

AN ACT

relating to filing of instruments conveying real property in certain counties and redemption of property after the foreclosure of certain assessment liens.

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

SECTION 1. Chapter 11, Property Code, is amended by adding Section 11.0041 to read as follows:

Sec. 11.0041. REVIEW OF CERTAIN INSTRUMENTS IN CERTAIN COUNTIES. (a) This section applies only to the county clerk of a county:

(1) that:

(A) is located on the international border; and

(B) has a population of less than 15,000;

(2) in which a colonia self-help center established under Section 2306.582, Government Code, is located; or

(3) that is served by a colonia self-help center described by Subdivision (2) in another county.

(b) Before accepting an instrument conveying real property for filing, the county clerk may send the instrument to the county attorney for review under this section. Not later than five business days after the date the county attorney receives an instrument under this subsection, the county attorney shall:

(1) review the instrument to determine whether the platting requirements prescribed by Sections 232.023, 232.025, and

1 232.031, Local Government Code, have been satisfied; and

2 (2) return the instrument to the county clerk with a
3 statement of the county attorney's determination under Subdivision
4 (1).

5 (c) Notwithstanding Section 11.004(a), the county clerk
6 shall immediately notify the party that presented the instrument
7 for recording that:

8 (1) the clerk is referring the instrument to the
9 county attorney for review;

10 (2) the instrument will not be immediately recorded;
11 and

12 (3) the clerk is not required to file an instrument the
13 county attorney determines the clerk is not required to file.

14 SECTION 2. Section 209.010, Property Code, is amended by
15 amending Subsections (a) and (b) and adding Subsections (b-1) and
16 (b-2) to read as follows:

17 (a) A property owners' association that conducts a
18 foreclosure sale of an owner's lot must send to the lot owner and to
19 each lienholder of record, not later than the 30th day after the
20 date of the foreclosure sale, a written notice stating the date and
21 time the sale occurred and informing the lot owner and each
22 lienholder of record of the ~~owner's~~ right of the lot owner and
23 lienholder to redeem the property under Section 209.011.

24 (b) The notice must be sent by certified mail, return
25 receipt requested, to:

26 (1) the lot owner's last known mailing address, as
27 reflected in the records of the property owners' association;

1 (2) the address of each holder of a lien on the
2 property subject to foreclosure evidenced by the most recent deed
3 of trust filed of record in the real property records of the county
4 in which the property is located; and

5 (3) the address of each transferee or assignee of a
6 deed of trust described by Subdivision (2) who has provided notice
7 to a property owners' association of such assignment or transfer.
8 Notice provided by a transferee or assignee to a property owners'
9 association shall be in writing, shall contain the mailing address
10 of the transferee or assignee, and shall be mailed by certified
11 mail, return receipt requested, or United States mail with
12 signature confirmation to the property owners' association
13 according to the mailing address of the property owners'
14 association pursuant to the most recent management certificate
15 filed of record pursuant to Section 209.004.

16 (b-1) If a recorded instrument does not include an address
17 for the lienholder, the association does not have a duty to notify
18 the lienholder as provided by this section.

19 (b-2) For purposes of this section, the lot owner is deemed
20 to have given approval for the association to notify the
21 lienholder.

22 SECTION 3. Subsections (b), (d), (e), (f), (g), (h), (j),
23 (k), (m), (n), and (p), Section 209.011, Property Code, are amended
24 to read as follows:

25 (b) The owner of property in a residential subdivision or a
26 lienholder of record may redeem the property from any purchaser at a
27 sale foreclosing a property owners' association's assessment lien

1 not later than the 180th day after the date the association mails
2 written notice of the sale to the owner and the lienholder under
3 Section 209.010. A lienholder of record may not redeem the property
4 as provided herein before 90 days after the date the association
5 mails written notice of the sale to the lot owner and the lienholder
6 under Section 209.010, and only if the lot owner has not previously
7 redeemed.

8 (d) To redeem property purchased by the property owners'
9 association at the foreclosure sale, the lot owner or lienholder
10 must pay to the association:

11 (1) all amounts due the association at the time of the
12 foreclosure sale;

13 (2) interest from the date of the foreclosure sale to
14 the date of redemption on all amounts owed the association at the
15 rate stated in the dedicatory instruments for delinquent
16 assessments or, if no rate is stated, at an annual interest rate of
17 10 percent;

18 (3) costs incurred by the association in foreclosing
19 the lien and conveying the property to the [~~redeeming~~] lot owner,
20 including reasonable attorney's fees;

21 (4) any assessment levied against the property by the
22 association after the date of the foreclosure sale;

23 (5) any reasonable cost incurred by the association,
24 including mortgage payments and costs of repair, maintenance, and
25 leasing of the property; and

26 (6) the purchase price paid by the association at the
27 foreclosure sale less any amounts due the association under

1 Subdivision (1) that were satisfied out of foreclosure sale
2 proceeds.

3 (e) To redeem property purchased at the foreclosure sale by
4 a person other than the property owners' association, the lot owner
5 or lienholder:

6 (1) must pay to the association:

7 (A) all amounts due the association at the time
8 of the foreclosure sale less the foreclosure sales price received
9 by the association from the purchaser;

10 (B) interest from the date of the foreclosure
11 sale through the date of redemption on all amounts owed the
12 association at the rate stated in the dedicatory instruments for
13 delinquent assessments or, if no rate is stated, at an annual
14 interest rate of 10 percent;

