

## **BILL ANALYSIS**

Senate Research Center  
82R29230 AJA-D

C.S.H.B. 1228  
By: Dutton (West)  
Intergovernmental Relations  
5/19/2011  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

C.S.H.B. 1228 amends current law relating to payment and collection of assessments and other charges owed to a property owners' association and foreclosure of a property owners' association assessment lien.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Supreme Court of Texas in SECTION 2 (Section 209.0092, Property Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 209.003, Property Code, by adding Subsection (e), to provide that Section 209.0062 does not apply to a property owners' association that is a mixed-use master association that existed before January 1, 1974, and that does not have the authority under a dedicatory instrument and other governing document to impose fines.

SECTION 2. Amends Chapter 209, Property Code by adding Sections 209.0062, 209.0063, 209.0064, 209.0091, 209.0092, 209.0093, and 209.0094, as follows:

Sec. 209.0062. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN ASSESSMENTS. (a) Requires a property owners' association (association) composed of more than 14 lots to adopt reasonable guidelines to establish an alternative payment schedule by which an owner may make partial payments to the association for delinquent regular or special assessments or any other amount owed to the association without accruing additional monetary penalties. Provides that, for purposes of this section, monetary penalties do not include reasonable costs associated with administering the payment plan or interest.

(b) Provides that the minimum term for a payment plan offered by an association is three months.

(c) Provides that an association is not required to allow a payment plan for any amount that extends more than 18 months from the date of the owner's request for a payment plan or to enter into a payment plan with an owner who failed to honor the terms of a previous payment plan during the two years following the owner's default under the previous payment plan.

(d) Requires an association to file the association's guidelines under this section in the real property records of each county in which the subdivision is located.

(e) Provides that an association's failure to file as required by this section the association's guidelines in the real property records of each county in which the subdivision is located does not prohibit a property owner from receiving an alternative payment schedule by which the owner may make partial payments to the association for delinquent regular or special assessments or any other amount owed to the association without accruing additional monetary penalties, as defined by Subsection (a).

Sec. 209.0063. PRIORITY OF PAYMENTS. (a) Requires that a payment received by an association, except as provided by Subsection (b), be applied to the owner's debt in the following order of priority:

- (1) any delinquent assessment;
- (2) any current assessment;
- (3) any attorney's fees or third party collection costs incurred by the association associated solely with assessments or any other charge that could provide the basis for foreclosure;
- (4) any attorney's fees incurred by the association that are not subject to Subdivision (3);
- (5) any fines assessed by the association; and
- (6) any other amount owed to the association.

(b) Provides that, if, at the time the association receives a payment from a property owner, the owner is in default under a payment plan entered into with the association:

- (1) the association is not required to apply the payment in the order of priority specified by Subsection (a); and
- (2) in applying the payment, a fine assessed by the association is prohibited from being given priority over any other amount owed to the association.

Sec. 209.0064. THIRD PARTY COLLECTIONS. (a) Defines, in this section, "collection agent."

(b) Prohibits an association from holding an owner liable for fees of a collection agent retained by the association unless the association first provides written notice to the owner by certified mail, return receipt requested, that:

- (1) specifies each delinquent amount and the total amount of the payment required to make the account current;
- (2) describes the options the owner has to avoid having the account turned over to a collection agent, including information regarding availability of a payment plan through the association; and
- (3) provides a period of at least 30 days for the owner to cure the delinquency before further collection action is taken.

(c) Provides that an owner is not liable for fees of a collection agent retained by the association if the obligation for payment by the association to the association's collection agent for fees or costs associated with a collection action is in any way dependent or contingent on amounts recovered, or the payment agreement between the association and the association's collection agent does not require payment by the association of all fees to a collection agent for the action undertaken by the collection agent.

(d) Prohibits the agreement between the association and the association's collection agent from prohibiting the owner from contacting the association board or the association's managing agent regarding the owner's delinquency.

(e) Prohibits an association from selling or otherwise transferring any interest in the association's account receivables for a purpose other than as collateral for a loan.

Sec. 209.0091. PREREQUISITES TO FORECLOSURE: NOTICE AND OPPORTUNITY TO CURE FOR CERTAIN OTHER LIENHOLDERS. (a) Prohibits an association from foreclosing an 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 evidence 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 association assessment lien.

Sec. 209.0092. JUDICIAL FORECLOSURE REQUIRED. (a) Prohibits an association, except as provided by Subsection (c) and subject to Section 209.0019, from foreclosing an association assessment lien unless the association first obtains a court order in an application for expedited foreclosure under the rules adopted by the supreme court under Subsection (b). Authorizes an association to use the procedure described by this subsection to foreclose any lien described by the association's dedicatory instruments.

(b) Requires the Supreme Court of Texas, as an exercise of the court's authority under Section 74.024 (Rules), Government Code, to adopt rules establishing expedited foreclosure proceedings for use by an association in foreclosing an assessment lien of the association. Requires that the rules adopted under this subsection be substantially similar to the rules adopted by the supreme court under Section 50(r) (authorizing the supreme court to promulgate rules of civil procedure for expedited foreclosure proceedings related to the foreclosure of liens and to foreclosure of a reverse mortgage lien that requires a court order), Article XVI (General Provisions), Texas Constitution.

(c) Provides that expedited foreclosure is not required under this section if the owner of the property that is subject to foreclosure agrees in writing at the time the foreclosure is sought to waive expedited foreclosure under this section. Prohibits a waiver under this subsection from being required as a condition of the transfer of title to real property.

Sec. 209.0093. REMOVAL OR ADOPTION OF FORECLOSURE AUTHORITY. Authorizes a provision granting a right to foreclose a lien on real property for unpaid amounts due to an association to be removed from a dedicatory instrument or adopted in a dedicatory instrument by a vote of at least 67 percent of the total votes allocated to property owners in the association. Authorizes owners holding at least 10 percent of all voting interests in the association to petition the association and require a special meeting to be called for the purposes of taking a vote for the purposes of this section.

Sec. 209.0094. ASSESSMENT LIEN FILING. Provides that a lien, lien affidavit, or other instrument evidencing the nonpayment of assessments or other charges owed to an association and filed in the official public records of a county is a legal instrument affecting title to real property.

SECTION 3. (a) Provides that Section 209.0062, Property Code, as added by this Act, applies only to an assessment or other debt that becomes due on or after the effective date of this Act. Provides that an assessment or other debt that becomes due before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) Provides that Section 209.0063, Property Code, as added by this Act, applies only to a payment received by an association on or after the effective date of this Act. Provides that a payment received by an association before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(c) Provides that Section 209.0091, Property Code, as added 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.

(d) Provides that Section 209.0092, Property Code, as added by this Act, applies only to a foreclosure sale conducted on or after the effective date of this Act. Provides that a foreclosure sale conducted before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(e) Provides that Section 209.0094, Property Code, as added by this Act, applies only to an instrument filed on or after January 1, 2012. Provides that an instrument filed before January 1, 2012, is governed by the law in effect on the date the instrument was filed, and that law is continued in effect for that purpose.

SECTION 4. Requires the Supreme Court of Texas, not later than January 1, 2012, to adopt rules of civil procedure under Section 209.0092, Property Code, as added by this Act.

SECTION 5. (a) Effective date, except as provided by Subsection (b) of this section: January 1, 2012.

(b) Effective date, Section 209.0092(b), Property Code, as added by this Act: September 1, 2011.