

"ACTIVE" REPORT #6 - 2017 TEXAS POA BILLS by Sharon Reuler

► **OMNIBUS HOA COLLECTIONS BILL OVERVIEW**

**Companions: HB 3528 by Vo and SB 2234 by Menendez**

**SECTION-BY-SECTION REPORT OF 6 NEARLY-INDEPENDENT LAWS IN AN 8-PAGE BILL**

An omnibus bill packages together several independent measures under a single bill number. Each part of an omnibus bill stands alone ~ could be a separate bill.

Sharing a bill number means each part gets less scrutiny. Although "omnibus" sounds like a comprehensive treatment of a single topic, it's the opposite.

► O=Omnibus Bill ■ SB=Senate Bill ■ HB=House Bill ■ TPC=Texas Property Code ■ SF = POA\HOA that's not condo

BILL SECTION	TOPIC - IN NUMERICAL ORDER OF BILL'S SECTIONS	SECTION OF TX PROPERTY CODE CHAPTER 209	Property Type
1	<b>ASSESS - COLLECTION COSTS.</b> The gist of NEW §209.0061 is to severely limit charges that are tacked onto a delinquent account by HOA, HOA manager, and HOA attorney. Late fees can't exceed 10% of the delinquent assessment. Interest and administrative charges are capped at 0.5%. Attorneys fees can't exceed 25%. Payment plan fees max at 3%. Also, owner can't be charged for payment plan negotiation or helping the owner understand the HOA's claim. The bill tries to limit charges to those authorized by the "dedicatory instruments", perhaps unaware that some HOAs record self-serving statements of fabricated authority, thus creating a "dedicatory instrument" that meets the letter of this new law. Bill overlooks charges authorized by statute. Small fees reduce HOA's interest in pursuing small debts until they accumulate to a size worth pursuing. Without a corresponding extension in statute of limitations (from 4 years to 10 years), HOAs may be forced to write-off some delinquencies. Although owners need protection from excessive fees, this isn't the answer. <b>[THUMBS DOWN]</b>	adds §209.0061	SF only
1	<b>ASSESS - DEMAND LETTER.</b> (1) Required contents for the delinquency demand letter that HOA must send to owner before HOA can add attorneys fees to owner's account. (2) Letter must itemize and substantiate ("verify") every component of the debt and give the owner 30 days in which to question the charges and obtain additional information, at no charge. Sounds like it duplicates the debt verification letter the HOA attorney sends as required by Fair Debt Collection Practices Act.	adds §209.00611	SF only
1	<b>ASSESS - LAWSUIT.</b> Owner has 60 days (after being served with lawsuit) to cure the debt described in the HOA's petition without being liable for more collection-related charges. Limits what HOA can claim, such as a cap of \$500 on "additional attorneys fees." Owner can make payment to HOA's attorney. Court may award more attorneys fees.	adds §209.00612	SF only
2	<b>ASSESS - PAYMENT PLAN.</b> Allows early pay-off of plan without penalty. (Do HOAs penalize early payment? Why?) Eliminates HOA manager's carve-out for payment plan administrative fees, which are capped elsewhere in bill. <b>[Thumbs Up]</b>	§209.0062 amends (a) & adds (a-1)	SF only
3	Re-titles heading of Sec. 209.0063. (Non-substantive)	§209.0063 amends	SF only
4	<b>ASSESS - PAYMENT.</b> HOA may not refuse partial payments or block payment portals, even under payment plan. <b>[OK]</b>	§209.0063 adds (c)	SF only
5	<b>ASSESS - FORECLOSURE.</b> Prevents HOA from foreclosing a delinquent account that is \$5,000 or less. Unfortunately, bill doesn't extend the statute of limitations. In some cases, more than 4 years may be required for debt to exceed \$5K. <b>[THUMBS DOWN]</b>	amends §209.009	SF only