

REFERENCE TITLE: homeowners' associations; statements of account

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

HB 2807

Introduced by
Representative Pawlik

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)

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

Section 1. Section 33-1256, Arizona Revised Statutes, is amended to read:

33-1256. Lien for assessments; priority; mechanics' and materialmen's liens; notice; applicability

A. The association has a lien on a unit for any assessment levied against that unit from the time the assessment becomes due. The association's lien for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments may be foreclosed in the same manner as a mortgage on real estate but may be foreclosed only if the owner has been delinquent in the payment of monies secured by the lien, excluding reasonable collection fees, reasonable attorney fees and charges for late payment of and costs incurred with respect to those assessments, for a period of one year or in the amount of \$1,200 or more, whichever occurs first, as determined on the date the action is filed. Fees, charges, late charges, monetary penalties and interest charged pursuant to section 33-1242, subsection A, paragraphs 10, 11 and 12, other than charges for late payment of assessments, are not enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment of the assessment becomes due. The association has a lien for fees, charges, late charges, other than charges for late payment of assessments, monetary penalties or interest charged pursuant to section 33-1242, subsection A, paragraphs 10, 11 and 12 after the entry of a judgment in a civil suit for those fees, charges, late charges, monetary penalties or interest from a court of competent jurisdiction and the recording of that judgment in the office of the county recorder as otherwise provided by law. The association's lien for monies other than for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments may not be foreclosed and is effective only on conveyance of any interest in the real property.

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

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

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

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

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

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

L. ~~Beginning January 1, 2020,~~ Except for condominiums that have fewer than fifty units and that do not contract with a third party to perform management services on behalf of the association, the association shall provide a statement of account in lieu of a periodic payment book to the unit owner with the same frequency that assessments are provided for in the declaration. The statement of account shall include the current account balance due and the immediately preceding ledger history. If the association offers the statement of account by electronic means, a unit owner may opt to receive the statement electronically. **A UNIT OWNER MAY OPT OUT OF RECEIVING THE STATEMENT OF ACCOUNT BY NOTIFYING THE ASSOCIATION.** The association may stop providing any further statements of account to a unit owner if collection activity begins by an attorney, or a collection agency that is not acting as the association's managing agent, regarding that unit owner's unpaid account. After collection activity begins, a unit owner may request statements of account by written request to the attorney or collection agency. Any request by a unit owner for a statement of account after collection activity begins by an attorney or a collection agency that is not acting as the association's managing agent must be fulfilled by the attorney or the collection agency responsible for the collection. The statement of account provided by the attorney or collection agency responsible for the collection shall include all amounts claimed to be owing to resolve the delinquency through the date set forth in the statement, including attorney fees and costs, regardless of whether such amounts have been reduced to judgment.

1 M. An agent for the association may collect on behalf of the
2 association directly from a unit owner the assessments and other amounts
3 owed by cash or check, by mailed or hand-delivered bank drafts, checks,
4 cashier's checks or money orders, by credit, charge or debit card or by
5 other electronic means. For any form of payment other than for cash or
6 for mailed or hand-delivered bank drafts, checks, cashier's checks or
7 money orders, the agent may charge a convenience fee to the unit owner
8 that is approximately the amount charged to the agent by a third-party
9 service provider.

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

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

14 33-1807. Lien for assessments; priority; mechanics' and
15 materialmen's liens; notice

16 A. The association has a lien on a unit for any assessment levied
17 against that unit from the time the assessment becomes due. The
18 association's lien for assessments, for charges for late payment of those
19 assessments, for reasonable collection fees and for reasonable attorney
20 fees and costs incurred with respect to those assessments may be
21 foreclosed in the same manner as a mortgage on real estate but may be
22 foreclosed only if the owner has been delinquent in the payment of monies
23 secured by the lien, excluding reasonable collection fees, reasonable
24 attorney fees and charges for late payment of and costs incurred with
25 respect to those assessments, for a period of one year or in the amount of
26 \$1,200 or more, whichever occurs first, as determined on the date the
27 action is filed. Fees, charges, late charges, monetary penalties and
28 interest charged pursuant to section 33-1803, other than charges for late
29 payment of assessments are not enforceable as assessments under this
30 section. If an assessment is payable in installments, the full amount of
31 the assessment is a lien from the time the first installment of the
32 assessment becomes due. The association has a lien for fees, charges,
33 late charges, other than charges for late payment of assessments, monetary
34 penalties or interest charged pursuant to section 33-1803 after the entry
35 of a judgment in a civil suit for those fees, charges, late charges,
36 monetary penalties or interest from a court of competent jurisdiction and
37 the recording of that judgment in the office of the county recorder as
38 otherwise provided by law. The association's lien for monies other than
39 for assessments, for charges for late payment of those assessments, for
40 reasonable collection fees and for reasonable attorney fees and costs
41 incurred with respect to those assessments may not be foreclosed and is
42 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
3 fees and costs incurred with respect to those assessments under this
4 section is prior to all other liens, interests and encumbrances on a unit
5 except:

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

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

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

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

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

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

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

30 G. This section does not prohibit:

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

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

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

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

1 J. Notwithstanding any provision in the community 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
4 shall be applied first to any unpaid assessments, unpaid charges for late
5 payment of those assessments, unpaid reasonable collection fees and unpaid
6 attorney fees and costs incurred with respect to those assessments, in
7 that order, with any remaining amounts applied next to other unpaid fees,
8 charges and monetary penalties or interest and late charges on any of
9 those amounts.

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

16 Your account is delinquent. If you do not bring your account
17 current or make arrangements that are approved by the
18 association to bring your account current within thirty days
19 after the date of this notice, your account will be turned
20 over for further collection proceedings. Such collection
21 proceedings could include bringing a foreclosure action
22 against your property.

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

28 L. ~~Beginning January 1, 2020,~~ Except for planned communities that
29 have fewer than fifty lots and that do not contract with a third party to
30 perform management services on behalf of the association, the association
31 shall provide a statement of account in lieu of a periodic payment book to
32 the member with the same frequency that assessments are provided for in
33 the declaration. The statement of account shall include the current
34 account balance due and the immediately preceding ledger history. If the
35 association offers the statement of account by electronic means, a member
36 may opt to receive the statement electronically. **A MEMBER MAY OPT OUT OF
37 RECEIVING THE STATEMENT OF ACCOUNT BY NOTIFYING THE ASSOCIATION.** The
38 association may stop providing any further statements of account to a
39 member if collection activity begins by an attorney, or a collection
40 agency that is not acting as the association's managing agent, regarding
41 that member's unpaid account. After collection activity begins, a member
42 may request statements of account by written request to the attorney or
43 collection agency. Any request by a member for a statement of account
44 after collection activity begins by an attorney or a collection agency
45 that is not acting as the association's managing agent must be fulfilled

1 by the attorney or the collection agency responsible for the collection.
2 The statement of account provided by the attorney or collection agency
3 responsible for the collection shall include all amounts claimed to be
4 owing to resolve the delinquency through the date set forth in the
5 statement, including attorney fees and costs, regardless of whether such
6 amounts have been reduced to judgment.

7 M. An agent for the association may collect on behalf of the
8 association directly from a member the assessments and other amounts owed
9 by cash or check, by mailed or hand-delivered bank drafts, checks,
10 cashier's checks or money orders, by credit, charge or debit card or by
11 other electronic means. For any form of payment other than for cash or
12 for mailed or hand-delivered bank drafts, checks, cashier's checks or
13 money orders, the agent may charge a convenience fee to the member that is
14 approximately the amount charged to the agent by a third-party service
15 provider.