

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SENATE BILL 1330

AN ACT

AMENDING SECTIONS 33-439, 33-1126, 33-1256, 33-1261, 33-1807 AND 33-1808, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 16, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-1815; RELATING TO PROPERTY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 33-439, Arizona Revised Statutes, is amended to
3 read:

4 33-439. Restrictions on installation or use of solar energy
5 devices invalid; exception

6 A. Any covenant, restriction or condition contained in any deed,
7 contract, security agreement or other instrument affecting the transfer or
8 sale of, or any interest in, real property which effectively prohibits the
9 installation or use of a solar energy device as defined in section 44-1761 is
10 void and unenforceable.

11 B. ~~A deed, contract, security agreement or other instrument affecting~~
12 ~~the transfer or sale of, or any interest in, real property entered into~~
13 ~~before April 17, 1980 shall not be subject to the provisions of this section.~~
14 THIS SECTION APPLIES WITHOUT REGARD TO THE EFFECTIVE DATE OF THE DEED,
15 CONTRACT, SECURITY AGREEMENT OR OTHER INSTRUMENT AFFECTING THE REAL PROPERTY.

16 Sec. 2. Section 33-1126, Arizona Revised Statutes, is amended to read:

17 33-1126. Money benefits or proceeds; exception

18 A. The following property of a debtor shall be exempt from execution,
19 attachment or sale on any process issued from any court:

20 1. All money received by or payable to a surviving spouse or child
21 upon the life of a deceased spouse, parent or legal guardian, not exceeding
22 twenty thousand dollars.

23 2. The earnings of the minor child of a debtor or the proceeds thereof
24 by reason of any liability of such debtor not contracted for the special
25 benefit of such minor child.

26 3. All monies received by or payable to a person entitled to receive
27 child support or spousal maintenance pursuant to a court order.

28 4. All money, proceeds or benefits of any kind to be paid in a lump
29 sum or to be rendered on a periodic or installment basis to the insured or
30 any beneficiary under any policy of health, accident or disability insurance
31 or any similar plan or program of benefits in use by any employer, except for
32 premiums payable on such policy or debt of the insured secured by a pledge,
33 and except for collection of any debt or obligation for which the insured or
34 beneficiary has been paid under the plan or policy and except for payment of
35 amounts ordered for support of a person from proceeds and benefits furnished
36 in lieu of earnings which would have been subject to such order and subject
37 to any exemption applicable to earnings so replaced.

38 5. All money arising from any claim for the destruction of, or damage
39 to, exempt property and all proceeds or benefits of any kind arising from
40 fire or other insurance upon any property exempt under this article.

41 6. The cash surrender value of life insurance policies where for a
42 continuous unexpired period of two years such policies have been owned by a
43 debtor and have named as beneficiary A TRUST, the debtor's surviving spouse,
44 child, parent, brother or sister, or any other dependent family member, in
45 the proportion that the policy names any such beneficiary, except that,

1 subject to the statute of limitations, the amount of any premium which is
2 recoverable or avoidable by a creditor pursuant to title 44, chapter 8,
3 article 1, with interest thereon, shall not be exempt. The exemption
4 provided by this paragraph does not apply to a claim for the payment of a
5 debt of the insured or beneficiary that is secured by a pledge or assignment
6 of the cash value of the insurance policy or the proceeds of the policy. For
7 the purposes of this paragraph "dependent" means a family member who is
8 dependent on the insured debtor for not less than half support.

9 7. An annuity contract where for a continuous unexpired period of two
10 years such contract has been owned by a debtor and has named as beneficiary A
11 TRUST, the debtor, debtor's surviving spouse, child, parent, brother or
12 sister, or any other dependent family member, except that, subject to the
13 statute of limitations, the amount of any premium, payment or deposit with
14 respect to such contract is recoverable or avoidable by a creditor pursuant
15 to title 44, chapter 8, article 1 shall not be exempt. The exemption
16 provided by this paragraph does not apply to a claim for a payment of a debt
17 of the annuitant or beneficiary that is secured by a pledge or assignment of
18 the contract or its proceeds. For the purposes of this paragraph,
19 "dependent" means a family member who is dependent on the debtor for not less
20 than half support.

21 8. Any claim for damages recoverable by any person by reason of any
22 levy upon or sale under execution of his exempt personal property or by
23 reason of the wrongful taking or detention of such property by any person,
24 and the judgment recovered for such damages.

25 9. A total of one hundred fifty dollars held in a single account in
26 any one financial institution as defined by section 6-101. The property
27 declared exempt by this paragraph is not exempt from normal service charges
28 assessed against the account by the financial institution at which the
29 account is carried.

