

By: England

H.B. No. 2392

A BILL TO BE ENTITLED

AN ACT

relating to the persons entitled to redeem property after the foreclosure of a property owners' association's assessment lien.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 209.010(a) and (b), Property Code, are amended to read as follows:

(a) A property owners' association that conducts a foreclosure sale of an owner's lot must send to the lot owner and to each lienholder of record on the property, not later than the 30th day after the date of the foreclosure sale, a written notice stating the date and time the sale occurred and informing the lot owner and each lienholder of the ~~[owner's]~~ right of the lot owner and lienholders to redeem the property under Section 209.011.

(b) The notice must be sent by certified mail, return receipt requested, to:

(1) the lot owner's last known mailing address, as reflected in the records of the property owners' association; and

(2) the address of each lienholder as shown in the real property records of the county in which the property is located.

SECTION 2. Sections 209.011(b), (c), (d), (e), (f), (g), (h), (j), (k), (m), (n), and (p), Property Code, are amended to read as follows:

(b) The owner of property in a residential subdivision or a holder of a recorded lien secured by the property may redeem the

1 property from any purchaser at a sale foreclosing a property
2 owners' association's assessment lien not later than the 180th day
3 after the date the association mails written notice of the sale to
4 the owner and the lienholder under Section 209.010.

5 (c) A person who purchases property at a sale foreclosing a
6 property owners' association's assessment lien may not transfer
7 ownership of the property to a person other than a redeeming lot
8 owner or a redeeming lienholder during the redemption period.

9 (d) To redeem property purchased by the property owners'
10 association at the foreclosure sale, the lot owner or lienholder
11 must pay to the association:

12 (1) all amounts due the association at the time of the
13 foreclosure sale;

14 (2) interest from the date of the foreclosure sale to
15 the date of redemption on all amounts owed the association at the
16 rate stated in the dedicatory instruments for delinquent
17 assessments or, if no rate is stated, at an annual interest rate of
18 10 percent;

19 (3) costs incurred by the association in foreclosing
20 the lien and conveying the property to the redeeming lot owner or
21 lienholder, including reasonable attorney's fees;

22 (4) any assessment levied against the property by the
23 association after the date of the foreclosure sale;

24 (5) any reasonable cost incurred by the association,
25 including mortgage payments and costs of repair, maintenance, and
26 leasing of the property; and

27 (6) the purchase price paid by the association at the

1 foreclosure sale less any amounts due the association under
2 Subdivision (1) that were satisfied out of foreclosure sale
3 proceeds.

4 (e) To redeem property purchased at the foreclosure sale by
5 a person other than the property owners' association, the lot owner
6 or lienholder:

7 (1) must pay to the association:

8 (A) all amounts due the association at the time
9 of the foreclosure sale less the foreclosure sales price received
10 by the association from the purchaser;

11 (B) interest from the date of the foreclosure
12 sale through the date of redemption on all amounts owed the
13 association at the rate stated in the dedicatory instruments for
14 delinquent assessments or, if no rate is stated, at an annual
15 interest rate of 10 percent;

16 (C) costs incurred by the association in
17 foreclosing the lien and conveying the property to the redeeming
18 lot owner or lienholder, including reasonable attorney's fees;

19 (D) any unpaid assessments levied against the
20 property by the association after the date of the foreclosure sale;
21 and

22 (E) taxable costs incurred in a proceeding
23 brought under Subsection (a); and

24 (2) must pay to the person who purchased the property
25 at the foreclosure sale:

26 (A) any assessments levied against the property
27 by the association after the date of the foreclosure sale and paid

1 by the purchaser;

2 (B) the purchase price paid by the purchaser at
3 the foreclosure sale;

4 (C) the amount of the deed recording fee;

5 (D) the amount paid by the purchaser as ad
6 valorem taxes, penalties, and interest on the property after the
7 date of the foreclosure sale; and

8 (E) taxable costs incurred in a proceeding
9 brought under Subsection (a).

