

REFERENCE TITLE: homeowners' associations; assessment liens

State of Arizona  
House of Representatives  
Fifty-sixth Legislature  
Second Regular Session  
2024

## **HB 2663**

Introduced by  
Representative Carter

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

17 B. THE COMMON EXPENSE ASSESSMENT LIEN PRESCRIBED BY THIS SECTION IS  
18 NOT SUBJECT TO THE HOMESTEAD EXEMPTION PRESCRIBED BY CHAPTER 8 OF THIS  
19 TITLE AND may be foreclosed in the same manner as a mortgage on real  
20 estate but may be foreclosed only if:

21 1. The UNIT owner has been AND REMAINS delinquent in the payment of  
22 ~~monies secured by the lien, excluding reasonable collection fees,~~  
23 ~~reasonable attorney fees and charges for late payment of and costs~~  
24 ~~incurred with respect to those assessments;~~ COMMON EXPENSE ASSESSMENTS for  
25 a period of one year or in the amount of \$1,200 or more, whichever occurs  
26 first, as determined on the date the action is filed.

27 2. THE ASSOCIATION BOARD OF DIRECTORS HAS EXERCISED ALL REASONABLE  
28 EFFORTS TO COMMUNICATE WITH THE UNIT OWNER, NEGOTIATE REASONABLE PAYMENT  
29 PLANS AND COLLECT THE DEBT THROUGH ALL REMEDIES THAT ARE REASONABLY  
30 AVAILABLE UNDER THE LAW PURSUANT TO TITLE 12, CHAPTER 9 BEFORE FILING A  
31 FORECLOSURE ACTION.

32 C. NOTWITHSTANDING ANY PROVISION IN THE CONDOMINIUM DOCUMENTS,  
33 fees, charges, late charges, monetary penalties and interest charged  
34 pursuant to section 33-1242, subsection A, paragraphs 10, 11 and 12, other  
35 than charges for late payment of COMMON EXPENSE assessments, are not  
36 enforceable as COMMON EXPENSE assessments under SUBSECTIONS A AND B OF  
37 this section. ~~If an assessment is payable in installments, the full~~  
38 ~~amount of the assessment is a lien from the time the first installment of~~  
39 ~~the assessment becomes due.~~ The association has a lien for fees,  
40 charges, ~~AND~~ late charges, other than charges for late payment of COMMON  
41 EXPENSE assessments, AND FOR monetary penalties or interest charged  
42 pursuant to section 33-1242, subsection A, paragraphs 10, 11 and 12 ONLY  
43 after the entry of a judgment in a civil suit for those fees, charges,  
44 late charges, monetary penalties or interest from a court of competent  
45 jurisdiction and the recording of that judgment in the office of the

1 county recorder as otherwise provided by law. The association's JUDGMENT  
2 lien for monies ~~other than for assessments, for charges for late payment~~  
3 ~~of those assessments, for reasonable collection fees and for reasonable~~  
4 ~~attorney fees and costs incurred with respect to those assessments~~  
5 PRESCRIBED BY THIS SUBSECTION may not be foreclosed and is effective only  
6 on conveyance of any interest in the real property.

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

12 1. Liens and encumbrances recorded before the recordation of the  
13 declaration.

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

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

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

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

27 ~~E. G.~~ Recording ~~of~~ the declaration constitutes record notice and  
28 perfection of the lien for COMMON EXPENSE assessments, ~~AND~~ for charges  
29 for late payment of those assessments, ~~for reasonable collection fees and~~  
30 ~~for reasonable attorney fees and costs incurred with respect to those~~  
31 ~~assessments~~. Further recordation of any claim of lien for COMMON EXPENSE  
32 assessments under this section is not required.

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

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

37 1. Actions to recover sums for which subsection A ~~OR C~~ of this  
38 section creates a lien.

