

REFERENCE TITLE: homeowner's associations; enforcement; limitations

State of Arizona  
House of Representatives  
Fiftieth Legislature  
Second Regular Session  
2012

# HB 2731

Introduced by  
Representatives Smith D, Kavanagh

AN ACT

AMENDING SECTIONS 33-1803, 33-1804, 33-1807 AND 33-1810, ARIZONA REVISED  
STATUTES; RELATING TO 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 33-1803, Arizona Revised Statutes, is amended to  
3 read:

4 33-1803. Penalties; notice to member of violation

5 A. Unless limitations in the community documents would result in a  
6 lower limit for the assessment, the association shall not impose a regular  
7 assessment that is more than twenty per cent greater than the immediately  
8 preceding fiscal year's assessment without the approval of the majority of  
9 the members of the association. Unless reserved to the members of the  
10 association, the board of directors may impose reasonable charges for the  
11 late payment of assessments. A payment by a member is deemed late if it is  
12 unpaid fifteen or more days after its due date, unless the community  
13 documents provide for a longer period. Charges for the late payment of  
14 assessments are limited to the greater of fifteen dollars or ten per cent of  
15 the amount of the unpaid assessment. Any monies paid by the member for an  
16 unpaid assessment shall be applied first to the principal amount unpaid and  
17 then to the interest accrued.

18 B. After notice and an opportunity to be heard, the board of directors  
19 may impose reasonable monetary penalties on members for violations of the  
20 declaration, bylaws and rules of the association. Notwithstanding any  
21 provision in the community documents, the board of directors shall not impose  
22 a charge for a late payment of a penalty that exceeds the greater of fifteen  
23 dollars or ten per cent of the amount of the unpaid penalty. A payment is  
24 deemed late if it is unpaid fifteen or more days after its due date, unless  
25 the declaration, bylaws or rules of the association provide for a longer  
26 period. Any monies paid by a member for an unpaid penalty shall be applied  
27 first to the principal amount unpaid and then to the interest accrued.  
28 Notice pursuant to this subsection shall include information pertaining to  
29 the manner in which the penalty shall be enforced.

30 C. A member who receives a written notice that the condition of the  
31 property owned by the member is in violation of the community documents  
32 without regard to whether a monetary penalty is imposed by the notice may  
33 provide the association with a written response by sending the response by  
34 certified mail within ten business days after the date of the notice. The  
35 response shall be sent to the address contained in the notice or in the  
36 recorded notice prescribed by section 33-1807, subsection J.

37 D. Within ten business days after receipt of the certified mail  
38 containing the response from the member, the association shall respond to the  
39 member with a written explanation **BY CERTIFIED MAIL** regarding the notice that  
40 shall provide at least the following information unless previously provided  
41 in the notice of violation:

- 42 1. The provision of the community documents that has allegedly been  
43 violated.  
44 2. The date of the violation or the date the violation was observed.

1           3. The first and last name of the person or persons who observed the  
2 violation.

3           4. The process the member must follow to contest the notice.

4           E. Unless the information required in subsection D, paragraph 4 of  
5 this section is provided in the notice of violation, the association shall  
6 not proceed with any action to enforce the community documents, including the  
7 collection of attorney fees, before or during the time prescribed by  
8 subsection D of this section regarding the exchange of information between  
9 the association and the member. **IF THE ASSOCIATION FAILS TO PROVIDE NOTICE  
10 BY CERTIFIED MAIL IN COMPLIANCE WITH THIS SECTION, THE MEMBER SHALL NOT BE  
11 CHARGED ANY PENALTY, MONETARY OR OTHERWISE, FOR THE ALLEGED VIOLATION UNTIL  
12 AFTER NOTICE IS PROPERLY DELIVERED BY CERTIFIED MAIL. IN ADDITION, THE  
13 ASSOCIATION IS LIABLE TO THE MEMBER FOR THE PAYMENT OF ANY ATTORNEY FEES  
14 INCURRED BY THE MEMBER REGARDING THE ALLEGED VIOLATION, AND SHALL PAY A  
15 PENALTY TO THE MEMBER OF \_\_\_\_\_ DOLLARS.** At any time before or after  
16 completion of the exchange of information pursuant to this section, the  
17 member may petition for a hearing pursuant to section 41-2198.01 if the  
18 dispute is within the jurisdiction of the department of fire, building and  
19 life safety as prescribed in section 41-2198.01, subsection B.

