

By: Deshotel

H.B. No. 3348

A BILL TO BE ENTITLED

AN ACT

relating to the operation of property owners' associations.

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

SECTION 1. Subdivision (11), Subsection (a), Section 82.003, Property Code, is amended to read as follows:

(11) "Declaration" means an an ~~recorded~~ instrument, however denominated, that creates a condominium and any amendment to that ~~recorded~~ instrument.

SECTION 2. Subdivision (17), Subsection (a), Section 82.102, Property Code, is amended to read as follows:

(17) ~~assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration so provides; unless the declaration, bylaws, rules, or certificate of formation prohibit the borrowing of money, borrow money upon resolution of the board of directors. Except as otherwise provided by this Section (17), upon such resolution the association shall have the right to assign its right to future income, including the right to receive common expense assessments and assign its lien rights, as collateral for any such loan. If there is a member approval requirement for the borrowing of money contained in the declaration, bylaws, rules, or certificate of formation, the borrowing of money may be approved by a vote of not less than 67 percent of the total votes entitled to be cast. If the declaration, bylaws, rules, or certificate of formation provide a~~

1 lower percentage, that percentage controls.

2 SECTION 3. Subsections (c) and (i), Section 82.111,
3 Property Code, are amended to read as follows:

4 (c) If the insurance described by Subsections (a) and (b) is
5 not reasonably available, the association shall cause notice of
6 that fact to be delivered or mailed to all unit owners and
7 lienholders. The declaration may require the association to carry
8 any other insurance, and the association in any event may carry any
9 other insurance the board considers appropriate to protect the
10 condominium, the association, or the unit owners. Insurance
11 policies carried under Subsection (a) and (b) may provide for
12 deductibles as the board considers appropriate or necessary. This
13 section does not affect the right of a holder of a mortgage on a unit
14 to require a unit owner to acquire insurance in addition to that
15 provided by the association.

16 (i) Any portion of the condominium for which insurance is
17 required that is damaged or destroyed shall be promptly repaired or
18 replaced by the association unless the condominium is terminated,
19 repair or replacement would be illegal under any state or local
20 health or safety statute or ordinance, or at least 80 percent of the
21 unit owners, including each owner of a unit or assigned limited
22 common element that will not be rebuilt or repaired, vote to not
23 rebuild. A vote to not rebuild does not increase an insurer's
24 liability to loss payment obligation under a policy, and the vote
25 does not cause a presumption of total loss. ~~The cost of repair or~~
26 ~~replacement in excess of the insurance proceeds and reserves is a~~
27 ~~common expense.~~ The cost of repairs that are incurred before any

1 insurance proceeds are available, within the association's
2 deductible, or in excess of the insurance proceeds and reserves
3 shall be paid as determined by resolution of the board of directors
4 of the association. However, if the board of directors of the
5 association has not approved a resolution then these costs shall be
6 a common expense. Any such resolution shall constitute, and be
7 filed as, a dedicatory instrument pursuant to Section 202.006. If
8 the entire condominium is not repaired or replaced, any insurance
9 proceeds attributable to the damaged common elements shall be used
10 to restore the damaged area to a condition compatible with the
11 remainder of the condominium, the insurance proceeds attributable
12 to units and limited common elements that are not rebuilt shall be
13 distributed to the owners of those units and the owners of the units
14 to which those limited common elements were assigned, or to their
15 mortgagees, as their interests may appear, and the remainder of the
16 proceeds shall be distributed to all the unit owners as their
17 interests may appear. If the unit owners vote to not rebuild any
18 unit, that unit's allocated interests shall be automatically
19 reallocated on the vote as if the unit had been condemned, and the
20 association shall prepare, execute, and record an amendment to the
21 declaration reflecting the reallocation. Section 82.068 governs
22 the distribution of insurance proceeds if the condominium is
23 terminated.

24 SECTION 4. Subsections (g)-(n), Section 82.113, Property
25 Code, are amended to read as follows:

26 (g) The owner of a unit ~~used for residential purposes and~~
27 purchased ~~by an association~~ at a foreclosure sale of the

1 association's lien for assessments may redeem the unit not later
2 than the 90th day after the date of the foreclosure sale. To redeem
3 the unit, the owner must pay to the association:

4 (1) if the association is the purchaser, all amounts
5 due the association at the time of the foreclosure sale, interest
6 from the date of foreclosure sale to the date of redemption at the
7 rate provided by the declaration for delinquent assessments,
8 reasonable attorney's fees, and all costs incurred by the
9 association in foreclosing the lien and related to the redemption
10 process, any assessment levied against the unit by the association
11 after the foreclosure sale, and any reasonable cost incurred by the
12 association as owner of the unit, including without limitation
13 costs of maintenance, leasing, mortgage payments, taxes and
14 insurance.