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

40 ~~H. J.~~ A judgment or decree in any action brought under this  
41 section ~~shall~~ MAY include costs and reasonable attorney fees for the  
42 prevailing party ONLY AS ORDERED BY THE COURT.

43 ~~I. K.~~ The association on written request shall furnish to a  
44 lienholder, escrow agent, unit owner or person designated by a unit owner  
45 a statement setting forth the amount of ANY unpaid ~~assessments~~ ASSESSMENT

1 LIENS PRESCRIBED BY SUBSECTION A OR C OF THIS SECTION against the  
2 unit. The statement shall be furnished within ten CALENDAR days after  
3 receipt of the request. ~~and~~ The statement is binding on the  
4 association, ~~the board of directors and every unit owner~~ if the statement  
5 is requested by an escrow agency that is licensed pursuant to title 6,  
6 chapter 7. Failure to provide the statement to the escrow agent within  
7 the time provided for in this subsection extinguishes any lien for any  
8 unpaid assessment then due.

9 ~~+~~ L. Notwithstanding any provision in the condominium documents  
10 or in any contract between the association and a management company OR ANY  
11 OTHER AGENT OF THE ASSOCIATION, INCLUDING ANY AGREEMENT OR CONTRACT WITH  
12 ANY ATTORNEY, unless the unit owner directs otherwise, all payments  
13 received on a unit owner's account shall be applied first to any unpaid  
14 DELINQUENT COMMON EXPENSE assessments, UNPAID CURRENT BUT NONDELINQUENT  
15 COMMON EXPENSE ASSESSMENTS, unpaid charges OR INTEREST for late payment of  
16 those assessments, unpaid reasonable collection COSTS OR fees and unpaid  
17 COURT-ORDERED attorney fees and costs incurred with respect to those  
18 assessments, in that order, with any remaining amounts applied next to  
19 other unpaid fees, charges and monetary penalties or interest and late  
20 charges on any of those amounts. FAILURE OF THE ASSOCIATION OR ITS  
21 AUTHORIZED AGENTS, INCLUDING ANY ATTORNEY FOR THE ASSOCIATION OR ITS  
22 AUTHORIZED AGENT, TO CORRECT ANY ERROR IN THE APPLICATION OF PAYMENTS FROM  
23 THE UNIT OWNER PURSUANT TO THIS SUBSECTION WITHIN TEN CALENDAR DAYS AFTER  
24 RECEIVING NOTICE OF THE ERROR EXTINGUISHES ANY COMMON EXPENSE ASSESSMENT  
25 LIEN THEN DUE.

26 ~~+~~ M. For a delinquent account for unpaid COMMON EXPENSE  
27 assessments or for charges related to unpaid COMMON EXPENSE assessments,  
28 the association shall provide the following written notice to the unit  
29 owner at the unit owner's address as provided to the association at least  
30 thirty days before authorizing an attorney, or a collection agency that is  
31 not acting as the association's managing agent, to begin collection  
32 activity on behalf of the association:

33 Your account is delinquent. If you do not bring your account  
34 current or make arrangements that are approved by the  
35 association to bring your account current within thirty days  
36 after the date of this notice, your account will be turned  
37 over for further collection proceedings. Such collection  
38 proceedings could include bringing a foreclosure action  
39 against your property.

40 The notice shall be in boldfaced type or all capital letters and shall  
41 include the contact information for the person that the unit owner may  
42 contact to discuss payment. The notice shall be sent by certified mail,  
43 return receipt requested, and may be included within other correspondence  
44 sent to the unit owner regarding the unit owner's delinquent account.

