

**House Bill 3479**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Chapter 11, Property Code, is amended by adding Section 11.0041 to read as follows:

Sec. 11.0041. REVIEW OF CERTAIN INSTRUMENTS IN CERTAIN COUNTIES. (a) This section applies only to a county clerk of a county:

(1) some part of which is on the international border of this state and

which has a population of less than 15,000; or

(2) in which a colonia self-help center established under Section 2306.582, Government Code, is located or which is served by a colonia self-help center in another county.

(b) A county clerk, before filing an instrument conveying real property, may send the instrument to the county attorney for review under this section.

The county attorney shall promptly:

(1) review the instrument to determine whether it meets the requirements prescribed by law for an instrument that is required to be recorded; and

(2) return the instrument to the county clerk with a statement of the county attorney's determination under Subdivision (1).

(c) Notwithstanding Section 11.004(a), a county clerk is not required to file an instrument that the county attorney has determined the clerk is not required to file.

SENATE VERSION

SECTION 1. Chapter 11, Property Code, is amended by adding Section 11.0041 to read as follows:

Sec. 11.0041. REVIEW OF CERTAIN INSTRUMENTS IN CERTAIN COUNTIES. (a) This section applies only to the county clerk of a county:

(1) that:

(A) is located on the international border; and

(B) has a population of less than 15,000;

(2) in which a colonia self-help center established under Section 2306.582, Government Code, is located; or

(3) that is served by a colonia self-help center described by Subdivision (2) in another county.

(b) Before accepting an instrument conveying real property for filing, the county clerk may send the instrument to the county attorney for review under this section. Not later than one business day after the date the county attorney receives an instrument under this subsection, the county attorney shall:

(1) review the instrument to determine whether the platting requirements prescribed by Sections 232.023, 232.025, and 232.031, Local Government Code, have been satisfied; and

(2) return the instrument to the county clerk with a statement of the county attorney's determination under Subdivision (1).

(c) Notwithstanding Section 11.004(a), the county clerk

CONFERENCE

**House Bill 3479**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

shall immediately notify the party that presented the instrument for recording that:

(1) the clerk is referring the instrument to the county attorney for review;

(2) the instrument will not be immediately recorded; and

(3) the clerk is not required to file an instrument the county attorney determines the clerk is not required to file.

SECTION 2. The change in law made by this Act applies only to an instrument delivered to a county clerk on or after the effective date of this Act. An instrument delivered to a county clerk before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

Same as House version.

SECTION 3. This Act takes effect September 1, 2009.

Same as House version.

The following rows were presented as containing language in Senate Bill 2121, relating to the persons entitled to redeem property after the foreclosure of a property owners' association's assessment lien. The language is not identical to the engrossed version of Senate Bill 2121.

**House Bill 3479**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

No equivalent provision.

SECTION \_\_. 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 to a property owners' association of such assignment or transfer. Notice provided by a transferee or assignee to a property owners' association shall be in writing, shall contain the mailing address of the transferee or assignee, and shall be mailed by certified mail, return receipt requested, or United States mail with signature confirmation to the property owners' association according to the mailing address of the

**House Bill 3479**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

property owners' association pursuant to the most recent management certificate filed of record pursuant to Section 209.004.

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

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

No equivalent provision.

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

(b) The owner of property in a residential subdivision or a lienholder of record may redeem the property from any purchaser at a sale foreclosing a property owners' association's assessment lien not later than the 180th day after the date the association mails written notice of the sale to the owner and the lienholder under Section 209.010. A lienholder of record may not redeem the property as provided herein before 90 days after the date the association mails written notice of the sale to the lot owner and the lienholder under Section 209.010, and only if the lot owner has not previously redeemed.

(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

**House Bill 3479**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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, 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:

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

(B) interest from the date of the foreclosure sale through 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;

**House Bill 3479**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

- (C) costs incurred by the association in 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 deliver to the redeeming party ~~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 ~~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

**House Bill 3479**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

the action.

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

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

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

(2) an affidavit that:

(A) states that the property [~~lot owner~~] has been 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

**House Bill 3479**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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

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



**House Bill 3479**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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

No equivalent provision.

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