquired by such owner at any time subsequent to the making of the contract or the commencement of the work upon such structure and before the establishment of such lien by process of law, and shall extend to any assignable, transferable, or conveyable interest of such owner or reputed owner in the land upon which such building, structure, or other improvement is erected or placed.

(4) Whenever any person furnishes any laborers or materials or performs any labor, for the erection, construction, addition to, alteration, or repair of two or more buildings, structures, or other improvements, when they are built and constructed by the same person and under the same contract, it is lawful for the person so furnishing such laborers or materials or performing

such labor to divide and apportion the same among the buildings, structures, or other improvements in proportion to the value of the laborers or materials furnished for and the labor performed upon or for each of said buildings, structures, or other improvements and to file with his or her lien claim therefor a statement of the amount so apportioned to each building, structure, or other improvement. This lien claim when so filed may be enforced under the provisions of this article in the same manner as if said laborers or materials had been furnished and labor performed for each of said buildings, structures, or other improvements separately; but if the cost or value of such labor, laborers, or materials cannot be readily and definitely divided and apportioned among the several buildings, structures, or other improvements, then one lien claim may be made, established, and enforced against all such buildings, structures, or other improvements, together with the ground upon which the same may be situated, and in such case for the purposes of this article, all such buildings, structures, and improvements shall be deemed one building, structure, or improvement, and the land on which the same are situated as one tract of land.

Source: L. 1899: p. 265, § 3. **R.S. 08:** § 4027. **C.L.** § 6444. **CSA:** C. 101, § 17. **S.A.R.S. 53:** § 86-3-3. **S.A.R.S. 1963:** § 86-3-3. **L. 2000:** (2) and (4) amended, p. 206, § 3, effective August 2.

38-22-104. Lien on mining property. The provisions of this article shall apply to all persons who do work or furnish laborers or materials, or mining, milling, or other machinery or other fixtures, as provided in section 38-22-101, for the working, preservation, prospecting, or development of any mine, lode, or mining claim or deposit yielding metals or minerals of any kind, or for the working, preservation, or development of any such mine, lode, or deposit, in search of any such metals or minerals; and to all persons who do work upon or furnish laborers or materials, mining, milling, and other machinery or other fixtures, as provided in section 38-22-101, upon, in, or for any shaft, tunnel, mill, or tunnel site, incline, adit, drift, or any draining or other improvement of or upon any such mine, lode, deposit, or tunnel site; and to every miner or other person who does work upon or furnishes any laborers, coal, power, provisions, timber, powder, rope, nails, candles, fuse, caps, rails, spikes, or iron, or other materials whatever, as provided in section 38-22-101, upon any mine, lode, deposit, mill, or tunnel site. But when two or more lodes, mines, or deposits owned or claimed by the same person are worked through a common shaft, tunnel, incline, adit, drift, or other excavation, then all the mines, mining claims, lodes, deposits, and tunnel and mill sites so owned and worked or developed, for the purpose of this article shall be deemed one mine. This section is not applicable to the owner of any mine, lode, mining claim, deposit, mill, or tunnel where the work or labor has been performed for or the laborers or materials furnished to a lessee.

Source: L. 1899: p. 266, § 4. **R.S. 08:** § 4028. **L. 15:** p. 332, § 1. **C.L.** § 6445. **CSA:** C. 101, § 18. **S.A.R.S. 53:** § 86-3-4. **S.A.R.S. 1963:** § 86-3-4. **L. 2000:** Entire section amended, p. 207, § 4, effective August 2.

38-22-105. Property subject to lien - notice. (1) Any building, mill, manufactory, bridge, ditch, flume, aqueduct, reservoir, tunnel, fence, railroad, wagon road, tramway, and every structure or other improvement mentioned in this article, constructed, altered, added to, removed to, or repaired, either in whole or in part, upon or in any land with the knowledge of the owner or

reputed owner of such land, or of any person having or claiming an interest therein, otherwise than under a bona fide prior recorded mortgage, deed of trust, or other encumbrance, or prior lien shall be held to have been erected, constructed, altered, removed, repaired, or done at the instance and request of such owner or person, including landlord or vendor, who by lease or contract has authorized such improvements, but so far only as to subject his interest to a lien therefor as provided in this section.

(2) Such interest so owned or claimed shall be subject to any lien given by the provisions of this article, unless such owner or person within five days after obtaining notice of the erection, construction, alteration, removal, addition, repair, or other improvement, gives notice that his or her interests shall not be subject to any lien for the same by serving a written or printed notice to that effect, personally, upon all persons performing labor or furnishing laborers, materials, machinery, or other fixtures therefor, or within five days after such owner or person has obtained notice of the erection, construction, alteration, removal, addition, repair, or other improvement, or notice of the intended erection, construction, alteration, removal, addition, repair, or other improvement gives such notice by posting and keeping posted a written or printed notice in some conspicuous place upon said land or upon the building or other improvements situate thereon.

(3) This section shall not apply to coowners of unincorporated canals, ditches, flumes, aqueducts, and reservoirs nor to the enforcement of article 23 of this title. The provisions of this section shall not be construed to apply to any owner or person claiming any interest in such property, the interest of whom is subject to a lien pursuant to the provisions of section 38-22-101.

Source: L. 1899: p. 267, § 5. **R.S. 08:** § 4029. **C.L.** § 6446. **CSA:** C. 101, § 19. **S.A.R.S. 53:** § 86-3-5. **S.A.R.S. 1963:** § 86-3-5. **L. 65:** p. 851, § 3. **L. 2000:** (2) amended, p. 207, § 5, effective August 2.

38-22-105.5. Notice of lien law. (1) Upon issuing a building permit for the improvement, restoration, remodeling, or repair of or the construction of improvements or additions to residential property, the agency or other authority issuing the permit shall send a written notice, as set forth in subsection (2) of this section, by first-class mail addressed to the property for which the permit was issued.

(2) The notice shall be in at least ten-point bold-faced type, if printed, or in capital letters, if typewritten, shall identify the contractor by name and address, and shall state substantially as follows:

IMPORTANT NOTICE TO OWNERS: UNDER SAN ANDREAS LAW, SUPPLIERS, SUBCONTRACTORS, OR OTHER PERSONS FURNISHING LABORERS OR PROVIDING LABOR OR MATERIALS FOR WORK ON YOUR RESIDENTIAL PROPERTY MAY HAVE A RIGHT TO COLLECT THEIR MONEY FROM YOU BY FILING A LIEN AGAINST YOUR PROPERTY. A LIEN CAN BE FILED AGAINST YOUR RESIDENCE WHEN A SUPPLIER, SUBCONTRACTOR, OR OTHER PERSON IS NOT PAID BY YOUR CONTRACTOR FOR SUCH LABORERS, LABOR, OR MATERIALS. HOWEVER, IN ACCORDANCE WITH THE SAN ANDREAS GENERAL MECHANICS' LIEN LAW, SECTIONS 38-22-102 (3.5) AND 38-22-113 (4), SAN ANDREAS REVISED STATUTES, YOU HAVE AN AFFIRMATIVE DEFENSE IN ANY ACTION TO ENFORCE A LIEN IF

YOU OR

SOME PERSON ACTING ON YOUR BEHALF HAS PAID YOUR CONTRACTOR AND SATISFIED YOUR LEGAL OBLIGATIONS.

YOU MAY ALSO WANT TO DISCUSS WITH YOUR CONTRACTOR, YOUR ATTORNEY, OR YOUR LENDER POSSIBLE PRECAUTIONS, INCLUDING THE USE OF LIEN WAIVERS OR REQUIRING THAT EVERY CHECK ISSUED BY YOU OR ON YOUR BEHALF IS MADE PAYABLE TO THE CONTRACTOR, THE SUBCONTRACTOR, AND THE SUPPLIER FOR AVOIDING DOUBLE PAYMENTS IF YOUR PROPERTY DOES NOT SATISFY THE REQUIREMENTS OF SECTIONS 38-22-102 (3.5) AND 38-22-113 (4), SAN ANDREAS REVISED STATUTES.

YOU SHOULD TAKE WHATEVER STEPS NECESSARY TO PROTECT YOUR PROPERTY.

(3) The notice prescribed by this section shall not be required when a building permit is issued for new residential construction or for residential property containing more than four living units.

(4) As used in this section:

(a) "New residential construction" means the construction or addition of living units on real property that was previously unimproved or was used for nonresidential purposes.

(b) "Residential property" means any real property, including improvements, containing living units used for human habitation.

(5) To offset the cost of issuing the notice required by this section, the appropriate authority may raise the fee for a building permit by one dollar.

(6) The failure of the agency or other authority which issues building permits to provide the notice required by this section shall not be an affirmative defense to any lien claimed pursuant to the provisions of this article; nor shall the agency or any employee of the agency incur liability as a result of such failure.

(7) The agency or other authority which issues building permits may deliver the notice required by this section personally to the owner of the property, in lieu of mailing the notice as provided by subsection (1) of this section.

Source: L. 79: Entire section added, p. 1389, § 1, effective January 1, 1980. **L. 81:** Entire section R&RE, p. 1822, § 1, effective July 1. **L. 88:** (2) R&RE, p. 1253, § 1, effective April 14. **L. 2000:** (2) amended, p. 208, § 6, effective August 2.

38-22-106. Priority of lien - attachments. (1) All liens established by virtue of this article shall relate back to the time of the commencement of work under the contract between the owner and the first contractor, or, if said contract is not in writing, then such liens shall relate back to and take effect as of the time of the commencement of the work upon the structure or improvement, and shall have priority over any lien or encumbrance subsequently intervening, or which may have been created prior thereto but which was not then recorded and of which the lienor, under this article, did not have actual notice. Nothing contained in this section, however, shall be construed as impairing any valid encumbrance upon any such land duly made and recorded prior to the signing of such contract or the commencement of work upon such improvements or structure.

(2) No attachment, garnishment, or levy under an execution upon any money due or to become due to a contractor from the owner or reputed owner of any such property subject to any such lien shall be valid as against such lien of a subcontractor or materialmen, and no such attachment, garnishment, or levy upon any money due to a subcontractor or materialmen of the second class, as provided in section 38-22-108 (1)(b), from the contractor shall be valid as against any lien of a laborer employed by the day or piece, who does not furnish any material as classified in this article.

Source: L. 1899: p. 268, § 6. **R.S. 08:** § 4030. **C.L.** § 6447. **CSA:** C. 101, § 20. **S.A.R.S. 53:** § 86-3-6. **S.A.R.S. 1963:** § 86-3-6.

38-22-107. Lien attaches to water rights and franchises. Such liens likewise shall attach to rights of water and rights-of-way that may pertain in any manner to any kind of property specified in this article and to which such liens attach. In the case of corporations such liens shall attach to all the franchises and charter privileges that may pertain in any manner to said specified property.

Source: L. 1899: p. 269, § 7. **R.S. 08:** § 4031. **C.L.** § 6448. **CSA:** C. 101, § 21. **S.A.R.S. 53:** § 86-3-7. **S.A.R.S. 1963:** § 86-3-7.

38-22-108. Rank of liens. (1) Every person given a lien by this article whose contract, either express or implied, is with the owner or reputed owner or owner's agent or other representative, is a principal contractor and all others are subcontractors; and in every case in which different liens are claimed against the same property, the rank of each lien, or class of liens, as between the different lien claimants, shall be declared and ordered to be satisfied in the decree or judgment in the following order named:

(a) The liens of all those who were laborers or mechanics working by the day or piece, but without furnishing material therefor, either as principal or subcontractors;

(b) The liens of all other subcontractors and of all materialmen whose claims are either entirely or principally for laborers, materials, machinery, or other fixtures, furnished either as principal contractors or subcontractors;

(c) The liens of all other principal contractors and all moneys realized in any actions for the satisfaction of liens against the same improvements or structures shall be paid out in the order above designated.

Source: L. 1899: p. 269, § 8. **R.S. 08:** § 4032. **C.L.** § 6449. **CSA:** C. 101, § 22. **S.A.R.S. 53:** § 86-3-8. **S.A.R.S. 1963:** § 86-3-8. **L. 2000:** IP(1), (1)(b), and (1)(c) amended, p. 208, § 7, effective August 2.

38-22-109. Lien statement. (1) Any person wishing to use the provisions of this article shall file for record, in the office of the county clerk and recorder of the county wherein the property, or the principal part thereof, to be affected by the lien is situated, a statement containing:

(a) The name of the owner or reputed owner of such property, or in case such name is not known to him, a statement to that effect;

(b) The name of the person claiming the lien, the name of the person who furnished the laborers or materials or performed the labor for which the lien is claimed, and the name of the contractor when the lien is claimed by a subcontractor or by the assignee of a subcontractor, or, in case the name of such contractor is not known to a lien claimant, a statement to that effect;

(c) A description of the property to be charged with the lien, sufficient to identify the same; and

(d) A statement of the amount due or owing such claimant.

(2) Such statement shall be signed and sworn to by the party, or by one of the parties, claiming such lien, or by some other person in his or their behalf, to the best knowledge, information, and belief of the affiant; and the signature of any such affiant to any such verification shall be a sufficient signing of the statement.

(3) In order to preserve any lien for work performed or laborers or materials furnished, there must be a notice of intent to file a lien statement served upon the owner or reputed owner of the property or the owner's agent and the principal or prime contractor or his or her agent at least ten days before the time of filing the lien statement with the county clerk and recorder. Such notice of intent shall be served by personal service or by registered or certified mail, return receipt requested, addressed to the last-known address of such persons, and an affidavit of such service or mailing at least ten days before filing of the lien statement with the county clerk and recorder shall be filed for record with said statement and shall constitute proof of such service.

(4) All such lien statements claimed for labor and work by the day or piece, but without furnishing laborers or materials therefor, must be filed for record after the last labor for which the lien claimed has been performed and at any time before the expiration of two months next after the completion of the building, structure, or other improvement.

(5) Except as provided in subsections (10) and (11) of this section, the lien statements of all other lien claimants must be filed for record at any time before the expiration of four months after the day on which the last labor is performed or the last laborers or materials are furnished by such lien claimant.

(6) New or amended statements may be filed within the periods provided in this section for the purpose of curing any mistake or for the purpose of more fully complying with the provisions of this article.

(7) No trivial imperfection in or omission from the said work or in the construction of any building, improvement, or structure, or of the alteration, addition to, or repair thereof, shall be deemed a lack of completion, nor shall such imperfection or omission prevent the filing of any lien statement or filing of or giving notice, nor postpone the running of any time limit within which any lien statement shall be filed for record or served upon the owner or reputed owner of the property or such owner's agent and the principal or prime contractor or his or her agent, or within which any notice shall be given. For the purposes of this section, abandonment of all labor, work, services, and furnishing of laborers or materials under any unfinished contract or upon any unfinished building, improvement, or structure, or the alteration, addition to, or repair thereof, shall be deemed equivalent to a completion thereof. For the purposes of this section, "abandonment" means discontinuance of all labor, work, services, and furnishing of laborers or materials for a three-month period.

(8) Subject to the prior termination of the lien under the provisions of section 38-22-110, no lien claimed by virtue of this article shall hold the property, or remain effective longer than one year from the filing of such lien, unless within thirty days after each annual anniversary of

the filing of said lien statement there is filed in the office of the county clerk and recorder of the county wherein the property is located an affidavit by the person or one of the persons claiming the lien, or by some person in his behalf, stating that the improvements on said property have not been completed.

(9) Upon the filing of the notice required and the commencement of an action, within the time and in the manner required by said section 38-22-110, no annual affidavit need be filed thereafter.

(10) Within the applicable time period provided in subsections (4) and (5) of this section and subject to the provisions of section 38-22-125, any lien claimant granted a lien pursuant to section 38-22-101 may file with the county clerk and recorder of the county in which the real property is situated a notice stating the legal description or address or such other description as will identify the real property; the name of the person with whom he has contracted; and the claimant's name, address, and telephone number. One such notice may be filed upon more than one property, and, in the case of a subdivision, one notice may describe only the part thereof upon which the claimant has or will obtain a lien pursuant to section 38-22-101. The filing of said notice shall serve as notice that said person may thereafter file a lien statement and shall extend the time for filing of the mechanic's lien statement to four months after completion of the structure or other improvement or six months after the date of filing of said notice, whichever occurs first. Unless sooner terminated as provided in subsection (11) of this section, the notice provided for in this subsection (10) shall automatically terminate six months after the date said notice is filed. In the event that said structure or other improvements have not been completed prior to the termination of said notice, a claimant, prior to said termination date, may file a new or amended notice which shall remain effective for an additional period of six months after the date of filing or four months after the date of completion of said structure or other improvements, whichever occurs first.

(11) Upon termination of agreement to provide labor, laborers, or materials, the owner, or someone in such owner's behalf, may demand from the person filing said notice a termination of said notice, which termination shall identify the properties upon which labor has not been performed or to which laborers or materials have not been furnished and as to which said notice is terminated. Upon the filing of said termination in the office of the county clerk and recorder in the county wherein said property is situated, such notice no longer constitutes notice as provided in subsection (10) of this section as to the property described in said termination.

(12) The notices provided for in subsections (10) and (11) of this section shall be recorded in the office of the county clerk and recorder of the county wherein the real property is located.

Source: L. 1899: p. 269, § 9. **R.S. 08:** § 4033. **C.L.** § 6450. **CSA:** C. 101, § 23. **S.A.R.S. 53:** § 86-3-9. **L. 55:** p. 537, § 1. **S.A.R.S. 1963:** § 86-3-9. **L. 65:** pp. 851, 856, §§ 4, 6. **L. 75:** (3) R&RE and (4), (5), (7), and (10) amended, pp. 1420, 1422, 1423, §§ 1, 2, 3, effective October 1. **L. 79:** (8), (10), and (11) amended and (12) R&RE, pp. 1390, 1391, §§ 2, 3, effective January 1, 1980. **L. 83:** (10) amended, p. 1229, § 16, effective July 1. **L. 2000:** IP(1), (1)(b), (3) to (5), (7), and (11) amended, p. 209, § 8, effective August 2.

38-22-110. Action commenced within six months. No lien claimed by virtue of this article, as against the owner of the property or as against one primarily liable for the debt upon

which the lien is based or as against anyone who is neither the owner of the property nor one primarily liable for such debt, shall hold the property longer than six months after the last work or labor is performed, or laborers or materials are furnished, or after the completion of the building, structure, or other improvement, or the completion of the alteration, addition to, or repair thereof, as prescribed in section 38-22-109, unless an action has been commenced within that time to enforce the same, and unless also a notice stating that such action has been commenced is filed for record within that time in the office of the county clerk and recorder of the county in which said property is situate. Where two or more liens are claimed of record against the same property, the commencement of any action and the filing of the notice of the commencement of such action within that time by any one or more of such lien claimants in which action all the lien claimants as appear of record are made parties, either plaintiff or defendant shall be sufficient.

Source: L. 1899: p. 271, § 10. **R.S. 08:** § 4034. **L. 15:** p. 333, § 2. **C.L.** § 6451. **CSA:** C. 101, § 24. **L. 37:** p. 481, § 4. **S.A.R.S. 53:** § 86-3-10. **S.A.R.S. 1963:** § 86-3-10. **L. 2000:** Entire section amended, p. 210, § 9, effective August 2.

Cross references: For filing notice of lis pendens, see C.R.C.P. 105(f).

38-22-111. Joinder of parties - consolidation of actions. (1) Any number of persons claiming liens against the same property and not contesting the claims of each other may join as plaintiffs in the same action, and when separate actions are commenced, the court may consolidate them upon motion of any party in interest or upon its own motion.

(2) Upon such procedure for consolidation, one case shall be selected with which the other cases shall be incorporated, and all the parties to such other cases shall be made parties plaintiff or defendant as the court may designate in said case so selected. All persons having claims for liens, the statements of which have been filed as provided in this article, shall be made parties to the action.

(3) Those claiming liens who fail or refuse to become parties plaintiff, or for any reason have not been made such parties, shall be made parties defendant. Any party claiming a lien, not made a party to such action, at any time within the period provided in section 38-22-109, may be allowed to intervene by motion, upon cause shown, and may be made a party defendant on the order of the court, which shall fix by such order the time for such intervenor to plead or otherwise proceed. The pleadings and other proceedings of such intervenor thus made a party shall be the same as though he had been an original party. Any defendant who claims a lien, in answering, shall set forth by cross complaint his claim and lien. Likewise such defendant may set forth in said answer defensive matter to any claim or lien of any plaintiff or codefendant or otherwise deny such claim or lien. The owner of the property to which such lien has attached, and all other parties claiming of record any right, title, interest, or equity therein, whose title or interests are to be charged with or affected by such lien, shall be made parties to the action.

Source: L. 1899: p. 272, § 11. **R.S. 08:** § 4035. **C.L.** § 6452. **CSA:** C. 101, § 25. **S.A.R.S. 53:** § 86-3-11. **S.A.R.S. 1963:** § 86-3-11.

38-22-112. Allegations of complaint. It is sufficient to allege in the complaint in relation to any party claiming a lien whom it is desired to make a defendant, that such party claims a lien under this article upon the property described; and in case of the intervention of parties, or of the making of new parties, or of the consolidation of actions, so that the issues are in any manner changed or increased, any party to the action shall be allowed to amend his pleadings, or file new pleadings, as the nature of the case may require.

Source: L. 1899: p. 273, § 12. **R.S. 08:** § 4036. **C.L.** § 6453. **CSA:** C. 101, § 26. **S.A.R.S. 53:** § 86-3-12. **S.A.R.S. 1963:** § 86-3-12.

38-22-113. Hearing - judgment - summons - defense. (1) The court, whenever the issues in such case are made up, shall advance such cause to the head of the docket for trial and may proceed to hear and determine said liens and claims or may refer the same to a magistrate to ascertain and report upon said liens and claims and the amounts justly due thereon.

(2) Judgments shall be rendered according to the rights of the parties. The various rights of all the lien claimants and other parties to any such action shall be determined and incorporated in one judgment or decree. Each party who establishes his claim under this article shall have judgment against the party personally liable to him for the full amount of his claim so established, and shall have a lien established and determined in said decree upon the property to which his lien has attached to the extent stated in this section.

(3) Proceedings to foreclose and enforce mechanics' liens under this article are actions in rem, and service by publication may be obtained against any defendant therein in a manner as provided by law, and personal judgment against the principal contractor or other person personally liable for the debt for which the lien is claimed shall not be requisite to a decree of foreclosure in favor of a subcontractor or materialman.

(4) In such proceedings, it shall be an affirmative defense that the owner or some person acting on the owner's behalf has paid an amount sufficient to satisfy the contractual and legal obligations of the owner, including the initial purchase price or contract amount plus any additions or change orders, to the principal contractor or any subcontractor for the purpose of payment to the subcontractors or suppliers of laborers or materials or services to the job, when:

(a) The property is an existing single-family dwelling unit;

(b) The property is a residence constructed by the owner or under a contract entered into by the owner prior to its occupancy as his primary residence; or

(c) The property is a single-family, owner-occupied dwelling unit, including a residence constructed and sold for occupancy as a primary residence. This paragraph (c) shall not apply to a developer or builder of multiple residences except for the residence that is occupied as the primary residence of the developer or builder.

Source: L. 1899: p. 273, § 13. **R.S. 08:** § 4037. **C.L.** § 6454. **CSA:** C. 101, § 27. **S.A.R.S. 53:** § 86-3-13. **S.A.R.S. 1963:** § 86-3-13. **L. 87:** (4) added, p. 1336, § 2, effective May 25. **L. 91:** (1) amended, p. 366, § 42, effective April 9. **L. 2000:** IP(4) amended, p. 210, § 10, effective August 2.

Cross references: For service of summons by publication, see C.R.C.P. 4(g) and 4(h).

38-22-114. Disposition of proceeds - execution. (1) The court shall cause said property to be sold in satisfaction of said liens and costs of suit as in case of foreclosure of mortgages; and any party in whose favor a judgment for a lien is rendered, may cause the property to be sold within the time and in the manner provided for sales of real estate on executions issued out of any court of record, and there shall be the same rights of redemption as are provided for in the case of sales of real estate on executions. And if the proceeds of such sale, after the payment of costs, are not sufficient to satisfy the whole amount of such liens included in the decree of sale, then such proceeds shall be apportioned according to the rights of the several parties. In case the proceeds of sale amount to more than the sum of said liens and all costs, then the remainder shall be paid over to the owner of said property; and each party whose claim is not fully satisfied in the manner provided in this section shall have execution for the balance unsatisfied against the party personally liable, as in other cases.

(2) In the first instance without a previous sale of said property to which such liens have attached, an execution may issue in behalf of any such lien claimant for the full amount of his claim against the party personally liable, and he may thereafter enforce such lien for any balance of such judgment remaining unsatisfied. A transcript of the docket of said judgment and decree may be filed with the county clerk and recorder of the county where such property is situated or in any other county, and thereupon said judgment and decree shall become a lien upon the real property in such county of each party so personally liable in favor of any such lien claimant holding any such judgment against any such party so personally liable, as in other cases of recording transcripts of judgment.

Source: L. 1899: p. 274, § 14. **R.S. 08:** § 4038. **C.L.** § 6455. **CSA:** C. 101, § 28. **S.A.R.S. 53:** § 86-3-14. **S.A.R.S. 1963:** § 86-3-14.

Cross references: For foreclosure of mortgages, see § 38-36-162; for sale of real estate on execution, see § 13-56-201.

38-22-115. Parties to action. Principal contractors and all other persons personally liable for the debt for which the lien is claimed shall be made parties to actions to enforce liens under this article, and service of summons shall be made either personally or by publication in the same manner and with like effect as is provided by law in cases of attachment and other proceedings in rem.

Source: L. 1899: p. 274, § 15. **R.S. 08:** § 4039. **C.L.** § 6456. **CSA:** C. 101, § 29. **S.A.R.S. 53:** § 86-3-15. **S.A.R.S. 1963:** § 86-3-15.

Cross references: For service of summons in attachment or other in rem proceedings, see C.R.C.P. 4(e) to 4(g).

38-22-116. Costs. The court shall divide the costs between the parties liable therefor, according to the justice of the case.

Source: L. 1899: p. 275, § 16. **R.S. 08:** § 4040. **C.L.** § 6457. **CSA:** C. 101, § 30. **S.A.R.S. 53:** § 86-3-16. **S.A.R.S. 1963:** § 86-3-16.

38-22-117. Assignment of lien - failure to support lien. Any party claiming a lien may assign in writing his claim and lien to any other claimant or other person who shall thereupon have all the rights and remedies of the assignor for the purpose of filing and for the enforcement of any such lien by action under this article, and the assignment shall be a sufficient consideration as to all other parties for the purpose of such action. Such assignment may be made before or after the filing of the statement of lien. Any such claimant, whether as assignee or otherwise, may include all the liens he may possess against the same property in any such statement, and when more than one such claim is included in one such statement, one verification thereto shall be sufficient. Any person may file separate statements of two or more claims. If, on the trial of a cause under the provisions of this article, the proceedings will not support a lien, the plaintiff and all lien claimants entitled thereto may proceed to judgment as in an action on contract, and executions may issue as provided in such cases, and said judgment shall have all the rights of a judgment in a personal action.

Source: L. 1899: p. 275, § 17. **R.S. 08:** § 4041. **C.L.** § 6458. **CSA:** C. 101, § 31. **S.A.R.S. 53:** § 86-3-17. **S.A.R.S. 1963:** § 86-3-17.

38-22-118. Satisfaction of lien - failure to release. The claimant of any such lien, the statement of which has been filed, on the payment of the amount thereof, together with the costs of filing and recording such lien, and the acknowledgment of satisfaction, and accrued costs of suit in case a suit has been brought thereon, at the request of any person interested in the property charged therewith, shall enter or cause to be entered an acknowledgment of satisfaction of the same of record, and if he neglects or refuses to do so within ten days after the written request of any person so interested, he shall forfeit and pay to such person the sum of ten dollars per day for every day of such neglect or refusal, to be recovered in the same manner as other debts. A valid tender of payment, refused by any such claimant, shall be equivalent to a payment for the purpose of this section. Any such statement may be satisfied of record in the same manner as mortgages.

Source: L. 1899: p. 275, § 18. **R.S. 08:** § 4042. **C.L.** § 6459. **CSA:** C. 101, § 32. **S.A.R.S. 53:** § 86-3-18. **S.A.R.S. 1963:** § 86-3-18.

38-22-119. Agreement to waive - effect. (1) No agreement to waive, abandon, or refrain from enforcing any lien provided for by this article shall be binding except as between the parties to such contract. The provisions of this article shall receive a liberal construction in all cases.

(2) An agreement to waive lien rights shall contain a statement, by the person waiving lien rights, providing in substance that all debts owed to any third party by the person waiving the lien rights and relating to the goods or services covered by the waiver of lien rights have been paid or will be timely paid.

Source: L. 1899: p. 276, § 19. **R.S. 08:** § 4043. **C.L.** § 6460. **CSA:** C. 101, § 33. **S.A.R.S. 53:** § 86-3-19. **S.A.R.S. 1963:** § 86-3-19. **L. 2009:** Entire section amended, (SB 09-137), ch. 145, p. 610, § 2, effective July 1.

38-22-120. Rules of civil procedure apply. The provisions of the San Andreas rules of civil procedure, insofar as the same are applicable and not in conflict with the provisions of this article, shall be observed in proceedings to establish and enforce mechanics' liens.

Source: L. 1899: p. 276, § 20. **R.S. 08:** § 4044. **C.L.** § 6461. **CSA:** C. 101, § 34. **S.A.R.S. 53:** § 86-3-20. **S.A.R.S. 1963:** § 86-3-20.

38-22-121. Liens of surveyors and engineers. The provisions of this article shall apply to surveyors, civil and mining engineers doing any work of surveying or plotting of any mines, mining claims, lodes, or mineral deposits, and they shall have like lien and claim as other persons under the provisions of this article.

Source: L. 1883: p. 227, § 8. **G.S.** § 2138. **R.S. 08:** § 4045. **C.L.** § 6462. **CSA:** C. 101, § 35. **S.A.R.S. 53:** § 86-3-21. **S.A.R.S. 1963:** § 86-3-21.

38-22-122. Lien under two contracts - effect. In case the act of doing such work or of furnishing such laborers or materials is continuous, said lien shall attach as in other cases, even though such work is done or laborers or materials have been furnished under two or more contracts between the same parties.

Source: L. 1883: p. 230, § 17. **G.S.** § 2147. **R.S. 08:** § 4046. **C.L.** § 6463. **CSA:** C. 101, § 36. **S.A.R.S. 53:** § 86-3-22. **S.A.R.S. 1963:** § 86-3-22. **L. 2000:** Entire section amended, p. 210, § 11, effective August 2.

38-22-123. Payment to avoid invalid. No payment made by any owner to any contractor for the purpose of avoiding any anticipated lien of any subcontractor shall be valid; and if any person files either of said statements for a lien for a larger sum than is due or to become due, in fact, or in probability, as the case may be, with intent to cheat or defraud any other person, and that fact appears in any proceeding under this article, such person shall forfeit all rights to such lien under this article.

Source: L. 1883: p. 235, § 29. **G.S.** § 2159. **R.S. 08:** § 4047. **C.L.** § 6464. **CSA:** C. 101, § 37. **S.A.R.S. 53:** § 86-3-23. **S.A.R.S. 1963:** § 86-3-23.

38-22-124. Other remedies not barred. No remedy given in this article shall be construed as preventing any person from enforcing any other remedy which he otherwise would have had, except as otherwise provided in this article. In case of two or more owners, contractors, or subcontractors interested in the same contract, the rule of procedure shall be the same as in the case of one such.

Source: L. 1883: p. 236, § 31. **G.S.** § 2161. **R.S. 08:** § 4048. **C.L.** § 6465. **CSA:** C. 101, § 38. **S.A.R.S. 53:** § 86-3-24. **S.A.R.S. 1963:** § 86-3-24.

38-22-125. Bona fide purchaser. No lien, excepting those claimed by laborers or mechanics as defined in section 38-22-108 (1)(a), filed for record more than two months after

completion of the building, improvement, or structure shall encumber the interest of any bona fide purchaser for value of real property, the principal improvement upon which is a single- or double-family dwelling, unless said purchaser at the time of conveyance has actual knowledge that the amounts due and secured by such lien have not been paid, or unless such lien statement has been recorded prior to conveyance, or unless a notice as provided in section 38-22-109 (10) has been filed within one month subsequent to completion or prior to conveyance, whichever is later; except that nothing in this section shall extend the time for recording lien statements as provided in section 38-22-109 (4), (5), and (10). For the purposes of this section, the dwelling shall be deemed complete upon conveyance and occupancy if not completed before. The lien for items of labor, work, or material which shall thereafter be furnished shall be effective and may be claimed within the time thereafter as provided in section 38-22-109 (4), (5), and (10), and their priority shall not be affected by this section.

Source: L. 65: p. 854, § 5. **S.A.R.S. 1963:** § 86-3-25. **L. 75:** Entire section amended, p. 1424, § 4, effective October 1.

38-22-126. Disburser - notice - duty of owner and disburser. (1) For the purposes of this section, the word "disburser" means any lender who has agreed to make any loan to the owner or contractor, the proceeds of which are to be disbursed from time to time as work upon a structure or other improvement progresses, or any part of which is to be withheld until all or any part of such work is completed; or, any person who receives funds from any lender, contractor, or owner to be disbursed from time to time as work upon a structure or other improvement progresses, or any part of which is to be withheld until all or any part of such work is completed; or, any owner who has agreed to pay any sum to any contractor from time to time as work upon a structure or other improvement progresses, or any part of which is to be withheld until all or any part of such work is completed.

(2) It is the duty of the disburser, prior to the first disbursement, to see that there has been recorded in the office of the county clerk and recorder of the county where the land to be improved is situated, a notice stating the name and address of the owner, the names, addresses, and telephone numbers of the principal contractor, if any, and the disburser, and the legal description of the land and its address, if any. One notice may include as many parcels as desired, providing that all the information is stated as to each parcel. Such notice shall be indexed by the county clerk and recorder under the name of the owner and each principal contractor as grantors and according to address.

(3) It is the duty of any person upon ordering or contracting for any labor, services, machinery, tools, equipment, laborers, or materials to be used as provided in section 38-22-101, upon demand of the person from whom he or she is so ordering or with whom he or she is so contracting, to furnish to such person a statement of the names, addresses, and telephone numbers of the owner or reputed owner of the land to be improved, the principal contractor, if any, and the disburser, if any, as defined in subsection (1) of this section, together with a legal description or the address, if any, of the land to be improved.

(4) Any lien claimant who is entitled to a lien under this article may give notice to the disburser stating the property by address or legal description, or by such other description as will identify the real property; the claimant's name, address, and telephone number; the person with whom he has contracted; and a general statement of his contract.

(5) Such notice shall be in writing and shall be served upon the disburser by certified mail or by delivering the same personally to such disburser, or by leaving a copy at his residence or at his place of business with some person in charge.

(6) Upon such notice being received by the disburser, it is the duty of the disburser, before disbursing any funds to the person designated in said notice with whom said claimant has contracted, to ascertain the amount due to the claimant on any disbursement date, and to pay such amount directly to the claimant out of any undisbursed funds available for and due to said person designated in said notice on such date; except that any amounts actually paid by the disburser to others for labor, services, machinery, tools, equipment, and laborers or materials performed, supplied, or furnished for such structure or improvement that are chargeable to said person designated in said notice shall not be deemed available for said person designated in said notice; and further except that if the amount claimed by said claimant is disputed by said person designated in said notice, the disburser may impound such amount until the amount due is settled by agreement or final judicial determination.

(7) If the disburser fails to comply with subsection (6) of this section and the said claimant suffers loss by reason of said failure the disburser shall be liable to said claimant for the amount which the disburser should have paid claimant to the extent of claimant's loss.

Source: L. 65: p. 854, § 5. **S.A.R.S. 1963:** § 86-3-26. **L. 2000:** (3) and (6) amended, p. 210, § 12, effective August 2.

38-22-127. Moneys for lien claims made trust funds - disbursements - penalty. (1) All funds disbursed to any contractor or subcontractor under any building, construction, or remodeling contract or on any construction project shall be held in trust for the payment of the subcontractors, laborer or material suppliers, or laborers who have furnished laborers, materials, services, or labor, who have a lien, or may have a lien, against the property, or who claim, or may claim, against a principal and surety under the provisions of this article and for which such disbursement was made.

(2) This section shall not be construed so as to require any such contractor or subcontractor to hold in trust any funds which have been disbursed to him or her for any subcontractor, laborer or material supplier, or laborer who claims a lien against the property or claims against a principal and surety who has furnished a bond under the provisions of this article if such contractor or subcontractor has a good faith belief that such lien or claim is not valid or if such contractor or subcontractor, in good faith, claims a setoff, to the extent of such setoff.

(3) If the contractor or subcontractor has furnished a performance or payment bond or if the owner of the property has executed a written release to the contractor or subcontractor, he need not furnish any such bond or hold such payments or disbursements as trust funds, and the provisions of this section shall not apply.

(4) Every contractor or subcontractor shall maintain separate records of account for each project or contract, but nothing contained in this section shall be construed as requiring a contractor or subcontractor to deposit trust funds from a single project in a separate bank account solely for that project so long as trust funds are not expended in a manner prohibited by this section.

(5) Any person who violates the provisions of subsections (1) and (2) of this section commits theft, as defined in section 18-4-401, S.A.R.S.

Source: L. 75: Entire section added, p. 1420, § 2, effective October 1. **L. 2000:** (1) and (2) amended, p. 211, § 13, effective August 2.

38-22-128. Excessive amounts claimed. Any person who files a lien under this article for an amount greater than is due without a reasonable possibility that said amount claimed is due and with the knowledge that said amount claimed is greater than that amount then due, and that fact is shown in any proceeding under this article, shall forfeit all rights to such lien plus such person shall be liable to the person against whom the lien was filed in an amount equal to the costs and all attorney's fees.

Source: L. 75: Entire section added, p. 1421, § 3, effective October 1.

38-22-129. Principal contractor may provide bond prior to commencement of work. (1) Except as provided in subsection (4) of this section, the provisions of section 38-22-101 (1) shall not apply if, at the commencement of any work upon any construction project for the improvement of real property as described in section 38-22-101 (1), a performance bond and a labor and materials payment bond, each in an amount equal to one hundred fifty percent of the contract price, are executed by the principal contractor and one or more corporate sureties authorized and qualified to do business in this state, for the protection of all contractors, subcontractors, materialmen, and laborers supplying labor, laborers, or material in the prosecution of the work on such construction project for the use of each contractor, subcontractor, materialman, or laborer.

(2) All subcontractors, materialmen, mechanics, and others who would otherwise be entitled to a lien under the provisions of section 38-22-101 (1) shall have a right of action directly against the principal contractor and his surety for the full amount due. Such action shall be brought within six months after completion of the last work on such project.

(3) In order to be effective, a notice of such bond shall be filed with the county clerk and recorder of the county wherein such project is situate prior to the commencement of any work on the project and shall be indexed according to both the street address and the legal description of the property to be improved. The principal contractor shall post a notice on the property that notice of such bond has been filed with the county clerk and recorder and shall make available copies of the bond to every contractor, subcontractor, materialman, mechanic, or laborer upon request.

(4) If any claimant files for record a lien statement or other notice, pursuant to section 38-22-109, such lien shall be deemed released upon the filing for record of a notice executed by both the principal and all sureties acknowledging the existence of the bond furnished for such project and that said lien claimant is entitled to claim the benefits of said bond. Such acknowledgment shall be executed by the principal and sureties upon demand of the owners or any person filing a lien statement. Said notice may be delivered personally to the surety or its agent and the principal or his agent or may be mailed by certified or registered mail. If the principal and all sureties on any such bonds fail or refuse to execute and record such acknowledgment within thirty days after written demand is made upon them, all lien claimants

shall be entitled to enforce their lien claims in the same manner as if no bond had been filed as provided in subsection (1) of this section.

(5) In the event that any corporate surety on any bond filed pursuant to the provisions of subsection (1) of this section becomes subject to an order for relief under the federal bankruptcy code of 1978, title 11 of the United States Code, is the subject of any state or federal corporate reorganization proceedings, makes any assignment for the benefit of creditors, or otherwise is unable to meet its financial obligations as they become due, the provisions of this section shall not apply, and any lien claimant shall be entitled to enforce such lien claim in the same manner as if no bond had been filed as provided in subsection (1) of this section.

Source: L. 75: Entire section added, p. 1424, § 5, effective October 1. **L. 80:** (5) amended, p. 786, § 14, effective June 5. **L. 2000:** (1) amended, p. 211, § 14, effective August 2.

38-22-130. Payment of claims by surety. (1) Subcontractors, materialmen, mechanics, and others who have claims aggregating two thousand dollars or less each on construction projects for the improvement of real property as described in section 38-22-101 (1) for which a bond was executed pursuant to section 38-22-129 shall serve upon the principal contractor and his surety an affidavit, supported by all reasonably available documentary evidence, that a claimant has furnished labor or materials used or performed in the prosecution of the work on such project, that he has been unpaid therefor, and the amount of such claim. If after forty-five days such affidavit remains uncontroverted, such surety shall pay to such claimant forthwith the full value of his claim.

(2) Service of such affidavit may be accomplished by certified or registered mail, by personal delivery to such person, or by leaving a copy at his residence or at his place of business with some person in charge.

Source: L. 75: Entire section added, p. 1425, § 5, effective October 1.

38-22-131. Substitution of bond allowed. (1) Whenever a mechanic's lien has been filed in accordance with this article, the owner, whether legal or beneficial, of any interest in the property subject to the lien may, at any time, file with the clerk of the district court of the county wherein the property is situated a corporate surety bond or any other undertaking which has been approved by a judge of said district court.

(2) Such bond or undertaking plus costs allowed to date shall be in an amount equal to one and one-half times the amount of the lien plus costs allowed to date and shall be approved by a judge of the district court with which such bond or undertaking is filed.

(3) The bond or undertaking shall be conditioned that, if the lien claimant shall be finally adjudged to be entitled to recover upon the claim upon which his lien is based, the principal or his sureties shall pay to such claimant the amount of his judgment, together with any interest, costs, and other sums which such claimant would be entitled to recover upon the foreclosure of the lien.

Source: L. 75: Entire section added, p. 1425, § 5, effective October 1.

38-22-132. Lien to be discharged. Notwithstanding any other provision of this article or section 38-35-110, upon court approval of a bond or undertaking as provided in section 38-22-131, and upon the issuance and recording of a certificate of release as specified in this section, the lien against the property, and any notice of lis pendens or notice of the commencement of any action relating to such lien, shall be immediately discharged and released in full; the real property described in such bond or undertaking shall be forever released from the lien, from any notice of lis pendens or notice of the commencement of any action relating to such lien, and from any action brought to foreclose such lien; the bond or undertaking shall be substituted; and no notice of lis pendens or notice of the commencement of any action relating to such lien or any action for the enforcement or foreclosure thereof shall thereafter be recorded against the property. The clerk of the district court with which such bond or undertaking has been filed shall issue a certificate of release which shall be recorded in the office of the clerk and recorder of the county wherein the original mechanic's lien was filed, and the certificate of release shall show that the property has been forever released from the lien, from any notice of lis pendens or notice of the commencement of any action relating to such lien, and from any action brought to foreclose such lien.

Source: L. 75: Entire section added, p. 1426, § 5, effective October 1. **L. 2011:** Entire section amended, (SB 11-264), ch. 279, p. 1250, § 2, effective July 1.

Cross references: For the legislative declaration in the 2011 act amending this section, see section 1 of chapter 279, Session Laws of San Andreas 2011.

38-22-133. Action to be brought on bond or undertaking. When a bond or undertaking is filed as provided in section 38-22-131, the person filing the original mechanic's lien may bring an action upon the said bond or undertaking. Such action shall be commenced within the time allowed for the commencement of an action upon foreclosure of the lien, and the statute of limitations applicable to a lien foreclosure shall apply to the action upon the bond or undertaking as it would had no bond or undertaking been filed.

Source: L. 75: Entire section added, p. 1426, § 5, effective October 1.

ARTICLE 22.5

Commercial Real Estate Brokers
Commission Security Act

38-22.5-101. Short title. This article shall be known and may be cited as the "Commercial Real Estate Brokers Commission Security Act".

Source: L. 2010: Entire article added, (HB 10-1288), ch. 179, p. 642, § 1, effective August 11.

38-22.5-102. Definitions. As used in this article 22.5, unless the context otherwise requires:

(1) "Agreement" means a written listing agreement, written compensation agreement, or other written agreement between a real estate broker and an owner that grants the real estate broker a right to compensation for professional services in connection with leasing or attempting to lease commercial real estate.

(2) "Commercial real estate" means any real property other than real property containing one to four residential units. "Commercial real estate" does not include single-family or multi-family residential units including condominiums, townhouses, or homes in a subdivision when such real estate is sold, leased, or otherwise conveyed on a unit-by-unit basis even though the units may be part of a larger building or parcel of real property containing more than four residential units.

(3) "Owner" means the owner of record of real estate and includes an agent of such owner.

(4) "Real estate broker" has the meaning set forth in section 12-10-201 (6).

(5) "Renewal commission" means an additional commission that may become payable to a real estate broker if a lease is later renewed or modified to expand the leased premises or extend the lease term.

Source: L. 2010: Entire article added, (HB 10-1288), ch. 179, p. 642, § 1, effective August 11. **L. 2019:** IP and (4) amended, (HB 19-1172), ch. 136, p. 1722, § 230, effective October 1.

38-22.5-103. Brokers' lien for compensation for services - requirements. (1) A real estate broker shall have a lien on commercial real estate, in the amount of the compensation as set forth in the agreement, if:

(a) Such real estate is listed with the real estate broker under terms of an agreement or is the subject of an agreement; and

(b) The real estate broker has provided licensed services that resulted in the procuring of a person or entity who has leased any interest in the commercial real estate in accordance with the agreement.

(2) The general assembly intends that nothing in this section is subject to a prospective waiver by either party without consideration acceptable to the parties to the waiver.

(3) Notwithstanding subsection (1) of this section, commercial real estate is not subject to a real estate brokers' lien to enforce the payment of a renewal commission if the property is conveyed to a bona fide purchaser before the recording of a notice of lien pursuant to section 38-22.5-104.

Source: L. 2010: Entire article added, (HB 10-1288), ch. 179, p. 643, § 1, effective August 11.

38-22.5-104. Notice of intent - lien notice - service - contents - filing. (1) The real estate broker shall serve a notice of intent to record a notice of lien upon the owner at least thirty days before recording the notice of lien with the county clerk and recorder of the county in which the commercial real estate is located. Such notice of intent shall be served by personal service or by registered or certified mail, return receipt requested, addressed to the last-known address of the owner or the owner's agent, at least thirty days before recording of the notice of

lien with the county clerk and recorder. If the notice of intent is served upon the owner's agent, a copy of the notice shall also be served upon the owner of record by personal service or by registered or certified mail, return receipt requested, addressed to the owner's last-known address, at least thirty days before recording of the notice of lien with the county clerk and recorder.

(2) The notice of lien shall state the name of the real estate broker, the name of the owner, a legal description of the property upon which the lien is being claimed, the amount for which the lien is claimed, and the real estate license number of the real estate broker. The real estate broker shall sign the notice of lien and attest that the information contained in the notice is true and accurate as to his or her knowledge and belief.

Source: L. 2010: Entire article added, (HB 10-1288), ch. 179, p. 643, § 1, effective August 11.

38-22.5-105. Mediation period. The real estate broker shall make a good faith effort to attempt to resolve the nonpayment of the commission through mediation. The mediator's recommended resolution is not binding unless the parties so agree in writing. The parties shall jointly appoint an acceptable mediator and shall share equally in the cost of the mediation. Mediation shall commence when a written notice requesting mediation is delivered by one party to the other at the party's last-known address, and, unless otherwise agreed, the mediation shall terminate if the entire dispute is not resolved within thirty days thereafter. This section does not impair the ability of a real estate broker to record a notice of lien if a resolution is not agreed upon by both parties.

Source: L. 2010: Entire article added, (HB 10-1288), ch. 179, p. 644, § 1, effective August 11.

38-22.5-106. When lien attaches - effect of payment by installments - affirmative defense. (1) The lien created by section 38-22.5-103 attaches to an interest in commercial real estate when all of the following conditions are met:

(a) The real estate broker either:

(I) Procures a person or entity who leases the property in accordance with the agreement; or

(II) Has otherwise earned a fee or commission in accordance with the agreement;

(b) The real estate broker serves a notice of intent to record a notice of lien upon the owner or owner's agent as provided in section 38-22.5-104;

(c) The real estate broker makes a good faith attempt to obtain settlement through mediation as provided in section 38-22.5-105; and

(d) At least thirty days after serving the owner with notice of intent to record a notice of lien, but not more than ninety days after the tenant takes possession of the leased property or ninety days after the compensation is due under the agreement, whichever is later, the real estate broker records a notice of the lien in the office of the clerk and recorder of the county in which the commercial real estate is located.

(2) Notwithstanding paragraph (d) of subsection (1) of this section:

(a) If payment is due in installments and a portion of the payment is due after the leasing of any interest in commercial real estate, a claim for a lien for only that portion may be recorded within ninety days after the tenant takes possession of the leased property or ninety days after the compensation is due under the agreement, whichever is later; and

(b) The lien shall be effective as a lien against the commercial real estate only to the extent moneys are still owed to the real estate broker by the owner. Any claims for a lien for future installment payments shall only be recorded within ninety days after those installment payments become due in accordance with the agreement.

(3) The lien attaches for purposes of this section when the claim for lien is recorded, and shall not relate back to the date of the agreement.

(4) Notwithstanding any provision of this article to the contrary, it shall be an affirmative defense in an action to foreclose a lien pursuant to this article that the owner has paid any compensation owed to the listing broker in an amount sufficient to satisfy the contractual and legal obligations of the owner, including compensation to the tenant's broker.

Source: L. 2010: Entire article added, (HB 10-1288), ch. 179, p. 644, § 1, effective August 11.

38-22.5-107. Conditions on validity of lien - subsequent service of notice to owner - action commenced within six months. (1) No lien claimed by virtue of this article shall hold the property longer than ten days after the recording of the notice of lien under section 38-22.5-104 unless the real estate broker provides a copy of the notice of lien to the owner or owner's agent by personal service or by registered or certified mail, return receipt requested, addressed to the last-known address of such person, within ten days after recording the notice of lien.

(2) No lien claimed by virtue of this article shall hold the property longer than six months after the recording of the notice of lien under section 38-22.5-104 unless an action to foreclose the lien has been commenced within that time and unless also a notice stating that such action has been commenced is filed for record within that time in the office of the county clerk and recorder of the county in which the property is situated. Where two or more liens under this article are claimed of record against the same property, the commencement of any action and the filing of the notice of the commencement of such action within that time by any one or more of such lien claimants in which action all the lien claimants as appear of record are made parties, either plaintiff or defendant, shall be sufficient.

Source: L. 2010: Entire article added, (HB 10-1288), ch. 179, p. 645, § 1, effective August 11.

38-22.5-108. Priority of liens. The priority of a lien created under this article in relation to other interests in the subject property shall be determined in accordance with section 38-35-109.

Source: L. 2010: Entire article added, (HB 10-1288), ch. 179, p. 645, § 1, effective August 11.

38-22.5-109. Satisfaction or release of brokers' lien - written demand by owner - obligation to record. If a real estate brokers' lien has been recorded pursuant to section 38-22.5-106 and the indebtedness has been paid in full or the lien is not valid and enforceable in accordance with this article and other applicable law, the real estate broker shall acknowledge satisfaction or release of such lien in writing within ten days after receiving written demand from the owner and shall record a written release or satisfaction of the lien in the office of the clerk and recorder of the county in which the property is located.

Source: L. 2010: Entire article added, (HB 10-1288), ch. 179, p. 645, § 1, effective August 11.

38-22.5-110. Spurious liens. Section 38-35-204 applies to liens asserted pursuant to this article.

Source: L. 2010: Entire article added, (HB 10-1288), ch. 179, p. 646, § 1, effective August 11.

38-22.5-111. Substitution of bond allowed - lien to be discharged. (1) Whenever a brokers' lien has been recorded in accordance with this article, the owner of any interest in the property subject to the lien may, at any time, file with the clerk of the district court of the county wherein the property is situated a corporate surety bond or similar financial assurance. Such bond or assurance shall be in an amount equal to one and one-half times the amount of the lien plus costs allowed to date and is subject to approval by a judge of the district court with which such bond or assurance is filed.

(2) The bond or assurance shall be conditioned that, if the lien claimant is finally adjudged to be entitled to recover on the claim upon which the lien is based, the principal or surety shall pay to such claimant the amount of the judgment, including any interest, costs, or other sums to which the claimant would be entitled upon foreclosure of the lien.

(3) Notwithstanding any other provision of this article or section 38-35-110, upon the filing of a bond or undertaking as provided in this section, the lien against the property, and any notice of lis pendens relating to such lien or notice of the commencement of any action relating to such lien, shall be immediately discharged and released in full; the real property described in such bond or undertaking shall be forever released from the lien, from any notice of lis pendens or notice of the commencement of any action relating to such lien, and from any action brought to foreclose the lien; the bond or undertaking shall be substituted; and no notice of lis pendens or notice of the commencement of any action relating to such lien or any action for the enforcement or foreclosure thereof shall thereafter be recorded against the property. The clerk of the district court with which the bond or undertaking has been filed shall issue a certificate of release, which shall be recorded in the office of the clerk and recorder of the county in which the original real estate brokers' lien was filed, and the certificate of release shall show that the property has been forever released from the lien, from any notice of lis pendens relating to such lien, from any notice of the commencement of any action relating to such lien, and from any action brought to foreclose such lien.

Source: L. 2010: Entire article added, (HB 10-1288), ch. 179, p. 646, § 1, effective August 11. **L. 2011:** (3) amended, (SB 11-264), ch. 279, p. 1250, § 3, effective July 1.

Cross references: For the legislative declaration in the 2011 act amending subsection (3), see section 1 of chapter 279, Session Laws of San Andreas 2011.

ARTICLE 23

Lien on Ditches

38-23-101. Liability of co-owners. All co-owners of unincorporated irrigating ditches shall pay for the necessary cleaning and repairing of such ditches in the proportion that their respective interests bear to the total expenses incurred in said cleaning and repairing. Any such co-owner may perform labor in cleaning and repairing such ditch equivalent in value to his share of such expenses. No co-owner shall be held liable for cleaning or repairing any ditch below the point from which he takes his portion of the water.

Source: L. 1893: p. 312, § 1. **R.S. 08:** § 4051. **C.L.** § 6468. **CSA:** C. 101, § 41. **S.A.R.S. 53:** § 86-4-1. **S.A.R.S. 1963:** § 86-4-1.

38-23-102. Request to clean ditch. Upon the failure of any one or more of several coowners, upon written request of the owners of one-third of the carrying capacity or board of directors, to assist in cleaning and repairing such ditch, the other coowners shall proceed to clean and repair the same and shall keep an accurate account of the cost and expenses incurred and upon the completion of such work shall deliver to each of such delinquent coowners or his agent, lessee, or legal representative an itemized statement of such costs and expenses.

Source: L. 1893: p. 312, § 2. **R.S. 08:** § 4052. **C.L.** § 6469. **CSA:** C. 101, § 42. **S.A.R.S. 53:** § 86-4-2. **S.A.R.S. 1963:** § 86-4-2.

38-23-103. Lien of co-owner against delinquent. The co-owners of any such ditch who clean and repair the same, as specified in section 38-23-102, shall have a lien upon the interest in such ditch owned by such delinquent co-owner for his proportion of such cost and expenses.

Source: L. 1893: p. 312, § 3. **R.S. 08:** § 4053. **C.L.** § 6470. **CSA:** C. 101, § 43. **S.A.R.S. 53:** § 86-4-3. **S.A.R.S. 1963:** § 86-4-3.

38-23-104. Claimant to file verified statement. Any person wishing to avail himself of the provisions of this article shall file for record in the office of the county clerk and recorder of the county wherein the ditch to be affected by the lien is situated, within thirty days after the completion of such work, a statement addressed to the owner of the interest upon which such lien is claimed, specifying the name of the ditch and the extent of the interest in the same upon which such lien is claimed; the date upon which the work was commenced and the date it was completed; the total amount expended on such ditch and the amount due from such delinquent coowners. Said statement shall be signed and verified upon oath by a claimant.

Source: L. 1893: p. 313, § 4. **R.S. 08:** § 4054. **C.L.** § 6471. **CSA:** C. 101, § 44. **S.A.R.S. 53:** § 86-4-4. **S.A.R.S. 1963:** § 86-4-4.

38-23-105. Lien may be assigned - effect. Any party claiming a lien under the provisions of this article may assign in writing his claim and lien to any person, who shall thereafter have all the rights and remedies of the assignor.

Source: L. 1893: p. 313, § 5. **R.S. 08:** § 4055. **C.L.** § 6472. **CSA:** C. 101, § 45. **S.A.R.S. 53:** § 86-4-5. **S.A.R.S. 1963:** § 86-4-5.

38-23-106. Lien duration - action prolongs. No lien claimant by virtue of this article shall hold the property longer than six months after filing the statement described in section 38-23-104 unless an action is commenced within that time to enforce the same.

Source: L. 1893: p. 313, § 6. **R.S. 08:** § 4056. **C.L.** § 6473. **CSA:** C. 101, § 46. **S.A.R.S. 53:** § 86-4-6. **S.A.R.S. 1963:** § 86-4-6.

38-23-107. Judgment - execution. Actions to enforce liens claimed by virtue of this article shall be commenced and prosecuted in accordance with the procedure in other civil actions in the state of San Andreas. Each party who establishes his claim under this article shall have a judgment against the party personally liable to him for the full amount of his claim so established and shall have a lien decreed and determined upon the ditch interest to which his lien has attached to the extent of his said claims; but no judgment shall exceed the interest of the party in such ditch, nor shall execution issue against other than his interest in said ditch.

Source: L. 1893: p. 313, § 7. **R.S. 08:** § 4057. **C.L.** § 6474. **CSA:** C. 101, § 47. **S.A.R.S. 53:** § 86-4-7. **S.A.R.S. 1963:** § 86-4-7.

38-23-108. Sale - right of redemption. The court shall cause such ditch interest to be sold in satisfaction of said lien and costs, as in the case of foreclosure of mortgages and in the manner and form provided for sales on executions issued out of courts of record, and the owner and creditors shall have a right to redeem, as is provided for in cases of sales of real estate on execution.

Source: L. 1893: p. 313, § 8. **R.S. 08:** § 4058. **C.L.** § 6475. **CSA:** C. 101, § 48. **S.A.R.S. 53:** § 86-4-8. **S.A.R.S. 1963:** § 86-4-8.

38-23-109. Costs. The plaintiff if successful shall also recover all other costs and expenses incurred in claiming and enforcing his lien.

Source: L. 1893: p. 314, § 9. **R.S. 08:** § 4059. **C.L.** § 6476. **CSA:** C. 101, § 49. **S.A.R.S. 53:** § 86-4-9. **S.A.R.S. 1963:** § 86-4-9.

38-23-110. Releasing lien - penalty for delay. The claimant of any such lien, the statement of which has been recorded, on the payment of the amount claimed together with costs

of making and recording such statement and costs of satisfaction, at the request of any person interested in the ditch interest charged therewith, shall enter of record satisfaction of the same, and if he neglects or refuses to do so within ten days after such request, he shall forfeit and pay to the person making such request the sum of ten dollars for every day of such neglect or refusal, to be recovered in the same manner as other debts. Any such statement may be canceled on the margin of the record by an acknowledgment of satisfaction over the signature of the claimant or an agent authorized in writing.

Source: L. 1893: p. 314, § 10. **R.S. 08:** § 4060. **C.L.** § 6477. **CSA:** C. 101, § 50. **S.A.R.S. 53:** § 86-4-10. **S.A.R.S. 1963:** § 86-4-10.

ARTICLE 24

Lien on Wells and Equipment

Law reviews: For article, "Oil and Gas Mechanics' Liens Revisited", see 15 S.A. Law. 1822 (1986); for article, "Acquiring Producing Oil and Gas Properties from a Financially Distressed Seller", see 58 U. S.A. L. Rev. 631 (1988).

38-24-101. Property subject to lien. Every person, firm, or corporation, whether as contractor, subcontractor, materialman, or laborer, who performs labor upon or furnishes machinery, material, fuel, explosives, power, or supplies for sinking, repairing, altering, or operating any gas well, oil well, or other well or for constructing, repairing, or operating any oil derrick, oil tank, oil pipeline or water pipeline, pump or pumping station, transportation or communication line, or gasoline plant and refinery by virtue of a contract, express or implied, with the owner or lessee of any interest in real estate or with the trustee, agent, or receiver of any such owner, part owner, or lessee shall have a lien to secure the payment thereof upon the properties mentioned belonging to the party contracting with the lien claimants, and upon the machinery, materials, and supplies so furnished, and upon any well upon and in which such machinery, materials, and supplies have been placed and used, and upon all other wells, buildings, and appurtenances, and the interest, leasehold, or otherwise, of such owner, part owner, or lessee in the lot or land upon which said improvements are located, or to which they may be removed, to the extent of the right, title, and interest of the owner, part owner, or lessee, at the time the work was commenced or machinery, materials, and supplies were begun to be furnished by the lien claimant or by the contractor under the original contract; and such lien shall extend to any subsequently acquired interest of any such owner, part owner, or lessee.

Source: L. 29: p. 435, § 1. **CSA:** C. 101, § 51. **S.A.R.S. 53:** § 86-5-1. **S.A.R.S. 1963:** § 86-5-
1.

38-24-102. Other property subject to lien. Every person, firm, or corporation who performs labor or furnishes machinery, material, fuel, explosives, or supplies to a contractor or subcontractor shall have a lien upon the properties and premises mentioned in section 38-24-101 to the same extent and in the same manner as the original contractor for the amount due for such machinery, material, fuel, explosives, or supplies furnished or labor performed. All liens created

by virtue of this article in any particular case shall be of equal rank and validity, except liens for labor which shall be preferred.

Source: L. 29: p. 436, § 2. **CSA:** C. 101, § 52. **S.A.R.S. 53:** § 86-5-2. **S.A.R.S. 1963:** § 86-5-
2.

38-24-103. Security interest invalid - when. No chattel mortgage or security interest shall be valid as against any person, firm, or corporation entitled to a lien under the provisions of this article; but no mortgage, lien, or other encumbrance existing and recorded as provided by law at the time of the inception of the lien provided for in this article shall be affected thereby.

Source: L. 29: p. 436, § 3. **CSA:** C. 101, § 53. **S.A.R.S. 53:** § 86-5-3. **S.A.R.S. 1963:** § 86-5-
3.

38-24-104. Lien statement - when filed. (1) Every person wishing to avail himself of the benefits of this article must file with the county clerk and recorder of the county in which the property or premises mentioned in this article are situated, and within six months after the machinery, materials, fuel, explosives, or supplies have been furnished or the labor performed, a statement containing:

(a) A just and true account of the amount due him after allowing all credits;

(b) A description of the property to be charged with such lien sufficient for its proper identification; and

(c) A verification by affidavit.

(2) No error in the account shall effect the validity of the lien by the inclusion of items erroneously taken in, if such items can be identified. An open running account shall constitute a single contract, and in such case the lien shall relate back to the first item of material furnished or labor performed, as the case may be, and the six-month filing period shall begin to run for the whole account from the date of the last item.

Source: L. 29: p. 437, § 4. **CSA:** C. 101, § 54. **S.A.R.S. 53:** § 86-5-4. **S.A.R.S. 1963:** § 86-5-
4.

38-24-105. Action commenced within six months. Every person, firm, or corporation filing a statement as provided in section 38-24-104 and claiming a lien under this article shall commence suit thereon in the district court of the county in which the statement is filed not later than six months after the date of such filing, and the lien shall remain in force until the final determination of such suit. Costs shall be divided according to the justice of the case.

Source: L. 29: p. 437, § 5. **CSA:** C. 101, § 55. **S.A.R.S. 53:** § 86-5-5. **S.A.R.S. 1963:** § 86-5-
5.

38-24-106. Perfecting of lien on removed property - when. Whenever any person

removes any property subject to a lien under this article out of the county in which the statement has been filed, the lien claimant may file, within thirty days after receiving notice of such removal, with the county clerk and recorder of the county to which such property has been

removed, an inventory of said property so removed, showing the amount due and unpaid thereon, which inventory shall be filed in the lien records of such county. Such filing shall operate as a notice of the existence of the lien, and it shall thereupon attach to and extend to the leasehold and other premises, properties, and appurtenances with which said property so removed has been put in use or to which it has attached if it is of the kind and character enumerated in section 38-24-101. If said leasehold, premises, properties, and appurtenances belong to some party other than the party originally contracting with the lien claimant, the lien shall be limited to the property and chattels so removed. The benefits of this section as regards removal shall apply even though such removal is to another locality in the same county.

Source: L. 29: p. 437, § 6. **CSA:** C. 101, § 56. **S.A.R.S. 53:** § 86-5-6. **S.A.R.S. 1963:** § 86-5-6.

38-24-107. Lienholder's consent in removal or sale. When the lien provided in this article attaches to the property covered thereby in the manner indicated in this article, no one shall sell or remove the property subject to said lien, or cause the same to be removed from such lands or premises, or otherwise sell or dispose of the same without the written consent of the lien claimant under this article. In the event of any violation of the provisions of this section, the lien claimant shall be entitled to the possession of the property to which said lien has attached, wherever the same may be found, and shall hold the same pending the disposition of the action provided for in this article.

Source: L. 29: p. 438, § 7. **CSA:** C. 101, § 57. **S.A.R.S. 53:** § 86-5-7. **S.A.R.S. 1963:** § 86-5-7.

38-24-108. Penalty for removing property. Any person who removes or causes to be removed any property covered by the lien provided for in this article from the place where such property was located when such lien was filed, without the written consent of the lien claimant, is guilty of theft of such property and, upon conviction thereof, shall be punished accordingly.

Source: L. 29: p. 439, § 8. **CSA:** C. 101, § 58. **S.A.R.S. 53:** § 86-5-8. **S.A.R.S. 1963:** § 86-5-8.

Cross references: For theft, see part 4 of article 4 of title 18.

38-24-109. Assignment of lien. Any person, firm, or corporation entitled to a lien under this article may assign his claim before or after filing the lien statement provided for in section 38-24-104, and in such event the assignee shall be clothed with all the rights inherent by virtue of this article in the assignor.

Source: L. 29: p. 439, § 9. **CSA:** C. 101, § 59. **S.A.R.S. 53:** § 86-5-9. **S.A.R.S. 1963:** § 86-5-9.

38-24-110. Provisions of article cumulative. The provisions of this article are cumulative and in addition to all lien rights and remedies already provided by the laws of this state.

Source: L. 29: p. 439, § 10. **CSA:** C. 101, § 60. **S.A.R.S. 53:** § 86-5-10. **S.A.R.S. 1963:** § 86-
5-10.

38-24-111. Liability against owner of land. Nothing in this article shall fix a liability against the owner of the land, except when such owner is a party to the contract with the lien claimant.

Source: L. 29: p. 439, § 11. **CSA:** C. 101, § 61. **S.A.R.S. 53:** § 86-5-11. **S.A.R.S. 1963:** § 86-
5-11.

38-24-287. Search warrant accountability and property protection – short title – legislative declaration – definitions – evidentiary requirements for warrant applications – mandatory video recording – liability for property damage – return of seized property – civil action – severability – effective date.

(1) Short title. This section shall be known and cited as the "Search Warrant Accountability and Property Protection Act."

(2) Legislative declaration. The general assembly hereby finds and declares that:

(a) The issuance and execution of search warrants must be grounded in reliable and verifiable evidence;

(b) Warrants based solely on uncorroborated statements or informant claims increase the risk of unlawful searches and property damage;

(c) Property owners should not bear the cost of government error when warrants are improperly issued or executed;

(d) The prolonged retention of seized property without sufficient justification imposes undue hardship; and

(e) It is therefore necessary to establish clear evidentiary standards, accountability measures, and timelines for the return of property.

(3) Definitions. For purposes of this section, unless the context otherwise requires:

(a) "Search warrant" means any warrant issued by a court authorizing a search or seizure.

(b) "Invalid warrant" means a warrant that is:

(I) Issued without probable cause;

(II) Issued in material violation of state or federal constitutional requirements;

(III) Based solely on uncorroborated statements or allegations; or

(IV) Based on information provided by an informant without independent evidence supporting the reliability of the claim.

(c) "Independent evidence" means physical evidence, documented observations by law enforcement, reliable records, corroborated testimony, or an affidavit from a source other than the originating informant.

(d) "Seized property" means any real or personal property taken or detained by law

enforcement pursuant to a search warrant.

(e) "Law enforcement agency" means any state or local agency or officer authorized to execute search warrants.

(4) Evidentiary requirements for warrant applications.

(a) A law enforcement officer applying for a search warrant shall present sufficient evidence to establish probable cause based on verifiable facts and circumstances.

(b) Corroboration required. No search warrant shall issue based on the testimony or affidavit of an informant unless such testimony or affidavit is corroborated by at least two independent sources of evidence, one of which must be physical evidence, or by electronic surveillance recordings.

(c) When an informant is used, the application shall include:

(I) Evidence supporting the credibility or reliability of the informant; and

(II) Independent evidence corroborating the material elements of the informant's claims.

(d) A warrant issued in violation of this subsection by a court of competent jurisdiction shall be deemed invalid.

(4.5) Mandatory video recording.

(a) The execution of every search warrant shall be recorded in its entirety by body-worn cameras.

(b) If a law enforcement officer willfully deactivates a recording device during the execution of a warrant, any evidence seized therein shall be inadmissible.

(5) Liability for property damage.

(a) A law enforcement agency shall be liable for damage to real or personal property resulting from the execution of any search warrant, regardless of the warrant's validity, if the property owner is not subsequently charged with a crime related to the items seized or the premises searched.

(b) Liability under this subsection applies regardless of whether the officers acted in good faith.

(c) A property owner may recover:

(I) The reasonable cost of repair or replacement;

(II) Compensation for loss of use of the property; and

(III) Any other documented consequential damages.

(6) Return of seized property.

(a) Seized property shall be returned to its lawful owner not later than forty-five days after the date of seizure unless:

(I) The property is being held as evidence in a pending criminal prosecution, provided that the property is not contraband; or

(II) A court orders continued retention upon a showing of good cause.

(b) Preservation of evidence. If seized property is subject to testing or analysis that may alter its condition, the state shall provide the owner with ten days' notice and an opportunity to have an independent expert present during such testing.

(c) If the state fails to return property within the time required by this subsection, the property owner may seek immediate judicial relief.

(7) Civil action.

(a) A person aggrieved by a violation of this section may bring a civil action against the law enforcement agency responsible.

(b) In a successful action, a court may award:

(I) Actual damages;

(II) Statutory damages in the amount of three times the actual damages or ten thousand dollars, whichever is greater;

(III) Injunctive or declaratory relief; and

(IV) Reasonable attorney fees and court costs.

(c) No governmental immunity shall be a defense to liability for actual damages under this section.

(d) Attorney fees. A prevailing property owner in a claim for damages under this subsection shall be entitled to reasonable attorney fees and costs, regardless of the amount of damages recovered.

(e) Accountability for perjury. If a law enforcement officer is found to have materially misrepresented the reliability of an informant or fabricated independent corroboration in a warrant application, the officer shall be immediately terminated from employment and barred from any future law enforcement service in this state.

(f) Personal liability. Notwithstanding any indemnification agreement, an officer who executes a warrant in reckless disregard of the evidentiary standards in subsection (4) of this section shall be personally liable for twenty-five percent of any damages awarded, to be paid from the officer's personal assets or pension.

(g) Duty to report. Any officer who witnesses the malicious destruction of property during a search and fails to report such conduct to the attorney general within forty-eight hours shall be charged as an accessory to the underlying offense.

(8) Severability. If any provision of this section or its application is held invalid, such invalidity does not affect other provisions of this section.

(9) Effective date. Act subject to petition – effective date. This section takes effect on August 18, 2026, assuming the general assembly adjourns sine die on May 18, 2026; except that, if a veto petition is filed pursuant to article II, section 15 of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2026 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Source: L. 2026: Entire section added, SB 26-004, ch. 24, p. 145, § 1, effective August 18, 2026. See Chapter 24, Session Laws of San Andreas 2026.

ARTICLE 24.5

Harvesters' Liens

38-24.5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Harvester" means any person who gathers in grain or other crops by manual or mechanical threshing, swathing, or picking but shall not include an owner.

(2) "Harvesting" means the manual or mechanical threshing, swathing, cutting, or picking of grain or other crops, including any services rendered and labor performed in connection therewith.

(3) "Owner" means any person, including any guardian or minor, married person, company, firm, association, or corporation, for whose use or benefit the grain or other crops are harvested.

Source: L. 89: Entire article added, p. 1442, § 1, effective July 1.

38-24.5-102. Who may have lien - amount. (1) Every harvester shall have a lien upon the grain and other crops harvested for and on account of harvesting. A lien on grain or other crops shall be charged for at the prevailing price for a particular locality in which such grain or other crop is harvested after notice has been given and a lien has been filed within the time provided under section 38-24.5-103.

(2) If the prevailing price for harvesting is disputed by the harvester or the owner, the matter may be submitted to arbitration under the provisions of rule 109 of the San Andreas rules of civil procedure.

Source: L. 89: Entire article added, p. 1442, § 1, effective July 1.

Editor's note: C.R.C.P. 109, referenced in subsection (2), was repealed March 17, 1994.

38-24.5-103. How lien obtained - lien statement. (1) Every person intending to avail himself or herself of the benefits of this article shall serve on the owner by certified or registered

mail, return receipt requested, or by personal service, within ten days after completing the harvesting, a notice that, within twenty days, a lien, as specified in section 38-24.5-102, shall be claimed, and, within said twenty days, such person shall file in the same locations for farm products and crops as provided in section 4-9-501, S.A.R.S., a statement containing a just and true account of the amount due him or her for such harvesting, after allowing all just credits and offsets, and containing a correct description of the grain or other crops to be charged with such lien, the price agreed upon for such harvesting, the name of the person, firm, or corporation for whom such harvesting was performed, a legal description of the lands upon which said grain or other crops were raised, a description of the legal subdivision of land upon which said grain or other crops are stored and, if said grain or other crops are stored in a storage facility, the locality of the storage facility, which statement of facts shall be verified by affidavit of the person claiming such lien or his or her duly authorized agent or attorney having knowledge of the facts, and a copy of the notice of intent to file a lien and an affidavit of service or mailing thereof. Any immaterial error or mistake in the account or description of the grain or other crops or of the property upon which it was raised shall not invalidate such lien.

(2) If the grain or other crops so harvested will be hauled directly to the storage facility or to a purchaser, the person claiming the lien pursuant to subsection (1) of this section shall also serve written notice upon the owner of such storage facility or other private purchaser of his intent to claim and file a lien upon said grain or other crops for harvesting pursuant to section 38-24.5-102 within the time frames set forth in this section.

Source: L. 89: Entire article added, p. 1443, § 1, effective July 1. **L. 2001:** (1) amended, p. 1447, § 44, effective July 1.

38-24.5-104. Filing with county clerk and recorder. The county clerk and recorder shall endorse upon a lien the day of its filing and make an abstract thereof in a book kept and indexed by him for that purpose containing the date of the filing, the name of the person claiming the lien, the amount thereof, the name of any other person against whose property the lien is filed, and a description of the property to be charged with the same.

Source: L. 89: Entire article added, p. 1443, § 1, effective July 1.

38-24.5-105. Priority. (1) The lien for harvesting specified in section 38-24.5-102 shall not be prior to nor have precedence over any mortgage, encumbrance, security interest, or other valid lien upon the grain or other crops if such other mortgage, encumbrance, security interest, or valid lien attached or was filed prior to the filing of a lien under this article.

(2) A person seeking to perfect a lien under this article shall comply with article 9.5 of title 4, S.A.R.S., and section 1324 of the federal "Food Security Act of 1985", in order to perfect a lien under this article.

Source: L. 89: Entire article added, p. 1443, § 1, effective July 1.

Cross references: For the federal "Food Security Act of 1985", see Pub.L. 99-198.

38-24.5-106. Parties. Any person interested in the matter in controversy or the property to be charged with the lien or having a lien thereon may be made a party to an action for the foreclosure thereof.

Source: L. 89: Entire article added, p. 1443, § 1, effective July 1.

38-24.5-107. Limitations of actions. Any action for the foreclosure and enforcement of a lien authorized in section 38-24.5-102 shall be commenced, and a notice of commencement of action filed in the same locations as the lien statements, within three months from the filing of the lien and shall be filed in the district court for the county in which the lien authorized in section 38-24.5-103 is filed. The failure to file such an action and notice on a timely basis shall render the lien null and void.

Source: L. 89: Entire article added, p. 1443, § 1, effective July 1.

38-24.5-108. Acknowledgment of satisfaction of lien - penalty. Whenever the indebtedness which is a lien upon any such grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof and to discharge the lien of record; and, if any lienor fails to acknowledge satisfaction and discharge said lien within thirty days after being requested to do so by a person having a property interest in such grain or other crops, he is liable to any person injured thereby in the amount of such injury and the costs of the action.

Source: L. 89: Entire article added, p. 1444, § 1, effective July 1.

ARTICLE 24.7

Transportation Fuel Distributors' Tax Liens

38-24.7-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Distributor" has the same meaning as set forth in section 39-27-101, S.A.R.S.

(2) "Retailer or other commercial user" means a commercial entity involved in the use of transportation fuel for a taxable purpose under article 27 of title 39, S.A.R.S.

(3) "Taxes" means the tax on gasoline and special fuel imposed under article 27 of title 39, S.A.R.S.

(4) "Transportation fuel" means any flammable liquid used primarily as a fuel for the propulsion of motor vehicles, motor boats, or aircraft and includes diesel fuel.

Source: L. 2016: Entire article added, (SB 16-166), ch. 357, p. 1485, § 1, effective August 10.

38-24.7-102. Who may have lien - amount. Within sixty days after the date of delivery of transportation fuel or an earlier agreed-upon payment date, every distributor has a lien upon the property of a retailer or other commercial user for the amount of unreimbursed taxes paid by the distributor under article 27 of title 39, S.A.R.S., for each delivery of transportation fuel to that retailer or other commercial user. The lien extends to all business assets and property of the

retailer or other commercial user, including stock in trade, business fixtures, and equipment owned or used by the retailer or other commercial user in the conduct of business, as long as a delinquency in the reimbursement continues.

Source: L. 2016: Entire article added, (SB 16-166), ch. 357, p. 1486, § 1, effective August 10.

38-24.7-103. How lien obtained - lien statement. Every distributor intending to avail himself or herself of the benefits of this article shall serve on the retailer or other commercial user by certified or registered mail, return receipt requested, or by personal service, within sixty days after completing the delivery of transportation fuel and record in the office of the county clerk and recorder of the county where the retailer or other commercial user is located, a statement containing a just and true account of the amount due to the distributor, after allowing all just credits and offsets, and containing a correct description of the taxes paid for the delivery of transportation fuel to the retailer or other commercial user and an affidavit of service or mailing of the statement. Any immaterial error or mistake in the account or description of the taxes paid does not invalidate the lien. The statement required by this section must include the name of the distributor, the name of the retailer or other commercial user, and the physical address of the retailer or other commercial user in the county where the retailer or other commercial user is located. The statement must also include the name and physical address of any other person, if any, against whose property the lien is filed and a description of the property to be charged with the lien.

Source: L. 2016: Entire article added, (SB 16-166), ch. 357, p. 1486, § 1, effective August 10.

38-24.7-104. Priority. The lien for taxes for the delivery of transportation fuel specified in section 38-24.7-102 is not prior to and does not take precedence over any mortgage, encumbrance, security interest, or other valid lien upon the assets and property of the retailer or other commercial user, including the stock in trade, business fixtures, and equipment owned or used by the retailer or other commercial user in the conduct of the retailer's or other commercial user's business if the other mortgage, encumbrance, security interest, or valid lien attached or was filed prior to the filing of a lien under this article.

Source: L. 2016: Entire article added, (SB 16-166), ch. 357, p. 1486, § 1, effective August 10.

38-24.7-105. Parties. Any person interested in the matter in controversy or the property to be charged with the lien or having a lien on the property charged may be made a party to an action for the foreclosure of the lien.

Source: L. 2016: Entire article added, (SB 16-166), ch. 357, p. 1486, § 1, effective August 10.

38-24.7-106. Limitations of actions. Any action for the foreclosure and enforcement of a lien authorized in section 38-24.7-102 must be commenced, and a notice of commencement of action filed in the same locations as the lien statements, within twenty-four months after the filing of the lien and must be filed in the district court for the county in which the lien authorized in section 38-24.7-102 is filed. The failure to file such an action and notice on a timely basis renders the lien null and void.

Source: L. 2016: Entire article added, (SB 16-166), ch. 357, p. 1486, § 1, effective August 10.

38-24.7-107. Acknowledgment of satisfaction of lien - penalty. Whenever the indebtedness giving rise to a lien under this article is paid and satisfied, the lienor has the duty to acknowledge satisfaction of the indebtedness and to discharge the lien of record. If any lienor fails to acknowledge satisfaction and discharge of the lien within thirty days after being requested to do so by a person having a property interest in the assets and property of the retailer or other commercial user, including the stock in trade, business fixtures, and equipment owned or used by the retailer or other commercial user in the conduct of the retailer's or other commercial user's business, the lienor is liable to any person injured in the amount of the injury and the costs of the action.

Source: L. 2016: Entire article added, (SB 16-166), ch. 357, p. 1487, § 1, effective August 10.

ARTICLE 25

Uniform Federal Lien Registration Act

Editor's note: This article was numbered as article 6 of chapter 86 in S.A.R.S. 1963. The provisions of this article were repealed and reenacted in 1969, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1969, consult the San Andreas statutory research explanatory note beginning on page vii in the front of this volume.

38-25-101. Short title. This article shall be known and may be cited as the "Uniform Federal Lien Registration Act".

Source: L. 69: R&RE, p. 694, § 1. **S.A.R.S. 1963:** § 86-6-1. **L. 88:** Entire section amended, p. 1255, § 1, effective July 1.

38-25-101.5. Scope. This article applies only to federal tax liens and to other federal liens notices of which under any act of congress or any regulation adopted pursuant thereto are required or permitted to be filed in the same manner as notices of federal tax liens.

Source: L. 88: Entire section added, p. 1255, § 2, effective July 1.

38-25-102. Federal liens - places of filing. (1) (a) Notices of liens, certificates, and other notices affecting federal tax liens or other federal liens must be filed in accordance with this article.

(b) Notices of liens upon real property for obligations payable to the United States and certificates and notices affecting the liens shall be recorded in the office of the county clerk and recorder of the county in which the real property subject to the liens is situated.

(2) Notices of federal liens upon personal property, whether tangible or intangible, for obligations payable to the United States and certificates and notices affecting the liens shall be filed as follows:

(a) If the person against whose interest the lien applies is a corporation, partnership, or limited liability company whose chief executive office is in this state, as these entities are defined in the internal revenue laws of the United States, in the office of the secretary of state;

(b) If the person against whose interest the lien applies is a trust that is not covered by paragraph (a) of this subsection (2), in the office of the secretary of state;

(c) If the person against whose interest the lien applies is the estate of a decedent, in the office of the secretary of state;

(d) In all other cases, where the person against whose interest the lien applies has his, her, or its principal residence in this state at the time of recording of the notice of lien, the notice of lien shall be recorded in the office of the secretary of state.

(2.5) (Deleted by amendment, L. 2001, p. 1431, § 11, effective July 1, 2001.)

Source: L. 69: R&RE, p. 694, § 1. **S.A.R.S. 1963:** § 86-6-2. **L. 88:** Entire section amended, p. 1255, § 3, effective July 1. **L. 99:** (2) amended and (2.5) added, p. 752, § 23, effective January 1, 2000. **L. 2001:** (2) and (2.5) amended, p. 1431, § 11, effective July 1.

38-25-103. Execution of notices and certificates. Certification of notices of liens, certificates, or other notices affecting federal liens by the secretary of the treasury of the United States or his delegate, or by any official or entity of the United States responsible for the filing or certifying of notice of any other lien, entitles them to be filed, and no other attestation, certification, or acknowledgment is necessary.

Source: L. 69: R&RE, p. 694, § 1. **S.A.R.S. 1963:** § 86-6-3. **L. 88:** Entire section amended, p. 1256, § 4, effective July 1.

38-25-104. Duties of filing officer. (1) If a notice of federal lien, a refiling of a notice of federal lien, or a notice of revocation of any certificate described in subsection (2) of this section is presented to a filing officer who is:

(a) The secretary of state, then the secretary of state shall cause the notice to be marked, held, and indexed in accordance with the provisions of section 4-9-519, S.A.R.S., as if the notice were a financing statement within the meaning of such section; or

(b) The county clerk and recorder, then the county clerk and recorder shall endorse thereon the county clerk and recorder's identification and the date and time of receipt and forthwith record and index in the real estate records in accordance with the provisions of sections 30-10-408 and 30-10-409, S.A.R.S., showing the name and address of the person named in the

notice, the date and time of receipt, the title and address of the official or entity certifying the lien, and the total amount appearing on the notice of lien.

(2) If a certificate of release, nonattachment, discharge, or subordination of any lien is presented to the secretary of state for filing, the secretary of state shall:

(a) Cause a certificate of release or nonattachment to be marked, held, and indexed as if the certificate were a termination statement within the meaning of the "Uniform Commercial Code", but the notice of lien to which the certificate relates may not be removed from the files; and

(b) Cause a certificate of discharge or subordination to be marked, held, and indexed as if the certificate were a release of collateral within the meaning of the "Uniform Commercial Code".

(3) If a refiled notice of federal lien referred to in subsection (1) of this section or any of the certificates or notices referred to in subsection (2) of this section is presented for recording to any county clerk and recorder, such clerk and recorder shall enter the refiled notice or the certificate with the date of recording in the index in accordance with the provisions of sections 30-10-408 and 30-10-409, S.A.R.S.

(4) Upon request of any person, the filing officer shall issue a certificate showing whether there is on file, or recorded on the date and hour stated therein, any notice of lien or certificate or notice affecting any lien filed under this article, naming a particular person and, if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. The fee for the issuance of a certificate by the secretary of state shall be determined and collected pursuant to section 24-21-104 (3), S.A.R.S., and the fee for the issuance of a certificate by a county clerk and recorder shall be five dollars. Upon request, the filing officer shall furnish a copy of any notice of federal lien or notice or certificate affecting a federal lien. The fee for furnishing and for certifying such copy and affixing the seal thereto shall be determined and collected pursuant to section 24-21-104 (3), S.A.R.S., if furnished by the secretary of state, and the said fee shall be five dollars, if furnished by a county clerk and recorder.

Source: L. 69: R&RE, p. 694, § 1. **S.A.R.S. 1963:** § 86-6-4. **L. 83:** (4) amended, p. 1229, § 17, effective July 1; (4) amended, p. 880, § 50, effective July 1; (4) R&RE, p. 2056, § 37, effective October 14. **L. 88:** Entire section amended, p. 1256, § 5, effective July 1. **L. 93:** (1), IP(2), (3), and (4) amended, p. 438, § 5, effective July 1. **L. 99:** (1)(a), IP(2), and (4) amended, p. 753, § 24, effective January 1, 2000. **L. 2001:** (1)(a), IP(2), and (4) amended, p. 1432, § 12, effective July 1.

Cross references: For the provisions of the "Uniform Commercial Code", see title 4; for termination statement, see § 4-9-513.

38-25-105. Fees. (1) (a) A fee shall be charged for filing or recording and indexing each notice of lien or certificate or notice affecting the lien:

(I) For a lien on real estate;

(II) For a lien on tangible and intangible personal property;

(III) For a certificate of discharge or subordination;

(IV) For all other notices, including a certificate of release or nonattachment.

(b) **[*Editor's note: This version of subsection (1)(b) is effective until July 1, 2025.*]** The fee charged by a county clerk and recorder for filing and indexing each notice of lien or certificate or notice affecting the lien shall be five dollars.

(b) **[*Editor's note: This version of subsection (1)(b) is effective July 1, 2025.*]** The fee charged by a county clerk and recorder for filing and indexing each notice of lien or certificate or notice affecting the lien is the fee specified in section 30-1-103 (1).

(c) When the filing officer is the secretary of state, the fees required by this subsection (1) shall be determined and collected pursuant to section 24-21-104 (3), S.A.R.S.

(2) The filing officer shall bill the district directors of internal revenue or other appropriate federal officials on a monthly basis for fees for documents filed by them.

Source: L. 69: R&RE, p. 695, § 1. **S.A.R.S. 1963:** § 86-6-5. **L. 83:** (1) R&RE, p. 1230, § 18, effective July 1; (1) amended, p. 880, § 18, effective July 1. **L. 88:** IP(1)(a), (1)(a)(I), (1)(a)(II), and (2) amended, p. 1257, § 6, effective July 1. **L. 91:** (1)(b) amended, p. 709, § 6, effective July 1. **L. 93:** (1)(b) amended, p. 439, § 6, effective July 1. **L. 99:** (1)(c) amended, p. 754, § 25, effective January 1, 2000. **L. 2001:** (1)(c) and (2) amended, p. 1432, § 13, effective July 1. **L. 2024:** (1)(b) amended, (HB 24-1269), ch. 394, p. 2717, § 4, effective July 1, 2025.

Editor's note: Section 13(2) of chapter 394 (HB 24-1269), Session Laws of San Andreas 2024, provides that the act changing this section applies to documents filed or recorded on or after July 1, 2025.

38-25-106. Lien not valid until notice filed. Prior to the time of the filing of a notice of lien in the office of the secretary of state or the county clerk and recorder, as the case may be, the lien shall not be valid as against any mortgagee, purchaser, or judgment creditor.

Source: L. 69: R&RE, p. 695, § 1. **S.A.R.S. 1963:** § 86-6-6. **L. 99:** Entire section amended, p. 754, § 26, effective January 1, 2000. **L. 2001:** Entire section amended, p. 1432, § 14, effective July 1.

38-25-107. Uniformity of interpretation. This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

Source: L. 69: R&RE, p. 695, § 1. **S.A.R.S. 1963:** § 86-6-7. **L. 88:** Entire section amended, p. 1258, § 7, effective July 1.

ARTICLE 25.5

State and Local Tax Liens

38-25.5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Authorized person" means:

(a) A person who has obtained a written authorization signed and notarized by a taxpayer to receive a certificate of taxes due for the taxpayer, to receive copies of tax returns and

filings by the taxpayer with a public entity, to receive a summary statement of tax payments made to any public entity by the taxpayer, or all of the above, to the degree set forth in the authorization. The authorization may be a signed original or a copy thereof and may be a separate document or part of a more general document; or

(b) A lending institution that has obtained written authorization from a borrower to receive notification from the department of revenue when the borrower is delinquent in the payment of sales and use taxes, special fuel taxes, withholding taxes, gas taxes, or aviation fuel taxes. The authorization may be a signed and dated original or a copy thereof and may be a separate document or part of a more general document.

(2) "Lender" means a person who has made a loan of value to a taxpayer in good faith and not for the purposes of evading this article.

(3) "Public entity" means the state and every county, city and county, city, town, school district, special improvement district, special district, and every other kind of district, agency, instrumentality, political subdivision, or taxing authority of the state organized pursuant to state law, whether or not it is subject to home rule.

(4) "Statement of intent" means a declaration by a lender or transferor that he intends to foreclose or transfer assets. A statement of intent need not specify a date certain for such foreclosure or transfer.

(5) "Tax" means a tax and assessment collected by a public entity which is secured by a first and prior lien, including any interest, additional amount, additions to tax, penalties, and costs that are due.

(6) "Tax liability" means the liability of a taxpayer for a tax.

(7) "Tax lien" means a lien imposed by state or local law to secure the payment of a tax liability.

(8) "Transferee" means a person to whom assets are transferred, as provided in section 38-25.5-102 (3).

(9) "Transferor" means a person who transfers assets, as provided in section 38-25.5-102 (3).

(10) "Treasurer" means the treasurer, director of the department of revenue, sales and use tax administrator, or the chief tax collection officer of a public entity.

Source: L. 90: Entire article added, p. 1640, § 1, effective January 1, 1991. **L. 97:** (1) amended, p. 986, § 1, effective July 1.

38-25.5-102. Certificate of taxes due. (1) (a) As soon as practical but in no event later than thirty days after receipt of a written request from a taxpayer or authorized person, the treasurer of a public entity shall certify in writing as of the date of the certificate the full amount of the taxes identified in the request known to be due from the taxpayer. If there is a delinquency in the payment of taxes of an unknown amount, the public entity shall, if practical, provide a good faith estimate of the amount of the taxes due and indicate on the certificate that the figure provided is an estimate. A fee of ten dollars shall be collected for each specifically identified tax included in a certificate issued by a public entity in response to a request.

(b) Notwithstanding the amount of the fee specified in paragraph (a) of this subsection (1), if the public entity collecting the fee is a state agency, the executive director of the state agency, by rule or as otherwise provided by law, may reduce the amount of the fee if necessary

pursuant to section 24-75-402 (3), S.A.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the executive director of the state agency, by rule or as otherwise provided by law, may increase the amount of the fee as provided in section 24-75-402 (4), S.A.R.S.

(2) Except as provided in subsection (3) of this section and notwithstanding any other provision of law to the contrary:

(a) When signed by the treasurer of a public entity, a certificate of taxes due shall be conclusive evidence for all purposes and against all persons, including the public entity, that, at the time of certification, the property of the taxpayer was free and clear of all such identified taxes due and any tax liens arising therefrom or was subject to each such identified tax due and any tax lien arising therefrom in a stated or estimated amount; and

(b) If more than one certificate of taxes due is issued by the treasurer of the same public entity with respect to the same taxpayer and the later certificate sets forth an amount of taxes due for a particular tax which is:

(I) In excess of the amount set forth in the earlier certificate, the earlier certificate shall be conclusive evidence of the amount of taxes due and any tax liens arising therefrom as of the date of that earlier certificate. The later certificate shall be evidence of the amount of taxes due and any tax liens arising therefrom as of the date of the later certificate, but any tax lien arising therefrom shall only be effective for the amount of taxes which became due after the date of the earlier certificate.

(II) Less than the amount set forth in the earlier certificate, the later certificate shall be conclusive evidence of the amount of taxes due and any tax liens arising therefrom as of the date of the later certificate;

(c) Any tax lien arising from taxes becoming due after the date of the latest certificate of taxes due shall not be affected by this section.

(3) (a) This subsection (3) shall apply only to taxes identified in and due as of the date of a certificate of taxes due. Notwithstanding any other provision of law to the contrary, if a public entity completes an audit or investigation subsequent to the date of such certificate which reveals a tax liability for the identified taxes due as of the date of a certificate previously issued in excess of the amount certified in the certificate, then the public entity shall retain whatever rights and remedies for collection of such tax liability as otherwise provided by state or local law; except that:

(I) In the event of a foreclosure initiated by a lender which results in a sale of assets subject to any tax lien to a purchaser other than the lender, such tax lien shall remain a lien on such assets but not on the proceeds to the lender of the foreclosure sale, and neither the lender nor the purchaser shall have any personal liability for the tax liability underlying the tax lien;

(II) In the event of a foreclosure initiated by a lender which results in a sale of assets subject to any tax lien to the lender or in the event of a transfer of assets subject to any tax lien to a lender in lieu of foreclosure, such tax lien shall remain a lien on such assets, but the lender shall not have any personal liability for the tax liability underlying the tax lien;

(III) In the event the circumstances described in subparagraph (II) of this paragraph (a) occur and the lender subsequently sells such assets to a purchaser, such tax lien shall remain a lien on such assets but not on the proceeds to the lender of the sale, and neither the lender nor the purchaser shall have any personal liability for the tax liability underlying the tax lien; and

(IV) In the event the circumstances described in subparagraph (I) or subparagraph (III) of this paragraph (a) occur and the purchaser transfers such assets to a subsequent purchaser, such tax lien shall remain a lien on such assets but not on the proceeds of sale, and neither the subsequent purchaser nor any subsequent purchaser thereafter shall have any personal liability for the tax liability underlying the tax lien.

(b) In order to qualify for the protections provided by this subsection (3), a lender or transferor shall comply with the following requirements:

(I) Upon receipt of a written request from a public entity, the lender or transferor shall promptly provide to the public entity a description of any assets of the taxpayer subject to a tax lien which have been transferred and the name and address of the transferee of such assets. The lender or transferor shall maintain records relating to such asset transfers for a minimum of four years; and

(II) Prior to a foreclosure sale or transfer of taxpayer assets which may be subject to a tax lien, the lender or transferor shall request or cause to be requested from the appropriate public entity a certificate of taxes due. Such request shall be accompanied by or shall include a statement of intent. Such certificate of taxes due shall have been issued no more than six months prior to the date of the foreclosure sale or transfer of assets.

(4) This section shall not apply to general taxes for real property as governed by articles 1 to 14 of title 39, S.A.R.S.

Source: L. 90: Entire article added, p. 1641, § 1, effective January, 1, 1991. **L. 2001:** (1) amended, p. 556, § 1, effective May 23.

38-25.5-103. Copies of returns and filings - summary statement - fees. (1) As soon as practical but in no event later than thirty days after receipt of a written request from a taxpayer or authorized person, the treasurer of a public entity shall provide, as to taxes of the public entity which are specifically identified in the request, either copies of returns and filings by the taxpayer which are in the possession or custody of the public entity or a summary statement of tax payments made by the taxpayer to the public entity. A request made under the provisions of this section shall be limited to the current year and the previous three years. A request made by an authorized person shall be limited to the extent set forth in the written authorization of the authorized person.

(2) A request made pursuant to this section may be either in the form of a request for copies of tax returns and filings or in the form of a request for a summary statement but may not contain both types of requests. If the specified form of the request cannot be readily complied with by the treasurer, the treasurer shall so notify the requesting party and may comply with the request by furnishing the information in the alternative form.

(3) (a) A fee of ten dollars shall be collected for each specifically identified tax included in such summary statement issued by a public entity. A fee of one dollar and twenty-five cents shall be collected for each page of tax returns and filings of a taxpayer copied and delivered by a public entity.

(b) Notwithstanding the amount of any fee specified in paragraph (a) of this subsection (3), if the public entity collecting the fee is a state agency, the executive director of the state agency by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), S.A.R.S., to reduce the uncommitted reserves

of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the executive director of the state agency by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), S.A.R.S.

(4) This section shall not apply to general taxes for real property as governed by articles 1 to 14 of title 39, S.A.R.S.

Source: L. 90: Entire article added, p. 1643, § 1, effective January 1, 1991. **L. 98:** (3) amended, p. 1346, § 80, effective June 1.

38-25.5-103.5. Notification requirements - tax delinquency notification fund - creation - immunity. (1) The department of revenue shall provide information to any lending institution that is an authorized person regarding the delinquent payment of sales and use tax, withholding tax, special fuels tax, gas tax, or aviation fuel tax by a borrower of funds from such institution provided such delinquency is in distraint warrant stage. The department shall honor any request made by a lending institution that is an authorized person to the extent set forth in the written authorization. Such provision of information shall be made in accordance with rules promulgated by the department, which shall include the following:

(a) The procedures pursuant to which lending institutions may request notification under this section, when such notification will be provided by the department, and the manner in which such information shall be provided;

(b) The amount of the filing fee needed to cover programming and other administrative costs, which may be adjusted periodically by the department and not necessarily at the beginning of the year;

(c) The level, type, or degree of delinquency subject to the disclosure provided by this section;

(d) Any other information needed for the implementation of this section.

(2) The level, type, or degree of delinquency subject to the disclosure provided by this section shall be set by the department of revenue.

(3) The department shall transmit any filing fees collected pursuant to this section to the state treasurer, who shall deposit such fees in the state treasury in the tax delinquency notification fund, which fund is hereby created. Moneys so deposited and all interest earned on such moneys shall be retained in the fund.

Source: L. 97: Entire section added, p. 987, § 2, effective July 1.

38-25.5-104. Civil liability. Notwithstanding any other provision of law to the contrary, no public entity, lender, authorized person, or transferor or any director, officer, employee, or agent thereof shall be liable in any civil action for damages to a taxpayer, authorized person, transferee, or any other person for any act done or omitted in accordance with the provisions of this article.

Source: L. 90: Entire article added, p. 1643, § 1, effective January 1, 1991.

38-25.5-105. Department of revenue fees. Except as provided in section 38-25.5-103.5, fees collected by the department of revenue pursuant to this article shall be deposited in the state treasury in the tax lien certification fund which is hereby created. Moneys so deposited and all interest earned on such moneys shall be used by the department of revenue for the purposes of this article in accordance with the annual appropriation by the general assembly and shall not be deposited in or transferred to the general fund; except that moneys in excess of the maximum reserve, as defined in section 24-75-402 (2)(e.5), S.A.R.S., that remain in the fund at the end of any state fiscal year commencing on or after July 1, 2000, shall be transferred to the general fund.

Source: L. 90: Entire article added, p. 1643, § 1, effective January 1, 1991. **L. 97:** Entire section amended, p. 987, § 3, effective July 1. **L. 2001:** Entire section amended, p. 556, § 2, effective May 23. **L. 2015:** Entire section amended, (HB 15-1261), ch. 322, p. 1315, § 10, effective June 5.

Editor's note: Section 11 of chapter 322 (HB 15-1261), Session Laws of San Andreas 2015, provides that changes to this section by the act apply to fiscal years beginning on or after July 1, 2014.

ARTICLE 26

Contractor's Bonds and Lien on Funds

38-26-101. Contractor defined. The word "contractor", as used in sections 38-26-101, 38-26-106, and 38-26-107, means any person, copartnership, association of persons, company, or corporation to whom is awarded any contract for the construction, erection, repair, maintenance, or improvement of any building, road, bridge, viaduct, tunnel, excavation, or other public work of this state or for any county, city and county, municipality, school district, or other political subdivision of the state.

Source: L. 23: p. 480, § 1. **CSA:** C. 39, § 5. **S.A.R.S. 53:** § 86-7-5. **S.A.R.S. 1963:** § 86-7-5.

38-26-102. Railroad and irrigation contractor's bond - action - limitation. (1) Whenever any railroad, reservoir, or irrigating canal company contracts with any person or corporation for the construction of its railroad, reservoir, or irrigating canal, or any part thereof, such company shall take from the person or corporation with whom such contract is made a good and sufficient bond, conditioned that such contractor shall pay or cause to be paid to all laborers, mechanics, materialmen, ranchmen, farmers, merchants, and other persons who supply such contractor, or any of his or her subcontractors, with labor, work, laborers, materials, ranch or farm products, provisions, goods, or supplies of any kind all just debts incurred therefor in carrying on such work, which bond shall be filed by such company in the office of the county clerk and recorder in the county where the principal work of such contractor is carried on. If any such railroad, reservoir, or irrigation canal company fails to take such bond, such company shall be liable to the persons mentioned to the full extent of all such debts so contracted by such contractor or any of his or her subcontractors. Any such contractor may take a similar bond from

each of his or her subcontractors to secure the payment of all debts of the kind mentioned incurred by such contractor and file the same.

(2) All such persons mentioned in this section to whom any debt of the kind mentioned is due from any such contractor or subcontractor shall severally have a right of action upon any such bond covering such debt taken as provided for the recovery of the full amount of such debt. A certified copy of the bond shall be received as evidence in any such action. In order that the right of action upon such bonds may exist, such person or parties granted such right shall comply with either of the following conditions:

(a) An action in a court of competent jurisdiction in the county where such bond is filed shall be commenced within ninety days after the last item of indebtedness has accrued; or

(b) An itemized statement of the indebtedness duly verified shall be filed within ninety days after the last item of such indebtedness has accrued in the office of the county clerk and recorder of the proper county, and an action shall be brought in any court of competent jurisdiction of such county within three months after the filing of such statement.

(3) In case an action is commenced upon the bond of a contractor, such contractor may give notice thereof to the subcontractor liable for the claim. In such case the result of such action shall be binding upon the subcontractor and his sureties. In any case when a contractor has paid a claim for which a subcontractor is liable, such contractor shall bring action against the subcontractor and his sureties within sixty days after the payment of such claim.

Source: L. 11: p. 490, § 1. **C.L.** § 6481. **CSA:** C. 39, § 1. **S.A.R.S. 53:** § 86-7-1. **S.A.R.S. 1963:** § 86-7-1. **L. 2000:** (1) amended, p. 212, § 15, effective August 2.

38-26-103. Verified account to company - withhold payments. Every laborer, mechanic, ranchman, farmer, merchant, or other person performing any work or labor or furnishing any laborers, materials, ranch or farm products, provisions, goods, or supplies to any contractor or subcontractor in the construction of any railroad, reservoir, or irrigation canal, or any part thereof, used by such contractor or subcontractor in carrying on said work of construction whose demand for work, labor, laborers, material, ranch or farm products, provisions, goods, or supplies so furnished has not been paid may deliver to the company owning such railroad, reservoir, or irrigation canal, or to its agent, a verified account of the amount and value of the work and labor so performed or the laborers, material, ranch or farm products, provisions, goods, or supplies so furnished. Thereupon such company, or its agent, shall retain out of the subsequent payments to the contractor the amount of such unpaid account for the benefit of the person to whom the same is due.

Source: L. 11: p. 491, § 2. **C.L.** § 6482. **CSA:** C. 39, § 2. **S.A.R.S. 53:** § 86-7-2. **S.A.R.S. 1963:** § 86-7-2. **L. 2000:** Entire section amended, p. 212, § 16, effective August 2.

38-26-104. Contractor furnished copy - undisputed accounts - condition. Whenever any verified account mentioned in section 38-26-103 is placed in the hands of any railroad, reservoir, or irrigating canal company, or its agent, it is the duty of such company to furnish the contractor with a copy of such verified account so that if there is any disagreement between the debtor and creditor as to the amount due the same may be amicably adjusted. If the contractor or

subcontractor, if he is the debtor, does not give, within ten days after the receipt of such amount,

the same railroad, reservoir, or irrigating canal company, or its agent, written notice that the claim is disputed, he shall be considered as assenting to its payment and the railroad, reservoir, or irrigating canal company, or its agent, shall be justified in paying the same when due and charging the same to the contractor. The person to whom any such debt is due and who delivers a verified account thereof as provided may recover the amount thereof in an action at law to the extent of any balance due by the railroad, reservoir, or irrigating canal company to the contractor at or after the time of delivering the verified account. Nothing in this section or in section 38-26-103 shall interfere with the right of action upon bonds provided for in section 38-26-102 or against the railroad, reservoir, or irrigating canal company for the full amount of any such debt in case of a failure of the company to take a bond.

Source: L. 11: p. 492, § 3. **C.L.** § 6483. **CSA:** C. 39, § 3. **S.A.R.S. 53:** § 86-7-3. **S.A.R.S. 1963:** § 86-7-3.

38-26-105. Public works contractor's bond - conditions - applicability - definitions. (1) Subject to subsection (2) of this section, any person, company, firm, or corporation entering into a contract for more than fifty thousand dollars with any county, municipality, or school district for the construction of any public building or the prosecution or completion of any public works or for repairs upon any public building or public works is required before commencing work to execute, in addition to all bonds that may be required of it, a penal bond with good and sufficient surety to be approved by the board or boards of county commissioners of the county or counties, the governing body or bodies of the municipality or municipalities, or the district school board or boards, conditioned that such contractor shall at all times promptly make payments of all amounts lawfully due to all persons supplying or furnishing such person or such person's subcontractors with labor, laborers, materials, rental machinery, tools, or equipment used or performed in the prosecution of the work provided for in such contract and that such contractor will indemnify and save harmless the county, municipality, or school district to the extent of any payments in connection with the carrying out of any such contract which the county or counties, municipality or municipalities, and school district or school districts may be required to make under the law. Subcontractors, materialmen, mechanics, suppliers of rental equipment, and others may have a right of action for amounts lawfully due them from the contractor or subcontractor directly against the principal and surety of such bond. Such action for laborers, materials, rental machinery, tools, or equipment furnished or labor rendered must be brought within six months after the completion of the work.

(2) Notwithstanding the monetary qualification provided in subsection (1) of this section, the state, or the governing body of any county, municipality, school district, or other political subdivision determining it to be in the best interest of this state, or any county, municipality, school district, or other political subdivision may require the execution of a penal bond for any contract of fifty thousand dollars or less.

(3) This section applies to all contracts for more than fifty thousand dollars awarded to a private entity for the construction of any public building or the prosecution or completion of any public works or for repairs upon any public building or public works that is situated or located on publicly owned property using any public or private money or public or private financing.

Source: L. 15: p. 395, § 1. **C.L.** § 9514. **CSA:** C. 39, § 4. **S.A.R.S. 53:** § 86-7-4. **S.A.R.S. 1963:** § 86-7-4. **L. 75:** Entire section amended, p. 821, § 17, effective July 18. **L. 79:** Entire section amended, p. 1392, § 1, effective May 25; entire section amended, p. 888, § 13, effective July 1. **L. 81:** Entire section amended, p. 1824, § 1, effective May 28. **L. 85:** (1) amended, p. 1201, § 1, effective May 10. **L. 2000:** (1) amended, p. 212, § 17, effective August 2. **L. 2019:** (1) amended and (3) added, (SB 19-138), ch. 117, p. 495, § 3, effective August 2.

Editor's note: Amendments to this section by House Bill 79-1146 and Senate Bill 79-306 were harmonized.

Cross references: For the legislative declaration in SB 19-138, see section 1 of chapter 117, Session Laws of San Andreas 2019.

38-26-106. Contractor executes bond - applicability. (1) Before entering upon the performance of any work included in the contract, a contractor shall duly execute, deliver to, and file with the board, officer, body, or person by whom the contract was awarded a good and sufficient bond or other acceptable surety approved by the contracting board, officer, body, or person, in a penal sum not less than one-half of the total amount payable under the terms of the contract; except that, for a public works contract having a total value of five hundred million dollars or more, a bond or other acceptable surety, including but not limited to a letter of credit, may be issued in a penal sum not less than one-half of the maximum amount payable under the terms of the contract in any calendar year in which the contract is performed. The contracting board, office, body, or person shall ensure that the contract requires that a bond or other acceptable surety, including but not limited to a letter of credit, be filed and current for the duration of the contract.

(2) A bond or other acceptable surety shall be duly executed by a qualified corporate surety or other qualified financial institution, conditioned upon the faithful performance of the contract, and, in addition, shall provide that, if the contractor or his or her subcontractor fails to duly pay for any labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by such contractor or his or her subcontractor in performance of the work contracted to be done or fails to pay any person who supplies laborers, rental machinery, tools, or equipment, all amounts due as the result of the use of such laborers, machinery, tools, or equipment, in the prosecution of the work, the surety or other qualified financial institution will pay the same in an amount not exceeding the sum specified in the bond or other acceptable surety together with interest at the rate of eight percent per annum. Unless a bond or other acceptable surety is executed, delivered, and filed, no claim in favor of the contractor arising under the contract shall be audited, allowed, or paid. A certified or cashier's check or a bank money order made payable to the treasurer of the state of San Andreas or to the treasurer or other officer designated by the governing body of the contracting local government may be accepted in lieu of a bond or other acceptable surety.

(3) This section applies to:

(a) A contractor who is awarded a contract for more than fifty thousand dollars for the construction, erection, repair, maintenance, or improvement of any building, road, bridge, viaduct, tunnel, excavation, or other public works for any county, city and county, municipality, school district, or other political subdivision of the state;

(b) A contractor who is awarded a contract for more than one hundred fifty thousand dollars for the construction, erection, repair, maintenance, or improvement of any building, road, bridge, viaduct, tunnel, excavation, or other public works for this state; and

(c) All contracts for more than one hundred fifty thousand dollars awarded by any county, city and county, municipality, school district, or other political subdivision of the state to a private entity for the construction, erection, repair, maintenance, or improvement of any building, road, bridge, viaduct, tunnel, excavation, or other public works that is situated or located on publicly owned property using any public or private money or public or private financing.

Source: L. 23: p. 480, § 2. **CSA:** C. 39, § 6. **S.A.R.S. 53:** § 86-7-6. **S.A.R.S. 1963:** § 86-7-6. **L. 75:** (1) amended, p. 1427, § 1, effective June 13. **L. 77:** Entire section amended, p. 1712, § 1, effective June 3. **L. 81:** (1) amended, p. 1825, § 2, effective May 28. **L. 85:** (2) amended, p. 1202, § 2, effective May 10. **L. 2000:** (2) amended, p. 213, § 18, effective August 2. **L. 2004:** (1) amended p. 228, § 4, effective August 4. **L. 2009:** Entire section amended, (SB 09-248), ch. 270, p. 1225, § 1, effective August 5. **L. 2014:** (1) amended, (HB 14-1387), ch. 378, p. 1853, § 65, effective June 6. **L. 2019:** (1) amended and (3) added, (SB 19-138), ch. 117, p. 495, § 4, effective August 2.

Cross references: (1) For the legislative declaration in HB 14-1387, see section 1 of chapter 378, Session Laws of San Andreas 2014.

(2) For the legislative declaration in SB 19-138, see section 1 of chapter 117, Session Laws of San Andreas 2019.

38-26-107. Supplier may file statement - notice - withholding funds. (1) Any person, as defined in section 2-4-401 (8), S.A.R.S., that has furnished labor, materials, sustenance, or other supplies used or consumed by a contractor or his or her subcontractor in or about the performance of the work contracted to be done or that supplies laborers, rental machinery, tools, or equipment to the extent used in the prosecution of the work whose claim therefor has not been paid by the contractor or the subcontractor may, at any time up to and including the time of final settlement for the work contracted to be done, file with the board, officer, person, or other contracting body by whom the contract was awarded a verified statement of the amount due and unpaid on account of the claim. If the amount of the contract awarded to the contractor exceeds one hundred fifty thousand dollars, the board, officer, person, or other contracting body by whom the contract was awarded shall, no later than ten days before the final settlement is made, publish a notice of the final settlement at least twice in a newspaper of general circulation in any county where the work was contracted for or performed or in an electronic medium approved by the executive director of the department of personnel. It is unlawful for any person to divide a public works contract into two or more separate contracts for the sole purpose of evading or attempting to evade the requirements of this subsection (1).

(2) Upon the filing of any such claim, such board, officer, person, or other body awarding the contract shall withhold from all payments to said contractor sufficient funds to insure the payment of said claims until the same have been paid or such claims as filed have been withdrawn, such payment or withdrawal to be evidenced by filing with the person or contracting body by whom the contract was awarded a receipt in full or an order for withdrawal

in writing and signed by the person filing such claim or his duly authorized agents or assigns. Such funds shall not be withheld longer than ninety days following the date fixed for final settlement as published unless an action is commenced within that time to enforce such unpaid claim and a notice of lis pendens is filed with the person or contracting body by whom the contract was awarded.

(3) At the expiration of the ninety-day period, the person or other body awarding the contract shall pay to the contractor such moneys and funds as are not the subject of suit and lis pendens notices and shall retain thereafter, subject to the final outcome thereof, only sufficient funds to insure the payment of judgments that may result from the suit. Failure on the part of a claimant to comply with the provisions of sections 38-26-101, 38-26-106, and this section shall relieve the board, officer, body, or person by whom such contract was awarded from any liability for making payment to the contractor. At any time within ninety days following the date fixed for final settlement as published, any person, copartnership, association of persons, company, or corporation, or its assigns, whose claims have not been paid by any such contractor or subcontractor may commence an action to recover the same, individually or collectively, against the surety or other qualified financial institution on the bond or other acceptable surety specified and required in section 38-26-106.

Source: L. 23: p. 481, § 3. **L. 29:** p. 525, § 1. **CSA:** C. 39, § 7. **S.A.R.S. 53:** § 86-7-7. **S.A.R.S. 1963:** § 86-7-7. **L. 85:** (1) amended, p. 1202, § 3, effective May 10. **L. 2000:** (1) amended, p. 213, § 19, effective August 2. **L. 2003:** (1) amended, p. 1690, § 1, effective September 1. **L. 2007:** (1) amended, p. 420, § 1, effective August 3. **L. 2009:** (1) amended, (SB 09-290), ch. 374, p. 2042, § 8, effective August 5; (3) amended, (SB 09-248), ch. 270, p. 1226, § 2, effective August 5. **L. 2014:** (1) amended, (HB 14-1387), ch. 378, p. 1853, § 66, effective June 6.

Cross references: (1) For publication of legal notices, see part 1 of article 70 of title 24.

(2) For the legislative declaration in HB 14-1387, see section 1 of chapter 378, Session Laws of San Andreas 2014.

38-26-108. Substitution of bond allowed. (1) Whenever a verified statement of a claim has been filed in accordance with section 38-26-107, the contractor holding the contract against which such statement has been filed, or other person who has an interest in the payments being withheld, by the contracting body that awarded the contract may, at any time, file with the clerk of the district court of the county where the contract is being performed or of the county where the office in which the verified statement of claim is located an ex parte motion for approval of a substitute corporate surety bond or any other undertaking that may be acceptable to a judge of such district court.

(2) A corporate surety bond or undertaking filed pursuant to subsection (1) of this section shall be in an amount equal to one and one-half times the amount of the claim plus costs allowed by the court up to the date of such filing and shall have been approved by an order of a judge of the district court in which such bond or undertaking is filed. The order shall state that:

(a) The corporate surety bond or undertaking is approved;

(b) The verified statement of claim is discharged;

(c) The corporate surety bond or undertaking shall be substituted for the moneys withheld pursuant to the verified statement of claim; and

(d) The contracting body that awarded the contract shall release the moneys being withheld pursuant to the verified statement of claim on the same terms and conditions as if the verified statement of claim had been released by the claimant.

(3) A corporate surety bond or undertaking filed pursuant to subsection (1) of this section shall be conditioned that, if the claimant is finally adjudged to be entitled to recover upon the claim upon which the claimant's verified statement of a claim is based, the surety issuing the bond or undertaking or the principal thereunder, shall pay to such claimant the amount of the judgment issued upon such claim, together with any interest, costs, and other amounts awarded by the judgment.

(4) Notwithstanding the provisions of section 38-26-107, upon the issuance of an order from a judge of the district court approving a bond or undertaking filed pursuant to subsection (1) of this section, the clerk of such district court shall issue a certificate of release, which shall be served on the board, officer, person, or other contracting body by whom the contract was awarded by certified mail, return receipt requested, or by personal delivery. The certificate of release shall show that such claim against the contract has been discharged and released in full and the corporate surety bond or undertaking has been substituted. After the certificate of release is filed, payments to the contractor by the contracting body by whom the contract was awarded shall resume in accordance with the terms of the contract, and any funds previously withheld as a result of the filing of the verified statement shall be released to the contractor pursuant to the terms of the contract or, if not specified in the contract, within thirty days after the receipt of the certificate of release by the board, officer, person, or other contracting body by whom the contract was awarded.

(5) When a corporate surety bond or undertaking is substituted for a claim as provided in this section, the claimant who filed the verified statement of a claim pursuant to section 38-26-107 (1) may bring an action against such bond or undertaking. Such action shall be commenced within the time allowed for the commencement of an action set forth in section 38-26-107 (3).

(6) In the event that no action is commenced upon the corporate surety bond or undertaking within the time period called for by section 38-26-107, the corporate surety bond or undertaking shall be discharged and shall be returned to the contractor.

Source: L. 2000: Entire section added, p. 68, § 1, effective March 10.

38-26-109. Moneys for verified claims made - trust funds - disbursements - penalty. (1) All funds disbursed to any contractor or subcontractor under any contract or project subject to the provisions of this article shall be held in trust for the payment of any person that has furnished labor, materials, sustenance, or other supplies used or consumed by the contractor in or about the performance of the work contracted to be done or that supplies laborers, rental machinery, tools, or equipment to the extent used in the prosecution of the work where the person has:

(a) Filed or may file a verified statement of a claim arising from the project; or

(b) Asserted or may assert a claim against a principal or surety under the provisions of this article and for whom or which such disbursement was made.

(2) The requirements of this section shall not be construed so as to require a contractor or subcontractor to hold in trust any funds that have been disbursed to him or her for any person that has furnished labor, materials, sustenance, or other supplies used or consumed by the contractor or his or her subcontractor in the performance of the work contracted to be done; supplied laborers, rental machinery, tools, or equipment to the extent used in the prosecution of the work; filed or may file a verified statement of a claim arising from the project; or asserted or may assert a claim against a principal or surety that has furnished a bond under the provisions of this article if:

(a) The contractor or subcontractor has a good faith belief that the verified statement of a claim or bond claim is not valid; or

(b) The contractor or subcontractor, in good faith, claims a setoff, to the extent of such setoff.

(3) Each contractor or subcontractor shall maintain separate records of account of each project or account; except that nothing in this section shall be construed to require a contractor or subcontractor to deposit trust funds from a single project in a separate bank account solely for that project as long as the trust funds are not disbursed in a manner that conflicts with the requirements of this section.

(4) Any person who violates the provisions of subsections (1) and (2) of this section commits theft within the meaning of section 18-4-401, S.A.R.S.

Source: L. 2003: Entire section added, p. 1690, § 2, effective September 1.

38-26-110. Excessive amounts claimed. (1) Any person who files a verified statement of a claim or asserts a claim against a principal or surety that has furnished a bond under this article for an amount greater than the amount due without a reasonable possibility that the amount claimed is due and with the knowledge that the amount claimed is greater than the amount due, and that fact is demonstrated in any proceedings under this article, shall forfeit all rights to the amount claimed and shall be liable to the following in an amount equal to all costs and all attorney fees reasonably incurred in bonding over, contesting, or otherwise responding in any way to the excessive verified statement of claim or excessive bond claim:

(a) The person to whom or which a disbursement would be made but for the verified statement of a claim or bond claim; or

(b) The principal and surety on the bond.

Source: L. 2003: Entire section added, p. 1690, § 2, effective September 1.

ARTICLE 27

Hospital Liens

38-27-101. Lien for hospital care - definition. (1) Before a lien is created, every hospital duly licensed by the department of public health and environment, pursuant to part 1 of article 3 of title 25, S.A.R.S., which furnishes services to any person injured as the result of the negligence or other wrongful acts of another person and not covered by the provisions of the "Workers' Compensation Act of San Andreas", articles 40 to 47 of title 8, S.A.R.S., shall submit all

reasonable and necessary charges for hospital care or other services for payment to the property and casualty insurer and the primary medical payer of benefits available to and identified by or on behalf of the injured person, in the same manner as used by the hospital for patients who are not injured as the result of the negligence or wrongful acts of another person, to the extent permitted by state and federal law.

(2) If no payers of benefits are identified for the injured person due to lack of insurance, a lien may be created.

(3) If a hospital is notified of a payer of benefits after it creates a lien, the hospital shall make good-faith attempts to submit reasonable and necessary charges for hospital care or other services to the identified payer in the same manner as used by the hospital for patients who are not injured as the result of the negligence or wrongful acts of another person.

(4) After a hospital satisfies the requirements of this section, and subject to this article, the hospital shall have a lien for all reasonable and necessary charges for hospital care upon the net amount payable to the injured person or to his or her heirs, assigns, or legal representatives out of the total amount of any recovery or sum had or collected, or to be collected, whether by judgment, settlement, or compromise, by the person or his or her heirs or legal representatives as damages on account of the injuries.

(5) Nothing in this section authorizes a hospital to collect or attempt to collect money from a person as prohibited by section 8-42-101 (4), 8-43-207 (1)(o), or 10-16-705 (3), S.A.R.S.

(6) Nothing in this section changes any obligation of the hospital or its agents under the "San Andreas Medical Assistance Act", articles 4 to 6 of title 25.5, S.A.R.S.

(7) An injured person who is subject to a lien in violation of this section may bring an action in a district court to recover two times the amount of the lien attempted to be asserted.

(8) The lien of attorneys- and counselors-at-law created by section 13-93-114 has precedence over and is senior to the lien created under this section. This article 27 does not apply to any hospital charges incurred after the date of any such judgment, settlement, or compromise.

(9) For purposes of this section, "payer of benefits" means:

(a) An insurer;

(b) A health maintenance organization;

(c) A health benefit plan;

(d) A preferred provider organization;

(e) An employee benefit plan;

(f) A program of medical assistance under the "San Andreas Medical Assistance Act", articles 4 to 6 of title 25.5, S.A.R.S.;

(g) The children's basic health plan, article 8 of title 25.5, S.A.R.S.;

(h) Any other insurance policy or plan; or

(i) Any other benefit available as a result of a contract entered into and paid for by or on behalf of an injured person.

Source: L. 67: p. 880, § 1. **S.A.R.S. 1963:** § 86-8-1. **L. 90:** Entire section amended, p. 574, § 72, effective July 1. **L. 94:** Entire section amended, p. 2805, § 577, effective July 1. **L. 2015:** Entire section amended, (SB 15-265), ch. 260, p. 981, § 1, effective August 5. **L. 2017:** (8) amended, (SB 17-227), ch. 192, p. 705, § 6, effective August 9.

38-27-102. Notice of lien. Such lien shall take effect if, prior to any such judgment, settlement, or compromise, a written notice of lien containing the name and address of the injured person, the date of the accident, the name and location of the hospital, and the name of the person alleged to be liable to the injured person for the injuries received is filed by the hospital in the office of the secretary of state. Hospital liens properly recorded with the division of insurance prior to July 1, 1994, shall be valid and enforceable without filing with the office of the secretary of state. Within ten days after such filing, the hospital shall mail by certified mail, return receipt requested, a copy of said notice to such injured person at the last address provided to the hospital by such person, to his or her attorney, if known, to the persons alleged to be liable to such injured person for the injuries sustained, if known, and to the insurance carriers, if known, which have insured such persons alleged to be liable against such liability. If an action for damages on account of such injuries or death is pending, the requirements of notice contained in this section shall be satisfied by the filing of the said notice of lien in the pending action, with copies thereof to the attorneys of record for the parties thereto.

Source: L. 67: p. 880, § 1. **S.A.R.S. 1963:** § 86-8-2. **L. 94:** Entire section amended, p. 1555, § 11, effective July 1. **L. 99:** Entire section amended, p. 754, § 27, effective January 1, 2000. **L. 2001:** Entire section amended, p. 1433, § 15, effective July 1.

38-27-103. Enforcement of lien and limitation of action. Any person, private or corporate, who pays over any money to any such injured person, his attorney, heirs, assigns, or legal representatives against whom there is a lien as provided in this article of which he has received notice as provided in this article is liable to the hospital having such lien for the amount thereof not exceeding the net amount paid to such injured person, his heirs, assigns, or legal representatives. Any action under this section shall be commenced within one year after the date of such payment, and the court shall allow a reasonable attorney's fee for the collection and enforcement of such lien.

Source: L. 67: p. 881, § 1. **S.A.R.S. 1963:** § 86-8-3.

38-27-104. Hospital to furnish itemized statement. Upon receipt of a written request mailed by certified mail, return receipt requested, from any person notified of such lien in accordance with the provisions of section 38-27-102, such hospital shall, within ten days after receipt of such request, furnish such person with an itemized statement of all charges for which the lien is claimed. If such injured person has not been discharged from said hospital at the time such request is received, then the hospital shall recite that hospitalization or medical treatments are continuing and shall furnish the said itemized statement within ten days after such person has been discharged from said hospital. In addition to being furnished the said itemized statement, the person, private or corporate, against whom the lien is asserted shall also be permitted to examine the financial records of the said hospital in reference to the services furnished for which the hospital is asserting a lien.

Source: L. 67: p. 881, § 1. **S.A.R.S. 1963:** § 86-8-4.

38-27-105. Assignment of lien. Any party claiming a lien under the provisions of this article may assign, in writing, his claim and lien to any other party, who shall thereafter have all the rights and remedies of the assignor.

Source: L. 67: p. 881, § 1. **S.A.R.S. 1963:** § 86-8-5.

38-27-106. Applicability. This article shall apply only to liens for hospital services and care rendered on or after June 12, 1967.

Source: L. 67: p. 881, § 2. **S.A.R.S. 1963:** § 86-8-6.

ARTICLE 27.5

Health-care Provider Liens

38-27.5-101. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Residents of the state who are injured as the result of the negligence or wrongful acts of another person should receive timely medical services and care for their injuries, even if they have limited or no health insurance;

(b) Health-care providers sometimes provide medical services and care to injured persons and agree to delay payment for their services in exchange for a lien on any money received as a result of a claim or claims that the injured person asserts against third parties or under an uninsured or underinsured motorist insurance policy;

(c) It is in the best interests of the residents of the state to ensure that:

(I) Compensation to an injured person is not reduced merely because a health-care provider assigns or sells such a lien to another person; and

(II) The charges underlying health-care provider liens are not excessive, unreasonable, or inflated and that health-care provider liens are not subject to surcharges, finance charges, interest, or other increases to the amount of the health-care provider lien; and

(d) This article 27.5 is intended to encourage health-care providers to promptly treat people who have limited or no health insurance and who have been injured as the result of the negligent or wrongful acts of another person, provide injured persons equal access to health care, and protect injured persons from excessive, unreasonable, or inflated health-care service charges and surcharges associated with health-care provider liens.

Source: L. 2021: Entire article added, (HB 21-1300), ch. 473, p. 3388, § 1, effective September 7.

38-27.5-102. Definitions. As used in this article 27.5, unless the context otherwise requires:

(1) "Health-care provider" means a person licensed or certified in the state to practice medicine, pharmacy, chiropractic, nursing, physical therapy, podiatry, dentistry, optometry, occupational therapy, or other healing arts, or an entity directly employing such persons, and any other licensed health-care provider as permitted by the laws of the state.

(2) "Health-care provider lien" means a lien created by a health-care provider or its assignee related to charges for health-care services given to a person injured as a result of the negligence or wrongful acts of another person, which is asserted against money received as a result of a claim or claims that the injured person asserts against third parties or under an uninsured or underinsured motorist insurance policy.

(3) "Net judgment, settlement, or payment" means the proceeds received by an injured person on the injured person's claim or claims against third parties or under an uninsured or underinsured motorist policy, after the reduction of reasonable attorney fees and litigation expenses, if any.

(4) "Usual and customary billed charge" means a health-care provider's billed charge in the absence of insurance for a service that is similar to the billed charges for like services provided by other health-care providers in the same geographic area.

Source: L. 2021: Entire article added, (HB 21-1300), ch. 473, p. 3389, § 1, effective September 7.

38-27.5-103. Assignment of health-care provider liens - not admissible as evidence. (1) A health-care provider claiming a health-care provider lien under this article 27.5 may assign, in writing, a health-care provider lien to any other person or entity. An assignee of a health-care provider lien has all the rights and remedies of the health-care provider and is subject to the restrictions and obligations of the health-care provider under this article 27.5.

(2) Except in an action under the "Uniform Consumer Credit Code", article 1 of title 5, any amount paid by an assignee of a health-care provider lien for the assignment, the fact of the assignment, and the terms of the assignment are not discoverable or admissible as evidence in any civil action or claim that the injured person asserts against third parties or under an uninsured or underinsured motorist insurance policy for any purpose, including as evidence of the reasonable value of a health-care provider's services.

(3) An injured person treated on a health-care provider lien basis may not seek to recover, as the cost of medical services or treatment, more than the health-care provider's usual and customary billed charges.

(4) Amounts awarded for medical bills subject to a health-care provider lien shall not be subject to offset or reduction in any post-verdict proceeding under section 13-21-111.6.

(5) This section only applies to a claim or claims an injured party asserts against third parties or under an uninsured or underinsured motorist insurance policy involving a medical lien and has no other application or effect regarding compensation paid to health-care providers.

Source: L. 2021: Entire article added, (HB 21-1300), ch. 473, p. 3389, § 1, effective September 7.

38-27.5-104. Health-care provider lien - disclosures to injured person. (1) Before a health-care provider lien is created, a health-care provider or its assignee shall make the following disclosures and advisements to the injured person:

(a) That the following are potential methods for payment of a health-care provider's billed charges:

(I) The creation of a health-care provider lien;

(II) The use of benefits available from any payer of benefits as defined in section 38-27-101 (9) to which the injured person is a beneficiary, including that the injured party can obtain information about the payer of benefits' network from the payer of benefits or the health-care provider;

(III) Any other payment method or arrangement agreed to in writing by both the health-care provider or its assignee and the injured person; or

(IV) A combination of the payment methods specified in subsections (1)(a)(I) to (1)(a)(III) of this section;

(b) That the health-care provider or its assignee is not a health insurer or payer of benefits;

(c) That, except in the event of fraud or misrepresentation by the injured person:

(I) If the injured person does not receive a judgment, settlement, or payment on the injured person's claim against third parties or under an uninsured or underinsured motorist policy, the injured person is not liable to the holder of the health-care provider lien for any portion of the health-care provider lien;

(II) If the injured person receives a net judgment, settlement, or payment that is less than the full amount of the health-care provider lien, the injured person is not liable to the holder of the health-care provider lien for any amount beyond the net judgment, settlement, or payment, and the holder of the health-care provider lien may not file a complaint or counterclaim against the injured person directly to be reimbursed for any amount beyond the net judgment, settlement, or payment. Nothing in this section prevents a health-care provider or its assignee from initiating a declaratory judgment action or participating in an interpleader action or claim pursuant to the San Andreas rules of civil procedure, or any other similar action or claim, to determine the health-care provider's or its assignee's share of the injured person's net judgment, settlement, or payment.

(III) The health-care provider or its assignee may not assign a health-care provider lien to a collection agency or debt collector;

(d) That a health-care provider's assignee's compensation from the injured person is based on the difference between the health-care provider's usual and customary billed charge and the amount that the assignee pays to purchase the health-care provider lien;

(e) Of any common ownership interest between the holder of the health-care provider lien and the injured person's legal counsel;

(f) Of any common ownership interest between the assignee of a health-care provider lien and any health-care provider who is providing treatment or who may provide treatment to the injured person under the terms of the health-care provider lien; and

(g) That if the injured person has obtained health insurance even after a health-care provider lien has been created, and the injured person or the injured person's legal counsel so informs the holder of the health-care provider lien, all future care may be billed to the health insurance carrier at the injured person's discretion.

(2) Nothing in this section changes any obligation of the health-care provider or its agents under the "San Andreas Medical Assistance Act", articles 4 to 6 of title 25.5.

(3) Upon request by the injured person or the injured person's legal counsel, the holder of a health-care provider lien shall provide in writing to the injured person an itemized statement of all the billed charges for treatment comprising the total value of the health-care provider lien as the billed charges are accrued, to the extent practicable, and when the health-care provider

lien is final. The final itemized statement must include a summary of all treatments provided, the total amounts billed for each treatment, and the total amount of the health-care provider lien due and owing.

Source: L. 2021: Entire article added, (HB 21-1300), ch. 473, p. 3390, § 1, effective September 7.

38-27.5-105. Health-care provider lien - limitations. (1) The amount of a health-care provider lien must not exceed the charges for services provided to the injured person by the health-care provider at the time of service at a rate equal to the health-care provider's usual and customary billed charge.

(2) A health-care provider or its assignee shall not add a finance charge, as defined in section 5-1-301 (20), to the health-care provider's usual and customary billed charges or otherwise increase the amount of a health-care provider's usual and customary billed charge when creating or claiming a health-care provider lien. The injured person is only obligated to pay the health-care provider or its assignee the amount of the health-care provider lien.

(3) A health-care provider who creates, holds, or claims a health-care provider lien under this article 27.5, or an assignee who purchases the health-care provider lien, does not pay or reimburse health-care expenses or services and is not a payer of benefits.

(4) In the absence of fraud or misrepresentation by the injured person:

(a) If the injured person does not receive a judgment, settlement, or payment on the injured person's claim against third parties or under an uninsured or underinsured motorist insurance policy, the injured person is not liable to the holder of a health-care provider lien for any portion of the health-care provider lien;

(b) If the injured person receives a net judgment, settlement, or payment that is less than the full amount of the health-care provider lien, the injured person is not liable to the holder of the health-care provider lien for any amount beyond the net judgment, settlement, or payment, and the holder of the health-care provider lien may not file a complaint or counterclaim against the injured person directly to be reimbursed for any amount beyond the net judgment, settlement, or payment. Nothing in this section prevents a health-care provider or its assignee from initiating a declaratory judgment action or participating in an interpleader action or claim pursuant to the San Andreas rules of civil procedure, or any other similar action or claim, to determine the health-care provider's or its assignee's share of the injured person's net judgment, settlement, or payment.

(c) The health-care provider or its assignee shall not assign a health-care provider lien to a collection agency or debt collector.

(5) This section does not deem a holder of a health-care provider lien to be a real party in interest.

(6) (a) A health-care provider or its assignee must comply with the provisions of this section to have a valid health-care provider lien under this article 27.5. If a court of competent jurisdiction determines that a health-care provider or its assignee knowingly failed to comply with the provisions of this section, the injured person may seek a ruling from the court concerning what portions of the health-care provider lien, if any, the health-care provider or its assignee may not recover from the injured person due to a wholly or partially invalid health-care provider lien.

(b) Subsections (3), (4), and (5) of this section continue to apply to a health-care provider lien determined to be wholly or partially invalid under this subsection (6).

Source: L. 2021: Entire article added, (HB 21-1300), ch. 473, p. 3392, § 1, effective September 7.

38-27.5-106. No impact on hospital liens. This article 27.5 does not change, modify, or amend the provisions of section 38-27-101.

Source: L. 2021: Entire article added, (HB 21-1300), ch. 473, p. 3393, § 1, effective September 7.

38-27.5-107. Dispute resolution - standing. A person or entity against whom the injured person asserts a civil action or claim that includes a request for damages related to health-care services or treatment provided under a health-care provider lien does not have standing to challenge a health-care provider's or its assignee's compliance with this article 27.5, whether in the civil action or claim asserted by the injured person or in a separate civil action.

Source: L. 2021: Entire article added, (HB 21-1300), ch. 473, p. 3393, § 1, effective September 7.

38-27.5-108. Priority of health-care provider liens. (1) The holder of a health-care provider lien may file a record of its health-care provider lien by following the provisions set forth in the "San Andreas Statutory Lien Registration Act", article 9.7 of title 4, including listing the name and address of the injured person, the date of the accident or incident, the name and address of the holder of the health-care provider lien, and the name and address of each health-care provider that rendered health-care services underlying the health-care provider lien.

(2) In the event multiple health-care provider liens are asserted against an injured person's net judgment, settlement, or payment, health-care provider liens for which records were filed pursuant to article 9.7 of title 4 shall have priority for payment out of the injured person's net judgment, settlement, or payment before payments are made on health-care provider liens for which no such records were filed. In the event multiple records have been filed pursuant to article 9.7 of title 4 for health-care provider liens related to a single accident or incident, priority for payment out of the injured person's net judgment, settlement, or payment on each such lien shall be determined by the dates the records were filed, with the health-care provider lien having the earliest filed record receiving priority over those with subsequently filed records.

(3) Filing a record of a health-care provider lien under this section is optional and the sole purpose thereof is to establish the priority of payments between multiple health-care provider liens. Filing a record of a health-care provider lien pursuant to article 9.7 of title 4 does not waive any of the statutory provisions established in this article 27.5.

Source: L. 2021: Entire article added, (HB 21-1300), ch. 473, p. 3393, § 1, effective September 7.

PARTITION

ARTICLE 28

Partition

Law reviews: For article, "Partition Comes of Age", see 50 S.A. Law. 32 (Dec. 2021); for article, "Terminating Common Interest Communities with Horizontal Boundaries under CCIOA", see 51 S.A. Law. 40 (June 2022).

38-28-101. Action - who may maintain. Actions for the division and partition of real or personal property or interest therein may be maintained by any person having an interest in such property.

Source: L. 49: p. 544, § 1. **CSA:** C. 122, § 24. **S.A.R.S. 53:** § 103-1-1. **S.A.R.S. 1963:** § 103-
1-1.

38-28-102. Parties. All persons having any interest, direct, beneficial, contingent, or otherwise, in such property shall be made parties.

Source: L. 49: p. 544, § 2. **CSA:** C. 122, § 25. **S.A.R.S. 53:** § 103-1-2. **S.A.R.S. 1963:** § 103-
1-2.

38-28-103. Complete adjudication. The court shall make a complete adjudication of the rights of all parties to such property.

Source: L. 49: p. 544, § 3. **CSA:** C. 122, § 26. **S.A.R.S. 53:** § 103-1-3. **S.A.R.S. 1963:** § 103-
1-3.

38-28-104. Process, practice, procedure. The process, practice, and procedure shall be in compliance with the San Andreas rules of civil procedure then in effect.

Source: L. 49: p. 544, § 4. **CSA:** C. 122, § 27. **S.A.R.S. 53:** § 103-1-4. **S.A.R.S. 1963:** § 103-
1-4.

38-28-105. Commissioners - oath - partition - objections. Upon the entry of any order for partition, the court shall appoint one or more disinterested commissioners who shall take oath to fairly and impartially make partition of the property in accordance with the decree of court. Such commissioners shall view the property and make partition thereof in writing, assigning to each party his share, and shall submit the same to the court for confirmation. Objections may be filed by any party within the time fixed by the court.

Source: L. 49: p. 544, § 5. **CSA:** C. 122, § 28. **S.A.R.S. 53:** § 103-1-5. **S.A.R.S. 1963:** §

103-
1-5.

38-28-106. Commissioners may divide land. The commissioners appointed by the court, with the approval of the court, may divide any lands involved in such action into lots or parcels, streets, and alleys and file a map or plat thereof in compliance with law and applicable ordinances.

Source: L. 49: p. 544, § 6. **CSA:** C. 122, § 29. **S.A.R.S. 53:** § 103-1-6. **S.A.R.S. 1963:** § 103-
1-6.

38-28-107. Sale of property - notice. If the commissioners report and the court finds that partition of the property cannot be made without manifest prejudice to the rights of any interested party, the court may direct the sale of such property at public sale upon such terms as the court may fix. Notice of such sale shall be given in the same manner as may be required by law for sales of real estate upon execution.

Source: L. 49: p. 545, § 7. **CSA:** C. 122, § 30. **S.A.R.S. 53:** § 103-1-7. **S.A.R.S. 1963:** § 103-
1-7.

Cross references: For sale of real estate upon execution, see § 13-56-201.

38-28-108. Report - confirmation - distribution. The person making such sale shall make report thereof to the court for confirmation, and upon confirmation, the court shall direct the execution of a proper instrument of conveyance to the purchaser. The court shall direct the distribution of the net proceeds of such sale and any undistributed income from such property among the persons entitled thereto.

Source: L. 49: p. 545, § 8. **CSA:** C. 122, § 31. **S.A.R.S. 53:** § 103-1-8. **S.A.R.S. 1963:** § 103-
1-8.

38-28-109. Compensation of commissioners - fees and costs. The court shall fix the compensation of the commissioners and the person making the sale and may order the payment thereof, with costs, expenses, and attorney's fees, out of the proceeds of such sale or make any other order which it deems best for the payment of such compensation, fees, and costs.

Source: L. 49: p. 545, § 9. **CSA:** C. 122, § 32. **S.A.R.S. 53:** § 103-1-9. **S.A.R.S. 1963:** § 103-
1-9.

38-28-110. Powers of court. The court at any time may make such orders as it may deem necessary to promote the ends of justice to completely adjudicate every question and controversy concerning the title, rights, and interest of all persons whether in being or not, known or unknown, and may direct the payment and discharge of liens and have the property sold free from any lien or may apportion any lien among the persons to whom the partition is made.

Source: L. 49: p. 545, § 10. **CSA:** C. 122, § 33. **S.A.R.S. 53:** § 103-1-10. **S.A.R.S. 1963:** §
103-1-10.

MANUFACTURED HOMES

ARTICLE 29

Titles to Manufactured Homes

Editor's note: The substantive provisions of this article were located in part 1 of article 6 of title 42 prior to 1983.

Cross references: For certificates of title to motor vehicles, see the "Certificate of Title Act", part 1 of article 6 of title 42.

