

By: Harper-Brown

H.B. No. 2869

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the powers and duties of certain master mixed-use  
3 property owners' associations.

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

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

7 CHAPTER 215. MASTER MIXED-USE PROPERTY OWNERS' ASSOCIATIONS

8 Sec. 215.001. DEFINITIONS. In this chapter:

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

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

16 (3) "Self-help" means the process by which a property  
17 owners' association takes remedial action with regard to property  
18 governed by the association after the exhaustion of traditional  
19 enforcement efforts.

20 Sec. 215.002. APPLICABILITY OF CHAPTER. (a) This chapter  
21 applies to properties that are:

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

23 (2) subject to restrictions or provisions in a  
24 declaration that:

1           (A) require mandatory membership in a property  
2 owners' association; and

3           (B) authorize the association to collect regular  
4 or special assessments on all or a majority of the property in the  
5 development.

6       (b) This chapter applies to a property owners' association  
7 that:

8           (1) includes:

9           (A) commercial properties, including hotel and  
10 retail properties, that constitute at least 40 percent of the total  
11 appraised property value of the mixed-use development governed by  
12 the association;

13           (B) single-family attached and detached  
14 properties that constitute at least 25 percent of the total  
15 appraised property value of the mixed-use development governed by  
16 the association; and

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

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

22           (3) has at least 10 residential or corporate  
23 commercial property owners' associations that are members of and  
24 subject to the governing documents of the master mixed-use property  
25 owners' association;

26           (4) has at least 3,500 platted and developed  
27 single-family residential properties and at least 450 separately

1 platted commercial properties together constituting at least 30  
2 million square feet of available square footage; and

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

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

11 Sec. 215.003. APPLICABILITY OF CHAPTER 209. Sections  
12 209.006, 209.007, 209.010, and 209.011 apply only to single-family  
13 residential properties governed by a property owners' association  
14 subject to this chapter.

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

19 Sec. 215.005. BOARD POWERS. In addition to any other powers  
20 provided by this chapter, and unless otherwise provided by the  
21 governing documents of the property owners' association, the  
22 association, acting through its board of directors, may:

23 (1) adopt and amend bylaws;

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

27 (3) adopt reasonable rules;

1           (4) hire and terminate managing agents and other  
2 employees, agents, and independent contractors;

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

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

8           (7) regulate the use, maintenance, repair,  
9 replacement, modification, and appearance of the property governed  
10 by the association;

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

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

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

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

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

22           (13) impose interest, late charges, and, if  
23 applicable, returned check charges for late payments of regular  
24 assessments or special assessments;

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

1           (15) adopt and amend rules regulating the collection  
2 of delinquent assessments;

3           (16) impose reasonable charges for preparing,  
4 recording, or copying amendments to resale certificates or  
5 statements of unpaid assessments;

6           (17) purchase insurance and fidelity bonds, including  
7 directors' and officers' liability insurance, that the board  
8 considers appropriate or necessary;

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

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

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

20                   (B) modify the guidelines as the needs of the  
21 development change;

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

24           (21) exercise other powers conferred by the governing  
25 documents;

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

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

3           Sec. 215.006. OPEN BOARD MEETINGS. (a) In this section,  
4 "board meeting" means a deliberation between a quorum of the voting  
5 board of the property owners' association, or between a quorum of  
6 the voting board and another person, during which association  
7 business or policy over which the board has responsibility is  
8 discussed or considered, or during which the board takes formal  
9 action. The term does not include the gathering of a quorum of the  
10 board at a social function unrelated to the business of the  
11 association, or the attendance by a quorum of the board at a  
12 regional, state, or national convention, workshop, ceremonial  
13 event, or press conference, if formal action is not taken and any  
14 discussion of association business is incidental to the social  
15 function, convention, workshop, ceremonial event, or press  
16 conference.

17           (b) Except as provided by this section, a meeting of the  
18 property owners' association board is open to members of the  
19 association and shall be held in a county in which all or part of the  
20 property governed by the association is located or a county  
21 adjacent to that county.

