

COMMITTEE ON GOVERNMENT
SENATE AMENDMENTS TO S.B. 1246
(Reference to printed bill)

Amendment instruction key:
[GREEN UNDERLINING IN BRACKETS] indicates text added to statute or previously enacted session law.
[Green underlining in brackets] indicates text added to new session law or text restoring existing law.
[GREEN STRIKEOUT IN BRACKETS] indicates new text removed from statute or previously enacted session law.
[Green strikeout in brackets] indicates text removed from existing statute, previously enacted session law or new session law.
<<Green carets>> indicate a section added to the bill.
<<Green strikeout in carets>> indicates a section removed from the bill.

1 The bill as proposed to be amended is reprinted as follows:

2 <<Section 1. Section 33-1202, Arizona Revised Statutes, is amended
3 to read:

4 33-1202. Definitions

5 in the condominium documents, unless specifically provided otherwise
6 or the context otherwise requires, and in this chapter:

7 1. "Affiliate of a declarant" means any person who controls, is
8 controlled by or is under common control with a declarant.

9 2. "Allocated interests" means the undivided interests in the
10 common elements, the common expense liability and votes in the association
11 allocated to each unit.

12 3. "Articles of incorporation" means the instrument by which an
13 incorporated association or unit owners' association is formed and
14 organized under this state's corporate statutes.

15 4. "Assessment" means the share of monies that is required for the
16 payment of common expenses and that the association assesses periodically
17 against each unit ASSOCIATION'S CHARGES THAT ARE APPLIED TO EACH UNIT
18 OWNER TO FUND THE ACTUAL OR ANTICIPATED COMMON EXPENSES BASED ON EACH UNIT
19 OWNER'S COMMON EXPENSE LIABILITY.

20 5. "Association" or "unit owners' association" means the unit
21 owners' association organized under section 33-1241.

22 6. "Board of directors" means the body, regardless of its name,
23 designated in the declaration and given general management powers to act
24 on behalf of the association.

25 7. "Bylaws" means the bylaws required by section 33-1246.

26 8. "Common elements" means all portions of a condominium other than
27 the units.

1 ~~9. "Common expense liability" means the liability for common~~
2 ~~expenses allocated to each unit pursuant to section SECTIONS 33-1217 or~~
3 ~~AND 33-1255.~~

4 ~~10. "Common expense lien" means the lien for assessments, charges~~
5 ~~for late payment of assessments OR INTEREST ON THOSE ASSESSMENTS if~~
6 ~~authorized in the declaration, reasonable collection fees and costs~~
7 ~~incurred or applied by the association and reasonable attorney fees and~~
8 ~~costs that are incurred IN ANY ACTION with respect to those assessments,~~
9 ~~if the attorney fees and costs are awarded by a court.~~

10 ~~11. "Common expenses" means expenditures made by or financial~~
11 ~~liabilities of the association, together with any allocations to reserves~~
12 ~~FOR THE MAINTENANCE, OPERATION, USE, UPGRADE, REPLACEMENT OR ACQUISITION~~
13 ~~OF THE COMMON ELEMENTS, UTILITIES OR OTHER SERVICES REQUIRED BY THE~~
14 ~~DECLARATION AND THE ASSOCIATION'S REASONABLE ADMINISTRATIVE AND~~
15 ~~OPERATIONAL EXPENSES AS AUTHORIZED IN THE DECLARATION.~~

16 ~~12. "Condominium" means real estate, portions of which are~~
17 ~~designated for separate ownership and the remainder of which is designated~~
18 ~~for common ownership solely by the owners of the separate portions. Real~~
19 ~~estate is not a condominium unless the undivided interests in the common~~
20 ~~elements are vested in the unit owners.~~

21 ~~13. "Condominium documents" means the declaration, bylaws, articles~~
22 ~~of incorporation, if any, and rules, if any.~~

23 ~~14. "Declarant" means any person or group of persons who reserves,~~
24 ~~is granted or succeeds to any special declarant right.~~

