

By: West

H.B. No. 3077

A BILL TO BE ENTITLED

AN ACT

relating to the foreclosure of certain liens on property located in a residential subdivision.

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

SECTION 1. Section 209.009, Property Code, is amended to read as follows:

Sec. 209.009. FORECLOSURE SALE PROHIBITED IN CERTAIN CIRCUMSTANCES. A property owners' association may not foreclose a property owners' association's assessment lien if the debt securing the lien consists solely of:

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

(2) attorney's fees incurred by the association solely associated with fines assessed by the association;

(3) a submetered utility billing that is separate from a regular or special assessment; or

(4) attorney's fees incurred by the association solely associated with a submetered utility billing that is separate from a regular or special assessment.

SECTION 2. Section 209.010, Property Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) A property owner's association that conducts a foreclosure sale of an owner's lot must send all notices required to be sent to the lot owner to any other holder of a lien on the lot whose lien was filed before the property owners' association's

1 assessment lien was filed.

2 (f) A notice sent to a lienholder under Subsection (e) must
3 be sent to the lienholder on the same date and in the same manner as
4 the notice is sent to the lot owner.

5 SECTION 3. The heading to Section 209.011, Property Code,
6 is amended to read as follows:

7 Sec. 209.011. LOT OWNER'S RIGHT OF REDEMPTION AFTER
8 FORECLOSURE.

9 SECTION 4. Chapter 209, Property Code, is amended by adding
10 Section 209.012 to read as follows:

11 Sec. 209.012. OTHER LIENHOLDER'S RIGHT OF REDEMPTION OR
12 FORECLOSURE AFTER FORECLOSURE BY PROPERTY OWNERS' ASSOCIATION. (a)
13 This section applies only to a lienholder described by Section
14 209.010(e).

15 (b) A lienholder who receives notice of a foreclosure sale
16 brought by a property owners' association must exercise the rights
17 granted to the lienholder by this section not later than the 180th
18 day after the date the association mails written notice of the sale
19 to the lienholder under Section 209.010(e). A lienholder who fails
20 to act in accordance with this section waives the lienholder's
21 interest in the lot that is the subject of the foreclosure sale
22 brought by a property owners' association under this chapter.

23 (c) After receiving notice of a foreclosure sale under
24 Section 209.010(e), a lienholder may:

25 (1) redeem the owner's lot by paying the assessment
26 lien filed by the property owners' association and allow the lot
27 owner to maintain possession of the lot; or

1 (2) foreclose on the lienholder's lien.

2 (d) If a lienholder redeems the lot owner's lot under
3 Subsection (c)(1) or forecloses on the lienholder's lien under
4 Subsection (c)(2), the foreclosing lienholder:

5 (1) must pay to the association:

6 (A) all amounts due the association at the time
7 of the foreclosure sale less the foreclosure sales price received
8 by the association from the purchaser;

9 (B) interest from the date of the foreclosure
10 sale through the date of redemption on all amounts owed the
11 association at the rate stated in the dedicatory instruments for
12 delinquent assessments or, if no rate is stated, at an annual
13 interest rate of 10 percent;

14 (C) costs incurred by the association in
15 foreclosing the lien and conveying the property to the redeeming
16 lot owner, including reasonable attorney's fees;

17 (D) any unpaid assessments levied against the
18 property by the association after the date of the foreclosure sale;

19 (E) taxable costs incurred in a proceeding
20 brought under Subsection (a); and

21 (F) costs incurred by the association to improve
22 or maintain the lot from the date of foreclosure of the
23 association's assessment lien through the date of redemption or
24 foreclosure by the foreclosing lienholder; and

25 (2) must pay to the person who purchased the property
26 at the foreclosure sale:

27 (A) any assessments levied against the property

1 by the association after the date of the foreclosure sale and paid
2 by the purchaser;

3 (B) the purchase price paid by the purchaser at
4 the foreclosure sale;

5 (C) the amount of the deed recording fee;

6 (D) the amount paid by the purchaser as ad
7 valorem taxes, penalties, and interest on the property after the
8 date of the foreclosure sale;

9 (E) taxable costs incurred in a proceeding
10 brought under Subsection (a); and

11 (F) costs incurred by the purchaser to improve or
12 maintain the lot from the date of foreclosure of the association's
13 assessment lien through the date of redemption or foreclosure by
14 the foreclosing lienholder.

15 (e) If a lienholder redeems the owner's lot under Subsection
16 (c)(1), the lienholder may add any amounts paid under Subsection
17 (d) to the total amount due to be paid by the lot owner under the
18 instrument giving rise to the lienholder's lien.

19 SECTION 5. This Act takes effect September 1, 2003, and
20 applies only to a foreclosure sale brought by a property owners'
21 association on or after that date. A foreclosure sale brought by a
22 property owners' association before the effective date of this Act
23 is governed by the law in effect at the time the foreclosure sale is
24 brought, and the former law is continued in effect for that purpose.