22           (c) The board shall keep a record of each regular,  
23 emergency, or special board meeting in the form of written minutes  
24 or an audio recording of the meeting. A record of a meeting must  
25 state the subject of each motion or inquiry, regardless of whether  
26 the board takes action on the motion or inquiry, and indicate each  
27 vote, order, decision, or other action taken by the board. The

1 board shall make meeting records, including approved minutes,  
2 available to a member for inspection and copying during the normal  
3 business hours of the association on the member's written request  
4 to the board or the board's representative. The board shall approve  
5 the minutes of a board meeting not later than the next regular board  
6 meeting.

7 (d) The board shall give members notice of the date, hour,  
8 place, and subject of a regular or special board meeting, including  
9 a general description of any matters to be brought up for  
10 deliberation in executive session. The notice shall be posted at  
11 least 72 hours before the start of the meeting in a conspicuous  
12 manner reasonably designed to provide notice to association  
13 members:

14 (1) in a place located on the association's common  
15 property or other conspicuously located property within the  
16 association, with the property owner's consent, or outside the  
17 association's corporate offices that is accessible to association  
18 members during normal business hours; or

19 (2) on any Internet website maintained by the  
20 association.

21 (e) If the board recesses a regular or special board meeting  
22 to continue the following regular business day, the board is not  
23 required to post notice of the continued meeting if the recess is  
24 taken in good faith and not to circumvent this section. If a  
25 regular or special board meeting is continued to the following  
26 regular business day, and on that following day the board continues  
27 the meeting to another day, the board shall give notice as required

1 by this section of the meeting continued to that other day.

2 (f) If at a regular, emergency, administrative, or special  
3 meeting, a member makes an inquiry regarding a subject for which  
4 notice has not been given as required by this section, the notice  
5 provisions of this section do not apply to:

6 (1) a statement by the board of specific factual  
7 information given in response to the inquiry; or

8 (2) a recitation of existing policy in response to the  
9 inquiry.

10 (g) Any deliberation of or decision relating to the subject  
11 of an inquiry made under Subsection (f) shall be limited to a  
12 proposal to place the subject on the agenda for a subsequent board  
13 meeting.

14 (h) In the event of a reasonably unforeseen emergency or  
15 urgent necessity that requires immediate board action, the board  
16 may meet in an emergency board meeting. Notice for an emergency  
17 board meeting may be given in at least one manner prescribed by  
18 Subsection (d) at least two hours before the emergency session is  
19 convened and must clearly identify the emergency or urgent  
20 necessity for which the notice is given. A board in an emergency  
21 meeting may not consider fines, foreclosures, enforcement actions  
22 other than pending litigation, or increases in assessments. Any  
23 action taken in an emergency board meeting must be summarized  
24 orally, including an explanation of any known actual or estimated  
25 expenditures approved at the meeting, and documented in the minutes  
26 or tape recording of the next regular or special board meeting.

27 (i) A property owners' association board may hold an



1 administrative session, and that session is not subject to the  
2 notice requirements of this section. In any administrative session,  
3 the board may not take action regarding issuance of fines,  
4 commencement of foreclosure proceedings, levying of a special  
5 assessment, increases in assessments, or approval of items not  
6 previously approved in the association's budget.

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

17 (k) A property owners' association board may meet in  
18 executive session, to which the members do not have access, to  
19 deliberate:

20 (1) anticipated or pending litigation, settlement  
21 offers, or interpretations of the law with the association's legal  
22 counsel;

23 (2) complaints or charges against or issues regarding  
24 a board member, or agent, employee, contractor, or other  
25 representative of the association;

26 (3) financial matters relating to an individual  
27 property owner;

1           (4) a payment plan for an association member who is  
2 delinquent in the payment of a financial obligation to the  
3 association;

4           (5) a foreclosure of a lien;

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

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

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

15           (9) matters involving the invasion of privacy of an  
16 individual owner; or

17           (10) an employee matter.

