

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SENATE BILL 1149

AN ACT

AMENDING SECTIONS 33-1256, 33-1260, 33-1261, 33-1806, 33-1807 AND 33-1808,
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: 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~~ TEN days after receipt of the
25 request and the statement is binding on the association, the board of
26 directors and every unit owner if the statement is requested by an escrow
27 agency that is licensed pursuant to title 6, chapter 7. Failure to provide
28 the statement to the escrow agent within the time provided for in this
29 subsection shall extinguish any lien for any unpaid assessment then due.

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

40 K. Notwithstanding any provision in the condominium documents or in
41 any contract between the association and a management company, unless the
42 member directs otherwise, all payments received on a member's account shall
43 be applied first to any unpaid assessments, for unpaid charges for late
44 payment of those assessments, for reasonable collection fees and for unpaid
45 attorney fees and costs incurred with respect to those assessments, in that

1 order, with any remaining amounts applied next to other unpaid fees, charges
2 and monetary penalties or interest and late charges on any of those amounts.

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

5 Sec. 2. Section 33-1260, Arizona Revised Statutes, is amended to read:
6 33-1260. Resale of units; information required; fees; civil
7 penalty; applicability; definition

8 A. For condominiums with fewer than fifty units, a unit owner shall
9 mail or deliver to a purchaser OR A PURCHASER'S AUTHORIZED AGENT within ten
10 days after receipt of a written notice of a pending sale of the unit, and for
11 condominiums with fifty or more units, the association shall mail or deliver
12 to a purchaser OR A PURCHASER'S AUTHORIZED AGENT within ten days after
13 receipt of a written notice of a pending sale that contains the name and
14 address of the purchaser, all of the following IN EITHER PAPER OR ELECTRONIC
15 FORMAT:

- 16 1. A copy of the bylaws and the rules of the association.
- 17 2. A copy of the declaration.
- 18 3. A dated statement containing:

19 (a) The telephone number and address of a principal contact for the
20 association, which may be an association manager, an association management
21 company, an officer of the association or any other person designated by the
22 board of directors.

23 (b) The amount of the common expense assessment for the unit and any
24 unpaid common expense assessment, special assessment or other assessment, fee
25 or charge currently due and payable from the selling unit owner. IF THE
26 REQUEST IS MADE BY A LIENHOLDER, ESCROW AGENT, UNIT OWNER OR PERSON
27 DESIGNATED BY A UNIT OWNER PURSUANT TO SECTION 33-1256, FAILURE TO PROVIDE
28 THE INFORMATION PURSUANT TO THIS SUBDIVISION WITHIN THE TIME PROVIDED FOR IN
29 THIS SUBSECTION SHALL EXTINGUISH ANY LIEN FOR ANY UNPAID ASSESSMENT THEN DUE
30 AGAINST THAT UNIT.

31 (c) A statement as to whether a portion of the unit is covered by
32 insurance maintained by the association.

33 (d) The total amount of money held by the association as reserves.

34 (e) If the statement is being furnished by the association, a
35 statement as to whether the records of the association reflect any
36 alterations or improvements to the unit that violate the declaration. The
37 association is not obligated to provide information regarding alterations or
38 improvements that occurred more than six years before the proposed sale.
39 Nothing in this subdivision relieves the seller of a unit from the obligation
40 to disclose alterations or improvements to the unit that violate the
41 declaration, nor precludes the association from taking action against the
42 purchaser of a unit for violations that are apparent at the time of purchase
43 and that are not reflected in the association's records.

1 (f) If the statement is being furnished by the unit owner, a statement
2 as to whether the unit owner has any knowledge of any alterations or
3 improvements to the unit that violate the declaration.

4 (g) A statement of case names and case numbers for pending litigation
5 with respect to the unit filed by the association against the unit owner or
6 filed by the unit owner against the association. The unit owner or the
7 association shall not be required to disclose information concerning the
8 pending litigation that would violate any applicable rule of attorney-client
9 privilege under Arizona law.

