

REFERENCE TITLE: homeowners' associations; foreclosures; assessments

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

SB 1080

Introduced by
Senator Kavanagh

AN ACT

AMENDING SECTIONS 33-1256 AND 33-1807, 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
10 fees and costs incurred with respect to those assessments may be
11 foreclosed in the same manner as a mortgage on real estate but may be
12 foreclosed only if the owner has been delinquent in the payment of monies
13 secured by the lien, excluding reasonable collection fees, reasonable
14 attorney fees and charges for late payment of and costs incurred with
15 respect to those assessments, for a period of ~~one year or in the amount of~~
16 ~~one thousand two hundred dollars or more, whichever occurs first~~ SIX
17 MONTHS. Fees, charges, late charges, monetary penalties and interest
18 charged pursuant to section 33-1242, subsection A, paragraphs 10, 11 and
19 12, other than charges for late payment of assessments, are not
20 enforceable as assessments under this section. If an assessment is
21 payable in installments, the full amount of the assessment is a lien from
22 the time the first installment of the assessment becomes due. The
23 association has a lien for fees, charges, late charges, other than charges
24 for late payment of assessments, monetary penalties or interest charged
25 pursuant to section 33-1242, subsection A, paragraphs 10, 11 and 12 after
26 the entry of a judgment in a civil suit for those fees, charges, late
27 charges, monetary penalties or interest from a court of competent
28 jurisdiction and the recording of that judgment in the office of the
29 county recorder as otherwise provided by law. The association's lien for
30 monies other than for assessments, for charges for late payment of those
31 assessments, for reasonable collection fees and for reasonable attorney
32 fees and costs incurred with respect to those assessments may not be
33 foreclosed and is effective only on conveyance of any interest in the real
34 property.

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

40 1. Liens and encumbrances recorded before the recordation of the
41 declaration.

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

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

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

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

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

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

19 G. This section does not prohibit:

20 1. Actions to recover sums for which subsection A of this section
21 creates a lien. ~~or does not prohibit~~

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

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

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

35 J. Notwithstanding any provision in the condominium documents or in
36 any contract between the association and a management company, unless the
37 member directs otherwise, all payments received on a member's account
38 shall be applied first to any unpaid assessments, for unpaid charges for
39 late payment of those assessments, for reasonable collection fees and for
40 unpaid attorney fees and costs incurred with respect to those assessments,
41 in that order, with any remaining amounts applied next to other unpaid
42 fees, charges and monetary penalties or interest and late charges on any
43 of those amounts.

44 K. This section does not apply to timeshare plans or associations
45 that are subject to chapter 20 of this title.

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

3 33-1807. Lien for assessments; priority; mechanics' and
4 materialmen's liens

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

32 B. A lien for assessments, for charges for late payment of those
33 assessments, for reasonable collection fees and for reasonable attorney
34 fees and costs incurred with respect to those assessments under this
35 section is prior to all other liens, interests and encumbrances on a unit
36 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
41 the unit recorded prior to the lien arising pursuant to subsection A of
42 this section or a recorded first deed of trust on the unit.

43 3. Liens for real estate taxes and other governmental assessments
44 or 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
7 real 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
11 fees and costs incurred with respect to those assessments. Further
12 recordation of any claim of lien for assessments under this section is not
13 required.

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

17 G. This section does not prohibit:

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

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

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

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

33 J. Notwithstanding any provision in the community documents or in
34 any contract between the association and a management company, unless the
35 member directs otherwise, all payments received on a member's account
36 shall be applied first to any unpaid assessments, for unpaid charges for
37 late payment of those assessments, for reasonable collection fees and for
38 unpaid attorney fees and costs incurred with respect to those assessments,
39 in that order, with any remaining amounts applied next to other unpaid
40 fees, charges and monetary penalties or interest and late charges on any
41 of those amounts.