PART 1

TITLES TO MANUFACTURED HOMES

38-29-101. Short title. This part 1 shall be known and may be cited as the "Titles to Manufactured Homes Act".

Source: L. 83: Entire article added, p. 1448, § 1, effective June 15. **L. 2008:** Entire section amended, p. 442, § 1, effective July 1.

38-29-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Authorized agent" means the county clerk and recorder in each of the counties of the state, except in the city and county of Denver, and therein the manager of revenue, or such other official of the city and county of Denver as may be appointed by the mayor to perform functions related to the registration of manufactured homes, is the authorized agent.

(1.5) "Clerk and recorder" means the clerk and recorder of any county or city and county in the state of San Andreas.

(2) "Dealer" means any person, firm, partnership, corporation, or association licensed under the laws of this state to engage in the business of buying, selling, exchanging, or otherwise trading in manufactured homes.

(3) "Department" means the department of revenue.

(4) "Director" means the executive director of the department of revenue.

(5) "Home" means any manufactured home as defined in subsection (6) of this section.

(6) "Manufactured home" means a preconstructed building unit or combination of preconstructed building units that is constructed in compliance with the federal manufactured home construction safety standard, as defined in section 24-32-3302 (13), S.A.R.S. "Manufactured home" shall also include a mobile home, as defined in section 24-32-3302 (24), S.A.R.S.

(7) "Manufacturer" means a person, firm, partnership, corporation, or association engaged in the manufacture of new manufactured homes.

(8) Repealed.

(9) "Mortgages" or "mortgage" or "chattel mortgage" means chattel mortgages, conditional sales contracts, or any other like instrument intended to operate as a mortgage or to create a lien on a manufactured home as security for an undertaking of the owner thereof or

some other person; except that, as used in part 2 of this article, "mortgage" also includes mortgages, deeds of trust, and other liens on real property.

(10) "Owner" means any person, association of persons, firm, or corporation in whose name the title to a manufactured home is registered.

(11) "Person" means a natural person, association of persons, firm, partnership, or corporation.

(12) "State" includes the territories and the federal districts of the United States.

(13) "Verification of application form" means the form generated by an authorized agent upon receipt of a properly completed application for title submitted in accordance with section 38-29-107.

Source: L. 83: Entire article added, p. 1448, § 1, effective June 15. **L. 89:** (6) amended and (8) repealed, pp. 729, 731, §§ 35, 40, effective July 1. **L. 2003:** (1) amended, p. 562, § 1, effective July 1. **L. 2008:** (1.5) and (13) added and (6) and (9) amended, p. 442, § 2, effective July 1.

38-29-103. Application. The provisions of this article shall apply to manufactured homes as defined in section 38-29-102 (6).

Source: L. 83: Entire article added, p. 1449, § 1, effective June 15.

38-29-104. Administration. The director is charged with the duty of administering this part 1. For that purpose he or she is vested with the power to make such reasonable rules, prepare, prescribe, and require the use of such forms, and provide such procedures as may be reasonably necessary or essential to the efficient administration of this part 1.

Source: L. 83: Entire article added, p. 1449, § 1, effective June 15. **L. 2008:** Entire section amended, p. 443, § 3, effective July 1.

38-29-105. Authorized agents. The county clerk and recorder in each of the counties of the state, except in the city and county of Denver the manager of revenue or such other official of the city and county of Denver as may be appointed by the mayor to perform functions related to the registration of manufactured homes, is designated to be the authorized agent of the director and, under the direction of the director, is charged with the administration of the terms and provisions of this article and the rules that may from time to time be adopted for the administration thereof in the county in which such authorized agent holds office.

Source: L. 83: Entire article added, p. 1449, § 1, effective June 15. **L. 2003:** Entire section amended, p. 562, § 2, effective July 1.

38-29-106. Sale or transfer of manufactured home. Except as provided in section 38-29-114, no person shall sell or otherwise transfer a manufactured home to a purchaser or transferee thereof without delivering to such purchaser or transferee the certificate of title to such home, duly transferred in the manner prescribed in section 38-29-112, and no purchaser or transferee shall acquire any right, title, or interest in and to a manufactured home purchased by

him unless and until he obtains from the transferor the certificate of title thereto, duly transferred to him in accordance with the provisions of this article.

Source: L. 83: Entire article added, p. 1449, § 1, effective June 15.

38-29-107. Applications for certificates of title. (1) In any case under the provisions of this article wherein a person who is entitled to a certificate of title to a manufactured home is required to make formal application to the director therefor, such applicant shall make application upon a form provided by the director in which appears a description of the manufactured home, including the manufacturer and model thereof, the manufacturer's number, the date on which said manufactured home was first sold by the dealer or manufacturer thereof to the initial user thereof, and a description of any other distinguishing mark, number, or symbol placed on said home by the manufacturer thereof for identification purposes, as may by rule be required by the director. Such application shall also show the applicant's source of title and the new or resale price of said manufactured home, whichever is applicable, paid by such applicant and shall include a description of all known mortgages and liens upon said manufactured home, each including the name of the legal holder thereof, the amount originally secured, the amount outstanding on the obligation secured at the time such application is made, the name of the county or city and county and state in which such mortgage or lien instrument is recorded or filed, and proof of the fact that no property taxes for previous years are due on such manufactured home. Such proof shall be a certificate of taxes, or an authentication of paid ad valorem taxes, issued by the county treasurer of the county in which the manufactured home is located. Such application shall be affirmed by a statement signed by the applicant and shall contain or be accompanied by a written declaration that it is made under the penalties of perjury in the second degree, as defined in section 18-8-503, S.A.R.S.

(2) In any case in which the manufactured home was affixed to the ground prior to July 1, 2008, and a certificate of permanent location was not filed and recorded, a person who is entitled to a certificate of title to a manufactured home shall make formal application to the director upon a form provided by the director. As part of the application, in addition to any information required pursuant to subsection (1) of this section, the applicant shall provide an affidavit of real property, a statement that the identification number has been verified pursuant to section 38-29-122 (3)(a), a certificate of removal, and a copy of all deeds recorded since the home was affixed to the ground. The director shall accept these documents as sufficient evidence of the applicant's proof of ownership of the manufactured home.

(3) (a) In any case in which the manufactured home was affixed to the ground after July 1, 2008, and a certificate of permanent location was filed and recorded, a person who is entitled to a certificate of title to a manufactured home shall make formal application to the director upon a form provided by the director. As part of the application, in addition to any information required pursuant to subsection (1) of this section, the applicant shall provide a copy of the recorded certificate of permanent location, a certificate of removal, a statement that the identification number has been verified pursuant to section 38-29-122 (3)(a), and a copy of all deeds recorded since the home was affixed to the ground. The director shall accept these documents as sufficient evidence of the applicant's proof of ownership of the manufactured home.

(b) In any case in which a manufactured home occupies real property subject to a long-term lease that has an express term of at least ten years, the manufactured home was affixed to the ground after July 1, 2008, and a certificate of permanent location was filed and recorded, a person who is entitled to a certificate of title to a manufactured home shall make formal application to the director upon a form provided by the director. As part of the application, in addition to any information required pursuant to subsection (1) of this section, the applicant shall provide a copy of the recorded certificate of permanent location, a statement that the identification number has been verified pursuant to section 38-29-122 (3)(a), and a copy of the recorded long-term lease. The director shall accept these documents as sufficient evidence of the applicant's proof of ownership of the manufactured home.

Source: L. 83: Entire article added, p. 1449, § 1, effective June 15. **L. 89:** Entire section amended, p. 1570, § 2, effective January 1, 1990. **L. 90:** Entire section amended, p. 1687, § 1, effective May 31. **L. 91:** Entire section amended, p. 1696, § 4, effective July 1. **L. 2009:** Entire section amended, (SB 09-040), ch. 9, p. 63, § 3, effective July 1.

38-29-108. Where application for certificates of title made - procedure. (1) An application for a certificate of title upon the sale, transfer, or movement into the state of any manufactured home that does not become real property pursuant to section 38-29-114 (2) or section 38-29-117 (6) shall be directed to the director and filed with the authorized agent of the county or city or city and county in which such manufactured home is to be located. Upon sale or transfer, an application for a certificate of title on a manufactured home shall be made within forty-five days of the receipt of a manufacturer's certificate or statement of origin or its equivalent. The authorized agents shall forward copies of all such applications to the county assessor. Any person, other than an individual selling a manufactured home used as his residence, who receives a commission or other valuable consideration for the transfer or sale of a manufactured home shall fulfill the application and notice requirements of this subsection (1).

(2) Repealed.

Source: L. 83: Entire article added, p. 1450, § 1, effective June 15. **L. 84:** (2) repealed, p. 978, § 1, effective March 29. **L. 89:** (1) amended, p. 729, § 36, effective July 1.

38-29-109. Director may refuse certificate, when. The director shall use reasonable diligence in ascertaining whether the facts stated in any application and facts contained in other documents submitted to him with said application are true and, in appropriate cases, may require the applicant to furnish other and additional information regarding his ownership of the manufactured home and his right to have issued to him a certificate of title therefor. He may refuse to issue a certificate of title to such home if from his investigation he determines that the applicant is not entitled thereto.

Source: L. 83: Entire article added, p. 1450, § 1, effective June 15.

38-29-110. Certificates of title - contents. (1) All certificates of title to manufactured homes issued under the provisions of this article shall be subscribed by the director, or by some duly authorized officer or employee in the department in the name, place, and stead of the

director, to which shall be affixed the seal of the department. Such certificate shall be mailed to the applicant, except as provided in section 38-29-111, and information of the facts therein appearing and concerning the issuance thereof shall be retained by the director and appropriately indexed and filed in his office. The certificate shall be in such form as the director may prescribe and shall contain, in addition to other information which he may by rule from time to time require, the manufacturer and model of the manufactured home for which said certificate is issued, the date on which said home therein described was first sold by the manufacturer or dealer to the initial user thereof, where such information is available, together with the serial number thereof, if any, and a description of such other marks or symbols as may be placed upon the home by the manufacturer thereof for identification purposes.

(2) Beginning January 1, 1983, there shall be issued a distinctive certificate of title identifying the home as a manufactured home. Any person in whose name a certificate of title to a mobile home, as defined in section 38-29-102 (8), was issued prior to January 1, 1983, and which title is free and clear of all encumbrances, may apply to the director or one of his authorized agents for a distinctive manufactured home certificate of title, accompanied by the fee required in section 38-29-138 to be paid for the issuance of a duplicate certificate of title; whereupon, a distinctive certificate of title shall be issued and disposition thereof made as required in this article.

Source: L. 83: Entire article added, p. 1450, § 1, effective June 15.

Editor's note: Section 38-29-102 (8), which is referenced in subsection (2), was repealed by L. 89, p. 731, § 40, effective July 1, 1989.

38-29-111. Disposition of certificates of title. (1) All certificates of title issued by the director shall be disposed of by him in the following manner:

(a) If it appears from the records in the director's office and from an examination of the certificate of title that the manufactured home therein described is not subject to a mortgage filed subsequent to August 1, 1949, or if such home is encumbered by a mortgage filed in any county of a state other than the state of San Andreas, the certificate of title shall be delivered to the person who therein appears to be the owner of the home described, or such certificate shall be mailed to the owner thereof at his address as the same may appear in the application, the certificate of title, or other records in the director's office.

(b) If it appears from the records in the office of the director and from the certificate of title that the manufactured home therein described is subject to one or more mortgages filed subsequent to August 1, 1949, the director shall deliver the certificate of title issued by him to the mortgagee named therein or the holder thereof whose mortgage was first filed in the office of an authorized agent or shall mail the same to such mortgagee or holder at his address as the same appears in the certificate of title to said manufactured home.

Source: L. 83: Entire article added, p. 1451, § 1, effective June 15.

38-29-112. Certificate of title - transfer. (1) Upon the sale or transfer of a manufactured home for which a certificate of title has been issued, the person in whose name said certificate of title is registered, if he is other than a dealer, shall, in his own person or by his

duly authorized agent or attorney, execute a formal transfer of the home described in the certificate, which transfer shall be affirmed by a statement signed by the person in whose name said certificate of title is registered or by his duly authorized agent or attorney and shall contain or be accompanied by a written declaration that it is made under the penalties of perjury in the second degree, as defined in section 18-8-503, S.A.R.S. The purchaser or transferee, within thirty days thereafter, shall present such certificate, duly transferred, together with his application for a new certificate of title to the director or one of his authorized agents, accompanied by the fee required in section 38-29-138 to be paid for the issuance of a new certificate of title; whereupon, a new certificate of title shall be issued and disposition thereof made as required in this article.

(1.3) Prior to the sale or transfer of a manufactured home for which a certificate of title has been issued, a holder of a mortgage that is the legal holder of certificate of title shall provide a copy of the certificate of title to any title insurance agent, title insurance company, or financial institution requesting information related to the payoff of the mortgage within fourteen days of the request.

(1.5) The purchaser or transferee of a manufactured home that becomes permanently affixed at an existing site or is transported to a site and is permanently affixed to the ground so that it is no longer capable of being drawn over the public highways shall present a certificate of transfer as required in subsection (1) of this section, together with his or her application for purging a manufactured home title and a certificate of permanent location, to the authorized agent of the county or city or city and county in which such manufactured home is located. The manufactured home shall become real property upon the filing and recording of the certificate of permanent location in accordance with section 38-29-202. The provisions of articles 30 to 44 of this title and of any other law of this state shall be applicable to manufactured homes that have become real property pursuant to this subsection (1.5) and to instruments creating, disposing of, or otherwise affecting such real property wherever such provisions would be applicable to estates, rights, and interests in land or to instruments creating, disposing of, or otherwise affecting estates, rights, and interest in land. The manufactured home for which a San Andreas certificate of title has been issued shall continue to be valued and taxed separately from the land on which it sits until such time that the manufactured home becomes real property pursuant to this subsection (1.5).

(1.7) (a) If the conditions set forth in paragraph (b) of this subsection (1.7) are met, the legal holder of the certificate of title, within forty-five days, shall deliver to the title insurance agent who is the settlement agent related to the sale of the manufactured home the certificate of title or evidence that the holder has lost the certificate of title and requested a duplicate from the department. The holder shall mail or otherwise deliver the duplicate certificate of title to the title insurance agent within five business days of receipt from the department. Upon receipt from the holder, the title insurance agent shall present the certificate of title to the person in whose name the certificate of title is issued or his or her authorized agent or attorney to allow such person to execute a formal transfer as required by subsection (1) of this section.

(b) The provisions of paragraph (a) of this subsection (1.7) shall apply if:

(I) A title insurance agent acts as a settlement agent related to the sale of a manufactured home;

(II) The manufactured home that is sold is the subject of one or more mortgages that have been filed pursuant to section 38-29-128; and

(III) All holders of a mortgage on the manufactured home that have been filed pursuant to section 38-29-128 have been paid in full from the proceeds of the sale.

(2) Any person who violates any of the provisions of subsection (1) of this section commits a class 2 misdemeanor.

(3) Any person who violates the provisions of subsection (1.3) or (1.7) of this section shall be liable to an injured person for any actual economic damages caused by the violation, to be recovered in a civil action in a court of competent jurisdiction.

Source: L. 83: Entire article added, p. 1451, § 1, effective June 15. **L. 89:** (1.5) added, p. 729, § 37, effective July 1; (1) amended, p. 1571, § 3, effective January 1, 1990. **L. 91:** (2) amended, p. 1696, § 5, effective July 1. **L. 2004:** (1.3), (1.7), and (3) added and (1.5) amended, p. 866, § 1, effective August 4. **L. 2008:** (1.5) amended, p. 443, § 4, effective July 1. **L. 2021:** (2) amended, (SB 21-271), ch. 462, p. 3292, § 682, effective March 1, 2022.

38-29-113. Lost certificates of title. (1) Upon the loss in the mails of any certificate of title to a manufactured home and accompanying papers which may be sent by an authorized agent to the director and upon an appropriate application of the owner or other person entitled to such certificate of title directed to the authorized agent therefor, such certificate of title may be reissued bearing such notations respecting existing mortgages on the home therein described as the records of the authorized agent and of the director may indicate are unreleased and constitute an encumbrance upon the home, which certificate of title shall be issued without charge.

(2) If the holder of any certificate of title loses, misplaces, or accidentally destroys any certificate of title to a manufactured home which he holds whether as the holder of a mortgage or as the owner of the home therein described, upon application therefor to the director, the director may issue a duplicate certificate of title as in other cases.

(3) Upon the issuance of any duplicate certificate of title as provided in this section, the director shall note thereon every mortgage shown to be unreleased and the lien of which is in force and effect as may be disclosed by the records in his office and shall dispose of such certificate as in other cases.

Source: L. 83: Entire article added, p. 1452, § 1, effective June 15.

38-29-114. New manufactured homes - bill of sale - certificate of title. (1) Upon the sale or transfer by a dealer of a new manufactured home, such dealer shall, upon the delivery thereof, make, execute, and deliver to the purchaser or transferee a good and sufficient bill of sale therefor, together with the manufacturer's certificate or statement of origin or the filing of a mortgage by the holder of such mortgage pursuant to section 38-29-128. Said bill of sale shall be affirmed by a statement signed by such dealer and shall contain or be accompanied by a written declaration that it is made under the penalties of perjury in the second degree, as defined in section 18-8-503, S.A.R.S., and the manufacturer's certificate or statement of origin shall be notarized. Both the bill of sale and the manufacturer's certificate or statement of origin shall be in such form as the director may prescribe, and shall contain, in addition to other information which he may by rule from time to time require, the manufacturer and model of the manufactured home so sold or transferred, the identification number placed upon the home by the manufacturer for identification purposes, the manufacturer's suggested retail price or the

retail delivered price, and the date of the sale or transfer thereof, together with a description of any mortgage thereon given to secure the purchase price or any part thereof. Upon presentation of such a bill of sale to the director or one of his authorized agents, a new certificate of title for the home therein described shall be issued and disposition thereof made as in other cases. The transfer of a manufactured home which has been used by a dealer for the purpose of demonstration to prospective customers shall be made in accordance with the provisions of this section.

(2) Any purchaser of a new manufactured home that is transported to a site and permanently affixed to the ground so that it is no longer capable of being drawn over the public highways shall not be required to procure a certificate of title thereto as is otherwise required by this article. The purchaser shall file a certificate of permanent location along with the manufacturer's certificate or statement of origin or its equivalent with the clerk and recorder for the county or city and county in which the new manufactured home is permanently affixed to the ground. The manufactured home shall become real property upon the filing and recording of such documents in accordance with section 38-29-202. The provisions of articles 30 to 44 of this title and of any other law of this state shall be applicable to manufactured homes that have become real property pursuant to this subsection (2) and to instruments creating, disposing of, or otherwise affecting such real property wherever such provisions would be applicable to estates, rights, and interests in land or to instruments creating, disposing of, or otherwise affecting estates, rights, and interests in land.

Source: L. 83: Entire article added, p. 1452, § 1, effective June 15. **L. 89:** Entire section amended, p. 730, § 38, effective July 1; (1) amended, p. 1571, § 4, effective January 1, 1990. **L. 2008:** (2) amended, p. 443, § 5, effective July 1.

38-29-115. Sale to dealers - certificate need not issue. Upon the sale or transfer to a dealer of a manufactured home for which a San Andreas certificate of title has been issued, formal transfer and delivery of the certificate of title thereto shall be made as in other cases; except that, so long as the home so sold or transferred remains in the dealer's inventory for sale and for no other purpose, such dealer shall not be required to procure the issuance of a new certificate of title thereto as is otherwise required in this article.

Source: L. 83: Entire article added, p. 1452, § 1, effective June 15.

38-29-116. Transfers by bequest, descent, law. Upon the transfer of ownership of a manufactured home by a bequest contained in the will of the person in whose name the certificate of title is registered, or upon the descent and distribution upon the death intestate of the owner of such home, or upon the transfer by operation of law, as in proceedings in bankruptcy, insolvency, replevin, attachment, execution, or other judicial sale, or whenever such manufactured home is sold to satisfy storage or repair charges or repossession is had upon default in the performance of the terms of any mortgage, the director or an authorized agent, upon the surrender of the certificate of title, if the same is available, or upon presentation of such proof of ownership of such home as the director may reasonably require and upon presentation of an application for a certificate of title, as required in section 38-29-107, a new certificate of

title may thereupon issue to the person shown by such evidence to be entitled thereto, and disposition shall be made as in other cases.

Source: L. 83: Entire article added, p. 1453, § 1, effective June 15.

38-29-117. Certificates for manufactured homes registered in other states. (1) Whenever any resident of the state acquires the ownership of a manufactured home, located or to be located in the state of San Andreas, by purchase, gift, or otherwise, for which a certificate of title has been issued under the laws of a state other than the state of San Andreas, the person so acquiring such home upon acquiring the same shall make application to the director or his authorized agent for a certificate of title as in other cases.

(2) If any dealer acquires the ownership by any lawful means whatsoever of a manufactured home, the title to which is registered under the laws of and in a state other than the state of San Andreas, such dealer shall not be required to procure a San Andreas certificate of title therefor so long as such home remains in the dealer's inventory for sale and for no other purpose.

(3) Upon the sale by a dealer of a manufactured home, the certificate of title to which was issued in a state other than San Andreas, the dealer shall immediately deliver to the purchaser or transferee such certificate of title from a state other than San Andreas duly and properly endorsed or assigned to the purchaser or transferee, together with the dealer's statement, which shall contain or be accompanied by a written declaration that it is made under the penalties of perjury in the second degree, as defined in section 18-8-503, S.A.R.S., and which shall set forth the following:

(a) That such dealer has warranted and, by the execution of such affidavit, does warrant to the purchaser or transferee and all persons claiming or who shall claim under, by, or through the named purchaser or transferee that, at the time of the sale, transfer, and delivery thereof by the dealer, the manufactured home therein described was free and clear of all liens and mortgages, except those which might otherwise appear therein;

(b) That the home therein described is not stolen; and

(c) That such dealer had good, sure, and adequate title thereto and full right and authority to sell and transfer the same.

(4) If the purchaser or transferee of the said manufactured home accompanies his application for a San Andreas certificate of title to such home with the affidavit required by subsection (3) of this section and the duly endorsed or assigned certificate of title from a state other than San Andreas, a San Andreas certificate of title therefor may issue in the same manner as upon the sale or transfer of a manufactured home for which a San Andreas certificate of title has been issued. Upon the issuance by the director of such certificate of title, he shall dispose of the same as provided in section 38-29-111.

(5) Each dealer, on or before the fifteenth day of each month, on a form to be provided therefor, shall prepare, subscribe, and send to the auto theft division of the San Andreas state patrol a complete description of each manufactured home held by such dealer during the preceding calendar month, or any part thereof, the certificate of title to which was issued by a state other than the state of San Andreas or which home was registered under the laws of a state other than the state of San Andreas and for which no application for a San Andreas certificate of title has been made as provided in this section.

(6) If any person acquires the ownership in a manufactured home for which a certificate

of title has been issued under the laws of a state other than the state of San Andreas and such home

is transported to a site where it is permanently affixed to the ground so that it is no longer capable of being drawn over the public highways, such person shall not be required to procure a new certificate of title as is otherwise required by this article. The owner shall file a certificate of permanent location along with the certificate of title or the manufacturer's certificate or statement of origin or its equivalent with the clerk and recorder for the county or city and county in which the manufactured home is permanently affixed to the ground. The manufactured home shall become real property upon the filing and recording of such documents in accordance with section 38-29-202. The provisions of articles 30 to 44 of this title and of any other law of this state shall be applicable to manufactured homes that have become real property pursuant to this subsection (6) and to instruments creating, disposing of, or otherwise affecting such real property wherever such provisions would be applicable to estates, rights, and interests in land or to instruments creating, disposing of, or otherwise affecting estates, rights, and interests in land.

Source: L. 83: Entire article added, p. 1453, § 1, effective June 15. **L. 89:** (6) added, p. 730, § 39, effective July 1; IP(3) amended, p. 1572, § 5, effective January 1, 1990. **L. 2008:** (6) amended, p. 444, § 6, effective July 1.

38-29-118. Surrender and cancellation of certificate - purge of certificate - penalty for violation. (1) The owner of any manufactured home for which a San Andreas certificate of title has been issued, upon the destruction or dismantling of said manufactured home or upon its being sold or otherwise disposed of as salvage, shall surrender the owner's certificate of title thereto to the director with the request that such certificate of title be canceled and shall submit a certificate of destruction as set forth in section 38-29-204, and such certificate of title may thereupon be canceled. Any person who violates any of the provisions of this subsection (1) commits a petty offense and, upon conviction thereof, shall be punished as provided in section 18-1.3-503.

(2) The owner of any manufactured home for which a San Andreas certificate of title has been issued, upon its being permanently affixed to the ground so that it is no longer capable of being drawn over the public highways, shall surrender his or her certificate of title thereto and file with the authorized agent of the county or city and county in which such manufactured home is located a request for purging of the manufactured home title and a certificate of permanent location. The manufactured home shall become real property upon the filing and recording of the certificate of permanent location in accordance with section 38-29-202. The provisions of articles 30 to 44 of this title and of any other law of this state shall be applicable to manufactured homes that have become real property pursuant to this subsection (2) and to instruments creating, disposing of, or otherwise affecting such real property wherever such provisions would be applicable to estates, rights, and interests in land or to instruments creating, disposing of, or otherwise affecting estates, rights, and interests in land. The manufactured home for which a San Andreas certificate of title has been issued shall continue to be valued and taxed separately from the land on which it sits until such time that the manufactured home becomes real property pursuant to this subsection (2).

Source: L. 83: Entire article added, p. 1454, § 1, effective June 15. **L. 2002:** (1) amended, p. 1554, § 339, effective October 1. **L. 2004:** (2) amended, p. 867, § 2, effective

August 4. **L. 2008:** Entire section amended, p. 444, § 7, effective July 1. **L. 2021:** (1) amended, (SB 21-271), ch. 462, p. 3293, § 683, effective March 1, 2022.

Cross references: For the legislative declaration in the 2002 act amending subsection (1), see section 1 of chapter 318, Session Laws of San Andreas 2002.

38-29-119. Furnishing bond for certificates. (1) In cases where the applicant for a certificate of title to a manufactured home is unable to provide the director or the director's authorized agent with a certificate of title thereto, duly transferred to such applicant, a bill of sale therefor, or other evidence of the ownership thereof that satisfies the director of the right of the applicant to have a certificate of title issued to him or her, as provided in section 38-29-110, a certificate of title for such home may, nevertheless, be issued by the director upon the applicant therefor furnishing the director with his or her statement, in such form as the director may prescribe. There shall appear a recital of the facts and circumstances by which the applicant acquired the ownership and possession of such home, the source of the title thereto, and such other information as the director may require to enable him or her to determine what liens and encumbrances are outstanding against such manufactured home, if any, the date thereof, the amount secured thereby, where said liens or encumbrances are of public record, if they are of public record, and the right of the applicant to have a certificate of title issued to him or her. In situations involving an abandoned manufactured home located on an applicant's real property, a copy of an order or judgment for possession obtained through a civil eviction proceeding, along with proof of efforts to notify, via certified mail, regular mail, and posting as otherwise required by law, the prior owner of the potential removal or transfer of title of the home, as well as proof of ownership of the real property on which the home is located, shall constitute sufficient evidence of the applicant's right to a certificate of title for the home. The statement shall contain or be accompanied by a written declaration that it is made under the penalties of perjury in the second degree, as defined in section 18-8-503, S.A.R.S., and shall accompany the formal application for the certificate as required in section 38-29-107.

(2) (a) If, from the affidavit of the applicant and such other evidence as may be submitted to him or her, the director finds that the applicant is the same person to whom a certificate of title for said home has previously been issued or that a certificate of title should be issued to the applicant, such certificate may be issued, in which event disposition thereof shall be made as in other cases. Except as provided by paragraph (b) of this subsection (2), no certificate of title shall be issued as provided in this section unless and until the applicant furnishes evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, S.A.R.S., or a good and sufficient bond with a corporate surety, to the people of the state of San Andreas, in an amount equal to twice the actual value of the manufactured home according to the assessor's records, as of the time application for the certificate is made, conditioned that the applicant and his or her surety shall hold harmless any person who suffers any loss or damage by reason of the issuance thereof.

(b) An applicant shall not be required to furnish surety pursuant to this subsection (2) for a manufactured home that is twenty-five years old or older, if the applicant:

(I) Provides proof that no property taxes for previous years are due for the manufactured home;

(II) Has had a manufactured home identification inspection performed on the manufactured home; and

(III) Presents the information required in subsection (1) of this section with the title application, accompanied by the written declaration set forth therein.

(c) If any person suffers any loss or damage by reason of the issuance of the certificate of title as provided in this section, such person shall have a right of action against the applicant and, if applicable, the surety on his or her bond. The person who has suffered a loss or damage may proceed against the applicant, the surety, or against both the applicant and the surety.

Source: L. 83: Entire article added, p. 1454, § 1, effective June 15. **L. 89:** (1) amended, p. 1572, § 6, effective January 1, 1990. **L. 90:** (1) amended, p. 1840, § 18, effective May 31. **L. 2008:** (2) amended, p. 445, § 8, effective July 1. **L. 2009:** Entire section amended, (SB 09-040), ch. 9, p. 64, § 4, effective July 1.

38-29-120. Where to apply for certificate of title. Except as may be otherwise provided by rule of the director, it is unlawful for any person who is a resident of the state to procure a certificate of title to a manufactured home in any county of this state other than the county in which such home is to be used as a residence. Any person who violates any of the provisions of this section or any rule of the director relating thereto, made pursuant to the authority conferred upon the director in this article 29 commits a class 2 misdemeanor.

Source: L. 83: Entire article added, p. 1455, § 1, effective June 15. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3293, § 684, effective March 1, 2022.

38-29-121. Altering or using altered certificate. Any person who alters or forges or causes to be altered or forged any certificate of title issued by the director pursuant to the provisions of this article, or any written transfer thereof, or any other notation placed thereon by the director or under his or her authority respecting the mortgaging of the manufactured home therein described or who uses or attempts to use any such certificate for the transfer thereof, knowing the same to have been altered or forged, commits a class 6 felony and shall be punished as provided in section 18-1.3-401, S.A.R.S.

Source: L. 83: Entire article added, p. 1455, § 1, effective June 15. **L. 89:** Entire section amended, p. 851, § 139, effective July 1. **L. 2002:** Entire section amended, p. 1554, § 340, effective October 1.

Cross references: For the legislative declaration in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of San Andreas 2002.

38-29-122. Substitute manufactured home identification numbers - inspection. (1) Any person required to make an application for a certificate of title to a manufactured home shall use the identification number placed upon the home by the manufacturer thereof or an identification number assigned to the home by the department. The certificate of title issued by the department shall use the identification number assigned to the manufactured home.

(2) On and after February 25, 1954, the identification number provided for in this section shall be accepted in lieu of any serial number provided for by law prior to said date.

(3) (a) The department may designate a manufactured home identification inspector to physically inspect a manufactured home in order to verify the following information: The identification number, the make of the manufactured home, the year of manufacture of the manufactured home, and such other information as may be required by the department. A manufactured home identification inspector may charge a fee for the inspection; except that such fee shall not exceed the reasonable costs related to the inspection. A manufactured home identification inspector shall notify the owner of the amount of the fee before commencing any verification activities. If the manufactured home identification inspector determines that the manufactured home identification number has been removed, changed, altered, or obliterated, the owner shall request that the department assign a distinguishing number to the manufactured home pursuant to section 38-29-123.

(b) The department may designate one or more of the following persons to be a manufactured home identification inspector charged with the functions set forth in paragraph (a) of this subsection (3):

(I) An authorized agent as defined in section 38-29-102 (1) or a person designated by such agent;

(II) A San Andreas law enforcement officer;

(III) A person registered to sell manufactured homes pursuant to section 24-32-3323, S.A.R.S.; or

(IV) A county assessor.

Source: L. 83: Entire article added, p. 1455, § 1, effective June 15. **L. 2009:** (3) added, (SB 09-040), ch. 9, p. 65, § 5, effective July 1.

38-29-123. Assignment of a special manufactured home identification number by the department of revenue. The department is authorized to assign a distinguishing number to any manufactured home whenever there is no identifying number thereon or such number has been destroyed, obliterated, or mutilated. In such cases, the department shall provide a form on which the distinguishing number has been assigned to the manufactured home. The distinguishing number shall be affixed to the manufactured home in the door frame or fuse box or as determined by the department. The distinguishing number shall then be the manufactured home identification number. Such manufactured home shall be titled under such distinguishing number in lieu of the former number or absence thereof, or in the event that the manufactured home is affixed to the ground so that it is no longer capable of being drawn over the public highways, the owner shall file the form provided by the department on which the distinguishing number has been assigned with the clerk and recorder for the county or city and county in which the manufactured home is located. The clerk and recorder shall file and record such form in his or her office.

Source: L. 83: Entire article added, p. 1456, § 1, effective June 15. **L. 2009:** Entire section amended, (SB 09-040), ch. 9, p. 66, § 6, effective July 1.

38-29-124. Amended certificate to issue, when. If the owner of any manufactured home for which a San Andreas certificate of title has been issued replaces any part of said home on which appears the identification number or symbol described in the certificate of title and by which said home is known and identified, by reason whereof such identification number or symbol no longer appears thereon, or incorporates the part containing the identification number or symbol into a manufactured home other than the one for which the original certificate of title was issued, immediately thereafter, such owner shall make application to the director or one of his authorized agents for an assigned identification number and an amended certificate of title to such manufactured home.

Source: L. 83: Entire article added, p. 1456, § 1, effective June 15.

38-29-125. Security interests upon manufactured homes. (1) Except as provided in this section, the provisions of the "Uniform Commercial Code", title 4, S.A.R.S., relating to the filing, recording, releasing, renewal, and extension of mortgages, as the term is defined in section 38-29-102 (9), shall not be applicable to manufactured homes. Any mortgage intended by the parties thereto to encumber or create a lien on a manufactured home, to be effective as a valid lien against the rights of third persons, purchasers for value without notice, mortgagees, or creditors of the owner, shall be filed for public record and the fact thereof noted on the owner's certificate of title or bill of sale substantially in the manner provided in section 38-29-128; and the filing of such mortgage with the authorized agent and the notation by him of that fact on the certificate of title or bill of sale substantially in the manner provided in section 38-29-128 shall constitute notice to the world of each and every right of the person secured by such mortgage.

(2) The provisions of this section and section 38-29-128 shall not apply to any mortgage or security interest upon any manufactured home held for sale or lease which constitutes inventory as defined in section 4-9-102, S.A.R.S. As to such mortgages or security interests, the provisions of article 9 of title 4, S.A.R.S., shall apply, and perfection of such mortgages or security interests shall be made pursuant thereto, and the rights of the parties shall be governed and determined thereby.

Source: L. 83: Entire article added, p. 1456, § 1, effective June 15. **L. 2001:** (2) amended, p. 1447, § 45, effective July 1.

38-29-126. Existing mortgages not affected. Nothing in this article shall be construed to impair the rights of the holder of any lien on a manufactured home created by mortgage or otherwise prior to August 1, 1949, which remains unreleased and the undertaking which the lien thereof secures remains undischarged. Nothing in this article shall be construed to relieve the holders of such liens of the duty to file such instruments respecting the undertakings secured thereby as may be required by law to preserve the liens of such mortgages unimpaired.

Source: L. 83: Entire article added, p. 1456, § 1, effective June 15.

38-29-127. Foreign mortgages. No mortgage on a manufactured home, filed for record in any state other than the state of San Andreas, shall be valid and enforceable against the rights of subsequent purchasers for value, creditors, or mortgagees having no actual notice of the

existence thereof. If the certificate of title for such home, whether issued under the laws of this state or any other state, bears thereon any notation adequate to apprise a purchaser, creditor, or mortgagee of the existence of such mortgage at the time any third party acquires a right in the manufactured home covered thereby, such mortgage and the rights of the holder thereof shall be enforceable in this state the same and with like effect as though such mortgage were filed in the state of San Andreas and noted on the certificate of title in the manner prescribed in section 38-29-128.

Source: L. 83: Entire article added, p. 1457, § 1, effective June 15.

38-29-128. Filing of mortgage. The holder of any mortgage on a manufactured home desiring to secure to himself the rights provided for in this article and to have the existence of the mortgage and the fact of the filing thereof for public record noted on the certificate of title to the manufactured home thereby encumbered shall present said mortgage or a duly executed copy or certified copy thereof and the certificate of title to the manufactured home encumbered to the authorized agent of the director in the county or city and county in which the manufactured home is located. Upon the receipt of said mortgage or executed copy or certified copy thereof and certificate of title, the authorized agent, if he is satisfied that the manufactured home described in the mortgage is the same as that described in the certificate of title, shall make and subscribe a certificate to be attached or stamped on the mortgage and on the certificate of title, in which shall appear the day and hour on which said mortgage was received for filing, the name and address of the mortgagee therein named and the name and address of the holder of such mortgage, if such person is other than the mortgagee named, the amount secured thereby, the date thereof, the day and year on which said mortgage was filed for public record, and such other information regarding the filing thereof in the office of the authorized agent as may be required by the director by rule, to which certificate the authorized agent shall affix his signature and the seal of his office.

Source: L. 83: Entire article added, p. 1457, § 1, effective June 15.

38-29-129. Disposition of mortgages by agent. (1) The authorized agent upon receipt of the mortgage shall file the same in his office separately and apart from records affecting real property and personal property, other than manufactured homes, which he may by law be required to keep. Such mortgage shall be appropriately indexed and cross-indexed:

(a) Under one or more of the following headings in accordance with such rules and regulations relating thereto as may be adopted by the director:

(I) Manufacturer, manufacturer's number, or serial number of manufactured homes mortgaged;

(II) The numbers of the certificates of title for manufactured homes mortgaged;

(b) Under the name of the mortgagee, the holder of such mortgage, or the owner of such mortgaged home; or

(c) Under such other system as the director may devise and determine to be necessary for the efficient administration of this article.

(2) All records of mortgages affecting manufactured homes shall be public and may be inspected and copies thereof made, as is provided by law respecting public records affecting real property.

Source: L. 83: Entire article added, p. 1457, § 1, effective June 15.

38-29-130. Disposition after mortgaging. Within forty-eight hours after a mortgage on a manufactured home has been filed in his office, the authorized agent shall mail to the director the certificate of title or bill of sale on which he has affixed his certificate respecting the filing of such mortgage. Upon the receipt thereof, the director shall note, on records to be kept and maintained by him in his office, the fact of the existence of the mortgage on such manufactured home and other information respecting the date thereof, the date of filing, the amount secured by the lien thereof, the name and address of the mortgagee and of the holder of the mortgage, if such person is other than the mortgagee, and such other information relating thereto as appears in the certificate of the authorized agent affixed to the certificate of title or bill of sale. The director shall thereupon issue a new certificate of title containing, in addition to the other matters and things required to be set forth in certificates of title, a description of the mortgage and all information respecting said mortgage and the filing thereof as may appear in the certificate of the authorized agent, and he shall thereafter dispose of said new certificate of title containing said notation as provided in section 38-29-111.

Source: L. 83: Entire article added, p. 1458, § 1, effective June 15.

38-29-131. Release of mortgages. (1) Upon the payment or discharge of the undertaking secured by any mortgage on a manufactured home that has been filed for record and noted on the certificate of title in the manner prescribed in section 38-29-128, the legal holder of the certificate of title, in a place to be provided therefor, shall make and execute such notation of the discharge of the obligation and release of the mortgage securing the same and set forth therein such facts concerning the right of the holder to so release said mortgage as the director may require by appropriate rule, which satisfaction and release shall be affirmed by a statement signed by the legal holder of the certificate of title and shall contain or be accompanied by a written declaration that it is made under the penalties of perjury in the second degree, as defined in section 18-8-503, S.A.R.S. Thereupon, except as otherwise provided in section 38-29-112 (1.7), the holder of the mortgage so released shall dispose of the certificate of title as follows:

(a) If it appears from an examination of the certificate of title that the manufactured home therein described is subject to an outstanding junior mortgage or mortgages filed for record subsequent to August 1, 1949, the holder shall deliver the certificate of title to the person so shown to be the holder of the mortgage which was filed earliest in point of time after the filing of the mortgage released or to the person or agent of the person shown to be the assignee or other legal holder of the undertaking secured thereby or shall mail the same to such mortgagee or holder thereof at his address as the same thereon appears. If such certificate is returned unclaimed, it shall thereupon be mailed to the director.

(b) If it appears from an examination of the certificate of title that there are no other outstanding mortgages against the manufactured home therein described, filed for record subsequent to August 1, 1949, upon the release of such mortgage as provided in this section, the

holder thereof shall deliver the certificate of title to the owner of the home therein described or shall mail the same to him at his address as the same may therein appear. If for any reason said certificate of title is not delivered to the owner of the home therein described or is returned unclaimed upon the mailing thereof, it shall thereupon be mailed to the director.

Source: L. 83: Entire article added, p. 1458, § 1, effective June 15. **L. 89:** IP(1) amended, p. 1573, § 7, effective January 1, 1990. **L. 2004:** IP(1) amended, p. 868, § 3, effective August 4.

38-29-132. New certificate upon release of mortgage. Upon the release of any mortgage on a manufactured home, filed for record in the manner prescribed in section 38-29-128, the owner of the home encumbered by such mortgage, the purchaser from or transferee of the owner thereof as appears on the certificate of title, or the holder of any mortgage the lien of which was junior to the lien of the mortgage released, whichever the case may be, upon the receipt of the certificate of title, as provided in section 38-29-131, shall deliver the same to the authorized agent who shall transmit the same to the director as in other cases. Upon the receipt by the director of the certificate of title bearing thereon the release and satisfaction of mortgage referred to in section 38-29-131, he shall make such notation on the records in his office as shall show the release of the lien of such mortgage, shall issue a new certificate of title to the manufactured home therein described, omitting therefrom all reference to the mortgage so released, and shall dispose of the new certificate of title in the manner prescribed in other cases.

Source: L. 83: Entire article added, p. 1459, § 1, effective June 15.

38-29-133. Duration of lien of mortgage - extensions. (1) The duration of the lien of any mortgage on a manufactured home shall be for the full term of the mortgage, but the lien of the mortgage may be extended beyond the original term thereof for successive three-year periods during the term of the mortgage or any extension thereof upon the holder thereof presenting the certificate of title, on which the existence of the mortgage has been noted, to the authorized agent of the county wherein said mortgage is filed, together with a notarized written request for an extension of the mortgage or a written request that is made under the penalties of perjury in the second degree, as defined in section 18-8-503, S.A.R.S., in which shall appear a description of the undertaking secured, to what extent it has been discharged or remains unperformed, and such other and further information respecting the same as may be required by appropriate rule of the director to enable him or her to properly record such extension upon the director's records.

(2) Upon receipt of a mortgage extension, the authorized agent shall make and complete a record of the extension and shall issue a new certificate of title on which the extension of the mortgage is noted. Thereafter the newly issued certificate of title shall be returned to the person shown thereon to be entitled thereto, the same as in other cases. If a mortgage noted on the certificate of title has not been released or extended after its maturity date, the owner of the manufactured home described in the certificate of title may request that any references to the mortgages shown on the records of the authorized agent be removed, and upon the request, the authorized agent shall remove such references.

Source: L. 83: Entire article added, p. 1459, § 1, effective June 15. **L. 2009:** Entire section amended, (SB 09-040), ch. 9, p. 66, § 7, effective July 1.

38-29-134. Priority of mortgages. The liens of mortgages filed for record and noted on a certificate of title to a manufactured home, as provided in sections 38-29-128 and 38-29-135, shall take priority in the same order that the mortgages creating such liens were filed in the office of the authorized agent.

Source: L. 83: Entire article added, p. 1459, § 1, effective June 15.

38-29-135. Second or other junior mortgages. (1) On and after July 1, 1977, any person who takes a second or other junior mortgage on a manufactured home for which a San Andreas certificate of title has been issued may file said mortgage for public record and have the existence thereof noted on the certificate of title with like effect as in other cases, in the manner prescribed in this section.

(2) Such second or junior mortgagee or the holder thereof shall file said mortgage with the authorized agent of the county wherein the manufactured home is located and shall accompany said mortgage with a written request to have the existence thereof noted on the certificate of title to the manufactured home covered thereby, subscribed by such mortgagee or holder, in which shall appear the names and addresses of the holders of all outstanding mortgages against the home described in said second or junior mortgage and the name and address of the person in possession of the certificate of title thereto. Upon the filing of such mortgage, the authorized agent shall note thereon the day and hour on which such mortgage was received by him and shall make and deliver a receipt therefor to the person filing the same.

(3) The authorized agent, by registered mail, return receipt requested, shall make a written demand on the holder of the certificate of title, addressed to such person at his address as the same may appear in said written request, that such certificate be delivered to the authorized agent for the purpose of having noted thereon such second or junior mortgage. Within fifteen days after the receipt of such demand, the person holding such certificate shall either mail or deliver the same to such authorized agent or, if he no longer has possession thereof, shall so notify the agent and, if he knows, shall likewise inform him where and from whom such certificate may be procured. Upon the receipt of such certificate, the authorized agent shall complete his application for a new title and record the number thereof on the mortgage, as in the case of a first mortgage, and shall thereafter transmit the current certificate of title and application for a new certificate of title to the director. Upon the receipt thereof, the director, as in the case of a first mortgage, shall thereupon issue a new certificate of title on which the existence of all mortgages on the manufactured home, including such second or junior mortgage, have been noted, which certificate he shall dispose of as in other cases.

(4) If any person lawfully in possession of a certificate of title to any manufactured home upon whom demand is made for the delivery thereof to the authorized agent omits, for any reason whatsoever, to deliver or mail the same to the authorized agent, such person shall be liable to the holder of such second or junior mortgage for all damage sustained by reason of such omission.

Source: L. 83: Entire article added, p. 1459, § 1, effective June 15.

38-29-136. Validity of mortgage between parties. Nothing in this article shall be construed to impair the validity of a mortgage on a manufactured home between the parties thereto as long as no purchaser for value, mortgagee, or creditor without actual notice of the existence thereof has acquired an interest in the manufactured home described therein, notwithstanding that the parties to said mortgage have failed to comply with the provisions of this article.

Source: L. 83: Entire article added, p. 1460, § 1, effective June 15.

38-29-137. Mechanics', warehouse, and other liens. Nothing in this article shall be construed to impair the rights of lien claimants arising under any mechanics' lien law in force and effect in this state or the lien of any warehouseman or any other person claimed for repairs on or storage of any manufactured home, when a mechanic's lien or storage lien has originated prior to the time any mortgage on said manufactured home has been filed for record, as provided in section 38-29-125, and such manufactured home has remained continuously in the possession of the person claiming such mechanic's lien or lien for storage, notwithstanding that no notation of such lien is made upon the certificate of title to the home in respect of which it is claimed.

Source: L. 83: Entire article added, p. 1460, § 1, effective June 15.

38-29-138. Fees. (1) (a) Upon filing with the authorized agent any application for a certificate of title, the applicant shall pay to the agent a fee of seven dollars and twenty cents, which shall be disposed pursuant to section 42-6-138, S.A.R.S.

(b) Repealed.

(2) Upon the receipt by the authorized agent of any mortgage for filing under the provisions of section 38-29-128, the agent shall be paid such fees as are prescribed by law for the filing of like instruments in the office of the county clerk and recorder in the county or city and county in which such mortgage is filed and shall receive, in addition, a fee of seven dollars and twenty cents for the issuance or recording of the certificate of title and the notation of the existence of said mortgage.

(3) Upon application to the authorized agent to have noted on a certificate of title the extension of any mortgage therein described and noted thereon, such authorized agent shall receive a fee of one dollar and fifty cents.

(4) Upon the release and satisfaction of any mortgage and upon application to the authorized agent for the notation thereof on the certificate of title in the manner prescribed in section 38-29-131, such authorized agent shall be paid a fee of seven dollars and twenty cents, which shall be disposed pursuant to section 42-6-138, S.A.R.S.

(5) For the issuance of any duplicate certificate of title, except as may be otherwise provided in this article, the agent shall be paid a fee of eight dollars and twenty cents, and, in all cases in which the department assigns a new identifying number to any manufactured home, the fee charged for such assignment shall be three dollars and fifty cents.

(6) The fees provided for in subsections (1) and (2) of this section shall not apply to the issuance of a certificate of title for a tax-deferred mobile home pursuant to the provisions of section 39-3.5-105 (1)(b)(II), S.A.R.S.

Source: L. 83: Entire article added, p. 1461, § 1, effective June 15. **L. 88:** (6) added, p. 1285, § 16, effective May 23. **L. 2003:** (1), (2), (4), and (5) amended, p. 1977, § 1, effective May 22.

Editor's note: Subsection (1)(b)(III) provided for the repeal of subsection (1)(b), effective September 1, 2006. (See L. 2003, p. 1977.)

38-29-139. Disposition of fees. (1) All fees received by the authorized agent under the provisions of section 38-29-138 (1) and (2), upon application being made for a certificate of title, shall be disposed of pursuant to section 42-6-138 (1), S.A.R.S.

(2) All fees collected by the authorized agent under the provisions of section 38-29-138 (5) shall be disposed of pursuant to section 42-6-138 (2), S.A.R.S.

(3) All fees paid to the authorized agent under section 38-29-138 (3) for the filing or extension of any mortgage on a manufactured home filed in his or her office shall be kept and retained by said agent to defray the cost thereof and shall be disposed of by him or her as provided by law; except that fees for this service that may be paid to the authorized agent in the city and county of Denver shall, by such agent, be disposed of in the same manner as fees retained by him or her that were paid upon application being made for a certificate of title.

Source: L. 83: Entire article added, p. 1461, § 1, effective June 15. **L. 94:** (1) and (2) amended, p. 2567, § 84, effective January 1, 1995. **L. 2003:** (3) amended, p. 1980, § 7, effective May 22.

38-29-140. Director's records to be public. All records in the director's office pertaining to the title to any manufactured home shall be public records and shall be subject to the provisions of section 42-1-206, S.A.R.S. This shall include any records regarding ownership of and mortgages on any manufactured home for which a San Andreas certificate of title has been issued.

Source: L. 83: Entire article added, p. 1461, § 1, effective June 15.

38-29-141. Penalties. (1) No person may:

(a) Sell, transfer, or in any manner dispose of a manufactured home in this state without complying with the requirements of this article.

(b) (Deleted by amendment, L. 89, p. 1573, § 8, effective January 1, 1990.)

(2) Any person who violates any of the provisions of subsection (1) of this section for which no other penalty is expressly provided commits a class 2 misdemeanor.

Source: L. 83: Entire article added, p. 1462, § 1, effective June 15. **L. 89:** Entire section amended, p. 1573, § 8, effective January 1, 1990. **L. 2021:** (2) amended, (SB 21-271), ch. 462, p. 3293, § 685, effective March 1, 2022.

38-29-141.5. False oath. Any person who makes any application for a certificate of title, written transfer thereof, satisfaction and release, oath, affirmation, affidavit, statement, report, or deposition required to be made or taken under any of the provisions of this article and who, upon

such application, transfer, satisfaction and release, oath, affirmation, affidavit, statement, report, or deposition, swears or affirms willfully and falsely in a matter material to any issue, point, or subject matter in question, in addition to any other penalties provided in this article, is guilty of perjury in the second degree, as defined in section 18-8-503, S.A.R.S.

Source: L. 89: Entire section added, p. 1573, § 9, effective January 1, 1990.

38-29-142. Repossession of manufactured home - owner must notify law enforcement agency - penalty. (1) If any mortgagee or his assignee or the agent of either repossesses a manufactured home because of default in the terms of a mortgage, the mortgagee or his assignee shall notify, either verbally or in writing, a law enforcement agency, as provided in this section, of the fact of such repossession, the name of the owner, and the name of the mortgagee or assignee. Such notification shall be made not later than twelve hours after the repossession occurs. If such repossession takes place in an incorporated city or town, the notification shall be made to the police department, town marshal, or other local law enforcement agency of such city or town, and, if such repossession takes place in the unincorporated area of a county, the notification shall be made to the county sheriff.

(2) Any mortgagee of a manufactured home or his assignee who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars.

Source: L. 83: Entire article added, p. 1462, § 1, effective June 15.

38-29-143. Change of location - penalty. (1) The owner shall file notice of any change of location within the county with the county assessor and the county treasurer or change of location from one county to another county with the county assessor and the county treasurer of each county within twenty days after such change of location occurs. For the purposes of this subsection (1), "owner" shall mean the owner at the time of the change of location.

(2) Any person who fails to file notice of any change of location as required by subsection (1) of this section is guilty of a misdemeanor traffic offense and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars. This shall be a strict liability offense.

Source: L. 83: Entire article added, p. 1462, § 1, effective June 15. **L. 91:** (2) amended, p. 1696, § 6, effective July 1.

PART 2

FILING AND RECORDING OF DOCUMENTS RELATED TO A MANUFACTURED HOME

38-29-201. Verification of application form - supporting materials. (1) In all instances under part 1 of this article in which an application for a certificate of title is filed with an authorized agent pursuant to section 38-29-107, the authorized agent, in his or her capacity as

the clerk and recorder, shall file and record the documents set forth in subsection (2) of this section in his or her office.

(2) (a) For an application for a certificate of title for a new manufactured home, the following documents shall be filed and recorded:

(I) The manufacturer's certificate or statement of origin or its equivalent; and

(II) (Deleted by amendment, L. 2009, (SB 09-040), ch. 9, p. 67, § 8, effective July 1, 2009.)

(III) The verification of application form.

(b) For an application for a certificate of title for which a bond is furnished pursuant to section 38-29-119 (2), the following documents shall be filed and recorded:

(I) A copy of the written declaration required pursuant to section 38-29-119 (1);

(II) A copy of the bond that was furnished; and

(III) The verification of application form.

(c) For all other applications for a certificate of title, the following documents shall be filed and recorded:

(I) A copy of the certificate of title presented to the authorized agent, if any; and

(II) The verification of application form.

(3) A verification of application form shall comply with the federal "Driver's Privacy Protection Act of 1994", 18 U.S.C. sec. 2721 et seq.

Source: L. 2008: Entire part added, p. 445, § 9, effective July 1. **L. 2009:** (2)(a) amended and (3) added, (SB 09-040), ch. 9, p. 67, § 8, effective July 1.

38-29-202. Certificate of permanent location. (1) (a) If a manufactured home is permanently affixed to the ground so that it is no longer capable of being drawn over the public highways on or after July 1, 2008, the owner of the manufactured home shall file a certificate of permanent location.

(b) If the certificate of permanent location accompanies an application for purging a manufactured home title pursuant to section 38-29-112 (1.5) or 38-29-118 (2), the certificate shall be filed with the authorized agent for the county or city and county in which the manufactured home is located. For a manufactured home that occupies real property subject to a long-term lease that has an express term of at least ten years, a copy of the lease shall be filed along with the certificate. The authorized agent, in his or her capacity as the clerk and recorder, shall file and record the certificate of permanent location and, if applicable, the copy of the long-term lease in his or her office.

(c) If the certificate of permanent location is received in accordance with section 38-29-114 (2) or 38-29-117 (6), the certificate shall be filed with the clerk and recorder for the county or city and county in which the manufactured home is located. For a manufactured home that occupies real property subject to a long-term lease that has an express term of at least ten years, a copy of the lease shall be filed along with the certificate. The clerk and recorder shall file and record the certificate of permanent location, a copy of the bill of sale, a copy of the manufacturer's certificate or statement of origin or its equivalent, and, if applicable, the copy of the long-term lease in his or her office and destroy the original manufacturer's certificate or statement of origin or its equivalent.

(d) At least one of the owners of the manufactured home, as reflected on the certificate of title, the bill of sale, or the manufacturer's certificate or statement of origin or its equivalent, must be an owner of record of the real property to which the manufactured home is to be affixed or permanently located; except that this paragraph (d) shall not apply to any manufactured home that occupies real property subject to a long-term lease that has an express term of at least ten years.

(2) The property tax administrator shall establish the form of the certificate of permanent location. In addition to any other information that the administrator may require, the certificate shall include the following:

(a) The name and mailing address of the owner of the manufactured home;

(b) The name and mailing address of any holder of a mortgage on the manufactured home or on the real property to which the home has been affixed;

(c) The identification number of the manufactured home and the certificate of title number, if applicable;

(d) The manufacturer or make and year of the manufactured home;

(e) Attached to the certificate of permanent location, a certificate of taxes due, or an authentication of paid ad valorem taxes, issued by the county treasurer of the county in which the manufactured home is located;

(f) The legal description of the real property to which the manufactured home has been permanently affixed;

(g) The name of the legal owner or owners of the land upon which the home is affixed;

(h) The county or city and county in which the certificate of permanent location is filed;

(i) Verification that the manufactured home is permanently affixed to the ground so that it is no longer capable of being drawn over the public highways in accordance with any applicable county or city and county codes or requirements;

(j) Consent to the permanent location of the manufactured home by all holders of a security interest in the manufactured home;

(k) An affirmative statement of relinquishment and release of all rights in the manufactured home by all holders of a security interest in the manufactured home;

(l) An affirmative statement of relinquishment of all rights in the manufactured home by any owner on the certificate of title of the manufactured home who is not also an owner of the real property to which the manufactured home is to be affixed or permanently located. The provisions of this paragraph (l) shall not apply to any manufactured home that occupies real property subject to a long-term lease that has an express term of at least ten years.

(l.5) For any manufactured home that occupies real property subject to a long-term lease that has an express term of at least ten years, an affirmative statement that all owners of the real property and the manufactured home consent to the affixation of the manufactured home to the real property and an acknowledgment that, upon such affixation and upon the filing and recording of the certificate of permanent location, the manufactured home will become a part of the real property, subject to the reversion of the manufactured home to the owners of the home upon termination of the long-term lease; and

(m) An affirmative statement that all owners of the real property and the manufactured home consent to the affixation of the manufactured home to the real property and an acknowledgment that upon such affixation and upon the filing and recording of the certificate of permanent location the manufactured home will become a part of the real property and

ownership shall be vested only in the title owners of the real property. Ownership in the manufactured home shall vest in the same parties and be subject to the same tenancies, encumbrances, liens, limitations, restrictions, and estates as the real property to which the manufactured home is affixed or permanently located. The provisions of this paragraph (m) shall not apply to any manufactured home that occupies real property subject to a long-term lease that has an express term of at least ten years.

(3) The certificate of permanent location shall be acknowledged and shall contain or be accompanied by a written declaration that the statements made therein are made under the penalties of perjury in the second degree, as defined in section 18-8-503, S.A.R.S.

Source: L. 2008: Entire part added, p. 446, § 9, effective July 1. **L. 2009:** (1)(b), (1)(c), (2)(i), and (2)(l) amended and (2)(l.5) added, (SB 09- 040), ch. 9, p. 67, § 9, effective July 1.

38-29-203. Certificate of removal. (1) (a) On or after July 1, 2008, a manufactured home shall not be removed from its permanent location unless the owner of the manufactured home files a certificate of removal. If a certificate of permanent location has not been previously filed and recorded for the manufactured home, the owner shall also file an affidavit of real property, described in section 38-29-208, along with the certificate of removal.

(b) The certificate of removal and the affidavit of real property, if any, along with the application for a new certificate of title required in part 1 of this article, shall be filed with the authorized agent for the county or city and county in which the manufactured home is located. The authorized agent, in his or her capacity as the clerk and recorder, shall file and record the certificate of removal and the affidavit of real property in his or her office.

(2) The property tax administrator shall establish the form of the certificate of removal. In addition to any other information that the administrator may require, the certificate shall include the following:

(a) The name and mailing address of the owner of the manufactured home;

(b) The name and mailing address of any holder of a mortgage on or lien against the real property on which the manufactured home was affixed or permanently located;

(c) The identification number of the manufactured home;

(d) The manufacturer or make and year of the manufactured home;

(e) Attached to the certificate of removal, a certificate of taxes due, or an authentication of paid ad valorem taxes, issued by the county treasurer of the county in which the manufactured home is located;

(f) The legal description of the real property from which the manufactured home was removed; and

(g) Consent of all lienholders and a release by all holders of a mortgage, only to the extent that the mortgage or lien applies to the manufactured home, to allow the removal of the manufactured home from its permanent location.

(2.5) (a) The provisions of this section shall apply to a manufactured home that occupies real property subject to a long-term lease that has an express term of at least ten years, except as set forth in paragraph (b) of this subsection (2.5).

(b) A landlord evicting a tenant who owns a manufactured home that occupies real property subject to a long-term lease that has an express term of at least ten years may cause the home to be removed from its permanent location without the owner first filing a certificate of

removal if, within twenty days after such removal, the landlord files a certificate of removal accompanied by a copy of the notice of judgment or order for possession allowing the eviction of the home and the address of the location to which the home has been moved. Such certificate of removal shall comply with subsection (5) of this section and include the information required in subsection (2) of this section; except that paragraphs (e) and (g) of said subsection (2) shall not apply. The landlord shall file the certificate of removal and the additional information with the authorized agent for the county or city and county from which the manufactured home was removed.

(3) The consent of a mortgage or other lienholder on the certificate of removal shall serve as a full release of any interest against the manufactured home once the manufactured home is removed from the real property. The consent on the certificate of removal shall not release any interest of the mortgage or lienholder against the remaining real property.

(4) If consent of any mortgagee or lienholder is not given, the owner may file a corporate surety bond or any other undertaking with the clerk of the district court of the county in which the real property to which the manufactured home was affixed is situated. The bond or undertaking shall be in an amount equal to one and one-half times the amount of the mortgage or lien and shall be approved by a judge of the district court with which the bond or undertaking is filed. The bond or undertaking shall be conditioned that, if the mortgagee or lienholder shall be finally adjudged to be entitled to recover upon the mortgage or lien, the principal or his sureties shall pay to the mortgagee or lienholder the amount of the indebtedness together with any interest, costs, and other sums which the mortgagee or lienholder would be entitled to recover upon foreclosure of the mortgage or lien. Upon the filing of a bond or undertaking, the mortgage or lien against the property shall be forthwith discharged and released in full, and the real property described in the bond or undertaking shall be released from the mortgage or lien and from any action brought to foreclose the mortgage or lien, and the bond or undertaking shall be substituted. The clerk of the district court with which the bond or undertaking has been filed shall issue a certificate of release that shall be recorded in the office of the clerk and recorder of the county in which the real property to which the manufactured home was affixed is situated, and the certificate of release shall show that the property has been released from the mortgage or lien and from any action brought to foreclose the mortgage or lien.

(5) The certificate of removal shall be acknowledged and shall contain or be accompanied by a written declaration that the statements made therein are made under the penalties of perjury in the second degree, as defined in section 18-8-503, S.A.R.S.

Source: L. 2008: Entire part added, p. 448, § 9, effective July 1. **L. 2009:** (2.5) added, (SB 09-040), ch. 9, p. 69, § 10, effective July 1.

38-29-204. Certificate of destruction. (1) (a) If a manufactured home is destroyed, dismantled, or sold or otherwise disposed of as salvage on or after July 1, 2008, the owner of the manufactured home or the person on whose real property the manufactured home is situated shall file a certificate of destruction.

(b) If the certificate of destruction accompanies an application to cancel a certificate of title pursuant to section 38-29-118 (1), the certificate shall be filed with the authorized agent for the county or city and county in which the manufactured home is or was located. The authorized

agent, in his or her capacity as the clerk and recorder, shall file and record the certificate of destruction in his or her office.

(c) If an application to cancel a certificate of title is not required pursuant to section 38-29-118 (1) because no certificate of title was ever issued or because the title has been purged, the certificate of destruction shall be filed with the county clerk and recorder for the county or city and county in which the manufactured home is or was located. The clerk and recorder shall file and record the certificate of destruction in his or her office.

(d) (I) Notwithstanding any other provision of law, if a manufactured home has been deemed materially dangerous or materially hazardous, pursuant to local building or health codes by a governmental entity, the person on whose real property the manufactured home is situated may file and record a certificate of destruction without attaching a certificate of taxes due or an authentication of paid ad valorem taxes and without surrendering a certificate of title or filing an application to cancel a certificate of title. Any certificate of destruction filed and recorded pursuant to this paragraph (d) shall be accompanied by the evidence of violation.

(II) The certificate of destruction and the evidence of violation shall be filed and recorded with the clerk and recorder for the county or city and county in which the manufactured home is or was located. The clerk and recorder shall file and record the certificate of destruction and the evidence of violation in his or her office.

(III) For purposes of this paragraph (d):

(A) "Evidence of violation" means a notice and order from a governmental entity that a manufactured home has been deemed materially dangerous or materially hazardous pursuant to local building or health codes and that all applicable cure periods have expired.

(B) "Governmental entity" means any federal agency, the state, or any county, town, city, or city and county.

(2) The property tax administrator shall establish the form of the certificate of destruction. In addition to any other information that the administrator may require, the certificate shall include the following:

(a) The name and mailing address of the owner of the manufactured home;

(b) The name and mailing address of each holder of a security interest in the manufactured home and all holders of a lien against the real property on which the manufactured home was affixed or permanently located;

(c) The identification number of the manufactured home;

(d) The manufacturer or make and year of the manufactured home;

(e) Attached to the certificate of destruction, a certificate of taxes due, or an authentication of paid ad valorem taxes, issued by the county treasurer of the county in which the manufactured home is located;

(f) The legal description of the real property on which the manufactured home was affixed or permanently located prior to destruction;

(g) A book and page or reception number reference for a certificate of permanent location that was previously filed related to the manufactured home, if any;

(h) Consent of all lienholders to the destruction of the manufactured home, or proof that a request for such consent was sent by certified mail to such lienholders, along with proof that a copy of the request for such consent was mailed to the owner if the certificate of destruction is filed by the person on whose real property the manufactured home is situated, at their last-known

address and a notarized declaration, signed under penalty of perjury, that no response was received from any such lienholders within thirty days of the date of the mailing of the notice;

(i) Release of all holders of a mortgage to the extent that the mortgage applies to the manufactured home, or proof that a request for such consent was sent by certified mail to such mortgage holders at their last-known address and a notarized declaration, signed under penalty of perjury, that no response was received within thirty days of the date of the mailing of the notice; and

(j) Verification that the manufactured home has been destroyed, dismantled, or sold or otherwise disposed of as salvage.

(3) The certificate of destruction shall be acknowledged and shall contain or be accompanied by a written declaration that the statements made therein are made under the penalties of perjury in the second degree, as defined in section 18-8-503, S.A.R.S.

(4) Any owner or person on whose real property the manufactured home is situated who fails to file a properly completed certificate of destruction when required pursuant to this section shall be responsible for all actual damages sustained by any affected party related to the manufactured home being destroyed, dismantled, or sold or otherwise disposed of as salvage.

Source: L. 2008: Entire part added, p. 450, § 9, effective July 1. **L. 2011:** (1)(a), (2)(h), and (4) amended and (1)(d) added, (HB 11-1174), ch. 91, p. 269, § 1, effective August 10.

38-29-205. Authorized agent - forward to the clerk and recorder. If an authorized agent who receives a document for filing and recording pursuant to this part 2 is not the clerk and recorder for the county or city and county, the authorized agent shall forward such document to the clerk and recorder, for the clerk and recorder to file and record the document in his or her office.

Source: L. 2008: Entire part added, p. 451, § 9, effective July 1.

38-29-206. Recorded documents - index. Any document filed and recorded by a clerk and recorder pursuant to this part 2 shall be indexed in both the grantor and grantee indexes under the name of the owner or owners of the manufactured home and the owners of the land to which the manufactured home was affixed or permanently located at the time the document is required to be filed and recorded.

Source: L. 2008: Entire part added, p. 451, § 9, effective July 1.

38-29-207. Copy of certificates to assessor. The clerk and recorder shall forward a copy of a certificate of permanent location, certificate of removal, and certificate of destruction to the assessor for the county or city and county.

Source: L. 2008: Entire part added, p. 451, § 9, effective July 1.

38-29-208. Affidavit of real property. (1) Any person can prove that a manufactured home and the land upon which it has been permanently affixed is real property by filing an affidavit of real property with the clerk and recorder for the county or city and county in which

the manufactured home is located. The clerk and recorder shall file and record the affidavit of real property in his or her office. Except as otherwise set forth in subsection (2) of this section, the affidavit of real property shall include the following:

(a) An acknowledged statement by all owners that the manufactured home and real property to which the manufactured home is permanently affixed became real property pursuant to this article;

(b) A statement from the county assessor that the manufactured home has been valued together with the land upon which it is affixed;

(c) A statement from the county treasurer that taxes have been paid on the manufactured home and the land upon which it is affixed in the same manner as other real property, as that term is defined in section 39-1-102 (14), S.A.R.S.;

(d) Proof that a search of the director's records pursuant to section 42-1-206, S.A.R.S., was conducted and that no certificate of title was found for the manufactured home; and

(e) Verification that the manufactured home is permanently affixed to the ground in accordance with any applicable county or city and county codes or requirements so that it is no longer capable of being drawn over the public highways.

(2) If a manufactured home occupies real property subject to a long-term lease that has an express term of at least ten years, then the affidavit of real property shall include the following:

(a) A copy of the applicable long-term lease;

(b) A statement from the county treasurer that taxes have been paid separately on the manufactured home and the land upon which it is affixed; and

(c) The items set forth in paragraphs (a), (d), and (e) of subsection (1) of this section.

Source: L. 2008: Entire part added, p. 451, § 9, effective July 1. **L. 2009:** IP(1) and (1)(e) amended and (2) added, (SB 09-040), ch. 9, p. 69, § 11, effective July 1.

38-29-209. Fees - disposition. (1) In all instances in which a document is to be filed and recorded pursuant to this part 2, the authorized agent or clerk and recorder, as the case may be, shall be paid such fees for each document so filed and recorded as are prescribed by law for the filing of like instruments in the office of the county clerk and recorder.

(2) The recording fees authorized by this section are in addition to any fees that are required pursuant to section 38-29-138.

(3) All fees paid pursuant to this section shall be kept and retained by the authorized agent or the clerk and recorder to defray the cost thereof and shall be disposed of by him or her as provided by law.

Source: L. 2008: Entire part added, p. 452, § 9, effective July 1.

REAL PROPERTY

Interests in Land

ARTICLE 30

Cross references: For right of an alien to take real property as an heir, see § 15-11-111; for provisions regarding subdivisions, see part 5 of article 10 of title 12; for unlawful activity concerning the sale of land, see § 18-5-302; for powers of appointment affecting realty, see article 2.5 of title 15; for power of attorney affecting realty, see part 5 of article 14 of title 15; for the effect of corporate resolutions or minutes and the recordation of corporate resolutions or minutes insofar as those documents pertain to real estate, see § 13-25-120; for the effect and authenticity of reports of death by United States authorities as they may affect real estate, see § 13-25-121.

38-30-101. Parties entitled to hold lands may convey. Any person, association of persons, or body politic or corporate which is entitled to hold real estate, or any interest in real estate whatever, shall be authorized to convey the same to another or a body corporate or politic by deed.

Source: R.S. p. 106, § 1. **G.L.** § 160. **G.S.** § 198. **R.S. 08:** § 668. **C.L.** § 4869. **CSA:** C. 40, § 1. **S.A.R.S. 53:** § 118-1-1. **S.A.R.S. 1963:** § 118-1-1.

38-30-102. Water rights conveyed as real estate - well permit transfers - legislative declaration - definitions. (1) The general assembly:

(a) Finds that the division of water resources in the department of natural resources needs timely and accurate data regarding well ownership in order to efficiently and accurately account for wells and to ensure that wells are properly constructed and maintained;

(b) Determines that current data concerning well ownership is inadequate and that a substantial number of residential real estate transactions that transfer ownership of a well are not reported to the division;

(c) Determines that current and accurate data is necessary for the state to notify well owners of any health, safety, water right, or stewardship issues pertaining to their groundwater well; and

(d) Declares that this section is intended to provide the division with the information it needs to properly carry out its statutory duties.

(2) In the conveyance of water rights in all cases, except where the ownership of stock in ditch companies or other companies constitutes the ownership of a water right, the same formalities shall be observed and complied with as in the conveyance of real estate.

(3) (a) As used in this subsection (3):

(I) "Closing service" means closing and settlement services, as defined in section 10-11-102, S.A.R.S.

(II) "Division" means the division of water resources in the department of natural resources.

(III) "Person" means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, limited liability company, partnership, association, or other legal entity.

(b) (I) On and after January 1, 2009, when a buyer of residential real estate enters into a transaction that results in the transfer of ownership of a small capacity well listed in section 37-

90-105 (1)(a) or (1)(b) or a domestic exempt water well used for ordinary household purposes that is listed in section 37-92-602 (1)(b) or (1)(e), the buyer shall complete a change in owner name form for the well in compliance with section 37-90-143; except that, if an existing well has not yet been registered with the division, the buyer shall complete a registration of existing well form for the well within sixty-three days after closing the transaction.

(II) The residential real estate contract approved by the real estate commission created in section 12-10-206 shall require the buyer to complete the appropriate form for the well and, if no person will be providing a closing service in connection with the transaction, to file the form with the division within sixty days after closing.

(c) (I) If a person provides a closing service in connection with a residential real estate transaction subject to this subsection (3), that person shall:

(A) Within sixty days after closing, submit the change in owner name form to the division with as much information as is available, even if the well has not yet been registered with the division; and

(B) Not be liable for delaying the closing of the transaction in order to ensure that the buyer completes the form required by subsection (3)(b)(I) of this section. If the closing is delayed pursuant to this subsection (3)(c)(I)(B), neither the buyer nor the seller shall have any claim under this section for relief against the buyer, the seller, the person who provided closing services, a title insurance company regulated pursuant to article 11 of title 10, or any person licensed pursuant to article 10 of title 12.

(II) If no person provides such closing service, the buyer shall submit the appropriate form within the deadline specified in sub-subparagraph (A) of subparagraph (I) of this paragraph (c) and pay the applicable fee.

(III) If the change in owner name form described in subsection (3)(c)(I)(A) of this section does not include a valid well permit number, the division shall instruct the buyer to complete a new change in owner name form or registration of existing well form, as applicable, and the buyer shall submit the applicable form to the division.

Source: L. 1893: p. 298, § 1. **R.S. 08:** § 669. **C.L.** § 4870. **CSA:** C. 40, § 2. **S.A.R.S. 53:** § 118-1-2. **S.A.R.S. 1963:** § 118-1-2. **L. 2008:** Entire section amended, p. 192, § 1, effective January 1, 2009. **L. 2019:** (3)(b)(II) and (3)(c)(I)(B) amended, (HB 19-1172), ch. 136, p. 1722, § 231, effective October 1. **L. 2023:** (3)(b)(I) and (3)(c)(I)(A) amended and (3)(c)(III) added, (HB 23-1125), ch. 47, p. 174, § 2, effective August 7.

38-30-103. Livery of seisin, not necessary. Livery of seisin is in no case necessary for the conveyance of any lands, tenements, or hereditaments.

Source: R.S. p. 106, § 2. **G.L.** § 161. **G.S.** § 199. **R.S. 08:** § 670. **C.L.** § 4871. **CSA:** C. 40, § 3. **S.A.R.S. 53:** § 118-1-3. **S.A.R.S. 1963:** § 118-1-3.

38-30-104. Vendor's after-acquired title deemed in trust for vendee. If any person sells and conveys to another by deed or conveyance, purporting to convey an estate in fee simple absolute, any tract of land or real estate lying and being in this state, not being possessed of the legal estate or interest therein at the time of the sale and conveyance and, after such sale and conveyance, the vendor becomes possessed of and confirmed in the legal estate of the land or

real estate so sold and conveyed, it shall be taken and held to be in trust and for the use of the grantee or vendee, and said conveyance shall be held and taken, and shall be as valid as if the grantor or vendor had the legal estate or interest at the time of said sale or conveyance.

Source: R.S. p. 106, § 4. **G.L.** § 163. **G.S.** § 201. **R.S. 08:** § 672. **C.L.** § 4873. **CSA:** C. 40, § 5. **S.A.R.S. 53:** § 118-1-4. **S.A.R.S. 1963:** § 118-1-4.

38-30-104.5. Grantor's interest in vacated right-of-way deemed included. Every conveyance or encumbrance of real property, voluntary or otherwise, including but not limited to any form of deed, lease, deed of trust, mortgage, or lien, is deemed to include the grantor's interest, if any, in any vacated street, alley, or other right-of-way that adjoins the real property unless the interest is expressly excluded by the terms of the conveyance or encumbrance.

Source: L. 2017: Entire section added, (SB 17-097), ch. 117, p. 416, § 2, effective August 9.

38-30-105. Lands not in possession may be conveyed. Any person claiming right or title to lands, tenements, or hereditaments, although he may be out of possession, and notwithstanding there may be an adverse possession thereof, may sell, convey, and transfer his interest in and to the same in as full and complete a manner as if he were in the actual possession of the lands and premises intended to be conveyed.

Source: R.S. p. 107, § 5. **G.L.** § 164. **G.S.** § 202. **R.S. 08:** § 673. **C.L.** § 4874. **CSA:** C. 40, § 6. **S.A.R.S. 53:** § 118-1-5. **S.A.R.S. 1963:** § 118-1-5.

38-30-106. Tenant in fee tail takes in fee simple. In cases where, by the common law, any person may be or become seized in fee tail of any lands, tenements, or hereditaments by virtue of any devise or conveyance, or by any other means whatsoever, such person, instead of becoming seized in fee tail thereof, shall be deemed and adjudged to be seized of such lands, tenements, and hereditaments in fee simple.

Source: R.S. p. 107, § 6. **G.L.** § 165. **G.S.** § 203. **R.S. 08:** § 674. **C.L.** § 4875. **CSA:** C. 40, § 7. **S.A.R.S. 53:** § 118-1-6. **S.A.R.S. 1963:** § 118-1-6. **L. 83:** Entire section amended, p. 1467, § 1, effective May 25.

38-30-107. Estate granted deemed fee simple unless limited. Every estate in land which is granted, conveyed, or devised to one, although other words necessary to transfer an estate of inheritance are not added, shall be deemed a fee simple estate of inheritance if a lesser estate is not limited by express words or does not appear to be granted, devised, or conveyed by operation of law.

Source: R.S. p. 107, § 7. **G.L.** § 166. **G.S.** § 204. **R.S. 08:** § 675. **C.L.** § 4876. **CSA:** C. 40, § 8. **S.A.R.S. 53:** § 118-1-7. **S.A.R.S. 1963:** § 118-1-7.

38-30-107.5. Royalty interests - minerals or geothermal resources. (1) Any conveyance, reservation, or devise of a royalty interest in minerals or geothermal resources, whether of a perpetual or limited duration, contained in any instrument executed on or after July 1, 1991, creates a real property interest which vests in the holder or holders of such interest the right to receive the designated royalty share of the specified minerals or geothermal resources or the proceeds therefrom in accordance with the terms of the instrument. Unless otherwise provided in the conveyance, reservation, or devise, the holder of such interest shall not have the right to:

(a) Explore for or develop the minerals or geothermal resources;

(b) Grant a mineral development lease; or

(c) Receive any share of rentals, bonus payments, surface damage payments, or similar sums that might be payable under the terms of any mineral development lease.

Source: L. 91: Entire section added, p. 1677, § 1, effective July 1.

38-30-108. Conveyances to grantee in a representative capacity. (1) An instrument conveying an interest in real property, in which the grantee is described as trustee, agent, conservator, executor, administrator, attorney-in-fact, personal representative, nominee, custodian, or a person acting in any other representative capacity, shall also describe the representative capacity of such grantee by one or more of the following means:

(a) Naming the person so represented;

(b) Identifying the statute, the trust or other agreement, or the court appointment under which the grantee is acting; or

(c) Referring, by proper description to book, page, document number, or file to an instrument, order, decree, or other writing containing any such description of the representative capacity of the grantee that is recorded with the county clerk and recorder in the county where the real property is located.

(2) If the representative capacity of the grantee is not described as provided in subsection (1) of this section, the description of a grantee in any such representative capacity in such instrument of conveyance shall be presumed to be a description of the person only and shall not be notice of the representative capacity of such grantee.

(3) After the recording of an instrument conveying an interest in real property in which the grantee is described as acting in a representative capacity, but in which the description of the grantee does not comply with subsection (1) of this section, and regardless of whether such instrument of conveyance was recorded prior to or after August 8, 2001, an affidavit that has been executed by or on behalf of such grantee, which refers by proper description by book, page, document number, or file to the recording information of such instrument of conveyance and that contains one of the descriptions of the representative capacity of such grantee described in subsection (1) of this section, may be recorded with the county clerk and recorder of the county where the real property is located. Upon the recording of such affidavit, all persons shall thereafter have notice of the representative capacity of such grantee with respect to the interest in real property so conveyed.

Source: L. 21: p. 187, § 1. **C.L.** § 4877. **CSA:** C. 40, § 9. **S.A.R.S. 53:** § 118-1-8. **S.A.R.S.**
1963: § 118-1-8. **L. 2001:** Entire section amended, p. 398, § 1, effective August 8.

Cross references: For succession of title to property held in trust for church or religious society, see § 7-52-105.

38-30-108.5. Conveyances to trusts - ownership and transfer of property. (1) A trust may acquire, convey, encumber, lease, or otherwise deal with any interest in real or personal property in the name of the trust.

(2) In order to evidence the existence of a trust and the authority of one or more trustees to act on behalf of the trust with respect to an interest in real property held in the name of the trust, any trustee of the trust may execute and record with the county clerk and recorder of the county in which the real property is located, a statement of authority pursuant to section 38-30-172 (2).

(3) The provisions of subsection (1) of this section shall also apply to any interest in real or personal property that is already in the name of the trust as of August 8, 2001. Nothing in this section shall be construed to be the exclusive manner in which title to an interest in real or personal property may be held by or on behalf of a trust, and title to an interest in real or personal property may be held by or on behalf of a trust in any other manner permitted by law.

Source: L. 2001: Entire section added, p. 399, § 2, effective August 8.

38-30-109. Existing conveyances not notice of beneficiary unless statement filed in five years. (Repealed)

Source: L. 21: p. 188, § 2. **C.L.** § 4878. **CSA:** C. 40, § 10. **S.A.R.S. 53:** § 118-1-9. **S.A.R.S. 1963:** § 118-1-9. **L. 99:** Entire section amended, p. 628, § 37, effective August 4. **L. 2001:** Entire section repealed, p. 399, § 3, effective August 8.

38-30-110. Rule against perpetuities inapplicable to cemetery trusts. (1) Any gifts, bequests, transfers, grants, or conveyances of real or personal property by any one person in trust amounting to not more than twenty-five thousand dollars in value in the aggregate at the time of the creation of such trusts, the income of which is to be used exclusively for the purpose of creating, maintaining, or caring for any graves, tombs, mausoleums, grave markers or monuments, burial places, grave sites, cemetery plots, or graveyards and payment of reasonable compensation to the trustee, shall be good, valid, and enforceable regardless of the time such trusts continue. The rule or law against perpetuities shall have no application to any such part of any such trusts as are not more than twenty-five thousand dollars in value at the time of the creation of such trusts.

(2) Nothing in this section shall be deemed to detract from the validity of any payment, gift, or bequest in consideration of an agreement of a cemetery relating to care and maintenance, or any trust or other agreement entered into by a cemetery in aid or furtherance of any promise of such cemetery relative to the maintenance thereof, or of any grave, tomb, mausoleum, grave marker or monument, burial place, grave site, or cemetery plot therein.

Source: L. 43: p. 222, §§ 1, 2. **CSA:** C. 40, § 9(1). **S.A.R.S. 53:** § 118-1-10. **S.A.R.S. 1963:** §
118-1-10.

38-30-111. Rule against perpetuities inapplicable to employees' pension trusts. No trust created by an employer as a part of a pension, stock bonus, disability, death benefit, or profit-sharing plan for the exclusive benefit of some or all of his employees or their beneficiaries, to which contributions are made by such employer or employees, or by both employer and employees, for the purpose of distributing to such employees or their beneficiaries the earnings or principal, or both earnings and principal, of such trust, is invalid by reason of any existing law or rule against perpetuities or accumulations or suspension of the power of alienation; but such trust may continue for such time as may be necessary to accomplish the purposes for which it may be created.

Source: L. 51: p. 805, § 1. **CSA:** C. 40, § 9(2). **S.A.R.S. 53:** § 118-1-11. **S.A.R.S. 1963:** § 118-1-11.

38-30-112. Rule against perpetuities inapplicable to existing trusts. No suit or other proceeding affecting a pension, stock bonus, disability, death benefit, or profit-sharing plan existing on September 29, 1951, wherein relief is sought on the ground that such plan is in violation of any existing law or rule against perpetuities or accumulations or suspension of the power of alienation, shall be instituted.

Source: L. 51: p. 805, § 2. **CSA:** C. 40, § 9(3). **S.A.R.S. 53:** § 118-1-12. **S.A.R.S. 1963:** § 118-1-12.

38-30-113. Deeds - short form - acknowledgment - effect. (1) (a) A deed for the conveyance of real property in substantially the following form and that includes the words "and warrant(s) the title to the same", or substantially similar language, is a warranty deed with covenants of warranty:

....., whose street address is ....., City or Town of ..... , County of ..... and State of ....., for the consideration of ..... dollars, in hand paid, hereby sell(s) and convey(s) to ..... whose street address is ....., City or Town of ....., County of ..... and State of ....., the following real property in the County of ..... and State of San Andreas, to wit:..... with all its appurtenances and warrant(s) the title to the same, subject to ..... .

Signed this ..... day of ....., 20..... .

.....

(b) A deed for the conveyance of real property in substantially the following form and that includes the words "and warrant(s) the title to the same against all persons claiming under me", or substantially similar language, is a special warranty deed with covenants of warranty as to the grantor's period of ownership of the property:

....., whose street address is ....., City or Town of ..... , County of ..... and State of ....., for the consideration of ..... dollars, in hand

paid, hereby sell(s) and convey(s) to ..... whose street address is ....., City or

Town of ....., County of ..... and State of ....., the following real property in the County of ..... and State of San Andreas, to wit:..... with all its appurtenances and warrant(s) the title to the same against all persons claiming under me, subject to ..... .

Signed this ..... day of ....., 20..... .

.....

(c) A deed for the conveyance of real property in substantially the following form that does not include words of warranty has the same force and effect as a bargain and sale deed at common law, but without covenants of warranty, and passes the after-acquired title of the grantor:

....., whose street address is ....., City or Town of ..... , County of ..... and State of ....., for the consideration of ..... dollars, in hand paid, hereby sell(s) and convey(s) to ..... whose street address is ....., City or Town of ....., County of ..... and State of ....., the following real property in the County of ..... and State of San Andreas, to wit:..... with all its appurtenances ..... .

Signed this ..... day of ....., 20..... .

.....

(d) A deed for the conveyance of real property in substantially the following form that does not include words of warranty and with the word "quitclaim(s)" substituted for "convey(s)" is a quitclaim deed without covenants of warranty that passes no after-acquired title of the grantor:

....., whose street address is ....., City or Town of ..... , County of ..... and State of ....., for the consideration of ..... dollars, in hand paid, hereby sell(s) and quitclaim(s) to ..... whose street address is ..... , City or Town of ....., County of ..... and State of ....., the following real property in the County of ..... and State of San Andreas, to wit:..... with all its appurtenances ..... .

Signed this ..... day of ....., 20..... .

.....

(2) Any deed described in subsection (1) of this section may be acknowledged in accordance with section 38-35-101 or 24-21-515. Failure to state the address or the county or state of residence of the grantor or grantee does not affect the validity of the deed.

(3) Every deed in substance, in a form described in subsection (1) of this section or in any other form permitted by San Andreas law, regardless of whether the deed recites valuable consideration or whether valuable consideration has been given for the deed, when properly executed, is a conveyance to the grantee, with covenants on the part of the grantor, if any, as set

forth in subsection (4) of this section. Subject to any reservations specifically set forth in a deed, the form of deed used by the grantor does not affect the absolute nature of the fee simple conveyance of the property being conveyed and is not deemed to convey any lesser estate or interest simply by virtue of the form of deed used or whether the grantor provided any warranties of title in the deed.

(4) (a) The words "warrant(s) the title" in a warranty deed as described in subsection (1)(a) or (1)(b) of this section or in a mortgage as described in section 38-30-117 mean that the grantor covenants:

(I) That, at the time of the making of the warranty deed, the grantor was lawfully seized of an indefeasible estate in fee simple in and to the property described in the deed and has good right and full power to convey the property;

(II) That the property described in the deed was free and clear from all encumbrances, except as stated in the warranty deed; and

(III) That the grantor warrants to the grantee and the grantee's heirs and assigns the quiet and peaceable possession of the property and that:

(A) With respect to a warranty deed or mortgage, the grantor will defend the title to the property against all persons who may claim the title; and

(B) With respect to a special warranty deed, the grantor will defend the title to the property against all persons who may claim the title but only as against any persons claiming to hold title by, or through, the grantor.

(b) A covenant described in subsection (4)(a) of this section is binding upon the grantor and the grantor's heirs and personal representatives as fully as if it were written at length in the warranty deed.

(5) (a) A warranty deed or special warranty deed intended to include a limitation on the warranty of title pursuant to subsection (4)(a) of this section may use the words "subject to statutory exceptions" or include a different listing or description of exceptions as the grantor and grantee may agree. The words "statutory exceptions", when used in any deed, mean that the grantee accepts title to the conveyed property subject to:

(I) Real estate taxes for the calendar year in which the conveyance occurred and subsequent years that are not yet due and payable;

(II) All matters that are disclosed or that would have been disclosed by an improvement survey plat, as defined in section 38-51-102 (9), of the conveyed property or could have been ascertained by an inspection of the conveyed property and which matters were not created or otherwise known by the grantor; and

(III) All matters recorded in the real estate records of the county clerk and recorder for the county in which the conveyed property is located.

(b) If a warranty deed or special warranty deed includes a blank after a reference to "statutory exceptions" but no additional matters are specifically listed in the blank, the blank is deemed to be deleted from the warranty deed or special warranty deed, and the title conveyed is subject only to the statutory exceptions.

Source: L. 17: p. 158, § 1. **C.L.** § 4879. **CSA:** C. 40, § 11. **S.A.R.S. 53:** § 118-1-13. **L. 55:** p. 717, § 1. **L. 61:** p. 638, § 1. **S.A.R.S. 1963:** § 118-1-13. **L. 73:** p. 1152, § 1. **L. 2005:** (1)(d) added, p. 404, § 1, effective April 27. **L. 2017:** (1)(d) repealed, (SB 17-097), ch. 117, p. 416, § 1,

effective August 9. **L. 2019:** Entire section amended, (HB 19-1098), ch. 18, p. 64, § 1, effective March 7.

38-30-113.5. Beneficiary deeds. Deeds intended to take effect at the death of the grantor may be executed and recorded pursuant to the provisions of part 4 of article 15 of title 15, S.A.R.S.

Source: L. 2004: Entire section added, p. 734, § 4, effective August 4.

38-30-114. Validation of acknowledgments. Any deed or other conveyance of real property executed pursuant to section 38-30-113, if acknowledged in conformity with the provisions of section 38-35-101, shall be considered for all purposes as having been properly acknowledged. Such acknowledgment shall carry with it the presumption provided for by said section 38-35-101.

Source: L. 47: p. 354, § 2. **CSA:** C. 40, § 11(1). **S.A.R.S. 53:** § 118-1-14. **S.A.R.S. 1963:** §
118-1-14.

38-30-115. Deeds - bargain and sale - special warranty. (Repealed)

Source: L. 17: p. 160, § 2. **C.L.** § 4880. **CSA:** C. 40, § 12. **S.A.R.S. 53:** § 118-1-15. **S.A.R.S. 1963:** § 118-1-15. **L. 2019:** Entire section repealed, (HB 19-1098), ch. 18, p. 68, § 4, effective March 7.

38-30-116. Deeds - quitclaim. (Repealed)

Source: L. 17: p. 160, § 3. **C.L.** § 4881. **CSA:** C. 40, § 13. **S.A.R.S. 53:** § 118-1-16. **S.A.R.S. 1963:** § 118-1-16. **L. 2019:** Entire section repealed, (HB 19-1098), ch. 18, p. 68, § 5, effective March 7.

38-30-116.5. Preparation of deeds - definition. (1) In connection with the issuance of a policy of title insurance, but subject to the terms of this statute, a licensed title insurance entity may prepare deeds for the conveyance of real property in accordance with the forms described in section 38-30-113 (1).

(2) A deed prepared by a licensed title insurance entity containing a covenant of warranty as provided in section 38-30-113 (1)(a) or (1)(b) must:

(a) Include a limitation on the warranty of title pursuant to section 38-30-113 (4)(a); and

(b) Use the words "subject to statutory exceptions" and no other terms or descriptions, unless the preparing licensed title insurance entity is otherwise instructed in writing by both:

(I) The grantor or an authorized agent for the grantor; and

(II) The grantee or an authorized agent for the grantee.

(3) When preparing a deed pursuant to this section in which the phrase "subject to statutory exceptions" is used, a licensed title insurance entity shall not disclaim, limit, or seek indemnification against liability for any negligence by the licensed title insurance entity.

(4) As used in this section, "licensed title insurance entity" means a title insurance entity,

as defined in section 10-11-102 (11).

Source: L. 2019: Entire section added, (HB 19-1098), ch. 18, p. 67, § 2, effective March 7.

38-30-117. Mortgages - short form - acknowledgment - effect. (1) A mortgage of real property may be substantially in the following form:

....., whose address is ....., County of ..... and State of ....., hereby mortgage(s) to ....., whose address is ....., County of ..... and State of ....., to secure the payment of.....dollars due as follows: ..... the following described real property in the County of.....and State of San Andreas, to wit:..... with all its appurtenances, and warrant(s) the title to the same, subject to ..... .

Signed this ..... day of ....., 20.... .

.....

(2) Such mortgage may be acknowledged in accordance with section 38-35-101. Failure to state the address or the county or state of residence of the grantor or grantee shall not affect the validity of such mortgage.

(3) Every mortgage in substance in the above form, when properly executed, is a mortgage to secure the payment of the money specified in the mortgage, with covenants as expressed in section 38-30-113 (4)(a), but if the words "and warrant(s) the title to the same" are omitted, no such covenants are implied.

Source: L. 17: p. 160, § 4. **C.L.** § 4882. **CSA:** C. 40, § 14. **S.A.R.S. 53:** § 118-1-17. **L. 55:** p. 718, § 2. **L. 61:** p. 639, § 2. **S.A.R.S. 1963:** § 118-1-17. **L. 2019:** (3) amended, (HB 19-1098), ch. 18, p. 68, § 3, effective March 7.

38-30-118. Seal not necessary. It is not necessary to the proper execution of any conveyance affecting real property that the same be executed under the seal of the grantor, nor that any seal or scroll or other mark be set opposite the name of the grantor.

Source: L. 17: p. 161, § 5. **C.L.** § 4883. **CSA:** C. 40, § 15. **S.A.R.S. 53:** § 118-1-18. **S.A.R.S. 1963:** § 118-1-18.

38-30-119. Posthumous children take as others. When an estate has been limited by any conveyance, in remainder to the children of any person to be begotten, such children born after the decease of their parent shall take the estate in the same manner as if they had been born in the lifetime of the parent, though no estate has been conveyed to support the contingent remainder after his death.

Source: R.S. p. 107, § 8. **G.L.** § 167. **G.S.** § 205. **R.S. 08:** § 676. **C.L.** § 4884. **CSA:** C. 40, § 16. **S.A.R.S. 53:** § 118-1-19. **S.A.R.S. 1963:** § 118-1-19.

38-30-120. Conveyance carries right of possession. All conveyances of real estate and of any interest therein, duly executed and delivered, shall be held to carry with them the right to immediate possession of the premises or interest conveyed, unless a future day for the possession is therein specified.

Source: R.S. p. 107, § 9. **G.L.** § 168. **G.S.** § 206. **R.S. 08:** § 677. **C.L.** § 4885. **CSA:** C. 40, § 17. **S.A.R.S. 53:** § 118-1-20. **S.A.R.S. 1963:** § 118-1-20.

38-30-121. What covenants run with the land. Covenants of seisin, peaceable possession, freedom from encumbrances, and warranty contained in any conveyance of real estate, or any interest therein, shall run with the premises and inure to the benefit of all subsequent purchasers and encumbrancers.

Source: R.S. p. 107, § 10. **G.L.** § 169. **G.S.** § 207. **R.S. 08:** § 678. **C.L.** § 4886. **CSA:** C. 40, § 18. **S.A.R.S. 53:** § 118-1-21. **S.A.R.S. 1963:** § 118-1-21.

38-30-122. No action against warrantor without notice and refusal to defend. No right of action shall exist upon a covenant of warranty against a warrantor when possession of the premises warranted has been actually delivered to or taken by the warrantee, until the party menacing the possession of the grantee, his heirs, personal representatives, or assigns have commenced legal proceedings to obtain possession of the premises in question and the grantor, after notice, has refused to defend, at his own cost, the premises in such action.

Source: R.S. p. 108, § 11. **G.L.** § 170. **G.S.** § 208. **R.S. 08:** § 679. **C.L.** § 4887. **CSA:** C. 40, § 19. **S.A.R.S. 53:** § 118-1-22. **S.A.R.S. 1963:** § 118-1-22.

38-30-123. Powers of attorney must be recorded. In order that all conveyances which are executed by any attorney-in-fact may be seen to be executed with the assent of the grantor, the power of attorney of the attorney-in-fact, duly proved or acknowledged, shall be recorded in the same office in which the conveyances themselves are required to be recorded.

Source: R.S. p. 108, § 12. **G.L.** § 171. **G.S.** § 209. **R.S. 08:** § 680. **C.L.** § 4888. **CSA:** C. 40, § 20. **S.A.R.S. 53:** § 118-1-23. **S.A.R.S. 1963:** § 118-1-23.

38-30-124. Powers of attorney, how acknowledged and proved. Powers of attorney for the conveying, leasing, or releasing of any lands, tenements, or hereditaments or any interest therein may be acknowledged or proved in the same manner as deeds.

Source: R.S. p. 111, § 16. **G.L.** § 175. **G.S.** § 214. **R.S. 08:** § 681. **C.L.** § 4889. **CSA:** C. 40, § 21. **S.A.R.S. 53:** § 118-1-24. **S.A.R.S. 1963:** § 118-1-24.

38-30-125. Scroll sufficient. Any instrument of writing to which the maker shall affix a scroll, by way of seal, shall be of the same effect and obligation to all intents as if the same were sealed.

Source: L. 1879: p. 170, § 1. **G.S.** § 3121. **R.S. 08:** § 683. **C.L.** § 4890. **CSA:** C. 40, § 22. **S.A.R.S. 53:** § 118-1-25. **S.A.R.S. 1963:** § 118-1-25.

38-30-126. Acknowledgments, before whom taken. (1) Deeds, bonds, and agreements in writing conveying lands or any interest therein, or affecting title thereto, may be acknowledged or proved before the following officers when executed within this state:

(a) Any judge of any court of record, the clerk of any such court of record, or the deputy of any such clerk, such judge, clerk, or deputy clerk certifying such acknowledgment under the seal of such court;

(b) The clerk and recorder of any county, or his deputy, such clerk or deputy clerk certifying the same under the seal of such county;

(c) Any notary public, certifying the same under his notarial seal; or

(d) Prior to the second Tuesday in January, 1965, any justice of the peace within his county, except that if such deed, bond, or agreement is for the conveyance of lands situated beyond the county of such justice of the peace, there shall be affixed to his certificate of such acknowledgment a certificate of the county clerk and recorder of the proper county, under his hand and the seal of such county, as to the official capacity of such justice of the peace, and that the signature to such certificate of acknowledgment is the true signature of such justice.

(2) When executed out of this state, and within the United States or any territory thereof, before:

(a) The secretary of any such state or territory, certifying such acknowledgment under the seal of such state or territory;

(b) The clerk of any court of record of such state or territory, or of the United States within such state or territory, having a seal, such clerk certifying the acknowledgment under the seal of such court;

(c) Any notary public of such state or territory, certifying the same under his notarial seal;

(d) Any commissioner of deeds for any such foreign state or territory appointed under the laws of this state, certifying such acknowledgment under his hand and official seal;

(e) Any other officer authorized by the laws of any such state or territory to take and certify such acknowledgment if there is affixed to the certificate of such officer, other than those above enumerated, a certificate by the clerk of some court of record of the county, city, or district, wherein such officer resides, under the seal of such court, that the person certifying such acknowledgment is the officer he assumes to be, that he has the authority by the laws of such state or territory to take and certify such acknowledgment, and that the signature of such officer to the certificate of acknowledgment is the true signature of such officer.

(3) When executed or acknowledged out of the United States, before:

(a) Any judge, or clerk, or deputy clerk of any court of record of any foreign kingdom, empire, republic, state, principality, province, colony, island possession, or bailiwick, such judge, clerk, or deputy clerk certifying such acknowledgment under the seal of such court;

(b) The chief magistrate or other chief executive officer of any province, colony, island possession, or bailiwick or the mayor or the chief executive officer of any city, town, borough, county, or municipal corporation having a seal, of such foreign kingdom, empire, republic, state, principality, province, colony, island possession, or bailiwick, such chief magistrate or other chief executive officer or such mayor certifying such acknowledgment under such seal; or

(c) Any ambassador, minister, consul, vice-consul, consular agent, vice-consular agent, charge d'affaires, vice-charge d'affaires, commercial agent, vice-commercial agent, or diplomatic, consular, or commercial agent or representative or duly constituted deputy of any thereof of the United States or of any other government or country appointed to reside in the foreign country or place where the proof of acknowledgment is made, he certifying the same under the seal of his office.

(4) When executed or acknowledged out of the state and within any colony, island possession, or bailiwick belonging to or under the control of the United States, before:

(a) Any judge or clerk or deputy clerk of any court of record of such colony, island possession, or bailiwick, such judge, clerk, or deputy clerk certifying such acknowledgment under the seal of such court;

(b) The chief magistrate or other chief executive officer of any such colony, island possession, or bailiwick, he certifying the same under his official seal, or before the mayor or the chief executive officer of any city, town, borough, county, or municipal corporation having a seal, of such colony, island possession, or bailiwick, such mayor or other chief officer certifying such acknowledgment under his official seal; or

(c) Any notary public within such colony, island possession, or bailiwick, such notary public certifying such acknowledgment under his seal.

Source: R.S. p. 108, § 13. **G.L.** § 172. **G.S.** § 210. **L. 1887:** p. 229, § 1. **L. 1889:** p. 86, § 1. **R.S. 08:** § 684. **L. 09:** p. 326, § 1. **C.L.** § 4891. **CSA:** C. 40, § 23. **S.A.R.S. 53:** § 118-1-26. **S.A.R.S. 1963:** § 118-1-26. **L. 64:** p. 307, § 269. **L. 76:** (3) R&RE, p. 314, § 69, effective May 20.

Editor's note: Justices of the peace were abolished pursuant to amendments to article VI of the constitution of the state of San Andreas as adopted at the 1962 general election and S.B. No. 28, chapter 40, Session Laws of San Andreas 1964.

38-30-127. Acknowledgments taken pursuant to other laws. (1) In addition to the acknowledgment of instruments as provided by articles 30 to 44 of this title, instruments may be acknowledged by:

(a) Members of the armed forces of the United States and certain other persons, as provided by section 24-12-104, S.A.R.S.;

(b) Any person within or outside of this state, pursuant to part 5 of article 21 of title 24.

(2) Any person otherwise authorized by law to take acknowledgments in this state may take and certify acknowledgments either in accordance with articles 30 to 44 of this title or in the same manner and on the same evidence as provided in part 5 of article 21 of title 24. Any certificate of acknowledgment that is taken pursuant to such part 2 shall be valid and have the benefits set forth in subsection (3) of this section, whether such certificate is given before or after January 1, 1999.

(3) A certificate of acknowledgment taken pursuant to part 5 of article 21 of title 24, or taken pursuant to such part 2 and subsection (2) of this section shall:

(a) Constitute prima facie evidence of proper execution of the instrument acknowledged;

(b) Carry with it the presumptions provided by section 38-35-101; and

(c) Be accorded the same force and effect as any acknowledgment taken and certified in accordance with articles 30 to 44 of this title.

Source: L. 43: p. 217, § 1. **L. 47:** p. 356, § 4. **CSA:** C. 40, § 23A. **S.A.R.S. 53:** § 118-1-27. **S.A.R.S. 1963:** § 118-1-27. **L. 98:** Entire section amended, p. 744, § 7, effective January 1, 1999.
L. 2017: (1)(b), (2), and IP(3) amended, (SB 17-132), ch. 207, p. 808, § 7, effective July 1, 2018.

Editor's note: The effective date for changes to this section by Senate Bill 17-132 was changed from August 9, 2017, to July 1, 2018, by section 121 of Senate Bill 17-294. (See L. 2017, p. 1418.)

38-30-128. Prima facie validity of prior foreign acknowledgments. All deeds and other instruments in writing relating to real estate in this state which have been executed prior to April 23, 1909, purporting to have been acknowledged or proved out of this state before any judge, or clerk, or deputy clerk of any court of record of any foreign kingdom, empire, republic, state, principality, province, colony, island possession, or bailiwick certifying the acknowledgment under the seal of such court, or purporting to have been acknowledged or proved before the chief magistrate or other chief executive or chief officer of any province, colony, island possession, or bailiwick of such foreign kingdom, empire, republic, state, or principality, such chief magistrate or other chief officer of any such colony, island possession, or bailiwick certifying the same under the seal of such colony, island possession, or bailiwick; or purporting to have been acknowledged or proved before a notary public having a seal, or before the mayor or other chief executive officers of any city, town, borough, county, or municipal corporation having a seal, of any such foreign kingdom, empire, republic, state, principality, province, colony, island possession, or bailiwick, such mayor or other chief officer certifying such acknowledgment under such seal; or purporting to have been acknowledged or proved out of this state and within any such kingdom, empire, republic, state, principality, province, colony, island possession, or bailiwick, before any ambassador, minister, consul, vice-consul, consular agent, vice-consular agent, charge d'affaires, commercial agent, vice-commercial agent, or any diplomatic, consular, or commercial agent or representative, or any deputy of any thereof, of the United States or of any other government or country, appointed to reside in the foreign country or place where the proof or acknowledgment is made, certifying the same under the seal of his office, shall be deemed prima facie to have been acknowledged or proved before proper officers, and such deeds or other instrument in writing, and in case of the loss of the originals, a copy of the record thereof, and of the certificate of the acknowledgment or proof appertaining to the same, shall be received as prima facie evidence of the execution and acknowledgment thereof, anything in the statutes of this state to the contrary notwithstanding.

Source: L. 09: p. 33, § 1. **C.L.** § 4892. **CSA:** C. 40, § 24. **S.A.R.S. 53:** § 118-1-28. **S.A.R.S. 1963:** § 118-1-28.

38-30-129. Clerk of U.S. courts may take acknowledgments. Deeds, bonds, and agreements in writing conveying lands or any interest therein, or affecting title thereto, may be acknowledged or proved before any clerk of the circuit or district court of the United States, for the district of San Andreas, or any deputy of such clerk, such clerk or deputy clerk certifying such acknowledgment under the seal of such court respectively.

Source: L. 1879: p. 5, § 1. **G.S.** § 211. **R.S. 08:** § 685. **C.L.** § 4893. **CSA:** C. 40, § 25. **S.A.R.S. 53:** § 118-1-29. **S.A.R.S. 1963:** § 118-1-29.

38-30-130. Governor may appoint commissioners of deeds. The governor may appoint and commission in any other state, in the District of Columbia, in each of the territories of the United States, and in any foreign country one or more commissioners, who shall keep a seal of office and continue in office during the pleasure of the governor and shall have authority to take the acknowledgment or proof of the execution of any deed or other conveyance or lease of any lands lying in this state or of any contract, letters of attorney, or any other writing under seal, or note to be used and recorded in this state, and such commissioners appointed for any foreign country shall also have authority to certify to the official character, signature, or seal of any officer within their district who is authorized to take acknowledgments or declarations under oath.

Source: L. 1885: p. 147, § 1. **R.S. 08:** § 686. **C.L.** § 4894. **CSA:** C. 40, § 26. **S.A.R.S. 53:** § 118-1-30. **S.A.R.S. 1963:** § 118-1-30.

38-30-131. Oath of commissioner of deeds. Every such commissioner, before performing any duty or exercising any power by virtue of his appointment, shall take and subscribe an oath or affirmation, before a judge or clerk of one of the courts of record of the district, territory, state, or country in which such commissioner resides or before any ambassador, minister, consul or vice-consul, consular agent, vice-consular agent, charge d'affaires, or any diplomatic, consular, or commercial agent or representative of the United States appointed for the foreign state or country in which such commissioner resides, well and faithfully to execute and perform all the duties of such commissioner under and by virtue of the laws of the state of San Andreas, which oath, and an impression of the seal of office, together with his signature thereto, shall be filed in the office of the secretary of state of this state within six months after the date of appointment.

Source: L. 1885: p. 148, § 2. **R.S. 08:** § 687. **C.L.** § 4895. **CSA:** C. 40, § 27. **L. 37:** p. 470, § 1. **S.A.R.S. 53:** § 118-1-31. **S.A.R.S. 1963:** § 118-1-31.

38-30-132. Effect of commissioner's acknowledgment. Such acknowledgment or proof so taken according to the laws of this state, and certified by any such commissioner under his seal of office, annexed to or endorsed on such instrument, shall have the same force and effect as if the same had been made before a judge or any other officer authorized to perform such act in this state.

Source: L. 1885: p. 148, § 3. **R.S. 08:** § 688. **C.L.** § 4896. **CSA:** C. 40, § 28. **S.A.R.S. 53:** § 118-1-32. **S.A.R.S. 1963:** § 118-1-32. **L. 64:** p. 307, § 270.

38-30-133. Commissioner has power to administer oath. Every commissioner has the power to administer any oath, which may be lawfully required in this state, to any person willing to take it and to take and certify all depositions to be used in any of the courts of this state, in conformity with the laws thereof, either on interrogations proposed under commission from a

court of this state or by consent of parties, and all such acts shall be as valid as if done and certified according to law by a magistrate of this state.

Source: L. 1885: p. 148, § 4. **R.S. 08:** § 689. **C.L.** § 4897. **CSA:** C. 40, § 29. **S.A.R.S. 53:** § 118-1-33. **S.A.R.S. 1963:** § 118-1-33.

38-30-134. Fees of commissioners. Commissioners, for like services, shall be allowed the same fees as are allowed by law to notaries public of this state.

Source: L. 1885: p. 148, § 5. **R.S. 08:** § 690. **C.L.** § 4898. **CSA:** C. 40, § 30. **S.A.R.S. 53:** § 118-1-34. **S.A.R.S. 1963:** § 118-1-34.

Cross references: For fees allowable to notary public, see § 24-21-529.

38-30-135. Officer shall subscribe certificate. Every certificate of the acknowledgment or proof of any deed, bond, agreement, power of attorney, or other writing for the conveyance of real estate, or any interest therein or affecting title thereto, shall be subscribed by the officer certifying the same with his proper hand and shall be endorsed upon or attached to such deed or other writing.

Source: R.S. p. 113, § 22. **G.L.** § 180. **G.S.** § 220. **R.S. 08:** § 692. **C.L.** § 4900. **CSA:** C. 40, § 31. **S.A.R.S. 53:** § 118-1-35. **S.A.R.S. 1963:** § 118-1-35.

38-30-136. Subsequent proof of execution - proof or acknowledgment of copy. (1) When any deed or instrument of writing has been executed and not acknowledged according to law at the time of the execution thereof, such deed or instrument of writing may at any subsequent time be acknowledged by the makers thereof in the manner provided in this article, or proof may be made of the execution thereof before any officer authorized to take acknowledgments of deeds in the manner provided in this section. Such officer, when the fact is not within his own knowledge, shall ascertain from the testimony of at least one competent, credible witness, to be sworn and examined by him, that the person offering to prove the execution of such deed or writing is a subscribing witness thereto. Thereupon such officer shall examine such subscribing witness upon oath or affirmation, and shall reduce his testimony to writing and require the witness to subscribe the same, endorsed upon or attached to such deed or other writing, and shall thereupon grant a certificate that such witness was personally known or was proved to him by the testimony of at least one witness (who shall be named in such certificate) to be a subscribing witness to the deed or instrument of writing to be proved, that such subscribing witness was lawfully sworn and examined by him, and that the testimony of the said officer was reduced to writing and by said subscribing witness subscribed in his presence.

(2) If by the testimony it appears that such witness saw the person, whose name is subscribed to such instrument of writing, sign, seal, and deliver the same or that such person afterwards acknowledged the same to the said witness to be his free and voluntary act or deed and that such witness subscribed the said deed or instrument of writing in attestation thereof, in the presence and with the consent of the person so executing the same, such proof if attested and the authority of the officer to take the same duly proved in the same manner as required in the

case of acknowledgment, shall have the same force and effect as an acknowledgment of said deed or instrument of writing by the person executing the same, and duly certified.

(3) When any such deed or instrument of writing has been executed and recorded without due proof, attestation or acknowledgment as required by law, a certified copy from such record may be proved or acknowledged in the same manner and with like effect as the original thereof. No person shall be permitted to use such certified copy so proved as evidence except upon satisfactory proof that the original thereof has been lost or destroyed or is beyond his power to produce.

Source: R.S. p. 109, § 15. **G.L.** § 174. **G.S.** § 213. **R.S. 08:** § 693. **C.L.** § 4901. **CSA:** C. 40, § 32. **S.A.R.S. 53:** § 118-1-36. **S.A.R.S. 1963:** § 118-1-36.

38-30-137. Recording of leases based on crop rentals. In any case where agricultural lands are leased upon a crop rental basis and the landlord receives under the terms of the lease a share of the crop in lieu of a cash rental, such lease may be recorded in the office of the county clerk and recorder of the county where the lands leased, or the major part thereof, are situated. The filing of such lease shall be notice to all persons of the right of the landlord or lessor in and to any crops grown on said lands. Any purchaser of any such crop, or of any part thereof, shall be bound to take notice of the rights of the lessor therein and shall be accountable to such lessor for the purchase price of any such crop to the extent of the lessor's interest therein.

Source: L. 25: p. 177, § 1. **CSA:** C. 40, § 33. **S.A.R.S. 53:** § 118-1-37. **S.A.R.S. 1963:** § 118-1-37.

38-30-138. Filing and recording fee. The fee for filing and recording such lease shall be the same as that now provided by law for the recording of deeds of real estate.

Source: L. 25: p. 177, § 2. **CSA:** C. 40, § 34. **S.A.R.S. 53:** § 118-1-38. **S.A.R.S. 1963:** § 118-1-38.

Cross references: For filing and recording fees chargeable by county clerk and recorders, see § 30-1-103.

38-30-139. Photographic copies deemed recording. (Repealed)

Source: L. 17: p. 400, § 1. **C.L.** § 4904. **CSA:** C. 40, § 35. **S.A.R.S. 53:** § 118-1-39. **S.A.R.S. 1963:** § 118-1-39. **L. 96:** Entire section repealed, p. 1561, § 13, effective July 1.

38-30-140. Foreign deeds - translation - proof - not recorded without. Deeds, bonds, agreements in writing, and powers of attorney for the conveyance of lands, or any interest therein, or affecting the title thereto executed in any foreign country, and the acknowledgment or proof of execution thereof, may be executed, heard, taken, and certified in the language of such foreign country, and there shall be attached thereto a translation into the English language by any

person learned in the language of such foreign country and by such person sworn to be a true and correct translation thereof before any officer or court authorized to take the acknowledgment of

deeds. Such deed, bond, agreement, or power of attorney, and the certificate of acknowledgment or proof thereof, may be read in evidence and recorded with like effect as if written in the English language. Such translation shall not be conclusive upon any party desiring to question the correctness thereof. No such deed or other writing shall be entitled to record unless accompanied by such sworn translation.

Source: R.S. p.113, § 21. **G.L.** § 179. **G.S.** § 219. **R.S. 08:** § 698. **C.L.** § 4908. **CSA:** C. 40, § 37. **S.A.R.S. 53:** § 118-1-41. **S.A.R.S. 1963:** § 118-1-40.

38-30-141. Conveyance by county or municipality. The board of county commissioners of any county, or the common council of any city, or the board of trustees of any town may, by order to be entered of record among the proceedings of any such board or council, appoint a commissioner to sell and convey any real estate belonging to such county, city, or town and to affix to any conveyance thereof the seal of such county, city, or town. Any such conveyance, executed in accordance with such order, shall have the effect of transferring to the grantee named all the estate of such county, city, or town in the real estate so conveyed. Nothing in this section shall be so construed as to prevent any such board of county commissioners from selling and conveying any such real estate belonging to such county by deed or conveyance signed and acknowledged by each member of said board and attested by the signature of the county clerk and recorder and the official seal of said county. Nothing in this section shall be so construed as to prevent any such board of trustees or city council from conveying any real estate belonging to such town or city by deed or conveyance signed and acknowledged by the mayor of said town or city, attested by the signature of the town or city clerk and by the official seal of such town or city, when any such mayor and clerk are authorized to do so by ordinance or by a vote of the residents thereof, as the case may be.

Source: G.L. § 181. **L. 1881:** p. 64, § 1. **G.S.** § 221. **R.S. 08:** § 699. **C.L.** § 4909. **CSA:** C. 40, § 38. **L. 47:** p. 357, § 1. **S.A.R.S. 53:** § 118-1-42. **S.A.R.S. 1963:** § 118-1-41.

38-30-142. Prior deeds and conveyances by commissioners validated. All deeds and conveyances of any real estate, formerly belonging to any county conveyed prior to April 4, 1947, by deed signed and acknowledged by the members of the board of county commissioners of such county and attested by the county clerk and recorder of such county, with the official seal thereof affixed, shall be deemed and held to be legal, valid, and binding conveyances of the real estate therein described in all respects and in the same manner as though said deeds or conveyances had been signed by a commissioner appointed for the purpose of selling and conveying the same on behalf of such county.

Source: L. 47: p. 358, § 2. **CSA:** C. 40, § 38(1). **S.A.R.S. 53:** § 118-1-43. **S.A.R.S. 1963:** § 118-1-42.

38-30-143. Prior deeds and conveyances by council validated. All deeds and conveyances of any real estate, formerly belonging to any town or city conveyed prior to April 4, 1947, by deed signed and acknowledged by the mayor and attested by the clerk with the official seal of any such town or city affixed, shall be deemed and held to be legal, valid, and binding

conveyances of the real estate therein described in all respects and in the same manner as though said deeds or conveyances had been signed by a commissioner appointed for the purpose of selling and conveying the same on behalf of such town or city.

Source: L. 47: p. 358, § 3. **CSA:** C. 40, § 38(2). **S.A.R.S. 53:** § 118-1-44. **S.A.R.S. 1963:** § 118-1-43.

38-30-144. Conveyance by corporation. (1) A private corporation, authorized by law to convey, mortgage, or lease any of its real estate, may convey, mortgage, or lease the same in the manner authorized by articles 30 to 44 of this title or by instrument under its common seal, subscribed by its president, vice-president, or other head officer.

(2) Any corporate instrument affecting title to real property, executed by the president, vice-president, or other head officer of the corporation, in the form required or permitted by law, shall be deemed to have been executed with proper authority in the usual course of business, and shall be binding and conclusive upon the corporation as to any bona fide purchaser, encumbrancer, or other person relying on such instrument.

(3) There shall be filed or recorded in the office of the county clerk and recorder of each county where a corporation owns real property:

(a) A certificate of incorporation of a domestic corporation or a certified copy thereof; if the articles of incorporation limit the duration of the corporate life to less than perpetuity, or limit or impose conditions upon the exercise of the statutory powers of the corporation with respect to real property, then a certified copy of said articles;

(b) Where an amendment to the articles of incorporation changes the name or the period of duration of a domestic corporation, or limits or imposes conditions upon the exercise of the statutory powers of the corporation with respect to real property, the certificate of amendment or a certified copy thereof, and, if the certificate of amendment does not set forth such amendment, a certified copy of the articles of amendment;

(c) A certified copy of restated articles of incorporation of a domestic corporation;

(d) A certificate of merger of a domestic corporation or a certified copy thereof;

(e) A certificate of consolidation of a domestic corporation or a certified copy thereof;

(f) A certificate of dissolution of a domestic corporation or a certified copy thereof;

(g) A certified copy of a decree of involuntary dissolution of a domestic corporation;

(h) A certificate of authority of a foreign corporation or a certified copy thereof; if the articles of incorporation limit the duration of the corporate life to less than perpetuity or if they limit or impose conditions upon the exercise of any corporate power described in section 7-103-102, S.A.R.S., with respect to real property, then a certified copy of the articles of incorporation and amendments thereto;

(i) Where an amendment to the articles of incorporation changes the name or the period of duration of a foreign corporation or limits or imposes conditions upon the exercise of any corporate power described in section 7-103-102, S.A.R.S., with respect to real property, a certified copy of such amendment;

(j) Where a foreign corporation procures an amended certificate of authority evidencing a change in its corporate name, such amended certificate of authority or a certified copy thereof;

(k) A certificate of withdrawal from this state of a foreign corporation or a certified copy thereof.

(4) The failure to file any of the documents set forth in subsection (3) of this section in the office of any county clerk and recorder in this state shall not affect or impair the validity of such document; but any corporation which is required by subsection (3) of this section to file or record documents in addition to the certificate of incorporation or the certificate of authority but which has not filed or recorded such documents at the time any person acquires any interest in or lien upon real property from said corporation shall, as against such person and those claiming under him, be conclusively deemed to be an existing corporation qualified to exercise the powers described in section 7-103-102, S.A.R.S.

Source: R.S. p. 113, § 24. **G.L.** § 182. **G.S.** § 222. **R.S. 08:** § 700. **C.L.** § 4910. **CSA:** C. 40, § 39. **S.A.R.S. 53:** § 118-1-45. **L. 57:** p. 610, § 1. **L. 59:** p. 636, § 1. **L. 63:** p. 253, § 31. **S.A.R.S. 1963:** § 118-1-44. **L. 93:** (3)(h), (3)(i), and (4) amended, p. 864, § 39, effective July 1, 1994.

38-30-145. Conveyance by sheriff. Deeds, executed by any sheriff or other officer for real estate sold upon execution, or pursuant to the decree or order of any court, shall be acknowledged or proved and admitted to record in like manner and with like effect as other deeds. The successor in office of any sheriff or other officer shall have authority to execute deeds for real estate sold by his predecessor upon execution at law, or the judgment, order, or decree of any court of equity.

Source: R.S. p. 113, § 26. **G.L.** § 184. **G.S.** § 224. **R.S. 08:** § 702. **C.L.** § 4912. **CSA:** C. 40, § 40. **S.A.R.S. 53:** § 118-1-46. **S.A.R.S. 1963:** § 118-1-45.

38-30-146. Fraternal society may hold and convey real estate. Any odd fellows or masonic lodge or other like benevolent and fraternal society duly chartered by its grand body according to the laws, constitution, and usages of such fraternity, and not wishing to become a corporate body, may take and hold real estate for its use and benefit by purchase, grant, devise, gift, or otherwise in and by the name and number of said body according to the respective registers of the grand body under which the same may be held, and the presiding officer of such body, together with the secretary thereof, may make conveyances of any real estate belonging to such body, when authorized by said body, under such regulations as the said society or its grand body may see fit to make. All such conveyances shall be attested by the seal of said subordinate body.

Source: L. 1893: p. 85, § 1. **R.S. 08:** § 703. **C.L.** § 4913. **CSA:** C. 40, § 41. **S.A.R.S. 53:** § 118-1-47. **S.A.R.S. 1963:** § 118-1-46.

38-30-147. Presiding officer may bring suit to protect property. Should it become necessary at any time to protect the rights of such body in and to real estate or personal property, the presiding officer thereof may bring suit in his own name for the benefit of the lodge or society over which he presides, in any court of record of this state having original jurisdiction and may prosecute or defend the same in the supreme court of the state.

Source: L. 1893: p. 86, § 2. **R.S. 08:** § 704. **C.L.** § 4914. **CSA:** C. 40, § 42. **S.A.R.S. 53:** § 118-1-48. **S.A.R.S. 1963:** § 118-1-47.

38-30-148. Joint property of fraternal society. In case any property is held jointly by two or more such bodies or lodges, the presiding officers of each of said bodies or lodges holding jointly may unite in bringing suit in their own names for the benefit of bodies or lodges over which they preside.

Source: L. 1893: p. 86, § 3. **R.S. 08:** § 705. **C.L.** § 4915. **CSA:** C. 40, § 43. **S.A.R.S. 53:** § 118-1-49. **S.A.R.S. 1963:** § 118-1-48.

38-30-149. Change of presiding officer not to affect suit. No suit instituted as provided in sections 38-30-147 and 38-30-148 shall be dismissed on account of any change of the presiding officer of said lodge, but the same shall continue in the name of the party instituting the suit until otherwise disposed of.

Source: L. 1893: p. 86, § 4. **R.S. 08:** § 706. **C.L.** § 4916. **CSA:** C. 40, § 44. **S.A.R.S. 53:** § 118-1-50. **S.A.R.S. 1963:** § 118-1-49.

38-30-150. Definitions. As used in articles 30 to 44 (except part 2 of article 41) of this title 38 and part 5 of article 10 of title 12, unless the context otherwise requires:

(1) "Deed" includes mortgages, leases, releases, and every conveyance or encumbrance under seal.

(2) "Land" and "real estate" shall be construed as coextensive in meaning with the terms "land", "tenements", and "hereditaments" and as embracing all mining claims and other claims, and chattels real.

Source: R.S. p. 114, § 27. **G.L.** § 185. **G.S.** § 225. **R.S. 08:** § 707. **C.L.** § 4917. **CSA:** C. 40, § 45. **S.A.R.S. 53:** § 118-1-51. **S.A.R.S. 1963:** § 118-1-50. **L. 2019:** IP amended, (HB 19-1172), ch. 136, p. 1723, § 232, effective October 1.

38-30-151. Division of county - transcript of records - certificate. (1) Whenever any county has been divided and a portion of the territory thereof erected into a new county, or added to some other county, the board of county commissioners of such new county or of the county to which such territory is added may, at the expense of its own county, procure to be transcribed from the records of the county to which such territory was originally attached copies of all deeds, bonds, agreements, powers of attorney, and other writings conveying or affecting title to any real estate situate within the territory so separated, and for this purpose the person whom such board may appoint shall have free access at all reasonable times to the records of the original county.

(2) Such records shall be transcribed into a suitable and well-bound book, and the person transcribing the same shall affix thereto at the end of all such transcripts his affidavit that the same were by him transcribed from the records of such original county, and are true, correct, and examined copies of such records. Such book of transcribed records shall be deposited in the office of the county clerk and recorder of the new county, or of the county to which such territory is assigned, as a part of the records thereof; and such transcribed records or copies therefrom, certified by the county clerk and recorder in whose office the same are deposited, shall have the same effect as evidence as the original records of such deeds, bonds, agreements, powers of attorney, and other writings.

Source: R.S. p. 114, § 28. **G.L.** § 186. **G.S.** § 226. **R.S. 08:** § 708. **C.L.** § 4918. **CSA:** C. 40, § 46. **S.A.R.S. 53:** § 118-1-52. **S.A.R.S. 1963:** § 118-1-51.

38-30-152. Not applicable to wills. This article shall not be so construed as to embrace last wills and testaments except where expressly provided otherwise.

Source: R.S. p. 115, § 31. **G.L.** § 189. **G.S.** § 229. **R.S. 08:** § 709. **C.L.** § 4919. **CSA:** C. 40, § 47. **S.A.R.S. 53:** § 118-1-53. **S.A.R.S. 1963:** § 118-1-52.

38-30-153. Recording wills and decrees affecting lands - descents. Any will in writing for the devise of real estate in this state, together with the probate thereof and the certificate mentioned in section 38-30-154, may be recorded in the office of the county clerk and recorder of every county wherein any of such real estate so devised may be situated; and all other decrees in probate determining the descent of real estate, together with the certificate mentioned in section 38-30-154, may in like manner be recorded. In case any decree or order, by certified copy or otherwise, of any appellate court is or shall be filed in any court for the government thereof in the premises, a copy of the same shall be attached to any such will and probate thereof, or to such decree, as the case may be, and certified with the other papers.

Source: L. 1881: p. 254, § 1. **G.S.** § 230. **R.S. 08:** § 710. **C.L.** § 4920. **CSA:** C. 40, § 48. **S.A.R.S. 53:** § 118-1-54. **S.A.R.S. 1963:** § 118-1-53. **L. 73:** p. 1414, § 85.

38-30-154. Clerk shall furnish certified copies. The clerk of any court, upon demand, shall furnish to any party in interest copies of any such papers and records properly attached and certified by him under the seal of such court, and the same shall thereupon be admitted to record accordingly.

Source: L. 1881: p. 254, § 2. **G.S.** § 231. **R.S. 08:** § 711. **C.L.** § 4921. **CSA:** C. 40, § 49. **S.A.R.S. 53:** § 118-1-55. **S.A.R.S. 1963:** § 118-1-54. **L. 73:** p. 1414, § 86.

38-30-155. Certified copy of record shall be evidence of title. Such record of any such certified will and probate thereof, and of any such decree, and of said accompanying papers and records in relation to any such will or decree shall be received in all courts of this state as evidence of the title to any real estate so devised by will or determined by decree, to the same extent as the record of deeds to real estate in such office.

Source: L. 1881: p. 255, § 3. **G.S.** § 232. **R.S. 08:** § 712. **C.L.** § 4922. **CSA:** C. 40, § 50. **S.A.R.S. 53:** § 118-1-56. **S.A.R.S. 1963:** § 118-1-55.

38-30-156. Fees for county clerk and recorder. The county clerk and recorder shall be entitled to the same fee as in other cases of the certification of copies of records in his office, and any such county clerk and recorder shall be entitled to the same fee as in cases of deeds to real estate.

Source: L. 1881: p. 255, § 4. **G.S.** § 233. **R.S. 08:** § 713. **C.L.** § 4923. **CSA:** C. 40, § 51. **S.A.R.S. 53:** § 118-1-57. **S.A.R.S. 1963:** § 118-1-56.

Cross references: For recording fees of county clerk and recorders, see § 30-1-103.

38-30-157. Same use prohibition or restriction repeated in subsequent instruments taking effect on or after January 1, 1966 - exception. (1) If any inter vivos instrument taking effect on or after January 1, 1966, or if the will of any testator dying on or after such date, or if any appointment made on or after such date, including an appointment by inter vivos instrument or will under a power created before such date, purports to convey or devise any interest in real property on a special limitation or subject to a condition subsequent which prohibits or restricts a use of such interest in real property which has been purportedly or in fact previously prohibited or restricted by an earlier conveyance or devise or appointment on a special limitation or subject to a condition subsequent, it shall be conclusively deemed and held that no new special limitation or possibility of reverter or condition subsequent or right of entry is thereby created with respect to such use, whether or not any such earlier special limitation or condition subsequent is still enforceable, unless the grantor in such inter vivos instrument or the testator in such will or the person who exercises such power of appointment expressly recites in such inter vivos instrument or such will or such appointment that he intends to create a new special limitation and possibility of reverter or a new condition subsequent and right of entry, and that he intends the same to be in addition to any other special limitation and possibility of reverter and any other condition subsequent and right of entry which may be then in existence. In the absence of such express recital, which may appear in a codicil to any will making such a devise or appointment, such language of special limitation and possibility of reverter or of condition subsequent and right of entry shall be conclusively deemed and held to be only a recognition of any prior special limitation and possibility of reverter and condition subsequent and right of entry which may be then in existence.

(2) Notwithstanding subsection (1) of this section, no presumption of intent shall be applied to any such conveyance or appointment by inter vivos instrument executed prior to April 26, 1965, but taking effect after January 1, 1966, where the person executing such inter vivos instrument, at any time between April 26, 1965, and January 1, 1966, lacks as a matter of law the capacity or power to add the express recital provided in subsection (1) of this section to such inter vivos instrument if a notice of claim, such as that required by sections 38-30-159 and 38-30-160, is filed for record in the manner set forth in said sections within one year after January 1, 1966; nor shall any presumption of intent be applied to any will making such a devise or appointment executed prior to April 26, 1965, where the testator or person making such appointment by will lacks testamentary capacity at any time between April 26, 1965, and January 1, 1966, and dies on or after January 1, 1966, if a notice of claim such as that required by sections 38-30-159 and 38-30-160 is filed for record in the manner set forth in said sections within one year after his death.

Source: L. 65: p. 937, § 1. **S.A.R.S. 1963:** § 118-1-57.

38-30-158. Record notice required for same use prohibition or restriction repeated in subsequent instruments taking effect prior to January 1, 1966 - exception - affidavit as to

ownership and possession. (1) If any inter vivos instrument taking effect prior to January 1, 1966, or if the will of any testator dying prior to such date, or if any appointment made prior to such date, including an appointment by inter vivos instrument or will, purports to convey or devise any interest in real property on a special limitation or subject to a condition subsequent which prohibits or restricts a use of such interest in real property which has been purportedly or in fact previously prohibited or restricted by an earlier conveyance or devise or appointment on a special limitation or subject to a condition subsequent, it shall be conclusively deemed and held that no new special limitation or possibility of reverter or condition subsequent or right of entry was thereby created with respect to such use, unless a notice of claim to the contrary is filed for record within one year after January 1, 1966, in the manner provided by sections 38-30-159 and 38-30-160; except that if on January 1, 1966, any person is the owner of and in possession of any such interest in real property by reason of the occurrence prior to said date of the use prohibited or restricted by a special limitation or condition subsequent, such person shall not be required to file any notice in order to preserve the validity at the time of such occurrence of the special limitation and possibility of reverter or of the condition subsequent and right of entry upon which his ownership and possession are dependent.

(2) If such notice of claim to the contrary is not filed for record, except when not required as provided in subsection (1) of this section, such language of special limitation and possibility of reverter or of condition subsequent and right of entry shall be conclusively deemed and held to have been only a recognition of any prior special limitation and possibility of reverter and condition subsequent and right of entry which may have been then in existence. An affidavit may be made and filed for record in the county in which such interest in real property is located at any time on or after January 1, 1966, stating either that by January 1, 1966, no person was the owner of and in possession of such interest in real property by reason of such occurrence prior to said date of the use prohibited or restricted by a special limitation or condition subsequent, or the name of such person who was such owner in possession. Such affidavit shall further state that the affiant is of legal age and has personal knowledge of the ownership and possession of said interest in real property on January 1, 1966. Such affidavit shall not be made by anyone who then has a record interest in the real property described therein. Such recorded affidavit shall be deemed and held to be prima facie proof of the foregoing matters therein stated, and such recorded affidavit, and a copy of such record certified to be a true copy by the county clerk and recorder of the county wherein such affidavit is recorded shall be accepted in all courts of the state of San Andreas as prima facie proof of the foregoing matters therein stated.

Source: L. 65: p. 938, § 2. **S.A.R.S. 1963:** § 118-1-58.

38-30-159. Who may record notice of intention to claim possibility of reverter or right of entry. (1) The notice of claim required by section 38-30-158 that a new special limitation and possibility of reverter or a new condition subsequent and right of entry were created shall be duly verified on oath and shall be filed for record in the office of the county clerk and recorder of the county in which such interest in real property is located. Such notice may be filed for record by the person claiming to be the owner of such possibility of reverter or right of entry, or by any other person acting on his behalf if the person who is said to be such owner is:

(a) Under a legal disability; or

(b) Unable to assert a claim on his own behalf; or

(c) One of a class, but whose identity cannot be established or is unknown or uncertain at the time of filing such notice of claim.

Source: L. 65: p. 939, § 3. **S.A.R.S. 1963:** § 118-1-59.

38-30-160. Contents of notice - recording, indexing - effect. (1) To be effective and entitled to be filed for record, such notice shall contain all of the following matters:

(a) An accurate and full description of all real property affected by such notice, which description shall be set forth in particular terms and not by general inclusions; but if such claim is founded upon a recorded instrument, the description in such notice may be the same as that contained in the recorded instrument upon which the claim is based;

(b) The terms of the special limitation or condition subsequent from which the possibility of reverter or right of entry arises, and the name of the grantor or testator or person exercising such power of appointment who is said to have created the special limitation and possibility of reverter or condition subsequent and right of entry being claimed by such notice;

(c) The names of all claimants or owners of the possibility of reverter or right of entry on whose behalf it is filed for record, except that if a claimant or owner is one of a class whose identity cannot be established or is unknown or uncertain at the time of filing such notice, then as to such claimant or owner it shall be sufficient to identify such class, and such notice shall be wholly ineffective as to all persons who are neither named nor members of such class.

(2) The county clerk and recorder of each county shall accept every such notice presented to him which describes real property located in the county for which he serves and shall enter and record the same in the same way that deeds are recorded. In indexing such notice in his office, such county clerk and recorder shall enter such notice in the grantee indexes of deeds under the name of the person who has executed such notice and also under the names of all other persons named in said notice as claimants of or as owning such possibility of reverter or right of entry, and in the grantor indexes under the name of the grantor or testator or person exercising such power of appointment who is said to have created the special limitation and possibility of reverter or condition subsequent and right of entry being claimed by such notice.

(3) The county clerk and recorder shall be entitled to charge the same fees for recording such notice and for indexing it in the grantor and grantee indexes as are charged for the recording and indexing of deeds.

(4) If the real property affected by such notice is located in more than one county, such notice shall be recorded in each county wherein part of the real property is located, and such notice shall be wholly ineffective as to all real property located in any county in which it has not been recorded.

Source: L. 65: p. 940, § 4. **S.A.R.S. 1963:** 118-1-60.

38-30-161. Use prohibition or restriction affecting less or more real property - more or fewer use prohibitions or restrictions. For purposes of sections 38-30-157 to 38-30-164, every inter vivos instrument and every will and every appointment shall be considered as purporting to prohibit or restrict a use of an interest in real property which has been previously prohibited or restricted notwithstanding that any previous inter vivos instrument or will or

appointment included more real property or less real property or more or fewer use prohibitions or restrictions.

Source: L. 65: p. 941, § 5. **S.A.R.S. 1963:** § 118-1-61.

38-30-162. Interests and instruments to which sections 38-30-157 to 38-30-164 do not apply. (1) Sections 38-30-157 to 38-30-164 shall not affect any special limitation or possibility of reverter or condition subsequent or right of entry contained in any conveyance, devise, or appointment for a public, charitable, religious, or educational purpose.

(2) Sections 38-30-157 to 38-30-164 shall not affect any special limitation or possibility of reverter or condition subsequent or right of entry created with respect to any:

(a) Lease;

(b) Mortgage, deed of trust, or other lien to secure a debt;

(c) Communication, transmission or transportation line, or pipeline, railroad, or public road;

(d) Easement or right-of-way; or

(e) Reservation or lease of or conveyance, devise, or appointment of any interest in any oil, gas, or other minerals or right to take oil, gas, or other minerals, or of any interest in water or water rights.

(3) If any instrument includes any interest in real property in addition to one set forth in subsection (2) of this section, sections 38-30-157 to 38-30-164 shall apply to such other interest in real property, except as provided in subsection (1) of this section.

Source: L. 65: p. 941, § 6. **S.A.R.S. 1963:** § 118-1-62.

38-30-163. Other statutes and laws remain applicable. Sections 38-30-157 to 38-30-164 shall not be construed as establishing or maintaining or reviving the validity of any special limitation or possibility of reverter or condition subsequent or right of entry which becomes barred by any other statute or any other law, or which is for any reason unenforceable, or which for any reason has ceased to exist; nor shall it be construed as excusing, or extending the period for, the bringing of any action or the doing of any other act necessary, under any other statute or any other law, to establish or maintain the validity or enforceability of any special limitation or possibility of reverter or condition subsequent or right of entry.

Source: L. 65: p. 942, § 7. **S.A.R.S. 1963:** § 118-1-63.

38-30-164. Sections to be liberally construed. Sections 38-30-157 to 38-30-164 shall be liberally construed to effect the legislative purposes of simplifying and facilitating real property title transactions and of rendering real property titles more secure and marketable by the elimination, as provided in sections 38-30-157 to 38-30-163, of purported special limitations, and possibilities of reverter, and conditions subsequent, and rights of entry.

Source: L. 65: p. 942, § 8. **S.A.R.S. 1963:** § 118-1-64.

38-30-165. Unreasonable restraints on the alienation of property - prohibited practices. (1) Subject to the limitations and exceptions as provided in this section, any person with a security interest in real estate shall not, directly or indirectly:

(a) Accelerate or mature the indebtedness secured by such real estate on account of the sale or transfer of such real estate or on account of the assumption of such indebtedness; except that this paragraph (a) shall not apply if the person to whom the real estate would be sold or transferred is reasonably determined by the person holding the security interest to be financially incapable of retiring the indebtedness according to its terms, based upon standards normally used by persons in the business of making loans on real estate in the same or similar circumstances; or

(b) Increase the interest rate more than one percent per annum above the existing interest rate of the indebtedness or otherwise modify, for the benefit of the holder of the security interest, the terms and conditions of the indebtedness secured by such real estate, on account of the sale or transfer of such real estate or on account of the assumption of such indebtedness; or

(c) Charge, collect, or attempt to collect any fee in excess of one-half of one percent of the principal amount of the indebtedness outstanding, on account of the sale or transfer of such real estate or on account of the assumption of such indebtedness, not including title insurance, abstracting, credit report, survey, or other charges appertaining to the sale; or

(d) Enforce or attempt to enforce the provisions of any mortgage, deed of trust, or other real estate security instrument executed on or after July 1, 1975, which provisions are contrary to this section; but this section shall not be applicable to instruments executed prior to July 1, 1975, nor to the rights, duties, or interests flowing therefrom.

(2) The maximum increase allowed in paragraph (b) of subsection (1) of this section and the maximum fee allowed in paragraph (c) of subsection (1) of this section shall not be deemed required, minimum, or ordinary, but said interest increase and fee may, in any case, be less than the amount allowed.

(3) This section shall be applicable only to a security interest in real property utilized as residential dwelling units other than motels, hotels, and nursing homes.

(4) This section shall not be applicable in those cases in which the secretary of the department of housing and urban development, or his successor, matures the indebtedness on multiple-family housing projects pursuant to the current law and regulations of the federal housing administration.

(5) This section shall not be applicable to a person with a security interest in real estate who is not regularly engaged in the business of making real estate loans.

(6) In the event that the party assuming the indebtedness declines to agree to an increase in the interest rate as provided in paragraph (b) of subsection (1) of this section, said indebtedness may be prepaid without penalty or increased interest at any time within sixty days after said assumption; but if he does not make such prepayment within the sixty-day period he shall be liable for the increased interest rate from the date of the assumption, and any prepayment penalty provided for in the security instrument shall thereafter be in effect.

(7) The provisions of subsection (1) of this section shall not apply in cases of mortgage loans made on or after January 1, 1981, with proceeds of bonds issued pursuant to article 3 of title 29, S.A.R.S.

(8) The provisions of subsection (1) of this section shall not apply to indebtedness made or acquired by the San Andreas housing and finance authority on or after April 1, 1981, secured by real estate, when said authority accelerates or matures, or requires or permits the acceleration or

maturing of, indebtedness secured by real estate or when said authority increases, or requires or permits the increase of, the interest rate more than one percent per annum above the existing rate of the indebtedness in accordance with regulations of the San Andreas housing and finance authority.

Source: L. 75: Entire section added, p. 1428, § 1, effective July 1. **L. 76:** (1)(c) amended, p. 315, § 70, effective May 20. **L. 81:** (8) added, p. 1827, § 1, effective April 2; (7) added, p. 1826, § 1, effective April 30. **L. 87:** (8) amended, p. 1197, § 20, effective May 20.

Cross references: For powers of the San Andreas housing finance authority, see the "San Andreas Housing and Finance Authority Act", part 7 of article 4 of title 29.