10 (h) A statement that provides "I hereby acknowledge that the
11 declaration, bylaws and rules of the association constitute a contract
12 between the association and me (the purchaser). By signing this statement, I
13 acknowledge that I have read and understand the association's contract with
14 me (the purchaser). I also understand that as a matter of Arizona law, if I
15 fail to pay my association assessments, the association may foreclose on my
16 property." The statement shall also include a signature line for the
17 purchaser and shall be returned to the association within fourteen calendar
18 days.

19 4. A copy of the current operating budget of the association.

20 5. A copy of the most recent annual financial report of the
21 association. If the report is more than ten pages, the association may
22 provide a summary of the report in lieu of the entire report.

23 6. A copy of the most recent reserve study of the association, if any.

24 7. A STATEMENT SUMMARIZING ANY PENDING LAWSUITS, EXCEPT THOSE RELATING
25 TO THE COLLECTION OF ASSESSMENTS OWED BY UNIT OWNERS OTHER THAN THE SELLING
26 UNIT OWNER, IN WHICH THE ASSOCIATION IS A NAMED PARTY, INCLUDING THE AMOUNT
27 OF ANY MONEY CLAIMED.

28 B. A purchaser or seller who is damaged by the failure of the unit
29 owner or the association to disclose the information required by subsection A
30 of this section may pursue all remedies at law or in equity against the unit
31 owner or the association, whichever failed to comply with subsection A of
32 this section, including the recovery of reasonable attorney fees.

33 C. The association may charge the unit owner a ~~reasonable~~ fee OF NO
34 MORE THAN AN AGGREGATE OF FOUR HUNDRED DOLLARS to compensate the association
35 for the costs incurred in the preparation of a statement OR OTHER DOCUMENTS
36 furnished by the association pursuant to this section FOR PURPOSES OF RESALE
37 DISCLOSURE, LIEN ESTOPPEL AND ANY OTHER SERVICES RELATED TO THE TRANSFER OR
38 USE OF THE PROPERTY. IN ADDITION, THE ASSOCIATION MAY CHARGE A RUSH FEE OF
39 NO MORE THAN ONE HUNDRED DOLLARS IF THE RUSH SERVICES ARE REQUIRED TO BE
40 PERFORMED WITHIN SEVENTY-TWO HOURS AFTER THE REQUEST FOR RUSH SERVICES, AND
41 MAY CHARGE A STATEMENT OR OTHER DOCUMENTS UPDATE FEE OF NO MORE THAN FIFTY
42 DOLLARS IF THIRTY DAYS OR MORE HAVE PASSED SINCE THE DATE OF THE ORIGINAL
43 DISCLOSURE STATEMENT OR DOCUMENTS WERE DELIVERED. The association shall make
44 available to any interested party the amount of any fee established from time
45 to time by the association. IF THE AGGREGATE FEE FOR PURPOSES OF RESALE

1 DISCLOSURE, LIEN ESTOPPEL AND ANY OTHER SERVICES RELATED TO THE TRANSFER OR
2 USE OF A PROPERTY IS LESS THAN FOUR HUNDRED DOLLARS ON JANUARY 1, 2010, THE
3 FEE MAY INCREASE AT A RATE OF NO MORE THAN TWENTY PER CENT PER YEAR BASED ON
4 THE IMMEDIATELY PRECEDING FISCAL YEAR'S AMOUNT NOT TO EXCEED THE FOUR HUNDRED
5 DOLLAR AGGREGATE FEE. THE ASSOCIATION MAY CHARGE THE SAME FEE WITHOUT REGARD
6 TO WHETHER THE ASSOCIATION IS FURNISHING THE STATEMENT OR OTHER DOCUMENTS IN
7 PAPER OR ELECTRONIC FORMAT.

8 D. THE FEES PRESCRIBED BY THIS SECTION SHALL BE COLLECTED NO EARLIER
9 THAN AT THE CLOSE OF ESCROW AND MAY ONLY BE CHARGED ONCE TO A UNIT OWNER FOR
10 THAT TRANSACTION BETWEEN THE PARTIES SPECIFIED IN THE NOTICE REQUIRED
11 PURSUANT TO SUBSECTION A OF THIS SECTION. AN ASSOCIATION SHALL NOT CHARGE OR
12 COLLECT A FEE RELATING TO SERVICES FOR RESALE DISCLOSURE, LIEN ESTOPPEL AND
13 ANY OTHER SERVICES RELATED TO THE TRANSFER OR USE OF A PROPERTY EXCEPT AS
14 SPECIFICALLY AUTHORIZED IN THIS SECTION. AN ASSOCIATION THAT CHARGES OR
15 COLLECTS A FEE IN VIOLATION OF THIS SECTION IS SUBJECT TO A CIVIL PENALTY OF
16 NO MORE THAN ONE THOUSAND TWO HUNDRED DOLLARS.

