

By: West

S.B. No. 2121

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. Section 209.010, Property Code, is amended by amending Subsections (a) and (b) and adding Subsections (b-1) and (b-2) 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, 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 record of the ~~[owner's]~~ right of the lot owner and lienholder 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;

(2) the address of each holder of a lien on the property subject to foreclosure evidenced by the most recent deed of trust filed of record in the real property records of the county in which the property is located; and

(3) the address of each transferee or assignee of a deed of trust described by Subdivision (2) who has provided notice

1 to a property owners' association of such assignment or transfer.
2 Notice provided by a transferee or assignee to a property owners'
3 association shall be in writing, shall contain the mailing address
4 of the transferee or assignee, and shall be mailed by certified
5 mail, return receipt requested, or United States mail with
6 signature confirmation to the property owners' association
7 according to the mailing address of the property owners'
8 association pursuant to the most recent management certificate
9 filed of record pursuant to Section 209.004.

10 (b-1) If a recorded instrument does not include an address
11 for the lienholder, the association does not have a duty to notify
12 the lienholder as provided by this section.

13 (b-2) For purposes of this section, the lot owner is deemed
14 to have given approval for the association to notify the
15 lienholder.

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

19 (b) The owner of property in a residential subdivision or a
20 lienholder of record may redeem the property from any purchaser at a
21 sale foreclosing a property owners' association's assessment lien
22 not later than the 180th day after the date the association mails
23 written notice of the sale to the owner and the lienholder under
24 Section 209.010.

25 (c) A person who purchases property at a sale foreclosing a
26 property owners' association's assessment lien may not transfer
27 ownership of the property to a person other than a redeeming lot

owner or a redeeming lienholder during the redemption period.

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

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

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

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

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

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

(6) the purchase price paid by the association at the foreclosure sale less any amounts due the association under Subdivision (1) that were satisfied out of foreclosure sale proceeds.

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

(1) must pay to the association:

1 (A) all amounts due the association at the time
2 of the foreclosure sale less the foreclosure sales price received
3 by the association from the purchaser;

4 (B) interest from the date of the foreclosure
5 sale through the date of redemption on all amounts owed the
6 association at the rate stated in the dedicatory instruments for
7 delinquent assessments or, if no rate is stated, at an annual
8 interest rate of 10 percent;

9 (C) costs incurred by the association in
10 foreclosing the lien and conveying the property to the redeeming
11 lot owner, including reasonable attorney's fees;

12 (D) any unpaid assessments levied against the
13 property by the association after the date of the foreclosure sale;
14 and

15 (E) taxable costs incurred in a proceeding
16 brought under Subsection (a); and

17 (2) must pay to the person who purchased the property
18 at the foreclosure sale:

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

22 (B) the purchase price paid by the purchaser at
23 the foreclosure sale;

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

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

1 (E) taxable costs incurred in a proceeding
2 brought under Subsection (a).

3 (f) If a lot owner or lienholder redeems the property under
4 this section, the purchaser of the property at foreclosure shall
5 immediately execute and deliver to the redeeming party ~~[owner]~~ a
6 deed transferring the property to the ~~[redeeming]~~ lot owner. If a
7 purchaser fails to comply with this section, the lot owner or
8 lienholder may file an ~~[a cause of]~~ action against the purchaser and
9 may recover reasonable attorney's fees from the purchaser if the
10 lot owner or the lienholder is the prevailing party in the action.

11 (g) If, before the expiration of the redemption period, the
12 redeeming lot owner or lienholder fails to record the deed from the
13 foreclosing purchaser or fails to record an affidavit stating that
14 the lot owner or lienholder has redeemed the property, the lot
15 owner's or lienholder's right of redemption as against a bona fide
16 purchaser or lender for value expires after the redemption period.

17 (h) The purchaser of the property at the foreclosure sale or
18 a person to whom the person who purchased the property at the
19 foreclosure sale transferred the property may presume conclusively
20 that the lot owner or a lienholder did not redeem the property
21 unless the lot owner or a lienholder files in the real property
22 records of the county in which the property is located:

23 (1) a deed from the purchaser of the property at the
24 foreclosure sale; or

25 (2) an affidavit that:

26 (A) states that the property ~~[lot owner]~~ has been
27 redeemed ~~[the property]~~; ~~[and]~~

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

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

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

(k) Property that is redeemed remains subject to all liens and encumbrances on the property before foreclosure. Any lease entered into by the purchaser of property at a sale foreclosing an assessment lien of a property owners' association is subject to the right of redemption provided by this section and the lot owner's right to reoccupy the property immediately after ~~[the]~~ redemption.

(m) If a lot owner or lienholder sends by certified mail, return receipt requested, a written request to redeem the property on or before the last day of the redemption period, the lot owner's or lienholder's right of redemption is extended until the 10th day after the date the association and any third party foreclosure purchaser provides written notice to the redeeming party ~~[lot~~

1 ~~owner]~~ of the amounts that must be paid to redeem the property.

2 (n) After the redemption period and any extended redemption
3 period provided by Subsection (m) expires without a redemption of
4 the property, the association or third party foreclosure purchaser
5 shall record an affidavit in the real property records of the county
6 in which the property is located stating that the lot owner or a
7 lienholder did not redeem the property during the redemption period
8 or any extended redemption period.

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

13 SECTION 3. Sections 209.010 and 209.011, Property Code, as
14 amended by this Act, apply only to a foreclosure sale conducted on
15 or after the effective date of this Act. A foreclosure sale
16 conducted before the effective date of this Act is governed by the
17 law in effect immediately before the effective date of this Act, and
18 that law is continued in effect for that purpose.

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