

## **BILL ANALYSIS**

C.S.S.B. 239  
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Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Homeowners' associations are intended to maintain common areas in residential neighborhoods and to protect homeowners' investments in their property by enforcing certain aesthetic guidelines. In recent years, however, many homeowners have become dissatisfied with the operation of their homeowners' associations. Disputes between homeowners' association boards and individual homeowners often begin with relatively small fines imposed by the board for violations of deed restrictions. The manner in which the board notifies the individual homeowner is at times the subject of the disagreement.

C.S.S.B. 239 sets forth the required content and manner of delivery of a notice of enforcement action by a property owners' association. The bill also requires the notice to specify a certain date by which the violation must be cured and requires that date to provide the owner a reasonable period of at least 30 days in which to cure the violation. The bill sets forth provisions for a suit brought by the association relating to the failure of a property owner to cure a violation.

### **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**

C.S.S.B. 239 amends the Property Code to require notice given to a property owner relating to a pending enforcement action taken by a property owners' association against the owner to specify a date certain by which the owner is required to cure the violation and requires that date to provide the owner a reasonable period of at least 30 days in which to cure the violation. The bill requires the notice to specify the dollar amount of any fine the association seeks to levy, if a fine is sought to be levied, and to specify the section or sections of the dedicatory instrument of which the owner is in violation. The bill requires the notice to be sent by certified mail with a return receipt requested or delivered by the United States Postal Service with signature confirmation service to the owner at the owner's last known address as shown on the association's records.

C.S.S.B. 239 authorizes a property owners' association, if the property owner does not cure the violation within 30 days, to issue the fine upon which they must provide notice to the owner of the fine. The bill authorizes the homeowner, if the property owner disputes the violation, to challenge the fine by providing to the association written notice of the challenge with the grounds for why they believe they are not in violation and citations of the dedicatory instrument for each violation alleged. The bill provides that the fine assessed is void if the property owner cures the violation before the expiration of the 30 day period. The bill requires the association, if the property owner contests but fails to cure a violation within 30 days of receiving the notice, to file suit listing each violation with citation of the dedicatory instrument for each violation in a justice of the peace court within 60 days after the 30 day cure period to uphold and enforce the fine. The bill requires the justice of the peace to hold an evidentiary hearing on the matter within

30 days and entitles the parties to any discovery. The bill provides that, at the hearing, the association has the burden of proof by a preponderance of the evidence that the property owner has violated a restricted covenant. The bill requires the court to determine if a violation has occurred and if so whether the fine is reasonable considering the type, duration, and severity of the violation, and authorizes the court to award the prevailing party its attorney's fees if the court finds the position taken by either party is groundless or made in bad faith.

#### **EFFECTIVE DATE**

January 1, 2010.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.S.B. 239 removes a provision in the original requiring notice given to a property owner relating to a pending enforcement action taken by a property owners' association against the owner to be personally delivered, among other acceptable required methods of deliverance.

C.S.S.B. 239 adds a provision not in the original requiring the notice to specify the dollar amount of any fine the association seeks to levy, if a fine is sought to be levied, and to specify the section or sections of the dedicatory instrument of which the owner is in violation.

C.S.S.B. 239 adds a provision not in the original requiring the reasonable period in which the owner is required to cure a violation to be at least 30 days.

C.S.S.B. 239 adds a provision not in the original authorizing an association, if the property owner does not cure the violation within 30 days, to issue the fine specified in the notice and a provision authorizing the homeowner, if the property owner disputes the violation, to challenge the fine by providing to the association written notice of the challenge with the grounds applicable to each alleged violation.

C.S.S.B. 239 adds a provision not in the original providing that the fine assessed is void if the property owner cures the violation before the expiration of the 30 day period.

C.S.S.B. 239 adds provisions not in the original relating to the requirement that the association, if the property owner contests but fails to cure a violation within 30 days of receiving the notice, file suit listing each violation with citation of the dedicatory instrument for each violation in a justice of the peace court within 60 days after the 30 day cure period to uphold and enforce the fine.