15 (2) if a party other than the association is the
16 purchaser, the redeeming owner shall pay to the party acquiring the
17 unit at the foreclosure sale the amount bid at the sale, interest
18 from the date of foreclosure sale to the date of redemption at the
19 rate of six percent, any assessment paid after the date of the
20 foreclosure, and any reasonable costs incurred as owner of the
21 unit, including without limitation costs of maintenance, leasing,
22 mortgage payments, taxes and insurance. The redeeming owner shall
23 also pay to the Association all assessments that are due as of the
24 date of redemption, reasonable attorney's fees, and all costs
25 incurred by the association in foreclosing the lien.

26 (h) On redemption, the association or the party acquiring
27 title at the foreclosure of the association's assessment lien shall

1 execute a deed with special warranty to the redeeming unit owner.
2 The exercise of the right of redemption is not effective against a
3 subsequent purchaser or lender for value without notice of the
4 redemption after the redemption period expires unless the redeeming
5 unit owner records the deed from the association or an affidavit
6 stating that the owner has exercised the right of redemption. A unit
7 that has been redeemed remains subject to all liens and
8 encumbrances on the unit before foreclosure. All rents and other
9 income collected from the unit by the association or other party
10 that acquires title at the foreclosure of the association's
11 assessment lien from the date of foreclosure sale to the date of
12 redemption belong to the ~~association~~ party purchasing the property
13 at the foreclosure of the association's assessment lien, but the
14 rents and income shall be credited against the redemption amount.
15 ~~An association~~ A party purchasing a unit at ~~a sale foreclosing its~~
16 ~~lien~~ the foreclosure sale of the association's assessment lien may
17 not transfer ownership of the unit during the redemption period to a
18 person other than a redeeming owner.

19 ~~(h)~~(i) If a unit owner defaults in the owner's monetary
20 obligations to the association, the association may notify other
21 lien holders of the default and the association's intent to
22 foreclose its lien. The association shall notify any holder of a
23 recorded lien or duly perfected mechanic's lien against a unit who
24 has given the association a written request for notification of the
25 unit owner's monetary default or the association's intent to
26 foreclose its lien.

27 ~~(i)~~(j) This section does not prohibit the association from

1 taking a deed in lieu of foreclosure or from filing suit to recover
2 a money judgment for sums that may be secured by the lien.

3 ~~(j)~~(k) At any time before a nonjudicial foreclosure sale, a
4 unit owner may avoid foreclosure by paying all amounts due the
5 association.

6 ~~(k)~~(l) If, on January 1, 1994, a unit is the homestead of
7 the unit owner and is subject to a declaration that does not contain
8 a valid assessment lien against the unit, the lien provided by this
9 section does not attach against the unit until the unit ceases to be
10 the homestead of the person owning it on January 1, 1994.

11 ~~(l)~~(m) Foreclosure of a tax lien attaching against a unit
12 under Chapter 32, Tax Code, does not discharge the association's
13 lien for assessments under this section or under a declaration for
14 amounts becoming due to the association after the date of
15 foreclosure of the tax lien.

16 ~~(m)~~(n) If a unit owner is delinquent in payment of
17 assessments to an association, at the request of the association a
18 holder of a recorded lien against the unit may provide the
19 association with information about the unit owner's debt secured by
20 the holder's lien against the unit and other relevant information.
21 At the request of a lien holder, the association may furnish the
22 lien holder with information about the condominium and the unit
23 owner's obligations to the association.

24 SECTION 5. Chapter 82.113, Property Code, is amended by
25 adding Subsection (o) to read as follows:

26 (o) A lien or lien affidavit or other instrument evidencing
27 the non-payment of assessments or other charges owed to an

1 association and filed in the official public records of a county is
2 a legal instrument affecting title to real property.

3 SECTION 6. (a) Subsections (g)-(n), Section 82.113,
4 Property Code, as amended by this Act apply only to a foreclosure
5 sale that occurs after January 1, 2012. A foreclosure sale that
6 occurs before January 1, 2012, is governed by the law immediately in
7 effect before the effective date of this Act, and the law is
8 continued in effect for that purpose.

9 (b) Subsection (o), Section 82.113, Property Code, as added
10 by this Act, applies only to a lien or lien affidavit that is
11 prepared or filed after January 1, 2012.

12 SECTION 7. This Act takes effect January 1, 2012.