

By: Harper-Brown

H.B. No. 2869

A BILL TO BE ENTITLED

AN ACT

relating to the powers and duties of certain master mixed-use property owners' associations.

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

SECTION 1. Title 11, Property Code, is amended by adding Chapter 215 to read as follows:

CHAPTER 215. MASTER MIXED-USE PROPERTY OWNERS' ASSOCIATIONS

Sec. 215.001. DEFINITIONS. In this chapter:

(1) "Appraised value" means the property value determined by the appraisal district that establishes property values for taxing entities levying taxes on property in a mixed-use development.

(2) "Property owners' association" or "association" means, unless otherwise indicated, a master mixed-use property owners' association.

(3) "Dedictory instrument" has the meaning assigned by Section 209.003.

(4) "Self-help" means the process by which a property owners' association takes remedial action with regard to property governed by the association.

Sec. 215.002. APPLICABILITY OF CHAPTER. (a) This chapter applies to a property owners' association that:

(1) includes:

(A) commercial properties, including hotel and

1 retail properties, that constitute at least 35 percent of the total
2 appraised property value of the mixed-use development governed by
3 the association;

4 (B) single-family attached and detached
5 properties that constitute at least 25 percent of the total
6 appraised property value of the mixed-use development governed by
7 the association; and

8 (C) multifamily properties that constitute at
9 least 10 percent of the total appraised property value of the
10 mixed-use development governed by the association;

11 (2) governs at least 6,000 acres of deed-restricted
12 property;

13 (3) has at least 10 incorporated residential or
14 commercial property owners' associations that are members of and
15 subject to the dedicatory instruments of the master mixed-use
16 property owners' association;

17 (4) has at least 3,400 platted and developed
18 single-family residential properties and at least 400 separately
19 platted commercial properties, including office, industrial,
20 hotel, and retail properties, which together constitute at least 30
21 million square feet of building area available for rental; and

22 (5) participates in the maintenance of public space,
23 including parks, medians, and lakefronts, owned by local, including
24 county, or state governmental entities.

25 (b) This chapter applies to property that is:

26 (1) governed by a property owners' association
27 described by Subsection (a);

1 (2) located in a master mixed-use development; and

2 (3) subject to a provision, including a restriction,
3 in a declaration that:

4 (A) requires mandatory membership in the
5 association; and

6 (B) authorizes the association to collect a
7 regular or special assessment on all or a majority of the property
8 in the development.

9 (c) Except as otherwise provided by this chapter, this
10 chapter applies only to a master mixed-use property owners'
11 association and not to the independent property owners'
12 associations that are members of the master mixed-use property
13 owners' association.

14 Sec. 215.003. APPLICABILITY OF CHAPTER 209. Sections
15 209.007, 209.008, 209.011, and 209.012 apply only to single-family
16 residential properties governed by a property owners' association
17 subject to this chapter.

18 Sec. 215.004. CONFLICTS OF LAW. Notwithstanding any other
19 provision of law, the provisions of this chapter prevail over a
20 conflicting or inconsistent provision of law relating to
21 independent property owners' associations.

22 Sec. 215.005. BOARD POWERS. In addition to any other powers
23 provided by applicable law and this chapter, and unless otherwise
24 provided by the dedicatory instruments of the property owners'
25 association, the association, acting through its board of
26 directors, may:

27 (1) adopt and amend bylaws;

1 (2) adopt and amend budgets for revenues,
2 expenditures, and reserves and collect assessments for common
3 expenses from property owners;

4 (3) adopt reasonable rules;

5 (4) hire and terminate managing agents and other
6 agents, employees, and independent contractors;

7 (5) institute, defend, intervene in, settle, or
8 compromise litigation or administrative proceedings on matters
9 affecting a property governed by the association;

10 (6) make contracts and incur liabilities relating to
11 the operation of the association;

12 (7) regulate the use, maintenance, repair,
13 replacement, modification, and appearance of the property governed
14 by the association;

15 (8) make improvements to be included as a part of the
16 common area;

17 (9) acquire, hold, encumber, and convey in its own
18 name any right, title, or interest to real or personal property;

19 (10) purchase an investment property that is not part
20 of the common area;

21 (11) grant easements, leases, licenses, and
22 concessions through or over the common elements;

23 (12) impose and receive payments, fees, or charges for
24 the use, rental, or operation of the common area and for services
25 provided to property owners;

26 (13) impose interest, late charges, and, if
27 applicable, returned check charges for late payments of regular

1 assessments or special assessments;

2 (14) charge costs to an owner's assessment account and
3 collect the costs in any manner provided in the restrictions for the
4 collection of assessments;

5 (15) adopt and amend rules regulating the collection
6 of delinquent assessments;

7 (16) impose reasonable charges for preparing,
8 recording, or copying amendments to resale certificates or
9 statements of unpaid assessments;

10 (17) purchase insurance and fidelity bonds, including
11 directors' and officers' liability insurance, that the board
12 considers appropriate or necessary;

13 (18) subject to the requirements of the provisions
14 described by Section 1.008(d), Business Organizations Code, and by
15 majority vote of the board, indemnify a director or officer of the
16 association who was, is, or may be made a named defendant or
17 respondent in a proceeding because the person is or was a director
18 or officer;

19 (19) if the restrictions vest the architectural
20 control authority in the association:

21 (A) implement written architectural control
22 guidelines for its own use, or record the guidelines in the real
23 property records of the applicable county; and

24 (B) modify the guidelines as the needs of the
25 development change;

26 (20) exercise self-help with regard to property
27 governed by the association;

1 (21) exercise other powers conferred by the dedicatory
2 instruments;

3 (22) exercise other powers necessary and proper for
4 the governance and operation of the association; and

5 (23) exercise any other powers that may be exercised
6 in this state by a corporation of the same type as the association.

7 Sec. 215.006. ANNUAL MEETING OF ASSOCIATION MEMBERS; NOTICE
8 OF ANNUAL OR SPECIAL MEETING. (a) An annual meeting of members of a
9 property owners' association must be conducted in accordance with
10 the association's dedicatory instruments.

11 (b) Unless otherwise provided by a dedicatory instrument,
12 an annual meeting of the property owners' association members is
13 open to association members and must be held in a county in which
14 all or part of the property governed by the association is located
15 or in a county adjacent to that county.

16 (c) Unless otherwise provided by a dedicatory instrument,
17 the board shall give members notice of the date, time, place, and
18 subject of an annual or special meeting of the members. The notice
19 must be delivered to each member not later than the 10th day and not
20 earlier than the 60th day before the date of the meeting.

21 (d) A notice under Subsection (c) must be posted in a
22 conspicuous manner reasonably designed to provide notice to
23 association members:

24 (1) in a place located outside the corporate offices
25 of the association that is accessible by the general membership
26 during normal business hours; or

27 (2) on any Internet website maintained by the

1 association.

2 (e) Unless otherwise provided by a dedicatory instrument,
3 any number of the members may attend the meeting by use of
4 videoconferencing or a similar telecommunication method for
5 purposes of establishing full participation in the meeting.

6 Sec. 215.007. BOARD MEETINGS. (a) A meeting of the board
7 of directors of a property owners' association must be conducted in
8 accordance with the association's dedicatory instruments.

9 (b) Unless otherwise provided by a dedicatory instrument,
10 elected directors who represent the commercial and residential
11 membership attend and conduct the business of the property owners'
12 association at a meeting under this section.

13 (c) In this section, a board meeting has the meaning
14 assigned by a dedicatory instrument. Notwithstanding this
15 subsection, the term does not include the gathering of a quorum of
16 the board at any other venue, including at a social function
17 unrelated to the business of the association, or the attendance by a
18 quorum of the board at a regional, state, or national convention,
19 workshop, ceremonial event, or press conference, if formal action
20 is not taken and any discussion of association business is
21 incidental to the social function, convention, workshop,
22 ceremonial event, or press conference.

23 (d) Unless otherwise provided by a dedicatory instrument,
24 the board shall keep a record of each regular, emergency, or special
25 board meeting in the form of written minutes or an audio recording
26 of the meeting. A record of a meeting must state the subject of each
27 motion or inquiry, regardless of whether the board takes action on

1 the motion or inquiry, and indicate each vote, order, decision, or
2 other action taken by the board. The board shall make meeting
3 records, including approved minutes, available to a member for
4 inspection and copying, at the member's expense, during the normal
5 business hours of the association on the member's written request
6 to the board or the board's representative. The board shall approve
7 the minutes of a board meeting not later than the next regular board
8 meeting.

9 (e) Unless otherwise provided by a dedicatory instrument,
10 before the board calls an executive session, the board shall
11 convene in a regular or special board meeting for which notice has
12 been given as provided by this section. During that board meeting,
13 the presiding board member may call an executive session by
14 announcing that an executive session will be held to deliberate a
15 matter described by Subsection (f) and identifying the specific
16 subdivision of Subsection (f) under which the executive session
17 will be held. A vote or other action item may not be taken in
18 executive session. An executive session is not subject to the
19 requirements of Subsection (d).