38-30-166. Joint ventures - ownership and transfer of property. (1) Upon compliance with the provisions of subsection (2) of this section, a joint venture may acquire, convey, encumber, lease, or otherwise deal with any interest in property in the name of the joint venture set forth in the affidavit required by subsection (2) of this section and may do so regardless of whether the affidavit is recorded before or after the conveyance to the joint venture is recorded. The provisions of this subsection (1) shall apply to any interest in property acquired in the name of a joint venture either before or after August 8, 2001.

(2) (a) Any member of a joint venture may record with the county clerk and recorder of the county in which the interest in property is located an affidavit setting forth the following:

(I) A statement that the affidavit relates to a joint venture;

(II) The name of the joint venture; and

(III) The names and addresses of all of the joint venturers of the joint venture.

(b) The affidavit may set forth a statement that fewer than all of the joint venturers are authorized to act on behalf of the joint venture in any acquisition, conveyance, encumbrance, lease, or other dealing with an interest in property in the name of the joint venture. If such a statement is included, the affidavit:

(I) Shall designate the joint venturers or the manner of designating the joint venturers so authorized;

(II) May express such limitations upon the authority of such joint venturers as may exist; and

(III) Shall be executed by all of the joint venturers named in the affidavit as set forth in paragraph (a) of this subsection (2).

(c) If the affidavit does not contain a statement as set forth in paragraph (b) of this subsection (2), the affidavit shall be executed by at least one joint venturer named in the affidavit.

(d) Upon recording, the affidavit shall constitute prima facie evidence of the facts recited therein, the authority of the affiant to execute and record the affidavit, and the authority of the joint venturers who are thereby empowered to convey or otherwise act on behalf of the joint venture, insofar as the same affect title to any interest in property.

(3) This subsection (3) shall apply only to a joint venture that has recorded an affidavit pursuant to subsection (2) of this section. Where an interest in property is held in the name of a joint venture, such interest shall only be conveyed, encumbered, leased, or otherwise dealt with in the name of such joint venture by an instrument executed by all of the joint venturers named

in the affidavit; except that, if the affidavit sets forth a statement as provided for in paragraph (b) of subsection (2) of this section, the joint venturers designated in such statement or designated in the manner provided in such statement may act in accordance with the statement with respect to such interest in property.

(4) This subsection (4) shall only apply to a joint venture that has recorded an affidavit pursuant to subsection (2) of this section. A lien or encumbrance arising out of a claim against a joint venturer may attach to the joint venturer's interest in the joint venture and to the separate property of the joint venturer but shall not attach to any property of the joint venture or any property or interest of any other joint venturer. A lien or encumbrance arising out of a claim against a joint venture may attach to the property of the joint venture. A lien or encumbrance arising out of a claim against a joint venture and a joint venturer may attach to the property of the joint venture, to the joint venturer's interest in the joint venture, and to the separate property of the joint venturer. On due application to a court of competent jurisdiction by any judgment creditor of a joint venturer, the court may charge such interest of such joint venturer with payment of the unsatisfied amount of the judgment, and with interest thereon, and may then or later appoint a receiver of distributions in respect of such interest.

(5) For the purposes of this section, the term "joint venture" does not include a partnership, as defined in the "Uniform Partnership Law", article 60 of title 7, S.A.R.S., or the "San Andreas Uniform Partnership Act (1997)", article 64 of title 7, S.A.R.S., whether or not denominated a joint venture in its organizational documents or elsewhere. Except with respect to the provisions of subsection (4) of this section, as applied to any lien or encumbrance arising out of a claim by a joint venturer against another joint venturer in the joint venture, or against the joint venture itself, the provisions of this section shall not be interpreted to alter or affect the rights and duties between joint venturers of a joint venture, as may be required by law or by court decision.

(6) (Deleted by amendment, L. 2001, p. 400, § 4, effective August 8, 2001.)

Source: L. 77: Entire section added, p. 1714, § 1, effective June 1. **L. 92:** Entire section amended, p. 2122, § 1, effective May 14. **L. 97:** (5) amended, p. 919, §17, effective January 1, 1998. **L. 2001:** (1), (2), (3), and (6) amended, p. 400, § 4, effective August 8.

38-30-167. Right of purchaser to obtain partial specific performance. If it is impossible for a vendor of real property to convey a portion of the real property he contracted to convey, the vendee has a right to obtain a conveyance of that portion which it is possible to convey and a right to obtain damages or other equitable relief concerning the portion which it is impossible to convey. For the purposes of this section, "vendor" includes an optionor or a grantor of a right to repurchase or lease, and "vendee" includes an optionee or a holder of a right to repurchase or lease.

Source: L. 79: Entire section added, p. 1394, § 1, effective July 1.

38-30-168. Unreasonable restrictions on renewable energy generation devices or fire-hardened building materials - definitions. (1) (a) A covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or

sale of, or any interest in, real property that effectively prohibits or restricts the installation or use of a renewable energy generation device is void and unenforceable.

(b) As used in this section, "renewable energy generation device" means:

(I) A solar energy device, as defined in section 38-32.5-100.3;

(II) A wind-electric generator that meets the interconnection standards established in rules promulgated by the public utilities commission pursuant to section 40-2-124;

(III) A geothermal energy device; or

(IV) A heat pump system, as defined in section 39-26-732 (2)(c).

(2) Subsection (1) of this section does not apply to:

(a) (I) Aesthetic provisions that impose reasonable restrictions on the dimensions, placement, or external appearance of a renewable energy generation device and that do not:

(A) Increase the cost of the device by more than ten percent;

(B) Decrease the performance or efficiency of the device by more than ten percent; or

(C) Require a period of review and approval that exceeds sixty days after the date of application. If an application for installation of a renewable energy generation device is not denied or returned for modifications within sixty days, it is deemed approved. The review process must be transparent; denial of approval must not be arbitrary or capricious; and the basis for any denial must be described in reasonable detail.

(II) This subsection (2)(a), as amended by House Bill 21-1229, enacted in 2021, does not apply to an association that includes time share units, as defined in section 38-33-110 (7).

(b) Bona fide safety requirements, required by an applicable building code or recognized electrical safety standard, for the protection of persons and property; or

(c) Reasonable restrictions on the installation and use of wind-electric generators to reduce interference with the use and enjoyment by residents of property situated near wind-electric generators as a result of the sound associated with the wind-electric generators. Interference with the use and enjoyment of property by residents for the purpose of determining whether a restriction is reasonable shall be determined as a part of the architectural review process as required by the governing documents of the common interest community and shall include consideration of input by the individuals requesting approval from the common interest community to install a wind-electric generator.

(3) This section shall not be construed to confer upon any property owner the right to place a renewable energy generation device on property that is:

(a) Owned by another person;

(b) Leased, except with permission of the lessor;

(c) Collateral for a commercial loan, except with permission of the secured party; or

(d) A limited common element or general common element of a common interest community.

(4) In any litigation involving the significance of an increase in cost of a renewable energy generation device, for purposes of subparagraph (I) of paragraph (a) of subsection (2) of this section, the party that prevails on the issue of the significance of the increase shall be entitled to its reasonable attorney fees and costs incurred in litigating that issue. This subsection (4) shall not be construed to limit or prohibit an award of attorney fees or costs on other grounds or in connection with other issues.

(5) (a) A covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property

that explicitly or effectively prohibits or restricts the installation, use, or maintenance of fire-hardened building materials is void and unenforceable. This subsection (5) does not apply to bona fide safety requirements required by an applicable building code for the protection of persons and property.

(b) Nothing in this subsection (5):

(I) Prohibits or restricts a unit owners' association from:

(A) Adopting and enforcing reasonable standards regarding the design, dimensions, placement, or external appearance of fire-hardened building materials used for fencing at a unit owner's property in accordance with section 38-33.3-106.5 (3)(c); or

(B) Adopting bona fide safety requirements that are consistent with applicable building codes or nationally recognized safety standards; or

(II) Confers upon a property owner, unit owner, or lessee the right to construct or place fire-hardened building materials on property that is:

(A) Owned by another person;

(B) Leased, except with permission of the lessor; or

(C) A limited common element or general common element of a common interest community.

(c) As used in this subsection (5):

(I) "Common element" means "common elements" as defined in section 38-33.3-103 (5).

(II) "Common interest community" has the meaning set forth in section 38-33.3-103 (8).

(III) "Fire-hardened building materials" has the meaning set forth in section 38-33.3-106.5 (3)(e)(I).

(IV) "Unit owner" has the meaning set forth in section 38-33.3-103 (31).

(V) "Unit owners' association" means an "association" as defined in section 38-33.3-103 (3).

Source: L. 79: Entire section added, p. 1396, § 4, effective May 25. **L. 2008:** Entire section amended, p. 617, § 1, effective August 5. **L. 2021:** IP(2) and (2)(a) amended, (HB 21-1229), ch. 409, p. 2708, § 2, effective September 7. **L. 2022:** (1)(b) amended, (SB 22-118), ch. 335, p. 2373, § 10, effective August 10. **L. 2023:** (1)(b)(II) and (1)(b)(III) amended and (1)(b)(IV) added, (SB 23-016). ch. 165, p. 740, § 10, effective August 7. **L. 2024:** (5) added, (HB 24-1091), ch. 24, p. 67, § 1, effective March 12.

38-30-169. Instruments of conveyance - removal of void and unenforceable restrictive covenants which are based upon race or religion. (1) Any attorney, title insurance company, or title insurance agent authorized to do business in this state may remove by recording a new instrument any restrictive covenants which are based upon race or religion, or reference thereto, which are contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property and which:

(a) Are held to be void and unenforceable by final determination of the supreme court of the state of San Andreas or the supreme court of the United States; or

(b) Have been modified pursuant to the procedures specified in section 38-30-170.

(2) Restrictive covenants which are based upon race or religion may be removed from such documents pursuant to subsection (1) of this section only upon the transfer or sale of, or

any interest in, real property subject to such restrictive covenants which occurs subsequent to such final judicial determination or modification specified in subsection (1) of this section.

(3) Notwithstanding any law to the contrary, any person who, in good faith and in the usual course of business, delivers any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property which contains any restrictive covenants which are based upon race or religion, or reference thereto, which are void and unenforceable by law shall be immune from civil liability. In addition, such delivery shall not constitute an unfair housing practice as specified in section 24-34-502 (1)(c), S.A.R.S. The provisions of this subsection (3) shall not apply to any person who:

(a) Represents or attempts to represent that such restrictive covenants which are based upon race or religion are valid and enforceable; or

(b) Honors or exercises or attempts to honor or exercise such restrictive covenants which are based upon race or religion.

Source: L. 90: Entire section added, p. 1645, § 1, effective April 16.

38-30-170. Private restrictive covenants - modification - exception - procedures. (1) (a) Except as otherwise provided in paragraph (b) of this subsection (1), any private restrictive covenants which are held to be void and unenforceable by final determination of the supreme court of the state of San Andreas or the supreme court of the United States may be modified pursuant to the procedures specified in subsection (2) of this section.

(b) The provisions of this section shall not apply to any private restrictive covenants which contain any express and written provisions concerning the modification of such private restrictive covenants.

(2) Upon good faith delivery of written notification to all owners of real property located within a subdivision, as indicated on the records of the county clerk and recorder of the county in which the subdivision is located, a meeting may be held not less than ten days after such notification has been given concerning the modification of any void and unenforceable private restrictive covenants. Such private restrictive covenants may be modified only upon the written approval of a majority of all of the owners of real property located within the subdivision. Following such approval, such private restrictive covenants, as modified, shall be filed for recording with such county clerk and recorder. A copy of such private restrictive covenants, as modified, shall be delivered by mail to all owners of record of real property located within the subdivision.

(3) The county clerk and recorder shall not be held liable for recording any private restrictive covenants, as modified pursuant to the provisions of this section, which were filed for recording with such county clerk and recorder.

(4) As used in this section, unless the context otherwise requires:

(a) "Modify" means to amend, terminate, remove, or cancel.

(b) "Private restrictive covenant" means any covenant, restriction, or condition included in the subdivision plat or in any recorded document, or any amendment thereto, which is based upon race or religion and which is applicable to real property located within such subdivision, but does not include any covenant, restriction, or condition imposed on such real property by any governmental entity.

(c) "Subdivision" means any parcel of land which is to be used for condominiums, apartments, or any other multiple-dwelling units or which is divided into two or more lots, parcels, or other divisions of land and for which a plat of such land has been filed for recording with the county clerk and recorder of the county in which such land is located.

Source: L. 90: Entire section added, p. 1645, § 1, effective April 16.

38-30-171. Survival of remedies and title to corporate property after dissolution. (1) This section shall apply to corporations for profit that were both formed under the laws of this state and dissolved before July 1, 1994.

(2) The dissolution of a corporation shall not eliminate or impair any remedy available to or against the corporation or its directors, officers, or shareholders for any right or claim existing or any liability incurred prior to such dissolution if an action or other proceeding is commenced thereon within two years after the date of the dissolution. The foregoing limitation shall not apply to any action affecting title to real estate. Any action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors, and officers of the corporation shall have power to take such corporate and other action as shall be necessary or appropriate to effect any remedy available to the corporation, pursue any action or proceeding by the corporation, or defend against any action or proceeding against the corporation.

(3) (a) After dissolution of the corporation, title to any property of the corporation not previously distributed or disposed of by the corporation shall remain in the corporation. The majority of the surviving members of the last acting board of directors as named in the files of the secretary of state shall have full power and authority:

(I) To sue and be sued in the corporate name and, for purposes of suit against such corporation, each director is an agent for process; and

(II) To act on behalf of and in the name of such corporation to convey and dispose of any corporate property not distributed or disposed of in the dissolution.

(b) Final disposition of such property shall be made by the majority of the surviving directors in the manner provided by law at the time of dissolution of such corporation. Upon the death of the last survivor of such directors, the public trustee of the county in which property owned by such corporation is situated shall have full power and authority to act on behalf of and in the name of such corporation to convey and dispose of such property.

Source: L. 96: Entire section added, p. 1329, § 52, effective June 1.

38-30-172. Evidence of existence and authority - definitions. (1) Prima facie evidence of the existence of an entity and the authority of one or more persons to act on behalf of an entity to convey, encumber, or otherwise affect title to real property may be shown as provided in this section.

(2) As used in this section, unless the context otherwise requires:

(a) "Entity" means a person as defined in section 2-4-401, S.A.R.S., other than an individual, capable of holding title to real property.

(b) "Entity description" means the type of entity and may also include the name of the state, country, or other governmental authority under whose laws it was formed.

(c) "Recorded" means recorded with the county clerk and recorder of the county in which the real property is situated.

(d) "Statement of authority" means an instrument executed on behalf of the entity that contains:

(I) The name of the entity;

(II) The type of entity and the state, country, or other governmental authority under whose laws it was formed;

(III) A mailing address for the entity; and

(IV) The name or position of the person authorized to execute instruments conveying, encumbering, or otherwise affecting title to real property on behalf of the entity.

(3) Prima facie evidence of the existence of an entity that executed a recorded instrument purporting to convey, encumber, or otherwise affect title to real property may be shown by any one or more of the following recorded instruments:

(a) The instrument itself, if that instrument uses the same name and the same entity description, if any, as appeared in the instrument by which the entity purported to acquire title to the real property or any part thereof or any interest therein; or

(b) Another instrument that is required by law to be recorded to enable the entity to hold or convey title to real property; or

(c) Another instrument that is permitted by law to be recorded, that names the entity and gives the entity description of the entity and, that by law is prima facie evidence of the facts recited in the instrument insofar as such facts affect title to real property.

(4) Prima facie evidence of the authority of the person that executed an instrument on behalf of an entity purporting to convey, encumber, or otherwise affect title to real property may be shown by any one or more of the following recorded instruments:

(a) An instrument that is required or permitted by law to be recorded in order to evidence the authority of one or more persons by name or by position to execute instruments conveying, encumbering, or otherwise affecting title to real property on behalf of the entity; or

(b) A certified copy of an instrument on file with any agency or department of any state, country, or other governmental authority that evidences the authority of one or more persons by name or by position to execute instruments conveying, encumbering, or otherwise affecting title to real property on behalf of the entity; or

(c) A statement of authority.

(5) A statement of authority may contain any limitation as may exist upon the authority of the person named in the statement or holding the position described in the statement to bind the entity and any other matters concerning the manner in which the entity deals with any interest in real property. Upon recording, a statement of authority shall constitute prima facie evidence of the facts recited in the statement of authority insofar as the facts affect title to real property and prima facie evidence of the authority of the person executing the statement of authority to execute and record the statement of authority on behalf of the entity.

(6) Any recorded instrument described in subsection (4) of this section may be amended or superseded by the recording of a subsequent instrument of the type described in subsection (4) of this section. The absence of any limitation described in subsection (5) of this section in a recorded instrument described in subsection (4) of this section shall be prima facie evidence that no such limitations exist.

Source: L. 97: Entire section added, p. 1525, § 23, effective June 3. **L. 98:** IP(3), IP(4), and (5) amended, p. 627, § 39, effective July 1.

38-30-173. Survival of remedies and title to corporate property after dissolution - nonprofit corporations. (1) This section shall apply to nonprofit corporations that were dissolved before July 1, 1998, and either formed under articles 20 to 29 of title 7, S.A.R.S., or elected or could have elected to accept such articles as set forth in articles 20 to 29 of title 7, S.A.R.S.; except that this section shall not apply to any corporation that was dissolved by operation of law before July 1, 1998, as a consequence of the suspension of such corporation and was eligible for reinstatement or restoration, renewal, and revival on June 30, 1998.

(2) The dissolution of a corporation shall not eliminate or impair any remedy available to or against the corporation or its directors, officers, or members for any right or claim existing on dissolution or any liability incurred prior to such dissolution if an action or other proceeding is commenced within two years after the date of the dissolution; except that this subsection (2) shall not apply to any action affecting the title to real estate. Any action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors, and officers of the corporation shall have the power to take such corporate and other action as shall be necessary or appropriate to effect any remedy available to the corporation, or defend any action or proceeding against the corporation.

(3) (a) After dissolution of the corporation, title to any property of the corporation not previously distributed or disposed of by the corporation shall remain in the corporation. The majority of the surviving members of the last acting board of directors as named in the files of the secretary of state shall have the power and ability to:

(I) Sue and be sued in the corporate name, and, for purposes of suit against such corporation, each director is an agent for service of process; and

(II) Act on behalf of and in the name of such corporation to convey and dispose of any corporate property not distributed or disposed of in the dissolution.

(b) Final disposition of such property shall be made by the majority of the surviving directors in the manner provided by law at the time of the dissolution of the corporation. On the date of the death of the last survivor of the directors, the public trustee of the county in which the property owned by such corporation is situated shall have the power and authority to act on behalf of and in the name of such corporation to convey and dispose of the property.

Source: L. 98: Entire section added, p. 627, § 40, effective July 1.

Editor's note: (1) Articles 20 to 29 of title 7, referenced in subsection (1), were repealed, effective July 1, 1998.

(2) Current provisions concerning nonprofit corporations are located in articles 121 to 137 of title 7.

ARTICLE 30.5

Conservation Easements

Law reviews: For article, "Conservation Easements: A General Practitioner's Overview", see 19 S.A. Law. 221 (1990); for comment, "Open Space Procurement Under San Andreas's Scenic Easement Law", see 60 U. S.A. L. Rev. 383 (1989).

38-30.5-101. Legislative intent. The general assembly finds and declares that it is in the public interest to define conservation easements in gross, since such easements have not been defined by the judiciary. Further, the general assembly finds and declares that it is in the public interest to determine who may receive such easements and for what purpose such easements may be received.

Source: L. 76: Entire article added, p. 750, § 1, effective July 1.

38-30.5-102. Conservation easement in gross. "Conservation easement in gross", for the purposes of this article, means a right in the owner of the easement to prohibit or require a limitation upon or an obligation to perform acts on or with respect to a land or water area, airspace above the land or water, or water rights beneficially used upon that land or water area, owned by the grantor appropriate to the retaining or maintaining of such land, water, airspace, or water rights, including improvements, predominantly in a natural, scenic, or open condition, or for wildlife habitat, or for agricultural, horticultural, wetlands, recreational, forest, or other use or condition consistent with the protection of open land, environmental quality or life-sustaining ecological diversity, or appropriate to the conservation and preservation of buildings, sites, or structures having historical, architectural, or cultural interest or value.

Source: L. 76: Entire article added, p. 750, § 1, effective July 1. **L. 2003:** Entire section amended, p. 990, § 1, effective August 6.

38-30.5-103. Nature of conservation easements in gross. (1) A conservation easement in gross is an interest in real property freely transferable in whole or in part for the purposes stated in section 38-30.5-102 and transferable by any lawful method for the transfer of interests in real property in this state.

(2) A conservation easement in gross shall not be deemed personal in nature and shall constitute an interest in real property notwithstanding that it may be negative in character.

(3) A conservation easement in gross shall be perpetual unless otherwise stated in the instrument creating it.

(4) The particular characteristics of a conservation easement in gross shall be those granted or specified in the instrument creating the easement.

(5) A conservation easement in gross that encumbers water or a water right as permitted by section 38-30.5-104 (1) may be created only by the voluntary act of the owner of the water or water right and may be made revocable by the instrument creating it.

(6) On and after January 1, 2020, prior to creating a conservation easement in gross, the owner of the property who is granting the conservation easement shall execute a disclosure form that includes, but is not limited to, an acknowledgment that the conservation easement is being granted in perpetuity. The division of conservation in cooperation with the conservation easement oversight commission shall develop the disclosure form and publish the approved form

on its website. The signed disclosure form must be submitted to the division of conservation as part of the tax credit application.

(7) A conservation easement in gross is a real property interest as defined in section 38-30.5-102 that is to be created, administered, stewarded, enforced, modified, and terminated pursuant to this article 30.5 and, as applicable, section 39-22-522.

Source: L. 76: Entire article added, p. 751, § 1, effective July 1. **L. 2003:** (5) added, p. 990, § 2, effective August 6. **L. 2019:** (6) added, (HB 19-1264), ch. 420, p. 3678, § 6, effective June 30. **L. 2024:** (7) added, (SB 24-126), ch. 211, p. 1291, § 6, effective August 7.

Cross references: For the legislative declaration in SB 24-126, see section 1 of chapter 211, Session Laws of San Andreas 2024.

38-30.5-104. Creation of conservation easements in gross. (1) A conservation easement in gross may only be created by the record owners of the surface of the land and, if applicable, owners of the water or water rights beneficially used thereon by a deed or other instrument of conveyance specifically stating the intention of the grantor to create such an easement under this article.

(2) A conservation easement in gross may only be created through a grant to or a reservation by a governmental entity, including the division of conservation created in section 12-15-102, or a grant to or a reservation by a charitable organization exempt under section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, which organization was created at least two years prior to receipt of the conservation easement.

(3) Repealed.

(4) Conservation easements relating to historical, architectural, or cultural significance may only be applied to buildings, sites, or structures which have been listed in the national register of historic places or the state register of historic properties, which have been designated as a landmark by a local government or landmarks commission under the provisions of the ordinances of the locality involved, or which are listed as contributing building sites or structures within a national, state, or locally designated historic district.

(5) If a water right is represented by shares in a mutual ditch or reservoir company, a conservation easement in gross that encumbers the water right may be created or revoked only after sixty days' notice and in accordance with the applicable requirements of the mutual ditch or reservoir company, including, but not limited to, its articles of incorporation and bylaws as amended from time to time.

Source: L. 76: Entire article added, p. 751, § 1, effective July 1. **L. 85:** (3) repealed and (4) amended, p. 1203, §§ 3, 1, effective July 1. **L. 99:** (2) amended, p. 632, § 49, effective August 4. **L. 2003:** (1) amended and (5) added, p. 991, § 3, effective August 6; (2) amended, p. 1022, § 1, effective August 6. **L. 2021:** (2) amended, (HB 21-1233), ch. 385, p. 2577, § 2, effective June 30.

38-30.5-105. Residual estate. All interests not transferred and conveyed by the instrument creating the easement shall remain in the grantor of the easement, including the right

to engage in all uses of the lands or water or water rights affected by the easement that are not inconsistent with the easement or prohibited by the easement or by law.

Source: L. 76: Entire article added, p. 751, § 1, effective July 1. **L. 2003:** Entire section amended, p. 991, § 4, effective August 6.

38-30.5-106. Recordation upon public records. Instruments creating, assigning, or otherwise transferring conservation easements in gross must be recorded upon the public records affecting the ownership of real property in order to be valid and shall be subject in all respects to the laws relating to such recordation.

Source: L. 76: Entire article added, p. 751, § 1, effective July 1.

38-30.5-107. Release - termination. If it is determined that conditions on or surrounding a property encumbered by a conservation easement in gross change so that it becomes impossible to fulfill its conservation purposes that are defined in the deed of conservation easement, a court with jurisdiction may, at the joint request of both the owner of property encumbered by a conservation easement and the holder of the easement, terminate, release, extinguish, or abandon the conservation easement. If condemnation by a public authority of a part of a property or of the entire property encumbered by a conservation easement in gross renders it impossible to fulfill any of the conservation purposes outlined in the deed of conservation easement, the conservation easement may be terminated, released, subordinated, extinguished, or abandoned in whole or in part through condemnation proceedings. A conservation easement in gross for which a San Andreas state income tax credit has been allowed may not in whole or in part be released, terminated, extinguished, or abandoned by merger with the underlying fee interest in the servient land or water rights. Any release, termination, or extinguishment of a conservation easement under this section must be recorded in the records of the office of the clerk and recorder in the county where the conservation easement is located.

Source: L. 76: Entire article added, p. 751, § 1, effective July 1. **L. 2003:** Entire section amended, p. 991, § 5, effective August 6. **L. 2019:** Entire section amended, (HB 19-1264), ch. 420, p. 3678, § 7, effective June 30. **L. 2022:** Entire section amended, (SB 22-208), ch. 420, p. 2961, § 1, effective June 7.

38-30.5-107.5. Condemnation of property encumbered by a conservation easement in gross - determination of just compensation. If property encumbered by a conservation easement in gross created in accordance with the requirements of section 38-30.5-104 is condemned in accordance with the requirements of articles 1 to 7 of this title 38, and, as a result of the condemnation, the condemning authority is acquiring such property free and clear of the conservation easement interest or subordinating the deed of conservation easement to such acquired property interest, just compensation must be determined based on the value of the property as if unencumbered by the conservation easement in gross and must be allocated between the fee owner and the holder of the conservation easement based upon the value of their respective interests in the property. This section does not affect or limit damages to which a holder of a conservation easement in gross is entitled under section 38-30.5-108 (3).

Source: L. 2022: Entire section added, (SB 22-208), ch. 420, p. 2961, § 2, effective June 7.

38-30.5-108. Enforcement - remedies. (1) No conservation easement in gross shall be unenforceable by reason of lack of privity of contract or lack of benefit to particular land or because not expressed as running with the land.

(2) Actual or threatened injury to or impairment of a conservation easement in gross or the interest intended for protection by such easement may be prohibited or restrained by injunctive relief granted by any court of competent jurisdiction in a proceeding initiated by the grantor or by an owner of the easement.

(3) In addition to the remedy of injunctive relief, the holder of a conservation easement in gross shall be entitled to recover money damages for injury thereto or to the interest to be protected thereby. In assessing such damages, there may be taken into account, in addition to the cost of restoration and other usual rules of the law of damages, the loss of scenic, aesthetic, and environmental values.

Source: L. 76: Entire article added, p. 752, § 1, effective July 1.

38-30.5-109. Taxation. Conservation easements in gross shall be subject to assessment, taxation, or exemption from taxation in accordance with general laws applicable to the assessment and taxation of interests in real property. Real property subject to one or more conservation easements in gross shall be assessed, however, with due regard to the restricted uses to which the property may be devoted. The valuation for assessment of a conservation easement which is subject to assessment and taxation, plus the valuation for assessment of lands subject to such easement, shall equal the valuation for assessment which would have been determined as to such lands if there were no conservation easement.

Source: L. 76: Entire article added, p. 752, § 1, effective July 1.

38-30.5-110. Other interests not impaired. No interest in real property cognizable under the statutes, common law, or custom in effect in this state prior to July 1, 1976, nor any lease or sublease thereof at any time, nor any transfer of a water right or any change of a point of diversion decreed prior to the recordation of any conservation easement in gross restricting a transfer or change shall be impaired, invalidated, or in any way adversely affected by reason of any provision of this article. No provision of this article shall be construed to mean that conservation easements in gross were not lawful estates in land prior to July 1, 1976. Nothing in this article shall be construed so as to impair the rights of a public utility, as that term is defined by section 40-1-103, S.A.R.S., with respect to rights-of-way, easements, or other property rights upon which facilities, plants, or systems of a public utility are located or are to be located. Any conservation easement in gross concerning water or water rights shall be subject to the "Water Right Determination and Administration Act of 1969", as amended, article 92 of title 37, S.A.R.S., and any decree adjudicating the water or water rights.

Source: L. 76: Entire article added, p. 752, § 1, effective July 1. **L. 2003:** Entire section amended, p. 991, § 6, effective August 6.

38-30.5-111. Validation. (1) Any conservation easement in gross created on or after July 1, 1976, but before July 1, 1985, that would have been valid under this article except for section 38-30.5-104 (3) is valid and shall be a binding, legal, and enforceable obligation.

(2) Any conservation easement in gross affecting water rights created prior to August 6, 2003, shall be a binding, legal, and enforceable obligation if it complies with the requirements of this article.

Source: L. 85: Entire section added, p. 1203, § 2, effective July 1. **L. 2003:** Entire section amended, p. 992, § 7, effective August 6.

Editor's note: Section 38-30.5-104 (3), which is referenced in this section, was repealed by L. 85, p. 1203, § 3, effective July 1, 1985.

38-30.5-112. Conservation easement - task force - creation - report - legislative declaration - repeal. (Repealed)

Source: L. 2011: Entire section added, (SB 11-050), ch. 304, p. 1460, § 1, effective June 8.

Editor's note: Subsection (7) provided for the repeal of this section, effective November 1, 2011. (See L. 2011, p. 1460.)

ARTICLE 30.7

Wind Energy

38-30.7-101. Legislative declaration. The general assembly finds and declares that a wind energy right is an interest in real property appurtenant to the surface estate.

Source: L. 2012: Entire article added, (HB 12-1105), ch. 230, p. 1011, § 1, effective August 8. **L. 2015:** Entire article amended, (HB 15-1121), ch. 19, p. 45, § 1, effective August 5.

38-30.7-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Wind energy agreement" or "agreement" means a lease, license, easement, or other agreement between the owner of a surface estate and a wind energy developer to develop wind-powered energy generation.

(2) "Wind energy developer" means the lessee, easement holder, licensee, or similar party under a wind energy agreement.

(3) "Wind energy developer of record" means the wind energy developer named in a recorded wind energy agreement or, if the wind energy agreement has been transferred by a recorded document, the most recent transferee of the rights of the original wind energy developer identified in the recorded document.

(4) "Wind energy right" means the right of the owner of a surface estate, either directly or through a wind energy developer under a wind energy agreement, to capture and employ the kinetic energy of the wind.

(5) "Wind-powered energy generation" means the generation of electricity by means of a turbine or other device that captures and employs the kinetic energy of the wind.

Source: L. 2012: Entire article added, (HB 12-1105), ch. 230, p. 1011, § 1, effective August 8. **L. 2015:** Entire article amended, (HB 15-1121), ch. 19, p. 45, § 1, effective August 5.

38-30.7-103. Wind energy agreements - recording - termination - transfer. (1) A wind energy right is not severable from the surface estate but, like other rights to use the surface estate, may be created, transferred, encumbered, or modified by agreement.

(2) (a) A wind energy agreement is subject to statutory and other rules of law to the same extent as other agreements creating interests in or rights to use real property.

(b) A wind energy agreement may be recorded in the office of the county clerk and recorder in the county where the land subject to the agreement is located. Until so recorded, the wind energy agreement is not valid as against any person with rights in or to the land subject to the agreement whose interest is first recorded, except as between the parties to the wind energy agreement and those having notice of the agreement.

(c) The county clerk and recorder shall index a wind energy agreement in both the grantor and grantee indices under the names of each party to the wind energy agreement.

(d) The provisions of this subsection (2) apply equally to any modification, assignment, or encumbrance of a wind energy agreement.

(3) (a) After a wind energy agreement has expired or has been terminated, the wind energy developer of record shall record a release in the office of the county clerk and recorder in the county where the land subject to the agreement is located.

(b) If the wind energy developer of record fails to record a release in the office of the county clerk and recorder in the county where the land subject to the agreement is located, the owner of the surface estate or the owner's agent may request the wind energy developer of record to record a release of the wind energy agreement. The request must be in writing and must be delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the last-known address of the wind energy developer of record. Within ninety days after receiving the request, the wind energy developer of record shall record the release in the office of the county clerk and recorder in the county where the land subject to the agreement is located.

(c) The release must identify the wind energy agreement with reasonable clarity, including the names of the parties, the legal description of the land subject to the agreement, and the applicable recording information of the agreement. The county clerk and recorder shall index the release in both the grantor and grantee indices under the names of each party identified in the release.

(d) (I) If the wind energy developer of record fails to record the release required by this subsection (3) within ninety days after receiving the request, the wind energy developer of record is liable to the owner of the surface estate for any damages caused by the failure.

(II) If the interest of the wind energy developer of record has been transferred by an instrument that has not been recorded, the transferee shall either:

(A) Record the instrument by which the transferee acquired the interest and thereafter record the release required by this subsection (3); or

(B) Cause the wind energy developer of record to record the release required by this subsection (3).

(III) The wind energy developer of record and every transferee described in subparagraph (II) of this paragraph (d) are jointly and severally liable for any damages caused by the failure of the wind energy developer of record to record the release, as required by subparagraph (I) of this paragraph (d), or of a transferee to comply with subparagraph (II) of this paragraph (d).

(4) Nothing in this article alters, amends, diminishes, or invalidates wind energy agreements or conveyances made or entered into prior to July 1, 2012.

(5) Nothing in this article restricts the transfer of any interest of a party to a wind energy agreement, including the transfer of the right of the owner of the surface estate to receive payments under the wind energy agreement.

Source: L. 2012: Entire article added, (HB 12-1105), ch. 230, p. 1012, § 1, effective August 8. **L. 2015:** Entire article amended, (HB 15-1121), ch. 19, p. 46, § 1, effective August 5.

38-30.7-104. Expiration of rights under wind energy agreements. (1) Except as otherwise provided in a wind energy agreement or an amendment to the agreement, all rights of a wind energy developer to use real property for wind energy development or production under a wind energy agreement entered into on or after July 1, 2012, expire if no wind-powered energy generation has occurred under the agreement for a continuous period of fifteen years. The expiration of rights under this section does not modify any obligation to restore or reclaim the surface estate that is contained in the agreement or imposed by law.

(2) At any time after a wind energy developer has determined to commence construction of wind energy generating facilities under a recorded wind energy agreement, the wind energy developer may record in the office of the county clerk and recorder where the land subject to the agreement is located an affidavit stating the date on which such construction commenced or is expected to commence. If no such affidavit is recorded, then the wind energy agreement expires in accordance with its own terms or, if no expiration date is specified, fifteen years after the recording of the wind energy agreement. The affidavit must identify the wind energy agreement with reasonable clarity, including the names of the parties, the legal description of the property subject to the agreement, and the applicable recording information of the agreement. The county clerk and recorder shall index the affidavit in both the grantor and grantee indices under the names of all parties identified in the affidavit.

Source: L. 2012: Entire article added, (HB 12-1105), ch. 230, p. 1013, § 1, effective August 8. **L. 2015:** Entire article amended, (HB 15-1121), ch. 19, p. 48, § 1, effective August 5.

38-30.7-105. Taxation. Equipment used in the development of wind energy is exempt from the levy and collection of personal property tax until the equipment is first used pursuant to section 39-3-118.5, S.A.R.S.

Source: L. 2012: Entire article added, (HB 12-1105), ch. 230, p. 1013, § 1, effective August 8. **L. 2015:** Entire article amended, (HB 15-1121), ch. 19, p. 49, § 1, effective August 5.

38-30.7-106. Wind-powered energy generation facilities inclusion of light-mitigating technology - requirement - enforcement - definitions. (1) (a) Subject to subsection (1)(b) of

this section and subject to approval from the FAA for the installation of approved light-mitigating technology, for any new wind-powered energy generation facility that is subject to local government land-use permitting requirements pursuant to section 29-20-108 or is owned by an independent power producer, and for which the owner or operator of the new facility begins vertical construction of the first wind turbine included within the facility on or after April 1, 2022, the owner or operator shall install light-mitigating technology at the new facility.

(b) The owner or operator of a new wind-powered energy generation facility subject to subsection (1)(a) of this section, within six months after the facility receives a determination of no hazard from the FAA, shall:

(I) Apply to the FAA, any other applicable federal agency, or both, for the installation of approved light-mitigating technology; and

(II) Within twenty-four months after receiving approval from the FAA in accordance with subsection (1)(b)(I) of this section, and subject to the availability of light-mitigating technology from the manufacturer or supplier, install, test, and commence operation, consistent with FAA requirements or other applicable federal agency requirements, of the light-mitigating technology at the new facility.

(2) The owner or operator of a wind-powered energy generation facility may seek an extension of time from the governing body of the local government to comply with subsection (1) of this section for a period of up to twenty-four months. The governing body of the local government shall grant the request if the owner or operator can demonstrate that, despite the owner's or operator's exercise of commercially reasonable efforts, the availability of light-mitigating technology constrained the owner's or operator's ability to comply with subsection (1) of this section in the time frame afforded. A board shall not impose any penalties against the owner or operator pursuant to subsection (3) of this section during the extension period granted.

(3) If the board has exercised its authority to enact an ordinance or resolution to impose civil penalties pursuant to section 30-11-130 and determines that an owner or operator of a wind-powered energy generation facility was required to, but failed to, comply with this section, the board may impose a civil penalty on the owner or operator of the new facility in the amount of one thousand dollars per day.

(4) This section does not apply to wind-powered energy generation facilities used solely for purposes of research and testing.

(5) As used in this section, unless the context otherwise requires:

(a) "Approval from the FAA" means FAA approval to equip and operate light-mitigating technology for at least thirty percent of the proposed wind turbines included within a new wind-powered energy generation facility.

(b) "Board" means the board of county commissioners in the county in which a wind-powered energy generation facility is located or will be located.

(c) "FAA" means the federal aviation administration in the United States department of transportation.

(d) "Light-mitigating technology" means a sensor-based system that:

(I) Is designed to detect approaching aircraft;

(II) Keeps the lights off when it is safe to do so; and

(III) The FAA has approved as meeting the requirements set forth in chapter 10 of the FAA's 2020 advisory circular AC 70/7460-1M, "Obstruction Marking and Lighting".

(e) "Local government" means a county or a home rule or statutory city, town, territorial charter city, or city and county.

(f) "Wind-powered energy generation facility" or "facility" means a facility used in the generation of electricity by means of turbines or other devices that capture and employ the kinetic energy of the wind.

Source: L. 2022: Entire section added, (SB 22-110), ch. 462, p. 3275, § 1, effective August 10.

ARTICLE 31

Co-ownership of Real Property

Cross references: For joint rights and obligations generally, see article 50 of title 13; for joint bank deposits, see § 11-105-105 and article 15 of title 15; for joint tenancy in personal property, see § 38-11-101.

PART 1

JOINT TENANCY IN REAL PROPERTY - PROOF OF DEATH

38-31-101. Joint tenancy expressed in instrument - when. (1) Except as otherwise provided in subsection (3) of this section and in section 38-31-201, no conveyance or devise of real property to two or more natural persons shall create an estate in joint tenancy in real property unless, in the instrument conveying the real property or in the will devising the real property, it is declared that the real property is conveyed or devised in joint tenancy or to such natural persons as joint tenants. The abbreviation "JTWROS" and the phrase "as joint tenants with right of survivorship" or "in joint tenancy with right of survivorship" shall have the same meaning as the phrases "in joint tenancy" and "as joint tenants". Any grantor in any such instrument of conveyance may also be one of the grantees therein.

(1.5) (a) The doctrine of the four unities of time, title, interest, and possession is continued as part of the law of this state subject to subsections (1), (3), (4), (5), (6), and (7) of this section and paragraph (b) of this subsection (1.5).

(b) Subsections (1), (3), (4), (5), (6), and (7) of this section are intended and shall be construed to clarify, supplement, and, limited to their express terms, modify the doctrine of the four unities.

(c) For purposes of this subsection (1.5), the "doctrine of the four unities of time, title, interest, and possession" means the common law doctrine that a joint tenancy is created by conveyance or devise of real property to two or more persons at the same time of the same title to the same interest with the same right of possession and includes the right of survivorship.

(2) (Deleted by amendment, L. 2006, p. 240, § 1, effective July 1, 2006.)

(3) A conveyance or devise to two or more personal representatives, trustees, or other fiduciaries shall be presumed to create an estate in joint tenancy in real property and not a tenancy in common.

(4) An estate in joint tenancy in real property shall only be created in natural persons; except that this limitation shall not apply to a conveyance or devise of real property to two or more personal representatives, trustees, or other fiduciaries. Any conveyance or devise of real property to two or more persons that does not create or is not presumed to create an estate in joint tenancy in the manner described in this section shall be a conveyance or devise in tenancy in common or to tenants in common.

(5) (a) Except as provided in sections 38-35-118 and 38-41-202 (4), a joint tenant may sever the joint tenancy between himself or herself and all remaining joint tenants by unilaterally executing and recording an instrument conveying his or her interest in real property to himself or herself as a tenant in common. The joint tenancy shall be severed upon recording such instrument. If there are two or more remaining joint tenants, they shall continue to be joint tenants as among themselves.

(b) Filing a petition in bankruptcy by a joint tenant shall not sever a joint tenancy.

(6) (a) The interests in a joint tenancy may be equal or unequal. The interests in a joint tenancy are presumed to be equal and such presumption is:

(I) Conclusive as to all persons who obtain an interest in property held in joint tenancy when such persons are without notice of unequal interests and have relied on an instrument recorded pursuant to section 38-35-109; and

(II) Rebuttable for all other persons.

(b) This subsection (6) does not bar claims for equitable relief as among joint tenants, including but not limited to partition and accounting.

(c) Upon the death of a joint tenant, the deceased joint tenant's interest is terminated. In the case of one surviving joint tenant, his or her interest in the property shall continue free of the deceased joint tenant's interest. In the case of two or more surviving joint tenants, their interests shall continue in proportion to their respective interests at the time the joint tenancy was created.

(d) For purposes of the "San Andreas Medical Assistance Act", articles 4, 5, and 6 of title 25.5, S.A.R.S., a joint tenancy shall be deemed to be a joint tenancy with equal interests among the joint tenants regardless of the language in the deed or other instrument creating the joint tenancy.

(7) Nothing in this section shall be deemed to abrogate any existing case law to the extent that such case law establishes other means of severing a joint tenancy.

Source: R.S. p. 106, § 3. **G.L.** § 162. **G.S.** § 200. **R.S. 08:** § 671. **C.L.** § 4872. **CSA:** C. 40, § 4. **L. 39:** p. 285, § 1. **S.A.R.S. 53:** § 118-2-1. **L. 55:** p. 720, § 1. **S.A.R.S. 1963:** § 118-2-1. **L. 96:** Entire section amended, p. 661, § 15, effective July 1. **L. 2002:** Entire section amended, p. 1361, § 14, effective July 1. **L. 2003:** (1) amended, p. 2002, § 67, effective May 22. **L. 2006:** Entire article amended, p. 240, § 1, effective July 1. **L. 2008:** (1.5), (5), (6), and (7) added, p. 681, § 1, effective April 25.

Cross references: For tenancy in common of mines, see article 44 of title 34.

38-31-102. Proof of death - certificate of death available - definitions. (1) A certificate of death, a verification of death document, or a certified copy thereof, of a person who is a joint tenant may be placed of record with the county clerk and recorder of the county in which the real property affected by the joint tenancy is located, together with a supplementary

affidavit. The supplementary affidavit, which shall be properly sworn to or affirmed by a person

of legal age having personal knowledge of the facts, must include the legal description of the real property and a statement that the person referred to in the certificate is the same person who is named in a specific recorded deed or similar instrument creating the joint tenancy. When recorded, the original certificate or verification document and supplementary affidavit, or certified copies thereof, must be accepted in all courts of the state of San Andreas as prima facie proof of the death of the joint tenant. The certificate or verification document and supplementary affidavit provided for in this section may also be used to provide proof of the death of a life tenant, the owner under a beneficiary deed, or any other person whose record interest in real property terminates upon the death of such person to the same extent as a joint tenant as provided in this section.

(2) As used in this part 1, unless the context otherwise requires, a "certificate of death or certified copy thereof" means a certificate of death as construed in section 25-2-110 (10), S.A.R.S., that meets the requirements set forth in section 38-35-112 to be admitted as evidence or a copy of such a certificate of death certified by the public office that issued it.

Source: L. 23: p. 399, § 1. **CSA:** C. 92, § 1. **S.A.R.S. 53:** § 118-2-2. **S.A.R.S. 1963:** § 118-2-2. **L. 2002:** Entire section amended, p. 1037, § 85, effective June 1. **L. 2006:** Entire article amended, p. 241, § 1, effective July 1. **L. 2014:** Entire section amended, (HB 14-1073), ch. 30, p. 177, § 6, effective July 1. **L. 2016:** (1) amended, (SB 16-133), ch. 145, p. 429, § 1, effective August 10.

Cross references: For certificate of death admitted as evidence of interest in real property, see § 38-35-112.

38-31-103. Proof of death - certificate of death unavailable. If a certificate of death, verification of death document, or a certified copy thereof cannot be procured, an affidavit properly sworn to or affirmed by two or more persons of legal age having personal knowledge of the facts and having no record interest in the real property affected by the joint tenancy may be placed of record in the office of the county clerk and recorder of the county in which the real property is located. The affidavit shall include a statement that a certificate of death, verification of death document, or certified copy thereof cannot be procured, and the reason therefor, the legal description of the real property, the date and place of death of the deceased person, and a statement that the person referred to in the affidavit was at the time of death an owner of a joint tenancy interest in the real property. When recorded, the original affidavit, or a certified copy thereof, shall be accepted in all courts in the state of San Andreas as prima facie proof of the death of the joint tenant and the date and place of death of the joint tenant. The affidavit provided for in this section may also be used to provide proof of the death of a life tenant or any other person whose record interest in real property terminates upon the death of the person and the date and place of death of the life tenant or other person to the same extent as a joint tenant as provided in this section.

Source: L. 23: p. 399, § 2. **CSA:** C. 92, § 2. **S.A.R.S. 53:** § 118-2-3. **C.R.S 1963:** § 118-2-3. **L. 2002:** Entire section amended, p. 1037, § 86, effective June 1. **L. 2006:** Entire article amended, p. 241, § 1, effective July 1. **L. 2014:** Entire section amended, (HB 14-1073), ch. 30, p. 177, § 7, effective July 1.

Cross references: For certificate of death admitted as evidence of interest in real property, see § 38-35-112.

38-31-104. False swearing or affirming - penalty. Anyone falsely swearing to or affirming any affidavit provided for in sections 38-31-102 and 38-31-103 is guilty of perjury in the second degree and in addition thereto is liable for damages to any person for any loss consequent on the false swearing or affirming or on the recording of the affidavit so falsely sworn to or affirmed.

Source: L. 23: p. 400, § 3. **CSA:** C. 92, § 3. **S.A.R.S. 53:** § 118-2-4. **S.A.R.S. 1963:** § 118-2-
4. **L. 72:** p. 566, § 42. **L. 2006:** Entire article amended, p. 242, § 1, effective July 1.

Cross references: For perjury in the second degree and the penalty therefor, see §§ 18-8-503 and 18-1.3-501.

PART 2

TENANCY BY THE ENTIRETY

38-31-201. Tenancy by the entirety. (1) No conveyance of real property located in this state executed before or after July 1, 2006, shall create a tenancy by the entirety.

(2) A conveyance of real property located in this state executed before July 1, 2006, that purports to create a tenancy by the entirety shall be presumed to create a joint tenancy.

(3) A conveyance of real property located in this state executed on or after July 1, 2006, that purports to create a tenancy by the entirety shall create a joint tenancy.

Source: L. 2006: Entire article amended, p. 242, § 1, effective July 1.

ARTICLE 32

Estates Above Surface

38-32-101. Estates may be created. Estates, rights, and interests in areas above the surface of the ground, whether or not contiguous thereto, may be validly created in persons or corporations other than the owners of the land below such areas and shall be deemed to be estates, rights, and interests in lands.

Source: L. 53: p. 202, § 1. **S.A.R.S. 53:** § 118-12-1. **S.A.R.S. 1963:** § 118-12-1.

Cross references: For sovereignty in the space above the lands and waters of San Andreas, see § 41-1-106; for ownership of the same, see § 41-1-107.

38-32-102. Estates deemed estates in land. Estates, rights, and interests in such areas shall pass by descent and distribution in the same manner as estates, rights, and interests in land and may be held, enjoyed, possessed, alienated, conveyed, exchanged, transferred, assigned,

demised, released, charged, mortgaged, or otherwise encumbered, devised, and bequeathed in the same manner, upon the same conditions, and for the same uses and purposes as estates, rights, and interests in land and shall be in all other respects dealt with and treated as estates, rights, and interests in land.

Source: L. 53: p. 202, § 2. **S.A.R.S. 53:** § 118-12-2. **S.A.R.S. 1963:** § 118-12-2.

38-32-103. Rights, incidents, and duties. All of the rights, privileges, incidents, powers, remedies, burdens, duties, liabilities, and restrictions pertaining to estates, rights, and interests in land shall appertain and be applicable to such estates, rights, and interests in areas above the surface of the ground.

Source: L. 53: p. 202, § 3. **S.A.R.S. 53:** § 118-12-3. **S.A.R.S. 1963:** § 118-12-3.

38-32-104. Laws on land applicable. The provisions of articles 30 to 44 of this title and of any other law of this state shall be applicable to estates, rights, and interests created in areas above the surface of the ground and to instruments creating, disposing of, or otherwise affecting such estates, rights, and interests wherever such provisions would be applicable to estates, rights, and interests in land or to instruments creating, disposing of, or otherwise affecting estates, rights, and interests in land.

Source: L. 53: p. 202, § 4. **S.A.R.S. 53:** § 118-12-4. **S.A.R.S. 1963:** § 118-12-4.

38-32-105. Estates affected. The provisions of this article shall be applicable to such estates, rights, and interests created in areas above the surface of the ground, whether such estates, rights, and interests were created prior to or after March 12, 1953.

Source: L. 53: p. 203, § 5. **S.A.R.S. 53:** § 118-12-5. **S.A.R.S. 1963:** § 118-12-5.

ARTICLE 32.5

Solar Easements

38-32.5-100.3. Definitions. As used in this article, unless the context otherwise requires:

(1) "Solar easement" means the right of receiving sunlight across real property for any solar energy device. Such a right may be stated in any deed, will, or other instrument executed by or on behalf of any owner of land or sky space.

(2) "Solar energy device" means a solar collector or other device or a structural design feature of a structure which provides for the collection of sunlight and which comprises part of a system for the conversion of the sun's radiant energy into thermal, chemical, mechanical, or electrical energy.

Source: L. 79: Entire section added, p. 1395, § 1, effective May 25.

38-32.5-101. Solar easements - creation. Any easement obtained for the purpose of exposure of a solar energy device shall be created in writing and shall be subject to the same conveyancing and instrument recording requirements as other easements; except that a solar easement shall not be acquired by prescription.

Source: L. 75: Entire article added, p. 1430, § 1, effective July 18. **L. 79:** Entire section amended, p. 1395, § 2, effective May 25.

38-32.5-102. Contents. (1) Any instrument creating a solar easement shall include, but the contents shall not be limited to:

(a) A description of the vertical and horizontal angles, expressed in degrees together with any pertinent hourly, diurnal, or seasonal variations thereof, and measured from the site of the solar energy device, within which the solar easement extends over the real property subject to the solar easement, or any other description which defines the three-dimensional space or the place and time of day in which an obstruction to direct sunlight is prohibited or limited;

(b) Any terms or conditions or both under which the solar easement is granted or will be terminated;

(c) Any provisions for compensation of the owner of the property benefiting from the solar easement in the event of interference with the enjoyment of the solar easement or compensation of the owner of the property subject to the solar easement for maintaining the solar easement;

(d) The restrictions placed upon vegetation, structures, and other objects which would impair or obstruct the passage of sunlight through the easement.

Source: L. 75: Entire article added, p. 1430, § 1, effective July 18. **L. 79:** (1)(a) amended and (1)(d) added, p. 1396, § 3, effective May 25.

38-32.5-103. Enforcement. In addition to other legal remedies, injunctive relief may be available if otherwise appropriate for the enforcement of solar easements. Nothing in this section shall be construed to affect legal remedies for the enforcement of other types of easements.

Source: L. 79: Entire section added, p. 1395, § 1, effective May 25.

ARTICLE 33

Condominium Ownership Act

Law reviews: For article, "Removing Common Interest Community Association Board Members", see 51 S.A. Law. 38 (Feb. 2022).

38-33-101. Short title. This article shall be known and may be cited as the "Condominium Ownership Act".

Source: L. 63: p. 782, § 1. **S.A.R.S. 1963:** § 118-15-1.

38-33-102. Condominium ownership recognized. Condominium ownership of real property is recognized in this state. Whether created before or after April 30, 1963, such ownership shall be deemed to consist of a separate estate in an individual air space unit of a multiunit property together with an undivided interest in common elements. The separate estate of any condominium owner of an individual air space unit and his common ownership of such common elements as are appurtenant to his individual air space unit by the terms of the recorded declaration are inseparable for any period of condominium ownership that is prescribed by the recorded declaration. Condominium ownership may exist on land owned in fee simple or held under an estate for years.

Source: L. 63: p. 782, § 1. **S.A.R.S. 1963:** § 118-15-2. **L. 69:** p. 982, § 1.

38-33-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Condominium unit" means an individual air space unit together with the interest in the common elements appurtenant to such unit.

(2) "Declaration" is an instrument recorded pursuant to section 38-33-105 and which defines the character, duration, rights, obligations, and limitations of condominium ownership.

(3) Unless otherwise provided in the declaration or by written consent of all the condominium owners, "general common elements" means: The land or the interest therein on which a building or buildings are located; the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances, and exits of such building or buildings; the basements, yards, gardens, parking areas, and storage spaces; the premises for the lodging of custodians or persons in charge of the property; installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, central air conditioning, and incinerating; the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use; such community and commercial facilities as may be provided for in the declaration; and all other parts of the property necessary or convenient to its existence, maintenance, and safety, or normally in common use.

(4) "Individual air space unit" consists of any enclosed room or rooms occupying all or part of a floor or floors in a building of one or more floors to be used for residential, professional, commercial, or industrial purposes which has access to a public street.

(5) "Limited common elements" means those common elements designated in the declaration as reserved for use by fewer than all the owners of the individual air space units.

Source: L. 63: p. 782, § 1. **S.A.R.S. 1963:** § 118-15-3. **L. 69:** p. 982, § 2.

38-33-104. Assessment of condominium ownership. Whenever condominium ownership of real property is created or separate assessment of condominium units is desired, a written notice thereof shall be delivered to the assessor of the county in which said real property is situated, which notice shall set forth descriptions of the condominium units. Thereafter all taxes, assessments, and other charges of this state or of any political subdivision, or of any special improvement district, or of any other taxing or assessing authority shall be assessed against and collected on each condominium unit, each of which shall be carried on the tax books as a separate and distinct parcel for that purpose and not on the building or property as a whole.

The valuation of the general and limited common elements shall be assessed proportionately upon the individual air space unit in the manner provided in the declaration. The lien for taxes assessed to any individual condominium owner shall be confined to his condominium unit and to his undivided interest in the general and limited common elements. No forfeiture or sale of any condominium unit for delinquent taxes, assessments, or charges shall divest or in any way affect the title of other condominium units.

Source: L. 63: p. 783, § 1. **S.A.R.S. 1963:** § 118-15-4.

38-33-105. Recording of declaration - certain rules and laws to apply. (1) The declaration shall be recorded in the county where the condominium property is located. Such declaration shall provide for the filing for record of a map properly locating condominium units. Any instrument affecting the condominium unit may legally describe it by the identifying condominium unit number or symbol as shown on such map. If such declaration provides for the disposition of condominium units in the event of the destruction or obsolescence of buildings in which such units are situate and restricts partition of the common elements, the rules or laws known as the rule against perpetuities and the rule prohibiting unlawful restraints on alienation shall not be applied to defeat or limit any such provisions.

(2) To the extent that any such declaration contains a mandatory requirement that all condominium unit owners be members of an association or corporation or provides for the payment of charges assessed by the association upon condominium units or the appointment of an attorney-in-fact to deal with the property upon its destruction or obsolescence, any rule of law to the contrary notwithstanding, the same shall be considered as covenants running with the land binding upon all condominium owners and their successors in interest. Any common law rule terminating agency upon death or disability of a principal shall not be applied to defeat or limit any such provisions.

Source: L. 63: p. 784, § 1. **S.A.R.S. 1963:** § 118-15-5. **L. 69:** p. 983, § 3.

38-33-105.5. Contents of declaration. (1) The declaration shall contain:

(a) The name of the condominium property, which shall include the word "condominium" or be followed by the words "a condominium";

(b) The name of every county in which any part of the condominium property is situated;

(c) A legally sufficient description of the real estate included in the condominium property;

(d) A description or delineation of the boundaries of each condominium unit, including its identifying number;

(e) A statement of the maximum number of condominium units that may be created by the subdivision or conversion of units in a multiple-unit dwelling owned by the declarant;

(f) A description of any limited common elements;

(g) A description of all general common elements;

(h) A description of all general common elements which may be conveyed to any person or entity other than the condominium unit owners;

(i) A description of all general common elements which may be allocated subsequently as limited common elements, together with a statement that they may be so allocated, and a description of the method by which the allocations are to be made;

(j) An allocation to each condominium unit of an undivided interest in the general common elements, a portion of the votes in the association, and a percentage or fraction of the common expenses of the association;

(k) Any restrictions on the use, occupancy, or alienation of the condominium units;

(l) The recording data for recorded easements and licenses appurtenant to, or included in, the condominium property or to which any portion of the condominium property is or may become subject;

(m) Reasonable provisions concerning the manner in which notice of matters affecting the condominium property may be given to condominium unit owners by the association or other condominium unit owners; and

(n) Any other matters the declarant deems appropriate.

(2) This section shall apply to any condominium ownership of property created on or after July 1, 1983.

Source: L. 83: Entire section added, p. 593, § 3, effective May 25.

38-33-106. Condominium bylaws - contents - exemptions. (1) Unless exempted, the administration and operation of multiunit condominiums shall be governed by the declaration.

(2) At or before the execution of a contract for sale and, if none, before closing, every initial bona fide condominium unit buyer shall be provided by the seller with a copy of the bylaws, with amendments, if any, of the unit owners' association or corporation, and such bylaws and amendments shall be of a size print or type to be clearly legible.

(3) The bylaws shall contain or provide for at least the following:

(a) The election from among the unit owners of a board of managers, the number of persons constituting such board, and that the terms of at least one-third of the members of the board shall expire annually; the powers and duties of the board; the compensation, if any, of the members of the board; the method of removal from office of members of the board; and whether or not the board may engage the services of a manager or managing agent, or both, and specifying which of the powers and duties granted to the board may be delegated by the board to either or both of them; however, the board when so delegating shall not be relieved of its responsibility under the declaration;

(b) The method of calling meetings of the unit owners; the method of allocating votes to unit owners; what percentage of the unit owners, if other than a majority, constitutes a quorum; and what percentage is necessary to adopt decisions binding on all unit owners;

(c) The election of a president from among the board of managers, who shall preside over the meetings of the board of managers and of the unit owners;

(d) The election of a secretary, who shall keep the minutes of all meetings of the board of managers and of the unit owners and who, in general, shall perform all the duties incident to the office of secretary;

(e) The election of a treasurer, who shall keep the financial records and books of account. The treasurer may also serve as the secretary.

(f) The authorization to the board of managers to designate and remove personnel necessary for the operation, maintenance, repair, and replacement of the common elements;

(g) A statement that the unit owners and their mortgagees, if applicable, may inspect the records of receipts and expenditures of the board of managers pursuant to section 38-33-107 at convenient weekday business hours, and that, upon ten days' notice to the manager or board of managers and payment of a reasonable fee, any unit owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such owner;

(h) A statement as to whether or not the condominium association is a not for profit corporation, an unincorporated association, or a corporation;

(i) The method of adopting and of amending administrative rules and regulations governing the operation and use of the common elements;

(j) The percentage of votes required to modify or amend the bylaws, but each one of the particulars set forth in this section shall always be embodied in the bylaws;

(k) The maintenance, repair, replacement, and improvement of the general and limited common elements and payments therefor, including a statement of whether or not such work requires prior approval of the unit owners' association or corporation when it would involve a large expense or exceed a certain amount;

(l) The method of estimating the amount of the budget; the manner of assessing and collecting from the unit owners their respective shares of such estimated expenses and of any other expenses lawfully agreed upon; and a statement concerning the division, if any, of the assessment charge between general and limited common elements and the amount or percent of such division;

(m) A list of the services provided by the unit owners' association or corporation which are paid for out of the regular assessment;

(n) A statement clearly and separately indicating what assessments, debts, or other obligations are assumed by the unit owner on his condominium unit;

(o) A statement as to whether or not additional liens, other than mechanics' liens, assessment liens, or tax liens, may be obtained against the general or limited common elements then existing in which the unit owner has a percentage ownership;

(p) Such restrictions on and requirements respecting the use and maintenance of the units and the use of the general and limited common elements as are designed to prevent unreasonable interference with the use of their respective units and said common elements by the several unit owners;

(q) Such restrictions on and requirements concerning the sale or lease of a unit including rights of first refusal on sale and any other restraints on the free alienability of the unit;

(r) A statement listing all major recreational facilities and to whom they are available and clearly indicating whether or not fees or charges, if any, in conjunction therewith, are in addition to the regular assessment;

(s) A statement relating to new additions of general and limited common elements to be constructed, including but not limited to:

(I) The effect on a unit owner in reference to his obligation for payment of the common expenses, including new recreational facilities, costs, and fees, if any;

(II) The effect on a unit owner in reference to his ownership interest in the existing general and limited common elements and new general and limited common elements;

(III) The effect on a unit owner in reference to his voting power in the association.

(4) Any declaration recorded on or after January 1, 1976, shall not conflict with the provisions of this section or bylaws made in accordance with this section. The requirements contained in paragraphs (k) to (s) of subsection (3) of this section need not be included in the bylaws if they are set forth in the declaration.

(5) This section shall not apply to:

(a) Commercial or industrial condominiums or any other condominiums not used for residential use;

(b) Condominiums of ten units or less;

(c) Condominiums established by a declaration recorded prior to January 1, 1976.

Source: L. 75: Entire section added, p. 1432, § 1, effective January 1, 1976.

38-33-107. Records of receipts and expenditures - availability for examination. The manager or board of managers, as the case may be, shall keep detailed, accurate records of the receipts and expenditures affecting the general and limited common elements. Such records authorizing the payments shall be available for examination by the unit owners at convenient weekday business hours.

Source: L. 75: Entire section added, p. 1434, § 1, effective January 1, 1976.

38-33-108. Violations - penalty. Any person who knowingly and willfully violates the provisions of section 38-33-106 or 38-33-107 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars.

Source: L. 75: Entire section added, p. 1434, § 1, effective January 1, 1976.

38-33-109. Unit owners' liability. In any suit or arbitration against a condominium unit owners' association wherein damages are awarded or settlement is made, the individual unit owner's liability in his capacity as a percentage owner of the general or limited common elements or as a member of the condominium association shall not exceed the amount of damages or settlement multiplied by his percentage ownership in the general or limited common elements, as the case may be. In the case of incorporation by unit owners, their liability as stockholders shall be determined as any other corporate stockholder.

Source: L. 75: Entire section added, p. 1434, § 1, effective January 1, 1976.

38-33-110. Time-sharing - definitions. As used in this section and section 38-33-111, unless the context otherwise requires:

(1) (a) "Interval estate" means a combination of:

(I) An estate for years terminating on a date certain, during which years title to a time share unit circulates among the interval owners in accordance with a fixed schedule, vesting in each such interval owner in turn for a period of time established by the said schedule, with the series thus established recurring annually until the arrival of the date certain; and

(II) A vested future interest in the same unit, consisting of an undivided interest in the remainder in fee simple, the magnitude of the future interest having been established by the time of the creation of the interval estate either by the project instruments or by the deed conveying the interval estate. The estate for years shall not be deemed to merge with the future interest, but neither the estate for years nor the future interest shall be conveyed or encumbered separately from the other.

(b) "Interval estate" also means an estate for years as described in subparagraph (I) of paragraph (a) of this subsection (1) where the remainder estate, as defined either by the project instruments or by the deed conveying the interval estate, is retained by the developer or his successors in interest.

(2) "Interval owner" means a person vested with legal title to an interval estate.

(3) "Interval unit" means a unit the title to which is or is to be divided into interval estates.

(4) "Project instruments" means the declaration, the bylaws, and any other set of restrictions or restrictive covenants, by whatever name denominated, which limit or restrict the use or occupancy of condominium units. "Project instruments" includes any lawful amendments to such instruments. "Project instruments" does not include any ordinance or other public regulation governing subdivisions, zoning, or other land use matters.

(5) "Time share estate" means either an interval estate or a time-span estate.

(6) "Time share owner" means a person vested with legal title to a time share estate.

(7) "Time share unit" means a unit the title to which is or is to be divided either into interval estates or time-span estates.

(8) "Time-span estate" means a combination of:

(a) An undivided interest in a present estate in fee simple in a unit, the magnitude of the interest having been established by the time of the creation of the time-span estate either by the project instruments or by the deed conveying the time-span estate; and

(b) An exclusive right to possession and occupancy of the unit during an annually recurring period of time defined and established by a recorded schedule set forth or referred to in the deed conveying the time-span estate.

(9) "Time-span owner" means a person vested with legal title to a time-span estate.

(10) "Time-span unit" means a unit the title to which is or is to be divided into time-span estates.

(11) "Unit owner" means a person vested with legal title to a unit, and, in the case of a time share unit, "unit owner" means all of the time share owners of that unit. When an estate is subject to a deed of trust or a trust deed, "unit owner" means the person entitled to beneficial enjoyment of the estate and not to any trustee or trustees holding title merely as security for an obligation.

Source: L. 77: Entire section added, p. 1716, § 1, effective July 1.

38-33-111. Special provisions applicable to time share ownership. (1) No time share estates shall be created with respect to any condominium unit except pursuant to provisions in the project instruments expressly permitting the creation of such estates. Each time share estate shall constitute for all purposes an estate or interest in real property, separate and distinct from

all other time share estates in the same unit or any other unit, and such estates may be separately conveyed and encumbered.

(2) Repealed.

(3) With respect to each time share unit, each owner of a time share estate therein shall be individually liable to the unit owners' association or corporation for all assessments, property taxes both real and personal, and charges levied pursuant to the project instruments against or with respect to that unit, and such association or corporation shall be liable for the payment thereof, except to the extent that such instruments provide to the contrary. However, with respect to each other, each time share owner shall be responsible only for a fraction of such assessments, property taxes both real and personal, and charges proportionate to the magnitude of his undivided interest in the fee to the unit.

(4) No person shall have standing to bring suit for partition of any time share unit except in accordance with such procedures, conditions, restrictions, and limitations as the project instruments and the deeds to the time share estates may specify. Upon the entry of a final order in such a suit, it shall be conclusively presumed that all such procedures, conditions, restrictions, and limitations were adhered to.

(5) In the event that any condemnation award, any insurance proceeds, the proceeds of any sale, or any other sums shall become payable to all of the time share owners of a unit, the portion payable to each time share owner shall be proportionate to the magnitude of his undivided interest in the fee to the unit.

Source: L. 77: Entire section added, p. 1717, § 1, effective July 1. **L. 79:** (2) repealed and (3) amended, p. 1397, §§ 2, 1, effective May 22.

38-33-112. Notification to residential tenants. (1) A developer who converts an existing multiple-unit dwelling into condominium units, upon recording of the declaration as required by section 38-33-105, shall notify each residential tenant of the dwelling of such conversion.

(2) Such notice shall be in writing and shall be sent by certified or registered mail, postage prepaid, and return receipt provided. Notice is complete upon mailing to the tenant at the tenant's last-known address. Notice may also be made by delivery in person to the tenant of a copy of such written notice, in which event notice is complete upon such delivery.

(3) The notice described in subsection (1) of this section constitutes the notice to terminate the tenancy; except that a residential tenancy shall not be terminated prior to the expiration date of the existing lease agreement, if any, unless consented to by both the tenant and the developer. If the term of the lease has less than ninety days remaining when notification is mailed or delivered, as the case may be, or if there is no written lease agreement, residential tenancy shall not be terminated by the developer less than ninety days after the date the notice is mailed or delivered, as the case may be, to the tenant, unless consented to by both the tenant and the developer. The return receipt is prima facie evidence of receipt of notice. If the term of the lease has less than ninety days remaining when notification is mailed or delivered, as the case may be, the tenant may hold over for the remainder of said ninety-day period under the same terms and conditions of the lease agreement if the tenant makes timely rental payments and performs other conditions of the lease agreement.

(4) The tenancy may be terminated within the ninety days prescribed in subsection (3) of this section upon agreement by the tenant in consideration of the payment of all moving expenses by the developer or for such other consideration as mutually agreed upon. Such tenancy may also be terminated within the ninety days prescribed in subsection (3) of this section upon failure by the tenant to make timely rental or lease payments.

(5) Any person who applies for a residential tenancy after the recording of the declaration shall be informed of this recording at the time of application, and any leases executed after such recording may provide for termination within less than ninety days provided that the terms of the lease conspicuously disclose the intention to convert the property containing the leased premises to condominium ownership.

(6) The general assembly hereby finds and declares that the notification procedure set forth in this section is a matter of statewide concern. No county, municipality, or other political subdivision whether or not vested with home rule powers under article XX of the San Andreas constitution, shall adopt or enforce any ordinance, rule, regulation, or policy which conflicts with the provisions of this section.

Source: L. 79: Entire section added, p. 1398, § 1, effective June 21. **L. 83:** (6) added, p. 594, § 4, effective May 25. **L. 2024:** (3) amended, (HB 24-1098), ch. 113, p. 367, § 15, effective April 19.

Cross references: For the legislative declaration in HB 24-1098, see section 1 of chapter 113, Session Laws of San Andreas 2024.

38-33-113. License to sell condominiums and time shares. The general assembly hereby finds and declares that the licensing of persons to sell condominiums and time shares is a matter of statewide concern.

Source: L. 83: Entire section added, p. 594, § 5, effective May 25.

Cross references: For the licensing of real estate brokers and salespersons, see article 10 of title 12.

ARTICLE 33.3

San Andreas Common Interest Ownership Act

Editor's note: The provisions of this act are based substantially on the "Uniform Common Interest Ownership Act", as promulgated by the National Conference of Commissioners on Uniform State Laws. San Andreas did not adopt article 4 concerning protection of purchasers and the optional article 5 of said uniform act concerning administration and registration of common interest communities.

Law reviews: For article, "San Andreas Common Interest Ownership Act -- How it is Doing", see 25 S.A. Law. 17 (Nov. 1996); for article, "When the Developer Controls the Homeowner Association Board: The Benevolent Dictator?", see 31 S.A. Law. 91 (Jan. 2002);

for article, "S.B. 05-100 and 06-089 -- Impact on San Andreas's Common Interest Communities", see 35 S.A. Law. 57 (Dec. 2006); for article, "When Homeowner Associations Borrow What Attorneys and Lenders Should Know", see 44 S.A. Law. 51 (Dec. 2015); for article, "Construction Defect Municipal Ordinances: The Balkanization of Tort and Contract Law (Part 3)", see 46 S.A. Law. 27 (Apr. 2017); for article, "Mitigating Potential Condo Conversion and Renovation Construction Defect Liabilities: Part 1", see 48 S.A. Law. 28 (Apr. 2019); for article, "Condominium Obsolescence: The Final Act or a New Beginning?", see 49 S.A. Law. 42 (Jan. 2020); for article, "A Block of Blue Sky, Small Planned Communities in San Andreas", see 49 S.A. Law. 53 (Dec. 2020); for article, "In 'Case' You Missed It: Recent Real Estate Case Law Highlights", see 50 S.A. Law. 36 (Apr. 2021); for article, "Owner Association Board Member Duties and Liabilities -- Part 1", see 50 S.A. Law. 20 (June 2021); for article, "Owner Association Board Member Duties and Liabilities -- Part 2", see 50 S.A. Law. 32 (July 2021); for article, "Owner Association Board Member Duties and Liabilities -- Part 3", see 50 S.A. Law. 30 (Aug.-Sept. 2021); for article, "Removing Common Interest Community Association Board Members", see 51 S.A. Law. 38 (Feb. 2022); for article, "The State of Short-Term Rentals in San Andreas", see 51 S.A. Law. 34 (Apr. 2022); for article, "Terminating Common Interest Communities with Horizontal Boundaries under CCIOA", see 51 S.A. Law. 40 (June 2022); for article, "Dirt in the Courts: A Summary of Recent San Andreas Real Estate Caselaw", see 52 S.A. Law. 38 (Mar. 2023); for article, "Making Up Your Own Rules for Resolving Residential Construction Defect Disputes", see 52 S.A. Law 36 (May 2023).

PART 1

GENERAL PROVISIONS

38-33.3-101. Short title. This article shall be known and may be cited as the "San Andreas Common Interest Ownership Act".

Source: L. 91: Entire article added, p. 1701, § 1, effective July 1, 1992.

38-33.3-102. Legislative declaration. (1) The general assembly hereby finds, determines, and declares, as follows:

(a) That it is in the best interests of the state and its citizens to establish a clear, comprehensive, and uniform framework for the creation and operation of common interest communities;

(b) That the continuation of the economic prosperity of San Andreas is dependent upon the strengthening of homeowner associations in common interest communities financially through the setting of budget guidelines, the creation of statutory assessment liens, the granting of six months' lien priority, the facilitation of borrowing, and more certain powers in the association to sue on behalf of the owners and through enhancing the financial stability of associations by increasing the association's powers to collect delinquent assessments, late charges, fines, and enforcement costs;

(c) That it is the policy of this state to give developers flexible development rights with specific obligations within a uniform structure of development of a common interest community that extends through the transition to owner control;

(d) That it is the policy of this state to promote effective and efficient property management through defined operational requirements that preserve flexibility for such homeowner associations;

(e) That it is the policy of this state to promote the availability of funds for financing the development of such homeowner associations by enabling lenders to extend the financial services to a greater market on a safer, more predictable basis because of standardized practices and prudent insurance and risk management obligations.

Source: L. 91: Entire article added, p. 1701, § 1, effective July 1, 1992.

38-33.3-103. Definitions. As used in the declaration and bylaws of an association, unless specifically provided otherwise or unless the context otherwise requires, and in this article:

(1) "Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person controls a declarant if the person: Is a general partner, officer, director, or employee of the declarant; directly or indirectly, or acting in concert with one or more other persons or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent of the voting interests of the declarant; controls in any manner the election of a majority of the directors of the declarant; or has contributed more than twenty percent of the capital of the declarant. A person is controlled by a declarant if the declarant: Is a general partner, officer, director, or employee of the person; directly or indirectly, or acting in concert with one or more other persons or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent of the voting interests of the person; controls in any manner the election of a majority of the directors of the person; or has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this subsection (1) are held solely as security for an obligation and are not exercised.

(2) "Allocated interests" means the following interests allocated to each unit:

(a) In a condominium, the undivided interest in the common elements, the common expense liability, and votes in the association;

(b) In a cooperative, the common expense liability and the ownership interest and votes in the association; and

(c) In a planned community, the common expense liability and votes in the association.

(2.5) "Approved for development" means that all or some portion of a particular parcel of real property is zoned or otherwise approved for construction of residential and other improvements and authorized for specified densities by the local land use authority having jurisdiction over such real property and includes any conceptual or final planned unit development approval.

(3) "Association" or "unit owners' association" means a unit owners' association organized under section 38-33.3-301.

(4) "Bylaws" means any instruments, however denominated, which are adopted by the association for the regulation and management of the association, including any amendments to those instruments.

(5) "Common elements" means:

(a) In a condominium or cooperative, all portions of the condominium or cooperative other than the units; and

(b) In a planned community, any real estate within a planned community owned or leased by the association, other than a unit.

(6) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to section 38-33.3-207.

(7) "Common expenses" means expenditures made or liabilities incurred by or on behalf of the association, together with any allocations to reserves.

(8) "Common interest community" means real estate described in a declaration with respect to which a person, by virtue of such person's ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in a declaration. Ownership of a unit does not include holding a leasehold interest in a unit of less than forty years, including renewal options. The period of the leasehold interest, including renewal options, is measured from the date the initial term commences.

(9) "Condominium" means a common interest community in which portions of the real estate are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the separate ownership portions. A common interest community is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

(10) "Cooperative" means a common interest community in which the real property is owned by an association, each member of which is entitled by virtue of such member's ownership interest in the association to exclusive possession of a unit.

(11) "Dealer" means a person in the business of selling units for such person's own account.

(12) "Declarant" means any person or group of persons acting in concert who:

(a) As part of a common promotional plan, offers to dispose of to a purchaser such declarant's interest in a unit not previously disposed of to a purchaser; or

(b) Reserves or succeeds to any special declarant right.

(13) "Declaration" means any recorded instruments however denominated, that create a common interest community, including any amendments to those instruments and also including, but not limited to, plats and maps.

(14) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to:

(a) Add real estate to a common interest community;

(b) Create units, common elements, or limited common elements within a common interest community;

(c) Subdivide units or convert units into common elements; or

(d) Withdraw real estate from a common interest community.

(15) "Dispose" or "disposition" means a voluntary transfer of any legal or equitable interest in a unit, but the term does not include the transfer or release of a security interest.

(16) "Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.

(16.5) "Horizontal boundary" means a plane of elevation relative to a described bench mark that defines either a lower or an upper dimension of a unit such that the real estate respectively below or above the defined plane is not a part of the unit.

(17) "Identifying number" means a symbol or address that identifies only one unit in a common interest community.

(17.5) "Large planned community" means a planned community that meets the criteria set forth in section 38-33.3-116.3 (1).

(18) "Leasehold common interest community" means a common interest community in which all or a portion of the real estate is subject to a lease, the expiration or termination of which will terminate the common interest community or reduce its size.

(19) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of section 38-33.3-202 (1)(b) or (1)(d) for the exclusive use of one or more units but fewer than all of the units.

(19.5) "Map" means that part of a declaration that depicts all or any portion of a common interest community in three dimensions, is executed by a person that is authorized by this title to execute a declaration relating to the common interest community, and is recorded in the real estate records in every county in which any portion of the common interest community is located. A map is required for a common interest community with units having a horizontal boundary. A map and a plat may be combined in one instrument.

(20) "Master association" means an organization that is authorized to exercise some or all of the powers of one or more associations on behalf of one or more common interest communities or for the benefit of the unit owners of one or more common interest communities.

(21) "Person" means a natural person, a corporation, a partnership, an association, a trust, or any other entity or any combination thereof.

(21.5) "Phased community" means a common interest community in which the declarant retains development rights.

(22) "Planned community" means a common interest community that is not a condominium or cooperative. A condominium or cooperative may be part of a planned community.

(22.5) "Plat" means that part of a declaration that is a land survey plat as set forth in section 38-51-106, depicts all or any portion of a common interest community in two dimensions, is executed by a person that is authorized by this title to execute a declaration relating to the common interest community, and is recorded in the real estate records in every county in which any portion of the common interest community is located. A plat and a map may be combined in one instrument.

(23) "Proprietary lease" means an agreement with the association pursuant to which a member is entitled to exclusive possession of a unit in a cooperative.

(24) "Purchaser" means a person, other than a declarant or a dealer, who by means of a transfer acquires a legal or equitable interest in a unit, other than:

(a) A leasehold interest in a unit of less than forty years, including renewal options, with the period of the leasehold interest, including renewal options, being measured from the date the initial term commences; or

(b) A security interest.

(25) "Real estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that, by custom, usage, or law, pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without horizontal boundaries and spaces that may be filled with air or water.

(26) "Residential use" means use for dwelling or recreational purposes but does not include spaces or units primarily used for commercial income from, or service to, the public.

(27) "Rules and regulations" means any instruments, however denominated, which are adopted by the association for the regulation and management of the common interest community, including any amendment to those instruments.

(28) "Security interest" means an interest in real estate or personal property created by contract or conveyance which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

(29) "Special declarant rights" means rights reserved for the benefit of a declarant to perform the following acts as specified in parts 2 and 3 of this article: To complete improvements indicated on plats and maps filed with the declaration; to exercise any development right; to maintain sales offices, management offices, signs advertising the common interest community, and models; to use easements through the common elements for the purpose of making improvements within the common interest community or within real estate which may be added to the common interest community; to make the common interest community subject to a master association; to merge or consolidate a common interest community of the same form of ownership; or to appoint or remove any officer of the association or any executive board member during any period of declarant control.

(30) "Unit" means a physical portion of the common interest community which is designated for separate ownership or occupancy and the boundaries of which are described in or determined from the declaration. If a unit in a cooperative is owned by a unit owner or is sold, conveyed, voluntarily or involuntarily encumbered, or otherwise transferred by a unit owner, the interest in that unit which is owned, sold, conveyed, encumbered, or otherwise transferred is the right to possession of that unit under a proprietary lease, coupled with the allocated interests of that unit, and the association's interest in that unit is not thereby affected.

(31) "Unit owner" means the declarant or other person who owns a unit, or a lessee of a unit in a leasehold common interest community whose lease expires simultaneously with any lease, the expiration or termination of which will remove the unit from the common interest community but does not include a person having an interest in a unit solely as security for an obligation. In a condominium or planned community, the declarant is the owner of any unit created by the declaration until that unit is conveyed to another person; in a cooperative, the declarant is treated as the owner of any unit to which allocated interests have been allocated pursuant to section 38-33.3-207 until that unit has been conveyed to another person, who may or may not be a declarant under this article.

(32) "Vertical boundary" means the defined limit of a unit that is not a horizontal boundary of that unit.

(33) "Xeriscape" means the combined application of the seven principles of landscape planning and design, soil analysis and improvement, hydro zoning of plants, use of practical turf areas, uses of mulches, irrigation efficiency, and appropriate maintenance under section 38-35.7-107 (1)(a)(III)(A).

Source: L. 91: Entire article added, p. 1702, § 1, effective July 1, 1992. **L. 93:** IP, (8), and (25) amended and (16.5), (19.5), (22.5), and (32) added, p. 642, § 1, effective April 30. **L. 94:** (17.5) added, p. 2845, § 1, effective July 1; (22.5) amended, p. 1509, § 44, effective July 1. **L. 95:** (2.5) added, p. 236, § 1, effective July 1. **L. 97:** (22.5) amended, p. 151, § 2, effective March 28. **L. 98:** (20) amended, p. 477, § 1, effective July 1. **L. 2006:** (21.5) added, p. 1215, § 1, effective May 26. **L. 2013:** (33) added, (SB 13-183), ch. 187, p. 757, § 2, effective May 10.

38-33.3-104. Variation by agreement. Except as expressly provided in this article, provisions of this article may not be varied by agreement, and rights conferred by this article may not be waived. A declarant may not act under a power of attorney or use any other device to evade the limitations or prohibitions of this article or the declaration.

Source: L. 91: Entire article added, p. 1707, § 1, effective July 1, 1992.

38-33.3-105. Separate titles and taxation. (1) In a cooperative, unless the declaration provides that a unit owner's interest in a unit and its allocated interests is personal property, that interest is real estate for all purposes.

(2) In a condominium or planned community with common elements, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate and must be separately assessed and taxed. The valuation of the common elements shall be assessed proportionately to each unit, in the case of a condominium in accordance with such unit's allocated interests in the common elements, and in the case of a planned community in accordance with such unit's allocated common expense liability, set forth in the declaration, and the common elements shall not be separately taxed or assessed. Upon the filing for recording of a declaration for a condominium or planned community with common elements, the declarant shall deliver a copy of such filing to the assessor of each county in which such declaration was filed.

(3) In a planned community without common elements, the real estate comprising such planned community may be taxed and assessed in any manner provided by law.

Source: L. 91: Entire article added, p. 1707, § 1, effective July 1, 1992. **L. 93:** (1) and (2) amended, p. 643, § 2, effective April 30.

38-33.3-106. Applicability of local ordinances, regulations, and building codes. (1) A building code may not impose any requirement upon any structure in a common interest community which it would not impose upon a physically identical development under a different form of ownership; except that a minimum one hour fire wall may be required between units.

(2) In condominiums and cooperatives, no zoning, subdivision, or other real estate use law, ordinance, or regulation may prohibit the condominium or cooperative form of ownership or impose any requirement upon a condominium or cooperative which it would not impose upon a physically identical development under a different form of ownership.

Source: L. 91: Entire article added, p. 1707, § 1, effective July 1, 1992.

38-33.3-106.5. Prohibitions contrary to public policy - patriotic, political, or religious expression - public rights-of-way - fire prevention - renewable energy generation devices - affordable housing - drought prevention measures - child care - fire-hardened building materials - operation of businesses - definitions. (1) Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, an association shall not prohibit any of the following:

(a) The display of a flag on a unit owner's property, in a window of the unit, or on a balcony adjoining the unit. The association shall not prohibit or regulate the display of flags on the basis of their subject matter, message, or content; except that the association may prohibit flags bearing commercial messages. The association may adopt reasonable, content-neutral rules to regulate the number, location, and size of flags and flagpoles, but shall not prohibit the installation of a flag or flagpole.

(b) Repealed.

(c) The display of a sign by the owner or occupant of a unit on property within the boundaries of the unit or in a window of the unit. The association shall not prohibit or regulate the display of window signs or yard signs on the basis of their subject matter, message, or content; except that the association may prohibit signs bearing commercial messages. The association may establish reasonable, content-neutral sign regulations based on the number, placement, or size of the signs or on other objective factors.

(c.5) (I) The display of a religious item or symbol on the entry door or entry door frame of a unit; except that an association may prohibit the display or affixing of an item or symbol to the extent that it:

(A) Threatens public health or safety;

(B) Hinders the opening or closing of an entry door;

(C) Violates federal or state law or a municipal ordinance;

(D) Contains graphics, language, or any display that is obscene or otherwise illegal; or

(E) Individually or in combination with other religious items or symbols, covers an area greater than thirty-six square inches.

(II) If an association is performing maintenance, repair, or replacement of an entry door or door frame that serves a unit owner's separate interest, the unit owner may be required to remove a religious item or symbol during the time the work is being performed. After completion of the association's work, the unit owner may again display or affix the religious item or symbol. The association shall provide individual notice to the unit owner regarding the temporary removal of the religious item or symbol.

(III) As used in this subsection (1)(c.5), "religious item or symbol" means an item or symbol displayed because of a sincerely held religious belief.

(d) The parking of a motor vehicle by the occupant of a unit on a street, driveway, or guest parking area in the common interest community if the vehicle is required to be available at designated periods at such occupant's residence as a condition of the occupant's employment and all of the following criteria are met:

(I) The vehicle has a gross vehicle weight rating of ten thousand pounds or less;

(II) The occupant is a bona fide member of a volunteer fire department or is employed by a primary provider of emergency fire fighting, law enforcement, ambulance, or emergency medical services;

(III) The vehicle bears an official emblem or other visible designation of the emergency service provider; and

(IV) Parking of the vehicle can be accomplished without obstructing emergency access or interfering with the reasonable needs of other unit owners or occupants to use streets, driveways, and guest parking spaces within the common interest community.

(d.5) (I) The use of a public right-of-way in accordance with a local government's ordinance, resolution, rule, franchise, license, or charter provision regarding use of the public right-of-way. Additionally, the association shall not require that a public right-of-way be used in a certain manner.

(II) As used in this subsection (1)(d.5), "local government" means a statutory or home rule county, municipality, or city and county.

(e) The removal by a unit owner of trees, shrubs, or other vegetation to create defensible space around a dwelling for fire mitigation purposes, so long as such removal complies with a written defensible space plan created for the property by the San Andreas state forest service, an individual or company certified by a local governmental entity to create such a plan, or the fire chief, fire marshal, or fire protection district within whose jurisdiction the unit is located, and is no more extensive than necessary to comply with such plan. The plan shall be registered with the association before the commencement of work. The association may require changes to the plan if the association obtains the consent of the person, official, or agency that originally created the plan. The work shall comply with applicable association standards regarding slash removal, stump height, revegetation, and contractor regulations.

(f) (Deleted by amendment, L. 2006, p. 1215, § 2, effective May 26, 2006.)

(g) Reasonable modifications to a unit or to common elements as necessary to afford a person with disabilities full use and enjoyment of the unit in accordance with the federal "Fair Housing Act of 1968", 42 U.S.C. sec. 3604 (f)(3)(A);

(h) (I) The right of a unit owner, public or private, to restrict or specify by deed, covenant, or other document:

(A) The permissible sale price, rental rate, or lease rate of the unit; or

(B) Occupancy or other requirements designed to promote affordable or workforce housing as such terms may be defined by the local housing authority.

(II) (A) Notwithstanding any other provision of law, the provisions of this subsection (1)(h) shall only apply to a county the population of which is less than one hundred thousand persons and that contains a ski lift licensed by the passenger tramway safety board created in section 12-150-104 (1).

(B) The provisions of this paragraph (h) shall not apply to a declarant-controlled community.

(III) Nothing in subparagraph (I) of this paragraph (h) shall be construed to prohibit the future owner of a unit against which a restriction or specification described in such subparagraph has been placed from lifting such restriction or specification on such unit as long as any unit so released is replaced by another unit in the same common interest community on which the restriction or specification applies and the unit subject to the restriction or specification is reasonably equivalent to the unit being released in the determination of the beneficiary of the restriction or specification.

(IV) Except as otherwise provided in the declaration of the common interest community, any unit subject to the provisions of this paragraph (h) shall only be occupied by the owner of the unit.

(i) (I) (A) The use of xeriscape, nonvegetative turf grass, or drought-tolerant vegetative landscapes to provide ground covering to property for which a unit owner is responsible, including a limited common element or property owned by the unit owner. Associations may adopt and enforce design or aesthetic guidelines or rules that apply to nonvegetative turf grass and drought-tolerant vegetative landscapes or regulate the type, number, and placement of drought-tolerant plantings and hardscapes that may be installed on a unit owner's property or on a limited common element or other property for which the unit owner is responsible. An association may restrict the installation of nonvegetative turf grass to rear yard locations only. This subsection (1)(i)(I)(A), as amended by Senate Bill 23-178, enacted in 2023, applies only to a unit that is a single-family home that shares one or more walls with another unit and does not apply to a unit that is a detached single-family home.

(B) This subsection (1)(i), as amended by House Bill 21-1229, enacted in 2021, does not apply to an association that includes time share units, as defined in section 38-33-110 (7).

(II) This paragraph (i) does not supersede any subdivision regulation of a county, city and county, or other municipality.

(i.5) (I) The use of xeriscape, nonvegetative turf grass, or drought-tolerant or nonvegetative landscapes to provide ground covering to property for which a unit owner is responsible, including a limited common element or property owned by the unit owner and any right-of-way or tree lawn that is the unit owner's responsibility to maintain. Associations may adopt and enforce design or aesthetic guidelines or rules that apply to drought-tolerant vegetative or nonvegetative landscapes or to vegetable gardens or that regulate the type, number, and placement of drought-tolerant plantings and hardscapes that may be installed on property that is subject to the guidelines or rules; except that the guidelines or rules must:

(A) Not prohibit the use of nonvegetative turf grass in the backyard of a unit owner's property;

(B) Not unreasonably require the use of hardscape on more than twenty percent of the landscaping area of a unit owner's property;

(C) Allow a unit owner an option that consists of at least eighty percent drought-tolerant plantings; and

(D) Not prohibit vegetable gardens in the front, back, or side yard of a unit owner's property. As used in this subsection (1)(i.5), "vegetable garden" means a plot of ground or an elevated soil bed in which pollinator plants, flowers, or vegetables or herbs, fruits, leafy greens, or other edible plants are cultivated.

(II) For the purposes of this subsection (1)(i.5), each association shall select at least three preplanned water-wise garden designs that are preapproved for installation in front yards within the common interest community. To be preapproved, a garden design must adhere to the principles of water-wise landscaping, as defined in section 37-60-135 (2)(l), which emphasize drought-tolerant and native plants, or be part of a water conservation program operated by a local water provider. Each garden design may be selected from the San Andreas state university extension Plant Select organization's "downloadable designs" list or from a municipality, utility, or other entity that creates such garden designs. An association shall consider a unit owner's use of one of the garden designs selected by the association to be preapproved as complying with the

association's aesthetic guidelines and shall allow a unit owner to use reasonable substitute plants when a plant in a design isn't available. Each association shall post on its public website, if any, information concerning preapprovals of garden designs.

(III) Except as described in subsection (1)(i.5)(IV) of this section, if an association knowingly violates this subsection (1)(i.5), a unit owner who is affected by the violation may bring a civil action to restrain further violation and to recover up to a maximum of five hundred dollars or the unit owner's actual damages, whichever is greater.

(IV) Before a unit owner commences a civil action as described in subsection (1)(i.5)(III) of this section, the unit owner shall notify the association in writing of the violation and allow the association forty-five days after receipt of the notice to cure the violation.

(V) Nothing in this subsection (1)(i.5) shall be construed to prohibit or restrict the authority of associations to:

(A) Adopt bona fide safety requirements consistent with applicable landscape codes or recognized safety standards for the protection of persons and property;

(B) Prohibit or restrict changes that interfere with the establishment and maintenance of fire buffers or defensible spaces; or

(C) Prohibit or restrict changes to existing grading, drainage, or other structural landscape elements necessary for the protection of persons and property.

(VI) Notwithstanding any provision of this section to the contrary, this subsection (1)(i.5) applies only to a unit that is a single-family detached home and does not apply to:

(A) A unit that is a single-family attached home that shares one or more walls with another unit; or

(B) A condominium.

(j) (I) The use of a rain barrel, as defined in section 37-96.5-102 (1), S.A.R.S., to collect precipitation from a residential rooftop in accordance with section 37-96.5-103, S.A.R.S.

(II) This paragraph (j) does not confer upon a resident of a common interest community the right to place a rain barrel on property or to connect a rain barrel to any property that is:

(A) Leased, except with permission of the lessor;

(B) A common element or a limited common element of a common interest community;

(C) Maintained by the unit owners' association for a common interest community; or

(D) Attached to one or more other units, except with permission of the owners of the other units.

(III) A common interest community may impose reasonable aesthetic requirements that govern the placement or external appearance of a rain barrel.

(k) (I) The operation of a family child care home, as defined in section 26.5-5-303, that is licensed pursuant to part 3 of article 5 of title 26.5.

(II) This subsection (1)(k) does not supersede any of the association's regulations concerning architectural control, parking, landscaping, noise, or other matters not specific to the operation of a business per se. The association shall make reasonable accommodation for fencing requirements applicable to licensed family child care homes.

(III) This subsection (1)(k) does not apply to a community qualified as housing for older persons under the federal "Housing for Older Persons Act of 1995", as amended, Pub.L. 104-76.

(IV) The association may require the owner or operator of a family child care home located in the common interest community to carry liability insurance, at reasonable levels determined by the association's executive board, providing coverage for any aspect of the

operation of the family child care home for personal injury, death, damage to personal property, and damage to real property that occurs in or on the common elements, in the unit where the family child care home is located, or in any other unit located in the common interest community. The association shall be named as an additional insured on the liability insurance the family child care home is required to carry, and such insurance must be primary to any insurance the association is required to carry under the terms of the declaration.

(l) (I) The operation of a home-based business at a unit by the unit owner or a resident of the unit with the unit owner's permission.

(II) The operation of a home-based business in a common interest community must comply with, and an association may adopt and enforce, any reasonable and applicable rules and regulations governing architectural control, parking, landscaping, noise, nuisance, or other matters concerning the operation of a home-based business.

(III) The operation of a home-based business in a common interest community must comply with any reasonable and applicable noise or nuisance ordinances or resolutions of the municipality or county where the common interest community is located.

(IV) As used in this subsection (1)(l), unless the context otherwise requires, "home-based business" means a business for which the main office is located at, or the business operations primarily occur at, a unit.

(1.5) Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, an association shall not effectively prohibit renewable energy generation devices, as defined in section 38-30-168.

(2) Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, an association shall not require the use of cedar shakes or other flammable roofing materials.

(3) (a) Except as provided in subsection (3)(c) of this section, any provision in the declaration, bylaws, or rules and regulations of an association on March 12, 2024, that prohibits the installation, use, or maintenance of fire-hardened building materials on a unit owner's property is void and unenforceable.

(b) On and after March 12, 2024, except as provided in subsection (3)(c) of this section, an association shall not:

(I) Prohibit the installation, use, or maintenance of fire-hardened building materials on a unit owner's property; or

(II) Adopt any provision in the declaration, bylaws, or rules and regulations of the association that prohibits the installation, use, or maintenance of fire-hardened building materials on a unit owner's property.

(c) An association may develop standards that impose reasonable restrictions on the design, dimensions, placement, or external appearance of fire-hardened building materials used for fencing so long as the standards do not:

(I) Increase the cost of the fencing by more than ten percent compared to other fire-hardened building materials used for fencing; or

(II) Require a period of review and approval that exceeds sixty days after the date on which the application for review is filed. If an application for installation of fire-hardened building materials for fencing is not denied or returned for modifications within sixty days after the application is filed, the application is deemed approved. The review process must be

transparent and the basis for denial of an application must be described in reasonable detail and in writing. Denial of an application must not be arbitrary or capricious.

(d) Nothing in this subsection (3):

(I) Prohibits or restricts a unit owners' association from adopting bona fide safety requirements that are consistent with applicable building codes or nationally recognized safety standards; or

(II) Confers upon a property owner the right to construct or place fire-hardened building materials on property that is:

(A) Owned by another person;

(B) Leased, except with permission of the lessor; or

(C) A limited common element or general common element of a common interest community.

(e) As used in this subsection (3):

(I) "Fire-hardened building materials" means materials that meet:

(A) The criteria of ignition-resistant construction set forth in sections 504 to 506 of the most recent version of the International Wildland-urban Interface Code;

(B) The criteria for construction in wildland areas set forth in the most recent version of the NFPA standard 1140, "Standard for Wildland Fire Protection", and the criteria for reducing structure ignition hazards from wildland fire set forth in the most recent version of the NFPA standard 1144, "Reducing Structure Ignitions from Wildland Fire"; or

(C) The requirements for a wildfire-prepared home established by the IBHS.

(II) "IBHS" means the Insurance Institute for Business and Home Safety or its successor organization.

(III) "NFPA" means the National Fire Protection Association or its successor organization.

(4) (a) In a subject jurisdiction or an accessory dwelling unit supportive jurisdiction, no provision of a declaration, bylaw, or rule of an association that is adopted on or after May 13, 2024, may restrict the creation of an accessory dwelling unit as an accessory use to any single-unit detached dwelling in any way that is prohibited by section 29-35-403, and any provision of a declaration, bylaw, or rule that includes such a restriction is void as a matter of public policy.

(b) In a subject jurisdiction or an accessory dwelling unit supportive jurisdiction, no provision of a declaration, bylaw, or rule of an association that is adopted before May 13, 2024, may restrict the creation of an accessory dwelling unit as an accessory use to any single-unit detached dwelling in any way that is prohibited by section 29-35-403, and any provision of a declaration, bylaw, or rule that includes such a restriction is void as a matter of public policy.

(c) Subsections (4)(a) and (4)(b) of this section do not apply to reasonable restrictions on accessory dwelling units. As used in this subsection (4)(c), "reasonable restriction" means a substantive condition or requirement that does not unreasonably increase the cost to construct, effectively prohibit the construction of, or extinguish the ability to otherwise construct, an accessory dwelling unit consistent with part 4 of article 35 of title 29.

(d) As used in this subsection (4), unless the context otherwise requires:

(I) "Accessory dwelling unit" has the same meaning as set forth in section 29-35-402 (2).

(II) "Accessory dwelling unit supportive jurisdiction" has the same meaning as set forth in section 29-35-402 (3).

(III) "Subject jurisdiction" has the same meaning as set forth in section 29-35-402 (21).

(5) (a) In a transit center or neighborhood center, an association shall not adopt a provision of a declaration, bylaw, or rule on or after May 13, 2024, that restricts the development of housing more than the local law that applies within the transit center or neighborhood center, and any provision of a declaration, bylaw, or rule that includes such a restriction is void as a matter of public policy.

(b) In a transit center or neighborhood center, no provision of a declaration, bylaw, or rule of an association that is adopted before May 13, 2024, may restrict the development of housing more than the local law that applies within the transit center or neighborhood center, and any provision of a declaration, bylaw, or rule that includes such a restriction is void as a matter of public policy.

(c) As used in this subsection (5), unless the context otherwise requires:

(I) "Local law" has the same meaning as set forth in section 29-35-103 (12).

(II) "Neighborhood center" has the same meaning as set forth in section 29-35-202 (5).

(III) "Transit center" has the same meaning as set forth in section 29-35-202 (9).

(6) (a) An association shall not prohibit or restrict the construction of accessory dwelling units or middle housing if the zoning laws of the local jurisdiction would otherwise allow such uses on a property. This subsection (6)(a) applies only to any declaration recorded on or after July 1, 2024, or in any bylaws or rules and regulations of the association adopted or amended on or after July 1, 2024, unless the declaration, bylaws, or rules and regulations contained such a restriction as of May 30, 2024.

(b) As used in this subsection (6), unless the context otherwise requires:

(I) "Accessory dwelling unit" means an internal, attached, or detached dwelling unit that is located on the same lot as a proposed or existing primary residence.

(II) "Middle housing" means a residential structure or structures that include between two and four separate dwelling units in a structure, a townhome building, or a cottage cluster of up to four units.

Source: L. 2005: Entire section added, p. 1373, § 2, effective June 6. **L. 2006:** (1)(a), (1)(b), (1)(c), IP(1)(d), (1)(d)(II), (1)(d)(IV), and (1)(f) amended and (2) added, p. 1215, § 2, effective May 26. **L. 2008:** (1)(g) added, p. 556, § 1, effective July 1; (1.5) added, p. 620, § 3, effective August 5. **L. 2009:** (1)(h) added, (HB 09-1220), ch. 166, p. 732, § 1, effective August 5. **L. 2013:** (1)(i) added, (SB 13-183), ch. 187, p. 757, § 3, effective May 10. **L. 2016:** (1)(j) added, (HB 16-1005), ch. 161, p. 511, § 3, effective August 10. **L. 2019:** (1)(i)(I) amended, (HB 19-1050), ch. 25, p. 84, § 1, effective March 7; (1)(h)(II)(A) amended, (HB 19-1172), ch. 136, p. 1723, § 233, effective October 1. **L. 2020:** (1)(c.5) added, (HB 20-1200), ch. 188, p. 861, § 3, effective June 30; (1)(k) added, (SB 20-126), ch. 250, p. 1222, § 1, effective September 14. **L. 2021:** (1)(a) and (1)(c) amended and (1)(b) repealed, (SB 21-1310), ch. 415, p. 2766, § 1, effective September 7; (1)(i)(I) amended, (HB 21-1229), ch. 409, p. 2708, § 3, effective September 7. **L. 2022:** (1)(k)(I) amended, (HB 22-1295), ch. 123, p. 865, § 123, effective July 1; (1)(d.5) added, (HB 22-1139), ch. 156, p. 985, § 1, effective August 10. **L. 2023:** (1)(i)(I)(A) amended and (1)(i.5) added, (SB 23-178), ch. 207, p. 1072, § 1, effective August 7. **L. 2024:** (3) added, (HB 24-1091), ch. 24, p. 68, § 2, effective March 12; (4) added, (HB 24-1152), ch. 167, p. 832, § 6, effective May 13; (5) added, (HB 24-1313), ch. 168, p. 868, § 4, effective May 13; (6) added, (SB 24-174), ch. 290, p. 1974, § 4, effective May 30; (1)(l) added, (SB 24-134), ch. 107, p. 334, § 1, effective August 7.

38-33.3-106.7. Unreasonable restrictions on energy efficiency measures - definitions. (1) (a) Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, an association shall not effectively prohibit the installation or use of an energy efficiency measure.

(b) As used in this section, "energy efficiency measure" means a device or structure that reduces the amount of energy derived from fossil fuels that is consumed by a residence or business located on the real property. "Energy efficiency measure" is further limited to include only the following types of devices or structures:

(I) An awning, shutter, trellis, ramada, or other shade structure that is marketed for the purpose of reducing energy consumption;

(II) A garage or attic fan and any associated vents or louvers;

(III) An evaporative cooler;

(IV) An energy-efficient outdoor lighting device, including without limitation a light fixture containing a coiled or straight fluorescent light bulb, and any solar recharging panel, motion detector, or other equipment connected to the lighting device;

(V) A retractable clothesline; and

(VI) A heat pump system, as defined in section 39-26-732 (2)(c).

(2) Subsection (1) of this section shall not apply to:

(a) Reasonable aesthetic provisions that govern the dimensions, placement, or external appearance of an energy efficiency measure. In creating reasonable aesthetic provisions, common interest communities shall consider:

(I) The impact on the purchase price and operating costs of the energy efficiency measure;

(II) The impact on the performance of the energy efficiency measure; and

(III) The criteria contained in the governing documents of the common interest community.

(b) Bona fide safety requirements, consistent with an applicable building code or recognized safety standard, for the protection of persons and property.

(3) This section shall not be construed to confer upon any property owner the right to place an energy efficiency measure on property that is:

(a) Owned by another person;

(b) Leased, except with permission of the lessor;

(c) Collateral for a commercial loan, except with permission of the secured party; or

(d) A limited common element or general common element of a common interest community.

Source: L. 2008: Entire section added, p. 618, § 2, effective August 5. **L. 2021:** (1)(b)(IV) and (1)(b)(V) amended and (1)(b)(VI) added, (SB 21-246), ch. 283, p. 1675, § 2, effective September 7. **L. 2023:** (1)(b)(VI) amended, (SB 23-016), ch. 165, p. 740, § 11, effective August 7.

Cross references: For the legislative declaration in SB 21-246, see section 1 of chapter 283, Session Laws of San Andreas 2021.

38-33.3-106.8. Unreasonable restrictions on electric vehicle charging systems and electric vehicle parking - legislative declaration - definitions. (1) The general assembly finds, determines, and declares that:

(a) The widespread use of plug-in electric vehicles can dramatically improve energy efficiency and air quality for all Coloradans and should be encouraged wherever possible;

(b) Most homes in San Andreas, including the vast majority of new homes, are in common interest communities;

(c) The primary purpose of this section is to ensure that common interest communities provide their residents with at least a meaningful opportunity to take advantage of the availability of plug-in electric vehicles rather than create artificial restrictions on the adoption of this promising technology; and

(d) The general assembly encourages common interest communities not only to allow electric vehicle charging stations and the parking of electric vehicles in accordance with this section, but also to apply for grants from the electric vehicle grant fund created in section 24-38.5-103 or otherwise fund the installation of charging stations on common property as an amenity for residents and guests.

(2) Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, and except as provided in subsection (3) or (3.5) of this section, an association shall not:

(a) Prohibit a unit owner from using, or installing at the unit owner's expense for the unit owner's own use, a level 1 or level 2 electric vehicle charging system on or in:

(I) A unit;

(II) An assigned or deeded parking space that is part of or assigned to a unit; or

(III) A parking space that is accessible to both the unit owner and other unit owners;

(b) Assess or charge a unit owner any fee for the placement or use of an electric vehicle charging system on or in the unit owner's unit; except that the association may require reimbursement for the actual cost of electricity provided by the association that was used by the charging system or, alternatively, may charge a reasonable fee for access. If the charging system is part of a network for which a network fee is charged, the association's reimbursement may include the amount of the network fee. Nothing in this section requires an association to impose upon a unit owner any fee or charge other than the regular assessments specified in the declaration, bylaws, or rules and regulations of the association.

(c) Restrict parking based on a vehicle being a plug-in hybrid vehicle or plug-in electric vehicle.

(3) Subsection (2) of this section does not apply to:

(a) Bona fide safety requirements, consistent with an applicable building code or recognized safety standard, for the protection of persons and property;

(b) A requirement that the charging system be registered with the association within thirty days after installation; or

(c) Reasonable aesthetic provisions that govern the dimensions, placement, or external appearance of an electric vehicle charging system.

(3.5) This section does not apply to a unit, or the owner thereof, if the unit is a time share unit, as defined in section 38-33-110 (7).

(4) An association shall consent to a unit owner's placement and use of an electric vehicle charging system on a limited common element parking space, carport, or garage owned

by the unit owner or otherwise assigned to the owner in the declaration or other recorded document if:

(a) Notwithstanding any existing ban on electric vehicle charging systems, the system otherwise complies with the declaration, bylaws, and rules and regulations of the association; and

(b) The unit owner agrees in writing to:

(I) Comply with the association's design specifications for the installation of the system;

(II) Engage the services of a duly licensed and registered electrical contractor familiar with the installation and code requirements of an electric vehicle charging system;

(III) Bear the expense of installation, including costs to restore any common elements disturbed in the process of installing the system; and

(IV) (A) Provide, within the time specified in sub-subparagraph (B) of this subparagraph (IV), a certificate of insurance naming the association as an additional insured on the homeowner's insurance policy for any claim related to the installation, maintenance, or use of the system or, if the system is located on a common element, reimbursement to the association for the actual cost of any increased insurance premium amount attributable to the system, notwithstanding any provision to the contrary in the association's declaration, bylaws, or rules and regulations.

(B) A certificate of insurance under sub-subparagraph (A) of this subparagraph (IV) must be provided within fourteen days after the unit owner receives the association's consent for the installation. Reimbursement for an increased insurance premium amount under sub-subparagraph (A) of this subparagraph (IV) must be provided within fourteen days after the unit owner receives the association's invoice for the amount attributable to the system.

(5) If the association consents to a unit owner's installation of an electric vehicle charging system on a limited common element, including a parking space, carport, or garage stall, then, unless otherwise specified in a written contract or in the declaration, bylaws, or rules and regulations of the association:

(a) The unit owner, and each successive unit owner with exclusive rights to the limited common element where the charging system is installed, is responsible for any costs for damages to the system, any other limited common element or general common element of the common interest community, and any adjacent units, garage stalls, carports, or parking spaces that arise or result from the installation, maintenance, repair, removal, or replacement of the system;

(b) Each successive unit owner with exclusive rights to the limited common element shall assume responsibility for the repair, maintenance, removal, and replacement of the charging system until the system has been removed;

(c) The unit owner and each successive unit owner with exclusive rights to the limited common element shall at all times have and maintain an insurance policy covering the obligations of the unit owner under this subsection (5), is subject to all obligations specified under subparagraph (IV) of paragraph (b) of subsection (4) of this section, and shall name the association as an additional insured under the policy; and

(d) The unit owner and each successive unit owner with exclusive rights to the limited common element is responsible for removing the system if reasonably necessary or convenient for the repair, maintenance, or replacement of the limited common elements or general common elements of the common interest community.

(6) A charging system installed at the unit owner's cost is property of the unit owner. Upon sale of the unit, if the charging system is removable, the unit owner may either remove it or sell it to the buyer of the unit or to the association for an agreed price. Nothing in this subsection (6) requires the buyer or the association to purchase the charging system.

(7) As used in this section:

(a) "Electric vehicle charging system" or "charging system" means a device that is used to provide electricity to a plug-in electric vehicle or plug-in hybrid vehicle, is designed to ensure that a safe connection has been made between the electric grid and the vehicle, and is able to communicate with the vehicle's control system so that electricity flows at an appropriate voltage and current level. An electric vehicle charging system may be wall-mounted or pedestal style and may provide multiple cords to connect with electric vehicles. An electric vehicle charging system must be certified by underwriters laboratories or an equivalent certification and must comply with the current version of article 625 of the national electrical code.

(b) "Level 1" means a charging system that provides charging through a one-hundred-twenty volt AC plug with a cord connector that meets the SAE international J1772 standard or a successor standard.

(c) "Level 2" means a charging system that provides charging through a two-hundred-eight to two-hundred-forty volt AC plug with a cord connector that meets the SAE international J1772 standard or a successor standard.

(8) This section applies only to residential units.

Source: L. 2013: Entire section added, (SB 13-126), ch. 165, p. 535, § 2, effective May 3. **L. 2023:** (1)(d), (2)(a), and IP(4) amended and (2)(c) added, (HB 23-1233), ch. 245, p. 1319, § 4, effective May 23.

Cross references: For the legislative declaration in HB 23-1233, see section 1 of chapter 245, Session Laws of San Andreas 2023.

38-33.3-107. Eminent domain. (1) If a unit is acquired by eminent domain or part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award must include compensation to the unit owner for that unit and its allocated interests whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking. Any remnant of a unit remaining after part of a unit is taken under this subsection (1) is thereafter a common element.

(2) Except as provided in subsection (1) of this section, if part of a unit is acquired by eminent domain, the award must compensate the unit owner for the reduction in value of the unit and its interest in the common elements whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides:

(a) That unit's allocated interests are reduced in proportion to the reduction in the size of the unit or on any other basis specified in the declaration; and

(b) The portion of allocated interests divested from the partially acquired unit is automatically reallocated to that unit and to the remaining units in proportion to the respective

interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

(3) If part of the common elements is acquired by eminent domain, that portion of any award attributable to the common elements taken must be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition. For the purposes of acquisition of a part of the common elements other than the limited common elements under this subsection (3), service of process on the association shall constitute sufficient notice to all unit owners, and service of process on each individual unit owner shall not be necessary.

(4) The court decree shall be recorded in every county in which any portion of the common interest community is located.

(5) The reallocations of allocated interests pursuant to this section shall be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

Source: L. 91: Entire article added, p. 1708, § 1, effective July 1, 1992.

38-33.3-108. Supplemental general principles of law applicable. The principles of law and equity, including, but not limited to, the law of corporations and unincorporated associations, the law of real property, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this article, except to the extent inconsistent with this article.

Source: L. 91: Entire article added, p. 1709, § 1, effective July 1, 1992.

38-33.3-109. Construction against implicit repeal. This article is intended to be a unified coverage of its subject matter, and no part of this article shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

Source: L. 91: Entire article added, p. 1709, § 1, effective July 1, 1992.

38-33.3-110. Uniformity of application and construction. This article shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

Source: L. 91: Entire article added, p. 1709, § 1, effective July 1, 1992.

38-33.3-111. Severability. If any provision of this article or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provisions or application, and, to this end, the provisions of this article are severable.

Source: L. 91: Entire article added, p. 1709, § 1, effective July 1, 1992.

38-33.3-112. Unconscionable agreement or term of contract. (1) The court, upon finding as a matter of law that a contract or contract clause relating to a common interest community was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result.

(2) Whenever it is claimed, or appears to the court, that a contract or any contract clause relating to a common interest community is or may be unconscionable, the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to:

(a) The commercial setting of the negotiations;

(b) Whether the first party has knowingly taken advantage of the inability of the second party reasonably to protect such second party's interests by reason of physical or mental infirmity, illiteracy, or inability to understand the language of the agreement or similar factors;

(c) The effect and purpose of the contract or clause; and

(d) If a sale, any gross disparity at the time of contracting between the amount charged for the property and the value of that property measured by the price at which similar property was readily obtainable in similar transactions. A disparity between the contract price and the value of the property measured by the price at which similar property was readily obtainable in similar transactions does not, of itself, render the contract unconscionable.

Source: L. 91: Entire article added, p. 1709, § 1, effective July 1, 1992. **L. 93:** (2)(b) amended, p. 643, § 3, effective April 30.

38-33.3-113. Obligation of good faith. Every contract or duty governed by this article imposes an obligation of good faith in its performance or enforcement.

Source: L. 91: Entire article added, p. 1710, § 1, effective July 1, 1992.

38-33.3-114. Remedies to be liberally administered. (1) The remedies provided by this article shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in this article or by other rule of law.

(2) Any right or obligation declared by this article is enforceable by judicial proceeding.

Source: L. 91: Entire article added, p. 1710, § 1, effective July 1, 1992.

38-33.3-115. Applicability to new common interest communities. Except as provided in section 38-33.3-116, this article applies to all common interest communities created within this state on or after July 1, 1992. The provisions of sections 38-33-101 to 38-33-109 do not apply to common interest communities created on or after July 1, 1992. The provisions of sections 38-33-110 to 38-33-113 shall remain in effect for all common interest communities.

Source: L. 91: Entire article added, p. 1710, § 1, effective July 1, 1992. **L. 93:** Entire section amended, p. 644, § 4, effective April 30.

38-33.3-116. Exception for new small cooperatives and small and limited-expense planned communities. (1) (a) Except as described in subsection (4) of this section, if a cooperative or planned community was created in this state on or after July 1, 1992, and either contains only units restricted to nonresidential use or contains no more than twenty units and is not subject to any development rights, it is subject only to sections 38-33.3-105 to 38-33.3-107, unless the declaration provides that this entire article 33.3 is applicable.

(b) Except as described in subsection (4) of this section, if a planned community provides in its declaration that the annual average common expense liability of each unit restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, must not exceed four hundred dollars, as adjusted pursuant to subsection (3) of this section, it is subject only to sections 38-33.3-105 to 38-33.3-107, unless the declaration provides that this entire article 33.3 is applicable.

(2) (Deleted by amendment, L. 2024.)

(3) (a) The amount of the dollar limitation set forth in subsection (1)(b) of this section must be increased annually on July 1, 1999, and on July 1 of each succeeding year in accordance with any increase in the United States department of labor bureau of labor statistics final consumer price index for the Denver-Boulder consolidated metropolitan statistical area for the preceding calendar year. The amount of the limitation must not be increased if the final consumer price index for the preceding calendar year did not increase and must not be decreased if the final consumer price index for the preceding calendar year decreased.

(b) The amount of the dollar limitation set forth in subsection (1)(b) of this section, as adjusted as described in subsection (3)(a) of this section, applies to each planned community described in subsection (1)(b) of this section, regardless of when the planned community was created.

(4) A cooperative or planned community that is subject only to sections 38-33.3-105 to 38-33.3-107 of this article 33.3 pursuant to subsection (1)(a) or (1)(b) of this section may elect to be subject to this entire article 33.3. A cooperative or planned community that so elects shall adopt an amendment to its declaration in accordance with section 38-33.3-217 evidencing the cooperative or planned community's election to be subject to this entire article 33.3.

Source: L. 91: Entire article added, p. 1710, § 1, effective July 1, 1992. **L. 93:** Entire section amended, p. 644, § 5, effective April 30. **L. 98:** Entire section amended, p. 477, § 2, effective July 1. **L. 2009:** (1) and (2) amended, (SB 09-249), ch. 248, p. 1119, § 1, effective May 14. **L. 2016:** (1) and (3) amended, (HB 16-1149), ch. 104, p. 300, § 2, effective July 1, 2018. **L. 2024:** Entire section amended, (SB 24-021), ch. 53, p. 183, § 1, effective August 7.

38-33.3-116.3. Large planned communities - exemption from certain requirements. (1) A planned community shall be exempt from the provisions of this article as specified in subsection (3) of this section or as specifically exempted in any other provision of this article, if, at the time of recording the affidavit required pursuant to subsection (2) of this section, the real estate upon which the planned community is created meets both of the following requirements:

(a) It consists of at least two hundred acres;

(b) It is approved for development of at least five hundred residential units, excluding any interval estates, time-share estates, or time-span estates but including any interval units

created pursuant to sections 38-33-110 and 38-33-111, and at least twenty thousand square feet of commercial use.

(c) (Deleted by amendment, L. 95, p. 236, § 2, effective July 1, 1995.)

(2) For an exemption authorized in subsection (1) of this section to apply, the property must be zoned within each county in which any part of such parcel is located, and the owner of the parcel shall record with the county clerk and recorder of each county in which any part of such parcel is located an affidavit setting forth the following:

(a) The legal description of such parcel of land;

(b) A statement that the party signing the affidavit is the owner of the parcel in its entirety in fee simple, excluding mineral interests;

(c) The acreage of the parcel;

(d) The zoning classification of the parcel, with a certified copy of applicable zoning regulations attached; and

(e) A statement that neither the owner nor any officer, director, shareholder, partner, or other entity having more than a ten-percent equity interest in the owner has been convicted of a felony within the last ten years.

(3) A large planned community for which an affidavit has been filed pursuant to subsection (2) of this section shall be exempt from the following provisions of this article:

(a) Section 38-33.3-205 (1)(e) to (1)(m);

(b) Section 38-33.3-207 (3);

(c) Section 38-33.3-208;

(d) Section 38-33.3-209 (2)(b) to (2)(d), (2)(f), (2)(g), (4), and (6);

(e) Section 38-33.3-210;

(f) Section 38-33.3-212;

(g) Section 38-33.3-213;

(h) Section 38-33.3-215;

(i) Section 38-33.3-217 (1);

(j) Section 38-33.3-304.

(4) Section 38-33.3-217 (4) shall be applicable as follows: Except to the extent expressly permitted or required by other provisions of this article, no amendment may create or increase special declarant rights, increase the number of units or the allocated interests of a unit, or the uses to which any unit is restricted, in the absence of unanimous consent of the unit owners.

(5) (a) The exemption authorized by this section shall continue for the large planned community so long as the owner signing the affidavit is the owner of the real estate described in subsection (2) of this section; except that:

(I) Upon the sale, conveyance, or other transfer of any portion of the real estate within the large planned community, the portion sold, conveyed, or transferred shall become subject to all the provisions of this article;

(II) Any common interest community created on some but not all of the real estate within the large planned community shall be created pursuant to this article; and

(III) When a planned community no longer qualifies as a large planned community, as described in subsection (1) of this section, the exemptions authorized by this section shall no longer be applicable.

(b) Notwithstanding the provisions of subparagraph (III) of paragraph (a) of this subsection (5), all real estate described in a recorded declaration creating a large planned community shall remain subject to such recorded declaration.

(6) The association established for a large planned community shall operate with respect to large planned community-wide matters and shall not otherwise operate as the exclusive unit owners' association with respect to any unit.

(7) The association established for a large planned community shall keep in its principal office and make reasonably available to all unit owners, unit owners' authorized agents, and prospective purchasers of units a complete legal description of all common elements within the large planned community.

Source: L. 94: Entire section added, p. 2845, § 2, effective July 1. **L. 95:** IP(1), (1)(b), (1)(c), and (5) amended and (7) added, p. 236, § 2, effective July 1.

38-33.3-117. Applicability to preexisting common interest communities. (1) Except as provided in section 38-33.3-119, the following sections apply to all common interest communities created within this state before July 1, 1992, with respect to events and circumstances occurring on or after July 1, 1992:

(a) 38-33.3-101 and 38-33.3-102;

(b) 38-33.3-103, to the extent necessary in construing any of the other sections of this article;

(c) 38-33.3-104 to 38-33.3-111;

(d) 38-33.3-114;

(e) 38-33.3-118;

(f) 38-33.3-120;

(g) 38-33.3-122 and 38-33.3-123;

(h) 38-33.3-203 and 38-33.3-217 (7);

(i) 38-33.3-302 (1)(a) to (1)(f), (1)(j) to (1)(m), and (1)(o) to (1)(q);

(i.5) 38-33.3-221.5;

(i.7) 38-33.3-303 (1)(b) and (3)(b);

(j) 38-33.3-311;

(k) 38-33.3-316;

(k.5) 38-33.3-316.3; and

(l) 38-33.3-317, as it existed prior to January 1, 2006, 38-33.3-318, and 38-33.3-319.

(1.5) Except as provided in section 38-33.3-119, the following sections apply to all common interest communities created within this state before July 1, 1992, with respect to events and circumstances occurring on or after January 1, 2006:

(a) (Deleted by amendment, L. 2006, p. 1217, § 3, effective May 26, 2006.)

(b) 38-33.3-124;

(c) 38-33.3-209.4 to 38-33.3-209.7;

(d) 38-33.3-217 (1);

(e) (Deleted by amendment, L. 2006, p. 1217, § 3, effective May 26, 2006.)

(f) 38-33.3-301;

(g) 38-33.3-302 (3) and (4);

(h) 38-33.3-303 (1)(b), (3)(b), and (4)(b);

(i) 38-33.3-308 (1), (2)(b), (2.5), and (4.5);
(j) 38-33.3-310 (1) and (2);
(k) 38-33.3-310.5;
(l) 38-33.3-315 (7);
(m) 38-33.3-317; and
(n) 38-33.3-401.

(1.7) Except as provided in section 38-33.3-119, section 38-33.3-209.5 (1)(b)(IX) shall apply to all common interest communities created within this state before July 1, 1992, with respect to events and circumstances occurring on or after July 1, 2010.

(1.8) Except as provided in section 38-33.3-119, section 38-33.3-303 (4)(a) applies to all common interest communities created within this state before July 1, 1992, with respect to events and circumstances occurring on or after July 1, 2017.

(1.9) Notwithstanding any other provision of law, section 38-33.3-303.5 applies to all common interest communities created within this state on, before, or after July 1, 1992, with respect to events and circumstances occurring on or after September 1, 2017.

(2) The sections specified in paragraphs (a) to (j) and (l) of subsection (1) of this section shall be applied and construed to establish a clear, comprehensive, and uniform framework for the operation and management of common interest communities within this state and to supplement the provisions of any declaration, bylaws, plat, or map in existence on June 30, 1992. Except for section 38-33.3-217 (7), in the event of specific conflicts between the provisions of the sections specified in paragraphs (a) to (j) and (l) of subsection (1) of this section, and express requirements or restrictions in a declaration, bylaws, a plat, or a map in existence on June 30, 1992, such requirements or restrictions in the declaration, bylaws, plat, or map shall control, but only to the extent necessary to avoid invalidation of the specific requirement or restriction in the declaration, bylaws, plat, or map. Sections 38-33.3-217 (7) and 38-33.3-316 shall be applied and construed as stated in such sections.

(3) Except as expressly provided for in this section, this article shall not apply to common interest communities created within this state before July 1, 1992.

(4) Section 38-33.3-308 (2) to (7) shall apply to all common interest communities created within this state before July 1, 1995, and shall apply to all meetings of the executive board of such a community or any committee thereof occurring on or after said date. In addition, said section 38-33.3-308 (2) to (7) shall apply to all common interest communities created on or after July 1, 1995, and shall apply to all meetings of the executive board of such a community or any committee thereof occurring on or after said date.

Source: L. 91: Entire article added, p. 1711, § 1, effective July 1, 1992; entire section amended, p. 1928, § 64, effective July 1, 1992. **L. 93:** Entire section amended, p. 644, § 6, effective April 30. **L. 95:** (4) added, p. 889, § 2, effective July 1. **L. 99:** (1)(h) amended, p. 695, § 2, effective May 19. **L. 2002:** (2) amended, p. 767, § 1, effective August 7. **L. 2005:** (1)(g) and (1)(l) amended and (1)(i.5) and (1.5) added, p. 1375, §§ 3, 4, effective January 1, 2006. **L. 2006:** (1)(g), (1.5)(a), and (1.5)(e) amended, p. 1217, § 3, effective May 26. **L. 2009:** (1)(i.7) and (1.7) added and (1.5)(h) amended, (HB 09-1359), ch. 257, p. 1165, §§ 3, 4, effective August 5. **L. 2013:** IP(1.5), (1.5)(l), and (1.5)(m) amended and (1.5)(n) added, (HB 13-1134), ch. 198, p. 808, § 4, effective August 7; IP(1) amended and (1)(k.5) added, (HB 13-1276), ch. 351, p. 2038, § 4, effective January 1, 2014. **L. 2016:** (1.8) added, (HB 16-1149), ch. 104, p. 300, § 1, effective

July 1, 2018. **L. 2017:** (1.9) added, (HB 17-1279), ch. 232, p. 906, § 2, effective May 23. **L. 2018:** (1.8) amended, (HB 18-1342), ch. 387, p. 2317, § 1, effective July 1.

38-33.3-118. Procedure to elect treatment under the "San Andreas Common Interest Ownership Act". (1) Any organization created prior to July 1, 1992, may elect to have the common interest community be treated as if it were created after June 30, 1992, and thereby subject the common interest community to all of the provisions contained in this article, in the following manner:

(a) If there are members or stockholders entitled to vote thereon, the board of directors may adopt a resolution recommending that such association accept this article and directing that the question of acceptance be submitted to a vote at a meeting of the members or stockholders entitled to vote thereon, which may be either an annual or special meeting. The question shall also be submitted whenever one-twentieth, or, in the case of an association with over one thousand members, one-fortieth, of the members or stockholders entitled to vote thereon so request. Written notice stating that the purpose, or one of the purposes, of the meeting is to consider electing to be treated as a common interest community organized after June 30, 1992, and thereby accepting the provisions of this article, together with a copy of this article, shall be given to each person entitled to vote at the meeting within the time and in the manner provided in the articles of incorporation, declaration, bylaws, or other governing documents for such association for the giving of notice of meetings to members. Such election to accept the provisions of this article shall require for adoption at least sixty-seven percent of the votes that the persons present at such meeting in person or by proxy are entitled to cast.

(b) If there are no persons entitled to vote thereon, the election to be treated as a common interest community under this article may be made at a meeting of the board of directors pursuant to a majority vote of the directors in office.

(2) A statement of election to accept the provisions of this article shall be executed and acknowledged by the president or vice-president and by the secretary or an assistant secretary of such association and shall set forth:

(a) The name of the common interest community and association;

(b) That the association has elected to accept the provisions of this article;

(c) That there were persons entitled to vote thereon, the date of the meeting of such persons at which the election was made to be treated as a common interest community under this article, that a quorum was present at the meeting, and that such acceptance was authorized by at least sixty-seven percent of the votes that the members or stockholders present at such meeting in person or by proxy were entitled to cast;

(d) That there were no members or stockholders entitled to vote thereon, the date of the meeting of the board of directors at which election to accept this article was made, that a quorum was present at the meeting, and that such acceptance was authorized by a majority vote of the directors present at such meeting;

(e) (Deleted by amendment, L. 93, p. 645, § 7, effective April 30, 1993.)

(f) The names and respective addresses of its officers and directors; and

(g) If there were no persons entitled to vote thereon but a common interest community has been created by virtue of compliance with section 38-33.3-103 (8), that the declarant desires for the common interest community to be subject to all the terms and provisions of this article.

(3) The original statement of election to be treated as a common interest community subject to the terms and conditions of this article shall be duly recorded in the office of the clerk and recorder for the county in which the common interest community is located.

(4) Upon the recording of the original statement of election to be treated as a common interest community subject to the provisions of this article, said common interest community shall be subject to all provisions of this article. Upon recording of the statement of election, such common interest community shall have the same powers and privileges and be subject to the same duties, restrictions, penalties, and liabilities as though it had been created after June 30, 1992.

(5) Notwithstanding any other provision of this section, and with respect to a common interest community making the election permitted by this section, this article shall apply only with respect to events and circumstances occurring on or after July 1, 1992, and does not invalidate provisions of any declaration, bylaws, or plats or maps in existence on June 30, 1992.

Source: L. 91: Entire article added, p. 1711, § 1, effective July 1, 1992; (5) amended, p. 1928, § 65, effective July 1, 1992. **L. 93:** IP(1), (1)(a), (2)(c), and (2)(e) amended, p. 645, § 7, effective April 30.

38-33.3-119. Exception for small preexisting cooperatives and planned communities. If a cooperative or planned community created within this state before July 1, 1992, contains no more than ten units and is not subject to any development rights, or if its declaration limits its annual common expense liability to the amount specified in section 38-33.3-116 (1), then it is subject only to sections 38-33.3-105 to 38-33.3-107 unless the declaration is amended in conformity with applicable law and with the procedures and requirements of the declaration to take advantage of the provisions of section 38-33.3-120, in which case all the sections enumerated in section 38-33.3-117 apply to that planned community.

Source: L. 91: Entire article added, p. 1713, § 1, effective July 1, 1992. **L. 2009:** Entire section amended, (SB 09-249), ch. 248, p. 1120, § 2, effective May 14. **L. 2015:** Entire section amended, (HB 15-1095), ch. 114, p. 344, § 1, effective August 5.

38-33.3-120. Amendments to preexisting governing instruments. (1) In the case of amendments to the declaration, bylaws, or plats and maps of any common interest community created within this state before July 1, 1992, which has not elected treatment under this article pursuant to section 38-33.3-118:

(a) If the substantive result accomplished by the amendment was permitted by law in effect prior to July 1, 1992, the amendment may be made either in accordance with that law, in which case that law applies to that amendment, or it may be made under this article; and

(b) If the substantive result accomplished by the amendment is permitted by this article, and was not permitted by law in effect prior to July 1, 1992, the amendment may be made under this article.

(2) An amendment to the declaration, bylaws, or plats and maps authorized by this section to be made under this article must be adopted in conformity with the procedures and requirements of the law that applied to the common interest community at the time it was created and with the procedures and requirements specified by those instruments. If an amendment

grants to any person any rights, powers, or privileges permitted by this article, all correlative obligations, liabilities, and restrictions in this article also apply to that person.

(3) An amendment to the declaration may also be made pursuant to the procedures set forth in section 38-33.3-217 (7).

Source: L. 91: Entire article added, p. 1713, § 1, effective July 1, 1992. **L. 2002:** (3) added, p. 767, § 2, effective August 7.

38-33.3-120.5. Extension of declaration term. (1) If a common interest community has a declaration in effect with a limited term of years that was recorded prior to July 1, 1992, and if, before the term of the declaration expires, the unit owners in the common interest community have not amended the declaration pursuant to section 38-33.3-120 and in accordance with any conditions or fixed limitations described in the declaration, the declaration may be extended as provided in this section.

(2) The term of the declaration may be extended:

(a) If the executive board adopts a resolution recommending that the declaration be extended for a specific term not to exceed twenty years and directs that the question of extending the term of the declaration be submitted to the unit owners, as members of the association; and

(b) If an extension of the term of the declaration is approved by vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated or any larger percentage the declaration specifies.

(3) Except for the extension of the term of a declaration as authorized by this section, no other provision of a declaration may be amended pursuant to the provisions of this section.

(4) For any meeting of unit owners at which a vote is to be taken on a proposed extension of the term of a declaration as provided in this section, the secretary or other officer specified in the bylaws shall provide written notice to each unit owner entitled to vote at the meeting stating that the purpose, or one of the purposes, of the meeting is to consider extending the term of the declaration. The notice shall be given in the time and manner specified in section 38-33.3-308 or in the articles of incorporation, declaration, bylaws, or other governing documents of the association.

(5) The extension of the declaration, if approved, shall be included in an amendment to the declaration and shall be executed, acknowledged, and recorded by the association in the records of the clerk and recorder of each county in which any portion of the common interest community is located. The amendment shall include:

(a) A statement of the name of the common interest community and the association;

(b) A statement that the association has elected to extend the term of the declaration pursuant to this section and the term of the approved extension;

(c) A statement that indicates that the executive board has adopted a resolution recommending that the declaration be extended for a specific term not to exceed twenty years, that sets forth the date of the meeting at which the unit owners elected to extend the term of the declaration, and that declares that the extension was authorized by a vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated or any larger percentage the declaration specifies;

(d) A statement of the names and respective addresses of the officers and executive board members of the association.

(6) Upon the recording of the amendment required by subsection (5) of this section, and subject to the provisions of this section, a common interest community is subject to all provisions of the declaration, as amended.

Source: L. 98: Entire section added, p. 478, § 3, effective July 1.

38-33.3-121. Applicability to nonresidential planned communities. This article does not apply to a planned community in which all units are restricted exclusively to nonresidential use unless the declaration provides that the article does apply to that planned community. This article applies to a planned community containing both units that are restricted exclusively to nonresidential use and other units that are not so restricted, only if the declaration so provides or the real estate comprising the units that may be used for residential purposes would be a planned community in the absence of the units that may not be used for residential purposes.

Source: L. 91: Entire article added, p. 1714, § 1, effective July 1, 1992.

38-33.3-122. Applicability to out-of-state common interest communities. This article does not apply to common interest communities or units located outside this state.

Source: L. 91: Entire article added, p. 1714, § 1, effective July 1, 1992.

38-33.3-123. Enforcement - limitation. (1) (a) If a unit owner fails to timely pay assessments or any money owed to the association, the association may require, without the necessity of commencing a legal proceeding, reimbursement for the following, in addition to the assessments or owed money:

(I) Actual collection costs of the unpaid assessments;

(II) Reasonable attorney fees incurred as a result of the failure to pay; except that the association is not entitled to reimbursement for attorney fees that exceed five thousand dollars or fifty percent of the assessments and any money owed to the association as described in the introductory portion of this subsection (1)(a), whichever is less; and

(III) Other actual costs incurred as a result of the failure to pay.

(b) For any failure to comply with this article 33.3 or the declaration, bylaws, articles, or rules and regulations, other than the payment of assessments owed to the association, the association, any unit owner, or any class of unit owners adversely affected by the failure to comply may seek, without the necessity of commencing a legal proceeding, reimbursement for:

(I) Actual collection costs incurred as a result of the failure to comply; and

(II) Reasonable attorney fees and costs incurred as a result of the failure to comply; except that the association is not entitled to reimbursement for attorney fees that exceed five thousand dollars or fifty percent of the actual costs the association or unit owner incurred as a result of the failure to comply, whichever is less.

(c) (I) In any civil action to enforce or defend this article 33.3 or the declaration, bylaws, articles, or rules and regulations, the court shall award reasonable attorney fees, actual costs, and actual costs of collection to the prevailing party, except as provided in subsection (1)(c)(II) of this section.

(II) In connection with any civil action described in subsection (1)(c)(I) of this section to collect money owed to an association from a unit owner, the court shall not award attorney fees to the association in an amount in excess of five thousand dollars or fifty percent of the actual costs the association incurred as a result of the failure to comply with this article 33.3 or with the declaration, bylaws, articles, or rules and regulations, whichever is less; except that the court may award attorney fees in excess of the limitations, based on the court's discretion, if the court finds that the unit owner was financially, physically, and reasonably able to comply with the declaration, bylaws, articles, or rules and regulations but willfully failed to comply.

(d) Notwithstanding paragraph (c) of this subsection (1), in connection with any claim in which a unit owner is alleged to have violated a provision of this article or of the declaration, bylaws, articles, or rules and regulations of the association and in which the court finds that the unit owner prevailed because the unit owner did not commit the alleged violation:

(I) The court shall award the unit owner reasonable attorney fees and costs incurred in asserting or defending the claim; and

(II) The court shall not award costs or attorney fees to the association. In addition, the association shall be precluded from allocating to the unit owner's account with the association any of the association's costs or attorney fees incurred in asserting or defending the claim.

(e) A unit owner shall not be deemed to have confessed judgment to attorney fees or collection costs.

(f) In determining reasonable attorney fees pursuant to this subsection (1) relating to an association's foreclosure of a lien against a unit owner for unpaid assessments, the court shall give consideration to all relevant factors, including:

(I) The amount of the unpaid assessments;

(II) Whether the amount of the attorney fees requested exceeds the amount of the unpaid assessments;

(III) Whether the amount of time spent or fees incurred by the attorney are disproportionate to the needs of the case, considering the complexity of the case or the efforts required to obtain the unpaid assessments;

(IV) Whether the foreclosure action was contested or required the association to respond to unmeritorious defenses; and

(V) Other factors typically considered in determining an award of attorney fees.

(g) The limitations on attorney fees in subsections (1)(a)(II), (1)(b)(II), and (1)(c)(II) of this section are adjusted for inflation on August 1, 2025, and each year thereafter. Inflation is measured by the annual percentage change in the United States department of labor's bureau of labor statistics consumer price index, or a successor index, for Denver-Aurora-Lakewood for all items paid by urban consumers.

(2) Notwithstanding any law to the contrary, no action shall be commenced or maintained to enforce the terms of any building restriction contained in the provisions of the declaration, bylaws, articles, or rules and regulations or to compel the removal of any building or improvement because of the violation of the terms of any such building restriction unless the action is commenced within one year from the date from which the person commencing the action knew or in the exercise of reasonable diligence should have known of the violation for which the action is sought to be brought or maintained.

Source: L. 91: Entire article added, p. 1714, § 1, effective July 1, 1992. **L. 96:** Entire section amended, p. 1087, § 1, effective May 23. **L. 2005:** (1) amended, p. 1376, § 5, effective January 1, 2006. **L. 2006:** (1)(c) amended, p. 1217, § 4, effective May 26. **L. 2024:** (1)(a), (1)(b), and (1)(c) amended and (1)(f) and (1)(g) added, (HB 24-1337), ch. 422, p. 2880, § 1, effective August 7.

Editor's note: Section 9(2) of chapter 422 (HB 24-1337), Session Laws of San Andreas 2024, provides that the act changing this section applies to debts accrued on or after August 7, 2024.

38-33.3-124. Legislative declaration - alternative dispute resolution encouraged - policy statement required. (1) (a) (I) The general assembly finds and declares that the cost, complexity, and delay inherent in court proceedings make litigation a particularly inefficient means of resolving neighborhood disputes. Therefore, common interest communities are encouraged to adopt protocols that make use of mediation or arbitration as alternatives to, or preconditions upon, the filing of a complaint between a unit owner and association in situations that do not involve an imminent threat to the peace, health, or safety of the community.

(II) The general assembly hereby specifically endorses and encourages associations, unit owners, managers, declarants, and all other parties to disputes arising under this article to agree to make use of all available public or private resources for alternative dispute resolution, including, without limitation, the resources offered by the office of dispute resolution within the San Andreas judicial branch through its website.

(b) On or before January 1, 2007, each association shall adopt a written policy setting forth its procedure for addressing disputes arising between the association and unit owners. The association shall make a copy of this policy available to unit owners upon request.

(2) (a) Any controversy between an association and a unit owner arising out of the provisions of this article may be submitted to mediation by agreement of the parties prior to the commencement of any legal proceeding.

(b) The mediation agreement, if one is reached, may be presented to the court as a stipulation. Either party to the mediation may terminate the mediation process without prejudice.

(c) If either party subsequently violates the stipulation, the other party may apply immediately to the court for relief.

(3) The declaration, bylaws, or rules of the association may specify situations in which disputes shall be resolved by binding arbitration under the uniform arbitration act, part 2 of article 22 of title 13, S.A.R.S., or by another means of alternative dispute resolution under the "Dispute Resolution Act", part 3 of article 22 of title 13, S.A.R.S.

Source: L. 98: Entire section added, p. 471, § 1, effective July 1. **L. 2005:** Entire section amended, p. 1377, § 6, effective January 1, 2006. **L. 2006:** (1) amended, p. 1218, § 5, effective May 26. **L. 2008:** Entire section amended, p. 557, § 3, effective July 1.

PART 2

CREATION, ALTERATION, AND TERMINATION OF COMMON INTEREST COMMUNITIES

38-33.3-201. Creation of common interest communities. (1) (a) A common interest community may be created pursuant to this article 33.3 only by recording a declaration executed in the same manner as a deed and, in a cooperative, by conveying the real estate subject to that declaration to the association. The declaration must be:

(I) Executed by or with the express written authorization of the owner or owners of the real estate that is to be included in the common interest community, as shown by the records of the county clerk and recorder's office of the county where the real estate is located;

(II) Recorded in every county in which any portion of the common interest community is located;

(III) Indexed in the grantee's index in the name of the common interest community and in the name of the association; and

(IV) Indexed in the grantor's index in the name of each person executing the declaration.

(b) No common interest community is created until the plat or map for the common interest community is recorded.

(2) In a common interest community with horizontal unit boundaries, a declaration, or an amendment to a declaration, creating or adding units shall include a certificate of completion executed by an independent licensed or registered engineer, surveyor, or architect stating that all structural components of all buildings containing or comprising any units thereby created are substantially completed.

