

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

HOUSE BILL 2764

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 41-134; 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 ten days after receipt of the request and
25 the statement is binding on the association, the board of directors and every
26 unit owner if the statement is requested by an escrow agency that is licensed
27 pursuant to title 6, chapter 7. Failure to provide the statement to the
28 escrow agent within the time provided for in this subsection shall extinguish
29 any lien for any unpaid assessment then due.

30 J. UNTIL JANUARY 1, 2013, 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, 2013, THE ASSOCIATION SHALL:

41 1. REGISTER WITH THE SECRETARY OF STATE PURSUANT TO SECTION 41-134.

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.

1 (b) THE NUMBER OF UNITS IN THE CONDOMINIUM.

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

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

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

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

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

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

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

43 B. A lien for assessments, for charges for late payment of those
44 assessments, for reasonable collection fees and for reasonable attorney fees

1 and costs incurred with respect to those assessments under this section is
2 prior to all other liens, interests and encumbrances on a unit except:

3 1. Liens and encumbrances recorded before the recordation of the
4 declaration.

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

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

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

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

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

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

26 G. This section does not prohibit:

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

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

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

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

41 J. UNTIL JANUARY 1, 2013, the association shall record in the office
42 of the county recorder in the county in which the planned community is
43 located a notice stating the name of the association or designated agent or
44 management company for the association, the address for the association and

1 the telephone number of the association or its designated agent or management
2 company. The notice shall include the name of the planned community, the
3 date of the recording and the recorded instrument number or book and page for
4 the main document that constitutes the declaration. If an association's
5 address, designated agent or management company changes, the association
6 shall amend its notice or record a new notice within ninety days after the
7 change. BEGINNING JANUARY 1, 2013, THE ASSOCIATION SHALL:

8 1. REGISTER WITH THE SECRETARY OF STATE PURSUANT TO SECTION 41-134.

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

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

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

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

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

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. 3. Title 41, chapter 1, article 2, Arizona Revised Statutes, is
24 amended by adding section 41-134, to read:

25 41-134. Registration of homeowners' associations; fee

26 A. BEGINNING JANUARY 1, 2013, EACH HOMEOWNERS' ASSOCIATION FOR A
27 CONDOMINIUM THAT IS REGULATED PURSUANT TO TITLE 33, CHAPTER 9 AND EACH
28 HOMEOWNERS' ASSOCIATION FOR A PLANNED COMMUNITY THAT IS REGULATED PURSUANT TO
29 TITLE 33, CHAPTER 16 SHALL REGISTER WITH THE SECRETARY OF STATE AND SHALL
30 PROVIDE TO THE SECRETARY OF STATE THE INFORMATION PRESCRIBED IN SECTION
31 33-1256, SUBSECTION J IF IT IS A HOMEOWNERS' ASSOCIATION FOR A CONDOMINIUM OR
32 SECTION 33-1807, SUBSECTION J IF IT IS A HOMEOWNERS' ASSOCIATION FOR A
33 PLANNED COMMUNITY.

34 B. BEGINNING MARCH 1, 2013, THE SECRETARY OF STATE SHALL POST THIS
35 INFORMATION ON THE SECRETARY OF STATE'S WEBSITE IN A FORM THAT MAKES THE
36 INFORMATION AVAILABLE TO THE PUBLIC.

37 C. EACH HOMEOWNERS' ASSOCIATION SHALL SUBMIT TO THE SECRETARY OF STATE
38 ANY REVISED INFORMATION WITHIN NINETY DAYS OF ANY CHANGE TO THE PRESCRIBED
39 INFORMATION.

40 D. THE SECRETARY OF STATE MAY CHARGE A FEE TO EACH REGISTRANT IN AN
41 AMOUNT TO BE DETERMINED BY RULE.

42 E. THIS SECTION DOES NOT APPLY TO TIMESHARE PLANS OR ASSOCIATIONS THAT
43 ARE SUBJECT TO TITLE 33, CHAPTER 20.

1 Sec. 4. Homeowners' association registry; contract provider;
2 secretary of state

3 A. The secretary of state shall provide for the establishment of a
4 registry for homeowners' associations for condominiums and planned
5 communities pursuant to sections 33-1256 and 33-1807, Arizona Revised
6 Statutes, as amended by this act. The registry shall be operated by a
7 nonprofit corporation in this state that is a member association of entities
8 that are primarily engaged in the management of planned communities and
9 condominiums. The secretary of state shall solicit proposals from nonprofit
10 corporations to provide the registry service under the authority of the
11 office of the secretary of state, and the secretary of state shall provide
12 for space on its website for the registry or shall allow a direct link to the
13 registry.

14 B. The secretary of state shall solicit proposals to provide the
15 registry service, and the solicitation shall contain provisions regarding the
16 organizational stability of the nonprofit corporation and its ability to
17 provide appropriate, timely information to the public. The proposals may
18 permit the contract provider to charge a fee for the registry service to be
19 determined by the secretary of state.

20 C. The initial contract for a registry provider shall be for a term of
21 three years with an option to renew for a term of five years.