25 ~~15. "Declaration" means any instruments, however denominated, that~~
26 ~~create a condominium and any amendments to those instruments.~~

27 ~~16. "Development rights" means any right or combination of rights~~
28 ~~reserved by or granted to a declarant in the declaration to do any of the~~
29 ~~following:~~

30 ~~(a) Add real estate to a condominium.~~

31 ~~(b) Create easements, units, common elements or limited common~~
32 ~~elements within a condominium.~~

33 ~~(c) Subdivide units, convert units into common elements or convert~~
34 ~~common elements into units.~~

35 ~~(d) Withdraw real estate from a condominium.~~

36 ~~(e) Make the condominium part of a larger condominium or planned~~
37 ~~community.~~

38 ~~(f) Amend the declaration during any period of declarant control,~~
39 ~~pursuant to section 33-1243, subsection E, to comply with applicable law~~
40 ~~or to correct any error or inconsistency in the declaration, if the~~
41 ~~amendment does not adversely affect the rights of any unit owner.~~

42 ~~(g) Amend the declaration during any period of declarant control,~~
43 ~~pursuant to section 33-1243, subsection E, to comply with the rules or~~
44 ~~guidelines, in effect from time to time, of any governmental or~~
45 ~~quasi-governmental entity or federal corporation guaranteeing or insuring~~
46 ~~mortgage loans or governing transactions involving mortgage instruments.~~

- 1 ~~17. "Identifying number" means a symbol or address that identifies~~
2 ~~one unit in a condominium.~~
- 3 ~~18. "Leasehold condominium" means a condominium in which all or a~~
4 ~~portion of the real estate is subject to a lease the expiration or~~
5 ~~termination of which will terminate the condominium or reduce its size.~~
- 6 ~~19. "Limited common element" means a portion of the common elements~~
7 ~~specifically designated as a limited common element in the declaration and~~
8 ~~allocated by the declaration or by operation of section 33-1212, paragraph~~
9 ~~2 or 4 for the exclusive use of one or more but fewer than all of the~~
10 ~~units.~~
- 11 ~~20. "Person" means:~~
- 12 ~~(a) A natural person, corporation, business trust, estate, trust,~~
13 ~~partnership, association, joint venture, government, governmental~~
14 ~~subdivision or agency, or other legal or commercial entity.~~
- 15 ~~(b) In the case of a subdivision trust, as defined in section~~
16 ~~6-801, the beneficiary of the trust who holds the right to subdivide,~~
17 ~~develop or sell the real estate rather than the trust or trustee.~~
- 18 ~~21. "Real estate":~~
- 19 ~~(a) Means any legal, equitable, leasehold or other estate or~~
20 ~~interest in, over or under land, including structures, fixtures and other~~
21 ~~improvements and interests which by custom, usage or law pass with a~~
22 ~~conveyance of land though not described in the contract of sale or~~
23 ~~instrument of conveyance.~~
- 24 ~~(b) Includes parcels with or without upper or lower boundaries and~~
25 ~~spaces that may be filled with air or water.~~
- 26 ~~22. "Rules" means the provisions, if any, adopted pursuant to the~~
27 ~~declaration or bylaws governing maintenance and use of the units and~~
28 ~~common elements.~~
- 29 ~~23. "Special declarant rights" means any right or combination of~~
30 ~~rights reserved by or granted to a declarant in the declaration to do any~~
31 ~~of the following:~~
- 32 ~~(a) Construct improvements provided for in the declaration.~~
- 33 ~~(b) Exercise any development right.~~
- 34 ~~(c) Maintain sales offices, management offices, signs advertising~~
35 ~~the condominium, and models.~~
- 36 ~~(d) Use easements through the common elements for the purpose of~~
37 ~~making improvements within the condominium or within real estate that may~~
38 ~~be added to the condominium.~~
- 39 ~~(e) Appoint or remove any officer of the association or any board~~
40 ~~member during any period of declarant control.~~
- 41 ~~24. "Unit" means a portion of the condominium designated for~~
42 ~~separate ownership or occupancy.~~
- 43 ~~25. "Unit owner" means:~~
- 44 ~~(a) A declarant or other person who owns a unit or, unless~~
45 ~~otherwise provided in the lease, a lessee of a unit in a leasehold~~
46 ~~condominium whose lease expires simultaneously with any lease the~~
47 ~~expiration or termination of which will remove the unit from the~~