20           Sec. 2. Section 33-1804, Arizona Revised Statutes, is amended to read:

21           **33-1804. Open meetings; exceptions; quorum required**

22           A. Notwithstanding any provision in the declaration, bylaws or other  
23 documents to the contrary, all meetings of the members' association and the  
24 board of directors, and any regularly scheduled committee meetings, are open  
25 to all members of the association or any person designated by a member in  
26 writing as the member's representative and all members or designated  
27 representatives so desiring shall be permitted to attend and speak at an  
28 appropriate time during the deliberations and proceedings. The board may  
29 place reasonable time restrictions on those persons speaking during the  
30 meeting but shall permit a member or member's designated representative to  
31 speak once after the board has discussed a specific agenda item but before  
32 the board takes formal action on that item in addition to any other  
33 opportunities to speak. The board shall provide for a reasonable number of  
34 persons to speak on each side of an issue. Persons attending may ~~tape-record~~  
35 **AUDIOTAPE** or videotape those portions of the meetings of the board of  
36 directors and meetings of the members that are open. The board of directors  
37 of the association may adopt reasonable rules governing the ~~taping~~  
38 **AUDIOTAPING AND VIDEOTAPING** of open portions of the meetings of the board and  
39 the membership, but such rules shall not preclude such ~~tape-recording~~  
40 **AUDIOTAPING** or videotaping by those attending. Any portion of a meeting may  
41 be closed only if that closed portion of the meeting is limited to  
42 consideration of one or more of the following:

43           1. Legal advice from an attorney for the board or the association. On  
44 final resolution of any matter for which the board received legal advice or  
45 that concerned pending or contemplated litigation, the board may disclose

1 information about that matter in an open meeting except for matters that are  
2 required to remain confidential by the terms of a settlement agreement or  
3 judgment.

4 2. Pending or contemplated litigation.

5 3. Personal, health or financial information about an individual  
6 member of the association, an individual employee of the association or an  
7 individual employee of a contractor for the association, including records of  
8 the association directly related to the personal, health or financial  
9 information about an individual member of the association, an individual  
10 employee of the association or an individual employee of a contractor for the  
11 association.

12 4. Matters relating to the job performance of, compensation of, health  
13 records of or specific complaints against an individual employee of the  
14 association or an individual employee of a contractor of the association who  
15 works under the direction of the association.

16 5. Discussion of a member's appeal of any violation cited or penalty  
17 imposed by the association except on request of the affected member that the  
18 meeting be held in an open session.

19 B. Notwithstanding any provision in the community documents, all  
20 meetings of the members' association and the board shall be held in this  
21 state. A meeting of the members' association shall be held at least once  
22 each year. Special meetings of the members' association may be called by the  
23 president, by a majority of the board of directors or by members having at  
24 least twenty-five per cent, or any lower percentage specified in the bylaws,  
25 of the votes in the association. Not fewer than ten nor more than fifty days  
26 in advance of any meeting of the members the secretary shall cause notice to  
27 be hand-delivered or sent prepaid by United States mail to the mailing  
28 address for each lot, parcel or unit owner or to any other mailing address  
29 designated in writing by a member. The notice shall state the time and place  
30 of the meeting. A notice of any special meeting of the members shall also  
31 state the purpose for which the meeting is called, including the general  
32 nature of any proposed amendment to the declaration or bylaws, changes in  
33 assessments that require approval of the members and any proposal to remove a  
34 director or an officer. The failure of any member to receive actual notice  
35 of a meeting of the members does not affect the validity of any action taken  
36 at that meeting.

37 C. Notwithstanding any provision in the declaration, bylaws or other  
38 community documents, for meetings of the board of directors that are held  
39 after the termination of declarant control of the association, notice to  
40 members of meetings of the board of directors shall be given at least  
41 forty-eight hours in advance of the meeting by newsletter, conspicuous  
42 posting or any other reasonable means as determined by the board of  
43 directors. An affidavit of notice by an officer of the corporation is prima  
44 facie evidence that notice was given as prescribed by this section. Notice  
45 to members of meetings of the board of directors is not required if emergency

1 circumstances require action by the board before notice can be given. Any  
2 notice of a board meeting shall state the time and place of the meeting. The  
3 failure of any member to receive actual notice of a meeting of the board of  
4 directors does not affect the validity of any action taken at that meeting.

5 D. Notwithstanding any provision in the declaration, bylaws or other  
6 community documents, for meetings of the board of directors that are held  
7 after the termination of declarant control of the association, all of the  
8 following apply:

9 1. The agenda shall be available to all members attending.

10 2. An emergency meeting of the board of directors may be called to  
11 discuss business or take action that cannot be delayed until the next  
12 regularly scheduled board meeting. The minutes of the emergency meeting  
13 shall state the reason necessitating the emergency meeting. The minutes of  
14 the emergency meeting shall be read and approved at the next regularly  
15 scheduled meeting of the board of directors.

16 3. A quorum of the board of directors may meet by means of a telephone  
17 conference if a speakerphone is available in the meeting room that allows  
18 board members and association members to hear all parties who are speaking  
19 during the meeting.

20 4. Any quorum of the board of directors that meets informally to  
21 discuss association business, including workshops, shall comply with the open  
22 meeting and notice provisions of this section without regard to whether the  
23 board votes or takes any action on any matter at that informal meeting.

