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H.B. No. 2215

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 202.007(a), Property Code, is amended to read as follows:

(a) A property owners' association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner from:

(1) implementing measures promoting solid-waste composting of vegetation, including grass clippings, leaves, or brush, or leaving grass clippings uncollected on grass;

(2) installing rain barrels or a rainwater harvesting system; ~~or~~

(3) implementing efficient irrigation systems, including underground drip or other drip systems; or

(4) 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. Section 209.003(d), Property Code, is amended to read as follows:

(d) This chapter does not apply to a condominium development governed by Chapter 81 or Chapter 82.

SECTION 3. Section 209.006, Property Code, is amended to

1 read as follows:

2 Sec. 209.006. NOTICE REQUIRED BEFORE ENFORCEMENT ACTION.

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

11 (b) The notice must:

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

15 (2) inform the owner:

16 (A) that the owner:

17 (i) [~~(A)~~] is entitled to a reasonable
18 period to cure the violation and avoid the suspension, suit,
19 action, charge, or fine [~~or suspension~~] unless the owner was given
20 notice and a reasonable opportunity to cure a similar violation
21 within the preceding six months; and

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

25 (B) if the violation involves an overdue regular
26 or special assessment, that failure to pay the assessment may
27 result in foreclosure.

1 SECTION 4. Chapter 209, Property Code, is amended by adding
2 Section 209.0071 to read as follows:

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

8 SECTION 5. Section 209.008, Property Code, is amended by
9 amending Subsection (b) and adding Subsection (h) to read as
10 follows:

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

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

1 owner may collect from the property owners' association.

2 SECTION 6. Section 209.009, Property Code, is amended to
3 read as follows:

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

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

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

11 [(1) fines assessed by the association; or

12 [(2) attorney's fees incurred by the association
13 solely associated with fines assessed by the association].

14 (b) Unless otherwise provided in writing by the property
15 owner, a payment received by a property owners' association from
16 the owner shall be applied to the owner's debt in the following
17 order of priority:

18 (1) any delinquent assessment;

19 (2) any current assessment;

20 (3) any fines assessed by the association; and

21 (4) any attorney's fees incurred by the association
22 solely associated with fines assessed by the association.

23 SECTION 7. Chapter 209, Property Code, is amended by adding
24 Section 209.0091 to read as follows:

25 Sec. 209.0091. JUDICIAL FORECLOSURE REQUIRED. (a) Except
26 as provided by a restriction created before September 1, 2005, a
27 property owners' association may not foreclose a property owners'

1 association's assessment lien unless the association first obtains
2 a court judgment foreclosing the lien and providing for issuance of
3 an order of sale.

4 (b) The supreme court, as an exercise of the court's
5 authority under Section 74.024, Government Code, shall adopt rules
6 establishing expedited foreclosure proceedings for use by a
7 property owners' association in foreclosing an assessment lien of
8 the association. The rules adopted under this subsection:

9 (1) must be substantially similar to the rules adopted
10 by the supreme court under Section 50(r), Article XVI, Texas
11 Constitution; and

12 (2) remain in effect unless and until disapproved by
13 the legislature.

14 SECTION 8. Section 209.011(b), Property Code, is amended to
15 read as follows:

16 (b) The owner of property in a residential subdivision may
17 redeem the property from any purchaser at a sale foreclosing a
18 property owners' association's assessment lien not later than the
19 first anniversary of [~~180th day after~~] the date the association
20 mails written notice of the sale to the owner under Section 209.010.

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

23 Sec. 209.012. QUALIFICATIONS OF BOARD MEMBERS. A person
24 convicted of a crime of moral turpitude may not serve as a member of
25 the board of a property owners' association before the 15th
26 anniversary of the date the person was convicted.

27 SECTION 10. (a) Chapter 209, Property Code, is amended by

1 adding Section 209.013 to read as follows:

2 Sec. 209.013. NOTICE OF CERTAIN MEETINGS OF CERTAIN
3 PROPERTY OWNERS' ASSOCIATIONS. (a) A property owners' association
4 is subject to this section only if:

5 (1) membership in the property owners' association is
6 mandatory for owners or for a defined class of owners of private
7 real property in a defined geographic area; and

8 (2) the property owners' association has the power to
9 make mandatory special assessments for capital improvements or
10 mandatory regular assessments.

11 (b) A property owners' association shall post notice of any
12 meeting of the association at which:

13 (1) one or more officers of the association will be
14 elected; or

15 (2) any proposed amendment to or change in an
16 assessment of the association, including an assessment described by
17 Subsection (a)(2), is to be deliberated or adopted.

18 (c) Notice of the date, time, and location of the meeting
19 must:

20 (1) be posted for at least 72 consecutive hours before
21 the meeting; and

22 (2) be posted at a reasonable number of conspicuous
23 locations in the appropriate area, including public places where it
24 is customary to post notices concerning the meetings of the
25 association or the affairs of the association generally.

26 (b) Section 109.013, Property Code, as added by this
27 section, applies only to a meeting of a property owners'

1 association that occurs on or after the effective date of this Act.

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

8 (b) Section 209.0071, Property Code, as added by this Act,
9 applies only to an assessment that becomes due on or after the
10 effective date of this Act. An assessment that becomes due before
11 the effective date of this Act is governed by the law in effect
12 immediately before that date, and that law is continued in effect
13 for that purpose.

14 (c) Section 209.008(b), Property Code, as amended by this
15 Act, applies only to a violation that occurs or arrearage that
16 accrues on or after the effective date of this Act. A violation
17 that occurred or arrearage that accrued before the effective date
18 of this Act is governed by the law in effect immediately before that
19 date, and that law is continued in effect for that purpose.

20 (d) Section 209.009(b), Property Code, as added by this Act,
21 applies only to a payment received by a property owners'
22 association on or after the effective date of this Act. A payment
23 received before the effective date of this Act is governed by the
24 law in effect when the payment was received, and the former law is
25 continued in effect for that purpose.

26 (e) 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 (f) Section 209.012, Property Code, as added by this Act,
7 applies only to a person who, on or after the effective date of this
8 Act, is elected, reelected, appointed, or reappointed to or
9 otherwise begins to serve on the board of a property owners'
10 association.

11 SECTION 12. This Act takes effect September 1, 2005.