17 E. THIS SECTION APPLIES TO A MANAGING AGENT FOR AN ASSOCIATION THAT IS
18 ACTING ON BEHALF OF THE ASSOCIATION.

19 ~~D.~~ F. A sale in which a public report is issued pursuant to sections
20 32-2183 and 32-2197.02 or a sale pursuant to section 32-2181.02 is exempt
21 from this section.

22 ~~E.~~ G. This section does not apply to timeshare plans or associations
23 that are subject to chapter 20 of this title.

24 ~~F.~~ H. For the purposes of this section, unless the context otherwise
25 requires, "unit owner" means the seller of the condominium unit title and
26 excludes any real estate salesperson or real estate broker who is licensed
27 under title 32, chapter 20 and who is acting as a salesperson or broker and
28 also excludes a trustee of a deed of trust who is selling the property in a
29 trustee's sale pursuant to chapter 6.1 of this title.

30 Sec. 3. Section 33-1261, Arizona Revised Statutes, is amended to read:

31 33-1261. Flag display; for sale signs; political petitions;
32 applicability

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

35 1. The American flag or an official or replica of a flag of the United
36 States army, navy, air force, marine corps or coast guard by a unit owner on
37 that unit owner's property if the American flag or military flag is displayed
38 in a manner consistent with the federal flag code (P.L. 94-344; 90 Stat. 810;
39 4 United States Code sections 4 through 10).

40 2. The POW/MIA flag.

41 3. The Arizona state flag.

42 4. An Arizona Indian nations flag.

43 B. The association shall adopt reasonable rules and regulations
44 regarding the placement and manner of display of the American flag, the
45 military flag, the POW/MIA flag, the Arizona state flag or an Arizona Indian

1 nations flag. The association rules may regulate the location and size of
2 flagpoles but shall not prohibit the installation of a flagpole.

3 C. Notwithstanding any provision in the condominium documents, an
4 association shall not prohibit OR CHARGE ANY FEE FOR THE USE OF, THE
5 PLACEMENT OF OR the indoor or outdoor display of a for sale sign and a sign
6 rider by a unit owner on that owner's property, including a sign that
7 indicates the unit owner is offering the property for sale by owner. The
8 size of a sign offering a property for sale shall be in conformance with the
9 industry standard size sign, which shall not exceed eighteen by twenty-four
10 inches, and the industry standard size sign rider, which shall not exceed six
11 by twenty-four inches. With respect to real estate for sale or lease in the
12 condominium, an association shall not prohibit IN ANY WAY OTHER THAN AS
13 SPECIFICALLY AUTHORIZED BY THIS SECTION or otherwise regulate any of the
14 following:

15 1. Temporary open house signs or a unit owner's for sale sign. The
16 association shall not require the use of particular signs indicating an open
17 house or real property for sale and may not further regulate the use of
18 temporary open house or for sale signs that are industry standard size and
19 that are owned or used by the seller or the seller's agent.

20 2. Open house hours. The association may not limit the hours for an
21 open house for real estate that is for sale in the condominium, except that
22 the association may prohibit an open house being held before 8:00 a.m. or
23 after 6:00 p.m. and may prohibit open house signs on the common elements of
24 the condominium.

25 3. An owner's or an owner's agent's for lease sign unless an
26 association's documents prohibit or restrict leasing of a unit or units. An
27 association shall not further regulate a for lease sign or require the use of
28 a particular for lease sign other than the for lease sign shall not be any
29 larger than the industry standard size sign of eighteen by twenty-four inches
30 and on or in the unit owner's property. If leasing of a unit is allowed, the
31 association may prohibit open house leasing being held before 8:00 a.m. or
32 after 6:00 p.m.

