

REFERENCE TITLE: HOAs; assessments; costs

State of Arizona
Senate
Fifty-fourth Legislature
First Regular Session
2019

SB 1531

Introduced by
Senator Farnsworth D

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; payment plan; 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~~ \$1,200 or more, whichever occurs first.
17 Fees, charges, late charges, monetary penalties and interest charged
18 pursuant to section 33-1242, subsection A, paragraphs 10, 11 and 12, other
19 than charges for late payment of assessments, are not enforceable as
20 assessments under this section. If an assessment is payable in
21 installments, the full amount of the assessment is a lien from the time
22 the first installment of the assessment becomes due. The association has
23 a lien for fees, charges, late charges, other than charges for late
24 payment of assessments, monetary penalties or interest charged pursuant to
25 section 33-1242, subsection A, paragraphs 10, 11 and 12 after the entry of
26 a judgment in a civil suit for those fees, charges, late charges, monetary
27 penalties or interest from a court of competent jurisdiction and the
28 recording of that judgment in the office of the county recorder as
29 otherwise provided by law. The association's lien for monies other than
30 for assessments, for charges for late payment of those assessments, for
31 reasonable collection fees and for reasonable attorney fees and costs
32 incurred with respect to those assessments may not be foreclosed and is
33 effective only on conveyance of any interest in the real property.

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

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

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

45 3. Liens for real estate taxes and other governmental assessments
46 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 those assessments, for reasonable collection fees and for reasonable
11 attorney fees and costs incurred with respect to those assessments.
12 Further recordation of any claim of lien for assessments under this
13 section is not required.

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

17 G. This section does not prohibit:

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

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

33 J. Notwithstanding any provision in the condominium documents or in
34 any contract between the association and a management company, unless the
35 ~~member~~ UNIT OWNER directs otherwise, all payments received on a ~~member's~~
36 UNIT OWNER'S account shall be applied ~~first~~ to any unpaid ~~assessments, for~~
37 ~~unpaid charges for late payment of those assessments, for reasonable~~
38 ~~collection fees and for unpaid attorney fees and costs incurred with~~
39 ~~respect to those assessments, in that order, with any remaining amounts~~
40 ~~applied next to other unpaid fees, charges and monetary penalties or~~
41 ~~interest and late charges on any of those amounts~~ AMOUNTS IN THE ORDER THE
42 DEBT WAS ACCRUED IF THOSE CHARGES, COSTS, FEES OR OTHER AMOUNTS ARE
43 SPECIFICALLY AUTHORIZED IN THE DECLARATION TO BE CHARGED TO THE UNIT
44 OWNER. ANY CHARGES, COSTS, FEES OR OTHER AMOUNTS THAT ARE NOT
45 SPECIFICALLY AUTHORIZED IN THE DECLARATION TO BE CHARGED TO THE UNIT OWNER
46 ARE VOID.

1 K. NOTWITHSTANDING ANY PROVISION IN THE CONDOMINIUM DOCUMENTS OR
2 ANY OTHER LAW, BEFORE A JUDGMENT OF FORECLOSURE MAY BE ISSUED FOR ANY
3 AMOUNT CLAIMED TO BE OWED TO THE ASSOCIATION, THE ATTORNEY FOR ANY
4 FORECLOSING PARTY IN THE FORECLOSURE ACTION SHALL PROVIDE THE UNIT OWNER A
5 WRITTEN PAYMENT PLAN THAT CONTAINS SPECIFIC TERMS AND AMOUNTS AS FOLLOWS:

6 1. EXCEPT AS PRESCRIBED IN PARAGRAPH 2 OF THIS SUBSECTION, THE
7 TOTAL AMOUNT OF THE PAYMENT PLAN MAY NOT INCLUDE INTEREST, LATE FEES,
8 COSTS, ATTORNEY FEES OR ANY ADDITIONAL AMOUNTS THAT EXCEED THE AMOUNT
9 UNPAID AT THE TIME THE FORECLOSURE ACTION IS FILED, AND THE UNIT OWNER IS
10 NOT LIABLE FOR ANY SUBSEQUENT CHARGES FOR INTEREST, LATE FEES, COSTS,
11 ATTORNEY FEES OR ANY OTHER AMOUNTS, WITHOUT REGARD TO THE DESIGNATION OR
12 DESCRIPTION OF THOSE AMOUNTS.

13 2. THE PAYMENT PLAN MAY INCLUDE A REASONABLE PAYMENT PLAN
14 ESTABLISHMENT FEE AND A REASONABLE SATISFACTION OF JUDGMENT FEE.

15 3. THE PAYMENT PLAN SHALL PROVIDE FOR EQUAL MONTHLY INSTALLMENTS
16 OVER NOT MORE THAN THREE YEARS AND ON COMPLETION OF THE PLAN SHALL RESULT
17 IN A COMPLETE DISCHARGE OF ALL AMOUNTS OWED.

