

1-1 By: Garza, Howard of Fort Bend H.B. No. 2761
1-2 (Senate Sponsor - West)
1-3 (In the Senate - Received from the House May 5, 2011;
1-4 May 9, 2011, read first time and referred to Committee on
1-5 Intergovernmental Relations; May 21, 2011, reported adversely,
1-6 with favorable Committee Substitute by the following vote: Yeas 5,
1-7 Nays 0; May 21, 2011, sent to printer.)

1-8 COMMITTEE SUBSTITUTE FOR H.B. No. 2761 By: West

1-9 A BILL TO BE ENTITLED
1-10 AN ACT

1-11 relating to meetings, elections, and records of certain property
1-12 owners' associations.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 209.005, Property Code, is amended to
1-15 read as follows:

1-16 Sec. 209.005. ASSOCIATION RECORDS. (a) Except as provided
1-17 by Subsection (b), this section applies to all property owners'
1-18 associations and controls over other law not specifically
1-19 applicable to a property owners' association.

1-20 (b) This section does not apply to a property owners'
1-21 association that is subject to Chapter 552, Government Code, by
1-22 application of Section 552.0036, Government Code.

1-23 (c) Notwithstanding a provision in a dedicatory instrument,
1-24 a [A] property owners' association shall make the books and records
1-25 of the association, including financial records, open to and
1-26 reasonably available for examination by [to] an owner, or a person
1-27 designated in a writing signed by the owner as the owner's agent,
1-28 attorney, or certified public accountant, in accordance with this
1-29 section. An owner is entitled to obtain from the association copies
1-30 of information contained in the books and records [Section B,
1-31 Article 2.23, Texas Non-Profit Corporation Act (Article 1396-2.23,
1-32 Vernon's Texas Civil Statutes)].

1-33 (d) Except as provided by this subsection, an [(a-1) A
1-34 property owners' association described by Section 552.0036(2),
1-35 Government Code, shall make the books and records of the
1-36 association, including financial records, reasonably available to
1-37 any person requesting access to the books or records in accordance
1-38 with Chapter 552, Government Code. Subsection (a) does not apply to
1-39 a property owners' association to which this subsection applies.

1-40 [(b) An] attorney's files and records relating to the
1-41 property owners' association, excluding invoices requested by an
1-42 owner under Section 209.008(d), are not[+]

1-43 [(1)] records of the association and are not[+]

1-44 [(2)] subject to inspection by the owner[+] or

1-45 [(3) subject to] production in a legal proceeding. If
1-46 a document in an attorney's files and records relating to the
1-47 association would be responsive to a legally authorized request to
1-48 inspect or copy association documents, the document shall be
1-49 produced by using the copy from the attorney's files and records if
1-50 the association has not maintained a separate copy of the document.
1-51 This subsection does not require production of a document that
1-52 constitutes attorney work product or that is privileged as an
1-53 attorney-client communication.

1-54 (e) An owner or the owner's authorized representative
1-55 described by Subsection (c) must submit a written request for
1-56 access or information under Subsection (c) by certified mail, with
1-57 sufficient detail describing the property owners' association's
1-58 books and records requested, to the mailing address of the
1-59 association or authorized representative as reflected on the most
1-60 current management certificate filed under Section 209.004. The
1-61 request must contain an election either to inspect the books and
1-62 records before obtaining copies or to have the property owners'
1-63 association forward copies of the requested books and records and:

2-1 (1) if an inspection is requested, the association, on
2-2 or before the 10th business day after the date the association
2-3 receives the request, shall send written notice of dates during
2-4 normal business hours that the owner may inspect the requested
2-5 books and records to the extent those books and records are in the
2-6 possession, custody, or control of the association; or

2-7 (2) if copies of identified books and records are
2-8 requested, the association shall, to the extent those books and
2-9 records are in the possession, custody, or control of the
2-10 association, produce the requested books and records for the
2-11 requesting party on or before the 10th business day after the date
2-12 the association receives the request, except as otherwise provided
2-13 by this section.

2-14 (f) If the property owners' association is unable to produce
2-15 the books or records requested under Subsection (e) on or before the
2-16 10th business day after the date the association receives the
2-17 request, the association must provide to the requestor written
2-18 notice that:

2-19 (1) informs the requestor that the association is
2-20 unable to produce the information on or before the 10th business day
2-21 after the date the association received the request; and

2-22 (2) states a date by which the information will be sent
2-23 or made available for inspection to the requesting party that is not
2-24 later than the 15th business day after the date notice under this
2-25 subsection is given.

