

BILL ANALYSIS

Senate Research Center
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S.B. 1204
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

An estimated 57 million Americans live in more than 200,000 community associations, including approximately 4.8 million Texans who pay assessments in amounts of \$3.2 billion annually. Property owners' associations may be classified as a condominium association, a cooperative association, or a homeowners' association. In Texas, these entities are regulated under the Property Code. As the popularity of homeowners associations increases, so does the potential for abuse. Existing statutory provisions regarding these associations do not provide adequate protections for homeowners.

S.B. 1204 seeks to ensure the basic private property rights of individuals residing within community associations by changing statutory provisions regarding foreclosure actions and appropriate avenues for redress and redemption of property in case of foreclosure. Specifically, S.B. 1204 requires associations to offer payment plans to homeowners when assessment become past due and to apply payments to an association in a specific order of priority so that payments are applied to assessments first. This bill also requires that association foreclosure be through judicial means, or through a process adopted by the Texas Supreme Court.

As proposed, S.B. 1204 amends current law relating to the procedures for collection of assessments and other debts, including foreclosure of an assessment lien, by a property owners' association.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Supreme Court of Texas in SECTION 2 (Section 209.0091, Property Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 209, Property Code, by adding Sections 209.0062, 209.0063, and 209.0064, as follows:

Sec. 209.0062. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN ASSESSMENTS. (a) Requires a property owners' association to adopt reasonable guidelines to establish an alternative payment schedule by which an owner may make partial payments to the property owners' 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) Requires a property owners' association, for any approved special assessment in an amount greater than the equivalent of the sum of all regular assessments payable in the year the special assessment is approved, to allow partial payments of the special assessment for 12 months unless the property owner requests a shorter payment period in writing at the time the property owner requests an alternative payment plan. Authorizes a property owners' association to offer a reasonable discount for an owner making a one-time lump sum payment of the special assessment.

(c) Requires a property owners' association, for any approved special assessment in an amount greater than the equivalent of one-half the sum of all regular assessments payable in the year the special assessment is approved, to allow partial payments of the special assessment for six months unless the property owner requests a shorter payment period in writing at the time the property owner requests an alternative payment plan. Authorizes a property owners' association to offer a reasonable discount to an owner making a one-time lump sum payment of the special assessment.

(d) Provides that a property owners' association is not required to allow a payment plan for any amount 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 who failed to honor the terms of a previous payment plan during the five years following the owner's default under the previous payment plan.

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

(f) Provides that a property owners' 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 property owners' 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. Requires a payment received by a property owners' association from the owner, unless otherwise provided in writing by the property owner at the time payment is made, to 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 incurred by the association associated solely with assessments or any other charge that could provide the basis for foreclosure;
- (4) any fines assessed by the association;
- (5) any attorney's fees incurred by the association that are not subject to Subdivision (3); and
- (6) any other amount owed to the association.

Sec. 209.0064. COLLECTIONS. Requires a property owners' 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 the 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 a property owners' association.

SECTION 2. Amends Chapter 209, Property Code, by adding Sections 209.0091 and 209.0092, as follows:

Sec. 209.0091. JUDICIAL FORECLOSURE REQUIRED. (a) Prohibits a property owners' association, except as provided by Subsection (c), from foreclosing a property owners' 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 of Texas (supreme court) under Subsection (b). Authorizes a property owners' 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, 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 a property owners' 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) (relating to promulgating rules to expedite foreclosure proceedings), Article XVI, 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. 209.0092. REMOVAL OR ADOPTION OF FORECLOSURE AUTHORITY. Authorizes a provision granting a right to foreclose a lien on real property for unpaid amounts due to a property owners' association to be removed from a dedicatory instrument or adopted in a dedicatory instrument by a vote of 51 percent of the total votes allocated to property owners in the property owners' association. Authorizes owners holding at least 10 percent of all voting interests in the property owners' 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.

SECTION 3. Amends Section 209.010(a), Property Code, as follows:

(a) Requires a property owners' association that conducts a foreclosure sale of an owner's lot to send to the lot owner and to each lienholder of record, not later than the 30th day after the date of the foreclosure sale:

(1) a written notice stating the date and time the sale occurred and informing the lot owner and each lienholder of record of the right of the lot owner and lienholder to redeem the property under Section 209.011 (Right of Redemption After Foreclosure); and

(2) a copy of Section 209.011.

SECTION 4. (a) Makes application of Sections 209.0062 and 209.0064, Property Code, as added by this Act, prospective.

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

(c) Makes application of Sections 209.0091 and 209.0092, Property Code, as added by this Act, prospective to January 1, 2012.

(d) Makes application of Section 209.010(a), Property Code, as amended by this Act, prospective.

SECTION 5. Requires the supreme court, not later than January 1, 2012, to adopt rules of civil procedure under Section 209.0091, Property Code, as added by this Act.

SECTION 6. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2011.

(b) Effective date, Sections 209.0091(a) and (c), Property Code, as added by this Act:
January 1, 2012.