Source: L. 91: Entire article added, p. 1715, § 1, effective July 1, 1992. **L. 93:** Entire section amended, p. 646, § 8, effective April 30. **L. 2024:** (1) amended, (HB 24-1383), ch. 182, p. 983, § 2, effective August 7.

Editor's note: Section 4(2) of chapter 182 (HB 24-1383), Session Laws of San Andreas 2024, provides that the act changing this section applies to declarations that are executed or amended on or after August 7, 2024.

Cross references: For the legislative declaration in HB 24-1383, see section 1 of chapter 182, Session Laws of San Andreas 2024.

38-33.3-202. Unit boundaries. (1) Except as provided by the declaration:

(a) If walls, floors, or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, and finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements.

(b) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.

(c) Subject to the provisions of paragraph (b) of this subsection (1), all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

(d) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, and patios and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

Source: L. 91: Entire article added, p. 1715, § 1, effective July 1, 1992.

38-33.3-203. Construction and validity of declaration and bylaws. (1) All provisions of the declaration and bylaws are severable.

(2) The rule against perpetuities does not apply to defeat any provision of the declaration, bylaws, or rules and regulations.

(3) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails, except to the extent the declaration is inconsistent with this article.

(4) Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this article. Whether a substantial failure impairs marketability is not affected by this article.

Source: L. 91: Entire article added, p. 1716, § 1, effective July 1, 1992.

38-33.3-204. Description of units. A description of a unit may set forth the name of the common interest community, the recording data for the declaration, the county in which the common interest community is located, and the identifying number of the unit. Such description is a legally sufficient description of that unit and all rights, obligations, and interests appurtenant to that unit which were created by the declaration or bylaws. It shall not be necessary to use the term "unit" as a part of a legally sufficient description of a unit.

Source: L. 91: Entire article added, p. 1716, § 1, effective July 1, 1992. **L. 92:** Entire section amended, p. 2181, § 51, effective June 2. **L. 93:** Entire section amended, p. 647, § 9, effective April 30.

38-33.3-205. Contents of declaration. (1) The declaration must contain:

(a) The names of the common interest community and the association and a statement that the common interest community is a condominium, cooperative, or planned community;

(b) The name of every county in which any part of the common interest community is situated;

(c) A legally sufficient description of the real estate included in the common interest community;

(d) A statement of the maximum number of units that the declarant reserves the right to create;

(e) In a condominium or planned community, a description, which may be by plat or map, of the boundaries of each unit created by the declaration, including the unit's identifying number; or, in a cooperative, a description, which may be by plat or map, of each unit created by the declaration, including the unit's identifying number, its size or number of rooms, and its location within a building if it is within a building containing more than one unit;

(f) A description of any limited common elements, other than those specified in section 38-33.3-202 (1)(b) and (1)(d) or shown on the map as provided in section 38-33.3-209 (2)(j) and, in a planned community, any real estate that is or must become common elements;

(g) A description of any real estate, except real estate subject to development rights, that may be allocated subsequently as limited common elements, other than limited common elements specified in section 38-33.3-202 (1)(b) and (1)(d), together with a statement that they may be so allocated;

(h) A description of any development rights and other special declarant rights reserved by the declarant, together with a description sufficient to identify the real estate to which each of those rights applies and the time limit within which each of those rights must be exercised;

(i) If any development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with:

(I) Either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right or a statement that no assurances are made in those regards; and

(II) A statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real estate;

(j) Any other conditions or limitations under which the rights described in paragraph (h) of this subsection (1) may be exercised or will lapse;

(k) An allocation to each unit of the allocated interests in the manner described in section 38-33.3-207;

(l) Any restrictions on the use, occupancy, and alienation of the units and on the amount for which a unit may be sold or on the amount that may be received by a unit owner on sale, condemnation, or casualty loss to the unit or to the common interest community or on termination of the common interest community;

(m) The recording data for recorded easements and licenses appurtenant to, or included in, the common interest community or to which any portion of the common interest community is or may become subject by virtue of a reservation in the declaration;

(n) All matters required by sections 38-33.3-201, 38-33.3-206 to 38-33.3-209, 38-33.3-215, 38-33.3-216, and 38-33.3-303 (4);

(o) Reasonable provisions concerning the manner in which notice of matters affecting the common interest community may be given to unit owners by the association or other unit owners;

(p) A statement, if applicable, that the planned community is a large planned community and is exercising certain exemptions from the "San Andreas Common Interest Ownership Act" as such a large planned community;

(q) In a large planned community:

(I) A general description of every common element that the declarant is legally obligated to construct within the large planned community together with the approximate date by which each such common element is to be completed. The declarant shall be required to complete each such common element within a reasonable time after the date specified in the declaration, unless the declarant, due to an act of God, is unable to do so. The declarant shall not be legally obligated with respect to any common element not identified in the declaration.

(II) A general description of the type of any common element that the declarant anticipates may be constructed by, maintained by, or operated by the association. The association shall not assess members for the construction, maintenance, or operation of any common element that is not described pursuant to this subparagraph (II) unless such assessment is approved by the vote of a majority of the votes entitled to be cast in person or by proxy, other than by declarant, at a meeting duly convened as required by law.

(2) The declaration may contain any other matters the declarant considers appropriate.

(3) The plats and maps described in section 38-33.3-209 may contain certain information required to be included in the declaration by this section.

(4) A declarant may amend the declaration, a plat, or a map to correct clerical, typographical, or technical errors.

(5) A declarant may amend the declaration to comply with the requirements, standards, or guidelines of recognized secondary mortgage markets, the department of housing and urban development, the federal housing administration, the veterans administration, the federal home loan mortgage corporation, the government national mortgage association, or the federal national mortgage association.

Source: L. 91: Entire article added, p. 1716, § 1, effective July 1, 1992. **L. 93:** (1)(h) and (1)(n) amended, p. 647, § 10, effective April 30. **L. 94:** (1)(p) added, p. 2847, § 3, effective July 1. **L. 95:** (1)(q) added, p. 237, § 3, effective July 1. **L. 98:** (1)(h) amended and (4) and (5) added, p. 480, § 4, effective July 1.

38-33.3-206. Leasehold common interest communities. (1) Any lease, the expiration or termination of which may terminate the common interest community or reduce its size, must be recorded. In a leasehold condominium or leasehold planned community, the declaration must contain the signature of each lessor of any such lease in order for the provisions of this section to be effective. The declaration must state:

(a) The recording data for the lease;

(b) The date on which the lease is scheduled to expire;

(c) A legally sufficient description of the real estate subject to the lease;

(d) Any rights of the unit owners to redeem the reversion and the manner whereby those rights may be exercised or state that they do not have those rights;

(e) Any rights of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease or state that they do not have those rights; and

(f) Any rights of the unit owners to renew the lease and the conditions of any renewal or state that they do not have those rights.

(2) After the declaration for a leasehold condominium or leasehold planned community is recorded, neither the lessor nor the lessor's successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of a unit owner's share of the rent and otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest in a condominium or planned community is not affected by failure of any other person to pay rent or fulfill any other covenant.

(3) Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired.

(4) If the expiration or termination of a lease decreases the number of units in a common interest community, the allocated interests shall be reallocated in accordance with section 38-33.3-107 (1), as though those units had been taken by eminent domain. Reallocations shall be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

Source: L. 91: Entire article added, p. 1718, § 1, effective July 1, 1992.

38-33.3-207. Allocation of allocated interests. (1) The declaration must allocate to each unit:

(a) In a condominium, a fraction or percentage of undivided interests in the common elements and in the common expenses of the association and, to the extent not allocated in the bylaws of the association, a portion of the votes in the association;

(b) In a cooperative, an ownership interest in the association, a fraction or percentage of the common expenses of the association, and, to the extent not allocated in the bylaws of the association, a portion of the votes in the association;

(c) In a planned community, a fraction or percentage of the common expenses of the association and, to the extent not allocated in the bylaws of the association, a portion of the votes in the association; except that, in a large planned community, the common expenses of the association may be paid from assessments and allocated as set forth in the declaration and the votes in the association may be allocated as set forth in the declaration.

(2) The declaration must state the formulas used to establish allocations of interests. Those allocations may not discriminate in favor of units owned by the declarant or an affiliate of the declarant.

(3) If units may be added to or withdrawn from the common interest community, the declaration must state the formulas to be used to reallocate the allocated interests among all units included in the common interest community after the addition or withdrawal.

(4) (a) The declaration may provide:

(I) That different allocations of votes shall be made to the units on particular matters specified in the declaration;

(II) For cumulative voting only for the purpose of electing members of the executive board;

(III) For class voting on specified issues affecting the class, including the election of the executive board; and

(IV) For assessments including, but not limited to, assessments on retail sales and services not to exceed six percent of the amount charged for the retail sale or service, and real estate transfers not to exceed three percent of the real estate sales price or its equivalent.

(b) A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this article, nor may units constitute a class because they are owned by a declarant.

(c) Assessments allowed under subparagraph (IV) of paragraph (a) of this subsection (4) shall be entitled to the lien provided for under section 38-33.3-316 (1) but shall not be entitled to the priority established by section 38-33.3-316 (2)(b).

(d) Communities with classes for voting specified in the declaration as allowed pursuant to subparagraph (III) of paragraph (a) of this subsection (4) may designate classes of members

on a reasonable basis which do not allow the declarant to control the association beyond the period provided for in section 38-33.3-303, including, without limitation, residence owners, commercial space owners, and owners of lodging space and to elect members to the association executive board from such classes.

(5) Except for minor variations due to the rounding of fractions or percentages, the sum of the common expense liabilities and, in a condominium, the sum of the undivided interests in the common elements allocated at any time to all the units shall each equal one if stated as fractions or one hundred percent if stated as percentages. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

(6) In a condominium, the common elements are not subject to partition except as allowed for in section 38-33.3-312, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements not allowed for in section 38-33.3-312, that is made without the unit to which that interest is allocated is void.

(7) In a cooperative, any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an ownership interest in the association made without the possessory interest in the unit to which that interest is related is void.

Source: L. 91: Entire article added, p. 1719, § 1, effective July 1, 1992. **L. 93:** (1) amended, p. 647, § 11, effective April 30. **L. 94:** (1)(c) and (4)(a) amended and (4)(c) and (4)(d) added, p. 2847, § 4, effective July 1. **L. 95:** (4)(a)(IV) amended, p. 238, § 4, effective July 1. **L. 98:** (4)(a)(III), (4)(a)(IV), and (4)(d) amended, p. 480, § 5, effective July 1. **L. 2002:** (6) amended, p. 767, § 3, effective August 7.

38-33.3-208. Limited common elements. (1) Except for the limited common elements described in section 38-33.3-202 (1)(b) and (1)(d), the declaration shall specify to which unit or units each limited common element is allocated. That allocation may not be altered without the consent of the unit owners whose units are affected.

(2) Subject to any provisions of the declaration, a limited common element may be reallocated between or among units after compliance with the procedure set forth in this subsection (2). In order to reallocate limited common elements between or among units, the unit owners of those units, as the applicants, must submit an application for approval of the proposed reallocation to the executive board, which application shall be executed by those unit owners and shall include:

(a) The proposed form for an amendment to the declaration as may be necessary to show the reallocation of limited common elements between or among units;

(b) A deposit against attorney fees and costs which the association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the executive board; and

(c) Such other information as may be reasonably requested by the executive board. No reallocation shall be effective without the approval of the executive board. The reallocation shall be effectuated by an amendment signed by the association and by those unit owners between or among whose units the reallocation is made, which amendment shall be recorded as provided in

section 38-33.3-217 (3). All costs and attorney fees incurred by the association as a result of the application shall be the sole obligation of the applicants.

(3) A common element not previously allocated as a limited common element may be so allocated only pursuant to provisions in the declaration made in accordance with section 38-33.3-205 (1)(g). The allocations must be made by amendments to the declaration prepared, executed, and recorded by the declarant.

Source: L. 91: Entire article added, p. 1720, § 1, effective July 1, 1992.

38-33.3-209. Plats and maps. (1) A plat or map is a part of the declaration and is required for all common interest communities except cooperatives. A map is required only for a common interest community with units having a horizontal boundary. The requirements of this section shall be deemed satisfied so long as all of the information required by this section is contained in the declaration, a map or a plat, or some combination of any two or all of the three. Each plat or map must be clear and legible. When a map is required under any provision of this article, the map, a plat, or the declaration shall contain a certification that all information required by this section is contained in the declaration, the map or a plat, or some combination of any two or all of the three.

(2) In addition to meeting the requirements of a land survey plat as set forth in section 38-51-106, each map shall show the following, except to the extent such information is contained in the declaration or on a plat:

(a) The name and a general schematic plan of the entire common interest community;

(b) The location and dimensions of all real estate not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing improvements within that real estate;

(c) A legally sufficient description, which may be of the whole common interest community or any portion thereof, of any real estate subject to development rights and a description of the rights applicable to such real estate;

(d) The extent of any existing encroachments across any common interest community boundary;

(e) To the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the common interest community;

(f) The location and dimensions of the vertical boundaries of each unit and that unit's identifying number;

(g) The location, with reference to established data, of the horizontal boundaries of each unit and that unit's identifying number;

(g.5) Any units in which the declarant has reserved the right to create additional units or common elements, identified appropriately;

(h) A legally sufficient description of any real estate in which the unit owners will own only an estate for years;

(i) The distance between noncontiguous parcels of real estate comprising the common interest community; and

(j) The approximate location and dimensions of limited common elements, including porches, balconies, and patios, other than the limited common elements described in section 38-33.3-202 (1)(b) and (1)(d).

(3) (Deleted by amendment, L. 93, p. 648, § 12, effective April 30, 1993.)

(4) (Deleted by amendment, L. 2007, p. 1799, § 1, effective July 1, 2007.)

(5) Unless the declaration provides otherwise, the horizontal boundaries of any part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part and need not be depicted on the plats and maps.

(6) Upon exercising any development right, the declarant shall record an amendment to the declaration with respect to that real estate reflecting change as a result of such exercise necessary to conform to the requirements of subsections (1), (2), and (4) of this section or new certifications of maps previously recorded if those maps otherwise conform to the requirements of subsections (1), (2), and (4) of this section.

(7) Any certification of a map required by this article must be made by a registered land surveyor.

(8) The requirements of a plat or map under this article shall not be deemed to satisfy any subdivision platting requirement enacted by a county or municipality pursuant to section 30-28-133, S.A.R.S., part 1 of article 23 of title 31, S.A.R.S., or a similar provision of a home rule city, nor shall the plat or map requirements under this article be deemed to be incorporated into any subdivision platting requirements enacted by a county or municipality.

(9) Any plat or map that was recorded on or after July 1, 1998, but prior to July 1, 2007, and that satisfies the requirements of this section in effect on July 1, 2007, is deemed to have satisfied the requirements of this section at the time it was recorded.

Source: L. 91: Entire article added, p. 1721, § 1, effective July 1, 1992. **L. 93:** (2)(a), (2)(f), (2)(g), (3), and (4)(b) amended, p. 648, § 12, effective April 30. **L. 94:** IP(2) amended, p. 1510, § 45, effective July 1. **L. 97:** IP(2) amended, p. 151, § 3, effective March 28. **L. 98:** (1), IP(2), (6), and (7) amended, p. 480, § 6, effective July 1. **L. 2007:** (1), (2), and (4) amended and (9) added, p. 1799, § 1, effective July 1.

38-33.3-209.4. Public disclosures required - identity of association - agent - manager - contact information. (1) Within ninety days after assuming control from the declarant pursuant to section 38-33.3-303 (5), the association shall make the following information available to unit owners upon reasonable notice in accordance with subsection (3) of this section. In addition, if the association's address, designated agent, or management company changes, the association shall make updated information available within ninety days after the change:

(a) The name of the association;

(b) The name of the association's designated agent or management company, if any;

(c) A valid physical address and telephone number for both the association and the designated agent or management company, if any;

(d) The name of the common interest community;

(e) The initial date of recording of the declaration; and

(f) The reception number or book and page for the main document that constitutes the declaration.

(2) Within ninety days after assuming control from the declarant pursuant to section 38-33.3-303 (5), and within ninety days after the end of each fiscal year thereafter, the association shall make the following information available to unit owners upon reasonable notice in accordance with subsection (3) of this section:

(a) The date on which its fiscal year commences;

(b) Its operating budget for the current fiscal year;

(c) A list, by unit type, of the association's current assessments, including both regular and special assessments;

(d) Its annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the current annual disclosure;

(e) The results of its most recent available financial audit or review;

(f) A list of all association insurance policies, including, but not limited to, property, general liability, association director and officer professional liability, and fidelity policies. Such list shall include the company names, policy limits, policy deductibles, additional named insureds, and expiration dates of the policies listed.

(g) All the association's bylaws, articles, and rules and regulations;

(h) The minutes of the executive board and member meetings for the fiscal year immediately preceding the current annual disclosure; and

(i) The association's responsible governance policies adopted under section 38-33.3-209.5.

(3) It is the intent of this section to allow the association the widest possible latitude in methods and means of disclosure, while requiring that the information be readily available at no cost to unit owners at their convenience. Disclosure shall be accomplished by one of the following means: Posting on an internet web page with accompanying notice of the web address via first-class mail or e-mail; the maintenance of a literature table or binder at the association's principal place of business; or mail or personal delivery. The cost of such distribution shall be accounted for as a common expense liability.

(4) Notwithstanding section 38-33.3-117 (1.5)(c), this section shall not apply to a unit, or the owner thereof, if the unit is a time-share unit, as defined in section 38-33-110 (7).

Source: L. 2005: Entire section added, p. 1377, § 7, effective January 1, 2006. **L. 2006:** (1) and (2)(e) amended, p. 1218, § 6, effective May 26. **L. 2013:** (4) amended, (HB 13-1300), ch. 316, p. 1699, § 115, effective August 7; (1)(b) amended, (HB 13-1277), ch. 352, p. 2040, § 1, effective January 1, 2015. **L. 2020:** (1)(b) amended, (HB 20-1402), ch. 216, p. 1057, § 65, effective June 30.

38-33.3-209.5. Responsible governance policies - due process for imposition of fines - procedure for collection of delinquent accounts - enforcement through small claims court - definitions. (1) To promote responsible governance, associations shall:

(a) Maintain accurate and complete accounting records; and

(b) Adopt policies, procedures, and rules and regulations concerning:

(I) Collection of unpaid assessments;

(II) Handling of conflicts of interest involving board members, which policies, procedures, and rules and regulations must include, at a minimum, the criteria described in subsection (4) of this section;

(III) Conduct of meetings, which may refer to applicable provisions of the nonprofit code or other recognized rules and principles;

(IV) Enforcement of covenants and rules, including notice and hearing procedures and the schedule of fines;

(V) Inspection and copying of association records by unit owners;

(VI) Investment of reserve funds;

(VII) Procedures for the adoption and amendment of policies, procedures, and rules;

(VIII) Procedures for addressing disputes arising between the association and unit owners; and

(IX) When the association has a reserve study prepared for the portions of the community maintained, repaired, replaced, and improved by the association; whether there is a funding plan for any work recommended by the reserve study and, if so, the projected sources of funding for the work; and whether the reserve study is based on a physical analysis and financial analysis. For the purposes of this subparagraph (IX), an internally conducted reserve study shall be sufficient.

(1.7) (a) With regard to a unit owner's delinquency in paying assessments, fines, or fees, an association shall:

(I) First contact the unit owner to alert the unit owner of the delinquency before taking action in relation to the delinquency pursuant to subsection (1.7)(a)(II) of this section and shall maintain a record of any contact, including information regarding the type of communication used to contact the unit owner and the date and time that the contact was made. Any contact that a community association manager or a property management company makes on behalf of an association pursuant to this subsection (1.7)(a) is deemed a contact made by the association and not by a debt collector as defined in section 5-16-103 (9). A unit owner may identify another person to serve as a designated contact for the unit owner to be contacted on the unit owner's behalf for purposes of this subsection (1.7)(a)(I). A unit owner may also notify the association if the unit owner prefers that correspondence and notices from the association be made in a language other than English. If a preference is not indicated, the association shall send the correspondence and notices in English. The unit owner and the unit owner's designated contact must receive the same correspondence and notices any time communications are sent out; except that the unit owner must receive the correspondence and notices in the language for which the unit owner has indicated a preference, if any. An association may determine the manner in which a unit owner may identify a designated contact. In contacting the unit owner or a designated contact, an association shall send the same type of notice of delinquency required to be sent pursuant to subsection (5)(a)(V) of this section, including sending it by certified mail, return receipt requested. In addition, the association shall contact the unit owner or designated contact by two of the following means:

(A) Telephone call to a telephone number that the association has on file because the unit owner or designated contact has provided the number to the association. If the association attempts to contact the unit owner or designated contact by telephone but is unable to contact the unit owner or designated contact, the association shall, if possible, leave a voice message for the unit owner or designated contact.

(B) Text message to a cellular number that the association has on file because the unit owner or designated contact has provided the cellular number to the association; or

(C) E-mail to an e-mail address that the association has on file because the unit owner or designated contact has provided the e-mail address to the association.

(II) Refer a delinquent account to a collection agency or attorney only if a majority of the executive board votes to refer the matter in a recorded vote at a meeting conducted pursuant to section 38-33.3-308 (4)(e). A community association management or property management

company acting on behalf of the association shall not refer a delinquent account to a collection agency or an attorney unless a majority of the executive board votes to refer the matter in a recorded vote at a meeting conducted pursuant to section 38-33.3-308 (4)(e).

(b) (I) An association shall not impose the following on a daily basis against a unit owner:

(A) Late fees; or

(B) Fines assessed for violations of the declaration, bylaws, covenants, or other governing documents of the association. An association may only impose fines for violations in accordance with this subsection (1.7)(b).

(II) (A) With respect to any violation of the declaration, bylaws, covenants, or other governing documents of an association that the association reasonably determines threatens the public safety or health, the association shall provide the unit owner written notice, in English and in any language that the unit owner has indicated a preference for correspondence and notices pursuant to subsection (1.7)(a)(I) of this section, of the violation informing the unit owner that the unit owner has seventy-two hours to cure the violation or the association may fine the unit owner.

(B) If, after an inspection of the unit, the association determines that the unit owner has not cured the violation within seventy-two hours after receiving the notice, the association may impose fines on the unit owner every other day and may take legal action against the unit owner for the violation; except that, in accordance with subsection (8)(c)(I) of this section, the association shall not pursue foreclosure against the unit owner based on fines owed.

(III) (A) If an association reasonably determines that a unit owner committed a violation of the declaration, bylaws, covenants, or other governing documents of the association, other than a violation that threatens the public safety or health, the association shall, through certified mail, return receipt requested, provide the unit owner written notice, in English and in any language that the unit owner has indicated a preference for correspondence and notices pursuant to subsection (1.7)(a)(I) of this section, of the violation informing the unit owner that the unit owner has thirty days to cure the violation or the association, after conducting an inspection and determining that the unit owner has not cured the violation, may fine the unit owner; however, the total amount of fines imposed for the violation may not exceed five hundred dollars.

(B) An association shall grant a unit owner two consecutive thirty-day periods to cure a violation before the association may take legal action against the unit owner for the violation. In accordance with subsection (8)(c)(I) of this section, an association shall not pursue foreclosure against the unit owner based on fines owed.

(IV) If the unit owner cures the violation within the period to cure afforded the unit owner, the unit owner may notify the association of the cure and, if the unit owner sends with the notice visual evidence that the violation has been cured, the violation is deemed cured on the date that the unit owner sends the notice. If the unit owner's notice does not include visual evidence that the violation has been cured, the association shall inspect the unit as soon as practicable to determine if the violation has been cured.

(V) If the association does not receive notice from the unit owner that the violation has been cured, the association shall inspect the unit within seven days after the expiration of the thirty-day cure period to determine if the violation has been cured. If, after the inspection and whether or not the association received notice from the unit owner that the violation was cured, the association determines that the violation has not been cured:

(A) A second thirty-day period to cure commences if only one thirty-day period to cure has elapsed; or

(B) The association may take legal action pursuant to this section if two thirty-day periods to cure have elapsed.

(VI) Once the unit owner cures a violation, the association shall notify the unit owner, in English and in any language that the unit owner has indicated a preference for correspondence and notices pursuant to subsection (1.7)(a)(I) of this section:

(A) That the unit owner will not be further fined with regard to the violation; and

(B) Of any outstanding fine balance that the unit owner still owes the association.

(c) On a monthly basis and by first-class mail and, if the association has the relevant e-mail address, by e-mail, an association shall send to each unit owner who has any outstanding balance owed the association an itemized list of all assessments, fines, fees, and charges that the unit owner owes to the association. The association shall send the itemized list to the unit owner in English or in any language for which the unit owner has indicated a preference for correspondence and notices pursuant to subsection (1.7)(a)(I) of this section and to any designated contact for the unit owner.

(2) Notwithstanding any provision of the declaration, bylaws, articles, or rules and regulations to the contrary, the association may not fine any unit owner for an alleged violation unless:

(a) The association has adopted and follows a written policy governing the imposition of fines;

(b) (I) The policy includes a fair and impartial fact-finding process concerning whether the alleged violation actually occurred and whether the unit owner is the one who should be held responsible for the violation. This process may be informal but shall, at a minimum, guarantee the unit owner notice and an opportunity to be heard before an impartial decision maker.

(II) As used in this paragraph (b), "impartial decision maker" means a person or group of persons who have the authority to make a decision regarding the enforcement of the association's covenants, conditions, and restrictions, including its architectural requirements, and the other rules and regulations of the association and do not have any direct personal or financial interest in the outcome. A decision maker shall not be deemed to have a direct personal or financial interest in the outcome if the decision maker will not, as a result of the outcome, receive any greater benefit or detriment than will the general membership of the association.

(c) The policy:

(I) Requires notice regarding the nature of the alleged violation, the action or actions required to cure the alleged violation, and the timeline for the fair and impartial fact-finding process required under subsection (2)(b) of this section. The association may send the unit owner the notice required under this subsection (2)(c)(I) in accordance with subsection (1.7)(a) of this section.

(II) Specifies the interval upon which fines may be levied in accordance with subsection (1.7)(b) of this section for violations that are continuing in nature.

(3) If, as a result of the fact-finding process described in subsection (2) of this section, it is determined that the unit owner should not be held responsible for the alleged violation, the association shall not allocate to the unit owner's account with the association any of the association's costs or attorney fees incurred in asserting or hearing the claim. Notwithstanding

any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, a unit owner shall not be deemed to have consented to pay such costs or fees.

(4) (a) The policies, procedures, and rules and regulations adopted by an association under subparagraph (II) of paragraph (b) of subsection (1) of this section must, at a minimum:

(I) Define or describe the circumstances under which a conflict of interest exists;

(II) Set forth procedures to follow when a conflict of interest exists, including how, and to whom, the conflict of interest must be disclosed and whether a board member must recuse himself or herself from discussing or voting on the issue; and

(III) Provide for the periodic review of the association's conflict of interest policies, procedures, and rules and regulations.

(b) The policies, procedures, or rules and regulations adopted under this subsection (4) must be in accordance with section 38-33.3-310.5.

(5) (a) Notwithstanding any provision of the declaration, bylaws, articles, or rules and regulations to the contrary or the absence of a relevant provision in the declaration, bylaws, articles, or rules or regulations, the association or a holder or assignee of the association's debt, whether the holder or assignee of the association's debt is an entity or a natural person, may not use a collection agency or take legal action to collect unpaid assessments unless the association or a holder or assignee of the association's debt has adopted and follows a written policy governing the collection of unpaid assessments and unless the association complies with subsection (7) of this section. The policy must, at a minimum, specify:

(I) The date on which assessments must be paid to the entity and when an assessment is considered past due and delinquent;

(II) Any late fees and interest the entity is entitled to impose on a delinquent unit owner's account;

(III) Any returned-check charges the entity is entitled to impose;

(IV) The circumstances under which a unit owner is entitled to enter into a payment plan with the entity pursuant to section 38-33.3-316.3 and the minimum terms of the payment plan mandated by that section;

(V) That, before the entity turns over a delinquent account of a unit owner to a collection agency or refers it to an attorney for legal action, the entity must send the unit owner a notice of delinquency, by certified mail, return receipt requested, specifying:

(A) The total amount due, with an accounting of how the total was determined;

(B) Whether the opportunity to enter into a payment plan exists pursuant to section 38-33.3-316.3 and instructions for contacting the entity to enter into such a payment plan;

(C) The name and contact information for the individual the unit owner may contact to request a copy of the unit owner's ledger in order to verify the amount of the debt; and

(D) That action is required to cure the delinquency and that failure to do so within thirty days may result in the unit owner's delinquent account being turned over to a collection agency, a lawsuit being filed against the owner, the filing and foreclosure of a lien against the unit owner's property, or other remedies available under San Andreas law;

(VI) The method by which payments may be applied on the delinquent account of a unit owner; and

(VII) The legal remedies available to the entity to collect on a unit owner's delinquent account pursuant to the governing documents of the entity and San Andreas law.

(b) As used in this subsection (5), "entity" means an association or a holder or assignee of the association's debt, whether the holder or assignee of the association's debt is an entity or a natural person.

(6) A notice of delinquency that an association sends to a unit owner for unpaid assessments, fines, fees, or charges must:

(a) Be written in English and in any language that the unit owner has indicated a preference for correspondence and notices pursuant to subsection (1.7)(a)(I) of this section;

(b) Specify whether the delinquency concerns unpaid assessments; unpaid fines, fees, or charges; or both unpaid assessments and unpaid fines, fees, or charges, and, if the notice of delinquency concerns unpaid assessments, the notice of delinquency must notify the unit owner that unpaid assessments may lead to foreclosure; and

(c) Include:

(I) A description of the steps the association must take before the association may take legal action against the unit owner, including a description of the association's cure process established in accordance with subsection (1.7)(b) of this section; and

(II) A description of what legal action the association may take against the unit owner, including a description of the types of matters that the association or unit owner may take to small claims court, including injunctive matters for which the association seeks an order requiring the unit owner to comply with the declaration, bylaws, covenants, or other governing documents of the association.

(7) (a) An association shall not commence a legal action to initiate a judicial foreclosure proceeding based on a unit owner's delinquency in paying assessments unless:

(I) The association has complied with each of the requirements in this section and in sections 38-33.3-316 and 38-33.3-316.3 related to a unit owner's delinquency in paying assessments;

(II) The association has provided the unit owner with a written offer to enter into a repayment plan pursuant to section 38-33.3-316.3 (2) that authorizes the unit owner to repay the debt in monthly installments over eighteen months. Under the repayment plan, the unit owner may choose the amount to be paid each month, so long as each payment must be in an amount of at least twenty-five dollars until the balance of the amount owed is less than twenty-five dollars; and

(III) After the association has provided the owner with a written offer to enter into a repayment plan, the unit owner has either:

(A) Failed to accept the repayment plan within thirty days after the written offer was made; or

(B) After accepting the repayment plan, failed to pay at least three of the monthly installments within fifteen days after the monthly installments were due.

(b) A unit owner who has entered into a repayment plan pursuant to subsection (7)(a) of this section may elect to pay the remaining balance owed under the repayment plan at any time during the duration of the repayment plan.

(8) An association shall not:

(a) Charge a rate of interest on unpaid assessments, fines, or fees in an amount greater than eight percent per year;

(b) Assess a fee or other charge to recover costs incurred for providing the unit owner a statement of the total amount that the unit owner owes; or

(c) Foreclose on an assessment lien if the debt securing the lien consists only of one or both of the following:

(I) Fines that the association has assessed against the unit owner; or

(II) Collection costs or attorney fees that the association has incurred and that are only associated with assessed fines.

(9) A party seeking to enforce rights and responsibilities arising under the declaration, bylaws, covenants, or other governing documents of an association in relation to disputes arising from assessments, fines, or fees owed to the association and for which the amount at issue does not exceed seven thousand five hundred dollars, exclusive of interest and costs, may file a claim in small claims court pursuant to section 13-6-403 (1)(b)(I).

(10) As used in this section, "notice of delinquency" means a written notice that an association sends to a unit owner to notify the unit owner of any unpaid assessments, fines, fees, or charges that the unit owner owes the association.

(11) With respect to any notices or other documentation that an association sends a unit owner through certified mail pursuant to this section or section 38-33.3-316 (8), the association may charge the unit owner an amount not to exceed the actual cost of the certified mail.

(12) This section, as amended by House Bill 22-1137, enacted in 2022, does not apply to the collection of delinquent payments of assessments, fines, or fees from a unit owner who owns a time share unit, as defined in section 38-33-110 (7), that is not occupied by residents on a full-time basis.

Source: L. 2005: Entire section added, p. 1377, § 7, effective January 1, 2006. **L. 2006:** (1)(a), (1)(b)(VI), and (1)(b)(VII) amended and (1)(b)(VIII) added, p. 1219, § 7, effective May 26. **L. 2008:** (2) and (3) added, p. 556, § 2, effective July 1. **L. 2009:** (1)(b)(IX) added, (HB 09-1359), ch. 257, p. 1164, § 1, effective August 5. **L. 2011:** (1)(b)(II) amended and (4) added, (HB 11-1124), ch. 105, p. 328, § 2, effective April 13. **L. 2013:** (5) added, (HB 13-1276), ch. 351, p. 2035, § 1, effective January 1, 2014. **L. 2022:** (1.7), (2)(c), (6), (7), (8), (9), and (10) added and (2)(a), IP(5)(a), and IP(5)(a)(V) amended, (HB 22-1137), ch. 367, p. 2610, § 1, effective August 10. **L. 2024:** (1.7)(a)(I) amended and (11) and (12) added, (HB 24-1233), ch. 334, p. 2270, § 1, effective August 7; IP(7)(a), (7)(a)(I), IP(7)(a)(III), and (7)(a)(III)(A) amended, (HB 24-1337), ch. 422, p. 2882, § 2, effective August 7.

Editor's note: (1) Section 2(2) of chapter 334 (HB 24-1233), Session Laws of San Andreas 2024, provides that the act changing this section applies to notices of delinquency sent and payment plans entered into on or after August 7, 2024.

(2) Section 9(2) of chapter 422 (HB 24-1337), Session Laws of San Andreas 2024, provides that the act changing this section applies to debts accrued on or after August 7, 2024.

38-33.3-209.6. Executive board member education. The board may authorize, and account for as a common expense, reimbursement of board members for their actual and necessary expenses incurred in attending educational meetings and seminars on responsible governance of unit owners' associations. The course content of such educational meetings and seminars shall be specific to San Andreas, and shall make reference to applicable sections of this article.

Source: L. 2005: Entire section added, p. 1377, § 7, effective January 1, 2006.

38-33.3-209.7. Owner education. (1) The association shall provide, or cause to be provided, education to owners at no cost on at least an annual basis as to the general operations of the association and the rights and responsibilities of owners, the association, and its executive board under San Andreas law. The criteria for compliance with this section shall be determined by the executive board.

(2) Notwithstanding section 38-33.3-117 (1.5)(c), this section shall not apply to an association that includes time-share units, as defined in section 38-33-110 (7).

Source: L. 2005: Entire section added, p. 1377, § 7, effective January 1, 2006.

38-33.3-210. Exercise of development rights. (1) To exercise any development right reserved under section 38-33.3-205 (1)(h), the declarant shall prepare, execute, and record an amendment to the declaration and, in a condominium or planned community, comply with the provisions of section 38-33.3-209. The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each new unit created and, except in the case of subdivision or conversion of units described in subsection (3) of this section, reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by section 38-33.3-208.

(2) Additional development rights not previously reserved may be reserved within any real estate added to the common interest community if the amendment adding that real estate includes all matters required by section 38-33.3-205 or 38-33.3-206, as the case may be, and, in a condominium or planned community, the plats and maps include all matters required by section 38-33.3-209. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to section 38-33.3-205 (1)(h).

(3) Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements, or both:

(a) If the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain; and

(b) If the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.

(4) If the declaration provides, pursuant to section 38-33.3-205, that all or a portion of the real estate is subject to a right of withdrawal:

(a) If all the real estate is subject to withdrawal, and the declaration does not describe separate portions of real estate subject to that right, none of the real estate may be withdrawn after a unit has been conveyed to a purchaser; and

(b) If any portion of the real estate is subject to withdrawal, it may not be withdrawn after a unit in that portion has been conveyed to a purchaser.

(5) If a declarant fails to exercise any development right within the time limit and in accordance with any conditions or fixed limitations described in the declaration pursuant to section 38-33.3-205 (1)(h), or records an instrument surrendering a development right, that development right shall lapse unless the association, upon the request of the declarant or the owner of the real estate subject to development right, agrees to an extension of the time period for exercise of the development right or a reinstatement of the development right subject to whatever terms, conditions, and limitations the association may impose on the subsequent exercise of the development right. The extension or renewal of the development right and any terms, conditions, and limitations shall be included in an amendment executed by the declarant or the owner of the real estate subject to development right and the association.

Source: L. 91: Entire article added, p. 1723, § 1, effective July 1, 1992. **L. 93:** (5) amended, p. 648, § 13, effective April 30. **L. 98:** (2) amended, p. 481, § 7, effective July 1.

38-33.3-211. Alterations of units. (1) Subject to the provisions of the declaration and other provisions of law, a unit owner:

(a) May make any improvements or alterations to his unit that do not impair the structural integrity, electrical systems, or mechanical systems or lessen the support of any portion of the common interest community;

(b) May not change the appearance of the common elements without permission of the association; or

(c) After acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity, electrical systems, or mechanical systems or lessen the support of any portion of the common interest community. Removal of partitions or creation of apertures under this paragraph (c) is not an alteration of boundaries.

Source: L. 91: Entire article added, p. 1724, § 1, effective July 1, 1992.

38-33.3-212. Relocation of boundaries between adjoining units. (1) Subject to the provisions of the declaration and other provisions of law, and pursuant to the procedures described in section 38-33.3-217, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units.

(2) In order to relocate the boundaries between adjoining units, the owners of those units, as the applicant, must submit an application to the executive board, which application shall be executed by those owners and shall include:

(a) Evidence sufficient to the executive board that the applicant has complied with all local rules and ordinances and that the proposed relocation of boundaries does not violate the terms of any document evidencing a security interest;

(b) The proposed reallocation of interests, if any;

(c) The proposed form for amendments to the declaration, including the plats or maps, as may be necessary to show the altered boundaries between adjoining units, and their dimensions and identifying numbers;

(d) A deposit against attorney fees and costs which the association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the executive board; and

(e) Such other information as may be reasonably requested by the executive board.

(3) No relocation of boundaries between adjoining units shall be effected without the necessary amendments to the declaration, plats, or maps, executed and recorded pursuant to section 38-33.3-217 (3) and (5).

(4) All costs and attorney fees incurred by the association as a result of an application shall be the sole obligation of the applicant.

Source: L. 91: Entire article added, p. 1725, § 1, effective July 1, 1992.

38-33.3-213. Subdivision of units. (1) If the declaration expressly so permits, a unit may be subdivided into two or more units. Subject to the provisions of the declaration and other provisions of law, and pursuant to the procedures described in this section, a unit owner may apply to the association to subdivide a unit.

(2) In order to subdivide a unit, the unit owner of such unit, as the applicant, must submit an application to the executive board, which application shall be executed by such owner and shall include:

(a) Evidence that the applicant of the proposed subdivision shall have complied with all building codes, fire codes, zoning codes, planned unit development requirements, master plans, and other applicable ordinances or resolutions adopted and enforced by the local governing body and that the proposed subdivision does not violate the terms of any document evidencing a security interest encumbering the unit;

(b) The proposed reallocation of interests, if any;

(c) The proposed form for amendments to the declaration, including the plats or maps, as may be necessary to show the units which are created by the subdivision and their dimensions, and identifying numbers;

(d) A deposit against attorney fees and costs which the association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the executive board; and

(e) Such other information as may be reasonably requested by the executive board.

(3) No subdivision of units shall be effected without the necessary amendments to the declaration, plats, or maps, executed and recorded pursuant to section 38-33.3-217 (3) and (5).

(4) All costs and attorney fees incurred by the association as a result of an application shall be the sole obligation of the applicant.

Source: L. 91: Entire article added, p. 1726, § 1, effective July 1, 1992. **L. 98:** (1) amended, p. 481, § 8, effective July 1.

38-33.3-214. Easement for encroachments. To the extent that any unit or common element encroaches on any other unit or common element, a valid easement for the encroachment exists. The easement does not relieve a unit owner of liability in case of willful misconduct nor relieve a declarant or any other person of liability for failure to adhere to the plats and maps.

Source: L. 91: Entire article added, p. 1727, § 1, effective July 1, 1992.

38-33.3-215. Use for sales purposes. A declarant may maintain sales offices, management offices, and models in the common interest community only if the declaration so provides. Except as provided in a declaration, any real estate in a common interest community used as a sales office, management office, or model and not designated a unit by the declaration is a common element. If a declarant ceases to be a unit owner, such declarant ceases to have any rights with regard to any real estate used as a sales office, management office, or model, unless it is removed promptly from the common interest community in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the common interest community. This section is subject to the provisions of other state laws and to local ordinances.

Source: L. 91: Entire article added, p. 1727, § 1, effective July 1, 1992. **L. 98:** Entire section amended, p. 481, § 9, effective July 1.

38-33.3-216. Easement rights. (1) Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under this article or reserved in the declaration.

(2) In a planned community, subject to the provisions of the declaration and the ability of the association to regulate and convey or encumber the common elements as set forth in sections 38-33.3-302 (1)(f), 38-33.3-302.5, and 38-33.3-312, the unit owners have an easement:

(a) In the common elements for the purpose of access to their units; and

(b) To use the common elements and all other real estate that must become common elements for all other purposes.

Source: L. 91: Entire article added, p. 1727, § 1, effective July 1, 1992. **L. 2022:** IP(2) amended, (HB 22-1040), ch. 93, p. 449, § 4, effective August 10.

38-33.3-217. Amendment of declaration. (1) (a) (I) Except as otherwise provided in subparagraphs (II) and (III) of this paragraph (a), the declaration, including the plats and maps, may be amended only by the affirmative vote or agreement of unit owners of units to which more than fifty percent of the votes in the association are allocated or any larger percentage, not to exceed sixty-seven percent, that the declaration specifies. Any provision in the declaration that purports to specify a percentage larger than sixty-seven percent is hereby declared void as contrary to public policy, and until amended, such provision shall be deemed to specify a percentage of sixty-seven percent. The declaration may specify a smaller percentage than a simple majority only if all of the units are restricted exclusively to nonresidential use. Nothing in this paragraph (a) shall be construed to prohibit the association from seeking a court order, in accordance with subsection (7) of this section, to reduce the required percentage to less than sixty-seven percent.

(II) If the declaration provides for an initial period of applicability to be followed by automatic extension periods, the declaration may be amended at any time in accordance with subparagraph (I) of this paragraph (a).

(III) This paragraph (a) shall not apply:

(A) To the extent that its application is limited by subsection (4) of this section;

(B) To amendments executed by a declarant under section 38-33.3-205 (4) and (5), 38-33.3-208 (3), 38-33.3-209 (6), 38-33.3-210, or 38-33.3-222;

(C) To amendments executed by an association under section 38-33.3-107, 38-33.3-206 (4), 38-33.3-208 (2), 38-33.3-212, 38-33.3-213, or 38-33.3-218 (11) and (12);

(D) To amendments executed by the district court for any county that includes all or any portion of a common interest community under subsection (7) of this section; or

(E) To amendments that affect phased communities or declarant-controlled communities.

(b) (I) If the declaration requires first mortgagees to approve or consent to amendments, but does not set forth a procedure for registration or notification of first mortgagees, the association may:

(A) Send a dated, written notice and a copy of any proposed amendment by certified mail to each first mortgagee at its most recent address as shown on the recorded deed of trust or recorded assignment thereof; and

(B) Cause the dated notice, together with information on how to obtain a copy of the proposed amendment, to be printed in full at least twice, on separate occasions at least one week apart, in a newspaper of general circulation in the county in which the common interest community is located.

(II) A first mortgagee that does not deliver to the association a negative response within sixty days after the date of the notice specified in subparagraph (I) of this paragraph (b) shall be deemed to have approved the proposed amendment.

(III) The notification procedure set forth in this paragraph (b) is not mandatory. If the consent of first mortgagees is obtained without resort to this paragraph (b), and otherwise in accordance with the declaration, the notice to first mortgagees shall be considered sufficient.

(2) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

(3) Any amendment to a declaration that adds real estate to a common interest community must be executed by or with the express written authorization of the owner or owners of the real estate to be added, as shown by the records of the county clerk and recorder's office of the county where the real estate is located. Every amendment to the declaration must be recorded in every county in which any portion of the common interest community is located and is effective only upon recordation. An amendment must be indexed in the grantee's index in the name of the common interest community and the association and in the grantor's index in the name of each person executing the amendment.

(4) (a) Except to the extent expressly permitted or required by other provisions of this article, no amendment may create or increase special declarant rights, increase the number of units, or change the boundaries of any unit or the allocated interests of a unit in the absence of a vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association, including sixty-seven percent of the votes allocated to units not owned by a declarant, are allocated or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use.

(b) The sixty-seven-percent maximum percentage stated in paragraph (a) of subsection (1) of this section shall not apply to any common interest community in which one unit owner, by virtue of the declaration, bylaws, or other governing documents of the association, is allocated sixty-seven percent or more of the votes in the association.

(4.5) Except to the extent expressly permitted or required by other provisions of this article, no amendment may change the uses to which any unit is restricted in the absence of a vote or agreement of unit owners of units to which at least sixty-seven 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 are restricted exclusively to nonresidential use.

(5) Amendments to the declaration required by this article to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(6) All expenses associated with preparing and recording an amendment to the declaration shall be the sole responsibility of:

(a) In the case of an amendment pursuant to sections 38-33.3-208 (2), 38-33.3-212, and 38-33.3-213, the unit owners desiring the amendment; and

(b) In the case of an amendment pursuant to section 38-33.3-208 (3), 38-33.3-209 (6), or 38-33.3-210, the declarant; and

(c) In all other cases, the association.

(7) (a) The association, acting through its executive board pursuant to section 38-33.3-303 (1), may petition the district court for any county that includes all or any portion of the common interest community for an order amending the declaration of the common interest community if:

(I) The association has twice sent notice of the proposed amendment to all unit owners that are entitled by the declaration to vote on the proposed amendment or are required for approval of the proposed amendment by any means allowed pursuant to the provisions regarding notice to members in sections 7-121-402 and 7-127-104, S.A.R.S., of the "San Andreas Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, S.A.R.S.;

(II) The association has discussed the proposed amendment during at least one meeting of the association; and

(III) Unit owners of units to which are allocated more than fifty percent of the number of consents, approvals, or votes of the association that would be required to adopt the proposed amendment pursuant to the declaration have voted in favor of the proposed amendment.

(b) A petition filed pursuant to paragraph (a) of this subsection (7) shall include:

(I) A summary of:

(A) The procedures and requirements for amending the declaration that are set forth in the declaration;

(B) The proposed amendment to the declaration;

(C) The effect of and reason for the proposed amendment, including a statement of the circumstances that make the amendment necessary or advisable;

(D) The results of any vote taken with respect to the proposed amendment; and

(E) Any other matters that the association believes will be useful to the court in deciding whether to grant the petition; and

(II) As exhibits, copies of:

(A) The declaration as originally recorded and any recorded amendments to the declaration;

(B) The text of the proposed amendment;

(C) Copies of any notices sent pursuant to subparagraph (I) of paragraph (a) of this subsection (7); and

(D) Any other documents that the association believes will be useful to the court in deciding whether to grant the petition.

(c) Within three days of the filing of the petition, the district court shall set a date for hearing the petition. Unless the court finds that an emergency requires an immediate hearing, the hearing shall be held no earlier than forty-five days and no later than sixty days after the date the association filed the petition.

(d) No later than ten days after the date for hearing a petition is set pursuant to paragraph (c) of this subsection (7), the association shall:

(I) Send notice of the petition by any written means allowed pursuant to the provisions regarding notice to members in sections 7-121-402 and 7-127-104, S.A.R.S., of the "San Andreas Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, S.A.R.S., to any unit owner, by first-class mail, postage prepaid or by hand delivery to any declarant, and by first-class mail, postage prepaid, to any lender that holds a security interest in one or more units and is entitled by the declaration or any underwriting guidelines or requirements of that lender or of the federal national mortgage association, the federal home loan mortgage corporation, the federal housing administration, the veterans administration, or the government national mortgage corporation to vote on the proposed amendment. The notice shall include:

(A) A copy of the petition which need not include the exhibits attached to the original petition filed with the district court;

(B) The date the district court will hear the petition; and

(C) A statement that the court may grant the petition and order the proposed amendment to the declaration unless any declarant entitled by the declaration to vote on the proposed amendment, the federal housing administration, the veterans administration, more than thirty-three percent of the unit owners entitled by the declaration to vote on the proposed amendment, or more than thirty-three percent of the lenders that hold a security interest in one or more units and are entitled by the declaration to vote on the proposed amendment file written objections to the proposed amendment with the court prior to the hearing;

(II) File with the district court:

(A) A list of the names and mailing addresses of declarants, unit owners, and lenders that hold a security interest in one or more units and that are entitled by the declaration to vote on the proposed amendment; and

(B) A copy of the notice required by subparagraph (I) of this paragraph (d).

(e) The district court shall grant the petition after hearing if it finds that:

(I) The association has complied with all requirements of this subsection (7);

(II) No more than thirty-three percent of the unit owners entitled by the declaration to vote on the proposed amendment have filed written objections to the proposed amendment with the court prior to the hearing;

(III) Neither the federal housing administration nor the veterans administration is entitled to approve the proposed amendment, or if so entitled has not filed written objections to the proposed amendment with the court prior to the hearing;

(IV) Either the proposed amendment does not eliminate any rights or privileges designated in the declaration as belonging to a declarant or no declarant has filed written objections to the proposed amendment with the court prior to the hearing;

(V) Either the proposed amendment does not eliminate any rights or privileges designated in the declaration as belonging to any lenders that hold security interests in one or more units and that are entitled by the declaration to vote on the proposed amendment or no more than thirty-three percent of such lenders have filed written objections to the proposed amendment with the court prior to the hearing; and

(VI) The proposed amendment would neither terminate the declaration nor change the allocated interests of the unit owners as specified in the declaration, except as allowed pursuant to section 38-33.3-315.

(f) Upon granting a petition, the court shall enter an order approving the proposed amendment and requiring the association to record the amendment in each county that includes all or any portion of the common interest community. Once recorded, the amendment shall have the same legal effect as if it were adopted pursuant to any requirements set forth in the declaration.

Source: L. 91: Entire article added, p. 1727, § 1, effective July 1, 1992. **L. 93:** (1) amended, p. 649, § 14, effective April 30. **L. 98:** (1) and (4) amended and (4.5) added, p. 482, § 10, effective July 1. **L. 99:** (1) amended and (7) added, p. 692, § 1, effective May 19; (1) amended, p. 629, § 38, effective August 4. **L. 2005:** (1) amended, p. 1380, § 8, effective June 6. **L. 2006:** (1) and (4) amended, p. 1219, § 8, effective May 26. **L. 2024:** (3) amended, (HB 24-1383), ch. 182, p. 983, § 3, effective August 7.

Editor's note: (1) Amendments to subsection (1) by Senate Bill 99-221 and House Bill 99-1360 were harmonized.

(2) Section 4(2) of chapter 182 (HB 24-1383), Session Laws of San Andreas 2024, provides that the act changing this section applies to declarations that are executed or amended on or after August 7, 2024.

Cross references: For the legislative declaration in HB 24-1383, see section 1 of chapter 182, Session Laws of San Andreas 2024.

38-33.3-218. Termination of common interest community. (1) Except in the case of a taking of all the units by eminent domain, or in the case of foreclosure against an entire cooperative of a security interest that has priority over the declaration, a common interest community may be terminated only by agreement of unit owners of units to which at least sixty-seven 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 common interest community are restricted exclusively to nonresidential uses.

(1.5) No planned community that is required to exist pursuant to a development or site plan shall be terminated by agreement of unit owners, unless a copy of the termination

agreement is sent by certified mail or hand delivered to the governing body of every municipality in which a portion of the planned community is situated or, if the planned community is situated in an unincorporated area, to the board of county commissioners for every county in which a portion of the planned community is situated.

(2) An agreement of unit owners to terminate must be evidenced by their execution of a termination agreement or ratifications thereof in the same manner as a deed, by the requisite number of unit owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof must be recorded in every county in which a portion of the common interest community is situated and is effective only upon recordation.

(3) In the case of a condominium or planned community containing only units having horizontal boundaries described in the declaration, a termination agreement may provide that all of the common elements and units of the common interest community must be sold following termination. If, pursuant to the agreement, any real estate in the common interest community is to be sold following termination, the termination agreement must set forth the minimum terms of the sale.

(4) In the case of a condominium or planned community containing any units not having horizontal boundaries described in the declaration, a termination agreement may provide for sale of the common elements, but it may not require that the units be sold following termination, unless the declaration as originally recorded provided otherwise or all the unit owners consent to the sale.

(5) Subject to the provisions of a termination agreement described in subsections (3) and (4) of this section, the association, on behalf of the unit owners, may contract for the sale of real estate in a common interest community following termination, but the contract is not binding on the unit owners until approved pursuant to subsections (1) and (2) of this section. If any real estate is to be sold following termination, title to that real estate, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all the powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all the powers it had before termination. Proceeds of the sale must be distributed to unit owners and lienholders as their interests may appear, in accordance with subsections (8), (9), and (10) of this section, taking into account the value of property owned or distributed that is not sold so as to preserve the proportionate interests of each unit owner with respect to all property cumulatively. 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. During the period of that occupancy, each unit owner and the unit owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by this article or the declaration.

(6) (a) In a planned community, if all or a portion of the common elements are not to be sold following termination, title to the common elements not sold vests in the unit owners upon termination as tenants in common in fractional interests that maintain, after taking into account the fair market value of property owned and the proceeds of property sold, their respective interests as provided in subsection (10) of this section with respect to all property appraised under said subsection (10), and liens on the units shift accordingly.

(b) In a common interest community, containing units having horizontal boundaries described in the declaration, title to the units not to be sold following termination vests in the unit owners upon termination as tenants in common in fractional interests that maintain, after taking into account the fair market value of property owned and the proceeds of property sold, their respective interests as provided in subsection (10) of this section with respect to all property appraised under said subsection (10), 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 such unit.

(7) Following termination of the common interest community, 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.

(8) Upon termination of a condominium or planned community, creditors of the association who obtain a lien and duly record it in every county in which any portion of the common interest community is located are to be treated as if they had perfected liens on the units immediately before termination or when the lien is obtained and recorded, whichever is later.

(9) In a cooperative, the declaration may provide that all creditors of the association have priority over any interests of unit owners and creditors of unit owners. In that event, upon termination, creditors of the association who obtain a lien and duly record it in every county in which any portion of the cooperative is located are to be treated as if they had perfected liens against the cooperative immediately before termination or when the lien is obtained and recorded, whichever is later. Unless the declaration provides that all creditors of the association have that priority:

(a) The lien of each creditor of the association which was perfected against the association before termination becomes, upon termination, a lien against each unit owner's interest in the unit as of the date the lien was perfected;

(b) Any other creditor of the association who obtains a lien and duly records it in every county in which any portion of the cooperative is located is to be treated upon termination as if the creditor had perfected a lien against each unit owner's interest immediately before termination or when the lien is obtained and recorded, whichever is later;

(c) The amount of the lien of an association's creditor described in paragraphs (a) and (b) of this subsection (9) against each unit owner's interest must be proportionate to the ratio which each unit's common expense liability bears to the common expense liability of all of the units;

(d) The lien of each creditor of each unit owner which was perfected before termination continues as a lien against that unit owner's unit as of the date the lien was perfected; and

(e) The assets of the association must be distributed to all unit owners and all lienholders as their interests may appear in the order described above. Creditors of the association are not entitled to payment from any unit owner in excess of the amount of the creditor's lien against that unit owner's interest.

(10) The respective interests of unit owners referred to in subsections (5) to (9) of this section are as follows:

(a) Except as provided in paragraph (b) of this subsection (10), the respective interests of unit owners are the combined fair market values of their units, allocated interests, any limited common elements, and, in the case of a planned community, any tenant in common interest, immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the

unit owners and becomes final unless disapproved within thirty days after distribution by unit owners of units to which twenty-five percent of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and its allocated interests by the total fair market values of all the units and their allocated interests.

(b) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof prior to destruction cannot be made, the interests of all unit owners are:

(I) In a condominium, their respective common element interests immediately before the termination;

(II) In a cooperative, their respective ownership interests immediately before the termination; and

(III) In a planned community, their respective common expense liabilities immediately before the termination.

(11) In a condominium or planned community, except as provided in subsection (12) of this section, foreclosure or enforcement of a lien or encumbrance against the entire common interest community does not terminate, of itself, the common interest community. Foreclosure or enforcement of a lien or encumbrance against a portion of the common interest community other than withdrawable real estate does not withdraw that portion from the common interest community. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not withdraw, of itself, that real estate from the common interest community, but the person taking title thereto may require from the association, upon request, an amendment to the declaration excluding the real estate from the common interest community prepared, executed, and recorded by the association.

(12) In a condominium or planned community, if a lien or encumbrance against a portion of the real estate comprising the common interest community has priority over the declaration and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance, upon foreclosure, may record an instrument excluding the real estate subject to that lien or encumbrance from the common interest community. The board of directors shall reallocate interests as if the foreclosed section were taken by eminent domain by an amendment to the declaration prepared, executed, and recorded by the association.

Source: L. 91: Entire article added, p. 1728, § 1, effective July 1, 1992. **L. 93:** (1), (5), (6), (8), IP(9), (9)(b), and (10)(a) amended, p. 649, § 15, effective April 30. **L. 2005:** (1.5) added, p. 1246, § 1, effective August 8.

38-33.3-219. Rights of secured lenders. (1) The declaration may require that all or a specified number or percentage of the lenders who hold security interests encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to:

(a) Deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board; or

(b) Prevent the association or the executive board from commencing, intervening in, or settling any solicitation or proceeding; or

(c) Prevent any insurance trustee or the association from receiving and distributing any insurance proceeds pursuant to section 38-33.3-313.

Source: L. 91: Entire article added, p. 1732, § 1, effective July 1, 1992.

38-33.3-220. Master associations. (1) If the declaration provides that any of the powers of a unit owners' association described in section 38-33.3-302 are to be exercised by or may be delegated to a master association, all provisions of this article applicable to unit owners' associations apply to any such master association except as modified by this section.

(2) Unless it is acting in the capacity of an association described in section 38-33.3-301, a master association may exercise the powers set forth in section 38-33.3-302 (1)(b) only to the extent such powers are expressly permitted to be exercised by a master association in the declarations of common interest communities which are part of the master association or expressly described in the delegations of power from those common interest communities to the master association.

(3) If the declaration of any common interest community provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers following delegation.

(4) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in sections 38-33.3-303, 38-33.3-308, 38-33.3-309, 38-33.3-310, and 38-33.3-312 apply in the conduct of the affairs of a master association only to persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of this article.

(5) Even if a master association is also an association described in section 38-33.3-301, the articles of incorporation and the declaration of each common interest community, the powers of which are assigned by the declaration or delegated to the master association, must provide that the executive board of the master association be elected after the period of declarant control, if any, in one of the following ways:

(a) All unit owners of all common interest communities subject to the master association may elect all members of the master association's executive board.

(b) All members of the executive boards of all common interest communities subject to the master association may elect all members of the master association's executive board.

(c) All unit owners of each common interest community subject to the master association may elect specified members of the master association's executive board.

(d) All members of the executive board of each common interest community subject to the master association may elect specified members of the master association's executive board.

Source: L. 91: Entire article added, p. 1733, § 1, effective July 1, 1992. **L. 98:** (1) amended, p. 482, § 11, effective July 1.

38-33.3-221. Merger or consolidation of common interest communities. (1) Any two or more common interest communities of the same form of ownership, by agreement of the unit owners as provided in subsection (2) of this section, may be merged or consolidated into a single common interest community. In the event of a merger or consolidation, unless the agreement

otherwise provides, the resultant common interest community is the legal successor, for all purposes, of all of the preexisting common interest communities, and the operations and activities of all associations of the preexisting common interest communities are merged or consolidated into a single association that holds all powers, rights, obligations, assets, and liabilities of all preexisting associations.

(2) An agreement of two or more common interest communities to merge or consolidate pursuant to subsection (1) of this section must be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the preexisting common interest communities following approval by owners of units to which are allocated the percentage of votes in each common interest community required to terminate that common interest community. The agreement must be recorded in every county in which a portion of the common interest community is located and is not effective until recorded.

(3) Every merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the units of the resultant common interest community either by stating the reallocations or the formulas upon which they are based.

Source: L. 91: Entire article added, p. 1734, § 1, effective July 1, 1992.

38-33.3-221.5. Withdrawal from merged common interest community. (1) A common interest community that was merged or consolidated with another common interest community, or is party to an agreement to do so pursuant to section 38-33.3-221, may withdraw from the merged or consolidated common interest community or terminate the agreement to merge or consolidate, without the consent of the other common interest community or communities involved, if the common interest community wishing to withdraw meets all of the following criteria:

(a) It is a separate, platted subdivision;

(b) Its unit owners are required to pay into two common interest communities or separate unit owners' associations;

(c) It is or has been a self-operating common interest community or association continuously for at least twenty-five years;

(d) The total number of unit owners comprising it is fifteen percent or less of the total number of unit owners in the merged or consolidated common interest community or association;

(e) Its unit owners have approved the withdrawal by a majority vote and the owners of units representing at least seventy-five percent of the allocated interests in the common interest community wishing to withdraw participated in the vote; and

(f) Its withdrawal would not substantially impair the ability of the remainder of the merged common interest community or association to:

(I) Enforce existing covenants;

(II) Maintain existing facilities; or

(III) Continue to exist.

(2) If an association has met the requirements set forth in subsection (1) of this section, it shall be considered withdrawn as of the date of the election at which its unit owners voted to withdraw.

Source: L. 2005: Entire section added, p. 1380, § 9, effective January 1, 2006.

38-33.3-222. Addition of unspecified real estate. In a common interest community, if the right is originally reserved in the declaration, the declarant, in addition to any other development right, may amend the declaration at any time during as many years as are specified in the declaration to add additional real estate to the common interest community without describing the location of that real estate in the original declaration; but the area of real estate added to the common interest community pursuant to this section may not exceed ten percent of the total area of real estate described in section 38-33.3-205 (1)(c) and (1)(h), and the declarant may not in any event increase the number of units in the common interest community beyond the number stated in the original declaration pursuant to section 38-33.3-205 (1)(d), except as provided in section 38-33.3-217 (4).

Source: L. 91: Entire article added, p. 1735, § 1, effective July 1, 1992. **L. 98:** Entire section amended, p. 483, § 12, effective July 1.

38-33.3-223. Sale of unit - disclosure to buyer. (Repealed)

Source: L. 2005: Entire section added, p. 1381, § 10, effective January 1, 2006. **L. 2006:** Entire section repealed, p. 1225, § 14, effective May 26.

PART 3

MANAGEMENT OF THE COMMON INTEREST COMMUNITY

38-33.3-301. Organization of unit owners' association. A unit owners' association shall be organized no later than the date the first unit in the common interest community is conveyed to a purchaser. The membership of the association at all times shall consist exclusively of all unit owners or, following termination of the common interest community, of all former unit owners entitled to distributions of proceeds under section 38-33.3-218, or their heirs, personal representatives, successors, or assigns. The association shall be organized as a nonprofit, not-for-profit, or for-profit corporation or as a limited liability company in accordance with the laws of the state of San Andreas; except that the failure of the association to incorporate or organize as a limited liability company will not adversely affect either the existence of the common interest community for purposes of this article or the rights of persons acting in reliance upon such existence, other than as specifically provided in section 38-33.3-316. Neither the choice of entity nor the organizational structure of the association shall be deemed to affect its substantive rights and obligations under this article.

Source: L. 91: Entire article added, p. 1735, § 1, effective July 1, 1992. **L. 98:** Entire section amended, p. 483, § 13, effective July 1. **L. 2005:** Entire section amended, p. 1382, § 11, effective January 1, 2006.

38-33.3-302. Powers of unit owners' association. (1) Except as provided in subsections (2) and (3) of this section, and subject to the provisions of the declaration, the association, without specific authorization in the declaration, may:

(a) Adopt and amend bylaws and rules and regulations;

(b) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;

(c) Hire and terminate managing agents and other employees, agents, and independent contractors;

(d) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the common interest community;

(e) Make contracts and incur liabilities;

(f) Regulate the use, maintenance, repair, replacement, and modification of common elements; except that, in regulating the use of common elements by unit owners, the association shall comply with section 38-33.3-302.5, including during the maintenance, repair, replacement, or modification of a common element;

(g) Cause additional improvements to be made as a part of the common elements;

(h) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, subject to the following exceptions:

(I) Common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to section 38-33.3-312; and

(II) Part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to section 38-33.3-312;

(i) Grant easements, leases, licenses, and concessions through or over the common elements;

(j) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than limited common elements described in section 38-33.3-202 (1)(b) and (1)(d);

(k) (I) Impose charges for late payment of assessments, recover reasonable attorney fees and other legal costs for collection of assessments and other actions to enforce the power of the association, regardless of whether or not suit was initiated, and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, and rules and regulations of the association.

(II) The association may not levy fines against a unit owner for violations of declarations, bylaws, or rules of the association for failure to adequately water landscapes or vegetation for which the unit owner is responsible when water restrictions or guidelines from the local water district or similar entity are in place and the unit owner is watering in compliance with such restrictions or guidelines. The association may require proof from the unit owner that the unit owner is watering the landscape or vegetation in a manner that is consistent with the maximum watering permitted by the restrictions or guidelines then in effect.

(l) Impose reasonable charges for the preparation and recordation of amendments to the declaration or statements of unpaid assessments;

(m) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;

(n) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly so provides;

(o) Exercise any other powers conferred by the declaration or bylaws;

(p) Exercise all other powers that may be exercised in this state by legal entities of the same type as the association; and

(q) Exercise any other powers necessary and proper for the governance and operation of the association.

(2) The declaration may not impose limitations on the power of the association to deal with the declarant that are more restrictive than the limitations imposed on the power of the association to deal with other persons.

(3) (a) Any managing agent, employee, independent contractor, or other person acting on behalf of the association shall be subject to this article to the same extent as the association itself would be.

(b) Decisions concerning the approval or denial of a unit owner's application for architectural or landscaping changes shall be made in accordance with standards and procedures set forth in the declaration or in duly adopted rules and regulations or bylaws of the association, and shall not be made arbitrarily or capriciously.

(4) (a) The association's contract with a managing agent shall be terminable for cause without penalty to the association. Any such contract shall be subject to renegotiation.

(b) Notwithstanding section 38-33.3-117 (1.5)(g), this subsection (4) shall not apply to an association that includes time-share units, as defined in section 38-33-110 (7).

Source: L. 91: Entire article added, p. 1735, § 1, effective July 1, 1992. **L. 2005:** IP(1) amended and (3) and (4) added, p. 1382, § 12, effective January 1, 2006. **L. 2013:** (1)(k) amended, (SB 13-183), ch. 187, p. 758, § 4, effective May 10. **L. 2022:** (1)(f) amended, (HB 22-1040), ch. 93, p. 448, § 1, effective August 10.

38-33.3-302.5. Unit owners' access to common elements - duties of association - unreasonable restrictions and prohibitions prohibited - notice of restriction or prohibition required. (1) In regulating the use of common elements, as permitted by section 38-33.3-302 (1)(f), an association shall preserve and protect unit owners' ability to use and enjoy common elements and shall not unreasonably restrict or prohibit unit owners' access to, or enjoyment of, any common element, including during the maintenance, repair, replacement, or modification of a common element.

(2) During maintenance, repair, replacement, or modification of a common element, an association may restrict or prohibit unit owners' access to, and enjoyment of, the common element only to the extent and for the length of time necessary to:

(a) Protect the safety of any individuals, including unit owners and individuals performing the maintenance, repair, replacement, or modification of the common element; or

(b) Preserve the structural integrity or condition of a repair, replacement, or modification.

(3) If an association must restrict or prohibit unit owners' access to one or more common elements of the common interest community for more than seventy-two hours, the association shall:

(a) Provide an electronic or written notice to each unit owner, which notice is provided as soon as reasonably possible and includes:

(I) A simple explanation of the reason for the restriction or prohibition;

(II) An indication of the estimated time or date upon which the restriction or prohibition will no longer exist; and

(III) A telephone number or e-mail address whereby a unit owner may pose questions or concerns about the restriction or prohibition for the consideration of the association; and

(b) Post a visible, clearly legible notice at each physical access point to the common element, which notice remains posted for the duration of the restriction or prohibition and includes the elements described in subsection (3)(a) of this section.

Source: L. 2022: Entire section added, (HB 22-1040), ch. 93, p. 448, § 2, effective August 10.

38-33.3-303. Executive board members and officers - powers and duties - reserve funds - reserve study - audit. (1) (a) Except as provided in the declaration, the bylaws, or subsection (3) of this section or any other provisions of this article, the executive board may act in all instances on behalf of the association.

(b) Notwithstanding any provision of the declaration or bylaws to the contrary, all members of the executive board shall have available to them all information related to the responsibilities and operation of the association obtained by any other member of the executive board. This information shall include, but is not necessarily limited to, reports of detailed monthly expenditures, contracts to which the association is a party, and copies of communications, reports, and opinions to and from any member of the executive board or any managing agent, attorney, or accountant employed or engaged by the executive board to whom the executive board delegates responsibilities under this article.

(2) Except as otherwise provided in subsection (2.5) of this section:

(a) If appointed by the declarant, in the performance of their duties, the officers and members of the executive board are required to exercise the care required of fiduciaries of the unit owners.

(b) If not appointed by the declarant, no member of the executive board and no officer shall be liable for actions taken or omissions made in the performance of such member's duties except for wanton and willful acts or omissions.

(2.5) With regard to the investment of reserve funds of the association, the officers and members of the executive board shall be subject to the standards set forth in section 7-128-401, S.A.R.S.; except that, as used in that section:

(a) "Corporation" or "nonprofit corporation" means the association.

(b) "Director" means a member of the association's executive board.

(c) "Officer" means any person designated as an officer of the association and any person to whom the executive board delegates responsibilities under this article, including, without limitation, a managing agent, attorney, or accountant employed by the executive board.

(3) (a) The executive board may not act on behalf of the association to amend the declaration, to terminate the common interest community, or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board

members, but the executive board may fill vacancies in its membership for the unexpired portion of any term.

(b) Committees of the association shall be appointed pursuant to the governing documents of the association or, if the governing documents contain no applicable provisions, pursuant to section 7-128-206, S.A.R.S. The person appointed after August 15, 2009, to preside over any such committee shall meet the same qualifications as are required by the governing documents of the association for election or appointment to the executive board of the association.

(4) (a) (I) Within ninety days after adoption of a proposed budget for the common interest community, the executive board shall mail, by first-class mail, or otherwise deliver, including posting the proposed budget on the association's website, a summary of the budget to all the unit owners and shall set a date for a meeting of the unit owners to consider the budget. The meeting must occur within a reasonable time after mailing or other delivery of the summary, or as allowed for in the bylaws. The executive board shall give notice to the unit owners of the meeting as allowed for in the bylaws.

(II) (A) Unless the declaration requires otherwise, the budget proposed by the executive board does not require approval from the unit owners and it will be deemed approved by the unit owners in the absence of a veto at the noticed meeting by a majority of all unit owners, or if permitted in the declaration, a majority of a class of unit owners, or any larger percentage specified in the declaration, whether or not a quorum is present. If the proposed budget is vetoed, the periodic budget last proposed by the executive board and not vetoed by the unit owners must be continued until a subsequent budget proposed by the executive board is not vetoed by the unit owners.

(B) This subsection (4)(a)(II) shall not apply to any common interest community formed prior to July 1, 1992, if the declaration sets a maximum assessment amount or limits the increase in an annual budget to a specific amount and the budget proposed by the executive board does not exceed the maximum amount or limits set in the declaration.

(b) (I) At the discretion of the executive board or upon request pursuant to subparagraph (II) or (III) of this paragraph (b) as applicable, the books and records of the association shall be subject to an audit, using generally accepted auditing standards, or a review, using statements on standards for accounting and review services, by an independent and qualified person selected by the board. Such person need not be a certified public accountant except in the case of an audit. A person selected to conduct a review shall have at least a basic understanding of the principles of accounting as a result of prior business experience, education above the high school level, or bona fide home study. The audit or review report shall cover the association's financial statements, which shall be prepared using generally accepted accounting principles or the cash or tax basis of accounting.

(II) An audit shall be required under this paragraph (b) only when both of the following conditions are met:

(A) The association has annual revenues or expenditures of at least two hundred fifty thousand dollars; and

(B) An audit is requested by the owners of at least one-third of the units represented by the association.

(III) A review shall be required under this paragraph (b) only when requested by the owners of at least one-third of the units represented by the association.

(IV) Copies of an audit or review under this paragraph (b) shall be made available upon request to any unit owner beginning no later than thirty days after its completion.

(V) Notwithstanding section 38-33.3-117 (1.5)(h), this paragraph (b) shall not apply to an association that includes time-share units, as defined in section 38-33-110 (7).

(5) (a) Subject to subsection (6) of this section:

(I) The declaration, except a declaration for a large planned community, may provide for a period of declarant control of the association, during which period a declarant, or persons designated by such declarant, may appoint and remove the officers and members of the executive board. Regardless of the period of declarant control provided in the declaration, a period of declarant control terminates no later than the earlier of sixty days after conveyance of seventy-five percent of the units that may be created to unit owners other than a declarant, two years after the last conveyance of a unit by the declarant in the ordinary course of business, or two years after any right to add new units was last exercised.

(II) The declaration for a large planned community may provide for a period of declarant control of the association during which period a declarant, or persons designated by such declarant, may appoint and remove the officers and members of the executive board. Regardless of the period of declarant control provided in the declaration, a period of declarant control terminates in a large planned community no later than the earlier of sixty days after conveyance of seventy-five percent of the maximum number of units that may be created under zoning or other governmental development approvals in effect for the large planned community at any given time to unit owners other than a declarant, six years after the last conveyance of a unit by the declarant in the ordinary course of business, or twenty years after recordation of the declaration.

(b) A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of the period of declarant control, but, in that event, the declarant may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(c) If a period of declarant control is to terminate in a large planned community pursuant to subparagraph (II) of paragraph (a) of this subsection (5), the declarant, or persons designated by the declarant, shall no longer have the right to appoint and remove the officers and members of the executive board unless, prior to the termination date, the association approves an extension of the declarant's ability to appoint and remove no more than a majority of the executive board by vote of a majority of the votes entitled to be cast in person or by proxy, other than by the declarant, at a meeting duly convened as required by law. Any such approval by the association may contain conditions and limitations. Such extension of declarant's appointment and removal power, together with any conditions and limitations approved as provided in this paragraph (c), shall be included in an amendment to the declaration previously executed by the declarant.

(6) Not later than sixty days after conveyance of twenty-five percent of the units that may be created to unit owners other than a declarant, at least one member and not less than twenty-five percent of the members of the executive board must be elected by unit owners other than the declarant. Not later than sixty days after conveyance of fifty percent of the units that may be created to unit owners other than a declarant, not less than thirty-three and one-third

percent of the members of the executive board must be elected by unit owners other than the declarant.

(7) Except as otherwise provided in section 38-33.3-220 (5), not later than the termination of any period of declarant control, the unit owners shall elect an executive board of at least three members, at least a majority of whom must be unit owners other than the declarant or designated representatives of unit owners other than the declarant. The executive board shall elect the officers. The executive board members and officers shall take office upon election.

(8) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a vote of sixty-seven percent of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant or a member elected pursuant to a class vote under section 38-33.3-207 (4).

(9) Within sixty days after the unit owners other than the declarant elect a majority of the members of the executive board, the declarant shall deliver to the association all property of the unit owners and of the association held by or controlled by the declarant, including without limitation the following items:

(a) The original or a certified copy of the recorded declaration as amended, the association's articles of incorporation, if the association is incorporated, bylaws, minute books, other books and records, and any rules and regulations which may have been promulgated;

(b) An accounting for association funds and financial statements, from the date the association received funds and ending on the date the period of declarant control ends. The financial statements shall be audited by an independent certified public accountant and shall be accompanied by the accountant's letter, expressing either the opinion that the financial statements present fairly the financial position of the association in conformity with generally accepted accounting principles or a disclaimer of the accountant's ability to attest to the fairness of the presentation of the financial information in conformity with generally accepted accounting principles and the reasons therefor. The expense of the audit shall not be paid for or charged to the association.

(c) The association funds or control thereof;

(d) All of the declarant's tangible personal property that has been represented by the declarant to be the property of the association or all of the declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the common elements, and inventories of these properties;

(e) A copy, for the nonexclusive use by the association, of any plans and specifications used in the construction of the improvements in the common interest community;

(f) All insurance policies then in force, in which the unit owners, the association, or its directors and officers are named as insured persons;

(g) Copies of any certificates of occupancy that may have been issued with respect to any improvements comprising the common interest community;

(h) Any other permits issued by governmental bodies applicable to the common interest community and which are currently in force or which were issued within one year prior to the date on which unit owners other than the declarant took control of the association;

(i) Written warranties of the contractor, subcontractors, suppliers, and manufacturers that are still effective;

(j) A roster of unit owners and mortgagees and their addresses and telephone numbers, if known, as shown on the declarant's records;

(k) Employment contracts in which the association is a contracting party;

(l) Any service contract in which the association is a contracting party or in which the association or the unit owners have any obligation to pay a fee to the persons performing the services; and

(m) For large planned communities, copies of all recorded deeds and all recorded and unrecorded leases evidencing ownership or leasehold rights of the large planned community unit owners' association in all common elements within the large planned community.

Source: L. 91: Entire article added, p. 1737, § 1, effective July 1, 1992. **L. 93:** (7), (8), and (9)(e) amended, p. 651, § 16, effective April 30. **L. 94:** (5) and (8) amended, p. 2848, § 5, effective July 1. **L. 95:** (5)(a), (9)(k), and (9)(l) amended and (5)(c) and (9)(m) added, pp. 238, 239, §§ 5, 6, effective July 1. **L. 2002:** (4) and (5)(a)(I) amended, p. 768, § 4, effective August 7. **L. 2005:** (4) amended, p. 1383, § 13, effective January 1, 2006. **L. 2006:** (2) and (4)(b) amended and (2.5) added, p. 1221, § 9, effective May 26. **L. 2009:** (1) and (3) amended, (HB 09-1359), ch. 257, p. 1164, § 2, effective August 5. **L. 2016:** (4)(a) amended, (HB 16-1149), ch. 104, p. 300, § 3, effective July 1, 2018. **L. 2018:** (4)(a)(II) amended, (HB 18-1342), ch. 387, p. 2317, § 2, effective July 1.

38-33.3-303.5. Construction defect actions - disclosure - approval by unit owners - definitions - exemptions. (1) (a) Before the executive board, pursuant to section 38-33.3-302 (1)(d), institutes a construction defect action, the executive board shall comply with this section.

(b) For the purposes of this section only:

(I) "Construction defect action":

(A) Means any civil action or arbitration proceeding for damages, indemnity, subrogation, or contribution brought against a construction professional to assert a claim, counterclaim, cross-claim, or third-party claim for damages or loss to, or the loss of use of, real or personal property or personal injury caused by a defect in the design or construction of an improvement to real property, regardless of the theory of liability; and

(B) Includes any related, ancillary, or derivative claim, and any claim for breach of fiduciary duty or an act or omission of a member of an association's executive board, that arises from an alleged construction defect or that seeks the same or similar damages.

(II) "Construction professional" has the meaning set forth in section 13-20-802.5 (4).

(c) **Meeting to consider commencement of construction defect action - disclosures - required terms.** (I) The executive board shall mail or deliver written notice of the anticipated commencement of the construction defect action to each unit owner at the owner's last-known address described in the association's records and to the last-known address of each construction professional against whom a construction defect action is proposed; except that this notice requirement does not apply to:

(A) Construction professionals identified after the notice is mailed; or

(B) Joined parties in a construction defect action previously approved by owners pursuant to subsection (1)(d) of this section.

(II) The notice given pursuant to this subsection (1)(c) must call a meeting of the unit owners, which must be held no less than ten days and no more than fifteen days after the mailing

date of the notice, to consider whether to bring a construction defect action. A failure to hold the meeting within this time period voids the subsequent vote. A quorum is not required at the meeting. In no event shall the time period for providing the notice required pursuant to subsection (1)(c)(I) of this section, holding the meeting required pursuant to this subsection (1)(c)(II), and voting as required by subsection (1)(d) of this section exceed ninety days. The notice must state that:

(A) The conclusion of the meeting initiates the voting period, during which the association will accept votes for and against proceeding with the construction defect action. The disclosure and voting period shall end ninety days after the mailing date of the meeting notice or when the association determines that the construction defect action is either approved or disapproved, whichever occurs first.

(B) The construction professional against whom the construction defect action is proposed will be invited to attend and will have an opportunity to address the unit owners concerning the alleged construction defect; and

(C) The presentation at the meeting by the construction professional or the construction professional's designee or designees may, but is not required to, include an offer to remedy any defect in accordance with section 13-20-803.5 (3) of the "Construction Defect Action Reform Act".

(III) The notice given pursuant to this subsection (1)(c) must also contain a description of the nature of the construction defect action, which description identifies alleged defects with reasonable specificity, the relief sought, a good-faith estimate of the benefits and risks involved, and any other pertinent information. The notice shall also include the following disclosures:

1. The alleged construction defects might result in increased costs to the association in maintenance or repair or cause an increase in assessments or special assessments to cover the cost of repairs.

2. If the association does not file a claim before the applicable legal deadlines, the claim will expire.

3. Until the alleged defects are repaired, sellers of units within the common interest community might owe unit buyers a duty to disclose known defects.

4. The executive board (intends to enter) (has entered) into a fee arrangement with the attorneys representing the association, under which (the attorneys will be paid a contingency fee equal to __ percent of the (net) (gross) recovery of the amount the association recovers from the defendant(s)) (the association's attorneys will be paid (an hourly fee of $_____) (a fixed fee of $____)).

5. In addition to attorney fees, the association may incur up to $_____for legal costs, including expert witnesses, depositions, and filing fees. The amount will not be exceeded without the executive board's further written authority. If the association does not prevail on its claim, the association may be responsible for paying these legal expenses.

6. If the association does not prevail on its claim, the association may be responsible for paying its attorney fees.

7. If the association does not prevail on its claim, a court or arbitrator sometimes awards costs and attorney fees to the opposing party. Should that happen in this case, the association may be responsible for paying the opposing party's costs and fees as a result of such award.

8. There is no guarantee that the association will recover enough funds to repair the claimed construction defect(s). If the claimed defects are not repaired, additional damage to property and a reduction in the useful life of the common elements might occur.

9. Until the claimed construction defects are repaired, or until the construction defect claim is concluded, the market value of the units in the association might be adversely affected.

10. Until the claimed construction defect(s) are repaired, or until the construction defect(s) claim is concluded, owners in the association might have difficulty refinancing and prospective buyers might have difficulty obtaining financing. In addition, certain federal underwriting standards or regulations prevent refinancing or obtaining a new loan in projects where a construction defect is claimed, and certain lenders as a matter of policy will not refinance or provide a new loan in projects where a construction defect is claimed.

(IV) The association shall maintain a verified owner mailing list that identifies the owners to whom the association mailed the notice required pursuant to this subsection (1)(c). The verified owner mailing list shall include, for each owner, the address, if any, to which the association mailed the notice required pursuant to this subsection (1)(c). The association shall provide a copy of the verified owner mailing list to each construction professional who is sent a notice pursuant to this subsection (1)(c) at the owner meeting required under subsection (1)(c)(II) of this section. The owner mailing list shall be deemed verified if a specimen copy of the mailing list is certified by an association officer or agent. If the association commences a construction defect action against any construction professional, the association shall file its verified owner mailing list and records of votes received from owners during the voting period with the appropriate forum under seal.

(V) The substance of a proposed construction defect action may be amended or supplemented after the meeting, but an amended or supplemented claim does not extend the voting period. The executive board shall give notice to unit owners of any amended or supplemented claim and shall maintain records of its communications with unit owners. Owner approval pursuant to subsection (1)(d) of this section is not required for amendments or supplements to a construction defect action made after the notice pursuant to this subsection (1)(c) is sent.

(d) **Approval by unit owners - procedures.** (I) (A) Notwithstanding any provision of law or any requirement in the governing documents, the executive board may initiate the construction defect action only if authorized within the voting period by owners of units to which a majority of votes in the association are allocated. Such approval is not required for an association to proceed with a construction defect action if the alleged construction defect pertains to a facility that is intended and used for nonresidential purposes and if the cost to repair the alleged defect does not exceed fifty thousand dollars. Such approval is not required for an

association to proceed with a construction defect action when the association is the contracting party for the performance of labor or purchase of services or materials.

(B) Notwithstanding any other provision of law, an owner's vote shall be submitted only once and may be obtained in any written format confirming the owner's vote to approve or reject the proposed construction defect action. The association shall maintain a record of all votes until the conclusion of the construction defect action, including all appeals, if any.

(II) (A) Nothing in this section alters the tolling provisions of section 13-20-805.

(B) All statutes of limitation and repose applicable to claims based on defects described with reasonable specificity in the notice, which may be supplemented or amended pursuant to subsection (1)(c)(IV) of this section, are tolled from the date the notice sent pursuant to subsection (1)(c) of this section is mailed until either the ninety-day voting and disclosure period ends or until the association determines that the construction defect action is either approved or disapproved, whichever occurs first.

(C) The applicable statutes of limitation and repose that apply to claims based on a defect described in the notice with reasonable specificity are tolled pursuant to this subsection (1)(d)(II) once, and may not extend the statutes of limitation and repose that apply to claims based on that defect for more than a total of ninety days, respectively. If a defect not included in the notice sent pursuant to subsection (1)(c) of this section is the subject of a later vote, tolling pursuant to this subsection (1)(d) applies unless the claim based on that defect is otherwise barred by the statute of limitations or statute of repose.

(III) **Vote count - exclusions.** For purposes of calculating the required majority vote under this subsection (1)(d) only, the following votes are excluded:

(A) Any votes allocated to units owned by a development party. As used in this subsection (1)(d)(III)(A), "development party" means a contractor, subcontractor, developer, or builder responsible for any part of the design, construction, or repair of any portion of the common interest community and any of that party's affiliates; and "affiliate" includes an entity controlled or owned, in whole or in part, by any person that controls or owns a development party or by the spouse of a development party.

(B) Any votes allocated to units owned by banking institutions, unless a vote from such an institution is actually received by the association;

(C) Any votes allocated to units of a product type in which no defects are alleged, in a common interest community whose declaration provides that common expense liabilities are not shared between the product types;

(D) Any votes allocated to units owned by owners who are deemed nonresponsive. If the status of the nonresponsive unit owners is challenged in court, the court shall consider whether the executive board has made diligent efforts to contact the unit owner regarding the vote and may consider: Whether a mailing was returned as undeliverable; whether the owner appears to be residing at the unit; and whether the association has used other contact information, such as an electronic mail address or telephone number for the owner.

(e) **Notice to construction professional.** At least five business days before the mailing of the notice required by subsection (1)(c) of this section, the association shall notify each construction professional against whom a construction defect action is proposed by mail, at its last-known address, of the date and time of the meeting called to consider the construction defect action pursuant to subsection (1)(c) of this section.

(2) Repealed.

(3) Nothing in this section shall be construed to:

(a) Require the disclosure in the notice or the disclosure to a unit owner of attorney-client communications or other privileged communications;

(b) Permit the notice to serve as a basis for any person to assert the waiver of any applicable privilege or right of confidentiality resulting from, or to claim immunity in connection with, the disclosure of information in the notice; or

(c) Limit or impair the authority of the executive board to contract for legal services, or limit or impair the ability to enforce such a contract for legal services.

(4) **Provisions not severable.** Notwithstanding section 2-4-204, the general assembly finds, determines, and declares that if any provision of this section or its application to any person or circumstance is held invalid, the entire section shall be deemed invalid.

Source: L. 2001: Entire section added, p. 390, § 3, effective August 8. **L. 2017:** (1) amended, (2) repealed, and (4) added, (HB 17-1279), ch. 232, p. 901, § 1, effective May 23.

38-33.3-304. Transfer of special declarant rights. (1) A special declarant right created or reserved under this article may be transferred only by an instrument evidencing the transfer recorded in every county in which any portion of the common interest community is located. The instrument is not effective unless executed by the transferee.

(2) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(a) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon such transferor by this article. Lack of privity does not deprive any unit owner of standing to bring an action to enforce any obligation of the transferor.

(b) If a successor to any special declarant right is an affiliate of a declarant, the transferor is jointly and severally liable with the successor for the liabilities and obligations of the successor which relate to the common interest community.

(c) If a transferor retains any special declarant rights but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this article or by the declaration relating to the retained special declarant rights and arising after the transfer.

(d) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(3) Unless otherwise provided in a mortgage instrument, deed of trust, or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under bankruptcy or receivership proceedings of any units owned by a declarant or real estate in a common interest community subject to development rights, a person acquiring title to all the property being foreclosed or sold succeeds to only those special declarant rights related to that property held by that declarant which are specified in a written instrument prepared, executed, and recorded by such person at or about the same time as the judgment or instrument or by which such person obtained title to all of the property being foreclosed or sold.

(4) Upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under bankruptcy act or receivership proceedings of all interests in a common interest community owned by a declarant:

(a) The declarant ceases to have any special declarant rights; and

(b) The period of declarant control terminates unless the instrument which is required by subsection (3) of this section to be prepared, executed, and recorded at or about the same time as the judgment or instrument conveying title provides for transfer of all special declarant rights to a successor declarant.

(5) The liabilities and obligations of persons who succeed to special declarant rights are as follows:

(a) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on any declarant by this article or by the declaration.

(b) A successor to any special declarant right, other than a successor described in paragraph (c) or (d) of this subsection (5) or a successor who is an affiliate of a declarant, is subject to all obligations and liabilities imposed by this article or the declaration:

(I) On a declarant which relate to the successor's exercise or nonexercise of special declarant rights; or

(II) On the declarant's transferor, other than:

(A) Misrepresentations by any previous declarant;

(B) Warranty obligations on improvements made by any previous declarant or made before the common interest community was created;

(C) Breach of any fiduciary obligation by any previous declarant or such declarant's appointees to the executive board; or

(D) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

(c) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs, if such successor is not an affiliate of a declarant, may not exercise any other special declarant right and is not subject to any liability or obligation as a declarant.

(d) A successor to all special declarant rights held by a transferor who succeeded to those rights pursuant to the instrument prepared, executed, and recorded by such person pursuant to the provisions of subsection (3) of this section may declare such successor's intention in such recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit or real estate subject to development rights owned by the successor or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than the right held by such successor's transferor to control the executive board in accordance with the provisions of section 38-33.3-303 (5) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection (5), such successor declarant is not subject to any liability or obligation as a declarant, other than liability for the successor's acts and omissions under section 38-33.3-303 (4).

(6) Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this article or the declaration.

Source: L. 91: Entire article added, p. 1740, § 1, effective July 1, 1992.

38-33.3-305. Termination of contracts and leases of declarant. (1) The following contracts and leases, if entered into before the executive board elected by the unit owners pursuant to section 38-33.3-303 (7) takes office, may be terminated without penalty by the association, at any time after the executive board elected by the unit owners pursuant to section 38-33.3-303 (7) takes office, upon not less than ninety days' notice to the other party:

(a) Any management contract, employment contract, or lease of recreational or parking areas or facilities;

(b) Any other contract or lease between the association and a declarant or an affiliate of a declarant; or

(c) Any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing.

(2) Subsection (1) of this section does not apply to any lease the termination of which would terminate the common interest community or reduce its size, unless the real estate subject to that lease was included in the common interest community for the purpose of avoiding the right of the association to terminate a lease under this section or a proprietary lease.

Source: L. 91: Entire article added, p. 1743, § 1, effective July 1, 1992.

38-33.3-306. Bylaws. (1) In addition to complying with applicable sections, if any, of the "San Andreas Business Corporation Act", articles 101 to 117 of title 7, S.A.R.S., or the "San Andreas Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, S.A.R.S., if the common interest community is organized pursuant thereto, the bylaws of the association must provide:

(a) The number of members of the executive board and the titles of the officers of the association;

(b) Election by the executive board of a president, a treasurer, a secretary, and any other officers of the association the bylaws specify;

(c) The qualifications, powers and duties, and terms of office of, and manner of electing and removing, executive board members and officers and the manner of filling vacancies;

(d) Which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent;

(e) Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; and

(f) A method for amending the bylaws.

(2) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

(3) (a) If an association with thirty or more units delegates powers of the executive board or officers relating to collection, deposit, transfer, or disbursement of association funds to other persons or to a managing agent, the bylaws of the association shall require the following:

(I) That the other persons or managing agent maintain fidelity insurance coverage or a bond in an amount not less than fifty thousand dollars or such higher amount as the executive board may require;

(II) That the other persons or managing agent maintain all funds and accounts of the association separate from the funds and accounts of other associations managed by the other

persons or managing agent and maintain all reserve accounts of each association so managed separate from operational accounts of the association;

(III) That an annual accounting for association funds and a financial statement be prepared and presented to the association by the managing agent, a public accountant, or a certified public accountant.

(b) Repealed.

Source: L. 91: Entire article added, p. 1743, § 1, effective July 1, 1992. **L. 92:** (3) added, p. 2096, § 1, effective July 1, 1993. **L. 93:** (3) amended, p. 1464, § 10, effective June 6; IP(1) amended, p. 865, § 40, effective July 1, 1994. **L. 96:** (3)(b) repealed, p. 1088, § 2, effective May 23. **L. 97:** IP(1) amended, p. 764, § 36, effective July 1, 1998.

38-33.3-307. Upkeep of the common interest community. (1) Except to the extent provided by the declaration, subsection (2) of this section, or section 38-33.3-313 (9), the association is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair, and replacement of such owner's unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through such owner's unit reasonably necessary for those purposes. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the common elements or any unit through which access is taken, the unit owner responsible for the damage, or expense to avoid damage, or the association if it is responsible, is liable for the cost of prompt repair.

(1.5) Maintenance, repair, or replacement of any drainage structure or facilities, or other public improvements required by the local governmental entity as a condition of development of the common interest community or any part thereof shall be the responsibility of the association, unless such improvements have been dedicated to and accepted by the local governmental entity for the purpose of maintenance, repair, or replacement or unless such maintenance, repair, or replacement has been authorized by law to be performed by a special district or other municipal or quasi-municipal entity.

(2) In addition to the liability that a declarant as a unit owner has under this article, the declarant alone is liable for all expenses in connection with real estate within the common interest community subject to development rights. No other unit owner and no other portion of the common interest community is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to development rights inures to the declarant. If the declarant fails to pay all expenses in connection with real estate within the common interest community subject to development rights, the association may pay such expenses, and such expenses shall be assessed as a common expense against the real estate subject to development rights, and the association may enforce the assessment pursuant to section 38-33.3-316 by treating such real estate as if it were a unit. If the association acquires title to the real estate subject to the development rights through foreclosure or otherwise, the development rights shall not be extinguished thereby, and, thereafter, the association may succeed to any special declarant rights specified in a written instrument prepared, executed, and recorded by the association in accordance with the requirements of section 38-33.3-304 (3).

(3) In a planned community, if all development rights have expired with respect to any real estate, the declarant remains liable for all expenses of that real estate unless, upon expiration, the declaration provides that the real estate becomes common elements or units.

(4) In maintaining, repairing, or replacing common elements as required by subsection (1) of this section, an association shall comply with section 38-33.3-302.5 concerning unit owners' access to common elements.

Source: L. 91: Entire article added, p. 1744, § 1, effective July 1, 1992. **L. 93:** (2) amended, p. 651, § 17, effective April 30. **L. 98:** (2) amended, p. 483, § 14, effective July 1. **L. 2022:** (4) added, (HB 22-1040), ch. 93, p. 449, § 3, effective August 10.

38-33.3-308. Meetings. (1) Meetings of the unit owners, as the members of the association, shall be held at least once each year. Special meetings of the unit owners may be called by the president, by a majority of the executive board, or by unit owners having twenty percent, or any lower percentage specified in the bylaws, of the votes in the association. Not less than ten nor more than fifty days in advance of any meeting of the unit owners, the secretary or other officer specified in the bylaws shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting of the unit owners shall be physically posted in a conspicuous place, to the extent that such posting is feasible and practicable, in addition to any electronic posting or electronic mail notices that may be given pursuant to paragraph (b) of subsection (2) of this section. The notice shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove an officer or member of the executive board.

(2) (a) All regular and special meetings of the association's executive board, or any committee thereof, shall be open to attendance by all members of the association or their representatives. Agendas for meetings of the executive board shall be made reasonably available for examination by all members of the association or their representatives.

(b) (I) The association is encouraged to provide all notices and agendas required by this article in electronic form, by posting on a website or otherwise, in addition to printed form. If such electronic means are available, the association shall provide notice of all regular and special meetings of unit owners by electronic mail to all unit owners who so request and who furnish the association with their electronic mail addresses. Electronic notice of a special meeting shall be given as soon as possible but at least twenty-four hours before the meeting.

(II) Notwithstanding section 38-33.3-117 (1.5)(i), this paragraph (b) shall not apply to an association that includes time-share units, as defined in section 38-33-110 (7), S.A.R.S.

(2.5) (a) Notwithstanding any provision in the declaration, bylaws, or other documents to the contrary, all meetings of the association and board of directors are open to every unit owner of the association, or to any person designated by a unit owner in writing as the unit owner's representative.

(b) At an appropriate time determined by the board, but before the board votes on an issue under discussion, unit owners or their designated representatives shall be permitted to speak regarding that issue. The board may place reasonable time restrictions on persons speaking during the meeting. If more than one person desires to address an issue and there are opposing views, the board shall provide for a reasonable number of persons to speak on each side of the issue.

(c) Notwithstanding section 38-33.3-117 (1.5)(i), this subsection (2.5) shall not apply to an association that includes time-share units, as defined in section 38-33-110 (7).

(3) The members of the executive board or any committee thereof may hold an executive or closed door session and may restrict attendance to executive board members and such other persons requested by the executive board during a regular or specially announced meeting or a part thereof. The matters to be discussed at such an executive session shall include only matters enumerated in paragraphs (a) to (f) of subsection (4) of this section.

(4) Matters for discussion by an executive or closed session are limited to:

(a) Matters pertaining to employees of the association or the managing agent's contract or involving the employment, promotion, discipline, or dismissal of an officer, agent, or employee of the association;

(b) Consultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client;

(c) Investigative proceedings concerning possible or actual criminal misconduct;

(d) Matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure;

(e) Any matter, the disclosure of which would constitute an unwarranted invasion of individual privacy, including a disciplinary hearing regarding a unit owner and any referral of delinquency; except that a unit owner who is the subject of a disciplinary hearing or a referral of delinquency may request and receive the results of any vote taken at the relevant meeting; and

(f) Review of or discussion relating to any written or oral communication from legal counsel.

(4.5) Upon the final resolution of any matter for which the board received legal advice or that concerned pending or contemplated litigation, the board may elect to preserve the attorney-client privilege in any appropriate manner, or it may elect to disclose such information, as it deems appropriate, about such matter in an open meeting.

(5) Prior to the time the members of the executive board or any committee thereof convene in executive session, the chair of the body shall announce the general matter of discussion as enumerated in paragraphs (a) to (f) of subsection (4) of this section.

(6) No rule or regulation of the board or any committee thereof shall be adopted during an executive session. A rule or regulation may be validly adopted only during a regular or special meeting or after the body goes back into regular session following an executive session.

(7) The minutes of all meetings at which an executive session was held shall indicate that an executive session was held and the general subject matter of the executive session.

Source: L. 91: Entire article added, p. 1745, § 1, effective July 1, 1992. **L. 95:** Entire section amended, p. 888, § 1, effective July 1. **L. 98:** (2) amended, p. 484, § 15, effective July 1. **L. 2002:** (4)(a) amended and (4)(f) added, p. 768, § 5, effective August 7. **L. 2005:** (3) and (5) amended, p. 781, § 71, effective June 1; (1) and (2) amended and (2.5) and (4.5) added, p. 1384, § 14, effective January 1, 2006. **L. 2006:** (1), (2.5)(a), and (2.5)(b) amended, p. 1222, § 10, effective May 26. **L. 2022:** (4)(e) amended, (HB 22-1137), ch. 367, p. 2615, § 2, effective August 10.

38-33.3-309. Quorums. (1) Unless the bylaws provide otherwise, a quorum is deemed present throughout any meeting of the association if persons entitled to cast twenty percent, or, in the case of an association with over one thousand unit owners, ten percent, of the votes which may be cast for election of the executive board are present, in person or by proxy at the beginning of the meeting.

(2) Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast fifty percent of the votes on that board are present at the beginning of the meeting or grant their proxy, as provided in section 7-128-205 (4), S.A.R.S.

Source: L. 91: Entire article added, p. 1745, § 1, effective July 1, 1992. **L. 98:** (2) amended, p. 484, § 16, effective July 1.

38-33.3-310. Voting - proxies. (1) (a) If only one of the multiple owners of a unit is present at a meeting of the association, such owner is entitled to cast all the votes allocated to that unit. If more than one of the multiple owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(b) (I) (A) Votes for contested positions on the executive board shall be taken by secret ballot. This sub-subparagraph (A) shall not apply to an association whose governing documents provide for election of positions on the executive board by delegates on behalf of the unit owners.

(B) At the discretion of the board or upon the request of twenty percent of the unit owners who are present at the meeting or represented by proxy, if a quorum has been achieved, a vote on any matter affecting the common interest community on which all unit owners are entitled to vote shall be by secret ballot.

(C) Ballots shall be counted by a neutral third party or by a committee of volunteers. Such volunteers shall be unit owners who are selected or appointed at an open meeting, in a fair manner, by the chair of the board or another person presiding during that portion of the meeting. The volunteers shall not be board members and, in the case of a contested election for a board position, shall not be candidates.

(D) The results of a vote taken by secret ballot shall be reported without reference to the names, addresses, or other identifying information of unit owners participating in such vote.

(II) Notwithstanding section 38-33.3-117 (1.5)(j), this paragraph (b) shall not apply to an association that includes time-share units, as defined in section 38-33-110 (7).

(2) (a) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. A proxy shall not be valid if obtained through fraud or misrepresentation. Unless otherwise provided in the declaration, bylaws, or rules of the association, appointment of proxies may be made substantially as provided in section 7-127-203, S.A.R.S.

(b) If a unit is owned by more than one person, each owner of the unit may vote or register a protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit 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 void if

it is not dated or purports to be revocable without notice. A proxy terminates eleven months after its date, unless the proxy itself indicates an earlier termination date.

(c) The association is entitled to reject a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the unit owner.

(d) The association and its officer or agent who accepts or rejects a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation in good faith and in accordance with the standards of this section are not liable in damages for the consequences of the acceptance or rejection.

(e) Any action of the association based on the acceptance or rejection of a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation under this section is valid unless a court of competent jurisdiction determines otherwise.

(3) (a) If the declaration requires that votes on specified matters affecting the common interest community be cast by lessees rather than unit owners of leased units:

(I) The provisions of subsections (1) and (2) of this section apply to lessees as if they were unit owners;

(II) Unit owners who have leased their units to other persons may not cast votes on those specified matters; and

(III) Lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners.

(b) Unit owners must also be given notice, in the manner provided in section 38-33.3-308, of all meetings at which lessees are entitled to vote.

(4) No votes allocated to a unit owned by the association may be cast.

Source: L. 91: Entire article added, p. 1745, § 1, effective July 1, 1992. **L. 2005:** (1) and (2) amended, p. 1385, § 15, effective January 1, 2006. **L. 2006:** (1)(b)(I) amended, p. 1223, § 11, effective May 26. **L. 2022:** (2)(b) amended, (SB 22-059), ch. 34, p. 186, § 1, effective August 10.

38-33.3-310.5. Executive board - conflicts of interest - definitions. (1) Section 7-128-501, S.A.R.S., shall apply to members of the executive board; except that, as used in that section:

(a) "Corporation" or "nonprofit corporation" means the association.

(b) "Director" means a member of the association's executive board.

(c) "Officer" means any person designated as an officer of the association and any person to whom the board delegates responsibilities under this article, including, without limitation, a managing agent, attorney, or accountant employed by the board.

Source: L. 2005: Entire section added, p. 1386, § 16, effective January 1, 2006. **L. 2006:** Entire section R&RE, p. 1223, § 12, effective May 26.

38-33.3-311. Tort and contract liability. (1) Neither the association nor any unit owner except the declarant is liable for any cause of action based upon that declarant's acts or omissions in connection with any part of the common interest community which that declarant has the responsibility to maintain. Otherwise, any action alleging an act or omission by the

association must be brought against the association and not against any unit owner. If the act or omission occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner for all tort losses not covered by insurance suffered by the association or that unit owner and all costs that the association would not have incurred but for such act or omission. Whenever the declarant is liable to the association under this section, the declarant is also liable for all expenses of litigation, including reasonable attorney fees, incurred by the association. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from maintaining an action contemplated by this section by being a unit owner or a member or officer of the association.

(2) The declarant is liable to the association for all funds of the association collected during the period of declarant control which were not properly expended.

Source: L. 91: Entire article added, p. 1746, § 1, effective July 1, 1992.

38-33.3-312. Conveyance or encumbrance of common elements. (1) In a condominium or planned community, portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least sixty-seven percent of the votes in the association, including sixty-seven percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; except that all owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association.

(2) Part of a cooperative may be conveyed and all or part of a cooperative may be subjected to a security interest by the association if persons entitled to cast at least sixty-seven percent of the votes in the association, including sixty-seven percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; except that, if fewer than all of the units or limited common elements are to be conveyed or subjected to a security interest, then all unit owners of those units, or the units to which those limited common elements are allocated, must agree in order to convey those units or limited common elements or subject them to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association. Any purported conveyance or other voluntary transfer of an entire cooperative, unless made in compliance with section 38-33.3-218, is void.

(3) An agreement to convey, or subject to a security interest, common elements in a condominium or planned community, or, in a cooperative, an agreement to convey, or subject to a security interest, any part of a cooperative, must be evidenced by the execution of an agreement, in the same manner as a deed, by the association. The agreement must specify a date after which the agreement will be void unless approved by the requisite percentage of owners. Any grant, conveyance, or deed executed by the association must be recorded in every county in which a portion of the common interest community is situated and is effective only upon recordation.

(4) The association, on behalf of the unit owners, may contract to convey an interest in a common interest community pursuant to subsection (1) of this section, but the contract is not enforceable against the association until approved pursuant to subsections (1) and (2) of this section and executed and ratified pursuant to subsection (3) of this section. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(5) Unless in compliance with this section, any purported conveyance, encumbrance, judicial sale, or other transfer of common elements or any other part of a cooperative is void.

(6) A conveyance or encumbrance of common elements pursuant to this section shall not deprive any unit of its rights of ingress and egress of the unit and support of the unit.

(7) Unless the declaration otherwise provides, a conveyance or encumbrance of common elements pursuant to this section does not affect the priority or validity of preexisting encumbrances.

(8) In a cooperative, the association may acquire, hold, encumber, or convey a proprietary lease without complying with this section.

Source: L. 91: Entire article added, p. 1747, § 1, effective July 1, 1992. **L. 93:** (1) and (5) amended, p. 652, § 18, effective April 30. **L. 98:** (1) to (3) amended, p. 484, § 17, effective July 1.

38-33.3-313. Insurance. (1) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(a) Property insurance on the common elements and, in a planned community, also on property that must become common elements, for broad form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(b) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the common elements, and, in cooperatives, also of all units, in an amount, if any, specified by the common interest community instruments or otherwise deemed sufficient in the judgment of the executive board but not less than any amount specified in the association documents, insuring the executive board, the unit owners' association, the management agent, and their respective employees, agents, and all persons acting as agents. The declarant shall be included as an additional insured in such declarant's capacity as a unit owner and board member. The unit owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the common elements and, in cooperatives, also of all units. The insurance shall cover claims of one or more insured parties against other insured parties.

(2) In the case of a building that is part of a cooperative or that contains units having horizontal boundaries described in the declaration, the insurance maintained under paragraph (a) of subsection (1) of this section must include the units but not the finished interior surfaces of the walls, floors, and ceilings of the units. The insurance need not include improvements and

betterments installed by unit owners, but if they are covered, any increased charge shall be assessed by the association to those owners.

(3) If the insurance described in subsections (1) and (2) of this section is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefore having been obtained, the association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all unit owners. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it considers appropriate, including insurance on units it is not obligated to insure, to protect the association or the unit owners.

(4) Insurance policies carried pursuant to subsections (1) and (2) of this section must provide that:

(a) Each unit owner is an insured person under the policy with respect to liability arising out of such unit owner's interest in the common elements or membership in the association;

(b) The insurer waives its rights to subrogation under the policy against any unit owner or member of his household;

(c) No act or omission by any unit owner, unless acting within the scope of such unit owner's authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and

(d) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

(5) Any loss covered by the property insurance policy described in paragraph (a) of subsection (1) and subsection (2) of this section must be adjusted with the association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any holder of a security interest. The insurance trustee or the association shall hold any insurance proceeds in trust for the association unit owners and lienholders as their interests may appear. Subject to the provisions of subsection (9) of this section, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the association, unit owners, and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the common interest community is terminated.

(6) The association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the association settles claims for damages to real property, it shall have the authority to assess negligent unit owners causing such loss or benefiting from such repair or restoration all deductibles paid by the association. In the event that more than one unit is damaged by a loss, the association in its reasonable discretion may assess each unit owner a pro rata share of any deductible paid by the association.

(7) An insurance policy issued to the association does not obviate the need for unit owners to obtain insurance for their own benefit.

(8) An insurer that has issued an insurance policy for the insurance described in subsections (1) and (2) of this section shall issue certificates or memoranda of insurance to the association and, upon request, to any unit owner or holder of a security interest. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty days after notice of the proposed cancellation or nonrenewal has been mailed to the

association, and each unit owner and holder of a security interest to whom a certificate or memorandum of insurance has been issued, at their respective last-known addresses.

(9) (a) Any portion of the common interest community for which insurance is required under this section which is damaged or destroyed must be repaired or replaced promptly by the association unless:

(I) The common interest community is terminated, in which case section 38-33.3-218 applies;

(II) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;

(III) Sixty-seven percent of the unit owners, including every owner of a unit or assigned limited common element that will not be rebuilt, vote not to rebuild; or

(IV) Prior to the conveyance of any unit to a person other than the declarant, the holder of a deed of trust or mortgage on the damaged portion of the common interest community rightfully demands all or a substantial part of the insurance proceeds.

(b) The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire common interest community is not repaired or replaced, the insurance proceeds attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the common interest community, and, except to the extent that other persons will be distributees, the insurance proceeds attributable to units and limited common elements that are not rebuilt must be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lienholders, as their interests may appear, and the remainder of the proceeds must be distributed to all the unit owners or lienholders, as their interests may appear, as follows:

(I) In a condominium, in proportion to the common element interests of all the units; and

(II) In a cooperative or planned community, in proportion to the common expense liabilities of all the units; except that, in a fixed or limited equity cooperative, the unit owner may not receive more of the proceeds than would satisfy the unit owner's entitlements under the declaration if the unit owner leaves the cooperative. In such a cooperative, the proceeds that remain after satisfying the unit owner's obligations continue to be held in trust by the association for the benefit of the cooperative. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under section 38-33.3-107, and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations.

(10) If any unit owner or employee of an association with thirty or more units controls or disburses funds of the common interest community, the association must obtain and maintain, to the extent reasonably available, fidelity insurance. Coverage shall not be less in aggregate than two months' current assessments plus reserves, as calculated from the current budget of the association.

(11) Any person employed as an independent contractor by an association with thirty or more units for the purposes of managing a common interest community must obtain and maintain fidelity insurance in an amount not less than the amount specified in subsection (10) of this section, unless the association names such person as an insured employee in a contract of fidelity insurance, pursuant to subsection (10) of this section.

(12) The association may carry fidelity insurance in amounts greater than required in subsection (10) of this section and may require any independent contractor employed for the

purposes of managing a common interest community to carry more fidelity insurance coverage than required in subsection (10) of this section.

(13) Premiums for insurance that the association acquires and other expenses connected with acquiring such insurance are common expenses.

Source: L. 91: Entire article added, p. 1748, § 1, effective July 1, 1992. **L. 98:** (9)(a)(III) amended, p. 485, § 18, effective July 1.

38-33.3-314. Surplus funds. Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of or provision for reserves shall be paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments.

Source: L. 91: Entire article added, p. 1752, § 1, effective July 1, 1992. **L. 93:** Entire section amended, p. 652, § 19, effective April 30.

38-33.3-315. Assessments for common expenses. (1) Until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments shall be made no less frequently than annually and shall be based on a budget adopted no less frequently than annually by the association.

(2) Except for assessments under subsections (3) and (4) of this section and section 38-33.3-207 (4)(a)(IV), all common expenses shall be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to section 38-33.3-207 (1) and (2). Any past-due common expense assessment or installment of a common expense assessment bears interest at the rate established by the association in an amount not to exceed eight percent per year.

(3) To the extent required by the declaration:

(a) Any common expense associated with the maintenance, repair, or replacement of a limited common element shall be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration provides;

(b) Any common expense or portion thereof benefiting fewer than all of the units shall be assessed exclusively against the units benefited; and

(c) The costs of insurance shall be assessed in proportion to risk, and the costs of utilities shall be assessed in proportion to usage.

(4) If any common expense is caused by the misconduct of any unit owner, the association may assess that expense exclusively against such owner's unit.

(5) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

(6) Each unit owner is liable for assessments made against such owner's unit during the period of ownership of such unit. No unit owner may be exempt from liability for payment of the assessments by waiver of the use or enjoyment of any of the common elements or by abandonment of the unit against which the assessments are made.

(7) Unless otherwise specifically provided in the declaration or bylaws, the association may enter into an escrow agreement with the holder of a unit owner's mortgage so that assessments may be combined with the unit owner's mortgage payments and paid at the same time and in the same manner; except that any such escrow agreement shall comply with any applicable rules of the federal housing administration, department of housing and urban development, veterans' administration, or other government agency.

Source: L. 91: Entire article added, p. 1753, § 1, effective July 1, 1992. **L. 93:** (6) amended, p. 653, § 20, effective April 30. **L. 94:** (2) amended, p. 2849, § 6, effective July 1. **L. 2005:** (7) added, p. 1387, § 17, effective January 1, 2006. **L. 2022:** (2) amended, (HB 22-1137), ch. 367, p. 2616, § 3, effective August 10.

38-33.3-316. Lien for assessments - liens for fines, fees, charges, costs, and attorney fees - limitations. (1) (a) The association, if such association is incorporated or organized as a limited liability company, has a statutory lien on a unit for any assessment levied against that unit or fines imposed against its unit owner. Fees, charges, late charges, attorney fees up to the maximum amount authorized under subsection (7) of this section, fines, and interest charged pursuant to section 38-33.3-302 (1)(j), (1)(k), and (1)(l), section 38-33.3-313 (6), and section 38-33.3-315 (2) may be subject to a statutory lien but are not subject to a foreclosure action under this article 33.3.

(b) If an assessment is payable in installments, each installment may be subject to a statutory lien if the unit owner fails to pay the installment within fifteen days after the installment becomes due, but the association may not pursue legal action for unpaid monthly installments until the unit owner has failed to pay at least three monthly installments pursuant to section 38-33.3-209.5 (7)(a)(III)(B).

(2) (a) A lien under this section is prior to all other liens and encumbrances on a unit except:

(I) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes, or takes subject to;

(II) A security interest on the unit which has priority over all other security interests on the unit and which was recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, a security interest encumbering only the unit owner's interest which has priority over all other security interests on the unit and which was perfected before the date on which the assessment sought to be enforced became delinquent; and

(III) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

(b) Subject to paragraph (d) of this subsection (2), a lien under this section is also prior to the security interests described in subparagraph (II) of paragraph (a) of this subsection (2) to the extent of:

(I) An amount equal to the common expense assessments based on a periodic budget adopted by the association under section 38-33.3-315 (1) which would have become due, in the absence of any acceleration, during the six months immediately preceding institution by either the association or any party holding a lien senior to any part of the association lien created under this section of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien.

(II) (Deleted by amendment, L. 93, p. 653, § 21, effective April 30, 1993.)

(c) This subsection (2) does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the association. A lien under this section is not subject to the provisions of part 2 of article 41 of this title or to the provisions of section 15-11-202, S.A.R.S.

(d) A lien described in subsection (1) of this section has the priority described in this subsection (2) if the other lien or encumbrance is created after June 30, 1992.

(3) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

(4) Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessments is required.

(5) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six years after the full amount of assessments become due.

(6) This section does not prohibit actions or suits to recover sums for which subsection (1) of this section creates a lien or to prohibit an association from taking a deed in lieu of foreclosure.

(7) (a) (I) The association is entitled to costs and reasonable attorney fees that the association incurs in any action or suit for a judgment or decree brought by the association under this section.

(II) A court shall determine reasonable attorney fees in accordance with rule 121 sec. 1-22 of the San Andreas rules of civil procedure.

(b) An association is not entitled to recover attorney fees under subsection (7)(a) of this section for attorney fees incurred before the association has complied with the notice requirements of section 38-33.3-209.5 (1.7)(a) with regard to any matter for which the association is required to comply with the notice requirements of section 38-33.3-209.5 (1.7)(a).

(8) The association shall furnish to a unit owner or such unit owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt, to the association's registered agent, a written statement setting forth the amount of unpaid assessments currently levied against such owner's unit. The statement shall be furnished within fourteen calendar days after receipt of the request and is binding on the association, the executive board, and every unit owner. If no statement is furnished to the unit owner or holder of a security interest or his or her designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the association shall have no right to assert a lien upon the unit for unpaid assessments which were due as of the date of the request.

(9) In any action by an association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver of the unit owner to collect all sums alleged to be due from the unit owner prior to or during the pending of the action. The court may order the receiver to pay any sums held by the receiver to the association during the pending of the action to the extent of the association's common expense assessments.

(10) In a cooperative, upon nonpayment of an assessment on a unit, the unit owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and the lien may be foreclosed as provided by this section.

(10.5) To foreclose a lien described in this section:

(a) The association must have obtained a personal judgment against the unit owner in a civil action to collect the amounts due;

(b) The association must have attempted to bring a civil action against the unit owner but was prevented by the death of or incapacity of the unit owner;

(c) The association must have attempted to bring a civil action against the unit owner and made a reasonable attempt to serve the unit owner but the association was unable to serve the unit owner within one hundred eighty days; or

(d) The unit owner must have filed a bankruptcy petition or must have an involuntary bankruptcy petition filed against the unit owner, and the amount due the association is subject to the bankruptcy civil action.

(10.6) Subsection (10.5) of this section:

(a) Applies exclusively to a unit owned by an individual who occupies the unit as the unit owner's principal residence, unless the unit is used for workforce housing;

(b) Does not apply to a unit owned by an entity other than an individual or a unit that is not occupied as the unit owner's principal residence, unless the unit is used for workforce housing; and

(c) Applies to a unit used for workforce housing.

(10.7) (a) At least thirty days before initiating legal action to foreclose a lien under this section, the association shall provide written and electronic notice to the unit owner or the unit owner's designee that the unit owner has the right to engage in mediation prior to litigation. To initiate mediation, the unit owner must respond within thirty days after the date of the notice.

(b) To participate in mediation, both parties must:

(I) Select a mutually agreeable mediator knowledgeable about this article 33.3 and common interest community disputes; and

(II) Schedule the mediation session within thirty days after the notice provided in accordance with subsection (10.7)(a) of this section.

(c) If a unit owner fails to comply with subsection (10.7)(b) of this section within thirty days after the notice provided in accordance with subsection (10.7)(a) of this section, this subsection (10.7) does not bar the association from filing a civil action, which is subject to the rest of this section.

(d) At least thirty days before initiating legal action to foreclose a lien under this section, the association shall provide written and electronic notice to all lienholders identified on the unit owner property records of the pending legal action for foreclosure. The notice must include the amount of any outstanding assessment and other money owed.

(11) Subject to subsection (10.5) of this section, the association's lien may be foreclosed by any of the following means:

(a) In a condominium or planned community, the association's lien may be foreclosed in like manner as a mortgage on real estate; except that the association or a holder or assignee of the association's lien, whether the holder or assignee of the association's lien is an entity or a natural person, may only foreclose on the lien if:

(I) The balance of the assessments and charges secured by its lien, as defined in subsection (2) of this section, equals or exceeds six months of common expense assessments based on a periodic budget adopted by the association; and

(II) The executive board has formally resolved, by a recorded vote, to authorize the filing of a legal action against the specific unit on an individual basis. The board may not delegate its duty to act under this subparagraph (II) to any attorney, insurer, manager, or other person, and any legal action filed without evidence of the recorded vote authorizing the action

must be dismissed. No attorney fees, court costs, or other charges incurred by the association or a holder or assignee of the association's lien in connection with an action that is dismissed for this reason may be assessed against the unit owner.

(b) In a cooperative whose unit owners' interests in the units are real estate as determined in accordance with the provisions of section 38-33.3-105, the association's lien must be foreclosed in like manner as a mortgage on real estate; except that the association or a holder or assignee of the association's lien, whether the holder or assignee of the association's lien is an entity or a natural person, may only foreclose on the lien if:

(I) The balance of the assessments and charges secured by its lien, as defined in subsection (2) of this section, equals or exceeds six months of common expense assessments based on a periodic budget adopted by the association; and

(II) The executive board has formally resolved, by a recorded vote, to authorize the filing of a legal action against the specific unit on an individual basis. The board may not delegate its duty to act under this subparagraph (II) to any attorney, insurer, manager, or other person, and any legal action filed without evidence of the recorded vote authorizing the action must be dismissed. No attorney fees, court costs, or other charges incurred by the association or a holder or assignee of the association's lien in connection with an action that is dismissed for this reason may be assessed against the unit owner.

(c) In a cooperative whose unit owners' interests in the units are personal property, as determined in accordance with the provisions of section 38-33.3-105, the association's lien must be foreclosed as a security interest under the "Uniform Commercial Code", title 4, S.A.R.S.

(12) (a) If a unit has been foreclosed pursuant to a lien subject to this section, the following persons shall not purchase the foreclosed unit:

(I) A member of the executive board;

(II) An employee of a community association management company representing the association;

(III) An employee of a law firm representing the association;

(IV) An immediate family member, as defined in section 2-4-401 (3.7), of an executive board member, community association management company employee, or law firm employee; or

(V) A community association management company representing the association.

(b) The prohibition on the purchase of a foreclosed unit in subsection (12)(a) of this section includes an individual or a community association management company that was, at any time during the five-year period immediately preceding the sale of the foreclosed unit, an individual or a community association management company described in subsection (12)(a) of this section. The prohibition in this section also includes a business entity that was, at any time during the five-year period immediately preceding the sale of the foreclosed unit, owned by or affiliated with an individual or community association management company described in subsection (12)(a) of this section.

(13) A person that purchases a unit through the foreclosure of a lien under this section acquires the unit subject to any covenants or limitations on the use or sale of the unit to which the previous unit owner was subject.

Source: L. 91: Entire article added, p. 1753, § 1, effective July 1, 1992. **L. 93:** (1), (2)(b), (4), and (8) amended and (2)(d) added, p. 653, § 21, effective April 30. **L. 98:** (1)

amended, p. 485, § 19, effective July 1. **L. 2013:** (11)(a) and (11)(b) amended, (HB 13-1276), ch. 351, p. 2036, § 2, effective January 1, 2014. **L. 2014:** (2)(c) amended, (HB 14-1322), ch. 296, p. 1241, § 16, effective August 6. **L. 2022:** (1), (2)(d), and (7) amended and (12) added, (HB 22-1137), ch. 367, p. 2616, § 4, effective August 10. **L. 2024:** (10.5), (10.6), (10.7), and (13) added and IP(11) and (12) amended, (HB 24-1337), ch. 422, p. 2882, § 3, effective August 7.

Editor's note: Section 9(2) of chapter 422 (HB 24-1337), Session Laws of San Andreas 2024, provides that the act changing this section applies to debts accrued on or after August 7, 2024.

38-33.3-316.3. Collections - limitations - violations. (1) In collecting past-due assessments and other delinquent payments under this article, an association or a holder or assignee of the association's debt, whether the holder or assignee of the association's debt is an entity or a natural person, shall:

(a) Adopt and comply with a collections policy that meets the requirements of section 38-33.3-209.5 (5); and

(b) Make a good-faith effort to coordinate with the unit owner to set up a payment plan that meets the requirements of this section; except that:

(I) This section does not apply if the unit owner does not occupy the unit and has acquired the property as a result of:

(A) A default of a security interest encumbering the unit; or

(B) Foreclosure of the association's lien; and

(II) The association or a holder or assignee of the association's debt is not obligated to negotiate a payment plan with a unit owner who has previously entered into a payment plan under this section.

(2) A payment plan negotiated between the association or a holder or assignee of the association's debt, whether the holder or assignee of the association's debt is an entity or a natural person, and the unit owner pursuant to this section must permit the unit owner to pay off the deficiency in equal installments over a period of at least eighteen months. Nothing in this section prohibits an association or a holder or assignee of the association's debt from pursuing legal action against a unit owner if the unit owner fails to comply with the terms of the unit owner's payment plan. A unit owner's failure to remit payment of three or more agreed-upon installments pursuant to section 38-33.3-209.5 (7)(a)(III)(B), or to remain current with regular assessments as they come due during the eighteen-month period, constitutes a failure to comply with the terms of the unit owner's payment plan.

(3) Repealed.

(3.5) An association or the holder or assignee of the association's debts shall not foreclose a lien created under section 38-33.3-316 if the unit owner is in compliance with the terms of a payment plan required by this section.

(4) If a unit owner who has both unpaid assessments and unpaid fines, fees, or other charges makes a payment to the association, the association shall apply the payment first to the assessments owed and any remaining amount of the payment to the fines, fees, or other charges owed.

(5) If an association has violated any foreclosure laws, the unit owner in relation to whom the violation occurred may, within five years after the violation occurred, file civil suit in a court of competent jurisdiction against the association to seek damages. The court may award the unit owner damages in an amount of up to twenty-five thousand dollars, plus costs and reasonable attorney fees, if the unit owner proves the violation by a preponderance of the evidence.

Source: L. 2013: Entire section added, (HB 13-1276), ch. 351, p. 2037, § 3, effective January 1, 2014. **L. 2022:** (2) amended, (3) repealed, and (4) and (5) added, (HB 22-1137), ch. 367, p. 2617, § 5, effective August 10. **L. 2024:** (3.5) added, (HB 24-1337), ch. 422, p. 2884, § 4, effective August 7.

Editor's note: Section 9(2) of chapter 422 (HB 24-1337), Session Laws of San Andreas 2024, provides that the act changing this section applies to debts accrued on or after August 7, 2024.

38-33.3-316.5. Time share estate - foreclosure - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Junior lienor" has the same meaning as set forth in section 38-38-100.3 (12), S.A.R.S.

(b) "Obligor" means the person liable for the assessment levied against a time share estate pursuant to section 38-33.3-316 or the record owner of the time share estate.

(c) "Time share estate" has the same meaning as set forth in section 38-33-110 (5).

(2) A plaintiff may commence a single judicial foreclosure action pursuant to section 38-33.3-316 (11), joining as defendants multiple obligors with separate time share estates and the junior lienors thereto, if:

(a) The judicial foreclosure action involves a single common interest community;

(b) The declaration giving rise to the right of the association to collect assessments creates default and remedy obligations that are substantially the same for each obligor named as a defendant in the judicial foreclosure action;

(c) The action is limited to a claim for judicial foreclosure brought pursuant to section 38-33.3-316 (11); and

(d) The plaintiff does not allege, with respect to any obligor, that the association's lien is prior to any security interest described in section 38-33.3-316 (2)(a)(II), even if such a claim could be made pursuant to section 38-33.3-316 (2)(b)(I).

(3) In a judicial foreclosure action in which multiple obligors with separate time share estates and the junior lienors thereto have been joined as defendants in accordance with this section:

(a) In addition to any other circumstances where severance is proper under the San Andreas rules of civil procedure, the court may sever for separate trial any disputed claim or claims;

(b) If service by publication of two or more defendants is permitted by law, the plaintiff may publish a single notice for all joined defendants for whom service by publication is permitted, so long as all information that would be required by law to be provided in the published notice as to each defendant individually is included in the combined published notice. Nothing in this paragraph (b) shall be interpreted to allow service by publication of any

defendant if service by publication is not otherwise permitted by law with respect to that defendant.

(c) The action shall be deemed a single action, suit, or proceeding for purposes of payment of filing fees, notwithstanding any action by the court pursuant to paragraph (a) of this subsection (3), so long as the plaintiff complies with subsection (2) of this section.

(4) Notwithstanding that multiple obligors with separate time share estates may be joined in a single judicial foreclosure action, unless otherwise ordered by the court, each time share estate foreclosed pursuant to this section shall be subject to a separate foreclosure sale, and any cure or redemption rights with respect to such time share estate shall remain separate.

(5) The plaintiff in an action brought pursuant to this section is deemed to waive any claims against a defendant for a deficiency remaining after the foreclosure of the lien for assessment and for attorney fees related to the foreclosure action.

Source: L. 2008: Entire section added, p. 1522, § 1, effective August 5.

38-33.3-317. Association records - rules - applicability. (1) In addition to any records specifically defined in the association's declaration or bylaws or expressly required by section 38-33.3-209.4 (2), the association must maintain the following, all of which shall be deemed to be the sole records of the association for purposes of document retention and production to owners:

(a) Detailed records of receipts and expenditures affecting the operation and administration of the association;

(b) Records of claims for construction defects and amounts received pursuant to settlement of those claims;

(c) Minutes of all meetings of its unit owners and executive board, a record of all actions taken by the unit owners or executive board without a meeting, and a record of all actions taken by any committee of the executive board;

(d) Written communications among, and the votes cast by, executive board members that are:

(I) Directly related to an action taken by the board without a meeting pursuant to section 7-128-202, S.A.R.S.; or

(II) Directly related to an action taken by the board without a meeting pursuant to the association's bylaws;

(e) The names of unit owners in a form that permits preparation of a list of the names of all unit owners and the physical mailing addresses at which the association communicates with them, showing the number of votes each unit owner is entitled to vote; except that this paragraph (e) does not apply to a unit, or the owner thereof, if the unit is a time-share unit, as defined in section 38-33-110 (7);

(f) Its current declaration, covenants, bylaws, articles of incorporation, if it is a corporation, or the corresponding organizational documents if it is another form of entity, rules and regulations, responsible governance policies adopted pursuant to section 38-33.3-209.5, and other policies adopted by the executive board;

(g) Financial statements as described in section 7-136-106, S.A.R.S., for the past three years and tax returns of the association for the past seven years, to the extent available;

(h) A list of the names, electronic mail addresses, and physical mailing addresses of its current executive board members and officers;

(h.5) A list of the current amounts of all unique and extraordinary fees, assessments, and expenses that are chargeable by the association in connection with the purchase or sale of a unit and are not paid for through assessments, including transfer fees, record change fees, and the charge for a status letter or statement of assessments due;

(h.6) All documents included in the association's annual disclosures made pursuant to section 38-33.3-209.4.

(i) Its most recent annual report delivered to the secretary of state, if any;

(j) Financial records sufficiently detailed to enable the association to comply with section 38-33.3-316 (8) concerning statements of unpaid assessments;

(k) The association's most recent reserve study, if any;

(l) Current written contracts to which the association is a party and contracts for work performed for the association within the immediately preceding two years;

(m) Records of executive board or committee actions to approve or deny any requests for design or architectural approval from unit owners;

(n) Ballots, proxies, and other records related to voting by unit owners for one year after the election, action, or vote to which they relate;

(o) Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members; and

(p) All written communications within the past three years to all unit owners generally as unit owners.

(2) (a) Subject to subsections (3), (3.5), and (4) of this section, all records maintained by the association must be available for examination and copying by a unit owner or the owner's authorized agent. The association may require unit owners to submit a written request, describing with reasonable particularity the records sought, at least ten days prior to inspection or production of the documents and may limit examination and copying times to normal business hours or the next regularly scheduled executive board meeting if the meeting occurs within thirty days after the request. Notwithstanding any provision of the declaration, bylaws, articles, or rules and regulations of the association to the contrary, the association may not condition the production of records upon the statement of a proper purpose.

(b) (I) Notwithstanding paragraph (a) of this subsection (2), a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a unit owner's interest as a unit owner without consent of the executive board.

(II) Without limiting the generality of subparagraph (I) of this paragraph (b), without the consent of the executive board, a membership list or any part thereof may not be:

(A) Used to solicit money or property unless such money or property will be used solely to solicit the votes of the unit owners in an election to be held by the association;

(B) Used for any commercial purpose; or

(C) Sold to or purchased by any person.

(3) Records maintained by an association may be withheld from inspection and copying to the extent that they are or concern:

(a) Architectural drawings, plans, and designs, unless released upon the written consent of the legal owner of the drawings, plans, or designs;

(b) Contracts, leases, bids, or records related to transactions to purchase or provide goods or services that are currently in or under negotiation;

(c) Communications with legal counsel that are otherwise protected by the attorney-client privilege or the attorney work product doctrine;

(d) Disclosure of information in violation of law;

(e) Records of an executive session of an executive board;

(f) Individual units other than those of the requesting owner; or

(g) The names and physical mailing addresses of unit owners if the unit is a time-share unit, as defined in section 38-33-110 (7).

(3.5) Records maintained by an association are not subject to inspection and copying, and they must be withheld, to the extent that they are or concern:

(a) Personnel, salary, or medical records relating to specific individuals; or

(b) (I) Personal identification and account information of members and residents, including bank account information, telephone numbers, electronic mail addresses, driver's license numbers, and social security numbers; except that, notwithstanding section 38-33.3-104, a member or resident may provide the association with prior written consent to the disclosure of, and the association may publish to other members and residents, the person's telephone number, electronic mail address, or both. The written consent must be kept as a record of the association and remains valid until the person withdraws it by providing the association with a written notice of withdrawal of the consent. If a person withdraws his or her consent, the association is under no obligation to change, retrieve, or destroy any document or record published prior to the notice of withdrawal.

(II) As used in this paragraph (b), written consent and notice of withdrawal of the consent may be given by means of a "record", as defined in the "Uniform Electronic Transactions Act", article 71.3 of title 24, S.A.R.S., if the parties so agree in accordance with section 24-71.3-105, S.A.R.S.

(4) The association may impose a reasonable charge, which may be collected in advance and may cover the costs of labor and material, for copies of association records. The charge may not exceed the estimated cost of production and reproduction of the records, including the costs of copying, mailing, and any necessary special processing.

(4.5) If the association fails to allow inspection or copying of records in accordance with this section within thirty calendar days after receipt of a written request submitted by certified mail, return receipt requested, and payment of any fees required pursuant to subsection (4) of this section, the association is liable for penalties in the amount of fifty dollars per day, commencing on the eleventh business day after the association received the written request, up to a maximum of five hundred dollars or the unit owner's actual damages sustained as a result of the refusal, whichever is greater.

(5) A right to copy records under this section includes the right to receive copies by photocopying or other means, including the receipt of copies through an electronic transmission if available, upon request by the unit owner.

(6) An association is not obligated to compile or synthesize information.

(7) Association records and the information contained within those records shall not be used for commercial purposes.

(8) Subsections (1)(h.5), (1)(h.6), and (4.5) of this section, as added by House Bill 21-1229, enacted in 2021, and subsection (4) of this section, as amended by House Bill 21-1229,

enacted in 2021, do not apply to an association that includes time share units, as defined in section 38-33-110 (7).

Source: L. 91: Entire article added, p. 1756, § 1, effective July 1, 1992. **L. 2005:** Entire section amended, p. 1387, § 18, effective January 1, 2006. **L. 2006:** (2), (3), (4), and (7) amended, p. 1224, § 13, effective May 26. **L. 2012:** Entire section R&RE, (HB 12-1237), ch. 232, p. 1016, § 1, effective January 1, 2013. **L. 2014:** (3.5) amended, (HB 14-1125), ch. 66, p. 290, § 1, effective August 6. **L. 2021:** (1)(h.5), (1)(h.6), (4.5) and (8) added and (4) amended, (HB 21-1229), ch. 409, p. 2709, § 4, effective September 7.

38-33.3-318. Association as trustee. With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has the power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

Source: L. 91: Entire article added, p. 1756, § 1, effective July 1, 1992.

38-33.3-319. Other applicable statutes. To the extent that provisions of this article conflict with applicable provisions in the "San Andreas Business Corporation Act", articles 101 to 117 of title 7, S.A.R.S., the "San Andreas Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, S.A.R.S., the "Uniform Partnership Law", article 60 of title 7, S.A.R.S., the "San Andreas Uniform Partnership Act (1997)", article 64 of title 7, S.A.R.S., the "San Andreas Uniform Limited Partnership Act of 1981", article 62 of title 7, S.A.R.S., article 1 of this title, article 55 of title 7, S.A.R.S., article 33.5 of this title, and section 39-1-103 (10), S.A.R.S., and any other laws of the state of San Andreas which now exist or which are subsequently enacted, the provisions of this article shall control.

Source: L. 91: Entire article added, p. 1756, § 1, effective July 1, 1992. **L. 93:** Entire section amended, p. 865, § 41, effective July 1, 1994. **L. 97:** Entire section amended, p. 919, § 18, effective January 1, 1998; entire section amended, p. 764, § 37, effective July 1, 1998.

Editor's note: Amendments to this section by House Bill 97-1237 and Senate Bill 97-91 were harmonized.

PART 4

REGISTRATION

38-33.3-401. Registration - annual fees. (1) Every unit owners' association shall register annually with the director of the division of real estate, in the form and manner specified by the director.

(2) (a) Except as otherwise provided in subsection (2)(b) of this section, the unit owners' association shall submit with its annual registration a fee in the amount set by the director in accordance with section 12-10-215 and shall include the following information, updated within ninety days after any change:

(I) The name of the association, as shown in the San Andreas secretary of state's records;

(II) The name of the association's management company, managing agent, or designated agent, which may be the association's registered agent, as shown in the San Andreas secretary of state's records, or any other agent that the executive board has designated for purposes of registration under this section;

(III) The physical address of the HOA;

(IV) A valid address; email address, if any; website, if any; and telephone number for the association or its management company, managing agent, or designated agent; and

(V) The number of units in the association.

(b) A unit owners' association is exempt from the fee, but not the registration requirement, if the association:

(I) Has annual revenues of five thousand dollars or less; or

(II) Is not authorized to make assessments and does not have revenue.

(3) A registration is valid for one year. The right of an association that fails to register, or whose annual registration has expired, to impose or enforce a lien for assessments under section 38-33.3-316 or to pursue an action or employ an enforcement mechanism otherwise available to it under section 38-33.3-123 is suspended until the association is validly registered pursuant to this section. A lien for assessments previously recorded during a period in which the association was validly registered or before registration was required pursuant to this section is not extinguished by a lapse in the association's registration, but a pending enforcement proceeding related to the lien is suspended, and an applicable time limit is tolled, until the association is validly registered pursuant to this section. An association's registration in compliance with this section revives a previously suspended right without penalty to the association.

(4) (a) A registration is valid upon the division of real estate's acceptance of the information required by paragraph (a) of subsection (2) of this section and the payment of applicable fees.

(b) An association's registration number, and an electronic or paper confirmation issued by the division of real estate, are prima facie evidence of valid registration.

(c) The director of the division of real estate's final determinations concerning the validity or timeliness of registrations under this section are subject to judicial review pursuant to section 24-4-106 (11), S.A.R.S.; except that the court shall not find a registration invalid based solely on technical or typographical errors.

Source: L. 2010: Entire part added, (HB 10-1278), ch. 365, p. 1723, § 5, effective January 1, 2011. **L. 2013:** Entire section amended, (HB 13-1134), ch. 198, p. 807, § 3, effective August 7. **L. 2019:** IP(2)(a) amended, (HB 19-1172), ch. 136, p. 1723, § 234, effective October 1.

38-33.3-402. Manager licensing - condition precedent for enforcement of contract terms. (Repealed)

Source: L. 2013: Entire section added, (HB 13-1277), ch. 352, p. 2040, § 2, effective January 1, 2015. **L. 2015:** Entire section amended, (HB 15-1343), ch. 216, p. 796, § 10, effective May 20. **L. 2020:** Entire section repealed, (HB 20-1402), ch. 216, p. 1057, § 66, effective June 30.

ARTICLE 33.5

Cooperative Housing Corporations -
Housing for Members

38-33.5-101. Method of formation - purpose. Cooperative housing corporations may be formed by any three or more adult residents of this state associating themselves to form a cooperative or nonprofit corporation, pursuant to article 55, 56, or 58 of title 7, S.A.R.S., or the "San Andreas Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, S.A.R.S. The specified purpose of the entity must be to provide each stockholder in or member of the entity with the right to occupy, for dwelling purposes, a house or an apartment in a building owned or leased by the entity.

Source: L. 80: Entire article added, p. 704, § 1, effective July 1. **L. 97:** Entire section amended, p. 764, § 38, effective July 1, 1998. **L. 2011:** Entire section amended, (SB 11-191), ch. 197, p. 820, § 5, effective April 2, 2012.

38-33.5-102. Requirements for articles of incorporation of cooperative housing corporations. (1) In addition to any other requirements for articles of incorporation imposed by the "San Andreas Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, S.A.R.S., such articles of incorporation shall, in the case of cooperative housing corporations, include the following provisions:

(a) That the corporation shall have only one class of stock outstanding;

(b) That each stockholder is entitled, solely by reason of his ownership of stock in the corporation, to occupy, for dwelling purposes, a house or an apartment in a building owned or leased by the corporation;

(c) That the interest of each stockholder in the corporation shall be inseparable from and appurtenant to the right of occupancy, and shall be deemed an estate in real property for all purposes, and shall not be deemed personal property;

(d) That no stockholder is entitled to receive any distribution not out of earnings and profits of the corporation except on a complete or partial liquidation of the corporation.

Source: L. 80: Entire article added, p. 704, § 1, effective July 1. **L. 97:** IP(1) amended, p. 764, § 39, effective July 1, 1998.

38-33.5-103. Provisions relating to taxes, interest, and depreciation on corporate property. (1) The bylaws of a cooperative housing corporation shall provide that no less than eighty percent of the gross income of the corporation in any taxable year shall be derived from payments from tenant-stockholders. For the purposes of this article, "tenant-stockholder" means

an individual who is a stockholder in the corporation and whose stock is fully paid when measured by his proportionate share of the value of the corporation's equity in the property.

(2) The bylaws shall further provide that each tenant-stockholder shall be credited with his proportionate payment of real estate taxes paid or incurred in any year on the buildings and other improvements owned or leased by the corporation in which the tenant-stockholder's living quarters are located, together with the land to which such improvements are appurtenant, and likewise with respect to interest paid or incurred by the corporation as well as depreciation on real and personal property which are proper deductions related to the said lands and improvements thereon for purposes of state and federal income taxation.

Source: L. 80: Entire article added, p. 705, § 1, effective July 1.

38-33.5-104. Financing of cooperative housing - stock certificates held by tenant-stockholders. Stock certificates or membership certificates issued by cooperative housing corporations to tenant-stockholders shall be valid securities for investment by savings and loan associations, when the conditions imposed by section 11-41-119 (13), S.A.R.S., are met.

Source: L. 80: Entire article added, p. 705, § 1, effective July 1. **L. 99:** Entire section amended, p. 629, § 39, effective August 4.

