

By: Turner of Tarrant, Bonnen,
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et al.

H.B. No. 3367

Substitute the following for H.B. No. 3367:

By: Turner of Tarrant

C.S.H.B. No. 3367

A BILL TO BE ENTITLED

AN ACT

relating to the powers and duties of certain property owners'
associations.

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

SECTION 1. Section 207.003(c), Property Code, is amended to
read as follows:

(c) A property owners' association may charge a reasonable
and necessary fee, not to exceed \$250, to assemble, copy, and
deliver the information required by this section and may charge a
reasonable and necessary fee, not to exceed \$30, to prepare and
deliver an update of a resale certificate under Subsection (f).

SECTION 2. Section 207.004(b), Property Code, is amended to
read as follows:

(b) If a property owners' association fails to deliver the
information required under Section 207.003 before the fifth
business [~~seventh~~] day after the second request for the information
was mailed by certified mail, return receipt requested, or hand
delivered, evidenced by receipt, the owner:

(1) may seek one or any combination of the following:

(A) a court order directing the property owners'
association to furnish the required information;

(B) a judgment against the property owners'
association for actual damages [~~not more than \$500~~];

(C) a judgment against the property owners'

1 association for court costs and reasonable attorney's fees; or

2 (D) a judgment authorizing the owner or the
3 owner's assignee to deduct the amounts awarded under Paragraphs (B)
4 and (C) from any future regular or special assessments payable to
5 the property owners' association; and

6 (2) may provide a buyer under contract to purchase the
7 owner's property an affidavit that states that the owner, owner's
8 agent, or title insurance company or its agent acting on behalf of
9 the owner made, in accordance with this chapter, two written
10 requests to the property owners' association for the information
11 described in Section 207.003 and that the association did not
12 timely provide the information.

13 SECTION 3. Section 207.006, Property Code, is amended to
14 read as follows:

15 Sec. 207.006. ONLINE SUBDIVISION INFORMATION REQUIRED. A
16 property owners' association shall make the current version of the
17 association's dedicatory instruments relating to the association
18 or subdivision and filed in the county deed records available on the
19 homepage of an Internet [a] website accessible to association
20 members that is maintained by [if] the association [has,] or by a
21 management company on behalf of the association [maintains, a
22 publicly accessible website].

23 SECTION 4. Section 209.004, Property Code, is amended by
24 amending Subsections (a), (b), (c), and (e) and adding Subsection
25 (b-1) to read as follows:

26 (a) A property owners' association shall record in each
27 county in which any portion of the residential subdivision is

1 located a management certificate, signed and acknowledged by an
2 officer or the managing agent of the association, stating:

- 3 (1) the name of the subdivision;
- 4 (2) the name of the association;
- 5 (3) the recording data for the subdivision;
- 6 (4) the recording data for the declaration and any
7 amendments to the declaration;
- 8 (5) the name and mailing address of the association;
- 9 (6) the name, ~~and~~ mailing address, telephone number,
10 and e-mail address of the person managing the association or the
11 association's designated representative; ~~and~~
- 12 (7) the website address of any Internet website on
13 which the association's dedicatory instruments are available in
14 accordance with Section 207.006; and
- 15 (8) other information the association considers
16 appropriate.

17 (b) The property owners' association shall record an
18 amended management certificate in each county in which any portion
19 of the residential subdivision is located not later than the 30th
20 day after the date the association has notice of a change in any
21 information in the recorded certificate required by Subsection (a).

22 (b-1) Not later than the seventh day after the date a
23 property owners' association files a management certificate for
24 recording under Subsection (a) or files an amended management
25 certificate for recording under Subsection (b), the property
26 owners' association shall electronically file the management
27 certificate or amended management certificate with the Texas Real

1 Estate Commission. The Texas Real Estate Commission shall only
2 collect the management certificate and amended management
3 certificate for the purpose of making the data accessible to the
4 general public through an Internet website.

5 (c) Except as provided under Subsections (d) and (e), the
6 property owners' association and its officers, directors,
7 employees, and agents are not subject to liability to any person for
8 a delay in recording or failure to record a management certificate
9 with a county clerk's office or electronically file the management
10 certificate with the Texas Real Estate Commission, unless the delay
11 or failure is wilful or caused by gross negligence.

