

REFERENCE TITLE: homeowners' associations; privately owned amenities

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2413

Introduced by
Representative Tobin, Senator O'Halleran

AN ACT

AMENDING SECTION 33-1807, ARIZONA REVISED STATUTES; RELATING TO 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 33-1807, Arizona Revised Statutes, is amended to
3 read:

4 33-1807. Lien for assessments: priority: mechanics' and
5 materialmen's liens

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

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

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

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

44 C. Subsection B of this section does not affect the priority of
45 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 real
5 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 fees
9 and costs incurred with respect to those assessments. Further recordation of
10 any claim of lien for assessments under this section is not required.

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

14 G. This section does not prohibit:

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

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

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

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

29 J. The association shall record in the office of the county recorder
30 in the county in which the planned community is located a notice stating the
31 name of the association or designated agent or management company for the
32 association, the address for the association and the telephone number of the
33 association or its designated agent or management company. The notice shall
34 include the name of the planned community, the date of the recording and the
35 recorded instrument number or book and page for the main document that
36 constitutes the declaration. If an association's address, designated agent
37 or management company changes, the association shall amend its notice or
38 record a new notice within ninety days after the change.

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

1 with any remaining amounts applied next to other unpaid fees, charges and
2 monetary penalties or interest and late charges on any of those amounts.
3 L. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS, AN
4 ASSOCIATION SHALL NOT IMPOSE AN ASSESSMENT OR OTHER MANDATORY FEE FOR THE
5 CONSTRUCTION, USE, OPERATION OR MAINTENANCE OF IMPROVEMENTS, FACILITIES OR
6 REAL ESTATE THAT IS NOT OWNED BY THE ASSOCIATION AND OPERATED FOR THE BENEFIT
7 OF THE MEMBERS OF THE PLANNED COMMUNITY. AN ASSESSMENT OR PORTION OF AN
8 ASSESSMENT THAT IS IMPOSED IN VIOLATION OF THIS SUBSECTION IS INVALID AND
9 UNENFORCEABLE AND DOES NOT CONSTITUTE A DEBT OF THE MEMBER OR A LIEN AGAINST
10 THE MEMBER'S PROPERTY.