2-26 (g) If an inspection is requested or required, the
2-27 inspection shall take place at a mutually agreed on time during
2-28 normal business hours, and the requesting party shall identify the
2-29 books and records for the property owners' association to copy and
2-30 forward to the requesting party.

2-31 (h) A property owners' association may produce books and
2-32 records requested under this section in hard copy, electronic, or
2-33 other format reasonably available to the association.

2-34 (i) A property owners' association board must adopt a
2-35 records production and copying policy that prescribes the costs the
2-36 association will charge for the compilation, production, and
2-37 reproduction of information requested under this section. The
2-38 prescribed charges may include all reasonable costs of materials,
2-39 labor, and overhead but may not exceed costs that would be
2-40 applicable for an item under 1 T.A.C. Section 70.3. The policy
2-41 required by this subsection must be recorded as a dedicatory
2-42 instrument in accordance with Section 202.006. An association may
2-43 not charge an owner for the compilation, production, or
2-44 reproduction of information requested under this section unless the
2-45 policy prescribing those costs has been recorded as required by
2-46 this subsection. An owner is responsible for costs related to the
2-47 compilation, production, and reproduction of the requested
2-48 information in the amounts prescribed by the policy adopted under
2-49 this subsection. The association may require advance payment of
2-50 the estimated costs of compilation, production, and reproduction of
2-51 the requested information. If the estimated costs are lesser or
2-52 greater than the actual costs, the association shall submit a final
2-53 invoice to the owner on or before the 30th business day after the
2-54 date the information is delivered. If the final invoice includes
2-55 additional amounts due from the owner, the additional amounts, if
2-56 not reimbursed to the association before the 30th business day
2-57 after the date the invoice is sent to the owner, may be added to the
2-58 owner's account as an assessment. If the estimated costs exceeded
2-59 the final invoice amount, the owner is entitled to a refund, and the
2-60 refund shall be issued to the owner not later than the 30th business
2-61 day after the date the invoice is sent to the owner.

2-62 (j) A property owners' association must estimate costs
2-63 under this section using amounts prescribed by the policy adopted
2-64 under Subsection (i).

2-65 (k) Except as provided by Subsection (l) and to the extent
2-66 the information is provided in the meeting minutes, the property
2-67 owners' association is not required to release or allow inspection
2-68 of any books or records that identify the dedicatory instrument
2-69 violation history of an individual owner of an association, an

3-1 owner's personal financial information, including records of
 3-2 payment or nonpayment of amounts due the association, an owner's
 3-3 contact information, other than the owner's address, or information
 3-4 related to an employee of the association, including personnel
 3-5 files. Information may be released in an aggregate or summary
 3-6 manner that would not identify an individual property owner.

3-7 (1) The books and records described by Subsection (k) shall
 3-8 be released or made available for inspection if:

3-9 (1) the express written approval of the owner whose
 3-10 records are the subject of the request for inspection is provided to
 3-11 the property owners' association; or

3-12 (2) a court orders the release of the books and records
 3-13 or orders that the books and records be made available for
 3-14 inspection.

3-15 (m) A property owners' association composed of more than 14
 3-16 lots shall adopt and comply with a document retention policy that
 3-17 includes, at a minimum, the following requirements:

3-18 (1) certificates of formation, bylaws, restrictive
 3-19 covenants, and all amendments to the certificates of formation,
 3-20 bylaws, and covenants shall be retained permanently;

3-21 (2) financial books and records shall be retained for
 3-22 seven years;

3-23 (3) account records of current owners shall be
 3-24 retained for five years;

3-25 (4) contracts with a term of one year or more shall be
 3-26 retained for four years after the expiration of the contract term;

3-27 (5) minutes of meetings of the owners and the board
 3-28 shall be retained for seven years; and

3-29 (6) tax returns and audit records shall be retained
 3-30 for seven years.

