

1-1 By: Harper-Brown (Senate Sponsor - Shapiro) H.B. No. 2869  
1-2 (In the Senate - Received from the House April 27, 2011;  
1-3 May 3, 2011, read first time and referred to Committee on  
1-4 Intergovernmental Relations; May 13, 2011, reported adversely,  
1-5 with favorable Committee Substitute by the following vote: Yeas 5,  
1-6 Nays 0; May 13, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2869 By: Nichols

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the powers and duties of certain master mixed-use  
1-11 property owners' associations.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Title 11, Property Code, is amended by adding  
1-14 Chapter 215 to read as follows:

1-15 CHAPTER 215. MASTER MIXED-USE PROPERTY OWNERS' ASSOCIATIONS

1-16 Sec. 215.001. DEFINITIONS. In this chapter:

1-17 (1) "Appraised value" means the property value  
1-18 determined by the appraisal district that establishes property  
1-19 values for taxing entities levying taxes on property in a mixed-use  
1-20 development.

1-21 (2) "Property owners' association" or "association"  
1-22 means, unless otherwise indicated, a master mixed-use property  
1-23 owners' association.

1-24 (3) "Dedictory instrument" has the meaning assigned  
1-25 by Section 209.002.

1-26 (4) "Self-help" means the process by which a property  
1-27 owners' association takes remedial action with regard to property  
1-28 governed by the association.

1-29 Sec. 215.002. APPLICABILITY OF CHAPTER. (a) This chapter  
1-30 applies to a property owners' association that:

1-31 (1) includes:

1-32 (A) commercial properties, including hotel and  
1-33 retail properties, that constitute at least 35 percent of the total  
1-34 appraised property value of the mixed-use development governed by  
1-35 the association;

1-36 (B) single-family attached and detached  
1-37 properties that constitute at least 25 percent of the total  
1-38 appraised property value of the mixed-use development governed by  
1-39 the association; and

1-40 (C) multifamily properties that constitute at  
1-41 least 10 percent of the total appraised property value of the  
1-42 mixed-use development governed by the association;

1-43 (2) governs at least 6,000 acres of deed-restricted  
1-44 property;

1-45 (3) has at least 10 incorporated residential or  
1-46 commercial property owners' associations that are members of and  
1-47 subject to the dedicatory instruments of the master mixed-use  
1-48 property owners' association;

1-49 (4) has at least 3,400 platted and developed  
1-50 single-family residential properties and at least 400 separately  
1-51 platted commercial properties, including office, industrial,  
1-52 hotel, and retail properties, which together constitute at least 30  
1-53 million square feet of building area available for rental; and

1-54 (5) participates in the maintenance of public space,  
1-55 including parks, medians, and lakefronts, owned by local, including  
1-56 county, or state governmental entities.

1-57 (b) This chapter applies to property that is:

1-58 (1) governed by a property owners' association  
1-59 described by Subsection (a);

1-60 (2) located in a master mixed-use development; and

1-61 (3) subject to a provision, including a restriction,  
1-62 in a declaration that:

1-63 (A) requires mandatory membership in the

2-1 association; and  
2-2 (B) authorizes the association to collect a  
2-3 regular or special assessment on all or a majority of the property  
2-4 in the development.  
2-5 (c) Except as otherwise provided by this chapter, this  
2-6 chapter applies only to a master mixed-use property owners'  
2-7 association and not to the independent property owners'  
2-8 associations that are members of the master mixed-use property  
2-9 owners' association.  
2-10 Sec. 215.003. APPLICABILITY OF CHAPTER 209. Sections  
2-11 209.007, 209.008, 209.011, and 209.012 apply only to single-family  
2-12 residential properties governed by a property owners' association  
2-13 subject to this chapter.  
2-14 Sec. 215.004. CONFLICTS OF LAW. Notwithstanding any other  
2-15 provision of law, the provisions of this chapter prevail over a  
2-16 conflicting or inconsistent provision of law relating to  
2-17 independent property owners' associations.  
2-18 Sec. 215.005. BOARD POWERS. In addition to any other powers  
2-19 provided by applicable law and this chapter, and unless otherwise  
2-20 provided by the dedicatory instruments of the property owners'  
2-21 association, the association, acting through its board of  
2-22 directors, may:  
2-23 (1) adopt and amend bylaws;  
2-24 (2) adopt and amend budgets for revenues,  
2-25 expenditures, and reserves and collect assessments for common  
2-26 expenses from property owners;  
2-27 (3) adopt reasonable rules;  
2-28 (4) hire and terminate managing agents and other  
2-29 agents, employees, and independent contractors;  
2-30 (5) institute, defend, intervene in, settle, or  
2-31 compromise litigation or administrative proceedings on matters  
2-32 affecting a property governed by the association;  
2-33 (6) make contracts and incur liabilities relating to  
2-34 the operation of the association;  
2-35 (7) regulate the use, maintenance, repair,  
2-36 replacement, modification, and appearance of the property governed  
2-37 by the association;  
2-38 (8) make improvements to be included as a part of the  
2-39 common area;  
2-40 (9) acquire, hold, encumber, and convey in its own  
2-41 name any right, title, or interest to real or personal property;  
2-42 (10) purchase an investment property that is not part  
2-43 of the common area;  
2-44 (11) grant easements, leases, licenses, and  
2-45 concessions through or over the common elements;  
2-46 (12) impose and receive payments, fees, or charges for  
2-47 the use, rental, or operation of the common area and for services  
2-48 provided to property owners;  
2-49 (13) impose interest, late charges, and, if  
2-50 applicable, returned check charges for late payments of regular  
2-51 assessments or special assessments;  
2-52 (14) charge costs to an owner's assessment account and  
2-53 collect the costs in any manner provided in the restrictions for the  
2-54 collection of assessments;  
2-55 (15) adopt and amend rules regulating the collection  
2-56 of delinquent assessments;  
2-57 (16) impose reasonable charges for preparing,  
2-58 recording, or copying amendments to resale certificates or  
2-59 statements of unpaid assessments;  
2-60 (17) purchase insurance and fidelity bonds, including  
2-61 directors' and officers' liability insurance, that the board  
2-62 considers appropriate or necessary;  
2-63 (18) subject to the requirements of the provisions  
2-64 described by Section 1.008(d), Business Organizations Code, and by  
2-65 majority vote of the board, indemnify a director or officer of the  
2-66 association who was, is, or may be made a named defendant or  
2-67 respondent in a proceeding because the person is or was a director  
2-68 or officer;  
2-69 (19) if the restrictions vest the architectural

