

By: Wentworth, et al.

S.B. No. 244

A BILL TO BE ENTITLED

AN ACT

relating to priority of payment relating to property owners' association assessments.

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) 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.

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

(1) any delinquent assessment;

(2) any current assessment;

(3) any fines assessed by the association; and

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

(c) Subsection (b) does not apply to a payment received by a property owners' association if:

1 (1) membership in the property owners' association is
2 mandatory for owners or for a defined class of owners of private
3 real property in a defined geographic area in a county with a
4 population of 3.3 million or more or in a county adjacent to a
5 county with a population of 3.3 million or more;

6 (2) the property owners' association has the power to
7 make mandatory special assessments for capital improvements or
8 mandatory regular assessments; and

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

14 SECTION 2. This Act applies to a payment received by a
15 property owners' association on or after the effective date of this
16 Act. A payment received before the effective date of this Act is
17 governed by the law in effect when the payment was received, and the
18 former law is continued in effect for that purpose.

19 SECTION 3. This Act takes effect September 1, 2005.