12 (e) A lien of a property owners' association that fails to
13 file a management certificate or an amended management certificate
14 under this section to secure an amount due on the effective date of
15 a transfer to a bona fide purchaser is enforceable only for an
16 amount incurred after the effective date of sale. An owner is not
17 liable for attorney's fees incurred by a property owners'
18 association relating to the collection of a delinquent assessment
19 against the owner or interest on the amount of a delinquent
20 assessment if the attorney's fees are incurred by the association
21 or the interest accrues during the period a management certificate
22 is not recorded with a county clerk or electronically filed with the
23 Texas Real Estate Commission as required by this section.

24 SECTION 5. Chapter 209, Property Code, is amended by adding
25 Section 209.00505 to read as follows:

26 Sec. 209.00505. ARCHITECTURAL REVIEW AUTHORITY. (a) In
27 this section, "architectural review authority" means the governing

1 authority for the review and approval of improvements within a
2 subdivision.

3 (b) This section:

4 (1) applies only to a property owners' association
5 that consists of more than 40 lots; and

6 (2) does not apply during a development period or
7 during any period in which the declarant:

8 (A) appoints at least a majority of the members
9 of the architectural review authority or otherwise controls the
10 appointment of the architectural review authority; or

11 (B) has the right to veto or modify a decision of
12 the architectural review authority.

13 (c) A person may not be appointed or elected to serve on an
14 architectural review authority if the person is:

15 (1) a current board member;

16 (2) a current board member's spouse;

17 (3) a person related to a current board member within
18 the second degree of consanguinity; or

19 (4) a person residing in a current board member's
20 household.

21 (d) A decision by the architectural review authority
22 denying an application or request by an owner for the construction
23 of improvements in the subdivision may be appealed to the board. A
24 written notice of the denial must be provided to the owner by
25 certified mail, hand delivery, or electronic delivery. The notice
26 must:

27 (1) describe the basis for the denial in reasonable

1 detail and changes, if any, to the application or improvements
2 required as a condition to approval; and

3 (2) inform the owner that the owner may request a
4 hearing under Subsection (e) on or before the 30th day after the
5 date the notice was mailed to the owner.

6 (e) The board shall hold a hearing under this section not
7 later than the 30th day after the date the board receives the
8 owner's request for a hearing and shall notify the owner of the
9 date, time, and place of the hearing not later than the 10th day
10 before the date of the hearing. Only one hearing is required under
11 this subsection.

12 (f) During a hearing, the board or the designated
13 representative of the property owners' association and the owner or
14 the owner's designated representative will each be provided the
15 opportunity to discuss, verify facts, and resolve the denial of the
16 owner's application or request for the construction of
17 improvements, and the changes, if any, requested by the
18 architectural review authority in the notice provided to the owner
19 under Subsection (d).

20 (g) The board or the owner may request a postponement. If
21 requested, a postponement shall be granted for a period of not more
22 than 10 days. Additional postponements may be granted by agreement
23 of the parties.

24 (h) The property owners' association or the owner may make
25 an audio recording of the meeting.

26 SECTION 6. Sections 209.0051(e) and (h), Property Code, are
27 amended to read as follows:

1 (e) Members shall be given notice of the date, hour, place,
2 and general subject of a regular or special board meeting,
3 including a general description of any matter to be brought up for
4 deliberation in executive session. The notice shall be:

5 (1) mailed to each property owner not later than the
6 10th day or earlier than the 60th day before the date of the
7 meeting; or

8 (2) provided at least 144 [~~72~~] hours before the start
9 of a regular board [~~the~~] meeting and at least 72 hours before the
10 start of a special board meeting by:

11 (A) posting the notice in a conspicuous manner
12 reasonably designed to provide notice to property owners'
13 association members:

14 (i) in a place located on the association's
15 common property or, with the property owner's consent, on other
16 conspicuously located privately owned property within the
17 subdivision; or

18 (ii) on the home page of any Internet
19 website accessible by association members that is maintained by the
20 association or by a management company on behalf of the association
21 [~~other Internet media~~]; and

22 (B) sending the notice by e-mail to each owner
23 who has registered an e-mail address with the association.