1 ~~condominium but does not include a person having an interest in a unit~~
2 ~~solely as security for an obligation.~~

3 ~~(b) In the case of a contract for conveyance, as defined in section~~
4 ~~33-741, of real property, the purchaser of the unit.~~

5 ~~26. "Unit owner expenses CHARGES":~~

6 ~~(a) Means fees, charges, late charges and monetary penalties or~~
7 ~~interest that is imposed pursuant to section 33-1242, subsection A,~~
8 ~~paragraphs 10, 11 and 12 OR THE CONDOMINIUM DOCUMENTS.~~

9 ~~(b) Does not include any amount that is included in a common~~
10 ~~expense lien.>>~~

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

13 33-1256. Common expense liens; priority; mechanics' and
14 materialmen's liens; notice; applicability

15 A. The association has a common expense lien on a unit for any
16 ~~[VALID]~~ assessment levied against that unit from the time the assessment
17 becomes due. The association's common expense lien may be foreclosed in
18 the same manner as a mortgage on real estate but may be foreclosed only if
19 the unit owner has been and remains delinquent in the payment of
20 ~~assessments,~~ ANY ASSESSMENT OR PORTION OF THE ASSESSMENT for a period of
21 ~~one year~~ EIGHTEEN MONTHS or in the amount of ~~\$1,200~~ \$10,000 or more,
22 whichever occurs first, as determined on the date the action is filed.
23 FOR ANY SPECIAL ASSESSMENT WITH AN INITIAL VALUE OF \$10,000 OR MORE, ONLY
24 THE EIGHTEEN-MONTH DELINQUENCY THRESHOLD APPLIES. The association board
25 of directors shall exercise reasonable efforts to communicate with the
26 unit owner and offer a reasonable payment plan before filing a foreclosure
27 action. If an assessment is payable in installments, the full amount of
28 the assessment is a COMMON EXPENSE lien from the time the first
29 installment of the assessment becomes due.

30 B. Notwithstanding any provision in the condominium documents, unit
31 owner ~~[expenses]~~ ~~[CHARGES]~~ are not enforceable as common expense liens
32 under this section. The association has a JUDGMENT lien for unit owner
33 ~~[expenses]~~ ~~[CHARGES]~~ after the entry of a judgment in a civil suit for
34 those unit owner ~~[expenses]~~ ~~[CHARGES]~~ from a court of competent
35 jurisdiction and the recording of that judgment in the office of the
36 county recorder as otherwise provided by law. The association's judgment
37 lien for unit owner ~~[expenses]~~ ~~[CHARGES]~~ may not be foreclosed and is
38 effective only on conveyance of any interest in the real property.

39 C. A common expense lien under this section is prior to all other
40 liens, interests and encumbrances on a unit 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
45 the unit recorded before the COMMON EXPENSE lien arising pursuant to
46 subsection A of this section or a recorded first deed of trust on the
47 unit.

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

3 D. Subsection C of this section does not affect the priority of
4 mechanics' or materialmen's liens. The common expense lien under this
5 section is not subject to chapter 8 of this title.

6 E. Unless the declaration otherwise provides, if two or more
7 associations have common expense liens created at any time on the same
8 real estate, those COMMON EXPENSE liens have equal priority.

9 F. Recording the declaration constitutes record notice and
10 perfection of the common expense lien. Further recordation of any claim
11 of common expense lien under this section is not required.

12 G. A common expense lien is extinguished unless proceedings to
13 enforce the COMMON EXPENSE lien are instituted within six years after the
14 full amount of the assessments becomes due.

