

By: Rose

H.B. No. 4148

A BILL TO BE ENTITLED

AN ACT

relating to the operation of a property owners' association.

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

SECTION 1. Section 207.001(5), Property Code, is amended to read as follows:

(5) "Resale certificate" means a written statement prepared prepared [~~issued, signed, and dated~~] by an officer or authorized agent of a property owners' association that contains the information specified by Section 207.003(b).

SECTION 2. Sections 207.003(c) and (e), Property Code, are amended to read as follows:

(c) A property owners' association may charge a reasonable fee of not more than \$50 to assemble, copy, and deliver the information required by this section and may charge a reasonable fee of not more than \$25 to prepare and deliver an update of a resale certificate.

(e) Notwithstanding any [~~Unless required by a~~] dedicatory instrument provision to the contrary, [~~neither~~] a property owners' association may not condition the delivery or validity of [~~or its agent is required to inspect a property before issuing~~] a resale certificate on an inspection, waiver, or performance by the owner, other than payment of any fee charged by the property owners' association for the [~~or an update to a~~] resale certificate.

SECTION 3. Sections 207.004(b) and (c), Property Code, are

1 amended to read as follows:

2 (b) If a property owners' association fails to deliver the
3 information required under Section 207.003 before the seventh day
4 after the second request for the information was mailed by
5 certified mail, return receipt requested, or hand delivered,
6 evidenced by receipt, the owner:

7 (1) may seek one or any combination of the following:

8 (A) a court order directing the property owners'
9 association to furnish the required information;

10 (B) a judgment against the property owners'
11 association for the greater of the amount of the owner's damages if
12 a buyer terminates a contract to purchase the owner's property or
13 ~~[not more than]~~ \$500;

14 (C) a judgment against the property owners'
15 association for court costs and attorney's fees; or

16 (D) a judgment authorizing the owner or the
17 owner's assignee to deduct the amounts awarded under Paragraphs (B)
18 and (C) from any future regular or special assessments payable to
19 the property owners' association; and

20 (2) may provide a buyer under contract to purchase the
21 owner's property an affidavit that states that the owner, owner's
22 agent, or title insurance company or its agent acting on behalf of
23 the owner made, in accordance with this chapter, two written
24 requests to the property owners' association for the information
25 described in Section 207.003 and that the association did not
26 timely provide the information.

27 (c) If the owner provides a buyer under contract to purchase

1 the owner's property an affidavit in accordance with Subsection
2 (b)(2):

3 (1) the buyer, buyer's agent, owner, owner's agent,
4 lender, or title insurance company or its agent is not liable to the
5 property owners' association for:

6 (A) any money that is due and unpaid to the
7 property owners' association on the date the affidavit was
8 prepared; and

9 (B) any debt to the property owners' association
10 or claim by the property owners' association that accrued before
11 the date the affidavit was prepared; and

12 (2) the property owners' association's lien to secure
13 the amounts due the property owners' association on the owner's
14 property on the date the affidavit was prepared shall automatically
15 terminate.

16 SECTION 4. Chapter 209, Property Code, is amended by adding
17 Sections 209.0061, 209.0062, and 209.0063 to read as follows:

18 Sec. 209.0061. CHARACTER OF ASSESSMENT AND DEBT. An
19 assessment or other debt owed by a property owner to a property
20 owners' association is debt for purposes of the federal Fair Debt
21 Collection Practices Act (15 U.S.C. Section 1692 et seq.).

22 Sec. 209.0062. PRIORITY OF PAYMENTS. (a) A property
23 owners' association shall apply a payment received by or on behalf
24 of an owner as instructed by the payor, or, if instructions for
25 applying a payment are not provided by the payor, the property
26 owners' association shall apply the payment to the owner's debt in
27 the following order of priority:

1 (1) any delinquent assessment; and

2 (2) any current assessment.

3 (b) A property owners' association may not apply a payment
4 by or on behalf of an owner to a debt other than an assessment unless
5 instructed to do so by the payor. Notwithstanding Subsection (a), a
6 property owners' association may not apply a payment received from
7 an owner to a debt that the owner disputes.

8 Sec. 209.0063. COLLECTIONS. A property owners' association
9 must bring suit or otherwise initiate against an owner a collection
10 action authorized by the dedicatory instruments or other law on or
11 before the third anniversary of the date on which the cause of
12 action for collection of the debt accrues. Section 16.004, Civil
13 Practice and Remedies Code, does not apply to the collection of a
14 debt owed by an owner to a property owners' association.

15 SECTION 5. (a) Sections 207.001, 207.003, and 207.004,
16 Property Code, as amended by this Act, apply only to a request for a
17 resale certificate initially received by a property owners'
18 association on or after the effective date of this Act. A request
19 for a resale certificate initially received by a property owners'
20 association before the effective date of this Act is governed by the
21 law in effect immediately before the effective date of this Act, and
22 that law is continued in effect for that purpose.

23 (b) Sections 209.0061 and 209.0063, Property Code, as added
24 by this Act, apply only to an assessment or other debt that becomes
25 due on or after the effective date of this Act. An assessment or
26 other debt that becomes due before the effective date of this Act is
27 governed by the law in effect immediately before the effective date

1 of this Act, and that law is continued in effect for that purpose.

2 (c) Section 209.0062, Property Code, as added by this Act,
3 applies only to a payment received by a property owners'
4 association on or after the effective date of this Act. A payment
5 received by a property owners' association before the effective
6 date of this Act is governed by the law in effect immediately before
7 the effective date of this Act, and that law is continued in effect
8 for that purpose.

9 SECTION 6. This Act takes effect January 1, 2010.