

REFERENCE TITLE: homeowners' associations; registration; disclosure

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

HB 2396

Introduced by
Representatives Campbell CH, Sinema: Campbell CL, Nichols

AN ACT

AMENDING SECTIONS 33-1256 AND 33-1807, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 1, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-133; 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: 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 fees
10 and costs incurred with respect to those assessments may be foreclosed in the
11 same manner as a mortgage on real estate but may be foreclosed only if the
12 owner has been delinquent in the payment of monies secured by the lien,
13 excluding reasonable collection fees, reasonable attorney fees and charges
14 for late payment of and costs incurred with respect to those assessments, for
15 a period of one year or in the amount of one thousand two hundred dollars or
16 more, whichever occurs first. Fees, charges, late charges, monetary
17 penalties and interest charged pursuant to section 33-1242, subsection A,
18 paragraphs 10, 11 and 12, other than charges for late payment of assessments,
19 are not enforceable as assessments under this section. If an assessment is
20 payable in installments, the full amount of the assessment is a lien from the
21 time the first installment of the assessment becomes due. The association
22 has a lien for fees, charges, late charges, other than charges for late
23 payment of assessments, monetary penalties or interest charged pursuant to
24 section 33-1242, subsection A, paragraphs 10, 11 and 12 after the entry of a
25 judgment in a civil suit for those fees, charges, late charges, monetary
26 penalties or interest from a court of competent jurisdiction and the
27 recording of that judgment in the office of the county recorder as otherwise
28 provided by law. The association's lien for monies other than for
29 assessments, for charges for late payment of those assessments, for
30 reasonable collection fees and for reasonable attorney fees and costs
31 incurred with respect to those assessments may not be foreclosed and is
32 effective only on conveyance of any interest in the real property.
33 B. A lien for assessments, for charges for late payment of those
34 assessments, for reasonable collection fees and for reasonable attorney fees
35 and costs incurred with respect to those assessments under this section is
36 prior to all other liens, interests and encumbrances on a unit except:
37 1. Liens and encumbrances recorded before the recordation of the
38 declaration.
39 2. A recorded first mortgage on the unit, a seller's interest in a
40 first contract for sale pursuant to chapter 6, article 3 of this title on the
41 unit recorded prior to the lien arising pursuant to subsection A of this
42 section or a recorded first deed of trust on the unit.
43 3. Liens for real estate taxes and other governmental assessments or
44 charges against the unit.

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

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

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

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

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

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

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

30 J. UNTIL JANUARY 1, 2011, the association shall record in the office
31 of the county recorder in the county in which the condominium is located a
32 notice stating the name of the association or designated agent or management
33 company for the association, the address for the association and the
34 telephone number of the association or its designated agent or management
35 company. The notice shall include the name of the condominium community, the
36 date of the recording and the recorded instrument number or book and page for
37 the main document that constitutes the declaration. If an association's
38 address, designated agent or management company changes, the association
39 shall amend its notice or record a new notice within ninety days after the
40 change. BEGINNING JANUARY 1, 2011, THE ASSOCIATION SHALL:

- 41 1. REGISTER WITH THE SECRETARY OF STATE PURSUANT TO SECTION 41-133.
42 2. PROVIDE THE SECRETARY OF STATE WITH THE FOLLOWING INFORMATION:
43 (a) ALL OF THE INFORMATION PREVIOUSLY REQUIRED TO BE RECORDED AS
44 PRESCRIBED BY THIS SUBSECTION.
45 (b) THE NUMBER OF UNITS IN THE CONDOMINIUM.

1 (c) THE CROSS STREETS FOR THE LOCATION OF THE CONDOMINIUM.

2 (d) THE YEAR THAT THE CONDOMINIUM WAS ESTABLISHED.

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

14 33-1807. Lien for assessments; priority; mechanics' and
15 materialmen's liens

