

BILL ANALYSIS

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S.B. 240
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Homeowners' associations (HOAs) are intended to maintain common areas in residential neighborhoods and to protect homeowners' investments in their property by enforcing certain aesthetic guidelines. In recent years, however, many homeowners have become dissatisfied with the operation of their associations. Disputes between HOA boards and individual homeowners often begin with the imposition of relatively small fines by the board for violations of deed restrictions. The actions of some HOA boards can cause such fines to become insurmountable burdens for the homeowner. Additionally, because foreclosure is a remedy available to an HOA board for delinquent assessments, the order of application by the HOA board of payments received from a homeowner is a critical issue.

As proposed, S.B. 240 sets forth certain requirements and restrictions regarding a fine imposed by a property owners' association. The bill also requires a property owners' association to adopt reasonable guidelines for an alternative payment schedule, sets forth provisions relating to the priority of application of payments by a homeowner, and sets forth time limitations relating to collection actions against a homeowner. S.B. 240 repeals Section 202.004(c), Property Code, relating to an assessment of civil damages by a court for the violation of a restrictive covenant.

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 209, Property Code, by adding Sections 209.0061-209.0064, as follows:

Sec. 209.0061. ASSESSMENT OF FINES. (a) Requires that a fine assessed by the property owners' association (association) be reasonable in the context of the nature, frequency, and effect of the violation. Requires an association to establish a maximum fine amount for a continuing violation, not to exceed 10 times the amount of the initial fine, at which point the total fine amount is capped if the association allows fines for a continuing violation to accumulate against a lot or an owner.

(b) Authorizes an association, in addition to exercising any of the association's powers against the owner, to assess a fine directly against the nonowner occupant in the same manner as provided for an owner but prohibits the association from requiring payment from both the owner and a nonowner occupant for the same violation if a lot occupant other than the owner violates a provision of the dedicatory instrument.

(c) Provides that the notice provisions of Section 209.006 (Notice Required Before Enforcement Action) and the hearing provisions of Section 209.007 (Hearing Before Board; Alternative Dispute Resolution) apply to the nonowner occupant in the same manner as those provisions apply to an owner if the association assesses a fine against a nonowner occupant under this section.

Sec. 209.0062. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN ASSESSMENTS. (a) Requires an association to adopt reasonable guidelines to establish

an alternative payment schedule by which an owner is authorized to make partial payments to the association for delinquent regular or special assessments or any other amount owed to the association.

(b) Provides that an association is not required to allow a payment plan that extends more than 12 months from the date of the owner's request for a payment plan or to enter into a payment plan with an owner during the five years following the owner's failure to honor the terms of a previous payment plan.

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

Sec. 209.0063. PRIORITY OF PAYMENTS. Requires that a payment received by an association from the owner be applied to the owner's debt in a certain order of priority unless otherwise provided in a writing by the property owner.

Sec. 209.0064. COLLECTIONS. Requires an association to bring suit or otherwise initiate against an owner a collection action authorized by the dedicatory instruments or other law on or before the 10th anniversary of the date on which the cause of action for collection of debt accrues. Provides that Section 16.004 (Four-Year Limitations Period), Civil Practice and Remedies Code, does not apply to the collection of a debt owed by an owner to an association.

SECTION 2. Repealer: Section 202.004(c) (relating to authorizing a court to assess civil damages for the violation of a restrictive covenant), Property Code.

SECTION 3. (a) Makes application of this Act with regard to the repeal of Section 202.004(c), prospective.

(b) Makes application of Sections 209.0061, 209.0062, and 209.0064, Property Code, as added by this Act, prospective.

(c) Makes application of Section 209.0063, Property Code, as added by this Act, prospective.

SECTION 4. Effective date: January 1, 2010.