

BILL ANALYSIS

C.S.S.B. 142
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

According to interested parties, an estimated 57 million Americans live in more than 200,000 areas with community associations, including nearly five million Texans who pay billions of dollars in assessments each year. Property owners' associations may be classified as a condominium association, a cooperative association, or homeowners association, entities regulated in Texas under the Property Code. As the popularity of property owners' associations increases, so does the potential for abuse. Interested parties contend that existing statutory provisions regarding these associations do not provide adequate protections for homeowners.

C.S.S.B. 142 seeks to address the need for adequate protection for homeowners subject to membership in a property owners' association by enacting provisions relating to the operation of such associations.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Supreme Court of Texas in SECTION 19 and SECTION 25 of this bill.

ANALYSIS

C.S.S.B. 142 amends the Property Code to authorize, rather than require, a court to allow to a prevailing party reasonable attorney's fees in addition to the party's costs and claim in an action based on breach of a restrictive covenant pertaining to real property, to expand the scope of the court's authority to an action based on a breach of a statute pertaining to real property subject to a restrict covenant or to restrictive covenants to which real property is subject, and to remove the specification that the prevailing party be the prevailing party who asserted the action.

C.S.S.B. 142, in a provision setting out content requirements for the notice of obligations related to membership in a property owners' association that a seller of residential real property that is subject to such membership must give to the purchaser of the property, requires the notice to inform the purchaser that the purchaser's failure to pay the association's assessments could result in enforcement of the association's lien on and the foreclosure of the purchaser's property. The bill expands the information contained in the notice to include notice that an owner is entitled to receive copies of any document that governs the association's establishment, maintenance, or operation, including but not limited to restrictions, bylaws, rules and regulations, and a resale certificate from the association containing certain information and that the documents must be made available to the purchaser by the association or the association's agent on request of either the purchaser or the seller. The bill requires the notice regarding the obligation to pay assessments to the association and the consequences of failure to pay to be in bold print and underlined.

C.S.S.B. 142 requires the property owners' association or its agent, on the purchaser's request for a resale certificate, to promptly deliver a copy of the current resale certificate issued for the property. The bill requires the seller, if such a resale certificate has not been issued for the

property, to request the association or its agent to issue a resale certificate and requires the association or its agent to promptly prepare and deliver a copy of the resale certificate to the purchaser. The bill requires the purchaser to pay the fee to the association or its agent for issuing the resale certificate unless otherwise agreed by the purchaser and seller of the property. The bill prohibits the association from processing a payment for a requested resale certificate until the certificate is available for delivery. The bill prohibits the association from charging a fee if the certificate is not provided within the deadline for delivery of information to a property owner.

C.S.S.B. 142 requires the notice of the sale of real property under a power of sale conferred by a contract lien that is served on each debtor who is obligated to pay the debt or the notice given to a debtor regarding the debtor's default and the debtor's opportunity to cure the default before a notice of sale can be given to state the name and address of the sender of the notice and to contain a conspicuous statement, in a specified format, advising the recipient, if the recipient or the recipient's spouse is serving on active military duty, to send immediate written notice of that active military duty to the sender of the notice.

C.S.S.B. 142, in a provision limiting the sale, foreclosure, or seizure of property owned by a member of the military for the purpose of enforcing an obligation to an obligation that is secured by a mortgage, deed of trust, or other contract lien on a dwelling owned by a military servicemember originating before the start of the servicemember's active duty and for which the servicemember is still obligated, clarifies that a contract lien includes a lien securing payment of a lawful assessment or assessments, as applicable, on that servicemember's property.

C.S.S.B. 142 limits a court's authority to assess civil damages in an amount up to \$200 for each day of a violation of a restrictive covenant of a property owners' association to the assessment of such civil damages for a violation of a restrictive covenant of a property owners' association that is a mixed-used master association that existed before January 1, 1974, and that does not have the authority under a dedicatory instrument or other governing document to impose fines.

C.S.S.B. 142 establishes that a dedicatory instrument has no effect until the dedicatory instrument is filed in the real property records of each county in which the property to which the dedicatory instrument relates is located and prohibits a dedicatory instrument from being enforced against a property owner who purchased the property before the instrument was filed unless the property owner agrees to comply with the subsequently filed dedicatory instrument.

C.S.S.B. 142 establishes that to the extent a restrictive covenant provides a right of first refusal for the sale or lease of a residential unit or lot in favor of the property owners' association or its members, the covenant is void. The bill exempts from such voiding a restrictive covenant that provides a right of first refusal in favor of a developer or builder during the development period.

C.S.S.B. 142 prohibits a property owners' association from including or enforcing a provision in a dedicatory instrument that prohibits or restricts a property owner from installing a solar energy device and establishes that a provision that violates this prohibition is void. The bill authorizes the association to include or enforce a provision in a dedicatory instrument that prohibits a solar energy device that, as adjudicated by a court, threatens the public health or safety or violates a law; is located on property owned or maintained by the association; is located on property owned in common by the members of the association; is located in an area on the property owner's property other than on the roof of the home or of another structure allowed under a dedicatory instrument or in a fenced yard or patio owned and maintained by the property owner; if located in a fenced yard or patio or mounted on the roof of a home, meets certain criteria; as installed, conflicts with the manufacturer's installation requirements or voids material warranties; or was installed without prior approval by a committee created in a dedicatory instrument for such purposes. The bill prohibits such a committee from withholding approval for installation of a solar energy device that meets or exceeds the minimum requirements of a dedicatory instrument.

