

REFERENCE TITLE: homeowners' associations; payment coupon books

State of Arizona
Senate
Fifty-fourth Legislature
Second Regular Session
2020

SB 1001

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; notice; 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 \$1,200 or more, whichever occurs first, as determined on the date the
17 action is filed. Fees, charges, late charges, monetary penalties and
18 interest charged pursuant to section 33-1242, subsection A, paragraphs 10,
19 11 and 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 six years after the full amount
18 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.

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 extinguishes any lien for any unpaid assessment then due.

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

43 K. For a delinquent account for unpaid assessments or for charges
44 related to unpaid assessments, the association shall provide the following
45 written notice to the unit owner at the unit owner's address as provided

1 to the association at least thirty days before authorizing an attorney, or
2 a collection agency that is not acting as the association's managing
3 agent, to begin collection activity on behalf of the association:

4 Your account is delinquent. If you do not bring your account
5 current or make arrangements that are approved by the
6 association to bring your account current within thirty days
7 after the date of this notice, your account will be turned
8 over for further collection proceedings. Such collection
9 proceedings could include bringing a foreclosure action
10 against your property.

11 The notice shall be in boldfaced type or all capital letters and shall
12 include the contact information for the person that the unit owner may
13 contact to discuss payment. The notice shall be sent by certified mail,
14 return receipt requested, and may be included within other correspondence
15 sent to the unit owner regarding the unit owner's delinquent account.

16 L. Beginning January 1, 2020, except for condominiums that have
17 fewer than fifty units and that do not contract with a third party to
18 perform management services on behalf of the association, the association
19 ~~shall~~ MAY provide a statement of account in lieu of a periodic payment
20 book to the unit owner with the same frequency that assessments are
21 provided for in the declaration. The statement of account shall include
22 the current account balance due and the immediately preceding ledger
23 history. If the association offers the statement of account by electronic
24 means, a unit owner may opt to receive the statement electronically. The
25 association may stop providing any further statements of account to a unit
26 owner if collection activity begins by an attorney, or a collection agency
27 that is not acting as the association's managing agent, regarding that
28 unit owner's unpaid account. After collection activity begins, a unit
29 owner may request statements of account by written request to the attorney
30 or collection agency. Any request by a unit owner for a statement of
31 account after collection activity begins by an attorney or a collection
32 agency that is not acting as the association's managing agent must be
33 fulfilled by the attorney or the collection agency responsible for the
34 collection. The statement of account provided by the attorney or
35 collection agency responsible for the collection shall include all amounts
36 claimed to be owing to resolve the delinquency through the date set forth
37 in the statement, including attorney fees and costs, regardless of whether
38 such amounts have been reduced to judgment.

39 M. An agent for the association may collect on behalf of the
40 association directly from a unit owner the assessments and other amounts
41 owed by cash or check, by mailed or hand-delivered bank drafts, checks,
42 cashier's checks or money orders, by credit, charge or debit card or by
43 other electronic means. For any form of payment other than for cash or
44 for mailed or hand-delivered bank drafts, checks, cashier's checks or
45 money orders, the agent may charge a convenience fee to the unit owner

1 that is approximately the amount charged to the agent by a third-party
2 service provider.

3 N. This section does not apply to timeshare plans or associations
4 that are subject to chapter 20 of this title.

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

7 33-1807. Lien for assessments; priority; mechanics' and
8 materialmen's liens; notice

