

SUBJECT: Revising powers and duties of homeowners associations

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 7 ayes — Giddings, Elkins, Bailey, Solomons, Taylor, Vo, Zedler
0 nays
2 absent — Bohac, Martinez

WITNESSES: For — Tom Adolph

Against — Joseph A. Berkel, River Place Residential Community Association, Inc.; Connie Heyer, Texas Community Associations Institute; Kyle Hood; Amy McLin

BACKGROUND: Homeowners associations are groups formed to provide services for homeowners in exchange for mandatory assessments or dues. The associations are governed by the homes' deed restrictions and by the associations' articles of incorporation, bylaws, and rules. Deed restrictions and rules generally are enforced through a system of fines for infractions.

In general, homeowner associations are governed by Property Code, ch. 209. Under sec. 209.009 owners' associations cannot foreclose on a property owner's assessment lien if the debt securing the lien consists solely of fines assessed by the association or attorney's fees incurred by the association associated with the fines.

Property Code, sec. 209.006 requires property owners associations to give property owners written notice by certified mail before filing a lawsuit — except for those to collect a regular or special assessment or foreclose under an association's lien — against an owner.

Some property owners associations are subject to the state's open meetings and public information laws. The law applies to mandatory associations in counties of 2.8 million or more (Harris) and in counties adjacent to them if the association has the power to make mandatory regular and special assessments for capital improvements and the amount of assessment is based on the property's ad valorem tax assessment.

DIGEST: HB 2215 would make various changes affecting homeowners associations.

Foreclosure. To foreclose on a property, homeowners associations would have to obtain a court judgment foreclosing on a lien and ordering the property to be sold. This would apply only to deed restrictions created after September 1, 2003.

HB 2215 would allow foreclosure on a property owners' association's assessment lien only if the debt secured by the lien included a mandatory regular or special assessment and the owner had an opportunity for a hearing.

This would apply only to foreclosures of liens that attach on or after the bill's effective date.

Right of redemption. HB 2215 would increase the time that property owners have to redeem property from someone who purchased it under a foreclosure sale from the current 180 days after receiving written notice of the sale to two years. This would apply only to foreclosures of liens that attach on or after the bill's effective date.

Notice of suits. HB 2215 would require property owners' associations to give property owners written notice in English and Spanish before filing all suits against the owner. The notice would inform the owner that if the violation involved an overdue regular or special assessment that failure to pay the fee could result in foreclosure. This would apply only to an enforcement action taken on or after the bill's effective date.

Payment plans. Property owners' associations would have to adopt guidelines so that owners who were unable to pay a delinquent regular or special assessment in full could, at the owner's request, make partial payments until the delinquent amount was paid. This would apply only to assessments that became due on or after the bill's effective date.

Property owners would not be liable for attorney's fees incurred by an association relating to an overdue assessment if the fees were incurred before the owner was offered a payment plan. This would apply only to a violation or arrearages that accrued on or after the bill's effective date.

Open meetings and public information laws. HB 2215 would remove the current restrictions that makes the state's open meetings and public information laws apply only to some homeowners associations. The state's open meetings and public information laws would apply to all mandatory property owner's associations with the power to make mandatory regular assessments or mandatory special assessments for capital improvements.

The bill would take effect September 1, 2005.

SUPPORTERS
SAY:

HB 2215 is necessary to give home owners adequate protections from actions by property owners' associations, which in some cases have abused their authority. In a recent Houston case, a house rented out by the owner was foreclosed on and sold without her knowledge for a \$420 delinquent assessment. Far from harming associations or dues-paying members, HB 2215 could result in more owners being informed about actions being taken against them and more flexibility in how they make payments which would result in more income for associations and fewer foreclosures.

Foreclosure. Non judicial foreclosures avoid both judicial and public oversight, avoid existing statutory limits on judicial foreclosures, and are subject to abuse. All homeowners should be entitled to their day in court when their homes are in danger of being taken from them. HB 2215 would ensure this by requiring judicial foreclosures.

Right of redemption. Current law that gives homeowners 180 days to buy back a home after foreclosure does not provide enough time for some owners to obtain the money to rebuy their homes. HB 2215 would extend the period to two years, putting it in line with the Tax Code, which gives home owners two years to buy back homesteads sold through foreclosures by tax entities recovering delinquent tax payments.