15 H. This section does not prohibit:

16 1. Actions to recover sums for which subsection A or B of this
17 section creates a ~~[PERFECTED AND OTHERWISE EFFECTIVE]~~ lien.

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

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

21 J. The association on written request 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 liens prescribed by
24 subsection A or B of this section against the unit. The statement shall
25 be furnished within ten days after receipt of the request. The statement
26 is binding on the association if the statement is requested by an escrow
27 agency that is licensed pursuant to title 6, chapter 7. Failure to
28 provide the statement to the escrow agent within the time provided for in
29 this subsection extinguishes any lien for any unpaid assessment then due.

30 K. Notwithstanding any provision in the condominium documents or in
31 any contract between the association and a management company or any other
32 agent of the association, including any agreement or contract with any
33 attorney, unless the unit owner directs otherwise, all payments received
34 on a unit owner's account shall be applied first to any unpaid
35 assessments, due but not delinquent assessments, unpaid charges for late
36 payment of ~~[OR INTEREST ON]~~ those assessments if authorized in the
37 declaration, unpaid reasonable collection fees and costs incurred or
38 applied by the association and unpaid attorney fees and costs incurred ~~[IN~~
39 ~~ANY ACTION]~~ with respect to those assessments if awarded by a court, in
40 that order, with any remaining amounts applied next to other unpaid fees,
41 charges and monetary penalties or interest [and late charges] on any of
42 those amounts.

43 L. For a delinquent account for unpaid common expense liens, the
44 association shall [provide] ~~[DELIVER]~~ the following written notice to the
45 unit owner at the unit owner's address [as provided to the association]
46 ~~[OF RECORD]~~ at least thirty days before authorizing an attorney, or a

1 collection agency that is not acting as the association's managing agent,
2 to begin collection activity on behalf of the association:

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

10 The notice shall be in ~~boldfaced~~ BOLD-FACED type or all capital letters
11 and shall include the contact information for the person that the unit
12 owner may contact to discuss payment. The notice shall be sent by
13 certified mail, return receipt requested[, and may be included within
14 other correspondence sent to the unit owner regarding the unit owner's
15 delinquent account]. ~~[IF THE ASSOCIATION DOES NOT COMPLY WITH THE NOTICE
16 REQUIREMENTS PRESCRIBED BY THIS SUBSECTION, ALL SUBSEQUENT COLLECTION
17 COSTS INCURRED BY THE ASSOCIATION ARE UNCOLLECTIBLE AGAINST THE UNIT
18 OWNER.]~~

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

42 ~~[M. THE ASSOCIATION SHALL MAINTAIN A TRUE AND ACCURATE RECORD OF
43 ACCOUNTS FOR EACH UNIT IN THE CONDOMINIUM. THESE ACCOUNTS SHALL
44 DISTINGUISH BETWEEN CHARGES THAT ARE INCLUDED IN THE COMMON EXPENSE LIEN
45 AND OTHER UNIT OWNER CHARGES. WITH RESPECT TO THE ACCOUNTS:~~

46 ~~1. THE ASSOCIATION MAY USE ANY PROCESS OR TOOL IT DEEMS APPROPRIATE
47 FOR THE BILLING OF MONEY OWED ON THE UNIT OWNER'S ACCOUNTS, INCLUDING THE~~

~~1 USE OF PERIODIC PAYMENT BOOKS. THE ASSOCIATION SHALL PROVIDE EITHER
2 SECURE ONLINE VIEWING ACCESS TO THE INDIVIDUAL UNIT OWNER'S ACCOUNT OR, ON
3 REQUEST BY THE UNIT OWNER, AN ELECTRONIC COPY OF THE STATEMENT OF ACCOUNT
4 FOR THE CURRENT FISCAL YEAR, WITHOUT CHARGE.~~

