

## **BILL ANALYSIS**

C.S.H.B. 366  
By: Orr  
Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

A property owners' association in Texas may foreclose on a person's property only for failure to pay assessments, not for fines or for attorney's fees incurred by the association that are related exclusively to those fines. Some interested parties contend that to circumvent that restriction, many associations will credit an assessment amount paid by a property owner to an outstanding fine or other amount the association indicates is owed by the property owner. This creates an artificial delinquency in the assessment due and allows the association to foreclose on the property. C.S.H.B. 366 creates a payment priority system wherein amounts paid by an owner are applied first to assessments, both delinquent and current, and then to any fines and related attorney's fees.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 366 amends the Property Code to require a payment received by a property owners' association from a property owner, unless otherwise provided in writing by the property owner at the time payment is made, to be applied to the owner's debt in the following order of priority: any delinquent assessment; any current assessment; any attorney's fees incurred by the association associated solely with assessments or any other charge that could provide the basis for foreclosure; any fines assessed by the association; any attorney's fees incurred by the association that are not associated solely with assessments or any other charge that could provide the basis for foreclosure; and any other amount owed to the association.

### **EFFECTIVE DATE**

September 1, 2011.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 366 contains three categories of prioritized owner debt not included in the original, toward which a property owners' association must apply payments received from an owner, as follows: attorney's fees incurred by the association relating to assessments or charges that could be the basis for foreclosure; attorney's fees incurred by the association other than those specified; and any other amount owed to the association, with the categories listed at the third, fifth, and sixth levels of priority, respectively.

C.S.H.B. 366 omits a category of prioritized owner debt contained in the original, as the lowest priority of debt, requiring a property owners' association to apply a payment from an owner toward any attorney's fees incurred by the association solely associated with fines assessed by the association.

C.S.H.B. 366 differs from the original by specifying that the owner's written notice to the property owners' association regarding the application of payment other than in the order of priorities listed is provided at the time payment is made, whereas the original does not specify when the written notice is given.

C.S.H.B. 366 differs from the original by adding a new section to the Property Code containing the substitute's provisions, whereas the original amends an existing section of the code by adding a new subsection to include the original's provisions.