

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. Sections 209.010(a) and (b), Property Code, are amended and subsection (c) is added, 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 holder of a lien evidenced by a deed of trust filed of record on the property subject to foreclosure, according to the most recent deed of trust on file in the real property records of the county in which the property is located. A property owners association shall have no duty to determine if a deed of trust has been transferred or assigned. If there is no lienholder address in such deed of trust, the

1 association shall have no duty to notify the lienholder in  
2 accordance with this Section.

3 (c) For purposes of this Section the lot owner shall be  
4 deemed to have given approval for the association to notify the  
5 lienholder.

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

9 (b) The owner of property in a residential subdivision or a  
10 holder of a recorded lien secured by the property may redeem the  
11 property from any purchaser at a sale foreclosing a property  
12 owners' association's assessment lien not later than the 180th day  
13 after the date the association mails written notice of the sale to  
14 the owner and the lienholder under Section 209.010.

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

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

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

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

1 10 percent;

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

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

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

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

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

17 (1) must pay to the association:

18 (A) all amounts due the association at the time  
19 of the foreclosure sale less the foreclosure sales price received  
20 by the association from the purchaser;

21 (B) interest from the date of the foreclosure  
22 sale through the date of redemption on all amounts owed the  
23 association at the rate stated in the dedicatory instruments for  
24 delinquent assessments or, if no rate is stated, at an annual  
25 interest rate of 10 percent;

26 (C) costs incurred by the association in  
27 foreclosing the lien and conveying the property to the redeeming

lot owner including reasonable attorney's fees;

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

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

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

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

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

(C) the amount of the deed recording fee;

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

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

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

1 (g) If, before the expiration of the redemption period, the  
2 redeeming lot owner or lienholder fails to record the deed from the  
3 foreclosing purchaser or fails to record an affidavit stating that  
4 the lot owner or lienholder has redeemed the property, the lot  
5 owner's or lienholder's right of redemption as against a bona fide  
6 purchaser or lender for value expires after the redemption period.

7 (h) The purchaser of the property at the foreclosure sale or  
8 a person to whom the person who purchased the property at the  
9 foreclosure sale transferred the property may presume conclusively  
10 that the lot owner or a lienholder did not redeem the property  
11 unless the lot owner or a lienholder files in the real property  
12 records of the county in which the property is located:

13 (1) a deed from the purchaser of the property at the  
14 foreclosure sale; or

15 (2) an affidavit that:

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

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

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

22 (j) If a person other than the property owners' association  
23 is the purchaser at the foreclosure sale, before executing a deed  
24 transferring the property to the ~~redeeming~~ lot owner, the purchaser  
25 shall obtain an affidavit from the association or its authorized  
26 agent stating that all amounts owed the association under  
27 Subsection (e) have been paid. The association shall provide the

1 purchaser with the affidavit not later than the 10th day after the  
2 date the association receives all amounts owed to the association  
3 under Subsection (e). Failure of a purchaser to comply with this  
4 subsection does not affect the validity of a redemption [~~by a~~  
5 ~~redeeming lot owner~~].

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

13 (m) If a lot owner or lienholder sends by certified mail,  
14 return receipt requested, a written request to redeem the property  
15 on or before the last day of the redemption period, the lot owner's  
16 or lienholder's right of redemption is extended until the 10th day  
17 after the date the association and any third party foreclosure  
18 purchaser provides written notice to the redeeming party ~~lot~~  
19 ~~owner~~ of the amounts that must be paid to redeem the property.

20 (n) After the redemption period and any extended redemption  
21 period provided by Subsection (m) expires without a redemption of  
22 the property, the association or third party foreclosure purchaser  
23 shall record an affidavit in the real property records of the county  
24 in which the property is located stating that the lot owner or a  
25 lienholder did not redeem the property during the redemption period  
26 or any extended redemption period.

27 (p) The rights of a lot owner and a lienholder under this

1 section also apply if the sale of the lot owner's property is  
2 conducted by a constable or sheriff as provided by a judgment  
3 obtained by the property owners' association.

4       SECTION 3. Sections 209.010 and 209.011, Property Code, as  
5 amended by this Act, apply only to a foreclosure sale conducted on  
6 or after the effective date of this Act. A foreclosure sale  
7 conducted before the effective date of this Act is governed by the  
8 law in effect immediately before the effective date of this Act, and  
9 that law is continued in effect for that purpose.

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