C.S.S.B. 142 prohibits a property owners' association from including or enforcing a provision in

a dedicatory instrument that prohibits or restricts a property owner who is otherwise authorized to install shingles on the roof of the property owner's property from installing shingles that are designed primarily to be wind and hail resistant; provide heating and cooling efficiencies greater than those provided by customary composite shingles; or provide solar generation capabilities; and when installed, resemble the shingles used or otherwise authorized for use on property in the subdivision; are more durable than and are of equal or superior quality to such shingles; and match the aesthetics of the property surrounding the owner's property.

C.S.S.B. 142 prohibits a dedicatory instrument from being amended to retroactively require a person who owns property subject to the dedicatory instrument at the time the amendment is adopted to make a capital improvement to the owner's property that is not required before the amendment.

C.S.S.B. 142, in a provision requiring a property owners' association to deliver to an owner, owner's agent, or title insurance company or its agent a resale certificate on the owner's request, requires the association to deliver a current resale certificate and requires such certificate to contain, among other required information, the purpose as well as the amount of any special assessment that has been approved before and is due after the date the resale certificate is prepared; the style and cause number of any pending lawsuit in which the association is a party, other than a lawsuit relating to unpaid property taxes of an individual member of the association, rather than the style and cause number of any pending lawsuit in which the association is a defendant; and a statement of all fees associated with the transfer of ownership, including a description of each fee, to whom each fee is paid, and the amount of each fee. The bill requires a purchaser requesting a resale certificate or on whose behalf the resale certificate is requested to pay the applicable assembly, copying, and delivery fees unless otherwise agreed by the purchaser and seller of the property. The bill requires the prescribed charges to be presumed to be reasonable if they do not exceed costs that would be applicable for an item under the relevant Texas Administrative Code regulation.

C.S.S.B. 142 requires a property owners' association to make dedicatory instruments relating to the association or subdivision and filed in the county deed records available on a website if the association has, or has maintained on its behalf, a publicly accessible website.

C.S.S.B. 142 exempts a property owners' association that is a mixed-use master association that existed before January 1, 1974, and that does not have the authority under a dedicatory instrument or other governing document to impose fines from provisions of the bill relating to the availability of association books and records, notice of an election or association vote, a vote recount, ballot requirements, the effect of voting in person, by proxy, or by absentee or electronic ballot, and an alternative payment schedule for certain assessments.

C.S.S.B. 142 requires a vote of 67 percent of the total votes allocated to property owners in the property owners' association, in addition to any governmental approval required by law, for a declaration to be amended in a residential subdivision in which property owners are subject to mandatory membership in a property owners' association. The bill establishes that if the declaration contains a lower percentage, the percentage in the declaration controls. The bill prohibits a bylaw from being amended to conflict with the declaration. The bill establishes that all ballots cast in a vote that results in an amendment to a restrictive covenant or bylaw are records of the association subject to inspection. The bill makes these provisions applicable to a dedicatory instrument regardless of the date on which the dedicatory instrument was created. The bill exempts from these provisions an association that is subject to the state's open records law and exempts the amendment of a declaration during a development period. The bill establishes these provisions supersede any contrary requirement in a dedicatory instrument and establishes that to the extent of any conflict with another provision relating to restrictive covenants, these provisions prevail.

C.S.S.B. 142 extends the requirement for a property owners' association to make the property

owners' association's books and records, including financial records, reasonably available to an owner to include making such books and records open to and reasonably available for examination by an owner's designated agent, attorney, or certified public accountant, as well as the owner, and entitles an owner to obtain from the association copies of information contained in the books and records. The bill exempts an association subject to the state's open records law from these provisions relating to association records.

C.S.S.B. 142 requires a document, if the document in an attorney's files and records relating to the property owners' association would be responsive to a legally authorized request to inspect or copy association documents, to be produced by using the copy from the attorney's files and records if the association has not maintained a separate copy of the document. The bill establishes that this provision does not require production of a document that constitutes attorney work product or that is privileged as an attorney-client communication. The bill requires an owner or the owner's authorized representative to submit a written request for access to or information about association records by certified mail or another method providing evidence of mailing or delivery, with sufficient detail describing the association's books and records requested, to the mailing address of the association or authorized representative as reflected on the most current management certificate filed. The bill requires the request to contain an election either to inspect the books and records before obtaining copies or to have the association forward copies of the requested books and records. The bill requires the association, if an inspection is requested, to send, within a specified period, written notice of dates during normal business hours that the owner may inspect the requested books and records to the extent those books and records are in the association's possession, custody, or control or, if copies of identified books and records are requested, to produce those books and records for the requestor within the specified period to the extent those books and records are in the association's possession, custody, or control, except as otherwise provided by the bill's provisions.

