

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 434
By: Brown
State Affairs
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Committee Report (Substituted)

DIGEST

Currently, the Texas Real Estate Commission provides that addendum and resale certificates may be used in transactions involving the sale of property subject to mandatory assessment in a property owners' association. The information contained in the certificate may be pertinent to the buyer. Some owners' associations refuse to provide a resale certificate or information about the association to a prospective buyer. This bill would authorize a property owner to request and receive information, including a resale certificate, from the property owners' association.

PURPOSE

As proposed, C.S.S.B. 434 establishes requirements for the disclosure of certain information by a property owners' association, and provisions for failure to comply.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 11, Property Code, by adding Chapter 207, as follows:

CHAPTER 207. DISCLOSURE OF INFORMATION BY PROPERTY OWNERS' ASSOCIATIONS

Sec. 207.001. DEFINITIONS. Defines "restrictions," "dedicatory instrument," "property owners' association," "restrictive covenant," "owner," "regular assessment," "special assessment," "resale certificate," and "subdivision."

Sec. 207.002. APPLICABILITY. Provides that this chapter is applicable to subdivisions whose property owners' association is entitled to levy regular or special assessments.

Sec. 207.003. DELIVERY OF SUBDIVISION INFORMATION TO OWNER. Requires the property owners' association (POA) to furnish an owner, owner's agent, or title insurance company or its agent acting on behalf of the owner (owner), current copies of restrictions applying to the subdivision, bylaws and rules of the association, and a resale certificate, within 10 days after receiving a written request from an owner. Requires a resale certificate to contain certain information. Authorizes a POA to charge a fee to assemble, copy, and deliver information required by this section, and a fee to prepare and deliver an update of a resale certificate. Requires the POA to deliver information required by Subsection (a) to the person specified in the written request. Provides that a request that does not specify to whom and where the request information is to be sent, is ineffective. Authorizes the POA to deliver the information by mail, hand-delivery, or alternative delivery means specified in the request. Provides that neither a POA or its agent is required to inspect a property before issuing a resale certificate or an update to a resale certificate.

Sec. 207.004. OWNER'S REMEDIES FOR FAILURE BY PROPERTY OWNERS' ASSOCIATION TO TIMELY DELIVER INFORMATION. Authorizes an owner to submit a second request for information if a POA does not timely deliver requested information. Authorizes an owner to seek certain court orders or judgments and provide a buyer under contract to purchase the owner's property an affidavit that states the owner made two written requests for certain information and that the POA did not timely respond, if the POA fails to deliver the

requested information before the seventh day after the second request was mailed by certified mail, return receipt requested, or hand-delivered, evidenced by receipt. Provides that a buyer, lender, or title insurance company or its agent is not liable to the POA for certain monies and debts due to the POA, if the owner provides the buyer under contract to purchase the owner's property an affidavit in accordance with Subsection (b)(2).

Sec. 207.005. EFFECT OF RESALE CERTIFICATION; LIABILITY. Prohibits a POA from denying the validity of any statement in a resale certificate. Requires a POA's lien to secure undisclosed amounts due to terminate the date the resale certificate is prepared. Provides that certain persons or entities are not liable for any debt or claim existing on the preparation date of the resale certificate that is not disclosed in the resale certificate. Provides that a resale certificate does not affect the right of the POA to recover debts or claims that arise after the date the resale certificate is prepared, or a lien on a property securing payment of future assessments held by the POA. Provides that an owner's agent and title company and its agent are not liable to a buyer for any delay in the POA's delivery of information required by Section 207.003. Provides that the POA is not liable to an owner selling property for untimely delivery of information required by Section 207.003, except as provided by Section 207.004. Provides that an officer or agent of the POA is not liable for untimely furnishment of a certificate.

SECTION 2. Effective date: September 1, 1999.

SECTION 3. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Amends Section 207.001, Property Code, to redefine "owner" and "subdivision."

Amends Section 207.002, Property Code, to delete text regarding restrictive covenants.

Amends Section 207.003, Property Code, to require a POA to deliver certain information to an owner's agent, or title insurance company or its agent acting on behalf of the owner. Requires a resale certificate to include certain information. Authorizes a POA to charge a fee relating to the issuance of a resale certificate. Sets forth guidelines for the delivery of a resale certificate. Deletes provision regarding the POA current operating budget.

Amends Section 207.004, Property Code, to set forth procedures for an owner to timely receive certain information from a POA. Sets forth liability requirements involved in the issuance of an affidavit to a buyer under contract. Deletes text regarding a resale certificate.

Amends Section 207.005, Property Code, to set forth requirements for parties affected by the issuance of a resale certificate.