

REFERENCE TITLE: condominiums; substantial change; maintenance; assessments

State of Arizona
House of Representatives
Fifty-first Legislature
Second Regular Session
2014

HB 2570

Introduced by
Representatives Larkin, Alston, Hernández, Mendez: Borrelli, Coleman,
Contreras, Kavanagh, Mitchell, Montenegro, Quezada, Seel

AN ACT

AMENDING TITLE 33, CHAPTER 9, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-1243.01; AMENDING SECTIONS 33-1255 AND 33-1256, ARIZONA REVISED STATUTES; RELATING TO CONDOMINIUMS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 33, chapter 9, article 3, Arizona Revised Statutes,
3 is amended by adding section 33-1243.01, to read:

4 33-1243.01. Substantial change; membership vote required

5 NOTWITHSTANDING ANY PROVISION IN THE CONDOMINIUM DOCUMENTS, FOR ANY
6 SUBSTANTIAL CHANGE IN THE COMMON ELEMENTS OF THE CONDOMINIUM INVOLVING
7 SECURITY OR THE OUTSIDE APPEARANCE OF THE CONDOMINIUM, THE BOARD OF DIRECTORS
8 SHALL SUBMIT THE PROPOSED CHANGE TO A VOTE OF THE MEMBERSHIP, AND THE VOTE OF
9 THE MEMBERSHIP IS BINDING ON THE CONDOMINIUM AND THE BOARD OF DIRECTORS.

10 Sec. 2. Section 33-1255, Arizona Revised Statutes, is amended to read:

11 33-1255. Assessments for common expenses; applicability

12 A. Until the association makes a common expense assessment, the
13 declarant shall pay all common expenses. After any assessment has been made
14 by the association, assessments shall be made at least annually, based on a
15 budget adopted at least annually by the association. UNLESS LIMITATIONS IN
16 THE CONDOMINIUM DOCUMENTS WOULD RESULT IN A LOWER LIMIT FOR THE ASSESSMENT,
17 THE ASSOCIATION SHALL NOT IMPOSE A REGULAR ASSESSMENT THAT IS MORE THAN
18 TWENTY PER CENT GREATER THAN THE IMMEDIATELY PRECEDING FISCAL YEAR'S
19 ASSESSMENT WITHOUT THE APPROVAL OF A MAJORITY OF THE UNIT OWNERS IN THE
20 ASSOCIATION.

21 B. Except for assessments under subsections C, D, E and F of this
22 section, all common expenses shall be assessed against all the units in
23 accordance with the allocations set forth in the declaration pursuant to
24 section 33-1217, subsection A. Any past due common expense assessment or
25 installment bears interest at the rate established by the board subject to
26 the condominium documents.

27 C. Unless otherwise provided for in the declaration all of the
28 following apply:

29 1. Any common expense associated with the maintenance, repair or
30 replacement of a limited common element shall be equally assessed against the
31 units to which the limited common element is assigned.

32 2. Any common expense or portion of a common expense benefitting fewer
33 than all of the units shall be assessed exclusively against the units
34 benefitted.

35 D. Assessments to pay a judgment against the association may be made
36 only against the units in the condominium at the time the judgment was
37 entered, in proportion to their common expense liabilities.

38 E. If any common expense is caused by the misconduct of any unit
39 owner, the association may assess that expense exclusively against that unit.

40 F. If the declaration so provides, the common expense assessment for
41 any unit on which construction has not been substantially completed may be an
42 amount ~~which~~ THAT is not less than twenty-five per cent of the common expense
43 assessment for units ~~which~~ THAT have been substantially completed. However,
44 this reduced common expense assessment shall not be permitted, unless the
45 declarant is obligated under the declaration to pay to the association any

1 deficiency in monies due to the declarant having paid a reduced common
2 assessment and necessary for the association to be able to timely pay all
3 common expenses.

4 G. If common expense liabilities are reallocated, common expense
5 assessments and any installment on the assessments not yet due shall be
6 recalculated in accordance with the reallocated common expense liabilities.

7 H. This section does not apply to timeshare plans or associations that
8 are subject to chapter 20 of this title.

9 Sec. 3. Section 33-1256, Arizona Revised Statutes, is amended to read:

10 33-1256. Lien for assessments; priority; mechanics' and
11 materialmen's liens; maintenance failure;
12 applicability

13 A. The association has a lien on a unit for any assessment levied
14 against that unit from the time the assessment becomes due. The
15 association's lien for assessments, for charges for late payment of those
16 assessments, for reasonable collection fees and for reasonable attorney fees
17 and costs incurred with respect to those assessments may be foreclosed in the
18 same manner as a mortgage on real estate but may be foreclosed only if the
19 owner has been delinquent in the payment of monies secured by the lien,
20 excluding reasonable collection fees, reasonable attorney fees and charges
21 for late payment of and costs incurred with respect to those assessments, for
22 a period of one year or in the amount of one thousand two hundred dollars or
23 more, whichever occurs first. Fees, charges, late charges, monetary
24 penalties and interest charged pursuant to section 33-1242, subsection A,
25 paragraphs 10, 11 and 12, other than charges for late payment of assessments,
26 are not enforceable as assessments under this section. If an assessment is
27 payable in installments, the full amount of the assessment is a lien from the
28 time the first installment of the assessment becomes due. The association
29 has a lien for fees, charges, late charges, other than charges for late
30 payment of assessments, monetary penalties or interest charged pursuant to
31 section 33-1242, subsection A, paragraphs 10, 11 and 12 after the entry of a
32 judgment in a civil suit for those fees, charges, late charges, monetary
33 penalties or interest from a court of competent jurisdiction and the
34 recording of that judgment in the office of the county recorder as otherwise
35 provided by law. The association's lien for monies other than for
36 assessments, for charges for late payment of those assessments, for
37 reasonable collection fees and for reasonable attorney fees and costs
38 incurred with respect to those assessments may not be foreclosed and is
39 effective only on conveyance of any interest in the real property.

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

44 1. Liens and encumbrances recorded before the recordation of the
45 declaration.

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

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

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

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

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

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

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

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

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

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

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

9 L. IF AN ASSOCIATION FAILS TO MAINTAIN THE COMMON ELEMENTS OF THE
10 CONDOMINIUM IN A MANNER THAT AFFECTS THE HEALTH OR SAFETY OF THE UNIT OWNERS
11 OR THE STRUCTURAL INTEGRITY OF THE UNIT, A UNIT OWNER MAY MAIL WRITTEN NOTICE
12 OF THE MAINTENANCE FAILURE TO THE BOARD OF DIRECTORS. IF THE FAILURE IS NOT
13 CORRECTED OR REPAIRED WITHIN SIXTY DAYS AFTER THE POSTMARKED DATE OF THE
14 WRITTEN NOTICE, THE UNIT OWNER MAY LAWFULLY WITHHOLD ONE OR MORE ASSESSMENT
15 PAYMENTS UNTIL THE FAILURE IS CORRECTED OR REPAIRED. ON CORRECTION OR REPAIR
16 OF THE MAINTENANCE FAILURE AND WRITTEN NOTICE TO THE UNIT OWNER, THE UNIT
17 OWNER IS OBLIGATED TO PAY SUBSEQUENT ASSESSMENTS BUT IS NOT LIABLE FOR ANY
18 UNPAID ASSESSMENTS ACCRUED DURING THE PERIOD OF MAINTENANCE FAILURE.

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