

REFERENCE TITLE: homeowners' associations; assessment liens

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

HB 2730

Introduced by
Representative Dalessandro

AN ACT

AMENDING SECTIONS 33-1256 AND 33-1807, ARIZONA REVISED STATUTES; RELATING
TO CONDOMINIUMS AND PLANNED COMMUNITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 33-1256, Arizona Revised Statutes, is amended to
3 read:

4 33-1256. Lien for common expense assessments; priority;
5 mechanics' and materialmen's liens; judgment
6 liens; applicability; definition

7 A. The association has a lien on a unit for any COMMON EXPENSE
8 assessment THAT IS levied against that unit from the time the assessment
9 becomes due. The association's lien for COMMON EXPENSE assessments, ~~for~~
10 MAY INCLUDE charges for late payment of those assessments, for reasonable
11 collection COSTS OR fees INCURRED OR APPLIED BY THE ASSOCIATION ON
12 DELINQUENT COMMON EXPENSE ASSESSMENTS, FOR REASONABLE INTEREST CHARGES AS
13 AUTHORIZED IN THE DECLARATION and for reasonable attorney fees and costs
14 incurred AND AWARDED BY THE COURT IN ANY ACTION with respect to those
15 assessments. IF A COMMON EXPENSES ASSESSMENT IS PAYABLE IN INSTALLMENTS,
16 THE FULL AMOUNT OF THE ASSESSMENT IS A LIEN FROM THE TIME THE FIRST
17 INSTALLMENT OF THE ASSESSMENT BECOMES DUE.

18 B. THE COMMON EXPENSE ASSESSMENT LIEN may be foreclosed in the same
19 manner as a mortgage on real estate but may be foreclosed only if the
20 owner has been AND REMAINS delinquent in the payment of ~~monies secured by~~
21 ~~the lien, excluding reasonable collection fees, reasonable attorney fees~~
22 ~~and charges for late payment of and costs incurred with respect to those~~
23 ~~assessments, COMMON EXPENSE ASSESSMENTS~~ for a period of one year or in the
24 amount of \$1,200 or more, whichever occurs first, ~~as determined on the~~
25 ~~date the action is filed.~~

26 C. NOTWITHSTANDING ANY PROVISION IN THE CONDOMINIUM DOCUMENTS,
27 fees, charges, late charges, monetary penalties and interest charged
28 pursuant to section 33-1242, subsection A, paragraphs 10, 11 and 12, other
29 than charges for late payment of assessments, are not enforceable as
30 COMMON EXPENSE assessments under this section. ~~If an assessment is~~
31 ~~payable in installments, the full amount of the assessment is a lien from~~
32 ~~the time the first installment of the assessment becomes due.~~ The
33 association has a lien for fees, charges, late charges, other than charges
34 for late payment of assessments, monetary penalties or interest charged
35 pursuant to section 33-1242, subsection A, paragraphs 10, 11 and 12 after
36 the entry of a judgment in a civil suit for those fees, charges, late
37 charges, monetary penalties or interest from a court of competent
38 jurisdiction and the recording of that judgment in the office of the
39 county recorder as otherwise provided by law. The association's JUDGMENT
40 lien for monies ~~other than for assessments, for charges for late payment~~
41 ~~of those assessments, for reasonable collection fees and for reasonable~~
42 ~~attorney fees and costs incurred with respect to those assessments AS~~
43 PRESCRIBED IN THIS SUBSECTION may not be foreclosed and is effective only
44 on conveyance of any interest in the real property.

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

6 1. Liens and encumbrances recorded before the recordation of the
7 declaration.

8 2. A recorded first mortgage on the unit, a seller's interest in a
9 first contract for sale pursuant to chapter 6, article 3 of this title on
10 the unit recorded ~~prior to~~ BEFORE the lien arising pursuant to subsection
11 A of this section or a recorded first deed of trust on the unit.

12 3. Liens for real estate taxes and other governmental assessments
13 or charges against the unit.

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

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

21 ~~E.~~ G. Recording ~~of~~ the declaration constitutes record notice and
22 perfection of the lien for COMMON EXPENSE assessments, ~~for charges for~~
23 ~~late payment of those assessments, for reasonable collection fees and for~~
24 ~~reasonable attorney fees and costs incurred with respect to those~~
25 ~~assessments~~. Further recordation of any claim of lien for COMMON EXPENSE
26 assessments under this section is not required.

