

By: Garza

H.B. No. 2761

A BILL TO BE ENTITLED

AN ACT

relating to the operation of 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 records of the association, including financial records,

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

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

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

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

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

27 (2) if copies of identified books and records are

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

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

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

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

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

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

26 (j) An owner is responsible for costs related to compilation  
27 and reproduction of the requested information in an amount that

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

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

27 (l) The books and records described by Subsection (k) shall

1 be released or made available for inspection if:

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

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

8 (m) A property owners' association may adopt a document  
9 retention policy that supersedes this subsection. In the absence  
10 of the adoption of a document retention policy, a property owners'  
11 association shall retain books and records as follows:

12 (1) certificates of formation, bylaws, restrictive  
13 covenants, and all amendments to the certificates of formation,  
14 bylaws, and covenants shall be retained permanently;

15 (2) financial books and records shall be retained for  
16 seven years;

17 (3) account records of current owners shall be  
18 retained for five years;

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

21 (5) minutes of meetings of the owners and the board  
22 shall be retained for seven years; and

23 (6) tax returns and audit records shall be retained  
24 for seven years.

25 (n) Subsection (m) does not apply to a property owners'  
26 association that is composed of 12 or less lots.

27 SECTION 2. Chapter 209, Property Code, is amended by adding

1 Section 209.0051 to read as follows:

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

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

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

17 (A) notice of the meeting has been given as  
18 required by law;

19 (B) each director may hear and be heard by every  
20 other director; and

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

27 (2) the board may act by unanimous written consent of

1 all the directors, without a meeting, if:

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

8 (B) a record of the board action is filed with the  
9 minutes of board meetings.

10 (c) An association, on the written request of an owner,  
11 shall inform the owner of the time and place of the next regular or  
12 special meeting of the board. If the association representative to  
13 whom the request is made does not know the time and place of the  
14 meeting, the association promptly shall obtain the information and  
15 disclose it to the owner or inform the owner where the information  
16 may be obtained.

17 (d) This section does not apply to meetings of the board  
18 during a development period, as defined by Section 209.0041.

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

26 (b) Section 209.005(m), Property Code, as added by this Act,  
27 applies only with respect to books and records generated on or after

1 the effective date of this Act. Books and records generated before  
2 the effective date of this Act are governed by the law in effect  
3 immediately before the effective date of this Act, and that law is  
4 continued in effect for that purpose.

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