

## BILL ANALYSIS

Senate Research Center

H.B. 2215  
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Intergovernmental Relations  
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Engrossed

### AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Frequently, homeowners' associations operate without any checks or balances. Although they are non-profit corporations, they often assume great powers. It is important that a reasonable standard of enforcement is practiced by homeowners' associations. It is the intent of this legislation to establish reasonable procedures for dispute resolution, and to strike a balance between the rights of the homeowner and those of the community as a whole, before costly civil litigation is commenced.

H.B. 2215 provides for intervention before costly lawsuits involving homeowners' associations are pursued in the civil courts.

### RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Supreme Court in SECTION 7 (Section 209.0091, Property Code) of this bill.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 202.007(a), Property Code, to prohibit a property owners' association from including or enforcing a provision in a dedicatory instrument that prohibits or restricts a property owner from implementing landscaping design, installation, or maintenance standards that result in water conservation, including standards relating to the use of native or other drought-tolerant plants, shrubs, trees, or grasses.

SECTION 2. Amends Section 209.003(d), Property Code, to provide that this chapter does not apply to a condominium development governed by Chapter 81 (Condominiums Created before Adoption of Uniform Condominium Act) or Chapter 82 (Uniform Condominium Act).

SECTION 3. Amends Section 209.006, Property Code, as follows:

Sec. 209.006. NOTICE REQUIRED BEFORE ENFORCEMENT ACTION. (a) to require the association or its agent to give written notice to the owner by regular mail and by certified mail, return receipt requested, before the property owner's association may take certain actions. Deletes existing text relating to a suit to collect a regular or special assessment or foreclose under an association's lien.

(b) Requires the notice to include describe the violation or property damage that is the basis for the suit and other actions and inform the owner of certain entitlements, certain requests, and certain authorizations.

SECTION 4. Amends Chapter 209, Property Code, by adding Section 209.0071, as follows:

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

SECTION 5. Amends Section 209.008, Property Code, by amending Subsection (b) and adding Subsection (h), as follows:

(b) Provides that an owner is not liable for attorney's fees incurred by the association relating to overdue assessments if the attorney's fees are incurred before the owner is offered a payment plan under Section 209.0071.

(h) Authorizes an owner to collect from a property owners' association reasonable attorney's fees incurred by the owner in defending against a suit initiated by the association or initiating a suit against the association under this chapter if, in the suit, the owner prevails against the association. Authorizes an owner that collects attorney's fees under this section collects those fees in addition to any other reasonable costs of court or other sums of money the owner to collect from the property owners' association.

SECTION 6. Amends Section 209.009, Property Code, as follows:

Sec. 209.009. FORECLOSURE SALE PROHIBITED IN CERTAIN CIRCUMSTANCES. (a) Prohibits a property owners' association from foreclosing a property owners' association assessment lien unless the debt for which the lien secures payment includes a mandatory regular or special assessment and the owner has had an opportunity for a hearing under Section 209.007 (Hearing Before Board; Alternative Dispute Resolution). Deletes existing text relating to certain fines and certain attorney's fees.

(b) Requires a payment received by a property owners' association from the owner, unless otherwise provided in writing by the property owner, to be applied to the owner's debt in a certain order of priority.

SECTION 7. Amends Chapter 209, Property Code, by adding Section 209.0091, as follows:

Sec. 209.0091. JUDICIAL FORECLOSURE REQUIRED. (a) Prohibits a property owners' association, except as provided by a restriction created before September 1, 2005, from foreclosing a property owners' association's assessments lien unless the association first obtains a court judgment foreclosing the lien and providing for issuance of an order of sale.

(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. Provides that the rules adopted under this subsection are required to be substantially similar to the rules adopted by the supreme court under Section 50(r) (Homestead; Protection from Forced Sale Mortgages, Trust Deeds, and Liens), Article XVI, Texas Constitution and remain in effect unless and until disapproved by the legislature.

SECTION 8. Amends Section 209.011(b), Property Code, to authorize the owner of property in a residential subdivision to redeem the property from any purchaser at a sale foreclosing a property owners' association's assessment lien not later than the first anniversary of, rather than 180th day after, the date the association mails written notice of the sale to the owner under Section 209.010 (Notice After Foreclosure Sale).

SECTION 9. Amends Chapter 209, Property Code, by adding Section 209.012, as follows:

Sec. 209.012. QUALIFICATIONS OF BOARD MEMBERS. Prohibits a person convicted of a crime of moral turpitude from serving as a member of the board of a property owners' association before the 15th anniversary of the date the person was convicted.

SECTION 10. (a) Amends Chapter 209, Property Code, by adding Section 209.013. as follows:

Sec. 209.013. NOTICE OF CERTAIN MEETINGS OF CERTAIN PROPERTY OWNERS' ASSOCIATIONS. (a) Provides that a property owners' association is subject to this section only if certain criteria are met.

(b) Requires a property owners' association to post notice of any meeting of the association at which certain matters are addressed.

(c) Requires notice of the date, time, and location of the meeting to be posted in a certain manner.

(b) Makes no changes to this subsection.

SECTION 11. (a) Makes application of Section 209.006, Property Code, as amended by this Act, prospective.

(b) Makes application of Section 209.0071, Property Code, as added by this Act, prospective.

(c) Makes application of Section 209.008(b), Property Code, as amended by this Act, prospective.

(d) Makes application of Section 209.009(b), Property Code, as added by this Act, prospective.

(e) Makes application of Section 209.009 and 209.011(b), Property Code, as amended by this Act, and Section 209.0091, as added by this Act, prospective.

(f) Makes application of Section 209.012, Property Code, as added by this Act, prospective.

SECTION 12. Effective date: September 1, 2005.