C.S.S.B. 142 requires the property owners' association, if the association is unable to produce the books or records requested within the specified period, to provide to the requestor written notice that informs the requestor of the reason that the association is unable to produce the information within that period and that states a date by which the information will be sent or made available for inspection to the request. The bill requires an inspection, if the inspection is requested or required, to take place at a mutually agreed on time during normal business hours and requires the requestor to identify the books and records for the association to copy and forward to the requestor. The bill authorizes the production of books and records requested in hard copy, electronic, or other format reasonably available to the association.

C.S.S.B. 142 requires a property owners' association board to adopt a records production and copying policy that prescribes the actual costs the association will charge for the compilation, production, and reproduction of requested information, which charges may include all reasonable costs of materials, labor, and overhead but which may not exceed costs that would be applicable for an item under the relevant Texas Administrative Code regulation. The bill requires the policy to be recorded as a dedicatory instrument in accordance with Property Code provisions relating to public records. The bill prohibits an association from charging an owner for the compilation, production, or reproduction of information requested unless the policy prescribing those costs has been recorded and makes an owner responsible for costs related to the compilation, production, and reproduction of requested information in the amounts prescribed by the policy. The bill authorizes the association to require advance payment of the compilation, production, and reproduction costs and requires an association to estimate the costs using amounts prescribed by the records production and copying policy.

C.S.S.B. 142 establishes that to the extent the information is provided in the meeting minutes, the property owners' association is not required to release or allow inspection of any books or records that identify the dedicatory instrument violation history of an individual owner, an owner's personal financial information, an owner's contact information other than the owner's address, or information related to an association employee. The bill authorizes the release of

information in an aggregate or summary manner that would not identify an individual property owner. The bill requires such books and records to be released or made available for inspection if the express written approval of the owner whose records are the subject of the request for inspection is provided to the association or a court orders the books and records to be released or to be made available for inspection.

C.S.S.B. 142 requires a property owners' association composed of more than 14 lots to adopt and comply with a document retention policy that includes, at a minimum, retention periods, as specified by the bill, for each of the following types of document: certificates of formation, bylaws, restrictive covenants, and all amendments to the certificates of formation, bylaws, and covenants; financial books and records; account records of current owners; contracts with a term of one year or more; minutes of meetings of the owners and the board; and tax returns and audit records. The bill authorizes a member of an association who is denied access to or copies of association books or records to which the member is entitled to file a petition requesting relief with the justice of the peace of a justice precinct in which all or part of the property that is governed by the association is located.

C.S.S.B. 142 authorizes the justice of the peace, on a finding that the member is entitled to access to or copies of the records, to grant one or more of the following remedies: a judgment ordering the property owners' association to release or allow access to the books or records; a judgment against the association for court costs and attorney's fees incurred in connection with seeking a remedy; or a judgment authorizing the owner or the owner's assignee to deduct the court costs and attorney's fees from any future assessments payable to the association. The bill entitles an association to a judgment for court costs and attorney's fees incurred by the association in connection with the action if the association prevails in such an action. The bill requires a person who brings an action against an association to send written notice to the association of the person's intent to bring the action on or before the 10th business day before the date the person brings such an action. The bill requires the notice to be sent by certified mail, return receipt requested, or delivered by the United States Postal Service with signature confirmation service and to describe with sufficient detail the books and records being requested.

C.S.S.B. 142 requires regular and special property owners' association board meetings to be open to owners, subject to the board's right to adjourn a meeting and reconvene in closed executive session to consider actions involving personnel, pending or threatened litigation, contract negotiations, enforcement actions, confidential communications with the association's attorney, matters involving the invasion of privacy of individual owners, or matters that are to remain confidential by request of the affected parties and agreement of the board. The bill requires any decision made in the executive session to be summarized orally following the executive session and placed in the minutes, in general terms, without breaching the privacy of individual owners, violating any privilege, or disclosing information that was to remain confidential and requires the oral summary to include a general explanation of expenditures approved in executive session.

C.S.S.B. 142 requires a board meeting, except for a meeting held by electronic or telephonic means, to be held in a county in which all or part of the property in the subdivision is located or in a county adjacent to that county. The bill requires the board to keep a record of each regular, emergency, or special board meeting in the form of written minutes or an audio recording of the meeting and to make meeting records available to a member for inspection and copying on a written request to the property owners' association's managing agent at the address appearing on the most recently filed management certificate or, if there is not a managing agent, to the board.

C.S.S.B. 142 requires members to be given notice of the date, hour, place, and general subject of a regular, emergency, or special board meeting, including a general description of any matter to be brought up for deliberation in executive session. The bill requires the notice to be mailed to each property owner not later than the 10th day or earlier than the 60th day before the date of the meeting or provided at least 72 hours before the start of the meeting by posting the notice in a conspicuous manner reasonably designed to provide notice to property owners' association

members in a place located on the association's common property or, with the property owner's consent, on other conspicuously located privately owned property within the subdivision, or on any Internet website or other Internet media maintained by the association; and by sending the notice by e-mail to each owner who has registered an e-mail address with the association. The bill establishes that it is an owner's duty to keep an updated e-mail address registered with the association. The bill establishes that if the board recesses a regular, emergency, or special board meeting to continue the following regular business day, the board is not required to post notice of the continued meeting if the recess is taken in good faith and not to circumvent the bill's open board meetings provisions. The bill requires the board, if any meeting is continued to the following regular business day, and on that following day the board continues the meeting to another day, to give notice of the continuation in at least one manner prescribed for posting in a physical location or on the Internet within two hours after adjourning the meeting being continued.