15 (C) costs incurred by the association in
16 foreclosing the lien and conveying the property to the redeeming
17 lot owner, including reasonable attorney's fees;

18 (D) any unpaid assessments levied against the
19 property by the association after the date of the foreclosure sale;
20 and

21 (E) taxable costs incurred in a proceeding
22 brought under Subsection (a); and

23 (2) must pay to the person who purchased the property
24 at the foreclosure sale:

25 (A) any assessments levied against the property
26 by the association after the date of the foreclosure sale and paid
27 by the purchaser;

1 (B) the purchase price paid by the purchaser at
2 the foreclosure sale;

3 (C) the amount of the deed recording fee;

4 (D) the amount paid by the purchaser as ad
5 valorem taxes, penalties, and interest on the property after the
6 date of the foreclosure sale; and

7 (E) taxable costs incurred in a proceeding
8 brought under Subsection (a).

9 (f) If a lot owner or lienholder redeems the property under
10 this section, the purchaser of the property at foreclosure shall
11 immediately execute and deliver to the redeeming party [~~owner~~]
12 deed transferring the property to the [~~redeeming~~] lot owner. If a
13 purchaser fails to comply with this section, the lot owner or
14 lienholder may file an an [~~a cause of~~] action against the purchaser and
15 may recover reasonable attorney's fees from the purchaser if the
16 lot owner or the lienholder is the prevailing party in the action.

17 (g) If, before the expiration of the redemption period, the
18 redeeming lot owner or lienholder fails to record the deed from the
19 foreclosing purchaser or fails to record an affidavit stating that
20 the lot owner or lienholder has redeemed the property, the lot
21 owner's or lienholder's right of redemption as against a bona fide
22 purchaser or lender for value expires after the redemption period.

23 (h) The purchaser of the property at the foreclosure sale or
24 a person to whom the person who purchased the property at the
25 foreclosure sale transferred the property may presume conclusively
26 that the lot owner or a lienholder did not redeem the property
27 unless the lot owner or a lienholder files in the real property

1 records of the county in which the property is located:

2 (1) a deed from the purchaser of the property at the
3 foreclosure sale; or

4 (2) an affidavit that:

5 (A) states that the property [~~lot owner~~] has been
6 redeemed [~~the property~~]; [~~and~~]

7 (B) contains a legal description of the property;
8 and

9 (C) includes the name and mailing address of the
10 person who redeemed the property.

11 (j) If a person other than the property owners' association
12 is the purchaser at the foreclosure sale, before executing a deed
13 transferring the property to the [~~redeeming~~] lot owner, the
14 purchaser shall obtain an affidavit from the association or its
15 authorized agent stating that all amounts owed the association
16 under Subsection (e) have been paid. The association shall provide
17 the purchaser with the affidavit not later than the 10th day after
18 the date the association receives all amounts owed to the
19 association under Subsection (e). Failure of a purchaser to comply
20 with this subsection does not affect the validity of a redemption
21 [~~by a redeeming lot owner~~].

22 (k) Property that is redeemed remains subject to all liens
23 and encumbrances on the property before foreclosure. Any lease
24 entered into by the purchaser of property at a sale foreclosing an
25 assessment lien of a property owners' association is subject to the
26 right of redemption provided by this section and the lot owner's
27 right to reoccupy the property immediately after [~~the~~] redemption.

1 (m) If a lot owner or lienholder sends by certified mail,
2 return receipt requested, a written request to redeem the property
3 on or before the last day of the redemption period, the lot owner's
4 or lienholder's right of redemption is extended until the 10th day
5 after the date the association and any third party foreclosure
6 purchaser provides written notice to the redeeming party [~~lot~~
7 ~~owner~~] of the amounts that must be paid to redeem the property.

8 (n) After the redemption period and any extended redemption
9 period provided by Subsection (m) expires without a redemption of
10 the property, the association or third party foreclosure purchaser
11 shall record an affidavit in the real property records of the county
12 in which the property is located stating that the lot owner or a
13 lienholder did not redeem the property during the redemption period
14 or any extended redemption period.

15 (p) The rights of a lot owner and a lienholder under this
16 section also apply if the sale of the lot owner's property is
17 conducted by a constable or sheriff as provided by a judgment
18 obtained by the property owners' association.

19 SECTION 4. The change in law made in Section 11.0041,
20 Property Code, as added by this Act, applies only to an instrument
21 delivered to a county clerk on or after the effective date of this
22 Act. An instrument delivered to a county clerk before the effective
23 date of this Act is governed by the law in effect immediately before
24 the effective date of this Act, and that law is continued in effect
25 for that purpose.

26 SECTION 5. Sections 209.010 and 209.011, Property Code, as
27 amended by this Act, apply only to a foreclosure sale conducted on

1 or after the effective date of this Act. A foreclosure sale
2 conducted before the effective date of this Act is governed by the
3 law in effect immediately before the effective date of this Act, and
4 that law is continued in effect for that purpose.

5 SECTION 6. This Act takes effect September 1, 2009.

President of the Senate

Speaker of the House

I certify that H.B. No. 3479 was passed by the House on April 28, 2009, by the following vote: Yeas 149, Nays 0, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 3479 on May 29, 2009, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 3479 on May 31, 2009, by the following vote: Yeas 143, Nays 0, 1 present, not voting.

Chief Clerk of the House

H.B. No. 3479

I certify that H.B. No. 3479 was passed by the Senate, with amendments, on May 27, 2009, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 3479 on May 31, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor