

By: Huffman

S.B. No. 318

A BILL TO BE ENTITLED

AN ACT

relating to the records of certain condominium unit owners' associations.

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

SECTION 1. Section 82.114(b), Property Code, is amended to read as follows:

(b) All financial and other records of the association shall be reasonably available at its registered office or its principal office in this state for examination and production in accordance with Section 82.1141 [~~by a unit owner and the owner's agents. An attorney's files and records relating to the association are not records of the association and are not subject to inspection by unit owners or production in a legal proceeding~~].

SECTION 2. Subchapter C, Chapter 82, Property Code, is amended by adding Section 82.1141 to read as follows:

Sec. 82.1141. ACCESS TO ASSOCIATION RECORDS. (a) This section applies to all associations governed by this chapter and controls over other law not specifically applicable to an association.

(b) Notwithstanding a provision in a dedicatory instrument, an association shall make the books and records of the association, including financial records, open to and reasonably available for examination by a unit owner, or a person designated in a writing signed by the unit owner as the unit owner's agent, attorney, or

1 certified public accountant, in accordance with this section. A  
2 unit owner is entitled to obtain from the association copies of  
3 information contained in the books and records.

4 (c) Except as provided by this subsection, an attorney's  
5 files and records relating to the association, excluding invoices  
6 requested by a unit owner for attorney's fees and other costs  
7 relating only to a matter for which the association seeks  
8 reimbursement of fees and costs, are not records of the association  
9 and are not subject to inspection by the unit owner or production in  
10 a legal proceeding. If a document in an attorney's files and  
11 records relating to the association would be responsive to a  
12 legally authorized request to inspect or copy association  
13 documents, the document shall be produced by using the copy from the  
14 attorney's files and records if the association has not maintained  
15 a separate copy of the document. This subsection does not require  
16 production of a document that constitutes attorney work product or  
17 that is privileged as an attorney-client communication.

18 (d) A unit owner or the unit owner's authorized  
19 representative described by Subsection (b) must submit a written  
20 request for access or information under Subsection (b) by certified  
21 mail, with sufficient detail describing the association's books and  
22 records requested, to the mailing address of the association or  
23 authorized representative as reflected on the most current  
24 management certificate filed under Section 82.116. The request  
25 must contain an election either to inspect the books and records  
26 before obtaining copies or to have the association forward copies  
27 of the requested books and records and:

1           (1) if an inspection is requested, the association, on  
2 or before the 10th business day after the date the association  
3 receives the request, shall send written notice of dates during  
4 normal business hours that the unit owner may inspect the requested  
5 books and records to the extent those books and records are in the  
6 possession, custody, or control of the association; or

7           (2) if copies of identified books and records are  
8 requested, the association shall, to the extent those books and  
9 records are in the possession, custody, or control of the  
10 association, produce the requested books and records for the  
11 requesting party on or before the 10th business day after the date  
12 the association receives the request, except as otherwise provided  
13 by this section.

14           (e) If the association is unable to produce the books or  
15 records requested under Subsection (d) on or before the 10th  
16 business day after the date the association receives the request,  
17 the association must provide to the requestor written notice that:

18           (1) informs the requestor that the association is  
19 unable to produce the information on or before the 10th business day  
20 after the date the association received the request; and

21           (2) states a date by which the information will be sent  
22 or made available for inspection to the requesting party that is not  
23 later than the 15th business day after the date notice under this  
24 subsection is given.

25           (f) If an inspection is requested or required, the  
26 inspection shall take place at a mutually agreed on time during  
27 normal business hours, and the requesting party shall identify the

1 books and records for the association to copy and forward to the  
2 requesting party.

3 (g) An association may produce books and records requested  
4 under this section in hard copy, electronic, or other format  
5 reasonably available to the association.