3-1 control authority in the association:  
 3-2 (A) implement written architectural control  
 3-3 guidelines for its own use, or record the guidelines in the real  
 3-4 property records of the applicable county; and  
 3-5 (B) modify the guidelines as the needs of the  
 3-6 development change;  
 3-7 (20) exercise self-help with regard to property  
 3-8 governed by the association;  
 3-9 (21) exercise other powers conferred by the dedicatory  
 3-10 instruments;  
 3-11 (22) exercise other powers necessary and proper for  
 3-12 the governance and operation of the association; and  
 3-13 (23) exercise any other powers that may be exercised  
 3-14 in this state by a corporation of the same type as the association.  
 3-15 Sec. 215.006. ANNUAL MEETING OF ASSOCIATION MEMBERS; NOTICE  
 3-16 OF ANNUAL OR SPECIAL MEETING. (a) An annual meeting of members of  
 3-17 a property owners' association must be conducted in accordance with  
 3-18 the association's dedicatory instruments.  
 3-19 (b) Unless otherwise provided by a dedicatory instrument,  
 3-20 an annual meeting of the property owners' association members is  
 3-21 open to association members and must be held in a county in which  
 3-22 all or part of the property governed by the association is located  
 3-23 or in a county adjacent to that county.  
 3-24 (c) Unless otherwise provided by a dedicatory instrument,  
 3-25 the board shall give members notice of the date, time, place, and  
 3-26 subject of an annual or special meeting of the members. The notice  
 3-27 must be delivered to each member not later than the 10th day and not  
 3-28 earlier than the 60th day before the date of the meeting.  
 3-29 (d) A notice under Subsection (c) must be posted in a  
 3-30 conspicuous manner reasonably designed to provide notice to  
 3-31 association members:  
 3-32 (1) in a place located outside the corporate offices  
 3-33 of the association that is accessible by the general membership  
 3-34 during normal business hours; or  
 3-35 (2) on any Internet website maintained by the  
 3-36 association.  
 3-37 (e) Unless otherwise provided by a dedicatory instrument,  
 3-38 any number of the members may attend the meeting by use of  
 3-39 videoconferencing or a similar telecommunication method for  
 3-40 purposes of establishing full participation in the meeting.  
 3-41 Sec. 215.007. BOARD MEETINGS. (a) A meeting of the board  
 3-42 of directors of a property owners' association must be conducted in  
 3-43 accordance with the association's dedicatory instruments.  
 3-44 (b) Unless otherwise provided by a dedicatory instrument,  
 3-45 elected directors who represent the commercial and residential  
 3-46 membership attend and conduct the business of the property owners'  
 3-47 association at a meeting under this section.  
 3-48 (c) In this section, a board meeting has the meaning  
 3-49 assigned by a dedicatory instrument. Notwithstanding this  
 3-50 subsection, the term does not include the gathering of a quorum of  
 3-51 the board at any other venue, including at a social function  
 3-52 unrelated to the business of the association, or the attendance by a  
 3-53 quorum of the board at a regional, state, or national convention,  
 3-54 workshop, ceremonial event, or press conference, if formal action  
 3-55 is not taken and any discussion of association business is  
 3-56 incidental to the social function, convention, workshop,  
 3-57 ceremonial event, or press conference.  
 3-58 (d) Unless otherwise provided by a dedicatory instrument,  
 3-59 the board shall keep a record of each regular, emergency, or special  
 3-60 board meeting in the form of written minutes or an audio recording  
 3-61 of the meeting. A record of a meeting must state the subject of each  
 3-62 motion or inquiry, regardless of whether the board takes action on  
 3-63 the motion or inquiry, and indicate each vote, order, decision, or  
 3-64 other action taken by the board. The board shall make meeting  
 3-65 records, including approved minutes, available to a member for  
 3-66 inspection and copying, at the member's expense, during the normal  
 3-67 business hours of the association on the member's written request  
 3-68 to the board or the board's representative. The board shall approve  
 3-69 the minutes of a board meeting not later than the next regular board

