

By: Menéndez

S.B. No. 2234

A BILL TO BE ENTITLED

AN ACT

relating to the collection of past due assessments and certain other charges by a property owners' association.

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

SECTION 1. Chapter 209, Property Code, is amended by adding Sections 209.0061, 209.00611, and 209.00612 to read as follows:

Sec. 209.0061. COLLECTION OF PAST DUE ASSESSMENTS: FEES AND COLLECTION COSTS. (a) If a property owners' association's dedicatory instruments authorize the association to impose late fees on, or recover costs associated with the collection of, past due regular or special assessments, the association may collect only the following fees and costs:

(1) a single late fee for each past due assessment that does not exceed 10 percent of the past due assessment;

(2) if any interest or administrative costs are authorized by the dedicatory instruments, a monthly charge that:

(A) does not exceed one-half of one percent of all unpaid past due assessments; and

(B) is payable directly to the association, regardless of whether the amount is ultimately used to pay the association's property manager;

(3) if the association sends a follow-up letter authorized by Section 209.00611(b), a charge for attorney's fees that does not exceed 25 percent of the past due assessments; and

1 (4) for a payment plan, regardless of whether the
2 association is required to offer the plan under Section 209.0062, a
3 monthly charge that does not exceed three percent of the sum of:

4 (A) the past due assessments; and

5 (B) any charges authorized by Subdivision (1),
6 (2), or (3) incurred as of the date the payment plan is accepted.

7 (b) A property owners' association may not impose a charge
8 other than the charge authorized by Subsection (a)(1) before the
9 31st day after the date the association sends the property owner a
10 letter that complies with Section 209.00611(a).

11 (c) A property owners' association may not impose attorney's
12 fees or any other charges on a property owner for:

13 (1) documentation or other information requested by
14 the owner in order to:

15 (A) confirm the amount of assessments due; or

16 (B) understand:

17 (i) an assessment or a related charge; or

18 (ii) a payment plan being offered to the
19 owner; or

20 (2) the negotiation of the terms of a payment plan.

21 (d) Subsection (c)(2) does not require a property owners'
22 association to offer a payment plan other than as required by
23 Section 209.0062.

24 Sec. 209.00611. COLLECTION OF PAST DUE ASSESSMENTS:
25 COLLECTION LETTERS. (a) A letter sent to a property owner by or on
26 behalf of a property owners' association seeking to collect a past
27 due regular or special assessment must:

1 (1) be sent to the owner by certified mail to the
2 address to which the association usually sends invoices or other
3 official communications and, if the association uses e-mail to
4 communicate with property owners, to each e-mail address provided
5 by the owner for that purpose;

6 (2) itemize each charge the association seeks to
7 collect and reference to each provision in the dedicatory
8 instruments on which the charge is based;

9 (3) state:

10 (A) a total amount certain that the association
11 claims is due;

12 (B) the date on which that amount was determined;
13 and

14 (C) that payments made after that date will be
15 credited as provided by law;

16 (4) if Section 209.0062 applies to the association or
17 the association's dedicatory instruments require a payment plan to
18 be offered, include the terms of an available payment plan that
19 complies with that section;

20 (5) state that the owner must pay the total amount
21 claimed or, if applicable, accept and deliver the first amount due
22 under the payment plan on or before the 30th day after the date the
23 letter was sent to avoid additional charges related to collection
24 of the assessments;

25 (6) provide the owner with a phone number the owner may
26 use at no cost to ask questions about the charges or the payment
27 plan terms;

1 (7) provide an address to which the owner may send a
2 check or money order as payment and notify the owner of any
3 available online payment portal; and

4 (8) notify the owner that attorney's fees and other
5 charges may be imposed and that a lawsuit may be filed to collect
6 the unpaid amount if:

7 (A) the owner does not pay the total amount
8 claimed or, if applicable, accept and deliver the first payment
9 under the payment plan in the time provided by Subdivision (5); or

10 (B) the owner accepts a payment plan and does not
11 comply with the plan.

12 (b) Not earlier than the 31st day after the date a letter
13 described by Subsection (a) is sent to a property owner, the
14 property owners' association may send a follow-up letter that
15 includes a charge for attorney's fees authorized by Section
16 209.0061(a)(3).