~~5 2. THE ASSOCIATION OR ITS AGENTS SHALL MAKE GOOD FAITH EFFORTS TO
6 EVALUATE AND RESOLVE ANY CHARGES ON THE UNIT OWNER'S ACCOUNT THAT ARE
7 CONTESTED BY THE UNIT OWNER, INCLUDING A REQUEST FOR REVIEW AND CORRECTION
8 BY THE BOARD OF DIRECTORS, IF NECESSARY.~~

~~9 3. ANY CHARGE ASSESSED IN VIOLATION OF THE DECLARATION OR THIS
10 CHAPTER ON EITHER THE COMMON EXPENSE LIEN OR THE UNIT OWNER CHARGES IS
11 INVALID AND UNENFORCEABLE.~~

~~12 4. ANY CONTESTED CHARGE FROM THE UNIT OWNER'S STATEMENT OF ACCOUNT
13 MAY BE CHALLENGED IN A COURT OF COMPETENT JURISDICTION IN ANY ACTION BY
14 THE ASSOCIATION TO ENFORCE OR APPLY THE COMMON EXPENSE LIEN OR JUDGMENT
15 LIEN. IF THE COURT FINDS THE CHARGE TO BE INVALID, THE CHARGE AND ANY
16 SUBSEQUENT RELATED COLLECTION COST OR FEES THAT ARE INCLUDED IN THE COMMON
17 EXPENSE LIEN OR JUDGMENT LIEN BASED ON THAT CHARGE SHALL BE EXTINGUISHED
18 AND EXCLUDED FROM THE COMMON EXPENSE LIEN OR JUDGMENT LIEN BY ORDER OF THE
19 COURT.]~~

20 N. An agent for the association may collect on behalf of the
21 association directly from a unit owner the assessments and other amounts
22 owed by cash or check, by mailed or hand-delivered bank drafts, checks,
23 cashier's checks or money orders, by credit, charge or debit card or by
24 other electronic means. For any form of payment other than for cash or
25 for mailed or hand-delivered bank drafts, checks, cashier's checks or
26 money orders, the agent may charge a convenience fee to the unit owner
27 that is approximately the amount charged to the agent by a third-party
28 service provider.

29 O. The association may not transfer ownership or control of debt
30 for common expense liens or unit owner [expenses] ~~[CHARGES]~~.

31 ~~P.~~ P. This section does not apply to timeshare plans or
32 associations that are subject to chapter 20 of this title.

33 ~~<<Sec. 3. Section 33-1802, Arizona Revised Statutes, is amended to
34 read:~~

35 ~~33-1802. Definitions~~

36 ~~In this chapter and in the community documents, unless the context
37 otherwise requires:~~

38 ~~1. "ALLOCATED INTERESTS" MEANS THE COMMON EXPENSE LIABILITY AND
39 VOTING RIGHTS THAT ARE ALLOCATED TO EACH MEMBER OF THE ASSOCIATION.~~

40 ~~2. "ASSESSMENT" MEANS THE ASSOCIATION'S CHARGES THAT ARE APPLIED TO
41 EACH MEMBER TO FUND THE ACTUAL OR ANTICIPATED COMMON EXPENSES BASED ON
42 EACH MEMBER'S COMMON EXPENSE LIABILITY.~~

43 ~~1. 3. "Association":~~

44 ~~(a) Means a nonprofit corporation or unincorporated association of
45 owners that is created pursuant to a declaration to own and operate
46 portions of a planned community and that has the power under the
47 declaration to assess association members to pay the costs and expenses~~

1 ~~incurred in the performance of the association's obligations under the~~
2 ~~declaration.~~

3 ~~(b) Does not include a nonprofit corporation or unincorporated~~
4 ~~association of owners that is created or incorporated before January 1,~~
5 ~~1974 and that does not have authority to enforce covenants, conditions or~~
6 ~~restrictions related to the use, occupancy or appearance of the separately~~
7 ~~owned lots, parcels or units in a real estate development, unless the~~
8 ~~nonprofit corporation or unincorporated association of owners elects to be~~
9 ~~subject to this chapter pursuant to section 33-1801, subsection D.~~