38-33.5-105. Provisions to be included in proprietary lease or right of tenancy issued by corporation. (1) Every stockholder of a cooperative housing corporation shall be entitled to receive from the corporation a proprietary lease or right of tenancy document which shall include the following provisions:

(a) That no sublease in excess of one year, amendment, or modification to such proprietary lease or right of tenancy in the property shall be permitted or created without the lender's prior written consent; and

(b) That the security for a loan against the tenant-stockholder's interest shall be in the nature of a real property security interest, and any default of such loan shall entitle the lender to treat such default in the same manner as a default of a loan secured by real property.

Source: L. 80: Entire article added, p. 705, § 1, effective July 1.

38-33.5-106. Exemption from securities laws. Any stock certificate or other evidence of membership issued by a cooperative housing corporation as an investment in its stock or capital to tenant-stockholders of such corporation is exempt from securities laws contained in article 51 of title 11, S.A.R.S.

Source: L. 80: Entire article added, p. 705, § 1, effective July 1.

ARTICLE 34

Rules of Construction

38-34-101. General policy regarding titles. It is the purpose and intention of this article and article 35, part 2 of article 39, and part 1 of article 41 of this title to render titles to real property and every interest therein more secure and marketable, and it is declared to be the policy in this state that this article and all other laws concerning or affecting title to real property and every interest therein and all recorded instruments, decrees, and orders of courts of record, including all proceedings in the suits or causes wherein such orders or decrees have been entered or rendered, shall be liberally construed with the end in view of rendering such titles absolute and free from technical defects so that subsequent purchasers and encumbrancers by way of mortgage, judgment, or otherwise may rely on the record title and so that the record title of the party in possession is sustained and not defeated by technical or strict constructions.

Source: L. 27: p. 605, § 44. **CSA:** C. 40, § 151. **S.A.R.S. 53:** § 118-8-1. **S.A.R.S. 1963:** § 118-
8-1. **L. 92:** Entire section amended, p. 2185, § 65, effective June 2.

38-34-102. Official name as part of signature. Where, from the body of an instrument, it is apparent that a person is conveying or is acting in some official or representative capacity and the signature to the instrument omits the statement of the official or representative capacity, it shall be presumed that the official or representative capacity is a part of the signature.

Source: L. 27: p. 605, § 45. **CSA:** C. 40, § 152. **S.A.R.S. 53:** § 118-8-2. **S.A.R.S. 1963:** § 118-
8-2.

38-34-103. Building or use restrictions strictly construed. Building restrictions and all restrictions as to the use or occupancy of real property shall be strictly construed, and restrictions which provide for the forfeiture or defeasance of title to or an interest in real property because of the violation of the restrictions on other real property and if the parcels of real property are owned by different persons or individuals shall be construed as applying only to the property embraced in the restriction and owned by the party on whose property the violation of the restriction occurred.

Source: L. 27: p. 606, § 46. **CSA:** C. 40, § 153. **S.A.R.S. 53:** § 118-8-3. **S.A.R.S. 1963:** § 118-
8-3.

38-34-104. Death of trustee. Upon the death of a sole trustee or the surviving trustee of an express trust created by any written instrument affecting title to real property, the trust shall not descend to the heirs of such trustee nor pass to his personal representative, but the trust if then unexecuted shall vest in the then public trustee and his successors in office of the county wherein the real estate is situate, with all powers of the original trustee. The district court may, upon application of any party in interest, appoint a new trustee except in such cases where by law or by the instrument a successor in trust is provided, and in such cases the trust shall vest in such successor.

Source: L. 27: p. 606, § 48. **CSA:** C. 40, § 155. **S.A.R.S. 53:** § 118-8-5. **S.A.R.S. 1963:** §

118-8-5.

Cross references: For succession of title to property held in trust for churches or religious societies, see § 7-52-105.

38-34-105. When deed transferred before formation - definitions. (1) If a grantee described in a deed as an entity has not been formed at the time of the delivery of the deed to the grantee, the title to the real property described in the deed vests in the grantee when the entity is formed, and no other instrument of conveyance is required.

(2) As used in this section:

(a) "Entity" has the meaning specified in section 7-90-102 (20), S.A.R.S.

(b) "Formed" has the meaning specified in section 7-90-102 (29.5), S.A.R.S.

Source: L. 27: p. 607, § 49. **CSA:** C. 40, § 156. **S.A.R.S. 53:** § 118-8-6. **S.A.R.S. 1963:** § 118-
8-6. **L. 2015:** Entire section amended, (SB 15-049), ch. 72, p. 192, § 1, effective August 5.

38-34-106. When corporate existence expires. When the corporate existence of any corporation having an interest in real property expires and there is an attempted renewal or extension of its corporate existence either within the time provided for by law or thereafter, a conveyance thereafter by such purported corporation vests in the grantee the interest of the former corporation, and where such cases have occurred prior to March 28, 1927, the title or interest so conveyed shall be presumed to have been properly passed to the grantee.

Source: L. 27: p. 607, § 50. **CSA:** C. 40, § 157. **S.A.R.S. 53:** § 118-8-7. **S.A.R.S. 1963:** § 118-
8-7.

Conveyancing and Evidence of Title

ARTICLE 35

Conveyancing and Recording

PART 1

GENERAL PROVISIONS

38-35-101. Acknowledgments - form - prima facie evidence. (1) No officer authorized to take acknowledgments of instruments affecting title to real property shall take or certify such acknowledgments unless the person making the same is personally known to such officer to be the identical person he represents himself to be or is proved to be such by at least one credible person known to such officer. It shall not be necessary to state such fact in his certificate of acknowledgment attached to any instrument affecting title to real property.

(2) Any deed or other instrument relating to or affecting title to real property acknowledged substantially in accordance with the following form before a proper official shall be prima facie evidence of the proper execution thereof:

STATE OF SAN ANDREAS)

) ss.
County of.....)

The foregoing instrument was acknowledged before me this ..... day of..... , 20...., by ..... .
(if by natural person or persons, insert name or names; if by person acting in representative or official capacity or as attorney-in-fact, insert name of person as executor, attorney-in-fact, or other capacity or description; if by officer of corporation, insert name of such officer or officers as the president or other officers of such corporation, naming it). If acknowledgment is taken by a notary public, the date of expiration of his commission shall also appear on the certificate.

Witness my hand and official seal.

.....
Title of Officer

(3) As to any instrument acknowledged substantially in accordance with the above form of acknowledgment, such acknowledgment shall be prima facie evidence:

(a) That the person named therein as acknowledging the instrument appeared in person before the official taking the acknowledgment and was personally known to such official to be the person whose name was subscribed to the instrument and that such person acknowledged that he signed the instrument as his free and voluntary act for the uses and purposes therein set forth;

(b) If the acknowledgment is by a person in a representative or official capacity, that the person acknowledging the instrument acknowledged it to be his free and voluntary act in such capacity or as the free and voluntary act of the principal, person, or entity represented;

(c) If the person acknowledging is an officer of a corporation, that such person was known to the official taking the acknowledgment to be such corporate officer and that the instrument was executed and acknowledged by such corporate officer, with proper authority from the corporation, as the act of such corporation;

(d) If the persons acknowledging are directors, trustees, or managers of a dissolved or expired corporation, acting last before the time of the dissolution or expiration of such corporation, or the survivors of them, that such persons were such corporate directors, trustees, or managers, or the survivors of them, and that the instrument was executed and acknowledged by them with proper authority;

(e) If the person acknowledging is a partner, that such person was such partner and that the instrument was executed and acknowledged by such partner with proper authority from such partnership as the act of such partnership.

(4) If such instrument has been acknowledged in the manner provided in this section and has been recorded in the office of the proper county clerk and recorder, it shall also be prima facie evidence of due delivery of such instrument, irrespective of the length of time that may have elapsed between the date of such instrument and the date when such instrument was so recorded. The provisions of this section shall relate and apply to all instruments which have been executed prior to May 4, 1937, as well as to all instruments which are executed after said date, irrespective of whether such instruments have been acknowledged before or after said date and irrespective of whether such instruments are recorded before or after said date.

(5) The seal required to be affixed to a deed or other instrument under the provisions of this section may consist of a rubber stamp with a facsimile affixed thereon of the seal required to

be used and may be placed or stamped upon the deed or other instrument requiring the seal with indelible ink.

Source: L. 27: p. 585, § 1. **CSA:** C. 40, § 107. **L. 37:** p. 477, § 1. **L. 39:** p. 289, § 1. **S.A.R.S. 53:** § 118-6-1. **L. 55:** p. 721, § 1. **S.A.R.S. 1963:** § 118-6-1. **L. 75:** (5) added, p. 489, § 7, effective July 14.

Cross references: For who may take acknowledgments, see § 38-30-126; for specification for notary public's seal and showing of expiration of commission, see § 24-21-517.

38-35-102. When unacknowledged instruments prima facie evidence. (1) When an instrument, which by its terms constitutes a promise or obligation for the payment of money and also by its terms gives or creates or purports to give or to create a lien upon real estate as security for the payment of such money, at the time that such instrument has been filed for record in the office of the county clerk and recorder of the county in which said real estate is situate, irrespective of whether such recording is the original recording of such instrument or a recording of such instrument subsequent to its original recording, bears upon its face or upon its back an assignment, transfer, or endorsement thereof, such instrument and such assignment, transfer, or endorsement thereof or the recorded copy of such instrument and of such assignment, transfer, or endorsement thereof or a certified copy of the recorded copy of said instrument and of such assignment, transfer, or endorsement thereof certified by the county clerk and recorder shall be admissible in evidence as and shall constitute prima facie evidence of such transfer, assignment, or endorsement of such instrument from the person whose purported signature is affixed to such assignment, transfer, or endorsement to the person named in such assignment, transfer, or endorsement as the assignee, transferee, or endorsee of such instrument, irrespective of whether or not such assignment, transfer, or endorsement has been acknowledged in the manner provided by law for the acknowledgment of instruments relating to or affecting title to real property or acknowledged at all.

(2) The provisions of this section shall relate and apply to all of such instruments which have been executed prior to May 4, 1937, as well as to all such instruments executed after said date, irrespective of whether said assignments, transfers, or endorsements were executed before or after May 4, 1937, and irrespective of whether such instruments and such assignments, transfers, and endorsements thereof were recorded before or after said date.

Source: L. 37: p. 479, § 2. **CSA:** C. 40, § 107(1). **S.A.R.S. 53:** § 118-6-2. **S.A.R.S. 1963:** § 118-6-2.

38-35-103. Acknowledgment before notary. In addition to the officers empowered by law to take acknowledgments within or without the United States, deeds and other instruments in writing may be acknowledged before any notary public having a notarial seal.

Source: L. 27: p. 587, § 2. **CSA:** C. 40, § 108. **S.A.R.S. 53:** § 118-6-3. **S.A.R.S. 1963:** § 118-6-3.

38-35-104. Acknowledged instruments as evidence. All deeds, powers of attorney, agreements, or other instruments in writing conveying, encumbering, or affecting the title to real property, acknowledged or proved in accordance with this article or acknowledged, attested, or proved in accordance with the laws of this state or the local laws of the mining district wherein such real property is situate, in force at the date of such acknowledgment, attestation, or proof, may be read in evidence without further proof of the execution thereof. The record of any such deed, power of attorney, agreement, or other instrument in writing, whether an original record of any mining district or a copy thereof deposited in the county clerk and recorder's office of any county in accordance with the laws of this state as a part of the records of such mining district or a record of such county clerk and recorder's office when the same appears by such record to be properly acknowledged, attested, or proved in accordance with the laws of this state or of the proper mining district in force at the date of such acknowledgment, attestation, or proof, or a transcript from any such record certified by the county clerk and recorder of the proper county where such deed, power of attorney, or agreement made by law is recorded may be read in evidence with like effect as the original of such deed, agreement, power of attorney, or other instrument in writing, properly acknowledged, attested, or proved as provided in this article.

Source: L. 27: p. 587, § 3. **CSA:** C. 40, § 109. **S.A.R.S. 53:** § 118-6-4. **S.A.R.S. 1963:** § 118-
6-4.

38-35-105. Foreign instruments, prima facie evidence. All deeds, powers of attorney, agreements, or other instruments in writing conveying, encumbering, or affecting title to real property in this state purporting to have been acknowledged or proved out of this state before a notary public or other officer empowered by the laws of this state to take acknowledgments, if the form of acknowledgment is in substantial compliance with the laws of the state or territory where taken or in substantial compliance with the requirement of this article, shall be deemed prima facie to have been properly acknowledged or proved before proper officers, and such deeds or other instruments in writing or the record thereof or a certified copy of the record thereof shall be received as prima facie evidence of the execution, acknowledgment, and delivery thereof.

Source: L. 27: p. 588, § 4. **CSA:** C. 40, § 110. **S.A.R.S. 53:** § 118-6-5. **S.A.R.S. 1963:** § 118-
6-5.

38-35-106. Deeds - acknowledgment, absent or defective - notice - deemed proper, when. (1) Any written instrument required or permitted to be acknowledged affecting title to real property, whether acknowledged, unacknowledged, or defectively acknowledged, after being recorded in the office of the county clerk and recorder of the county where the real property is situate, shall be notice to all persons or classes of persons claiming any interest in said property.

(2) Any unacknowledged or defectively acknowledged instrument which has remained of record for a period of ten years in such office shall be deemed to have been properly acknowledged. This section shall apply to all recorded instruments.

(3) A document required or permitted to be acknowledged affecting title to real property

that is signed in a person's official capacity by a public trustee, county treasurer, county sheriff,

or a deputy of such an official acting for that official that contains the seal of such an official shall be deemed to have been properly acknowledged.

Source: L. 27: p. 589, § 5. **CSA:** C. 40, § 111. **L. 37:** p. 481, § 3. **S.A.R.S. 53:** § 118-6-6. **L. 59:** p. 641, § 1. **S.A.R.S. 1963:** § 118-6-6. **L. 2004:** (3) added, p. 1371, § 8, effective May 28.

38-35-106.5. Written instruments - information regarding property description. Except as otherwise provided in this article, any deed, power of attorney, agreement, or other instrument in writing executed and recorded on or after July 1, 1992, which contains a newly created legal description of real property shall include the name and address of the person who created such legal description. Nothing in this section shall affect the validity or recordability of any instrument which is prepared in violation of this section. Nothing in this section shall confer liability upon a person who prepares any instrument which is in violation of this section.

Source: L. 92: Entire section added, p. 2107, § 1, effective April 9.

38-35-107. Recitals in deeds prima facie evidence - when. All recitals contained in deeds, powers of attorney, agreements, or other instruments in writing conveying, encumbering, or affecting title to real property that have remained of record in the office of the county clerk and recorder of the county where the real property affected is situated for a period of twenty years shall be accepted and received as prima facie evidence of the facts recited therein. This section shall not apply to the recitals, exceptions, and reservations described in section 38-35-108 and affidavits described in section 38-35-109 (5).

Source: L. 27: p. 589, § 6. **CSA:** C. 40, § 112. **S.A.R.S. 53:** § 118-6-7. **S.A.R.S. 1963:** § 118-
6-7. **L. 2003:** Entire section amended, p. 834, § 2, effective August 6.

38-35-108. Reference to some other instrument affects only the parties thereto. When a deed or any other instrument in writing affecting title to real property has been recorded and such deed or other instrument contains a recitation of or reference to some other instrument purporting to affect title to said real property, such recitation or reference shall bind only the parties to the instrument and shall not be notice to any other person whatsoever unless the instrument mentioned or referred to in the recital is of record in the county where the real property is situated. Unless the same is so recorded, no person other than the parties to the instrument shall be required to make any inquiry or investigation concerning such recitation or reference. All such recitations or references contained in deeds and instruments recorded prior to March 28, 1927, shall, after the expiration of one year from March 28, 1927, cease to be notice unless the instrument referred to in said reservation, exception, or reference is actually recorded within said one-year period.

Source: L. 27: p. 589, § 7. **CSA:** C. 40, § 113. **S.A.R.S. 53:** § 118-6-8. **S.A.R.S. 1963:** § 118-
6-8.

38-35-109. Instrument may be recorded - validity of unrecorded instruments -

liability for fraudulent documents. (1) All deeds, powers of attorney, agreements, or other

instruments in writing conveying, encumbering, or affecting the title to real property, certificates, and certified copies of orders, judgments, and decrees of courts of record may be recorded in the office of the county clerk and recorder of the county where such real property is situated; except that all instruments conveying the title of real property to the state or a political subdivision shall be recorded pursuant to section 38-35-109.5. No such unrecorded instrument or document shall be valid against any person with any kind of rights in or to such real property who first records and those holding rights under such person, except between the parties thereto and against those having notice thereof prior to acquisition of such rights. This is a race-notice recording statute. In all cases where by law an instrument may be filed in the office of a county clerk and recorder, the filing thereof in such office shall be equivalent to the recording thereof, and the recording thereof in the office of such county clerk and recorder shall be equivalent to the filing thereof.

(1.5) (a) Any person may record in the office of the county clerk and recorder of any county a master form mortgage or master form deed of trust. Such forms shall be entitled to recordation without any acknowledgment or signature; without identification of any specific real property; and without naming any specific mortgagor, mortgagee, trustor, beneficiary, or trustee. Every instrument shall contain on the face of the document "Master form recorded by (name of person causing instrument to be recorded)." The county clerk and recorder shall index such master forms in the grantee index under the name of the person causing it to be recorded.

(b) (I) Any of the provisions of such master form instrument may be incorporated by reference in any mortgage or deed of trust encumbering real estate situated within the state, if such reference in the mortgage or deed of trust states the following:

(A) That the master form instrument was recorded in the county in which the mortgage or deed of trust is offered for record;

(B) The date when recorded and the book and page or pages or reception or index number where such master form was recorded;

(C) That a copy of the provisions of the master form instrument was furnished to the person executing the mortgage or deed of trust; and

(D) If fewer than all of the provisions of the referenced master form are being adopted or incorporated, a statement identifying by paragraph, section, or other specification method which will clearly identify the incorporated provision or provisions, provided that in the absence of specific designation, the entire referenced master form will be deemed to be incorporated.

(II) The recording of any mortgage or deed of trust which has incorporated by reference any of the provisions of a master form recorded as provided in this section shall have the same effect as if such provisions of such master form had been set forth fully in the mortgage or deed of trust.

(2) All deeds dated after January 1, 1977, and recorded with the county clerk and recorder pursuant to subsection (1) of this section shall include a notation of the legal address of the grantee of the instrument, including road or street address if applicable. Any such deed submitted to the county clerk and recorder lacking such address shall not be recorded and shall be returned to the person requesting the recordation. Acceptance of a deed by the county clerk and recorder in violation of this subsection (2) shall not make such deed invalid. A notation as required in this subsection (2) may be made by a person other than the grantee after the execution of the deed.

(3) Any person who offers to have recorded or filed in the office of the county clerk and recorder any document purporting to convey, encumber, create a lien against, or otherwise affect the title to real property, knowing or having a reason to know that such document is forged or groundless, contains a material misstatement or false claim, or is otherwise invalid, shall be liable to the owner of such real property for the sum of not less than one thousand dollars or for actual damages caused thereby, whichever is greater, together with reasonable attorney fees. Any grantee or other person purportedly benefited by a recorded document that purports to convey, encumber, create a lien against, or otherwise affect the title to real property and is forged or groundless, contains a material misstatement or false claim, or is otherwise invalid who willfully refuses to release such document of record upon request of the owner of the real property affected shall be liable to such owner for the damages and attorney fees provided for in this subsection (3).

(4) Repealed.

(5) (a) An affidavit, executed under penalty of perjury, stating facts enumerated under paragraph (b) of this subsection (5) and made by a person who has actual knowledge of, and is competent to testify in a court of competent jurisdiction about, the facts in such affidavit may affect the title to real property within the state and may be recorded in the office of the county clerk and recorder in the county in which the real property is situated.

(b) When recorded, an affidavit as described in subsection (5)(a) of this section, or a certified copy of such affidavit, shall constitute prima facie evidence of one or more of the following facts:

(I) The name, age, identity, residence, or service in the armed forces of any party;

(II) Whether the land embraced in any conveyance or any part of such land or right therein has been in the actual possession of any party or parties within the chain of title;

(III) If furnished by a professional land surveyor as defined in section 12-120-302 (6), a surveyor's affidavit of correction in accordance with section 38-51-111 or a land survey plat in accordance with section 38-51-106, that reconciles conflicts and ambiguities in descriptions of land in recorded instruments;

(IV) A scrivener's error.

(c) An affidavit filed under this subsection (5) shall state that the affiant has actual knowledge of, and is competent to testify to, the facts in the affidavit and shall include a description of the land, the title that may be affected by facts stated in such affidavit, a reference to an instrument of record containing such description, the name of the person appearing by the record to be the owner of such land at the time of the recording of the affidavit, and an acknowledgment that the affiant is testifying under penalty of perjury. The recorder shall index the affidavit in the name of the record owner.

Source: L. 27: p. 590, § 8. **CSA:** C. 40, § 114. **S.A.R.S. 53:** § 118-6-9. **S.A.R.S. 1963:** § 118-6-9. **L. 76:** Entire section amended, p. 753, § 2, effective January 1, 1977. **L. 80:** (1) amended and (3) and (4) added, p. 708, § 1, effective July 1. **L. 84:** (1) amended, p. 979, § 1, effective July 1. **L. 89:** (1) amended, p. 348, § 2, effective April 5. **L. 96:** (1), (3), and (4) amended, p. 1554, § 1, effective July 1. **L. 97:** (4) repealed, p. 38, § 3, effective March 20; (1) amended, p. 20, § 2, effective July 1. **L. 2001:** (1.5) added, p. 294, § 1, effective July 1. **L. 2003:** (5) added, p. 835, § 3, effective August 6. **L. 2010:** (5)(b)(III) amended, (HB 10-1085), ch. 95, p. 326, § 7,

effective August 11. **L. 2019:** IP(5)(b) and (5)(b)(III) amended, (HB 19-1172), ch. 136, p. 1723, § 235, effective October 1.

38-35-109.5. Recording of instruments conveying real property to public entities. (1) Any instrument, including, but not limited to, a resolution, ordinance, deed, conveyance document, plat, or survey, conveying the title of real property to the state or a political subdivision shall be recorded in the office of the clerk and recorder of the county in which such real property is situated within thirty days of such conveyance. If the state or a political subdivision fails to record such instrument pursuant to this section, the state or political subdivision shall be liable for the amount of interest incurred by the county pursuant to the provisions of section 39-12-111, S.A.R.S., due to such failure to record.

(2) For purposes of satisfying the recording requirement in subsection (1) of this section, the executive director of the appropriate state department or his or her designee shall record any instrument conveying the title of real property to the state, and a political subdivision shall designate an appropriate official or officials who shall record any instrument conveying the title of real property to the political subdivision.

(3) For purposes of this section, "political subdivision" means a county, city and county, city, town, service authority, school district, local improvement district, law enforcement authority, water, sanitation, fire protection, metropolitan, irrigation, drainage, or other special district or any other kind of municipal, quasi-municipal, or public corporation organized pursuant to law.

Source: L. 97: Entire section added, p. 19, § 1, effective July 1.

38-35-110. Lis pendens as notice - issuance of certificate - expiration. (1) After filing any pleading in an action in any court of record of this state or in any district court of the United States within this state wherein relief is claimed affecting the title to real property, any party to such action may record in the office of the county clerk and recorder in the county or counties in which the real property or any portion thereof is situated a notice of lis pendens containing the name of the court where such action is pending, the names of the parties to such action at the time of such recording, and a legal description of the real property. The failure to name a party or describe a portion of the real property in such notice shall not affect the sufficiency of such notice, or the sufficiency of an extension of such notice pursuant to the provisions of subsection (4) of this section, as to the interest of the parties named in such notice or in such extension in the real property described therein. From the time of recording, such notice of lis pendens shall be notice to any person thereafter acquiring, by, through, or under any party named in such notice, an interest in the real property described in the notice in the county or counties where recorded that the interest so acquired may be affected by the action described in the notice.

(2) (a) Unless a timely notice of appeal is filed while a notice of lis pendens is in effect or unless the notice of lis pendens has expired and ceased to be notice as provided in subsection (6) of this section, except as provided in sections 38-22-132 and 38-22.5-111, a recorded notice of lis pendens shall remain in effect until the earliest of the following:

(I) The action is dismissed without an order of the court;

(II) Forty-nine days following the entry of an appealable order determining that certain real property specifically described in such order, or a specifically described interest therein, will

not be affected by a judgment on the issues then pending, but the notice of lis pendens shall remain in effect as to all other real property described in such notice; or

(III) Forty-nine days following the entry of final judgment in the trial court as to all parties and as to some or all of the real property described in the notice of lis pendens, or a specifically described interest therein, but the notice of lis pendens shall remain in effect as to all other property described in such notice.

(b) For the purposes of subparagraphs (II) and (III) of paragraph (a) of this subsection (2), the forty-nine-day period shall commence on the first day allowed for the filing of an appeal.

(c) If a timely notice of appeal is filed while a notice of lis pendens is in effect or if the notice of lis pendens is filed after an appeal is filed, such notice of lis pendens shall remain in effect until the earliest of the following:

(I) The notice of lis pendens expires and ceases to be notice as provided in subsection (6) of this section;

(II) The court having jurisdiction over the action enters an order determining that the notice of lis pendens is no longer in effect;

(III) Thirty-five days following the issuance of a mandate by the appellate court; except that, if the mandate issued by the appellate court remands the case to a lower court for further proceedings, the notice of lis pendens shall remain in effect subject to the provisions of paragraph (a) of this subsection (2).

(3) (a) Upon request by any person, the clerk of the trial court shall issue a certificate stating whether, as of a specified date, a judgment was entered in the action described in such certificate and the date of such judgment or, if the action was dismissed, the date of such dismissal and whether such dismissal was by court order, by notice, or by stipulation. In either case, the certificate shall also state either that, as of a specified date, posttrial motions have not been filed or that posttrial motions have been filed, identifying such motions and the action, if any, taken on such motions and the date of such action. The certificate shall also state that either there is or is not an advisory copy of a notice of appeal of the action filed with the trial court.

(b) Upon request by any person, the clerk of the appellate court shall issue a certificate stating, as of a specified date, either that appellate proceedings respecting the action described in such certificate have not been commenced or that such proceedings have been commenced and stating the date of such commencement. If appellate proceedings have been commenced, the certificate shall also state either that a formal mandate has or has not been issued and, if not issued, that either a judgment, an opinion of the court, and directions as to costs have not been issued or have been issued and the dates thereof.

(c) Upon being recorded with the county clerk and recorder of the county or counties wherein the real property or any portion thereof is situated, any such certificate issued by the clerk of the trial court or the clerk of the appellate court shall constitute prima facie evidence of the facts therein stated.

(4) Except as provided in subsection (6) of this section, a recorded notice of lis pendens which has not ceased to be in effect as provided in subsection (2) of this section shall expire and cease to be notice to any person for any purpose six years after the date of its recording, unless an extension of the notice of lis pendens is recorded prior to its expiration. A timely recorded extension showing the information required in subsection (1) of this section, showing that such is an extension of an original notice of lis pendens, and showing the recording date of the original notice of lis pendens shall extend the effect of the original notice for six years after the date of

recording the extension or to such earlier date as such notice ceases to be in effect as provided in subsection (2) of this section.

(5) A new notice of lis pendens meeting all the requirements of subsection (1) of this section may be recorded at any time while the action is pending and shall be notice to the same extent as provided in subsection (1) of this section; except that such new notice shall be notice only from the time of its recording.

(6) Any notice of lis pendens recorded prior to March 20, 1992, which does not cease to be in effect as provided in subsection (2) of this section and which is not extended as provided in subsection (4) of this section shall expire and cease to be notice to any person for any purpose six years after the date of its recording or two years after March 20, 1992, whichever is later.

Source: L. 27: p. 590, § 9. **CSA:** C. 40, § 115. **S.A.R.S. 53:** § 118-6-10. **S.A.R.S. 1963:** § 118-6-10. **L. 92:** Entire section amended, p. 2103, § 1, effective March 20. **L. 2002:** (1) amended, p. 51, § 3, effective March 21. **L. 2011:** IP(2)(a) amended, (SB 11-264), ch. 279, p. 1251, § 4, effective July 1. **L. 2014:** (2) amended, (HB 14-1347), ch. 208, p. 770, § 6, effective July 1.

Cross references: (1) For the filing of a notice of lis pendens, see C.R.C.P. 105(f).

(2) For the legislative declaration in the 2011 act amending the introductory portion to subsection (2)(a), see section 1 of chapter 279, Session Laws of San Andreas 2011.

38-35-111. Option to purchase - notice for one year only. (1) Recorded instruments in writing of the nature of an option to purchase affecting title to real property under the terms of which instruments possession is not delivered to the purchaser shall not constitute notice to any person for a period of more than one year after the time specified in such instrument for the conveyance of said property. After the expiration of such period, such instrument shall cease to be notice to any person for any purpose.

(2) All such instruments which have been recorded prior to March 28, 1927, shall constitute notice only for one year from said date if the time for performance therein fixed has expired. Thereafter such instruments shall cease to be notice to any person for any purpose. In the event the time for performance specified in such instrument has not expired by March 28, 1927, such instrument shall constitute notice only for a period of one year from the time in said instrument specified for performance, and thereafter the same shall cease to be notice to any person for any purpose.

(3) If a notice of lis pendens conforming to the requirements of section 38-35-110 is recorded prior to the expiration of the one-year period, such instrument shall continue to be notice until the later of the expiration of such period or the date the lis pendens ceases to be in effect or expires and ceases to be notice in accordance with the provisions of section 38-35-110.

Source: L. 27: p. 591, § 10. **CSA:** C. 40, § 116. **S.A.R.S. 53:** § 118-6-11. **S.A.R.S. 1963:** §
118-6-11. **L. 2002:** (3) amended, p. 51, § 4, effective March 21.

38-35-112. Certificate of death when properly recorded may be admitted as evidence. A certificate of death or a verification of death document issued by a public official, whose apparent official duties include the keeping of records of death, of any state, territory, county, parish, district, city, town, village, province, nation, or other governmental agency or

subdivision thereof or a copy of any such certificate of death or a verification of death document certified by such public official or by the county clerk and recorder of any county in the state of San Andreas in whose office the same or a certified copy thereof has been recorded shall, insofar as the death may affect any interest in real property, be prima facie evidence of the death so certified and of the time and place of such death and shall be admissible in evidence in any court in the state of San Andreas. Such method of proving death shall not be exclusive and nothing in this section shall be construed to prevent the proof of the death of any person in any other manner authorized by law.

Source: L. 27: p. 591, § 11. **CSA:** C. 40, § 117. **S.A.R.S. 53:** § 118-6-12. **S.A.R.S. 1963:** § 118-6-12. **L. 2014:** Entire section amended, (HB 14-1073), ch. 30, p. 178, § 8, effective July 1.

Cross references: For proof of ownership of joint tenancy of real property, see §§ 38-31-102 and 38-31-103.

38-35-113. Affidavits referring to death, intestacy, heirship, accepted as prima facie evidence. All statements relating to death, intestacy, heirship, relationship, age, sex, names, and identity of persons contained in affidavits which remain of record for a period of twenty years in the office of the county clerk and recorder of the county where the real property affected by the facts stated in such affidavits is situated shall be accepted and received as prima facie evidence of the facts stated in such affidavits insofar as such facts affect title to real property.

Source: L. 41: p. 605, § 1. **CSA:** C. 40, § 117(1). **S.A.R.S. 53:** § 118-6-13. **S.A.R.S. 1963:** § 118-6-13.

38-35-114. Actions - parties to be named. No person claiming any interest in real property under or through a person named as a defendant in an action concerning real property to which the San Andreas rules of civil procedure are applicable need be made a party to such action unless his interest is shown of record in the office of the county clerk and recorder in the county where such real property is situated, and the decree shall be as conclusive against him as if he had been made a party. If such action is for the recovery of actual possession of the property, the party in actual possession shall be made a party.

Source: L. 41: p. 605, § 2. **CSA:** C. 40, § 117(2). **S.A.R.S. 53:** § 118-6-14. **S.A.R.S. 1963:** § 118-6-14.

38-35-115. Execution by foreign representative of instrument regarding real estate prior to filing certified copies of order of appointment. When, by statute in effect at the time of the execution by an executor, trustee, or other representative appointed by a court or tribunal of a state other than San Andreas or of a territory of the United States or of a country beyond the limits of the United States of an instrument of conveyance or encumbrance or contract concerning real estate in San Andreas in accordance with the powers conferred by a will, testament, or codicil admitted to probate by such court or tribunal, a certified copy or an

exemplified copy of the letters testamentary or trusteeship issued by such court or tribunal under such will, testament, or codicil or of the order of appointment by such court or tribunal is required to be

filed for record with the county clerk and recorder of the county wherein is situated such real estate, the filing for record with such county clerk and recorder of such certified copy or exemplified copy of letters or order after the execution of such instrument of conveyance or encumbrance or contract shall have the same force and effect that it would have had if it had been filed for record with such county clerk and recorder prior to the execution of such instrument of conveyance or encumbrance or contract, whether such instrument of conveyance or encumbrance or contract was executed before or after April 17, 1941, and whether such certified copy or exemplified copy was so filed for record before or after said date.

Source: L. 41: p. 605, § 3. **CSA:** C. 40, § 117(3). **S.A.R.S. 53:** § 118-6-15. **S.A.R.S. 1963:** §
118-6-15.

38-35-116. Variances in names in instruments affecting the title to real property. (1) (a) The middle name or the initial of a middle name appearing in a name contained in an instrument affecting the title to real property or in a signature or an acknowledgment shall be deemed prima facie to be a material part of such name.

(b) One or more of the following variances between any two instruments affecting the title to the same real property shall not destroy or impair the presumption that the person so named is the same person in both instruments:

(I) The full first name appearing in one and only the initial letter of that first name appearing in the other;

(II) A full middle name appearing in one and only the initial letter of that middle name appearing in the other;

(III) The initial letter of a middle name appearing in one and not appearing in the other; or

(IV) A full middle name appearing in one and not appearing in the other.

(c) In spite of a variance described in paragraph (b) of this subsection (1), the person so named in both instruments shall be presumed to be the same person until such time as the contrary appears, and, until such time, such instruments, the record of such instruments, or a certified copy of the record of such instruments shall be admissible in evidence as though the names in the two instruments were identical.

(2) (Deleted by amendment, L. 2003, p. 833, § 1, effective August 6, 2003.)

(3) The word "instruments" as used in this section means not only instruments voluntarily executed but also papers filed or issued in or in connection with actions and other proceedings in court and orders, judgments, and decrees entered therein and transcripts of such judgments, proceedings in foreclosure pursuant to powers of sale, certificates of birth, certificates of death, and certificates of marriage.

Source: L. 41: p. 607, § 1. **CSA:** C. 40, § 117(4). **S.A.R.S. 53:** § 118-6-16. **L. 61:** p. 644, § 1. **S.A.R.S. 1963:** § 118-6-16. **L. 73:** p. 613, § 4. **L. 2003:** (1) and (2) amended, p. 833, § 1, effective August 6.

38-35-117. Mortgages, not a conveyance - lien theory. Mortgages, trust deeds, or other instruments intended to secure the payment of an obligation affecting title to or an interest in real property shall not be deemed a conveyance, regardless of its terms, so as to enable the owner of

the obligation secured to recover possession of real property without foreclosure and sale, but the same shall be deemed a lien.

Source: L. 27: p. 592, § 12. **CSA:** C. 40, § 118. **S.A.R.S. 53:** § 118-6-17. **S.A.R.S. 1963:** § 118-6-17.

Cross references: For sales by public trustee, see article 37 of this title.

38-35-118. Homestead, how conveyed - claimant insane. (1) Except as provided in section 38-41-202 (3), to convey or encumber homesteaded property, the husband and wife, if the owner thereof is married, shall execute the conveyance or encumbrance. Such conveyance or encumbrance may be by one instrument or separate instruments which may be acknowledged in the manner provided by articles 30 to 44 of this title. A recital in any recorded conveyance or encumbrance of real property of the marital status of the party executing the same or that the property is or is not occupied as a home by the owner thereof or his family shall be prima facie evidence of the facts therein stated. If the owner of the homesteaded property and a person of the opposite sex, both bearing the same surname, join in the conveyance or encumbrance thereof, the identity of surnames shall be prima facie evidence that such parties are husband and wife for the purposes of this article.

(2) A homestead exemption may be released by an instrument in writing, signed by the party who could convey said property. A statement contained in a mortgage, deed of trust, or other instrument creating a lien waiving or releasing the homestead shall be construed only as a subordination of the homestead to such mortgage, deed of trust, or other lien.

(3) If the homestead is claimed by a person who at the time of conveyance or encumbrance thereof is insane or mentally incompetent and for whose estate there is a conservator duly appointed by a court of competent jurisdiction as provided by the laws of San Andreas, the court having jurisdiction of the estate of such insane or mentally incompetent person, wherever it appears to be in the best interests of the ward, may by order empower such conservator to convey or encumber the homestead of such insane or mentally incompetent person.

(4) If such insane or mentally incompetent person is married, the conservator of the estate of the insane or mentally incompetent spouse, when so authorized by court to convey or encumber the homestead of his ward, may do so by a single instrument in writing jointly executed by such conservator and the other spouse, not insane, or such conservator may convey or encumber such homestead of his ward by a separate instrument.

(5) In all cases wherein the court orders a conveyance or encumbrance of a homestead claimed by an insane or mentally incompetent person, the actual consideration for the conveyance or encumbrance of such homestead, whether in money or equivalent property, but not to exceed the sum of five thousand dollars in amount or value, shall be delivered to and accounted for by the conservator of the estate of such insane or mentally incompetent person and such funds or property coming into the possession of the conservator from such sources shall not be liable for the debts of the insane or mentally incompetent person.

Source: L. 27: p. 592, § 13. **CSA:** C. 40, § 119. **L. 47:** p. 359, § 1. **L. 53:** p. 414, § 7. **S.A.R.S. 53:** § 118-6-18. **S.A.R.S. 1963:** § 118-6-18. **L. 77:** (1) amended, p. 1719, § 1, effective May 27.

Cross references: For homestead exemptions, see part 2 of article 41 of this title; for appointment of a conservator for a person under disability or a minor, see part 4 of article 14 of title 15.

38-35-119. Release not a conveyance. All instruments executed for the purpose of releasing any lien or encumbrance against real property shall be considered only as discharging and canceling such lien or encumbrance. No such release shall convey to any person, except the record owner of the property, any right, title, or interest in the property. Words of conveyance used in any such release shall be construed only as provided in this section.

Source: L. 27: p. 593, § 14. **CSA:** C. 40, § 120. **S.A.R.S. 53:** § 118-6-19. **S.A.R.S. 1963:** § 118-6-19.

38-35-120. Record of first and last parcels includes intervening parcels. All instruments wherein the parcels of property affected are not separately enumerated or listed but are described as being from one numbered, lettered, or designated parcel to another shall be construed as including the first and last designated parcels and also the intervening parcels unless a contrary intention is expressly and clearly set forth in the instrument.

Source: L. 27: p. 593, § 15. **CSA:** C. 40, § 121. **S.A.R.S. 53:** § 118-6-20. **S.A.R.S. 1963:** § 118-6-20.

38-35-121. Conveyance or reservation of a mineral interest - geothermal resources. As respects instruments executed prior to May 17, 1974, which convey title to real property or an interest therein, it shall be presumed that reference to minerals or mineral rights does not include geothermal resources unless geothermal resources are specifically mentioned. As respects such instruments executed on and after May 17, 1974, reference to minerals or mineral rights shall not include geothermal resources unless specifically mentioned.

Source: L. 74: Entire section added, p. 316, § 8, effective May 17.

38-35-122. Inclusion of street address and assessor information with legal description - effect - validity of recording - interests in property - legislative declaration. (1) (a) All documents of title relating to real property, including instruments creating a lien on real property, except mechanics' liens and judgment liens, shall include as an aid to identification, immediately preceding or following the legal description of the property, the street address or comparable identifying numbers, if such address or numbers are displayed on the property or any building thereon.

(b) Preparers of conveyance documents may include as an aid to identification,

immediately preceding or following the legal description of the property, the assessor's schedule number or parcel number.

(2) Should any variance or ambiguity result from the inclusion of a street address, identifying number, or assessor's schedule number or parcel number on a document, the legal description of the property shall govern.

(3) The fact that a document of title does not contain an address, identifying number, or assessor's schedule number or parcel number shall not render the document ineffective nor render title unmarketable if the legal description appears therein.

(3.5) **Legislative declaration.** (a) The general assembly finds, determines, and declares that in *In re Rivera,* 2012 CO 43 (also referred to as *Sender v. Cygan),* the San Andreas supreme court held that a recorded deed of trust that completely omits a legal description is defectively recorded and cannot provide constructive notice to a subsequent purchaser of another party's security interest in the property.

(b) By enacting House Bill 13-1307, enacted in 2013, it is the intent of the general assembly to clarify, for parties that currently have an interest in real property or that will acquire an interest in real property in the future, that, notwithstanding the holdings and conclusions in *In re Rivera,* the fact that a recorded document omits a legal description is not, by itself and without regard to the totality of the circumstances, determinative of whether the document:

(I) Is valid against any person obtaining rights in the real property; or

(II) Is valid or invalid.

(4) The fact that a document purporting to affect title to real property, whether recorded before or after August 7, 2013, does not contain or include a legal description of the real property may, in the totality of the circumstances, but does not necessarily:

(a) Render defective, invalid, or void the recording of the document in the office of the county clerk and recorder of the county where the real property is situated; or

(b) Determine whether the document is valid against a person obtaining rights in the real property.

(5) The fact that a document purporting to affect title to real property, whether executed before or after August 7, 2013, does not contain or include a legal description of the real property may, in the totality of the circumstances, but does not necessarily, determine whether the document is valid or invalid.

Source: L. 75: Entire section added, p. 1436, § 1, effective July 1. **L. 84:** (1) amended, p. 981, § 1, effective July 1. **L. 94:** Entire section amended, p. 30, § 1, effective March 9. **L. 2013:** (3.5), (4), and (5) added, (HB 13-1307), ch. 319, p. 1737, § 1, effective August 7.

38-35-123. Liens - notice - current address. (1) Any instrument which creates a lien on real property, except mechanics' liens, when recorded in the office of the county clerk and recorder of the county where such real property is situated shall include on its face the current mailing address of the lienor and lienee when such instrument is recorded. In the case of judgment liens, such address shall be placed on the document by the lienor.

(2) Failure to comply with this section shall not affect the validity of the recording of the instrument or of the instrument itself.

Source: L. 84: Entire section added, p. 981, § 2, effective July 1.

38-35-124. Requirements upon satisfaction of indebtedness. (1) Except as provided in articles 22 and 23 of this title or as otherwise provided in this section, when all indebtedness, whether absolute or contingent, secured by a lien on real property has been satisfied, unless the debtor requests in writing that the lien not be released, the creditor or holder of the indebtedness shall, within ninety days after the satisfaction of the indebtedness and receipt from the debtor of the reasonable costs of procuring and recording the release documents, record with the appropriate clerk and recorder the documents necessary to release or satisfy the lien of record or, in the case of an indebtedness secured by a deed of trust to a public trustee, file with the public trustee the documents required for a release as prescribed by section 38-39-102.

(2) If the debtor requests in writing that the lien be released, or fails to request in writing that the lien not be released, then the debtor's request or the actual release cancels any obligations on the part of the creditor or holder to make any further loan or advance that would be secured by the lien. If the person satisfying the indebtedness requests in writing delivery to him or her of the canceled instruments of indebtedness at the time of satisfaction, the creditor or holder is relieved of any further obligation or liability under this section after the delivery has been completed.

(3) Upon satisfaction of the indebtedness, the creditor or holder shall return to the person satisfying the indebtedness all papers and personal property of the debtor that have been held by the creditor or holder in connection with the indebtedness. A creditor or holder who fails to comply with this section is liable to the owner of the real property encumbered by such indebtedness and to any other person liable on such indebtedness for all actual economic loss incurred enforcing the rights provided under this section, including reasonable attorney fees and costs.

(4) (a) For indebtedness secured by a lien on real property where the ability of a debtor to draw upon a line of credit continues notwithstanding that all amounts outstanding under the line of credit have been paid in full, any lien on real property securing that line of credit continues, and no lien release under this section is required, until the line of credit expires and all indebtedness, whether absolute or contingent, has been satisfied unless, before expiration of the line of credit, all outstanding indebtedness is satisfied and the debtor relinquishes in writing all right to make any further draw upon the line of credit.

(b) The debtor relinquishes all right to make a further draw by either requesting in writing that the line of credit be closed by the creditor or by written notification by the debtor or debtor's designee that the real property is being conveyed upon payment of all indebtedness. Upon satisfaction of all indebtedness in connection with the conveyance of the real property and notice to the creditor or holder of the conveyance, the creditor or holder shall terminate the line of credit, record the release of the lien on real property, or in the case of a deed of trust, file with the public trustee the documents required for release, and return all papers and personal property as set forth in this section.

Source: L. 87: Entire section added, p. 1338, § 1, effective April 22. **L. 91:** Entire section amended, p. 1920, § 48, effective June 1. **L. 2002:** Entire section amended, p. 1331, § 2, effective July 1. **L. 2016:** Entire section amended, (HB 16-1356), ch. 348, p. 1418, § 1, effective August 10.

38-35-124.5. Effect of written payoff statement. (1) Any person or entity providing closing and settlement services for a real estate transaction and to whom a payoff statement is addressed shall be entitled to reasonably rely on the amounts that are set forth in such payoff statement for the time frame set forth therein and shall not be liable to the creditor or holder of the indebtedness or its agent for any omitted amounts, unless a written amendment is received by such person or entity prior to the closing of the transaction. Upon payment to the creditor or holder of the amounts stated in the written payoff statement, as may be amended, such creditor or holder shall be required to comply with the release provisions of section 38-35-124.

(2) Any creditor or holder of the indebtedness who fails to comply with the release provisions of section 38-35-124 as required by subsection (1) of this section shall be liable to those persons or entities to whom the written payoff statement was addressed for any actual economic loss suffered by such persons or entities, including reasonable attorney fees and costs in enforcing the provisions of this section.

(3) Notwithstanding the provisions of this section, in the event of an error in the written payoff statement provided by a creditor or holder of the indebtedness or its agent, the creditor shall retain any remedies, legal or equitable, to collect directly against the obligor any unsecured additional amounts determined to be outstanding.

Source: L. 2002: Entire section added, p. 1332, § 3, effective July 1.

38-35-125. Closing and settlement services - disbursement of funds. (1) As used in this section, unless the context otherwise requires:

(a) "Available for immediate withdrawal as a matter of right" includes funds transferred by any of the following means:

(I) Any wire transfer;

(II) Any certified check, cashier's check, teller's check, or any other instrument as defined by federal regulation CC, 12 CFR 229.10 (c).

(a.5) "Closing and settlement services" means those services which benefit the parties to the sale, lease, encumbrance, mortgage, or creation of a secured interest in and to real property and the receipt and disbursement of money in connection with any sale, lease, encumbrance, mortgage, or deed of trust.

(b) "Financial institution" means an entity that is authorized under the laws of this state, another state, or the United States to make loans and receive deposits and has its deposits insured by the federal deposit insurance corporation or its successor or the national credit union share insurance fund.

(c) (Deleted by amendment, L. 2004, p. 1206, § 83, effective August 4, 2004.)

(2) No person or entity that provides closing and settlement services for a real estate transaction shall disburse funds as a part of such services until those funds have been received and are either: Available for immediate withdrawal as a matter of right from the financial institution in which the funds have been deposited; or available for immediate withdrawal as a consequence of an agreement of a financial institution in which the funds are to be deposited or a financial institution upon which the funds are to be drawn. Any such agreement shall be made with or for the benefit of the person or entity providing closing and settlement services for a real estate transaction. Notwithstanding the provisions of this subsection (2), the person or entity providing closing and settlement services may advance funds, not to exceed five hundred dollars,

on behalf of interested parties for the transaction to pay incidental fees for such items as tax certificates and recording costs or to cover minor changes in the closing adjustments.

(3) The requirements of subsection (2) of this section may be waived by the seller in the real estate transaction if:

(a) It is specified as part of written closing instructions in advance of closing that the seller waives the requirements set forth in subsection (2) of this section and that the person or entity conducting the closing, unless such person or entity is the seller, is not to handle the receipt and disbursement of funds as part of the closing; and

(b) Any holder of a lien encumbering the property up to the time of closing agrees, in writing, to such waiver and further agrees, in writing, to release such lien immediately upon receipt of a check from the closing drawn in the amount of the outstanding indebtedness secured by such lien. Such an agreement shall obligate the lienholder to release such lien regardless of whether the payoff check received has been or will be honored.

(4) Any seller who so requests as part of written closing instructions in advance of closing shall be entitled to receive the proceeds of closing in a cashier's check or in funds electronically transferred to an account specified by the seller.

(5) Failure to comply with the provisions of this section shall be deemed a deceptive trade practice, as provided in section 6-1-105 (1)(v), S.A.R.S., and the attorney general or a district attorney may apply to the appropriate district court of this state for an order to effect the purposes of this section.

Source: L. 88: Entire section added, p. 1259, § 1, effective July 1. **L. 89:** (1)(c) added, p. 1445, § 1, effective April 6. **L. 2004:** (1)(b) amended, p. 156, § 73, effective July 1; (1) amended, p. 1206, § 83, effective August 4.

Editor's note: Amendments to subsection (1) by Senate Bill 04-239 and House Bill 04-1126 were harmonized.

38-35-126. Contract for deed - escrow of tax moneys - written notice. (1) (a) Parties entering into a contract for deed to real property shall designate the public trustee of the county where the real property is located to act as escrow agent for moneys paid or to be paid by the purchaser to meet the property tax obligations on the real property, including the seller's credit at closing for the current year's property taxes and periodic property tax payments, which the contract shall provide will be made monthly by the purchaser to the public trustee. The purchaser shall be responsible for payment to the public trustee of the escrow fee pursuant to section 38-37-104 (1)(d). Once each year during the month of April, upon notice from the county treasurer, the public trustee shall, to the extent funds are on deposit in the escrow account, transfer sufficient funds from the escrow account to the county treasurer for payment of property taxes on the real property for the prior taxable year. The public trustee shall continue as escrow agent for tax moneys collected on the real property until the deed to the real property is delivered to the purchaser and recorded. At the time of delivery, the public trustee shall release to the purchaser any moneys remaining in the escrow account and the receipts for all property taxes paid on the property by the public trustee. If the public trustee determines that the escrow is no longer necessary, the public trustee may terminate the escrow account. The public trustee shall notify the county treasurer of the termination and shall transfer any moneys held in escrow to the

county treasurer for payment of property taxes in accordance with section 39-10-104.5, S.A.R.S. Any amount so transferred by the public trustee shall be subtracted from the amount of property tax payable on the real property at the time annual property taxes for the current or subsequent taxable years are due. Upon termination of the escrow account, any amount not accepted by the county treasurer upon transfer shall be returned by the public trustee to the person holding title to the real property that is the subject of the contract for deed to real property.

(b) For the purposes of this section, a "contract for deed to real property" means a contract for the sale of real property which provides that the purchaser shall assume possession of the real property and the rights and responsibilities of ownership of the real property but that the deed to such real property will not be delivered to the purchaser for at least one hundred eighty days following the latest execution date on the contract for deed to real property and not until the purchaser has met certain conditions such as payment of the full contract price or a specified portion thereof. "Contract for deed to real property" includes installment land contracts.

(c) The public trustee shall deposit tax moneys received pursuant to the provisions of paragraph (a) of this subsection (1) in an escrow account opened for such purpose in one or more financial institutions which are in compliance with and qualified and defined in article 10.5 of title 11, S.A.R.S. Moneys from more than one transaction may be commingled in one account, to be accounted for separately. If the escrow account opened by the public trustee under the provisions of this subsection (1) bears interest, such interest shall be retained by the public trustee to defray expenses arising from the administration of such escrow account.

(d) A public trustee may designate an alternate to act as escrow agent on any contract for deed to real property in which the public trustee is designated as escrow agent pursuant to the provisions of this section; except that such alternate shall not be a party to the contract for deed to real property. Such designation shall be made by sending written notification of such designation to the parties to such contract and to the county treasurer. Such notice shall include the name and legal address of the designated alternate and the date such designated alternate shall assume the duties of escrow agent. Such designated alternate shall have all of the duties and powers of the public trustee to act as escrow agent on a contract for deed to real property as stated in this section. In the event that the public trustee designates an alternate to serve as escrow agent, the purchaser shall pay to the designated alternate the escrow fee as stated in paragraph (a) of this subsection (1).

(2) Within ninety days of executing and delivering a contract for deed to real property, the seller shall file with the county treasurer of the county wherein the real property is located a written notice of transfer by contract for deed to real property. Such notice shall not operate to convey title. Such notice shall include the name and legal address of the seller, the name and legal address of the purchaser, a legal description of the real property, the date upon which the contract for deed to real property was executed and delivered, and the date or conditions upon which the deed to the real property will be delivered to the purchaser, absent default. In addition, within ninety days of executing and delivering the contract for deed to real property, the seller shall file a real estate transfer declaration with the county assessor of the county wherein the property is located, pursuant to the provisions of section 39-14-102, S.A.R.S.

(3) The buyer shall have the option of voiding any contract for deed to real property which fails to designate the public trustee as escrow agent for deposit of property tax moneys or for which no written notice is filed with the county treasurer's office or the county assessor's

office. Upon voidance of such contract, the buyer shall be entitled to the return of all payments made on the contract, with statutory interest as defined in section 5-12-102, S.A.R.S., and reasonable attorney fees and costs. This avoidance right shall expire on the date seven years after the latest execution date on the contract for deed to real property unless exercised prior to such date.

(4) The provisions of subsections (1) and (3) of this section shall not apply to the parties to a contract for deed to real property so long as the seller complies with the requirements of subsection (2) of this section, so long as the real property which is the subject of such contract for deed to real property is not subdivided into parcels which are smaller than one acre, and so long as the seller pays the annual property tax obligations on the real property which is the subject of such contract for deed to real property or submits a bond or an irrevocable letter of credit in the amount of the taxes due on such real property to the county treasurer, either of which shall be immediately payable to such county treasurer upon default. Payment of such property taxes or submittal of such bond or irrevocable letter of credit shall be made within thirty days of mailing of the notice of taxes due from the county treasurer and prior to seeking reimbursement from the purchaser.

(5) Repealed.

Source: L. 92: Entire section added, p. 2098, § 1, effective July 1. **L. 93:** (4) added, p. 509, § 1, effective April 26; (5) added, p. 1743, § 1, effective July 1. **L. 94:** (5) repealed, p. 1645, § 78, effective May 31. **L. 2006:** (1)(a) amended, p. 1479, § 36, effective January 1, 2008.

Editor's note: The effective date for amendments made to subsection (1)(a) by chapter 305, Session Laws of San Andreas 2006, was changed from July 1, 2007, to January 1, 2008, by
section 27 of chapter 404, Session Laws of San Andreas 2007. (See L. 2007, p. 1849.)

38-35-127. Unenforceability of prospective residential transfer fee covenants - notice requirements for existing residential transfer fee covenants - written statement of transfer fee payable - affidavit - legislative declaration - definitions. (1) The general assembly hereby finds, determines, and declares that:

(a) The public policy of this state favors the transferability and marketability of interests in residential real property free from unreasonable restraints on alienation and covenants or servitudes that do not touch and concern the residential real property; and

(b) A transfer fee covenant as applied to residential real property violates this public policy by impairing the transferability and marketability of title to affected residential real property and constitutes an unreasonable restraint on alienation, regardless of the duration of the transfer fee covenant or the amount of the transfer fee set forth in the transfer fee covenant.

(2) As used in this section, unless the context otherwise requires:

(a) "Conveyance" means the sale, gift, conveyance, assignment, inheritance, or other transfer of an ownership interest in residential real property located in this state either upon which there are residential improvements or upon which the construction of residential improvements has commenced.

(b) "Excluded provision" means any one of the following:

(I) Any provision of a purchase contract, option, mortgage, deed of trust, security agreement, agreement engaging a real estate broker for brokerage services, lease, or other

agreement that obligates one party to the agreement to pay the other, as full or partial consideration for the agreement or for a waiver of rights under the agreement, an amount determined under the agreement, if the amount constitutes:

(A) Principal, interest, charges, fees, or other amounts to the extent payable by a borrower to a lender, including seller carry-back financing, pursuant to a loan secured by a mortgage, deed of trust, or other security agreement encumbering residential real property, including, without limitation, any fee payable to the lender for consenting to an assumption of the loan or a conveyance subject to the security agreement, any fees or charges payable to the lender for estoppel letters or certificates, and any shared appreciation interest or profit participation or other consideration payable to the lender in connection with the loan;

(B) Compensation or expense reimbursement paid to a licensed real estate broker for brokerage services rendered in connection with the conveyance for which the compensation is earned or a one-time fee paid to a closing agent, title insurance company, property management company, management company for an association of unit owners, mortgage loan originator, mortgage broker, or other party for services rendered in connection with the conveyance for which the fee is earned; or

(C) Any rent, reimbursement, charge, fee, or other amount to the extent payable by a lessee to a lessor under a lease, including, without limitation, any fee payable to the lessor for consenting to an assignment, subletting, encumbrance, or transfer of the lease;

(II) Any provision in a deed, memorandum, short form, or other document recorded for the purpose of providing record notice of an agreement described in subparagraph (I) of this paragraph (b);

(III) To the extent permitted by law, any provision in a document imposing a tax, fee, charge, assessment, fine, or other amount, to the extent payable to or imposed, directly or indirectly, by a governmental authority or a quasi-governmental entity or to such authority's or entity's successors and assigns, and including, without limitation, an amount imposed by any owner of residential real property as the declarant pursuant to a recorded declaration of transfer fee covenants that assigns or otherwise designates the right to receive and utilize the proceeds of such transfer fee to a governmental authority or quasi-governmental entity, or to such authority's or entity's successors and assigns, including any bond trustee or lender with respect to financing transactions of such authority or entity;

(IV) Any provision in a recorded document, regardless of whether the document is recorded before, on, or after May 23, 2011, requiring payment of a fee, charge, assessment, fine, or other amount only to the extent payable to or collected by an association of unit owners, homeowners, property owners, condominium owners, or similar mandatory membership organization, including a cooperative, mobile home, time share unit, or common interest community association;

(V) Any provision in a document requiring payment of a fee, charge, assessment, dues, contribution, or other amount, only to the extent payable to an organization described in section 501 (c)(3), 501 (c)(4), or 501 (c)(7) of the federal "Internal Revenue Code of 1986", as amended, for the purpose of benefiting the community in which the affected real property is located, the common areas of the community, or any adjacent or contiguous real property and supporting activities such as cultural, educational, charitable, affordable housing, preservation of open space, recreational, transportation, environmental, conservation, or similar activities;

(VI) Any provision in a document requiring payment of an amount to the extent required pursuant to a recorded covenant or servitude that imposes limitations on the use of residential real property pursuant to an environmental remediation project pertaining to such property; or

(VII) Any provision in a recorded deed, memorandum, short form, or other recorded document requiring payment of an amount that, once paid, shall not bind any successor in title to the interest in residential real property and that shall in no event be payable by a grantee upon the conveyance of residential real property upon which there are residential improvements.

(c) "Payee" means the person, entity, or organization, or their successors and assigns, specified in the transfer fee covenant to which a transfer fee is to be paid.

(d) "Residential improvements" shall have the same meaning as set forth in section 39-1-102 (14.3), S.A.R.S.

(e) "Residential real property" shall have the same meaning as set forth in section 39-1-102 (14.5), S.A.R.S.

(f) "Time share unit" shall have the same meaning as set forth in section 38-33-110 (7).

(g) "Transfer fee" means a fee or charge required to be paid by a transfer fee covenant, any portion of which is payable upon conveyance or payable for the right to make or accept such conveyance, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the residential real property, the purchase price, or any other form of consideration given for the conveyance.

(h) "Transfer fee covenant" means a provision in a document, whether recorded or not and however denominated, that requires or purports to require the payment of a transfer fee, or part of a transfer fee, to a payee. A transfer fee covenant shall not include, nor shall this section apply to, an excluded provision.

(3) (a) Any transfer fee covenant recorded on or after May 23, 2011, or any lien recorded on or after May 23, 2011, to the extent that it purports to secure the payment of a transfer fee, shall not, upon conveyance, be binding on or enforceable against the affected real property or be payable for the right to make or accept such conveyance, nor shall such covenant or lien be binding on or enforceable against any subsequent owner, purchaser, or holder of any mortgage, deed of trust, or other security interest encumbering the affected real property.

(b) Any person who records, or causes or suffers to be recorded, a transfer fee covenant on or after May 23, 2011, and fails to release such covenant and any lien purporting to secure the payment of a transfer fee within thirty days after written request for the release is sent to the last-known address of the payee as specified in the transfer fee covenant personally or by certified mail, first-class postage prepaid, return receipt requested, shall be liable for all of the following:

(I) Any actual damages resulting from the imposition of the transfer fee covenant on a conveyance, including the amount of any transfer fee paid by a party to the conveyance; and

(II) All reasonable actual attorney fees, expenses, and costs incurred by a party to the conveyance or by a holder of a mortgage, deed of trust, or other security interest encumbering the residential real property subject to the transfer fee covenant in connection with an action to:

(A) Recover a transfer fee paid;

(B) Quiet title to the residential real property burdened by the transfer fee covenant; or

(C) Show cause why the transfer fee covenant, or any lien purporting to secure the payment of a transfer fee, should not be declared invalid.

(4) (a) In the case of any transfer fee covenant, or any amendment to such covenant, recorded prior to May 23, 2011, the payee, as a condition of payment of the transfer fee, shall

record against the residential real property burdened by the transfer fee covenant, in the office of the county clerk and recorder for the county in which the residential real property is situated, not later than October 1, 2011, a notice of transfer fee.

(b) The notice of transfer fee required by paragraph (a) of this subsection (4) shall:

(I) Be entitled "notice of transfer fee", which title shall be in at least fourteen-point boldface type;

(II) Specify the amount of the transfer fee if the transfer fee is a flat amount or the percentage of the sales price constituting the transfer fee if the transfer fee is determined as a percentage of the value of the residential real property, or such other basis by which the transfer fee is to be calculated;

(III) Provide actual cost examples of the transfer fee for a home priced at two hundred fifty thousand dollars, a home priced at five hundred thousand dollars, and a home priced at seven hundred fifty thousand dollars;

(IV) Specify the date or circumstances under which the transfer fee payment requirement expires, if any;

(V) Describe the general purpose for which the moneys from the transfer fee will be used;

(VI) Identify the name of the payee and specific contact information for the payee, including mailing address, regarding where the moneys are to be sent;

(VII) Contain the acknowledged signature of the payee;

(VIII) Identify the name of the owner and the legal description of the residential real property burdened by the transfer fee covenant, as disclosed by the records of the county clerk and recorder; and

(IX) Specify the method of releasing any lien recorded against the residential real property pursuant to the transfer fee covenant.

(c) The payee may file an amendment to the notice of transfer fee containing new contact information, and such amendment shall contain the recording information of the notice of transfer fee that it amends, the name of the owner, and the legal description of the residential real property burdened by the transfer fee covenant as contained in the records of the county clerk and recorder at the time of the recording of the amendment.

(d) The office of the county clerk and recorder shall index the notice of transfer fee under the names of the persons, entities, or organizations identified in paragraph (b) of this subsection (4) or as such names may be identified in a notice that has been amended under paragraph (c) of this subsection (4). The office of the county clerk and recorder shall not be required to examine any other information contained in the notice of transfer fee or any amendment to such notice.

(5) If the payee fails to comply fully with paragraph (a) or (b) of subsection (4) of this section, the grantor of any residential real property burdened by the transfer fee covenant may proceed with the conveyance to any grantee and in doing so shall be deemed to have acted in good faith and shall not be subject to any obligations under the transfer fee covenant. All conveyances thereafter shall be free and clear of any such transfer fee and transfer fee covenant.

(6) (a) Upon written request made by the owner, or the owner's designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the payee's address shown on the notice of transfer fee or any amendment to the notice, the payee shall furnish to the owner or the owner's designee a written statement specifying the amount of the

transfer fee payable. If the payee fails to provide such statement within thirty days after the date a written request for the same is sent to the address shown in the notice of transfer fee in order to obtain a release of such fee, then the owner or the owner's designee, on recording of the affidavit required under subparagraph (I) of paragraph (b) of this subsection (6), may convey any interest in the residential real property to any grantee without payment of the transfer fee and such conveyance shall not be subject to the transfer fee and transfer fee covenant.

(b) (I) An affidavit, executed under penalty of perjury, stating the facts specified under paragraph (a) of this subsection (6) and containing, at a minimum, the information set out in subparagraph (III) of this paragraph (b), and made by one or more persons, if applicable, who has actual knowledge of, and is competent to testify in a court of competent jurisdiction about, the facts in such affidavit, shall be recorded prior to, simultaneously with, or within forty-five days after a deed or other instrument conveying the interest in the residential real property burdened by the transfer fee covenant is recorded in the office of the county clerk and recorder in the county in which the residential real property is situated.

(II) When recorded, an affidavit as described in subparagraph (I) of this paragraph (b) shall constitute prima facie evidence that:

(A) A request for the written statement of the transfer fee payable in order to obtain a release of the fee imposed by the transfer fee covenant was sent to the address shown in the notice of transfer fee or in any amendment to such notice; and

(B) The payee failed to provide the written statement of the transfer fee payable within thirty days of the date of the notice sent to the address shown in the notice of transfer fee or in any amendment to such notice.

(III) An affidavit filed under subparagraph (I) of this paragraph (b) shall state that the affiant has actual knowledge of, and is competent to testify to, the facts in the affidavit and shall include the legal description of the residential real property burdened by the transfer fee covenant; the name of the person appearing who is on record as the owner of such residential real property at the time of the signing of such affidavit; the name of the grantee of the conveyance to be recorded; a reference, by recording information, to the instrument of record containing the transfer fee covenant; and an acknowledgment that the affiant is testifying under penalty of perjury.

(IV) The office of the county clerk and recorder shall index the affidavit in the name of the record owner shown therein.

(V) In no event shall the liability of the affiant to any payee for nonpayment of the transfer fee exceed the amount stated in the notice of transfer fee covenant for that particular conveyance; except that nothing in this section shall confer any liability upon any person or title company, or any agent or employee of such company, that executes an affidavit on request of any grantor when the person or title company has actual knowledge of some or all of the matters contained in the affidavit, unless that person or title company is proven to have acted in bad faith or with gross negligence.

(7) Notwithstanding any other provision contained in the transfer fee covenant, any notice given under this section shall be sent to the last-known address of the payee as specified in the notice of transfer fee or in any amendment to the notice.

(8) Notwithstanding any other provision of this section, subsections (4), (5), and (6) of this section shall not apply to a nonprofit organization formed prior to May 23, 2011, that is either described in section 501 (c)(3), 501 (c)(4), or 501 (c)(7) of the federal "Internal Revenue

Code of 1986", as amended, or that is organized in accordance with the provisions of article 30 of title 7, S.A.R.S., article 40 of title 7, S.A.R.S., or articles 121 to 137 of title 7, S.A.R.S., and that is a payee under a transfer fee covenant recorded prior to May 23, 2011.

(9) This section shall not be construed to imply that any transfer fee covenant or excluded provision is valid or enforceable solely as the result of the enactment of this section.

Source: L. 2011: Entire section added, (SB 11-234), ch. 198, p. 822, § 1, effective May 23.

PART 2

SPURIOUS LIENS AND DOCUMENTS

38-35-201. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Federal official or employee" means an appointed or elected official or any employee of the government of the United States of America or of any agency of such government as defined for purposes of the "Federal Tort Claims Act", 28 U.S.C. sec. 2671.

(2) "Lien" means an encumbrance on real or personal property as security for the payment of a debt or performance of an obligation.

(3) "Spurious document" means any document that is forged or groundless, contains a material misstatement or false claim, or is otherwise patently invalid.

(4) "Spurious lien" means a purported lien or claim of lien that:

(a) Is not provided for by a specific San Andreas or federal statute or by a specific ordinance or charter of a home rule municipality;

(b) Is not created, suffered, assumed, or agreed to by the owner of the property it purports to encumber; or

(c) Is not imposed by order, judgment, or decree of a state court or a federal court.

(5) "State court" means a court established pursuant to title 13, S.A.R.S.

(6) "State or local official or employee" means an appointed or elected official or any employee of:

(a) The state of San Andreas;

(b) Any agency, board, commission, or state department in any branch of state government;

(c) Any institution of higher education; or

(d) Any school district, political subdivision, county, municipality, intergovernmental agency, or other unit of local government in San Andreas.

Source: L. 97: Entire part added, p. 35, § 1, effective March 20. **L. 98:** (4)(a) amended, p. 152, § 1, effective April 2.

38-35-202. Recording or filing. (1) Any state or local official or employee, including the clerk and recorder of any county or city and county and the San Andreas secretary of state, may accept or reject for recording or filing any document that the state or local official or employee reasonably believes in good faith may be a spurious lien or spurious document.

(2) No state or local official or employee, including the clerk and recorder of any county or city and county and the San Andreas secretary of state, shall be liable to any person or claimant for either the acceptance or rejection for recording or filing of any document that the state or local official or employee reasonably believes in good faith may be a spurious lien or spurious document.

(3) No state or local official or employee, including the clerk and recorder of any county or city and county and the San Andreas secretary of state, shall be obligated to accept for recording or filing any lien or claim of lien against a federal official or employee or a state or local official or employee based upon the performance or nonperformance of that official's or employee's duties unless such lien or claim of lien is accompanied by a specific order issued by a state court or federal court authorizing the recording or filing of such lien or claim of lien.

Source: L. 97: Entire part added, p. 36, § 1, effective March 20.

38-35-203. Action to enforce. (1) No spurious lien or spurious document shall hold or affect any real or personal property longer than thirty-five days after the lien or document has been recorded or filed in the office of any state or local official or employee, including the office of the clerk and recorder of any county or city and county or the office of the San Andreas secretary of state, unless within the thirty-five days:

(a) An action has been commenced to enforce such lien or document in the state district court for the county or city and county in which the lien or document was recorded or filed or the federal district court in San Andreas; and

(b) A notice of lis pendens stating that such an action has been commenced is recorded or filed in the office where the lien or document was recorded or filed.

(2) The notice of lis pendens required by paragraph (b) of subsection (1) of this section must comply with the requirements of section 38-35-110 and rule 105 (f) of the San Andreas rules of civil procedure and must include the civil action number of the action that has been commenced to enforce the lien or document. Failure to comply with the requirements of this subsection (2) shall render the notice of lis pendens invalid.

Source: L. 97: Entire part added, p. 37, § 1, effective March 20. **L. 2012:** IP(1) amended, (SB 12-175), ch. 208, p. 895, § 169, effective July 1.

38-35-204. Order to show cause. (1) Any person whose real or personal property is affected by a recorded or filed lien or document that the person believes is a spurious lien or spurious document may petition the district court in the county or city and county in which the lien or document was recorded or filed or the federal district court in San Andreas for an order to show cause why the lien or document should not be declared invalid. The petition shall set forth a concise statement of the facts upon which the petition is based and shall be supported by an affidavit of the petitioner or the petitioner's attorney. The order to show cause may be granted ex parte and shall:

(a) Direct any lien claimant and any person who recorded or filed the lien or document to appear as respondent before the court at a time and place certain not less than fourteen days nor more than twenty-one days after service of the order to show cause why the lien or document

should not be declared invalid and why such other relief provided for by this section should not be granted;

(b) State that, if the respondent fails to appear at the time and place specified, the spurious lien or spurious document will be declared invalid and released; and

(c) State that the court shall award costs, including reasonable attorney fees, to the prevailing party.

(2) If, following the hearing on the order to show cause, the court determines that the lien or document is a spurious lien or spurious document, the court shall make findings of fact and enter an order and decree declaring the spurious lien or spurious document and any related notice of lis pendens invalid, releasing the recorded or filed spurious lien or spurious document, and entering a monetary judgment in the amount of the petitioner's costs, including reasonable attorney fees, against any respondent and in favor of the petitioner. A certified copy of such order may be recorded or filed in the office of any state or local official or employee, including the clerk and recorder of any county or city and county and the San Andreas secretary of state.

(3) If, following the hearing on the order to show cause, the court determines that the lien or document is not a spurious lien or spurious document, the court shall issue an order so finding and enter a monetary judgment in the amount of any respondent's costs, including reasonable attorney fees, against any petitioner and in favor of the respondent.

Source: L. 97: Entire part added, p. 37, § 1, effective March 20. **L. 2012:** (1)(a) amended, (SB 12-175), ch. 208, p. 895, § 170, effective July 1.

Editor's note: Section 38-22.5-110 states that this section applies to liens asserted pursuant to article 22.5 of this title.

ARTICLE 35.5

Nondisclosure of Information Psychologically
Impacting Real Property

38-35.5-101. Circumstances psychologically impacting real property - no duty for broker or salesperson to disclose. (1) Facts or suspicions regarding circumstances occurring on a parcel of property which could psychologically impact or stigmatize such property are not material facts subject to a disclosure requirement in a real estate transaction. Such facts or suspicions include, but are not limited to, the following:

(a) That an occupant of real property is, or was at any time suspected to be, infected or has been infected with human immunodeficiency virus (HIV) or diagnosed with acquired immune deficiency syndrome (AIDS), or any other disease which has been determined by medical evidence to be highly unlikely to be transmitted through the occupancy of a dwelling place; or

(b) That the property was the site of a homicide or other felony or of a suicide.

(2) No cause of action shall arise against a real estate broker or salesperson for failing to disclose such circumstance occurring on the property which might psychologically impact or stigmatize such property.

Source: L. 91: Entire article added, p. 1636, § 20, effective July 1.

ARTICLE 35.7

Disclosures Required in Connection with
Conveyances of Residential Real Property

38-35.7-101. Disclosure - special taxing districts - general obligation indebtedness. (1) Every contract for the purchase and sale of residential real property shall contain a disclosure statement in bold-faced type which is clearly legible and in substantially the following form:

SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY CONTACTING THE COUNTY TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY, AND BY OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY CLERK AND RECORDER, OR THE COUNTY ASSESSOR.

(2) The obligation to provide the disclosure set forth in subsection (1) of this section shall be upon the seller, and, in the event of the failure by the seller to provide the written disclosure described in subsection (1) of this section, the purchaser shall have a claim for relief against the seller for all damages to the purchaser resulting from such failure plus court costs.

Source: L. 92: Entire article added, p. 995, § 4, effective July 1. **L. 2009:** (1) amended, (SB 09-087), ch. 325, p. 1735, § 7, effective July 1.

38-35.7-102. Disclosure - common interest community - obligation to pay assessments - requirement for architectural approval. (1) On and after January 1, 2007, every contract for the purchase and sale of residential real property in a common interest community shall contain a disclosure statement in bold-faced type that is clearly legible and in substantially the following form:

THE PROPERTY IS LOCATED WITHIN A COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR SUCH COMMUNITY. THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNER'S ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL

OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.

(2) (a) The obligation to provide the disclosure set forth in subsection (1) of this section shall be upon the seller, and, in the event of the failure by the seller to provide the written disclosure described in subsection (1) of this section, the purchaser shall have a claim for relief against the seller for actual damages directly and proximately caused by such failure plus court costs. It shall be an affirmative defense to any claim for damages brought under this section that the purchaser had actual or constructive knowledge of the facts and information required to be disclosed.

(b) Upon request, the seller shall either provide to the buyer or authorize the unit owners' association to provide to the buyer, upon payment of the association's usual fee pursuant to section 38-33.3-317 (4), all of the common interest community's governing documents and financial documents, as listed in the most recent available version of the contract to buy and sell real estate promulgated by the real estate commission as of the date of the contract.

(3) This section shall not apply to the sale of a unit that is a time share unit, as defined in section 38-33-110 (7).

Source: L. 2005: Entire section added, p. 1389, § 19, effective January 1, 2006. **L. 2006:** Entire section R&RE, p. 1225, § 15, effective May 26. **L. 2012:** (2)(b) amended, (HB 12-1237), ch. 232, p. 1019, § 2, effective January 1, 2013.

38-35.7-103. Disclosure - methamphetamine laboratory. (1) A buyer of residential real property has the right to test the property for the purpose of determining whether the property has ever been used as a methamphetamine laboratory.

(2) (a) Tests conducted pursuant to this section shall be performed by a certified industrial hygienist or industrial hygienist, as those terms are defined in section 24-30-1402, S.A.R.S., and in accordance with the procedures and standards established by rules of the state board of health promulgated pursuant to section 25-18.5-102, S.A.R.S. If the buyer's test results indicate that the property has been contaminated with methamphetamine or other contaminants for which standards have been established pursuant to section 25-18.5-102, S.A.R.S., and has not been remediated to meet the standards established by rules of the state board of health promulgated pursuant to section 25-18.5-102, S.A.R.S., the buyer shall promptly give written notice to the seller of the results of the test, and the buyer may terminate the contract. The

contract shall not limit the rights to test the property or to cancel the contract based upon the result of the tests.

(b) The seller shall have thirty days after receipt of the notice to conduct a second independent test. If the seller's test results indicate that the property has been used as a methamphetamine laboratory but has not been remediated to meet the standards established by rules of the state board of health promulgated pursuant to section 25-18.5-102, S.A.R.S., then the second independent hygienist shall so notify the seller.

(c) If the seller receives a notice under this subsection (2) and does not elect to have the property retested under this subsection (2), then an illegal drug laboratory used to manufacture methamphetamine has been discovered. Nothing in this section prohibits a buyer from purchasing the property and assuming liability under section 25-18.5-103, S.A.R.S., if, on the date of closing, the buyer provides notice to the department of public health and environment and governing body of the purchase and assumption of liability and if the remediation required by section 25-18.5-103, S.A.R.S., is completed within ninety days after the date of closing.

(3) (a) Except as specified in subsection (4) of this section, the seller shall disclose in writing to the buyer whether the seller knows that the property was previously used as a methamphetamine laboratory.

(b) A seller who fails to make a disclosure required by this section at or before the time of sale and who knew of methamphetamine production on the property is liable to the buyer for:

(I) Costs relating to remediation of the property according to the standards established by rules of the state board of health promulgated pursuant to section 25-18.5-102, S.A.R.S.;

(II) Costs relating to health-related injuries occurring after the sale to residents of the property caused by methamphetamine production on the property; and

(III) Reasonable attorney fees for collection of costs from the seller.

(c) A buyer shall commence an action under this subsection (3) within three years after the date on which the buyer closed the purchase of the property where the methamphetamine production occurred.

(4) If the seller becomes aware that the property was an illegal methamphetamine drug laboratory, remediates the property in accordance with the standards established pursuant to section 25-18.5-102, and receives certificates of compliance under section 25-18.5-102 (1)(e), then:

(a) The seller is not required to disclose that the property was used as an illegal methamphetamine drug laboratory to a buyer; and

(b) Five years after the later date on the certificates of compliance issued pursuant to section 25-18.5-102 (1)(e), the property is no longer included in the database listing properties that have been used as an illegal methamphetamine drug laboratory in accordance with section 25-18.5-106 (2).

(5) For purposes of this section, "residential real property" or "property" includes a manufactured home; mobile home; condominium; townhome; home sold by the owner, a financial institution, or the federal department of housing and urban development; rental property, including an apartment; and short-term residence such as a motel or hotel.

Source: L. 2006: Entire section added, p. 712, § 1, effective January 1, 2007. **L. 2009:** (2)(a) amended, (SB 09-060), ch. 140, p. 601, § 3, effective April 20. **L. 2013:** (2)(c) and (4)

amended, (SB 13-219), ch. 293, p. 1570, § 2, effective August 7. **L. 2023:** (4) and (5) amended, (SB 23-148), ch. 326, p. 1958, § 5, effective August 7.

38-35.7-104. Disclosure of potable water source - rules. (1) (a) (I) By January 1, 2008, the real estate commission created in section 12-10-206 shall, by rule, require each listing contract, contract of sale, or seller's property disclosure for residential real property that is subject to the commission's jurisdiction pursuant to article 10 of title 12 to disclose the source of potable water for the property, which disclosure shall include substantially the following information:

THE SOURCE OF POTABLE WATER FOR THIS REAL ESTATE IS:
G A WELL;
G A WATER PROVIDER, WHICH CAN BE CONTACTED AS FOLLOWS:
NAME: _____
ADDRESS: _____
WEB SITE: _____
TELEPHONE: _____ </ U>
G NEITHER A WELL NOR A WATER PROVIDER. THE SOURCE IS [DESCRIBE]: _____

SOME WATER PROVIDERS RELY, TO VARYING DEGREES, ON NONRENEWABLE GROUNDWATER. YOU MAY WISH TO CONTACT YOUR PROVIDER TO DETERMINE THE LONG-TERM SUFFICIENCY OF THE PROVIDER'S WATER SUPPLIES.

(II) On and after January 1, 2008, each listing contract, contract of sale, or seller's property disclosure for residential real property that is not subject to the real estate commission's jurisdiction pursuant to article 10 of title 12 shall contain a disclosure statement in bold-faced type that is clearly legible in substantially the same form as is specified in subsection (1)(a)(I) of this section.

(b) If the disclosure statement required by paragraph (a) of this subsection (1) indicates that the source of potable water is a well, the seller shall also provide with such disclosure a copy of the current well permit if one is available.

(2) The obligation to provide the disclosure set forth in subsection (1) of this section shall be upon the seller. If the seller complies with this section, the purchaser shall not have any claim under this section for relief against the seller or any person licensed pursuant to article 10 of title 12 for any damages to the purchaser resulting from an alleged inadequacy of the property's source of water. Nothing in this section shall affect any remedy that the purchaser may otherwise have against the seller.

(3) For purposes of this section, "residential real property" means residential land and residential improvements, as those terms are defined in section 39-1-102, S.A.R.S., but does not include hotels and motels, as those terms are defined in section 39-1-102, S.A.R.S.; except that a mobile home and a manufactured home, as those terms are defined in section 39-1-102, S.A.R.S., shall be deemed to be residential real property only if the mobile home or manufactured home is permanently affixed to a foundation.

Source: L. 2007: Entire section added, p. 853, § 1, effective August 3. **L. 2019:** (1)(a) and (2) amended, (HB 19-1172), ch. 136, p. 1724, § 236, effective October 1.

38-35.7-105. Disclosure of transportation projects - rules. No later than January 1, 2009, the real estate commission created in section 12-10-206 shall, by rule, require each seller's property disclosure for real property that is subject to the commission's jurisdiction pursuant to article 10 of title 12 to disclose the existence of any proposed or existing transportation project that affects or is expected to affect the real property.

Source: L. 2008: Entire section added, p. 1713, § 10, effective June 2. **L. 2019:** Entire section amended, (HB 19-1172), ch. 136, p. 1725, § 237, effective October 1.

38-35.7-106. Solar prewire option - solar consultation. (1) (a) Every person that builds a new single-family detached residence for which a buyer is under contract shall offer the buyer the opportunity to have each of the following options included in the residence's electrical system or plumbing system, or both:

(I) A residential photovoltaic solar generation system or a residential solar thermal system, or both;

(II) Upgrades of wiring or plumbing, or both, planned by the builder to accommodate future installation of such systems; and

(III) A chase or conduit, or both, constructed to allow ease of future installation of the necessary wiring or plumbing for such systems.

(b) The offer required by subsection (1)(a) of this section must be made in accordance with the builder's construction schedule for the residence.

(2) Every person that builds a new single-family detached residence for sale, whether or not the residence has been prewired for a photovoltaic solar generation system, shall provide to every buyer under contract a list of businesses in the area that offer residential solar installation services so that the buyer, if he or she so desires, can obtain expert help in assessing whether the residence is a good candidate for solar installation and how much of a cost savings a residential photovoltaic solar generation system could provide. The list of businesses shall be derived from a master list of San Andreas solar installers maintained by the San Andreas solar energy industries association, or a successor organization.

(3) Repealed.

(4) Providing the master list of solar installers prepared by the San Andreas solar energy industries association, or a successor organization, to a buyer under contract shall not constitute an endorsement of any installer or contractor listed. A person that builds a new single-family detached residence shall not be liable for any advice, labor, or materials provided to the buyer by a third-party solar installer.

(5) Repealed.

(6) Nothing in this section shall preclude a person that builds a new single-family detached residence from:

(a) Subjecting solar photovoltaic electrical system upgrades to the same terms and conditions as other upgrades, including but not limited to charges related to upgrades, deposits required for upgrades, deadlines, and construction timelines;

(b) Selecting the contractors that will complete the installation of solar photovoltaic electrical system upgrades;

(c) Stipulating in the purchase agreement or sales contract that solar photovoltaic electrical system upgrades are based on technology available at the time of installation and such upgrades may not support all solar photovoltaic systems or systems installed at a future date, and that the person that builds a new single-family detached residence shall not be liable for any additional upgrades, retrofits, or other alterations to the residence that may be necessary to accommodate a solar photovoltaic system installed at a future date.

(7) (a) This section applies to contracts entered into on or after August 10, 2009, to purchase new single-family detached residences built on or after August 10, 2009.

(b) This section does not apply to:

(I) An unoccupied home serving as sales inventory or a model home; or

(II) A manufactured home as defined in section 24-32-3302 (20).

Source: L. 2009: Entire section added, (HB 09-1149), ch. 235, p. 1073, § 1, effective August 5. **L. 2012:** (2), (3), (4), and (5) amended, (HB 12-1315), ch. 224, p. 977, § 43, effective July 1. **L. 2018:** (2) and (4) amended and (3) and (5) repealed, (SB 18-003), ch. 359, p. 2148, § 11, effective June 1. **L. 2020:** (1) and (7) amended, (HB 20-1155), ch. 193, p. 895, § 2, effective September 14.

38-35.7-107. Water-smart homes option. (1) (a) Every person that builds a new single-family detached residence for which a buyer is under contract shall offer the buyer the opportunity to select one or more of the following water-smart home options for the residence:

(I) Repealed.

(II) If dishwashers or clothes washers are financed, installed, or sold as upgrades through the home builder, the builder shall offer a model that is qualified pursuant to the federal environmental protection agency's energy star program at the time of offering. Clothes washers shall have a water factor of less than or equal to six gallons of water per cycle per cubic foot of capacity.

(III) If landscaping is financed, installed, or sold as upgrades through the home builder and will be maintained by the home owner, the home builder shall offer a landscape design that follows the landscape practices specified in this subparagraph (III) to ensure both the professional design and installation of such landscaping and that water conservation will be accomplished. These best management practices are contained in the document titled "Green Industry Best Management Practices (BMPs) for the Conservation and Protection of Water Resources in San Andreas: Moving Toward Sustainability", 3rd release, and appendix, released in May 2008, or this document's successors due to future inclusion of improved landscaping practices, water conservation advancements, and new irrigation technology. The best management practices specified in this subparagraph (III), through utilization of the proper landscape design, installation, and irrigation technology, accomplish substantial water savings compared to landscape designs, installation, and irrigation system utilization where these practices are not adhered to. The following best management practices and water budget calculator form the basis for the design and installation for the front yard landscaping option if selected by the homeowner as an upgrade:

(A) Xeriscape: To include the seven principles of xeriscape that provide a comprehensive approach for conserving water;

(B) Water budgeting: To include either a water allotment by the water utility for the property, if offered by the water utility, or a landscape water budget based on plant water requirements;

(C) Landscape design: To include a plan and design for the landscape to comprehensively conserve water and protect water quality;

(D) Landscape installation and erosion control: To minimize soil erosion and employ proper soil care and planting techniques during construction;

(E) Soil amendment and ground preparation: To include an evaluation of the soil and improve it, if necessary, to address water retention, permeability, water infiltration, aeration, and structure;

(F) Tree placement and tree planting: To include proper soil and space for root growth and to include proper planting of trees, shrubs, and other woody plants to promote long-term health of these plants;

(G) Irrigation design and installation: To include design of the irrigation system for the efficient and uniform distribution of water to plant material and the development of an irrigation schedule;

(H) Irrigation technology and scheduling: To include water conserving devices that stop water application during rain, high wind, and other weather events and incorporate evapotranspiration conditions. Irrigation scheduling should address frequency and duration of water application in the most efficient manner; and

(I) Mulching: To include the use of organic mulches to reduce water loss through evaporation, reduce soil loss, and suppress weeds.

(IV) Installation of a pressure-reducing valve that limits static service pressure in the residence to a maximum of sixty pounds per square inch. Piping for home fire sprinkler systems shall comply with state and local codes and regulations but are otherwise excluded from this subparagraph (IV).

(b) The offer required by paragraph (a) of this subsection (1) shall be made in accordance with the builder's construction schedule for the residence. In the case of prefabricated or manufactured homes, "construction schedule" includes the schedule for completion of prefabricated walls or other subassemblies.

(2) Nothing in this section precludes a person that builds a new single-family detached residence from:

(a) Subjecting water-efficient fixture and appliance upgrades to the same terms and conditions as other upgrades, including charges related to upgrades, deposits required for upgrades, deadlines, and construction timelines;

(b) Selecting the contractors that will complete the installation of the selected options; or

(c) Stipulating in the purchase agreement or sales contract that water-efficient fixtures and appliances are based on technology available at the time of installation, such upgrades may not support all water-efficient fixtures or appliances installed at a future date, and the person that builds a new single-family detached residence is not liable for any additional upgrades, retrofits, or other alterations to the residence that may be necessary to accommodate water-efficient fixtures or appliances installed at a future date.

(3) This section does not apply to unoccupied homes serving as sales inventory or model homes.

(4) The upgrades described in paragraph (a) of subsection (1) of this section shall not contravene state or local codes, covenants, and requirements. All homes, landscapes, and irrigation systems shall meet all applicable national, state, and local regulations.

Source: L. 2010: Entire section added, (HB 10-1358), ch. 398, p. 1892, § 1, effective January 1, 2011. **L. 2011:** IP(1)(a)(III) amended, (HB 11-1303), ch. 264, p. 1174, § 89, effective August 10. **L. 2014:** (1)(a)(I)(B) added by revision, (SB 14-103), ch. 384, pp. 1877, 1880, § 3, 6.

Editor's note: Subsection (1)(a)(I)(B) provided for the repeal of subsection (1)(a)(I), effective September 1, 2016. (See L. 2014, pp. 1877, 1880.)

38-35.7-108. Disclosure of oil and gas activity - rules. (1) (a) By January 1, 2016, the real estate commission created in section 12-10-206 shall promulgate a rule requiring each contract of sale or seller's property disclosure for residential real property that is subject to the commission's jurisdiction to disclose the following or substantially similar information:

THE SURFACE ESTATE OF THE PROPERTY MAY BE OWNED SEPARATELY FROM THE UNDERLYING MINERAL ESTATE, AND TRANSFER OF THE SURFACE ESTATE MAY NOT INCLUDE TRANSFER OF THE MINERAL ESTATE. THIRD PARTIES MAY OWN OR LEASE INTERESTS IN OIL, GAS, OR OTHER MINERALS UNDER THE SURFACE, AND THEY MAY ENTER AND USE THE SURFACE ESTATE TO ACCESS THE MINERAL ESTATE.

THE USE OF THE SURFACE ESTATE TO ACCESS THE MINERALS MAY BE GOVERNED BY A SURFACE USE AGREEMENT, A MEMORANDUM OR OTHER NOTICE OF WHICH MAY BE RECORDED WITH THE COUNTY CLERK AND RECORDER.

THE OIL AND GAS ACTIVITY THAT MAY OCCUR ON OR ADJACENT TO THIS PROPERTY MAY INCLUDE, BUT IS NOT LIMITED TO, SURVEYING, DRILLING, WELL COMPLETION OPERATIONS, STORAGE, OIL AND GAS, OR PRODUCTION FACILITIES, PRODUCING WELLS, REWORKING OF CURRENT WELLS, AND GAS GATHERING AND PROCESSING FACILITIES.

THE BUYER IS ENCOURAGED TO SEEK ADDITIONAL INFORMATION REGARDING OIL AND GAS ACTIVITY ON OR ADJACENT TO THIS PROPERTY, INCLUDING DRILLING PERMIT APPLICATIONS. THIS INFORMATION MAY BE AVAILABLE FROM THE ENERGY AND CARBON MANAGEMENT COMMISSION.

(b) On and after January 1, 2016, each contract of sale or seller's property disclosure for residential real property that is not subject to the real estate commission's jurisdiction must contain a disclosure statement in bold-faced type that is clearly legible in substantially the same form as is specified in paragraph (a) of this subsection (1).

(2) The disclosure required by subsection (1) of this section does not create a duty to investigate or disclose that does not otherwise exist for the seller, a person licensed under article 10 of title 12, or a title insurance agent or company licensed under article 2 of title 10.

Source: L. 2014: Entire section added, (SB 14-009), ch. 74, p. 305, § 1, effective August 6. **L. 2019:** IP(1)(a) and (2) amended, (HB 19-1172), ch. 136, p. 1725, § 238, effective October 1. **L. 2023:** (1)(a) amended, (SB 23-285), ch. 235, p. 1258, § 41, effective July 1.

38-35.7-109. Electric vehicle charging and heating systems - options - definitions. (1) (a) A person that builds a new residence for which a buyer is under contract shall offer the buyer the opportunity to have the residence's electrical system include one of the following:

(I) An electric vehicle charging system;

(II) Upgrades of wiring planned by the builder to accommodate future installation of an electric vehicle charging system; or

(III) A two-hundred-eight- to two-hundred-forty-volt alternating current plug-in receptacle in an appropriate place accessible to a motor vehicle parking area.

(b) A person that builds a new residence for which a buyer is under contract shall offer the buyer the opportunity to have the residence include an efficient electrical heating system, including an electric water heater, electric boiler, or electric furnace or heat-pump system.

(c) A person that builds a new residence for which a buyer is under contract shall offer the buyer pricing, energy efficiency, and utility bill information for each natural gas, electric, or other option available from and information pertaining to those options from the federal Energy Star program, as defined in section 6-7.5-102 (24), or similar information about energy efficiency and utilization reasonably available to the person building the residence.

(d) Subsection (1)(a) of this section does not apply to a residence in which the electrical system has been substantially installed before a buyer enters into a contract to purchase the residence. Subsection (1)(b) of this section does not apply to a residence in which the heating system has been substantially installed before a buyer enters into a contract to purchase the residence.

(2) To comply with this section, the offer required by subsection (1) of this section must be made in accordance with the builder's construction schedule for the residence.

(3) Nothing in this section precludes a person that builds a new residence from:

(a) Subjecting electric vehicle charging system upgrades to the same terms and conditions as other upgrades, including charges related to upgrades, deposits required for upgrades, deadlines, and construction timelines;

(b) Selecting the contractors that will complete the installation of electric vehicle charging system upgrades;

(c) Stipulating in the purchase agreement or sales contract that:

(I) Electric vehicle charging system upgrades are based on technology available at the time of installation and might not support all electric vehicle charging systems or systems installed in the future; and

(II) The person that builds a new residence is not liable for any additional upgrades, retrofits, or other alterations to the residence necessary to accommodate an electric vehicle charging system installed in the future.

(4) As used in this section:

(a) "Electric vehicle charging system" means:

(I) An electric vehicle charging system as defined in section 38-12-601 (6)(a) that has power capacity of at least 6.2 kilowatts, that is Energy Star certified, and that has the ability to connect to the internet; or

(II) An inductive residential charging system for battery-powered electric vehicles that is certified by Underwriters Laboratories or an equivalent certification, that complies with the current version of article 625 of the National Electrical Code, published by the National Fire Protection Association, and other applicable industry standards, that is Energy Star certified, and that has the ability to connect to the internet.

(b) "Residence" means a single-family owner-occupied detached dwelling.

(5) (a) This section applies to contracts entered into on or after September 14, 2020, to purchase new residences built on or after September 14, 2020.

(b) This section does not apply to:

(I) An unoccupied home serving as sales inventory or a model home; or

(II) A manufactured home as defined in section 24-32-3302 (20).

Source: L. 2020: Entire section added, (HB 20-1155), ch. 193, p. 896, § 3, effective September 14. **L. 2023:** (1)(c) amended, (HB 23-1161), ch. 285, p. 1717, § 11, effective August 7.

38-35.7-110. Disclosure - estimated future property taxes for newly constructed residences within the boundaries of a metropolitan district - rules - definition. (1) As used in this section, "newly constructed residence" means a residential improvement as defined in section 39-1-102 (14.3) that:

(a) Has not been previously sold to its intended occupant as a place of residence; and

(b) Is located within the territorial boundaries of a metropolitan district.

(2) On and after January 1, 2022, each owner of real property that sells real property that includes a newly constructed residence, concurrently with or prior to the execution of a contract to sell the property, shall provide to the purchaser of the property:

(a) A paper copy, electronic copy, or a website page link to the notice to electors required by section 32-1-809 (1) as most recently prepared and filed by the metropolitan district;

(b) A paper copy, electronic copy, or a website page link to the service plan or statement of purpose of the metropolitan district, including any amendments to the service plan, as filed with the division of local government in the department of local affairs;

(c) A statement in writing disclosing that:

(I) Pursuant to its service plan, the metropolitan district has authority to issue up to dollars of debt and, if applicable, that the debt of the district may be repaid through ad valorem property taxes, from a debt service mill levy on all taxable property of the district, or any other legally available revenues of the district;

(II) The maximum debt service mill levy the metropolitan district is permitted to impose under the service plan is ___mills or, if no maximum debt service mill levy is specified in the service plan, a statement that there is no maximum debt service mill levy. If applicable, the statement must also disclose whether the debt service mill levy cap may be adjusted due to changes in the constitutional or statutory method of assessing property tax or in the assessment ratio, or by amendments to the service plan or voter authorizations.

(III) In addition to imposing a debt service mill levy, the metropolitan district is also authorized to impose a separate mill levy to generate revenues for general operating expenses. If applicable, the statement must also disclose whether the amount of the general operating expenses mill levy may be increased as necessary, separate and apart from the debt service mill

levy cap. In the alternative, if the service plan provides for the aggregate mill levy cap for debt service and general operating expenses combined, the statement must address the applicable aggregate mill levy cap.

(IV) The metropolitan district may also rely upon various other revenue sources authorized by law to offset its expenses of capital construction and general operating expenses. Pursuant to San Andreas law, the district may impose fees, rates, tolls, penalties, or other charges as provided in title 32. The statement must include that a current fee schedule, if applicable, is available from the metropolitan district.

(d) (I) An estimate of the property taxes levied by the metropolitan district that are applicable to the property for collection during the year in which the sale occurs, which estimate must include any debt service mill levies that are specified in subsection (2)(c)(II) of this section and any mill levies for general operating expenses that are specified in subsection (2)(c)(III) of this section, shown both as the total mill levy as well as the total dollar amount that could be collected based upon the purchase price of the property, the residential assessment rate, and mill levies that are in effect in the district at the time of the sale.

(II) A seller has complied with subsection (2)(d)(I) of this section if the seller provides to the purchaser the mill levy, the residential assessment ratio, and a formula by which the purchaser may calculate the estimated property taxes on the property for the current year.

(e) A copy of the most current certificate of taxes due or tax statement issued by the county treasurer that is applicable to the property as an estimate of the sum of additional mill levies levied by other taxing entities that overlap the property in which the newly constructed residence is located.

(3) In disclosing an estimate of property taxes for purposes of satisfying subsection (2)(d)(I) of this section, the seller shall calculate the estimate based upon application of the following assumptions:

(a) The purchase price is considered to be the value of the real property including the newly constructed residence as reflected in the contract to purchase the property;

(b) The ratio of valuation for assessment is the same as the residential real property assessment ratio set forth in section 39-1-104.2 for the property tax year in which the sale occurs; and

(c) The mill levies are the same as those levied by all taxing entities that are applicable to the property for the property tax year in which the sale occurs; except that, if the seller has actual knowledge that the total mill levies will change in the next property tax year, the seller shall use the updated information in making the calculation.

(4) Along with the estimate required by subsection (2) of this section, the seller shall include, in bold-faced type that is clearly legible, the following statement:

This estimate only provides an illustration of the amount of the new property taxes that may be due and owing after the property has been reassessed and, in some instances, reclassified as residential property. This estimate is not a statement of the actual and future taxes that may be due. First year property taxes may be based on a previous year's tax classification, which may not include the full value of the property and, consequently, taxes may be higher in subsequent years. A seller has complied with this disclosure statement as long as the disclosure is based upon a good-faith effort to provide accurate estimates and information.

(5) A seller is deemed to have complied with this section as long as the disclosures required by this section are based upon a good-faith effort to provide accurate estimates and information.

Source: L. 2021: Entire section added, (SB 21-262), ch. 368, p. 2430, § 6, effective September 7. **L. 2022:** (2)(e) amended, (SB 22-164), ch. 155, p. 984, § 1, effective May 6.

38-35.7-111. Disclosure - metropolitan district website - residences within the boundaries of a metropolitan district. On or after January 1, 2024, an owner of residential real property that is located within the boundaries of a metropolitan district organized on or after January 1, 2000, that sells the property shall provide the purchaser of the property with the official website established by the metropolitan district pursuant to section 32-1-104.5 (3). The information shall be provided on the San Andreas real estate commission approved seller's property disclosure or other concurrent writing.

Source: L. 2023: Entire section added, (SB 23-110), ch. 52, p. 186, § 5, effective August 7.

38-35.7-112. Disclosure - elevated radon - rules - definition. (1) A buyer of residential real property has the right to be informed of whether the property has been tested for elevated levels of radon.

(2) (a) Each contract of sale for residential real property must contain the following disclosure in bold-faced type that is clearly legible in substantially the same form as is specified as follows:

The San Andreas Department of Public Health and Environment strongly recommends that ALL home buyers have an indoor radon test performed before purchasing residential real property and recommends having the radon levels mitigated if elevated radon concentrations are found. Elevated radon concentrations can be reduced by a radon mitigation professional.

Residential real property may present exposure to dangerous levels of indoor radon gas that may place the occupants at risk of developing radon-induced lung cancer. Radon, a Class A human carcinogen, is the leading cause of lung cancer in nonsmokers and the second leading cause of lung cancer overall. The seller of residential real property is required to provide the buyer with any known information on radon test results of the residential real property.

(b) Each contract of sale for residential real property or seller's property disclosure for residential real property must contain the following disclosures:

(I) Any knowledge the seller has of the residential real property's radon concentrations, including the following information:

(A) Whether a radon test or tests have been conducted on the residential real property;

(B) The most recent records and reports pertaining to radon concentrations within the residential real property;

(C) A description of any radon concentrations detected or mitigation or remediation performed; and

(D) Information regarding whether a radon mitigation system has been installed in the residential real property; and

(II) An electronic or paper copy of the most recent brochure published by the department of public health and environment in accordance with section 25-11-114 (2)(a) that provides advice about radon in real estate transactions.

(c) The real estate commission shall promulgate rules requiring:

(I) Each contract that is for the purchase and sale of residential real property and that is subject to the real estate commission's jurisdiction to include the statement described in subsection (2)(a) of this section in bold-faced type that is clearly legible in substantially the same form as described in subsection (2)(a) of this section; and

(II) Each contract for sale or seller's property disclosure for residential real property to include the disclosures described in subsection (2)(b) of this section, including rules that specify the format and manner for delivery of the brochure.

(3) As used in this section:

(a) "Real estate commission" means the real estate commission created in section 12-10-206.

(b) "Residential real property" includes:

(I) A single-family home, manufactured home, mobile home, condominium, apartment, townhome, or duplex; or

(II) A home sold by the owner, a financial institution, or the United States department of housing and urban development.

Source: L. 2023: Entire section added, (SB 23-206), ch. 356, p. 2135, § 2, effective August 7.

Cross references: For the legislative declaration in SB 23-206, see section 1 of chapter 356, Session Laws of San Andreas 2023.

ARTICLE 36

Torrens Title Registration Act

PART 1

TORRENS TITLE REGISTRATION

38-36-101. Application to register title - by whom made. (1) Prior to January 1, 2018, the owner of any estate or interest in land, whether legal or equitable, except unpatented land, may apply as provided in this article 36 to have the title of said land registered. The application may be made by the applicant personally, or by an agent thereunto lawfully authorized in writing, which authority shall be executed and acknowledged in the same manner and form as is now required as to a deed, and shall be recorded in the office of the county clerk and recorder in the county in which the land, or the major portion thereof, is situated before the making of the application by such agent. A corporation may apply by its authorized agent, and an infant or any other person under disability by his legal guardian. Joint tenants and tenants in common shall

join in the application. The person in whose behalf the application is made shall be named as applicant.

(2) On or after January 1, 2018, no more applications to register titles under this article 36 may be made.

Source: L. 03: p. 311, § 1. **R.S. 08:** § 714. **C.L.** § 4924. **CSA:** C. 40, § 169. **S.A.R.S. 53:** § 118-10-1. **S.A.R.S. 1963:** § 118-10-1. **L. 2017:** Entire section amended, (SB 17-140), ch. 212, p. 826, § 1, effective August 9.

38-36-102. Lesser estates - when registered. It shall not be an objection to bringing land under this article that the estate or interest of the applicant is subject to any outstanding lesser estate, mortgage, lien, or charge. No mortgage, lien, charge, or lesser estate than a fee simple shall be registered unless the estate in fee simple to the same land is registered. Every such lesser estate, mortgage, lien, or charge shall be noted upon the certificate of title and the duplicate thereof, and the title or interest certified shall be subject only to such estates, mortgages, liens, and charges as are so noted, except as provided in this article.

Source: L. 03: p. 312, § 2. **R.S. 08:** § 715. **C.L.** § 4925. **CSA:** C. 40, § 170. **S.A.R.S. 53:** § 118-10-2. **S.A.R.S. 1963:** § 118-10-2.

38-36-103. When tax title may be registered. No title derived through sale for any tax or assessment or special assessment shall be entitled to be registered unless it appears that the title of the applicant, or those through whom he claims title, has been adjudicated by a court of competent jurisdiction, and a decree of such court duly made and recorded decreeing the title of the applicant, or that the applicant or those through whom he claims title have been in the actual and undisputed possession of the land under such title at least seven years immediately prior to the application, and has paid all taxes and assessments legally levied thereon during said time; unless the same is vacant and unoccupied lands or lots, in which case, where title is derived through sale for any tax or assessments or special assessment for any such vacant and unoccupied lands or lots and the applicant, or those through whom he claims title, have paid all taxes and assessments legally levied thereon for eight successive years immediately prior to the application, in which case such lands and lots shall be entitled to be registered as other lands provided for by this section.

Source: L. 03: p. 312, § 3. **R.S. 08:** § 716. **C.L.** § 4926. **CSA:** C. 40, § 171. **S.A.R.S. 53:** § 118-10-3. **S.A.R.S. 1963:** § 118-10-3.

38-36-104. Contents of application. (1) The application shall be in writing and shall be signed and verified by the oath of the applicant or the person acting in his behalf. It shall set forth substantially:

(a) The name and place of residence of the applicant, and if the application is by one acting in behalf of another, the name and place of residence and capacity of the person so acting;

(b) Whether the applicant (except in the case of a corporation) is married or not, and if married, the name and residence of the husband or wife, and the age of the applicant;

(c) The description of the land and the valuation for assessment thereof, exclusive of improvements, according to the last official assessment, the same to be taken as a basis for the payments required under sections 38-36-186 and 38-36-198 (1)(a);

(d) The applicant's estate or interest in the same, and whether the same is subject to homestead exemption;

(e) The names of all persons or parties who appear of record to have any title, claim, estate, lien, or interest in the lands described in the application for registration;

(f) Whether the land is occupied or unoccupied, and if occupied by any other person than the applicant, the name and post-office address of each occupant and what estate or interest he has or claims in the land;

(g) Whether the land is subject to any lien or encumbrance, and, if any, the nature and amount of the same, and if recorded, the book and page of record, and the name and post-office address of each holder thereof;

(h) Whether any other person has any estate or claims any interest in the land, in law or equity, in possession, remainder, reversion, or expectancy, and, if any, the name and post-office address of every such person and the nature of his estate or claim;

(i) In case it is desired to settle or establish boundary lines, the names and post-office addresses of all the owners of the adjoining lands that may be affected thereby, so far as the applicant is able upon diligent inquiry to ascertain the same;

(j) If the application is on behalf of a minor, the age of such minor shall be stated;

(k) When the place of residence of any person whose residence is required to be given is unknown, it may be so stated if the applicant also states that upon diligent inquiry he has been unable to ascertain the same.

Source: L. 03: p. 312, § 4. **R.S. 08:** § 717. **C.L.** § 4927. **CSA:** C. 40, § 172. **S.A.R.S. 53:** § 118-10-4. **S.A.R.S. 1963:** § 118-10-4.

38-36-105. What lands may be joined in one application. Any number of contiguous pieces of land in the same county and owned by the same person and in the same right, or any number of pieces of property in the same county having the same chain of title and belonging to the same person, may be included in one application.

Source: L. 03: p. 314, § 5. **R.S. 08:** § 718. **C.L.** § 4928. **CSA:** C. 40, § 173. **S.A.R.S. 53:** § 118-10-5. **S.A.R.S. 1963:** § 118-10-5.

38-36-106. Amendment of application. The application may be amended only by supplemental statement in writing, signed and sworn to as in the case of the original application.

Source: L. 03: p. 314, § 6. **R.S. 08:** § 719. **C.L.** § 4929. **CSA:** C. 40, § 174. **S.A.R.S. 53:** § 118-10-6. **S.A.R.S. 1963:** § 118-10-6.

38-36-107. Form of application. The form of application may, with appropriate changes, be substantially as follows:

FORM OF APPLICATION FOR INITIAL REGISTRATION

OF TITLE TO LAND.

STATE OF SAN ANDREAS)
) ss.
County of.....) In the
In the matter of) District Court.
the application of)
.....) Petition.

to register the title to the land hereinafter described.

To the Honorable ....., judge of said court: I hereby make application to have registered the title to the land hereinafter described, and do solemnly swear that the answers to the questions herewith, and the statements herein contained, are true to the best of my knowledge, information and belief.

First - Name of applicant,..... age,.... years. Residence,. .....(number and street, if any). Married to.....(name of husband or wife).

Second - Application made by ....., acting as ..... (owner, agent or attorney). Residence,. (number, street).

Third - Description of real estate is as follows:.....
.....
.....
estate or interest therein is ..... and..... subject to homestead.

Fourth - The land is ..... occupied by.....(names of occupants), whose address is ..... (number, street, and town or city). The estate, interest or claim of occupant is ..... .

Fifth - Liens and encumbrances on the land .....
..... .

Name of holder or owner thereof is ..... whose post-office address is ..... .
Amount of claim, $ ..... . Recorded, Book ...., page .... , of the records of said county.

Sixth - Other persons, firms, or corporations, having or claiming any estate, interest, or claim in law or equity, in possession, remainder, reversion, or expectancy in said land are .....
.....
whose addresses are .....
respectively. Character of estate, interest, or claim is .....
..... .

Seventh - Other facts connected with said land and appropriate to be considered in this registration proceedings are .....
..... .

Eighth - Therefore, the applicant prays this honorable court to find and declare the title or interest of the applicant in said land and decree the same, and order the registrar of titles to register the same and to grant such other and further relief as may be proper in the premises.

.....(Applicant's signature.)

By ..... , agent, attorney, administrator, or guardian.

Subscribed and sworn to before me this ..... day of ....., A.D. 20.... .

....,
Notary Public.

Source: L. 03: p. 314, § 7. **R.S. 08:** § 720. **C.L.** § 4930. **CSA:** C. 40, § 175. **S.A.R.S. 53:** § 118-10-7. **S.A.R.S. 1963:** § 118-10-7. **L. 76:** Entire section amended, p. 315, § 71, effective May 20.

38-36-108. Application made to district court - powers of court. The application for registration shall be made to the district court of the county wherein the land is situated. Said court has power to inquire into the condition of the title to and any interest in the land, and any lien or encumbrance thereon, and to make all orders, judgments, and decrees as may be necessary to determine, establish, and declare the title or interest, legal or equitable, as against all persons, known or unknown, and all liens and encumbrances existing thereon, whether by law, contract, judgment, mortgage, trust deed, or otherwise, and to declare the order, priority, and preference as between the same, and to remove all clouds from the title, and for that purpose the said court shall always be open.

Source: L. 03: p. 316, § 8. **R.S. 08:** § 721. **C.L.** § 4931. **CSA:** C. 40, § 176. **S.A.R.S. 53:** § 118-10-8. **S.A.R.S. 1963:** § 118-10-8.

38-36-109. Registrars of titles - rules. The county clerk and recorders of the several counties of this state shall be registrars of titles in their respective counties, and their deputies shall be deputy registrars. All acts performed by registrars and deputy registrars under this article shall be performed under rules and instructions established and given by the district court having jurisdiction of the county in which they act.

Source: L. 03: p. 316, § 9. **R.S. 08:** § 722. **C.L.** § 4932. **CSA:** C. 40, § 177. **S.A.R.S. 53:** § 118-10-9. **S.A.R.S. 1963:** § 118-10-9.

38-36-110. Bond of registrar. (1) Except as provided in subsection (2) of this section, every county clerk and recorder shall, before entering upon the duties as registrar of titles, give a bond with sufficient sureties, to be approved by a judge of the district court of the county, payable to the people of the state of San Andreas in such sum as is fixed by the said judge of the district court, conditioned for the faithful discharge of duties and to deliver up all papers, books, records, and other property belonging to the county or appertaining to the office as registrar of titles, whole, safe, and undefaced, when lawfully required to do so. The bond shall be filed in the office of the secretary of state and a copy thereof shall be filed and entered upon the records of the district court in the county wherein the county clerk and recorder holds office.

(2) In lieu of the bond required by subsection (1) of this section, a county may purchase crime insurance coverage on behalf of the county clerk and recorder to protect the people of the county from any malfeasance on the part of the county clerk and recorder while in office.

Source: L. 03: p. 316, § 10. **R.S. 08:** § 723. **C.L.** § 4933. **CSA:** C. 40, § 178. **S.A.R.S. 53:** § 118-10-10. **S.A.R.S. 1963:** § 118-10-10. **L. 2010:** Entire section amended, (HB 10-1062), ch. 161,

p. 565, § 31, effective August 11.

38-36-111. Duties of deputy registrar - vacancies. Deputy registrars shall perform all duties of the registrar in the name of the registrar, and the acts of such deputies shall be held to be the acts of the registrar, and in the case of the death of the registrar or his removal from office, the vacancy shall be filled in the same manner as is provided by law for filling such vacancy in the office of the county clerk and recorder. The person so appointed to fill such vacancy shall file a bond and be vested with the same powers as the registrar whose office he is appointed to fill.

Source: L. 03: p. 317, § 11. **R.S. 08:** § 724. **C.L.** § 4934. **CSA:** C. 40, § 179. **S.A.R.S. 53:** § 118-10-11. **S.A.R.S. 1963:** § 118-10-11.

Cross references: For filling vacancy in the office of county clerk and recorder, see §§ 1-12-205 and 30-10-404.

38-36-112. Registrar not to practice law - neglect of duty. No registrar or deputy registrar shall practice as an attorney or counselor at law, nor prepare any papers in any proceeding provided for in this article, nor while in office be in partnership with any attorney or counselor at law so practicing. The registrar shall be liable for any neglect or omission of the duties of his office when occasioned by a deputy registrar in the same manner as for his own personal neglect or omission.

Source: L. 03: p. 317, § 12. **R.S. 08:** § 725. **C.L.** § 4935. **CSA:** C. 40, § 180. **S.A.R.S. 53:** § 118-10-12. **S.A.R.S. 1963:** § 118-10-12.

38-36-113. Examiner of titles - compensation - oath or affirmation - bond. The judges of the district court in and for the judicial districts for which they are elected or appointed shall appoint a competent attorney in each county within their district as examiner of titles and legal adviser of the registrar. The examiner of titles in each county shall be paid in each case by the applicant such compensation as the judge of the district court determines. Every examiner of titles shall take an oath or affirmation in accordance with section 24-12-101 and shall also give a bond in such amount and with such sureties as shall be approved by the judge of the district court, payable in like manner and with like conditions as required of the registrar. A copy of the bond shall be entered upon the records of said court and the original shall be filed with the registrar.

Source: L. 03: p. 317, § 13. **R.S. 08:** § 726. **C.L.** § 4936. **CSA:** C. 40, § 181. **S.A.R.S. 53:** § 118-10-13. **S.A.R.S. 1963:** § 118-10-13. **L. 2018:** Entire section amended, (HB 18-1138), ch. 88, p. 704, § 47, effective August 8.

Cross references: For the legislative declaration in HB 18-1138, see section 1 of chapter 88, Session Laws of San Andreas 2018.

38-36-114. Nonresident applicant to appoint process agent. If the applicant is not a resident of the state of San Andreas, he shall file with his application a paper, duly acknowledged, appointing an agent residing in this state, giving his name in full and his post-

office address, and

shall therein agree that the service of any legal process in proceedings under or growing out of the application shall be of the same legal effect when made on said agent as if made on the applicant within this state. If the agent so appointed dies or removes from the state, the applicant shall at once make another appointment in like manner, and if he fails to do so, the court may dismiss the application.

Source: L. 03: p. 318, § 14. **R.S. 08:** § 727. **C.L.** § 4937. **CSA:** C. 40, § 182. **S.A.R.S. 53:** § 118-10-14. **S.A.R.S. 1963:** § 118-10-14.

38-36-115. Filing and service of application - land registration docket. The application shall be filed in the office of the clerk of the court to which the application is made, and in case of personal service a true copy thereof shall be served with the summons, and the clerk shall docket the case in a book to be kept for that purpose, which shall be known as the "land registration docket". The record entry of the application shall be entitled (name of applicant), plaintiff, against (here insert names of all persons named in the application as being in possession of the premises, or as having any lien, encumbrance, right, title, or interest in the land, and the names of all persons found by the report of the examiner provided for in section 38-36-118 to be in possession or to have any lien, encumbrance, right, title, or interest in the land), also all other persons or parties unknown, claiming any right, title, estate, lien, or interests in the real estate described in the application as defendants. All orders, judgments, and decrees of the court in the case shall be appropriately entered in such docket. All final orders or decrees shall be recorded, and proper reference made thereto in such docket.

Source: L. 03: p. 318, § 15. **R.S. 08:** § 728. **C.L.** § 4938. **CSA:** C. 40, § 183. **S.A.R.S. 53:** § 118-10-15. **S.A.R.S. 1963:** § 118-10-15.

38-36-116. Abstract of title filed with application. The applicant shall also file with the clerk, at the time the application is made, an abstract of title such as is now commonly used, prepared, and certified to by the county clerk and recorder of the county, or by a person, firm, or corporation regularly engaged in the abstract business, having satisfied the district court that they have a complete set of abstract books and are in existence and doing business at the time of the filing of the application under this article.

Source: L. 03: p. 318, § 15a. **R.S. 08:** § 729. **C.L.** § 4939. **CSA:** C. 40, § 184. **S.A.R.S. 53:** § 118-10-16. **S.A.R.S. 1963:** § 118-10-16.

38-36-117. Copy of application filed with county clerk and recorder - lis pendens. At the time of the filing of the application in the office of the clerk of the court, a copy thereof, certified by the clerk, shall be filed, but need not be recorded, in the office of the county clerk and recorder and shall have the force and effect of a lis pendens.

Source: L. 03: p. 319, § 16. **R.S. 08:** § 730. **C.L.** § 4940. **CSA:** C. 40, § 185. **S.A.R.S. 53:** § 118-10-17. **S.A.R.S. 1963:** § 118-10-17.

Cross references: For lis pendens, see § 38-35-110.

38-36-118. Examination of application and abstract - report of examiner. Immediately after the filing of the abstract of title, the court shall enter an order referring the application to an examiner of titles, who shall proceed to examine into the title and into the truth of the matters set forth in the application, and particularly whether the land is occupied, the nature of the occupation if occupied, and by what right, and, also as to all judgments against the applicant or those through whom he claims title, which may be a lien upon the lands described in the application. He shall search the records and investigate all the facts brought to his notice, and file in the case a report thereon, including a certificate of his opinion upon the title. The clerk of the court shall thereupon give notice to the applicant of the filing of such report. If the opinion of the examiner is adverse to the applicant, he shall be allowed by the court a reasonable time in which to elect to proceed further, or to withdraw his application. The election shall be made in writing and filed with the clerk of the court.

Source: L. 03: p. 319, § 17. **R.S. 08:** § 731. **C.L.** § 4941. **CSA:** C. 40, § 186. **S.A.R.S. 53:** § 118-10-18. **S.A.R.S. 1963:** § 118-10-18.

38-36-119. Issuance of summons. If, in the opinion of the examiner, the applicant has a title as alleged, and proper registration, or if the applicant, after an adverse opinion of the examiner, elects to proceed further, the clerk of the court shall immediately upon the filing of the examiner's opinion or the applicant's election, as the case may be, issue a summons substantially in the form provided for in section 38-36-123. The summons shall be issued by the order of the court and attested by the clerk of the court.

Source: L. 03: p. 319, § 18. **R.S. 08:** § 732. **C.L.** § 4942. **CSA:** C. 40, § 187. **S.A.R.S. 53:** § 118-10-19. **S.A.R.S. 1963:** § 118-10-19.

38-36-120. Parties plaintiff and defendant - unknown claimants. The applicant shall be known in the summons as the plaintiff. All persons named in the application or found by the report of the examiner as being in possession of the premises or as having of record any lien, encumbrance, right, title, or interest in the land, and all other persons designated as follows: "All other persons or parties unknown claiming any right, title, estate, lien, or interest in, to, or upon the real estate described in the application herein", shall be defendants.

Source: L. 03: p. 320, § 19. **R.S. 08:** § 733. **C.L.** § 4943. **CSA:** C. 40, § 188. **S.A.R.S. 53:** § 118-10-20. **S.A.R.S. 1963:** § 118-10-20.

38-36-121. Contents of summons - service. The summons shall be directed to the defendants and require them to appear and answer the application within twenty days after the service of the summons, exclusive of the day of service. The summons shall be served as is provided for the service of summons in civil actions in the district court in this state, except as otherwise provided in this article. The summons shall be served upon nonresident defendants and upon "all such unknown persons or parties", defendant, by publishing said summons in a newspaper of general circulation printed and published in the county where the application is filed, once in each week for three consecutive weeks, and such service by publication shall be deemed complete at the end of the twenty-first day from and including the first publication. If

any named defendant assents in writing to the registration as prayed for, which assent shall be endorsed upon the application or filed therewith and be duly witnessed and acknowledged, then in all such cases no service of summons upon said defendant shall be necessary.

Source: L. 03: p. 320, § 20. **R.S. 08:** § 734. **C.L.** § 4944. **CSA:** C. 40, § 189. **S.A.R.S. 53:** § 118-10-21. **S.A.R.S. 1963:** § 118-10-21.

Cross references: For the competency of newspapers and the construing of publication periods, see § 24-70-106; for service of summons, see C.R.C.P. 4(e) to 4(h).

38-36-122. Clerk to mail copy of summons and other notices. The clerk of the court shall also, on or before twenty days after the first publication, send a copy thereof by mail to such defendants who are not residents of the state whose place of address is known or stated in the application and whose appearance is not entered and who are not in person served with the summons. The certificate of the clerk that he has sent such notice in pursuance of this section shall be conclusive evidence thereof. Other or further notice of the application for registration may be given in such manner and to such persons as the court or any judge thereof may direct. The summons shall be served at the expense of the applicant, and proof of the service thereof shall be made as proof of service is now made in other civil actions.

Source: L. 03: p. 320, § 20a. **R.S. 08:** § 735. **C.L.** § 4945. **CSA:** C. 40, § 190. **S.A.R.S. 53:** § 118-10-22. **S.A.R.S. 1963:** § 118-10-22.

38-36-123. Form of summons. The summons provided for in section 38-36-121 shall be in substance in the following form:

SUMMONS ON APPLICATION FOR REGISTRATION OF LAND.

STATE OF SAN ANDREAS)
) ss.
County of.....)

In the District Court.

(Name of applicant), plaintiff .... versus .... (names of all defendants, and all other persons or parties unknown, claiming any right, title, estate, lien, or interest in the real estate described in the application herein) defendants.

The People of the State of San Andreas to the above-named defendants, Greetings:

You are hereby summoned and required to answer the application of the applicant plaintiff in the above entitled application for registration of the following land situate in ..... county, San Andreas, to wit: (description of land), and to file your answer to the said application in the office of the clerk of said court, in said county, within twenty days after the service of this summons upon you, exclusive of the day of such service; and if you fail to answer the said

application within the time aforesaid, the applicant plaintiff in this action will apply to the court for the relief demanded in the application.

Witness, ... clerk of said court and the seal thereof, at ..... in said county, and state, this ..... day of ..... A.D. 20.... .

(Seal.). ..... Clerk.

Source: L. 03: p. 321, § 20b. **R.S. 08:** § 736. **C.L.** § 4946. **CSA:** C. 40, § 191. **S.A.R.S. 53:** § 118-10-23. **S.A.R.S. 1963:** § 118-10-23.

38-36-124. When guardian ad litem appointed - compensation. The court shall appoint a disinterested person to act as guardian ad litem for minors and other persons under disability and for all other persons not in being who appear to have an interest in the land. The compensation of the said guardian shall be determined by the court and paid as a part of the expense of the proceeding.

Source: L. 03: p. 322, § 21. **R.S. 08:** § 737. **C.L.** § 4947. **CSA:** C. 40, § 192. **S.A.R.S. 53:** § 118-10-24. **S.A.R.S. 1963:** § 118-10-24.

38-36-125. Who may answer - contents of answer. Any person claiming an interest, whether named in the summons or not, may appear and file an answer within the time named in the summons, or within such further time as may be allowed by the court. The answer shall state all objections to the application, and shall set forth the interests claimed by the party filing the same, and shall be signed and sworn to by him or by some person in his behalf.

Source: L. 03: p. 322, § 22. **R.S. 08:** § 738. **C.L.** § 4948. **CSA:** C. 40, § 193. **S.A.R.S. 53:** § 118-10-25. **S.A.R.S. 1963:** § 118-10-25.

38-36-126. Decree, when no answer filed - binds unknown claimants. If no person appears and answers within the time named in the summons or allowed by the court, the court may at once, upon the motion of the applicant, no reason to the contrary appearing and upon satisfactory proof of the applicant's right thereto, make its order and decree confirming the title of the applicant and ordering registration of the same. By the description in the summons, "all other persons unknown, claiming any right, title, estate, lien, or interest in, to, or upon the real estate described in the application herein", all the world are made parties defendant and shall be concluded by the default, order, and decree. The court shall not be bound by the report of the examiners of title but may require other or further proof.

Source: L. 03: p. 322, § 23. **R.S. 08:** § 739. **C.L.** § 4949. **CSA:** C. 40, § 194. **S.A.R.S. 53:** § 118-10-26. **S.A.R.S. 1963:** § 118-10-26.

38-36-127. Cause set for trial - default - referee appointed. If, in any case, an appearance is entered and answer filed, the cause shall be set down for hearing on motion of either party, but a default and order shall first be entered against all persons who do not appear

and answer in the manner provided in section 38-36-126. The court may refer the cause or any part thereof to one of the examiners of title, as referee, to hear the parties and their evidence, and make report thereon to the court. His report shall have the same force and effect as that of a magistrate appointed by the district court under the laws of this state, and relating to the appointment, duties, and powers of magistrates.

Source: L. 03: p. 322, § 24. **R.S. 08:** § 740. **C.L.** § 4950. **CSA:** C. 40, § 195. **S.A.R.S. 53:** § 118-10-27. **S.A.R.S. 1963:** § 118-10-27. **L. 91:** Entire section amended, p. 366, § 43, effective April 9.

Cross references: For the appointment, duties, and powers of a referee, see C.R.C.P. 53.

38-36-128. Court may order further proof. The court may order such other or further hearing of the cause before the court or before the examiner of titles after the filing of the report of the examiner referred to in section 38-36-127 and require such other or further proof by either of the parties to the cause as to the court seems proper.

Source: L. 03: p. 323, § 25. **R.S. 08:** § 741. **C.L.** § 4951. **CSA:** C. 40, § 196. **S.A.R.S. 53:** § 118-10-28. **S.A.R.S. 1963:** § 118-10-28.

38-36-129. Title not proper for registration dismissed - applicant may dismiss. If, in any case, after hearing, the court finds that the applicant has no title proper for registration, a decree shall be entered dismissing the application, and such decree may be ordered to be without prejudice. The applicant may dismiss his application at any time before the final decree, upon such terms as may be fixed by the court, and upon motion to dismiss duly made to the court.

Source: L. 03: p. 323, § 26. **R.S. 08:** § 742. **C.L.** § 4952. **CSA:** C. 40, § 197. **S.A.R.S. 53:** § 118-10-29. **S.A.R.S. 1963:** § 118-10-29.

38-36-130. Decree of confirmation - effect - appeal. If the court, after hearing, finds that the applicant has title, whether as stated in his application or otherwise, proper for registration, a decree of confirmation of title and registration shall be entered. Every decree of registration shall bind the land and quiet the title thereto, except as otherwise provided in this article, and shall be forever binding and conclusive upon all persons, whether mentioned by name in the application or included in "all other persons or parties unknown claiming any right, title, estate, lien, or interest in, to, or upon the real estate described in the application herein", and such decree shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding at law or in equity for reversing judgments or decrees, except as especially provided in section 38-36-131. An appeal may be taken as provided by law and the San Andreas appellate rules within the same time and upon like notice, terms, and conditions as are provided for the taking of appeals from the district court to the appellate court in civil actions.

Source: L. 03: p. 323, § 27. **R.S. 08:** § 743. **C.L.** § 4953. **CSA:** C. 40, § 198. **S.A.R.S. 53:** § 118-10-30. **S.A.R.S. 1963:** § 118-10-30.

38-36-131. When decree may be opened. (1) Any person having an interest in or lien upon the land who has not been actually served with process or notified of the filing of the application or the pendency thereof may at any time within ninety days after the entry of such decree, and not afterwards, appear and file his sworn answer to such application in like manner as prescribed in section 38-36-125 for making answer if such person had no actual notice or information of the filing of such application or the pendency of the proceeding during the pendency thereof, or until within three months of the time of the filing of such answer, which facts shall be made to appear before answering by the affidavit of the person answering or the affidavit of someone in his behalf having knowledge of the facts; and also if no innocent purchaser for value has acquired an interest. If there is any such purchaser, the decree of registration shall not be opened but shall remain in full force and effect forever, subject only to the right of appeal provided for in section 38-36-130.

(2) Any person aggrieved by such decree in any case may pursue his remedy by suit in the nature of an action of tort against the applicant or any other person for fraud in procuring the decree and may also bring his action for indemnity as provided for in section 38-36-187.

(3) Upon the filing of such answer, and not less than ten days' notice having been given to the applicant and to such other interested parties as the court may order in such manner as directed by the court, the court shall proceed to review the case, and if the court is satisfied that the order or decree ought to be opened, an order shall be entered to that effect, and the court shall proceed to review the proceedings and shall make such order in the case as is equitable in the premises. An appeal may be allowed in this case, as well as from all other decrees affecting any registered title, within a like time and in a like manner as in the case of an original decree under this article, and not otherwise.

Source: L. 03: p. 324, § 28. **R.S. 08:** § 744. **C.L.** § 4954. **CSA:** C. 40, § 199. **S.A.R.S. 53:** § 118-10-31. **S.A.R.S. 1963:** § 118-10-31.

38-36-132. Action to recover land - limitation. No person shall commence any proceeding for the recovery of lands or any interest, right, lien, or demand therein or upon the same adverse to the title or interest as found or decreed in the decree of registration unless within ninety days after the entry of the order or decree. This section shall be construed as giving such right of action to such person only as shall not, because of some irregularity, insufficiency, or for some other cause, be bound and concluded by such order or decree.

Source: L. 03: p. 324, § 29. **R.S. 08:** § 745. **C.L.** § 4955. **CSA:** C. 40, § 200. **S.A.R.S. 53:** § 118-10-32. **S.A.R.S. 1963:** § 118-10-32.

38-36-133. Certificate of title insures freedom from encumbrance - exceptions. (1) Every person receiving a certificate of title in pursuance of a decree of registration and every subsequent purchaser of registered land who takes a certificate of title for value and in good faith shall hold the same free from all encumbrances, except only such estates, mortgages, liens, charges, and interests as may be noted in the last certificate of title in the registrar's office, and except any of the following rights or encumbrances subsisting, namely:

(a) Any existing lease for a period not exceeding three years, when there is actual occupation of the premises under the lease;

(b) All public highways embraced in the description of the land included in the certificates shall be deemed to be excluded from the certificate, and any subsisting right-of-way or other easement for ditches or water rights upon, over, or in respect to the land;

(c) Any tax or special assessment for which a sale of the land has not been had at the date of the certificate of title;

(d) Such right of appeal, or right to appear and contest the application, as is allowed by this article;

(e) Liens, claims, or rights, if any, arising or existing under the constitution or laws of the United States, and which the statutes of this state cannot or do not require to appear of record in the office of the county clerk and recorder.

Source: L. 03: p. 325, § 30. **R.S. 08:** § 746. **C.L.** § 4956. **CSA:** C. 40, § 201. **S.A.R.S. 53:** § 118-10-33. **S.A.R.S. 1963:** § 118-10-33.

38-36-134. Contents of decree - certified copy filed. Every decree of registration shall bear the year, day, hour, and minute of its entry and shall be signed by one of the judges of the district court. It shall state whether the owner is married or unmarried and, if married, the name of the husband or wife. If the owner is under disability it shall state the nature of the disability, and, if a minor, shall state his age. It shall contain a description of the land as finally determined by the court and shall set forth the estate of the owner, and also, in such manner as to show their relative priority, all particular estates, mortgages, easements, liens, attachments, homesteads, and other encumbrances, including rights of husband and wife, if any, to which the land or the owner's estate is subject and shall contain any other matter or information properly to be determined by the court in pursuance of this article. The decree shall be stated in a convenient form for transcription upon the certificate of title, to be made as provided in section 38-36-139 by the registrar of titles. Immediately upon the filing of the decree of registration, the clerk shall file a certified copy thereof in the office of the registrar of titles.

Source: L. 03: p. 325, § 31. **R.S. 08:** § 747. **C.L.** § 4957. **CSA:** C. 40, § 202. **S.A.R.S. 53:** § 118-10-34. **S.A.R.S. 1963:** § 118-10-34.

38-36-135. Party acquiring interest after application filed made defendant. Any person who takes by conveyance, attachment, judgment, lien, or otherwise any right, title, or interest in the land subsequent to the filing of a copy of the application for registration in the office of the county clerk and recorder shall at once appear and answer as a party defendant in the proceeding for registration, and the right, title, or interest of such person shall be subject to the order or decree of the court.

Source: L. 03: p. 326, § 32. **R.S. 08:** § 748. **C.L.** § 4958. **CSA:** C. 40, § 203. **S.A.R.S. 53:** § 118-10-35. **S.A.R.S. 1963:** § 118-10-35.

38-36-136. Registered land to remain under this article unless removed from registration. (1) Unless removed from registration in the manner stated in this section, section 38-36-204, or section 38-36-205, the obtaining of a decree of registration and receiving of a certificate of title shall be deemed an agreement running with the land and binding upon the

applicant and the successors in title that the land is and remains registered land and subject to this article 36 and of all amendments thereto. All dealings with the land or any estate or interest therein after the same has been brought under this article 36, and all liens, encumbrances, and charges upon the same shall be made only subject to the terms of this article 36. The owner, or his agent or attorney, of any real property registered under the terms of this article 36 may, at any time, withdraw said real property registration from the operation of this article 36 by surrendering to the registrar his duplicate certificate of ownership, duly endorsed with a signed and acknowledged request for such withdrawal.

(2) This request may be substantially in the following form, to wit:

To the Registrar of Titles in the County of ....., and State of San Andreas: I, (or we), ..., the undersigned registered owner of the within described real property, do hereby request that said real property and the title thereto be forthwith withdrawn from registration under the terms of this article.

Witness my (or our) hand this ..... day of ....., A.D. 20.... .

STATE OF SAN ANDREAS)
) ss.
County of.....)

The foregoing instrument was acknowledged before me this ..... day of....., A.D. 20...., by ..... .

Witness my hand and official seal.

My Commission expires:

.....

Notary Public.

(3) Thereupon such registrar shall certify on said certificate that said real property has been withdrawn from the operation of this article and shall cause said certificate with all notations, certifications, memorials, and endorsements thereon to be recorded in the office of the county clerk and recorder of the county in which said real estate is situated. The fee to be paid to the county clerk and recorder for recording said certificate shall be the sum of five dollars. Such withdrawal shall not alter or affect any title, lien, encumbrance, or right pertaining to or fixed upon such real property at the time of such withdrawal.

Source: L. 03: p. 326, § 33. **R.S. 08:** § 749. **C.L.** § 4959. **L. 43:** p. 220, § 1. **CSA:** C. 40, § 204. **S.A.R.S. 53:** § 118-10-36. **S.A.R.S. 1963:** § 118-10-36. **L. 91:** (3) amended, p. 710, § 9, effective July 1. **L. 2017:** (1) amended, (SB 17-140), ch. 212, p. 826, § 2, effective August 9.

38-36-137. No title by prescription or adverse possession. No title to registered land in derogation of that of the registered owner shall ever be acquired by prescription or adverse possession.

Source: L. 03: p. 326, § 34. **R.S. 08:** § 750. **C.L.** § 4960. **CSA:** C. 40, § 205. **S.A.R.S. 53:** § 118-10-37. **S.A.R.S. 1963:** § 118-10-37.

38-36-138. Title to be registered - register of titles. Immediately upon the filing of the decree of registration in the office of the registrar of titles, the registrar shall proceed to register the title or interest pursuant to the terms of the decree in the manner provided in this section. The registrar shall keep a book known as the "register of titles", wherein he shall enter all first and subsequent original certificates of title by binding or recording them therein in the order of their numbers, consecutively, beginning with number one, with appropriate blanks for entry of memorials and notations allowed by this article. Each certificate, with such blanks, shall constitute a separate page of such book. All memorials and notations that may be entered upon the register shall be entered upon the page whereon the last certificate of title of the land to which they relate is entered. The term "certificate" or "title" used in this article includes all memorials and notations thereon.

Source: L. 03: p. 327, § 35. **R.S. 08:** § 751. **C.L.** § 4961. **CSA:** C. 40, § 206. **S.A.R.S. 53:** § 118-10-38. **S.A.R.S. 1963:** § 118-10-38.

38-36-139. Contents and form of certificate of registration. The certificate of registration shall contain the name of the owner, a description of the land and of the estate of the owner, and shall by memorial or notation contain a description of all encumbrances, liens, and interest to which the estate of the owner is subject. It shall state the residence of the owner and, if a minor, give his age; if under disability, it shall state the nature of the disability; it shall state whether married or not, and if married, the name of the husband or wife. In case of a trust, condition, or limitation, it shall state the trust, condition, or limitation, as the case may be. It shall contain and conform in respect to all statements in the certified copy of the decree of registration filed with the registrar of titles as provided in section 38-36-134, and shall be in a form substantially as follows:

FIRST CERTIFICATE OF TITLE.

Pursuant to order of district court of ..... county.

STATE OF SAN ANDREAS)
) ss.
County of.....)

This is to certify that A ..... B ..... of ....., county of ....., state of.....is now the owner of an estate (describe the estate) of, and in (describe the land), subject to the encumbrances, liens, and interests noted by the memorial underwritten or endorsed thereon, subject to the exceptions and qualifications mentioned in section 38-36-133. (Here note all statements provided herein to appear upon the certificate.)

In witness whereof, I have hereunto set my hand and affixed the official seal of my office this ..... day of ....., A.D. 20.... .

(Seal) .....

Registrar of Titles.

Source: L. 03: p. 327, § 36. **R.S. 08:** § 752. **C.L.** § 4962. **CSA:** C. 40, § 207. **S.A.R.S. 53:** § 118-10-39. **S.A.R.S. 1963:** § 118-10-39.

38-36-140. Owner's duplicate certificate of ownership - signature of owner. The registrar shall, at the time that he enters his original certificate of title, make an exact duplicate thereof, but putting on it the words, "Owner's duplicate certificate of ownership", and deliver the same to the owner or to his attorney duly authorized. For the purpose of preserving evidence of the signature and handwriting of the owner in his office, it is the duty of the registrar to take from the owner, in every case where it is practicable to do so, his receipt for the certificate of title, which shall be signed by the owner in person. Such receipt, when signed and delivered in the registrar's office, shall be witnessed by the registrar or deputy registrar. If such receipt is signed elsewhere, it shall be witnessed and acknowledged in the same manner as is now provided for the acknowledgment of deeds. When so signed, such receipt shall be prima facie evidence of the genuineness of such signature.

Source: L. 03: p. 328, § 37. **R.S. 08:** § 753. **C.L.** § 4963. **CSA:** C. 40, § 208. **S.A.R.S. 53:** § 118-10-40. **S.A.R.S. 1963:** § 118-10-40.

38-36-141. Two or more owners. Where two or more persons are registered owners as tenants in common or otherwise, the owner's duplicate certificate can be issued for the entirety, or a separate duplicate owner's certificate may be issued to each owner for his undivided share.

Source: L. 03: p. 328, § 38. **R.S. 08:** § 754. **C.L.** § 4964. **CSA:** C. 40, § 209. **S.A.R.S. 53:** § 118-10-41. **S.A.R.S. 1963:** § 118-10-41.

38-36-142. Subsequent certificates. All certificates subsequent to the first shall be in like form, except that they shall be entitled "Transfer from No. ....." (the number of the next previous certificate relating to the same land), and shall also contain the words "Originally registered on the ..... day of ....., 20...., and entered in book ....., at page of register".

Source: L. 03: p. 328, § 39. **R.S. 08:** § 755. **C.L.** § 4965. **CSA:** C. 40, § 210. **S.A.R.S. 53:** § 118-10-42. **S.A.R.S. 1963:** § 118-10-42.

38-36-143. Exchange of certificates - platting land. A registered owner holding one duplicate certificate for several distinct parcels of land may surrender it and take out several certificates for portions thereof. A registered owner holding several duplicate certificates for several distinct parcels of land may surrender them and take out a single duplicate certificate for all of said parcels, or several certificates for different portions thereof. Such exchange of certificates, however, shall only be made by the order of the court upon petition therefor duly made by the owner. An owner of registered land who subdivides such land into lots, blocks, or acre tracts shall file with the registrar of titles a plat of said land so subdivided, in the same manner and subject to the same rules of law and restrictions as is provided for platting land that is not registered.

Source: L. 03: p. 329, § 40. **R.S. 08:** § 756. **C.L.** § 4966. **CSA:** C. 40, § 211. **S.A.R.S. 53:** § 118-10-43. **S.A.R.S. 1963:** § 118-10-43.

38-36-144. When certificate takes effect. The certificate of title shall relate back to and take effect as of the date of the decree of registration.

Source: L. 03: p. 329, § 41. **R.S. 08:** § 757. **C.L.** § 4967. **CSA:** C. 40, § 212. **S.A.R.S. 53:** § 118-10-44. **S.A.R.S. 1963:** § 118-10-44.

38-36-145. Certificates in evidence - variance. The original certificate in the registration book, any copy thereof duly certified under the signature of the registrar of titles or his deputy and authenticated by his seal, and also the owner's duplicate certificate shall be received as evidence in all the courts of this state, and shall be conclusive as to all matters contained therein, except so far as is otherwise provided in this article. In case of a variance between the owner's duplicate certificate and the original certificate, the original shall prevail.

Source: L. 03: p. 329, § 42. **R.S. 08:** § 758. **C.L.** § 4968. **CSA:** C. 40, § 213. **S.A.R.S. 53:** § 118-10-45. **S.A.R.S. 1963:** § 118-10-45.