17 Sec. 209.00612. COLLECTION OF PAST DUE ASSESSMENTS:
18 LAWSUITS. (a) In a lawsuit filed by a property owners' association
19 to collect past due assessments, the original petition:

20 (1) must prominently state that:

21 (A) the property owner may resolve the entire
22 claim by paying, on or before the 60th day after the date the owner
23 is served with the petition, an amount certain stated in the
24 petition that the association claims is due:

25 (i) determined as of a date stated in the
26 petition; and

27 (ii) that includes only the itemized

1 amounts described by Subdivision (2); and

2 (B) any payment received after the stated date on
3 which the amount certain was determined will be credited towards
4 the amount claimed in the petition; and

5 (2) may include a claim only for the following
6 itemized amounts:

7 (A) past due regular and special assessments;

8 (B) costs or fees the association may collect
9 under Section 209.0061;

10 (C) filing fees, fees for service of process,
11 certified mail charges incurred in connection with the suit, and
12 any other charges paid by the association in connection with the
13 suit that the association is authorized to collect under the
14 dedicatory instruments; and

15 (D) additional attorney's fees in an amount that
16 does not exceed \$500.

17 (b) A payment received from a property owner after the
18 stated date on which the amount certain claimed in the petition was
19 determined must be credited towards the claimed amount.

20 (c) A property owners' association may not impose any
21 additional collection-related charges in connection with the past
22 due assessments being claimed before the 61st day after the date the
23 association's petition is served on the property owner.

24 (d) A property owner must be allowed to make a payment in
25 satisfaction of the claim by check or money order to the attorney or
26 law firm representing the association.

27 (e) In a lawsuit described by Subsection (a), the court may

1 award reasonable and necessary attorney's fees as are equitable and
2 just.

3 SECTION 2. Section 209.0062, Property Code, is amended by
4 amending Subsection (a) and adding Subsection (a-1) to read as
5 follows:

6 (a) A property owners' association composed of more than 14
7 lots shall adopt reasonable guidelines to establish an alternative
8 payment schedule by which an owner may make partial payments to the
9 property owners' association for delinquent regular or special
10 assessments or any other amount owed to the association without
11 accruing additional monetary penalties other than amounts
12 authorized by Section 209.0061.

13 (a-1) A payment plan offered by a property owners'
14 association for payment of past due assessments, regardless of
15 whether the association is subject to Subsection (a):

16 (1) may not be conditioned on payment of any amount not
17 authorized by Section 209.0061; and

18 (2) must allow the owner to pay off at any time without
19 additional penalty or requirement for further payments under the
20 plan the outstanding balance of the past due assessments and any
21 charges authorized by Section 209.0061(a)(1), (2), or (3) that were
22 incurred as of the date the payment plan was entered into [~~For~~
23 ~~purposes of this section, monetary penalties do not include~~
24 ~~reasonable costs associated with administering the payment plan or~~
25 ~~interest~~].

26 SECTION 3. The heading to Section 209.0063, Property Code,
27 is amended to read as follows:

1 Sec. 209.0063. PRIORITY OF PAYMENTS; LATE OR PARTIAL
2 PAYMENTS.

3 SECTION 4. Section 209.0063, Property Code, is amended by
4 adding Subsection (c) to read as follows:

5 (c) A property owners' association must accept a partial
6 payment on any amount due to the association, regardless of whether
7 the owner is subject to a payment plan, to be applied in accordance
8 with this section. If the association uses an online payment
9 portal, the association may not block an owner's ability to make a
10 late or partial payment through the portal.

11 SECTION 5. Section 209.009, Property Code, is amended to
12 read as follows:

13 Sec. 209.009. FORECLOSURE SALE PROHIBITED IN CERTAIN
14 CIRCUMSTANCES. A property owners' association may not foreclose a
15 property owners' association's assessment lien unless the debt
16 secured by the lien includes more than \$5,000 of debt described by
17 Section 209.0063(a)(1), (2), or (3) [if the debt securing the lien
18 ~~consists solely of:~~

- 19 ~~[(1) fines assessed by the association,~~
20 ~~[(2) attorney's fees incurred by the association~~
21 ~~solely associated with fines assessed by the association, or~~
22 ~~[(3) amounts added to the owner's account as an~~
23 ~~assessment under Section 209.005(i) or 209.0057(b-4)].~~

24 SECTION 6. (a) Except as provided by Subsection (b) of this
25 section, the changes in law made by this Act apply only to
26 collection of regular and special assessments that become due on or
27 after the effective date of this Act. Collection of assessments

1 that became due before the effective date of this Act is governed by
2 the law as it existed immediately before the effective date of this
3 Act, and that law is continued in effect for that purpose.

4 (b) Section [209.0063](#)(c), Property Code, as added by this
5 Act, applies to a payment made by a property owner on or after the
6 effective date of this Act.

7 SECTION 7. This Act takes effect September 1, 2017.