

REFERENCE TITLE: homeowners' association liens; homestead exemptions

State of Arizona  
Senate  
Fifty-sixth Legislature  
First Regular Session  
2023

## **SB 1470**

Introduced by  
Senator Kavanagh

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 assessments; priority; mechanics' and  
5 materialmen's liens; notice; applicability

6 A. The association has a lien on a unit for any assessment levied  
7 against that unit from the time the assessment becomes due. The  
8 association's lien for assessments, for charges for late payment of those  
9 assessments, for reasonable collection fees and for reasonable attorney  
10 fees and costs incurred with respect to those assessments may be  
11 foreclosed in the same manner as a mortgage on real estate but may be  
12 foreclosed only if the owner has been delinquent in the payment of monies  
13 secured by the lien, excluding reasonable collection fees, reasonable  
14 attorney fees and charges for late payment of and costs incurred with  
15 respect to those assessments, for a period of one year or in the amount of  
16 \$1,200 or more, whichever occurs first, as determined on the date the  
17 action is filed. Fees, charges, late charges, monetary penalties and  
18 interest charged pursuant to section 33-1242, subsection A, paragraphs 10,  
19 11 and 12, other than charges for late payment of assessments, are not  
20 enforceable as assessments under this section. If an assessment is  
21 payable in installments, the full amount of the assessment is a lien from  
22 the time the first installment of the assessment becomes due. The  
23 association has a lien for fees, charges, late charges, other than charges  
24 for late payment of assessments, monetary penalties or interest charged  
25 pursuant to section 33-1242, subsection A, paragraphs 10, 11 and 12 after  
26 the entry of a judgment in a civil suit for those fees, charges, late  
27 charges, monetary penalties or interest from a court of competent  
28 jurisdiction and the recording of that judgment in the office of the  
29 county recorder as otherwise provided by law. The association's lien for  
30 monies other than for assessments, for charges for late payment of those  
31 assessments, for reasonable collection fees and for reasonable attorney  
32 fees and costs incurred with respect to those assessments may not be  
33 foreclosed and is effective only on conveyance of any interest in the real  
34 property.

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

40 1. Liens and encumbrances recorded before the recordation of the  
41 declaration.

42 2. A recorded first mortgage on the unit, a seller's interest in a  
43 first contract for sale pursuant to chapter 6, article 3 of this title on

1 the unit recorded ~~prior to~~ BEFORE the lien arising pursuant to subsection  
2 A of this section or a recorded first deed of trust on the unit.

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

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

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

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

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

21 G. This section does not prohibit:

22 1. Actions to recover sums for which subsection A of this section  
23 creates a lien.

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

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

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

36 J. Notwithstanding any provision in the condominium documents or in  
37 any contract between the association and a management company, unless the  
38 unit owner directs otherwise, all payments received on a unit owner's  
39 account shall be applied first to any unpaid assessments, unpaid charges  
40 for late payment of those assessments, unpaid reasonable collection fees  
41 and unpaid attorney fees and costs incurred with respect to those  
42 assessments, in that order, with any remaining amounts applied next to  
43 other unpaid fees, charges and monetary penalties or interest and late  
44 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 unit owner at the unit owner's address as provided  
4 to the association at least thirty days before authorizing an attorney, or  
5 a collection agency that is not acting as the association's managing  
6 agent, 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 unit owner may  
16 contact to discuss payment. The notice shall be sent by certified mail,  
17 return receipt requested, and may be included within other correspondence  
18 sent to the unit owner regarding the unit owner's delinquent account.

19 L. Beginning January 1, 2020, except for condominiums that have  
20 fewer than fifty units 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 unit owner with the same frequency that assessments are provided for  
24 in 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 unit  
27 owner may opt to receive the statement electronically. The association  
28 may stop providing any further statements of account to a unit owner if  
29 collection activity begins by an attorney, or a collection agency that is  
30 not acting as the association's managing agent, regarding that unit  
31 owner's unpaid account. After collection activity begins, a unit owner  
32 may request statements of account by written request to the attorney or  
33 collection agency. Any request by a unit owner for a statement of account  
34 after collection activity begins by an attorney or a collection agency  
35 that is not acting as the association's managing agent must be fulfilled  
36 by the attorney or the collection agency responsible for the collection.  
37 The 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 unit owner the assessments and other amounts  
44 owed by cash or check, by mailed or hand-delivered bank drafts, checks,

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

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

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

11 33-1807. Lien for assessments; priority; mechanics' and  
12 materialmen's liens; notice

13 A. The association has a lien on a unit for any assessment levied  
14 against that unit from the time the assessment becomes due. The  
15 association's lien for assessments, for charges for late payment of those  
16 assessments, for reasonable collection fees and for reasonable attorney  
17 fees and costs incurred with respect to those assessments may be  
18 foreclosed in the same manner as a mortgage on real estate but may be  
19 foreclosed only if the owner has been delinquent in the payment of monies  
20 secured by the lien, excluding reasonable collection fees, reasonable  
21 attorney fees and charges for late payment of and costs incurred with  
22 respect to those assessments, for a period of one year or in the amount of  
23 \$1,200 or more, whichever occurs first, as determined on the date the  
24 action is filed. Fees, charges, late charges, monetary penalties and  
25 interest charged pursuant to section 33-1803, other than charges for late  
26 payment of assessments are not enforceable as assessments under this  
27 section. If an assessment is payable in installments, the full amount of  
28 the assessment is a lien from the time the first installment of the  
29 assessment becomes due. The association has a lien for fees, charges,  
30 late charges, other than charges for late payment of assessments, monetary  
31 penalties or interest charged pursuant to section 33-1803 after the entry  
32 of a judgment in a civil suit for those fees, charges, late charges,  
33 monetary penalties or interest from a court of competent jurisdiction and  
34 the recording of that judgment in the office of the county recorder as  
35 otherwise provided by law. The association's lien for monies other than  
36 for assessments, for charges for late payment of those assessments, for  
37 reasonable collection fees and for reasonable attorney fees and costs  
38 incurred with respect to those assessments may not be foreclosed and is  
39 effective only on conveyance of any interest in the real property.

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

1           1. Liens and encumbrances recorded before the recordation of the  
2 declaration.

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

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

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

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

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

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

25           G. This section does not prohibit:

26           1. Actions to recover amounts for which subsection A of this  
27 section creates a lien.

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

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

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

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

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

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

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

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

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

1 statement, including attorney fees and costs, regardless of whether such  
2 amounts have been reduced to judgment.

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