3-31 (n) A member of a property owners' association who is denied
 3-32 access to or copies of association books or records to which the
 3-33 member is entitled under this section may file a petition with the
 3-34 justice of the peace of a justice precinct in which all or part of
 3-35 the property that is governed by the association is located
 3-36 requesting relief in accordance with this subsection. If the
 3-37 justice of the peace finds that the member is entitled to access to
 3-38 or copies of the records, the justice of the peace may grant one or
 3-39 more of the following remedies:

3-40 (1) a judgment ordering the property owners'
 3-41 association to release or allow access to the books or records;

3-42 (2) a judgment against the property owners'
 3-43 association for court costs and attorney's fees incurred in
 3-44 connection with seeking a remedy under this section; or

3-45 (3) a judgment authorizing the owner or the owner's
 3-46 assignee to deduct the amounts awarded under Subdivision (2) from
 3-47 any future regular or special assessments payable to the property
 3-48 owners' association.

3-49 (o) If the property owners' association prevails in an
 3-50 action under Subsection (n), the association is entitled to a
 3-51 judgment for court costs and attorney's fees incurred by the
 3-52 association in connection with the action.

3-53 (p) On or before the 10th business day before the date a
 3-54 person brings an action against a property owners' association
 3-55 under this section, the person must send written notice to the
 3-56 association of the person's intent to bring the action. The notice
 3-57 must:

3-58 (1) be sent certified mail, return receipt requested,
 3-59 or delivered by the United States Postal Service with signature
 3-60 confirmation service to the mailing address of the association or
 3-61 authorized representative as reflected on the most current
 3-62 management certificate filed under Section 209.004; and

3-63 (2) describe with sufficient detail the books and
 3-64 records being requested.

3-65 (q) For the purposes of this section, "business day" means a
 3-66 day other than Saturday, Sunday, or a state or federal holiday.

3-67 SECTION 2. Chapter 209, Property Code, is amended by adding
 3-68 Sections 209.0051 and 209.0056 to read as follows:

3-69 Sec. 209.0051. OPEN BOARD MEETINGS. (a) This section does

4-1 not apply to a property owners' association that is subject to
4-2 Chapter 551, Government Code, by application of Section 551.0015,
4-3 Government Code.

4-4 (b) In this section:

4-5 (1) "Board meeting":

4-6 (A) means a deliberation between a quorum of the
4-7 voting board of the property owners' association, or between a
4-8 quorum of the voting board and another person, during which
4-9 property owners' association business is considered and the board
4-10 takes formal action; and

4-11 (B) does not include the gathering of a quorum of
4-12 the board at a social function unrelated to the business of the
4-13 association or the attendance by a quorum of the board at a
4-14 regional, state, or national convention, ceremonial event, or press
4-15 conference, if formal action is not taken and any discussion of
4-16 association business is incidental to the social function,
4-17 convention, ceremonial event, or press conference.

4-18 (2) "Development period" means a period stated in a
4-19 declaration during which a declarant reserves:

4-20 (A) a right to facilitate the development,
4-21 construction, and marketing of the subdivision; and

4-22 (B) a right to direct the size, shape, and
4-23 composition of the subdivision.

4-24 (c) Regular and special board meetings must be open to
4-25 owners, subject to the right of the board to adjourn a board meeting
4-26 and reconvene in closed executive session to consider actions
4-27 involving personnel, pending or threatened litigation, contract
4-28 negotiations, enforcement actions, confidential communications
4-29 with the property owners' association's attorney, matters involving
4-30 the invasion of privacy of individual owners, or matters that are to
4-31 remain confidential by request of the affected parties and
4-32 agreement of the board. Following an executive session, any
4-33 decision made in the executive session must be summarized orally
4-34 and placed in the minutes, in general terms, without breaching the
4-35 privacy of individual owners, violating any privilege, or
4-36 disclosing information that was to remain confidential at the
4-37 request of the affected parties. The oral summary must include a
4-38 general explanation of expenditures approved in executive session.

4-39 (c-1) Except for a meeting held by electronic or telephonic
4-40 means under Subsection (h), a board meeting must be held in a county
4-41 in which all or part of the property in the subdivision is located
4-42 or in a county adjacent to that county.

4-43 (d) The board shall keep a record of each regular or special
4-44 board meeting in the form of written minutes of the meeting. The
4-45 board shall make meeting records, including approved minutes,
4-46 available to a member for inspection and copying on the member's
4-47 written request to the property owners' association's managing
4-48 agent at the address appearing on the most recently filed
4-49 management certificate or, if there is not a managing agent, to the
4-50 board.

