| **House Bill 1228**  Senate Amendments  Section-by-Section Analysis | | |
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| HOUSE VERSION | SENATE VERSION (IE) | CONFERENCE |
| 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  (2) 30 or more days before the affidavit was filed, the letter and the affidavit were sent to the property owners' association by registered or certified mail, return receipt requested, to the address provided in the management certificate recorded under Section 209.004.  (d) An affidavit filed under Subsection (a) does not serve as a release of record of a property owners' association assessment lien if the association files a contradicting affidavit in the real property records of the county in which the affidavit is filed asserting that:  (1) the affidavit filed by the owner is untrue; or  (2) another reason exists as to why the assessment lien attaches to the owner's property.  (e) An affidavit filed under Subsection (a) must be in substantially the following form:  PROPERTY OWNER'S AFFIDAVIT AS RELEASE OF PROPERTY OWNERS'  ASSOCIATION ASSESSMENT LIEN  Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_\_\_ ("Affiant(s)") (insert name of one or more affiants) who, being first duly sworn, upon oath states:  (1) My/our name is/are \_\_\_\_\_\_\_ (insert name of Affiant(s)). I/we own the following described land ("Land"):  (describe the property that is the subject of the property owners' association assessment lien)  (2) This affidavit is made for the purpose of effecting a release of the property owners' association assessment lien recorded in \_\_\_\_\_\_\_ (refer to recording information of property owners' association assessment lien) ("Assessment Lien") as to the Land.  (3) The debt on which the Assessment Lien is based has been satisfied in its entirety or is not owed by us.  (4) Attached to this affidavit is evidence that:  (A) Affiant(s) sent a letter and a copy of this affidavit, without attachments and before execution of the affidavit, notifying the association claiming the Assessment Lien of this affidavit and the Affiant(s)' intent to file for record this affidavit; and  (B) the letter and this affidavit were sent by registered or certified mail, return receipt requested, 30 or more days before this affidavit was filed to the property owners' association claiming the Assessment Lien.  (5) This affidavit serves as a release of the Assessment Lien as to the Land in accordance with Section 12.0171, Property Code.  Signed on this \_\_\_\_ day of \_\_\_\_\_\_, \_\_\_\_.  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Signature of Affiant(s))  State of \_\_\_\_\_\_\_  County of \_\_\_\_\_\_\_  SWORN TO AND SUBSCRIBED before me on the \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_, 20\_\_\_\_.  My commission expires:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Notary Public, State of Texas  Notary's printed name:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (f) A person who knowingly causes an affidavit with false information to be executed and recorded under this section is liable for the penalties for filing a false affidavit, including the penalties for the commission of an offense under Section 37.02, Penal Code. The attorney general may sue to collect the penalty. A person who negligently causes an affidavit with false information to be executed and recorded under this section is liable to a party injured by the affidavit for actual damages. If the attorney general or an injured party bringing suit substantially prevails in an action under this subsection, the court may award reasonable attorney's fees and court costs to the prevailing party. | No equivalent provision. |  |
| No equivalent provision. | SECTION 1. Section 209.003, Property Code, is amended by adding Subsection (e) to read as follows:  (e) Section 209.0062 does not apply to a property owners' association that is a mixed-use master association that existed before January 1, 1974, and that does not have the authority under a dedicatory instrument or other governing document to impose fines. |  |
| SECTION 2. Chapter 209, Property Code, is amended by adding Section 209.0091 to read as follows:  Sec. 209.0091. PREREQUISITES TO FORECLOSURE: NOTICE AND OPPORTUNITY TO CURE FOR CERTAIN OTHER LIENHOLDERS. (a) A property owners' association may not foreclose a property owners' association assessment lien on real property by giving notice of sale under Section 51.002 or commencing a judicial foreclosure action unless the association has:  (1) provided written notice of the total amount of the delinquency giving rise to the foreclosure to any other holder of a lien of record on the property whose lien is inferior or subordinate to the association's lien and is evidenced by a deed of trust; and  (2) provided the recipient of the notice an opportunity to cure the delinquency before the 61st day after the date the recipient receives the notice.  (b) Notice under this section must be sent by certified mail, return receipt requested, to the address for the lienholder shown in the deed records relating to the property that is subject to the property owners' association assessment lien. | SECTION 2. Chapter 209, Property Code, is amended by adding Sections 209.0062, 209.0063, 209.0064, 209.0091, 209.0092, 209.0093, and 209.0094 to read as follows:  Sec. 209.0062. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN ASSESSMENTS. (a) A property owners' association composed of more than 14 lots shall adopt reasonable guidelines to establish an alternative payment schedule by which an owner may make partial payments to the property owners' association for delinquent regular or special assessments or any other amount owed to the association without accruing additional monetary penalties. For purposes of this section, monetary penalties do not include reasonable costs associated with administering the payment plan or interest.  (b) The minimum term for a payment plan offered by a property owners' association is three months.  (c) A property owners' association may not allow a payment plan for any amount that extends more than 18 months from the date of the owner's request for a payment plan. The association is not required to enter into a payment plan with an owner who failed to honor the terms of a previous payment plan during the two years following the owner's default under the previous payment plan.  (d) A property owners' association shall file the association's guidelines under this section in the real property records of each county in which the subdivision is located.  (e) A property owners' association's failure to file as required by this section the association's guidelines in the real property records of each county in which the subdivision is located does not prohibit a property owner from receiving an alternative payment schedule by which the owner may make partial payments to the property owners' association for delinquent regular or special assessments or any other amount owed to the association without accruing additional monetary penalties, as defined by Subsection (a).  Sec. 209.0063. PRIORITY OF PAYMENTS. (a) Except as provided by Subsection (b), a payment received by a property owners' association from the owner shall be applied to the owner's debt in the following order of priority:  (1) any delinquent assessment;  (2) any current assessment;  (3) any attorney's fees or third party collection costs incurred by the association associated solely with assessments or any other charge that could provide the basis for foreclosure;  (4) any attorney's fees incurred by the association that are not subject to Subdivision (3);  (5) any fines assessed by the association; and  (6) any other amount owed to the association.  (b) If, at the time the property owners' association receives a payment from a property owner, the owner is in default under a payment plan entered into with the association:  (1) the association is not required to apply the payment in the order of priority specified by Subsection (a); and  (2) in applying the payment, a fine assessed by the association may not be given priority over any other amount owed to the association.  Sec. 209.0064. THIRD PARTY COLLECTIONS. (a) In this section, "collection agent" means a debt collector, as defined by Section 803 of the federal Fair Debt Collection Practices Act (15 U.S.C. Section 1692a).  (b) A property owners' association may not hold an owner liable for fees of a collection agent retained by the property owners' association unless the association first provides written notice to the owner by certified mail, return receipt requested, that:  (1) specifies each delinquent amount and the total amount of the payment required to make the account current;  (2) describes the options the owner has to avoid having the account turned over to a collection agent, including information regarding availability of a payment plan through the association; and  (3) provides a period of at least 30 days for the owner to cure the delinquency before further collection action is taken.  (c) An owner is not liable for fees of a collection agent retained by the property owners' association if:  (1) the obligation for payment by the association to the association's collection agent for fees or costs associated with a collection action is in any way dependent or contingent on amounts recovered; or  (2) the payment agreement between the association and the association's collection agent does not require payment by the association of all fees to a collection agent for the action undertaken by the collection agent.  (d) The agreement between the property owners' association and the association's collection agent may not prohibit the owner from contacting the association board or the association's managing agent regarding the owner's delinquency.  (e) A property owners' association may not sell or otherwise transfer any interest in the association's accounts receivables for a purpose other than as collateral for a loan.  