C.S.S.B. 142 authorizes a board to meet by any method of communication, including electronic and telephonic, without prior notice to owners, to consider a reasonably unforeseen emergency or urgent necessity that requires immediate board action if each director may hear and be heard by every other director. The bill requires any action taken without notice to owners to be recorded by an audio device and kept as part of the association records and to be summarized orally and documented in the minutes of the next regular or special board meeting. The bill prohibits the board from considering or voting on, without prior notice to owners, fines, damage assessments, initiation of foreclosure actions or of enforcement actions, with certain exceptions, increases in assessments, levying of special assessments, appeals from a denial of architectural control approval, or a suspension of a right of a particular owner before the owner has an opportunity to attend a board meeting to present the owner's position on the issue. The bill makes these provisions applicable to a meeting of a property owners' association board during the development period only if the meeting is conducted for the purpose of adopting or amending the association's governing documents, increasing the amount of regular assessments or adopting or increasing a special assessment, electing non-developer board members or establishing a process by which those members are elected, or changing members' voting rights. The bill exempts an association that is subject to the state's open meetings law from the bill's open board meeting provisions.

C.S.S.B. 142 requires a property owners' association, not later than the 10th day or earlier than the 60th day before the date of an election or vote, to give written notice of the election or vote to each property owner in the association, for purposes of an association-wide election or vote, or to each property owner in the association entitled under the dedicatory instruments to vote in a particular representative election, for purposes of a vote that involves election of association representatives who are vested under the association's dedicatory instruments with the authority to elect or appoint board members of the association. The bill establishes that these provisions supersede any contrary requirement in a dedicatory instrument and exempts from these provisions a property owners' association that is subject to the state's open records law.

C.S.S.B. 142 authorizes any owner, not later than the 15th day after the date of a meeting at which an election was held, to require a recount of the votes. The bill requires a demand for a recount to be submitted in writing either by certified mail, return receipt requested, or by delivery by the United States Postal Service with signature confirmation service to the property owners' association's mailing address on the latest management certificate filed or in person to the property owners' association's managing agent as reflected on the latest management certificate filed or to the address to which absentee and proxy ballots are mailed. The bill requires the association, at the expense of the owner requesting the recount, to retain for the purpose of performing the recount the services of a person qualified to tabulate votes under the bill's provisions. The bill requires the association to enter into a contract for the services of a person who is not a member of the association or related to a member of the association board within the third degree by consanguinity or affinity and who is a current or former county judge, county elections administrator, justice of the peace, or county voter registrar or a person agreed

on by the association and the persons requesting the recount.

C.S.S.B. 142 establishes a deadline for such a recount and requires the property owners' association to reimburse the requesting owner for the cost of the recount if the recount changes the results of the election and to provide the results to each owner who requested the recount. The bill establishes that any action taken by the board in the period between the initial election vote tally and the completion of the recount is not affected by any recount. The bill exempts an association that is subject to the state's open records law from the bill's recount provisions.

C.S.S.B. 142 requires any vote cast in an election or vote by a member of a property owners' association to be in writing and signed by the member and establishes that electronic votes cast constitute written and signed ballots. The bill establishes that in an association-wide election, written and signed ballots are not required for uncontested races.

C.S.S.B. 142 establishes that a provision in a dedicatory instrument that would disqualify a property owner from voting in a property owners' association election of board members or on any matter concerning the owner's rights or responsibilities is void. The bill exempts an association that is subject to the state's open records law from this provision.

C.S.S.B. 142 establishes that a provision in a dedicatory instrument that restricts a property owner's right to run for a position on the board of the property owners' association is void. The bill establishes that if a board is presented with written, documented evidence from a database or other record maintained by a governmental law enforcement authority that a board member has been convicted of a felony or crime involving moral turpitude, the board member is immediately ineligible to serve on the board, automatically considered removed from the board, and prohibited from future service on the board. The bill authorizes the declaration to provide for a period of declarant control of the association during which a declarant, or persons designated by the declarant, may appoint and remove board members and the officers of the association, other than board members or officers elected by members of the association. The bill requires at least one-third of the board members to be elected by owners other than the declarant, regardless of the period of declarant control provided by the declaration, on or before the 120th day after the date 75 percent of the lots that may be created and made subject to the declaration are conveyed to owners other than a declarant. The bill requires at least one-third of the board members to be elected by owners other than the declarant not later than the 10th anniversary of the date the declaration was recorded if the declaration does not include the number of lots that may be created and made subject to the declaration.

C.S.S.B. 142 authorizes an owner's voting rights to be cast or given in person or by proxy at a meeting of the property owners' association or by absentee or electronic ballot in accordance with the bill's provisions. The bill authorizes an absentee or electronic ballot to be counted as an owner present and voting for the purpose of establishing a quorum only for items appearing on the ballot. The bill prohibits an absentee or electronic ballot from being counted, even if properly delivered, if the owner attends any meeting to vote in person, so that any vote cast at a meeting by a property owner supersedes any vote submitted by absentee or electronic ballot previously submitted for that proposal and from being counted on the final vote of a proposal if the motion was amended at the meeting to be different from the exact language on the absentee or electronic ballot. The bill requires a solicitation for votes by absentee ballot to include an absentee ballot that contains each proposed action and provides an opportunity to vote for or against each proposed action; instructions for delivery of the completed absentee ballot; and language specified by the bill regarding the consequences of casting a vote via absentee ballot with respect to consideration and voting on any action on the proposals if a meeting is held.