20 (f) Unless otherwise provided by a dedicatory instrument, a
21 property owners' association board may meet in executive session to
22 deliberate:

23 (1) anticipated or pending litigation, settlement
24 offers, or interpretations of the law with the association's legal
25 counsel;

26 (2) complaints or charges against or issues regarding
27 a board member or an agent, employee, contractor, or other

1 representative of the association;

2 (3) all financial matters concerning a specific
3 property owner;

4 (4) a payment plan for an association member who has a
5 financial obligation to the association;

6 (5) a foreclosure of a lien;

7 (6) an enforcement action against an association
8 member, including for nonpayment of amounts due;

9 (7) the purchase, exchange, lease, or value of real
10 property, if the board determines in good faith that deliberation
11 in an open board meeting may have a detrimental effect on the
12 association;

13 (8) business and financial issues relating to the
14 negotiation of a contract, if the board determines in good faith
15 that deliberation in an open board meeting may have a detrimental
16 effect on the position of the association;

17 (9) matters involving the invasion of privacy of an
18 individual owner;

19 (10) an employee matter; and

20 (11) any other matter the board considers necessary or
21 reasonable to further assist the association's operation.

22 Sec. 215.008. VOTING. (a) The number of votes to which an
23 individual or corporation who is a member of a property owners'
24 association is entitled is determined by the dedicatory instruments
25 of the association.

26 (b) Each corporation or individual who is a member of the
27 property owners' association may vote by proxy as provided for

1 nonprofit corporations under Sections 22.160(b) and (c), Business
2 Organizations Code.

3 (c) Notwithstanding any provision of the certificate of
4 formation or bylaws to the contrary, a member vote on any matter may
5 be conducted by mail, by facsimile transmission, by e-mail, or by
6 any combination of those methods.

7 Sec. 215.009. RESTRICTIVE COVENANTS. (a) A property
8 owners' association may enforce its restrictive covenants as
9 follows:

10 (1) by exercising discretionary authority relating to
11 a restrictive covenant unless a court has determined by a
12 preponderance of the evidence that the exercise of discretionary
13 authority was arbitrary, capricious, or discriminatory; and

14 (2) by initiating, defending, or intervening in
15 litigation or an administrative proceeding affecting the
16 enforcement of a restrictive covenant or the protection,
17 preservation, or operation of property subject to the association's
18 dedicatory instruments.

19 (b) If the association prevails in an action to enforce
20 restrictive covenants, the association may recover reasonable
21 attorney's fees and costs incurred.

22 (c) An association may use self-help to enforce its
23 restrictive covenants against a residential or commercial property
24 owner as necessary to prevent immediate harm to a person or
25 property, or as otherwise reasonable. If a property owner commits a
26 subsequent repeat violation of the restrictive covenants within 12
27 months of the initial violation, the association is not required to

1 provide the property owner with advance notice before the
2 association implements self-help.

3 (d) For purposes of Subsection (c), an advance, annual
4 notice of maintenance requirements is considered notice to the
5 extent notice is required.

6 Sec. 215.010. ATTORNEY'S FEES IN BREACH OF RESTRICTIVE
7 COVENANT ACTION. In an action based on breach of a restrictive
8 covenant, the prevailing party is entitled to reasonable attorney's
9 fees, costs, and actual damages.

10 Sec. 215.011. COMMON AREAS. A property owners' association
11 may adopt reasonable rules regulating common areas.

12 Sec. 215.012. RESALE CERTIFICATES. A property owners'
13 association shall provide resale certificates only for residential
14 properties and in the manner provided by Section 207.003.

15 Sec. 215.013. MANAGEMENT CERTIFICATE. (a) A property
16 owners' association shall record in each county in which any
17 portion of the development governed by the association is located a
18 management certificate, signed and acknowledged by an officer of
19 the association, stating:

20 (1) the name of the development;

21 (2) the name of the association;

22 (3) the recording data for the declaration and all
23 supplementary declarations;

24 (4) the applicability of any supplementary
25 declarations to residential communities;

26 (5) the name and mailing address of the association;

27 and

1 (6) other information the association considers
2 appropriate.

3 (b) A property owners' association shall record an amended
4 management certificate not later than the 30th day after the date
5 the association has notice of a change in information in the
6 recorded certificate required by Subsection (a).

7 (c) The association and its officers, directors, employees,
8 and agents are not liable to any person or corporation for delay in
9 recording or failure to record a management certificate unless the
10 delay or failure is willful or caused by gross negligence.

11 Sec. 215.014. PRIORITY OF PAYMENTS. Unless otherwise
12 provided in writing by the property owner at the time payment is
13 made, a payment received by a property owners' association from the
14 owner shall be applied to the owner's debt in the following order of
15 priority:

16 (1) any delinquent assessment;

17 (2) any current assessment;

18 (3) any attorney's fees incurred by the association
19 associated solely with assessments or any other charge that could
20 provide the basis for foreclosure;

21 (4) any fines assessed by the association;

22 (5) any attorney's fees incurred by the association
23 that are not subject to Subdivision (3); and

24 (6) any other amount owed to the association.

25 Sec. 215.015. FORECLOSURE. A property owners' association
26 may not foreclose an association assessment lien unless the
27 association first obtains a court order of sale.

1 SECTION 2. This Act takes effect September 1, 2011.