1 ~~L. N. Beginning January 1, 2020,~~ Except for condominiums that have  
2 fewer than fifty units and that do not contract with a third party to  
3 perform management services on behalf of the association, the association  
4 shall provide a statement of account in lieu of a periodic payment book to  
5 the unit owner with the same frequency that assessments are provided for  
6 in the declaration. The statement of account shall include the current  
7 account balance due and the immediately preceding ledger history. If the  
8 association offers the statement of account by electronic means, a unit  
9 owner may opt to receive the statement electronically. The association  
10 may stop providing any further statements of account to a unit owner if  
11 collection activity begins by an attorney, or a collection agency that is  
12 not acting as the association's managing agent, regarding that unit  
13 owner's unpaid account. After collection activity begins, a unit owner  
14 may request statements of account by written request to the attorney or  
15 collection agency. Any request by a unit owner for a statement of account  
16 after collection activity begins by an attorney or a collection agency  
17 that is not acting as the association's managing agent must be fulfilled  
18 by the attorney or the collection agency responsible for the collection.  
19 The statement of account provided by the attorney or collection agency  
20 responsible for the collection shall include all amounts claimed to be  
21 owing to resolve the delinquency through the date set forth in the  
22 statement, ~~including attorney fees and costs, regardless of whether such~~  
23 ~~amounts have been reduced to judgment.~~

24 ~~M. O.~~ An agent for the association may collect on behalf of the  
25 association directly from a unit owner the assessments and other amounts  
26 owed by cash or check, by mailed or hand-delivered bank drafts, checks,  
27 cashier's checks or money orders, by credit, charge or debit card or by  
28 other electronic means. For any form of payment other than for cash or  
29 for mailed or hand-delivered bank drafts, checks, cashier's checks or  
30 money orders, the agent may charge a convenience fee to the unit owner  
31 that is approximately the amount charged to the agent by a third-party  
32 service provider.

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

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

37 33-1807. Lien for assessments; priority; mechanics' and  
38 materialmen's liens; notice

39 A. The association has a lien on a ~~unit~~ PROPERTY for any COMMON  
40 EXPENSE assessment levied against that ~~unit~~ PROPERTY from the time the  
41 assessment becomes due. The association's lien for COMMON EXPENSE  
42 assessments, ~~for~~ MAY INCLUDE REASONABLE charges OR INTEREST for late  
43 payment of those assessments IF AUTHORIZED IN THE DECLARATION, ~~for~~  
44 reasonable collection COSTS OR fees INCURRED OR APPLIED BY THE ASSOCIATION  
45 ONLY, and ~~for~~ THOSE reasonable attorney fees and costs incurred BUT ONLY

1 AS AWARDED BY THE COURT IN ANY ACTION with respect to those assessments.  
2 IF A COMMON EXPENSE ASSESSMENT IS PAYABLE IN INSTALLMENTS, THE FULL AMOUNT  
3 OF THE ASSESSMENT IS A LIEN FROM THE TIME THE FIRST INSTALLMENT OF THE  
4 ASSESSMENT BECOMES DUE.

5 B. THE COMMON EXPENSE ASSESSMENT LIEN PRESCRIBED BY THIS SECTION IS  
6 NOT SUBJECT TO THE HOMESTEAD EXEMPTION PRESCRIBED BY CHAPTER 8 OF THIS  
7 TITLE AND may be foreclosed in the same manner as a mortgage on real  
8 estate but may be foreclosed only if:

9 1. The owner has been AND REMAINS delinquent in the payment of  
10 ~~monies secured by the lien, excluding reasonable collection fees,~~  
11 ~~reasonable attorney fees and charges for late payment of and costs~~  
12 ~~incurred with respect to those assessments,~~ COMMON EXPENSE ASSESSMENTS for  
13 a period of one year or in the amount of \$1,200 or more, whichever occurs  
14 first, as determined on the date the action is filed.

15 2. THE ASSOCIATION BOARD OF DIRECTORS HAS EXERCISED ALL REASONABLE  
16 EFFORTS TO COMMUNICATE WITH THE OWNER, NEGOTIATE REASONABLE PAYMENT PLANS  
17 AND COLLECT THE DEBT THROUGH ALL REMEDIES THAT ARE REASONABLY AVAILABLE  
18 UNDER THE LAW PURSUANT TO TITLE 12, CHAPTER 9 BEFORE FILING A FORECLOSURE  
19 ACTION.