C.S.S.B. 142 requires a notice that an electronic ballot has been posted on an Internet website to be sent to each owner with instructions on obtaining access to the posting. The bill establishes that this provision supersedes any contrary provision in a dedicatory instrument and exempts a property owners' association that is subject to the state's open records law from the provision.

C.S.S.B. 142 requires any board member whose term has expired to be elected by owners who are members of the property owners' association. The bill authorizes the appointment of a board member to the board only to fill a vacancy caused by a resignation, death, or disability and limits such a board member's service only until the end of the predecessor's unexpired term. The bill authorizes an association's board to amend association bylaws to provide for elections to be held for board members whose terms have expired. The bill establishes that the appointment of a board member in violation of these provisions is void. The bill exempts from these election provisions the appointment of a board member during a development period and exempts from these election provisions a representative board whose members or delegates are elected or appointed by representatives of an association who are elected by an association's owner members.

C.S.S.B. 142 requires a notice that must be given to an owner before an enforcement action to inform the owner that the owner may request a hearing before the board of the property owners' association on or before the 30th day after the date notice was delivered to the owner, rather than on or before the 30th day after the date the owner receives the notice.

C.S.S.B. 142 requires a fine assessed by the property owners' association to be reasonable in the context of the nature and frequency of the violation and the effect of the violation on the subdivision as a whole. The bill requires the association, if the association allows fines for a continuing violation to accumulate against a lot or an owner, to establish a reasonable maximum fine amount for a continuing violation at which point the total fine amount is capped. The bill authorizes the association, if a lot occupant other than the owner violates a provision of the dedicatory instrument, to assess a fine directly against the nonowner occupant in the same manner as provided for an owner in addition to exercising any of the association's powers against the owner but prohibits the association from requiring payment from both the owner and a nonowner occupant for the same violation. The bill establishes that if the association assesses a fine against a nonowner occupant under these provisions, the provisions relating to required notice before an enforcement action and the provisions relating to a hearing before the board of the association apply to the nonowner occupant in the same manner as they apply to an owner.

C.S.S.B. 142 requires a property owners' association composed of more than 14 lots to adopt reasonable guidelines to establish an alternative payment schedule by which an owner shall have a right to make partial payments for delinquent assessments or any other amount owed to the association without accruing additional monetary penalties. The bill establishes that such monetary penalties do not include reasonable costs associated with administering the payment plan or interest. The bill sets the minimum term for a payment plan offered by an association at three months and establishes that an association is not required to allow a payment plan for any amount that extends more than 18 months from the date of the owner's request for a payment plan or to enter into a payment plan with an owner who failed to honor the terms of a previous payment plan during the two years following the owner's default under the previous plan. The bill requires an association to file the association's guidelines in the real property records of each county in which the subdivision is located and establishes that an association's failure to do so does not affect a property owner's right to an alternative payment schedule by which the owner may make partial payments for delinquent assessments or any other amount owed to the association without accruing additional monetary penalties.

C.S.S.B. 142 requires a payment received by a property owners' association from the owner to be applied to the owner's debt in the following order of priority: any delinquent assessment; any current assessment; any attorney's fees or third party collection costs incurred by the association associated solely with assessments or any other charge that could provide the basis for foreclosure; any fines assessed by the association; any attorney's fees incurred by the association that are not associated solely with assessments or any other charge that could provide the basis for foreclosure; and any other amount owed to the association.

C.S.S.B. 142 requires a property owners' association, before the property owners' association may assess an owner's account for reimbursement of reasonable attorney's fees and other reasonable costs payable by the association to another party or billed by a third party to the association on a contingency basis and that are related to collecting assessments or other amounts owed the association by the owner, to provide a notice to the owner by certified mail, return receipt requested, that specifies each delinquent amount and the total amount of the payment required to make the account current; describes the options the owner has to avoid liability for attorney's fees or other costs related to collection of those amounts; and provides a period of at least 30 days for the owner to cure the delinquency before further action is taken by the association.

C.S.S.B. 142 prohibits a property owners' association from foreclosing the association's assessment lien if the debt securing the lien consists solely of amounts added to an owner's account as an assessment relating to charges for compiling, producing, and reproducing association records or to third party collections.

C.S.S.B. 142 prohibits a property owners' association from foreclosing an assessment lien unless the association first obtains a court order in an application for expedited foreclosure under the rules adopted by the Supreme Court of Texas under the bill's provisions. The bill requires the supreme court to adopt rules establishing expedited foreclosure proceedings for use by an association in foreclosing an assessment lien, requires the rules to be substantially similar to the rules adopted by the supreme court under certain state constitutional provisions, and makes these provisions effective September 1, 2011. The bill requires such rules to require service on the record owners of the property of a copy of the notice and application for foreclosure of the lien by the same methods of service prescribed for service of citation under applicable provisions of the Texas Rules of Civil Procedure. The bill establishes that expedited foreclosure is not required if the owner of the property subject to foreclosure agrees in writing at the time the foreclosure is sought to waive expedited foreclosure. The bill prohibits any requirement for such a waiver as a condition of the transfer of title to real property.

