

By: Garza, Howard of Fort Bend

H.B. No. 2761

Substitute the following for H.B. No. 2761:

By: Quintanilla

C.S.H.B. No. 2761

A BILL TO BE ENTITLED

AN ACT

relating to meetings and records of certain property owners' associations.

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

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

Sec. 209.005. ASSOCIATION RECORDS. (a) Except as provided by Subsection (b), this section applies to all property owners' associations and controls over other law not specifically applicable to a property owners' association.

(b) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

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

(d) [(a-1)] A property owners' association described by Section 552.0036(2), Government Code, shall make the books and

1 records of the association, including financial records,
2 reasonably available to any person requesting access to the books
3 or records in accordance with Chapter 552, Government Code[
4 ~~Subsection (a) does not apply to a property owners' association to~~
5 ~~which this subsection applies].~~

6 (e) [~~(b)~~] An attorney's files and records relating to the
7 association, excluding invoices requested by an owner under Section
8 209.008(d), are not:

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

12 (f) An owner or the owner's attorney or certified public
13 accountant must submit a written request for access or information
14 under Subsection (c) by certified mail, with sufficient
15 particularity detailing the association's books and records
16 requested, to the mailing address of the association or authorized
17 representative as reflected on the most current management
18 certificate filed under Section 209.004. The request must contain
19 an election either to inspect the books and records before
20 obtaining copies or to have the property owners' association
21 forward copies of the requested books and records and:

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

1 (2) if copies of identified books and records are
2 requested, the association shall, to the extent those books and
3 records are required to be retained by the association, produce the
4 requested books and records for the requesting party on or before
5 the 10th business day after the date the association receives the
6 request, except as otherwise provided by this section.

7 (g) If the property owners' association is unable to produce
8 the books or records requested under Subsection (f) on or before the
9 10th business day after the date the association receives the
10 request, the association must provide to the requestor written
11 notice that:

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

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

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

24 (i) A property owners' association may produce books and
25 records requested under this section in hard copy, electronic, or
26 other format reasonably available to the association.

27 (j) An owner is responsible for costs related to compilation

1 and reproduction of the requested information in an amount that
2 reasonably includes all costs related to compilation and
3 reproduction of the information, including costs of materials,
4 labor, and overhead. The association may require advance payment
5 of the estimated costs of compilation and reproduction. If the
6 estimated costs are lesser or greater than actual costs, the
7 association shall submit a final invoice to the owner on or before
8 the 30th business day after the date the information is delivered to
9 the requestor. If the final invoice includes additional amounts
10 due from the owner, the additional amounts, if not reimbursed to the
11 association before the 30th business day after the date the invoice
12 is sent to the owner, may be added to the owner's account as an
13 assessment. If the estimated costs exceeded the final invoice
14 amount, the owner is entitled to a refund, and the refund shall be
15 issued to the owner not later than the 30th business day after the
16 date the invoice is sent to the owner.

17 (k) Except as provided by Subsection (l), the association is
18 not required, other than in meeting minutes, to release or allow
19 inspection of any books or records that identify the dedicatory
20 instrument violation history of an individual owner of an
21 association, an owner's personal financial information, including
22 records of payment or nonpayment of amounts due the association, an
23 owner's contact information, other than the owner's address, or
24 information related to an employee of the association, including
25 personnel files. Information may be released in an aggregate or
26 summary manner that would not identify an individual property
27 owner.

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

3 (1) the express written approval of the owner whose
4 records are the subject of the request for inspection is provided to
5 the association; or

6 (2) a court orders the release of the books and records
7 or orders that the books and records be made available for
8 inspection.

9 (m) A property owners' association composed of more than 12
10 lots shall adopt a records retention policy that, except as
11 provided by this subsection, conforms to the records retention
12 schedule adopted by the Texas State Library and Archives Commission
13 applicable to all local governments. An association's records
14 retention policy may require a class of records to be retained
15 longer than would otherwise be required under this subsection.

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

18 Sec. 209.0051. OPEN BOARD MEETINGS. (a) Meetings of the
19 board must be open to owners, subject to the right of the board to
20 adjourn a board meeting and reconvene in closed executive session
21 to consider actions involving personnel, pending or threatened
22 litigation, contract negotiations, enforcement actions,
23 confidential communications with the association's attorney,
24 matters involving the invasion of privacy of individual owners, or
25 matters that are to remain confidential by request of the affected
26 parties and agreement of the board. The general nature of any
27 business to be considered in executive session must first be

1 announced at the open meeting.

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

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

6 (A) notice of the meeting has been given as
7 required by law;

8 (B) each director may hear and be heard by every
9 other director; and

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

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

18 (A) the board action does not involve voting on a
19 fine, damage assessment, appeal from a denial of architectural
20 control approval, or suspension of a right of a particular owner
21 before the owner has an opportunity to attend a board meeting to
22 present the owner's position, including any defense, on the issue;
23 and

24 (B) a record of the board action is filed with the
25 minutes of board meetings.

26 (c) An association, on the written request of an owner,
27 shall inform the owner of the time and place of the next regular or

1 special meeting of the board. If the association representative to
2 whom the request is made does not know the time and place of the
3 meeting, the association promptly shall obtain the information and
4 disclose it to the owner or inform the owner where the information
5 may be obtained.

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

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

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

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

16 SECTION 3. (a) Section 209.005, Property Code, as amended
17 by this Act, applies only to a request for information received by a
18 property owners' association on or after the effective date of this
19 Act. A request for information received by a property owners'
20 association before the effective date of this Act is governed by the
21 law in effect immediately before the effective date of this Act, and
22 that law is continued in effect for that purpose.

23 (b) Section 209.005(m), Property Code, as added by this Act,
24 applies only with respect to records generated on or after the
25 effective date of this Act. Records generated before the effective
26 date of this Act are governed by the law in effect immediately
27 before the effective date of this Act, and that law is continued in

1 effect for that purpose.

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