Sec. 209.0091. PREREQUISITES TO FORECLOSURE: NOTICE AND OPPORTUNITY TO CURE FOR CERTAIN OTHER LIENHOLDERS. (a) A property owners' association may not foreclose a property owners' association assessment lien on real property by giving notice of sale under Section 51.002 or commencing a judicial foreclosure action unless the association has:  (1) provided written notice of the total amount of the delinquency giving rise to the foreclosure to any other holder of a lien of record on the property whose lien is inferior or subordinate to the association's lien and is evidenced by a deed of trust; and  (2) provided the recipient of the notice an opportunity to cure the delinquency before the 61st day after the date the recipient receives the notice.  (b) Notice under this section must be sent by certified mail, return receipt requested, to the address for the lienholder shown in the deed records relating to the property that is subject to the property owners' association assessment lien.  Sec. 209.0092. JUDICIAL FORECLOSURE REQUIRED. (a) Except as provided by Subsection (c) and subject to Section 209.009, a property owners' association may not foreclose a property owners' association assessment lien unless the association first obtains a court order in an application for expedited foreclosure under the rules adopted by the supreme court under Subsection (b). A property owners' association may use the procedure described by this subsection to foreclose any lien described by the association's dedicatory instruments.  (b) The supreme court, as an exercise of the court's authority under Section 74.024, Government Code, shall adopt rules establishing expedited foreclosure proceedings for use by a property owners' association in foreclosing an assessment lien of the association. The rules adopted under this subsection must be substantially similar to the rules adopted by the supreme court under Section 50(r), Article XVI, Texas Constitution.  (c) Expedited foreclosure is not required under this section if the owner of the property that is subject to foreclosure agrees in writing at the time the foreclosure is sought to waive expedited foreclosure under this section. A waiver under this subsection may not be required as a condition of the transfer of title to real property.  Sec. 209.0093. REMOVAL OR ADOPTION OF FORECLOSURE AUTHORITY. A provision granting a right to foreclose a lien on real property for unpaid amounts due to a property owners' association may be removed from a dedicatory instrument or adopted in a dedicatory instrument by a vote of at least 67 percent of the total votes allocated to property owners in the property owners' association. Owners holding at least 10 percent of all voting interests in the property owners' association may petition the association and require a special meeting to be called for the purposes of taking a vote for the purposes of this section.  Sec. 209.0094. ASSESSMENT LIEN FILING. A lien, lien affidavit, or other instrument evidencing the nonpayment of assessments or other charges owed to a property owners' association and filed in the official public records of a county is a legal instrument affecting title to real property. [FA1(1)-(2)] |  |
| SECTION 3. The change in law made by this Act applies only to a notice of sale given under Section 51.002, Property Code, on or after the effective date of this Act or a judicial foreclosure action commenced on or after the effective date of this Act. | SECTION 3. (a) Section 209.0062, Property Code, as added by this Act, applies only to an assessment or other debt that becomes due on or after the effective date of this Act. An assessment or other debt that becomes due before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.  (b) Section 209.0063, Property Code, as added by this Act, applies only to a payment received by a property owners' association on or after the effective date of this Act. A payment received by a property owners' association before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.  (c) Section 209.0091, Property Code, as added by this Act, applies only to a notice of sale given under Section 51.002, Property Code, on or after the effective date of this Act or a judicial foreclosure action commenced on or after the effective date of this Act.  (d) Section 209.0092, Property Code, as added by this Act, applies only to a foreclosure sale conducted on or after the effective date of this Act. A foreclosure sale conducted before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.  (e) Section 209.0094, Property Code, as added by this Act, applies only to an instrument filed on or after January 1, 2012. An instrument filed before January 1, 2012, is governed by the law in effect on the date the instrument was filed, and that law is continued in effect for that purpose. |  |
| No equivalent provision. | SECTION 4. Not later than January 1, 2012, the Supreme Court of Texas shall adopt rules of civil procedure under Section 209.0092, Property Code, as added by this Act. |  |
| SECTION 4. This Act takes effect September 1, 2011. | SECTION 5. (a) Except as provided by Subsection (b) of this section, this Act takes effect January 1, 2012.  (b) Subsection (b), Section 209.0092, Property Code, as added by this Act, takes effect September 1, 2011. |  |