10 (f) If a lot owner or lienholder redeems the property under
11 this section, the purchaser of the property at foreclosure shall
12 immediately execute and deliver to the redeeming lot owner or
13 lienholder a deed transferring the property to the redeeming lot
14 owner or lienholder. If a purchaser fails to comply with this
15 section, the redeeming lot owner or lienholder may file an ~~an~~ ~~[a cause~~
16 ~~of]~~ action against the purchaser and may recover reasonable
17 attorney's fees from the purchaser if the lot owner or the
18 lienholder is the prevailing party in the action.

19 (g) If, before the expiration of the redemption period, the
20 redeeming lot owner or lienholder fails to record the deed from the
21 foreclosing purchaser or fails to record an affidavit stating that
22 the lot owner or lienholder has redeemed the property, the lot
23 owner's or lienholder's right of redemption as against a bona fide
24 purchaser or lender for value expires after the redemption period.

25 (h) The purchaser of the property at the foreclosure sale or
26 a person to whom the person who purchased the property at the
27 foreclosure sale transferred the property may presume conclusively

1 that the lot owner or a lienholder did not redeem the property
2 unless the lot owner or a lienholder files in the real property
3 records of the county in which the property is located:

4 (1) a deed from the purchaser of the property at the
5 foreclosure sale; or

6 (2) an affidavit that:

7 (A) states that the lot owner or a lienholder has
8 redeemed the property; ~~and~~

9 (B) contains a legal description of the property;
10 and

11 (C) includes the name and mailing address of the
12 person who redeemed the property.

13 (j) If a person other than the property owners' association
14 is the purchaser at the foreclosure sale, before executing a deed
15 transferring the property to the redeeming lot owner or lienholder,
16 the purchaser shall obtain an affidavit from the association or its
17 authorized agent stating that all amounts owed the association
18 under Subsection (e) have been paid. The association shall provide
19 the purchaser with the affidavit not later than the 10th day after
20 the date the association receives all amounts owed to the
21 association under Subsection (e). Failure of a purchaser to comply
22 with this subsection does not affect the validity of a redemption
23 ~~[by a redeeming lot owner]~~.

24 (k) Property that is redeemed remains subject to all liens
25 and encumbrances on the property before foreclosure. Any lease
26 entered into by the purchaser of property at a sale foreclosing an
27 assessment lien of a property owners' association is subject to the

1 right of redemption provided by this section and the lot owner's
2 right to reoccupy the property immediately after [~~the~~] redemption
3 by the lot owner.

4 (m) If a lot owner or lienholder sends by certified mail,
5 return receipt requested, a written request to redeem the property
6 on or before the last day of the redemption period, the lot owner's
7 or lienholder's right of redemption is extended until the 10th day
8 after the date the association and any third party foreclosure
9 purchaser provides written notice to the lot owner or lienholder of
10 the amounts that must be paid to redeem the property.

11 (n) After the redemption period and any extended redemption
12 period provided by Subsection (m) expires without a redemption of
13 the property, the association or third party foreclosure purchaser
14 shall record an affidavit in the real property records of the county
15 in which the property is located stating that the lot owner or a
16 lienholder did not redeem the property during the redemption period
17 or any extended redemption period.

18 (p) The rights of a lot owner and a lienholder under this
19 section also apply if the sale of the lot owner's property is
20 conducted by a constable or sheriff as provided by a judgment
21 obtained by the property owners' association.

22 SECTION 3. Sections 209.010 and 209.011, Property Code, as
23 amended by this Act, apply only to a foreclosure sale conducted on
24 or after the effective date of this Act. A foreclosure sale
25 conducted before the effective date of this Act is governed by the
26 law in effect immediately before the effective date of this Act, and
27 that law is continued in effect for that purpose.

1 SECTION 4. This Act takes effect September 1, 2009.