C.S.S.B. 142 authorizes the removal from or adoption in a dedicatory instrument of a provision granting a right to foreclose a lien on real property for unpaid amounts due to a property owners' association by a vote of at least 67 percent of the total votes allocated to property owners in the property owners' association. The bill authorizes owners holding at least 10 percent of all voting interests in the association to petition the association and to require a special meeting to be called for the purposes of taking a vote on the removal or adoption of such provisions. The bill establishes that a lien, lien affidavit, or other instrument evidencing the nonpayment of assessments or other charges owed to an association and filed in the official public records of a county is a legal instrument affecting title to real property.

C.S.S.B. 142 requires a property owners' association that conducts a foreclosure sale of an owner's lot to send to the lot owner and to each lienholder of record, not later than the 30th day after the date of the foreclosure sale, a copy of the statute relating to a right of redemption after foreclosure.

C.S.S.B. 142 requires a board of a property owners' association to call an annual meeting of the members of the association. The bill authorizes an owner, if the board does not call such an annual meeting, to demand that a meeting of the association members be called not later than the 30th day after the date of the owner's demand. The bill requires the owner's demand to be made in writing and sent by certified mail, return receipt requested, to the association's registered agent and to the association at the address for the association according to the most recently filed management certificate and requires a copy of the notice to be sent to each property owner who is a member of the association.

C.S.S.B. 142 authorizes three or more owners to form an election committee if the board does not call a meeting of the members of the property owners' association within the specified

period. The bill requires the election committee to file written notice of the committee's formation with the county clerk of each county in which the subdivision is located, which notice must contain a statement that an election committee has been formed to call a meeting of owners who are members of the association for the sole purpose of electing board members; the name and residential address of each committee member; and the name of the subdivision over which the association has jurisdiction under a dedicatory instrument. The bill requires each committee member to sign and acknowledge the notice before a notary or other official authorized to take acknowledgments and requires the county clerk to enter on the notice the date the notice is filed and record the notice in the county's real property records.

C.S.S.B. 142 authorizes only one committee in a subdivision to operate under these provisions at one time. The bill establishes that, if more than one committee in a subdivision files a notice, the first committee that files a notice, after having complied with all other applicable requirements, is the committee with the power to act under these provisions. The bill establishes that a committee that does not hold or conduct a successful election within four months after the date the notice is filed with the county clerk is dissolved by operation of law. The bill establishes that an election held or conducted by a dissolved committee is ineffective for any purpose under these provisions. The bill authorizes the election committee to call meetings of the owners who are members of the property owners' association for the sole purpose of electing board members. The bill establishes that notice, quorum, and voting provisions contained in the property owners' association's bylaws apply to any meeting called by the election committee. The bill prohibits bylaws adopted by the board of an association from expanding the association's powers beyond those powers specifically granted in the declaration and establishes that to the extent of any conflict between the bylaws and any declaration, the declaration prevails.

C.S.S.B. 142 makes provisions relating to the amendment and enforcement of restrictions in certain subdivisions previously applicable only to a residential real estate subdivision or any unit or parcel of a subdivision located in whole or in part within an unincorporated area of a county with a population of less than 65,000 applicable instead to a subdivision or unit or parcel of a subdivision to which another provision in the Property Code providing a procedure for amending restrictions does not apply.

C.S.S.B. 142 provides for the meanings of "assessment" and "assessments" by reference, redefines "dedicatory instrument," and defines "board meeting," "business day," "capital improvement," "development period," and "electronic ballot." The bill provides for the meaning of "solar energy device" by reference to the Tax Code.

C.S.S.B. 142 makes conforming and nonsubstantive changes.

C.S.S.B. 142 makes its provisions relating to public records, prohibition of a right of first refusal in favor of a property owners' association in a restrictive covenant, regulation of the installation of solar energy devices, the regulation of the installation of certain roofing materials, a member's right to vote, and the casting of votes in person or by proxy or by absentee or electronic ballot applicable to a provision in a dedicatory instrument or a restrictive covenant enacted before, on, or after the bill's effective date, except that any action taken before the bill's effective date based on an unfiled dedicatory instrument is not invalidated by provisions relating to public records.

C.S.S.B. 142 makes its provision establishing a lien, lien affidavit, or other evidence of nonpayment of a property owners' association's assessments or charges as a legal instrument affecting title to real property applicable to an instrument filed on or after January 1, 2012. The bill makes its provisions relating to a mandatory election required after failure to call a regular meeting of the board of an association applicable to an association created before, on, or after the bill's effective date.

C.S.S.B. 142 requires each property owners' association, not later than January 1, 2012, to present for recording with the county clerk each dedicatory instrument governing the association

that has not been previously recorded in the real property records of the county. The bill requires the Supreme Court of Texas to adopt rules of civil procedure for expedited foreclosure under the bill's provisions not later than January 1, 2012.