27 ~~F.~~ H. A lien for unpaid COMMON EXPENSE assessments is extinguished
28 unless proceedings to enforce the lien are instituted within six years
29 after the full amount of the assessments becomes due.

30 ~~G.~~ I. This section does not prohibit:

31 1. Actions to recover sums for which subsection A OR C of this
32 section creates a lien.

33 2. An association from taking a deed in lieu of foreclosure.

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

37 ~~I.~~ K. The association on written request shall furnish to a
38 lienholder, escrow agent, unit owner or person designated by a unit owner
39 a statement setting forth the amount of unpaid ~~assessments~~ ASSESSMENT
40 LIENS PURSUANT TO SUBSECTION A OR C OF THIS SECTION against the unit. The
41 statement shall be furnished within ten days after receipt of the request.
42 ~~and~~ The statement is binding on the association, the board of directors
43 and every unit owner if the statement is requested by an escrow agency
44 that is licensed pursuant to title 6, chapter 7. Failure to provide the

1 statement to the escrow agent within the time provided for in this
2 subsection extinguishes any lien for any unpaid assessment then due.

3 ~~⌚~~ L. Notwithstanding any provision in the condominium documents
4 or in any contract between the association and a management company OR ANY
5 OTHER AGENT OF THE ASSOCIATION, unless the unit owner directs otherwise,
6 all payments received on a unit owner's account shall be applied first to
7 any unpaid CURRENT COMMON EXPENSE assessments, THEN DELINQUENT COMMON
8 EXPENSE ASSESSMENTS, unpaid charges for late payment of those assessments,
9 unpaid reasonable collection COSTS OR fees, UNPAID INTEREST CHARGES and
10 unpaid COURT-ORDERED attorney fees and costs incurred with respect to
11 those assessments, in that order, with any remaining amounts applied next
12 to other unpaid fees, charges and monetary penalties or interest and late
13 charges on any of those amounts.

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

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

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

32 ~~L. Beginning January 1, 2020, except for condominiums that have~~
33 ~~fewer than fifty units and that do not contract with a third party to~~
34 ~~perform management services on behalf of the association, the association~~
35 ~~shall provide a statement of account in lieu of a periodic payment book to~~
36 ~~the unit owner with the same frequency that assessments are provided for~~
37 ~~in the declaration. The statement of account shall include the current~~
38 ~~account balance due and the immediately preceding ledger history. If the~~
39 ~~association offers the statement of account by electronic means, a unit~~
40 ~~owner may opt to receive the statement electronically. The association~~
41 ~~may stop providing any further statements of account to a unit owner if~~
42 ~~collection activity begins by an attorney, or a collection agency that is~~
43 ~~not acting as the association's managing agent, regarding that unit~~
44 ~~owner's unpaid account. After collection activity begins, a unit owner~~
45 ~~may request statements of account by written request to the attorney or~~

~~1 collection agency. Any request by a unit owner for a statement of account
2 after collection activity begins by an attorney or a collection agency
3 that is not acting as the association's managing agent must be fulfilled
4 by the attorney or the collection agency responsible for the collection.
5 The statement of account provided by the attorney or collection agency
6 responsible for the collection shall include all amounts claimed to be
7 owing to resolve the delinquency through the date set forth in the
8 statement, including attorney fees and costs, regardless of whether such
9 amounts have been reduced to judgment.~~

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

19 N. This section does not apply to timeshare plans or associations
20 that are subject to chapter 20 of this title.

21 O. FOR THE PURPOSES OF THIS SECTION, "COMMON EXPENSE ASSESSMENTS":

22 1. MEANS THE ANNUAL, SPECIAL OR SUPPLEMENTAL ASSESSMENTS THAT ARE
23 PAYABLE BY ALL UNIT OWNERS IN THE ASSOCIATION TO MAINTAIN ALL COMMON
24 ELEMENTS AND TO ACCOUNT FOR THE BUDGETED EXPENSES OF THE ASSOCIATION AND
25 THE APPLICATION OF RESERVES, OR TO FUND COMMON ELEMENT IMPROVEMENTS OR
26 LONG-TERM MAINTENANCE OF COMMON ELEMENTS, AS SPECIFIED IN THE DECLARATION.