18           Sec. 215.007. VOTING. (a) The number of votes to which an  
19 individual or corporation who is a member of a property owners'  
20 association is entitled is determined by the governing documents of  
21 the association.

22           (b) Each corporation or individual who is a member of the  
23 property owners' association may vote by proxy as provided for  
24 nonprofit corporations under Section 22.160, Business  
25 Organizations Code.

26           (c) Notwithstanding any provision of the certificate of  
27 formation or bylaws to the contrary, a member vote on any matter may

1 be conducted by mail, by facsimile transmission, by e-mail, or by  
2 any combination of those methods.

3 Sec. 215.008. RESTRICTIVE COVENANTS. (a) A property  
4 owners' association may enforce its restrictive covenants as  
5 follows:

6 (1) by exercising discretionary authority relating to  
7 a restrictive covenant unless a court has determined by a  
8 preponderance of the evidence that the exercise of discretionary  
9 authority was arbitrary, capricious, or discriminatory; and

10 (2) by initiating, defending, or intervening in  
11 litigation or an administrative proceeding affecting the  
12 enforcement of a restrictive covenant or the protection,  
13 preservation, or operation of property subject to the association's  
14 governing documents.

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

18 (c) Unless prohibited or restricted by municipal ordinance  
19 or county code, an association may use self-help to enforce its  
20 restrictive covenants against a residential or commercial property  
21 owner as necessary to prevent immediate harm to a person or  
22 property, or as otherwise reasonable. If a property owner commits a  
23 subsequent repeat violation of the restrictive covenants within 12  
24 months of the initial violation, the association is not required to  
25 provide the property owner with advance notice before the  
26 association implements self-help.

27 (d) For purposes of Subsection (c), an advance, annual

1 notice of maintenance requirements is considered notice to the  
2 extent notice is required.

3 Sec. 215.009. ATTORNEY'S FEES IN BREACH OF RESTRICTIVE  
4 COVENANT ACTION. In an action based on breach of a restrictive  
5 covenant, the prevailing party is entitled to reasonable attorney's  
6 fees, costs, and actual damages.

7 Sec. 215.010. COMMON AREAS. A property owners' association  
8 may adopt reasonable rules regulating common areas.

9 Sec. 215.011. RESALE CERTIFICATES. A property owners'  
10 association shall provide resale certificates only for residential  
11 properties and in the manner provided by Section 207.003.

12 Sec. 215.012. MANAGEMENT CERTIFICATE. (a) A property  
13 owners' association shall record in each county in which any  
14 portion of the development governed by the association is located a  
15 management certificate, signed and acknowledged by an officer of  
16 the association, stating:

17 (1) the name of the development;  
18 (2) the name of the association;  
19 (3) the recording data for the declaration and all  
20 supplementary declarations;

21 (4) the applicability of any supplementary  
22 declarations to residential communities;

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

24 and

25 (6) other information the association considers  
26 appropriate.

27 (b) A property owners' association shall record an amended

1 management certificate not later than the 30th day after the date  
2 the association has notice of a change in information in the  
3 recorded certificate required by Subsection (a).

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

8 Sec. 215.013. PRIORITY OF PAYMENTS. Unless otherwise  
9 provided in writing by the property owner at the time payment is  
10 made, a payment received by a property owners' association from the  
11 owner shall be applied to the owner's debt in the following order of  
12 priority:

- 13 (1) any delinquent assessment;  
14 (2) any current assessment;  
15 (3) any attorney's fees incurred by the association  
16 associated solely with assessments or any other charge that could  
17 provide the basis for foreclosure;  
18 (4) any fines assessed by the association;  
19 (5) any attorney's fees incurred by the association  
20 that are not subject to Subdivision (3); and  
21 (6) any other amount owed to the association.

22 Sec. 215.014. FORECLOSURE. A property owners' association  
23 may not foreclose an association assessment lien unless the  
24 association first obtains a court order of sale.

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