33 D. Notwithstanding any provision in the condominium documents, an
34 association shall not prohibit but may reasonably regulate the circulation of
35 political petitions, including candidate nomination petitions or petitions in
36 support of or opposition to an initiative, referendum or recall or other
37 political issue on property dedicated to the public within the association.
38 A condominium is not required to comply with this subsection if the
39 condominium restricts vehicular or pedestrian access to the condominium.
40 Nothing in this subsection requires a condominium to make its common elements
41 available for the circulation of political petitions to anyone who is not an
42 owner or resident of the community.

43 E. AN ASSOCIATION OR MANAGING AGENT THAT VIOLATES SUBSECTION C OF THIS
44 SECTION FORFEITS AND EXTINGUISHES THE LIEN RIGHTS AUTHORIZED UNDER SECTION

1 33-1256 AGAINST THAT UNIT FOR A PERIOD OF SIX CONSECUTIVE MONTHS FROM THE
2 DATE OF THIS VIOLATION.

3 ~~F.~~ F. This section does not apply to timeshare plans or associations
4 that are subject to chapter 20 of this title.

5 Sec. 4. Section 33-1806, Arizona Revised Statutes, is amended to read:
6 33-1806. Resale of units; information required; fees; civil
7 penalty; definition

8 A. For planned communities with fewer than fifty units, a member shall
9 mail or deliver to a purchaser OR A PURCHASER'S AUTHORIZED AGENT within ten
10 days after receipt of a written notice of a pending sale of the unit, and for
11 planned communities with fifty or more units, the association shall mail or
12 deliver to a purchaser OR A PURCHASER'S AUTHORIZED AGENT within ten days
13 after receipt of a written notice of a pending sale that contains the name
14 and address of the purchaser, all of the following IN EITHER PAPER OR
15 ELECTRONIC FORMAT:

- 16 1. A copy of the bylaws and the rules of the association.
- 17 2. A copy of the declaration.
- 18 3. A dated statement containing:

19 (a) The telephone number and address of a principal contact for the
20 association, which may be an association manager, an association management
21 company, an officer of the association or any other person designated by the
22 board of directors.

23 (b) The amount of the common regular assessment and the unpaid common
24 regular assessment, special assessment or other assessment, fee or charge
25 currently due and payable from the selling member. IF THE REQUEST IS MADE BY
26 A LIENHOLDER, ESCROW AGENT, MEMBER OR PERSON DESIGNATED BY A MEMBER PURSUANT
27 TO SECTION 33-1807, FAILURE TO PROVIDE THE INFORMATION PURSUANT TO THIS
28 SUBDIVISION WITHIN THE TIME PROVIDED FOR IN THIS SUBSECTION SHALL EXTINGUISH
29 ANY LIEN FOR ANY UNPAID ASSESSMENT THEN DUE AGAINST THAT PROPERTY.

30 (c) A statement as to whether a portion of the unit is covered by
31 insurance maintained by the association.

32 (d) The total amount of money held by the association as reserves.

33 (e) If the statement is being furnished by the association, a
34 statement as to whether the records of the association reflect any
35 alterations or improvements to the unit that violate the declaration. The
36 association is not obligated to provide information regarding alterations or
37 improvements that occurred more than six years before the proposed sale.
38 Nothing in this subdivision relieves the seller of a unit from the obligation
39 to disclose alterations or improvements to the unit that violate the
40 declaration, nor precludes the association from taking action against the
41 purchaser of a unit for violations that are apparent at the time of purchase
42 and that are not reflected in the association's records.

43 (f) If the statement is being furnished by the member, a statement as
44 to whether the member has any knowledge of any alterations or improvements to
45 the unit that violate the declaration.

1 (g) A statement of case names and case numbers for pending litigation
2 with respect to the unit filed by the association against the member or filed
3 by the member against the association. The member shall not be required to
4 disclose information concerning such pending litigation ~~which~~ THAT would
5 violate any applicable rule of attorney-client privilege under Arizona law.