27 2. INCLUDES ANY ASSESSMENT MADE ON AN INDIVIDUAL UNIT OWNER TO PAY
28 FOR THE REPAIR OF DAMAGE TO COMMON ELEMENTS CAUSED BY THAT UNIT OWNER OR
29 ANY OTHER OCCUPANT OF THE UNIT OWNER'S RESIDENCE.

30 Sec. 2. Section 33-1807, Arizona Revised Statutes, is amended to
31 read:

32 33-1807. Lien for common expense assessments; priority;
33 mechanics' and materialmen's liens; judgment
34 liens; definition

35 A. The association has a lien on a ~~unit~~ PROPERTY for any COMMON
36 EXPENSE assessment THAT IS levied against that ~~unit~~ PROPERTY from the time
37 the assessment becomes due. The association's lien for COMMON EXPENSE
38 assessments, ~~for~~ MAY INCLUDE charges for late payment of those
39 assessments, for reasonable collection COSTS OR fees INCURRED OR APPLIED
40 BY THE ASSOCIATION ON DELINQUENT COMMON EXPENSE ASSESSMENTS, FOR
41 REASONABLE INTEREST CHARGES AS AUTHORIZED IN THE DECLARATION and for
42 reasonable attorney fees and costs incurred AND AWARDED BY THE COURT IN
43 ANY ACTION with respect to those assessments. IF A COMMON EXPENSE
44 ASSESSMENT IS PAYABLE IN INSTALLMENTS, THE FULL AMOUNT OF THE ASSESSMENT

1 IS A LIEN FROM THE TIME THE FIRST INSTALLMENT OF THE ASSESSMENT BECOMES
2 DUE.

3 B. THE COMMON EXPENSE ASSESSMENT LIEN may be foreclosed in the same
4 manner as a mortgage on real estate but may be foreclosed only if the
5 owner has been AND REMAINS delinquent in the payment of ~~monies secured by~~
6 ~~the lien, excluding reasonable collection fees, reasonable attorney fees~~
7 ~~and charges for late payment of and costs incurred with respect to those~~
8 ~~assessments;~~ COMMON EXPENSE ASSESSMENTS for a period of one year or in the
9 amount of \$1,200 or more, whichever occurs first, ~~as determined on the~~
10 ~~date the action is filed.~~

11 C. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS, fees,
12 charges, late charges, monetary penalties and interest charged pursuant to
13 section 33-1803, other than charges for late payment of assessments are
14 not enforceable as COMMON EXPENSE assessments under this section. ~~if an~~
15 ~~assessment is payable in installments, the full amount of the assessment~~
16 ~~is a lien from the time the first installment of the assessment becomes~~
17 ~~due.~~ The association has a lien for fees, charges, late charges, other
18 than charges for late payment of assessments, monetary penalties or
19 interest charged pursuant to section 33-1803 after the entry of a judgment
20 in a civil suit for those fees, charges, late charges, monetary penalties
21 or interest from a court of competent jurisdiction and the recording of
22 that judgment in the office of the county recorder as otherwise provided
23 by law. The association's JUDGMENT lien for monies ~~other than for~~
24 ~~assessments, for charges for late payment of those assessments, for~~
25 ~~reasonable collection fees and for reasonable attorney fees and costs~~
26 ~~incurred with respect to those assessments~~ AS PRESCRIBED IN THIS
27 SUBSECTION may not be foreclosed and is effective only on conveyance of
28 any interest in the real property.

29 ~~B. D.~~ D. A lien for COMMON EXPENSE assessments, ~~for charges for late~~
30 ~~payment of those assessments, for reasonable collection fees and for~~
31 ~~reasonable attorney fees and costs incurred with respect to those~~
32 ~~assessments~~ under this section is prior to all other liens, interests and
33 encumbrances on a ~~unit~~ PROPERTY except:

34 1. Liens and encumbrances recorded before the recordation of the
35 declaration.

36 2. A recorded first mortgage on the ~~unit~~ PROPERTY, a seller's
37 interest in a first contract for sale pursuant to chapter 6, article 3 of
38 this title on the unit recorded ~~prior to~~ BEFORE the lien arising pursuant
39 to subsection A of this section or a recorded first deed of trust on the
40 ~~unit~~ PROPERTY.

41 3. Liens for real estate taxes and other governmental assessments
42 or charges against the ~~unit~~ PROPERTY.