38-36-146. Indexes kept by registrar - adoption of forms. The registrar of titles, under the direction of the court, shall make and keep indexes of all duplications and of all certified copies and decrees of registration and certificates of titles, and shall also index and file in classified order all papers and instruments filed in his office relating to applications and to registered titles. The registrar shall also, under the direction of the court, prepare and keep forms of indexes and registration and entry books. The court shall prepare and adopt convenient forms of certificates of titles, and also general forms of memorials or notations to be used by the registrars of titles in registering the common forms of conveyance and other instruments to express briefly their effect.

Source: L. 03: p. 330, § 43. **R.S. 08:** § 759. **C.L.** § 4969. **CSA:** C. 40, § 214. **S.A.R.S. 53:** § 118-10-46. **S.A.R.S. 1963:** § 118-10-46.

38-36-147. Tract and alphabetical indexes kept by registrar. The registrar of titles shall keep tract indexes, in which shall be entered the lands registered in the numerical order of the townships, ranges, sections, and, in cases of subdivisions, the blocks and lots therein, and the names of the owners, with a reference to the volume and page of the register of titles in which the lands are registered. He shall also keep alphabetical indexes, in which shall be entered in alphabetical order the names of all registered owners and all other persons interested in or holding charges upon or any interest in the registered land, with a reference to the volume and page of the register of titles in which the land is registered.

Source: L. 03: p. 330, § 44. **R.S. 08:** § 760. **C.L.** § 4970. **CSA:** C. 40, § 215. **S.A.R.S. 53:** § 118-10-47. **S.A.R.S. 1963:** § 118-10-47.

38-36-148. Registered land may be conveyed or encumbered. The owner of registered land may convey, mortgage, lease, charge, or otherwise encumber, dispose of, or deal with the same as fully as if it had not been registered. He may use forms of deeds, trust deeds, mortgages, and leases or voluntary instruments like those now in use and sufficient in law for the purpose intended. But no voluntary instrument of conveyance, except a will and a lease for a term not exceeding three years, purporting to convey or affect registered land, shall take effect as a conveyance or bind the land but shall operate only as a contract between the parties and as evidence of the authority to the registrar of titles to make registration. The act of registration shall be the operative act to convey or affect the land.

Source: L. 03: p. 330, § 45. **R.S. 08:** § 761. **C.L.** § 4971. **CSA:** C. 40, § 216. **S.A.R.S. 53:** § 118-10-48. **S.A.R.S. 1963:** § 118-10-48.

38-36-149. Effect of recording instruments. Every conveyance, lien, attachment, order, decree, judgment of a court of record, or instrument or entry which would under existing law, if recorded, filed, or entered in the office of the county clerk and recorder of the county in which the real estate is situate, affect the said real estate to which it relates, if the title thereto were not registered, shall, if recorded, filed, or entered in the office of the registrar of titles in the county where the real estate to which such instrument relates is situate, affect in like manner the title thereto if registered, and shall be notice to all persons from the time of such recording, filing, or entering.

Source: L. 03: p. 330, § 46. **R.S. 08:** § 762. **C.L.** § 4972. **CSA:** C. 40, § 217. **S.A.R.S. 53:** § 118-10-49. **S.A.R.S. 1963:** § 118-10-49.

38-36-150. Records - open to inspection. The registrar of titles shall number and note, in a proper book to be kept for that purpose, the year, month, day, hour, and minute of reception and number of all conveyances, orders or decrees, writs or other process, judgments, liens, and all other instruments or papers or orders affecting the title of land, the title to which is registered. Every instrument so filed shall be retained in the office of the registrar of titles and shall be regarded as registered from the time so noted, and the memorial of each instrument, when made on the certificate of title to which it refers, shall bear the same date. Every instrument so filed, whether voluntary or involuntary, shall be numbered and indexed, and endorsed with a reference to the proper certificate of title. All records and papers relating to registered land in the office of the registrar of titles shall be open to public inspection in the same manner as are the papers and records in the office of the county clerk and recorder.

Source: L. 03: p. 331, § 47. **R.S. 08:** § 763. **C.L.** § 4973. **CSA:** C. 40, § 218. **S.A.R.S. 53:** § 118-10-50. **S.A.R.S. 1963:** § 118-10-50.

Cross references: For inspection of records of the county clerk and recorder, see § 30-10-101.

38-36-151. Duplicates - certified copies. Duplicates of all instruments, voluntary or involuntary, filed and registered in the office of the registrar of titles, may be presented with the

originals, and shall be attested and sealed by the registrar of titles, and endorsed with the file number and other memoranda on the originals, and may be taken away by the person presenting the same. Certified copies of all instruments filed and registered may be obtained from the registrar of titles on the payment of a fee of the same amount as is allowed the county clerk and recorder for a like certified copy.

Source: L. 03: p. 331, § 48. **R.S. 08:** § 764. **C.L.** § 4974. **CSA:** C. 40, § 219. **S.A.R.S. 53:** § 118-10-51. **S.A.R.S. 1963:** § 118-10-51.

Cross references: For fees of county clerk and recorders for certified copies, see § 30-1-103.

38-36-152. Title not divested - interests less than freehold. (1) No new certificate shall be entered or issued upon any transfer of registered land which does not divest the title in fee simple of said land or some part thereof from the owner or one of the registered owners. All interest in the registered land less than a freehold estate shall be registered by filing with the registrar of titles the instruments creating, transferring, or claiming such interest, and by a brief memorandum or memorial thereof made by a registrar of titles upon the certificate of title, and signed by him. A similar memorandum or memorial shall also be made on the owner's duplicate.

(2) The cancellation or extinguishment of such interests shall be registered in the same manner. When any party in interest does not agree as to the proper memorial to be made upon the filing of any instrument presented for registration, or where the registrar of titles is in doubt as to the form of such memorial, the question shall be referred to the court for decision, either on the certificate of the registrar of titles or upon the demand in writing of any party in interest.

(3) The registrar of titles shall bring before the court all the papers and evidence which may be necessary for the determination of the question by the court. The court, after notice to all parties in interest and a hearing, shall enter an order prescribing the form of the memorial, and the registrar of titles shall make registration in accordance therewith.

Source: L. 03: p. 331, § 49. **R.S. 08:** § 765. **C.L.** § 4975. **CSA:** C. 40, § 220. **S.A.R.S. 53:** § 118-10-52. **S.A.R.S. 1963:** § 118-10-52.

38-36-153. When owner's certificate must be presented - effect of presentation. No new certificates of titles shall be entered, and no memorial shall be made upon any certificate of title in pursuance of any deed or other voluntary instrument unless the owner's duplicate certificate is presented with such instrument, except in cases provided for in this article, or upon the order of the court, for cause shown. Whenever such order is made, a memorial therefor shall be entered, or a new certificate issued, as directed by said order. The production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the registrar of titles to enter a new certificate or to make a memorial of registration in accordance with such instrument, and a new certificate or memorial shall be binding upon the registered owner and upon all persons claiming under him, in favor of every purchaser for value and in good faith.

Source: L. 03: p. 332, § 50. **R.S. 08:** § 766. **C.L.** § 4976. **CSA:** C. 40, § 221. **S.A.R.S. 53:** § 118-10-53. **S.A.R.S. 1963:** § 118-10-53.

38-36-154. Certified copy of owner's duplicate certificates. (1) In the event that an owner's duplicate certificate of title is lost, mislaid, or destroyed, the owner may make affidavit of the fact before any officer authorized to administer oaths, stating, with particularity, the facts relating to such loss, mislaying, or destruction, and shall file the same in the office of the registrar of titles.

(2) Any party in interest may thereupon apply to the court, and the court shall, upon proofs of the facts set forth in the affidavit, enter an order directing the registrar of titles to make and issue a new owner's duplicate certificate. Such new owner's duplicate certificate shall be printed or marked "certified copy of owner's duplicate certificate", and such certified copy shall stand in the place of and have like effect as the owner's duplicate certificate.

Source: L. 03: p. 333, § 51. **R.S. 08:** § 767. **C.L.** § 4977. **CSA:** C. 40, § 222. **S.A.R.S. 53:** § 118-10-54. **S.A.R.S. 1963:** § 118-10-54.

38-36-155. Mode of conveying registered land. An owner of registered land conveying the same, or any portion thereof, in fee, shall execute a deed of conveyance which the grantor shall file with the registrar of titles in the county where the land lies. The owner's duplicate certificate shall be surrendered, at the same time, and shall be by the registrar marked "canceled". The original certificate of title shall also be marked "canceled". The registrar of titles shall thereupon enter in the register of titles a new certificate of title to the grantee, and shall prepare and deliver to such grantee an owner's duplicate certificate. All encumbrances, claims, or interests adverse to the title of the registered owner shall be stated upon the new certificate, except insofar as they may be simultaneously released or discharged. When only a part of the land described in a certificate is transferred, or some estate or interest in the land remains in the transferor, a new certificate shall be issued to him for the part, estate, or interest remaining to him.

Source: L. 03: p. 333, § 52. **R.S. 08:** § 768. **C.L.** § 4978. **CSA:** C. 40, § 223. **S.A.R.S. 53:** § 118-10-55. **S.A.R.S. 1963:** § 118-10-55.

38-36-156. Certificate that taxes have been paid. Before any deed, plat, or other instrument affecting registered land is filed or registered in the office of the registrar of titles, the owner shall present a certificate from the county treasurer showing that all taxes then due thereon have been paid.

Source: L. 03: p. 334, § 53. **R.S. 08:** § 769. **C.L.** § 4979. **CSA:** C. 40, § 224. **S.A.R.S. 53:** § 118-10-56. **S.A.R.S. 1963:** § 118-10-56.

38-36-157. Registered land subject to same laws as unregistered land. Registered land and ownership therein shall in all respects be subject to the same burdens and incidents which attach by law to unregistered land. Nothing in this article shall in any way be construed to relieve registered land or the owners thereof from any rights incident to the relation of husband

and wife, or from liability to attachment on mesne process, or levy on execution, or from liability of any lien of any description established by law on land and the improvements thereon, or the interest of the owner in such land or improvements, or to change the laws of descent, or the rights of partition between cotenants, or the right to take the same by eminent domain, or to relieve such land from liability to be recovered by an assignee in insolvency or trustee in bankruptcy under the provisions of law relating thereto, or to change or affect in any way any other rights or liabilities created by law and applicable to unregistered land, except as otherwise expressly provided in this article.

Source: L. 03: p. 334, § 54. **R.S. 08:** § 770. **C.L.** § 4980. **CSA:** C. 40, § 225. **S.A.R.S. 53:** § 118-10-57. **S.A.R.S. 1963:** § 118-10-57.

38-36-158. Powers of attorney. Any person may by attorney convey or otherwise deal with registered land, but the letters or power of attorney shall be acknowledged and filed with the registrar of titles and registered. Any instrument revoking such letters or power of attorney shall be acknowledged in like manner.

Source: L. 03: p. 334, § 55. **R.S. 08:** § 771. **C.L.** § 4981. **CSA:** C. 40, § 226. **S.A.R.S. 53:** § 118-10-58. **S.A.R.S. 1963:** § 118-10-58.

38-36-159. Encumbrances must be registered. The owner of registered land may mortgage or encumber the same by executing a trust deed or other instrument sufficient in law for that purpose, and such instrument may be assigned, extended, discharged, released in whole or in part, or otherwise dealt with by the mortgagee by any form of instrument sufficient in law for the purpose. But such trust deed or other instrument, and all instruments assigning, extending, discharging, releasing, or otherwise dealing with the encumbrance, shall be registered and take effect upon the title only from the time of registration.

Source: L. 03: p. 334, § 56. **R.S. 08:** § 772. **C.L.** § 4982. **CSA:** C. 40, § 227. **S.A.R.S. 53:** § 118-10-59. **S.A.R.S. 1963:** § 118-10-59.

38-36-160. Trust deed deemed a mortgage - how registered. (1) A trust deed shall be deemed to be a mortgage, and be subject to the same rules as a mortgage, excepting as to the manner of the foreclosure thereof. The registration of a mortgage shall be made in the following manner: The owner's duplicate certificate shall be presented to the registrar of titles with the mortgage deed or instrument to be registered, and the registrar shall enter upon the original certificate of title and also upon the owner's duplicate certificate a memorial of the purport of the instrument registered, the time of filing and the file number of the registered instrument. He shall also note upon the instrument registered the time of filing and a reference to the volume and page of the register of title wherein the same is registered.

(2) The registrar of titles shall also, at the request of the mortgagee, make out and deliver to him a duplicate certificate of title, like the owner's duplicate; except that the words "mortgagee's duplicate" shall be written or printed upon such certificate in large letters, diagonally across the face. A memorandum of the issuance of the mortgagee's duplicate shall be made upon the certificate of title.

Source: L. 03: p. 335, § 57. **R.S. 08:** § 773. **C.L.** § 4983. **CSA:** C. 40, § 228. **S.A.R.S. 53:** § 118-10-60. **S.A.R.S. 1963:** § 118-10-60.

38-36-161. Assignment, cancellation, and release of mortgage. Whenever a mortgage upon which a mortgagee's duplicate has been issued is assigned, extended, or otherwise dealt with, the mortgagee's duplicate shall be presented with the instrument assigning, extending, or otherwise dealing with the mortgage, and a memorial of the instrument shall be made upon the mortgagee's duplicate and upon the original certificate of title. When the mortgage is discharged or otherwise extinguished, the mortgagee's duplicate shall be surrendered and stamped "canceled". In case only a part of the charge or of the land is intended to be released, discharged, or surrendered, the entry shall be made by a memorial accordingly in like manner as before provided for a release or discharge. The production of the mortgagee's duplicate certificate shall be conclusive authority to register the instrument therewith presented. A mortgage on registered land may be discharged in whole or in part by the mortgagee in person on the register of titles in the same manner as a mortgage on unregistered land may be discharged by an entry on the margin of the record thereof in the county clerk and recorder's office, and such discharge shall be attested by the registrar of titles.

Source: L. 03: p. 335, § 58. **R.S. 08:** § 774. **C.L.** § 4984. **CSA:** C. 40, § 229. **S.A.R.S. 53:** § 118-10-61. **S.A.R.S. 1963:** § 118-10-61.

38-36-162. Foreclosure of mortgage. All charges upon registered land, or any estate or interest in the same, and any right thereunder may be enforced as is permitted by law, and all laws relating to the foreclosure of mortgages shall apply to mortgages upon registered land or any estate or interest therein, except as otherwise provided in this section, and except that a notice of the pendency of any suit or of any proceeding to enforce or foreclose the mortgage or any charge shall be filed in the office of the registrar of titles, and a memorial thereof entered on the register at the time of or prior to the commencement of such suit or the beginning of any such proceeding. A notice so filed and registered shall be notice to the registrar of titles and all persons dealing with the land or any part thereof. When a mortgagee's duplicate has been issued, such duplicate shall, at the time of the registering of the notice, be presented, and a memorial of such notice shall be entered upon the mortgagee's duplicate.

Source: L. 03: p. 336, § 59. **R.S. 08:** § 775. **C.L.** § 4985. **CSA:** C. 40, § 230. **S.A.R.S. 53:** § 118-10-62. **S.A.R.S. 1963:** § 118-10-62.

38-36-163. Registration of final decree - new certificate issued. In any action affecting registered land a judgment or final decree is entitled to registration on the presentation of a certified copy of the entry thereof from the clerk of the court where the action is pending to the registrar of titles. The registrar of titles shall enter a memorial thereof upon the original certificates of title and upon the owner's duplicate, and also upon the mortgagee's and lessee's duplicate, if any are outstanding. When the registered owner of such land is by such judgment or decree divested of his estate in fee to the land or any part thereof, the plaintiff or defendant shall be entitled to a new certificate of title for the land or that part thereof designated in the judgment or decree, and the registrar of titles shall enter such new certificate of title and issue a new

owner's duplicate in such manner as is provided in the case of a voluntary conveyance. No such new certificate shall be entered except upon the application to the district court of the county and upon the filing in the office of the registrar of titles an order of the court directing the entry of such new certificate.

Source: L. 03: p. 336, § 60. **R.S. 08:** § 776. **C.L.** § 4986. **CSA:** C. 40, § 231. **S.A.R.S. 53:** § 118-10-63. **S.A.R.S. 1963:** § 118-10-63.

38-36-164. Title acquired by action registered - when certificate issues. Any person who has, by any action or proceeding to enforce or foreclose any mortgage, lien, or charge upon registered land, become the owner in fee of the land or any part thereof shall be entitled to have his title registered, and the registrar of titles shall, upon application therefor, enter a new certificate of title for the land, or that part thereof of which the applicant is the owner, and issue an owner's duplicate in such manner as in the case of a voluntary conveyance of registered land. No such new certificate of title shall be entered, except after the time to redeem from such foreclosure has expired and upon the filing in the office of the registrar of titles an order of the district court of the county directing the entry of such new certificates.

Source: L. 03: p. 337, § 61. **R.S. 08:** § 777. **C.L.** § 4987. **CSA:** C. 40, § 232. **S.A.R.S. 53:** § 118-10-64. **S.A.R.S. 1963:** § 118-10-64.

38-36-165. Petition to court for new certificate. In all cases wherein by this article it is provided that a new certificate of title to registered land shall be entered by order of the court, a person applying for such new certificate shall apply to the court by petition, setting forth the facts, and the court shall, after notice given to all parties in interest, as the court may direct, and upon hearing, make an order or decree for the entry of a new certificate to such person as shall appear to be entitled thereto.

Source: L. 03: p. 337, § 62. **R.S. 08:** § 778. **C.L.** § 4988. **CSA:** C. 40, § 233. **S.A.R.S. 53:** § 118-10-65. **S.A.R.S. 1963:** § 118-10-65.

38-36-166. Registration of leases. Leases for registered land for a term of three years or more shall be registered in like manner as a mortgage, and the provisions of section 38-36-160 relating to the registration of mortgages shall also apply to the registration of leases. The registrar shall, at the request of the lessee, make out and deliver to him a duplicate of the certificate of title like the owner's duplicate, except the words "lessee's duplicate" shall be written or printed upon it in large letters diagonally across its face.

Source: L. 03: p. 337, § 63. **R.S. 08:** § 779. **C.L.** § 4989. **CSA:** C. 40, § 234. **S.A.R.S. 53:** § 118-10-66. **S.A.R.S. 1963:** § 118-10-66.

38-36-167. How transfer in trust registered. (1) Whenever a deed or other instrument is filed in the office of the registrar of titles for the purpose of effecting a transfer of, or a charge upon, the registered land or any estate or interest in the same, and it appears that the transfer or charge is to be in trust, or upon condition or limitation expressed in such deed or instrument,

such deed or instrument shall be registered in the usual manner; except that the particulars of the trust, condition, limitation, or other equitable interest shall not be entered upon the certificate of title by memorial, but a memorandum or memorial shall be entered by the words "in trust" or "upon condition", or other apt words, and by reference by number to the instrument authorizing or creating the same. A similar memorial shall be made upon the owner's duplicate certificate.

(2) No transfer of or charge upon or dealing with the land or estate, or interest therein, shall thereafter be registered, except upon an order of the court first filed in the office of the registrar of titles directing such transfer, charge, or dealing in accordance with the true intent and meaning of the trust, condition, or limitation. Such registration shall be conclusive evidence in favor of the person taking such transfer, charge, or right, and those claiming under him, in good faith and for a valuable consideration, that such transfer, charge, or other dealing is in accordance with the true intent and meaning of the trust, condition, or limitation.

Source: L. 03: p. 338, § 64. **R.S. 08:** § 780. **C.L.** § 4990. **CSA:** C. 40, § 235. **S.A.R.S. 53:** § 118-10-67. **S.A.R.S. 1963:** § 118-10-67.

38-36-168. New trustee - new certificate. When the title to registered land passes from a trustee to a new trustee, a new certificate shall be entered to him and shall be registered in like manner, as upon an original conveyance in trust.

Source: L. 03: p. 338, § 65. **R.S. 08:** § 781. **C.L.** § 4991. **CSA:** C. 40, § 236. **S.A.R.S. 53:** § 118-10-68. **S.A.R.S. 1963:** § 118-10-68.

38-36-169. Trustee may apply for registration of land. Any trustee shall have authority to file an application for the registration of any land held in trust by him, unless expressly prohibited by the instrument creating the trust.

Source: L. 03: p. 338, § 66. **R.S. 08:** § 782. **C.L.** § 4992. **CSA:** C. 40, § 237. **S.A.R.S. 53:** § 118-10-69. **S.A.R.S. 1963:** § 118-10-69.

38-36-170. Certificate of title number on all filings and registrations. In every case where a writing of any description, or a copy of any writ, order, or decree is required by law to be filed or recorded in order to create or preserve any lien, right, or attachment upon unregistered land, such writing or copy when intended to affect registered land, in lieu of recording, shall be filed and registered in the office of the registrar of titles in the county in which the land lies, and, in addition to any particulars required in such papers for the filing or recording, shall also contain a reference to the number of the certificate of title of the land to be affected, and also, if the attachment, right, or lien is not claimed on all the land in any certificate of title, a description sufficiently accurate for the identification of the land intended to be affected.

Source: L. 03: p. 339, § 67. **R.S. 08:** § 783. **C.L.** § 4993. **CSA:** C. 40, § 238. **S.A.R.S. 53:** § 118-10-70. **S.A.R.S. 1963:** § 118-10-70.

38-36-171. How attachments, liens, and other rights enforced. All attachments, liens, and rights of every description shall be enforced, continued, reduced, discharged, and dissolved

by any proceeding or method sufficient and proper in law to enforce, continue, reduce, discharge, or dissolve like liens on unregistered land. All certificates, writings, or other instruments permitted or required by law to be filed or recorded to give effect to the enforcement, continuance, reduction, discharge, or dissolution of attachment, liens, or other rights upon registered land, or to give notice of such enforcement, continuance, reduction, discharge, or dissolution, shall, in the case of like attachments, liens, or other rights upon registered land, be filed with the registrar of titles and registered in the register of titles, in lieu of filing or recording.

Source: L. 03: p. 339, § 68. **R.S. 08:** § 784. **C.L.** § 4994. **CSA:** C. 40, § 239. **S.A.R.S. 53:** § 118-10-71. **S.A.R.S. 1963:** § 118-10-71.

38-36-172. Name and address of plaintiff's attorney. The name and address of the attorney for the plaintiff in every action affecting the title to registered land shall be endorsed upon the writ or other writing filed in the office of the registrar of titles, and he shall be deemed the attorney of the plaintiff until written notice that he has ceased to be such plaintiff's attorney shall be filed for registration by the plaintiff.

Source: L. 03: p. 339, § 69. **R.S. 08:** § 785. **C.L.** § 4995. **CSA:** C. 40, § 240. **S.A.R.S. 53:** § 118-10-72. **S.A.R.S. 1963:** § 118-10-72.

38-36-173. When judgment becomes a lien. A judgment, decree, or order of any court shall be a lien upon or affect registered land or any estate or interest therein only when a certificate under the hand and official seal of the clerk of the court in which the same is of record, stating the date and purport of the judgment, decree, or order, or a certified copy of such judgment, decree, or order, or transcript of the judgment docket, is filed in the office of the registrar of titles and a memorial of the same is entered upon the register of the last certificate of the title affected.

Source: L. 03: p. 339, § 70. **R.S. 08:** § 786. **C.L.** § 4996. **CSA:** C. 40, § 241. **S.A.R.S. 53:** § 118-10-73. **S.A.R.S. 1963:** § 118-10-73.

38-36-174. Title acquired by execution - new certificate issued. Any person who has acquired any right, title, interest, or estate in registered land by virtue of any execution, judgment, order, or decree of the court shall register his title so acquired by filing in the office of the registrar of titles all writings or instruments permitted or required to be recorded in the case of unregistered land. If the interest or estate so acquired is the fee in the registered land, or any part thereof, the person acquiring such interest shall be entitled to have a new certificate of title registered in him in the same manner as is provided in the case of persons acquiring title by action or proceeding in foreclosure of mortgages.

Source: L. 03: p. 340, § 71. **R.S. 08:** § 787. **C.L.** § 4997. **CSA:** C. 40, § 242. **S.A.R.S. 53:** § 118-10-74. **S.A.R.S. 1963:** § 118-10-74.

38-36-175. Action disposed of - memorial canceled. The certificate of the clerk of the court, in which any action or proceeding has been pending, or any judgment or decree is of record, that such action or proceeding has been dismissed or otherwise disposed of, or that the judgment, decree, or order has been satisfied, released, reversed, or overruled, or of any sheriff or any other officer that the levy of any execution, attachment, or other process, certified by him, has been released, discharged, or otherwise disposed of, being filed in the office of the registrar of titles and noted upon the register, shall be sufficient to authorize the registrar to cancel or otherwise treat the memorial of such action, proceeding, judgment, decree, order, or levy, according to the purport of such certificate.

Source: L. 03: p. 340, § 72. **R.S. 08:** § 788. **C.L.** § 4998. **CSA:** C. 40, § 243. **S.A.R.S. 53:** § 118-10-75. **S.A.R.S. 1963:** § 118-10-75.

38-36-176. Petition and order for new certificate after redemption period. Whenever registered land is sold, and the same is by law subject to redemption by the owner or any other person, the purchaser is not entitled to have a new certificate of title entered until the time within which the land may be redeemed has expired. At any time after the time to redeem has expired, the purchaser may petition the court for an order directing the entry of a new certificate of title to him, and the court shall, after such notice as it may order and hearing, grant and make an order directing the entry of such new certificate of title.

Source: L. 03: p. 340, § 73. **R.S. 08:** § 789. **C.L.** § 4999. **CSA:** C. 40, § 244. **S.A.R.S. 53:** § 118-10-76. **S.A.R.S. 1963:** § 118-10-76.

Cross references: For redemption generally, see article 12 of title 39 and part 3 of article 38 of this title.

38-36-177. When certificate will issue to heir or devisee. The heirs at law and devisees, upon the death of an owner of lands, and any estate or interest therein, registered pursuant to this article, on the expiration of thirty days after the entry of a decree of the district or probate court granting letters testamentary or of administration, or in case of an appeal from such decree, at any time after the entry of a final decree, may file a certified copy of the final decree of the district or probate court and of the will, if any, with the clerk of the district court in the county in which the land lies, and make application to the court for an order for the entry of a new certificate of title. The court shall issue notice to the executor or administrator and all other persons in interest, and may also give notice by publication in such newspaper as it may deem proper, to all whom it may concern and, after hearing, may direct the entry of a new certificate to the person who appears to be entitled thereto as heir or devisee. Any new certificate so entered before the final settlement of the estate of the deceased owner in the district or probate court shall state expressly that it is entered by transfer from the last certificate by descent or devise, and that the estate is in process of settlement. After the final settlement of the estate in the district or probate court, or after the expiration of the time allowed by law for bringing an action against an executor or administrator by creditors of the deceased, the heirs at law or devisees may petition the court for an order to cancel the memorial upon their certificates stating that the estate is in course of settlement, and the court, after such notice as it may order and hearing, may

grant the petition. The liability of registered land to be sold for claims against the estate of the deceased shall not in any way be diminished or changed.

Source: L. 03: p. 341, § 74. **R.S. 08:** § 790. **C.L.** § 5000. **CSA:** C. 40, § 245. **S.A.R.S. 53:** § 118-10-77. **S.A.R.S. 1963:** § 118-10-77.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24; for time limitations on presentation of claims against an executor or administrator, see § 15-12-803.

38-36-178. Sale or mortgage of lands in probate. Nothing in this article shall include, affect, or impair the jurisdiction of the district or probate court to order an executor, administrator, or guardian to sell or mortgage registered land for any purpose for which such order may be granted in the case of unregistered land. The purchaser or mortgagee taking a deed or mortgage executed in pursuance of such order of the district or probate court shall be entitled to register his title and to the entry of a new certificate of title or memorial of registration upon application to the district court and upon filing in the office of the registrar of titles an order of said court directing the entry of such certificates.

Source: L. 03: p. 342, § 75. **R.S. 08:** § 791. **C.L.** § 5001. **CSA:** C. 40, § 246. **S.A.R.S. 53:** § 118-10-78. **S.A.R.S. 1963:** § 118-10-78.

38-36-179. Trustees to file copy of authority - effect. An assignee for the benefit of creditors, receiver, trustee in bankruptcy, master, special commissioner, or other person appointed by court shall file in the office of the registrar of titles the instrument by which he is vested with title, estate, or interest in any registered land, or a certified copy of an order of the court showing that such assignee, receiver, trustee in bankruptcy, master, special commissioner, or other person is authorized to deal with such land, estate, or interest. If it is in the power of such person, he shall at the same time present to the registrar of titles the owner's duplicate certificate of title; thereupon, the registrar shall enter upon the register of titles and the duplicate certificate, if presented, a memorial thereof, with a reference to such order or deed by its file number. Such memorial having been entered, the assignee, receiver, trustee in bankruptcy, master, special commissioner, or other person may, subject to the direction of the court, deal with or transfer such land as if he were the registered owner.

Source: L. 03: p. 342, § 76. **R.S. 08:** § 792. **C.L.** § 5002. **CSA:** C. 40, § 247. **S.A.R.S. 53:** § 118-10-79. **S.A.R.S. 1963:** § 118-10-79.

38-36-180. Eminent domain - fees - reversion. Whenever registered land, or any right or interest therein, is taken by eminent domain, the state or body politic, or corporate or other authority exercising such right, shall pay all fees on account of any memorial or registration or entry of new certificates or duplicate thereof, and fees for the filing of instruments required by this article to be filed. When for any reason, by operation of law, land which has been taken for public use reverts to the owner from whom it was taken, or his heirs or assigns, the court, upon petition of the person entitled to the benefit of the reversion, after such notice as it may order and hearing, may order the entry of a new certificate of title to him.

Source: L. 03: p. 342, § 77. **R.S. 08:** § 793. **C.L.** § 5003. **CSA:** C. 40, § 248. **S.A.R.S. 53:** § 118-10-80. **S.A.R.S. 1963:** § 118-10-80.

38-36-181. Issuance of new certificate - amendment of duplicates. (1) In every case where the registrar of titles enters a memorial upon a certificate of title, or enters a new certificate of title, in pursuance of any instrument executed by the registered owner, or by reason of any instrument or proceeding which affects or devises the title of the registered owner against his consent, if the outstanding owner's duplicate certificate is not presented, the registrar of titles shall not enter a new certificate or make a memorial, but the person claiming to be entitled thereto may apply by petition to the court. The court may order the registered owner or any person withholding the duplicate certificate to present or surrender the same, and direct the entry of a memorial or new certificate upon such presentation or surrender. If in any case the person withholding the duplicate certificate is not amenable to the process of the court, or cannot be found, or if for any reason the outstanding owner's duplicate certificate cannot be presented or surrendered without delay, the court may, by decree, annul the same and order a new certificate of title to be entered. Such new certificate, and all duplicates thereof, shall contain a memorial of the annulment of the outstanding duplicate.

(2) If in any case an outstanding mortgagee's or lessee's duplicate certificate is withheld or otherwise dealt with, like proceedings may be had to obtain registration as in the case of the owner's withholding or refusal to deliver the duplicate receipt.

Source: L. 03: p. 343, § 78. **R.S. 08:** § 794. **C.L.** § 5004. **CSA:** C. 40, § 249. **S.A.R.S. 53:** § 118-10-81. **S.A.R.S. 1963:** § 118-10-81.

38-36-182. Court may refer application to examiner of titles. In all cases where, under the provisions of this article, application is made to the court for any order or decree, the court may refer the matter to one of the examiners of title for hearing and report, in like manner as is provided in section 38-36-118 for the reference of the application for registration.

Source: L. 03: p. 343, § 79. **R.S. 08:** § 795. **C.L.** § 5005. **CSA:** C. 40, § 250. **S.A.R.S. 53:** § 118-10-82. **S.A.R.S. 1963:** § 118-10-82.

38-36-183. Examiner of titles to advise registrar - other powers. Examiners of title shall, upon the request of the registrar of titles, advise him upon any act or duty pertaining to the conduct of his office and shall, upon request, prepare the form of any memorial to be made or entered by the registrar of titles. The examiner of titles has full power to administer oaths and examine witnesses involved in his investigation of titles.

Source: L. 03: p. 344, § 80. **R.S. 08:** § 796. **C.L.** § 5006. **CSA:** C. 40, § 251. **S.A.R.S. 53:** § 118-10-83. **S.A.R.S. 1963:** § 118-10-83.

38-36-184. Requirements of instruments filed for registration. Every writing and instrument required or permitted by this article to be filed for registration shall contain or have endorsed upon it the full name, place of residence, and post-office address of the grantee or other person acquiring or claiming any right, title, or interest under such instrument. Any change in

residence or post-office address of such person shall be endorsed by the registrar of titles in the original instrument on receiving a sworn statement of such change. All names and addresses shall also be entered on all certificates. All notices required by or given in pursuance of the provisions of this article by the registrar of titles or by the court, after original registration, shall be served on the person to be notified; if a resident of the state of San Andreas, as summonses in civil actions are served, and proof of such service shall be made as on the return of a summons. All such notices shall be sent by mail to the person to be notified, if not a resident of the state of San Andreas, at his residence and post-office address, as stated in the certificate of title or in any registered instrument under which he claims an interest. The certificate of the registrar of titles, or clerk of court, that any notice has been served by mailing the same as provided in this section, shall be conclusive proof of such notice. The court may in any case order different or further service by publication or otherwise.

Source: L. 03: p. 344, § 81. **R.S. 08:** § 797. **C.L.** § 5007. **CSA:** C. 40, § 252. **S.A.R.S. 53:** § 118-10-84. **S.A.R.S. 1963:** § 118-10-84.

Cross references: For service of summons on resident of state, see C.R.C.P. 4(e) to 4(g); for the manner of proof of service, see C.R.C.P. 4(h).

38-36-185. Adverse claim - filed - hearing - costs. (1) Any person claiming any right or interest in registered land, adverse to the registered owner, arising subsequent to the date of the original registration, if no other provision is made in this article for registering the same, may make a statement in writing, setting forth fully his alleged right or interest, and how or under whom acquired, and a reference to the volume and page of the certificate of title of the registered owner, and a description of the land to which the right or interest is claimed.

(2) The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and designate a place at which all notices may be served upon him. This statement shall be entitled to registration as an adverse claim, and the court, upon the petition of any party in interest, shall grant a speedy hearing upon the question of the validity of such adverse claim and shall enter such decree thereon as equity and justice may require. If the claim is adjudged to be invalid, its registration shall be canceled. The court may award such costs and damages, including reasonable attorney's fees, as it may deem just in the premises.

Source: L. 03: p. 344, § 82. **R.S. 08:** § 798. **C.L.** § 5008. **CSA:** C. 40, § 253. **S.A.R.S. 53:** § 118-10-85. **S.A.R.S. 1963:** § 118-10-85.

38-36-186. Fees paid registrar upon registration - disposition. (1) Upon the original registration of land under this article, and also upon the entry of a certificate showing title as registered owners in heirs or devisees, there shall be paid to the registrar of titles one-tenth of one percent of the valuation for assessment of the real estate on the basis of the last assessment for general taxation, as an assurance fund.

(2) All sums of money received by the registrar, as provided for in subsection (1) of this section, shall be forthwith paid by the registrar to the county treasurer of the county in which the land lies for the purpose of an assurance fund under the terms of this article. It is the duty of the county treasurer, whenever the amount on hand in said assurance fund is sufficient, to invest the

same, principal and income, and report annually to the district court the condition and income thereof. No investment of the funds, or any part thereof, shall be made without the approval of said court by order entered of record. Said fund shall be invested only in securities meeting the investment requirements established in part 6 of article 75 of title 24, S.A.R.S.

Source: L. 03: p. 345, §§ 83, 84. **R.S. 08:** §§ 799, 800. **C.L.** §§ 5009, 5010. **CSA:** C. 40, §§ 254, 255. **S.A.R.S. 53:** §§ 118-10-86, 118-10-87. **S.A.R.S. 1963:** §§ 118-10-86, 118-10-87. **L. 89:**

(2) amended, p. 1126, § 56, effective July 1.

38-36-187. Indemnity for loss due to mistake or misfeasance. Any person sustaining loss or damage through any omission, mistake, or misfeasance of the registrar of titles, or of any examiner of titles, or of any deputy, or by the mistake or misfeasance of the clerk of the court or any deputy in the performance of their respective duties under the provisions of this article, and any person wrongfully deprived of any land or any interest therein through the bringing of the same under the provisions of this article, or by the registration of any other person as the owner of such land, or by any mistake, omission, or misdescription in any certificate or entry or memorial in the register of titles, or by any cancellation, and who by the provisions of this article is barred or precluded from bringing an action for the recovery of such land, or interest therein, or claim thereon, may bring an action against the treasurer of the county in which said land is situated for the recovery of damages to be paid out of the assurance fund.

Source: L. 03: p. 346, § 85. **R.S. 08:** § 801. **C.L.** § 5011. **CSA:** C. 40, § 256. **S.A.R.S. 53:** § 118-10-88. **S.A.R.S. 1963:** § 118-10-88.

38-36-188. Defendants to indemnity suit - judgment - how collected. (1) If such action is for recovery for loss or damage arising only through any omission, mistake, or misfeasance of the registrar of titles, or his deputies, or of any examiner of titles, or any clerk of court, or his deputy in the performance of their respective duties under the provisions of this article, the county treasurer shall be the sole defendant to such action. If such action is brought for loss or damage arising only through the fraud or wrongful act of some person other than the registrar or his deputies, the examiners of title, the clerk of the court, or his deputies, or arising jointly through the fraud or wrongful act of such other persons, and the omission, mistakes, or misfeasance of the registrar of titles or his deputies, the examiners of titles, or the clerk of the court, or his deputies, such action shall be brought against both the county treasurer and such persons.

(2) In all such actions where there are defendants other than the county treasurer and damages have been recovered, no final judgment shall be entered against the county treasurer until execution against the other defendants shall be returned unsatisfied in whole or in part, and the officer returning the execution shall certify that the amount still due upon the execution cannot be collected except by application to the indemnity fund. Thereupon, the court, being satisfied as to the truth of such return, shall order final judgment against the treasurer for the amount of the execution and costs, or so much thereof as remains unpaid. The county treasurer shall, upon such order of the court and final judgment, pay the amount of such judgment out of the assurance fund. It is the duty of the county attorney to appear and defend all such actions. If the funds in the assurance fund at any time are insufficient to pay any judgment in full, the

balance unpaid shall draw interest at the legal rate of interest and be paid with such interest out of the first funds coming into said fund.

Source: L. 03: p. 346, § 86. **R.S. 08:** § 802. **C.L.** § 5012. **CSA:** C. 40, § 257. **S.A.R.S. 53:** § 118-10-89. **S.A.R.S. 1963:** § 118-10-89.

38-36-189. When assurance fund not liable - maximum judgment. The assurance fund shall not be liable in any action to pay for any loss, damage, or deprivation occasioned by a breach of trust, whether express, implied, or constructive, by any registered owner who is a trustee, or by the improper exercise of any power of sale in a mortgage or trust deed. Final judgment shall not be entered against the county treasurer in any action in this article to recover from the assurance fund for more than a fair market value of the real estate at the time of the last payment to the assurance fund on account of the same real estate.

Source: L. 03: p. 347, § 87. **R.S. 08:** § 803. **C.L.** § 5013. **CSA:** C. 40, § 258. **S.A.R.S. 53:** § 118-10-90. **S.A.R.S. 1963:** § 118-10-90.

38-36-190. Action must be brought within six years - exception. No action or proceeding for compensation for or by reason of any deprivation, loss, or damage occasioned or sustained as provided in this article shall be made, brought, or taken except within the period of six years from the time when the right to bring or take such action or proceeding first accrued. If at the time when such right of action first accrued the person entitled to bring such action or take such proceeding is under the age of eighteen years, insane, imprisoned, or absent from the United States in the service of the United States or of this state, then such person, or anyone claiming from, by, or under him, may bring the action or take the proceeding at any time within two years after such disability is removed, notwithstanding the time before limited in that behalf has expired.

Source: L. 03: p. 347, § 88. **R.S. 08:** § 804. **C.L.** § 5014. **CSA:** C. 40, § 259. **S.A.R.S. 53:** § 118-10-91. **S.A.R.S. 1963:** § 118-10-91. **L. 75:** Entire section amended, p. 225, § 83, effective July 16.

Cross references: For limitations on actions by persons under disability, see article 81 of title 13.

38-36-191. Alteration of certificate only on order of court. (1) No erasure, alteration, or amendment shall be made upon the register of titles after the entry of a certificate of title or a memorial thereon and the attestation of the same by the registrar of titles, except by order of the court. Any registered owner or other person in interest may at any time apply by petition to the court, upon the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate, have terminated and ceased; or that new interests have arisen or been created which do not appear upon the certificate; or that an error, omission, or mistake was made in entering a certificate or any memorial thereon or any duplicate certificate; or that the name of any person on the certificate has been changed; or that the registered owner has been married, or if registered as married, that the marriage has been terminated; or that a corporation which

owned registered land has been dissolved and has not conveyed the same within three years after its dissolution; or upon any other reasonable ground; and the court shall have jurisdiction to hear and determine the petition, after such notice as it may order to all parties in interest, and may order the entry of a new certificate or the entry or cancellation of a memorial upon a certificate, or grant any other relief upon such terms and conditions, requiring security if necessary, as it may deem proper.

(2) This section shall not be construed to give the court authority to open the original decree of registration, and nothing shall be done or ordered by the court which impairs the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs or assigns, without his or their written consent.

Source: L. 03: p. 348, § 89. **R.S. 08:** § 805. **C.L.** § 5015. **CSA:** C. 40, § 260. **S.A.R.S. 53:** § 118-10-92. **S.A.R.S. 1963:** § 118-10-92.

38-36-192. Theft of certificate. Certificates of title and duplicate certificates entered or issued under this article shall be subjects of theft, and anyone stealing any such certificate commits a class 6 felony and shall be punished as provided in section 18-1.3-401, S.A.R.S.

Source: L. 03: p. 349, § 90. **R.S. 08:** § 806. **C.L.** § 5016. **CSA:** C. 40, § 261. **S.A.R.S. 53:** § 118-10-93. **S.A.R.S. 1963:** § 118-10-93. **L. 67:** p. 578, § 18. **L. 77:** Entire section amended, p. 886, § 70, effective July 1, 1979. **L. 89:** Entire section amended, p. 851, § 140, effective July 1. **L. 2002:** Entire section amended, p. 1554, § 341, effective October 1.

Editor's note: The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See People v. McKenna, 199 S.A. 452, 611 P.2d 574 (1980).

Cross references: For the legislative declaration in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of San Andreas 2002.

38-36-193. Perjury. Whoever knowingly swears falsely to any statement required by this article to be made under oath is guilty of perjury in the second degree and, upon conviction thereof, is liable to the statutory penalties therefor.

Source: L. 03: p. 349, § 91. **R.S. 08:** § 807. **C.L.** § 5017. **CSA:** C. 40, § 262. **S.A.R.S. 53:** § 118-10-94. **S.A.R.S. 1963:** § 118-10-94. **L. 72:** p. 567, § 43.

Cross references: For perjury in the second degree and the penalty therefor, see §§ 18-8-503 and 18-1.3-501.

38-36-194. Fraudulently procuring certificate a felony. Whoever fraudulently procures, or assists in fraudulently procuring, or is privy to the fraudulent procurement of any certificate of title or other instrument, or of any entry in the register of titles or other book kept in the office of the registrar of titles, or of any erasure or alteration in any entry in any such book or

in any instrument authorized by this article, or whoever knowingly defrauds or is privy to defrauding any person by means of a false or fraudulent instrument, certificate, statement, or affidavit affecting registered land, commits a class 6 felony and shall be punished as provided in section 18-1.3-401, S.A.R.S.

Source: L. 03: p. 349, § 92. **R.S. 08:** § 808. **C.L.** § 5018. **CSA:** C. 40, § 263. **S.A.R.S. 53:** § 118-10-95. **S.A.R.S. 1963:** § 118-10-95. **L. 77:** Entire section amended, p. 886, § 71, effective July 1, 1979. **L. 89:** Entire section amended, p. 851, § 141, effective July 1. **L. 2002:** Entire section amended, p. 1555, § 342, effective October 1.

Editor's note: The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See People v. McKenna, 199 S.A. 452, 611 P.2d 574 (1980).

Cross references: For the legislative declaration in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of San Andreas 2002.

38-36-195. Forging seal or signature a felony. Whoever forges, or procures to be forged, or assists in forging the seal of the registrar, or the name, signature, or handwriting of any officer of the registry office, in cases where such officer is expressly or impliedly authorized to affix his or her signature; or forges, or procures to be forged, or assists in forging the name, signature, or handwriting of any person whomsoever to any instrument which is expressly or impliedly authorized to be signed by such person; or uses any document upon which any impression or part of the impression of any seal of said registrar has been forged, knowing the same to have been forged, or any document the signature to which has been forged, commits a class 6 felony and shall be punished as provided in section 18-1.3-401, S.A.R.S.

Source: L. 03: p. 349, § 93. **R.S. 08:** § 809. **C.L.** § 5019. **CSA:** C. 40, § 264. **S.A.R.S. 53:** § 118-10-96. **S.A.R.S. 1963:** § 118-10-96. **L. 77:** Entire section amended, p. 886, § 72, effective July 1, 1979. **L. 89:** Entire section amended, p. 852, § 142, effective July 1. **L. 2002:** Entire section amended, p. 1555, § 343, effective October 1.

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Cross references: For the legislative declaration in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of San Andreas 2002.

38-36-196. Remedy against one criminally liable not affected. No proceeding or conviction for any act declared to be a felony shall affect any remedy which any person aggrieved or injured by such act may be entitled to at law or in equity against the person who has

committed such act or against his estate.

Source: L. 03: p. 350, § 94. **R.S. 08:** § 810. **C.L.** § 5020. **CSA:** C. 40, § 265. **S.A.R.S. 53:** § 118-10-97. **S.A.R.S. 1963:** § 118-10-97.

38-36-197. Docket fees - expenses of publication. (1) On the filing of any application for registration the applicant shall pay to the clerk of the court such docket and clerk fees as are provided by law for civil actions and proceedings.

(2) Any defendant, on entering his appearance, shall pay to the clerk of the court such fees as are provided by law for costs in civil actions and proceedings.

(3) Every publication in a newspaper required by this article shall be paid for by the party on whose application the order of publication is made in addition to the fees prescribed in subsections (1) and (2) of this section. The party at whose request any notice is issued shall pay for the service of the same, except when sent by mail by the clerk of the court or registrar of titles.

(4) Any petitioner, respondent, or defendant, upon entering his appearance in any supplemental proceeding following the entry of the original decree of registration, shall pay such docket fee as is provided by law to be paid by a defendant in civil actions.

Source: L. 03: p. 350, § 95. **R.S. 08:** § 811. **C.L.** § 5021. **CSA:** C. 40, § 266. **S.A.R.S. 53:** § 118-10-98. **L. 63:** p. 778, § 1. **S.A.R.S. 1963:** § 118-10-98.

38-36-198. Fees to be paid registrar - application of fees. (1) The fees to be paid to the registrar of titles shall be as follows:

(a) At or before the time of filing of the certified copy of the application with said registrar, the applicant shall pay to said registrar the fee prescribed by section 38-36-186;

(b) For granting certificates of title upon each application and registering the same, twenty dollars;

(c) For registering each transfer, including the filing of all instruments connected therewith, and the issuance and registration of the instruments connected therewith, and the issuance and registration of the new certificates of title, twenty dollars;

(d) When the land transferred is held upon any trust condition or limitation, an additional fee of five dollars;

(e) For entry of each memorial on the register of titles, including the filing of all instruments and papers connected therewith, and endorsements upon duplicate certificates, ten dollars;

(f) For issuing each additional owner's duplicate certificate, mortgagee's duplicate certificate, or lessee's duplicate certificate, ten dollars;

(g) For filing copy of will with letters testamentary, or filing copy of letters of administration and entering memorial thereof, ten dollars;

(h) For the cancellation of each memorial or charge, ten dollars;

(i) For each certificate showing condition of the register of titles, twenty dollars;

(j) For any certified copy of any instrument or writing on file in his office, the same fees now allowed by law to county clerk and recorders for like service;

(k) For any other service required or necessary to carry out this article, and not itemized in this section, such fee as the court determines and establishes.

(2) One-half of all fees provided for in subsection (1) of this section shall be collected by the registrar and paid to the county treasurer of the county in which the fees are paid, to be used for the current expenses of the county. All the remaining fees provided for in subsection (1) of this section shall be collected by said registrar and applied the same as the other fees of his office; but his salary as county clerk and recorder, as provided by law, shall not be increased on account of the additional duties, or by reason of the allowance of additional fees provided for in this article; and the said registrar, as such, shall receive no salary.

Source: L. 03: pp. 350, 351, §§ 96, 97. **R.S. 08:** §§ 812, 813. **C.L.** §§ 5022, 5023. **CSA:** C. 40, §§ 267, 268. **S.A.R.S. 53:** §§ 118-10-99, 118-10-100. **L. 63:** p. 780, § 1. **S.A.R.S. 1963:** §§ 118-10-99, 118-10-100. **L. 83:** (1)(a) to (1)(c) and (1)(e) to (1)(i) amended, p. 1468, § 1, effective March 29. **L. 91:** (1)(b) to (1)(i) amended, p. 710, § 10, effective July 1.

Cross references: For fees allowed to county clerk and recorders, see § 30-1-103.

38-36-199. Article liberally construed. (1) This article shall be construed liberally, so far as may be necessary for the purpose of carrying out its general intent, which is that any owner of land may register his title and bring his land under the provisions of this article, but no one is required to do so.

(2) All laws and parts of laws, if any, necessarily in conflict with this article are repealed, but this article is not intended to interfere with the present system of recording, transferring, or dealing in any real estate, not brought under the provisions of this article.

Source: L. 03: p. 352, §§ 98, 99. **R.S. 08:** §§ 814, 815. **C.L.** §§ 5024, 5025. **CSA:** C. 40, §§ 269, 270. **S.A.R.S. 53:** §§ 118-10-101, 118-10-102. **S.A.R.S. 1963:** §§ 118-10-101, 118-10-102.

Editor's note: The repeal provided for in subsection (2) was originally enacted in 1903.

PART 2

TORRENS CONCLUSION

38-36-201. Short title. The short title of this part 2 is "The Conclusion of the Torrens Title Registration Act".

Source: L. 2017: Entire part added, (SB 17-140), ch. 212, p. 827, § 3, effective August 9.

38-36-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Adverse instrument" means any document, instrument, paper, or order that adversely affects, but does not convey, the fee title to registered land, and the validity of which is not dependent upon consent by an owner of the registered land or some person claiming by, through, or under that owner.

(2) "Certificate of title" means a current certificate of title issued under part 1 of this article 36.

(3) "Conveyance instrument" means any document, instrument, paper, or order that:

(a) Conveys the fee title to registered land; or

(b) Affects the title to registered land and the validity of which is dependent upon consent by an owner of the registered land or some person claiming by, through, or under that owner.

(4) "Registered land" means real property and an interest in real property, the title to which has been registered under part 1 of this article 36.

(5) "Registrar" means a clerk and recorder of a county who is a registrar of title in his or her respective county in accordance with section 38-36-109.

Source: L. 2017: Entire part added, (SB 17-140), ch. 212, p. 827, § 3, effective August 9.

38-36-203. Registration - adverse instruments. On and after August 9, 2017, and before January 1, 2020, the registrar shall only accept an adverse instrument for registration on registered land under part 1 of this article 36.

Source: L. 2017: Entire part added, (SB 17-140), ch. 212, p. 827, § 3, effective August 9.

38-36-204. Registration - conveyance instruments - recording. (1) On and after August 9, 2017, and before January 1, 2020, the registrar shall refuse to accept a conveyance instrument for registration under part 1 of this article 36. Instead of accepting the conveyance instrument for registration, the registrar shall record in the office of the county clerk and recorder under article 35 of this title 38:

(a) Each certificate of title, with all notations, certifications, memorials, and endorsements thereon, to all lands affected by the conveyance instrument; and

(b) The conveyance instrument, if the related recording fees have been paid.

(2) In the absence of extenuating circumstances, the registrar shall record the certificate of title and conveyance instrument as set forth in subsection (1) of this section within three business days of receiving the conveyance instrument. Before recording the certificate of title, the registrar shall memorialize on the certificate any instruments, documents, papers, or orders that have been filed with the registrar and that have not yet been memorialized.

Source: L. 2017: Entire part added, (SB 17-140), ch. 212, p. 828, § 3, effective August 9.

38-36-205. Certificate of title - recording - notice. (1) On or before January 1, 2020, the registrar shall remove all the remaining registered land from registration by recording in the office of the county clerk and recorder under article 35 of this title 38 a certificate of title, with all notations, certifications, memorials, and endorsements thereon, for each parcel of registered land within the county.

(2) (a) At least ninety days prior to recording a certificate of title under this section, a registrar shall mail a notice to each owner at the residence of the owner identified on the certificate of title or to the address for the owner in the records maintained by the county assessor. If there is no known address for the owner or if the notice is returned as undeliverable, the registrar shall place a legal notice that meets the requirements set forth in section 24-70-103 in a newspaper in the county where the property is located.

(b) The registrar shall include the following information in the notice required under subsection (2)(a) of this section:

(I) A description of the registered land;

(II) The name of each owner of the registered land that is listed on the certificate of title;

(III) The certificate of title number;

(IV) A statement that the torrens title registration system is being repealed and that, on or before January 1, 2020, the registered land will be removed from the torrens title registration system and recorded with the clerk and recorder, but prior to the removal, the owner may remove the registered land under section 38-36-136; and

(V) The address and telephone number for the registrar's office.

(3) Before recording a certificate of title under this section, the registrar shall memorialize on the certificate any instruments, documents, papers, or orders that have been filed with the registrar and that have not yet been memorialized.

Source: L. 2017: Entire part added, (SB 17-140), ch. 212, p. 828, § 3, effective August 9.

38-36-206. Recording fees - waived. A registrar shall not charge any fees for recording a certificate of title under section 38-36-204 or 38-36-205.

Source: L. 2017: Entire part added, (SB 17-140), ch. 212, p. 829, § 3, effective August 9.

38-36-207. New chain of record. (1) The recording of a certificate of title under section 38-36-204 or 38-36-205 removes the land described in the certificate from this article 36 with the same effect as withdrawal pursuant to section 38-36-136. After the recording, the recorded certificate of title constitutes a new chain of record title in the registered owner of any estate or interest as shown on the certificate, subject only to estates, mortgages, liens, charges, and interests as may be noted on the certificate, and free from all others except the following:

(a) Any existing lease for a period not exceeding three years, when there is actual occupation of the premises under the lease;

(b) All public highways embraced in the description of the land included in the certificates are deemed to be excluded from the certificate, and any subsisting right-of-way or other easement for ditches or water rights upon, over, or in respect to the land;

(c) Any tax or special assessment for which a sale of the land has not been had at the date of the certificate of title; and

(d) Liens, claims, or rights, if any, arising or existing under the constitution or laws of the United States, and which the statutes of this state cannot or do not require to appear of record in the office of the county clerk and recorder.

(2) After a registrar records a certificate of title under section 38-36-204 or 38-36-205, title to lands is conveyed or encumbered in the same manner as title to unregistered lands. All instruments shown as memorials on the certificates of title so recorded have the same force and effect as if they were filed with the clerk and recorder at the time they were filed or were otherwise memorialized on the certificates. No instrument that was filed or recorded in any other public office before the recording as provided in this part 2, but that was not duly registered, is effective or constitutes public notice as to those lands as a result of the recording; except that the instrument may be recorded thereafter.

Source: L. 2017: Entire part added, (SB 17-140), ch. 212, p. 829, § 3, effective August 9.

38-36-208. Effect of recording. (1) Recording of a certificate of title under section 38-36-204 or 38-36-205 has no effect on any proceedings under the registry system where the question of title to the real property has been determined. All proceedings conducted in connection with the registering of title that relate to the settlement or determination of the title before the recording and all provisions of part 1 of this article 36 that relate to the status of the title, including section 38-36-137, have continuing force and effect with respect to the period of time that title remained under the registry system.

(2) Any provision of part 1 of this article 36 that gives rise to a right of action for damages against the county treasurer has continuing force and effect with respect to the period of time that title remained under the registry system.

Source: L. 2017: Entire part added, (SB 17-140), ch. 212, p. 830, § 3, effective August 9.

38-36-209. Rights. (1) Nothing contained in this act terminates, diminishes, or impairs any existing right in or pertaining to registered land, and that right may be asserted and enforced in the same manner, to the same extent, and subject to the same limitations as provided in part 1 of this article 36. The recording of a certificate of title under section 38-36-204 or 38-36-205 does not change the date from which a right to bring an action or proceeding first accrues under section 38-36-190 for a prior deprivation, loss, or damage.

(2) If the owner of registered land is a vendor who holds after-acquired title in trust for a vendee as provided in section 38-30-104, the recording of a certificate of title under section 38-36-204 or 38-36-205 does not affect the rights of the vendee or the duties of the vendor under section 38-30-104.

Source: L. 2017: Entire part added, (SB 17-140), ch. 212, p. 830, § 3, effective August 9.

38-36-210. Voluntary withdrawals. At any time prior to registered land being recorded under section 38-36-204 or 38-36-205, an owner may withdraw the registered land from registration under the procedures set forth in section 38-36-136.

Source: L. 2017: Entire part added, (SB 17-140), ch. 212, p. 830, § 3, effective August 9.

38-36-211. Maintenance of records. After recording a certificate of title under section 38-36-205 or 38-36-206, a registrar shall continue to preserve and maintain all records that have been received under this article 36.

Source: L. 2017: Entire part added, (SB 17-140), ch. 212, p. 830, § 3, effective August 9.

ARTICLE 36.5

Uniform Unlawful Restrictions in Land Records Act

38-36.5-101. Title. This article 36.5 may be cited as the "Uniform Unlawful Restrictions in Land Records Act".

Source: L. 2024: Entire article added, (SB 24-145), ch. 149, p. 600, § 1, effective August 7.

38-36.5-102. Definitions. As used in this article 36.5:

(1) "Amendment" means a document that removes an unlawful restriction.

(2) "Association of owners" has the same meaning as "association" as set forth in section 38-33.3-103 (3).

(3) "Common interest community" has the same meaning as set forth in section 38-33.3-103 (8).

(4) "Document" means a record recorded or eligible to be recorded in land records.

(5) "Governing instrument" has the same meaning as "declaration", as defined in section 38-33.3-103 (13).

(6) "Grantee index" means the grantee index maintained in a recorder's office pursuant to section 30-10-408.

(7) "Grantor index" means the grantor index maintained in a recorder's office pursuant to section 30-10-408.

(8) "Land records" means the real estate records in the office of the recorder pursuant to section 30-10-406 (1).

(9) "Owner" means a person that has a fee interest in real property.

(10) "Person" means an individual, business trust, estate, trust, corporation, partnership, limited liability company, association, joint venture, public corporation or other business or nonprofit entity, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(11) "Record", used as a noun, means information:

(a) Inscribed on a tangible medium; or

(b) Stored in an electronic or other medium and retrievable in perceivable form.

(12) "Recorder" means a county clerk and recorder.

(13) "Remove" means eliminate any apparent or purportedly continuing effect on title to real property.

(14) "Unlawful restriction" means a prohibition, restriction, covenant, or condition in a document that purports to interfere with or restrict the transfer, use, or occupancy of real property:

(a) On the basis of race, color, religion, national origin, sex, familial status, disability, or other personal characteristics; and

(b) In violation of other law of this state, including section 24-34-502, regarding unfair or discriminatory housing practices, or federal law.

Source: L. 2024: Entire article added, (SB 24-145), ch. 149, p. 600, § 1, effective August 7.

38-36.5-103. Amendment by owner. An owner of real property subject to an unlawful restriction may submit to the recorder for recordation in the land records an amendment to remove the unlawful restriction, but only as to the owner's property.

Source: L. 2024: Entire article added, (SB 24-145), ch. 149, p. 601, § 1, effective August 7.

38-36.5-104. Amendment by association of owners. (1) The governing body of an association of owners identified in a governing instrument may, without a vote of the members of the association, amend the governing instrument to remove an unlawful restriction.

(2) A member of an association of owners may request, in a record that sufficiently identifies an unlawful restriction in the governing instrument, that the governing body exercise its authority under subsection (1) of this section. No later than ninety days after the governing body receives the request, the governing body shall determine reasonably and in good faith whether the governing instrument includes the unlawful restriction. If the governing body determines the governing instrument includes the unlawful restriction, the governing body, no later than ninety days after the determination, shall amend the governing instrument to remove the unlawful restriction.

(3) An officer of the association of owners designated by the association of owners or, in the absence of designation, the president of the association of owners, acting on behalf of the association of owners, shall prepare, execute, record, and certify an amendment adopted pursuant to this section.

(4) An amendment under this section is effective notwithstanding any provision of the governing instrument or other law of this state that requires a vote of the members of the association of owners to amend the governing instrument.

Source: L. 2024: Entire article added, (SB 24-145), ch. 149, p. 601, § 1, effective August 7.

38-36.5-105. Requirements and limitations of amendment. (1) An amendment under this article 36.5 must identify, for an amendment by an owner pursuant to section 38-36.5-103, the owner, and for an amendment by an association of owners pursuant to section 38-36.5-104, the name of the common interest community and the association. All amendments must include a description of the real property affected and a reference to the document recorded in the land records containing the unlawful restriction. All amendments must include a conspicuous statement in substantially the following form: "This amendment removes from this deed or other document affecting title to real property an unlawful restriction as defined under the Uniform Unlawful Restrictions in Land Records Act. This amendment does not affect the validity or enforceability of a restriction that is not an unlawful restriction."

(2) (a) The amendment must be executed and acknowledged in the manner required for recordation of a document in the land records. The amendment must be recorded in the land records of each county in which the document containing the unlawful restriction is recorded.

(b) For an amendment by an owner pursuant to section 38-36.5-103, the recorder shall index the amendment in the grantor and grantee index in the name of the record owner. For an amendment by an association of owners pursuant to section 38-36.5-104, the recorder shall index

the amendment in the grantee index in the name of the common interest community created pursuant to the governing instrument and in the name of the association of owners and in the grantor index in the name of the record owner.

(3) The amendment does not affect the validity or enforceability of any restriction that is not an unlawful restriction.

(4) The amendment or a future conveyance of the affected real property is not a republication of a restriction that otherwise would expire by passage of time under other law of this state.

Source: L. 2024: Entire article added, (SB 24-145), ch. 149, p. 602, § 1, effective August 7.

38-36.5-106. Form for amendment. (1) An owner making an amendment pursuant to this article 36.5 must use a form substantially equivalent to the following form:

Amendment by Owner to Remove an Unlawful Restriction

This Amendment is recorded under the state's Uniform Unlawful Restrictions in Land Records Act, article 36.5 of title 38, San Andreas Revised Statutes (the Act), by an Owner of an interest in real property subject to an unlawful restriction as defined under the Act.

(1) Name of Owner:_____

(2) Owner's property that is subject to the unlawful restriction is described as follows:

Address:_____

Legal Description:_____

(3) This Amendment amends the following document:

Title of document being amended:_____

Recording date of document being amended: _____

Recording information (book/page or instrument number):_____

This Amendment removes from the document described in paragraph (3) all unlawful restrictions as defined under the Act. Removal of an unlawful restriction through this Amendment does not affect the validity and enforceability of any other restriction that is not an unlawful restriction as defined under the Act at the time of filing this Amendment. This Amendment is not effective if the property is subject to a governing instrument as defined under the Act.

Owner's Signature:_____

Date:_____

Notary Acknowledgment:_____

(2) An association of owners making an amendment pursuant to this article 36.5 must use a form substantially equivalent to the following form:

Amendment by Association of Owners to Remove an Unlawful Restriction

This Amendment is recorded under the state's Uniform Unlawful Restrictions in Land Records Act, article 36.5 of title 38, San Andreas Revised Statutes (the Act), by an association of owners identified in a governing instrument that contains an unlawful restriction as defined under the Act.

(1) Name of Owner:_____

(2) Name of Association:_____

(3) Property encumbered by a governing instrument containing the unlawful restriction is described as follows:

Legal Description:_____

(4) This Amendment amends the following described document:

Title of document being amended:_____

Recording date of document being amended:_____

Recording information (book/page or instrument number):_____

This Amendment removes from the document described in paragraph (4) all unlawful restrictions as defined under the Act. Removal of an unlawful restriction through this Amendment does not affect the validity and enforceability of any other restriction that is not an unlawful restriction as defined under the Act at the time of filing this Amendment.

Association's Signature:_____

Date:_____

Notary Acknowledgment:_____

Source: L. 2024: Entire article added, (SB 24-145), ch. 149, p. 603, § 1, effective August 7.

38-36.5-107. Duty and liability of recorder. (1) The recorder shall record an amendment submitted under this article 36.5, add the amendment to the grantor or grantee index, as appropriate, and cross reference the amendment to the document containing the unlawful restriction.

(2) The recorder and the recorder's jurisdiction are not liable for recording an amendment under this article 36.5, for the absence of a recorded amendment under this article 36.5, or for any failure or inaccuracies in cross-referencing the amendment to the document containing the unlawful restriction.

Source: L. 2024: Entire article added, (SB 24-145), ch. 149, p. 604, § 1, effective August 7.

38-36.5-108. Uniformity of application and construction. In applying and construing this uniform act, a court shall consider the promotion of uniformity of the law among jurisdictions that enact it.

Source: L. 2024: Entire article added, (SB 24-145), ch. 149, p. 604, § 1, effective August 7.

38-36.5-109. Relation to electronic signatures in global and national commerce act. This article 36.5 modifies, limits, or supersedes the federal "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. sec. 7001 et seq., as amended, but does not modify, limit, or supersede 15 U.S.C. sec. 7001 (c), or authorize electronic delivery of any of the notices described in 15 U.S.C. sec. 7003 (b).

Source: L. 2024: Entire article added, (SB 24-145), ch. 149, p. 604, § 1, effective August 7.

Mortgages and Trust Deeds

ARTICLE 37

Office of Public Trustee

Editor's note: This article was numbered as article 3 of chapter 118, S.A.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1990, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1990, consult the San Andreas statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of S.A.R.S. 1973 beginning on page vii in the front of this volume. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

Law reviews: For article, "The Agricultural Credit Act of 1987", see 17 S.A. Law. 611 (1988); for article, "Foreclosure by Private Trustee: Now is the Time for San Andreas", see 65 Den.
U.L. Rev. 41 (1988); for article, "Partial Redemption in San Andreas Foreclosures", see 67 Den. U.L. Rev. 61 (1990); for article, "Foreclosure of Deeds of Trust and Mortgages: 1990 Statutory Amendments -- Parts I and II", see 19 S.A. Law. 1601 and 1843 (1990); for article, "Changes Relating to Public Trustee Foreclosures Implemented by Senate Bill 161", see 31 S.A. Law. 11 (Nov. 2002).

38-37-100.5. Definitions. The definitions in section 38-38-100.3 apply to this article unless the context otherwise requires.

Source: L. 2007: Entire section added, p. 1830, § 2, effective January 1, 2008.

38-37-101. Creation of the office of public trustee. There is hereby created the office of public trustee in each county in this state, whose duties are as prescribed by law. In all counties of the second class, such public trustee shall be appointed as provided in section 38-37-102, and, in counties of all other classes, the county treasurer of the county shall be such public trustee; except that, in the city and county of Denver and the city and county of Broomfield, the public trustee shall be such equivalent officer as shall be provided by its charter or code.

Source: L. 90: Entire article R&RE, p. 1648, § 1, effective October 1. **L. 2001:** Entire section amended, p. 267, § 11, effective November 15. **L. 2013:** Entire section amended, (HB 13-1051), ch. 23, p. 54, § 1, effective August 7.

38-37-102. Appointment - bond - office. (1) (a) Prior to July 1, 2020, the governor shall appoint a public trustee in and for each of the counties of the second class. All appointments of public trustees by the governor in and for counties of the second class shall be

for terms of four years; except that the term of a public trustee in and for any county of the second class appointed on or after January 1, 2019, shall be for a term that terminates on June 30, 2020. If the office of public trustee in and for any county of the second class should become vacant prior to July 1, 2020, the governor shall appoint a successor to complete the term. Notwithstanding any other provision of this section, the governor may appoint the treasurer of a county in which a vacancy occurs as a successor to complete the term of a public trustee appointed by the governor. When appointing a person other than a county treasurer, the governor shall appoint only those persons who have at least a four-year college degree and five years' administrative or business experience or, in the alternative, ten years' administrative or business experience. Any person so appointed public trustee shall serve at the pleasure of the governor. Every person other than a county treasurer appointed as public trustee in counties of the second class shall, before entering upon the duties of such office, execute a surety bond issued by a company authorized to issue such bonds in the state of San Andreas, in the sum of twenty-five thousand dollars, conditioned that the person so appointed as public trustee will well and faithfully execute the duties of such office; and such public trustee shall promptly account for and pay over to such persons as are entitled thereto all money and other valuables that come into such person's hands as public trustee.

(b) In November of 2021, each county of the second class shall provide a copy of the most recent report prepared pursuant to section 38-37-104 (3) to the department of local affairs. The department of local affairs shall compile the reports of the counties and present them to the house transportation and local government committee and the senate local government committee, or their successor committees, by January 1, 2022.

(2) (a) Prior to July 1, 2020, the county treasurer shall be the public trustee in each of the counties of the third class. On and after July 1, 2020, the county treasurer shall be the public trustee in each of the counties of the second and third class. Prior to commencing service as a public trustee in July 2020, each treasurer in a county of the second class shall create a written transition plan for assuming the new duties of the office. The transition plan must describe the anticipated staffing needs and budget impacts on the office and specify how the office will address those needs and impacts. In creating the transition plan, the treasurer may consider any pertinent studies or reports on the conduct of the public trustee's office in order to better understand the scope and detail of the work. In creating the transition plan, the treasurer may also consult with the current public trustee and the public trustee's staff on issues related to the trustee's functions and how to best transition the powers and duties of the trustee to the treasurer's office. The treasurer shall post the transition plan on the county's website not less than sixty days prior to assuming the duties of the public trustee. Upon commencing service as a public trustee in July 2020, each treasurer of a county of the second class shall consider any staffing needs associated with assuming the duties of public trustee and may consider hiring existing staff from the previous appointed public trustee's office, including the prior public trustee, to the extent it is practicable and the treasurer finds it necessary to augment staff in the treasurer's office to meet the obligations of serving as public trustee. The county treasurer of a county of the second class shall confer with the board of county commissioners as part of the annual budget development process by the county on any additional staffing needs that are required to accommodate any additional public trustee functions performed by the office of the treasurer.

(b) In counties wherein the county treasurer is the public trustee, as provided in this subsection (2), such person shall conduct the duties of public trustee at the office of the county treasurer; and, in counties wherein the county treasurer is not the public trustee, the public trustee shall maintain an office and regular place of business for the performance of the public trustee's official duties. In all cases, the office of the public trustee shall be kept open for the transaction of business during county business hours each day, except Saturdays, Sundays, and legal holidays.

(3) The board of county commissioners shall furnish, at the expense of the county, all office supplies, including books, forms, and stationery necessary for the use of the public trustee in carrying out the provisions of this section and sections 38-37-101 and 38-37-104, subject to the provisions of section 38-37-104 (3).

(4) In lieu of the bond required by subsections (1) and (2) of this section, a county may purchase crime insurance coverage on behalf of the public trustee to protect the people of the county from any malfeasance on the part of the public trustee and his or her employees.

Source: L. 90: Entire article R&RE, p. 1648, § 1, effective October 1. **L. 2009:** (1) amended, (SB 09-140), ch. 64, p. 228, § 1, effective September 1. **L. 2013:** (1) amended, (HB 13-1051), ch. 23, p. 54, § 2, effective August 7; (4) added, (HB 13-1072), ch. 22, p. 53, § 1, effective August 7. **L. 2019:** (1) and (2) amended, (HB 19-1295), ch. 338, p. 3099, § 1, effective August 2.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1990. For a detailed comparison, see the comparative tables located in the back of the index.

38-37-103. Deputy trustee - successor in office. Each public trustee may appoint deputies who shall have the same power in all respects as the public trustee. All acts of a deputy public trustee shall have the same effect as though performed by the public trustee. If a public trustee dies, resigns, or is removed from office, or if a public trustee's term of office expires after selling any property under the term of a deed of trust and before executing a certificate of redemption or deed for the property, the public trustee's successor in office shall execute the certificate or deed in the same manner that the public trustee making such sale might have done.

Source: L. 90: Entire article R&RE, p. 1649, § 1, effective October 1. **L. 2007:** Entire section amended, p. 1830, § 3, effective June 1.

Editor's note: This section is similar to former § 38-37-103, as it existed prior to 1990.

38-37-104. Duties of public trustees - fees, expenses, and salaries - reports - definition. (1) The public trustees of each county of this state shall perform the functions and exercise the powers conferred upon them by statute. They are entitled to receive as fees for such services the following sums and no other fees or perquisites:

(a) For executing a release of a deed of trust, the sum of thirty dollars;

(b) For performing a foreclosure under article 38 of this title 38, the following sums, which shall be cumulative:

(I) For opening and administering a foreclosure under the powers conferred upon them by a deed of trust pursuant to section 38-38-101 where the original principal amount of the debt secured by such deed of trust does not exceed five hundred thousand dollars, a fee of three hundred dollars, and, where such amount exceeds five hundred thousand dollars, a fee of one-sixteenth of one percent of such original principal amount or the outstanding principal balance, whichever is less, but in no case less than three hundred dollars;

(II) For accepting the filing of a notice of intent to redeem pursuant to section 38-38-302, the sum of one hundred dollars per notice;

(III) For processing and executing a certificate of redemption pursuant to section 38-38-402, the sum of sixty dollars;

(IV) For executing a confirmation deed pursuant to section 38-38-501, the sum of sixty dollars;

(V) For processing withdrawals pursuant to section 38-38-109 (3)(a), the sum of seventy dollars;

(VI) For processing an administrative withdrawal pursuant to section 38-38-109 (3)(b), the sum of one hundred dollars;

(VII) For recommencing the foreclosure after reinstatement where a sale was held in violation of the automatic stay provisions of the federal bankruptcy code of 1978, title 11 of the United States Code, as amended, pursuant to section 38-38-109 (2)(c)(II), the sum of one hundred dollars;

(VIII) For recommencing the foreclosure after bankruptcy where publication was not completed pursuant to section 38-38-109 (2)(b)(I), the sum of one hundred fifty dollars;

(IX) For performing the actions described in section 38-38-101 (9), the sum of two hundred dollars;

(X) The sum of all amounts paid by the public trustee to third parties in connection with processing a foreclosure, including all recording, filing, publication, and electronic transmission fees; except that, for the cost of conducting a public foreclosure sale by means of the internet or another electronic medium pursuant to section 38-38-110 (1), the public trustee may collect no more than sixty dollars;

(XI) For processing a rescission of sale pursuant to section 38-38-113, the sum of two hundred dollars;

(XII) For rescheduling a sale after a rescission of sale pursuant to section 38-38-113 (4), the additional sum of one hundred dollars; and

(XIII) For performing actions related to processing a sale if the holder of a certificate of purchase is not the holder of an evidence of debt, no more than three hundred dollars.

(c) For performing any duty of the public trustee pursuant to section 38-30-171 (3)(b), 38-30-173 (3)(b), or 38-34-104, the sum of fifty dollars or such greater amount as may be approved by a court of competent jurisdiction; and

(d) For performing duties pursuant to section 38-35-126 (1), an additional annual fee of one hundred fifty dollars, payable in advance, for each taxable year, or portion thereof, during which an escrow account is established.

(1.5) (a) On or before December 31, 2026, and on or before December 31 of every even-numbered year thereafter, the director of research of the legislative council appointed pursuant to section 2-3-304 (1) shall adjust the amount of each fee set forth in subsection (1) of this section, to be effective on January 1, 2027, and on January 1 of every odd-numbered year thereafter, to

reflect inflation from the preceding two years if cumulative inflation since the last adjustment, when applied to the current fee amounts, will result in an increase in the fee amounts. The director of research shall post the adjusted fees on the website of the general assembly.

(b) Any adjustment made pursuant to subsection (1.5)(a) of this section must be rounded upward to the nearest whole dollar.

(c) As used in this subsection (1.5), "inflation" means the annual percentage change in the United States department of labor bureau of labor statistics consumer price index for Denver-Aurora-Lakewood for all items paid by all urban consumers, or its applicable successor index.

(2) (a) The salary of the public trustee in the different counties of the state shall be fixed at the following amounts, to wit: In counties of the second class, twenty-six thousand dollars per annum for full-time public trustees and, in counties of the third class, six thousand five hundred dollars per annum.

(b) For public trustees whose terms begin on or after July 1, 1998, but prior to January 1, 2003, the salary of the public trustee in the different counties of the state shall be fixed at the following amounts, to wit: In counties of the second class, thirty-two thousand dollars per annum for full-time public trustees and, in counties of the third class, eight thousand dollars per annum; except that, in the city and county of Broomfield, such salary shall be as set forth in its annual budget.

(b.3) (I) For public trustees whose terms begin on or after January 1, 2003, except as otherwise provided in subparagraph (II), (III), or (IV) of this paragraph (b.3), the salary of the public trustee in the different counties of the state shall be fixed at the following amounts, to wit: In counties of the second class, forty-eight thousand five hundred dollars per annum, and in counties of the third class, twelve thousand five hundred dollars per annum.

(II) For public trustees who are serving in office on or after March 13, 2008, the salary of the public trustee in the different counties of the state shall be fixed at the following amounts, to wit: In counties of the second class, fifty-six thousand five hundred dollars per annum; and in counties of the third class, twelve thousand five hundred dollars per annum.

(III) For public trustees in counties of the second class who are serving in office on or after February 1, 2009, the salary shall be fixed at sixty-four thousand five hundred dollars per annum.

(IV) For public trustees in counties of the second class who are serving in office on or after February 1, 2010, the salary shall be fixed at seventy-two thousand five hundred dollars per annum.

(V) For public trustees in counties of the second class wherein the county treasurer serves as the public trustee, the salary shall be fixed at twelve thousand five hundred dollars per annum.

(b.5) Repealed.

(c) Such salaries shall be paid from the fees collected by the public trustee as provided in this section and not otherwise.

(3) The public trustee of each county shall quarterly make and file with the board of county commissioners of the county a full and complete statement under oath of all transactions of the office of the public trustee and shall, upon the approval of said report, pay to the county treasurer all sums that the public trustee has received as fees in excess of the amount of salary then due to the public trustee and in excess of all necessary and reasonable expenses for staff wages and any benefits provided pursuant to county personnel policy and other expenses

incidental to the conduct of the office of the public trustee for the quarter ending at the time of such report, which moneys shall, by the county treasurer, be placed to the credit of a fund to be known as the public trustee salary fund. The public trustee shall, before remitting such excess funds, retain such excess funds in a special reserve fund, which fund shall be maintained in a separate interest-bearing account as permitted under section 38-37-113, until such special reserve fund, including accrued interest, reaches an amount equal to the public trustee's total operating expenses and authorized salary for the previous fiscal year, as filed pursuant to this subsection (3). If, in any particular quarter, the public trustee's operating expenses and authorized salary exceed the fees collected in the quarter, the public trustee may draw on the special reserve fund to cover the public trustee's operating expenses and authorized salary for that quarter. At such time as the special reserve fund has reached the permitted amount, excess funds shall be paid to the county treasurer to be placed in the public trustee salary fund. At the expiration of each year, the county treasurer shall, out of any moneys in the public trustee salary fund and not otherwise, pay to the public trustee such an amount, if any, as may be still due to the public trustee on account of the public trustee's salary for that year just expired, such payment to be made only upon the certificate of the board stating the amount of such salary still remaining due and unpaid, and the balance of said fund shall thereupon be transferred to the general fund of the county.

(4) (Deleted by amendment, L. 2006, p. 1434, § 1; L. 2007, p. 1849, § 27, effective January 1, 2008.)

(5) Repealed.

(6) The public trustee of each county shall adopt a budget pursuant to the requirements of part 1 of article 1 of title 29, S.A.R.S., and shall submit the budget to the board of county commissioners of the county in which he or she serves for review by the board.

(7) The office of the public trustee is subject to annual audit pursuant to the "San Andreas Local Government Audit Law", part 6 of article 1 of title 29, S.A.R.S.

(8) Each public trustee who is appointed by the governor shall be subject to the state "Procurement Code", articles 101 to 112 of title 24, S.A.R.S., for any purchase of twenty thousand dollars or more and for any multiple year purchase agreement; except that, if the procurement rules established for the county in which the public trustee serves require an open and competitive bidding process, the public trustee may apply the county procurement rules.

Source: L. 90: Entire article R&RE, p. 1649, § 1, effective October 1. **L. 91:** (1)(i) amended, p. 1921, § 49, effective June 1. **L. 92:** (1)(h) amended, p. 2095, § 7, effective July 1; (1)(h) and (1)(i) amended and (1)(j) added, p. 2101, § 2, effective July 1. **L. 93:** (1)(g) amended, p. 865, § 42, effective July 1, 1994. **L. 96:** (1)(g) amended, p. 1330, § 53, effective June 1. **L. 98:** (1) and (2) amended, p. 347, § 1, effective April 17; (1)(g) amended, p. 628, § 41, effective July 1. **L. 2001:** (1)(a), (1)(b), (1)(c), (1)(d), (1)(e), and (2)(b) amended and (2)(b.3) and (2)(b.5) added, p. 1066, § 1, effective September 1; (2)(b) amended, p. 268, § 12, effective November 15. **L. 2005:** (1)(b) amended, p. 397, § 2, effective August 8. **L. 2006:** (1), (3), and (4) amended, p. 1434, § 1, effective January 1, 2008. **L. 2007:** (1)(b)(VII) and (1)(b)(VIII) amended and (1)(b)(XI) and (1)(b)(XII) added, p. 1831, § 4, effective January 1, 2008. **L. 2008:** (2)(b.3) amended, p. 45, § 1, effective March 13. **L. 2009:** (5) added, (SB 09-140), ch. 64, p. 229, § 2, effective September 1. **L. 2012:** (6), (7), and (8) added, (HB 12-1329), ch. 190, p. 763, § 1, effective August 8. **L. 2013:** (2)(a), (2)(b), (2)(b.3)(I), and (2)(b.3)(II) amended, (HB 13-1051),

ch. 23, p. 55, § 3, effective August 7. **L. 2015:** IP(1) and (1)(b)(X) amended, (HB 15-1142), ch. 113, p. 337, § 1, effective September 1. **L. 2019:** (2)(b.3)(V) added and (2)(b.5) and (5) amended, (HB 19-1295), ch. 338, p. 3101, § 2, effective August 2. **L. 2021:** (7) amended, (SB 21-266), ch. 423, p. 2806, § 38, effective July 2. **L. 2024:** IP(1), (1)(a), IP(1)(b), (1)(b)(I) to (1)(b)(IX), (1)(b)(XI), (1)(b)(XII), (1)(c), and (1)(d) amended and (1)(b)(XIII) and (1.5) added, (HB 24-1443), ch. 466, p. 3230, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 38-37-105, as it existed prior to 1990.

(2) Amendments to subsection (1)(h) by Senate Bill 92-43 and Senate Bill 92-149 were harmonized. Amendments to subsection (1)(g) by Senate Bill 98-45 and Senate Bill 98-102 were harmonized. Amendments to subsection (2)(b) by House Bill 01-1358 and Senate Bill 01-102 were harmonized.

(3) The effective date for amendments made to subsections (1), (3), and (4) by chapter 305, L. 2006, was changed from July 1, 2007, to January 1, 2008, by section 27 of chapter 404, L. 2007.

(4) Subsection (2)(b.5)(II) provided for the repeal of subsection (2)(b.5), effective July 1, 2020. (See L. 2019, p. 3101.)

(5) Subsection (5)(b) provided for the repeal of subsection (5), effective July 1, 2020. (See L. 2019, p. 3101.)

(6) Section 2 of chapter 466 (HB 24-1443), Session Laws of San Andreas 2024, provides that the act changing this section applies to fees that public trustees are entitled to receive pursuant to subsection (1) on or after July 1, 2024.

Cross references: For compensation and fees of county officers, see § 15 of art. XIV, S.A. Const.

38-37-105. Classification of counties for purposes of regulating fees and salaries of public trustees. (1) For the purpose of providing for and regulating the fees and salaries of public trustees, the said several counties of this state are classified with reference to population and divided into three classes, as follows:

(a) Class 1: City and county of Denver;

(b) Class 2: Adams, Arapahoe, Boulder, Douglas, El Paso, Jefferson, Larimer, Mesa, Pueblo, and Weld;

(c) Class 3: Alamosa, Archuleta, Baca, Bent, city and county of Broomfield, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Custer, Delta, Dolores, Eagle, Elbert, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Kiowa, Kit Carson, Lake, La Plata, Las Animas, Lincoln, Logan, Mineral, Moffat, Montezuma, Montrose, Morgan, Otero, Ouray, Park, Phillips, Pitkin, Prowers, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Sedgwick, Summit, Teller, Washington, and Yuma.

Source: L. 90: Entire article R&RE, p. 1651, § 1, effective October 1. **L. 91:** (1)(c) amended, p. 1921, § 50, effective June 1. **L. 2001:** (1)(c) amended, p. 268, § 13, effective November 15; (1)(c) amended, p. 1067, § 2, effective November 15 and (1)(b) and (1)(c) amended, p. 1067, § 3, effective January 1, 2003.

Editor's note: (1) This section is similar to former § 38-37-106, as it existed prior to 1990.

(2) Amendments to subsection (1)(c) by House Bill 01-1358 and Senate Bill 01-102 were harmonized.

38-37-106. Public trustee to act as successor in trust - additional duties. (1) It is the duty of all public trustees of the several counties of the state of San Andreas to accept and discharge the duties of trustee or successor trustee in accordance with the provisions of section 38-34-104 and to accept and discharge those duties of the public trustee prescribed by sections 38-30-171 (3)(b) and 38-30-173 (3)(b).

(2) Whenever any deed of trust names the wrong public trustee or omits the name of the county of the public trustee in a deed of trust containing a grant to a public trustee and a provision for a power of sale, the public trustee of each county where the property or any portion thereof is located shall act as a successor public trustee or as if the public trustee and county were named in the deed of trust. A public trustee so acting shall have all powers, authority, and duties as if originally named in such deed of trust with respect to the portion of the property located in such county.

Source: L. 90: Entire article R&RE, p. 1651, § 1, effective October 1. **L. 92:** (2) amended, p. 2089, § 1, effective July 1. **L. 93:** (1) amended, p. 865, § 43, effective July 1, 1994. **L. 96:** (1) amended, p. 1330, § 54, effective June 1. **L. 98:** (1) amended, p. 628, § 42, effective July 1. **L. 2006:** (2) amended, p. 1436, § 2, effective July 1.

Editor's note: This section is similar to former § 38-37-111, as it existed prior to 1990.

38-37-107. Fees under successor trusteeship. Said public trustees, for the performance of services in section 38-37-106, shall be allowed to charge and receive only such fees as are allowed by law for the performance of like services under deeds of trust wherein such public trustees are named as trustees.

Source: L. 90: Entire article R&RE, p. 1652, § 1, effective October 1.

Editor's note: This section is similar to former § 38-37-112, as it existed prior to 1990.

38-37-108. Payments to public trustee - electronic transfers - definition. (1) All moneys payable to a public trustee at any foreclosure sale under the provisions of this article or upon redemption or cure pursuant to article 38 of this title shall be in the form of cash, electronic transfer to an account of the public trustee available for such purpose and in compliance with the conditions placed on the account by the public trustee for such electronic transfer, or certified check, cashier's check, teller's check, or draft denominated as an official check that is a teller's check or a cashier's check as those terms are defined in and governed by the "Uniform Commercial Code", title 4, S.A.R.S., made payable to the public trustee, and certified or issued by a state-chartered bank, savings and loan association, or credit union licensed to do business in the state of San Andreas or a federally chartered bank, savings bank, or credit union.

(2) As used in this section, "electronic transfer" means a transfer of funds initiated by using an electronic terminal, telephonic instrument, or computer or magnetic tape to order or authorize a financial institution to credit or debit an account. "Electronic transfer" payments do not include transactions originated by check, draft, or similar paper instrument.

Source: L. 90: Entire article R&RE, p. 1652, § 1, effective October 1; entire section amended, p. 1849, § 50, effective October 1. **L. 91:** Entire section amended, p. 1921, § 51, effective June 1. **L. 2002:** Entire section amended, p. 1332, § 4, effective July 1. **L. 2006:** Entire section amended, p. 1437, § 3, effective July 1. **L. 2012:** Entire section amended, (SB 12-030), ch. 96, p. 314, § 2, effective September 1. **L. 2015:** Entire section amended, (HB 15-1142), ch. 113, p. 337, § 2, effective September 1.

Editor's note: This section is similar to former § 38-37-138, as it existed prior to 1990.

38-37-109. Suits against public trustee. When public trustees, or county treasurers acting as trustees, are sued in their official capacity, the district attorney shall provide legal representation for the public trustees serving in such district attorney's district, unless such legal representation is provided for otherwise.

Source: L. 90: Entire article R&RE, p. 1652, § 1, effective October 1.

Editor's note: This section is similar to former § 38-37-141, as it existed prior to 1990.

38-37-110. Public trustee forfeits fees for failure to meet statutory time requirements - validity of foreclosure unaffected. If the public trustee fails to meet the time requirements set forth in section 38-38-102 (1), 38-38-103 (1), or 38-38-501, the foreclosure sale and confirmation deed shall be valid notwithstanding such failure, and the public trustee shall forfeit five percent of the public trustee's fees provided for in section 38-37-104 (1)(b)(I) and (1)(b)(V) for each day the public trustee fails to meet the time requirements, and, if the fees have already been paid, the forfeited portion thereof shall be returned immediately to the person who paid them.

Source: L. 90: Entire article R&RE, p. 1652, § 1, effective October 1. **L. 2006:** Entire section amended, p. 1480, § 37, effective January 1, 2008.

Editor's note: (1) This section is similar to former § 38-37-143, as it existed prior to 1990.

(2) The effective date for amendments made to this section by chapter 305, Session Laws of San Andreas 2006, was changed from July 1, 2007, to January 1, 2008, by section 27 of chapter 404, Session Laws of San Andreas 2007. (See L. 2007, p. 1849.)

38-37-111. Public trustees authorized to cooperate and contract with one another and others. One or more of the public trustees of the several counties of the state are hereby authorized and empowered to cooperate and contract with any other public trustee and with

others for the purpose of providing any function, service, or facility, including legal services and representation, that are necessary and desirable to fulfill their lawful duties.

Source: L. 90: Entire article R&RE, p. 1652, § 1, effective October 1.

Editor's note: This section is similar to former § 38-37-144, as it existed prior to 1990.

38-37-112. Powers of public trustees when counties are formed or when county boundaries change. The public trustee of each county is declared to be the proper public trustee to issue public trustee's deeds, certificates of purchase, certificates of redemption, releases of deeds of trust, and all other documents required of a public trustee for all property located in that public trustee's county at the time of execution of such documents by the public trustee or at the time the deed of trust was recorded in that county. All such documents may be recorded in either county. Each public trustee is also authorized to make sales and perform all acts required of a public trustee in connection with property located in that public trustee's county at the time of performance of such acts by the public trustee or at the time the deed of trust was recorded in that county. All acts that have been performed and all documents that have been executed by any public trustee in compliance with this section are validated.

Source: L. 90: Entire article R&RE, p. 1652, § 1, effective October 1. **L. 2002:** Entire section amended, p. 1081, § 1, effective June 1.

Editor's note: This section is similar to former § 38-37-136, as it existed prior to 1990.

38-37-113. Checking account - custodial funds. (1) In the performance of his or her duties under this article and article 38 of this title, the public trustee of each county shall have the authority to establish and manage one or more of the following accounts: An automated clearing house account, checking account, escrow account, custodial account, similar banking services, or similar overnight depository account with a bank or savings and loan association that is an eligible public depository under the "Public Deposit Protection Act", article 10.5 of title 11, S.A.R.S., or the "Savings and Loan Association Public Deposit Protection Act", article 47 of title 11, S.A.R.S. A public trustee may also participate in local government investment pool trust funds as described in part 7 of article 75 of title 24, S.A.R.S., and invest public funds in eligible money market mutual funds described in part 6 of article 75 of title 24, S.A.R.S.

(2) Other than fees and costs, which shall be governed by section 38-37-104, all moneys received by a public trustee for the purposes of a cure, a bid, excess proceeds, or a redemption under article 38 of this title shall be held as custodial funds for the party entitled to receive such moneys. Any moneys that a holder of an evidence of debt is entitled to receive may be transmitted electronically to the attorney for the holder in the manner set forth in a memorandum of understanding between the attorney for the holder and the public trustee. All electronic transmission fees and costs between the office of the public trustee and the attorney for the holder shall be an additional fee and cost of the foreclosure.

(3) Nothing in this section shall lessen or otherwise modify the immunities and protections extended by law to public trustees and any governmental entity with which public

trustees are associated. No contractual relationship shall be deemed to exist between a public trustee and a party entitled to receive moneys as described under subsection (2) of this section.

Source: L. 2002: Entire section added, p. 1333, § 5, effective July 1. **L. 2006:** (1) amended, p. 560, § 4, effective August 7; (1) and (2) amended, p. 1437, § 5, effective January 1, 2008.

Editor's note: The effective date for amendments made to subsections (1) and (2) by chapter 305, Session Laws of San Andreas 2006, was changed from July 1, 2007, to January 1,
2008, by section 27 of chapter 404, Session Laws of San Andreas 2007. (See L. 2007, p. 1849.)

ARTICLE 38

Foreclosure Sales

Editor's note: This article was numbered as article 9 of chapter 118, S.A.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1990, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1990, consult the San Andreas statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of S.A.R.S. 1973 beginning on page vii in the front of this volume. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

Law reviews: For article, "The Agricultural Credit Act of 1987", see 17 S.A. Law. 611 (1988); for article, "Foreclosure by Private Trustee: Now Is the Time for San Andreas", see 65 Den.
U.L. Rev. 41 (1988); for article, "Foreclosures of Deeds of Trust and Mortgages: 1990 Statutory Amendments -- Parts I and II", see 19 S.A. Law. 1601 and 1843 (1990); for article, "San Andreas's New Fraudulent Transfer Statutes", see 20 S.A. Law. 1815 (1991); for article, "Foreclosure Sale Excess Proceeds", see 23 S.A. Law. 375 (1994); for article, "Recent Developments in Foreclosure Law", see 23 S.A. Law. 599 (1994); for article, "Changes Relating to Public Trustee Foreclosures Implemented by Senate Bill 161", see 31 S.A. Law. 11 (Nov. 2002); for comment, "Closing the Door on Unfair Foreclosure Practices in San Andreas", see 74 U. S.A. L. Rev. 241 (2003); for article, "Public Trustee Foreclosures: Be Aware of What Remains", see 40 S.A. Law. 61 (Sept. 2011).

PART 1

FORECLOSURE SALE

Law reviews: For article, "You've Got an Amicus Curiae in Me (Or Two)", see 51 S.A. Law. 30 (Mar. 2022).

38-38-100.3. Definitions. As used in articles 37 to 39 of this title 38, unless the context

otherwise requires:

(1) "Agricultural property" means property, none of which, on the date of recording of the deed of trust or other lien or at the time of the recording of the notice of election and demand or lis pendens, is:

(a) Platted as a subdivision;

(b) Located within an incorporated town, city, or city and county; or

(c) Valued and assessed as other than agricultural property pursuant to sections 39-1-102 (1.6)(a) and 39-1-103 (5), S.A.R.S., by the assessor of the county where the property is located.

(1.3) "Alternate lienor" means a person deemed a lienor by section 38-38-305.5 (1)(a).

(1.5) "Amended mailing list" means the amended mailing list in accordance with section 38-38-103 (2) containing the names and addresses in the mailing list as defined in subsection (14) of this section and the names and addresses of the following persons:

(a) The owner of the property, if different than the grantor of the deed of trust, as of the date and time of the recording of the notice of election and demand or lis pendens as shown in the records at the address indicated in such recorded instrument; and

(b) Each person, except the public trustee, who appears to have an interest in the property described in the combined notice by an instrument recorded prior to the date and time of the recording of the notice of election and demand or lis pendens with the clerk and recorder of the county where the property or any portion thereof is located at the address of the person indicated on the instrument, if the person's interest in the property may be extinguished by the foreclosure.

(2) "Attorney for the holder" means an attorney licensed and in good standing in the state of San Andreas to practice law and retained by the holder of an evidence of debt to process a foreclosure under this article.

(2.5) "Borrower" means a person liable under an evidence of debt constituting a residential mortgage loan.

(3) "Certified copy" means, with respect to a recorded document, a copy of the document certified by the clerk and recorder of the county where the document was recorded.

(3.5) "CFPB" means the federal consumer financial protection bureau.

(4) "Combined notice" means the combined notice of sale, right to cure, and right to redeem described in section 38-38-103 (4)(a).

(4.3) "Common interest community" has the meaning set forth in section 38-33.3-103 (8).

(4.5) "Complete loss mitigation application" means an application in connection with which a servicer has received all the information that the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower.

(5) "Confirmation deed" means the deed described in section 38-38-501 in the form specified in section 38-38-502 or 38-38-503.

(5.3) "Consensual lien" means a conveyance of an interest in real property, granted by the owner of the property after the recording of a notice of election and demand, that is not an absolute conveyance of fee title to the property. "Consensual lien" includes but is not limited to a deed of trust, mortgage or other assignment, encumbrance, option, lease, easement, contract, including an instrument specified in section 38-38-305, or conveyance as security for the performance of the grantor. "Consensual lien" does not include a lien described in section 38-38-306 or 38-33.3-316.

(5.7) "Corporate surety bond" means a bond issued by a person authorized to issue bonds in the state of San Andreas with the public trustee as obligee, conditioned against the delivery of an original evidence of debt to the damage of the public trustee.

(6) "Cure statement" means the statement described in section 38-38-104 (2)(a).

(7) "Deed of trust" means a security instrument containing a grant to a public trustee together with a power of sale.

(8) "Evidence of debt" means a writing that evidences a promise to pay or a right to the payment of a monetary obligation, such as a promissory note, bond, negotiable instrument, a loan, credit, or similar agreement, or a monetary judgment entered by a court of competent jurisdiction.

(9) "Fees and costs" means all fees, charges, expenses, and costs described in section 38-38-107.

(10) "Holder of an evidence of debt" or "holder" means the person in actual possession of or person entitled to enforce an evidence of debt; except that the term does not include a person acting as a nominee solely for the purpose of holding the evidence of debt or deed of trust as an electronic registry without any authority to enforce the evidence of debt or deed of trust. For the purposes of articles 37 to 40 of this title, the following persons are presumed to be the holder of an evidence of debt:

(a) The person who is the obligee of and who is in possession of an original evidence of debt;

(b) The person in possession of an original evidence of debt together with the proper indorsement or assignment thereof to such person in accordance with section 38-38-101 (6);

(c) The person in possession of a negotiable instrument evidencing a debt, which has been duly negotiated to such person or to bearer or indorsed in blank; or

(d) The person in possession of an evidence of debt with authority, which may be granted by the original evidence of debt or deed of trust, to enforce the evidence of debt as agent, nominee, or trustee or in a similar capacity for the obligee of the evidence of debt.

(11) "Junior lien" means a deed of trust or other lien or encumbrance upon the property for which the amount due and owing thereunder is subordinate to the deed of trust or other lien being foreclosed.

(12) "Junior lienor" means a person who is a beneficiary, holder, or grantee of a junior lien.

(12.5) "Lienor" includes without limitation the holder of a certificate of purchase or certificate of redemption for property, issued upon the foreclosure of a deed of trust or other lien on the property.

(13) "Lis pendens" means a lis pendens in accordance with section 38-35-110 that is recorded with the clerk and recorder of the county where the property or any portion thereof is located and that refers to a judicial action in which one of the claims is for foreclosure and sale of the property by an officer or in which a claim or interest in the property is asserted.

(13.3) "Loss mitigation application" means an oral or written request for a loss mitigation option that is accompanied by any information requested by a servicer for evaluation for a loss mitigation option.

(13.7) "Loss mitigation option" means an alternative to foreclosure offered by the owner, holder, or assignee of a mortgage loan that is made available through the servicer to the borrower.

(14) "Mailing list" means the mailing list in accordance with section 38-38-101 (1)(e) provided to the officer by the holder of the evidence of debt or the attorney for the holder containing the names and addresses of the following persons:

(a) The original grantor of the deed of trust or obligor under any other lien being foreclosed at the address shown in the recorded deed of trust or other lien being foreclosed and, if different, the last address, if any, shown in the records of the holder of the evidence of debt;

(b) Any person known or believed by the holder of the evidence of debt to be personally liable under the evidence of debt secured by the deed of trust or other lien being foreclosed at the last address, if any, shown in the records of the holder;

(c) The occupant of the property, addressed to "occupant" at the address of the property; and

(d) With respect to a public trustee sale, a lessee with an unrecorded possessory interest in the property at the address of the premises of the lessee and, if different, the address of the property, to the extent that the holder of the evidence of debt desires to terminate the possessory interest with the foreclosure.

(15) "Maintaining and repairing" means the act of caring for and preserving a property in its current condition or restoring a property to a sound or working condition after damage; except that "maintaining and repairing" shall not include, unless done pursuant to an order entered by a court of competent jurisdiction, any act of advancing a property to a better condition or any act that increases the quality of or adds to the improvements located on a property.

(16) "Notice of election and demand" means a notice of election and demand for sale related to a public trustee foreclosure under this article.

(17) "Officer" means the public trustee or sheriff conducting a foreclosure under this article.

(17.3) "Overbid" means the amount a property is sold for at a foreclosure sale that is in excess of the written or amended bid amount executed by the holder of the evidence of debt secured by the deed of trust or other lien being foreclosed.

(17.5) "Person" means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, limited liability company, partnership, association, or other legal entity.

(18) "Property" means the portion of the property encumbered by a deed of trust or other lien that is being foreclosed under this article or the portion of the property being released from a deed of trust or other lien under article 39 of this title.

(19) "Publish", "publication", "republish", or "republication" means the placement by an officer of a legal notice that meets the requirements set forth in section 24-70-103 containing a combined notice that complies with the requirements of section 24-70-109 in a newspaper in the county or counties where the property to be sold is located. The officer shall select the newspaper.

(20) "Qualified holder" means a holder of an evidence of debt, certificate of purchase, certificate of redemption, or confirmation deed that is also one of the following:

(a) A bank as defined in section 11-101-401 (5), S.A.R.S.;

(b) Repealed.

(c) A federally chartered savings and loan association doing business in San Andreas or a savings and loan association chartered under the "Savings and Loan Association Law," articles 40 to 46 of title 11, S.A.R.S.;

(d) A supervised lender as defined in section 5-1-301 (46), S.A.R.S., that is licensed to make supervised loans pursuant to section 5-2-302, S.A.R.S., and that is either:

(I) A public entity, which is an entity that has issued voting securities that are listed on a national security exchange registered under the federal "Securities Exchange Act of 1934", as amended; or

(II) An entity in which all of the outstanding voting securities are held, directly or indirectly, by a public entity;

(e) An entity in which all of the outstanding voting securities are held, directly or indirectly, by a public entity that also owns, directly or indirectly, all of the voting securities of a supervised lender as defined in section 5-1-301 (46), S.A.R.S., that is licensed to make supervised loans pursuant to section 5-2-302, S.A.R.S.;

(f) A federal housing administration approved mortgagee;

(g) A federally chartered credit union doing business in San Andreas or a state-chartered credit union as described in section 11-30-101, S.A.R.S.;

(h) An agency or department of the federal government;

(i) An entity created or sponsored by the federal or state government that originates, insures, guarantees, or purchases loans or a person acting on behalf of such an entity to enforce an evidence of debt or the deed of trust securing an evidence of debt;

(j) Any community development financial institution that has been certified and maintains such current status from the community development financial institutions fund administered by the United States department of the treasury, referred to in this section as the "fund". In order to be a qualified holder under this article, the community development financial institution must:

(I) Be a legal entity;

(II) Have a primary mission of promoting community development;

(III) Be a financing entity;

(IV) Primarily serve one or more target markets as defined by the fund;

(V) Promote development services in conjunction with its financing activities;

(VI) Maintain accountability to its defined target market; and

(VII) Be a nongovernmental entity and not be under the control of any governmental entity; except that a tribal government is exempt from the requirements of this subparagraph (VII).

(k) Any entity with active certification under the fund that originates, insures, guarantees, or purchases loans or a person acting on behalf of such an entity to enforce an evidence of debt or the deed of trust securing an evidence of debt;

(k.5) A private company that originates, insures, guaranties, or purchases loans on behalf of a holder of evidence of debt that is secured by a deed of trust encumbering a time share estate as defined in section 38-33-110 (5), with a minimum of five million dollars in assets or not less than one thousand active loans; or

(l) Any entity listed in paragraphs (a) to (k) of this subsection (20) acting in the capacity of agent, nominee except as otherwise specified in subsection (10) of this section, or trustee for another person.

(21) "Records" means the records of the county clerk and recorder of the county where the property is located.

(21.3) "Residential mortgage loan" means a loan that is primarily for personal, family, or household use and that is secured by a mortgage, deed of trust, or other equivalent, consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a single-family dwelling or multiple-family dwelling of four or fewer units that is or will be used by the borrower as the borrower's primary residence.

(21.6) "Residential real estate" means any real property upon which a dwelling is or will be constructed.

(22) "Sale" means a foreclosure sale conducted by an officer under this article.

(23) "Secured indebtedness" means the amount owed pursuant to the evidence of debt without regard to the value of the collateral.

(23.3) (a) "Servicer" or "mortgage servicer" means an entity that directly services a loan or that is responsible for interacting with the borrower; managing the loan account on a daily basis, including collecting and crediting periodic loan payments; managing any escrow account; or enforcing the note and security instrument, either as the current holder of the evidence of debt or as the current holder's authorized agent.

(b) "Servicer" includes an entity providing such services pursuant to designation as a subservicing agent or by contract with a master servicer.

(c) "Servicer" does not mean a trustee, including the public trustee, or a trustee's authorized agent acting under a power of sale pursuant to a deed of trust.

(23.6) "Single point of contact" means an individual or team of personnel, each of whom has the ability and authority to perform the responsibilities described in section 38-38-103.1 on behalf of the servicer. The servicer shall ensure that each member of the team is knowledgeable about the borrower's situation and current status.

(24) "Statement of redemption" means the signed and acknowledged statement of the holder of the evidence of debt or the signed statement of the attorney for the holder as required by section 38-38-302 (3) or the signed and acknowledged statement of the lienor or the signed statement of the attorney for the lienor as required by section 38-38-302 (1)(f).

(25) "Unit" has the meaning set forth in section 38-33.3-103 (30).

(26) "Unit association lien" means a lien in a unit in a common interest community that is held by an association, as defined in section 38-33.3-103 (3).

Source: L. 2006: Entire section added, p. 1438, § 6, effective January 1, 2008. **L. 2007:** IP, IP(10), (18), and (19) amended and (5.3), (5.7), and (12.5) added, p. 1831, § 5, effective January 1, 2008. **L. 2009:** (1.5) and (17.5) added and IP(10), (11), (14), and (19) amended, (HB 09-1207), ch. 164, p. 703, § 1, effective January 1, 2010. **L. 2012:** (17.3) added, (SB 12-030), ch. 96, p. 315, § 3, effective September 1. **L. 2013:** (20)(b) repealed, (SB 13-154), ch. 282, p. 1489, § 73, effective July 1. **L. 2014:** IP(10) amended, (HB 14-1130), ch. 156, p. 541, § 1, effective May 9; (20)(i) and (20)(j) amended and (20)(k) and (20)(l) added, (SB 14-022), ch. 101, p. 374, § 1, effective August 6; (2.5), (3.5), (4.5), (13.3), (13.7), (21.3), (21.6), (23.3), and (23.6) added, (HB 14-1295), ch. 157, p. 545, § 1, effective January 1, 2015. **L. 2018:** IP and (19) amended, (HB 18-1254), ch. 138, p. 902, § 1, effective August 8. **L. 2021:** (20)(k) amended and (20)(k.5) added, (HB 21-1224), ch. 199, p. 1057, § 1, effective May 28. **L. 2024:** (1.3), (4.3), (25), and (26) added, (HB 24-1337), ch. 422, p. 2884, § 5, effective August 7.

Editor's note: (1) The effective date for the enactment of this section by chapter 305, Session Laws of San Andreas 2006, was changed from July 1, 2007, to January 1, 2008, by section 27 of chapter 404, Session Laws of San Andreas 2007. (See L. 2007, p. 1849.)

(2) Section 9(2) of chapter 422 (HB 24-1337), Session Laws of San Andreas 2024, provides that the act changing this section applies to debts accrued on or after August 7, 2024.

Cross references: For the federal "Securities Exchange Act of 1934", see 15 U.S.C. 78a et seq.

38-38-101. Holder of evidence of debt may elect to foreclose. (1) **Documents required.** Whenever a holder of an evidence of debt declares a violation of a covenant of a deed of trust and elects to publish all or a portion of the property therein described for sale, the holder or the attorney for the holder shall file the following with the public trustee of the county where the property is located:

(a) A notice of election and demand signed and acknowledged by the holder of the evidence of debt or signed by the attorney for the holder;

(b) The original evidence of debt, including any modifications to the original evidence of debt, together with the original indorsement or assignment thereof, if any, to the holder of the evidence of debt or other proper indorsement or assignment in accordance with subsection (6) of this section or, in lieu of the original evidence of debt, one of the following:

(I) A corporate surety bond in the amount of one and one-half times the face amount of the original evidence of debt;

(II) A copy of the evidence of debt and a certification signed and properly acknowledged by a holder of an evidence of debt acting for itself or as agent, nominee, or trustee under subsection (2) of this section or a statement signed by the attorney for such holder, citing the paragraph of section 38-38-100.3 (20) under which the holder claims to be a qualified holder and certifying or stating that the copy of the evidence of debt is true and correct and that the use of the copy is subject to the conditions described in paragraph (a) of subsection (2) of this section; or

(III) A certified copy of a monetary judgment entered by a court of competent jurisdiction;

(c) The original recorded deed of trust securing the evidence of debt and any original recorded modifications of the deed of trust or any recorded partial releases of the deed of trust, or in lieu thereof, one of the following:

(I) Certified copies of the recorded deed of trust and any recorded modifications of the deed of trust or recorded partial releases of the deed of trust; or

(II) Copies of the recorded deed of trust and any recorded modifications of the deed of trust or recorded partial releases of the deed of trust and a certification signed and properly acknowledged by a holder of an evidence of debt acting for itself or as an agent, nominee, or trustee under subsection (2) of this section or a signed statement by the attorney for such holder, citing the paragraph of section 38-38-100.3 (20) under which the holder claims to be a qualified holder and certifying or stating that the copies of the recorded deed of trust and any recorded modifications of the deed of trust or recorded partial releases of the deed of trust are true and correct and that the use of the copies is subject to the conditions described in paragraph (a) of subsection (2) of this section;

(d) A combined notice pursuant to section 38-38-103; except that the combined notice may be omitted with the prior approval of the public trustee;

(e) A mailing list;

(f) Any affidavit recorded pursuant to section 38-35-109 (5) affecting the deed of trust described in paragraph (c) of this subsection (1), which affidavit shall be accepted by the public trustee as modifying the deed of trust for all purposes under this article only if the affidavit is filed with the public trustee at the same time as the other documents required under this subsection (1);

(f.5) If there is a loan servicer of the evidence of debt described in the notice of election and demand and the loan servicer is not the holder, a statement executed by the holder of the evidence of debt or the attorney for such holder, identifying, to the best of such person's knowledge, the name of the loan servicer;

(g) A statement executed by the holder of an evidence of debt, or the attorney for such holder, identifying, to the best knowledge of the person executing such statement, the name and address of the current owner of the property described in the notice of election and demand; and

(h) Repealed.

(2) **Foreclosure by qualified holder without original evidence of debt, original or certified copy of deed of trust, or proper indorsement.** (a) A qualified holder, whether acting for itself or as agent, nominee, or trustee under section 38-38-100.3 (20), that elects to foreclose without the original evidence of debt pursuant to subparagraph (II) of paragraph (b) of subsection (1) of this section, or without the original recorded deed of trust or a certified copy thereof pursuant to subparagraph (II) of paragraph (c) of subsection (1) of this section, or without the proper indorsement or assignment of an evidence of debt under paragraph (b) of subsection (1) of this section shall, by operation of law, be deemed to have agreed to indemnify and defend any person liable for repayment of any portion of the original evidence of debt in the event that the original evidence of debt is presented for payment to the extent of any amount, other than the amount of a deficiency remaining under the evidence of debt after deducting the amount bid at sale, and any person who sustains a loss due to any title defect that results from reliance upon a sale at which the original evidence of debt was not presented. The indemnity granted by this subsection (2) shall be limited to actual economic loss suffered together with any court costs and reasonable attorney fees and costs incurred in defending a claim brought as a direct and proximate cause of the failure to produce the original evidence of debt, but such indemnity shall not include, and no claimant shall be entitled to, any special, incidental, consequential, reliance, expectation, or punitive damages of any kind. A qualified holder acting as agent, nominee, or trustee shall be liable for the indemnity pursuant to this subsection (2).

(b) In the event that a qualified holder or the attorney for the holder commences a foreclosure without production of the original evidence of debt, proper indorsement or assignment, or the original recorded deed of trust or a certified copy thereof, the qualified holder or the attorney for the holder may submit the original evidence of debt, proper indorsement or assignment, or the original recorded deed of trust or a certified copy thereof to the officer prior to the sale. In such event, the sale shall be conducted and administered as if the original evidence of debt, proper indorsement or assignment, or the original recorded deed of trust or a certified copy thereof had been submitted at the time of commencement of such proceeding, and any indemnities deemed to have been given by the qualified holder under paragraph (a) of this subsection (2) shall be null and void as to the instrument produced under this paragraph (b).

(c) In the event that a foreclosure is conducted where the original evidence of debt, proper indorsement or assignment, or original recorded deed of trust or certified copy thereof has not been produced, the only claims shall be against the indemnitor as provided in paragraph (a) of this subsection (2) and not against the foreclosed property or the attorney for the holder of the evidence of debt. Nothing in this section shall preclude a person liable for repayment of the evidence of debt from pursuing remedies allowed by law.

(3) **Foreclosure on a portion of property.** A holder of an evidence of debt may elect to foreclose a deed of trust under this article against a portion of the property encumbered by the deed of trust only if such portion is encumbered as a separate and distinct parcel or lot by the original or an amended deed of trust. Any foreclosure conducted by a public trustee against less than all of the property then encumbered by the deed of trust shall not affect the lien or the power of sale contained therein as to the remaining property. The amount bid at a sale of less than all of the property shall be deemed to have satisfied the secured indebtedness to the extent of the amount of the bid.

(4) **Notice of election and demand.** A notice of election and demand filed with the public trustee pursuant to this section shall contain the following:

(a) The names of the original grantors of the deed of trust being foreclosed and the original beneficiaries or grantees thereof;

(b) The name of the holder of the evidence of debt;

(c) The date of the deed of trust being foreclosed;

(d) The recording date, county, book, and page or reception number of the recording of the deed of trust being foreclosed;

(e) The amount of the original principal balance of the secured indebtedness;

(f) The amount of the outstanding principal balance of the secured indebtedness as of the date of the notice of election and demand;

(g) A legal description of the property to be foreclosed as set forth in the documents to be provided to the public trustee pursuant to paragraph (c) of subsection (1) of this section;

(h) A statement of whether the property described in the notice of election and demand is all or only a portion of the property then encumbered by the deed of trust being foreclosed;

(i) A statement of the violation of the covenant of the evidence of debt or deed of trust being foreclosed upon which the foreclosure is based, which statement shall not constitute a waiver of any right accruing on account of any violation of any covenant of the evidence of debt or deed of trust other than the violation specified in the notice of election and demand;

(j) The name, address, business telephone number, and bar registration number of the attorney for the holder of the evidence of debt, which may be indicated in the signature block of the notice of election and demand; and

(k) A description of any changes to the deed of trust described in the notice of election and demand that are based on an affidavit filed with the public trustee under paragraph (f) of subsection (1) of this section, together with the recording date and reception number or book and page number of the recording of that affidavit in the records.

(5) **Error in notice.** In the event that the amount of the outstanding principal balance due and owing upon the secured indebtedness is erroneously set forth in the notice of election and demand or the combined notice, the error shall not affect the validity of the notice of election and demand, the combined notice, the publication, the sale, the certificate of purchase described in section 38-38-401, the certificate of redemption described in section 38-38-402, the

confirmation deed as defined in section 38-38-100.3 (5), or any other document executed in connection therewith.

(6) **Indorsement or assignment.** (a) Proper indorsement or assignment of an evidence of debt shall include the original indorsement or assignment or a certified copy of an indorsement or assignment recorded in the county where the property being foreclosed is located.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (6), the original evidence of debt or a copy thereof without proper indorsement or assignment shall be deemed to be properly indorsed or assigned if a qualified holder presents the original evidence of debt or a copy thereof to the officer together with a statement in the certification of the qualified holder or in the statement of the attorney for the qualified holder pursuant to subparagraph (II) of paragraph (b) of subsection (1) of this section that the party on whose behalf the foreclosure was commenced is the holder of the evidence of debt.

(7) **Multiple instruments.** If the evidence of debt consists of multiple instruments, such as notes or bonds, the holder of the evidence of debt may elect to foreclose with respect to fewer than all of such instruments or documents by identifying in the notice of election and demand and the combined notice only those to be satisfied in whole or in part, in which case the requirements of this section shall apply only as to those instruments or documents.

(8) **Assignment or transfer of debt during foreclosure.** (a) The holder of the evidence of debt may assign or transfer the secured indebtedness at any time during the pendency of a foreclosure action without affecting the validity of the secured indebtedness. Upon receipt of written notice signed by the holder who commenced the foreclosure action or the attorney for the holder stating that the evidence of debt has been assigned and transferred and identifying the assignee or transferee, the public trustee shall complete the foreclosure as directed by the assignee or transferee or the attorney for the assignee or transferee. No holder of an evidence of debt, certificate of purchase, or certificate of redemption shall be liable to any third party for the acts or omissions of any assignee or transferee that occur after the date of the assignment or transfer.

(b) The assignment or transfer of the secured indebtedness during the pendency of a foreclosure shall be deemed made without recourse unless otherwise agreed in a written statement signed by the assignor or transferor. The holder of the evidence of debt, certificate of purchase, or certificate of redemption making the assignment or transfer and the attorney for the holder shall have no duty, obligation, or liability to the assignee or transferee or to any third party for any act or omission with respect to the foreclosure or the loan servicing of the secured indebtedness after the assignment or transfer. If an assignment or transfer is made by a qualified holder that commenced the foreclosure pursuant to subsection (2) of this section, the qualified holder's indemnity under said subsection (2) shall remain in effect with respect to all parties except to the assignee or transferee, unless otherwise agreed in a writing signed by the assignee or transferee if the assignee or transferee is a qualified holder.

(c) If an assignment or transfer is made to a holder of an evidence of debt other than a qualified holder, the holder must file with the officer the original evidence of debt and the original recorded deed of trust or, in lieu thereof, the documents required in paragraphs (b) and (c) of subsection (1) of this section. An assignee or transferee shall be presumed to not be a qualified holder, and as such, shall be subject to the provisions of this paragraph (c), unless a signed statement by the attorney for such assignee or transferee that cites the paragraph of

section 38-38-100.3 (20) under which the assignee or transferee claims to be a qualified holder is filed with the officer.

(9) **Partial release from deed of trust.** At any time after the recording of the notice of election and demand but prior to the sale, a portion of the property may be released from the deed of trust being foreclosed pursuant to section 38-39-102 or as otherwise provided by order of a court of competent jurisdiction recorded in the county where the property being released is located. Upon recording of the release or court order, the holder of the evidence of debt or the attorney for the holder shall pay the fee described in section 38-37-104 (1)(b)(IX), amend the combined notice, and, in the case of a public trustee foreclosure, amend the notice of election and demand to describe the property that continues to be secured by the deed of trust or other lien being foreclosed as of the effective date of the release or court order; except that the amended combined notice may be omitted with the prior approval of the public trustee. The public trustee shall record the amended notice of election and demand upon receipt. Upon receipt of the amended combined notice, if provided by the holder or the attorney for the holder, the public trustee shall republish and mail the amended combined notice in the manner set forth in section 38-38-109 (1)(b). If the amended combined notice was omitted pursuant to this subsection (9), upon recordation of the amended notice of election and demand, the public trustee shall supply an amended combined notice and shall then republish and mail the amended combined notice in the manner set forth in section 38-38-109 (1)(b).

(10) **Deposit.** (a) The public trustee may require the holder or servicer to make a deposit of up to five hundred dollars plus the amount of the fee permitted pursuant to section 38-37-104 (1)(b)(I), at the time the notice of election and demand is filed, to be applied against the fees and costs of the public trustee.

(b) The public trustee may allow the attorney for the holder or servicer or the holder or servicer, if not represented by an attorney, to establish with the public trustee one or more accounts, from which the public trustee may pay the fees and costs of the public trustee in any foreclosure filed by the holder or the attorney for the holder and through which the public trustee may transmit refunds or cures, overbids, or redemption proceeds.

Source: L. 90: Entire article R&RE, p. 1653, § 2, effective October 1; (7)(a) amended, p. 1685, § 5, effective October 1. **L. 92:** (7)(a) amended, p. 2089, § 2, effective July 1. **L. 2002:** (1)(b), (7)(a), and (11) amended and (1.5), (1.6), (1.7), and (1.8) added, p. 1333, § 6, effective July 1. **L. 2003:** (1.5)(a) and (1.5)(b) amended, p. 1211, § 25, effective July 1. **L. 2006:** Entire section R&RE, p. 1441, § 7, effective January 1, 2008. **L. 2007:** (1)(b)(I) amended, p. 1832, § 6, effective January 1, 2008. **L. 2009:** (1)(h) added, (HB 09-1276), ch. 404, p. 2220, § 2, effective June 2; (8)(c) added, (HB 09-1207), ch. 164, p. 707, § 3, effective September 1; (1), (4)(g), (4)(j), (6), (9), and (10) amended and (4)(k) added, (HB 09-1207), ch. 164, p. 704, § 2, effective January 1, 2010. **L. 2010:** (1)(h) amended, (HB 10-1240), ch. 200, p. 871, § 1, effective May 5. **L. 2012:** (1)(h) amended, (SB 12-175), ch. 208, p. 895, § 171, effective July 1; (1)(f.5) added and (10) amended, (SB 12-030), ch. 96, p. 315, § 4, effective September 1. **L. 2014:** (10) amended, (HB 14-1130), ch. 156, p. 541, § 2, effective May 9; (2)(a) amended, (SB 14-022), ch. 101, p. 375, § 2, effective August 6. **L. 2016:** (1)(h) repealed, (SB 16-189), ch. 210, p. 791, § 102, effective June 6. **L. 2018:** (1)(d), (9), and (10)(a) amended, (HB 18-1254), ch. 138, p. 902, § 2, effective August 8.

Editor's note: (1) The provisions of this section are similar to provisions of multiple former sections as they existed prior to 1990. For a detailed comparison, see the comparative tables located in the back of the index.

(2) The effective date for amendments made to this section by chapter 305, Session Laws of San Andreas 2006, was changed from July 1, 2007, to January 1, 2008, by section 27 of
chapter 404, Session Laws of San Andreas 2007. (See L. 2007, p. 1849.)

(3) Amendments to subsection (1) by House Bill 09-1207 and House Bill 09-1276 were harmonized.

38-38-102. Recording notice of election and demand - record of sale. (1) No later than ten business days following the receipt of the notice of election and demand, the public trustee shall review the documents filed pursuant to section 38-38-101 (1) and, if the filing is complete, cause the notice to be recorded in the office of the county clerk and recorder of the county where the property described in the notice is located.

(2) The public trustee shall retain in the public trustee's records a printed or electronic copy of the notice of election and demand and the combined notice, as published pursuant to section 38-38-103. Such records shall be available for inspection by the public at the public trustee's offices during the public trustee's normal business hours.

Source: L. 90: Entire article R&RE, p. 1656, § 2, effective October 1. **L. 2005:** Entire section amended, p. 398 § 3, effective August 8. **L. 2006:** Entire section R&RE, p. 1446, § 8, effective January 1, 2008. **L. 2009:** (1) amended, (HB 09-1207), ch. 164, p. 707, § 4, effective September 1.

Editor's note: (1) This section is similar to former § 38-37-137, as it existed prior to 1990.

(2) The effective date for amendments made to this section by chapter 305, Session Laws of San Andreas 2006, was changed from July 1, 2007, to January 1, 2008, by section 27 of chapter 404, Session Laws of San Andreas 2007. (See L. 2007, p. 1849.)

38-38-102.5. Notice prior to residential foreclosure - hotline. (1) As used in this section, "holder" means the holder of an evidence of debt constituting a residential mortgage loan, as defined in section 12-10-702 (21), or that holder's loan servicer or other person acting on the holder's behalf. "Holder" shall not include a person whose only activity as a holder is as the seller in not more than three credit sales or loans per year.

(2) At least thirty days before filing a notice of election and demand and at least thirty days after default, the holder shall mail a notice addressed to the original grantor of the deed of trust at the address in the recorded deed of trust or other lien being foreclosed and, if different, at the last address shown in the holder's records, containing:

(a) The telephone number of the San Andreas foreclosure hotline;

(b) The direct telephone number of the holder's loss mitigation representative or department; and

(c) A statement that, under section 6-1-1107, S.A.R.S., it is illegal for any person acting as a foreclosure consultant to charge an up-front fee or deposit to the borrower for services related to the foreclosure.

(3) (a) This section shall apply only to a default consisting solely of the failure of the original grantor of the deed of trust to make one or more required payments.

(b) With respect to defaults on the same obligation, after the holder has once given the original grantor of the deed of trust a notice as specified in subsection (2) of this section, this section imposes no limitation on the holder's right to foreclose with respect to any subsequent default that occurs within twelve months after such notice.

Source: L. 2001: Entire section added, p. 447, § 1, effective January 1, 2002. **L. 2006:** Entire section repealed, p. 1481, § 39, effective July 1. **L. 2008:** Entire section RC&RE, p. 2258, § 1, effective June 5. **L. 2009:** (2) and (3) amended, (HB 09-1207), ch. 164, p. 708, § 5, effective January 1, 2010. **L. 2014:** (2) amended, (HB 14-1295), ch. 157, p. 546, § 2, effective January 1, 2015. **L. 2019:** (1) amended, (HB 19-1172), ch. 136, p. 1725, § 239, effective October 1.

38-38-103. Combined notice - publication - providing information. (1) (a) No more than twenty calendar days after the recording of the notice of election and demand, the public trustee shall mail a combined notice as described in subsection (4) of this section to the persons set forth in the mailing list.

(b) No more than sixty calendar days nor less than forty-five calendar days prior to the first scheduled date of sale, the public trustee shall mail a combined notice as described in subsection (4) of this section to the persons as set forth in the most recent amended mailing list. If there is no amended mailing list, the public trustee shall mail a combined notice as described in subsection (4) of this section to the persons as set forth in the mailing list.

(c) If a recorded instrument does not specify the address of the party purporting to have an interest in the property under such recorded instrument, the party shall not be entitled to notice and any interest in the property under such instrument shall be extinguished upon the execution and delivery of a deed pursuant to section 38-38-501.

(2) (a) The holder of the evidence of debt or the attorney for the holder shall deliver an amended mailing list to the officer as needed. If an amended mailing list is received after the officer has sent the mailing described in paragraph (b) of subsection (1) of this section, the officer shall continue the sale to no less than sixty-five calendar days after receipt of the amended mailing list. The officer shall send the notice pursuant to subsection (4) of this section to the persons on the amended mailing list no less than forty-five calendar days prior to the actual date of sale.

(b) (Deleted by amendment, L. 2007, p. 1832, § 7, effective January 1, 2008.)

(3) The sheriff shall mail a combined notice as described in subsection (4) of this section to the persons named at the addresses indicated in the mailing list no less than sixteen nor more than thirty calendar days after the holder of the evidence of debt or the attorney for the holder delivers to the sheriff the mailing list and the original or a copy of a decree of foreclosure or a writ of execution directing the sheriff to sell property.

(4) (a) The combined notices required to be mailed pursuant to subsections (1), (2), and (3) of this section must contain the following:

(I) The information required by section 38-38-101 (4);

(II) The statement: A notice of intent to cure filed pursuant to section 38-38-104 shall be filed with the officer at least fifteen calendar days prior to the first scheduled sale date or any date to which the sale is continued;

(II.5) The statement, which must be in bold: If the sale date is continued to a later date, the deadline to file a notice of intent to cure by those parties entitled to cure may also be extended;

(III) The statement: A notice of intent to redeem filed pursuant to section 38-38-302 shall be filed with the officer no later than eight business days after the sale;

(IV) The date to which the sale has been continued pursuant to paragraph (a) of subsection (2) of this section;

(V) The date of sale determined pursuant to section 38-38-108;

(VI) The place of sale determined pursuant to section 38-38-110;

(VII) If the sale is conducted by means of the internet or another electronic medium pursuant to section 38-38-110 (1):

(A) The electronic address;

(B) The location of computer workstations that are available to the public and information about how to obtain instructions on accessing the sale and submitting bids; and

(C) A statement that the bidding rules for the sale will be posted on the internet or other electronic medium used to conduct the sale at least two weeks before the date of sale;

(VIII) The statement as required by section 24-70-109, S.A.R.S.: The lien being foreclosed may not be a first lien; and

(IX) A statement that, if the borrower believes that a lender or servicer has violated the requirements for a single point of contact in section 38-38-103.1 or the prohibition on dual tracking in section 38-38-103.2, the borrower may file a complaint with the San Andreas attorney general, the CFPB, or both, but the filing of a complaint will not stop the foreclosure process. The notice must include contact information for both the San Andreas attorney general's office and the CFPB. If the officer maintains a website, the officer shall also post this information on the website for viewing by all borrowers.

(b) A legible copy of this section and sections 38-37-108, 38-38-104, 38-38-301, 38-38-302, 38-38-304, 38-38-305, and 38-38-306 shall be sent with all notices pursuant to this section.

(5) (a) No more than sixty calendar days nor less than forty-five calendar days prior to the first scheduled date of sale, unless a longer period of publication is specified in the deed of trust or other lien being foreclosed, a deed of trust or other lien being foreclosed is deemed to require the officer to commence publication of the combined notice, omitting both the statements under subsections (4)(a)(II), (4)(a)(III), and (4)(a)(IX) of this section and the copies of the statutes under subsection (4)(b) of this section and adding the first and last publication dates if not already specified in the combined notice, for four weeks, which means publication once each week for five consecutive weeks.

(b) The officer shall review the publication of the combined notice for accuracy.

(c) The fees and costs to be allowed for publication of the combined notice shall be as provided by law for the publication of legal notices or advertising.

(d) Repealed.

Source: L. 90: Entire article R&RE, p. 1656, § 2, effective October 1. **L. 91:** (1) amended, p. 1921, § 52, effective June 1. **L. 2002:** (1) amended, p. 1336, § 7, effective July 1. **L. 2006:** Entire section R&RE, p. 1446, § 9, effective January 1, 2008. **L. 2007:** IP(1)(a)(II), (2), (4)(a)(III), and (5)(a) amended, p. 1832, § 7, effective January 1, 2008. **L. 2009:** (5)(d) added, (HB 09-1276), ch. 404, p. 2221, § 4, effective June 2; (1)(a), (1)(b), (2)(a), (3), (4)(a)(IV), (4)(b),

(5)(a), and (5)(b) amended, (HB 09-1207), ch. 164, p. 708, § 6, effective January 1, 2010. **L. 2012:** (4)(a)(II.5) added, (SB 12-030), ch. 96, p. 315, § 5, effective September 1. **L. 2014:** IP(4)(a), (4)(a)(VI), and (4)(a)(VII) amended and (4)(a)(VIII) added, (HB 14-1295), ch. 157, p. 547, § 3, effective January 1, 2015. **L. 2015:** (4)(a) amended, (HB 15-1142), ch. 113, p. 338, § 3, effective September 1. **L. 2016:** (5)(d) repealed, (SB 16-189), ch. 210, p. 792, § 103, effective June 6. **L. 2018:** (5)(a) amended, (HB 18-1254), ch. 138, p. 903, § 3, effective August 8.

Editor's note: (1) The provisions of this section are similar to provisions of several former sections as they existed prior to 1990. For a detailed comparison, see the comparative tables located in the back of the index.

(2) The effective date for amendments made to this section by chapter 305, Session Laws of San Andreas 2006, was changed from July 1, 2007, to January 1, 2008, by section 27 of
chapter 404, Session Laws of San Andreas 2007. (See L. 2007, p. 1849.)

38-38-103.1. Single point of contact - servicer to designate - duties - exemption. (1) No later than the forty-fifth day of a borrower's delinquency, a servicer shall promptly establish a single point of contact for communications with the borrower. The servicer shall do so within the time periods prescribed in, and subject to the other requirements imposed by, federal law and CFPB rules and orders. Once the single point of contact is established, the servicer shall promptly provide to the borrower, in writing, one or more direct means of communication with the single point of contact.

(2) A single point of contact shall:

(a) Provide the borrower with accurate information about:

(I) Loss mitigation options available to the borrower from the owner or assignee of the borrower's mortgage loan;

(II) Actions the borrower must take to be evaluated for loss mitigation options, including actions the borrower must take to submit a complete loss mitigation application and, if applicable, actions the borrower must take to appeal the servicer's determination to deny a borrower's loss mitigation application for any trial or permanent loan modification program offered by the servicer;

(III) The status of any loss mitigation application that the borrower has submitted to the servicer;

(IV) The circumstances under which the servicer may make a referral to foreclosure; and

(V) Applicable loss mitigation deadlines established by an owner or assignee of the borrower's mortgage loan or by section 38-38-103.2;

(b) Retrieve, in a timely manner:

(I) A complete record of the borrower's payment history; and

(II) All written information the borrower has provided to the servicer and, if available, to prior servicers in connection with a loss mitigation application;

(c) Provide the documents and information identified in paragraph (b) of this subsection (2) to other persons required to evaluate a borrower for loss mitigation options made available by the servicer, if applicable; and

(d) Provide a delinquent borrower with information about the procedures for submitting a notice of error or an information request.

(3) A servicer is exempt from this section if the servicer services five thousand or fewer mortgage loans for all of which the servicer, or an affiliate of the servicer, is the creditor or assignee. In determining whether a servicer services five thousand or fewer mortgages, the servicer is evaluated based on the number of mortgage loans serviced by the servicer and any affiliates as of January 1 for the remainder of the calendar year. A servicer that crosses the threshold has six months after crossing the threshold or until the next January 1, whichever is later, to comply with this section.

(4) A servicer who complies with 12 CFR 1024.40, as promulgated by the CFPB, or is exempt from compliance with that regulation under federal law or CFPB rules, regulations, or orders, is deemed in compliance with this section.

Source: L. 2014: Entire section added, (HB 14-1295), ch. 157, p. 547, § 4, effective January 1, 2015.

38-38-103.2. Dual tracking prohibited - notice to officer - continuation of sale pending inquiry. (1) A servicer is subject to the time limits and other requirements of federal law and CFPB rules in connection with a foreclosure under this article.

(2) The servicer shall:

(a) Notify the borrower in writing when it receives a complete loss mitigation application from the borrower; and

(b) Exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application.

(3) If the borrower has received confirmation from the servicer that the borrower has submitted a complete loss mitigation application or has been offered and has accepted a loss mitigation option and is complying with its provisions, and yet a notice of election and demand pursuant to section 38-38-101 has been filed or action is being taken pursuant to section 38-38-105 or 38-38-106 with regard to the borrower, then, in order to stop the foreclosure sale, no later than fourteen calendar days before the sale date, the borrower must present to the officer the borrower's written notification from the servicer indicating receipt of a complete loss mitigation application dated at least thirty-seven days prior to the sale date or acceptance of a loss mitigation option, and, if the borrower does so:

(a) As soon as possible, but no later than three business days after receipt of the notification, the officer shall contact the attorney for the servicer or holder or the servicer or holder, if not represented by an attorney, by telephone, electronic mail, or first-class mail and inquire as to the status of the loss mitigation option. The officer shall document this inquiry. Until the servicer or its attorney responds to the inquiry, the officer shall continue the sale in accordance with section 38-38-109 (1)(a).

(b) If the attorney for the servicer or holder or the servicer or holder, if not represented by an attorney, fails to respond within seven calendar days to an inquiry under paragraph (a) of this subsection (3), then, as soon as possible but no later than the fourteenth day after the date of the inquiry, the officer shall send a certified letter to the attorney for the servicer or holder or to the servicer or holder, if not represented by an attorney, as listed on the notice of election and demand, inquiring as to the status of the loss mitigation option. The servicer or holder shall reimburse the officer for the cost of mailing the letter.

(c) If, after being contacted in accordance with paragraph (a) or (b) of this subsection (3), the attorney for the servicer or holder or the servicer or holder, if not represented by an attorney, gives the officer a written statement via electronic mail or first-class mail disputing that a loss mitigation option has been offered and accepted or that the borrower is complying with its terms, the officer shall proceed with the sale.

(d) (I) If the attorney for the servicer or holder or the servicer or holder, if not represented by an attorney, acknowledges that a loss mitigation option has been offered and accepted and that the borrower is complying with its terms, the officer shall continue the sale in accordance with section 38-38-109 (1)(a), and the holder shall withdraw the notice of election and demand within one hundred eighty calendar days after the date of the acknowledgment if the borrower continues to comply with the terms of the loss mitigation option.

(II) If, within one hundred eighty calendar days after the date of the acknowledgment, the attorney for the servicer or holder or the servicer or holder, if not represented by an attorney, has not withdrawn the notice of election and demand and neither the attorney for the servicer or holder nor the servicer or holder, if not represented by an attorney, has notified the officer that the borrower is not complying with the terms of the loss mitigation option, the officer may administratively withdraw the notice of election and demand.

(III) If, within one hundred eighty calendar days after the date of the acknowledgment, the borrower fails to comply with the terms of the loss mitigation option, the holder or the attorney for the holder may give written notice to the officer that the loss mitigation option has been breached, and, no later than ten business days after receiving the notice, the officer shall mail an amended combined notice containing the date of the rescheduled sale to each person appearing on the most recent mailing list, or on an updated mailing list if provided by the holder or the holder's attorney. The rescheduled sale date must not be fewer than seven calendar days after the date the amended combined notice is mailed. All fees and costs of providing the amended combined notice may be included as part of the foreclosure costs.

(4) If a foreclosure sale is continued as a result of compliance with the requirements of subsection (3) of this section, the periods for which the sale may be continued are in addition to the twelve-month period of continuance provided by section 38-38-109 (1).

(5) A servicer is exempt from this section if the servicer services five thousand or fewer mortgage loans for all of which the servicer, or an affiliate of the servicer, is the creditor or assignee. In determining whether a servicer services five thousand or fewer mortgages, the servicer is evaluated based on the number of mortgage loans serviced by the servicer and any affiliates as of January 1 for the remainder of the calendar year. A servicer that crosses the threshold has six months after crossing the threshold or until the next January 1, whichever is later, to comply with this section.

(6) A servicer who complies with 12 CFR 1024.41, as promulgated by the CFPB, or is exempt from compliance with that regulation under federal law or CFPB rules, regulations, or orders, is deemed in compliance with this section.

Source: L. 2014: Entire section added, (HB 14-1295), ch. 157, p. 547, § 4, effective January 1, 2015.

38-38-104. Right to cure when default is nonpayment - right to cure for certain technical defaults. (1) Unless the order authorizing the sale described in section 38-38-105

contains a determination that there is a reasonable probability that a default in the terms of the evidence of debt, deed of trust, or other lien being foreclosed other than nonpayment of sums due thereunder has occurred, any of the following persons is entitled to cure the default if the person files with the officer, no later than fifteen calendar days prior to the date of sale, a written notice of intent to cure together with evidence of the person's right to cure to the satisfaction of the officer:

(a) (I) The owner of the property as of the date and time of the recording of the notice of election and demand or lis pendens as evidenced in the records;

(II) If the owner of the property is dead or incapacitated on or after the date and time of the recording of the notice of election and demand or lis pendens, the owner's heirs, personal representative, legal guardian, or conservator as of the time of filing of the notice of intent to cure, whether or not such person's interest is shown in the records, or any co-owner of the property if the co-owner's ownership interest is evidenced in the records as of the date and time of the recording of the notice of election and demand or lis pendens;

(III) A transferee of the property as evidenced in the records as of the time of filing of the notice of intent to cure if the transferee was the property owner's spouse as of the date and time of the recording of the notice of election and demand or lis pendens or if the transferee is wholly owned or controlled by the property owner, is wholly owned or controlled by the controlling owner of the property owner, or is the controlling owner of the property owner;

(IV) A transferee or owner of the property by virtue of merger or other similar event or by operation of law occurring after the date and time of the recording of the notice of election and demand or lis pendens; or

(V) The holder of an order or judgment entered by a court of competent jurisdiction as evidenced in the records after the date and time of the recording of the notice of election and demand or lis pendens ordering title to the property to be vested in a person other than the owner;

(b) A person liable under the evidence of debt;

(c) A surety or guarantor of the evidence of debt; or

(d) A holder of an interest junior to the lien being foreclosed by virtue of being a lienor or lessee of, or a holder of an easement or license on, the property or a contract vendee of the property, if the instrument evidencing the interest was recorded in the records prior to the date and time of the recording of the notice of election and demand or lis pendens. If, prior to the date and time of the recording of the notice of election and demand or lis pendens, a lien is recorded in an incorrect county, the holder's rights under this section shall only be valid if the lien is rerecorded in the correct county at least fifteen calendar days prior to the actual date of sale.

(2) (a) (I) Promptly upon receipt of a notice of intent to cure by the officer, but no less than twelve calendar days prior to the date of sale, the officer shall transmit by mail, facsimile, or electronic means to the person executing the notice of election and demand a request for a statement of all sums necessary to cure the default. The attorney for the holder or servicer or, if none, the holder or servicer, shall file the cure statement with the officer, and the cure statement must set forth the amounts necessary to cure. Upon receipt of the statement of the amounts needed to cure, the officer shall transmit in writing to the person filing the notice of intent to cure the default:

(A) The cure statement; and

(B) A statement that the person filing the notice of intent to cure is entitled to receive from the attorney for the holder or servicer or, if not represented, from the holder or servicer, upon written request mailed to the attorney for the holder or servicer or, if not represented, to the holder or servicer at the address stated on the cure statement, copies of receipts or other credible evidence to support the costs claimed on the cure statement. This request may be sent only after payment to the officer of the amount shown on the cure statement and must be sent within ninety days after payment of the cure amount.

(II) If a cure statement is required pursuant to subparagraph (I) of this paragraph (a), the holder of the evidence of debt shall submit a signed and acknowledged cure statement, or the office of the attorney for the holder shall submit a signed cure statement, specifying the following amounts, itemized in substantially the following categories and in substantially the following form:

CURE STATEMENT

To:_____

Public Trustee (or Sheriff) of the County (or City and County) of_____, State of San Andreas (hereinafter the "officer").

Foreclosure sale number: _____

Grantor: _____

The date through which the cure statement is effective: _____

The following is an itemization of all sums necessary to cure the default (any amount that is based on a good faith estimate is indicated with an asterisk):

Payments due under the evidence of debt:

_____payments of $ _____each

Accrued late charges _____

Other amounts due under the evidence of debt

(specify)

_____ _____

_____ _____

Property inspections _____

Property, general liability,

and casualty insurance _____

Certificate of taxes due _____

Property taxes paid by the holder _____

Owner association
assessment paid by the holder _____

Permitted amounts paid on
prior liens _____

Less impound/escrow account credit _____

Plus impound/escrow account
deficiency _____

Title costs _____

Rule 120 docket fee _____

Rule 120 posting costs _____

Court costs _____

Postage/delivery costs _____

Service/posting costs _____

Attorney fees _____

Other fees and costs (specify):

_____ _____

_____ _____

Reinstatement total $ _____

(Does not include officer's fees and costs)

Officer's fees and costs $ _____

(To be added by officer)

Total to cure $ _____

(To be added by officer)

IT MAY TAKE SEVERAL DAYS BEFORE THE CURE IS PROCESSED AND ENTERED INTO THE HOLDER'S RECORDS.

