

33-1802. Definitions

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

1. "ASSESSMENT" AS USED IN THIS CHAPTER MEANS EACH MEMBERS PRORATED SHARE OF ALL COST NECESSARY TO PROVIDE FOR THE ASSOCIATION'S OPERATING COST AND LONG TERM MAINTENANCE AND UPGRADE COST OF THE COMMON AREAS AND FACILITIES. IT DOES NOT INCLUDE ANY EXPENSE OR FEES APPLICABLE ONLY TO ANY SINGLE MEMBER.

2. "Association" means a nonprofit corporation or unincorporated association of owners that is created pursuant to a declaration to own and operate portions of a planned community and that has the power under the declaration to assess association members to pay the costs and expenses incurred in the performance of the association's obligations under the declaration.

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

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

5. "Planned community" means a real estate development that includes real estate owned and operated by or real estate on which an easement to maintain roadways or a covenant to maintain roadways is held by a nonprofit corporation or unincorporated association of owners, that is created for the purpose of managing, maintaining or improving the property and in which the owners of separately owned lots, parcels or units are mandatory members and are required to pay assessments to the association for these purposes. Planned community does not include a timeshare plan or a timeshare association that is governed by chapter 20 of this title or a condominium that is governed by chapter 9 of this title.

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

A The association has a lien on a ~~unit~~ PROPERTY for any REGULAR AND SPECIAL assessment levied against that ~~unit~~ PROPERTY 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 ENFORCED AND DISPOSITIONED BY JUDGEMENT FOR GARNISHMENT OF MONEY OR PROPERTY IN ACCORDANCE WITH TITLE 12 CHAPTER 9 ARTICLE 4 THEN FAILING TOTAL DISPOSITION, foreclosed IN ACCORDANCE WITH CHAPTER 6 ARTICLE 2 OF THIS TITLE AND TITLE 12 CHAPTER 9 SECTION 1566, BY ACTION OF A COURT OF COMPETANT JURISDICTION. ~~in the same manner as a mortgage on real estate. FORECLOSURE PROCEEDING MAY COMMENSE~~ 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 cost incurred with respect to those assessments, for a period of one year or in the amount of one thousand two hundred dollars or more, whichever occurs first. ~~Fees, charges, late charges, monetary penalties, and interest charged pursuant to section 33-1803, 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'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 COST INCURRED WITH RESPECT TO THOSE ASSESSMENTS MAY NOT BE FORECLOSED AND IS EFFECTIVE ONLY ON CONVEYANCE OF ANY INTEREST IN THE REAL PROPERTY.

B 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 33-1803 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, AND ARE NOT ENFORCEABLE AS ASSESSMENTS UNDER SUBSECTION A. ~~The association's lien for monies other than for assessments, for charges for late payment, 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.~~

CB. 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 PROPERTY except:

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

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

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

DE. Subsection BC of this section does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the association. The ASSESSMENT lien under this section is not subject to chapter 8 of this title.

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

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

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

**HG.** This section does not prohibit:

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

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

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

**JF.** On written request, the association shall furnish to a lienholder, escrow agent, unit owner or person designated by a unit owner a statement setting forth the amount of any unpaid assessment **AND NON-ASSESSMENT LIENS** against the unit. The association shall furnish the statement within ten ~~days~~ **calendar days** after receipt of the request, and the statement is binding on the association, the board of directors and every unit owner 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 shall extinguish any **ASSOCIATION** lien ~~for any unpaid assessment~~ then due.

**KJ.** Notwithstanding any provision in the community documents or in any contract between the association and a management company, **OR OTHER AGENT OF THE ASSOCIATION**, unless the member directs otherwise, all payments received on a member's account shall be applied first to any unpaid assessments, **TO for** unpaid charges for late payment **OR INTEREST** of those assessments, **TO for** reasonable collection fees and **TO for unpaid-REASONABLE** attorney fees and costs incurred with respect to those assessments, 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. **THE ASSOCIATION MAY NOT REFUSE TO ACCEPT PARTIAL PAYMENTS FROM THE MEMBER FOR EITHER OF THE LIENS OR CHARGES DESCRIBED IN SUBSECTION A OR B.**