10 ~~4. "COMMON EXPENSE LIABILITY" MEANS THE SHARE OR ASSIGNMENT OF~~
11 ~~COMMON EXPENSES THAT ARE ALLOCATED TO EACH MEMBER BY THE DECLARATION.~~

12 ~~2. 5. "Common expense lien" means the lien for assessments,~~
13 ~~charges for late payment of assessments OR INTEREST ON THOSE ASSESSMENTS~~
14 ~~if authorized in the declaration, reasonable collection fees and costs~~
15 ~~THAT ARE incurred or applied by the association and reasonable attorney~~
16 ~~fees and costs that are incurred IN ANY ACTION with respect to those~~
17 ~~assessments, if the attorney fees and costs are awarded by a court.~~

18 ~~6. "COMMON EXPENSES" MEANS EXPENDITURES MADE BY OR FINANCIAL~~
19 ~~LIABILITIES OF THE ASSOCIATION FOR THE MAINTENANCE, OPERATION, USE,~~
20 ~~UPGRADE, REPLACEMENT OR ACQUISITION OF THE COMMON PROPERTY, THE~~
21 ~~MAINTENANCE OF MEMBER PROPERTY OR UTILITIES OR OTHER SERVICES REQUIRED BY~~
22 ~~THE DECLARATION AND THE ASSOCIATION'S REASONABLE ADMINISTRATIVE AND~~
23 ~~OPERATIONAL EXPENSES AS AUTHORIZED IN THE DECLARATION.~~

24 ~~3. 7. "Community documents" means the declaration, bylaws,~~
25 ~~articles of incorporation, if any, and rules, if any.~~

26 ~~4. 8. "Declaration" means any instruments, however denominated,~~
27 ~~that establish a planned community and any amendment to those instruments.~~

28 ~~5. 9. "Member expenses CHARGES":~~

29 ~~(a) Means fees, charges, late charges and monetary penalties or~~
30 ~~interest THAT ARE IMPOSED PURSUANT TO THE COMMUNITY DOCUMENTS.~~

31 ~~(b) Does not include any amount that is included in a common~~
32 ~~expense lien.~~

33 ~~6. 10. "Planned community":~~

34 ~~(a) Means a real estate development that includes real estate owned~~
35 ~~and operated by or real estate on which an easement to maintain roadways~~
36 ~~or a covenant to maintain roadways is held by a nonprofit corporation or~~
37 ~~unincorporated association of owners, that is created for the purpose of~~
38 ~~managing, maintaining or improving TO MANAGE, MAINTAIN OR IMPROVE the~~
39 ~~property and in which the declaration expressly states both that the~~
40 ~~owners of separately owned lots, parcels or units are mandatory members~~
41 ~~and that the owners are required to pay assessments to the association for~~
42 ~~these purposes.~~

- 1 ~~(b) Does not include any of the following:~~
2 ~~(i) A timeshare plan or a timeshare association that is governed by~~
3 ~~chapter 20 of this title.~~
4 ~~(ii) A condominium that is governed by chapter 9 of this title.~~
5 ~~(iii) A real estate development that is not managed or maintained~~
6 ~~by an association.>>~~

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

9 33-1807. Common expense liens; priority; mechanics' and
10 materialmen's liens; notice

11 A. The association has a common expense lien on a property for any
12 ~~[VALID]~~ assessment levied against that property from the time the
13 assessment becomes due. The association's common expense lien 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 and remains delinquent in the
16 payment of any assessment or portion of the assessment for a period of
17 eighteen months or in the amount of \$10,000 or more, whichever occurs
18 first, as determined on the date the action is filed. **FOR ANY SPECIAL**
19 **ASSESSMENT WITH AN INITIAL VALUE OF \$10,000 OR MORE, ONLY THE**
20 **EIGHTEEN-MONTH DELINQUENCY THRESHOLD APPLIES.** The association board of
21 directors shall exercise reasonable efforts to communicate with the member
22 and offer a reasonable payment plan before filing a foreclosure
23 action. If an assessment is payable in installments, the full amount of
24 the assessment is a common expense lien from the time the first
25 installment of the assessment becomes due.