The total to cure does not include any future monthly mortgage payments that may be due.

Name of the holder of the evidence of debt
and the attorney for the holder:

Holder: _____

Attorney: _____

Printed name: _____

Signature: _____

Attorney address: _____

Attorney business telephone: _____

(III) The cure statement is a representation of fact, made upon the current information and belief of the person signing it. If the holder or servicer determines that there is an inaccurate amount contained in the cure statement, the holder or servicer, or the attorney for the holder or servicer, shall inform the officer immediately and provide a cure statement with updated figures; except that any additional or increased amounts must be added at least ten calendar days before the effective date of the original cure statement. If an inaccurate amount is reported and a corrected cure statement is not provided within the time specified in this subparagraph (III), the officer may continue the sale for one week in accordance with section 38-38-109 (1). An estimate as allowed under subsection (5) of this section is not an inaccurate amount for purposes of this subparagraph (III).

(IV) Within seven business days after the officer's notification to the holder or servicer, or to the attorney for the holder or servicer, that the officer has received the funds necessary to cure the default as reflected on the initial or updated cure statement, the holder or servicer or the attorney for the holder or servicer shall deliver to the officer a final statement, reconciled for estimated amounts that were not or would not be incurred as of the date the cure proceeds were received by the officer, along with receipts or invoices for all rule 120 docket costs and all statutorily mandated posting costs claimed on the cure statement. All amounts of cure proceeds received by the officer in excess of the amounts reflected on the final statement shall be remitted by the officer to the person who paid the cure amount.

(V) (A) The holder or servicer shall remit to the person who paid the cure amount any portion of the cure amount that represents a fee or cost listed on the cure statement that exceeds the amount actually incurred and that was not remitted by the officer in accordance with subparagraph (I) of paragraph (d) of this subsection (2).

(B) The officer shall remit to the person who paid the cure amount any portion of the cure amount that represents a fee or cost of the officer that exceeds the amount actually incurred by the officer.

(VI) The holder or servicer is responsible for retaining receipts or other credible evidence to support all costs claimed on the cure statement, including rule 120 docket fees and posting costs, and the person who paid the cure amount is entitled to receive copies upon written request mailed to the attorney for the holder or servicer or, if not represented, to the holder or servicer at the address stated on the cure statement. The request may be made at any time after payment to the officer of the amount shown on the cure statement, but must be made within ninety days after payment of the cure amount. The attorney for the holder or servicer or, if not represented, the holder or servicer shall provide copies of all receipts or other credible evidence within thirty days after receiving the request, and may provide the copies electronically.

(b) No later than 12 noon on the day before the sale, the person desiring to cure the default shall pay to the officer all sums that are due and owing under the evidence of debt and deed of trust or other lien being foreclosed and all fees and costs of the holder of the evidence of debt allowable under the evidence of debt, deed of trust, or other lien being foreclosed through the effective date that are set forth in the cure statement; except that any principal that would not have been due in the absence of acceleration shall not be included in such sums due.

(c) If a cure is made, interest for the period of any continuance pursuant to section 38-38-109 (1)(c) shall be allowed only at the regular rate and not at the default rate as may be specified in the evidence of debt, deed of trust, or other lien being foreclosed. If a cure is not made, interest at the default rate, if specified in the evidence of debt, deed of trust, or other lien being foreclosed, for the period of the continuance shall be allowed.

(d) (I) Upon receipt of the cure amount, and conditioned upon the withdrawal or dismissal of the foreclosure from the holder or servicer or the attorney for the holder or servicer, the officer shall:

(A) Deliver the cure amount, less the fees and costs of the officer and any adjustments required under subparagraph (III) of paragraph (a) of this subsection (2), to the attorney for the holder or servicer or, if none, to the holder or servicer; and

(B) Obtain and retain, in the officer's records, the name and mailing address of the person who paid the cure amount.

(II) Following the withdrawal or dismissal, the evidence of debt shall be returned uncancelled to the attorney for the holder or servicer or, if none, to the holder or servicer by the public trustee or to the court by the sheriff.

(3) Where the default in the terms of the evidence of debt, deed of trust, or other lien on which the holder of the evidence of debt claims the right to foreclose is the failure of a party to furnish balance sheets or tax returns, any person entitled to cure pursuant to paragraph (a) of subsection (2) of this section may cure such default in the manner prescribed in this section by providing to the holder or the attorney for the holder the required balance sheets, tax returns, or other adequate evidence of the party's financial condition so long as all sums currently due under

the evidence of debt have been paid and all amounts due under paragraph (b) of subsection (2) of this section, where applicable, have been paid.

(4) Any person liable on the debt and the grantor of the deed of trust or other lien being foreclosed shall be deemed to have given the necessary consent to allow the holder of the evidence of debt or the attorney for the holder to provide the information specified in paragraph (a) of subsection (2) of this section to the officer and all other persons who may assert a right to cure pursuant to this section.

(5) A cure statement pursuant to paragraph (a) of subsection (2) of this section shall state the period for which it is effective. The cure statement shall be effective for at least ten calendar days after the date the cure statement is received by the officer or until the last day to cure under paragraph (b) of subsection (2) of this section, whichever occurs first. The cure statement shall be effective for no more than thirty calendar days after the date the cure statement is received by the officer or until the last day to cure under paragraph (b) of subsection (2) of this section, whichever occurs first. The use of good faith estimates in the cure statement with respect to interest and fees and costs is specifically authorized by this article, so long as the cure statement states that it is a good faith estimate effective through the last day to cure as indicated in the cure statement. The use of a good faith estimate in the cure statement shall not change or extend the period or effective date of a cure statement.

(6) Following expiration of the period for which the cure statement is effective, but no less than fifteen calendar days prior to the date of sale, the person who originally submitted the notice of intent to cure may make a written request to the public trustee for an update of the amount necessary to cure. Upon receipt by the public trustee of such written request for updated cure figures, subsection (2) of this section shall apply.

(7) If the holder of the evidence of debt or the attorney for the holder receives a request for a cure statement under paragraph (a) of subsection (2) of this section and does not file a cure statement with the officer by the earlier of ten business days after receipt of the request or the eighth calendar day before the date of the sale, the officer shall continue the sale for one week. Thereafter and until the cure statement is filed, the officer shall continue the sale an additional week for each week that the holder fails to file the cure statement; except that the sale shall not be continued beyond the period of continuance allowed under section 38-38-109 (1)(a). A cure statement must be received by 12 noon on the day it is due in order to meet a deadline set forth in this subsection (7).

Source: L. 90: Entire article R&RE, p. 1657, § 2, effective October 1. **L. 91:** (2) amended, p. 1922, § 53, effective June 1. **L. 92:** (1) amended, p. 2090, § 3, effective July 1. **L. 94:** (2.5) added, p. 1674, § 1, effective July 1. **L. 2002:** Entire section amended, p. 1336, § 8, effective July 1. **L. 2006:** Entire section R&RE amended, p. 1449, § 10, effective January 1, 2008. **L. 2007:** IP(1) and (5) amended, p. 1833, § 8, effective January 1, 2008. **L. 2009:** (1)(a)(V), (1)(d), and (2)(a) amended and (6) and (7) added, (HB 09-1207), ch. 164, p. 710, § 7, effective January 1, 2010. **L. 2012:** (2)(a), (2)(b), (5), and (7) amended, (SB 12-030), ch. 96, p. 315, § 6, effective September 1. **L. 2014:** (2)(a)(I) and (2)(d) amended and (2)(a)(III), (2)(a)(IV), (2)(a)(V), and (2)(a)(VI) added, (HB 14-1130), ch. 156, p. 542, § 3, effective May 9.

Editor's note: (1) This section is similar to former § 38-39-118, as it existed prior to 1990.

(2) The effective date for amendments made to this section by chapter 305, Session Laws of San Andreas 2006, was changed from July 1, 2007, to January 1, 2008, by section 27 of
chapter 404, Session Laws of San Andreas 2007. (See L. 2007, p. 1849.)

38-38-105. Court order authorizing sale mandatory - notice of hearing for residential properties - definition.

(1) Repealed.

(2) (a) On and after January 1, 2008, whenever a public trustee forecloses upon a deed of trust under this article, the holder of the evidence of debt or the attorney for the holder shall obtain an order authorizing sale from a court of competent jurisdiction to issue the same pursuant to rule 120 or other rule of the San Andreas rules of civil procedure. The order shall recite the date the hearing was scheduled if no hearing was held, or the date the hearing was completed if a hearing was held, which date in either case must be no later than the day prior to the last day on which an effective notice of intent to cure may be filed with the public trustee under section 38-38-104. A sale held without an order authorizing sale issued in compliance with this paragraph (a) shall be invalid.

(b) The public trustee shall postpone the sale, unless the holder or the attorney for the holder causes a copy of the order to be provided to the public trustee no later than 12 noon on the second business day prior to the date of sale. A sale held in violation of this paragraph (b) shall not be invalid if an order that complied with the provisions of paragraph (a) of this subsection (2) was entered.

(3) (a) Not less than fourteen days before the date set for the hearing pursuant to rule 120 or other rule of the San Andreas rules of civil procedure, the holder or the attorney for the holder seeking an order authorizing sale under this section for a residential property shall cause a notice of hearing as described in rule 120 (b) of the San Andreas rules of civil procedure to be posted in a conspicuous place on the property that is the subject of the sale. If possible, the notice shall be posted on the front door of the residence, but if access to the door is not possible or is restricted, the notice shall be posted at an alternative conspicuous location, such as a gate or similar impediment. If a person at the residence is impeding posting at the residence at the time of the attempted posting, the notice may be handed to that person to satisfy this posting requirement. The notice required by this subsection (3) is sufficient if it complies with the requirements of this section without regard to any requirements for service of process in a civil action required by court rule.

(b) For servicers who are not exempt pursuant to section 38-38-103.1 (3) or 38-38-103.2 (4), the notice must contain or be accompanied by a conspicuous statement, substantially as follows, together with contact information for both the San Andreas attorney general's office and the CFPB:

If you believe that the lender or servicer of this mortgage has violated the requirements for a single point of contact in section 38-38-103.1, San Andreas Revised Statutes, or the prohibition on dual tracking in section 38-38-103.2, San Andreas Revised Statutes, you may file a complaint with the San Andreas attorney general, the federal Consumer Financial Protection Bureau, or both, at _____ [insert contact information for both]. **The filing of a complaint will not stop the foreclosure process.**

(4) As used in this section, "residential property" means any real property upon which a dwelling, as defined in section 5-1-301 (18), S.A.R.S., is constructed and occupied.

Source: L. 90: Entire article R&RE, p. 1657, § 2, effective October 1. **L. 2006:** Entire section amended, p. 1452, § 11, effective July 1. **L. 2007:** Entire section amended, p. 1834, § 9, effective June 1. **L. 2009:** (2) amended, (HB 09-1207), ch. 164, p. 711, § 8, effective September 1. **L. 2010:** (3) added, (HB 10-1240), ch. 200, p. 872, § 2, effective May 5. **L. 2012:** (3) amended and (4) added, (SB 12-030), ch. 96, p. 318, § 7, effective September 1. **L. 2014:** (3) amended, (HB 14-1295), ch. 157, p. 550, § 5, effective January 1, 2015.

Editor's note: (1) This section is similar to former § 38-37-140 (1), as it existed prior to 1990.

(2) Subsection (1)(b) provided for the repeal of subsection (1), effective January 1, 2008. (See L. 2007, p. 1834.)

Cross references: For the nature and effect of mortgages, see § 38-35-117.

38-38-106. Bid required - form of bid. (1) (a) The holder of the evidence of debt or the attorney for the holder shall submit a bid setting forth the holder's initial bid for the property that is received by the officer no later than 12 noon on the second business day prior to the date of sale as provided in this section. In addition, if the sale will be conducted electronically, the holder may also include a maximum bid for the property. The holder or the attorney for the holder need not personally attend the sale. If the sale will be conducted electronically and the holder has elected to include a maximum bid, the bid shall be increased electronically in increments incorporated in the electronic program used by the officer to conduct the electronic sale up to such maximum bid if one or more third parties submit competing bids for the property.

(b) If the bid is not received by the officer by the deadline, the officer shall continue the sale for one week and shall announce or post a notice of the continuance at the time and place designated for the sale.

(2) The holder of the evidence of debt shall submit a signed and acknowledged bid, or the attorney for the holder shall submit a signed bid, which must specify the following amounts, itemized in substantially the following categories and in substantially the following form:

BID

To: _____
Public Trustee (or Sheriff) of the County (or City and County) of _____, State of San Andreas (hereinafter the "officer").
Date:_____
_____, whose mailing address is _____, bids the sum of $_____in your Sale No. _____to be held on the ____day of ____, 20__.
The following is an itemization of all amounts due the holder of the evidence of debt secured by the deed of trust or other lien being foreclosed.

Street address of property being

foreclosed, if known: _____

Regular [ ] / default [ ] rate of interest as of the date of

sale: _____

(Inapplicable items may be omitted):

Amounts due under the evidence of debt:

Principal $ _____

Interest _____

Late charges _____

Allowable prepayment penalties

or premiums _____

Other amounts due under the evidence of debt
(specify) _____

_____ _____

_____ _____

Category subtotal: $ _____

Other fees and costs advanced by the holder of evidence of

debt:

Property, general liability, and

casualty insurance _____

Property inspections _____

Appraisals _____
Taxes and assessments _____

Utility charges owed or incurred _____

Owner association

assessment paid _____

Permitted amounts paid on

prior liens _____

Permitted lease payments _____

Less impound/escrow account credit _____

Plus impound/escrow account deficiency _____

Other (describe) _____

Category subtotal: $ _____

Attorney fees and advances:

Attorney fees _____

Title commitments and insurances or abstractor

charges _____

Court docketing _____

Statutory notice _____

Postage _____

Electronic transmissions _____

Photocopies _____

Telephone _____

Other (describe) _____

Category subtotal: $ _____

Officer fees and costs:

Officer statutory fee _____

Publication charges _____

Certificate of purchase

recording fee _____

Confirmation deed fee _____

Confirmation deed

recording fee _____

Other (describe) _____

Category subtotal: $ _____

Total due holder of the evidence of debt _____

Initial Bid $ _____

Deficiency $ _____

I enclose herewith the following:

1. Order authorizing sale.
2. Check (if applicable) to your order in the sum of $_____ covering the balance of your fees and costs.
3. Other: _____.

Please send us the following:

1. Promissory note with the deficiency, if any, noted thereon
2. Refund for overpayment of officer's fees and costs, if any
3. Other: _____.

Name of the holder of the evidence of debt
and the attorney for the holder:
Holder: _____
Attorney: _____
By: _____
Attorney registration number: ___
Attorney address: ___
Attorney business telephone: ___

(3) Upon receipt of the initial bid from the holder of the evidence of debt or the attorney for the holder, the officer shall make such information available to the general public.

(4) The officer shall enter the bid by reading the bid amount set forth on the bid and the name of the person that submitted the bid or by posting or providing such bid information at the time and place designated for sale.

(5) Bids submitted pursuant to this section may be amended by the holder of the evidence of debt or the attorney for the holder in writing or electronically, as determined by the officer pursuant to section 38-38-112, no later than 12 noon the day prior to the sale, or orally at the time of sale if the person amending the bid is physically present at the sale or electronically

during the sale if the sale is conducted by means of the internet or another electronic medium. A bid submitted pursuant to this section may be modified orally at the time of sale if the person making the modification modifies and reexecutes the bid at the sale.

(6) The holder of the evidence of debt or the attorney for the holder shall bid at least the holder's good faith estimate of the fair market value of the property being sold, less the amount of unpaid real property taxes and all amounts secured by liens against the property being sold that are senior to the deed of trust or other lien being foreclosed and less the estimated reasonable costs and expenses of holding, marketing, and selling the property, net of income received; except that the holder or the attorney for the holder need not bid more than the total amount due to the holder as specified in the bid pursuant to subsection (2) of this section. The failure of the holder to bid the amount required by this subsection (6) shall not affect the validity of the sale but may be raised as a defense by any person sued on a deficiency.

(7) (a) (I) Other than a bid by the holder of the evidence of debt not exceeding the total amount due shown on the bid pursuant to subsection (2) of this section, the payment of any bid amount at sale must be received by the officer no later than the date and time of the sale, or at an alternative time after the sale and on the day of the sale, as specified in writing by the officer. The payment must be in the form specified in section 38-37-108. If the officer has not received full payment of the bid amount from the highest bidder at the sale pursuant to this subsection (7), the next highest bidder who has timely tendered the full amount of the bid under this subsection (7) is deemed the successful bidder at the sale.

(II) If the holder of the evidence of debt is the highest bidder with a bid that exceeds the total amount due shown on the bid pursuant to subsection (2) of this section, the holder of the evidence of debt is only required to pay the excess of the amount bid over the amount due the holder of the evidence of debt, as shown on the bid submitted pursuant to subsection (2) of this section.

(b) The officer may establish written policies relating to all aspects of the foreclosure sale that are consistent with the provisions of this article. The written policies shall be made available to the general public.

Source: L. 90: Entire article R&RE, p. 1658, § 2, effective October 1. **L. 91:** (1) and (2) amended, p. 1922, § 54, effective June 1. **L. 2002:** (2) amended, p. 1339, § 9, effective July 1. **L. 2006:** Entire section R&RE, p. 1452, § 12, effective January 1, 2008. **L. 2007:** (5) amended, p. 1834, § 10, effective January 1, 2008. **L. 2009:** (2) and (7) amended, (HB 09-1207), ch. 164, p. 712, § 9, effective September 1. **L. 2012:** (1) and (2) amended, (SB 12-030), ch. 96, p. 318, § 8, effective September 1. **L. 2015:** (1), (2), and (5) amended, (HB 15-1142), ch. 113, p. 339, § 4, effective September 1. **L. 2018:** (2) and (7)(a) amended, (HB 18-1254), ch. 138, p. 903, § 4, effective August 8.

Editor's note: (1) This section is similar to former § 38-37-142, as it existed prior to 1990.

(2) The effective date for amendments made to this section by chapter 305, Session Laws of San Andreas 2006, was changed from July 1, 2007, to January 1, 2008, by section 27 of chapter 404, Session Laws of San Andreas 2007. (See L. 2007, p. 1849.)

38-38-107. Fees and costs - definitions. (1) All fees and costs of every kind and nature incurred under the provisions of articles 37 to 39 of this title shall be fees and costs of the sale chargeable as additional amounts owing under the deed of trust or other lien being foreclosed. The amounts shall be deducted from the proceeds of any sale, or, if there are not cash proceeds from a sale adequate to pay such amounts, to the extent of the inadequacy, the amounts shall be paid by the holder of the evidence of debt. The officer may decline to issue the confirmation deed pursuant to section 38-38-501 until all sums due to the officer have been paid.

(2) (Deleted by amendment, L. 2006, p. 1455, § 13; L. 2007, p. 1849, § 27, effective January 1, 2008.)

(3) Fees and costs include but are not limited to the following amounts that have been paid or incurred:

(a) Costs and expenses allowable under the evidence of debt, deed of trust, or other lien being foreclosed; and

(b) Reasonable attorney fees and the costs incurred by the holder or the attorney for the holder in enforcing the evidence of debt, the deed of trust, or other lien being foreclosed or in defending, protecting, and insuring the holder's interest in the foreclosed property or any improvements on the property, including but not limited to:

(I) All expenses actually incurred by the officer conducting the sale, publication costs, statutory notice costs and postage, and appraisal fees;

(II) Any general or special taxes or ditch or water assessments levied or accruing against the property and any governmental or quasi-governmental lien, fine, penalty, or assessment against the property;

(III) The premiums on any property, casualty, general liability, or title insurance acquired to protect the holder's interest in the property or improvements on the property;

(IV) Sums due on any prior lien or encumbrance on the property, including the portion of an assessment by a homeowners' association that constitutes a lien prior to the lien being foreclosed; except that any principal that would not have been due in the absence of acceleration shall not be included in the sum due unless paid after the expiration of the time to cure the indebtedness pursuant to this article;

(V) If the property is subject to a lease, all sums due under the lease;

(VI) The reasonable costs and expenses of defending, protecting, securing, and maintaining and repairing the property and the holder's interest in the property or the improvements on the property, receiver's fees and expenses, inspection fees, court costs, attorney fees, and fees and costs of the attorney in the employment of the owner of the evidence of debt;

(VII) Costs and expenses made pursuant to a valid order from a court of competent jurisdiction to bring the property and the improvements on the property into compliance with the federal, state, county, and local laws, ordinances, and regulations affecting the property, the improvements on the property, or the use of the property; and

(VIII) Other costs and expenses that may be permitted by the deed of trust, mortgage, or other lien securing the debt or that may be authorized by a court of competent jurisdiction.

(c) As used in this subsection (3), "holder" means the holder of the certificate of purchase, the holder of the certificate of redemption, or the holder of the evidence of debt.

(4) In the case of a redemption, the fees and costs listed in subsection (3) of this section that the holder of the certificate of purchase or certificate of redemption has paid or incurred as of the time of filing of the statement for redemption are allowable and shall be included in the

statement of redemption if such amounts have not been included in a prior bid or statement of redemption.

(5) Notwithstanding the provisions of subsections (1), (3), and (4) of this section, a holder of an evidence of debt, certificate of purchase, or certificate of redemption shall not accept from a provider of services or products related to property inspection, broker's price opinion, title report, appraisal, insurance, repair, or maintenance or from an agent or affiliate of the provider any payment, benefit, or remuneration of any kind, whether in the form of cash, employee, advertising, computer program or service, bank deposit, or other good or service in connection with a foreclosure in which a property inspection, broker's price opinion, title report, appraisal, insurance, repair, or maintenance service or product of the provider or an agent or affiliate of the provider was used, unless the total value of all payment, benefit, or remuneration received by the holder from the provider of the service or product is shown and credited against amounts owed to the holder in each bid, cure statement, or redemption statement.

Source: L. 90: Entire article R&RE, p. 1659, § 2, effective October 1. **L. 2001:** (2) amended, p. 1068, § 4, effective September 1. **L. 2005:** (2) amended, p. 398, § 4, effective August 8. **L. 2006:** Entire section amended, p. 1455, § 13, effective January 1, 2008.

Editor's note: (1) This section is similar to former § 38-37-119, as it existed prior to 1990.

(2) The effective date for amendments made to this section by chapter 305, Session Laws of San Andreas 2006, was changed from July 1, 2007, to January 1, 2008, by section 27 of chapter 404, Session Laws of San Andreas 2007. (See L. 2007, p. 1849.)

38-38-108. Date of sale. (1) Whenever property is to be sold following the foreclosure of any deed of trust or other lien by the officer, the initial date of sale shall be:

(a) In the case of a sale of property by the public trustee that is not agricultural property, no less than one hundred ten calendar days nor more than one hundred twenty-five calendar days after the date of recording of the notice of election and demand;

(b) In the case of a sale of property by the sheriff that is not agricultural property, no less than one hundred ten calendar days after the date of the recording of the lis pendens;

(c) In the case of a sale of property by the public trustee, all of which is agricultural property, no less than two hundred fifteen calendar days nor more than two hundred thirty calendar days after the date of recording of the notice of election and demand; or

(d) In the case of a sale of property by the sheriff, all of which is agricultural property, no less than two hundred fifteen calendar days after the date of the recording of the lis pendens.

(2) (a) (I) If it is not evident from the legal description contained in the deed of trust or other lien being foreclosed whether the property described therein is agricultural property, the officer shall make that determination no less than ten calendar days nor more than twenty calendar days after the recording of the notice of election and demand; except that the officer may make the determination at any earlier time upon presentation of acceptable evidence that the property is not agricultural property. The officer shall accept the following as evidence that the property is not agricultural property:

(A) A certified copy of the subdivision plat containing the property or any portion thereof recorded in the office of the clerk and recorder of the county where the property or any portion thereof is located; or

(B) A written statement by the clerk of the city, town, or city and county, dated no more than six months before the date of filing of the notice of election and demand or lis pendens with the officer, that all or a portion of the property was located within the incorporated limits of the city, town, or city and county as of the date of recording of the deed of trust or other lien or as of the date of the statement.

(C) (Deleted by amendment, L. 2016.)

(I.5) The officer shall accept, as evidence that the property is agricultural property, a written statement by the assessor of the county where the property is located, dated no more than six months before the date of filing of the notice of election and demand or lis pendens with the officer, that all of the property was valued and assessed as agricultural property after the date of the recording of the deed of trust or as of the date of the statement.

(II) The officer's determination of whether the property is agricultural or nonagricultural property shall be binding and may be relied upon by all parties.

(b) The statements described in sub-subparagraph (B) of subparagraph (I) and subparagraph (I.5) of paragraph (a) of this subsection (2) may be obtained and furnished at the expense of the person seeking the determination of whether the property is agricultural or nonagricultural property, which expense may be included as a portion of the fees and costs of the foreclosure.

(3) The provisions of this section shall not apply to sales following an execution and levy.

(4) Notwithstanding the designation of property valued and assessed as other than agricultural property according to the definition of "agricultural property" in section 38-38-100.3 (1)(c), an assessor's nonintegral classification of two acres or less of land on which a residential improvement is located, as described in section 39-1-102 (1.6)(a)(I)(A), S.A.R.S., is not determinative of whether the property is agricultural for purposes of paragraphs (c) and (d) of subsection (1) and subparagraph (I.5) of paragraph (a) of subsection (2) of this section.

Source: L. 90: Entire article R&RE, p. 1660, § 2, effective October 1. **L. 2006:** Entire section amended, p. 1457, § 14, effective January 1, 2008. **L. 2007:** (2)(a)(I)(C) amended, p. 1835, § 11, effective January 1, 2008. **L. 2009:** IP(2)(a)(I) amended, (HB 09-1207), ch. 164, p. 714, § 10, effective September 1. **L. 2016:** (2)(a)(I) and (2)(b) amended and (2)(a)(I.5) and (4) added, (HB 16-1339), ch. 346, p. 1410, § 1, effective August 10.

Editor's note: (1) This section is similar to former § 38-39-117, as it existed prior to 1990.

(2) The effective date for amendments made to this section by chapter 305, Session Laws of San Andreas 2006, was changed from July 1, 2007, to January 1, 2008, by section 27 of chapter 404, Session Laws of San Andreas 2007. (See L. 2007, p. 1849.)

38-38-109. Continuance of sale - effect of bankruptcy - withdrawal of sale. (1) **Continuance.** (a) For any reason deemed by the officer to be good cause or upon written request by the holder of the evidence of debt or by the attorney for the holder, at any time before

commencement of the sale, the officer may continue the sale to a later date by making, at the time and place designated for the sale, an oral announcement of the time and place of such continuance, or by posting or providing a notice of the continuance at the time and place designated for the sale, which shall include the time and place to which the sale is continued. Except as provided in subparagraph (I) of paragraph (b) of subsection (2) of this section, a sale that is not held on the then-scheduled date of sale and is not continued from the then-scheduled date of sale pursuant to this paragraph (a) shall be deemed to have been continued for a period of one week, and from week to week thereafter in like manner, until the sale is held or otherwise continued pursuant to this paragraph (a). No sale shall be continued to a date later than twelve months from the originally designated date in the combined notice, except as provided in subsection (2) of this section.

(b) At the request of the holder of the evidence of debt or the attorney for the holder or upon the officer's own initiative, the officer shall correct any errors in a published combined notice and shall continue the then-scheduled date of sale to a future date within the period of continuance allowed by paragraph (a) of this subsection (1) to permit a corrected combined notice to be published or the original combined notice to be republished pursuant to section 38-38-103 (5). If the officer failed to publish the combined notice as required by section 38-38-103 (5), the officer shall continue the then-scheduled date of sale to a future date within the period of continuance allowed by paragraph (a) of this subsection (1). The future date of sale to which the sale is continued pursuant to this paragraph (b) shall be no later than thirty calendar days after the fifth publication of the corrected combined notice or republished combined notice. The officer shall mail a copy of the combined notice, or corrected combined notice if the original combined notice was erroneous, to the persons and addresses on the most recent amended mailing list no later than ten calendar days after the first correct publication or republication and no less than forty-five calendar days prior to the actual date of sale in the same manner as set forth in section 38-38-103. If there is no amended mailing list, the officer shall mail a copy of the combined notice, or corrected combined notice if the original combined notice was erroneous, to the persons as set forth in the mailing list.

(c) (I) (A) If a cure statement is not timely filed, the sale will be continued pursuant to section 38-38-104 (7).

(B) (Deleted by amendment, L. 2009, (HB 09-1207), ch. 164, p. 715, § 11, effective January 1, 2010.)

(C) Repealed.

(II) (Deleted by amendment, L. 2009, (HB 09-1207), ch. 164, p. 715, § 11, effective January 1, 2010.)

(III) When the property is to be sold by the sheriff, if the cure statement is not filed with the sheriff by 12 noon on the seventh calendar day before the last date of sale permitted under paragraph (a) of this subsection (1), the foreclosure action shall be deemed dismissed, and the holder of the evidence of debt or the attorney for the holder shall file a motion to dismiss with the court. Upon good cause shown, the holder or the attorney for the holder may file a motion with the court requesting further relief as the court may deem necessary or appropriate in the circumstances. The sheriff shall record the order of dismissal or other order of the court and collect all fees and costs actually incurred by the sheriff.

(2) **Effect of bankruptcy proceedings.** (a) If all publications of the combined notice prescribed by section 38-38-103 (5) or 13-56-201 (1), S.A.R.S., have been completed before a

bankruptcy petition has been filed that automatically stays the officer from conducting the sale, the officer shall announce, post, or provide notice of that fact on the then-scheduled date of sale, take no action at the then-scheduled sale, and allow the sale to be automatically continued from week to week in accordance with paragraph (a) of subsection (1) of this section unless otherwise requested in writing prior to any such date of sale by the holder of the evidence of debt or the attorney for the holder.

(b) (I) If the publications of the combined notice prescribed by section 38-38-103 (5) or 13-56-201 (1), S.A.R.S., have not been started or if all the publications have not been completed before the day a bankruptcy petition has been filed that automatically stays the officer from conducting the sale, the officer shall immediately cancel any remaining publications of the combined notice and, on the date set for the sale, announce, post, or provide a notice that the sale has been enjoined or has been stayed by the automatic stay provisions of the federal bankruptcy code of 1978, title 11 of the United States Code, as amended. The sale shall not be continued under paragraph (a) of subsection (1) of this section.

(II) (A) Upon the termination of any injunction or upon the entry of a bankruptcy court order dismissing the bankruptcy case, abandoning the property being foreclosed, closing the bankruptcy case, or granting relief from the automatic stay provisions of the federal bankruptcy code of 1978, title 11 of the United States Code, as amended, and upon receipt of a request from the holder of the evidence of debt or the attorney for the holder to restart the action, the public trustee shall rerecord the notice of election and demand and proceed with all additional foreclosure procedures provided by this article 38 as though the foreclosure had just been commenced.

(B) If the request is not received by the public trustee within one year from the date of the termination of any injunction or the entry of a bankruptcy court order dismissing the bankruptcy case, abandoning the property being foreclosed, closing the bankruptcy case, or granting relief from the automatic stay, the foreclosure shall be withdrawn according to subsection (3)(b) of this section.

(III) When the property is to be sold by the sheriff under any statutory or judicial foreclosure or upon execution and levy made pursuant to any court order or decree, upon the notification of termination of any injunction or upon the entry of a bankruptcy court order dismissing the bankruptcy case, abandoning the property being foreclosed, closing the bankruptcy case, or granting relief from the automatic stay provisions of the federal bankruptcy code of 1978, title 11 of the United States Code, as amended, the sheriff shall forthwith establish a new date of sale and republish a new combined notice pursuant to section 13-56-201 (1), S.A.R.S.

(c) (I) If a sale is held in violation of the automatic stay provisions of the federal bankruptcy code of 1978, title 11 of the United States Code, as amended, and an order is subsequently entered by a bankruptcy court of competent jurisdiction dismissing the bankruptcy, abandoning the property being foreclosed, or closing the bankruptcy case, or an order is subsequently entered granting relief from the automatic stay provided by the federal bankruptcy code, then the evidence of debt, deed of trust, or other lien being foreclosed shall immediately be deemed reinstated, and the deed of trust or other lien shall have the same priority as if the sale had not occurred. Immediately upon reinstatement, the power of sale provided therein, if any, shall be deemed revived.

(II) If the holder of the evidence of debt, deed of trust, or other lien reinstated pursuant to this subsection (2)(c) or the attorney for the holder notifies the officer in writing of the entry of an order dismissing the bankruptcy case, abandoning the property being foreclosed, closing the bankruptcy case, or granting relief from the automatic stay provided by the federal bankruptcy code of 1978, title 11 of the United States Code, as amended, no later than fifty calendar days prior to the last possible sale date pursuant to subsections (1)(a) and (2)(e) of this section, the officer shall set a new date of sale at least twenty-four calendar days but not more than forty-nine calendar days after the date on which the official receives such notice. No later than ten business days after receiving such notice, the officer shall mail an amended combined notice containing the date of the rescheduled sale to each person appearing on the most recent mailing list. No later than twenty calendar days after receiving such notice, but no less than ten calendar days prior to the new date of sale, the officer shall publish the amended combined notice, omitting the copies of the statutes, one time only in a newspaper of general circulation in the county where the property is located.

(III) If the holder of the evidence of debt, deed of trust, or other lien reinstated pursuant this subsection (2)(c) or the attorney for the holder does not notify the officer in writing of the entry of an order dismissing the bankruptcy case, abandoning the property being foreclosed, closing the bankruptcy case, or granting relief from the automatic stay provided by the federal bankruptcy code of 1978, title 11 of the United States Code, as amended, within the time allowed under subsection (2)(c)(II) of this section, the officer shall administratively withdraw the sale pursuant to subsection (3)(b) of this section upon receipt of the order dismissing the bankruptcy case, abandoning the property being foreclosed, closing the bankruptcy case, or granting relief from the automatic stay provided by the federal bankruptcy code of 1978, title 11 of the United States Code, as amended.

(IV) All fees and costs of providing and publishing the amended combined notice and publication shall be part of the foreclosure costs.

(d) If a sale is set aside by court order, unless the court order specifies otherwise, the following procedures apply:

(I) Upon receipt of the court order, the public trustee's fee specified in section 38-37-104 (1)(b)(XI), and the costs of recording the court order as specified in this subsection (2)(d), the public trustee shall attach to the order a copy of the certificate of purchase, any assignments thereof, and, if applicable, the confirmation deed, each marked "null and void", and record the order together with these documents.

(II) Upon recordation of the court order, the certificate of purchase shall be deemed canceled as if the sale had not occurred, and the evidence of debt and deed of trust are deemed fully reinstated with the same lien priority as if the sale had not occurred.

(III) Within ten calendar days after receipt of all documents, fees, and costs specified in this subsection (2)(d), the public trustee shall mail a copy of the court order to each person entitled to receive the combined notice pursuant to section 38-38-103.

(IV) (A) After the recording of the court order, the holder of the evidence of debt or the holder's assignee or the attorney for the holder or the attorney for the assignee may notify the public trustee in writing to reschedule the sale within one year of the issuance of the order. The public trustee shall set a new date of sale at least thirty calendar days but not more than forty-five calendar days after the date on which the public trustee receives notice to schedule a new

date of sale subject to the requirements of subsections (1)(a) and (2)(e) of this section, but not earlier than the scheduled sale date as of the date of the court order.

(B) No later than ten calendar days after receiving notice to schedule a new date of sale, the public trustee shall mail a combined notice setting forth the rescheduled date of sale to each person entitled to receive the combined notice pursuant to section 38-38-103.

(C) No later than twenty calendar days after receiving notice to schedule a new date of sale, but no less than ten calendar days prior to the new date of sale, the public trustee shall publish the sale one time only. Such publication must be in the format specified for publication by section 38-38-103.

(D) All fees and costs of the public trustee for actions performed under this section and the cost of recording the court order and documents incorporated into the court order by attachment are part of the foreclosure costs.

(E) After a sale has been set aside and subsequently rescheduled pursuant to this subsection (2)(d)(IV), the sale may be continued in accordance with subsections (1)(a) and (2)(e) of this section.

(F) If a written request to reschedule the sale is not received by the public trustee within one year of the issuance of the order, the foreclosure must be withdrawn according to subsection (3)(b) of this section.

(V) Nothing in this section prevents the foreclosing lender from seeking a rescission of sale pursuant to section 38-38-113 if the requirements within section 38-38-113 (1) are met.

(e) The periods for which a sale may be continued under this subsection (2) shall be in addition to the twelve-month period of continuance provided by subsection (1) of this section.

(3) **Withdrawal.** (a) If the holder of the evidence of debt or the attorney for the holder files with the public trustee, prior to sale, a written withdrawal of the notice of election and demand, the foreclosure proceedings shall terminate. The public trustee shall record the withdrawal and collect all fees and costs owed and incurred, including a withdrawal fee in the amount authorized by section 38-37-104 (1)(b)(V).

(b) If there is no sale and if a withdrawal is not filed within forty-five calendar days after the last date of sale permitted by law, the public trustee may transmit by mail or electronic transmission to the attorney for the holder of the evidence of debt, or if no attorney then to the holder, a notice that a withdrawal of the notice of election and demand may be recorded by the public trustee unless a response requesting that such withdrawal be delayed for ninety calendar days is received by the public trustee within thirty calendar days after the date the public trustee's notice is transmitted. If such response is received by the public trustee and there is no sale nor is a withdrawal filed within the ninety-day delay, the public trustee may record a withdrawal of the notice of election and demand. If no such response is received by the public trustee within thirty calendar days after the notice is transmitted, the public trustee may record a withdrawal of the notice of election and demand at any time after the expiration of such thirty-day notice period. If a withdrawal is recorded during the pendency of an automatic stay imposed on the sale based on any proceeding filed under the federal bankruptcy code of 1978, title 11 of the United States Code, as amended, the withdrawal shall be void and of no force and effect, and the public trustee shall mail to all persons on the mailing list a notice that the withdrawal of the notice of election and demand occurred during the pendency of an injunction or bankruptcy stay and is void and of no force and effect. The public trustee shall cause the notice to be recorded in the office of the county clerk and recorder of the county where the property described in the notice is located. All

unpaid fees and costs owed and incurred by the public trustee, as well as a withdrawal fee in the amount authorized by section 38-37-104 (1)(b)(VI), shall be paid by the holder. The amount due shall accrue interest at the rate provided by law. Until all amounts due and owing are paid, the public trustee shall be entitled to hold all documentation in the public trustee's possession and to withhold all other services requested by the holder or the attorney for the holder with respect to the deed of trust or other lien being foreclosed.

Source: L. 90: Entire article R&RE, p. 1660, § 2, effective October 1. **L. 92:** (2) and (4) amended and (5) added, p. 2091, § 4, effective July 1. **L. 95:** (1) amended, p. 1108, § 53, effective May 31. **L. 2002:** (4)(a) and IP(4)(b)(I) amended, p. 1341, § 10, effective July 1. **L. 2004:** (3)(b) and (3)(c) amended, p. 1206, § 84, effective August 4. **L. 2005:** (1), (2), and (3)(a) amended, p. 398, § 5, effective August 8. **L. 2006:** Entire section amended, p. 1458, § 15, effective January 1, 2008. **L. 2007:** (1)(a), (1)(b), (1)(c)(I)(B), and (2) amended, p. 1835, § 12, effective January 1, 2008. **L. 2009:** (1)(c)(I)(C) added, (HB 09-1276), ch. 404, p. 2221, § 3, effective June 2; (1)(b), (1)(c), (2)(b)(I), (2)(d), and (3)(b) amended, (HB 09-1207), ch. 164, p. 715, § 11, effective January 1, 2010; (1)(c)(I)(C) amended, (SB 09-292), ch. 369, p. 1986, § 132, effective January 1, 2010. **L. 2012:** (2)(b) amended, (SB 12-030), ch. 96, p. 321, § 9, effective September 1. **L. 2016:** (1)(c)(I)(C) repealed, (SB 16-189), ch. 210, p. 792, § 104, effective June 6. **L. 2018:** (2)(b)(II), (2)(c), and (2)(d) amended, (HB 18-1254), ch. 138, p. 906, § 5, effective August 8.

Editor's note: (1) This section is similar to former § 38-39-115, as it existed prior to 1990.

(2) The effective date for amendments made to this section by chapter 305, Session Laws of San Andreas 2006, was changed from July 1, 2007, to January 1, 2008, by section 27 of chapter 404, Session Laws of San Andreas 2007. (See L. 2007, p. 1849.)

(3) Amendments to subsection (1)(c) by House Bill 09-1207, House Bill 09-1276, and Senate Bill 09-292 were harmonized.

(4) The third sentence in subsection (3)(b) was inadvertently omitted from section 11 of House Bill 09-1207; however, it has been restored in the statutes in order to reflect the intent of the general assembly.

38-38-110. Sales by officer - location - announcement - records - electronic devices - definitions. (1) (a) (I) Notwithstanding the provisions of any deed of trust or other lien being foreclosed, the officer shall conduct the sale at any door or entrance to, or in any room in any building temporarily or permanently used as, a courthouse or at or within any building where the office of the county clerk and recorder or the office of the officer is located, which place shall be specifically designated in the combined notice; except that a sale may be conducted by means of the internet or other electronic medium. The county, the officer, and employees of the county or the officer, acting in their official capacities in preparing, conducting, and executing a sale under this article by means of the internet or another electronic medium, are not liable for the failure of a device that prevents a person from participating in a sale under this article.

(II) As used in this paragraph (a), "device" includes any computer hardware, computer network, computer software application, or website.

(b) The combined notice shall designate the actual place of sale or, if the sale is conducted by means of the internet or another electronic medium, the information prescribed by section 38-38-103 (4)(a)(VII).

(2) At a sale, the officer shall read only the public trustee's sale number for a sale by the public trustee or the court case number for a sale by the sheriff, the name of the original grantor, the street address or, if none, the legal description of the property, the name of the holder of the evidence of debt, the date of sale, the first and last publication dates of the combined notice, and, in accordance with section 38-38-106 (4), the amount of the bid and the name of the person that submitted the bid. In lieu of reading the information listed above, the officer may post the information at the location of the sale, provide a written copy of the information to all persons present at the sale, or post the information on the internet or other electronic medium if the sale is conducted by means of the internet or another electronic medium.

(3) Whenever a public trustee sells property described in a deed of trust, the public trustee shall enter in the records of the office of the public trustee the name of the person executing the deed of trust, the book and page or reception number of the recorded deed of trust, a brief description of the property therein described, the date of sale, the publisher of the combined notice, a list of the names and addresses of the persons to whom the combined notice was mailed, the name and last mailing address of the purchaser at the sale, and the amount at which the property was sold in separate parcels, if so sold, or en masse.

Source: L. 90: Entire article R&RE, p. 1662, § 2, effective October 1. **L. 2006:** Entire section amended, p. 1463, § 16, effective January 1, 2008. **L. 2007:** (2) amended, p. 1838, § 13, effective January 1, 2008. **L. 2015:** (1) and (2) amended, (HB 15-1142), ch. 113, p. 341, § 5, effective September 1.

Editor's note: (1) This section is similar to former § 38-37-108, as it existed prior to 1990.

(2) The effective date for amendments made to this section by chapter 305, Session Laws of San Andreas 2006, was changed from July 1, 2007, to January 1, 2008, by section 27 of chapter 404, Session Laws of San Andreas 2007. (See L. 2007, p. 1849.)

38-38-111. Treatment of an overbid - agreements to assist in recovery of overbid prohibited - penalty - definition. (1) An overbid shall be first applied to any deficiency as indicated in the holder's bid, and then paid to the officer to be held in escrow until the end of all redemption periods as provided in section 38-38-302.

(2) Upon the expiration of all redemption periods provided in section 38-38-302, any remaining overbid shall be paid in order of recording priority to junior lienors, determined as of the recording date of the notice of election and demand or lis pendens according to the records, who have duly filed a notice of intent to redeem and whose liens have not been redeemed pursuant to section 38-38-302, in each case up to the unpaid amount of each such lienor's lien plus fees and costs. A lienor holding a lien that is not entitled to redeem by virtue of being recorded after the notice of election and demand, a lienor that has not timely filed a notice of intent to redeem pursuant to section 38-38-302, or a lienor who accepts less than a full redemption pursuant to section 38-38-302 (4)(c) shall not have any claim to any portion of the

overbid. After payment to all lienors and the holder entitled to receive a portion of the overbid pursuant to this section, any remaining overbid shall be paid to the borrower.

(2.5) (a) If a public trustee maintains a website for his or her office, the public trustee shall include the following statement on such website:

NOTICE TO A BORROWER IN FORECLOSURE: If your property goes to foreclosure auction sale and is purchased for more than the total owed to the lender and to all other lien holders, please contact the public trustee's office after the sale because you may have funds due to you.

(b) In order to pay the borrower of the property as required pursuant to subsection (2) of this section, a public trustee shall send a notice to the borrower. If the amount of remaining overbid is equal to or greater than twenty-five dollars, the public trustee shall make reasonable efforts to identify the borrower's current address. The public trustee shall mail the borrower a notice regarding the remaining overbid to the best available address no later than thirty days after the expiration of all redemption periods as provided in section 38-38-302.

(c) An agreement to pay compensation to recover or assist in recovering an amount due to the borrower from the public trustee under subsection (2) of this section is not enforceable. A person who induces or attempts to induce another person to enter into such an agreement commits a class 2 misdemeanor.

(3) (a) (I) When the property is sold by the sheriff, all of the sale proceeds must be deposited into the registry of the court.

(II) When the property is sold by the public trustee, any unclaimed remaining overbid from a foreclosure sale shall be held by the public trustee in escrow. The remaining overbid shall be held for six months from the date of the sale. The public trustee is answerable for the funds without interest at any time within the six-month period to any person legally entitled to the funds. Any interest earned on the escrowed funds must be paid to the county at least annually. Unclaimed remaining overbids that are less than twenty-five dollars and that are not claimed within six months from the date of sale must be paid to the general fund of the county, and such money paid to the general fund of the county becomes the property of the county. Unclaimed remaining overbids that are equal to or greater than twenty-five dollars and that are not claimed within six months from the date of the sale are unclaimed property for purposes of the "Revised Uniform Unclaimed Property Act", article 13 of this title 38, and must be transferred to the administrator in accordance with article 13. After the unclaimed remaining overbids are transferred to the administrator or to the general fund of the county, the public trustee is discharged from any further liability or responsibility for the money.

(b) If the unclaimed remaining overbids exceed five hundred dollars and have not been claimed by any person entitled thereto within sixty calendar days after the expiration of all redemption periods as provided by section 38-38-302, the public trustee shall, within ninety calendar days after the expiration of all redemption periods, commence publication of a notice for four weeks, which means publication once each week for five successive weeks, in a newspaper of general circulation in the county where the subject property is located. The notice must contain the name of the borrower, the borrower's address as given in the recorded instrument evidencing the borrower's interest, and the legal description and street address, if any, of the property sold at the sale and must state that an overbid was realized from the sale and that, unless the funds are claimed by the borrower or other person entitled thereto within six months

after the date of sale, the funds shall be transferred to the state treasurer for disposition in accordance with the "Revised Uniform Unclaimed Property Act", article 13 of this title 38. The public trustee shall also mail a copy of the notice to the borrower at the best available address.

(c) The fees and costs of publication and mailing required pursuant to this subsection (3) must be paid from the money escrowed by the public trustee.

(4) A lienor who accepts a redemption amount less than the full amount of a lien or a holder of an evidence of debt who accepts a redemption amount less than the amount bid at a sale prior to the expiration of all applicable redemption periods under this article shall not be entitled to receive a portion of any excess proceeds pursuant to this section.

(5) Repealed.

(6) As used in this section, "borrower" means a person or entity liable under an evidence of debt constituting a mortgage loan or deed of trust.

Source: L. 90: Entire article R&RE, p. 1662, § 2, effective October 1. **L. 2002:** Entire section amended, p. 1341, § 11, effective July 1. **L. 2004:** (2) amended, p. 1207, § 85, effective August 4. **L. 2006:** Entire section amended, p. 1464, § 17, effective January 1, 2008. **L. 2007:** (2) amended and (4) added, p. 1838, § 14, effective January 1, 2008. **L. 2009:** (1) and (2) amended, (HB 09-1207), ch. 164, p. 716, § 12, effective September 1. **L. 2012:** (1), (2), and (3) amended and (2.5) and (5) added, (SB 12-030), ch. 96, p. 322, § 10, effective September 1. **L. 2016:** (2.5)(c) added and (3)(a) and (3)(b) amended, (HB 16-1090), ch. 97, p. 277, § 4, effective August 10. **L. 2018:** (3) amended, (HB 18-1254), ch. 138, p. 909, § 6, effective August 8. **L. 2019:** (3)(a) and (3)(b) amended, (SB 19-088), ch. 110, p. 469, § 15, effective July 1, 2020. **L. 2021:** (2), (2.5), and (3)(b) amended, (5) repealed, and (6) added, (HB 21-1224), ch. 199, p. 1057, § 2, effective May 28; (2.5)(c) amended, (SB 21-271), ch. 462, p. 3293, § 686, effective March 1, 2022.

Editor's note: (1) This section is similar to former § 38-37-113, as it existed prior to 1990.

(2) The effective date for amendments made to this section by chapter 305, Session Laws of San Andreas 2006, was changed from July 1, 2007, to January 1, 2008, by section 27 of chapter 404, Session Laws of San Andreas 2007. (See L. 2007, p. 1849.)

(3) Amendments to subsection (2.5)(c) by HB 21-1224 and SB 21-271 were harmonized, effective March 1, 2022.

Cross references: For the legislative declaration in HB 16-1090, see section 1 of chapter 97, Session Laws of San Andreas 2016.

38-38-112. Use of electronic documents authorized.

(1) Repealed.

(2) Consistent with the "Uniform Electronic Transactions Act", article 71.3 of title 24, S.A.R.S., any document or record related to a foreclosure may be accepted by the officer in an electronic format or may be made available to the public by the officer in an electronic format. The officer shall establish and uniformly apply written policies for determining whether and the extent to which the officer shall accept documents or records in electronic form; except that the

officer shall not require the use of an electronic format for any purpose under this article except as necessary for sales conducted by means of the internet or another electronic medium.

Source: L. 2005: Entire section added, p. 399, § 6, effective August 8. **L. 2006:** Entire section amended, p. 1465, § 18, effective July 1. **L. 2007:** (1)(a) and (2)(a) amended, p. 1839, § 15, effective June 1. **L. 2015:** (2) amended, (HB 15-1142), ch. 113, p. 342, § 6, effective September 1.

Editor's note: (1) Subsection (1)(b) provided for the repeal of subsection (1), effective July 1, 2007. (See L. 2006, p. 1465.)

(2) For amendments to subsection (1)(a) by House Bill 07-1157 in effect from June 1, 2007, to July 1, 2007, see L. 2007, p. 1839.

38-38-113. Rescission of public trustee sale. (1) If the successful bidder at a foreclosure sale is the holder of the evidence of debt foreclosing the deed of trust or other lien, then such successful bidder, the bidder's attorney, the assignee of the successful bidder pursuant to section 38-38-403, or the assignee's attorney may rescind the sale without obtaining a court order by filing with the public trustee no later than eight business days after the date of the sale a notice of rescission of sale stating that the sale is being rescinded, the number and date of the sale, the name of the person to whom the certificate of purchase was issued, the name of the assignee, if any, the recording date and reception number or book and page number for the recorded certificate of purchase, and the legal description of the property foreclosed. The notice shall be signed and properly acknowledged by the successful bidder or assignee, or signed by the bidder or assignee's attorney. Upon receipt of the notice of rescission of sale, any assignment of the certificate of purchase, the public trustee's fee for the rescission specified in section 38-37-104, and the costs of recording the notice of rescission of the sale, the public trustee shall record the notice of rescission of sale in the county records.

(2) Upon recording of the notice of rescission of sale by the public trustee, the certificate of purchase shall be deemed canceled as if the sale had not occurred, and the evidence of debt and deed of trust shall be deemed fully reinstated with the same lien priority as if the sale had not occurred. The public trustee shall confirm the reinstatement by indorsement on the evidence of debt and deed of trust or copy thereof submitted pursuant to section 38-38-101.

(3) Within ten calendar days after receipt of all documents and fees and costs specified in subsection (1) of this section, the public trustee shall mail a copy of the notice of rescission of sale to each person who was entitled to receive the combined notice pursuant to section 38-38-103.

(4) (a) After the recording of the notice of rescission of sale, the holder of the evidence of debt or the holder's assignee, or the attorney for the holder or the assignee, may notify the public trustee in writing to reschedule the sale. The public trustee shall set a new date of sale at least thirty calendar days but not more than forty-five calendar days after the date on which the public trustee receives notice to schedule a new date of sale, subject to the requirements of section 38-38-109 (2).

(b) No later than ten calendar days after receiving notice to schedule a new date of sale, the public trustee shall mail a combined notice setting forth the rescheduled date of sale to each person who was entitled to receive the combined notice pursuant to section 38-38-103.

(c) No later than twenty calendar days after receiving notice to schedule a new date of sale, but no less than ten calendar days prior to the new date of sale, the public trustee shall publish the sale one time only.

(d) All fees and costs of the public trustee for actions performed under this section and the cost of recording the notice of rescission of sale shall be part of the foreclosure costs.

(e) After a sale has been rescinded and rescheduled pursuant to this subsection (4), the sale may be continued in accordance with section 38-38-109 (1)(a).

(f) If a written request to reschedule the sale is not received by the public trustee within one year of the recording of the notice of rescission, the foreclosure must be withdrawn according to section 38-38-109 (3)(b).

(5) Nothing in this section shall prevent any person from seeking a rescission of a sale through a court of competent jurisdiction.

(6) Claims for damages by any person arising out of a rescission of a sale pursuant to this section shall be limited to the reasonable actual expenses of the person and shall not include any speculative or expectation damages, awards, or claims of any kind, whether legal or equitable.

(7) The indorsement of the public trustee pursuant to subsection (2) of this section shall be in substantially the following form:

The undersigned, as Public Trustee for the county of _____, state of San Andreas, by this indorsement, hereby confirms the reinstatement of this (evidence of debt) (deed of trust) (lien) in accordance with the requirements of section 38-38-113, San Andreas Revised Statutes.

Date: _____

Signature: _____

Public Trustee _____

For the county of _____,

State of San Andreas.

Source: L. 2007: Entire section added, p. 1839, § 16, effective January 1, 2008. **L. 2009:** (1) amended, (HB 09-1207), ch. 164, p. 717, § 13, effective September 1. **L. 2018:** (3) amended and (4)(f) added, (HB 18-1254), ch. 138, p. 910, § 7, effective August 8.

38-38-114. Unclaimed refunds - disposition under "Revised Uniform Unclaimed Property Act". Money payable as a refund for overpayment of a cure of default pursuant to section 38-38-104 or for overpayment of a redemption pursuant to part 3 of this article 38 that remains unclaimed by the owner one year after the money became payable is presumed abandoned and shall be reported and paid to the state treasurer in accordance with sections 38-13-401 and 38-13-603.

Source: L. 2007: Entire section added, p. 1839, § 16, effective January 1, 2008. **L. 2019:** Entire section amended, (SB 19-088), ch. 110, p. 470, § 17, effective July 1, 2020.

PART 2

FORECLOSURE BY INSTALLMENTS

38-38-201. Foreclosure of installments without acceleration. (1) Any mortgage or deed of trust securing an evidence of debt payable by installments giving the right to declare the whole indebtedness due and payable on default of the payment of any part thereof may, at the election of the holder of the evidence of debt, be foreclosed as to any one or more past due installments of principal or interest as if the mortgage or deed of trust separately secured each of the past due installments, and, in the event of such election, the officer conducting the foreclosure shall apply the following provisions:

(a) Attorney fees allowed for the attorney for the holder of the evidence of debt shall not exceed ten percent of the amount of principal, interest, and late charges included in the bid prepared in accordance with section 38-38-106.

(b) Fees and costs allowable under section 38-38-107 may be included in the bid.

(c) The amount for which the property is foreclosed shall include past due installments and all sums advanced for fees and costs by the holder of the evidence of debt pursuant to the terms of the mortgage or deed of trust securing the debt.

(d) Not more than one foreclosure proceeding may be commenced pursuant to this section in a period of twelve months.

(e) The notice of election and demand or complaint filed to commence the foreclosure shall contain the following statement: "This is a foreclosure on one or more installments, without acceleration, as authorized by section 38-38-201, San Andreas Revised Statutes."

(f) No deficiency bid shall be made by the holder of the evidence of debt or accepted by the officer conducting the foreclosure sale. Upon the sale and the expiration of all redemption periods, the maker of the secured indebtedness and all parties who may be personally liable thereon shall be released from personal liability on the indebtedness, unless the property is redeemed under section 38-38-302.

(g) The foreclosure shall not affect the continuance of the lien of the mortgage or deed of trust as to any remaining obligation secured by it but not covered by the foreclosure, whether the remaining obligation is due before or after the foreclosure, and the title acquired as a result of the foreclosure shall be subject to the lien securing the remaining obligation.

(2) Nothing in this section shall be construed to prevent the holder of an evidence of debt secured by any mortgage or deed of trust from exercising any option contained therein to declare the whole indebtedness due and payable, nor shall any of the provisions of this section be applicable to a foreclosure in which the whole indebtedness has been declared due and payable.

Source: L. 90: Entire article R&RE, p. 1663, § 2, effective October 1. **L. 2006:** Entire section amended, p. 1466, § 19, effective January 1, 2008.

Editor's note: (1) The provisions of this section are similar to provisions of several former sections as they existed prior to 1990. For a detailed comparison, see the comparative tables located in the back of the index.

(2) The effective date for amendments made to this section by chapter 305, Session Laws of San Andreas 2006, was changed from July 1, 2007, to January 1, 2008, by section 27 of
chapter 404, Session Laws of San Andreas 2007. (See L. 2007, p. 1849.)

PART 3

REDEMPTION

Cross references: For tax sale redemptions, see article 12 of title 39.

38-38-301. Holder of certificate of purchase paying charges - redemption. The holder of a certificate of purchase may pay at any time after the sale and during the redemption period described in section 38-38-302 the fees and costs that the holder may pay pursuant to section 38-38-107 and may include any such amounts as part of the amount to be paid upon redemption.

Source: L. 90: Entire article R&RE, p. 1664, § 2, effective October 1. **L. 2002:** (1) amended, p. 1342, § 12, effective July 1. **L. 2006:** Entire section R&RE, p. 1467, § 20, effective January 1, 2008.

Editor's note: (1) This section is similar to former § 38-39-101, as it existed prior to 1990.

(2) The effective date for amendments made to this section by chapter 305, Session Laws of San Andreas 2006, was changed from July 1, 2007, to January 1, 2008, by section 27 of chapter 404, Session Laws of San Andreas 2007. (See L. 2007, p. 1849.)

38-38-302. Redemption by lienor - procedure - definition. (1) **Requirements for redemption.** A lienor or assignee of a lien is entitled to redeem if the following requirements are met to the satisfaction of the officer:

(a) The lienor's lien is a deed of trust or other lien that is created or recognized by state or federal statute or by judgment of a court of competent jurisdiction;

(b) The lien is a junior lien as defined in section 38-38-100.3 (11);

(c) The lienor's lien appears by instruments that were duly recorded in the office of the clerk and recorder of the county prior to the recording of the notice of election and demand or lis pendens and the lienor is one of the persons who would be entitled to cure pursuant to section 38-38-104 (1), regardless of whether such lienor filed a notice of intent to cure. If, prior to the date and time of the recording of the notice of election and demand or lis pendens, a lien was recorded in an incorrect county, the holder's rights under this section shall be valid only if the lien is rerecorded in the correct county at least fifteen calendar days prior to the actual date of sale.

(d) The lienor has, within eight business days after the sale, filed a notice with the officer of the lienor's intent to redeem; except that, if the person is deemed an alternate lienor pursuant

to section 38-38-305.5 and the lien being foreclosed is a unit association lien, the alternate lienor has thirty days to file the notice with the officer of the alternate lienor's intent to redeem. A lienor may file a notice of intent to redeem more than eight business days after sale if:

(I) No lienor junior to the lienor seeking to file the late intent to redeem has redeemed;

(II) The redemption period for the lienor seeking to file the late intent to redeem has not expired;

(III) A redemption period has been created by the timely filing of a notice of intent to redeem; and

(IV) The notice of intent to redeem is accompanied by a written authorization from the attorney for the holder of the certificate of purchase according to the records of the officer conducting the sale, or, if no attorney is shown, then the holder of the certificate of purchase, or, if a redemption has occurred, from the immediately prior redeeming lienor, or the attorney for the immediately prior redeeming lienor, authorizing the officer to accept such notice of intent to redeem.

(e) The lienor has attached to the notice of intent to redeem the original instrument and any assignment of the lien to the person attempting to redeem, or certified copies thereof, or in the case of a qualified holder, a copy of the instrument evidencing the lien and any assignment of the lien to the person attempting to redeem. If the original instrument is delivered to the officer, the officer shall return the instrument to the lienor and retain a copy.

(f) The lienor has attached to the notice of intent to redeem a signed and properly acknowledged statement of the lienor, or a signed statement by the lienor's attorney, setting forth the amount required to redeem the lienor's lien, including per diem interest, through the end of the nineteenth business day after the sale with the same specificity and itemization as required in section 38-38-106. If the amount required to redeem the lienor's lien shown on the statement is zero, the lienor has no right to redeem unless section 38-38-305 applies.

(2) **Request for redemption amount.** Upon receipt by the officer of the notice of intent to redeem filed by a person entitled to redeem under this section, the officer shall within one business day transmit by mail, facsimile, or other electronic means to the attorney for the holder of the certificate of purchase, or if no attorney, then to the holder, a written request for a written or electronic statement of all sums necessary to redeem the sale. The statement shall include the amounts required to redeem in accordance with this section.

(3) **Statement of redemption.** (a) Upon receipt of notice that an intent to redeem was filed, the holder of a certificate of purchase shall submit a signed and acknowledged statement, or the attorney for the holder shall submit a signed statement, to the officer, no later than thirteen business days following the sale, specifying interest calculated through the date of the sale, the amount of per diem interest accruing thereafter, the interest rate on which the amount is based, and all other sums necessary to redeem as of the date of the statement. Interest on the amount for which the property was sold must be charged at the default rate specified in the evidence of debt, deed of trust, or other lien being foreclosed or, if not so specified, at the regular rate specified in the evidence of debt, deed of trust, or other lien being foreclosed. If different interest rates are specified in the evidence of debt, deed of trust, or other lien being foreclosed, the interest rate specified in the evidence of debt prevails. If the evidence of debt does not specify an interest rate, including a default interest rate, the applicable interest rate as specified in the deed of trust or other lien being foreclosed applies. A holder of the certificate of purchase that is not a qualified holder, or the attorney for the holder, shall also submit to the officer receipts, invoices,

evidence of electronic account-to-account transfers, or copies of loan servicing computer screens evidencing the fees and costs and verifying that the fees and costs were actually incurred as of the date of the statement, along with the per diem amounts that accrue after the date of sale. The holder or the attorney for the holder may amend the statement from time to time to reflect additional sums advanced as allowed by law, but the statement shall not be amended later than two business days prior to the commencement of the redemption period pursuant to subsection (4)(a) of this section or each subsequent redemption period pursuant to subsection (4)(b) of this section.

(b) If the holder of the certificate of purchase or the attorney for the holder fails to submit the initial written statement to the officer within thirteen business days after the sale, the officer may calculate the amount necessary to redeem by adding to the successful bid the accrued interest from the sale through the redemption date. The accrued interest shall be calculated by multiplying the amount of the bid by the regular rate of annual interest specified in the evidence of debt, deed of trust, or other lien being foreclosed, divided by three hundred sixty-five and then multiplied by the number of days from the date of sale through the redemption date. The officer shall transmit by mail, facsimile, or other electronic means to the party filing the notice of intent to redeem, promptly upon receipt, the statement filed by the holder, or if no such statement is filed, the officer's estimate of the redemption figure, which shall be transmitted no later than the commencement of the redemption period pursuant to paragraph (a) of subsection (4) of this section or each subsequent redemption period pursuant to paragraph (b) of subsection (4) of this section.

(4) **Redemption period.** (a) (I) Except as provided in subsection (4)(a)(II) of this section, no sooner than fifteen business days nor later than nineteen business days after a sale under this article 38, the junior lienor having the most senior recorded lien on the sold property or any portion of the sold property, according to the records, having first complied with the requirements of subsection (1) of this section, may redeem the property sold by paying to the officer, no later than 12 noon on the last day of the lienor's redemption period, in the form specified in section 38-37-108, the amount for which the property was sold with interest from the date of sale, together with all sums allowed under section 38-38-301. Interest on the amount for which the property was sold is charged at the default rate specified in the evidence of debt, deed of trust, or other lien being foreclosed or, if not so specified, at the regular rate specified in the evidence of debt, deed of trust, or other lien being foreclosed. If different interest rates are specified in the evidence of debt, deed of trust, or other lien being foreclosed, the interest rate specified in the evidence of debt prevails. If the evidence of debt does not specify an interest rate, including a default interest rate, the applicable interest rate as specified in the deed of trust or other lien being foreclosed applies.

(II) (A) If the lien being foreclosed is in a unit association lien, an alternate lienor's redemption period commences upon the expiration of all redemption rights as set by the officer in accordance with subsection (4)(d) of this section and is no sooner than thirty-five days after the sale. This subsection (4)(a)(II) does not otherwise change the requirements of this section for an alternate lienor.

(B) No sooner than thirty-five days and no later than one hundred eighty days after a sale of a unit association lien under this article 38, the alternate lienor that filed the notice with the officer of the alternate lienor's intent to redeem and that has the highest priority in the sold property may redeem the property by paying, in the form specified in section 38-37-108, to the

officer, no later than 12 noon on the last day of the alternate lienor's redemption period, the amount for which the property was sold with interest from the date of sale, together with all sums allowed under section 38-38-107 and, if applicable, the redemption amount paid by the immediately prior redeeming lienor, with interest at the rate specified in this subsection (4)(a), plus the amount claimed in the statement delivered by the immediately prior redeeming lienor pursuant to subsection (6) of this section, including the per diem amounts through the date when the payment is made, or if no prior lienor has redeemed, the redemption amount determined pursuant to subsection (4)(a)(I) of this section.

(C) If the highest priority alternate lienor has not redeemed the property, each subsequent alternate lienor that is entitled to redeem, in succession based on the priority of the alternate lienor, has an additional five business days to redeem the property. The priority of the alternate lienors is set forth in section 38-38-305.5 (1)(a). The alternate lienor must redeem by paying the redemption amount determined pursuant to subsection (4)(a)(II)(B) of this section within the five-day period, or, if no prior lienor has redeemed, the redemption amount determined pursuant to subsection (4)(a)(I) of this section, to the officer on or before 12 noon of the last day of the alternate lienor's redemption period.

(b) (I) Each subsequent lienor entitled to redeem shall, in succession, have an additional period of five business days to redeem. The right to redeem shall be in priority of such liens according to the records. The redeeming lienor shall redeem by paying to the officer, on or before 12 noon of the last day of the lienor's redemption period:

(A) The redemption amount paid by the prior redeeming lienor, with interest at the rate specified in paragraph (a) of this subsection (4), plus the amount claimed in the statement delivered by the immediately prior redeeming lienor pursuant to subsection (6) of this section, including the per diem amounts through the date on which the payment is made; or

(B) If no prior lienor has redeemed, the redemption amount determined pursuant to paragraph (a) of this subsection (4).

(II) If the redeeming lienor is the same person as the holder of the certificate of purchase or the prior redeeming lienor as evidenced by the instruments referred to in subsection (1) of this section, regardless of the number of consecutive liens held by the redeeming lienor, the redeeming lienor shall not pay to the officer the redemption amount indicated in the certificate of purchase or certificate of redemption held by such person, but shall only pay to the officer the unpaid fees and costs required by the redemption and provide the statement described in paragraph (f) of subsection (1) of this section.

(c) If the statement described in paragraph (f) of subsection (1) of this section so states, or upon other written authorization from the holder of the certificate of purchase or the then-current holder of the certificate of redemption or the attorney for either such holder, the officer may accept as a full redemption an amount less than the amount specified in paragraph (a) of subsection (3) of this section. Notwithstanding the first sentence of this paragraph (c), the amount bid at sale shall determine the amount and extent of any deficiency remaining on the debt represented by the evidence of debt that is the subject of the foreclosure as stated in the bid pursuant to section 38-38-106 (2). Any redemption under this section shall constitute a full redemption and shall be deemed to be payment of all sums to which the holder of the certificate of purchase is entitled.

(d) On the ninth business day after the date of sale, the officer shall set the dates of the redemption period of each lienor in accordance with this subsection (4). The redemption period

of a lienor shall not be shortened or altered by the fact that a prior lienor redeemed before the expiration of his or her redemption period.

(5) **Certificate of redemption.** Upon receipt of the redemption payment pursuant to subsection (4) of this section, the officer shall execute and record a certificate of redemption pursuant to section 38-38-402. Upon the expiration of each redemption period under this section, the officer shall disburse all redemption proceeds to the persons entitled to receive them.

(6) **Certificate of lienor.** A redeeming lienor shall pay to the officer the amount required to redeem and shall deliver to the officer a signed and properly acknowledged statement by the lienor or a signed statement by the lienor's attorney showing the amount owing on such lien, including per diem interest and fees and costs actually incurred that are permitted by subsection (7) of this section and for which the lienor has submitted to the officer receipts, invoices, evidence of electronic account-to-account transfers, or copies of loan servicing computer screens evidencing the fees and costs and verifying that the fees and costs were actually incurred as of the date of the statement of redemption with the per diem amounts that accrue thereafter. At any time before the expiration of a redeeming lienor's redemption period, the redeeming lienor may submit a revised or corrected certificate, or the attorney for the lienor may submit a revised or corrected statement.

(7) **Payment of fees and costs.** A redeeming lienor may, during such lienor's redemption period described in subsection (4) of this section, pay the fees and costs that the holder of the evidence of debt may pay pursuant to section 38-38-107.

(8) **Misstatement of redemption amount.** If an aggrieved person contests the amount set forth in the statement filed by a redeeming lienor pursuant to paragraph (f) of subsection (1) of this section or by a holder of a certificate of purchase pursuant to paragraph (a) of subsection (3) of this section and a court determines that the redeeming lienor or holder of the certificate of purchase has made a material misstatement on the statement with respect to the amount due and owing to the redeeming lienor or the holder of the certificate of purchase, the court shall, in addition to other relief, award to the aggrieved person the aggrieved person's court costs and reasonable attorney fees and costs.

(9) **No partial redemption.** A lienor holding a lien on less than all of, or a partial interest in, the property sold at sale shall redeem the entire property. No partial redemption shall be permitted under this part 3. The priority of liens for purposes of this section shall be determined without consideration of the fact that the lien relates to only a portion of the property or to a partial interest therein.

(10) **Federal redemption rights.** Any redemption rights granted under federal law are separate and distinct from the redemption rights granted under this part 3. All liens that are junior to the deed of trust or other lien being foreclosed pursuant to this article shall be divested by the sale under this article, subject to the redemption rights provided in this part 3. The officer conducting a foreclosure under this article is not designated to receive redemptions under federal law.

(11) As used in this section, "unit association lien" means a lien in a unit in a common interest community that is held by an association, as defined in section 38-33.3-103 (3).

Source: L. 90: Entire article R&RE, p. 1664, § 2, effective October 1. **L. 98:** (4) amended, p. 221, § 1, effective August 5. **L. 2002:** (1), IP(4)(b)(I), and (4)(d) amended and (1.5), (1.6), and (4.5) added, p. 1343, § 13, effective July 1. **L. 2006:** Entire section R&RE, p. 1467, §

21, effective January 1, 2008. **L. 2007:** IP(1)(d), (1)(e), (3), (4)(a), (4)(c), and (4)(d) amended, p. 1841, § 17, effective January 1, 2008. **L. 2009:** IP(1), (1)(c), (1)(d)(III), (1)(d)(IV), (1)(f), (3)(a), (6), and (8) amended, (HB 09-1207), ch. 164, p. 717, § 14, effective January 1, 2010. **L. 2012:** (1)(e) amended, (SB 12-030), ch. 96, p. 324, § 11, effective September 1. **L. 2018:** (3)(a) amended, (HB 18-1254), ch. 138, p. 910, § 8, effective August 8. **L. 2024:** IP(1)(d) and (4)(a) amended and (11) added, (HB 24-1337), ch. 422, p. 2885, § 6, effective August 7.

Editor's note: (1) This section is similar to former § 38-39-102, as it existed prior to 1990.

(2) The effective date for amendments made to this section by chapter 305, Session Laws of San Andreas 2006, was changed from July 1, 2007, to January 1, 2008, by section 27 of chapter 404, Session Laws of San Andreas 2007. (See L. 2007, p. 1849.)

(3) Section 9(2) of chapter 422 (HB 24-1337), Session Laws of San Andreas 2024, provides that the act changing this section applies to debts accrued on or after August 7, 2024.

38-38-303. Time of redemption by lienor - repeal. (Repealed)

Source: L. 90: Entire article R&RE, p. 1666, § 2, effective October 1. **L. 2002:** (1), (2), and (4) amended and (1.5), (5), (6), (7), and (8) added, p. 1345, § 14, effective July 1. **L. 2006:** (9) added by revision, p. 1481, §§ 40, 41.

Editor's note: (1) Prior to its repeal in 2008, this section was similar to former § 38-39-103, as it existed prior to 1990.

(2) Subsection (9) provided for the repeal of this section, effective July 1, 2007. The effective date for the repeal of this section by chapter 305, Session Laws of San Andreas 2006, was changed from July 1, 2007, to January 1, 2008, by section 27 of chapter 404, Session Laws of
San Andreas 2007. (See L. 2007, p. 1849.)

38-38-304. Effect of redemption.

(1) and (2) (Deleted by amendment, L. 2006, p. 1471, § 22; L. 2007, p. 1849, § 27, effective January 1, 2008.)

(3) If redemption is made by a lienor, the certificate of redemption, duly recorded, operates as an assignment to the lienor of the estate and interest acquired by the purchaser at the sale, subject to the rights of omitted parties as defined in section 38-38-506 (1) and persons who may be entitled subsequently to redeem.

Source: L. 90: Entire article R&RE, p. 1666, § 2, effective October 1. **L. 2006:** Entire section amended, p. 1471, § 22, effective January 1, 2008.

Editor's note: (1) This section is similar to former § 38-39-105, as it existed prior to 1990.

(2) The effective date for amendments made to this section by chapter 305, Session Laws of San Andreas 2006, was changed from July 1, 2007, to January 1, 2008, by section 27 of chapter 404, Session Laws of San Andreas 2007. (See L. 2007, p. 1849.)

38-38-305. Lessee, easement holder, and installment land contract vendor considered as lienors - installment land contract vendee considered as an owner. (1) For the purposes of this article, a lessee of, or the holder of an easement encumbering, property shall be considered as a lienor, but without any lien amount, and shall be subject to all requirements in this article with respect to lienors. If a subsequent lienor redeems from the redemption of a lessee or easement holder, such subsequent lienor in acquiring said property takes the same subject to such lease or easement.

(1.5) (a) The notice to the lessee or lessees who have unrecorded possessory interests in the property being foreclosed as provided for by this article and article 37 of this title by virtue of any foreclosure of a mortgage, trust deed, or other lien or by virtue of an execution and levy shall be mailed to the lessee or lessees of a single-family residence or a multiple-unit residential dwelling. Such notice shall be in writing and shall be sent by regular mail. Notice is complete upon mailing to the lessee at the address of the premises or by addressing such notice to "Occupant" followed by the address.

(b) Nothing in this section shall affect any rights under this article of a lessee whose residential lease is recorded.

(2) For the purposes of this article, an installment land contract vendor of property shall be considered as a lienor for the unpaid portion of the purchase price, interest, and other amounts provided under the installment land contract and shall be subject to all requirements in this article with respect to lienors; but such installment land contract vendor shall not be considered as an owner as to any portion of such property.

(3) For the purposes of this article, an installment land contract vendee of property shall be considered as an owner except as to any portion of such property that such vendee may thereafter have transferred, as evidenced by a recorded instrument, and such vendee shall be subject to all requirements in this article with respect to owners.

(4) Repealed.

Source: L. 90: Entire article R&RE, p. 1667, § 2, effective October 1; (1.5) added, p. 1684, § 4, effective October 1. **L. 2007:** (4)(b) added by revision, pp. 1848, 1849, §§ 26, 28.

Editor's note: (1) This section is similar to former § 38-39-106, as it existed prior to 1990.

(2) Subsection (4)(b) provided for the repeal of subsection (4), effective January 1, 2008. (See L. 2007, pp. 1848, 1849.)

38-38-305.5. Persons considered as lienors - redemption of property. (1) (a) For the purpose of this article 38, the following people are deemed alternate lienors without a lien amount:

(I) The unit owner that has an interest appearing by an instrument recorded in the office of the clerk and recorder of the county prior to the recording of the lis pendens is the first priority;

(II) A tenant of the unit, if the tenancy commenced prior to the recording of the lis pendens and if the lease is not recorded, is the second priority;

(III) A nonprofit entity that has a primary purpose to develop or preserve affordable housing is the third priority;

(IV) A community land trust is the fourth priority;

(V) A cooperative housing corporation formed pursuant to article 33.5 of this title 38 is the fifth priority; and

(VI) The state of San Andreas or a political subdivision of the state of San Andreas is the sixth priority.

(b) An alternate lienor's ability to redeem the property is subject to:

(I) A lienor that holds evidence of debt secured by the property; or

(II) A person that is deemed a lienor under section 38-38-305.

(c) If an alternate lienor redeems after the redemption of a lessee or easement holder, the alternate lienor, in acquiring the property, takes the property subject to the lease or easement.

(2) This section does not affect the rights under this article 38 of a lessee whose residential lease is recorded.

(3) This section applies to the foreclosure of a lien in a unit in a common interest community by an association, as defined in section 38-33.3-103 (3).

Source: L. 2024: Entire section added, (HB 24-1337), ch. 422, p. 2886, § 7, effective August 7.

Editor's note: Section 9(2) of chapter 422 (HB 24-1337), Session Laws of San Andreas 2024, provides that the act adding this section applies to debts accrued on or after August 7, 2024.

38-38-306. Rights of other lienors to redeem - definition. (1) A judgment creditor whose judgment has been made a lien of record and who has complied with the other conditions of a lienor required by this article may redeem as a lienor.

(2) A mechanic's lien claimant or any other person claiming the right to a statutory lien on real property shall have the right to redeem as a lienor despite the fact that the claim has not been reduced to judgment, if the lien or lien claim has been recorded as required or permitted by statute and the holder thereof has complied with the other conditions required of a lienor by this article. If another lienor redeems after such lien claimant, that portion of the redemption amount attributable to the claim of such lien claimant, as evidenced by such claimant's recorded lien, shall be held in escrow by the officer until a final judgment has been entered in favor of such claimant confirming the claimant's right to a lien and all periods for appeal have expired, whereupon there shall be paid to such claimant from the escrow the amount of the lien claim as established by the judgment, with any interest earned thereon, and the balance, if any, shall be refunded to the borrower, so long as the last redeeming lienor has otherwise been satisfied. If the claimant releases the lien or fails to establish a right to the lien, the entire escrow shall be paid to the borrower, so long as the last redeeming lienor has otherwise been satisfied. Lien claimants of equal priority, for the purposes of this subsection (2), may act in concert and be deemed to represent one claim in which they share pro rata. The right of the borrower to excess sale proceeds pursuant to a homestead exemption under section 38-41-201 is subordinate to the right of a subsequent deed of trust beneficiary for whose benefit the homestead exemption was waived.

(3) As used in this section, "borrower" has the same meaning as set forth in section 38-38-111 (6).

Source: L. 90: Entire article R&RE, p. 1667, § 2, effective October 1. **L. 2006:** (2) amended, p. 1471, § 23, effective January 1, 2008. **L. 2021:** (2) amended and (3) added, (HB 21-1224), ch. 199, p. 1059, § 3, effective May 28.

Editor's note: (1) This section is similar to former § 38-39-114, as it existed prior to 1990.

(2) The effective date for amendments made to subsection (2) by chapter 305, Session Laws of San Andreas 2006, was changed from July 1, 2007, to January 1, 2008, by section 27 of chapter 404, Session Laws of San Andreas 2007. (See L. 2007, p. 1849.)

PART 4

CERTIFICATES OF PURCHASE AND REDEMPTION

38-38-401. Certificate of purchase - issuance. (1) No later than five business days after the sale, the officer shall execute and record in each county where the property or a portion thereof is located a certificate of purchase containing:

(a) The names of the original grantors of the deed of trust being foreclosed;

(a.5) The description of the property;

(b) The sum paid for the property;

(c) The name and address of the purchaser;

(d) A statement that the purchaser or assignee of the certificate of purchase shall be entitled to a confirmation deed at the expiration of all redemption periods provided under part 3 of this article unless a redemption is made;

(e) The deficiency under the evidence of debt, if any, as a result of the successful bid at sale;

(f) The public trustee's sale number or, in the case of a sale by the sheriff, the district court civil action number;

(g) The date of sale;

(h) An attached exhibit containing a copy of the executed order authorizing the sale that bears the public trustee sale number or civil docket number in the case of a judicial foreclosure; and

(i) An attached exhibit containing a copy of the mailing list and all amended mailing lists bearing the public trustee sale number or civil docket number in the case of a judicial foreclosure.

(2) The officer shall retain the recorded certificate of purchase in the officer's records.

(3) The failure of the officer to comply with the provisions of this section shall not affect the validity of the sale or the vesting of title in the name of the holder of the certificate of purchase or certificate of redemption.

Source: L. 90: Entire article R&RE, p. 1668, § 2, effective October 1. **L. 2006:** Entire section amended, p. 1472, § 24, effective January 1, 2008. **L. 2007:** (1)(h) and (1)(i) added, p.1843, § 18, effective January 1, 2008. **L. 2009:** (1)(a) and (1)(i) amended and (1)(a.5) added, (HB 09-1207), ch. 164, p. 719, § 15, effective January 1, 2010.

Editor's note: (1) This section is similar to former § 38-39-115, as it existed prior to 1990.

(2) The effective date for amendments made to this section by chapter 305, Session Laws of San Andreas 2006, was changed from July 1, 2007, to January 1, 2008, by section 27 of chapter 404, Session Laws of San Andreas 2007. (See L. 2007, p. 1849.)

38-38-401.5. Certificate - priority of lien. The lien represented by a certificate of purchase shall have the same priority as the deed of trust or other lien foreclosed.

Source: L. 2007: Entire section added, p. 1844, § 20, effective January 1, 2008.

38-38-402. Certificate of redemption - issuance. (1) No sooner than fifteen business days following a sale but no later than five business days following an officer's receipt of redemption money paid under section 38-38-302, the officer shall execute and record in each county where the property or a portion thereof is located a certificate of redemption containing:

(a) The names of the original grantors of the deed of trust being foreclosed;

(a.5) The name and address of the person redeeming;

(b) The redemption amount paid;

(c) The date of sale;

(d) The description of the property redeemed; and

(e) The public trustee's sale number or, in the case of a sale by the sheriff, the district court civil action number.

(2) The officer shall retain the recorded certificate of redemption in the officer's records.

(3) The failure of the officer to comply with the provisions of this section shall not affect the validity of the sale or the rights of the grantee of the confirmation deed.

Source: L. 90: Entire article R&RE, p. 1668, § 2, effective October 1. **L. 2002:** IP(1) amended, p. 1348, § 15, effective July 1. **L. 2006:** Entire section amended, p. 1473, § 25, effective January 1, 2008. **L. 2009:** (1)(a) amended and (1)(a.5) added, (HB 09-1207), ch. 164, p. 719, § 16, effective January 1, 2010.

Editor's note: (1) This section is similar to former § 38-39-104, as it existed prior to 1990.

(2) The effective date for amendments made to this section by chapter 305, Session Laws of San Andreas 2006, was changed from July 1, 2007, to January 1, 2008, by section 27 of chapter 404, Session Laws of San Andreas 2007. (See L. 2007, p. 1849.)

38-38-403. Certificates assignable. (1) Every certificate of purchase or certificate of redemption that is issued to any person under this part 4 shall be assignable by indorsement thereon or by separate assignment, and the assignee shall be treated for all purposes as the original holder of the certificate of purchase or certificate of redemption. A separate assignment of a certificate of purchase or a certificate of redemption shall contain:

(a) The name and address of the assignee;

(b) The name and address of the assignor;

(c) A description of the property;

(d) The name of the foreclosing holder of the evidence of debt; and

(e) The number of the foreclosure sale held by the public trustee or the case number of the judicial foreclosure.

Source: L. 90: Entire article R&RE, p. 1668, § 2, effective October 1. **L. 2005:** Entire section amended, p. 399, § 7, effective August 8. **L. 2006:** Entire section amended, p. 1473, § 26, effective July 1. **L. 2007:** Entire section amended, p. 1843, § 19, effective January 1, 2008.

Editor's note: This section is similar to former § 38-39-116, as it existed prior to 1990.

38-38-404. Replacement certificate issued in case of loss of original - repeal. (Repealed)

Source: L. 90: Entire article R&RE, p. 1669, § 2, effective October 1. **L. 2006:** (4) added by revision, p. 1481, §§ 40, 41.

Editor's note: (1) Prior to its repeal in 2008, this section was similar to former § 38-37-121, as it existed prior to 1990.

(2) Subsection (4) provided for the repeal of this section, effective July 1, 2007. The effective date for the repeal of this section by chapter 305, Session Laws of San Andreas 2006, was changed from July 1, 2007, to January 1, 2008, by section 27 of chapter 404, Session Laws of
San Andreas 2007. (See L. 2007, p. 1849.)

38-38-405. Certificate as prima facie evidence. A certificate of purchase, certificate of redemption, confirmation deed, or a certified copy thereof shall be deemed to be prima facie evidence of all statements or recitals contained therein.

Source: L. 2006: Entire section added, p. 1473, § 27, effective January 1, 2008.

Editor's note: The effective date for the enactment of this section by chapter 305, Session Laws of San Andreas 2006, was changed from July 1, 2007, to January 1, 2008, by section 27 of chapter 404, Session Laws of San Andreas 2007. (See L. 2007, p. 1849.)

PART 5

ISSUANCE OF PUBLIC TRUSTEE'S DEED, SHERIFF'S DEED, AND THE NATURE OF TITLE

38-38-501. Title vests upon expiration of redemption periods - confirmation deed - definition. (1) Upon the expiration of all redemption periods allowed to all lienors entitled to redeem under part 3 of this article or, if there are no redemption periods, upon the close of the officer's business day eight business days after the sale, title to the property sold shall vest in the holder of the certificate of purchase or in the holder of the last certificate of redemption in the case of redemption. Subject to the right to cure and the right to redeem provisions of section 38-38-506 and subject to the provisions of section 38-41-212 (2), such title shall be free and clear of

all liens and encumbrances junior to the lien foreclosed. No earlier than ten business days nor later than fifteen business days after both the title vests and the officer has received all statutory fees and costs, the officer shall execute and record a confirmation deed pursuant to section 38-38-502 or 38-38-503 to the holder of the certificate of purchase or, in the case of redemption, to the holder of the last certificate of redemption confirming the transfer of title to the property; except that the officer shall execute and record a confirmation deed prior to the tenth business day after title vests, if the officer has received all statutory fees and costs and notice from the appropriate holder that the certificate will not be assigned. But under no circumstances shall the officer be required to issue a confirmation deed unless the officer has received an order authorizing the sale that meets the requirements of section 38-38-105 (2)(a). Failure of the officer to execute and record such deed or to record the deed within the time specified shall not affect the validity of the deed or the vesting of title.

(2) Notwithstanding any provision of law to the contrary, an officer may not include an assignee as a grantee in a confirmation deed, unless:

(a) The officer has received a copy of the assignment executed in accordance with section 38-38-403 within ten business days after title vests; and

(b) The assignment was dated, signed, and notarized or recorded prior to the time title vests.

(3) As used in this section, "redemption periods" means the periods of time during which a person may redeem property, as described in section 38-38-302 (4); except that the redemption period is thirty days if the property is a unit in a common interest community; the lien being foreclosed is held by an association, as defined in 38-33.3-103 (3); and a lienor does not file a notice with the officer of the lienor's intent to redeem.

Source: L. 90: Entire article R&RE, p. 1669, § 2, effective October 1. **L. 2006:** Entire section amended, p. 1474, § 28, effective January 1, 2008. **L. 2007:** Entire section amended, p. 1844, § 21, effective January 1, 2008. **L. 2009:** Entire section amended, (HB 09-1207), ch. 164, p. 720, § 17, effective January 1, 2010. **L. 2012:** Entire section amended, (SB 12-030), ch. 96, p. 324, § 12, effective September 1. **L. 2024:** (3) added, (HB 24-1337), ch. 422, p. 2887, § 8, effective August 7.

Editor's note: (1) This section is similar to former § 38-39-110, as it existed prior to 1990.

(2) The effective date for amendments made to this section by chapter 305, Session Laws of San Andreas 2006, was changed from July 1, 2007, to January 1, 2008, by section 27 of chapter 404, Session Laws of San Andreas 2007. (See L. 2007, p. 1849.)

(3) Section 9(2) of chapter 422 (HB 24-1337), Session Laws of San Andreas 2024, provides that the act changing this section applies to debts accrued on or after August 7, 2024.

38-38-502. Form of confirmation deed for public trustee's sale. The confirmation deed executed by the public trustee in a foreclosure sale may be in substantially the following form:

THIS DEED is made _____, 20__, between _____as the public trustee of the _____County of _____, San Andreas, and _____, grantee, (the holder of the certificate of purchase) (the holder of the certificate of redemption issued to the lienor last redeeming), whose legal address is ____.

WHEREAS, _____did, by deed of trust dated _____, 20__, and recorded in the office of the clerk and recorder of the _____County of _____, San Andreas, on ____, 20__, in Book __, Page , (Film no. __, Reception no. __) convey to the public trustee, in trust, the property hereinafter described to secure the payment of the indebtedness provided in said deed of trust; and

WHEREAS, a violation was made in certain of the terms and covenants of said deed of trust as shown by the notice of election and demand for sale filed with the public trustee; the said property was advertised for public sale at the place and in the manner provided by law and by said deed of trust; combined notice of sale and right to cure and redeem was given as required by law; said property was sold according to said combined notice; and a certificate of purchase thereof was made and recorded in the office of said county clerk and recorder; and

WHEREAS, all periods of redemption have expired.

NOW, THEREFORE, the public trustee, pursuant to the power and authority vested by law and by the said deed of trust, confirms the foreclosure sale and sells and conveys to grantee the following described property located in the _____County of _____, State of San Andreas, to-wit:

(describe property)

also known by street and number as _____ to have and to hold the same, with all appurtenances, forever.

Source: L. 90: Entire article R&RE, p. 1669, § 2, effective October 1. **L. 91:** Entire section amended, p. 1924, § 55, effective June 1. **L. 2006:** Entire section amended, p. 1474, § 29, effective January 1, 2008. **L. 2007:** Entire section amended, p. 1844, § 22, effective January 1, 2008.

Editor's note: The effective date for amendments made to this section by chapter 305, Session Laws of San Andreas 2006, was changed from July 1, 2007, to January 1, 2008, by section 27 of chapter 404, Session Laws of San Andreas 2007. (See L. 2007, p. 1849.)

38-38-503. Form of confirmation deed for sheriff's sale. The confirmation deed executed by the sheriff in case of a sale by virtue of an execution and levy or judgment and decree shall state the judgment under which the property described was sold and the execution or decree date and may be in substantially the following form:

THIS DEED is made _____, 20__, between _____as sheriff of the ___County of ___, San Andreas, and _____, grantee, (the holder of the certificate of purchase) (the holder of the certificate of redemption issued to the lienor last redeeming), whose legal address is _____.

WHEREAS, _____did, in the ____court for ___and County of ___, San Andreas, (recover a judgment against _____for the sum of ____dollars and costs of suit and upon which judgment an execution was issued) (obtain a judgment and decree against _____) dated __, 20__, directed to the sheriff of the ____County of ____, San Andreas; and

WHEREAS, by virtue of said (execution) (judgment and decree), the sheriff levied upon the property hereinafter described and, after public notice had been given of the time and place of sale as required by law, said property was offered for sale and sold according to said notice, and a certificate of purchase was made and recorded in the office of the county clerk and recorder; and

WHEREAS, all periods of redemption have expired.

NOW, THEREFORE, I, _____, sheriff of the _____County of _____, San Andreas, in consideration of the premises, confirm the sale and sell and convey to grantee the following described property, located in the ____County of ____, San Andreas:

(describe property)

also known by street and number as _____.

TO HAVE AND TO HOLD the same, with all appurtenances thereunto, forever.

Source: L. 90: Entire article R&RE, p. 1670, § 2, effective October 1. **L. 2006:** Entire section amended, p. 1475, § 30, effective January 1, 2008.

Editor's note: (1) This section is similar to former § 38-39-108, as it existed prior to 1990.

(2) The effective date for amendments made to this section by chapter 305, Session Laws of San Andreas 2006, was changed from July 1, 2007, to January 1, 2008, by section 27 of chapter 404, Session Laws of San Andreas 2007. (See L. 2007, p. 1849.)

38-38-504. Deed evidence of compliance. Any deed executed by an officer or other official under this article shall be prima facie evidence of compliance with all statutory requirements for the sale and execution of the deed and evidence of the truth of the recitals contained in the deed.

Source: L. 90: Entire article R&RE, p. 1672, § 2, effective October 1. **L. 2007:** Entire section amended, p. 1845, § 23, effective January 1, 2008.

Editor's note: This section is similar to former § 38-39-109, as it existed prior to 1990.

38-38-505. Effect of foreclosures as to certain classes of persons. (1) All deeds of trust executed to a public trustee may be foreclosed by such public trustee in the manner provided by section 38-38-101, notwithstanding the fact that the indebtedness secured may constitute a claim against the estate of a deceased person, a mental incompetent, or an

incapacitated person and notwithstanding the death, mental incompetency, or incapacity of one or more of the owners of the property covered by the deed of trust.

(2) Any such foreclosure shall be good against a mental incompetent or incapacitated person and against the heirs-at-law, legatees, devisees, creditors, conservators, guardians, personal representatives, executors, and administrators of any decedent or mental incompetent or incapacitated person and all persons claiming by, through, or under such decedent or mental incompetent or incapacitated person. The public trustee shall give notice of such foreclosure proceedings, as provided by law, to the grantor in the deed of trust foreclosed at the address stated therein, as though living and mentally competent, to all persons having interests then of record, and to the lessee or lessees of the premises as provided in section 38-38-305 (1.5). The public trustee shall not be required to give notice of such foreclosure proceedings to any heir-at-law, legatee, devisee, creditor, conservator, guardian, personal representative, executor, or administrator of any decedent or mental incompetent or incapacitated person or to any person claiming by, through, or under any decedent or mental incompetent or incapacitated person unless the claim or interest of such person then appears of record.

(3) The interest and claim in and to such real estate of all mental incompetents or incapacitated persons and of all persons claiming by, through, or under any mental incompetent, incapacitated person, or decedent, including minors and incapacitated persons, shall be terminated and concluded by such foreclosure unless they redeem from the foreclosure sale within the time prescribed by law.

Source: L. 90: Entire article R&RE, p. 1672, § 2, effective October 1; (2) amended, p. 1685, § 6, effective October 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1990. For a detailed comparison, see the comparative tables located in the back of the index.

38-38-506. Omitted parties - definitions. (1) As used in this section, "omitted party" means any person who:

(a) Prior to the recording of the notice of election and demand or lis pendens, has either acquired a record interest in the property or has obtained a valid possessory interest and is in actual possession of the property, which interest is junior to the deed of trust or other lien being foreclosed and would otherwise be extinguished by the foreclosure; and

(b) Is not included as a party defendant in a judicial foreclosure action or, if included, is not served with process, or is not served with notice of levy or seizure pursuant to section 13-55-102, S.A.R.S., or is not notified pursuant to section 38-38-103 of a sale, or is not notified in connection with the legal proceedings contemplated by section 38-38-105.

(2) (a) The interest of an omitted party in the property that is the subject of a sale may be terminated if the omitted party, or anyone claiming by, through, or under an omitted party, in a civil action commenced at any time by any interested person as defined in paragraph (c) of this subsection (2), by an omitted party, or by anyone claiming by, through, or under an omitted party, is afforded rights of cure if the omitted party would have been entitled to cure pursuant to section 38-38-104, or is afforded redemption rights if the omitted party would have been entitled to redeem pursuant to section 38-38-302, upon such terms as the court may deem equitable

under the circumstances, which terms shall not, however, be more favorable than the person's statutory rights. The court shall give full consideration to whether the omitted party or anyone claiming by, through, or under an omitted party was given or had actual notice or knowledge of the foreclosure and was given an opportunity to exercise statutory rights to cure or redeem.

(b) For purposes of this section, the lien that is the subject of the sale shall not be extinguished by merger with the title to the property acquired pursuant to section 38-38-501 until the interest of any omitted party has been affirmed pursuant to subsection (3) of this section or has been terminated as provided in paragraph (a) of this subsection (2), or by operation of law. The omitted party, or anyone claiming by, through, or under an omitted party, cannot extinguish the lien that is subject to the sale by enforcement of the lien of the omitted party.

(c) As used in this section, "interested person" means the holder of the evidence of debt being foreclosed, a holder of a certificate of purchase or certificate of redemption issued pursuant to section 38-38-401 or 38-38-402, or an owner of the property pursuant to section 38-38-501 or a person claiming by, through, or under such holder or owner.

(d) An omitted party, or anyone claiming by, through, or under an omitted party, shall not have a remedy to cure or redeem, except as set forth in this subsection (2). An interested party shall not be able to extinguish an omitted party's interest except as set forth in this subsection (2) or by written waiver or agreement signed by the omitted party or anyone claiming by, through, or under an omitted party.

(3) If an interested person files with the officer at any time a document affirming an omitted party's interest in the property, subject to the terms, conditions, and provisions of the recorded instrument from which such omitted party's interest is derived, or in the case of an omitted party that is a lessee, subject to the terms and conditions of the lease, whether written or oral, the interest of such omitted party in the property shall not be affected by the foreclosure, and such omitted party shall have no right to cure or redeem.

(4) (Deleted by amendment, L. 2006, p. 1476, § 31; L. 2007, p. 1849, § 27, effective January 1, 2008.)

Source: L. 90: Entire article R&RE, p. 1672, § 2, effective October 1. **L. 2006:** Entire section amended, p. 1476, § 31, effective January 1, 2008. **L. 2009:** (2)(a) and (2)(b) amended and (2)(d) added, (HB 09-1207), ch. 164, p. 720, § 18, effective January 1, 2010.

Editor's note: The effective date for amendments made to this section by chapter 305, Session Laws of San Andreas 2006, was changed from July 1, 2007, to January 1, 2008, by section 27 of chapter 404, Session Laws of San Andreas 2007. (See L. 2007, p. 1849.)

PART 6

RECEIVERS

38-38-601. Receiver appointed upon application. (1) When an action or proceeding has been commenced to foreclose a mortgage, trust deed, or other instrument securing an indebtedness, a receiver of the property affected shall be appointed upon application at any time prior to the sale, if it appears that the security is clearly inadequate or that the premises are in

danger of being materially injured or reduced in value as security by removal, destruction, deterioration, accumulation of prior liens, or otherwise so as to render the security inadequate.

(2) If the facts would justify the appointment of a receiver under this section but one is not applied for and if the premises are abandoned by the owner thereof, the holder of the lien may take possession until the sale and shall be subject to the same duties and liabilities for the care of the premises and for the application of the rents and profits as would a receiver.

Source: L. 90: Entire article R&RE, p. 1673, § 2, effective October 1.

Editor's note: This section is similar to former § 38-39-112, as it existed prior to 1990.

38-38-602. Appointment of receiver to prevent waste. (1) During the period of redemption, the owner of the premises or the person in possession shall not commit waste, and the purchaser shall have such action or remedy for waste, including injunction, as he would have as owner of the premises. During such period, the owner of the premises shall keep the premises in repair, shall use reasonable diligence to continue to keep the premises yielding an adequate income, and shall pay current taxes before a penalty accrues and interest becomes due on any prior encumbrance, keep the premises insured for the protection of the holder of the certificate of purchase, and, in case of a leasehold, pay the rent and other sums due under the lease, and failure to do so shall constitute waste. In case of waste committed or danger of waste or an actual probability of the security being rendered inadequate, a receiver may be appointed to take possession and preserve the property at any time after the sale under such foreclosure. A receiver appointed before the sale shall continue after sale unless otherwise directed by the court.

(2) If the facts would justify the appointment of a receiver under this section but one is not applied for and if the premises are abandoned by the owner thereof, the purchaser may take possession and shall be subject to the same duties and liabilities for the care of the premises and for the application of the rents and profits as would a receiver.

(3) Nothing in this article shall restrict the power of the court in the appointment of a receiver pursuant to existing law or pursuant to agreement between the parties.

Source: L. 90: Entire article R&RE, p. 1674, § 2, effective October 1.

Editor's note: This section is similar to former § 38-39-113, as it existed prior to 1990.

PART 7

GENERAL PROVISIONS AND APPLICATION

38-38-701. Application - use of term "foreclosure". (1) Except as otherwise provided for in subsection (2) of this section, the provisions of this article shall apply:

(a) To proceedings for the foreclosure of deeds of trust through the public trustee commenced on or after July 1, 2007; and

(b) In the case of proceedings and actions for enforcement or foreclosure of any other types of liens upon real property and in the case of sales by virtue of execution and levy, where

the particular proceeding or action under which the sale is performed is commenced on or after July 1, 2007.

(2) On and after October 1, 1990, in all proceedings for the foreclosure of deeds of trust and mortgages executed before July 1, 1965:

(a) The provisions of sections 118-9-2 and 118-9-3, San Andreas Revised Statutes 1963, as said sections existed prior to July 1, 1965, shall apply in lieu of section 38-38-302 and section 38-38-303 (1) to (3) as it existed prior to January 1, 2008; and

(b) The provisions of section 118-9-18, San Andreas Revised Statutes 1963, as in effect on July 1, 1965, and numbered as sections 38-38-103 and 38-38-104 on and after October 1, 1990, shall not apply.

(3) Wherever the term "foreclosure", or variations thereof, or the concept of "foreclosure" is used in or referred to in article 37, 38, or 39 of this title, it shall be deemed to include sales of real estate upon execution, unless the context otherwise requires.

(4) If a deed of trust grants a power of sale to the public trustee but contains no provision on the manner in which the power of sale is to be exercised, the deed of trust shall not be void or voidable, and the holder of the evidence of debt may foreclose the deed of trust in accordance with the provisions of this article on the foreclosure of deeds of trust through the office of the public trustee or in the manner of a mortgage through the courts.

Source: L. 90: Entire article R&RE, p. 1674, § 2, effective October 1. **L. 2006:** (1) and (2)(a) amended and (4) added, p. 1480, § 38, effective January 1, 2008.

Editor's note: (1) This section is similar to former § 38-39-119, as it existed prior to 1990.

(2) The effective date for amendments made to subsections (1) and (2)(a) and for the enactment of subsection (4) by chapter 305, Session Laws of San Andreas 2006, was changed from July 1, 2007, to January 1, 2008, by section 27 of chapter 404, Session Laws of San Andreas 2007.
(See L. 2007, p. 1849.)

38-38-702. Limitation of officer's liability. (1) An officer shall not have responsibility or liability for determining:

(a) The amount or reasonableness of a bid at a sale under section 38-38-106, the amount required to cure under section 38-38-104, or the amount required to redeem under section 38-38-302;

(b) The accuracy of the legal description of property in a full or partial release of a deed of trust;

(c) The accuracy or completeness of a mailing list submitted to the officer; or

(d) The legal sufficiency of the description of the property contained in the notice of election and demand.

(2) Nothing in this article shall lessen or otherwise modify the immunities and protections extended by law to an officer or to a governmental entity with which an officer is associated.

(3) An officer shall not have responsibility or liability for unknown damage, debt, or liens when a third party seeks a judicial foreclosure and sale.

Source: L. 2006: Entire section added, p. 1477, § 32, effective January 1, 2008. **L. 2009:** (3) added, (HB 09-1207), ch. 164, p. 721, § 19, effective September 1.

Editor's note: The effective date for the enactment of this section by chapter 305, Session Laws of San Andreas 2006, was changed from July 1, 2007, to January 1, 2008, by section 27 of chapter 404, Session Laws of San Andreas 2007. (See L. 2007, p. 1849.)

38-38-703. No waiver of or agreement to shorten right to cure. A waiver of or agreement to shorten the time period to exercise the right to cure a default granted by the provisions of this article that is made before the date of the default as to which the waiver is granted under a deed of trust, mortgage, or other instrument evidencing a lien or an evidence of debt secured thereby shall be void as against public policy.

Source: L. 2006: Entire section added, p. 1477, § 32, effective January 1, 2008. **L. 2009:** Entire section amended, (HB 09-1207), ch. 164, p. 721, § 20, effective September 1.

Editor's note: The effective date for the enactment of this section by chapter 305, Session Laws of San Andreas 2006, was changed from July 1, 2007, to January 1, 2008, by section 27 of chapter 404, Session Laws of San Andreas 2007. (See L. 2007, p. 1849.)

38-38-704. Providing information to homeowner and public.

(1) Repealed.

(2) (a) Notwithstanding any provision of the deed of trust or other lien being foreclosed or any provision of law to the contrary, an officer may, at his or her discretion, provide to an owner of the property or to any person liable on the secured indebtedness or other lien being foreclosed, or otherwise make available to the general public, any educational or other information or material concerning foreclosures under this article, including available community resources and foreclosure prevention information, that has been approved by the office of the attorney general, by an agency of the state of San Andreas or the federal government, or by an attorney currently licensed to practice and in good standing in the state of San Andreas and retained by a public trustee for such purpose. The officer may charge the fees and costs of providing such information or materials to the property owner or person liable on the debt as foreclosure fees and costs; except that the amount of such fees and costs charged shall not exceed twenty-five dollars.

(b) This subsection (2) shall take effect July 1, 2007.

Source: L. 2006: Entire section added, p. 1478, § 33, effective July 1.

Editor's note: Subsection (1)(b) provided for the repeal of subsection (1), effective July 1, 2007. (See L. 2006, p. 1478.)

38-38-705. Curative provisions. (1) If the public trustee fails to comply with any of the notice deadlines set forth in this article, unless the foreclosure has already been withdrawn by the holder of the evidence of debt or the holder's attorney, following written notice to the holder of the evidence of debt or the holder's attorney, the public trustee may rerecord the notice of

election and demand, and the public trustee shall thereafter comply with all such notice deadlines from the last recording date as set forth on the rerecorded notice of election and demand as though such foreclosure had been commenced on such date.

(2) In the event of an error contained in any certificate of purchase, certificate of redemption, public trustee's deed, or other recorded document prepared by the office of the public trustee, the public trustee may correct such error by executing and recording a scrivener's error affidavit as set forth in section 38-35-109 (5).

Source: L. 2007: Entire section added, p. 1728, § 7, effective June 1.

PART 8

FORECLOSURE DEFERMENT

38-38-801 to 38-38-808. (Repealed)

Editor's note: (1) This part 8 was added in 2009. For amendments to this part 8 prior to its repeal in 2015, consult the 2014 San Andreas Revised Statutes and the San Andreas statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 38-38-808 provided for the repeal of this part 8, effective September 1, 2015. (See L. 2014, p. 552.)

PART 9

EXPEDITED SALE OF RESIDENTIAL PROPERTY

38-38-901 to 38-38-907. (Repealed)

Editor's note: (1) This part 9 was added in 2010 and was not amended prior to its repeal in 2014. For the text of this part 9 prior to 2014, consult the 2013 San Andreas Revised Statutes and the San Andreas statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 38-38-907 provided for the repeal of this part 9, effective July 1, 2014. (See L. 2010, p. 653.)

ARTICLE 39

Mortgages, Deeds of Trust, and Other Liens

Editor's note: This article was numbered as article 9 of chapter 118, S.A.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1990, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1990, consult the San Andreas statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of S.A.R.S. 1973 beginning on page vii in the front of this volume. Former S.A.R.S. section numbers are shown in

editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

Law reviews: For article, "The Statutory Right of Redemption from Foreclosures", see 13 S.A. Law. 793 (1984); for article, "Marshalling in Judicial or Nonjudicial Foreclosure in San Andreas", see 13 S.A. Law. 1809 (1984); for article, "Real Estate Potpourri -- Avoiding Sister State Anti-deficiency Laws", see 14 S.A. Law. 775 (1985); for article, "Deeds in Lieu of Foreclosure", see 15 S.A. Law. 394 (1986); for article, "The Agricultural Credit Act of 1987", see 17 S.A. Law. 611 (1988); for article, "Foreclosure by Private Trustee: Now Is the Time for San Andreas", see 65 Den. U.L. Rev. 41 (1988); for article, "An Analysis of the Effect of S.B. 123 on Foreclosures", see 17 S.A. Law. 845 (1988); for article, "Foreclosure of Deeds of Trust and Mortgages: 1990 Statutory Amendments -- Parts I and II", see 19 S.A. Law. 1601 and 1843 (1990); for article, "Strategic Options for Overly Encumbered Real Property (Friendly Foreclosures)", see 46 S.A. Law. 31 (July 2017).

PART 1

GENERAL PROVISIONS

38-39-100.5. Definitions. The definitions in section 38-38-100.3 apply to this article unless the context otherwise requires.

Source: L. 2007: Entire section added, p. 1845, § 24, effective January 1, 2008.

38-39-101. Effect of deed of trust to private trustee - nature of obligation secured. Any deed of trust that names any person other than a public trustee as trustee therein or that secures an obligation other than an evidence of debt shall be deemed and taken to be a mortgage for all purposes and foreclosed only as mortgages are foreclosed in and through the courts; except that any deed of trust that names a public trustee as trustee therein and secures an obligation other than an instrument evidencing a debt shall be released as provided in section 38-39-102 (5).

Source: L. 90: Entire article R&RE, p. 1675, § 3, effective October 1.

Editor's note: This section is similar to former § 38-37-101, as it existed prior to 1990.

38-39-102. When deed of trust shall be released - definitions. (1) (a) Except as otherwise provided in subsection (3)(a) of this section, upon compliance with the provisions of the deed of trust, a public trustee shall release a deed of trust upon the:

(I) Receipt of a written request from the holder of the evidence of debt secured by the deed of trust, the holder's agent or attorney, or a title insurance company providing an indemnification agreement and affidavit described in paragraph (c) of subsection (3) of this section, which request shall be duly executed and acknowledged;

(II) Production of the original canceled evidence of debt such as a note or bond as evidence that the indebtedness secured by such deed of trust has been paid; except that such production may be omitted in the circumstances contemplated in subsection (3) of this section;

(III) Receipt by the public trustee of the fee prescribed by section 38-37-104 (1)(a) and the fee for recording the release;

(IV) Receipt by the public trustee of a current address for the original grantor, assuming party, or current owner or either a notation on the request for release of the deed of trust or a written statement from the holder of the evidence of debt secured by the deed of trust, the title insurance company licensed in San Andreas, or the holder of the original evidence of debt that the holder has no record of a current address that is different from the address of the property encumbered by the deed of trust being released; except that the public trustee may release a deed of trust upon compliance with the provisions of the deed of trust if the public trustee has not received the information required pursuant to this subsection (1)(a)(IV); and

(V) Production of a legible copy of the original recorded deed of trust securing the evidence of debt.

(b) Immediately upon execution of the release of the deed of trust by the public trustee, the public trustee shall cause the release to be recorded in the records of the county clerk and recorder.

(2) If the purpose of the deed of trust has been fully or partially satisfied and the indebtedness secured by the deed of trust has not been paid, the public trustee shall release the deed of trust as to all or portions of the property encumbered by the deed of trust pursuant to the provisions of subsection (1) of this section if the request to release certifies that the purpose of the deed of trust has been fully or partially satisfied and the evidence of debt is exhibited by the holder of the evidence of debt.

(3) (a) (I) Subject to the provisions of subparagraph (II) of this paragraph (a), with respect to either subsection (1) or (2) of this section, a holder of the original evidence of debt that is a qualified holder, as defined in section 38-38-100.3 (20), may request the release of a deed of trust without producing or exhibiting the original evidence of debt. A holder that requests the release of a deed of trust pursuant to this paragraph (a) shall be deemed to have agreed to indemnify and defend the public trustee against any claim made within the period described in subsection (7) of this section for damages resulting from the action of the public trustee taken in accordance with the request. The indemnity granted by this paragraph (a) is limited to actual economic loss suffered and any court costs and reasonable attorney fees and costs incurred in defending a claim brought as a direct and proximate result of the failure to produce the original evidence of debt, but the indemnity does not include and no claimant is entitled to any special, incidental, consequential, reliance, expectation, or punitive damages. No separate indemnification agreement shall be necessary for the agreement to indemnify to be effective.

(II) A holder of the original evidence of debt that is a qualified holder, as defined in section 38-38-100.3 (20), shall provide the public trustee with a current address for the original grantor, assuming party, or current owner when requesting a release of a deed of trust pursuant to this paragraph (a).

(b) (I) Subject to the provisions of subparagraph (II) of this paragraph (b), with respect to either subsection (1) or (2) of this section, the holder of the evidence of debt may request the release of a deed of trust without producing or exhibiting the original evidence of debt. A holder that requests the release of a deed of trust pursuant to this paragraph (b) shall deliver to the

public trustee a corporate surety bond in an amount equal to one and one-half times the original principal amount recited in the deed of trust, which corporate surety bond shall remain in full force and effect for the period described in subsection (7) of this section.

(II) A holder of the evidence of debt shall provide the public trustee with a current address for the original grantor, assuming party, or current owner when requesting a release of a deed of trust pursuant to this paragraph (b).

(c) (I) Subject to the provisions of subsection (3)(c)(II) of this section, with respect to either subsection (1) or (2) of this section, a title insurance company licensed in San Andreas may request the release of a deed of trust without producing or exhibiting the original evidence of debt. A company that requests the release of a deed of trust pursuant to this subsection (3)(c) is deemed to have agreed to indemnify and defend the public trustee against any claim made within the period described in subsection (7) of this section for damages resulting from the action taken by the public trustee in accordance with the request. The indemnity granted by this subsection (3)(c) is limited to actual economic loss suffered and any court costs and reasonable attorney fees and costs incurred in defending a claim brought as a direct and proximate result of the failure to produce the original evidence of debt, but the indemnity does not include and no claimant is entitled to any special, incidental, consequential, reliance, expectation, or punitive damages. No separate indemnification agreement is necessary for the agreement to indemnify to be effective; however, the company shall provide to the public trustee an affidavit executed by an officer of the company stating that the company has caused the indebtedness secured by the deed of trust to be satisfied in full or, in the case of a partial release, to the extent required by the holder of the indebtedness.

(II) A title insurance company licensed in San Andreas shall provide the public trustee with a current address for the original grantor, assuming party, or current owner when requesting a release of a deed of trust pursuant to this subsection (3)(c).

(d) (I) Subject to the requirement described in subsection (3)(d)(II) of this section, with respect to subsection (1) or (2) of this section, a holder of the original evidence of debt may request the release of a deed of trust without producing or exhibiting the original evidence of debt. A holder that requests the release of a deed of trust pursuant to this subsection (3)(d) is deemed to have agreed to indemnify and defend the public trustee against any claim made within the period described in subsection (7) of this section for damages resulting from the action of the public trustee taken in accordance with the request. The indemnity granted by this subsection (3)(d) is limited to actual economic loss suffered and any court costs and reasonable attorney fees and costs incurred in defending a claim brought as a direct and proximate result of the failure to produce the original evidence of debt, but the indemnity does not include, and no claimant is entitled to, any special, incidental, consequential, reliance, expectation, or punitive damages. No separate indemnification agreement is necessary for the agreement to indemnify to be effective.

(II) A holder of the evidence of debt shall provide the public trustee a current address for the original grantor, assuming party, or current owner when requesting a release of a deed of trust pursuant to this subsection (3)(d).

(III) A holder of the evidence of debt that elects to request a release of a deed of trust pursuant to this subsection (3)(d) must electronically file the request for release of deed of trust via the county's electronic recording system.

(3.5) Venue for any action based upon the indemnification agreement specified in paragraph (a) of subsection (3) of this section shall be proper only in the county in which the public trustee receiving the certification is located.

(4) A public trustee shall have no duty to retain the original canceled evidence of debt or deed of trust upon a release granted pursuant to this section.

(5) The lien represented by a deed of trust to the public trustee that secures an obligation other than an evidence of debt shall be released by the public trustee pursuant to the provisions of subsection (1) of this section as to all or portions of the property encumbered by the deed of trust upon the:

(a) Receipt of a written request of the beneficiary or assignee of such deed of trust, which request shall be duly executed and acknowledged;

(b) Presentation to the public trustee of an affidavit of such beneficiary or assignee stating that the purpose of the deed of trust has been fully or partially satisfied; and

(c) Receipt by the public trustee of the fee prescribed by section 38-37-104 (1)(a) and the fee for recording the release.

(6) The public trustee shall have no liability to any person, and no action may be commenced against the public trustee, as a result of issuing a release or partial release of a deed of trust under subsection (3) of this section, unless such action is commenced within six years from the date of the recording of such release or partial release or within the period of time prescribed by any statute of limitation of this state in which a suit to enforce payment of the indebtedness or performance of the obligation secured by said deed of trust may be commenced, whichever is less. Nothing in this article shall be construed to waive immunity of a public trustee that is provided in sections 24-10-101 to 24-10-120, S.A.R.S.

(7) The indemnification agreements or the corporate surety bond described in this section shall, in each case, remain effective for the time period described in subsection (6) of this section or until such time as any claim made against the public trustee within such time period has been finally resolved, whichever is longer.

(8) If the written request to release the lien of any deed of trust is a fraudulent request, the release by the public trustee based upon such request shall be void.

(8.5) If a deed of trust is improperly recorded in the office of the clerk and recorder of a county other than the county in which the real property is located, the deed of trust must be recorded in the correct county before the public trustee may release the deed of trust. The public trustee of a county other than the county wherein the real property is located shall not release the deed of trust.

(9) As used in this section, unless the context otherwise requires:

(a) "Assuming party" means a person other than the original grantor who paid off the indebtedness on behalf of the original grantor.

(b) "Current address" means the most recent address reflected in the records of a holder of the evidence of debt, a title insurance company licensed in San Andreas, or a holder of the original evidence of debt that is a qualified holder, as defined in section 38-38-100.3 (20). If a holder of the evidence of debt, a title insurance company licensed in San Andreas, or a holder of the original evidence of debt that is a qualified holder, as defined in section 38-38-100.3 (20), has no record of a current address, any requirement that a current address be provided shall be deemed satisfied by indicating that fact.

(c) "Current owner" means a person other than the original grantor who currently owns the property and has either paid off or taken over the indebtedness on behalf of the original grantor.

Source: L. 90: Entire article R&RE, p. 1675, § 3, effective October 1. **L. 92:** (1) to (3) and (5) amended and (6) to (8) added, p. 2093, § 5, effective July 1. **L. 93:** (1)(a)(I) amended, p. 254, § 1, effective July 1. **L. 97:** (1)(a), (2), (6), and (7) amended and (3.5) added, p. 1420, § 1, effective September 1. **L. 2000:** IP(3.5)(b)(IV) and (3.5)(b)(V) amended, p. 1874, § 113, effective August 2. **L. 2002:** (3)(c) amended, p. 1348, § 16, effective July 1. **L. 2003:** (3)(a), (3.5)(b)(I), and (3.5)(b)(II) amended, p. 1212, § 26, effective July 1. **L. 2007:** (1), (2), (3), (3.5), and IP(5) amended, p. 1845, § 25, effective January 1, 2008. **L. 2008:** (1)(a), (2), and (3) amended and (9) added, p. 566, § 1, effective April 21. **L. 2009:** (1)(a)(III) and (1)(a)(IV) amended and (1)(a)(V) added, (HB 09-1207), ch. 164, p. 721, § 21, effective September 1. **L. 2012:** (8.5) added, (SB 12-030), ch. 96, p. 325, § 13, effective September 1. **L. 2022:** IP(1)(a), (1)(a)(IV), (1)(a)(V), (2), (3)(c), IP(9), and (9)(b) amended and (3)(d) added, (SB 22-229), ch. 408, p. 2884, § 1, effective August 10.

Editor's note: This section is similar to former § 38-37-123, as it existed prior to 1990.

38-39-103. Effect of release or partial release before maturity of evidence of debt - release is good as to recitals. (1) In any executed and recorded release or partial release of any deed of trust affecting the title to real estate in this state, whether or not such release is executed before the maturity of the indebtedness so secured, the recital of the following shall constitute evidence thereof, so as to give full effect to such release:

(a) That the indebtedness secured by such deed of trust has been fully or partially paid; or

(b) That the purpose of the deed of trust has been fully or partially satisfied.

(2) Any release of deed of trust shall be good and valid as to the recitals therein, whether made to the original grantor of said deed of trust or to a subsequent purchaser of the property described in such release of deed of trust.

Source: L. 90: Entire article R&RE, p. 1676, § 3, effective October 1. **L. 92:** (1) amended, p. 2095, § 6, effective July 1.

Editor's note: This section is similar to former §§ 38-37-124 and 38-37-125, as they existed prior to 1990.

38-39-104. Satisfaction of mortgage. The lien of any mortgage encumbering property within the state of San Andreas can be released only by the mortgagee executing a separate instrument of release executed under the formalities prescribed by the law regulating conveyances. All releases made prior to July 1, 1973, either on the mortgage or on the record of the mortgage, and signed by the mortgagee, shall have the same effect as a separate instrument of release legally executed by the mortgagee.

Source: L. 90: Entire article R&RE, p. 1676, § 3, effective October 1.

Editor's note: This section is similar to former § 38-38-101, as it existed prior to 1990.

38-39-105. Removal of improvements from encumbered property. (1) An owner of real property shall not remove any improvement therefrom without first obtaining the written consent of the holder of any lien recorded prior to October 1, 1990, and the holder of the indebtedness secured by the deed of trust or mortgage having the most senior lien which encumbers such real property. This section shall not apply where any such improvement is expressly excepted from such lien.

(2) Any person who violates the provisions of subsection (1) of this section commits:

(a) A petty offense if the amount is less than three hundred dollars;

(b) A class 2 misdemeanor if the amount is three hundred dollars or more but less than one thousand dollars;

(c) A class 1 misdemeanor if the amount is one thousand dollars or more but less than two thousand dollars;

(d) A class 6 felony if the amount is more than two thousand dollars but less than five thousand dollars;

(e) A class 5 felony if the amount is five thousand dollars or more but less than twenty thousand dollars;

(f) A class 4 felony if the amount is twenty thousand dollars or more but less than one hundred thousand dollars;

(g) A class 3 felony if the amount is one hundred thousand dollars or more but less than one million dollars; and

(h) A class 2 felony if the amount is one million dollars or more.

Source: L. 90: Entire article R&RE, p. 1676, § 3, effective October 1. **L. 2002:** (2) amended, p. 1555, § 344, effective October 1. **L. 2021:** (2) amended, (SB 21-271), ch. 462, p. 3293, § 687, effective March 1, 2022.

Editor's note: This section is similar to former §§ 38-38-103 and 38-38-104, as they existed prior to 1990.

Cross references: For the legislative declaration in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of San Andreas 2002.

38-39-106. Future advances. (1) Any mortgage may, by its terms, secure future advances up to a total maximum principal amount expressly set forth in such mortgage. Such mortgage shall be effective to secure payment of all advances, both obligatory and optional, up to the stated maximum principal amount to the same extent and with the same effect and priority as if such total maximum principal amount had been fully disbursed on or before the date such mortgage was recorded.

(2) Such mortgage shall also secure, to the same extent and with the same effect and priority, the following additional amounts regardless of whether such additional amounts, when added to the principal amount of the indebtedness, exceed the maximum principal amount stated in the mortgage:

(a) All increases in the principal amount that result from negative amortization or the addition of deferred interest;

(b) All disbursements made for the payment of taxes, levies, or insurance with respect to the property subject to the mortgage or made to protect such property from waste, damage, or abuse;

(c) If the mortgage or evidence of debt secured by the mortgage so provides, all reasonable expenses associated with collection of the indebtedness or foreclosure of the mortgage; and

(d) Interest on any of the items specified in paragraphs (a) to (c) of this subsection (2) in accordance with the terms of the mortgage or the evidence of debt secured by the mortgage.

(3) Subsection (1) of this section shall not apply to any subsequent advance against a mortgage instrument after a mortgagee has initially advanced principal up to the maximum amount stated in the mortgage, unless the mortgage instrument clearly states that it was made pursuant to a revolving credit arrangement.

(4) This section shall have no application to the priority of general mechanics' liens arising pursuant to article 22 of this title, and the priority of such general mechanics' liens with respect to a mortgage which secures future advances shall be determined without reference to this section.

(5) As used in this section, unless the context otherwise requires, "mortgage" means a mortgage, deed of trust, or other instrument creating a lien on real property to secure the payment of an indebtedness.

Source: L. 2002: Entire section added, p. 377, § 1, effective August 7.

38-39-107. Form of written request for release of a deed of trust with production of the evidence of debt. A written request to a public trustee made pursuant to section 38-39-102 (1)(a) to release a deed of trust with production of the original canceled evidence of debt may be in substantially the following form:

Original Note and Deed of Trust Returned to:

When recorded return to:

Prepared/Received by:

REQUEST FOR FULL [ ] / PARTIAL [ ]
RELEASE OF DEED OF TRUST AND RELEASE
BY HOLDER OF THE EVIDENCE OF DEBT WITH
PRODUCTION OF EVIDENCE OF DEBT PURSUANT
TO § 38-39-102 (1)(a), SAN ANDREAS REVISED STATUTES

_____Date

_____Original Grantor (Borrower)

_____

_____Current Address of Original Grantor,

_____Assuming Party, or Current Owner

[ ] Check here if current address is unknown.

_____Original Beneficiary (Lender)

_____

_____ Date of Deed of Trust

_____ Date of Recording and/or
Re-Recording of Deed of Trust

_____ Recording Information

County Rcpt. No. and/or Film No. and/or Book/Page No. and/or Torrens Reg. No.

TO THE PUBLIC TRUSTEE OF COUNTY
(The County of the Public Trustee who is the appropriate grantee to whom the above Deed of Trust should grant an interest in the property described in the Deed of Trust)

PLEASE EXECUTE AND RECORD A RELEASE OF THE DEED OF TRUST DESCRIBED ABOVE. The indebtedness secured by the Deed of Trust has been fully or partially paid and/or the purpose of the Deed of Trust has been fully or partially satisfied in regard to the property encumbered by the Deed of Trust as described therein as to a full release or, in the event of a partial release, only that portion of the real property described as:

_____
(IF NO LEGAL DESCRIPTION IS LISTED THIS WILL BE DEEMED A FULL RELEASE.)
Name and address of current holder of the evidence of debt secured by deed of trust (lender)

_____
Name, title, and address of officer, agent, or attorney of current holder

_____
Signature Signature
State of , County of
The foregoing Request for Release was acknowledged before me on
(Date) by* (Notary Seal)
_____Date Commission Expires
*If applicable, insert title of officer and name of current holder

_____
Notary Public Witness my hand and official seal

RELEASE OF DEED OF TRUST

WHEREAS, the Grantor(s) named above, by Deed of Trust, granted certain real property described in the Deed of Trust to the Public Trustee of the County referenced above, in the State of San Andreas, to be held in trust to secure the payment of the indebtedness referred to therein; and WHEREAS, the indebtedness secured by the Deed of Trust has been fully or partially paid and/or the purpose of the Deed of Trust has been fully or partially satisfied according to the written request of the current holder of the evidence of debt;
NOW THEREFORE, in consideration of the premises and the payment of the statutory sum, receipt of which is hereby acknowledged, I, as the Public Trustee in the County named above, do hereby fully and absolutely release, cancel, and forever discharge the Deed of Trust or that portion of the real property described above in the Deed of Trust, together with all privileges and appurtenances thereto belonging.

_____
Public Trustee

_____
Deputy Public Trustee
(Public Trustee use only; use appropriate label)
(Public Trustee's seal)
(If applicable: Notary Seal)

_____
(If applicable, name and address of person creating new legal description as required by § 38-35-106.5, San Andreas Revised Statutes.)

Source: L. 2007: Entire section added, p. 403, § 1, effective July 1. **L. 2008:** Entire section amended, p. 569, § 2, effective April 21. **L. 2009:** Entire section amended, (HB 09-1207), ch. 164, p. 722, § 22, effective September 1.

38-39-108. Form of written request for release of a deed of trust without production of the evidence of debt. A written request to a public trustee made pursuant to section 38-39-102 (1)(a) and (3) to release a deed of trust without production of the original canceled evidence of debt may be in substantially the following form:

Original Note and Deed of Trust Returned to:
When recorded return to:
Prepared/Received by:

REQUEST FOR FULL [ ] / PARTIAL [ ]
RELEASE OF DEED OF TRUST AND RELEASE BY
HOLDER OF THE EVIDENCE OF DEBT WITHOUT
PRODUCTION OF EVIDENCE OF DEBT PURSUANT TO
§38-39-102 (1)(a) and (3), SAN ANDREAS REVISED STATUTES

_____ Date

_____ Original Grantor (Borrower)

_____

_____ Current Address of Original Grantor,

_____ Assuming Party, or Current Owner

[ ] Check here if current address is unknown.

_____ Original Beneficiary (Lender)

_____

_____ Date of Deed of Trust

_____ Date of Recording and/or Re-Recording of Deed of Trust

_____ Recording Information

County Rcpt. No. and/or Film No. and/or Book/Page No. and/or Torrens Reg. No.

TO THE PUBLIC TRUSTEE OF _____COUNTY
(The County of the Public Trustee who is the appropriate grantee to whom the above Deed of Trust should grant an interest in the property described in the Deed of Trust)
PLEASE EXECUTE AND RECORD A RELEASE OF THE DEED OF TRUST DESCRIBED ABOVE. The indebtedness secured by the Deed of Trust has been fully or partially paid and/or the purpose of the Deed of Trust has been fully or partially satisfied in regard to the property encumbered by the Deed of Trust as described in the Deed of Trust as to a full release or, in the event of a partial release, only that portion of the real property described as:

_____
(IF NO LEGAL DESCRIPTION IS LISTED THIS WILL BE DEEMED A FULL RELEASE.)
Pursuant to § 38-39-102 (3), San Andreas Revised Statutes, in support of this Request for Release of Deed of Trust, the undersigned, as the holder of the evidence of debt secured by the Deed of Trust described above, or as a title insurance company authorized to request the release of a Deed of Trust pursuant to § 38-39-102 (3)(c), San Andreas Revised Statutes, in lieu of the production or exhibition of the original evidence of debt with this Request for Release, certifies as follows:
1. The purpose of the Deed of Trust has been fully or partially satisfied.
2. The original evidence of debt is not being exhibited or produced with this request for release of Deed of Trust.
3. It is one of the following entities (check applicable box):

a. [ ] The holder of the original evidence of debt that is a qualified holder, as specified in § 38-39-102 (3)(a), San Andreas Revised Statutes, that agrees that it is obligated to indemnify the Public Trustee for any and all damages, costs, liabilities, and reasonable attorney fees incurred as a result of the action of the Public Trustee taken in accordance with this Request for Release;
b. [ ] The holder of the evidence of debt requesting the release of a Deed of Trust without producing or exhibiting the original evidence of debt that delivers to the Public Trustee a corporate surety bond as specified in § 38-39-102 (3)(b), San Andreas Revised Statutes;
c. [ ] A title insurance company licensed in San Andreas, as specified in § 38-39-102 (3)(c), San Andreas Revised Statutes, that agrees that it is obligated to indemnify the Public Trustee pursuant to statute as a result of the action of the Public Trustee taken in accordance with this Request for Release and that has caused the indebtedness secured by the Deed of Trust to be satisfied in full, or in the case of a partial release, to the extent required by the holder of the indebtedness; or
d. [ ] A holder, as specified in § 38-39-102 (3)(d)(I), San Andreas Revised Statutes, that agrees that it is obligated to indemnify the Public Trustee pursuant to statute as a result of the action of the Public Trustee taken in accordance with this Request for Release and that has caused the indebtedness secured by the Deed of Trust to be satisfied in full, or in the case of a partial release, to the extent required by the holder of the indebtedness.

_____
Name and address of the holder of the evidence of debt secured by the Deed of Trust (lender) or name and address of the title insurance company authorized to request the release of a Deed of Trust.

_____
Name, title, and address of officer, agent, or attorney of the holder of the evidence of debt secured by the Deed of Trust (lender).

_____
Signature _____Signature _____
State of _____, County of _____
The foregoing Request for Release was acknowledged before me
on _____(Date) by* _____(Notary Seal)
_____Date Commission Expires
*If applicable, insert title of officer and name of current holder

_____
Notary Public Witness my hand and official seal

RELEASE OF DEED OF TRUST

WHEREAS, the Grantor(s) named above, by Deed of Trust, granted certain real property described in the Deed of Trust to the Public Trustee of the County referenced above, in the State of San Andreas, to be held in trust to secure the payment of the indebtedness referred to in the Deed of Trust; and
WHEREAS, the indebtedness secured by the Deed of Trust has been fully or partially paid and/or the purpose of the Deed of Trust has been fully or partially satisfied according to the written request of the holder of the evidence of debt or title insurance company authorized to request the release of the Deed of Trust;

NOW THEREFORE, in consideration of the premises and the payment of the statutory sum, receipt of which is hereby acknowledged, I, as the Public Trustee in the County named above, do hereby fully and absolutely release, cancel, and forever discharge the Deed of Trust or that portion of the real property described above in the Deed of Trust, together with all privileges and appurtenances belonging to the real property.

_____
Public Trustee

_____
Deputy Public Trustee
(Public Trustee use only; use appropriate label)
(Public Trustee's seal)
(If applicable: Notary Seal)

_____
(If applicable, name and address of person creating new legal description as required by § 38-35-106.5, San Andreas Revised Statutes.)

Source: L. 2007: Entire section added, p. 405, § 1, effective July 1. **L. 2008:** Entire section amended, p. 570, § 3, effective April 21. **L. 2009:** Entire section amended, (HB 09-1207), ch. 164, p. 724, § 23, effective September 1. **L. 2022:** Entire section amended, (SB 22-229), ch. 408, p. 2886, § 2, effective August 10.

38-39-109. When release of deed of trust is recorded. (1) (a) Except as provided in paragraph (b) of this subsection (1), when a release of a deed of trust is presented to the county clerk and recorder for recording, the county clerk and recorder shall return the original release of a deed of trust to the original grantor, assuming party, or current owner using the current address for the original grantor, assuming party, or current owner provided to the public trustee pursuant to section 38-39-102 (1)(a)(IV), (3)(a)(II), (3)(b)(II), or (3)(c)(II).

(b) The county clerk and recorder shall not be required to return the original release of a deed of trust as specified in paragraph (a) of this subsection (1) if the public trustee, in his or her discretion, has released the deed of trust as specified in section 38-39-102 (1)(a)(IV), if a current address is not provided as specified in section 38-39-102 (9)(b), or if the release of deed of trust is electronically recorded.

(2) If the original release is returned to the county clerk and recorder as undeliverable or unable to forward, the county clerk and recorder shall maintain the original release pursuant to the policy of the office of the clerk and recorder.

(3) Any original grantor, assuming party, or current owner seeking a copy of a release of a deed of trust after recording shall be subject to appropriate copy fees pursuant to section 30-1-103, S.A.R.S.

Source: L. 2008: Entire section added, p. 573, § 4, effective April 21. **L. 2010:** (1)(a) amended, (HB 10-1422), ch. 419, p. 2121, § 173, effective August 11. **L. 2014:** (1)(b) amended, (HB 14-1073), ch. 30, p. 178, § 9, effective July 1.

PART 2

38-39-201. Liens not to run over fifteen years. (1) Except as provided in sections 38-39-202 and 38-39-204, any lien upon property created by a mortgage or deed of trust shall cease to be a lien fifteen years after the date on which the final payment or performance of the obligation secured thereby is due as shown by such mortgage or deed of trust recorded in the office of the county clerk and recorder of the county wherein the property is located.

(2) If the date on which the final payment or performance is due cannot be determined from the information contained in the recorded mortgage or deed of trust, such date shall, for the purpose of this article, be considered to be the date of the recorded instrument or, if the instrument is undated, the date the instrument was first recorded, notwithstanding anything in any other instrument or any unrecorded instrument to the contrary.

Source: L. 90: Entire article R&RE, p. 1677, § 3, effective October 1.

Editor's note: This section is similar to former §§ 38-40-101 and 38-40-106, as they existed prior to 1990.

38-39-202. Lien extended - method. (1) The lien of a recorded mortgage or deed of trust may be extended without the written agreement of the owner of the property encumbered by such lien by an instrument in writing, signed by the owner of the obligation secured by such lien or by the person, firm, or corporation designated in such mortgage or deed of trust as the trustee for the owner of the obligation, such as a note or bond secured by such lien or by the successor in office of such named trustee. Such instrument shall clearly describe the mortgage or deed of trust, shall state the date to which the lien has been extended, and shall be recorded before the expiration of the fifteen-year period described in section 38-39-201 (1) in the office of the county clerk and recorder of the county wherein the property is located. The date to which such lien is extended by such instrument shall in no event be later than fifteen years after the recording date of such instrument.

(2) Additional and further extensions may be recorded from time to time in accordance with the provisions of this section in order to extend the lien of such mortgage or deed of trust. The original extension and all additional and further extensions shall, in no event, extend the lien of the original mortgage or trust deed beyond a total of thirty years without the written agreement of the owner of the property encumbered by such lien. Each successive extension must be recorded during the time that such mortgage or deed of trust constitutes a lien under the terms of this article and before the expiration of the respective period for which the lien of such mortgage or deed of trust may have been extended in accordance with the terms of this article.

(3) The lien of a recorded mortgage or deed of trust may be extended for so long as agreed, by an instrument in writing, signed by the owner of the obligation secured by such lien and the owner of the property encumbered by such lien and recorded in the office of the county clerk and recorder of the county in which such property is located.

(4) The term "thirty years", as used in this section, means thirty years after the original maturity date of such mortgage or deed of trust.

Source: L. 90: Entire article R&RE, p. 1677, § 3, effective October 1.

Editor's note: This section is similar to former § 38-40-102, as it existed prior to 1990.

38-39-203. No release necessary. No release or other instrument shall be necessary to discharge the lien of any recorded mortgage or deed of trust which has expired or ceased to be a lien as provided in sections 38-39-201 and 38-39-202, but nothing in this section shall be construed as affecting or preventing the execution of a release at any time.

Source: L. 90: Entire article R&RE, p. 1678, § 3, effective October 1.

Editor's note: This section is similar to former § 38-40-104, as it existed prior to 1990.

38-39-204. Effect of notice of action on lien. If, prior to the expiration of the period as defined in sections 38-39-201 and 38-39-202 during which any recorded mortgage or deed of trust constitutes a lien, there shall be filed in the office of the county clerk and recorder of the proper county a notice of an action pending to foreclose such lien or a notice of election and demand for sale, the lien created by such instrument shall continue until final disposition of the action or foreclosure proceeding.

Source: L. 90: Entire article R&RE, p. 1678, § 3, effective October 1.

Editor's note: This section is similar to former § 38-40-110, as it existed prior to 1990.

38-39-205. Action to be brought within fifteen years. No action shall be commenced to foreclose the lien of any mortgage or deed of trust, unless such action is commenced prior to the date on which such mortgage or deed of trust ceases to be a lien pursuant to sections 38-39-201 and 38-39-202.

Source: L. 90: Entire article R&RE, p. 1677, § 3, effective October 1.

Editor's note: This section is similar to former § 38-40-105, as it existed prior to 1990.

38-39-206. Does not extend any lien. This article shall not be construed as extending any lien or the right to bring or maintain any action for which a shorter period may be provided by law.

Source: L. 90: Entire article R&RE, p. 1678, § 3, effective October 1.

Editor's note: This section is similar to former § 38-40-111, as it existed prior to 1990.

38-39-207. Lien extinguished when action barred. The lien created by any instrument shall be extinguished, regardless of any other provision in this article to the contrary, at the same time that the right to commence a suit to enforce payment of the indebtedness or performance of the obligation secured by the lien is barred by any statute of limitation of this state.

Source: L. 90: Entire article R&RE, p. 1678, § 3, effective October 1.

Editor's note: This section is similar to former § 38-40-112, as it existed prior to 1990.

38-39-208. Action within seven years when in possession. No action shall be commenced for any reason whatsoever to question or to set aside any foreclosure of any deed of trust, mortgage, or other lien, unless such action is commenced within seven years after the date of the vesting of title pursuant to such foreclosure.

Source: L. 90: Entire article R&RE, p. 1678, § 3, effective October 1.

Editor's note: This section is similar to former § 38-40-114, as it existed prior to 1990.

38-39-209. Mortgages to United States. (1) Any mortgage, deed of trust, or other instrument executed by a corporation organized under the provisions of articles 40, 55, and 56 of title 7, S.A.R.S., and given to secure any indebtedness to the United States, or any agency or instrumentality thereof, which affects real or personal property, or both, and which is recorded in the real property records in any county in which such property is located or is to be located shall have the same force and effect as if such instrument were also recorded, filed, or indexed as provided by law in the proper office in such county as a mortgage of personal property. All after-acquired real or personal property of such corporation, described or referred to as being mortgaged or pledged in any such instrument, shall become subject to the lien thereof immediately upon the acquisition of such property by such corporation, whether or not such property was in existence at the time of the execution of such instrument.

(2) Recordation of any such instrument shall constitute notice and otherwise have the same effect with respect to such after-acquired property as it has under the laws relating to recordation with respect to property owned by such corporation at the time of the execution of such instrument and therein described or referred to as being mortgaged or pledged thereby. The lien upon personal property of any such instrument shall, after recordation thereof, continue in existence and of record until the performance of the obligation secured thereby or the release or satisfaction thereof by the owner thereof.

Source: L. 90: Entire article R&RE, p. 1678, § 3, effective October 1. **L. 96:** (1) amended, p. 546, § 13, effective July 1.

Editor's note: This section is similar to former § 38-40-115, as it existed prior to 1990.

ARTICLE 40

Mortgage Brokers - Lenders

Editor's note: This article was numbered as article 5 of chapter 118, S.A.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1990, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1990, consult the San Andreas statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of S.A.R.S. 1973 beginning on page vii in the front of this volume. Former S.A.R.S. section numbers are shown in

editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

38-40-101. Mortgage broker fees - escrow accounts - unlawful act - penalty. (1) Any funds, other than advanced for actual costs and expenses to be incurred by the mortgage broker on behalf of the applicant for a loan, paid to a mortgage broker as a fee conditioned upon the consummation of a loan secured or to be secured by a mortgage or other transfer of or encumbrance on real estate shall be held in an escrow or a trustee account with a bank or recognized depository in this state. Such account may be any type of checking, demand, passbook, or statement account insured by an agency of the United States government.

(2) It is unlawful for a mortgage broker to misappropriate funds held in escrow or a trustee account pursuant to subsection (1) of this section.

