

By: Sherman, Sr.

H.B. No. 2387

A BILL TO BE ENTITLED

AN ACT

relating to suits to collect past due property owners' association assessments.

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

SECTION 1. Title 4, Property Code, is amended by adding Chapter 31 to read as follows:

CHAPTER 31. SUITS TO COLLECT PROPERTY OWNERS' ASSOCIATION

ASSESSMENTS

Sec. 31.001. DEFINITIONS. In this chapter, a term defined by Section 209.002 has the meaning assigned by that section.

Sec. 31.002. APPLICABILITY OF CHAPTER. This chapter applies only to a property owners' association to which Chapter 209 applies.

Sec. 31.003. SUIT IN JUSTICE COURT; EXCLUSIVE JURISDICTION. (a) A property owners' association that brings a suit to collect past due assessments or interest or late fees associated with past due assessments must bring the suit in a justice court.

(b) Notwithstanding Section 27.034(d), Government Code, a justice court has exclusive jurisdiction of a suit under this chapter.

Sec. 31.004. PETITION. The petition in a suit under this chapter:

(1) must include a verified statement detailing:

(A) the basis for each amount sought by the

1 property owners' association, citing applicable provisions of the
2 association's dedicatory instruments; and

3 (B) the steps taken by the association to comply
4 with procedures required by Chapter 209 or other law, as
5 applicable, including procedures required by the association's
6 dedicatory instruments; and

7 (2) may not seek relief other than relief authorized
8 by Section 31.007 or 31.008.

9 Sec. 31.005. COUNTERCLAIMS; OFFSET. (a) A property owner's
10 answer in a suit under this chapter may not include a counterclaim
11 other than a claim that the property owners' association owes the
12 owner money and a request that any amount awarded to the association
13 be offset by the amount owed to the owner.

14 (b) A property owner's failure to assert a counterclaim
15 authorized by this section does not bar the owner from bringing a
16 separate suit on the claim, but the owner's failure to timely assert
17 the counterclaim in the answer bars consideration of the claim in
18 the suit brought against the owner under this chapter.

19 (c) This section does not affect the property owner's
20 ability to assert any lawful defense to the property owners'
21 association's claim.

22 Sec. 31.006. MEDIATION. (a) A justice court in a suit
23 under this chapter may order mediation of the dispute at no cost to
24 the property owner. Mediation ordered under this section shall be
25 conducted as provided by Chapter 154, Civil Practice and Remedies
26 Code.

27 (b) This section does not affect the justice court's

1 authority to order another method of alternative dispute resolution
2 under Section 27.034(c), Government Code, or the Texas Rules of
3 Civil Procedure.

4 Sec. 31.007. JUDGMENT; PAYMENT SCHEDULE. (a) A justice
5 court in a suit under this chapter shall:

6 (1) determine:

7 (A) whether the property owners' association is
8 entitled to all or part of the amounts requested in the
9 association's petition; and

10 (B) whether the property owner is entitled to any
11 offset requested in the owner's answer; and

12 (2) make an award as appropriate.

13 (b) The justice court's judgment must provide, if
14 applicable, that the property owner is not required to make a
15 payment to satisfy the award before the 30th day after the date the
16 judgment is signed or a later date specified in the judgment.
17 Subject to this subsection, the court may order that the property
18 owner be allowed to make partial payments toward satisfaction of
19 the award according to a payment schedule prescribed by the court.

20 Sec. 31.008. COSTS; ATTORNEY'S FEES. (a) The prevailing
21 party in a suit under this chapter is entitled to recover filing
22 fees and service costs incurred in connection with the suit.

23 (b) In addition to any amounts awarded under Subsection (a),
24 the justice court may award a party to the suit other costs and
25 reasonable and necessary attorney's fees as is equitable and just,
26 in an amount that does not exceed the greater of:

27 (1) 15 percent of the amount sought by the property

1 owners' association; or

2 (2) \$500.

3 (c) The justice court may award a party to the suit
4 attorney's fees or other penalties or costs not specifically
5 authorized by this section only if:

6 (1) the court finds the other party to have acted in
7 bad faith in connection with the suit; or

8 (2) the sanction is authorized under Chapter 10, Civil
9 Practice and Remedies Code, or Rule 13, Texas Rules of Civil
10 Procedure.

11 (d) A court hearing an appeal or enforcing a judgment under
12 this chapter may award a party to the appeal or enforcement action
13 costs and reasonable and necessary attorney's fees as is equitable
14 and just.

15 Sec. 31.009. COLLECTION OF AMOUNTS NOT AWARDED. A judgment
16 under this chapter in favor of a property owners' association must
17 provide that the association or the association's agent may not
18 seek to impose or collect any additional penalty, cost, attorney's
19 fees, or other charge related to the assessments that are the
20 subject of the suit except in a proceeding to enforce the judgment.

21 Sec. 31.010. RECORDING OF CERTAIN INSTRUMENTS. (a) A
22 judgment under this chapter that has become final after the
23 exhaustion of appeals or after the expiration of the time for appeal
24 is the only basis to record a lien based on unpaid property owners'
25 association assessments and related charges.

26 (b) A lis pendens, notice of assessment lien, or similar
27 instrument may not be recorded with respect to any amount sought by

1 a property owners' association in a suit under this chapter:

2 (1) while the property owner is current under a
3 payment plan ordered under Section 31.007; or

4 (2) before the 30th day after the date the owner
5 becomes delinquent under the payment plan.

6 Sec. 31.011. FORECLOSURE. (a) A judgment in a suit under
7 this chapter may be enforced by foreclosure on the property with
8 respect to which the assessments that are the subject of the suit
9 were imposed only if the association:

10 (1) otherwise has authority to foreclose an assessment
11 lien on the property for the amount awarded by the judgment; and

12 (2) complies with Section 209.0092 and any other law
13 governing the foreclosure of the lien.

14 (b) The property owners' association may not initiate
15 foreclosure of an assessment lien for the amount awarded by the
16 judgment:

17 (1) while the property owner is current under a
18 payment plan ordered under Section 31.007; or

19 (2) before the 30th day after the date:

20 (A) the owner becomes delinquent under the
21 payment plan; or

22 (B) the owner becomes delinquent under an order
23 to pay the entire award if no payment plan is ordered.

24 SECTION 2. (a) Except as provided by Subsection (b) of this
25 section, this Act applies to assessments imposed under a dedicatory
26 instrument adopted before, on, or after the effective date of this
27 Act.

1 (b) This Act applies only to collection of property owners'
2 association assessments that become due on or after the effective
3 date of this Act and any interest, fees, or other costs related to
4 those assessments. Collection of property owners' association
5 assessments that became due before the effective date of this Act,
6 and any interest, fees, or other costs related to those
7 assessments, is governed by the law as it existed immediately
8 before the effective date of this Act, and that law is continued in
9 effect for that purpose.

10 SECTION 3. This Act takes effect September 1, 2021.