6 (h) A statement that provides "I hereby acknowledge that the
7 declaration, bylaws and rules of the association constitute a contract
8 between the association and me (the purchaser). By signing this statement, I
9 acknowledge that I have read and understand the association's contract with
10 me (the purchaser). I also understand that as a matter of Arizona law, if I
11 fail to pay my association assessments, the association may foreclose on my
12 property." The statement shall also include a signature line for the
13 purchaser and shall be returned to the association within fourteen calendar
14 days.

15 4. A copy of the current operating budget of the association.

16 5. A copy of the most recent annual financial report of the
17 association. If the report is more than ten pages, the association may
18 provide a summary of the report in lieu of the entire report.

19 6. A copy of the most recent reserve study of the association, if any.

20 7. A STATEMENT SUMMARIZING ANY PENDING LAWSUITS, EXCEPT THOSE RELATING
21 TO THE COLLECTION OF ASSESSMENTS OWED BY MEMBERS OTHER THAN THE SELLING
22 MEMBER, IN WHICH THE ASSOCIATION IS A NAMED PARTY, INCLUDING THE AMOUNT OF
23 ANY MONEY CLAIMED.

24 B. A purchaser or seller who is damaged by the failure of the member
25 or the association to disclose the information required by subsection A of
26 this section may pursue all remedies at law or in equity against the member
27 or the association, whichever failed to comply with subsection A of this
28 section, including the recovery of reasonable attorney fees.

29 C. The association may charge the member a ~~reasonable~~ fee OF NO MORE
30 THAN AN AGGREGATE OF FOUR HUNDRED DOLLARS to compensate the association for
31 the costs incurred in the preparation of a statement OR OTHER DOCUMENTS
32 furnished by the association pursuant to this section FOR PURPOSES OF RESALE
33 DISCLOSURE, LIEN ESTOPPEL AND ANY OTHER SERVICES RELATED TO THE TRANSFER OR
34 USE OF THE PROPERTY. IN ADDITION, THE ASSOCIATION MAY CHARGE A RUSH FEE OF
35 NO MORE THAN ONE HUNDRED DOLLARS IF THE RUSH SERVICES ARE REQUIRED TO BE
36 PERFORMED WITHIN SEVENTY-TWO HOURS AFTER THE REQUEST FOR RUSH SERVICES, AND
37 MAY CHARGE A STATEMENT OR OTHER DOCUMENTS UPDATE FEE OF NO MORE THAN FIFTY
38 DOLLARS IF THIRTY DAYS OR MORE HAVE PASSED SINCE THE DATE OF THE ORIGINAL
39 DISCLOSURE STATEMENT OR DOCUMENTS WERE DELIVERED. The association shall make
40 available to any interested party the amount of any fee established from time
41 to time by the association. IF THE AGGREGATE FEE FOR PURPOSES OF RESALE
42 DISCLOSURE, LIEN ESTOPPEL AND ANY OTHER SERVICES RELATED TO THE TRANSFER OR
43 USE OF A PROPERTY IS LESS THAN FOUR HUNDRED DOLLARS ON JANUARY 1, 2010, THE
44 FEE MAY INCREASE AT A RATE OF NO MORE THAN TWENTY PER CENT PER YEAR BASED ON
45 THE IMMEDIATELY PRECEDING FISCAL YEAR'S AMOUNT NOT TO EXCEED THE FOUR HUNDRED

1 DOLLAR AGGREGATE FEE. THE ASSOCIATION MAY CHARGE THE SAME FEE WITHOUT REGARD
2 TO WHETHER THE ASSOCIATION IS FURNISHING THE STATEMENT OR OTHER DOCUMENTS IN
3 PAPER OR ELECTRONIC FORMAT.

4 D. THE FEES PRESCRIBED BY THIS SECTION SHALL BE COLLECTED NO EARLIER
5 THAN AT THE CLOSE OF ESCROW AND MAY ONLY BE CHARGED ONCE TO A MEMBER FOR THAT
6 TRANSACTION BETWEEN THE PARTIES SPECIFIED IN THE NOTICE REQUIRED PURSUANT TO
7 SUBSECTION A OF THIS SECTION. AN ASSOCIATION SHALL NOT CHARGE OR COLLECT A
8 FEE RELATING TO SERVICES FOR RESALE DISCLOSURE, LIEN ESTOPPEL AND ANY OTHER
9 SERVICES RELATED TO THE TRANSFER OR USE OF A PROPERTY EXCEPT AS SPECIFICALLY
10 AUTHORIZED IN THIS SECTION. AN ASSOCIATION THAT CHARGES OR COLLECTS A FEE IN
11 VIOLATION OF THIS SECTION IS SUBJECT TO A CIVIL PENALTY OF NO MORE THAN ONE
12 THOUSAND TWO HUNDRED DOLLARS.

