

BILL ANALYSIS

S.B. 244
By: Wentworth
Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, a property owner's association (association) may not foreclose on an association's assessment lien if the debt securing the lien consists solely of fines or attorneys fees incurred by the association solely associated with fines. The Property Code does not specify the priority in which a payment made by a property owner to the association should be applied, allowing associations to apply a payment made by an owner to that owner's outstanding fines, leaving unpaid the owner's outstanding assessments. The association can then foreclose on an assessment lien because the debt securing the lien consists of unpaid assessments.

As engrossed by the Senate, Senate Bill No. 244 would require that, unless otherwise provided in writing by the property owner, a payment from an owner to an association be applied to the owner's debt in the specified order of priority.

RULEMAKING AUTHORITY

It is the opinion of the Committee on Business and Industry that this bill does not expressly grant any additional rulemaking authority to any state officer, institution, or agency.

SECTION-BY-SECTION ANALYSIS

SECTION 1. Amends Section 209.009, Property Code, as follows:

Sec. 209.009. FORECLOSURE SALE PROHIBITED IN CERTAIN CIRCUMSTANCES. (a) Creates this subsection from existing text.

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

(c) Provides that Subsection (b) does not apply to a payment received by a property owners' association if membership in the property owner's association is mandatory for owners or for a defined class of owners of private real property in a defined geographic area in a county with a population of 3.3 million or more or in a county adjacent to such a county. Subsection (b) also does not apply if the property owners' association has the power to make mandatory special assessments for capital improvements or mandatory regular assessments. Subsection (b) also does not apply if the amount of the mandatory special or regular assessments is or has ever been based in whole or in part on the value at which the state or a local governmental body assesses the property for purposes of ad valorem taxation under Section 20, Article VIII, Texas Constitution.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2005.

EFFECTIVE DATE

September 1, 2005.

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