24 (h) Except as provided by this subsection, a board may take
25 action outside of a meeting, including voting by electronic or
26 telephonic means, without prior notice to owners under Subsection
27 (e), if each board member is given a reasonable opportunity to

1 express the board member's opinion to all other board members and to
2 vote. Any action taken without notice to owners under Subsection
3 (e) must be summarized orally, including an explanation of any
4 known actual or estimated expenditures approved at the meeting, and
5 documented in the minutes of the next regular or special board
6 meeting. The board may not, unless done in an open meeting for
7 which prior notice was given to owners under Subsection (e),
8 consider or vote on:

- 9 (1) fines;
- 10 (2) damage assessments;
- 11 (3) initiation of foreclosure actions;
- 12 (4) initiation of enforcement actions, excluding
13 temporary restraining orders or violations involving a threat to
14 health or safety;
- 15 (5) increases in assessments;
- 16 (6) levying of special assessments;
- 17 (7) appeals from a denial of architectural review
18 authority [~~control~~] approval;
- 19 (8) a suspension of a right of a particular owner
20 before the owner has an opportunity to attend a board meeting to
21 present the owner's position, including any defense, on the issue;
- 22 (9) lending or borrowing money;
- 23 (10) the adoption or amendment of a dedicatory
24 instrument;
- 25 (11) the approval of an annual budget or the approval
26 of an amendment of an annual budget [~~that increases the budget by~~
27 ~~more than 10 percent~~];

- 1 (12) the sale or purchase of real property;
- 2 (13) the filling of a vacancy on the board;
- 3 (14) the construction of capital improvements other
- 4 than the repair, replacement, or enhancement of existing capital
- 5 improvements; or
- 6 (15) the election of an officer.

7 SECTION 7. Section 209.0055(a), Property Code, is amended

8 to read as follows:

9 (a) This section applies only to a property owners'

10 association that:

11 (1) provides maintenance, preservation, and

12 architectural review authority [~~control~~] of residential and

13 commercial property within a defined geographic area in a county

14 with a population of 2.8 million or more or in a county adjacent to a

15 county with a population of 2.8 million or more; and

16 (2) is a corporation that:

17 (A) is governed by a board of trustees who may

18 employ a general manager to execute the association's bylaws and

19 administer the business of the corporation;

20 (B) does not require membership in the

21 corporation by the owners of the property within the defined area;

22 and

23 (C) was incorporated before January 1, 2006.

24 SECTION 8. Section 209.006(a), Property Code, is amended to

25 read as follows:

26 (a) Before a property owners' association may suspend an

27 owner's right to use a common area, file a suit against an owner

1 other than a suit to collect a regular or special assessment or
2 foreclose under an association's lien, charge an owner for property
3 damage, [~~or~~] levy a fine for a violation of the restrictions or
4 bylaws or rules of the association, or report any delinquency of an
5 owner to a credit reporting service, the association or its agent
6 must give written notice to the owner by certified mail.

7 SECTION 9. Section 209.0063(a), Property Code, is amended
8 to read as follows:

9 (a) Except as provided by Subsection (b), a payment received
10 by a property owners' association from the owner shall be applied to
11 the owner's debt in the following order of priority:

- 12 (1) any delinquent assessment;
- 13 (2) any current assessment;
- 14 (3) any reasonable attorney's fees or reasonable third
15 party collection costs incurred by the association associated
16 solely with assessments or any other charge that could provide the
17 basis for foreclosure;
- 18 (4) any reasonable attorney's fees incurred by the
19 association that are not subject to Subdivision (3);
- 20 (5) any reasonable fines assessed by the association;
- 21 and
- 22 (6) any other reasonable amount owed to the
23 association.

24 SECTION 10. Section 209.0064(b), Property Code, is amended
25 to read as follows:

26 (b) A property owners' association may not hold an owner
27 liable for fees of a collection agent retained by the association

1 unless the association first provides written notice to the owner
2 by certified mail that:

3 (1) specifies each delinquent amount and the total
4 amount of the payment required to make the account current;

5 (2) if the association is subject to Section 209.0062
6 or the association's dedicatory instruments contain a requirement
7 to offer a payment plan, describes the options the owner has to
8 avoid having the account turned over to a collection agent,
9 including information regarding availability of a payment plan
10 through the association; and

11 (3) provides a period of at least 45 [~~30~~] days for the
12 owner to cure the delinquency before further collection action is
13 taken.

14 SECTION 11. Chapter 209, Property Code, is amended by
15 adding Section 209.0065 to read as follows:

16 Sec. 209.0065. CREDIT REPORTING SERVICES. (a) A property
17 owners' association or the association's collection agent may not
18 report any delinquent fines, fees, or assessments to a credit
19 reporting service that are the subject of a pending dispute between
20 the owner and the property owners' association.