13 E. THIS SECTION APPLIES TO A MANAGING AGENT FOR AN ASSOCIATION THAT IS
14 ACTING ON BEHALF OF THE ASSOCIATION.

15 ~~D.~~ F. A sale in which a public report is issued pursuant to sections
16 32-2183 and 32-2197.02 or a sale pursuant to section 32-2181.02 is exempt
17 from this section.

18 ~~E.~~ G. For THE purposes of this section, unless the context otherwise
19 requires, "member" means the seller of the unit title and excludes any real
20 estate salesperson or real estate broker who is licensed under title 32,
21 chapter 20 and who is acting as a salesperson or broker and also excludes a
22 trustee of a deed of trust who is selling the property in a trustee's sale
23 pursuant to chapter 6.1 of this title.

24 Sec. 5. Section 33-1807, Arizona Revised Statutes, is amended to read:
25 33-1807. Lien for assessments: priority; mechanics' and
26 materialmen's liens

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

1 penalties or interest from a court of competent jurisdiction and the
2 recording of that judgment in the office of the county recorder as otherwise
3 provided by law. The association's lien for monies other than for
4 assessments, for charges for late payment of those assessments, for
5 reasonable collection fees and for reasonable attorney fees and costs
6 incurred with respect to those assessments may not be foreclosed and is
7 effective only on conveyance of any interest in the real property.

8 B. A 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 under this section is
11 prior to all other liens, interests and 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 the
16 unit recorded prior to the lien arising pursuant to subsection A of this
17 section or a recorded first deed of trust on the unit.

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

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

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

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

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

35 G. This section does not prohibit:

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

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

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

41 I. On written request, the association shall furnish to a lienholder,
42 escrow agent, unit owner or person designated by a unit owner a statement
43 setting forth the amount of any unpaid assessment against the unit. The
44 association shall furnish the statement within ~~fifteen~~ TEN days after receipt
45 of the request, and the statement is binding on the association, the board of

1 directors and every unit owner if the statement is requested by an escrow
2 agency that is licensed pursuant to title 6, chapter 7. Failure to provide
3 the statement to the escrow agent within the time provided for in this
4 subsection shall extinguish any lien for any unpaid assessment then due.

5 J. The association shall record in the office of the county recorder
6 in the county in which the planned community is located a notice stating the
7 name of the association or designated agent or management company for the
8 association, the address for the association and the telephone number of the
9 association or its designated agent or management company. The notice shall
10 include the name of the planned community, the date of the recording and the
11 recorded instrument number or book and page for the main document that
12 constitutes the declaration. If an association's address, designated agent
13 or management company changes, the association shall amend its notice or
14 record a new notice within ninety days after the change.

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

23 Sec. 6. Section 33-1808, Arizona Revised Statutes, is amended to read:
24 33-1808. Flag display; political signs; caution signs; for sale
25 signs; political petitions

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

28 1. The American flag or an official or replica of a flag of the United
29 States army, navy, air force, marine corps or coast guard by an association
30 member on that member's property if the American flag or military flag is
31 displayed in a manner consistent with the federal flag code (P.L. 94-344;
32 90 Stat. 810; 4 United States Code sections 4 through 10).

33 2. The POW/MIA flag.

34 3. The Arizona state flag.

35 4. An Arizona Indian nations flag.