26 B. Notwithstanding any provision in the community documents, member
27 ~~[expenses]~~ ~~[CHARGES]~~ are not enforceable as common expense liens under
28 this section. The association has a judgment lien for member ~~[expenses]~~
29 ~~[CHARGES]~~ after the entry of a judgment in a civil suit for those member
30 ~~[expenses]~~ ~~[CHARGES]~~ from a court of competent jurisdiction and the
31 recording of that judgment in the office of the county recorder as
32 otherwise provided by law. The association's judgment lien for member
33 ~~[expenses]~~ ~~[CHARGES]~~ may not be foreclosed and is effective only on
34 conveyance of any interest in the real property.

35 C. A common expense lien under this section is prior to all other
36 liens, interests and encumbrances on a property except:

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

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

44 3. Liens for real estate taxes and other governmental assessments
45 or charges against the property.

1 D. Subsection C of this section does not affect the priority of
2 mechanics' or materialmen's liens. The common expense lien under this
3 section is not subject to chapter 8 of this title.

4 E. Unless the declaration otherwise provides, if two or more
5 associations have common expense liens created at any time on the same
6 real estate those common expense liens have equal priority.

7 F. Recording the declaration constitutes record notice and
8 perfection of the common expense lien. Further recordation of any claim
9 of common expense lien under this section is not required.

10 G. A common expense lien is extinguished unless proceedings to
11 enforce the common expense lien are instituted within six years after the
12 full amount of the assessment becomes due.

13 H. This section does not prohibit:

14 1. Actions to recover amounts for which subsection A or B of this
15 section creates a ~~[PERFECTED AND OTHERWISE EFFECTIVE]~~ lien.

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

17 I. A judgment or decree in any action brought under this section
18 may include costs and reasonable attorney fees for the prevailing party.

19 J. On written request, the association shall furnish to a
20 lienholder, escrow agent, member or person designated by a member a
21 statement setting forth the amount of any unpaid liens prescribed by
22 subsection A or B of this section against the property. The association
23 shall furnish the statement within ten days after receipt of the request.
24 The statement is binding on the association if the statement is requested
25 by an escrow agency that is licensed pursuant to title 6, chapter 7.
26 Failure to provide the statement to the escrow agent within the time
27 provided for in this subsection extinguishes any lien for any unpaid
28 assessment then due.

29 K. Notwithstanding any provision in the community documents or in
30 any contract between the association and a management company or any other
31 agent of the association, including any agreement or contract with any
32 attorney, unless the member directs otherwise, all payments received on a
33 member's account shall be applied first to any unpaid assessments, due but
34 not delinquent assessments, unpaid charges for late payment of ~~[OR~~
35 ~~INTEREST ON]~~ those assessments if authorized in the declaration, unpaid
36 reasonable collection fees and costs incurred or applied by the
37 association, and unpaid attorney fees and costs incurred ~~[IN ANY ACTION]~~
38 with respect to those assessments if awarded by a court, in that order,
39 with any remaining amounts applied next to other unpaid fees ~~[.]~~ ~~[AND]~~
40 charges and monetary penalties or interest ~~[and late charges]~~ on any of
41 those amounts.

42 L. For a delinquent account for unpaid common expense liens, the
43 association shall ~~[provide]~~ ~~[DELIVER]~~ the following written notice to the
44 member at the member's address ~~[as provided to the association]~~ ~~[OF~~
45 ~~RECORD]~~ at least thirty days before authorizing an attorney, or a
46 collection agency that is not acting as the association's managing agent,
47 to begin collection activity on behalf of the association:

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

8 The notice shall be in bold-faced type or all capital letters and shall
9 include the contact information for the person that the member may contact
10 to discuss payment. The notice shall be sent by certified mail, return
11 receipt requested[, and may be included within other correspondence sent
12 to the member regarding the member's delinquent account]. ~~[IF THE
13 ASSOCIATION DOES NOT COMPLY WITH THE NOTICE REQUIREMENTS PRESCRIBED BY
14 THIS SUBSECTION, ALL SUBSEQUENT COLLECTION COSTS ARE UNCOLLECTIBLE AGAINST
15 THE MEMBER.]~~

