

SENATE AMENDMENTS

2nd Printing

By: Dutton

H.B. No. 1228

A BILL TO BE ENTITLED

AN ACT

relating to foreclosure of a property owners' association
assessment lien.

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

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

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

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

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

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

(1) the property owner sent a letter and a copy of the
affidavit, without attachments and before execution of the
affidavit, notifying the property owners' association of the
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 is 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. Chapter 209, Property Code, is amended by adding
17 Section 209.0091 to read as follows:

18 Sec. 209.0091. PREREQUISITES TO FORECLOSURE: NOTICE AND
19 OPPORTUNITY TO CURE FOR CERTAIN OTHER LIENHOLDERS. (a) A property
20 owners' association may not foreclose a property owners'
21 association assessment lien on real property by giving notice of
22 sale under Section 51.002 or commencing a judicial foreclosure
23 action unless the association has:

24 (1) provided written notice of the total amount of the
25 delinquency giving rise to the foreclosure to any other holder of a
26 lien of record on the property whose lien is inferior or subordinate
27 to the association's lien and is evidenced by a deed of trust; and

1 (2) provided the recipient of the notice an
2 opportunity to cure the delinquency before the 61st day after the
3 date the recipient receives the notice.

4 (b) Notice under this section must be sent by certified
5 mail, return receipt requested, to the address for the lienholder
6 shown in the deed records relating to the property that is subject
7 to the property owners' association assessment lien.

8 SECTION 3. The change in law made by this Act applies only
9 to a notice of sale given under Section 51.002, Property Code, on or
10 after the effective date of this Act or a judicial foreclosure
11 action commenced on or after the effective date of this Act.

12 SECTION 4. This Act takes effect September 1, 2011.

ADOPTED

MAY 23 2011

Atty. Gen.
Secretary of the Senate

By: Roger W. N.

H.B. No. 1228

Substitute the following for H.B. No. 1228

By: Roger W. N.

C.S. H.B. No. 1228

A BILL TO BE ENTITLED

1

AN ACT

2 relating to payment and collection of assessments and other charges
3 owed to a property owners' association and foreclosure of a
4 property owners' association assessment lien.

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

6 SECTION 1. Section 209.003, Property Code, is amended by
7 adding Subsection (e) to read as follows:

8 (e) Section 209.0062 does not apply to a property owners'
9 association that is a mixed-use master association that existed
10 before January 1, 1974, and that does not have the authority under a
11 dedicatory instrument or other governing document to impose fines.

12 SECTION 2. Chapter 209, Property Code, is amended by adding
13 Sections 209.0062, 209.0063, 209.0064, 209.0091, 209.0092,
14 209.0093, and 209.0094 to read as follows:

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

24 (b) The minimum term for a payment plan offered by a

1 property owners' association is three months.

2 (c) A property owners' association is not required to allow
3 a payment plan for any amount that extends more than 18 months from
4 the date of the owner's request for a payment plan or to enter into a
5 payment plan with an owner who failed to honor the terms of a
6 previous payment plan during the two years following the owner's
7 default under the previous payment plan.

8 (d) A property owners' association shall file the
9 association's guidelines under this section in the real property
10 records of each county in which the subdivision is located.

11 (e) A property owners' association's failure to file as
12 required by this section the association's guidelines in the real
13 property records of each county in which the subdivision is located
14 does not prohibit a property owner from receiving an alternative
15 payment schedule by which the owner may make partial payments to the
16 property owners' association for delinquent regular or special
17 assessments or any other amount owed to the association without
18 accruing additional monetary penalties, as defined by Subsection
19 (a).

20 Sec. 209.0063. PRIORITY OF PAYMENTS. (a) Except as
21 provided by Subsection (b), a payment received by a property
22 owners' association from the owner shall be applied to the owner's
23 debt in the following order of priority:

24 (1) any delinquent assessment;

25 (2) any current assessment;

26 (3) any attorney's fees or third party collection
27 costs incurred by the association associated solely with

1 assessments or any other charge that could provide the basis for
2 foreclosure;

3 (4) any attorney's fees incurred by the association
4 that are not subject to Subdivision (3);

5 (5) any fines assessed by the association; and

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

7 (b) If, at the time the property owners' association
8 receives a payment from a property owner, the owner is in default
9 under a payment plan entered into with the association:

10 (1) the association is not required to apply the
11 payment in the order of priority specified by Subsection (a); and

12 (2) in applying the payment, a fine assessed by the
13 association may not be given priority over any other amount owed to
14 the association.

