

By: Bailey

H.B. No. 1641

A BILL TO BE ENTITLED

AN ACT

relating to the operation of property owners' associations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 209.006, Property Code, is amended to read as follows:

Sec. 209.006. NOTICE REQUIRED BEFORE ENFORCEMENT ACTION.

(a) Before a property owners' association may suspend an owner's right to use a common area, file a suit against an owner [~~other than a suit to collect a regular or special assessment or foreclose under an association's lien~~], charge an owner for property damage, or levy a fine for a violation of the restrictions, or bylaws, or rules of the association, the association or its agent must give written notice to the owner in English and Spanish by certified mail, return receipt requested.

(b) The notice must:

(1) describe the violation or property damage that is the basis for the suspension, suit, action, charge, or fine and state any amount due the association from the owner; and

(2) inform the owner:

(A) that the owner:

(i) [~~(A)~~] is entitled to a reasonable period to cure the violation and avoid the suspension, suit, action, charge, or fine [~~or suspension~~] unless the owner was given notice and a reasonable opportunity to cure a similar violation

1 within the preceding six months; and

2 (ii) [~~(B)~~] may request a hearing under
3 Section 209.007 on or before the 30th day after the date the owner
4 receives the notice; and

5 (B) if the violation involves an overdue regular
6 or special assessment, that failure to pay the assessment may
7 result in foreclosure.

8 SECTION 2. Chapter 209, Property Code, is amended by adding
9 Section 209.0071 to read as follows:

10 Sec. 209.0071. PAYMENT OF CERTAIN ASSESSMENTS. A property
11 owners' association shall adopt guidelines under which an owner who
12 is unable to pay a delinquent regular or special assessment in full
13 may, at the owner's request, make partial payments of the
14 delinquent assessments until the delinquency is cured.

15 SECTION 3. Section 209.008(b), Property Code, is amended to
16 read as follows:

17 (b) An owner is not liable for attorney's fees incurred by
18 the association relating to a matter described by the notice under
19 Section 209.006 if the attorney's fees are incurred before the
20 conclusion of the hearing under Section 209.007 or, if the owner
21 does not request a hearing under that section, before the date by
22 which the owner must request a hearing. The owner's presence is not
23 required to hold a hearing under Section 209.007. An owner is not
24 liable for attorney's fees incurred by the association relating to
25 overdue assessments if the attorney's fees are incurred before the
26 owner is offered a payment plan under Section 209.0071.

27 SECTION 4. Section 209.009, Property Code, is amended to

1 read as follows:

2 Sec. 209.009. FORECLOSURE SALE PROHIBITED IN CERTAIN
3 CIRCUMSTANCES. A property owners' association may not foreclose a
4 property owners' association's assessment lien unless:

5 (1) [if] the debt for which the lien secures payment
6 includes a mandatory regular or special assessment; and

7 (2) the owner has had an opportunity for a hearing
8 under Section 209.007 [securing the lien consists solely of:

9 ~~[(1) fines assessed by the association; or~~

10 ~~[(2) attorney's fees incurred by the association~~
11 ~~solely associated with fines assessed by the association].~~

12 SECTION 5. Chapter 209, Property Code, is amended by adding
13 Section 209.0091 to read as follows:

14 Sec. 209.0091. JUDICIAL FORECLOSURE REQUIRED. Except as
15 provided by a restriction created before September 1, 2003, a
16 property owners' association may not foreclose a property owners'
17 association's assessment lien unless the association first obtains
18 a court judgment foreclosing the lien and providing for issuance of
19 an order of sale.

20 SECTION 6. Section 209.011(b), Property Code, is amended to
21 read as follows:

22 (b) The owner of property in a residential subdivision may
23 redeem the property from any purchaser at a sale foreclosing a
24 property owners' association's assessment lien not later than the
25 second anniversary of ~~[180th day after]~~ the date the association
26 mails written notice of the sale to the owner under Section 209.010.

27 SECTION 7. Section 551.0015(a), Government Code, is amended

1 to read as follows:

2 (a) A property owners' association is subject to this
3 chapter in the same manner as a governmental body if:

4 (1) membership in the property owners' association is
5 mandatory for owners or for a defined class of owners of private
6 real property in a defined geographic area [~~in a county with a~~
7 ~~population of 2.8 million or more or in a county adjacent to a~~
8 ~~county with a population of 2.8 million or more~~]; and

9 (2) the property owners' association has the power to
10 make mandatory special assessments for capital improvements or
11 mandatory regular assessments [~~and~~

12 [~~(3) the amount of the mandatory special or regular~~
13 ~~assessments is or has ever been based in whole or in part on the~~
14 ~~value at which the state or a local governmental body assesses the~~
15 ~~property for purposes of ad valorem taxation under Section 20,~~
16 ~~Article VIII, Texas Constitution]~~.

17 SECTION 8. Section 552.0036, Government Code, is amended to
18 read as follows:

19 Sec. 552.0036. CERTAIN PROPERTY OWNERS' ASSOCIATIONS
20 SUBJECT TO LAW. A property owners' association is subject to this
21 chapter in the same manner as a governmental body if:

22 (1) membership in the property owners' association is
23 mandatory for owners or for a defined class of owners of private
24 real property in a defined geographic area [~~in a county with a~~
25 ~~population of 2.8 million or more or in a county adjacent to a~~
26 ~~county with a population of 2.8 million or more~~]; and

27 (2) the property owners' association has the power to

1 make mandatory special assessments for capital improvements or
2 mandatory regular assessments [~~and~~

3 ~~(3) the amount of the mandatory special or regular~~
4 ~~assessments is or has ever been based in whole or in part on the~~
5 ~~value at which the state or a local governmental body assesses the~~
6 ~~property for purposes of ad valorem taxation under Section 20,~~
7 ~~Article VIII, Texas Constitution].~~

8 SECTION 9. (a) Section 209.006, Property Code, as amended
9 by this Act, applies only to an enforcement action taken by a
10 property owners' association on or after the effective date of this
11 Act. An enforcement action taken before the effective date of this
12 Act is governed by the law in effect immediately before that date,
13 and that law is continued in effect for that purpose.

14 (b) Section 209.0071, Property Code, as added by this Act,
15 applies only to an assessment that becomes due on or after the
16 effective date of this Act. An assessment that becomes due before
17 the effective date of this Act is governed by the law in effect
18 immediately before that date, and that law is continued in effect
19 for that purpose.

20 (c) Section 209.008(b), Property Code, as amended by this
21 Act, applies only to a violation that occurs or arrearage that
22 accrues on or after the effective date of this Act. A violation
23 that occurred or arrearage that accrued before the effective date
24 of this Act is governed by the law in effect immediately before that
25 date, and that law is continued in effect for that purpose.

26 (d) Sections 209.009 and 209.011(b), Property Code, as
27 amended by this Act, and Section 209.0091, Property Code, as added

1 by this Act, apply only to foreclosure of a lien that attaches on or
2 after the effective date of this Act. Foreclosure of a lien that
3 attaches before the effective date of this Act is governed by the
4 law in effect immediately before that date, and that law is
5 continued in effect for that purpose.

6 SECTION 10. This Act takes effect September 1, 2003.