

BILL ANALYSIS

Senate Research Center

H.B. 1228
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Intergovernmental Relations
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, a property owners' association may foreclose on real property for the property owner's failure to pay association assessments. In many instances, the foreclosed property is encumbered with other liens that are not disposed of when the foreclosure sale occurs because there is no requirement to notify the lienholder of the foreclosure or the sale. H.B. 1228 sets forth provisions relating to notice and providing the lienholder with an opportunity to cure a delinquency before a foreclosure sale.

H.B. 1228 amends current law relating to foreclosure of a property owners' association assessment lien.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 12, Property Code, by adding Section 12.0171, as follows:

Sec. 12.0171. AFFIDAVIT AS RELEASE OF ASSESSMENT LIEN. (a) Authorizes a property owner whose property is subject to a recorded notice of a property owners' assessment lien to, at any time, file an affidavit that substantially complies with Subsection (e) in the real property records of the county in which the lien notice is recorded.

(b) Provides that, subject to Subsection (c) and except as provided by Subsection (d), an affidavit filed under Subsection (a) serves as a release of record of the property owners' association assessment lien referenced in the affidavit.

(c) Authorizes a bona fide purchaser or a mortgagee for value or a successor or assign of a bona fide purchaser or mortgagee for value to rely conclusively on an affidavit filed under Subsection (a) if included with the affidavit is evidence that:

(1) the property owner sent a letter and a copy of the affidavit, without attachments and before execution of the affidavit, notifying the property owners' association of the owner's intent to file the affidavit; and

(2) 30 or more days before the affidavit was filed, the letter and the affidavit were sent to the property owners' association by registered or certified mail, return receipt requested, to the address provided in the management certificate recorded under Section 209.004 (Management Certificates).

(d) Provides that an affidavit filed under Subsection (a) does not serve as a release of record of a property owners' association assessment lien if the association files a contradicting affidavit in the real property records of the county in which the affidavit is filed asserting that:

(1) the affidavit filed by the owner is untrue; or

(2) another reason exists as to why the assessment lien attaches to the owner's property.

(e) Requires that an affidavit filed under Subsection (a) be in substantially a certain form. Sets forth the form for an affidavit filed under Subsection (a).

(f) Provides that a person who knowingly causes an affidavit with false information to be executed and recorded under this section is liable for the penalties for filing a false affidavit, including the penalties for the commission of an offense under Section 37.02 (Perjury), Penal Code. Authorizes the attorney general to sue to collect the penalty. Provides that a person who negligently causes an affidavit with false information to be executed and recorded under this section is liable to a party injured by the affidavit for actual damages. Authorizes the court, if the attorney general or an injured party bringing suit substantially prevails in an action under this subsection, to award reasonable attorney's fees and court costs to the prevailing party.

SECTION 2. Amends Chapter 209, Property Code, by adding Section 209.0091, as follows:

Sec. 209.0091. PREREQUISITES TO FORECLOSURE: NOTICE AND OPPORTUNITY TO CURE FOR CERTAIN OTHER LIENHOLDERS. (a) Prohibits a property owners' association from foreclosing a property owners' association assessment lien on real property by giving notice of sale under Section 51.002 (Sale of Real Property Under Contract Lien) or commencing a judicial foreclosure action unless the association has:

(1) provided written notice of the total amount of the delinquency giving rise to the foreclosure to any other holder of a lien of record on the property whose lien is inferior or subordinate to the association's lien and is evidenced by a deed of trust; and

(2) provided the recipient of the notice an opportunity to cure the delinquency before the 61st day after the date the recipient receives the notice.

(b) Requires that notice under this section be sent by certified mail, return receipt requested, to the address for the lienholder shown in the deed records relating to the property that is subject to the property owners' association assessment lien.

SECTION 3. Provides that the change in law made by this Act applies only to a notice of sale given under Section 51.002, Property Code, on or after the effective date of this Act or a judicial foreclosure action commenced on or after the effective date of this Act.

SECTION 4. Effective date: September 1, 2011.