

By: Garza, Howard of Fort Bend

H.B. No. 2761

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to meetings and records of certain property owners'  
3 associations.

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 Government Code.

11 (b) A property owners' association shall make the books and  
12 records of the association, including financial records, open to  
13 and reasonably available for examination by [to] an owner, or an  
14 owner's attorney or certified public accountant, in accordance with  
15 this section. An owner is entitled to obtain from the association  
16 copies of information contained in the books and records [Section  
17 B, Article 2.23, Texas Non-Profit Corporation Act (Article  
18 1396-2.23, Vernon's Texas Civil Statutes)].

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

1 ~~which this subsection applies].~~

2 (d) [~~(b)~~] An attorney's files and records relating to the  
3 association, excluding invoices requested by an owner under Section  
4 209.008(d), are not:

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

8 (e) An owner or the owner's authorized representative must  
9 submit a written request for access or information under Subsection  
10 (b) by certified mail or other evidence of mailing or delivery, with  
11 sufficient particularity detailing the association's books and  
12 records requested, to the mailing address of the association or  
13 authorized representative as reflected on the most current  
14 management certificate filed under Section 209.004. The request  
15 must contain an election either to inspect the books and records  
16 before obtaining copies or to have the property owners' association  
17 forward copies of the requested books and records and:

18 (1) if an inspection is requested, the association, on  
19 or before the 10th business day after the date the association  
20 receives the request, shall send written notice of dates during  
21 normal business hours that the owner may inspect the requested  
22 books and records to the extent those books and records are required  
23 to be retained by the association; or

24 (2) if copies of identified books and records are  
25 requested, the association shall, to the extent those books and  
26 records are required to be retained by the association, produce the  
27 requested books and records for the requesting party on or before

1 the 10th business day after the date the association receives the  
2 request, except as otherwise provided by this section.

3 (f) If the property owners' association is unable to produce  
4 the books or records requested under Subsection (f) on or before the  
5 10th business day after the date the association receives the  
6 request, the association must provide to the requestor written  
7 notice that:

8 (1) informs the requestor the reason that the  
9 association is unable to produce the information on or before the  
10 10th business day after the date the association received the  
11 request; and

12 (2) states a date by which the information will be sent  
13 or made available for inspection to the requesting party that is not  
14 later than the 30th business day after the date notice under this  
15 subsection is given.

16 (g) If an inspection is requested or required, the  
17 inspection shall take place at a mutually agreed on time during  
18 normal business hours, and the requesting party shall identify the  
19 books and records for the association to copy and forward to the  
20 requesting party.

21 (h) A property owners' association may produce books and  
22 records requested under this section in hard copy, electronic, or  
23 other format reasonably available to the association.

24 (i) An owner is responsible for actual costs related to  
25 compilation and reproduction of the requested information in an  
26 amount that reasonably includes all actual costs related to  
27 compilation and reproduction of the information, including costs of

1 materials, labor, and overhead, but may not exceed costs that would  
2 be applicable for an item under Section 70.3, Administrative Code.  
3 The association may require advance payment of the costs of  
4 compilation and reproduction.

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

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

18 (1) the express written approval of the owner whose  
19 records are the subject of the request for inspection is provided to  
20 the association; or

21 (2) a court orders the release of the books and records  
22 or orders that the books and records be made available for  
23 inspection.

24 (l) A property owners' association composed of more than 12  
25 lots shall adopt a records retention policy that, except as  
26 provided by this subsection, conforms to the records retention  
27 schedule adopted by the Texas State Library and Archives Commission

1 applicable to all local governments. An association's records  
2 retention policy may require a class of records to be retained  
3 longer than would otherwise be required under this subsection.

4 SECTION 2. Chapter 209, Property Code, is amended by adding  
5 Section 209.0051 to read as follows:

6 Sec. 209.0051. OPEN BOARD MEETINGS. (a) Meetings of the  
7 board must be open to owners, subject to the right of the board to  
8 adjourn a board meeting and reconvene in closed executive session  
9 to consider actions involving personnel, pending or threatened  
10 litigation, contract negotiations, enforcement actions,  
11 confidential communications with the association's attorney,  
12 matters involving the invasion of privacy of individual owners, or  
13 matters that are to remain confidential by request of the affected  
14 parties and agreement of the board. The general nature of any  
15 business to be considered in executive session must first be  
16 announced at the open meeting.

17 (b) Unless the declaration, bylaws, or certificate of  
18 formation of the association provide otherwise:

19 (1) a meeting of the board may be held by any method of  
20 communication, including electronic and telephonic, if:

21 (A) notice of the meeting has been given as  
22 required by law;

23 (B) each director may hear and be heard by every  
24 other director; and

25 (C) the meeting does not involve voting on a  
26 fine, damage assessment, appeal from a denial of architectural  
27 control approval, or suspension of a right of a particular owner

1 before the owner has an opportunity to attend a board meeting to  
2 present the owner's position, including any defense, on the issue;  
3 and

4 (2) the board may act by unanimous written consent of  
5 all the directors, without a meeting, if:

6 (A) the board action does not involve voting on a  
7 fine, damage assessment, appeal from a denial of architectural  
8 control approval, or suspension of a right of a particular owner  
9 before the owner has an opportunity to attend a board meeting to  
10 present the owner's position, including any defense, on the issue;  
11 and

12 (B) a record of the board action is filed with the  
13 minutes of board meetings.

14 (c) Members shall be given notice of the date, hour, place,  
15 and general subject of a regular, emergency, or special board  
16 meeting, including a general description of any matter to be  
17 brought up for deliberation in executive session.

18 (d) This section does not apply to meetings of the board  
19 during a development period. For purposes of this subsection,  
20 "development period" means a period stated in a declaration during  
21 which a declarant reserves:

22 (1) a right to facilitate the development,  
23 construction, and marketing of the subdivision; and

24 (2) a right to direct the size, shape, and composition  
25 of the subdivision.

26 (e) An action taken by a board at a meeting held in violation  
27 of this section is voidable.

1           SECTION 3. (a) Section 209.005, Property Code, as amended  
2 by this Act, applies only to a request for information received by a  
3 property owners' association on or after the effective date of this  
4 Act. A request for information received by a property owners'  
5 association before the effective date of this Act is governed by the  
6 law in effect immediately before the effective date of this Act, and  
7 that law is continued in effect for that purpose.

8           (b) Section 209.005(m), Property Code, as added by this Act,  
9 applies only with respect to records generated on or after the  
10 effective date of this Act. Records generated before the effective  
11 date of this Act are governed by the law in effect immediately  
12 before the effective date of this Act, and that law is continued in  
13 effect for that purpose.

14           SECTION 4. This Act takes effect January 1, 2012.