

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, 2014, 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, 2014, THE ASSOCIATION SHALL:

- 41 1. REGISTER THROUGH THE SECRETARY OF STATE PURSUANT TO SECTION 41-134.
42 2. PROVIDE THE SECRETARY OF STATE WITH THE FOLLOWING INFORMATION,
43 THROUGH THE REGISTRATION ENTITY:

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

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

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

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

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

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

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

17 33-1807. Lien for assessments; priority; mechanics' and
18 materialmen's liens

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

1 B. A 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 under this section is
4 prior to all other liens, interests and encumbrances on a unit except:

5 1. Liens and encumbrances recorded before the recordation of the
6 declaration.

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

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

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

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

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

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

28 G. This section does not prohibit:

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

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

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

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

43 J. UNTIL JANUARY 1, 2014, the association shall record in the office
44 of the county recorder in the county in which the planned community is

1 located a notice stating the name of the association or designated agent or
2 management company for the association, the address for the association and
3 the telephone number of the association or its designated agent or management
4 company. The notice shall include the name of the planned community, the
5 date of the recording and the recorded instrument number or book and page for
6 the main document that constitutes the declaration. If an association's
7 address, designated agent or management company changes, the association
8 shall amend its notice or record a new notice within ninety days after the
9 change. BEGINNING JANUARY 1, 2014, THE ASSOCIATION SHALL:

10 1. REGISTER THROUGH THE SECRETARY OF STATE PURSUANT TO SECTION 41-134.
11 2. PROVIDE THE SECRETARY OF STATE WITH THE FOLLOWING INFORMATION,
12 THROUGH THE REGISTRATION ENTITY:

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

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

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

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

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

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

28 41-134. Registration of homeowners' associations; fee

29 A. BEGINNING JANUARY 1, 2014, EACH HOMEOWNERS' ASSOCIATION FOR A
30 CONDOMINIUM THAT IS REGULATED PURSUANT TO TITLE 33, CHAPTER 9 AND EACH
31 HOMEOWNERS' ASSOCIATION FOR A PLANNED COMMUNITY THAT IS REGULATED PURSUANT TO
32 TITLE 33, CHAPTER 16 SHALL REGISTER THROUGH THE SECRETARY OF STATE BY WAY OF
33 THE REGISTRATION ENTITY AND SHALL PROVIDE TO THE SECRETARY OF STATE THROUGH
34 THE REGISTRATION ENTITY THE INFORMATION PRESCRIBED IN SECTION 33-1256,
35 SUBSECTION J IF IT IS A HOMEOWNERS' ASSOCIATION FOR A CONDOMINIUM OR SECTION
36 33-1807, SUBSECTION J IF IT IS A HOMEOWNERS' ASSOCIATION FOR A PLANNED
37 COMMUNITY.

38 B. BEGINNING MARCH 1, 2014, THE SECRETARY OF STATE SHALL POST THIS
39 INFORMATION ON THE SECRETARY OF STATE'S WEBSITE IN A FORM THAT MAKES THE
40 INFORMATION AVAILABLE TO THE PUBLIC.

41 C. EACH HOMEOWNERS' ASSOCIATION SHALL SUBMIT TO THE SECRETARY OF STATE
42 THROUGH THE REGISTRATION ENTITY ANY REVISED INFORMATION WITHIN NINETY DAYS OF
43 ANY CHANGE TO THE PRESCRIBED INFORMATION.

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

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

5 A. The secretary of state shall provide for the establishment of a
6 registry for homeowners' associations for condominiums and planned
7 communities pursuant to sections 33-1256 and 33-1807, Arizona Revised
8 Statutes, as amended by this act. The secretary of state shall solicit
9 proposals from nonprofit corporations in this state to provide the registry
10 service under the authority of the office of the secretary of state, and the
11 secretary of state shall provide for space on its website for the registry or
12 shall allow a direct link to the registry. The proposals may permit the
13 contract provider to charge a fee for the registry service.

14 B. The initial contract for a registry provider shall be for a term of
15 three years with an option to renew for a term of five years.