Fifty-seventh Legislature
First Regular Session

COMMITTEE ON COMMERCE
HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1494
(Reference to Senate engrossed 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.

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

Section 1. Section 33-1807, Arizona Revised Statutes, is amended to read:

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

A. The association has a common expense lien on a property for any assessment levied against that property from the time the assessment becomes due. The association's common expense lien may be foreclosed in the same manner as a mortgage on real estate but may be foreclosed only if the owner has been and remains delinquent in the payment of [~~assessments~~] [ANY ASSESSMENT]~~,~~ [OR PORTION OF THE ASSESSMENT] for a period of ~~one year~~ TWO YEARS or in the amount of ~~$1,200~~ $10,000 or more, whichever occurs first, as determined on the date the action is filed. The association board of directors shall exercise reasonable efforts to communicate with the member and offer a reasonable payment plan before filing a foreclosure action. If an assessment is payable in installments, the full amount of the assessment is a COMMON EXPENSE lien from the time the first installment of the assessment becomes due.

B. Notwithstanding any provision in the community documents, member expenses are not enforceable as common expense liens under this ~~subsection~~ SECTION. The association has a JUDGMENT lien for member expenses after the entry of a judgment in a civil suit for those member expenses 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 judgment lien for member expenses may not be foreclosed and is effective only on conveyance of any interest in the real property.

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

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

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

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

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

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

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

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

H. This section does not prohibit:

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

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

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

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

K. Notwithstanding any provision in the community documents or in any contract between the association and a management company or any other agent of the association, including any agreement or contract with any attorney, unless the member directs otherwise, all payments received on a member's account shall be applied first to any unpaid assessments, due but not delinquent assessments, unpaid charges for late payment of those assessments if authorized in the declaration, unpaid reasonable collection fees and costs incurred or applied by the association, and unpaid attorney fees and costs incurred with respect to those assessments if awarded by a court, in that order, with any remaining amounts applied next to other unpaid fees, charges and monetary penalties or interest and late charges on any of those amounts.

L. For a delinquent account for unpaid common expense liens, the association shall provide the following written notice to the member at the member'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~~ BOLD-FACED type or all capital letters and shall include the contact information for the person that the member 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 member regarding the member's delinquent account.

M. Except for planned communities that have fewer than fifty lots 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 member 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 member may opt to receive the statement electronically. The association may stop providing any further statements of account to a member if collection activity begins by an attorney, or a collection agency that is not acting as the association's managing agent, regarding that member's unpaid account. After collection activity begins, a member may request statements of account by written request to the attorney or collection agency. Any request by a member 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.

N. An agent for the association may collect on behalf of the association directly from a member the assessments and other amounts owed by cash or check, by mailed or hand-delivered bank drafts, checks, cashier's checks or money orders, by credit, charge or debit card or by other electronic means. For any form of payment other than for cash or for mailed or hand-delivered bank drafts, checks, cashier's checks or money orders, the agent may charge a convenience fee to the member that is approximately the amount charged to the agent by a third-party service provider. The association may not transfer ownership or control of debt for common expense liens or member expenses.

Enroll and engross to conform
Amend title to conform
And, as so amended, it do pass

JEFF WENINGER
CHAIRMAN

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