21 (b) A property owners' association may report delinquent
22 payment history assessments, fines, and fees of property owners
23 within its jurisdiction to a credit reporting service only if:

24 (1) at least 30 business days before reporting to a
25 credit reporting service, the association sends, via certified
26 mail, hand delivery, electronic delivery, or by other delivery
27 means acceptable between the parties, a detailed report of all

1 delinquent charges owed; and

2 (2) a property owner has been given the opportunity to
3 enter into a payment plan.

4 SECTION 12. Section 209.007, Property Code, is amended by
5 amending Subsection (a) and adding Subsections (f), (g), and (h) to
6 read as follows:

7 (a) Except as provided by Subsection (d) and only if [If]
8 the owner is entitled to an opportunity to cure the violation, the
9 owner has the right to submit a written request for a hearing to
10 discuss and verify facts and resolve the matter in issue before [~~a~~
11 ~~committee appointed by~~] the board [~~of the property owners'~~
12 ~~association or before the board if the board does not appoint a~~
13 ~~committee~~].

14 (f) Not later than 10 days before the association holds a
15 hearing under this section, the association shall provide to an
16 owner a packet containing all documents, photographs, and
17 communications relating to the matter the association intends to
18 introduce at the hearing.

19 (g) If an association does not provide a packet within the
20 period described by Subsection (f), an owner is entitled to an
21 automatic 15-day postponement of the hearing.

22 (h) During a hearing, a member of the board or the
23 association's designated representative shall first present the
24 association's case against the owner. An owner or the owner's
25 designated representative is entitled to rebut the association's
26 information, present the owner's information, and present issues
27 relevant to the appeal or dispute.

1 SECTION 13. Section 209.015(c), Property Code, is amended
2 to read as follows:

3 (c) An owner must obtain the approval of the property
4 owners' association or, if applicable, an architectural review
5 authority, as defined by Section 209.00505(a), [~~committee~~]
6 established by the association or the association's dedicatory
7 instruments, based on criteria prescribed by the dedicatory
8 instruments specific to the use of a lot for residential purposes,
9 including reasonable restrictions regarding size, location,
10 shielding, and aesthetics of the residential purpose, before the
11 owner begins the construction, placement, or erection of a
12 building, structure, or other improvement for the residential
13 purpose on an adjacent lot.

14 SECTION 14. Section 209.016, Property Code, is amended by
15 amending Subsection (d) and adding Subsection (e) to read as
16 follows:

17 (d) Nothing [~~Except as provided by Subsection (b), nothing~~]
18 in this section shall be construed to prohibit the adoption or
19 enforcement of a provision in a dedicatory instrument establishing
20 a restriction relating to occupancy or leasing.

21 (e) A property owners' association may request the
22 following information to be submitted to the association regarding
23 a lease or rental applicant:

24 (1) contact information, including the name, mailing
25 address, phone number, and e-mail address of each person who will
26 reside at a property in the subdivision under a lease; and

27 (2) the commencement date and term of the lease.

1 SECTION 15. The following provisions of the Property Code
2 are repealed:

- 3 (1) Sections 204.003(c) and (d);
- 4 (2) Section 209.007(b); and
- 5 (3) Sections 209.016(a) and (c).

6 SECTION 16. (a) Not later than December 1, 2021, the Texas
7 Real Estate Commission shall establish and make available the
8 system necessary for the electronic filing of management
9 certificates and amended management certificates as required under
10 Section 209.004(b-1), Property Code, as added by this Act.

11 (b) Notwithstanding Section 209.004(b-1), Property Code, as
12 added by this Act, a property owners' association that has on or
13 before December 1, 2021, recorded a management certificate or
14 amended management certificate with a county clerk under Section
15 209.004, Property Code, shall electronically file the most recently
16 recorded management certificate or amended management certificate
17 with the Texas Real Estate Commission not later than June 1, 2022.

18 SECTION 17. Section 209.0065, Property Code, as added by
19 this Act, applies only to a fine, fee, or assessment that becomes
20 due on or after the effective date of this Act. A fine, fee, or
21 assessment that becomes due before the effective date of this Act is
22 governed by the law in effect immediately before the effective date
23 of this Act, and that law is continued in effect for that purpose.

24 SECTION 18. (a) Except as provided by Subsection (b) of
25 this section, this Act takes effect September 1, 2021.

26 (b) Section 209.004(b-1), Property Code, as added by this
27 Act, takes effect December 1, 2021.