

By: West

S.B. No. 1204

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the procedures for collection of assessments and other
3 debts, including foreclosure of an assessment lien, by a property
4 owners' association.

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

6 SECTION 1. Chapter 209, Property Code, is amended by adding
7 Sections 209.0062, 209.0063, and 209.0064 to read as follows:

8 Sec. 209.0062. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN
9 ASSESSMENTS. (a) A property owners' association shall adopt
10 reasonable guidelines to establish an alternative payment schedule
11 by which an owner may make partial payments to the property owners'
12 association for delinquent regular or special assessments or any
13 other amount owed to the association without accruing additional
14 monetary penalties. For purposes of this section, monetary
15 penalties do not include reasonable costs associated with
16 administering the payment plan or interest.

17 (b) For any approved special assessment in an amount greater
18 than the equivalent of the sum of all regular assessments payable in
19 the year the special assessment is approved, a property owners'
20 association shall allow partial payments of the special assessment
21 for 12 months unless the property owner requests a shorter payment
22 period in writing at the time the property owner requests an
23 alternative payment plan. A property owners' association may offer
24 a reasonable discount for an owner making a one-time lump sum

1 payment of the special assessment.

2 (c) For any approved special assessment in an amount greater
3 than the equivalent of one-half the sum of all regular assessments
4 payable in the year the special assessment is approved, a property
5 owners' association shall allow partial payments of the special
6 assessment for six months unless the property owner requests a
7 shorter payment period in writing at the time the property owner
8 requests an alternative payment plan. A property owners'
9 association may offer a reasonable discount to an owner making a
10 one-time lump sum payment of the special assessment.

11 (d) A property owners' association is not required to allow
12 a payment plan for any amount that extends more than 12 months from
13 the date of the owner's request for a payment plan or to enter into a
14 payment plan with an owner who failed to honor the terms of a
15 previous payment plan during the five years following the owner's
16 default under the previous payment plan.

17 (e) A property owners' association shall file the
18 association's guidelines under this section in the real property
19 records of each county in which the subdivision is located.

20 (f) A property owners' association's failure to file as
21 required by this section the association's guidelines in the real
22 property records of each county in which the subdivision is located
23 does not prohibit a property owner from receiving an alternative
24 payment schedule by which the owner may make partial payments to the
25 property owners' association for delinquent regular or special
26 assessments or any other amount owed to the association without
27 accruing additional monetary penalties, as defined by Subsection

1 (a).

2 Sec. 209.0063. PRIORITY OF PAYMENTS. Unless otherwise
3 provided in writing by the property owner at the time payment is
4 made, a payment received by a property owners' association from the
5 owner shall be applied to the owner's debt in the following order of
6 priority:

7 (1) any delinquent assessment;

8 (2) any current assessment;

9 (3) any attorney's fees incurred by the association
10 associated solely with assessments or any other charge that could
11 provide the basis for foreclosure;

12 (4) any fines assessed by the association;

13 (5) any attorney's fees incurred by the association
14 that are not subject to Subdivision (3); and

15 (6) any other amount owed to the association.

16 Sec. 209.0064. COLLECTIONS. A property owners' association
17 must bring suit or otherwise initiate against an owner a collection
18 action authorized by the dedicatory instruments or other law on or
19 before the 10th anniversary of the date on which the cause of action
20 for collection of the debt accrues. Section 16.004, Civil Practice
21 and Remedies Code, does not apply to the collection of a debt owed
22 by an owner to a property owners' association.

23 SECTION 2. Chapter 209, Property Code, is amended by adding
24 Sections 209.0091 and 209.0092 to read as follows:

25 Sec. 209.0091. JUDICIAL FORECLOSURE REQUIRED. (a) Except
26 as provided by Subsection (c), a property owners' association may
27 not foreclose a property owners' association assessment lien unless

1 the association first obtains a court order in an application for
2 expedited foreclosure under the rules adopted by the supreme court
3 under Subsection (b). A property owners' association may use the
4 procedure described by this subsection to foreclose any lien
5 described by the association's dedicatory instruments.

6 (b) The supreme court, as an exercise of the court's
7 authority under Section 74.024, Government Code, shall adopt rules
8 establishing expedited foreclosure proceedings for use by a
9 property owners' association in foreclosing an assessment lien of
10 the association. The rules adopted under this subsection must be
11 substantially similar to the rules adopted by the supreme court
12 under Section 50(r), Article XVI, Texas Constitution.

13 (c) Expedited foreclosure is not required under this
14 section if the owner of the property that is subject to foreclosure
15 agrees in writing at the time the foreclosure is sought to waive
16 expedited foreclosure under this section. A waiver under this
17 subsection may not be required as a condition of the transfer of
18 title to real property.

19 Sec. 209.0092. REMOVAL OR ADOPTION OF FORECLOSURE
20 AUTHORITY. A provision granting a right to foreclose a lien on real
21 property for unpaid amounts due to a property owners' association
22 may be removed from a dedicatory instrument or adopted in a
23 dedicatory instrument by a vote of 51 percent of the total votes
24 allocated to property owners in the property owners' association.
25 Owners holding at least 10 percent of all voting interests in the
26 property owners' association may petition the association and
27 require a special meeting to be called for the purposes of taking a

1 vote for the purposes of this section.

2 SECTION 3. Section 209.010(a), Property Code, is amended to
3 read as follows:

4 (a) A property owners' association that conducts a
5 foreclosure sale of an owner's lot must send to the lot owner and to
6 each lienholder of record, not later than the 30th day after the
7 date of the foreclosure sale:

8 (1) [~~r~~] a written notice stating the date and time the
9 sale occurred and informing the lot owner and each lienholder of
10 record of the right of the lot owner and lienholder to redeem the
11 property under Section 209.011; and

12 (2) a copy of Section 209.011.

13 SECTION 4. (a) Sections 209.0062 and 209.0064, Property
14 Code, as added by this Act, apply only to an assessment or other
15 debt that becomes due on or after the effective date of this Act. An
16 assessment or other debt that becomes due before the effective date
17 of this Act is governed by the law in effect immediately before the
18 effective date of this Act, and that law is continued in effect for
19 that purpose.

20 (b) Section 209.0063, Property Code, as added by this Act,
21 applies only to a payment received by a property owners'
22 association on or after the effective date of this Act. A payment
23 received by a property owners' association before the effective
24 date of this Act is governed by the law in effect immediately before
25 the effective date of this Act, and that law is continued in effect
26 for that purpose.

27 (c) Sections 209.0091 and 209.0092, Property Code, as added

1 by this Act, apply only to a foreclosure sale that occurs after
2 January 1, 2012. A foreclosure sale that occurs on or before
3 January 1, 2012, is governed by the law in effect immediately before
4 the effective date of this Act, and that law is continued in effect
5 for that purpose.

6 (d) Section 209.010(a), Property Code, as amended by this
7 Act, applies only to a foreclosure sale conducted on or after the
8 effective date of this Act. A foreclosure sale conducted before the
9 effective date of this Act is governed by the law in effect
10 immediately before the effective date of this Act, and that law is
11 continued in effect for that purpose.

12 SECTION 5. Not later than January 1, 2012, the Supreme Court
13 of Texas shall adopt rules of civil procedure under Section
14 209.0091, Property Code, as added by this Act.

15 SECTION 6. (a) Except as provided by Subsection (b) of this
16 section, this Act takes effect September 1, 2011.

17 (b) Sections 209.0091(a) and (c), Property Code, as added by
18 this Act, take effect January 1, 2012.