

BILL ANALYSIS

C.S.H.B. 3348
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There is concern that certain provisions of law governing the operation of condominium unit owners' association inhibit such associations from operating in the best interests of their members. C.S.H.B. 3348 seeks to address this situation by revising those provisions.

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. 3348 amends the Property Code to authorize a condominium unit owners' association by resolution of its board of directors to borrow money unless prohibited by the association's declaration, certificate of formation, bylaws, or rules. The bill authorizes the association, on approval of such a resolution, to assign the association's right to future income, including the right to receive common expense assessments and assign the association's lien rights, as collateral for the loan authorized by the resolution. The bill requires the association to comply with any member approval requirement in the association's declaration, certificate of formation, bylaws, or rules for borrowing money, except that not more than 67 percent of the total votes entitled to be cast are required to approve an authorization to borrow money.

C.S.H.B. 3348 authorizes certain property insurance on the insurable elements and commercial general liability insurance policies carried by a condominium unit owners' association to provide for deductibles as the board of the association considers appropriate or necessary. The bill removes a provision establishing the cost of repair or replacement for any portion of the condominium that is damaged or destroyed in excess of the insurance proceeds and reserves as a common expense. The bill requires the cost of repairs incurred before any insurance proceeds are available that are within the association's deductible, or that are in excess of the insurance proceeds and reserves, to be paid as determined by resolution of the board. The bill requires such costs to be considered a common expense if the board has not approved a resolution. The bill establishes that a resolution regarding payment of costs under these provisions is considered a dedicatory instrument and requires the resolution to be recorded in accordance with certain provisions of state law relating to filing a dedicatory instrument in the real property records of a county.

C.S.H.B. 3348 establishes that a lien or lien affidavit or other instrument evidencing the nonpayment of assessments or other charges owed to an association and filed in the official public records of a county is a legal instrument affecting title to real property. The bill, in provisions authorizing the owner of a unit purchased at a foreclosure sale of the association's lien for assessments to redeem the unit within a specified time period, removes the specification that the unit be purchased by an association and used for residential purposes. The bill specifies that provisions of law requiring the owner of a unit, before the owner redeems the unit, to pay to the association certain specified expenses apply if the association is the purchaser of a unit. The bill

specifies that the requirement that the owner of a unit purchased at such a foreclosure sale pay to the association costs incurred by the association in foreclosing the lien applies to all such costs incurred and costs in connection to the redemption process. The bill adds to the reasonable costs of maintenance incurred by the association the owner is required to pay to the association the costs of mortgage payments, taxes, and insurance.

C.S.H.B. 3348 requires the redeeming owner, if a party other than the association is the purchaser of the unit at the foreclosure sale, to pay to the party acquiring the unit at the foreclosure sale the amount bid at the sale, interest on the bid amount computed from the date of the foreclosure sale to the date of redemption at the rate of six percent, any assessment paid after the date of the foreclosure, and any reasonable costs incurred as the owner of the unit, including costs of maintenance, leasing, mortgage payments, taxes, and insurance. The bill requires the redeeming owner also to pay to the association all assessments that are due as of the date of redemption, reasonable attorney's fees, and all costs incurred by the association in foreclosing the lien.

C.S.H.B. 3348 expands the provisions of law requiring the association, upon redemption of a unit, to execute a deed to the redeeming unit owner to make those provisions applicable to the purchaser of the unit at the foreclosure sale and specifies that the requirement applies to the execution of a deed with special warranty to the redeeming unit owner. The bill redefines "declaration" and makes related conforming changes.

EFFECTIVE DATE

January 1, 2012.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3348 omits a provision included in the original establishing an exception to the 67 percent approving vote threshold, if such a vote is required of an association's board of directors for the borrowing of money, contingent on a lower percentage provided in the declaration creating a condominium, bylaws, rules, or certificate of formation.

C.S.H.B. 3348 differs from the original by requiring the owner of a unit purchased by the association at a foreclosure sale to redeem the unit to pay the association any reasonable costs of maintenance, leasing, mortgage payments, taxes, and insurance levied against the unit by the association, whereas the original requires those costs to be paid without limitation. The substitute differs from the original by specifying that the interest the redeeming owner is required to pay to the purchaser of the unit, other than the association, at a foreclosure sale is interest on the bid amount computed from the date of the foreclosure sale to the date of the redemption at a specified rate, whereas the original does not reference the bid amount.

C.S.H.B. 3348 differs from the original by providing that upon redemption of a unit, the purchaser of the unit at the foreclosure sale is required to execute a deed to the redeeming unit owner, whereas the original specifies that such a deed is executed by the association or the party acquiring the title at the foreclosure of the association's assessment lien.

C.S.H.B. 3348 differs from the original in nonsubstantive ways by using language reflective of and conforming to certain bill drafting conventions.