20 C. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS, fees,  
21 charges, late charges, monetary penalties and interest charged pursuant to  
22 section 33-1803, other than charges for late payment of COMMON EXPENSE  
23 assessments are not enforceable as COMMON EXPENSE assessments under  
24 SUBSECTIONS A AND B OF this section. ~~If an assessment is payable in~~  
25 ~~installments, the full amount of the assessment is a lien from the time~~  
26 ~~the first installment of the assessment becomes due.~~ The association has  
27 a lien for fees, charges, ~~AND~~ late charges, other than charges for late  
28 payment of COMMON EXPENSE assessments, AND FOR monetary penalties or  
29 interest charged pursuant to section 33-1803 ONLY after the entry of a  
30 judgment in a civil suit for those fees, charges, late charges, monetary  
31 penalties or interest from a court of competent jurisdiction and the  
32 recording of that judgment in the office of the county recorder as  
33 otherwise provided by law. The association's JUDGMENT lien for monies  
34 ~~other than for assessments, for charges for late payment of those~~  
35 ~~assessments, for reasonable collection fees and for reasonable attorney~~  
36 ~~fees and costs incurred with respect to those assessments~~ PRESCRIBED BY  
37 THIS SUBSECTION may not be foreclosed and is effective only on conveyance  
38 of any interest in the real property.

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

44 1. Liens and encumbrances recorded before the recordation of the  
45 declaration.

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

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

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

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

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

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

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

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

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

28           ~~H.~~ J. A judgment or decree in any action brought under this  
29 section ~~shall~~ MAY include costs and reasonable attorney fees for the  
30 prevailing party ONLY AS ORDERED BY THE COURT.

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

42           ~~J.~~ L. Notwithstanding any provision in the community documents or  
43 in any contract between the association and a management company OR ANY  
44 OTHER AGENT OF THE ASSOCIATION, INCLUDING ANY AGREEMENT OR CONTRACT WITH  
45 ANY ATTORNEY, unless the member directs otherwise, all payments received

1 on a member's account shall be applied first to any unpaid DELINQUENT  
2 COMMON EXPENSE assessments, UNPAID CURRENT BUT NONDELINQUENT COMMON  
3 EXPENSE ASSESSMENTS, unpaid charges OR INTEREST for late payment of those  
4 assessments, unpaid reasonable collection COSTS OR fees and unpaid  
5 COURT-ORDERED attorney fees and costs incurred with respect to those  
6 assessments, in that order, with any remaining amounts applied next to  
7 other unpaid fees, charges and monetary penalties or interest and late  
8 charges on any of those amounts. FAILURE OF THE ASSOCIATION OR ITS  
9 AUTHORIZED AGENTS, INCLUDING ANY ATTORNEY FOR THE ASSOCIATION OR ITS  
10 AUTHORIZED AGENT, TO CORRECT ANY ERROR IN THE APPLICATION OF PAYMENTS FROM  
11 THE MEMBER PURSUANT TO THIS SUBSECTION WITHIN TEN CALENDAR DAYS AFTER  
12 RECEIVING NOTICE OF THE ERROR EXTINGUISHES ANY COMMON EXPENSE ASSESSMENT  
13 LIEN THEN DUE.

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

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

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

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



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

11 ~~M.~~ 0. An agent for the association may collect on behalf of the  
12 association directly from a member the assessments and other amounts owed  
13 by cash or check, by mailed or hand-delivered bank drafts, checks,  
14 cashier's checks or money orders, by credit, charge or debit card or by  
15 other electronic means. For any form of payment other than for cash or  
16 for mailed or hand-delivered bank drafts, checks, cashier's checks or  
17 money orders, the agent may charge a convenience fee to the member that is  
18 approximately the amount charged to the agent by a third-party service  
19 provider.