24 E. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS, IN  
25 DETERMINING WHETHER THE QUORUM REQUIREMENTS HAVE BEEN MET FOR A MEETING OF  
26 THE MEMBERS OF THE ASSOCIATION, OWNERSHIP STATUS SHALL BE DETERMINED NO  
27 EARLIER THAN THIRTY DAYS BEFORE THE DATE OF THE MEETING OF THE MEMBERSHIP.  
28 IF A MEETING OF THE MEMBERSHIP IS HELD WITHOUT A QUORUM, ANY ACTION TAKEN AT  
29 THAT MEETING IS INVALID AND UNENFORCEABLE.

30 ~~E.~~ F. It is the policy of this state as reflected in this section  
31 that all meetings of a planned community, whether meetings of the members'  
32 association or meetings of the board of directors of the association, be  
33 conducted openly and that notices and agendas be provided for those meetings  
34 that contain the information that is reasonably necessary to inform the  
35 members of the matters to be discussed or decided and to ensure that members  
36 have the ability to speak after discussion of agenda items, but before a vote  
37 of the board of directors is taken. Toward this end, any person or entity  
38 that is charged with the interpretation of these provisions shall take into  
39 account this declaration of policy and shall construe any provision of this  
40 section in favor of open meetings.

41 Sec. 3. Section 33-1807, Arizona Revised Statutes, is amended to read:

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

44 A. The association has a lien on a unit for any assessment levied  
45 against that unit from the time the assessment becomes due. The

1 association's lien for assessments, for charges for late payment of those  
2 assessments, for reasonable collection fees and for reasonable attorney fees  
3 and costs incurred with respect to those assessments may be foreclosed in the  
4 same manner as a mortgage on real estate but may be foreclosed only if the  
5 owner has been delinquent in the payment of monies secured by the lien,  
6 excluding reasonable collection fees, reasonable attorney fees and charges  
7 for late payment of and costs incurred with respect to those assessments, for  
8 a period of one year or in the amount of one thousand two hundred dollars or  
9 more, whichever occurs first. Fees, charges, late charges, monetary  
10 penalties and interest charged pursuant to section 33-1803, other than  
11 charges for late payment of assessments are not enforceable as assessments  
12 under this section. If an assessment is payable in installments, the full  
13 amount of the assessment is a lien from the time the first installment of the  
14 assessment becomes due. The association has a lien for fees, charges, late  
15 charges, other than charges for late payment of assessments, monetary  
16 penalties or interest charged pursuant to section 33-1803 after the entry of  
17 a judgment in a civil suit for those fees, charges, late charges, monetary  
18 penalties or interest from a court of competent jurisdiction and the  
19 recording of that judgment in the office of the county recorder as otherwise  
20 provided by law. The association's lien for monies other than for  
21 assessments, for charges for late payment of those assessments, for  
22 reasonable collection fees and for reasonable attorney fees and costs  
23 incurred with respect to those assessments may not be foreclosed and is  
24 effective only on conveyance of any interest in the real property.  
25 NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS, THE ASSOCIATION  
26 SHALL NOT HAVE AN ASSESSMENT LIEN FOR PAYMENT OF ANY MONIES THAT ARE IN THE  
27 NATURE OF A PENALTY FOR VIOLATING THE COMMUNITY DOCUMENTS, WITHOUT REGARD TO  
28 WHETHER THE ASSOCIATION, THE BOARD OR THE COMMUNITY DOCUMENTS DESCRIBE THE  
29 PENALTY AS AN ASSESSMENT. AN UNPAID PENALTY MAY ONLY BECOME A LIEN AFTER THE  
30 ENTRY OF A JUDGMENT IN A CIVIL ACTION AS PRESCRIBED IN THIS SUBSECTION.

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

35 1. Liens and encumbrances recorded before the recordation of the  
36 declaration.

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

41 3. Liens for real estate taxes and other governmental assessments or  
42 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  
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 an unpaid assessment is extinguished unless proceedings  
14 to enforce the lien are instituted within three years after the full amount  
15 of the assessment becomes due.

16 G. This section does not prohibit:

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

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

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

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

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

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

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

4 Sec. 4. Section 33-1810, Arizona Revised Statutes, is amended to read:

5 33-1810. Board of directors; annual audit; indemnification

6 A. Unless any provision in the planned community documents requires an  
7 annual audit by a certified public accountant, the board of directors shall  
8 provide for an annual financial audit, review or compilation of the  
9 association. The audit, review or compilation shall be completed no later  
10 than one hundred eighty days after the end of the association's fiscal year  
11 and shall be made available upon request to the members within thirty days  
12 after its completion.

13 B. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS, IF ANY  
14 ONE OR MORE MEMBERS OF THE BOARD OF DIRECTORS TAKES ACTION AGAINST A MEMBER  
15 ON BEHALF OF THE ASSOCIATION AND THAT ACTION IS NOT TAKEN IN GOOD FAITH, THE  
16 INDIVIDUAL BOARD MEMBERS ARE PERSONALLY LIABLE FOR THE ACTIONS TAKEN AND THE  
17 ASSOCIATION SHALL NOT INDEMNIFY THE BOARD MEMBERS FOR THAT LIABILITY.