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HBA-MPM S.B. 507 77(R) BILL ANALYSIS

Office of House Bill Analysis S.B. 507

By: Carona
Business

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By: Carona
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BACKGROUND AND PURPOSE

There has been an explosive growth of property owners' associations in Texas and the rest of the nation. More than 40 million people live in one of more than 200,000 communities managed by property owners' associations nationwide. In Texas, property owners' associations operate with little statutory regulation or guidance. At times, the volunteer board members of these associations must work to enforce deed restrictions, and conflicts may arise between the board and the homeowners. Sometimes these conflicts result in a home foreclosure. **Senate Bill 507** establishes the Texas Residential Property Owners Protection Act to provide guidelines for the operation of property owners' associations and to provide homeowners a mechanism by which to redeem property in the event of a foreclosure.

RULEMAKING AUTHORITY

It is the opinion of the Office of House Bill Analysis that this bill does not expressly delegate any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

Senate Bill 507 amends the Property Code to establish the Texas Residential Property Owners Protection Act (Act). The Act only applies to a residential subdivision in which a property owners' association (association) collects regular or special assessments and to a property owners' association that requires mandatory membership. The Act does not apply to a condominium development (Sec. 209.003).

The bill requires an association to record in each county in which any portion of a residential subdivision is located a management certificate containing specified information and to record an amended management certificate not later than 30 days after the date the association has notice of any change in the information (Sec. 209.004). The association is required to make all of its records reasonably available to examination by an owner at the association's office (Sec. 209.005).

S.B. 507 provides that an association must give written notice to a property owner before suspending an owner's right to use a common area, filing a suit against the owner other than a suit to collect assessment fees or to foreclose the property, charging an owner for property damage, or levying a fine for a violation of the restrictions or bylaws or rules of the association. The bill sets forth the content that must be contained in the notice (Sec. 209.006). If an owner is entitled to an opportunity to cure a violation, the owner has the right to request in writing a hearing before the association. The bill authorizes the governing body of the association or the owner to request a postponement of the hearing for a period of no more than 10 days. An owner or association may use alternative dispute resolution services (Sec. 209.007).

The bill authorizes the association to collect attorney's fees and reasonable costs incurred for attempting to collect amounts due for enforcing restrictions, bylaws, or rules only if the owner was notified that the fees and costs will be charged if the delinquency or violation continues after a certain date, and provides exceptions. (Sec. 209.008). The bill prohibits an association from foreclosing a property owners' association assessment lien if the debt securing the lien consists solely of fines assessed by the association or associated attorney's fees (Sec. 209.009).

The bill provides that an association that conducts a foreclosure sale of an owner's lot must send to the lot owner by certified mail 30 days after the date of the sale a written notice stating the date and time the sale occurred and informing the lot owner of the owner's right to redeem the property (Sec. 209.010). The owner may redeem the property from any purchaser at a sale foreclosing an association's assessment lien within 90 days after the association mails the written notice. The bill prohibits a person purchasing property at such a sale from transferring ownership of the property to a person other than a redeeming lot owner during the redemption period. The bill sets forth procedures by which a lot owner may redeem property purchased at the foreclosure sale by the association or a third party, including payment of certain amounts due the association, interest, assessment costs, purchase price, and other costs to the association or the third party, as applicable. The bill specifies that all rent and income collected by an association that purchases the property from the date of the foreclosure sale to the date of redemption shall be credited toward the amount due the association, with excess proceeds being refunded to the lot owner. The bill specifies that all rent and income collected by a third party be credited toward the amount due the purchaser, with excess proceeds being refunded to the lot owner. The bill requires a third party purchaser before executing a deed of transfer to obtain an affidavit from the association stating that all amounts owed the association have been paid. The bill requires the association to provide the purchaser with the affidavit within 10 days after the association receives all amounts owed (Sec. 209.011).

The bill provides that redeemed property remains subject to all existing liens and encumbrances, and any lease entered into by a purchaser is subject to the right of redemption and the lot owner's right to reoccupy the property immediately after redemption. If a lot owner makes partial payments due to the association before the redemption period expires but does not pay the all amounts due, the association is required to refund any partial payments to the lot owner by mailing payment to the owner within 30 days of the expiration date of the redemption period. The bill provides that if a lot owner sends a written request to redeem the property on or before the last day of the redemption period, the lot owner's right of redemption is extended for 10 days after the association and any third

party foreclosure purchaser provides written notice of the amounts that must be paid to redeem the property. After the redemption period and any extended redemption period expires, the association or third party purchaser is required to record an affidavit in the real property records stating that the lot owner did not redeem the property (Sec. 209.011).

EFFECTIVE DATE

January 1, 2002.