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

38 ~~[M. THE ASSOCIATION SHALL MAINTAIN A TRUE AND ACCURATE RECORD OF
39 ACCOUNTS FOR EACH PROPERTY IN THE PLANNED COMMUNITY. THESE ACCOUNTS SHALL
40 DISTINGUISH BETWEEN CHARGES THAT ARE INCLUDED IN THE COMMON EXPENSE LIEN
41 AND OTHER MEMBER CHARGES. WITH RESPECT TO THE ACCOUNTS:~~

42 ~~1. THE ASSOCIATION MAY USE ANY PROCESS OR TOOL IT DEEMS APPROPRIATE
43 FOR THE BILLING OF MONEY OWED ON THE MEMBER'S ACCOUNTS, INCLUDING THE USE
44 OF PERIODIC PAYMENT BOOKS. THE ASSOCIATION SHALL PROVIDE EITHER SECURE
45 ONLINE VIEWING ACCESS TO THE INDIVIDUAL MEMBER'S ACCOUNT OR, ON REQUEST BY
46 THE MEMBER, AN ELECTRONIC COPY OF THE STATEMENT OF ACCOUNT FOR THE CURRENT
47 FISCAL YEAR, WITHOUT CHARGE.~~

1 ~~2. THE ASSOCIATION OR ITS AGENTS SHALL MAKE GOOD FAITH EFFORTS TO~~
2 ~~EVALUATE AND RESOLVE ANY CHARGES ON THE MEMBER'S ACCOUNT THAT ARE~~
3 ~~CONTESTED BY THE MEMBER, INCLUDING A REQUEST FOR REVIEW AND CORRECTION BY~~
4 ~~THE BOARD OF DIRECTORS, IF NECESSARY.~~

5 ~~3. ANY CHARGE ASSESSED IN VIOLATION OF THE DECLARATION OR THIS~~
6 ~~CHAPTER ON EITHER THE COMMON EXPENSE LIEN OR THE MEMBER CHARGES IS INVALID~~
7 ~~AND UNENFORCEABLE.~~

8 ~~4. ANY CONTESTED CHARGE FROM THE MEMBER'S STATEMENT OF ACCOUNT MAY~~
9 ~~BE CHALLENGED IN A COURT OF COMPETENT JURISDICTION IN ANY ACTION BY THE~~
10 ~~ASSOCIATION TO ENFORCE OR APPLY THE COMMON EXPENSE LIEN OR JUDGMENT LIEN.~~
11 ~~IF THE COURT FINDS THE CHARGE TO BE INVALID, THE CHARGE AND ANY SUBSEQUENT~~
12 ~~RELATED COLLECTION COST OR FEES THAT ARE INCLUDED IN THE COMMON EXPENSE~~
13 ~~LIEN OR JUDGMENT LIEN BASED ON THAT CHARGE SHALL BE EXTINGUISHED AND~~
14 ~~EXCLUDED FROM THE COMMON EXPENSE LIEN OR JUDGMENT LIEN BY ORDER OF THE~~
15 ~~COURT.]~~

16 N. An agent for the association may collect on behalf of the
17 association directly from a member the assessments and other amounts owed
18 by cash or check, by mailed or hand-delivered bank drafts, checks,
19 cashier's checks or money orders, by credit, charge or debit card or by
20 other electronic means. For any form of payment other than for cash or
21 for mailed or hand-delivered bank drafts, checks, cashier's checks or
22 money orders, the agent may charge a convenience fee to the member that is
23 approximately the amount charged to the agent by a third-party service
24 provider.

25 O. The association may not transfer ownership or control of debt
26 for common expense liens or member [expenses] ~~[CHARGES]~~.

27 Enroll and engross to conform
28 Amend title to conform

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