18 4. THE PLAN SHALL REQUIRE A UNIT OWNER WHO CONTINUES TO OCCUPY THE
19 PROPERTY TO REMAIN CURRENT ON ALL REGULAR AND SPECIAL ASSESSMENTS THAT
20 BECOME DUE WHILE THE PLAN IS IN EFFECT.

21 5. THE PLAN SHALL REQUIRE THE UNIT OWNER TO STIPULATE TO A JUDGMENT
22 OR OTHER AGREEMENT OR WAIVER THAT PROVIDES FOR THE FORECLOSURE ACTION TO
23 PROCEED IF THE UNIT OWNER DOES NOT COMPLY WITH THE PAYMENT PLAN.

24 6. THE ATTORNEY FOR THE FORECLOSING PARTY SHALL GIVE WRITTEN NOTICE
25 OF THE PROPOSED PAYMENT PLAN TO THE UNIT OWNER AND SHALL ALLOW THE UNIT
26 OWNER THIRTY DAYS TO EXECUTE THE PAYMENT PLAN AFTER RECEIVING NOTICE OF
27 THE PLAN.

28 L. FOR ANY DEBT OWED BY A UNIT OWNER THAT ARISES OUT OF AN
29 OBLIGATION TO PAY ASSESSMENTS OR OTHER AMOUNTS TO THE ASSOCIATION AND THAT
30 CONSISTS OF ONLY ATTORNEY FEES OWED TO A THIRD PARTY, THE THIRD PARTY
31 SHALL PROVIDE THE UNIT OWNER WITH A PAYMENT PLAN THAT PROVIDES FOR PAYMENT
32 OF THE ATTORNEY FEES IN EQUAL MONTHLY INSTALLMENTS OVER NOT MORE THAN
33 THREE YEARS, THAT ON COMPLETION OF THE PLAN RESULTS IN A COMPLETE
34 DISCHARGE OF ALL AMOUNTS OWED AND THAT INCLUDES ONLY A REASONABLE PAYMENT
35 PLAN ESTABLISHMENT FEE AND A REASONABLE SATISFACTION OF JUDGEMENT FEE.

36 M. THE ASSOCIATION SHALL PROVIDE A MONTHLY STATEMENT OF ACCOUNT TO
37 ALL UNIT OWNERS IF ASSESSMENTS ACCRUE MONTHLY, A QUARTERLY STATEMENT IF
38 ASSESSMENTS ACCRUE QUARTERLY OR A SEMIANNUAL STATEMENT IF ASSESSMENTS
39 ACCRUE YEARLY. THE UNIT OWNER MAY BE CHARGED FOR THE COST OF THE
40 STATEMENT.

41 N. UNLESS THE ASSOCIATION AGREES OTHERWISE IN WRITING, A MANAGING
42 AGENT FOR THE ASSOCIATION MAY COLLECT DIRECTLY FROM A UNIT OWNER THE
43 ASSESSMENTS AND OTHER AMOUNTS OWED BY CASH, CHECK, CREDIT OR DEBIT CARD OR
44 OTHER ELECTRONIC MEANS AND MAY CHARGE A CONVENIENCE FEE TO THE UNIT OWNER.

45 ~~K.~~ O. This section does not apply to timeshare plans or
46 associations 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; payment plan

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~~ \$1,200 or more, whichever occurs first.
16 Fees, charges, late charges, monetary penalties and interest charged
17 pursuant to section 33-1803, other than charges for late payment of
18 assessments are not enforceable as assessments under this section. If an
19 assessment is payable in installments, the full amount of the assessment
20 is a lien from the time the first installment of the assessment becomes
21 due. The association has a lien for fees, charges, late charges, other
22 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.

45 C. Subsection B of this section does not affect the priority of
46 mechanics' or materialmen's liens or the priority of liens for other

1 assessments made by the association. The lien under this section is not
2 subject to chapter 8 of this title.

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

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

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

15 G. This section does not prohibit:

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

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

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

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

31 J. Notwithstanding any provision in the community documents or in
32 any contract between the association and a management company, unless the
33 member directs otherwise, all payments received on a member's account
34 shall be applied ~~first to any unpaid assessments, for unpaid charges for~~
35 ~~late payment of those assessments, for reasonable collection fees and for~~
36 ~~unpaid attorney fees and costs incurred with respect to those assessments,~~
37 ~~in that order, with any remaining amounts applied next to other unpaid~~
38 ~~fees, charges and monetary penalties or interest and late charges on any~~
39 ~~of those amounts~~ UNPAID AMOUNTS IN THE ORDER THE DEBT WAS ACCRUED IF THOSE
40 CHARGES, COSTS, FEES OR OTHER AMOUNTS ARE SPECIFICALLY AUTHORIZED IN THE
41 DECLARATION TO BE CHARGED TO THE MEMBER. ANY CHARGES, COSTS, FEES OR
42 OTHER AMOUNTS THAT ARE NOT SPECIFICALLY AUTHORIZED IN THE DECLARATION TO
43 BE CHARGED TO THE MEMBER ARE VOID.