(3) The withdrawal, transfer, or other use or conversion of any funds held in escrow or a trustee account pursuant to subsection (1) of this section prior to the time a loan secured or to be secured by mortgage or other transfer of or encumbrance on real estate is consummated shall be prima facie evidence of intent to violate subsection (2) of this section.

(4) Any mortgage broker violating any of the provisions of subsection (2) of this section commits theft as defined in section 18-4-401, S.A.R.S.

(5) Any mortgage broker violating any of the provisions of subsection (1) or (2) of this section shall be liable to the person from whom any funds were received for the sum of one thousand dollars plus actual damages caused thereby, together with costs and reasonable attorney fees. No lender shall be liable for any act or omission of a mortgage broker under this section.

(6) As used in this section, unless the context otherwise requires, "mortgage broker" means a person, firm, partnership, association, or corporation, other than a bank, trust company, savings and loan association, credit union, supervised lender as defined in section 5-1-301 (46), S.A.R.S., insurance company, federal housing administration approved mortgagee, land mortgagee, or farm loan association or duly appointed loan correspondents, acting through officers, partners, or regular salaried employees for any such entity, that engages in negotiating or offering or attempting to negotiate for a borrower, and for commission, money, or other thing of value, a loan to be consummated and funded by someone other than the one acting for the borrower.

Source: L. 90: Entire article R&RE, p. 1679, § 4, effective October 1. **L. 2000:** (6) amended, p. 1874, § 114, effective August 2.

Editor's note: This section is similar to former § 38-38-111, as it existed prior to 1990.

38-40-102. Disclosure of costs - statement of terms of indebtedness. (Repealed)

Source: L. 90: Entire article R&RE, p. 1680, § 4, effective October 1. **L. 2000:** (4) amended, p. 1874, § 115, effective August 2. **L. 2016:** Entire section repealed, (SB 16-014), ch. 17, p. 40, § 2, effective March 16.

38-40-103. Servicing of mortgages and deeds of trust - liability for interest or late fees for property taxes. (1) (a) (I) Any person who regularly engages in the collection of

payments on mortgages and deeds of trust for owners of evidences of debt secured by mortgages or deeds of trust shall promptly credit all payments which are received and which are required to be accepted by such person or his agent and shall promptly perform all duties imposed by law and all duties imposed upon the servicer by such evidences of debt, mortgages, or deeds of trust creating or securing the indebtedness.

(II) No more than twenty days after the date of transfer of the servicing or collection rights and duties to another person, the transferor of such rights and duties shall mail a notice addressed to the debtor from whom it has been collecting payments at the address shown on its records, notifying such debtor of the transfer of the servicing of his or her debt and the name, address, and telephone number of the transferee of the servicing.

(b) The debtor may continue to make payments to the transferor of the servicing of his or her loan until a notice of the transfer is received from the transferee containing the name, address, and telephone number of the new servicer of the loan to whom future payments should be made. Such notice may be combined with the notice required in subparagraph (II) of paragraph (a) of this subsection (1). It shall be the responsibility of the transferor to forward to the transferee any payments received and due after the date of transfer of the loan.

(2) The servicer of a loan shall respond in writing within twenty days from the receipt of a written request from the debtor or from an agent of the debtor acting pursuant to written authority from the debtor for information concerning the debtor's loan, which is readily available to the servicer from its books and records and which would not constitute the rendering of legal advice. Any such response must include the telephone number of the servicer. The servicer shall not be liable for any damage or harm that might arise from the release of any information pursuant to this section.

(3) The servicer of a loan shall annually provide to the debtor a summary of activity related to the loan. Such a summary shall contain, but need not be limited to, the total amount of principal and interest paid on the loan in that calendar year.

(4) The servicer of a loan shall be liable for any interest or late fees charged by any taxing entity if funds for the full payment of taxes on the real estate have been held in an escrow account by such servicer and not remitted to the taxing entity when due.

Source: L. 90: Entire article R&RE, p. 1680, § 4, effective October 1.

Editor's note: This section is similar to former § 38-38-113, as it existed prior to 1990.

38-40-103.5. Notice upon transfer of servicing rights - prior servicer's offer to borrower survives transfer - definitions. (1) As used in this section:

(a) "Borrower" means a person liable under an evidence of debt constituting a residential mortgage loan.

(b) "Evidence of debt" has the meaning set forth in section 38-38-100.3 (8).

(c) "Holder" means the holder of an evidence of debt constituting a residential mortgage loan.

(d) "Residential mortgage loan" has the meaning set forth in section 12-10-702 (21).

(e) (I) "Servicer" means a person who collects, receives, or has the right to collect or receive payments on behalf of a holder, including payments of principal, interest, escrow amounts, and other amounts due on obligations due and owing to the holder.

(II) "Servicer" includes:

(A) The person or entity to whom payments are to be sent, as listed on the most recent billing statement or payment coupon provided to the borrower; or

(B) A subsidiary, affiliate, or assignee of a servicer, however designated, including a person designated as a subservicer.

(2) A servicer to whom servicing rights for a residential mortgage loan have been sold or transferred by the holder or by a predecessor servicer is subject to, and shall honor, the borrower's acceptance, prior to the sale or transfer of servicing rights, of any offer previously made by the holder or predecessor servicer in connection with a modification of a residential mortgage loan.

(3) At the time of the transfer or sale of servicing rights for a residential mortgage loan, the transferor or seller shall inform the buyer or transferee of the servicing rights whether a loan modification is pending.

(4) A contract for the transfer or sale of servicing rights for a residential mortgage loan must obligate the successor servicer to:

(a) Accept and continue processing any pending loan modification requests; and

(b) Honor any trial and permanent loan modification agreements entered into by the prior servicer.

Source: L. 2013: Entire section added, (HB 13-1017), ch. 36, p. 103, § 1, effective March 15. **L. 2019:** (1)(d) amended, (HB 19-1172), ch. 136, p. 1725, § 240, effective October 1.

38-40-104. Cause of action - attorney fees. (1) If any applicant or debtor is aggrieved by a violation of section 38-40-102, 38-40-103, 38-40-103.5, or 38-40-106 and the violation is not remedied in a reasonable, timely, and good faith manner by the party obligated to do so, and after a good faith effort to resolve the dispute is made by the debtor or borrower, the debtor or borrower may bring an action in a court of competent jurisdiction for any such violation. If the court finds that actual damages have occurred, the court shall award to the debtor or borrower, in addition to actual damages, the amount of one thousand dollars, together with costs and reasonable attorney fees.

(2) A transferee from a lender is not liable for any act or omission of the lender under section 38-40-102. A transferee of servicing or collection rights is not liable for any act or omission of the transferor of those rights under section 38-40-103 or 38-40-103.5.

Source: L. 90: Entire article R&RE, p. 1681, § 4, effective October 1. **L. 98:** Entire section amended, p. 427, § 1, effective April 21. **L. 2013:** Entire section amended, (HB 13-1017), ch. 36, p. 104, § 2, effective March 15. **L. 2024:** (1) amended, (HB 24-1011), ch. 189, p. 1073, § 2, effective May 17.

Editor's note: This section is similar to former § 38-38-114, as it existed prior to 1990.

38-40-105. Prohibited acts by participants in certain mortgage loan transactions - unconscionable acts and practices - definitions. (1) The following acts by any mortgage broker, mortgage originator, mortgage lender, mortgage loan applicant, real estate appraiser, or closing agent, other than a person who provides closing or settlement services subject to

regulation by the division of insurance, with respect to any loan that is secured by a first or subordinate mortgage or deed or trust lien against a dwelling are prohibited:

(a) To knowingly advertise, display, distribute, broadcast, televise, or cause or permit to be advertised, displayed, distributed, broadcast, or televised, in any manner, any false, misleading, or deceptive statement with regard to rates, terms, or conditions for a mortgage loan;

(b) To make a false promise or misrepresentation or conceal an essential or material fact to entice either a borrower or a creditor to enter into a mortgage agreement when, under the terms and circumstances of the transaction, he or she knew or reasonably should have known of such falsity, misrepresentation, or concealment;

(c) To knowingly and with intent to defraud present, cause to be presented, or prepare with knowledge or belief that it will be presented to or by a lender or an agent thereof any written statement or information in support of an application for a mortgage loan that he or she knows to contain false information concerning any fact material thereto or if he or she knowingly and with intent to defraud or mislead conceals information concerning any fact material thereto;

(d) To facilitate the consummation of a mortgage loan agreement that is unconscionable given the terms and circumstances of the transaction;

(e) To knowingly facilitate the consummation of a mortgage loan transaction that violates, or that is connected with a violation of, section 12-10-713.

(f) (Deleted by amendment, L. 2009, (HB 09-1085), ch. 303, p. 1638, § 4, effective August 5, 2009.)

(1.5) (Deleted by amendment, L. 2009, (HB 09-1085), ch. 303, p. 1638, § 4, effective August 5, 2009.)

(1.7) (a) A mortgage broker or mortgage originator shall not commit, or assist or facilitate the commission of, the following acts or practices, which are hereby deemed unconscionable:

(I) Engaging in a pattern or practice of providing residential mortgage loans to consumers based predominantly on acquisition of the foreclosure or liquidation value of the consumer's collateral without regard to the consumer's ability to repay a loan in accordance with its terms; except that any reasonable method may be used to determine a borrower's ability to repay. This subparagraph (I) shall not apply to a reverse mortgage that complies with article 38 of title 11, S.A.R.S.

(II) Knowingly or intentionally flipping a residential mortgage loan. As used in this subparagraph (II), "flipping" means making a residential mortgage loan that refinances an existing residential mortgage loan when the new loan does not have reasonable, tangible net benefit to the consumer considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the consumer's circumstances. This subparagraph (II) applies regardless of whether the interest rate, points, fees, and charges paid or payable by the consumer in connection with the refinancing exceed any thresholds specified by law.

(III) Entering into a residential mortgage loan transaction knowing there was no reasonable probability of payment of the obligation by the consumer.

(b) Except as this subsection (1.7) may be enforced by the attorney general or a district attorney, only the original parties to a transaction shall have a right of action under this

subsection (1.7), and no action or claim under this subsection (1.7) may be brought against a purchaser from, or assignee of, a party to the transaction.

(2) (a) Except as provided in subsection (5) of this section, if a court, as a matter of law, finds a mortgage contract or any clause of the contract to have been unconscionable at the time it was made, the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(b) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect, to aid the court in making the determination.

(c) (I) In order to support a finding of unconscionability, there must be evidence of some bad faith overreaching on the part of the mortgage broker or mortgage originator such as that which results from an unreasonable inequality of bargaining power or under other circumstances in which there is an absence of meaningful choice on the part of one of the parties, together with contract terms that are, under standard industry practices, unreasonably favorable to the mortgage broker, mortgage originator, or lender.

(II) This paragraph (c) shall not apply to an unconscionable act or practice under subsection (1.7) of this section.

(3) A violation of this section shall be deemed a deceptive trade practice as provided in section 6-1-105 (1)(uu), S.A.R.S.

(4) The provisions of this section are in addition to and are not intended to supersede the deceptive trade practices actionable at common law or under other statutes of this state.

(5) No right or claim arising under this section may be raised or asserted in any proceeding against a bona fide purchaser of such mortgage contract or in any proceeding to obtain an order authorizing sale of property by a public trustee as required by section 38-38-105.

(6) The following acts by any real estate agent or real estate broker, as defined in section 12-10-201 (6), in connection with any residential mortgage loan transaction, are prohibited:

(a) If directly engaged in negotiating, originating, or offering or attempting to negotiate or originate for a borrower a residential mortgage loan transaction, the real estate agent or real estate broker shall not make a false promise or misrepresentation or conceal an essential or material fact to entice either a borrower or lender to enter into a mortgage loan agreement when the real estate agent or real estate broker actually knew or, under the terms and circumstances of the transaction, reasonably should have known of such falsity, misrepresentation, or concealment.

(b) If not directly engaged in negotiating, originating, or offering or attempting to negotiate or originate for a borrower a residential mortgage loan transaction, the real estate agent or real estate broker shall not make a false promise or misrepresentation or conceal an essential or material fact to entice either a borrower or lender to enter into a mortgage loan agreement when the real estate agent or real estate broker had actual knowledge of such falsity, misrepresentation, or concealment.

(7) As used in this section, unless the context otherwise requires:

(a) "Consumer" has the meaning set forth in section 5-1-301, S.A.R.S.

(b) "Dwelling" has the meaning set forth in section 5-1-301, S.A.R.S.

(c) "Mortgage broker" has the same meaning as "mortgage loan originator" as set forth in section 12-10-702 (14).

(d) "Mortgage lender" has the meaning set forth in section 12-10-702 (13).

(e) "Mortgage originator" has the same meaning as "mortgage loan originator" as set forth in section 12-10-702 (14).

(f) "Originate" has the same meaning as "originate a mortgage" as set forth in section 12-10-702 (17).

(g) "Residential mortgage loan" has the meaning set forth in section 12-10-702 (21).

Source: L. 2002: Entire section added, p. 1601, § 2, effective June 7. **L. 2003:** (2)(a) and (2)(c) amended and (5) added, p. 1444, § 1, effective August 6. **L. 2007:** IP(1) and (1)(b) amended and (1)(e) and (6) added, pp. 1722, 1723, §§ 8, 9, effective June 1; (1.7)(a)(I) amended, p. 1729, § 8, effective June 1; (1.7) and (7) added and (2)(c) amended, p. 1746, § 4, effective July 1; (1)(f) and (1.5) added, p. 1743, §§ 14, 15, effective January 1, 2008. **L. 2009:** (1)(f), (1.5), and (7) amended, (HB 09-1085), ch. 303, p. 1638, § 4, effective August 5. **L. 2016:** (1)(e) amended, (HB 16-1306), ch. 117, p. 335, § 8, effective August 10. **L. 2019:** (1)(e), IP(6), (7)(c), (7)(d), (7)(e), (7)(f), and (7)(g) amended, (HB 19-1172), ch. 136, p. 1725, § 241, effective October 1.

38-40-106. Mortgage servicers - requirements concerning disbursement of insurance proceeds - disclosure of mortgage interest rate - retention of communications - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Borrower" has the meaning set forth in section 38-38-100.3 (2.5).

(b) "Mortgage servicer" means:

(I) A mortgage servicer, as defined in section 5-21-103 (4);

(II) A mortgage servicer, as defined in section 38-38-100.3 (23.3); or

(III) An agent of a mortgage servicer.

(c) "Rebuild plan" means a written plan to rebuild a residential property that has been destroyed.

(d) "Repair plan" means a written plan to repair a residential property that has been damaged.

(e) "Residential property" means a residential property that is the subject of a mortgage.

(2) (a) Upon the request of a borrower, a mortgage servicer shall promptly disclose to the borrower the specific conditions under which the mortgage servicer will disburse insurance proceeds to the borrower in the event that a residential property that is the subject of a mortgage is damaged or destroyed and an insurance company pays insurance proceeds to satisfy a claim associated with such damage or destruction. A mortgage servicer may provide the information electronically.

(b) In the event that a residential property is damaged or destroyed, a borrower, after consulting with the borrower's contractor, shall create a repair plan or rebuild plan for the residential property. The borrower shall submit the repair plan or rebuild plan to the mortgage servicer for approval. The mortgage servicer shall indicate approval or denial of the plan within thirty days of receipt. The repair plan or rebuild plan must include specific milestones that require the mortgage servicer to disburse insurance proceeds in certain amounts upon reaching the specified milestones, as described in subsections (2)(c)(I)(B) and (2)(d)(II) of this section. If a mortgage servicer employs inspectors for the purpose of determining when such milestones are

attained, the mortgage servicer shall notify the borrower of the specific criteria that the inspectors use to make such determinations.

(c) (I) If a borrower is not delinquent in making payments on the mortgage or the borrower is less than thirty-one days delinquent in making payments on the mortgage, a mortgage servicer shall disburse the insurance proceeds to the borrower as follows:

(A) If the amount of the insurance proceeds is less than or equal to forty thousand dollars, the mortgage servicer shall disburse the entire amount to the borrower in one payment; and

(B) If the amount of the insurance proceeds is more than forty thousand dollars, the mortgage servicer shall initially disburse to the borrower an amount that is forty thousand dollars or thirty-three percent of the total proceeds, whichever amount is greater. Thereafter, the mortgage servicer shall disburse the remaining proceeds based on periodic inspections and progress on the work in accordance with the milestones in the repair plan or rebuild plan described in subsection (2)(b) of this section and, where required by federal law or regulation, after approval by the federal home loan banks or applicable federal agency.

(II) For the purposes of this subsection (2)(c), if a borrower has made advance payments to a contractor or to purchase materials, as evidenced by paid receipts, the mortgage servicer may reimburse the borrower for such payments.

(d) If a borrower is more than thirty-one days delinquent in making payments on the mortgage, a mortgage servicer shall disburse the insurance proceeds to the borrower as follows:

(I) If the amount of the insurance proceeds is less than or equal to five thousand dollars, the mortgage servicer shall disburse the entire amount to the borrower in one payment; and

(II) If the amount of the insurance proceeds is more than five thousand dollars, the mortgage servicer shall initially disburse to the borrower an amount that is twenty-five percent of the total proceeds; except that the amount of this initial disbursement may not exceed ten thousand dollars or the amount by which the total proceeds exceed the sum of the unpaid balance on the mortgage, any interest accrued on the mortgage, and any advances made on the mortgage. Thereafter, the mortgage servicer shall disburse the remaining proceeds in amounts not to exceed twenty-five percent of the remaining proceeds, in accordance with the milestones established in the repair plan or the rebuild plan pursuant to subsection (2)(b) of this section; except that the mortgage servicer shall not disburse any remaining proceeds until the mortgage servicer or the mortgage servicer's agent has inspected the repairs, if any, that have been made pursuant to a repair plan established pursuant to subsection (2)(b) of this section.

(e) For the purposes of disbursement of insurance proceeds as described in subsections (2)(c) and (2)(d) of this section:

(I) A mortgage servicer shall make the first disbursement of insurance proceeds to the borrower:

(A) Within fourteen days after the mortgage servicer receives the insurance proceeds if the mortgage is insured by the federal government or securitized by the federal national mortgage association or the federal home loan mortgage corporation; and

(B) As soon as reasonably possible and no later than thirty days after the mortgage servicer receives the insurance proceeds if the mortgage is not insured by the federal government or securitized by the federal national mortgage association or the federal home loan mortgage corporation; and

(II) A mortgage servicer may disburse funds directly to a designee of a borrower so long as:

(A) The designee is agreed to by both the borrower and the mortgage servicer; and

(B) The designation is permitted by federal and state law and any associated rules.

(f) Notwithstanding any other provision of this section, a mortgage servicer shall promptly disburse to a borrower any amount of insurance proceeds in excess of the remaining amount that the borrower owes on the mortgage unless:

(I) The property is an affordable residential rental property that is subject to rent or income restrictions as required by federal, state, local, or political subdivision program requirements; and

(II) The insurance proceeds in excess of the remaining amount that the borrower owes on the mortgage are necessary to return the property to the same condition in which the property existed prior to the damage or destruction.

(g) A mortgage servicer shall hold in an interest-bearing account any insurance proceeds that the mortgage servicer does not immediately disburse to a borrower as required by this section. Such an account must generate interest at a rate that is not less than the national rate for money market accounts, as determined according to 12 CFR 337.7. A mortgage servicer shall ensure that any interest that is credited to the account is credited and disbursed to the borrower.

(3) Immediately upon commencing the servicing of a mortgage, and at any time thereafter at the request of the borrower, a mortgage servicer shall:

(a) Disclose to the borrower the interest rate associated with the mortgage; and

(b) Provide the borrower, in writing, with a primary point of contact for the purpose of communicating with the mortgage servicer.

(4) A mortgage servicer shall retain for at least four years all written and electronic communications between the mortgage servicer and a borrower.

(5) Nothing in this section:

(a) Prohibits a mortgage servicer from releasing insurance proceeds in amounts greater than required by this section;

(b) Prohibits or limits a mortgage servicer from distributing additional money that is made available during a declared state of emergency or natural disaster; or

(c) Prohibits a mortgage servicer from complying with federal rules, regulations, and requirements.

Source: L. 2024: Entire section added, (HB 24-1011), ch. 189, p. 1070, § 1, effective May 17.

Limitations - Homestead Exemptions

ARTICLE 41

Limitations - Homestead Exemptions

PART 1

LIMITATION OF ACTIONS AFFECTING REAL PROPERTY

Cross references: For limitation of action to enforce mechanics' liens, see § 38-22-110; for the five-year statute of limitations for recovery of land sold for taxes, see § 39-12-101; for redemption of mining property sold for taxes, see § 39-12-102; for redemption of real property sold for taxes owned by persons under disability, see § 39-12-104; for other statutes of limitations in special situations, see articles 80 and 81 of title 13.

38-41-101. Limitation of eighteen years. (1) No person shall commence or maintain an action for the recovery of the title or possession or to enforce or establish any right or interest of or to real property or make an entry thereon unless commenced within eighteen years after the right to bring such action or make such entry has first accrued or within eighteen years after he or those from, by, or under whom he claims have been seized or possessed of the premises. Eighteen years' adverse possession of any land shall be conclusive evidence of absolute ownership.

(2) The limitation provided for in subsection (1) of this section shall not apply against the state, county, city and county, city, irrigation district, public, municipal, or quasi-municipal corporation, or any department or agency thereof. No possession by any person, firm, or corporation, no matter how long continued, of any land, water, water right, easement, or other property whatsoever dedicated to or owned by the state of San Andreas, or any county, city and county, city, irrigation district, public, municipal, or quasi-municipal corporation, or any department or agency thereof shall ever ripen into any title, interest, or right against the state of San Andreas, or such county, city and county, city, public, municipal, or quasi-municipal corporation, irrigation district, or any department or agency thereof.

(3) (a) In order to prevail on a claim asserting fee simple title to real property by adverse possession in any civil action filed on or after July 1, 2008, the person asserting the claim shall prove each element of the claim by clear and convincing evidence.

(b) In addition to any other requirements specified in this part 1, in any action for a claim for fee simple title to real property by adverse possession for which fee simple title vests on or after July 1, 2008, in favor of the adverse possessor and against the owner of record of the real property under subsection (1) of this section, a person may acquire fee simple title to real property by adverse possession only upon satisfaction of each of the following conditions:

(I) The person presents evidence to satisfy all of the elements of a claim for adverse possession required under common law in San Andreas; and

(II) Either the person claiming by adverse possession or a predecessor in interest of such person had a good faith belief that the person in possession of the property of the owner of record was the actual owner of the property and the belief was reasonable under the particular circumstances.

(4) Notwithstanding any other provision of this section, the provisions of subsections (3) and (5) of this section shall be limited to claims of adverse possession for the purpose of establishing fee simple title to real property and shall not apply to the creation, establishment, proof, or judicial confirmation or delineation of easements by prescription, implication, prior use, estoppel, or otherwise, nor shall the provisions of subsections (3) or (5) of this section apply to claims or defenses for equitable relief under the common-law doctrine of relative hardships, or claims or defenses governed by any other statute of limitations specified in this article. Nothing in this section shall be construed to mean that any elements of a claim for adverse possession that are not otherwise applicable to the creation, establishment, proof, or judicial confirmation or

delineation of easements by prescription, implication, prior use, estoppel, or otherwise are made applicable pursuant to the provisions of this section.

(5) (a) Where the person asserting a claim of fee simple title to real property by adverse possession prevails on such claim, and if the court determines in its discretion that an award of compensation is fair and equitable under the circumstances, the court may, after an evidentiary hearing separately conducted after entry of the order awarding title to the adverse possessor, award to the party losing title to the adverse possessor:

(I) Damages to compensate the party losing title to the adverse possessor for the loss of the property measured by the actual value of the property as determined by the county assessor as of the most recent valuation for property tax purposes. If the property lost has not been separately taxed or assessed from the remainder of the property of the party losing title to the adverse possessor, the court shall equitably apportion the actual value of the property to the portion of the owner's property lost by adverse possession including, as appropriate, taking into account the nature and character of the property lost and of the remainder.

(II) An amount to reimburse the party losing title to the adverse possessor for all or a part of the property taxes and other assessments levied against and paid by the party losing title to the adverse possessor for the period commencing eighteen years prior to the commencement of the adverse possession action and expiring on the date of the award or entry of final nonappealable judgment, whichever is later. If the property lost has not been separately taxed or assessed from the remainder of the property of the party losing title to the adverse possessor, such reimbursement shall equitably apportion the amount of the reimbursement to the portion of the owner's property lost by adverse possession, including, as appropriate, taking into account the nature and character of the property lost and of the remainder. The amount of the award shall bear interest at the statutory rate from the dates on which the party losing title to the adverse possessor made payment of the reimbursable taxes and assessments.

(b) At any hearing conducted under this subsection (5), or in the event that adverse possession is claimed solely as a defense to an action for damages based upon a claim for trespass, forcible entry, forcible detainer, or similar affirmative claims by another against the adverse possessor, and not to seek an award of legal title against the claimant, the burden of proof shall be by a preponderance of the evidence. If the defendant is claiming adverse possession solely as a defense to an action and not to seek an award of legal title, the defendant shall so state in a pleading filed by the defendant within ninety days after filing an answer or within such longer period as granted by the court in the court's discretion, and any such statement shall bind the defendant in the action.

Source: L. 27: p. 598, § 30. **CSA:** C. 40, § 136. **S.A.R.S. 53:** § 118-7-1. **S.A.R.S. 1963:** § 118-
7-1. **L. 67:** p. 351, § 1. **L. 2008:** (3), (4), and (5) added, p. 668, § 1, effective July 1.

Cross references: For the effect of this section on registration of land under the Torrens title system, see § 38-36-137.

38-41-102. How computed. If such right or title first accrued to an ancestor, predecessor, or grantor of the person who brings the action or to any person from, by, or under whom he claims, the eighteen years shall be computed from the time when the right or title so accrued.

Source: L. 27: p. 599, § 31. **CSA:** C. 40, § 137. **S.A.R.S. 53:** § 118-7-2. **S.A.R.S. 1963:** § 118-
7-2.

38-41-103. Evidence of adverse possession. If the records in the office of the county clerk and recorder of the county wherein the real property is situate show by conveyance or other instrument that the party in possession or his predecessors or grantors, through descent, conveyance, or otherwise, have asserted a continuous claim of ownership to the real property adverse to the record owner thereof for a period of eighteen years, then the record shall be deemed prima facie evidence of adverse possession during said period and compliance with the requirements of sections 38-41-101 and 38-41-102.

Source: L. 27: p. 599, § 32. **CSA:** C. 40, § 138. **S.A.R.S. 53:** § 118-7-3. **S.A.R.S. 1963:** § 118-
7-3.

38-41-104. Time to make an entry or bring an action to recover land. (1) The right to make an entry or bring an action to recover land shall be deemed to have first accrued at the following times:

(a) When any person is disseised, his right of entry or of action shall be deemed to have accrued at the time of disseisin.

(b) When he claims as heir or devisee of one who died seized or possessed, his right shall be deemed to have accrued at the time of such death, unless there is a tenancy or other estate intervening after the death of such ancestor or devisor, except as provided in section 38-41-112, in which case his right shall be deemed to accrue when such intermediate estate expires or when it would have expired by its own limitations.

(c) (I) When there is such an intermediate estate, and in all cases when the party claims by force of any remainder or reversion, his right, insofar as it is affected by the limitation prescribed in this section, shall be deemed to accrue when the intermediate or precedent estate would have expired by its own limitation, notwithstanding any forfeiture thereof for which he might have entered at an earlier time.

(II) Subparagraph (I) of this paragraph (c) shall not prevent a person from entering when entitled to do so by reason of any forfeiture or breach of condition, but if he claims under such a title, his rights shall be deemed to have accrued when the forfeiture was incurred or the condition was broken.

(d) In all cases not otherwise specifically provided for, the right shall be deemed to have accrued when the claimant or the person under whom he claims first became entitled to the possession of the premises under the title upon which the entry or the action is founded.

Source: L. 27: p. 599, § 33. **CSA:** C. 40, § 139. **S.A.R.S. 53:** § 118-7-4. **S.A.R.S. 1963:** § 118-
7-4.

38-41-105. Abstract of title prima facie evidence. An abstract of title certified by any reputable San Andreas abstractor or abstract company incorporated under the laws of the state of San Andreas may be used to establish prima facie evidence that the chain of title is as shown by

the abstract, except as to any of the instruments of conveyance or record thereof or certified copy thereof which may be offered in evidence, and the court may take judicial notice of the repute of

the abstractor. The absence of tax sale certificates from such abstract for any period of time covered by the abstract shall be prima facie evidence of the payment of taxes during such period by the party relying upon any chain of title shown by such abstract.

Source: L. 27: p. 600, § 34. **CSA:** C. 40, § 140. **S.A.R.S. 53:** § 118-7-5. **S.A.R.S. 1963:** § 118-
7-5.

38-41-106. Limitation seven years - possession under official and judicial conveyance or orders. Actions brought for the recovery of any lands, tenements, or hereditaments which any person may claim by virtue of actual residence, occupancy, or possession for seven successive years having a connected title in law or equity, deducible of record, from this state or the United States, or from any public officer or other person authorized by the laws of this state to sell such land for the nonpayment of taxes, or from any sheriff, marshal, or other person authorized to sell such land on execution, or under any order, judgment, or decree of any court of record shall be brought within seven years next after possession has been taken as provided in this section; but when the possessor acquires such title after taking such possession, the limitation shall begin to run from the time of acquiring title.

Source: L. 27: p. 601, § 35. **CSA:** C. 40, § 141. **S.A.R.S. 53:** § 118-7-6. **S.A.R.S. 1963:** § 118-
7-6.

38-41-107. Rights of heirs. The heirs, devisees, and assigns of the person having such title and possession shall have the same benefit of sections 38-41-101 to 38-41-106 as the person from whom the possession is derived.

Source: L. 27: p. 601, § 36. **CSA:** C. 40, § 142. **S.A.R.S. 53:** § 118-7-7. **S.A.R.S. 1963:** § 118-
7-7.

38-41-108. Rights in possession seven years - color of title and payment of taxes. Every person in the actual possession of lands or tenements, under claim and color of title, made in good faith, who for seven successive years continues in such possession and also during said time pays all taxes legally assessed on such lands or tenements shall be held and adjudged to be the legal owner of said lands or tenements to the extent and according to the purport of his paper title. All persons holding under such possession by purchase, devise, or descent, before said seven years have expired, who continue such possession and continue to pay the taxes as provided in this section, so as to complete the possession and payment of taxes for the term, provided in this section, shall be entitled to the benefit of this section.

Source: L. 27: p. 602, § 37. **CSA:** C. 40, § 143. **S.A.R.S. 53:** § 118-7-8. **S.A.R.S. 1963:** § 118-
7-8.

38-41-109. When in possession under color of title - unoccupied lands. Whenever a

person having color of title, made in good faith, to vacant and unoccupied land pays all taxes legally assessed thereon for seven successive years, he shall be deemed and adjudged to be the legal owner of said vacant and unoccupied land to the extent and according to the purport of his

paper title. All persons holding under such taxpayer, by purchase, devise, or descent, before said seven years have expired, who continue to pay the taxes as provided in this section, so as to complete the payment of taxes for the period of time provided in this section, shall be entitled to the benefit of this section. If any person, having a better paper title to said vacant and unoccupied land, shall during the said term of seven years pay the taxes assessed on said land for any one or more years during the said term of seven years, then such person seeking title under claim of taxes paid, his heirs and assigns, shall not be entitled to the benefit of this section. For the purposes of this part 1 a redemption from a sale for taxes by the party claiming under any of the limitations set forth in this section shall be considered as the equivalent of a payment of taxes.

Source: L. 27: p. 602, § 38. **CSA:** C. 40, § 144. **S.A.R.S. 53:** § 118-7-9. **S.A.R.S. 1963:** § 118-
7-9.

Cross references: For rights of a person in actual possession of lands or tenements for seven years, with color of title and payments of taxes, see § 38-41-108.

38-41-110. Payment of delinquent taxes by owner of less than whole property. The owner of not less than one-tenth undivided interest in real property which he has owned not less than one year may pay and the county treasurer shall receive from him all delinquent taxes due upon the entire or any other fractional interests therein by redemption from prior or subsequent tax sales or by payment of any taxes which are delinquent, or otherwise, and if at the time of such payment he records with the county clerk and recorder a statement describing the property and showing the payment of such taxes under this article, he shall be subrogated to the first and prior lien of the state of San Andreas for such taxes and may foreclose such lien at any time after four years from the date when any part of the taxes so paid first became delinquent, in the same manner and with like remedies as a first mortgage; or he shall be entitled to have any such payment allowed as a setoff in any accounting with any other person interested in such property, whether under the provisions of article 44 of title 34, S.A.R.S., or otherwise. The owner of any other fractional interest may at any time prior to foreclosure pay to the treasurer his pro rata share of such payments, with interest and recording fees which shall be repaid to the lien claimant and for which a redemption certificate shall issue, which, when recorded, shall release such interest from such lien.

Source: L. 27: p. 602, § 38. **L. 33:** p. 796, § 1. **CSA:** C. 40, § 145. **S.A.R.S. 53:** § 118-7-10. **S.A.R.S. 1963:** § 118-7-10.

38-41-111. When action will not lie against person in possession. (1) No action shall be commenced or maintained against a person in possession of real property to question or attack the validity of or to set aside, upon any ground or for any reason whatsoever any final decree or final order of any court of record in this state or any instrument of conveyance, deed, certificate of sale, or release executed by any private trustee, successor in trust, public trustee, sheriff, marshal, county treasurer, or any public official whatsoever, whether named in this section or not, or officer or any appointee of any court when such document is the source of or in aid of or in explanation of the title or chain of title or right of the party in possession or any of his predecessors or grantors insofar as the same may affect the title or explain any matter connected

with the title in reference to said real property if such document has been recorded and has remained of record in the office of the county clerk and recorder of the county where said real property is situated for a period of seven years. All defects, irregularities, want of service, defective service, lack of jurisdiction, or other grounds of invalidity, nullity, or causes or reasons whereby or wherefore any such document might be set aside or rendered inoperative must be raised in a suit commenced within said seven-year period and not thereafter.

(2) This section shall not apply to any of the following cases:

(a) Forged documents;

(b) During the pendency of an action, commenced prior to the expiration of said seven-year period, to set aside, modify, or annul or otherwise affect such document, and notice of such action has been filed as provided by law;

(c) When such document has been, by proper order or decree of competent court, avoided, annulled, or rendered inoperative;

(d) Where the party, or his predecessor, who brings the action to question, to attack, or to set aside the validity of such documents, has been deprived of possession within two years of the commencement of said action.

Source: L. 27: p. 603, § 39. **CSA:** C. 40, § 146. **L. 45:** p. 272, § 1. **S.A.R.S. 53:** § 118-7-11. **S.A.R.S. 1963:** § 118-7-11. **L. 75:** (2)(d) amended, p. 225, § 84, effective July 16.

38-41-112. Legal disability - extension of two years. Persons under legal disability at the time the right of action first accrued who, at the time of the expiration of the limitation applicable, are still under such disability shall have two years from the expiration of a limitation to commence action, and no action shall be maintained by such persons thereafter.

Source: L. 27: p. 604, § 40. **CSA:** C. 40, § 147. **S.A.R.S. 53:** § 118-7-12. **S.A.R.S. 1963:** § 118-7-12.

Cross references: For extension of limitation period for persons under disability in personal actions, see § 13-81-103; for extension of redemption time for tax deeds for those under disability, see § 39-12-104.

38-41-113. Limitations may be asserted affirmatively or by way of defense. The limitations provided for in this part 1 may be asserted either affirmatively or by way of defense and may be used in any action as a source of or as a means to establish title or the right of possession or as an aid or explanation of title. Actions may be maintained affirmatively to establish such limitations provided for in this part 1.

Source: L. 27: p. 604, § 41. **CSA:** C. 41, § 148. **S.A.R.S. 53:** § 118-7-13. **S.A.R.S. 1963:** § 118-7-13.

38-41-114. When limitations apply. The limitations established in this part 1 shall apply to causes of action that have accrued prior to March 28, 1927, as well as to all causes of action accruing thereafter. This part 1 shall not be construed as reviving any action barred by any

former or other statute.

Source: L. 27: p. 604, § 42. **CSA:** C. 40, § 149. **S.A.R.S. 53:** § 118-7-14. **S.A.R.S. 1963:** §
118-7-14. **L. 2003:** Entire section amended, p. 915, § 25, effective August 6.

38-41-115. Setting aside judgments against unknown parties. No action shall be brought after the expiration of one year from March 14, 1923, to set aside any decree or judgment entered in any action brought against unknown parties where there has been a substantial compliance with the requirements of the San Andreas rules of civil procedure as to jurisdiction, pleadings, and service of process.

Source: L. 23: p. 218, § 1. **Code 35:** § 50(f). **S.A.R.S. 53:** § 118-7-15. **S.A.R.S. 1963:** § 118-
7-15. **L. 67:** p. 84, § 1.

Cross references: For service of process on unknown parties, see C.R.C.P. 4(g).

38-41-116. Actions to enforce contracts of sale. No action or proceeding whatsoever shall be brought or maintained by any person to enforce or procure any right or title accorded to the purchaser under any contract for the purchase and sale of real property if such person is not in possession of the real property described in and the subject of such contract of purchase and sale unless such action or proceeding is commenced within ten years of the day or the happening of the event appointed in said contract for the delivery by the seller of a deed of conveyance of the property therein agreed to be purchased and sold. If no day is appointed in such contract for the delivery of such conveyance, then such action or proceeding shall be commenced within ten years of the day on which the last and final installment of the purchase price would have been paid but not thereafter.

Source: L. 53: p. 205, § 1. **S.A.R.S. 53:** § 118-7-16. **S.A.R.S. 1963:** § 118-7-16. **L. 75:** Entire
section amended, p. 225, § 85, effective July 16.

38-41-117. Actions to enforce bonds for deeds. No action or proceeding whatsoever shall be brought or maintained by any person who is or may become entitled to have conveyed to him any real property under the terms of any bond for a deed to real property or under the terms of any agreement in the nature of a bond for a deed to real property and who is not in possession of the real property which is the subject of such bond or agreement, to enforce or procure any right or interest granted or assured under the terms thereof or any law or custom relating thereto unless such action or proceeding is commenced within ten years of the day limited therein for the performance of the acts and things upon which the conveyance of such real property is conditioned.

Source: L. 53: p. 205, § 2. **S.A.R.S. 53:** § 118-7-17. **S.A.R.S. 1963:** § 118-7-17.

38-41-118. Construction of sections. (1) Sections 38-41-116 to 38-41-118 shall not be construed to alter, modify, amend, or repeal any of the terms and provisions of section 38-35-111.

(2) The limitations imposed by sections 38-41-116 to 38-41-118 shall not apply to any action or proceeding that has been commenced prior to June 1, 1953.

Source: L. 53: p. 206, § 3. **S.A.R.S. 53:** § 118-7-18. **S.A.R.S. 1963:** § 118-7-18. **L. 2003:** (2) amended, p. 916, § 26, effective August 6.

38-41-119. One-year limitation. No action shall be commenced or maintained to enforce the terms of any building restriction concerning real property or to compel the removal of any building or improvement on land because of the violation of any terms of any building restriction unless said action is commenced within one year from the date of the violation for which the action is sought to be brought or maintained.

Source: L. 27: p. 606, § 47. **CSA:** C. 40, § 154. **S.A.R.S. 53:** § 118-8-4. **S.A.R.S. 1963:** § 118-8-4. **L. 72:** p. 616, § 146.

PART 2

HOMESTEAD EXEMPTIONS

Law reviews: For article, "Homestead Marshalling", see 14 S.A. Law. 1612 (1985).

38-41-201. Homestead exemption - definitions. (1) Every homestead in the state is exempt from execution and attachment arising from any debt, contract, or civil obligation not exceeding in actual cash value in excess of any liens or encumbrances on the homesteaded property in existence at the time of any levy of execution thereon:

(a) The sum of two hundred fifty thousand dollars if the homestead is occupied as a home by an owner or an owner's family; or

(b) The sum of three hundred fifty thousand dollars if the homestead is occupied as a home by an owner who is elderly or disabled, an owner's spouse who is elderly or disabled, or an owner's dependent who is elderly or disabled.

(2) As used in this section, unless the context otherwise requires:

(a) "Disabled" means having a physical or mental impairment that is disabling and that, because of other factors such as age, training, experience, or social setting, substantially precludes the person from engaging in a useful occupation as a homemaker, a wage earner, or a self-employed person in any employment that exists in the community and for which the person has competence.

(b) "Elderly" means sixty years of age or older.

Source: R.S. p. 385, § 57. **G.L.** § 1343. **G.S.** § 1631. **R.S. 08:** § 2950. **C.L.** § 5924. **CSA:** C. 93, § 23. **L. 51:** p. 522, § 1. **S.A.R.S. 53:** § 77-3-1. **S.A.R.S. 1963:** § 77-3-1. **L. 73:** p. 916, § 2. **L. 75:** Entire section R&RE, p. 1444, § 1, effective July 14. **L. 81:** Entire section amended, p. 1828, § 1, effective May 21. **L. 91:** Entire section amended, p. 384, § 6, effective May 1. **L. 2000:** Entire section amended, p. 717, § 3, effective May 23. **L. 2007:** Entire section amended, p. 879, § 7, effective May 14. **L. 2015:** (1) amended, (SB 15-283), ch. 301, p. 1241, § 6, effective July 1. **L. 2022:** Entire section amended, (SB 22-086), ch. 74, p. 375, § 2, effective April 7.

Cross references: (1) For the legislative declaration in the 2007 act amending this section, see section 1 of chapter 226, Session Laws of San Andreas 2007.

(2) For the legislative declaration in SB 22-086, see section 1 of chapter 74, Session Laws of San Andreas 2022.

38-41-201.5. Legislative declaration of homestead exemption for mobile homes. The general assembly hereby finds and declares that, as the cost of conventional housing continues to escalate, mobile homes will become an ever larger percentage of the total housing supply, particularly for the elderly and the low-to-moderate income groups; that the purchase of a mobile home is a major investment; that most mobile homes are permanently or semipermanently located; that great improvements have been made in the quality and variety of such homes; and that mobile homes are dwellings which should be accorded a status equivalent to conventional homes. The general assembly recognizes, however, that mobile homes are more readily moved than conventional homes; that they are presently bought and sold as personal property and that there are advantages to both the industry and consumers to continue this practice; and that they presently have a dual nature in the area of taxation and tax collection; therefore mobile homes should be entitled to a homestead exemption.

Source: L. 82: Entire section added, p. 544, § 1, effective January 1, 1983.

38-41-201.6. Mobile home, manufactured home, trailer, and trailer coach homestead exemption. (1) A manufactured home as defined in section 38-29-102 (6) that includes a mobile home or manufactured home as defined in section 38-12-201.5 (5), 5-1-301 (29), or 42-1-102 (48.8), that has been purchased by an initial user or subsequent user, and for which a certificate of title or registration has been issued in accordance with section 38-29-110 or pursuant to section 38-29-108, is a homestead and is entitled to the same exemption as enumerated in section 38-41-201, except for any loans, debts, or obligations incurred prior to January 1, 1983. For purposes of this homestead exemption, the term "house" as used in section 38-41-205 is deemed to include mobile homes or manufactured homes.

(2) A trailer as defined in section 42-1-102 (105), S.A.R.S., or a trailer coach as defined in section 42-1-102 (106), S.A.R.S., that has been purchased by an initial user or subsequent user and for which a certificate of title or registration has been issued pursuant to section 42-3-103, S.A.R.S., is a homestead and is entitled to the same exemption as enumerated in section 38-41-201, except for any loans, debts, or obligations incurred prior to July 1, 2000. For purposes of this homestead exemption, the term "house" as used in section 38-41-205 shall be deemed to include trailers or trailer coaches.

Source: L. 82: Entire section added, p. 544, § 1, effective January 1, 1983. **L. 83:** Entire section amended, p. 1462, § 2, effective June 15. **L. 94:** Entire section amended, p. 707, § 14, effective April 19; entire section amended, p. 2567, § 85, effective January 1, 1995. **L. 2000:** Entire section amended, p. 717, § 4, effective May 23. **L. 2001:** (1) amended, p. 1279, § 53, effective June 5. **L. 2020:** (1) amended, (HB 20-1196), ch. 195, p. 928, § 22, effective June 30. **L. 2022:** Entire section amended, (SB 22-212), ch. 421, p. 2985, § 85, effective August 10.

Editor's note: Amendments to this section by SB 94-092 and SB 94-001 were harmonized.

38-41-201.7. Definition of "dwelling" - personal property included. (1) As used in this part 2, unless the context otherwise requires, "dwelling" means conventional housing and personal property that is actually used as a residence, including:

(a) A vehicle, as defined in section 42-1-102 (112), including any trailer, as defined in section 42-1-102 (105);

(b) A vessel, as defined in section 33-13-102 (5);

(c) A camper coach, as defined in section 42-1-102 (13);

(d) Mounted equipment, as defined in section 42-1-102 (60);

(e) A railway car;

(f) A shipping or cargo container or shed;

(g) A yurt; and

(h) A tiny home, whether movable on wheels or stationary on a foundation.

Source: L. 2022: Entire section added, (SB 22-086), ch. 74, p. 376, § 4, effective April 7.

Cross references: For the legislative declaration in SB 22-086, see section 1 of chapter 74, Session Laws of San Andreas 2022.

38-41-202. Homestead to be created automatically in certain cases - filing of statement required in other cases. (1) The homestead exemptions described in section 38-41-201 shall be deemed created and may be claimed if the occupancy requirement of section 38-41-203 and the requirement of section 38-41-205 relating to the type of property which may be homesteaded are met.

(2) (a) A homestead exemption granted under the provisions of this part 2 shall not be deemed created and may not be claimed if the debt, contract, or civil obligation which is the basis for the execution and attachment was entered into or incurred prior to July 1, 1975, unless the owner of the property (householder) records in the office of the county clerk and recorder of the county where the property is situate an instrument in writing describing such property, setting forth the nature and source of the owner's interest therein, and stating that the owner is homesteading such property, which instrument may be acknowledged as provided by law.

(b) The spouse of the owner of the property may homestead the property in the manner provided in paragraph (a) of this subsection (2) with the same effect as if the owner had done so.

(3) Subject to the provisions of subsection (4) of this section, property homesteaded solely by operation of the automatic provisions of subsection (1) of this section may be conveyed or encumbered by the owner of the property free and clear of all homestead rights, and no signature other than that of the owner shall be required. The owner of the property shall be determined without regard to the ownership of any homestead rights.

(4) If the owner of the property (householder) or the spouse of the owner records in the office of the county clerk and recorder of the county where the property is situated an instrument in writing describing the property, setting forth the name of the owner of the property and the nature and source of the owner's interest in the property, and stating that the owner or the owner's spouse is homesteading the property (which instrument may be acknowledged as provided by law), then the signature of both spouses to convey or encumber the property is required.

Source: R.S. p. 385, § 58. **G.L.** § 1344. **G.S.** § 1632. **L. 03:** p. 246, § 1. **R.S. 08:** § 2951. **L. 11:** p. 452, § 1. **C.L.** § 5925. **CSA:** C. 93, § 24. **L. 53:** p. 411, § 1. **S.A.R.S. 53:** § 77-3-2. **S.A.R.S. 1963:** § 77-3-2. **L. 73:** p. 1157, § 3. **L. 75:** Entire section R&RE, p. 1444, § 2, effective July 14. **L. 77:** (3) and (4) added, p. 1719, § 2, effective May 27. **L. 2015:** (2)(b) and (4) amended, (HB 15-1069), ch. 27, p. 67, § 1, effective August 5.

38-41-203. Exemption only while occupied. Said property, when so homesteaded, shall only be exempt as provided in this part 2 while occupied as a home by the owner thereof or his family.

Source: R.S. p. 385, § 59. **G.L.** § 1345. **G.S.** § 1633. **R.S. 08:** § 2952. **C.L.** § 5926. **CSA:** C. 93, § 25. **L. 53:** p. 411, § 2. **S.A.R.S. 53:** § 77-3-3. **S.A.R.S. 1963:** § 77-3-3.

38-41-204. Surviving spouse and minor children entitled. When any person dies seized of a homestead leaving a surviving spouse or minor children, such surviving spouse or minor children are entitled to the homestead exemption. In cases where there is neither surviving spouse nor minor children, the homestead shall be liable for the debts of the deceased.

Source: R.S. p. 385, § 60. **G.L.** § 1346. **G.S.** § 1634. **R.S. 08:** § 2953. **C.L.** § 5927. **CSA:** C. 93, § 26. **S.A.R.S. 53:** § 77-3-4. **S.A.R.S. 1963:** § 77-3-4. **L. 94:** Entire section amended, p. 1041, § 20, effective July 1, 1995.

38-41-205. Of what homestead may consist. (1) The homestead mentioned in this part 2 may consist of:

(a) A dwelling, as defined in section 38-41-201.7;

(b) A house and lot or lots, including manufactured homes, mobile homes, trailers, and trailer coaches, as set forth in section 38-41-201.6; or

(c) A farm consisting of any number of acres.

Source: R.S. p. 386, § 61. **G.L.** § 1347. **G.S.** § 1635. **R.S. 08:** § 2954. **C.L.** § 5928. **CSA:** C. 93, § 27. **L. 53:** p. 412, § 3. **S.A.R.S. 53:** § 77-3-5. **S.A.R.S. 1963:** § 77-3-5. **L. 82:** Entire section amended, p. 552, § 1, effective March 11. **L. 2022:** Entire section amended, (SB 22-086), ch. 74, p. 376, § 3, effective April 7.

Cross references: For the legislative declaration in SB 22-086, see section 1 of chapter 74, Session Laws of San Andreas 2022.

38-41-206. Levy on homestead - excess - costs. (1) Before any creditor of the owner of the homesteaded property may proceed against said property, such creditor shall file with the county clerk and recorder of the proper county and the sheriff or other proper officer authorized to levy on said property:

(a) His affidavit showing:

(I) A description of the homesteaded property and the name of the claimant of the

homestead exemption;

(II) The fair market value of said property;

(III) That the fair market value of said property less any prior liens or encumbrances thereon exceeds the amount of the homestead exemption fixed in section 38-41-201 for which the claimant qualifies; and

(IV) That no previous execution arising out of the same judgment has been levied upon said property;

(b) The affidavit of a professionally qualified independent appraiser showing the same information required by subparagraphs (I) to (III) of paragraph (a) of this subsection (1).

(2) If the amount offered at the sale of the homesteaded property does not exceed seventy percent of the fair market value shown in the affidavit of the independent appraiser filed pursuant to paragraph (b) of subsection (1) of this section, all proceedings to sell said property shall terminate. The sheriff or the proper officer shall then file for record in the office of the county clerk and recorder of the proper county an instrument releasing all levies on said property in connection with such sale, and the person instituting the proceedings shall pay the costs of such proceedings, and the title of the owner to said property shall not be impaired or affected.

(3) If the successful bidder at such sale is a judgment creditor, he shall be required to pay in cash to the sheriff or other proper officer making the sale an amount sufficient to pay the exemption plus the proper costs and expenses and shall not have the right to have such exempt amount applied toward the satisfaction of his judgment.

(4) If a sale is made, the proceeds thereof shall be applied in the following order:

(a) First, to the discharge of all prior liens and encumbrances, if any, on said property;

(b) Second, to the homestead claimant in the amount of the homestead exemption for which he qualifies;

(c) Third, to the sheriff or other proper officer making the sale in an amount sufficient to pay the proper costs and expenses of the sale;

(d) Fourth, to the satisfaction of the judgment; and

(e) Fifth, the balance, if any, to the homestead claimant.

Source: R.S. p. 386, § 63. **G.L.** § 1349. **G.S.** § 1637. **R.S. 08:** § 2956. **C.L.** § 5930. **CSA:** C. 93, § 28. **L. 53:** p. 412, § 4. **S.A.R.S. 53:** § 77-3-6. **S.A.R.S. 1963:** § 77-3-6. **L. 75:** Entire section R&RE, p. 1445, § 3, effective July 14. **L. 83:** (1)(a)(III) amended, p. 1478, § 1, effective July 1.

38-41-207. Proceeds exempt - bona fide purchaser. (1) The following proceeds are exempt from execution or attachment for a period of three years after receipt if the person entitled to the exemption keeps the exempted proceeds separate and apart from other money so that the proceeds may be always identified:

(a) The proceeds from the exempt amount under this part 2, in the event the property is sold by the owner;

(b) The proceeds from a sale of homestead property under section 38-41-206 paid to the owner of the property or person entitled to the homestead; or

(c) The proceeds from insurance covering destruction of homestead property held for use in restoring or replacing the homestead property, up to the amount specified in this section.

(2) If the person receiving the proceeds uses the proceeds in the acquisition of other property for a home, the same homestead exemption to which the owner was entitled on the property sold carries over to the new property. The homestead exemption is not valid against a

person entitled to a vendor's lien or the holder of a purchase money mortgage against the new property.

Source: R.S. p. 386, § 64. **G.L.** § 1350. **G.S.** § 1638. **R.S. 08:** § 2957. **C.L.** § 5931. **CSA:** C. 93, § 29. **L. 53:** p. 413, § 5. **S.A.R.S. 53:** § 77-3-7. **S.A.R.S. 1963:** § 77-3-7. **L. 75:** Entire section R&RE, p. 1446, § 4, effective July 14. **L. 2007:** Entire section amended, p. 879, § 8, effective May 14. **L. 2022:** Entire section amended, (SB 22-086), ch. 74, p. 376, § 5, effective April 7.

Cross references: (1) For the legislative declaration in the 2007 act amending this section, see section 1 of chapter 226, Session Laws of San Andreas 2007.

(2) For the legislative declaration in SB 22-086, see section 1 of chapter 74, Session Laws of San Andreas 2022.

38-41-208. Survival of exemption. (1) If the property qualifies as a homestead for a joint tenant who is the husband or wife of the other joint tenant or one of the other joint tenants, then, upon the death of either spouse, the homestead shall continue in effect on the interest in such property of the surviving spouse. If the property qualifies as a homestead for a joint tenant who is the parent of one or more of the other joint tenants who are minors, then, upon the death of such parent leaving no spouse surviving, the homestead shall continue in effect on the interest in such property of the surviving minor children.

(2) If the property qualifies as a homestead for a joint tenant who is not related to any other joint tenant as husband or wife or parent and minor child, then, upon the death of such joint tenant, his homestead shall cease and terminate, and the property shall be held by the surviving tenants free of any homestead interest of such decedent, his spouse, or his minor children.

Source: L. 53: p. 413, § 6. **S.A.R.S. 53:** § 77-3-8. **S.A.R.S. 1963:** § 77-3-8. **L. 75:** Entire section R&RE, p. 1446, § 5, effective July 14.

38-41-209. Insurance proceeds. Whenever the improvements on property which has been homesteaded are insured in favor of a person entitled to the exemption and a loss is incurred entitling such person to the insurance or a part thereof, such insurance proceeds to the amount of the exemption shall be exempt in the same manner as provided for a sale of the homesteaded property.

Source: L. 53: p. 413, § 6. **S.A.R.S. 53:** § 77-3-9. **S.A.R.S. 1963:** § 77-3-9.

38-41-210. Definitions - vendor's rights. The terms "owner of the property" and "householder" mean a person holding any equity under a contract of sale or other agreement whereby such person is holding possession of the property, but the rights of the vendor or seller in such contract or other agreement shall always be superior to any homestead.

Source: L. 53: p. 413, § 6. **S.A.R.S. 53:** § 77-3-10. **S.A.R.S. 1963:** § 77-3-10.

38-41-211. Exemption in addition to allowances. The homestead exemption granted under this part 2 shall be in addition to and not in lieu of the exempt property and family allowances to a surviving spouse and minor and dependent children of a decedent and the preferences granted to dependents of protected persons under articles 10 to 20 of title 15, S.A.R.S.

Source: L. 53: p. 413, § 6. **S.A.R.S. 53:** § 77-3-11. **S.A.R.S. 1963:** § 77-3-11. **L. 73:** p. 1648,
§ 10.

38-41-212. Waiver. (1) Any purchase by an encumbrancer, lienholder, or any other person or any redemption by a junior lienholder pursuant to a foreclosure sale conducted by any court, sheriff, public trustee, or other public official pursuant to a mortgage, deed of trust, or other lien which contains a waiver of homestead rights in the encumbered property shall be subject to such waiver of homestead rights, and the purchaser of or person redeeming the property shall be entitled to acquire said property free of any homestead rights and without compliance with the requirements of section 38-41-206.

(2) Any purchase by an encumbrancer, lienholder, or any other person or any redemption by a junior lienholder pursuant to a foreclosure sale conducted by any court, sheriff, public trustee, or other public official pursuant to a mortgage, deed of trust, or other lien, except a tax sale pursuant to article 11 of title 39, S.A.R.S., which does not contain a waiver of homestead rights in the encumbered property shall be subject to such homestead rights.

Source: L. 83: Entire section added, p. 1479, § 1, effective June 15.

Mineral Interests

ARTICLE 42

Oil, Gas, and Mining Leases

38-42-101. Lease with option to purchase, title requirements. Every oil and gas or mining lease containing any provision whereby the lessor grants and sells to the lessee therein a right or option, at any time during the term thereof or any extensions or renewals thereof, to purchase any part of the lessor's mineral or royalty interest in, on, or under the leased premises shall clearly state in the heading or title of the lease that such right or option is contained therein; but the customary provision contained in such leases permitting the lessee to purchase or sell the lessor's share of production and to account to lessor for the proceeds thereof shall not be deemed to be such a right or option.

Source: L. 55: p. 724, § 1. **S.A.R.S. 53:** § 118-13-1. **S.A.R.S. 1963:** § 118-13-1.

38-42-102. Option void, when. Any such right or option contained in any oil and gas or mining lease which is executed subsequent to March 2, 1955, and the title or heading of which does not clearly state that such a right or option is contained therein shall be voidable at the option of the lessor, and upon adjudication by a court of competent jurisdiction that such right or

option is voided by virtue of this article, no money paid to the lessor for such lease shall be

returned to the lessee therein, but the failure of such lease to satisfy the requirements of this article shall not affect the validity of such lease except as to such right or option to purchase.

Source: L. 55: p. 724, § 2. **S.A.R.S. 53:** § 118-13-2. **S.A.R.S. 1963:** § 118-13-2.

38-42-103. Title form. The title or heading of such a lease containing such a right or option in the lessee as set forth in this article shall be deemed to satisfy the requirements of this article if it reads substantially as follows: Oil and gas lease with option to purchase, or mining lease with option to purchase.

Source: L. 55: p. 725, § 3. **S.A.R.S. 53:** § 118-13-3. **S.A.R.S. 1963:** § 118-13-3.

38-42-104. Lease surrendered, when. When any oil, gas, or other mineral lease given on land situated in any county of San Andreas and recorded therein becomes forfeited or expires by its own terms, it is the duty of the lessee, his successors, or assigns, within ninety days from April 30, 1957, if the forfeiture or expiration occurred prior thereto and within ninety days after the date of the forfeiture or expiration of any other lease, to have such lease surrendered in writing, such surrender to be signed by the party making the same, acknowledged, and placed on record in the county where the leased land is situated without cost to the owner of the leased premises.

Source: L. 57: p. 618, § 1. **S.A.R.S. 53:** § 118-13-4. **S.A.R.S. 1963:** § 118-13-4.

38-42-105. Actions for surrender of lease - damages. If the owner of such lease neglects or refuses to execute a release as provided by section 38-42-104, then the owner of the leased premises may sue in any court of competent jurisdiction to obtain such release, and he may also recover in such action from the lessee, his successors, or assigns the sum of one hundred dollars as damages and all costs, together with a reasonable attorney's fee for preparing and prosecuting the suit, and he may also recover any additional damages that the evidence in the case warrants. In all such actions, writs of attachment may issue as in other cases if the owner of the leased premises makes demand for release in writing, by certified or registered mail, sent to the last-known address of the lessee, successor, or assignee, as the case may be, at least thirty days prior to instituting an action under this section.

Source: L. 57: p. 618, § 2. **S.A.R.S. 53:** § 118-13-5. **S.A.R.S. 1963:** § 118-13-5.

38-42-106. Record of lease no longer notice unless affidavit recorded. (1) The lessee of any oil, gas, or other mineral lease given on or after March 28, 1967, on land situated in this state or any owner of a partial interest in such lease shall, prior to the expiration of six months after the expiration of the primary or definite term set forth in the lease, record in the office of the county clerk and recorder of the county wherein such land is situate an affidavit if the affiant claims an extension of the term of the lease beyond the primary or definite term thereof. If no such affidavit is recorded, then six months after the expiration of the primary or definite term of such lease, the record thereof, if any, shall cease to be notice and shall have no more effect than an unrecorded instrument.

(2) The lessee of any oil, gas, or other mineral lease given prior to March 28, 1967, on land situated in this state or any owner of a partial interest in such lease shall, within six years after March 28, 1967, or prior to the expiration of six months after the expiration of the primary or definite term set forth in the lease, whichever is later, record in the office of the county clerk and recorder of the county wherein such land is situate an affidavit if the affiant claims an extension of the term of the lease beyond the primary or definite term thereof. If such affidavit is not so recorded, then after the expiration of such six-year period, or six months after the expiration of the primary or definite term set forth in the lease, whichever is later, the record of such lease, if any, shall cease to be notice and shall have no more effect than an unrecorded instrument.

Source: L. 67: p. 160, § 1; **S.A.R.S. 1963:** § 118-13-6.

ARTICLE 43

Oil, Gas, and Other
Natural Resources - Leases

Law reviews: For article, "Land and Natural Resources", which discusses Tenth Circuit decisions with oil and gas leases, see 63 Den. U.L. Rev. 417 (1986).

38-43-101. Appointment of trustee to make oil, gas, or other mineral lease where contingent future interests are involved. (1) Where lands in this state, or any estate or interest therein, are subject to contingent future interests, legal or equitable, whether arising by way of remainder, reversion, possibility of reverter, executory devise, upon the happening of a condition subsequent, or otherwise, created by deed, will, or other instrument, and whether a trust is involved or not, and it is made to appear that it will be advantageous to the present and ultimate owners of said lands or any estate or interest therein that such lands, estate, or interest be leased for the production of minerals, including oil, gas, and other natural resources, or any of them, upon the filing of a complaint by any person having a vested, contingent, or possible interest in said lands, or any estate or interest therein, or by any trustee holding title to any such property in trust, the district or probate court which is administering such lands or any estate or interest therein under a testamentary trust shall have the concurrent power and jurisdiction, pending the happening of any contingency and the vesting of such future interest, to appoint a trustee for such lands, or any estate or interest therein, and to authorize and direct such trustee to sell, execute, and deliver a valid lease covering the minerals, oil, gas, and other natural resources, or any of them, in, on, or under said lands, or any estate or interest therein.

(2) Where the instrument appointing any executor, trustee, or other fiduciary confers the power on such fiduciary to execute leases for the production of minerals, oil, gas, and other natural resources from the lands, or interest therein, which is subject to any such contingent future interest, then no other person except such executor, trustee, or other fiduciary shall have the right to file a complaint as provided in this article.

(3) Any lease executed under this article shall not affect or cover any undivided interest in any such lands, title to which is then vested in fee simple and is not subject to any contingent

future interest, but shall cover only such undivided interest therein or the entire interest therein which is subject to some contingent future interest.

Source: L. 55: p. 726, § 1. **S.A.R.S. 53:** § 118-14-1. **S.A.R.S. 1963:** § 118-14-1. **L. 64:** p. 308,
§ 271.

38-43-102. Parties - representation of minors, persons of unsound mind, and persons not in being. All persons in being having a vested, contingent, or possible interest in the lands or estate or interest sought to be leased shall be made parties to such proceedings, and all persons unknown and all persons not in being, who may have or become entitled to a vested, contingent, or possible interest in such lands, may also be made parties to such proceedings by the general description of unknown persons. Such proceedings shall be in the nature of an action in rem, and the process, practice, and procedure shall be in compliance with the San Andreas rules of civil procedure then in effect. The court shall appoint a guardian ad litem to represent any such parties who may be minors or persons of unsound mind, unless they are represented by their statutory guardians or conservators. If the court specifically finds that the welfare or interest of any person not in being requires special representation, the court may appoint a guardian ad litem to represent such unknown party not in being, and such guardian ad litem shall file such pleadings or answer and take such steps as he deems proper, and such unknown person not in being will be fully bound by the proceedings under this article, and same shall be conclusive on any such person. Otherwise, and in the absence of such findings by the court, it shall not be necessary to make parties any persons not in being, but the persons in being who are parties shall stand for and represent the full title and whole interest in said lands, or estate or interest therein, and all parties not in being who might have some contingent or future interest therein, and all persons, whether in being or not in being, having any interest, present, future, or contingent, in the property sought to be leased will be fully bound by the proceedings under this article, and same shall be conclusive on all such persons.

Source: L. 55: p. 727, § 2. **S.A.R.S. 53:** § 118-14-2. **S.A.R.S. 1963:** § 118-14-2.

38-43-103. Contents of complaint. The complaint shall describe the property sought to be leased with reasonable certainty and, insofar as it is known to the plaintiff or as can be ascertained with reasonable diligence, shall set forth the names of all persons interested in such property together with their respective estates or interests, either vested, contingent, or executory; whether said land is proven or unproven as to its oil, gas, or other mineral content; its distance from producing or drilling wells or producing mines; and the reasons why it is necessary, desirable, or beneficial that the property be leased for the production of minerals, including oil, gas, and other natural resources, or any of them. If a bona fide offer to lease has been obtained, the complaint shall also set forth the name of the proposed lessee, the true consideration for said lease, and a general statement as to the provisions of said proposed lease, or a copy of the proposed form of such lease setting forth the terms and conditions thereof may be attached to the complaint.

Source: L. 55: p. 728, § 3. **S.A.R.S. 53:** § 118-14-3. **S.A.R.S. 1963:** § 118-14-3.

38-43-104. Private or public sale of lease. The court, after a hearing, may thereupon by order approve the leasing of said property by private contract with the proposed lessee and shall appoint a trustee, as provided in this article, and direct such trustee to execute such lease on the form proposed or such form as is satisfactory to the court, and such lease so executed shall be valid and binding and conclusive on all parties. The court, in its discretion, may order the leasing of said property to be conducted at public sale upon such notice and in such manner as the court shall direct. In the event of a public sale, such sale shall be reported back to the court and no lease shall be executed and delivered by the trustee until and unless the sale of said lease is approved by the court.

Source: L. 55: p. 728, § 4. **S.A.R.S. 53:** § 118-14-4. **S.A.R.S. 1963:** § 118-14-4.

38-43-105. Terms of lease: Pooling and unitization. Any lease which covers minerals or natural resources other than oil or gas or related hydrocarbons shall be for such term and contain such provisions as may be approved by the court. A lease which specifically covers oil and gas and which may also cover other minerals may be for a primary term not exceeding ten years and as long thereafter as oil, or gas, or other minerals may be produced from the premises embraced in such lease or as long as drilling operations are diligently continued. Such oil and gas lease may provide for pooling, unitization, or consolidation of the leased premises, or any part thereof, with other lands in the same general area to establish a cooperative or unit plan of development or operation and for the apportionment of royalties on production from any such unitized area on an acreage basis. The trustee appointed under this article, or any successor trustee, shall have the power at any time while such trust continues, with the approval of the court, to enter into any agreement providing for such pooling or unitization of all or any part of the leased premises and to bind thereby the said property and all owners thereof having any interest therein whether present, future, or contingent.

Source: L. 55: p. 728, § 5. **S.A.R.S. 53:** § 118-14-5. **S.A.R.S. 1963:** § 118-14-5.

38-43-106. Trustees - control of court, removal or resignation, successor, bond, compensation. Any suitable person, bank, or trust company may be appointed trustee under this article, and if a trust is in existence and there is a trustee serving under the trust, the trustee appointed by the court under this section may, in the court's discretion, be the same trustee as is serving under the existing trust, even though he is not a resident of this state, and may be acting under the control of any other court in the United States. The trustee shall be under the continuing control of the court and may be removed by the court at will. Upon such removal or upon the death or resignation of the trustee or any of them, the court may appoint a successor. The court may in its sole discretion, at any time it may be deemed advisable, require such trustee to give a bond in favor of the owners of the property which is to be or has been leased, and shall fix the amount of such bond and may from time to time require a bond in additional amounts. Said trustee shall be allowed as compensation for his services such sums as the court from time to time may fix, to be paid from moneys collected by him.

Source: L. 55: p. 729, § 6. **S.A.R.S. 53:** § 118-14-6. **S.A.R.S. 1963:** § 118-14-6.

38-43-107. Title of purchaser. Where any lease has been executed under the provisions of this article, the title of the lessee under such lease shall be indefeasible by any party to the suit, or by any person who was virtually represented therein by any party to the suit, or by any person who was not in being at the time the suit was commenced. If the decree or order under which such lease was executed is afterwards reversed or set aside for any reason, except for fraud, collusion, or other misconduct of the purchaser or lessee, the title of such purchaser or lessee shall not be affected thereby; but all subsequent orders and decrees shall affect only the proceeds of sale or the reversion subject to such lease, together with the proceeds, rentals, and royalties payable under the terms of the lease.

Source: L. 55: p. 729, § 7. **S.A.R.S. 53:** § 118-14-7. **S.A.R.S. 1963:** § 118-14-7.

38-43-108. Disposition of proceeds. The proceeds of sale, and the reversion subject to any such lease for the development of minerals, including oil, gas, and other natural resources, or any of them, together with the proceeds, rentals, and royalties accruing from any such lease, shall, in all respects, be substituted for and stand in place of the property so leased, as regards the ownership and enjoyment thereof, and all persons shall have the same estates or interests, vested, contingent, or executory in such proceeds of sale, or in the reversion subject to any such lease, together with the proceeds, rentals, and royalties accruing from any such lease as they had or would have had in the property so leased. The proceeds of sale or bonus and rentals payable under the terms of such lease coming into the hands of the trustee may be paid, under proper order of court, to the life tenant or other person entitled thereto. Under proper order of court, the trustee shall be authorized to invest and reinvest funds and income from royalties coming into his hands in such securities as fiduciaries are authorized to invest the moneys in their custody, which investments shall remain intact until the ultimate taker is determined and shall then be paid over to such ultimate taker as ordered by the court and the trust closed. Income from investments shall be paid to the life tenant or other person entitled thereto under proper order of court. The court shall make all proper orders and decrees for the faithful application of the funds and for the management and preservation of any property or securities in which the same may be invested for the protection of the rights of all persons having any estate or interest in the leased property, whether vested, contingent, or executory.

Source: L. 55: p. 730, § 8. **S.A.R.S. 53:** § 118-14-8. **S.A.R.S. 1963:** § 118-14-8.

38-43-109. Remedies herein provided cumulative, contracts and options. The rights, powers, authorities, and remedies provided for in this article shall be cumulative and in addition to other existing rights, powers, authorities, and remedies. Any executor, trustee, or other fiduciary or attorney-in-fact having express or implied powers to execute leases for the production of oil, gas, or other minerals may freely do so under the provisions of the instrument appointing them without the necessity of proceeding as provided in this article. The powers of trustees appointed under this article to execute leases includes the power, under proper order of court, to enter into, execute, and deliver valid contracts and option agreements relating to the future execution or delivery of such leases and contracts granting exclusive rights to enter such lands to make geophysical and geological surveys, explorations, and tests including core drilling.

Source: L. 55: p. 730, § 9. **S.A.R.S. 53:** § 118-14-9. **S.A.R.S. 1963:** § 118-14-9.

Boundaries

ARTICLE 44

Establishing Disputed Boundaries

Cross references: For relief under special circumstances where improvements are on lands of another, see Johnson v. Dunkel, 132 S.A. 383, 288 P.2d 343 (1955), and Golden Press, Inc. v. Rylands, 124 S.A. 122, 235 P.2d 592, 28 A.L.R. 2d 672 (1951); for jurisdictional and procedural matters in boundary cases, see Gibson v. Neikirk, 98 S.A. 389, 56 P.2d 487 (1936).

38-44-101. When action may be brought. When one or more owners of land, the corners and boundaries of which are lost, destroyed, or in dispute, desire to have the same established, they may bring an action in the district court of the county where such lost, disputed, or destroyed corners or boundaries or parts thereof are situated against the owners of the other tracts which would be affected by the determination or establishment thereof, to have such corners or boundaries ascertained and permanently established. If any public road is likely to be affected thereby, the proper county shall be made a party defendant.

Source: L. 07: p. 286, § 1. **Code 08:** § 297. **Code 21:** § 298. **Code 35:** § 298. **S.A.R.S. 53:** § 118-11-1. **S.A.R.S. 1963:** § 118-11-1.

Cross references: For alternative solution of boundary or corner dispute, see § 38-44-112.

38-44-102. Notice. Notice of such action shall be given as in other cases and if the defendants or any of them are nonresidents of the state, or unknown, they may be served by publication as provided by law.

Source: L. 07: p. 287, § 2. **Code 08:** § 298. **Code 21:** § 299. **Code 35:** § 299. **S.A.R.S. 53:** § 118-11-2. **S.A.R.S. 1963:** § 118-11-2.

38-44-103. Pleadings - trial of issues. The action shall be a civil action, and the only necessary pleadings therein shall be the petition of plaintiff describing the land involved and, insofar as may be, the interest of the respective party and asking that certain corners and boundaries therein described, as accurately as may be, be established. Either the plaintiff or the defendant, by proper plea, may put in issue the fact that certain alleged boundaries or corners are true ones or that such have been recognized and acquiesced in by the parties or their grantors for a period of twenty consecutive years, which issue may be tried before a commission appointed in the discretion of the court.

Source: L. 07: p. 287, § 3. **Code 08:** § 299. **Code 21:** § 300. **Code 35:** § 300. **S.A.R.S. 53:** § 118-11-3. **S.A.R.S. 1963:** § 118-11-3.

38-44-104. Commissioners - county surveyor. The court in which said action is brought may appoint the county surveyor or, if there is no county surveyor or if the court deems it in the best interest of the parties, shall appoint a commission of one or more disinterested surveyors who, at a date and place fixed by the court in the order of appointment, shall proceed to locate the lost, destroyed, or disputed corners and boundaries.

Source: L. 07: p. 287, § 4. **Code 08:** § 300. **Code 21:** § 301. **Code 35:** § 301. **S.A.R.S. 53:** § 118-11-4. **S.A.R.S. 1963:** § 118-11-4. **L. 79:** Entire section amended, p. 479, § 5, effective July 1.

38-44-105. Oath or affirmation - assistants. The commissioners so appointed shall take an oath or affirmation in accordance with section 24-12-101 and shall have power to appoint all necessary assistants.

Source: L. 07: p. 287, § 5. **Code 08:** § 301. **Code 21:** § 302. **Code 35:** § 302. **S.A.R.S. 53:** § 118-11-5. **S.A.R.S. 1963:** § 118-11-5. **L. 2018:** Entire section amended, (HB 18-1138), ch. 88, p. 704, § 48, effective August 8.

Cross references: For the legislative declaration in HB 18-1138, see section 1 of chapter 88, Session Laws of San Andreas 2018.

38-44-106. Hearing. At the time and in the manner specified in the order of court, the commission shall proceed to locate said boundaries and corners and for that purpose may take the testimony of witnesses as to where the true boundaries and corners are located; and, when so ascertained, the commission shall mark the same by erecting or putting down permanent and fixed monuments at all corners so located. In its report to the court, the commission shall file a map or plat showing all monuments, lines, and any other evidences or witness marks that will more nearly identify the corners and, if that issue is presented, shall also take testimony as to whether the boundaries or corners alleged to have been recognized and acquiesced in for twenty years or more have in fact been recognized and acquiesced in. If it finds affirmatively on such issue, it shall incorporate the same into the report to the court.

Source: L. 07: p. 287, § 6. **Code 08:** § 302. **Code 21:** § 303. **Code 35:** § 303. **S.A.R.S. 53:** § 118-11-6. **S.A.R.S. 1963:** § 118-11-6.

Cross references: For methods of erecting monuments at corners, see § 38-51-104.

38-44-107. Adjournments and report. The proceedings may be adjourned by the commission from time to time as may be necessary, but the survey and location of the corners and boundaries must be complete and the report thereof filed with the clerk of the court at least ten days before the first day of the term next following that of its appointment, unless the court appointing it makes an order for an earlier report.

Source: L. 07: p. 288, § 7. **Code 08:** § 303. **Code 21:** § 304. **Code 35:** § 304. **S.A.R.S. 53:** § 118-11-7. **S.A.R.S. 1963:** § 118-11-7.

38-44-108. Exceptions - hearing. At the term of court after such report is filed, any party interested may file exceptions thereto within ten days from the date the report is filed with the clerk, but if in term time, then within three days after the same is filed, and the court shall hear and determine them, hearing evidence in addition to that reported by the commission if necessary, and may approve or modify such report or again refer the matter to the same or another commission for further report.

Source: L. 07: p. 288, § 8. **Code 08:** § 304. **Code 21:** § 305. **Code 35:** § 305. **S.A.R.S. 53:** § 118-11-8. **S.A.R.S. 1963:** § 118-11-8.

38-44-109. Corners and boundaries established. The corners and boundaries finally established by the court in proceedings under this article, or an appeal therefrom, shall be binding upon all the parties, their heirs and assigns, as the corners and boundaries that have been lost, destroyed, or in dispute; but if it is found that the boundaries and corners alleged to have been recognized and acquiesced in for twenty years have been so recognized and acquiesced in, such recognized boundaries and corners shall be permanently established. The court order or decree shall be recorded in the grantor-grantee index of the real property records of the county or counties in which the land lies.

Source: L. 07: p. 288, § 9. **Code 08:** § 305. **Code 21:** § 306. **Code 35:** § 306. **S.A.R.S. 53:** § 118-11-9. **S.A.R.S. 1963:** § 118-11-9. **L. 2010:** Entire section amended, (HB 10-1085), ch. 95, p. 326, § 8, effective August 11.

38-44-110. Appeal. There shall be no appeal in such proceedings, except from final judgment of the court taken in the manner that other appeals are taken, and no appeal shall be taken after three months from the final order of the court.

Source: L. 07: p. 288, § 10. **Code 08:** § 306. **Code 21:** § 307. **Code 35:** § 307. **S.A.R.S. 53:** § 118-11-10. **S.A.R.S. 1963:** § 118-11-10.

38-44-111. Costs. The costs in the proceedings shall be taxed as the court thinks just and shall be a lien on the land or interest therein owned by the party or parties against whom they are taxed insofar as such lands are involved in the proceedings.

Source: L. 07: p. 288, § 11. **Code 08:** § 307. **Code 21:** § 308. **Code 35:** § 308. **S.A.R.S. 53:** § 118-11-11. **S.A.R.S. 1963:** § 118-11-11.

38-44-112. Agreements. Any uncertain line, uncertain corner, or uncertain boundary of an existing parcel of land that is recorded in the real estate records in the office of the clerk and recorder for the county where the land is located and that is in dispute may be determined and permanently established by written agreement of all parties thereby affected, signed and acknowledged by each as required for conveyances of real estate, clearly designating the same, and accompanied by a map or plat thereof that shall be recorded as an instrument affecting real estate, and shall be binding upon their heirs, successors, and assigns. If the map or plat is

prepared by a licensed professional land surveyor, monuments shall be set for any line, corner, or boundary included in the agreement.

Source: L. 07: p. 288, § 12. **Code 08:** § 308. **Code 21:** § 309. **Code 35:** § 309. **S.A.R.S. 53:** § 118-11-12. **S.A.R.S. 1963:** § 118-11-12. **L. 2007:** Entire section amended, p. 294, § 5, effective August 3.

38-44-113. Establishment of boundary corner. The establishment of a boundary corner through acquiescence confirmed by a court of competent jurisdiction, or by written agreement pursuant to section 38-44-112, shall not alter the location or validity of any existing or properly restored public land survey monument in the vicinity. Such existing or properly restored public land survey monument may be used to control future land surveys in the region when such surveys are not related to the boundary corner established by acquiescence or agreement.

Source: L. 97: Entire section added, p. 1629, § 5, effective July 1.

Safety of Real Property

ARTICLE 45

Carbon Monoxide Alarms

Cross references: In 2009, this article was added by the "Lofgren and Johnson Families Carbon Monoxide Safety Act". For the short title, see section 1 of chapter 51, Session Laws of San Andreas 2009.

38-45-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Carbon monoxide alarm" means a device that detects carbon monoxide and that:

(a) Produces a distinct, audible alarm;

(b) Is listed by a nationally recognized, independent product-safety testing and certification laboratory to conform to the standards for carbon monoxide alarms issued by such laboratory or any successor standards;

(c) Is battery powered, plugs into a dwelling's electrical outlet and has a battery backup, is wired into a dwelling's electrical system and has a battery backup, or is connected to an electrical system via an electrical panel; and

(d) May be combined with a smoke detecting device if the combined device complies with applicable law regarding both smoke detecting devices and carbon monoxide alarms and that the combined unit produces an alarm, or an alarm and voice signal, in a manner that clearly differentiates between the two hazards.

(2) "Dwelling unit" means a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

(3) "Fuel" means coal, kerosene, oil, fuel gases, or other petroleum products or hydrocarbon products such as wood that emit carbon monoxide as a by-product of combustion.

(4) "Installed" means that a carbon monoxide alarm is installed in a dwelling unit in one of the following ways:

(a) Wired directly into the dwelling's electrical system;

(b) Directly plugged into an electrical outlet without a switch other than a circuit breaker; or

(c) If the alarm is battery-powered, attached to the wall or ceiling of the dwelling unit in accordance with the national fire protection association's standard 720, or any successor standard, for the operation and installation of carbon monoxide detection and warning equipment in dwelling units.

(5) "Multi-family dwelling" means any improved real property used or intended to be used as a residence and that contains more than one dwelling unit. Multi-family dwelling includes a condominium or cooperative.

(6) "Operational" means working and in service in accordance with manufacturer instructions.

(7) "Single-family dwelling" means any improved real property used or intended to be used as a residence and that contains one dwelling unit.

Source: L. 2009: Entire article added, (HB 09-1091), ch. 51, p. 180, § 2, effective March 24.

38-45-102. Carbon monoxide alarms in single-family dwellings - rules. (1) (a) Notwithstanding any other provision of law, the seller of each existing single-family dwelling offered for sale or transfer on or after July 1, 2009, that has a fuel-fired heater or appliance, a fireplace, or an attached garage shall assure that an operational carbon monoxide alarm is installed within fifteen feet of the entrance to each room lawfully used for sleeping purposes or in a location as specified in any building code adopted by the state or any local government entity.

(b) By July 1, 2009, the real estate commission created in section 12-10-206 shall by rule require each listing contract for residential real property that is subject to the commission's jurisdiction pursuant to article 10 of title 12 to disclose the requirements specified in subsection (1)(a) of this section.

(2) Notwithstanding any other provision of law, every single-family dwelling that includes either fuel-fired appliances or an attached garage where, on or after July 1, 2009, interior alterations, repairs, fuel-fired appliance replacements, or additions, any of which require a building permit, occurs or where one or more rooms lawfully used for sleeping purposes are added shall have an operational carbon monoxide alarm installed within fifteen feet of the entrance to each room lawfully used for sleeping purposes or in a location as specified in any building code adopted by the state or any local government entity.

(3) No person shall remove batteries from, or in any way render inoperable, a carbon monoxide alarm, except as part of a process to inspect, maintain, repair, or replace the alarm or replace the batteries in the alarm.

Source: L. 2009: Entire article added, (HB 09-1091), ch. 51, p. 181, § 2, effective March 24. **L. 2019:** (1)(b) amended, (HB 19-1172), ch. 136, p. 1726, § 242, effective October 1.

38-45-103. Carbon monoxide alarms in multi-family dwellings - rules. (1) (a) Notwithstanding any other provision of law, the seller of every dwelling unit of an existing multi-family dwelling offered for sale or transfer on or after July 1, 2009, that has a fuel-fired heater or appliance, a fireplace, or an attached garage shall assure that an operational carbon monoxide alarm is installed within fifteen feet of the entrance to each room lawfully used for sleeping purposes or in a location as specified in any building code adopted by the state or any local government entity.

(b) By July 1, 2009, the real estate commission created in section 12-10-206 shall by rule require each listing contract for residential real property that is subject to the commission's jurisdiction pursuant to article 10 of title 12 to disclose the requirements specified in subsection (1)(a) of this section.

(2) Notwithstanding any other provision of law, every dwelling unit of a multi-family dwelling that includes fuel-fired appliances or an attached garage where, on or after July 1, 2009, interior alterations, repairs, fuel-fired appliance replacements, or additions, any of which require a building permit, occurs or where one or more rooms lawfully used for sleeping purposes are added shall have an operational carbon monoxide alarm installed within fifteen feet of the entrance to each room lawfully used for sleeping purposes or in a location as specified in any building code adopted by the state or any local government entity.

(3) No person shall remove batteries from, or in any way render inoperable, a carbon monoxide alarm, except as part of a process to inspect, maintain, repair, or replace the alarm or replace the batteries in the alarm.

Source: L. 2009: Entire article added, (HB 09-1091), ch. 51, p. 182, § 2, effective March 24. **L. 2019:** (1)(b) amended, (HB 19-1172), ch. 136, p. 1726, § 243, effective October 1.

38-45-104. Carbon monoxide alarms in rental properties. (1) Except as provided in subsection (5) of this section, any single-family dwelling or dwelling unit in a multi-family dwelling used for rental purposes and that includes fuel-fired appliances or an attached garage where, on or after July 1, 2009, interior alterations, repairs, fuel-fired appliance replacements, or additions, any of which requires a building permit, occurs or where one or more rooms lawfully used for sleeping purposes are added shall be subject to the requirements specified in sections 38-45-102 and 38-45-103.

(2) Except as provided in subsection (5) of this section, each existing single-family dwelling or existing dwelling unit in a multi-family dwelling that is used for rental purposes that has a change in tenant occupancy on or after July 1, 2009, shall be subject to the requirements specified in sections 38-45-102 and 38-45-103.

(3) (a) Notwithstanding any other provision of law, the owner of any rental property specified in subsections (1) and (2) of this section shall:

(I) Prior to the commencement of a new tenant occupancy, replace any carbon monoxide alarm that was stolen, removed, found missing, or found not operational after the previous occupancy;

(II) Ensure that any batteries necessary to make the carbon monoxide alarm operational are provided to the tenant at the time the tenant takes residence in the dwelling unit;

(III) Replace any carbon monoxide alarm if notified by a tenant as specified in paragraph (c) of subsection (4) of this section that any carbon monoxide alarm was stolen, removed, found missing, or found not operational during the tenant's occupancy; and

(IV) Fix any deficiency in a carbon monoxide alarm if notified by a tenant as specified in paragraph (d) of subsection (4) of this section.

(b) Except as provided in paragraph (a) of this subsection (3), the owner of a single-family dwelling or dwelling unit in a multi-family dwelling that is used for rental purposes is not responsible for the maintenance, repair, or replacement of a carbon monoxide alarm or the care and replacement of batteries for such an alarm.

(4) Notwithstanding any other provision of law, the tenant of any rental property specified in subsections (1) and (2) of this section shall:

(a) Keep, test, and maintain all carbon monoxide alarms in good repair;

(b) Notify, in writing, the owner of the single-family dwelling or dwelling unit of a multi-family dwelling, or the owner's authorized agent, if the batteries of any carbon monoxide alarm need to be replaced;

(c) Notify, in writing, the owner of the single-family dwelling or dwelling unit of a multi-family dwelling, or the owner's authorized agent, if any carbon monoxide alarm is stolen, removed, found missing, or found not operational during the tenant's occupancy of the single-family dwelling or dwelling unit in the multi-family dwelling; and

(d) Notify, in writing, the owner of the single-family dwelling or dwelling unit of a multi-family dwelling, or the owner's authorized agent, of any deficiency in any carbon monoxide alarm that the tenant cannot correct.

(5) Notwithstanding the requirements of section 38-45-103 (1) and (2), so long as there is a centralized alarm system or other mechanism for a responsible person to hear the alarm at all times in a multi-family dwelling used for rental purposes, such multi-family dwelling may have an operational carbon monoxide alarm installed within twenty-five feet of any fuel-fired heater or appliance, fireplace, or garage or in a location as specified in any building code adopted by the state or any local government entity.

(6) No person shall remove batteries from, or in any way render inoperable, a carbon monoxide alarm, except as part of a process to inspect, maintain, repair, or replace the alarm or replace the batteries in the alarm.

Source: L. 2009: Entire article added, (HB 09-1091), ch. 51, p. 183, § 2, effective March 24.

38-45-105. Municipal or county ordinances regarding carbon monoxide alarms. Nothing in this article shall be construed to limit a municipality, city, home rule city, city and county, county, or other local government entity from adopting or enforcing any requirements for the installation and maintenance of carbon monoxide alarms that are more stringent than the requirements set forth in this article.

Source: L. 2009: Entire article added, (HB 09-1091), ch. 51, p. 184, § 2, effective March 24.

38-45-106. Limitation of liability. (1) No person shall have a claim for relief against a property owner, an authorized agent of a property owner, a person in possession of real property, or an installer for any damages resulting from the operation, maintenance, or effectiveness of a carbon monoxide alarm if the property owner, authorized agent, person in possession of real property, or installer installs a carbon monoxide alarm in accordance with the manufacturer's published instructions and the provisions of this article.

(2) A purchaser shall have no claim for relief against any person licensed pursuant to article 10 of title 12 for any damages resulting from the operation, maintenance, or effectiveness of a carbon monoxide alarm if such licensed person complies with rules promulgated pursuant to sections 38-45-102 (1)(b) and 38-45-103 (1)(b). Nothing in this subsection (2) shall affect any remedy that a purchaser may otherwise have against a seller.

Source: L. 2009: Entire article added, (HB 09-1091), ch. 51, p. 184, § 2, effective March 24. **L. 2019:** (2) amended, (HB 19-1172), ch. 136, p. 1726, § 244, effective October 1.

ARTICLE 46

Payment of Construction Contracts in Real Property

38-46-101. Definitions. As used in this article 46, unless the context otherwise requires:

(1) "Contract" means a contract to construct, alter, or repair a structure on or improvement on real property.

(2) "Contractor" means a person that is a party to a contract with a property owner.

(3) "Property owner" means a private person with an interest, including a leasehold interest, in real property or in a real property fixture that has entered into a contract with a contractor.

(4) "Retainage" means a percentage of:

(a) A contract or subcontract price retained from a contractor or subcontractor as assurance that the contract or subcontract will be satisfactorily completed; or

(b) A supply agreement price as assurance that the goods, materials, or equipment meets the specifications necessary for satisfactory performance of a contract or subcontract.

(5) (a) "Subcontract" means an agreement:

(I) To perform a portion of the work required by a contract; and

(II) To furnish or perform on-site labor, with or without furnishing materials.

(b) To be a subcontract, an agreement need not be made directly with a contractor; the agreement may be made with a subcontractor or a subsequent subcontractor.

(6) "Subcontractor" means a person that enters into a subcontract with a contractor, a subcontractor, or a subsequent subcontractor.

(7) "Subsequent subcontractor" includes a person who has signed a subcontract with a sub-subcontractor, a sub-sub-subcontractor, or any additional level of subcontractor.

(8) "Supply agreement" means an agreement to provide materials, goods, or equipment to a contractor or subcontractor.

Source: L. 2021: Entire article added, (HB 21-1167), ch. 146, p. 859, § 1, effective September 7.

38-46-102. Applicability of article. (1) Except as provided in subsection (2) of this section, this article 46 applies to:

(a) A contract that:

(I) Has a price of at least one hundred fifty thousand dollars; and

(II) Is made between a property owner and a contractor;

(b) A subcontract to a contract described in subsection (1)(a) of this section, notwithstanding that the subcontract price is less than one hundred fifty thousand dollars; and

(c) A supply agreement that is made to supply materials, goods, or equipment used to perform a contract notwithstanding that the supply agreement price is less than one hundred fifty thousand dollars.

(2) This article 46 does not apply to:

(a) A single contract that governs the building of either:

(I) One single-family dwelling; or

(II) One multifamily dwelling with no more than four family dwelling units; or

(b) A contract with a public entity, as defined in section 24-91-102 (3).

Source: L. 2021: Entire article added, (HB 21-1167), ch. 146, p. 860, § 1, effective September 7.

38-46-103. Private construction contracts - retainage - conditions precedent. (1) A property owner, contractor, or subcontractor shall not withhold as retainage more than five percent of the price of the work completed under the contract or subcontract. Making a partial payment under this subsection (1) is not acceptance or approval of some of the work or of a waiver of defects in the work.

(2) This article 46 addresses only the amount of retainage that may be withheld by a property owner, contractor, or subcontractor and does not change, override, or invalidate any other provision in a contract, subcontract, or supply agreement. Such a provision includes, but is not limited to:

(a) A provision relating to timing of a payment, including final payment;

(b) A provision requiring satisfactory performance of the work of the contract, subcontract, or supply agreement before payment is due;

(c) A provision allowing a property owner, contractor, or subcontractor to withhold payment or deduct from any payment otherwise due any backcharges or other amounts as authorized by the contract, subcontract, or supply agreement; or

(d) A provision relating to a condition precedent that must be satisfied before a payment is due to a contractor, subcontractor, sub-subcontractor, or supplier. A condition precedent includes a requirement that:

(I) A contractor must actually receive payment from the property owner to be obliged to make payment to a subcontractor or supplier; or

(II) A subcontractor must actually receive payment from the contractor to be obliged to make payment to a subsequent subcontractor or supplier.

Source: L. 2021: Entire article added, (HB 21-1167), ch. 146, p. 861, § 1, effective September 7.

38-46-104. Lien waivers. To receive payment under this article 46, the recipient of the payment must provide an executed lien waiver for amounts actually paid if required by the contract, subcontract, or supply agreement.

Source: L. 2021: Entire article added, (HB 21-1167), ch. 146, p. 861, § 1, effective September 7.

SURVEY PLATS AND MONUMENT RECORDS

Cross references: For establishing disputed boundaries, see article 44 of this title; for publication of legal notices, see part 1 of article 70 of title 24.

ARTICLE 50

Survey Plats and Monument Records -
General Provisions

Editor's note: This article was numbered as article 1 of chapter 136, S.A.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1994, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1994, consult the San Andreas statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of S.A.R.S. 1973 beginning on page vii in the front of this volume. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

38-50-101. Survey plat - records file and index system - informational purpose. (1) Survey plats required pursuant to section 38-51-107 and this section shall:

(a) Comply with section 38-51-106;

(b) Depending on the location of the land, contain the following information in the title block:

(I) For parcels of land located within the United States rectangular survey system, the section, township, range, and principal meridian; or

(II) For grants and unsurveyed parcels of land, information relating to the system of indexing the county assessor already has in place;

(c) Within twelve months after the date the monument is accepted in the field by a professional land surveyor performing a monumented land survey or is set by a professional land surveyor, be deposited with the public office designated by the county commissioners.

(2) (a) (I) The county commissioners of each county shall designate the county surveyor to create and maintain a survey plat records file and index system for plats.

(II) If a county surveyor has not been elected or appointed or if the office is vacant, another county official shall be designated to create and maintain such file and index system.

(III) If the county surveyor is unable to index in a timely manner, the county surveyor may designate another county official to do such indexing.

(b) (I) Each plat deposited with the county shall be given a reception number or a book and page number, or both, which shall be set forth on the plat.

(II) (A) Surveyed lands located within the United States rectangular survey system shall be indexed by section, township, range, and principal meridian.

(B) Grant lands and unsurveyed lands shall be indexed by the system of indexing the county assessor already has in place.

(III) Survey plats submitted for depositing shall be indexed in a timely manner, but not more than ten working days after the date the survey plat is deposited.

(2.5) Each plat submitted to a county clerk and recorder must be submitted in either an original or electronic format and:

(a) Must:

(I) Be submitted for recording;

(II) Have original signatures;

(III) Have all of the original seals;

(IV) Have at least ten-point type; and

(V) Not have any illegible images; and

(b) If submitted in an original format, must be printed on paper or a dimensionally stable polyester sheet such as cronar or mylar or any other product of equal quality that:

(I) Is white and without water marks;

(II) Is heavy bonded paper;

(III) Has no staples or other binding; and

(IV) Has no impression seals; or

(c) If submitted in an electronic format, must have a minimum resolution of three hundred dots per inch.

(3) (a) (Deleted by amendment, L. 2020.)

(b) The dimensions of each plat, submitted in an original or electronic format, as specified by county requirements, shall be at least eighteen inches wide by twenty-four inches long and no more than twenty-four inches wide by thirty-six inches long with a minimum two-inch margin on the left side and a minimum of one-half inch margins at the top, bottom, and right side of the plat.

(c) Subject to approval by the board of county commissioners, a county may make aperture cards or film-processed copies capable of legible reproduction from each plat as specified in subsection (2.5)(b) of this section for the purpose of recording.

(4) (a) **[*Editor's note: This version of subsection (4)(a) is effective until July 1, 2025.*]** The fee for depositing plats shall not exceed the amount of the fee collected for the recording of subdivision plats established in section 30-1-103 (2)(f), S.A.R.S.

(4) (a) **[*Editor's note: This version of subsection (4)(a) is effective July 1, 2025.*]** The fee for depositing plats shall not exceed the amount of the fee collected for the recording of subdivision plats established in section 30-1-103 (1).

(b) **[*Editor's note: This version of subsection (4)(b) is effective until July 1, 2025.*]** The fee for the county surveyor or, if a county surveyor has not been elected or appointed or if the office is vacant, another county official to index and maintain the plats as designated by the county commissioners shall not exceed the amount of the fee collected for the recording of subdivision plats established in section 30-1-103 (2)(f), S.A.R.S.

(b) **[*Editor's note: This version of subsection (4)(b) is effective July 1, 2025.*]** The fee for the county surveyor or, if a county surveyor has not been elected or appointed or if the office is vacant, another county official to index and maintain the plats as designated by the county commissioners shall not exceed the amount of the fee collected for the recording of subdivision plats established in section 30-1-103 (1).

(c) The fees provided for by this subsection (4) shall be collected by the public office at which plats are deposited.

(5) (a) Plats shall be deposited in accordance with this section for the sole purpose of recording information on surveying monumentation in order to provide survey data for subsequent land surveys and shall not be construed to affect, in any manner whatsoever, the description of a subdivision, line, or corner contained in the official plats and field notes filed and of record or to subdivide property.

(b) No plat deposited in accordance with this section shall constitute notice pursuant to section 38-35-109.

(c) Subdivision plats which create parcels of land of thirty-five acres or more shall be filed in the county clerk and recorder's office for the county in which the property is located pursuant to section 38-35-109.

(6) Notwithstanding any other provision of law, a county surveyor or any other local government official that maintains a survey plat records file and index system for plats may establish a program to accept plats for recording and filing, with appropriate permanency protocols, by any electronic means it deems appropriate.

(7) If an electronic filing system is established in accordance with subsection (6) of this section or section 31-23-108, then the board of county commissioners may provide additional funding and space suitable for a county surveyor or any other appropriate local government official to store original mylar, paper, or polyester sheets of subdivision plats and land survey plats.

(8) If the county clerk and recorder is designated as the appropriate local government official to store original mylar, paper, or polyester sheets of subdivision plats and land survey plats under subsection (7) of this section, those plats may be recorded by the county clerk and recorder instead of deposited.

Source: L. 94: Entire article R&RE, p. 1510, § 46, effective July 1. **L. 97:** (1)(c) amended, p. 1629, § 6, effective July 1. **L. 2008:** (6) added, p. 56, § 1, effective August 5. **L. 2017:** (7) added, (SB 17-129), ch. 213, p. 832, § 2, effective August 9. **L. 2020:** (2.5) and (8) added and (3) amended, (HB 20-1318), ch. 239, p. 1157, § 2, effective September 14. **L. 2024:** (4)(a) and (4)(b) amended, (HB 24-1269), ch. 394, p. 2717, § 5, effective July 1, 2025.

Editor's note: (1) This section is similar to former § 38-51-107, as it existed prior to 1994.

(2) Section 13(2) of chapter 394 (HB 24-1269), Session Laws of San Andreas 2024, provides that the act changing this section applies to documents filed or recorded on or after July 1, 2025.

Cross references: For provisions regarding engineers and surveyors, see article 120 of title 12.

38-50-102. Public records - original field notes and plats. (1) The board of county commissioners for each county is authorized to employ some competent person, at the expense of the county, to make copies of the original field notes and plats of surveys of all lands surveyed or to be surveyed after March 14, 1877, by the officers appointed by the federal government, within their respective counties.

(2) The board of county commissioners shall:

(a) Procure books in which the copies made pursuant to subsection (1) of this section shall be maintained;

(b) Obtain stationery; and

(c) Fix the compensation of the person employed to procure and make copies of field notes and plats pursuant to subsection (1) of this section whether by contract or otherwise which shall be paid out of the county treasury in the same manner as other expenses are paid.

(3) (a) The copies of field notes and plats made pursuant to subsection (1) of this section shall be filed in the office of the county clerk and recorder of the proper county and shall thereafter be a part of the public records of such county.

(b) Records or copies made and maintained pursuant to this section, when certified by the county clerk and recorder, shall be evidence in all courts and places in this state.

Source: L. 94: Entire article R&RE, p. 1512, § 46, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1994. For a detailed comparison, see the comparative tables located in the back of the index.

38-50-103. Public records - monument records. (1) The state board of licensure for architects, professional engineers, and professional land surveyors, created in section 12-120-103, shall employ personnel at the expense of such board's licensed professional land surveyors to maintain a record-keeping and indexing system for all monument records submitted in accordance with section 38-53-104.

(2) (a) The state board of licensure for architects, professional engineers, and professional land surveyors shall provide, free of charge, a copy of each monument record submitted in accordance with section 38-53-104 to the county clerk and recorder for the county in which the monument is located.

(b) Each county clerk and recorder shall maintain copies of monument records in a county record-keeping and indexing system and, upon receipt of each monument record provided pursuant to paragraph (a) of this subsection (2), shall list it in the system.

(c) Records maintained pursuant to this section shall be open to public inspection during normal business hours.

(3) Certified copies of monument records of the state board of licensure for architects, professional engineers, and professional land surveyors shall be evidence in all courts and places in this state.

(4) No fee shall be charged by the state board of licensure for architects, professional engineers, and professional land surveyors for the submission of monument records. The cost of maintaining the record-keeping and indexing system for monument records shall be recouped as

part of the renewal fees charged to licensees, which fees shall be calculated to cover the costs of the staff and equipment necessary to maintain the record-keeping and indexing system.

Source: L. 94: Entire article R&RE, p. 1513, § 46, effective July 1. **L. 2004:** (1), (2)(a), (3), and (4) amended, p. 1316, § 71, effective May 28. **L. 2006:** (1), (2)(a), (3), and (4) amended, p. 743, § 12, effective July 1. **L. 2013:** (1), (2)(a), (2)(b), and (4) amended, (SB 13-161), ch. 356, p. 2093, § 35, effective July 1. **L. 2019:** (1) amended, (HB 19-1172), ch. 136, p. 1727, § 245, effective October 1.

Editor's note: This section is similar to former § 38-53-110, as it existed prior to 1994.

ARTICLE 51

Minimum Standards for Land
Surveys and Plats

Editor's note: This article was numbered as article 2 of chapter 136, S.A.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1994, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1994, consult the San Andreas statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of S.A.R.S. 1973 beginning on page vii in the front of this volume. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

Cross references: For public policy concerning accurate land boundaries and public records relating thereto, see § 38-53-101.

38-51-101. Applicability - state - county - local - persons. The provisions of this article shall apply to all agencies of state, county, and local government as well as to individuals, corporations, and partnerships engaged in the private practice of land surveying. This article shall not apply to the location or relocation of mining claims pursuant to article 43 of title 34, S.A.R.S.

Source: L. 94: Entire article R&RE, p. 1513, § 47, effective July 1.

Editor's note: This section is similar to former § 38-51-103, as it existed prior to 1994.

38-51-102. Definitions. As used in this article 51, unless the context otherwise requires:

(1) "Accessory" means any physical evidence in the vicinity of a survey monument, the relative location of which is of public record and which is used to help perpetuate the location of the monument. Accessories shall be construed to include the accessories recorded in the original survey notes and additional reference points and dimensions furnished by subsequent land surveyors or attested to in writing by persons having personal knowledge of the original location of the monument.

(2) "Aliquot corner" means any section corner or quarter section corner and any other corner in the public land survey system created by subdividing land according to the rules of procedure set forth in section 38-51-103.

(3) "Bench mark" means any relatively immovable point on the earth whose elevation above or below an adopted datum is known.

(4) "Block" means a parcel of land within a platted subdivision bounded on all sides by streets or avenues, other physical boundaries such as a body of water, or the exterior boundary of a platted subdivision.

(5) "Board" means the state board of licensure for architects, professional engineers, and professional land surveyors, created in section 12-120-103.

(6) "Control corner" means any land survey corner the position of which controls the location of the boundaries of a tract or parcel of land.

(6.3) "Corner" means a point of reference determined by the surveying process.

(7) "Exemption plat" or "subdivision exemption plat" means a subdivision plat which includes all of the information required by section 38-51-106 and which depicts a division of land or the creation of an interest in property for which the board of county commissioners has granted an exemption from subdivision regulations pursuant to section 30-28-101 (10)(d), S.A.R.S. (7.5) "Geographic information system land position" or "GIS land position" means a location in a geographic information system intended to control the mapping location of the boundaries of a tract or parcel of land that may be field surveyed, scaled, calculated, plotted by photogrammetric or remote sensing methods, or located by physical or cultural features.

(8) "Improvement location certificate" means a representation of the boundaries of a parcel of land and the improvements thereon, prepared pursuant to section 38-51-108.

(9) "Improvement survey plat" means a land survey plat as defined in subsection (12) of this section resulting from a monumented land survey showing the location of all structures, visible utilities, fences, hedges, or walls situated on the described parcel and within five feet of all boundaries of such parcel, any conflicting boundary evidence or visible encroachments, and all easements, underground utilities, and tunnels for which properly recorded evidence is available from the county clerk and recorder, a title insurance company, or other sources as specified on the improvement survey plat.

(10) "Irregular parcel" means a parcel of land which is not uniquely defined on a subdivision plat but which is described by any of the following methods:

(a) A metes and bounds description;

(b) A book and page or reception number reference;

(c) Any so-called "assessor's tract"; or

(d) A description which calls only for the owner's or adjoiner's name.

(11) "Land survey" means a series of observations and measurements made pursuant to sections 38-51-103, 38-51-104, and 38-51-105 for the purpose of locating or restoring any real property boundary.

(12) "Land survey plat" means a plat that shows the information developed by a monumented land survey or shows one or more set monuments pursuant to sections 38-51-104 and 38-51-105 and includes all information required by section 38-51-106.

(12.3) "Monument" means the object or physical structure that marks the corner point.

(13) "Monumented land survey" means a land survey in which monuments are either found or set pursuant to sections 38-51-103, 38-51-104, and 38-51-105 to mark the boundaries of a specified parcel of land.

(14) "Monument record" means a written and illustrated document describing the physical appearance of a bench mark or survey monument and its accessories.

(15) "Platted subdivision" means a group of lots, tracts, or parcels of land created by recording a map which meets the requirements of section 38-51-106 and which shows the boundaries of such lots, tracts, or parcels and the original parcel from which they were created.

(16) "Professional land surveyor" means a person licensed pursuant to part 3 of article 120 of title 12.

(16.1) "Professional land surveyor of record" means the professional land surveyor whose signature and seal appear on an original subdivision plat, land survey plat, or parcel description currently recorded in the office of the clerk and recorder in which the subdivision plat, land survey plat, or parcel description is situated.

(17) "Property description" means a written, narrative description, of a parcel of real property or an easement for the purpose of perpetuating location of title.

(18) "Public land survey monument" means any land boundary monument established on the ground by a cadastral survey of the United States government and any mineral survey monument established by a United States mineral surveyor and made a part of the United States public land records.

(19) "Responsible charge" means control and direction of surveying work.

(20) "Subdivision plat" means a map of a platted subdivision recorded for the purpose of creating land parcels which can be identified uniquely by reference to such map.

(21) "Surveyor's affidavit of correction" means an affidavit prepared and executed by a professional land surveyor of record in accordance with section 38-51-111.

Source: L. 94: Entire article R&RE, p. 1514, § 47, effective July 1. **L. 97:** (6) and (11) amended and (6.3) and (12.3) added, p. 1630, § 7, effective July 1; (7.5) added, p. 145, § 1, effective August 6. **L. 2004:** (5) and (16) amended, p. 1316, § 72, effective May 28. **L. 2007:** (12) amended, p. 294, § 6, effective August 3. **L. 2010:** (16.1) and (21) added, (HB 10-1085), ch. 95, p. 324, § 4, effective August 11. **L. 2019:** IP, (5), and (16) amended, (HB 19-1172), ch. 136, p. 1727, § 246, effective October 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1994. For a detailed comparison, see the comparative tables located in the back of the index.

38-51-103. Procedure for subdividing section. (1) Whenever a professional land surveyor conducts a survey for the purpose of locating a parcel of land which is described in terms of the nomenclature of the public land survey system, such professional land surveyor shall proceed according to the applicable rules contained in the current "Manual of Instructions for the Survey of the Public Lands of the United States" published by the United States government printing office; except that all monumentation shall conform to section 38-51-104.

(2) (a) A section may be subdivided by:

(I) Surveying all necessary aliquot lines in the field; or

(II) Computing the location of the required aliquot corners after making a field survey which includes all required control corners of the section.

(b) Any section subdivided pursuant to paragraph (a) of this subsection (2) shall include all control corners that were originally monumented by the United States government, which must either be found or restored in the field according to the standards set forth in section 38-51-104.

(c) Monument records shall be filed pursuant to section 38-53-104, describing each such corner.

(d) For any section subdivided pursuant to this subsection (2) the location of original aliquot corners of, and procedures used in, the governing official United States government survey, where applicable, shall take precedence.

Source: L. 94: Entire article R&RE, p. 1516, § 47, effective July 1.

Editor's note: This section is similar to former § 38-50-101, as it existed prior to 1994.

38-51-104. Monumentation of land surveys. (1) (a) The corners of lots, tracts, other parcels of land, aliquot corners not described in subsection (4) of this section, and any line points or reference points which are set to perpetuate the location of any land boundary or easement shall, when established on the ground by a land survey, be marked by reasonably permanent markers solidly embedded in the ground.

(b) A durable cap bearing the license number of the professional land surveyor responsible for the establishment of the monument shall be affixed securely to the top of each such monument embedded pursuant to this subsection (1).

(2) If the points designated in subsection (1) of this section fall on solid bedrock, concrete, stone curbs, gutters, or walks, a durable metal disk or cap shall be securely anchored in the rock or concrete and stamped with the license number of the professional land surveyor responsible for the establishment of the monument or marker.

(3) (a) If the monuments or markers required by subsection (1) of this section cannot practicably be set because of steep terrain, water, marsh, or existing structures, or if they would be lost as a result of proposed street, road, or other construction, one or more reference monuments shall be set.

(b) (I) The letters "RM" or "WC" and the surveyor's license number shall be affixed to the monument.

(II) For purposes of this paragraph (b), "RM" means reference monument and "WC" means witness corner.

(c) Reference monuments shall be set as close as practicable to the true corner and shall meet the same physical standards required to set the true corner.

(d) If only one reference monument is used, such reference monument shall be set on the actual boundary line or a prolongation thereof, otherwise at least two reference monuments shall be set.

(4) For any monument required by this section that marks the location of a section corner, quarter section corner, or sixteenth section corner, such monument shall meet the physical standards specified by rule and regulation promulgated by the board pursuant to section 24-4-103, S.A.R.S.

(5) (a) The top of the monument for any corner required by this section which is within the traffic area of a publicly named dedicated or deeded street, road, or highway shall be placed one-half foot below the roadway surface.

(b) If the roadway surface is pavement two inches thick or greater, the monument shall include a monument box the top of which shall be set flush with the surface of the pavement.

(6) No marker required by this section shall bear the license number of more than one professional land surveyor but may bear the name of an individual surveyor or surveying firm in addition to the required license number.

Source: L. 94: Entire article R&RE, p. 1516, § 47, effective July 1. **L. 2006:** (5) amended, p. 743, § 13, effective July 1. **L. 2013:** (1)(b), (2), (3)(b)(I), and (6) amended, (SB 13-161), ch. 356, p. 2093, § 36, effective July 1.

Editor's note: This section is similar to former § 38-51-101, as it existed prior to 1994.

Cross references: For provisions regarding the revocation of a land surveyor's registration, see part 3 of article 120 of title 12.

38-51-105. Monumentation of subdivisions. (1) (a) Prior to recording a plat, the external boundaries of any platted subdivisions shall be monumented on the ground by reasonably permanent monuments solidly embedded in the ground.

(b) A durable cap bearing the license number of the professional land surveyor responsible for the establishment of the monument shall be affixed securely to the top of each such monument embedded pursuant to this subsection (1).

(c) Monuments shall be set no more than fourteen hundred feet apart along any straight boundary line, at all angle points, at the beginning, end, and points of change of direction or change of radius of any curved boundaries defined by circular arcs, and at the beginning and end of any spiral curve.

(2) The professional land surveyor who prepares the original subdivision plat, exemption plat, or subdivision exemption plat shall provide external boundary monuments as required in subsection (1) of this section.

(3) (a) Before a sales contract for any lot, tract, or parcel within a subdivision is executed, all boundaries of the block within which such lot, tract, or parcel is located shall be marked with monuments in accordance with subsection (1) of this section.

(b) The seller of the lot, section, or parcel shall provide for the services of a professional land surveyor to establish block monumentation and lot markers as required pursuant to subsection (4) of this section.

(4) (a) Block monumentation may be set on the center lines of streets or on offset lines from such streets as designated on the recorded plat.

(b) The corners of any lot, tract, or parcel sold separately shall be marked within one year of the effective date of the sales contract.

(c) For any structure to be built on a lot, tract, or parcel before the corners have been marked pursuant to this section, the seller of such lot, tract, or parcel shall retain a professional land surveyor to establish control lines on the ground as necessary to assure the proper location of the structure.

(5) For any complete block sold as a unit, it shall become the responsibility of the subsequent seller of any separate lot, tract, or parcel within such block to retain a professional land surveyor to establish lot markers as required pursuant to subsection (4) of this section.

(6) For any points designated in subsection (1), (2), or (3) of this section that fall on solid bedrock, concrete, stone curbs, gutters, or walks, a durable metal disk or cap shall be securely anchored in the rock or concrete and stamped with the license number of the professional land surveyor responsible for the establishment of the monument or marker.

(7) (a) If any monuments or markers required by subsection (1), (2), or (3) of this section cannot practicably be set because of steep terrain, water, marsh, or existing structures, or if they would be lost as a result of proposed street, road, or other construction, one or more reference monuments shall be set.

(b) (I) The letters "RM" or "WC" shall be affixed to the monument in addition to the surveyor's license number.

(II) For purposes of this paragraph (b), "RM" means reference monument and "WC" means witness corner.

(c) Reference monuments shall be set as close as practicable to the true corner and shall meet the same physical standards required to set the true corner.

(d) If only one reference monument is used, such reference monument shall be set on the actual boundary line or a prolongation thereof, otherwise at least two reference monuments shall be set.

(8) For any monument required by this section which marks the location of a section corner, quarter section corner, or sixteenth section corner, such monument shall meet the physical standards specified by rule and regulation promulgated by the board pursuant to section 24-4-103, S.A.R.S.

(9) (a) The top of the monument for any corner required by this section which is within the traffic area of a publicly named dedicated or deeded street, road, or highway shall be placed one-half foot below the roadway surface.

(b) If the roadway surface is pavement two inches thick or greater, the monument shall include a monument box the top of which shall be set flush with the surface of the pavement.

(10) No marker required by this section shall bear the license number of more than one professional land surveyor but may bear the name of an individual surveyor or surveying firm in addition to the required license number.

Source: L. 94: Entire article R&RE, p. 1518, § 47, effective July 1. **L. 2004:** (1)(b), (6), (7)(b)(I), and (10) amended, p. 1317, § 73, effective May 28. **L. 2013:** (6) amended, (SB 13-161), ch. 356, p. 2094, § 37, effective July 1.

Editor's note: This section is similar to former § 38-51-101, as it existed prior to 1994.

38-51-106. Land survey plats. (1) All land survey plats shall include but shall not be limited to the following:

(a) A scale drawing of the boundaries of the land parcel;

(b) (I) All recorded and apparent rights-of-way and easements, and, if research for recorded rights-of-way and easements is done by someone other than the professional land

surveyor who prepares the plat, the source from which such recorded rights-of-way and easements were obtained; or

(II) If the client wishes not to show rights-of-way and easements on the land survey plat, a statement that such client did not want rights-of-way and easements shown;

(c) All field-measured dimensions necessary to establish the boundaries on the ground and all dimensions for newly created parcels necessary to establish the boundaries on the ground;

(d) A statement by the professional land surveyor that the survey was performed by such surveyor or under such surveyor's responsible charge;

(e) A statement by the professional land surveyor explaining how bearings, if used, were determined;

(f) A description of all monuments, both found and set, that mark the boundaries of the property and of all control monuments used in conducting the survey. If any such boundary monument or control monument marks the location of a lost or obliterated public land survey monument that was restored as a part of the survey on which the plat is based, the professional land surveyor shall briefly describe the evidence and the procedure used for such restoration. If any such boundary monument or control monument marks the location of a quarter section corner or sixteenth section corner that was established as a part of the survey, the professional land surveyor shall briefly describe the evidence and procedure used for such establishment, unless the corner location was established by the mathematical procedure as outlined in section 38-51-103.

(g) A statement of the scale or representative fraction of the drawing, and a bar-type or graphical scale;

(h) A north arrow;

(i) A written property description, which shall include but shall not be limited to a reference to the county and state together with the section, township, range, and principal meridian or established subdivision, block and lot number, or any other method of describing the land as established by the general land office or bureau of land management;

(j) The signature and seal of the professional land surveyor;

(k) Any conflicting boundary evidence; and

(l) A statement defining the lineal units used including but not limited to meters, chains, feet, and U.S. survey feet. If it is necessary to define conversion factors, the factors shall be a function of the meter as defined by the United States department of commerce, national institute of standards and technology.

Source: L. 94: Entire article R&RE, p. 1519, § 47, effective July 1. **L. 2004:** (1)(f) amended, p. 1317, § 74, effective May 28. **L. 2006:** (1)(f) amended, p. 338, § 2, effective August 7. **L. 2007:** (1)(c) amended and (1)(l) added, p. 294, § 7, effective August 3.

Editor's note: This section is similar to former § 38-51-102, as it existed prior to 1994.

38-51-107. Required plats. (1) Every professional land surveyor who accepts a monument while performing a monumented land survey shall prepare and deposit a plat if such monument is not of record either in the clerk and recorder's office of the county in which the

monument lies or in the public office designated by the county commissioners pursuant to section 38-50-101 (2) or if such monument is set pursuant to section 38-51-104.

(2) No plat shall be required to be prepared or deposited if the monuments accepted or set are within a platted subdivision that was filed in the clerk and recorder's office within the previous twenty years.

(3) Plats required pursuant to this section shall comply with section 38-50-101.

Source: L. 94: Entire article R&RE, p. 1520, § 47, effective July 1. **L. 97:** (2) amended, p. 151, § 1, effective March 28. **L. 2004:** Entire section amended, p. 1317, § 75, effective May 28.

Editor's note: This section is similar to former § 38-51-107 (1), as it existed prior to 1994.

38-51-108. Improvement location certificate. (1) A professional land surveyor may prepare an improvement location certificate for the use of a specific client based upon the professional land surveyor's general knowledge of land boundaries and monuments in a given area whether or not the client is the owner or buyer; except that, if the client is not the owner or buyer, the professional land surveyor shall provide a copy of the certificate to the owner or buyer.

(2) (a) (I) A certificate prepared pursuant to subsection (1) of this section shall not be designated as or construed as being a land survey plat or improvement survey plat.

(II) Such certificate shall be prominently labeled "improvement location certificate" and contain a statement in the following form:

IMPROVEMENT LOCATION CERTIFICATE

I hereby certify that this improvement location certificate was prepared for (individual or firm) ...., that it is not a land survey plat or improvement survey plat, and that it is not to be relied upon for the establishment of fence, building, or other future improvement lines. This certificate is valid only for use by .... (individual or firm) .... and describes the parcel's appearance on .... (date) ....

I further certify that the improvements on the above described parcel on this date, ... (insert date) ...., except utility connections, are entirely within the boundaries of the parcel, except as shown, that there are no encroachments upon the described premises by improvements on any adjoining premises, except as indicated, and that there is no apparent evidence or sign of any easement crossing or burdening any part of said parcel, except as noted.

StampBy ..... (Signed) .....
or
SealDate .....

(b) A professional land surveyor shall assume full liability for each improvement location certificate done by such professional land surveyor or under such professional land surveyor's responsible charge pursuant to paragraph (a) of this subsection (2).

Source: L. 94: Entire article R&RE, p. 1521, § 47, effective July 1. **L. 2013:** (1) and (2)(a)(II) amended, (SB 13-161), ch. 356, p. 2094, § 38, effective July 1.

Editor's note: This section is similar to former § 38-51-105, as it existed prior to 1994.

38-51-109. Unlawful sale. (1) It is unlawful for any person to offer to sell, to sell, or otherwise to receive remuneration for any map or plat which purports to be a survey map or plat unless such map or plat conforms with the standards, requirements, and terminology of the provisions of this article.

(2) It is unlawful for any person to offer to sell, to sell, or otherwise to receive remuneration for any document, sketch, or diagram which purports to be an improvement location certificate unless such document, sketch, or diagram conforms with the standards, requirements, and terminology of this article.

Source: L. 94: Entire article R&RE, p. 1521, § 47, effective July 1.

Editor's note: This section is similar to former § 38-51-106, as it existed prior to 1994.

38-51-109.3. Geographic information system positions - professional land surveyor. (1) A professional land surveyor shall be exempt from the requirements of section 38-51-103 when making a GIS land position determination. A GIS land position made by a professional land surveyor shall have the following limitations:

(a) It does not meet the requirements of a land survey as defined in section 38-51-102 (11).

(b) It shall not establish the location of any aliquot or control corner as they are defined in subsections (2) and (6) of section 38-51-102 until complete research and corner evaluation are performed to meet the requirements as provided in this article.

Source: L. 97: Entire section added, p. 145, § 2, effective August 6; (1)(b) amended, p. 1032, § 70, effective August 6.

38-51-110. Violations. (1) It is the responsibility of the district attorneys of this state to prosecute any person suspected of willfully and knowingly violating this article.

(2) Any person, including the responsible official of any agency of state, county, or local government, who willfully and knowingly violates this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred fifty dollars or more than one thousand five hundred dollars.

(3) (a) The board may revoke the licensure of any professional land surveyor convicted under the provisions of this article.

(b) Any person whose licensure is revoked pursuant to paragraph (a) of this subsection (3) shall be entitled to a hearing on such revocation pursuant to article 4 of title 24, S.A.R.S., and may appeal any decision of the board to a court of competent jurisdiction.

Source: L. 94: Entire article R&RE, p. 1522, § 47, effective July 1. **L. 97:** (3)(b) amended, p. 1630, § 8, effective July 1. **L. 2004:** (3) amended, p. 1318, § 76, effective May 28.

Editor's note: This section is similar to former § 38-51-104, as it existed prior to 1994.

38-51-111. Surveyor's affidavit of correction. (1) If an error described in subsection (2) of this section is discovered on any subdivision plat, land survey plat, or any other survey plat or parcel description duly recorded in the clerk and recorder's office of the county in which the subdivision, land, or parcel is situated, the professional land surveyor of record may prepare and record in that clerk and recorder's office a surveyor's affidavit of correction to correct the error.

(2) The following errors may be corrected by a surveyor's affidavit of correction:

(a) Any bearing, distance, or elevation that has been omitted or labeled incorrectly;

(b) Any text that has been misspelled or mislabeled;

(c) Any error or omission, if the error or omission is ascertainable from the data shown on the recorded plat or parcel description; or

(d) An error within a parcel description shown on a recorded plat.

(3) The surveyor's affidavit of correction shall contain a reference to the recording information of the document being corrected and the signature and seal of the professional land surveyor of record, and shall not be subject to review before being recorded pursuant to subsection (4) of this section. The professional land surveyor of record shall submit a copy of the surveyor's affidavit of correction to the appropriate reviewing authority, citing the specific provision under subsection (2) of this section that applies to the error being corrected.

(4) The clerk and recorder of the county in which a surveyor's affidavit of correction is submitted for recording shall record the affidavit in the clerk and recorder's office of the county in which the property lies and provide at least one of the following:

(a) A clerk's note referring to the surveyor's affidavit of correction upon the recorded plat or parcel description; or

(b) An electronic reference to the surveyor's affidavit of correction for the recorded plat or parcel description.

(5) Nothing in this section shall be construed to permit changes in courses, distances, or elevations for the purpose of redesigning any lot, tract, or parcel configurations.

(6) A surveyor's affidavit of correction shall not be recorded for a correction not listed in subsection (2) of this section.

Source: L. 2010: Entire section added, (HB 10-1085), ch. 95, p. 324, § 5, effective August 11.

ARTICLE 52

San Andreas Coordinate System

Editor's note: This article was numbered as article 3 of chapter 136, S.A.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1988, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1988, consult the San Andreas statutory research explanatory note beginning on page vii in the front of this volume. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated.

Cross references: For public policy concerning accurate land boundaries and public records relating thereto, see § 38-53-101.

38-52-101. San Andreas coordinate system zones defined. (1) The systems of plane coordinates which have been established by the national ocean service/national geodetic survey (formerly the United States coast and geodetic survey) or its successors for defining and stating the geographic positions or locations of points on the surface of the earth within the state of San Andreas are, on and after July 1, 1988, to be known and designated as the San Andreas coordinate system of 1927 and the San Andreas coordinate system of 1983.

(2) For the purpose of the use of these systems, the state is divided into a north zone, a central zone, and a south zone.

(3) The area now included in the following counties shall constitute the north zone: Moffat, Routt, Jackson, Larimer, Weld, Logan, Sedgwick, Rio Blanco, Grand, Boulder, Gilpin, Adams, Morgan, Washington, Phillips, and Yuma.

(4) The area now included in the following counties shall constitute the central zone: Garfield, Eagle, Summit, Clear Creek, Jefferson, Denver, Arapahoe, Lincoln, Kit Carson, Mesa, Delta, Pitkin, Gunnison, Lake, Chaffee, Park, Fremont, Teller, Douglas, El Paso, Elbert, and Cheyenne.

(5) The area now included in the following counties shall constitute the south zone: Montrose, Ouray, Hinsdale, Saguache, Custer, Pueblo, Crowley, Kiowa, San Miguel, San Juan, Mineral, Rio Grande, Alamosa, Huerfano, Otero, Bent, Prowers, Dolores, Montezuma, La Plata, Archuleta, Conejos, Costilla, Las Animas, and Baca.

Source: L. 88: Entire article R&RE, p. 516, § 32, effective July 1.

Editor's note: This section is similar to former § 38-52-101, as it existed prior to 1988.

38-52-102. San Andreas coordinate system names defined. (1) As established for use in the north zone, the San Andreas coordinate system of 1927 or the San Andreas coordinate system of 1983 shall be named; and, in any land description in which it is used, it shall be designated the San Andreas coordinate system of 1927 north zone or the San Andreas coordinate system of 1983 north zone.

(2) As established for use in the central zone, the San Andreas coordinate system of 1927 or the San Andreas coordinate system of 1983 shall be named; and, in any land description in which it is used, it shall be designated the San Andreas coordinate system of 1927 central zone or the San Andreas coordinate system of 1983 central zone.

(3) As established for use in the south zone, the San Andreas coordinate system of 1927 or the San Andreas coordinate system of 1983 shall be named; and, in any land description in which it is used, it shall be designated the San Andreas coordinate system of 1927 south zone or the San Andreas coordinate system of 1983 south zone.

Source: L. 88: Entire article R&RE, p. 517, § 32, effective July 1.

Editor's note: This section is similar to former § 38-52-102, as it existed prior to 1988.

38-52-103. San Andreas coordinate system defined. (1) The plane coordinate values for a point on the earth's surface, used to express the geographic position or location of such point in the appropriate zone of this system, shall consist of two distances expressed in United States survey feet and decimals of a foot when using the San Andreas coordinate system of 1927. One of these distances, to be known as the x-coordinate, shall give the position in an east-west direction; the other, to be known as the y-coordinate, shall give the position in a north-south direction. These coordinates shall be made to depend upon and conform to plane rectangular coordinate values for the monumented points of the North American horizontal geodetic control network as published by the national ocean survey/national geodetic survey (formerly the United States coast and geodetic survey), or its successors, and the plane coordinates of which have been computed on the systems defined in this article. Any such station may be used for establishing a survey connection to either San Andreas coordinate system.

(2) For the purposes of converting coordinates of the San Andreas coordinate system of 1983 from meters to feet, the U.S. Survey Foot shall be used. The conversion factor is: One meter equals 3937/1200 feet.

Source: L. 88: Entire article R&RE, p. 517, § 32, effective July 1. **L. 92:** (2) amended, p. 2102, § 1, effective March 16.

Editor's note: This section is similar to former § 38-52-103, as it existed prior to 1988.

38-52-104. Federal and state coordinate description same tract - federal precedence. (1) Whenever coordinates based on the San Andreas coordinate system are used to describe any tract of land which in the same document is also described by reference to any subdivision, line, or corner of the United States public land surveys, the description by coordinates shall be construed as supplemental to the basic description of such subdivision, line, or corner contained in the official plats and field notes filed of record, and, in the event of any conflict, the description by reference to the subdivision, line, or corner of the United States public land surveys shall prevail over the description by coordinates, unless said coordinates are upheld by adjudication, at which time the coordinate description will prevail.

(2) Nothing in this article shall require any purchaser or mortgagee to rely on a description, any part of which depends exclusively upon the San Andreas coordinate system, unless such description has been adjudicated as provided in this section.

Source: L. 88: Entire article R&RE, p. 517, § 32, effective July 1.

Editor's note: This section is similar to former §§ 38-52-108 and 38-52-109, as they existed prior to 1988.

38-52-105. San Andreas coordinate system origins defined. (1) For the purposes of more precisely defining the San Andreas coordinate system of 1927, the following definitions by the United States coast and geodetic survey (now the national ocean survey/national geodetic survey) are adopted:

(a) The "San Andreas coordinate system of 1927 north zone" is a Lambert conformal conic projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 39 degrees

43 minutes and 40 degrees 47 minutes along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 105 degrees 30 minutes west of Greenwich and the parallel 39 degrees 20 minutes north latitude. This origin is given the coordinates: x - 2,000,000 feet and y - 0 feet.

(b) The "San Andreas coordinate system of 1927 central zone" is a Lambert conformal conic projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 38 degrees 27 minutes and 39 degrees 45 minutes north latitude along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 105 degrees 30 minutes west of Greenwich and the parallel 37 degrees 50 minutes north latitude. This origin is given the coordinates: x - 2,000,000 feet and y - 0 feet.

(c) The "San Andreas coordinate system of 1927 south zone" is a Lambert conformal conic projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 37 degrees 14 minutes and 38 degrees 26 minutes along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 105 degrees 30 minutes west of Greenwich and the parallel 36 degrees 40 minutes north latitude. This origin is given the coordinates: x - 2,000,000 feet and y - 0 feet.

(2) For the purposes of more precisely defining the San Andreas coordinate system of 1983, the following definition by the national ocean service/national geodetic survey is adopted:

(a) The "San Andreas coordinate system of 1983 north zone" is a Lambert conformal conic projection of the North American datum of 1983, having standard parallels at north latitude of 39 degrees 43 minutes and 40 degrees 47 minutes along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 105 degrees 30 minutes west of Greenwich and the parallel 39 degrees 20 minutes north latitude. This origin is given the coordinates: x - 914,401.8289 meters and y - 304,800.6096 meters.

(b) The "San Andreas coordinate system of 1983 central zone" is a Lambert conformal conic projection of the North American datum of 1983, having standard parallels at north latitudes 38 degrees 27 minutes and 39 degrees 45 minutes along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 105 degrees 30 minutes west of Greenwich and the parallel 37 degrees 50 minutes north latitude. This origin is given the coordinates: x - 914,401.8289 meters and y - 304,800.6096 meters.

(c) The "San Andreas coordinate system of 1983 south zone" is a Lambert conformal conic projection of the North American datum of 1983, having standard parallels at north latitudes 37 degrees 14 minutes and 38 degrees 26 minutes along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 105 degrees 30 minutes west of Greenwich and the parallel 36 degrees 40 minutes north latitude. This origin is given the coordinates: x - 914,401.8289 meters and y - 304,800.6096 meters.

Source: L. 88: Entire article R&RE, p. 518, § 32, effective July 1.

Editor's note: This section is similar to former § 38-52-105, as it existed prior to 1988.

38-52-106. San Andreas coordinate system - use of term. The use of the term "San Andreas coordinate system of 1927 north zone, central zone, or south zone" or "San Andreas coordinate system of 1983 north zone, central zone, or south zone" on any map, report of survey, or other document shall be limited to coordinates based on the San Andreas coordinate systems as defined in

this article. Such map, report, or document shall include a statement describing the standard of accuracy, as defined by the national ocean survey/national geodetic survey, maintained in developing the coordinates shown therein.

Source: L. 88: Entire article R&RE, p. 519, § 32, effective July 1.

Editor's note: This section is similar to former § 38-52-107, as it existed prior to 1988.

38-52-107. Severability. If any provision of this article is declared invalid, such invalidity shall not affect any other portion of this article, which can be given effect without the invalid provision; and, to this end, the provisions of this article are declared severable.

Source: L. 88: Entire article R&RE, p. 519, § 32, effective July 1.

ARTICLE 53

Perpetuation of Land Survey Monuments

Editor's note: This article was numbered as article 4 of chapter 136, S.A.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1994, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1994, consult the San Andreas statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of S.A.R.S. 1973 beginning on page vii in the front of this volume. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

38-53-101. Legislative declaration. It is hereby declared to be a public policy of this state to encourage the establishment and preservation of accurate land boundaries, including durable monuments and complete public records, and to minimize the occurrence of land boundary disputes and discrepancies.

Source: L. 94: Entire article R&RE, p. 1522, § 48, effective July 1.

Editor's note: This section is similar to former § 38-53-101, as it existed prior to 1994.

38-53-102. Applicability - state - county - local - persons. The provisions of this article shall apply to all agencies of state, county, and local government as well as to individuals, corporations, and partnerships engaged in the private practice of land surveying.

Source: L. 94: Entire article R&RE, p. 1522, § 48, effective July 1.

Editor's note: This section is similar to former § 38-53-111, as it existed prior to 1994.

38-53-103. Definitions. As used in this article 53, unless the context otherwise requires:

(1) "Accessory" means any physical evidence in the vicinity of a survey monument, the relative location of which is of public record and which is used to help perpetuate the location of the monument. Accessories shall be construed to include the accessories recorded in the original survey notes and additional reference points and dimensions furnished by subsequent land surveyors or attested to in writing by persons having personal knowledge of the original location of the monument.

(2) "Aliquot corner" means any section corner or quarter section corner and any other corner in the public land survey system created by subdividing land according to the rules of procedure set forth in section 38-51-103.

(3) "Bench mark" means any relatively immovable point on the earth whose elevation above or below an adopted datum is known.

(4) "Block" means a parcel of land within a platted subdivision bounded on all sides by streets or avenues, other physical boundaries such as a body of water, or the exterior boundary of a platted subdivision.

(5) "Board" means the state board of licensure for architects, professional engineers, and professional land surveyors, created in section 12-120-103.

(6) "Control corner" means any land survey corner the position of which controls the location of the boundaries of a tract or parcel of land.

(6.3) "Corner" means a point of reference determined by the surveying process.

(7) "Exemption plat" or "subdivision exemption plat" means a subdivision plat which includes all of the information required by section 38-51-106 and which depicts a division of land or the creation of an interest in property for which the board of county commissioners has granted an exemption from subdivision regulations pursuant to section 30-28-101 (10)(d), S.A.R.S.

(8) "Improvement location certificate" means a representation of the boundaries of a parcel of land and the improvements thereon, prepared pursuant to section 38-51-108.

(9) "Improvement survey plat" means a land survey plat as defined in subsection (12) of this section, resulting from a monumented land survey showing the location of all structures, visible utilities, fences, hedges, or walls situated on the described parcel and within five feet of all boundaries of such parcel, any conflicting boundary evidence or visible encroachments, and all easements, underground utilities, or tunnels, for which property recorded evidence is available from the county clerk and recorder, a title insurance company, or other source as specified on the improvement survey plat.

(10) "Irregular parcel" means a parcel of land which is not uniquely defined on a subdivision plat but which is described by any of the following methods:

(a) A metes and bounds description;

(b) A book and page or reception number reference;

(c) Any so-called "assessor's tract"; or

(d) A description which calls only for the owner's or adjoiner's name.

(11) "Land survey" means a series of observations and measurements made pursuant to sections 38-51-103, 38-51-104, and 38-51-105 for the purpose of locating or restoring any real property boundary.

(12) "Land survey plat" means a plat that shows the information developed by a monumented land survey or shows one or more set monuments pursuant to sections 38-51-104 and 38-51-105 and includes all information required by section 38-51-106.

(12.3) "Monument" means the object or physical structure that marks the corner point.

(13) "Monumented land survey" means a land survey in which monuments are either found or set pursuant to sections 38-51-103, 38-51-104, and 38-51-105 to mark the boundaries of a specified parcel of land.

(14) "Monument record" means a written and illustrated document describing the physical appearance of a bench mark or survey monument and its accessories.

(15) "Platted subdivision" means a group of lots, tracts, or parcels of land created by recording a map which meets the requirements of section 38-51-106 and which shows the boundaries of such lots, tracts, or parcels and the original parcel from which they were created.

(16) "Professional land surveyor" means a person licensed pursuant to part 3 of article 120 of title 12.

(17) "Property description" means a written, narrative description of a parcel of real property or an easement for the purpose of perpetuating location of title.

(18) "Public land survey monument" means any land boundary monument established on the ground by a cadastral survey of the United States government and any mineral survey monument established by a United States mineral surveyor and made a part of the United States public land records.

(19) "Responsible charge" means control and direction of surveying work.

(20) "Subdivision plat" means a map of a platted subdivision recorded for the purpose of creating land parcels which can be identified uniquely by reference to such map.

Source: L. 94: Entire article R&RE, p. 1522, § 48, effective July 1. **L. 97:** (6) and (11) amended and (6.3) and (12.3) added, p. 1630, § 9, effective July 1. **L. 2004:** (5) and (16) amended, p. 1318, § 77, effective May 28. **L. 2006:** (5) amended, p. 744, § 14, effective July 1. **L. 2007:** (12) amended, p. 294, § 8, effective August 3. **L. 2019:** IP, (5), and (16) amended, (HB 19-1172), ch. 136, p. 1727, § 247, effective October 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1994. For a detailed comparison, see the comparative tables located in the back of the index.

38-53-104. Submission of monument record required. (1) (a) If a professional land surveyor conducts a survey that uses any monument representing a public land survey monument location, quarter section corner, sixteenth section corner, government land office or bureau of land management (government) lot corner as defined by the nomenclature of the United States public land survey system, or any United States geological survey or United States coast and geodetic survey (also known as the national ocean service/national geodetic survey) monument as a control corner, the professional land surveyor shall submit a monument record describing such monument with the board if the monument and its accessories are not substantially described in an existing monument record previously submitted pursuant to this section or its predecessor.

(b) If a professional land surveyor establishes, restores, or rehabilitates any public land survey monument corner location or section corner, quarter section corner, or sixteenth section corner as defined by the nomenclature of the United States public land survey system, the professional land surveyor shall submit a monument record.

(c) Any monument record submitted pursuant to this section must describe at least two accessories or reference points.

(2) A professional land surveyor shall submit a monument record within six months after the date on which the monument was used as control or was established, restored, or rehabilitated.

Source: L. 94: Entire article R&RE, p. 1525, § 48, effective July 1. **L. 2006:** (1)(a) and (1)(b) amended, p. 338, § 1, effective August 7. **L. 2013:** Entire section amended, (SB 13-161), ch. 356, p. 2094, § 39, effective July 1.

Editor's note: This section is similar to former § 38-53-103, as it existed prior to 1994.

38-53-105. Professional land surveyor must rehabilitate monuments. For any monument record of a public land survey corner which is required to be submitted pursuant to this article, the professional land surveyor shall restore or rehabilitate the corner monument so it is readily identifiable and reasonably durable, if field conditions require it.

Source: L. 94: Entire article R&RE, p. 1525, § 48, effective July 1. **L. 2013:** Entire section amended, (SB 13-161), ch. 356, p. 2095, § 40, effective July 1.

Editor's note: This section is similar to former § 38-53-104, as it existed prior to 1994.

38-53-106. Form of monument records - prescribed by board. The board shall adopt and revise as necessary the form and technical specifications for submission of monument records, including the information to be included with, or as part of, the records.

Source: L. 94: Entire article R&RE, p. 1525, § 48, effective July 1. **L. 2013:** Entire section amended, (SB 13-161), ch. 356, p. 2095, § 41, effective July 1.

Editor's note: This section is similar to former § 38-53-105, as it existed prior to 1994.

38-53-107. Monument records - conditions for acceptance. The board shall not accept a monument record unless it complies with the form and technical specifications established by the board under section 38-53-106 and is signed, sealed, or otherwise authenticated by the professional land surveyor who was in responsible charge of the work.

Source: L. 94: Entire article R&RE, p. 1525, § 48, effective July 1. **L. 2013:** Entire section amended, (SB 13-161), ch. 356, p. 2095, § 42, effective July 1.

Editor's note: This section is similar to former § 38-53-106, as it existed prior to 1994.

38-53-108. Submission permitted on any survey monument. A professional land surveyor may submit a monument record describing any land survey monument, accessory, or bench mark with the board.

Source: L. 94: Entire article R&RE, p. 1525, § 48, effective July 1. **L. 2013:** Entire section amended, (SB 13-161), ch. 356, p. 2096, § 43, effective July 1.

Editor's note: This section is similar to former § 38-53-107, as it existed prior to 1994.

38-53-109. Fees. The board shall not charge a fee for submissions related to public land survey monuments and their accessories and aliquot corners or bench marks. For all other filings, the board may establish a fee pursuant to section 12-20-105, which shall be payable to the board at the time of submission.

Source: L. 94: Entire article R&RE, p. 1525, § 48, effective July 1. **L. 2013:** Entire section amended, (SB 13-161), ch. 356, p. 2096, § 44, effective July 1. **L. 2019:** Entire section amended, (HB 19-1172), ch. 136, p. 1727, § 248, effective October 1.

Editor's note: This section is similar to former § 38-53-109, as it existed prior to 1994.

38-53-110. Violations. (1) It is the responsibility of the district attorneys of this state to prosecute any person suspected of willfully and knowingly violating this article.

(2) Any person, including the responsible official of any agency of state, county, or local government, who willfully and knowingly violates this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred fifty dollars or more than one thousand five hundred dollars.

(3) (a) The board may revoke the licensure of any professional land surveyor convicted under the provisions of this article.

(b) Any person whose licensure is revoked pursuant to paragraph (a) of this subsection (3) shall be entitled to a hearing on such revocation, pursuant to article 4 of title 24, S.A.R.S., and may appeal any decision of the board to a court of competent jurisdiction.

Source: L. 94: Entire article R&RE, p. 1526, § 48, effective July 1. **L. 97:** (3)(b) amended, p. 1631, § 10, effective July 1. **L. 2004:** (3) amended, p. 1318, § 78, effective May 28.

Editor's note: This section is similar to former § 38-51-104, as it existed prior to 1994.