30 B. Any money or other assets payable to a participant in or
31 beneficiary of, or any interest of any participant or beneficiary in, a
32 retirement plan under section 401(a), 403(a), 403(b), 408, 408A or 409 or a
33 deferred compensation plan under section 457 of the United States internal
34 revenue code of 1986, as amended, shall be exempt from any and all claims of
35 creditors of the beneficiary or participant. This subsection shall not apply
36 to any of the following:

37 1. An alternate payee under a qualified domestic relations order, as
38 defined in section 414(p) of the United States internal revenue code of 1986,
39 as amended. The interest of any and all alternate payees is exempt from any
40 and all claims of any creditor of the alternate payee.

41 2. Amounts contributed within one hundred twenty days before a debtor
42 files for bankruptcy.

43 3. The assets of bankruptcy proceedings filed before July 1, 1987.

44 C. Any person the age of eighteen years or over, married or single,
45 who resides within this state and who does not exercise the homestead

1 exemption under article 1 of this chapter may claim as a personal property
2 homestead exempt from all process prepaid rent, including security deposits
3 as provided in section 33-1321, subsection A, for the claimant's residence,
4 not exceeding the lesser of one thousand dollars or one and one-half months'
5 rent.

6 D. Nothing in this section exempts property from orders which are the
7 result of a judgment for arrearages of child support or for a child support
8 debt.

9 Sec. 3. Section 33-1256, Arizona Revised Statutes, is amended to read:

10 33-1256. Lien for assessments; priority; mechanics' and
11 materialmen's liens; applicability

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

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

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

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

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

7 C. Subsection B of this section does not affect the priority of
8 mechanics' or materialmen's liens or the priority of liens for other
9 assessments made by the association. ~~The lien under this section is not~~
10 ~~subject to~~ THE HOMESTEAD EXEMPTION PROTECTION PRESCRIBED IN chapter 8,
11 ARTICLE 1 of this title APPLIES AGAINST ANY LIEN OF THE ASSOCIATION.

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

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

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

23 G. This section does not prohibit actions to recover sums for which
24 subsection A of this section creates a lien or does not prohibit an
25 association from taking a deed in lieu of foreclosure.

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

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

37 J. The association shall record in the office of the county recorder
38 in the county in which the condominium is located a notice stating the name
39 of the association or designated agent or management company for the
40 association, the address for the association and the telephone number of the
41 association or its designated agent or management company. The notice shall
42 include the name of the condominium community, the date of the recording and
43 the recorded instrument number or book and page for the main document that
44 constitutes the declaration. If an association's address, designated agent

1 or management company changes, the association shall amend its notice or
2 record a new notice within ninety days after the change.

3 K. Notwithstanding any provision in the condominium documents or in
4 any contract between the association and a management company, unless the
5 member directs otherwise, all payments received on a member's account shall
6 be applied first to any unpaid assessments, for unpaid charges for late
7 payment of those assessments, for reasonable collection fees and for unpaid
8 attorney fees and costs incurred with respect to those assessments, in that
9 order, with any remaining amounts applied next to other unpaid fees, charges
10 and monetary penalties or interest and late charges on any of those amounts.

11 L. This section does not apply to timeshare plans or associations that
12 are subject to chapter 20 of this title.

13 Sec. 4. Section 33-1261, Arizona Revised Statutes, is amended to read:

14 33-1261. Flag display; for sale signs; applicability

15 A. Notwithstanding any provision in the condominium documents, an
16 association shall not prohibit the outdoor display of any of the following:

17 1. The American flag or an official or replica of a flag of the United
18 States army, navy, air force, marine corps or coast guard by a unit owner on
19 that unit owner's property if the American flag or military flag is displayed
20 in a manner consistent with the federal flag code (P.L. 94-344; 90 Stat. 810;
21 4 United States Code sections 4 through 10).

22 2. The POW/MIA flag.

23 3. The Arizona state flag.

24 4. An Arizona Indian nations flag.

25 B. The association shall adopt reasonable rules and regulations
26 regarding the placement and manner of display of the American flag, the
27 military flag, the POW/MIA flag, the Arizona state flag or an Arizona Indian
28 nations flag. The association rules may regulate the location and size of
29 flagpoles but shall not prohibit the installation of a flagpole.