Notice of suits. HB 2515 would ensure that all homeowners had adequate notice of all suits that may be filed against them, including a suit for non-payment of assessments. This would ensure that everyone involved was knowledgeable about a situation and understood the potential outcome. Although current law has a notification requirement before attorneys fees relating to nonpayment of assessments can be charged to a homeowner, this would occur later in the process than the notice that would be required under HB 2525. The bill would ensure that homeowners were informed early in the process when a resolution might be easier and less expensive. The bill would require that notices be given in English and Spanish,

ensuring that the many Spanish-speaking Texans were informed. These requirements should not be burdensome to an association and could result in increased payments that would increase the revenue for associations and could eliminate some foreclosures.

Payment plans. To ensure that owners were given ample opportunities to pay assessments, HB 2515 would require that associations institute payment plans. This would increase revenue for associations that might otherwise get nothing from owners with delinquent assessments. HB 2525 would not mandate a specific type of collection plan but would give associations the flexibility to implement one that met their needs.

Open meetings and public information laws. HB 2215 would require all associations to meet the requirements in the state's open meetings and public information laws so that all home owners would have access to information about associations. Associations function like governmental bodies by levying assessments and taking other actions, so they should be subject to the same laws as governmental bodies. It would not be burdensome for associations to adhere to these laws, just as many small, local, and rural governmental bodies adhere to them. Any burden on associations would be outweighed by the rights of property owners.

OPPONENTS
SAY:

Homeowners associations need the flexibility of current law to collect overdue assessments, enforce deed restrictions, and provide essential services. HB 2215 would infringe on these association powers and make it harder for them to enforce deed restrictions. This would result in higher dues for other members and make it easier for non-payers to avoid paying dues. Associations would face a choice between curtailing services to owners or increasing fees for paying members.

Foreclosure. Current law has appropriate, fair limits on foreclosures. Non judicial foreclosures are a necessary tool for associations and should be continued. Prohibiting non judicial foreclosure would harm both owners whose homes are foreclosed on and associations because the cost of judicial foreclosure is often many times that of non judicial foreclosure because of attorneys fees and other items. Costs would be higher for owners who were being foreclosed on and had to pay more for attorneys fees. Associations might not recoup all of the money they were owed, which often happens, so dues for other members could increase.

Right of redemption. The current limit of 180 days for owners to redeem property after a foreclosure is enough to allow owners who are serious about getting their property back to do so. Enacting a two-year right of redemption could scare away many, if not most, potential buyers. In the two-year period, an entity holding a first lien on the property could foreclose and therefore wipe out an association's lien. Imposing this two-year time table would be a back-door way to end foreclosures and would result in higher assessments for other owners

Notice of suits. HB 2525 would unnecessarily burden on associations by requiring them to send certified mail notifications of all enforcement actions, even a nonpayment of assessment violation. In nonpayment of assessment situations, owners most likely would have received several notices about their non-payment and under current law would have to receive a notice before attorneys fees could be assessed to them relating to a non-payment. Sending out another notice could inhibit an association's ability to collect timely assessments. It would be burdensome and expensive to provide all notices in both English and Spanish.

Payment plans. Requiring associations to accept payment plans is unfair and would hurt associations' ability to collect their full assessments in a timely manner. It could delay the acquisition of funds for the associations, and in effect, force them to act as lenders while owners paid off their assessments. This could result in assessments for all owners increasing to make up for delays in collections.

Open meetings and public information laws. Requiring all associations to adhere to the state's open meeting and public information laws would impose a large burden on these groups. Current law rightfully restricts this requirement to associations in large counties with the resources to meet the laws' requirements. Many associations would have difficulty understanding and meeting all of the technical and detailed requirements in these laws, and associations and board members could be exposed to lawsuits for failing on even a small technicality. The rights of homeowners to attend meetings and get information from the associations are protected under current Property Code provisions and other laws.

OTHER
OPPONENTS
SAY:

Payment plans. HB 2215 does not include guidelines on the type of payment plans that associations would have to implement, which could lead to wide variations in the plans. This could result in disagreements and litigation between owners and associations over the design of the plans.

NOTES: SB 1886 by Lindsay, which is pending in the Senate Intergovernmental Relations Committee, would allow only judicial foreclosures by property owners' associations.