15 Sec. 209.0064. THIRD PARTY COLLECTIONS. (a) In this
16 section, "collection agent" means a debt collector, as defined by
17 Section 803 of the federal Fair Debt Collection Practices Act (15
18 U.S.C. Section 1692a).

19 (b) A property owners' association may not hold an owner
20 liable for fees of a collection agent retained by the property
21 owners' association unless the association first provides written
22 notice to the owner by certified mail, return receipt requested,
23 that:

24 (1) specifies each delinquent amount and the total
25 amount of the payment required to make the account current;

26 (2) describes the options the owner has to avoid
27 having the account turned over to a collection agent, including

1 information regarding availability of a payment plan through the
2 association; and

3 (3) provides a period of at least 30 days for the owner
4 to cure the delinquency before further collection action is taken.

5 (c) An owner is not liable for fees of a collection agent
6 retained by the property owners' association if:

7 (1) the obligation for payment by the association to
8 the association's collection agent for fees or costs associated
9 with a collection action is in any way dependent or contingent on
10 amounts recovered; or

11 (2) the payment agreement between the association and
12 the association's collection agent does not require payment by the
13 association of all fees to a collection agent for the action
14 undertaken by the collection agent.

15 (d) The agreement between the property owners' association
16 and the association's collection agent may not prohibit the owner
17 from contacting the association board or the association's managing
18 agent regarding the owner's delinquency.

19 (e) A property owners' association may not sell or otherwise
20 transfer any interest in the association's accounts receivables for
21 a purpose other than as collateral for a loan.

22 Sec. 209.0091. PREREQUISITES TO FORECLOSURE: NOTICE AND
23 OPPORTUNITY TO CURE FOR CERTAIN OTHER LIENHOLDERS. (a) A property
24 owners' association may not foreclose a property owners'
25 association assessment lien on real property by giving notice of
26 sale under Section 51.002 or commencing a judicial foreclosure
27 action unless the association has:

1 (1) provided written notice of the total amount of the
2 delinquency giving rise to the foreclosure to any other holder of a
3 lien of record on the property whose lien is inferior or subordinate
4 to the association's lien and is evidenced by a deed of trust; and

5 (2) provided the recipient of the notice an
6 opportunity to cure the delinquency before the 61st day after the
7 date the recipient receives the notice.

8 (b) Notice under this section must be sent by certified
9 mail, return receipt requested, to the address for the lienholder
10 shown in the deed records relating to the property that is subject
11 to the property owners' association assessment lien.

12 Sec. 209.0092. JUDICIAL FORECLOSURE REQUIRED. (a) Except
13 as provided by Subsection (c) and subject to Section 209.009, a
14 property owners' association may not foreclose a property owners'
15 association assessment lien unless the association first obtains a
16 court order in an application for expedited foreclosure under the
17 rules adopted by the supreme court under Subsection (b). A property
18 owners' association may use the procedure described by this
19 subsection to foreclose any lien described by the association's
20 dedicatory instruments.

21 (b) The supreme court, as an exercise of the court's
22 authority under Section 74.024, Government Code, shall adopt rules
23 establishing expedited foreclosure proceedings for use by a
24 property owners' association in foreclosing an assessment lien of
25 the association. The rules adopted under this subsection must be
26 substantially similar to the rules adopted by the supreme court
27 under Section 50(r), Article XVI, Texas Constitution.

1 (c) Expedited foreclosure is not required under this
2 section if the owner of the property that is subject to foreclosure
3 agrees in writing at the time the foreclosure is sought to waive
4 expedited foreclosure under this section. A waiver under this
5 subsection may not be required as a condition of the transfer of
6 title to real property.

7 Sec. 209.0093. REMOVAL OR ADOPTION OF FORECLOSURE
8 AUTHORITY. A provision granting a right to foreclose a lien on real
9 property for unpaid amounts due to a property owners' association
10 may be removed from a dedicatory instrument or adopted in a
11 dedicatory instrument by a vote of at least 67 percent of the total
12 votes allocated to property owners in the property owners'
13 association. Owners holding at least 10 percent of all voting
14 interests in the property owners' association may petition the
15 association and require a special meeting to be called for the
16 purposes of taking a vote for the purposes of this section.

17 Sec. 209.0094. ASSESSMENT LIEN FILING. A lien, lien
18 affidavit, or other instrument evidencing the nonpayment of
19 assessments or other charges owed to a property owners' association
20 and filed in the official public records of a county is a legal
21 instrument affecting title to real property.

