

By: Gutierrez

H.B. No. 1335

A BILL TO BE ENTITLED

AN ACT

relating to the collection of attorney fees in property owners' association foreclosures.

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

SECTION 1. Section 209.008, Property Code, is amended to read as follows:

Sec. 209.008. ATTORNEY'S FEES. (a) A property owners' association may collect reimbursement of reasonable attorney's fees and other reasonable costs incurred by the association relating to collecting amounts, including damages, due the association for enforcing restrictions or the bylaws or rules of the association only if the owner is provided a written notice that attorney's fees and costs will be charged to the owner if the delinquency or violation continues after a date certain.

(b) An owner is not liable for attorney's fees incurred by the association relating to a matter described by the notice under Section 209.006 if the attorney's fees are incurred before the conclusion of the hearing under Section 209.007 or, if the owner does not request a hearing under that section, before the date by which the owner must request a hearing. The owner's presence is not required to hold a hearing under Section 209.007.

(c) All attorney's fees, costs, and other amounts collected from an owner shall be deposited into an account maintained at a financial institution in the name of the association or its

1 managing agent. Only members of the association's board or its
2 managing agent or employees of its managing agent may be
3 signatories on the account.

4 (d) On written request from the owner, the association shall
5 provide copies of invoices for attorney's fees and other costs
6 relating only to the matter for which the association seeks
7 reimbursement of fees and costs.

8 (e) The notice provisions of Subsection (a) do not apply to
9 a counterclaim of an association in a lawsuit brought against the
10 association by a property owner.

11 (f) If the dedicatory instrument or restrictions of an
12 association allow for ~~[nonjudicial]~~ foreclosure, the amount of
13 attorney's fees that a property owners' association may ~~[include]~~
14 seek in a ~~[nonjudicial]~~ foreclosure ~~sale~~ proceeding brought for an
15 indebtedness covered by a property owners' association's assessment
16 lien is limited to the greater of:

17 (1) ten percent ~~[one-third]~~ of the amount of all
18 ~~[actual costs and]~~ assessments owed ~~[excluding attorney's fees,~~
19 ~~plus interest and court costs,]~~ if those amounts are permitted to be
20 included by law including the statute of limitations ~~[or by the~~
21 ~~restrictive covenants governing the property]~~; or

22 (2) ~~[\$2,500]~~ \$500.

23 ~~g) Subsection (f) does not prevent a property owners'~~
24 ~~association from recovering or collecting attorney's fees in excess~~
25 ~~of the amounts prescribed by Subsection (f) by other means provided~~
26 ~~by law.~~

27 (g) A property owners' association may not seek any

1 additional attorney's fees in a foreclosure proceeding except as
2 provided by (f) unless:

3 (i) an owner files a separate, original proceeding in
4 a court of competent jurisdiction that contests the property
5 owners' association right to foreclose; and

6 (ii) such fees are reasonable and necessary, and
7 equitable and just, to defend such a proceeding.

8 SECTION 3. The Act takes effect September 1, 2015.