1 ~~E.~~ E. Subsection ~~B~~ D of this section does not affect the priority
2 of mechanics' or materialmen's liens or the priority of JUDGMENT liens for
3 other assessments made by the association. ~~The lien under this section is~~
4 ~~not subject to chapter 8 of this title.~~

5 ~~F.~~ F. Unless the declaration otherwise provides, if two or more
6 associations have liens for COMMON EXPENSE assessments created at any time
7 on the same real estate those liens have equal priority.

8 ~~G.~~ G. Recording ~~of~~ the declaration constitutes record notice and
9 perfection of the lien for COMMON EXPENSE assessments, ~~for charges for~~
10 ~~late payment of assessments, for reasonable collection fees and for~~
11 ~~reasonable attorney fees and costs incurred with respect to those~~
12 ~~assessments.~~ Further recordation of any claim of lien for COMMON EXPENSE
13 assessments under this section is not required.

14 ~~F.~~ H. A lien for an unpaid COMMON EXPENSE assessment is
15 extinguished unless proceedings to enforce the lien are instituted within
16 six years after the full amount of the assessment becomes due.

17 ~~G.~~ I. This section does not prohibit:

18 1. Actions to recover amounts for which subsection A OR C of this
19 section creates a lien.

20 2. An association from taking a deed in lieu of foreclosure.

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

24 ~~I.~~ K. On written request, the association shall furnish to a
25 lienholder, escrow agent, ~~unit owner~~ MEMBER or person designated by a ~~unit~~
26 ~~owner~~ MEMBER a statement setting forth the amount of any unpaid assessment
27 LIENS PURSUANT TO SUBSECTION A OR C OF THIS SECTION against the ~~unit~~
28 PROPERTY. The association shall furnish the statement within ten days
29 after receipt of the request. ~~, and~~ The statement is binding on the
30 association, the board of directors and every ~~unit owner~~ MEMBER if the
31 statement is requested by an escrow agency that is licensed pursuant to
32 title 6, chapter 7. Failure to provide the statement to the escrow agent
33 within the time provided for in this subsection extinguishes any lien for
34 any unpaid assessment then due.

35 ~~J.~~ L. Notwithstanding any provision in the community documents or
36 in any contract between the association and a management company OR ANY
37 OTHER AGENT OF THE ASSOCIATION, unless the member directs otherwise, all
38 payments received on a member's account shall be applied first to any
39 unpaid CURRENT COMMON EXPENSE assessments, THEN DELINQUENT COMMON EXPENSE
40 ASSESSMENTS, unpaid charges for late payment of those assessments, unpaid
41 reasonable collection COSTS OR fees, UNPAID INTEREST CHARGES and unpaid
42 COURT-ORDERED attorney fees and costs incurred with respect to those
43 assessments, in that order, with any remaining amounts applied next to
44 other unpaid fees, charges and monetary penalties or interest and late
45 charges on any of those amounts.

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

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

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

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

42 M. An agent for the association may collect on behalf of the
43 association directly from a member the assessments and other amounts owed
44 by cash or check, by mailed or hand-delivered bank drafts, checks,
45 cashier's checks or money orders, by credit, charge or debit card or by

1 other electronic means. For any form of payment other than for cash or
2 for mailed or hand-delivered bank drafts, checks, cashier's checks or
3 money orders, the agent may charge a convenience fee to the member that is
4 approximately the amount charged to the agent by a third-party service
5 provider.

6 N. FOR THE PURPOSES OF THIS SECTION, "COMMON EXPENSE ASSESSMENTS":

7 1. MEANS THE ANNUAL, SPECIAL OR SUPPLEMENTAL ASSESSMENTS THAT ARE
8 PAYABLE BY ALL MEMBERS OF THE ASSOCIATION TO MAINTAIN ALL COMMON AREAS AND
9 TO ACCOUNT FOR THE BUDGETED EXPENSES OF THE ASSOCIATION AND THE
10 APPLICATION OF RESERVES, OR TO FUND COMMON AREA IMPROVEMENTS OR LONG-TERM
11 MAINTENANCE OF COMMON AREAS, AS SPECIFIED IN THE DECLARATION.

12 2. INCLUDES ANY ASSESSMENT MADE ON AN INDIVIDUAL MEMBER TO PAY FOR
13 THE REPAIR OF DAMAGE TO COMMON AREAS CAUSED BY THAT MEMBER OR ANY OTHER
14 OCCUPANT OF THE MEMBER'S RESIDENCE.