6 (h) An association board must adopt a records production and  
7 copying policy that prescribes the costs the association will  
8 charge for the compilation, production, and reproduction of  
9 information requested under this section. The prescribed charges  
10 may include all reasonable costs of materials, labor, and overhead  
11 but may not exceed costs that would be applicable for an item under  
12 1 T.A.C. Section 70.3. The policy required by this subsection must  
13 be recorded as a dedicatory instrument in accordance with Section  
14 202.006. An association may not charge a unit owner for the  
15 compilation, production, or reproduction of information requested  
16 under this section unless the policy prescribing those costs has  
17 been recorded as required by this subsection. A unit owner is  
18 responsible for costs related to the compilation, production, and  
19 reproduction of the requested information in the amounts prescribed  
20 by the policy adopted under this subsection. The association may  
21 require advance payment of the estimated costs of compilation,  
22 production, and reproduction of the requested information. If the  
23 estimated costs are lesser or greater than the actual costs, the  
24 association shall submit a final invoice to the unit owner on or  
25 before the 30th business day after the date the information is  
26 delivered. If the final invoice includes additional amounts due  
27 from the unit owner, the additional amounts, if not reimbursed to

1 the association before the 30th business day after the date the  
2 invoice is sent to the unit owner, may be added to the unit owner's  
3 account as an assessment. If the estimated costs exceeded the final  
4 invoice amount, the unit owner is entitled to a refund, and the  
5 refund shall be issued to the unit owner not later than the 30th  
6 business day after the date the invoice is sent to the unit owner.

7 (i) An association must estimate costs under this section  
8 using amounts prescribed by the policy adopted under Subsection  
9 (h).

10 (j) Except as provided by Subsection (k) and to the extent  
11 the information is provided in the meeting minutes, the association  
12 is not required to release or allow inspection of any books or  
13 records that identify the dedicatory instrument violation history  
14 of an individual unit owner of an association, a unit owner's  
15 personal financial information, including records of payment or  
16 nonpayment of amounts due the association, a unit owner's contact  
17 information, other than the unit owner's address, or information  
18 related to an employee of the association, including personnel  
19 files. Information may be released in an aggregate or summary  
20 manner that would not identify an individual unit owner.

21 (k) The books and records described by Subsection (j) shall  
22 be released or made available for inspection if:

23 (1) the express written approval of the unit owner  
24 whose records are the subject of the request for inspection is  
25 provided to the association; or

26 (2) a court orders the release of the books and records  
27 or orders that the books and records be made available for

1 inspection.

2 (1) In addition to retaining records as necessary for  
3 compliance with Section 82.114 an association shall adopt and  
4 comply with a document retention policy that includes, at a  
5 minimum, the following requirements:

6 (1) certificates of formation, bylaws, dedicatory  
7 instruments, and all amendments to the certificates of formation,  
8 bylaws, and dedicatory instruments shall be retained permanently;

9 (2) financial books and records shall be retained for  
10 seven years;

11 (3) account records of current unit owners shall be  
12 retained for five years;

13 (4) contracts with a term of one year or more shall be  
14 retained for four years after the expiration of the contract term;

15 (5) minutes of meetings of the unit owners and the  
16 board shall be retained for seven years; and

17 (6) tax returns and audit records shall be retained  
18 for seven years.

19 (m) A member of an association who is denied access to or  
20 copies of association books or records to which the member is  
21 entitled under this section may file a petition with the justice of  
22 the peace of a justice precinct in which all or part of the  
23 condominium is located requesting relief in accordance with this  
24 subsection. If the justice of the peace finds that the member is  
25 entitled to access to or copies of the records, the justice of the  
26 peace may grant one or more of the following remedies:

27 (1) a judgment ordering the association to release or

1 allow access to the books or records;

2 (2) a judgment against the association for court costs  
3 and attorney's fees incurred in connection with seeking a remedy  
4 under this section; or

5 (3) a judgment authorizing the unit owner or the unit  
6 owner's assignee to deduct the amounts awarded under Subdivision  
7 (2) from any future regular or special assessments payable to the  
8 association.

9 (n) If the association prevails in an action under  
10 Subsection (m), the association is entitled to a judgment for court  
11 costs and attorney's fees incurred by the association in connection  
12 with the action.

13 (o) On or before the 10th business day before the date a  
14 person brings an action against an association under this section,  
15 the person must send written notice to the association of the  
16 person's intent to bring the action. The notice must:

17 (1) be sent certified mail, return receipt requested,  
18 or delivered by the United States Postal Service with signature  
19 confirmation service to the mailing address of the association or  
20 authorized representative as reflected on the most current  
21 management certificate filed under Section 82.116; and

22 (2) describe with sufficient detail the books and  
23 records being requested.

24 (p) For the purposes of this section, "business day" means a  
25 day other than Saturday, Sunday, or a state or federal holiday.

26 SECTION 3. Section 82.1141, Property Code, as added by this  
27 Act, applies only to a request for association records or

1 information made on or after the effective date of this Act.

2 SECTION 4. This Act takes effect September 1, 2021.