

BILL ANALYSIS

Senate Research Center
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S.B. 954
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As Filed

DIGEST

Currently, Texas law does not protect property owners from the actions of property owners' associations. S.B. 954 regulates the governance of property owners' associations, to certain procedures involving the relationship between property owners and property owners' associations, and to certain procedures involving the sale of residential real property and provides a civil penalty.

PURPOSE

As proposed, S.B. 954 regulates the governance of property owners' associations, certain procedures involving the relationship between property owners and property owners' associations, and certain procedures involving the sale of residential real property and provides a civil penalty.

RULEMAKING AUTHORITY

Rulemaking authority is granted to a property owners' associations and the attorney general in SECTION 4 (Sections 202.006(b) and 202.008, Chapter 202, Property Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 27.031, Government Code, to provide that the justice court has jurisdiction of disputes between property owners and property owners' associations, including the enforcement of a lien for failure to pay property owners' association dues, in cases in which the amount in controversy is otherwise within the justice court's jurisdiction. Provides that a justice court does not have jurisdiction of a suit for enforcement of a lien on land except as provided by Subsection (a)(4).

SECTION 2. Amends Chapter 5A, Property Code, by adding Sections 5.012 and 5.13, as follows:

Sec. 5.012. NOTICE OF HOMESTEAD FORECLOSURE INFORMATION. Requires a seller of residential property comprising not more than one dwelling unit located in this state to give to the purchaser of the property a written notice as prescribed by this section. Requires the notice to be conspicuous and printed in 14-point bold-faced type. Sets forth an example of the notice the notice. Set forth the consequences of the seller's failure to provide the notice required by this section.

Sec. 5.013. NOTICE OF OBLIGATIONS RELATED TO MEMBERSHIP IN PROPERTY OWNERS' ASSOCIATION. Requires a seller of residential real property that is subject to membership in a property owners' association and comprises not more than one dwelling unit located in this state to give to the purchaser of the property before the transfer of the property a written notice as prescribed by this section. Requires the notice to be conspicuous and printed in 14-point bold-faced type. Sets forth an example of the notice. Sets forth the consequence of the seller's failure to provide notice.

SECTION 3. Amends Chapter 51, Property Code, by adding Sections 51.007 and 51.008, as follows:

Sec. 51.007. NOTICE OF SALE OF REAL PROPERTY UNDER PROPERTY OWNERS' ASSOCIATION'S LIEN. Requires a notice of sale of real property under a power of sale conferred by a property owners' association's lien, designating the place of the sale and providing a brief description of the property sufficient to identify the location of the property, to be published in a newspaper of general circulation in each county in which the property is located at least once each week for three consecutive weeks before the date of the sale, with the first publication appearing at least 21 days before the date of the sale.

Sec. 51.008. RIGHT OF REDEMPTION IN CERTAIN CIRCUMSTANCES. Authorizes the owner of real property in a residential real estate subdivision whose property has been sold at a foreclosure sale under a property owners' association's lien for assessments to redeem that property not later than a certain date. Prohibits the association from transferring ownership of the real property to a person other than a redeeming owner during the redemption period, if the association purchases real property at a sale foreclosing its assessment lien. Requires the property owner to pay to the property owners' association certain fees, to redeem the real property. Requires the property owners' association to execute a deed transferring the property to the redeeming property owner, if the property owner redeems the real property as provided by this section. Provides that the exercise of the right of redemption is not effective after the redemption period against a subsequent purchaser or lender for value without notice of the redemption unless the redeeming property owner records the deed from the property owners' association or an affidavit stating that the owner has exercised the right of redemption. Provides that real property that has been redeemed remains subjected to all liens and encumbrances on the real property before the foreclosure sale. Provides that all rents and other income collected by the property owners' association from the date of the foreclosure sale to the date of the redemption belong to the association. Requires the association to collect the rent and income against the redemption amount.

SECTION 4. Amends Chapter 202, Property Code, by adding Sections 202.006-202.008, as follows:

Sec. 202.006. HEARING BEFORE PROPERTY OWNERS' ASSOCIATION. Requires a property owners' association to establish a dispute resolution committee to conduct hearings on disputes relating to a fine or penalty imposed on a property owner by the association. Requires a property owners' association to adopt rules relating to hearings conducted by a dispute resolution committee. Sets forth requirements for rules.