22 SECTION 3. (a) Section 209.0062, Property Code, as added by
23 this Act, applies only to an assessment or other debt that becomes
24 due on or after the effective date of this Act. An assessment or
25 other debt that becomes due before the effective date of this Act is
26 governed by the law in effect immediately before the effective date
27 of this Act, and that law is continued in effect for that purpose.

1 (b) Section 209.0063, Property Code, as added by this Act,
2 applies only to a payment received by a property owners'
3 association on or after the effective date of this Act. A payment
4 received by a property owners' association before the effective
5 date of this Act is governed by the law in effect immediately before
6 the effective date of this Act, and that law is continued in effect
7 for that purpose.

8 (c) Section 209.0091, Property Code, as added by this Act,
9 applies only to a notice of sale given under Section 51.002,
10 Property Code, on or after the effective date of this Act or a
11 judicial foreclosure action commenced on or after the effective
12 date of this Act.

13 (d) Section 209.0092, Property Code, as added by this Act,
14 applies only to a foreclosure sale conducted on or after the
15 effective date of this Act. A foreclosure sale conducted before the
16 effective date of this Act is governed by the law in effect
17 immediately before the effective date of this Act, and that law is
18 continued in effect for that purpose.

19 (e) Section 209.0094, Property Code, as added by this Act,
20 applies only to an instrument filed on or after January 1, 2012. An
21 instrument filed before January 1, 2012, is governed by the law in
22 effect on the date the instrument was filed, and that law is
23 continued in effect for that purpose.

24 SECTION 4. Not later than January 1, 2012, the Supreme Court
25 of Texas shall adopt rules of civil procedure under Section
26 209.0092, Property Code, as added by this Act.

27 SECTION 5. (a) Except as provided by Subsection (b) of

1 this section, this Act takes effect January 1, 2012.

2 (b) Subsection (b), Section 209.0092, Property Code, as
3 added by this Act, takes effect September 1, 2011.

ADOPTED

MAY 23 2011

Arlene Dew
Secretary of the Senate

BY:

Roger W. W.

FLOOR AMENDMENT NO. 1

1 Amend C.S.H.B. No. 1228 (senate committee printing) as
2 follows:

3 (1) In SECTION 2 of the bill, in added Section 209.0062(c),
4 Property Code (page 1, line 34), strike "is not required to" and
5 substitute "may not".

6 (2) In SECTION 2 of the bill, in added Section 209.0062(c),
7 Property Code (page 1, line 36), strike "plan or" and substitute
8 "plan. The association is not required".

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 24, 2011

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1228 by Dutton (Relating to payment and collection of assessments and other charges owed to a property owners' association and foreclosure of a property owners' association assessment lien.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Property Code relating to property owners' associations.

The bill would require the Supreme Court of Texas to adopt rules establishing expedited foreclosure proceedings in cases in which a property owners' association seeks to foreclose an assessment lien.

According to the Office of Court Administration (OCA), the bill is not anticipated to cause an increase in the workload of the courts.

Local Government Impact

The bill would require a property owners' association to file the association's guidelines in each county in which a subdivision is located. It is assumed that any additional work required by counties could be absorbed with existing resources.

Source Agencies:

LBB Staff: JOB, SD, KKR

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 19, 2011

TO: Honorable Royce West, Chair, Senate Committee on Intergovernmental Relations

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1228 by Dutton (Relating to payment and collection of assessments and other charges owed to a property owners' association and foreclosure of a property owners' association assessment lien.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Property Code relating to property owners' associations.

The bill would require the Supreme Court of Texas to adopt rules establishing expedited foreclosure proceedings in cases in which a property owners' association seeks to foreclose an assessment lien.

According to the Office of Court Administration (OCA), the bill is not anticipated to cause an increase in the workload of the courts.

Local Government Impact

The bill would require a property owners' association to file the association's guidelines in each county in which a subdivision is located. It is assumed that any additional work required by counties could be absorbed with existing resources.

Source Agencies:

LBB Staff: JOB, KKR

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 16, 2011

TO: Honorable Royce West, Chair, Senate Committee on Intergovernmental Relations

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1228 by Dutton (Relating to foreclosure of a property owners' association assessment lien.), **As Engrossed**

No fiscal implication to the State is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JOB, KKR, AG, TP

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

March 3, 2011

TO: Honorable Joe Deshotel, Chair, House Committee on Business & Industry

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1228 by Dutton (Relating to foreclosure of a property owners' association assessment lien.), **As Introduced**

No fiscal implication to the State is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JOB, AG, TP