EFFECTIVE DATE

Except as otherwise provided, January 1, 2012.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 142 differs from the original by authorizing a court to allow to a prevailing party reasonable attorney's fees in addition to the party's costs and claim in an action based on breach of a restrictive covenant pertaining to real property; expanding that court authority to an action based on a breach of a statute pertaining to real property subject to a restrictive covenant or to restrictive covenants to which real property is subject; and removing the specification that the prevailing party be the party that asserted the action, whereas the original only removes the specification that the prevailing party be the party who asserted the action.

C.S.S.B. 142 differs from the original, in a provision setting out content requirements for the notice of obligations that a seller of residential real property that is subject to membership in a property owners' association must give to the purchaser of the property, by requiring the notice to inform the purchaser that certain documents which the purchaser is entitled to receive from the association must be made available to the purchaser by the association or the association's agent on the request of either the purchaser or the seller, whereas the original requires the notice to inform the purchaser only that the documents must be made available on the buyer's request.

C.S.S.B. 142 differs from the original by requiring a property owners' association or its agent, on the purchaser's request for a resale certificate, to promptly deliver a copy of the current resale certificate issued for the property, whereas the original requires the association or its agent, on the purchaser's request for a resale certificate, to promptly deliver a copy of the most recent resale certificate issued for the property so long as the resale certificate was prepared not earlier than the 60th day before the date the resale certificate is delivered to the purchaser and reflects any special assessments approved before and due after the resale certificate is delivered.

C.S.S.B. 142 differs from the original, in a provision relating to the enforcement of an obligation secured by a contract lien on property owned by a member of the military, by specifying that such a contract includes a lien securing payment of a lawful assessment or assessments, as applicable, on a dwelling owned by a military servicemember, whereas the original specifies that such a contract lien includes a lien securing payment of an assessment or assessments, as applicable, on a dwelling owned by a military servicemember. The substitute differs from the original by redefining "dedicatory instrument" to include a declaration or similar instrument subjecting real property to a property owners' association's properly adopted bylaws, whereas the original's redefinition does not include the reference to such bylaws.

C.S.S.B. 142 contains a provision not included in the original prohibiting a dedicatory instrument from being enforced against a property owner who purchased the property before the dedicatory instrument was filed in the real property records of each applicable county unless the property owner agrees to comply with the subsequently filed dedicatory instrument.

C.S.S.B. 142 differs from the original, in a provision authorizing a property owners' association to include or enforce a prohibition against a roof-mounted solar energy device, specifies a device that extends higher than the roofline, whereas the original specifies a device that extends higher than or beyond the roofline. The substitute differs from the original by authorizing an association to include or enforce a prohibition against a solar energy device that, as installed, conflicts with the manufacturer's installation requirements, whereas the original contains no such authorization.

C.S.S.B. 142 differs from the original by authorizing the property owners' association to include or enforce a prohibition against a solar energy device installed without prior approval by a committee created in a dedicatory instrument for such purposes, whereas the original applies its provision to such a device installed without prior approval by the association or by such a committee.

C.S.S.B. 142 differs from the original by prohibiting a committee created in a dedicatory instrument to approve certain improvements from withholding approval for installation of a solar energy device that meets or exceeds the minimum requirements of a dedicatory instrument, whereas the original prohibits a property owners' association or the association's architectural review committee from withholding such approval if the provisions of the dedicatory instruments are met or exceeded, unless the association or committee determines that the proposed placement of the device will substantially interfere with the use and enjoyment of land by persons of ordinary sensibilities. The substitute contains provisions not included in the original relating to the association's regulation of the installation of certain roofing materials.

C.S.S.B. 142 differs from the original by requiring a property owners' association to deliver to the owner, owner's agent, or title insurance company or its agent a current resale certificate, whereas the original requires delivery of a resale certificate prepared not earlier than the 60th day before the date the certificate is delivered. The substitute differs from the original by requiring a current resale certificate to contain, among other information, a statement of any right of first refusal and the amount and purpose of any special assessment that has been approved before and is due after the date the certificate is prepared, whereas the original requires a resale certificate to contain, among other information, a statement of any right of first refusal, other than a right of first refusal that is prohibited by statute, and the amount and purpose of any special assessment that has been approved before and is due after the certificate is delivered.

C.S.S.B. 142 contains a provision not included in the original requiring the fees to assemble, copy, and deliver requested subdivision information and to prepare and deliver an updated resale certificate to be presumed to be reasonable if they do not exceed costs that would be applicable for an item under Texas Administrative Code provisions. The substitute contains a provision not included in the original establishing that all ballots cast in a vote that results in an amendment to a restrictive covenant or bylaw are records of the property owners' association subject to inspection.

C.S.S.B. 142 omits a provision included in the original establishing that provisions relating to property owners' association records control over other law not specifically applicable to an association. The substitute differs from the original by requiring an owner or the owner's authorized representative to submit a written request for access to or information regarding association records by certified mail or another method providing evidence of mailing or delivery to the mailing address of the association or authorized representative, whereas the original requires the submission of such a request only by certified mail.

C.S.S.B. 142 differs from the original by requiring a property owners' association, if the association is unable to produce the books or records requested within a specified period, to provide to the requestor written notice that informs the requestor of the reason that the association is unable to produce the information within that period, whereas the original requires the notice to inform the requestor only that the association is unable to produce the information within the specified period.

