

(The House considered SB 1919 by West, the Senate companion bill, in lieu of HB 2394, the House version of the bill, which had been set on the daily calendar and was analyzed by the House Research Organization. The bill subsequently was enacted as SB 1919.)

HOUSE

RESEARCH

ORGANIZATION bill analysis

5/11/2009

HB 2394

England

SUBJECT: Requiring update of property owner association records to collect liens

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 6 ayes — Deshotel, Elkins, Christian, Gattis, Giddings, S. Miller

0 nays

5 absent — England, Keffer, Orr, Quintanilla, S. Turner

WITNESSES: For —John DeLoach, Texas Land Title Association; Gwen Gates; (*Registered, but did not testify*: Irene “Beanie” Adolph, Lynn G. Walshak, Texas Homeowners for HOA Reform, Inc.; Jennifer Brown, Community Associations Institute; Nancy Hentschel; Randy Lee, Stewart Title Guaranty Co.; Lori Levy, Texas Association of Realtors; Jay Propes, Texas Association of Community Management Companies)

Against — None

BACKGROUND: Property Code, sec. 209.004(a), requires that a property owners’ association record a management certificate in each county in which a portion of its residential subdivision is located. The certificate must be signed and acknowledged by an officer or managing agent of the property association and include:

- name of the subdivision;
- name of the association;
- recording data for the subdivision;
- recording data for the declaration;
- mailing address of the association;
- name and mailing address of the person managing the association;
- and
- other information the association considers appropriate.

Property Code, sec. 209.004 (c) relieves the property owners’ association,

its officers, directors, employees, or agents from liability for delay or failure to record a management certificate, unless the delay is willful or caused by gross negligence.

DIGEST:

HB 2394 would amend Property Code, sec. 209.004 (a) to require that the management certificate filed by a property owners' association with the county clerk include the name and mailing address of the association and the name and address of the association's designated agent.

If a property owner's association were to fail to record an original or amended management certificate, a purchaser, lender, title company, or agent involved in a purchase of property in the property owners' association would not be liable for any amount due to the association on the date of the transfer to a bona fide purchaser, or any debt to or claim of the association that accrued before the transfer of the property.

If a property owners' association failed to file an original or amended management certificate, it would be limited to filing a lien for fees or other debts accrued only after the sale of the property.

The bill would amend Property Code, sec, 209.004 (c) to provide that the property owners' association and its officers, directors, employees, or agents could be held liable for the amounts that would be forfeited by failure to file an original or amended property management certificate.

Other provisions would define a "bona fide purchaser" as one who pays valuable consideration without notice of outstanding rights of others and acts in good faith or a third-party lender who acquires a security interest in the property under a deed of trust.

The bill would apply to purchases made on or after the bill takes effect on September 1, 2009.

**SUPPORTERS
SAY:**

HB 2394 would resolve enduring problems that occur when uncertainty about management certificates delay closings on sales of homes in a property owners' association. Finalizing the transaction could be stalled for days or even weeks because no updated management certificate is available. The bill would provide a clear standard and enforceable consequences for not filing an original or amended management certificate and would benefit homeowners, buyers, real estate brokers, title companies, property owners' associations, and management companies.

HB 2394 would provide a mechanism to resolve problems with old or dormant property owners' associations. Too many property owners' associations exist only on paper or have morphed into another entity. These essentially phantom property owners' associations can leave dedications and liens that complicate the closing of real estate sales. Title companies cannot as a matter of statute or underwriting standards complete a sale on properties with unresolved liens, and they have to violate the law to close the transaction. The bill would provide a mechanism to shed these impediments legally.

Property owners' associations, even smaller self-directed ones with no paid staff, enjoy great power to foreclose on homestead residences for sometimes small amounts of money, but they remain largely unregulated. HB 2394 would provides some degree of oversight and some checks and balances on operations of property owners' associations.

The bill would provide financial incentives for property owners to provide an updated management certificate or the name of the person who would help prepare that sales packet. Property owners' associations generate notices of fees, fines, and assessments but cannot provide information needed for a closing on a timely basis. Fairness would demand that the association should not collect on fees or assessments that they cannot document before closing.

HB 2394 also could benefit property owners' associations and ensure that they collect outstanding fees and assessments. Title companies already collect millions of dollars in delinquent taxes owed local governments when property is sold and could provide the same service to property owners' associations, if accurate information was available on the amounts of liens and other charges against the property.

**OPPONENTS
SAY:**

HB 2394 could be an unnecessary burden for smaller, self-governed property owners' associations. These associations typically are run by volunteers and have no paid staff. Even in associations run by property management firms, information must be gathered from many sources and cannot be compiled quickly by just one person.

**OTHER
OPPONENTS
SAY:**

Some terms are not well-defined and could prove to be problematic in implementing HB 2394. For example, the term "amended management certificate" should be clarified. Presumably, this would be intended to

cover cases where a management certificate was recorded, but a new managing agent or agent for service of process had not filed the required management certificate. The bill should provide a better definition of “the person managing the association” and the “association’s designated representative.” The bill would not make clear how the two would be different, or whether one was intended to be the association’s designated representative or agent for service of process.

NOTES:

The companion bill, SB 1919 by West, passed the Senate by 31-0 on April 30 on the Local and Uncontested Calendar and was reported favorably, without amendment, by the House Business and Industry Committee on May 8.