30 C. NOTWITHSTANDING ANY PROVISION IN THE CONDOMINIUM DOCUMENTS, AN
31 ASSOCIATION SHALL NOT PROHIBIT THE INDOOR OR OUTDOOR DISPLAY OF A FOR SALE
32 SIGN AND A SIGN RIDER BY A UNIT OWNER ON THAT OWNER'S PROPERTY, INCLUDING A
33 SIGN THAT INDICATES THE UNIT OWNER IS OFFERING THE PROPERTY FOR SALE BY
34 OWNER. THE SIZE OF A SIGN OFFERING A PROPERTY FOR SALE SHALL BE IN
35 CONFORMANCE WITH THE INDUSTRY STANDARD SIZE SIGN, WHICH SHALL NOT EXCEED
36 EIGHTEEN BY TWENTY-FOUR INCHES, AND THE INDUSTRY STANDARD SIZE SIGN RIDER,
37 WHICH SHALL NOT EXCEED SIX BY TWENTY-FOUR INCHES.

38 ~~C.~~ D. This section does not apply to timeshare plans or associations
39 that are subject to chapter 20 of this title.

40 Sec. 5. Section 33-1807, Arizona Revised Statutes, is amended to read:

41 33-1807. Lien for assessments; priority; mechanics' and
42 materialmen's liens

43 A. The association has a lien on a unit for any assessment levied
44 against that unit from the time the assessment becomes due. The
45 association's lien for assessments, for charges for late payment of those

1 assessments, for reasonable collection fees and for reasonable attorney fees
2 and costs incurred with respect to those assessments may be foreclosed in the
3 same manner as a mortgage on real estate but may be foreclosed only if the
4 owner has been delinquent in the payment of monies secured by the lien,
5 excluding reasonable collection fees, reasonable attorney fees and charges
6 for late payment of and costs incurred with respect to those assessments, for
7 a period of one year or in the amount of one thousand two hundred dollars or
8 more, whichever occurs first. Fees, charges, late charges, monetary
9 penalties and interest charged pursuant to section 33-1803, other than
10 charges for late payment of assessments, are not enforceable as assessments
11 under this section. If an assessment is payable in installments, the full
12 amount of the assessment is a lien from the time the first installment of the
13 assessment becomes due. The association has a lien for fees, charges, late
14 charges, ~~other than charges for late payment of assessments, monetary~~
15 ~~penalties or interest charged pursuant to section 33-1803 after the entry of~~
16 ~~a judgment in a civil suit for those fees, charges, late charges, monetary~~
17 ~~penalties or interest from a court of competent jurisdiction and the~~
18 ~~recording of that judgment in the office of the county recorder as otherwise~~
19 ~~provided by law. The association's lien for monies other than for~~
20 ~~assessments, for charges for late payment of those assessments, for~~
21 ~~reasonable collection fees and for reasonable attorney fees and costs~~
22 ~~incurred with respect to those assessments may not be foreclosed and is~~
23 ~~effective only on conveyance of any interest in the real property.~~

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

28 1. Liens and encumbrances recorded before the recordation of the
29 declaration.

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

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

36 C. Subsection B of this section does not affect the priority of
37 mechanics' or materialmen's liens or the priority of liens for other
38 assessments made by the association. ~~The lien under this section is not~~
39 ~~subject to~~ THE HOMESTEAD EXEMPTION PROTECTION PRESCRIBED IN chapter 8,
40 ARTICLE 1 of this title APPLIES AGAINST ANY LIEN OF THE ASSOCIATION.

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

44 E. Recording of the declaration constitutes record notice and
45 perfection of the lien for assessments, for charges for late payment of

1 assessments, for reasonable collection fees and for reasonable attorney fees
2 and costs incurred with respect to those assessments. Further recordation of
3 any claim of lien for assessments under this section is not required.

4 F. A lien for an unpaid assessment is extinguished unless proceedings
5 to enforce the lien are instituted within three years after the full amount
6 of the assessment becomes due.

7 G. This section does not prohibit:

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

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

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

13 I. On written request, the association shall furnish to a lienholder,
14 escrow agent, unit owner or person designated by a unit owner a statement
15 setting forth the amount of any unpaid assessment against the unit. The
16 association shall furnish the statement within fifteen days after receipt of
17 the request, and the statement is binding on the association, the board of
18 directors and every unit owner if the statement is requested by an escrow
19 agency that is licensed pursuant to title 6, chapter 7. Failure to provide
20 the statement to the escrow agent within the time provided for in this
21 subsection shall extinguish any lien for any unpaid assessment then due.

22 J. The association shall record in the office of the county recorder
23 in the county in which the planned community is located a notice stating the
24 name of the association or designated agent or management company for the
25 association, the address for the association and the telephone number of the
26 association or its designated agent or management company. The notice shall
27 include the name of the planned community, the date of the recording and the
28 recorded instrument number or book and page for the main document that
29 constitutes the declaration. If an association's address, designated agent
30 or management company changes, the association shall amend its notice or
31 record a new notice within ninety days after the change.