9 A. The association has a lien on a unit for any assessment levied
10 against that unit from the time the assessment becomes due. The
11 association's lien for assessments, for charges for late payment of those
12 assessments, for reasonable collection fees and for reasonable attorney
13 fees and costs incurred with respect to those assessments may be
14 foreclosed in the same manner as a mortgage on real estate but may be
15 foreclosed only if the owner has been delinquent in the payment of monies
16 secured by the lien, excluding reasonable collection fees, reasonable
17 attorney fees and charges for late payment of and costs incurred with
18 respect to those assessments, for a period of one year or in the amount of
19 \$1,200 or more, whichever occurs first, as determined on the date the
20 action is filed. Fees, charges, late charges, monetary penalties and
21 interest charged pursuant to section 33-1803, other than charges for late
22 payment of assessments are not enforceable as assessments under this
23 section. If an assessment is payable in installments, the full amount of
24 the assessment is a lien from the time the first installment of the
25 assessment becomes due. The association has a lien for fees, charges,
26 late charges, other than charges for late payment of assessments, monetary
27 penalties or interest charged pursuant to section 33-1803 after the entry
28 of a judgment in a civil suit for those fees, charges, late charges,
29 monetary penalties or interest from a court of competent jurisdiction and
30 the recording of that judgment in the office of the county recorder as
31 otherwise provided by law. The association's lien for monies other than
32 for assessments, for charges for late payment of those assessments, for
33 reasonable collection fees and for reasonable attorney fees and costs
34 incurred with respect to those assessments may not be foreclosed and is
35 effective only on conveyance of any interest in the real property.

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

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

43 2. A recorded first mortgage on the unit, a seller's interest in a
44 first contract for sale pursuant to chapter 6, article 3 of this title on

1 the unit recorded prior to the lien arising pursuant to subsection A of
2 this section or a recorded first deed of trust on the unit.

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

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

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

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

18 F. A lien for an unpaid assessment is extinguished unless
19 proceedings to enforce the lien are instituted within six years after the
20 full amount of the assessment becomes due.

21 G. This section does not prohibit:

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

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

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

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

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

1 K. For a delinquent account for unpaid assessments or for charges
2 related to unpaid assessments, the association shall provide the following
3 written notice to the member at the member's address as provided to the
4 association at least thirty days before authorizing an attorney, or a
5 collection agency that is not acting as the association's managing agent,
6 to begin collection activity on behalf of the association:

7 Your account is delinquent. If you do not bring your account
8 current or make arrangements that are approved by the
9 association to bring your account current within thirty days
10 after the date of this notice, your account will be turned
11 over for further collection proceedings. Such collection
12 proceedings could include bringing a foreclosure action
13 against your property.

14 The notice shall be in boldfaced type or all capital letters and shall
15 include the contact information for the person that the member may contact
16 to discuss payment. The notice shall be sent by certified mail, return
17 receipt requested, and may be included within other correspondence sent to
18 the member regarding the member's delinquent account.

19 L. Beginning January 1, 2020, except for planned communities that
20 have fewer than fifty lots and that do not contract with a third party to
21 perform management services on behalf of the association, the association
22 shall MAY provide a statement of account in lieu of a periodic payment
23 book to the member with the same frequency that assessments are provided
24 for in the declaration. The statement of account shall include the
25 current account balance due and the immediately preceding ledger history.
26 If the association offers the statement of account by electronic means, a
27 member may opt to receive the statement electronically. The association
28 may stop providing any further statements of account to a member if
29 collection activity begins by an attorney, or a collection agency that is
30 not acting as the association's managing agent, regarding that member's
31 unpaid account. After collection activity begins, a member may request
32 statements of account by written request to the attorney or collection
33 agency. Any request by a member for a statement of account after
34 collection activity begins by an attorney or a collection agency that is
35 not acting as the association's managing agent must be fulfilled by the
36 attorney or the collection agency responsible for the collection. The
37 statement of account provided by the attorney or collection agency
38 responsible for the collection shall include all amounts claimed to be
39 owing to resolve the delinquency through the date set forth in the
40 statement, including attorney fees and costs, regardless of whether such
41 amounts have been reduced to judgment.

42 M. An agent for the association may collect on behalf of the
43 association directly from a member the assessments and other amounts owed
44 by cash or check, by mailed or hand-delivered bank drafts, checks,
45 cashier's checks or money orders, by credit, charge or debit card or by

1 other electronic means. For any form of payment other than for cash or
2 for mailed or hand-delivered bank drafts, checks, cashier's checks or
3 money orders, the agent may charge a convenience fee to the member that is
4 approximately the amount charged to the agent by a third-party service
5 provider.

6 Sec. 3. Emergency

7 This act is an emergency measure that is necessary to preserve the
8 public peace, health or safety and is operative immediately as provided by
9 law.