4-51 (e) Members shall be given notice of the date, hour, place,
4-52 and general subject of a regular or special board meeting,
4-53 including a general description of any matter to be brought up for
4-54 deliberation in executive session. The notice shall be:

4-55 (1) mailed to each property owner not later than the
4-56 10th day or earlier than the 60th day before the date of the
4-57 meeting; or

4-58 (2) provided at least 72 hours before the start of the
4-59 meeting by:

4-60 (A) posting the notice in a conspicuous manner
4-61 reasonably designed to provide notice to property owners'
4-62 association members:

4-63 (i) in a place located on the association's
4-64 common property or, with the property owner's consent, on other
4-65 conspicuously located privately owned property within the
4-66 subdivision; or

4-67 (ii) on any Internet website maintained by
4-68 the association or other Internet media; and

4-69 (B) sending the notice by e-mail to each owner

5-1 who has registered an e-mail address with the association.

5-2 (f) It is an owner's duty to keep an updated e-mail address
 5-3 registered with the property owners' association under Subsection
 5-4 (e)(2)(B).

5-5 (g) If the board recesses a regular or special board meeting
 5-6 to continue the following regular business day, the board is not
 5-7 required to post notice of the continued meeting if the recess is
 5-8 taken in good faith and not to circumvent this section. If a
 5-9 regular or special board meeting is continued to the following
 5-10 regular business day, and on that following day the board continues
 5-11 the meeting to another day, the board shall give notice of the
 5-12 continuation in at least one manner prescribed by Subsection
 5-13 (e)(2)(A) within two hours after adjourning the meeting being
 5-14 continued.

5-15 (h) A board may meet by any method of communication,
 5-16 including electronic and telephonic, without prior notice to owners
 5-17 under Subsection (e), if each director may hear and be heard by
 5-18 every other director, or the board may take action by unanimous
 5-19 written consent to consider routine and administrative matters or a
 5-20 reasonably unforeseen emergency or urgent necessity that requires
 5-21 immediate board action. Any action taken without notice to owners
 5-22 under Subsection (e) must be summarized orally, including an
 5-23 explanation of any known actual or estimated expenditures approved
 5-24 at the meeting, and documented in the minutes of the next regular or
 5-25 special board meeting. The board may not, without prior notice to
 5-26 owners under Subsection (e), consider or vote on:

5-27 (1) fines;
 5-28 (2) damage assessments;
 5-29 (3) initiation of foreclosure actions;
 5-30 (4) initiation of enforcement actions, excluding
 5-31 temporary restraining orders or violations involving a threat to
 5-32 health or safety;

5-33 (5) increases in assessments;
 5-34 (6) levying of special assessments;
 5-35 (7) appeals from a denial of architectural control
 5-36 approval; or

5-37 (8) a suspension of a right of a particular owner
 5-38 before the owner has an opportunity to attend a board meeting to
 5-39 present the owner's position, including any defense, on the issue.

5-40 (i) This section applies to a meeting of a property owners'
 5-41 association board during the development period only if the meeting
 5-42 is conducted for the purpose of:

5-43 (1) adopting or amending the governing documents,
 5-44 including declarations, bylaws, rules, and regulations of the
 5-45 association;

5-46 (2) increasing the amount of regular assessments of
 5-47 the association or adopting or increasing a special assessment;

5-48 (3) electing non-developer board members of the
 5-49 association or establishing a process by which those members are
 5-50 elected; or

5-51 (4) changing the voting rights of members of the
 5-52 association.

5-53 Sec. 209.0056. NOTICE OF ELECTION OR ASSOCIATION VOTE. (a)
 5-54 Not later than the 10th day or earlier than the 60th day before the
 5-55 date of an election or vote, a property owners' association shall
 5-56 give written notice of the election or vote to:

5-57 (1) each owner of property in the property owners'
 5-58 association, for purposes of an association-wide election or vote;
 5-59 or

5-60 (2) each owner of property in the property owners'
 5-61 association entitled under the dedicatory instruments to vote in a
 5-62 particular representative election, for purposes of a vote that
 5-63 involves election of representatives of the association who are
 5-64 vested under the dedicatory instruments of the property owners'
 5-65 association with the authority to elect or appoint board members of
 5-66 the property owners' association.

5-67 (b) This section supersedes any contrary requirement in a
 5-68 dedicatory instrument.

5-69 (c) This section does not apply to a property owners'

6-1 association that is subject to Chapter 552, Government Code, by
 6-2 application of Section 552.0036, Government Code.

