

By: Menendez

H.B. No. 45

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the release of a property owners' association
3 assessment lien.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Chapter 12, Property Code, is amended by adding
6 Section 12.0171 to read as follows:

7 Sec. 12.0171. AFFIDAVIT AS RELEASE OF ASSESSMENT LIEN. (a)

8 A property owner whose property is subject to a recorded notice of a
9 property owners' assessment lien may, at any time, file an
10 affidavit that substantially complies with Subsection (e) in the
11 real property records of the county in which the lien notice is
12 recorded.

13 (b) Subject to Subsection (c) and except as provided by
14 Subsection (d), an affidavit filed under Subsection (a) serves as a
15 release of record of the property owners' association assessment
16 lien referenced in the affidavit.

17 (c) A bona fide purchaser or a mortgagee for value or a
18 successor or assign of a bona fide purchaser or mortgagee for value
19 may rely conclusively on an affidavit filed under Subsection (a) if
20 included with the affidavit is evidence that:

21 (1) the property owner sent a letter and a copy of the
22 affidavit, without attachments and before execution of the
23 affidavit, notifying the property owners' association of the
24 owner's intent to file the affidavit; and

1 (2) 30 or more days before the affidavit was filed, the
2 letter and the affidavit were sent to the property owners'
3 association by registered or certified mail, return receipt
4 requested, to the address provided in the management certificate
5 recorded under Section 209.004.

6 (d) An affidavit filed under Subsection (a) does not serve
7 as a release of record of a property owners' association assessment
8 lien if the association files a contradicting affidavit in the real
9 property records of the county in which the affidavit is filed
10 asserting that:

11 (1) the affidavit filed by the owner is untrue; or
12 (2) another reason exists as to why the assessment
13 lien attaches to the owner's property.

14 (e) An affidavit filed under Subsection (a) must be in
15 substantially the following form:

16 PROPERTY OWNER'S AFFIDAVIT AS RELEASE OF PROPERTY OWNERS'
17 ASSOCIATION ASSESSMENT LIEN

18 Before me, the undersigned authority, on this day personally
19 appeared _____ ("Affiant(s)) (insert name of one or more
20 affiants) who, being first duly sworn, upon oath states:

21 (1) My/our name is/are _____ (insert name of
22 Affiant(s)). I/we own the following described land ("Land"):

23 (describe the property that is the subject of the property owners'
24 association assessment lien)

25 (2) This affidavit is made for the purpose of
26 effecting a release of the property owners' association assessment
27 lien recorded in _____ (refer to recording information of

1 property owners' association assessment lien) ("Assessment Lien")
2 as to the Land.

3 (3) The debt on which the Assessment Lien in based has
4 been satisfied in its entirety or is not owed by us.

5 (4) Attached to this affidavit is evidence that:

6 (A) Affiant(s) sent a letter and a copy of this
7 affidavit, without attachments and before execution of the
8 affidavit, notifying the association claiming the Assessment Lien
9 of this affidavit and the Affiant(s)' intent to file for record this
10 affidavit; and

11 (B) the letter and this affidavit were sent by
12 registered or certified mail, return receipt requested, 30 or more
13 days before this affidavit was filed to the property owners'
14 association claiming the Assessment Lien.

15 (5) This affidavit serves as a release of the
16 Assessment Lien as to the Land in accordance with Section 12.0171,
17 Property Code.

18 Signed on this _____ day of _____, _____.

19 _____
20 _____

21 (Signature of Affiant(s))

22 State of _____

23 County of _____

24 SWORN TO AND SUBSCRIBED before me on the _____ day of
25 _____, 20____.

26 My commission expires:

27 _____

1 _____
2 Notary Public, State of Texas
3 Notary's printed name:
4 _____

5 (f) A person who knowingly causes an affidavit with false
6 information to be executed and recorded under this section is
7 liable for the penalties for filing a false affidavit, including
8 the penalties for the commission of an offense under Section 37.02,
9 Penal Code. The attorney general may sue to collect the penalty. A
10 person who negligently causes an affidavit with false information
11 to be executed and recorded under this section is liable to a party
12 injured by the affidavit for actual damages. If the attorney
13 general or an injured party bringing suit substantially prevails in
14 an action under this subsection, the court may award reasonable
15 attorney's fees and court costs to the prevailing party.

16 SECTION 2. The change in law made by this Act applies only
17 to an affidavit filed on or after the effective date of this Act. An
18 affidavit filed before the effective date of this Act is governed by
19 the law in effect immediately before the effective date of this Act,
20 and that law is continued in effect for that purpose.

21 SECTION 3. This Act takes effect September 1, 2011.