Sec. 202.007. ALTERNATIVE DISPUTE RESOLUTION REQUIRED TO ENFORCE LIEN FOR ASSESSMENTS. Prohibits a property owners' association from enforcing a lien on real property for an assessment levied by the property owners' association against the real property unless the association submits to an alternative dispute resolution procedure to establish the existence and amount of the debt owed. Requires the property owners' association to provide written notice to the property owner of its intention to initiate an alternative dispute resolution procedure. Requires the property owner to participate in the alternative dispute resolution procedure. Provides that the property owners' association is not required to comply with this section, if the property owner refuses to participate in the alternative dispute resolution procedure. Authorizes the property owners' association and the property owner to agree on the type of alternative dispute resolution procedure. Authorizes either party to file a petition in a district court to refer the dispute to an alternative dispute resolution procedure, if the parties fail to reach an agreement before a certain date. Requires the court to refer the dispute before a certain date. Requires the cost of the alternative dispute resolution to be paid by the property owners' association.

Sec. 202.008. BOARD MEMBER TRAINING; INDEMNIFICATION. Requires the attorney general to adopt rules establishing minimum standards for the training of board members of a property owners' association. Requires each board member of a property owners' association to attend a training program that meets the standards developed under Subsection (a) not later than six months after assuming the duties of the board. Prohibits a property owner from indemnifying a board member for liability imposed as damages because of an act, error, or omission committed in the individual's capacity as a board member unless the board member has completed a training program as required by Subsection (b).

SECTION 5. Amends Title 11, Property Code, by adding Chapter 207, as follows:

CHAPTER 207. STANDARD OF CONDUCT OF AND CAUSES OF ACTION APPLICABLE TO GOVERNING BOARDS OF PROPERTY OWNERS' ASSOCIATIONS

Sec. 207.001. DEDICATORY INSTRUMENT. Defines "dedicatory instrument."

Sec. 207.002. REASONABLY PRUDENT BUSINESS PERSON STANDARD. Requires the governing board of a property owners' association to conduct the business of the association in

the same manner that a reasonably prudent business person would conduct business under the same or similar circumstances.

Sec. 207.003. ENFORCEMENT. Authorizes the attorney general to bring an action in the name of the state against the governing board of a property owners' association to enjoin the governing board from certain violations. Authorizes an action brought under this section to be commenced in the district court of the county in which the real property covered by the dedicatory instrument is located. Authorizes the court to issue appropriate temporary or permanent injunctions to be issued without bond.

Sec. 208.004. CIVIL PENALTY. Provides that the governing board of a property owners' association is liable to the state for a civil penalty of not more than \$10,000 for each violation described by Section 207.003 in which the governing board engages. Provides that the governing board is liable to the state for a civil penalty of not more than \$10,000 for each violation, if the governing board violates the terms of an injunction issued under this chapter. Requires the district court issuing the injunction to retain jurisdiction, and the cause to be continued. Authorizes the attorney general to sue to collect a civil penalty.

Sec. 207.005. DAMAGES. Requires the court to make additional orders or judgments as necessary to compensate identifiable persons for actual damages resulting from an action described by Section 207.003. Authorizes the court to award not more than three times the amount of actual damages, if the court finds that the governing board of a property owners' association has engaged or is engaging in action described by Section 207.003 in bad faith.

SECTION 6. (a) Effective date: September 1, 1999, except as provided by Subsection (b).

(b) Provides that Sections 202.008(a) and (b), Property Code, take effect January 1, 2000.

SECTION 7 and 8. Makes application of this Act prospective.

SECTION 9. Makes application of 51.007, Property Code, prospective to October 1, 1999.

SECTION 10. Makes application of 51.008, Property Code, prospective to September 1, 1999.

SECTION 11. Requires the attorney general to adopt rules not later than December 1, 1999.

SECTION 12. Makes application of Chapter 207, Property Code, prospective to September 1, 1999.

SECTION 13. Emergency clause.