

By: West

S.B. No. 238

Substitute the following for S.B. No. 238:

By: Quintanilla

C.S.S.B. No. 238

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the availability of a property owners' association's  
3 books and records.

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

5 SECTION 1. Section 209.005, Property Code, is amended to  
6 read as follows:

7 Sec. 209.005. ASSOCIATION RECORDS. (a) This section does  
8 not apply to a property owners' association that is subject to  
9 Chapter 552, Government Code, by application of Section 552.0036.

10 (b) A property owners' association shall make the books and  
11 records of the association, including financial records, open to  
12 and reasonably available for examination by ~~[to]~~ an owner ~~[in~~  
13 ~~accordance with Section B, Article 2.23, Texas Non Profit~~  
14 ~~Corporation Act (Article 1396 2.23, Vernon's Texas Civil~~  
15 ~~Statutes)].~~ An owner is entitled to copies of information  
16 contained in the books and records.

17 (c) ~~[(a-1) A property owners' association described by~~  
18 ~~Section 552.0036(2), Government Code, shall make the books and~~  
19 ~~records of the association, including financial records,~~  
20 ~~reasonably available to any person requesting access to the books~~  
21 ~~or records in accordance with Chapter 552, Government Code.~~  
22 ~~Subsection (a) does not apply to a property owners' association to~~  
23 ~~which this subsection applies.~~

24 ~~[(b)]~~ An attorney's files and records relating to the

1 association, excluding invoices requested by an owner under Section  
2 209.008(d), are not:

- 3 (1) records of the association;
- 4 (2) subject to inspection by the owner; or
- 5 (3) subject to production in a legal proceeding.

6 (d) In addition to the requirements of Subsection (b), a  
7 property owners' association shall maintain a copy of the  
8 association's books and records, including financial records and  
9 invoices, in a building:

10 (1) in which the books and records are appropriately  
11 stored; and

12 (2) that is:

13 (A) staffed during normal business hours;

14 (B) accessible to members of the association  
15 during normal business hours; and

16 (C) located on property commonly owned by the  
17 association within the boundaries of the subdivision governed by  
18 the association.

19 (e) If a building described by Subsection (d) does not exist  
20 on property described by Subsection (d), the property owners'  
21 association shall make the books and records available in  
22 accordance with Subsections (g) and (h).

23 (f) A party requesting association books or records shall  
24 submit the request in writing to a current board member or to the  
25 mailing address of the association or authorized representative as  
26 provided on the most current management certificate filed under  
27 Section 209.004.

1       (g) A property owners' association shall make books and  
2 records requested under Subsection (b) available to the requesting  
3 party within a reasonable time of the property owners'  
4 association's receipt of the request.

5       (h) A reasonable time for providing information requested  
6 under Subsection (b) is considered to be 10 business days after the  
7 date the property owners' association receives a request, except as  
8 otherwise provided by this section.

9       (i) If the property owners' association is unable to produce  
10 a requested book or record on or before the 10th business day after  
11 the date the information is requested, the property owners'  
12 association must provide to the requestor notice that:

13             (1) informs the requestor that the property owners'  
14 association is unable to produce the information on or before the  
15 10th business day after the date of the request; and

16             (2) states a date by which the information will be  
17 available for inspection that occurs not later than the 30th day  
18 after the date notice under this subsection is given.

19       (j) A property owners' association shall make books and  
20 records requested under this section available to the requestor in  
21 one or more of the following formats, as agreed on by the requestor  
22 and the property owners' association:

23             (1) an electronic format:

24                     (A) delivered to an electronic mail address  
25 provided by the requestor; or

26                     (B) delivered in a disc or other standard  
27 electronic format:

1                   (i) to the mailing address of the  
2 requestor; or

3                   (ii) if the requesting party does not  
4 provide a mailing address, to the address of the requestor's  
5 property in the subdivision; or

6                   (2) a hard-copy format:

7                   (A) delivered to the mailing address of the  
8 requestor; or

9                   (B) if the requesting party does not provide a  
10 mailing address:

11                   (i) mailed to the address of the requestor's  
12 property in the subdivision; or

13                   (ii) made available at a location not more  
14 than 50 miles from the boundary of the county in which the  
15 requestor's property is located.

16                   (k) This section does not require a property owners'  
17 association to staff a building described by Subsection (d).

18                   (l) A property owners' association may charge an owner for  
19 copies of the requested information in an amount that reasonably  
20 includes all costs related to reproducing the information,  
21 including costs of materials, labor, and overhead.

22                   (m) Any information maintained by the association that is  
23 released under this section may not identify an individual member  
24 of an association or an individual's personal financial  
25 information. Information may be released in an aggregate manner  
26 that would not identify an individual property owner.

27                   (n) A property owners' association shall keep all records as

1 to changes to the dedicatory instruments in perpetuity and shall  
2 maintain records related to financial matters of the association,  
3 including assessments, fines, foreclosures, and enforcement  
4 actions for at least seven years.

5 (o) A member of a property owners' association who is denied  
6 access to or copies of association books or records to which the  
7 member is entitled under this section may file a petition with the  
8 justice of the peace of a justice precinct in which all or part of  
9 the property that is governed by the association is located,  
10 requesting relief in accordance with this subsection. If the  
11 justice of the peace finds that the member is entitled to access to  
12 or copies of the records, the justice of the peace shall order the  
13 association to:

14 (1) provide the access or copies requested by the  
15 member; and

16 (2) pay the court costs and the member's reasonable  
17 attorney's fees and court costs.

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

20 SECTION 2. Subsection (o), Section 209.005, Property Code,  
21 as added by this Act, applies only to a property owners'  
22 association's failure to comply with Section 209.005, Property  
23 Code, on or after the effective date of this Act. A property  
24 owners' association's failure to comply with that section before  
25 the effective date of this Act is governed by the law in effect  
26 immediately before the effective date of this Act, and that law is  
27 continued in effect for that purpose.

1 SECTION 3. This Act takes effect January 1, 2010.