44 K. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS OR ANY
45 OTHER LAW, BEFORE A JUDGMENT OF FORECLOSURE MAY BE ISSUED FOR ANY AMOUNT
46 CLAIMED TO BE OWED TO THE ASSOCIATION, THE ATTORNEY FOR ANY FORECLOSING

1 PARTY IN THE FORECLOSURE ACTION SHALL PROVIDE THE MEMBER A WRITTEN PAYMENT
2 PLAN THAT CONTAINS SPECIFIC TERMS AND AMOUNTS AS FOLLOWS:

3 1. EXCEPT AS PRESCRIBED IN PARAGRAPH 2 OF THIS SUBSECTION, THE
4 TOTAL AMOUNT OF THE PAYMENT PLAN MAY NOT INCLUDE INTEREST, LATE FEES,
5 COSTS, ATTORNEY FEES OR ANY ADDITIONAL AMOUNTS THAT EXCEED THE AMOUNT
6 UNPAID AT THE TIME THE FORECLOSURE ACTION IS FILED, AND THE MEMBER IS NOT
7 LIABLE FOR ANY SUBSEQUENT CHARGES FOR INTEREST, LATE FEES, COSTS, ATTORNEY
8 FEES OR ANY OTHER AMOUNTS, WITHOUT REGARD TO THE DESIGNATION OR
9 DESCRIPTION OF THOSE AMOUNTS.

10 2. THE PAYMENT PLAN MAY INCLUDE A REASONABLE PAYMENT PLAN
11 ESTABLISHMENT FEE AND A REASONABLE SATISFACTION OF JUDGMENT FEE.

12 3. THE PAYMENT PLAN SHALL PROVIDE FOR EQUAL MONTHLY INSTALLMENTS
13 OVER NOT MORE THAN THREE YEARS AND ON COMPLETION OF THE PLAN SHALL RESULT
14 IN A COMPLETE DISCHARGE OF ALL AMOUNTS OWED.

15 4. THE PLAN SHALL REQUIRE A MEMBER WHO CONTINUES TO OCCUPY THE
16 PROPERTY TO REMAIN CURRENT ON ALL REGULAR AND SPECIAL ASSESSMENTS THAT
17 BECOME DUE WHILE THE PLAN IS IN EFFECT.

18 5. THE PLAN SHALL REQUIRE THE MEMBER TO STIPULATE TO A JUDGMENT OR
19 OTHER AGREEMENT OR WAIVER THAT PROVIDES FOR THE FORECLOSURE ACTION TO
20 PROCEED IF THE MEMBER DOES NOT COMPLY WITH THE PAYMENT PLAN.

21 6. THE ATTORNEY FOR THE FORECLOSING PARTY SHALL GIVE WRITTEN NOTICE
22 OF THE PROPOSED PAYMENT PLAN TO THE MEMBER AND SHALL ALLOW THE MEMBER
23 THIRTY DAYS TO EXECUTE THE PAYMENT PLAN AFTER RECEIVING NOTICE OF THE
24 PLAN.

25 L. FOR ANY DEBT OWED BY A MEMBER THAT ARISES OUT OF AN OBLIGATION
26 TO PAY ASSESSMENTS OR OTHER AMOUNTS TO THE ASSOCIATION AND THAT CONSISTS
27 OF ONLY ATTORNEY FEES OWED TO A THIRD PARTY, THE THIRD PARTY SHALL PROVIDE
28 THE MEMBER WITH A PAYMENT PLAN THAT PROVIDES FOR PAYMENT OF THE ATTORNEY
29 FEES IN EQUAL MONTHLY INSTALLMENTS OVER NOT MORE THAN THREE YEARS, THAT ON
30 COMPLETION OF THE PLAN RESULTS IN A COMPLETE DISCHARGE OF ALL AMOUNTS OWED
31 AND THAT INCLUDES ONLY A REASONABLE PAYMENT PLAN ESTABLISHMENT FEE AND A
32 REASONABLE SATISFACTION OF JUDGEMENT FEE.

33 M. THE ASSOCIATION SHALL PROVIDE A MONTHLY STATEMENT OF ACCOUNT TO
34 ALL MEMBERS IF ASSESSMENTS ACCRUE MONTHLY, A QUARTERLY STATEMENT IF
35 ASSESSMENTS ACCRUE QUARTERLY OR A SEMIANNUAL STATEMENT IF ASSESSMENTS
36 ACCRUE YEARLY. THE MEMBER MAY BE CHARGED FOR THE COST OF THE STATEMENT.

37 N. UNLESS THE ASSOCIATION AGREES OTHERWISE IN WRITING, A MANAGING
38 AGENT FOR THE ASSOCIATION MAY COLLECT DIRECTLY FROM A MEMBER THE
39 ASSESSMENTS AND OTHER AMOUNTS OWED BY CASH, CHECK, CREDIT OR DEBIT CARD OR
40 OTHER ELECTRONIC MEANS AND MAY CHARGE A CONVENIENCE FEE TO THE MEMBER.