32 K. Notwithstanding any provision in the community documents or in any
33 contract between the association and a management company, unless the member
34 directs otherwise, all payments received on a member's account shall be
35 applied first to any unpaid assessments, for unpaid charges for late payment
36 of those assessments, for reasonable collection fees and for unpaid attorney
37 fees and costs incurred with respect to those assessments, in that order,
38 with any remaining amounts applied next to other unpaid fees, charges and
39 monetary penalties or interest and late charges on any of those amounts.

40 Sec. 6. Section 33-1808, Arizona Revised Statutes, is amended to read:

41 33-1808. Flag display; political signs; for sale signs

42 A. Notwithstanding any provision in the community documents, an
43 association shall not prohibit the outdoor display of any of the following:

44 1. The American flag or an official or replica of a flag of the United
45 States army, navy, air force, marine corps or coast guard by an association

1 member on that member's property if the American flag or military flag is
2 displayed in a manner consistent with the federal flag code (P.L. 94-344; 90
3 Stat. 810; 4 United States Code sections 4 through 10).

4 2. The POW/MIA flag.

5 3. the Arizona state flag.

6 4. An Arizona Indian nations flag.

7 B. The association shall adopt reasonable rules and regulations
8 regarding the placement and manner of display of the American flag, the
9 military flag, the POW/MIA flag, the Arizona state flag or an Arizona Indian
10 nations flag. The association rules may regulate the location and size of
11 flagpoles but shall not prohibit the installation of a flagpole.

12 C. Notwithstanding any provision in the community documents, an
13 association shall not prohibit the indoor or outdoor display of a political
14 sign by an association member on that member's property, except that an
15 association may prohibit the display of political signs earlier than
16 forty-five days before the day of an election and later than seven days after
17 an election day. An association may regulate the size and number of
18 political signs that may be placed on a member's property if the
19 association's regulation is no more restrictive than any applicable city,
20 town or county ordinance that regulates the size and number of political
21 signs on residential property. If the city, town or county in which the
22 property is located does not regulate the size and number of political signs
23 on residential property, the association shall permit at least one political
24 sign with the maximum dimensions of twenty-four inches by twenty-four inches
25 on a member's property. For the purposes of this paragraph, "political sign"
26 means a sign that attempts to influence the outcome of an election, including
27 supporting or opposing the recall of a public officer or supporting or
28 opposing the circulation of a petition for a ballot measure, question or
29 proposition or the recall of a public officer.

30 D. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS, AN
31 ASSOCIATION SHALL NOT PROHIBIT THE INDOOR OR OUTDOOR DISPLAY OF A FOR SALE
32 SIGN AND A SIGN RIDER BY AN ASSOCIATION MEMBER ON THAT MEMBER'S PROPERTY,
33 INCLUDING A SIGN THAT INDICATES THE MEMBER IS OFFERING THE PROPERTY FOR SALE
34 BY OWNER. THE SIZE OF A SIGN OFFERING A PROPERTY FOR SALE SHALL BE IN
35 CONFORMANCE WITH THE INDUSTRY STANDARD SIZE SIGN, WHICH SHALL NOT EXCEED
36 EIGHTEEN BY TWENTY-FOUR INCHES, AND THE INDUSTRY STANDARD SIZE SIGN RIDER,
37 WHICH SHALL NOT EXCEED SIX BY TWENTY-FOUR INCHES.

38 Sec. 7. Title 33, chapter 16, article 1, Arizona Revised Statutes, is
39 amended by adding section 33-1815, to read:

40 33-1815. Solar energy devices; reasonable restrictions

41 A. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS, AN
42 ASSOCIATION SHALL NOT PROHIBIT THE INSTALLATION OR USE OF A SOLAR ENERGY
43 DEVICE AS DEFINED IN SECTION 44-1761.

44 B. AN ASSOCIATION MAY ADOPT REASONABLE RULES REGARDING THE PLACEMENT
45 OF A SOLAR ENERGY DEVICE IF THOSE RULES DO NOT IMPAIR THE FUNCTIONING OF THE

1 DEVICE OR UNREASONABLY RESTRICT ITS USE OR ADVERSELY AFFECT THE COST OR
2 EFFICIENCY OF THE DEVICE.

3 C. NOTWITHSTANDING ANY PROVISION OF THE COMMUNITY DOCUMENTS, THE COURT
4 SHALL AWARD REASONABLE ATTORNEY FEES AND COSTS TO ANY PARTY WHO SUBSTANTIALLY
5 PREVAILS IN AN ACTION AGAINST THE BOARD OF DIRECTORS OF THE ASSOCIATION FOR A
6 VIOLATION OF THIS SECTION.