

BILL ANALYSIS

H.B. 2394
By: England
Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

There are currently no enforcement penalties in place for the failure of a property owners' association to file a management certificate. Therefore, neither the general public nor individuals attempting to address title issues are protected by a statutorily prescribed method to ensure that association managers or representatives can be contacted.

H.B. 2394 establishes centralized access to such information via the county clerks' real property records in which property owners' associations are required by law to file a management certificate containing specific information relating to the association. Failure of an association to comply with this requirement releases a purchaser, lender, or title insurance company or its agent from any liability for any amount due to the association as a debt to or claim of the association that accrued on or before the date of a transfer to a bona fide purchaser and makes a lien to secure an amount due before that date enforceable only for an amount incurred after the effective date of the sale.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 2394 amends the Property Code to include the name of a property owners' association and the name and mailing address of the association's designated representative to the information the association is required to include on the management certificate the association is required to record in each county in which any portion of the residential subdivision is located. The bill establishes that, if a property owners' association fails to record a management certificate or an amended management certificate, the purchaser, lender, or title insurance company or its agent is not liable in a transaction involving property in the association for any amount due to the association on the date of a transfer to a bona fide purchaser and for any debt to or claim of the association that accrued before the date of a transfer to a bona fide purchaser. The bill specifies that a lien of a property owners' association that fails to file a management certificate or an amended management certificate to secure an amount due on the effective date of a transfer to a bona fide purchaser is enforceable only for an amount incurred after the effective date of sale. The bill defines "bona fide purchaser" as a person who pays valuable consideration without notice of outstanding rights of others and acts in good faith or a third-party lender who acquires a security interest in the property under a deed of trust.

EFFECTIVE DATE

September 1, 2009.