C.S.S.B. 142 differs from the original by specifying that the costs prescribed by a property owners' association's records production and copying policy are the actual costs the association will charge for the compilation, production, and reproduction of information relating to association records, whereas the original specifies that the policy prescribes the costs the association will charge. The bill differs from the original by prohibiting the prescribed charges from exceeding costs that would be applicable for an item under Texas Administrative Code

provisions, whereas the original prohibits those charges from exceeding costs that would be applicable for an item under Government Code provisions relating to charges for providing copies of public information. The substitute differs from the original by authorizing the association to require advance payment of those compilation, production, and reproduction costs, whereas the original authorizes a requirement for advance payment of the estimated costs of such compilation, production, and reproduction.

C.S.S.B. 142 omits provisions included in the original authorizing a property owners' association to take certain actions with respect to a final invoice if estimated costs are lesser or greater than actual costs.

C.S.S.B. 142 differs from the original by redefining "board meeting" to mean a deliberation between a quorum of the property owners' association's voting board, or between a quorum of the voting board and another person, during which association business or policies are considered or during which the board takes formal action, whereas the original specifies only deliberations during which association business is considered and during which the board takes formal action.

C.S.S.B. 142 differs from the original by requiring the board of a property owners' association to keep a record of each regular, emergency, or special board meeting in the form of written minutes or an audio recording of the meeting, whereas the original only requires the board to keep a record of each regular or special board meeting in the form of written minutes of the meeting. The substitute differs from the original by requiring members to be given notice of the date, hour, place, and general subject of a regular, emergency, or special board meeting, whereas the original requires notice of a regular or special board meeting.

C.S.S.B. 142 differs from the original, in provisions relating to posting requirements for a board meeting that is recessed and continued to the following business day and to a subsequent continuation of that meeting to yet another day, by making those provisions applicable to the recessing and continuation of a regular, emergency, or special board meeting, whereas the original applies its provisions to the recessing and continuation of a regular or special board meeting.

C.S.S.B. 142 differs from the original, in a provision authorizing the board to meet by any method of communication under certain conditions without prior notice to owners, by specifying as a purpose for such meeting the consideration of a reasonably unforeseen emergency or urgent necessity that requires immediate board action, whereas the original adds to that purpose taking action by unanimous written consent to consider routine and administrative matters. The substitute contains a provision not included in original requiring any action taken without notice to owners to be recorded by an audio device and kept as part of the association records.

C.S.S.B. 142 omits a provision included in the original authorizing the voting rights of an owner to be cast or given by any method of representative or delegated voting provided by a dedicatory instrument.

C.S.S.B. 142 differs from the original by requiring a board member appointed to fill a vacant position to serve only until the end of the predecessor's unexpired term, whereas the original requires such appointed member to serve the predecessor's unexpired term.

C.S.S.B. 142 differs from the original by requiring a property owners' association composed of more than 14 lots to adopt reasonable guidelines to establish an alternative payment schedule by which an owner shall have a right to make partial payments to the association for delinquent assessments or any other amount owed without accruing additional monetary penalties, whereas the original requires the adoption of reasonable guidelines to establish an alternative payment schedule by which an owner may make such partial payments.

C.S.S.B. 142 differs from the original by establishing that a property owners' association's failure to file the association's guidelines in the real property records of each applicable county does not affect a property owner's right to an alternative payment schedule by which the owner may make partial payments for delinquent assessments or any other amount owed without accruing additional monetary penalties, whereas the original establishes that such a failure does not prohibit a property owner from receiving such an alternative payment schedule.

C.S.S.B. 142 omits a provision included in the original exempting a property owners' association that receives a payment from a property owner who is in default under a payment plan entered into with the association from having to apply that payment in the order of priority specified by the original's provisions and prohibiting giving priority in applying the payment to a fine assessed by the association over any other amount owed to the association.

C.S.S.B. 142 differs from the original, in a provision prohibiting a property owners' association from foreclosing an assessment lien if the debt securing the lien consists solely of certain amounts, by including amounts added to an owner's account as an assessment under provisions relating to third party collections, whereas the original does not include those amounts relating to third party collections.

C.S.S.B. 142 omits a provision included in the original authorizing a property owners' association to use the procedure for a court-ordered expedited foreclosure described by the original's provisions to foreclose any lien described by the association's dedicatory instruments. The substitute contains a provision not included in the original requiring rules adopted by the Supreme Court of Texas establishing expedited foreclosure proceedings for use by an association in foreclosing an assessment lien to require service on the record owners of the property of a copy of the notice and application for foreclosure of the lien by the same methods of service prescribed for service of citation under the Texas Rules of Civil Procedure.

C.S.S.B. 142 contains a provision not included in the original prohibiting bylaws adopted by the board of a property owners' association from expanding the association's powers beyond those powers specifically granted in the declaration and establishing that to the extent of any conflict between the bylaws and any declaration, the declaration prevails.

C.S.S.B. 142 contains a provision not included in the original by making provisions relating to an association's regulation of the installation of certain roofing materials applicable to a provision in a dedicatory instrument or a restrictive covenant enacted before, on, or after the substitute's effective date, with the exception that any action taken before the substitute's effective date based on an unfiled dedicatory instrument is not invalidated by provisions relating to public records.