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

42 B. A lien for assessments, for charges for late payment of those
43 assessments, for reasonable collection fees and for reasonable attorney fees
44 and costs incurred with respect to those assessments under this section is
45 prior to all other liens, interests and encumbrances on a unit 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 the
5 unit recorded prior to the lien arising pursuant to subsection A of this
6 section or a recorded first deed of trust on the unit.
7 3. Liens for real estate taxes and other governmental assessments or
8 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 real
15 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 fees
19 and costs incurred with respect to those assessments. Further recordation of
20 any claim of lien for assessments under this section is not required.
21 F. A lien for an unpaid assessment is extinguished unless proceedings
22 to enforce the lien are instituted within three years after the full amount
23 of the assessment becomes due.
24 G. This section does not prohibit:
25 1. Actions to recover amounts for which subsection A of this section
26 creates a lien.
27 2. An association from taking a deed in lieu of foreclosure.
28 H. A judgment or decree in any action brought under this section shall
29 include costs and reasonable attorney fees for the prevailing party.
30 I. On written request, the association shall furnish to a lienholder,
31 escrow agent, unit owner or person designated by a unit owner a statement
32 setting forth the amount of any unpaid assessment against the unit. The
33 association shall furnish the statement within fifteen days after receipt of
34 the request, and the statement is binding on the association, the board of
35 directors and every unit owner if the statement is requested by an escrow
36 agency that is licensed pursuant to title 6, chapter 7. Failure to provide
37 the statement to the escrow agent within the time provided for in this
38 subsection shall extinguish any lien for any unpaid assessment then due.
39 J. UNTIL JANUARY 1, 2011, the association shall record in the office
40 of the county recorder in the county in which the planned community is
41 located a notice stating the name of the association or designated agent or
42 management company for the association, the address for the association and
43 the telephone number of the association or its designated agent or management
44 company. The notice shall include the name of the planned community, the
45 date of the recording and the recorded instrument number or book and page for

1 the main document that constitutes the declaration. If an association's
2 address, designated agent or management company changes, the association
3 shall amend its notice or record a new notice within ninety days after the
4 change. BEGINNING JANUARY 1, 2011, THE ASSOCIATION SHALL:

5 1. REGISTER WITH THE SECRETARY OF STATE PURSUANT TO SECTION 41-133.

6 2. PROVIDE THE SECRETARY OF STATE WITH THE FOLLOWING INFORMATION:

7 (a) ALL OF THE INFORMATION PREVIOUSLY REQUIRED TO BE RECORDED AS
8 PRESCRIBED BY THIS SUBSECTION.

9 (b) THE NUMBER OF UNITS IN THE PLANNED COMMUNITY.

10 (c) THE CROSS STREETS FOR THE LOCATION OF THE PLANNED COMMUNITY.

11 (d) THE YEAR THAT THE PLANNED COMMUNITY WAS ESTABLISHED.

12 K. Notwithstanding any provision in the community documents or in any
13 contract between the association and a management company, unless the member
14 directs otherwise, all payments received on a member's account shall be
15 applied first to any unpaid assessments, for unpaid charges for late payment
16 of those assessments, for reasonable collection fees and for unpaid attorney
17 fees and costs incurred with respect to those assessments, in that order,
18 with any remaining amounts applied next to other unpaid fees, charges and
19 monetary penalties or interest and late charges on any of those amounts.

20 Sec. 3. Title 41, chapter 1, article 2, Arizona Revised Statutes, is
21 amended by adding section 41-133, to read:

22 41-133. Registration of homeowners' associations; applicability

23 A. BEGINNING JANUARY 1, 2011, EACH HOMEOWNERS' ASSOCIATION FOR A
24 CONDOMINIUM THAT IS REGULATED PURSUANT TO TITLE 33, CHAPTER 9 AND EACH
25 HOMEOWNERS' ASSOCIATION FOR A PLANNED COMMUNITY THAT IS REGULATED PURSUANT TO
26 TITLE 33, CHAPTER 16 SHALL REGISTER WITH THE SECRETARY OF STATE AND SHALL
27 PROVIDE TO THE SECRETARY OF STATE THE INFORMATION PRESCRIBED IN SECTION
28 33-1256, SUBSECTION J IF A HOMEOWNERS' ASSOCIATION FOR A CONDOMINIUM OR
29 SECTION 33-1807, SUBSECTION J IF A HOMEOWNERS' ASSOCIATION FOR A PLANNED
30 COMMUNITY.

31 B. BEGINNING MARCH 1, 2011, THE SECRETARY OF STATE SHALL POST THIS
32 INFORMATION ON THE SECRETARY OF STATE'S WEBSITE IN A FORM THAT MAKES THE
33 INFORMATION AVAILABLE TO THE PUBLIC.

34 C. EACH HOMEOWNERS' ASSOCIATION SHALL SUBMIT TO THE SECRETARY OF STATE
35 ANY REVISED INFORMATION WITHIN NINETY DAYS OF ANY CHANGE TO THE PRESCRIBED
36 INFORMATION.

37 D. THIS SECTION DOES NOT APPLY TO TIMESHARE PLANS OR ASSOCIATIONS THAT
38 ARE SUBJECT TO TITLE 33, CHAPTER 20.