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

41 C. Notwithstanding any provision in the community documents, an
42 association shall not prohibit the indoor or outdoor display of a political
43 sign by an association member on that member's property, except that an
44 association may prohibit the display of political signs earlier than
45 forty-five days before the day of an election and later than seven days after

1 an election day. An association may regulate the size and number of
2 political signs that may be placed on a member's property if the
3 association's regulation is no more restrictive than any applicable city,
4 town or county ordinance that regulates the size and number of political
5 signs on residential property. If the city, town or county in which the
6 property is located does not regulate the size and number of political signs
7 on residential property, the association shall permit at least one political
8 sign with the maximum dimensions of twenty-four inches by twenty-four inches
9 on a member's property. For the purposes of this subsection, "political
10 sign" means a sign that attempts to influence the outcome of an election,
11 including supporting or opposing the recall of a public officer or supporting
12 or opposing the circulation of a petition for a ballot measure, question or
13 proposition or the recall of a public officer.

14 D. Notwithstanding any provision in the community documents, an
15 association shall not prohibit the use of cautionary signs regarding children
16 if the signs are used and displayed as follows:

- 17 1. The signs are displayed in residential areas only.
- 18 2. The signs are removed within one hour of children ceasing to play.
- 19 3. The signs are displayed only when children are actually present
20 within fifty feet of the sign.
- 21 4. The temporary signs are no taller than three feet in height.
- 22 5. The signs are professionally manufactured or produced.

23 E. Notwithstanding any provision in the community documents, an
24 association shall not prohibit children who reside in the planned community
25 from engaging in recreational activity on residential roadways that are under
26 the jurisdiction of the association and on which the posted speed limit is
27 twenty-five miles per hour or less.

28 F. Notwithstanding any provision in the community documents, an
29 association shall not prohibit **OR CHARGE ANY FEE FOR THE USE OF, THE**
30 **PLACEMENT OF OR** the indoor or outdoor display of a for sale sign and a sign
31 rider by an association member on that member's property, including a sign
32 that indicates the member is offering the property for sale by owner. The
33 size of a sign offering a property for sale shall be in conformance with the
34 industry standard size sign, which shall not exceed eighteen by twenty-four
35 inches, and the industry standard size sign rider, which shall not exceed six
36 by twenty-four inches. With respect to real estate for sale or lease in the
37 planned community, an association shall not prohibit or otherwise regulate **IN**
38 **ANY WAY OTHER THAN SPECIFICALLY AUTHORIZED BY THIS SECTION** any of the
39 following:

- 40 1. Temporary open house signs or a ~~unit-owner's~~ **MEMBER'S** for sale
41 sign. The association shall not require the use of particular signs
42 indicating an open house or real property for sale and may not further
43 regulate the use of temporary open house or for sale signs that are industry
44 standard size and that are owned or used by the seller or the seller's agent.

1 2. Open house hours. The association may not limit the hours for an
2 open house for real estate that is for sale in the planned community, except
3 that the association may prohibit an open house being held before 8:00 a.m.
4 or after 6:00 p.m. and may prohibit open house signs on the common areas of
5 the planned community.

6 3. An owner's or an owner's agent's for lease sign unless an
7 association's documents prohibit or restrict leasing of a member's property.
8 An association shall not further regulate a for lease sign or require the use
9 of a particular for lease sign other than the for lease sign shall not be any
10 larger than the industry standard size sign of eighteen by twenty-four inches
11 on or in the member's property. If leasing of a member's property is not
12 prohibited or restricted, the association may prohibit open house leasing
13 being held before 8:00 a.m. or after 6:00 p.m.

14 G. Notwithstanding any provision in the community documents, an
15 association shall not prohibit but may reasonably regulate the circulation of
16 political petitions, including candidate nomination petitions or petitions in
17 support of or opposition to an initiative, referendum or recall or other
18 political issue on property dedicated to the public within the association.
19 A planned community is not required to comply with this subsection if the
20 planned community restricts vehicular or pedestrian access to the planned
21 community. Nothing in this subsection requires a planned community to make
22 its common elements available for the circulation of political petitions to
23 anyone who is not an owner or resident of the community.

24 H. AN ASSOCIATION OR MANAGING AGENT THAT VIOLATES SUBSECTION F OF THIS
25 SECTION FORFEITS AND EXTINGUISHES THE LIEN RIGHTS AUTHORIZED UNDER SECTION
26 33-1807 AGAINST THAT PROPERTY FOR A PERIOD OF SIX CONSECUTIVE MONTHS FROM THE
27 DATE OF THE VIOLATION.

28 Sec. 7. Effective date

29 This act is effective from and after December 31, 2011.