6-3 SECTION 3. Section 209.009, Property Code, is amended to
 6-4 read as follows:

6-5 Sec. 209.009. FORECLOSURE SALE PROHIBITED IN CERTAIN
 6-6 CIRCUMSTANCES. A property owners' association may not foreclose a
 6-7 property owners' association's assessment lien if the debt securing
 6-8 the lien consists solely of:

6-9 (1) fines assessed by the association; [~~or~~]

6-10 (2) attorney's fees incurred by the association solely
 6-11 associated with fines assessed by the association; or

6-12 (3) amounts added to the owner's account as an
 6-13 assessment under Section 209.005(i).

6-14 SECTION 4. Chapter 209, Property Code, is amended by adding
 6-15 Section 209.014 to read as follows:

6-16 Sec. 209.014. MANDATORY ELECTION REQUIRED AFTER FAILURE TO
 6-17 CALL REGULAR MEETING. (a) Notwithstanding any provision in a
 6-18 dedicatory instrument, a board of a property owners' association
 6-19 shall call an annual meeting of the members of the association.

6-20 (b) If a board of a property owners' association does not
 6-21 call an annual meeting of the association members, an owner may
 6-22 demand that a meeting of the association members be called not later
 6-23 than the 30th day after the date of the owner's demand. The owner's
 6-24 demand must be made in writing and sent by certified mail, return
 6-25 receipt requested, to the registered agent of the property owners'
 6-26 association and to the association at the address for the
 6-27 association according to the most recently filed management
 6-28 certificate. A copy of the notice must be sent to each property
 6-29 owner who is a member of the association.

6-30 (c) If the board does not call a meeting of the members of
 6-31 the property owners' association on or before the 30th day after the
 6-32 date of a demand under Subsection (b), three or more owners may form
 6-33 an election committee. The election committee shall file written
 6-34 notice of the committee's formation with the county clerk of each
 6-35 county in which the subdivision is located.

6-36 (d) A notice filed by an election committee must contain:

6-37 (1) a statement that an election committee has been
 6-38 formed to call a meeting of owners who are members of the property
 6-39 owners' association for the sole purpose of electing board members;

6-40 (2) the name and residential address of each committee
 6-41 member; and

6-42 (3) the name of the subdivision over which the
 6-43 property owners' association has jurisdiction under a dedicatory
 6-44 instrument.

6-45 (e) Each committee member must sign and acknowledge the
 6-46 notice before a notary or other official authorized to take
 6-47 acknowledgments.

6-48 (f) The county clerk shall enter on the notice the date the
 6-49 notice is filed and record the notice in the county's real property
 6-50 records.

6-51 (g) Only one committee in a subdivision may operate under
 6-52 this section at one time. If more than one committee in a
 6-53 subdivision files a notice, the first committee that files a
 6-54 notice, after having complied with all other requirements of this
 6-55 section, is the committee with the power to act under this section.
 6-56 A committee that does not hold or conduct a successful election
 6-57 within four months after the date the notice is filed with the
 6-58 county clerk is dissolved by operation of law. An election held or
 6-59 conducted by a dissolved committee is ineffective for any purpose
 6-60 under this section.

6-61 (h) The election committee may call meetings of the owners
 6-62 who are members of the property owners' association for the sole
 6-63 purpose of electing board members. Notice, quorum, and voting
 6-64 provisions contained in the bylaws of the property owners'
 6-65 association apply to any meeting called by the election committee.

6-66 SECTION 5. (a) Section 209.005, Property Code, as amended
 6-67 by this Act, applies only to a request for information received by a
 6-68 property owners' association on or after the effective date of this
 6-69 Act. A request for information received by a property owners'

7-1 association before the effective date of this Act is governed by the
7-2 law in effect immediately before the effective date of this Act, and
7-3 that law is continued in effect for that purpose.

7-4 (b) Subsection (m), Section 209.005, Property Code, as
7-5 added by this Act, applies only with respect to books and records
7-6 generated on or after the effective date of this Act. Books and
7-7 records generated before the effective date of this Act are
7-8 governed by the law in effect immediately before the effective date
7-9 of this Act, and that law is continued in effect for that purpose.

7-10 (c) Section 209.014, Property Code, as added by this Act,
7-11 applies to a property owners' association created before, on, or
7-12 after the effective date of this Act.

7-13 SECTION 6. This Act takes effect January 1, 2012.

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