4-1 meeting.

4-2 (e) Unless otherwise provided by a dedicatory instrument,  
 4-3 before the board calls an executive session, the board shall  
 4-4 convene in a regular or special board meeting for which notice has  
 4-5 been given as provided by this section. During that board meeting,  
 4-6 the presiding board member may call an executive session by  
 4-7 announcing that an executive session will be held to deliberate a  
 4-8 matter described by Subsection (f) and identifying the specific  
 4-9 subdivision of Subsection (f) under which the executive session  
 4-10 will be held. A vote or other action item may not be taken in  
 4-11 executive session. An executive session is not subject to the  
 4-12 requirements of Subsection (d).

4-13 (f) Unless otherwise provided by a dedicatory instrument, a  
 4-14 property owners' association board may meet in executive session to  
 4-15 deliberate:

4-16 (1) anticipated or pending litigation, settlement  
 4-17 offers, or interpretations of the law with the association's legal  
 4-18 counsel;

4-19 (2) complaints or charges against or issues regarding  
 4-20 a board member or an agent, employee, contractor, or other  
 4-21 representative of the association;

4-22 (3) all financial matters concerning a specific  
 4-23 property owner;

4-24 (4) a payment plan for an association member who has a  
 4-25 financial obligation to the association;

4-26 (5) a foreclosure of a lien;

4-27 (6) an enforcement action against an association  
 4-28 member, including for nonpayment of amounts due;

4-29 (7) the purchase, exchange, lease, or value of real  
 4-30 property, if the board determines in good faith that deliberation  
 4-31 in an open board meeting may have a detrimental effect on the  
 4-32 association;

4-33 (8) business and financial issues relating to the  
 4-34 negotiation of a contract, if the board determines in good faith  
 4-35 that deliberation in an open board meeting may have a detrimental  
 4-36 effect on the position of the association;

4-37 (9) matters involving the invasion of privacy of an  
 4-38 individual owner;

4-39 (10) an employee matter; and

4-40 (11) any other matter the board considers necessary or  
 4-41 reasonable to further assist the association's operation.

4-42 Sec. 215.008. VOTING. (a) The number of votes to which an  
 4-43 individual or corporation who is a member of a property owners'  
 4-44 association is entitled is determined by the dedicatory instruments  
 4-45 of the association.

4-46 (b) Each corporation or individual who is a member of the  
 4-47 property owners' association may vote by proxy as provided for  
 4-48 nonprofit corporations under Sections 22.160(b) and (c), Business  
 4-49 Organizations Code.

4-50 (c) Notwithstanding any provision of the certificate of  
 4-51 formation or bylaws to the contrary, a member vote on any matter may  
 4-52 be conducted by mail, by facsimile transmission, by e-mail, or by  
 4-53 any combination of those methods.

4-54 Sec. 215.009. RESTRICTIVE COVENANTS. (a) A property  
 4-55 owners' association may enforce its restrictive covenants as  
 4-56 follows:

4-57 (1) by exercising discretionary authority relating to  
 4-58 a restrictive covenant unless a court has determined by a  
 4-59 preponderance of the evidence that the exercise of discretionary  
 4-60 authority was arbitrary, capricious, or discriminatory; and

4-61 (2) by initiating, defending, or intervening in  
 4-62 litigation or an administrative proceeding affecting the  
 4-63 enforcement of a restrictive covenant or the protection,  
 4-64 preservation, or operation of property subject to the association's  
 4-65 dedicatory instruments.

4-66 (b) If the association prevails in an action to enforce  
 4-67 restrictive covenants, the association may recover reasonable  
 4-68 attorney's fees and costs incurred.

4-69 (c) An association may use self-help to enforce its

5-1 restrictive covenants against a residential or commercial property  
5-2 owner as necessary to prevent immediate harm to a person or  
5-3 property, or as otherwise reasonable. If a property owner commits a  
5-4 subsequent repeat violation of the restrictive covenants within 12  
5-5 months of the initial violation, the association is not required to  
5-6 provide the property owner with advance notice before the  
5-7 association implements self-help.

5-8 (d) For purposes of Subsection (c), an advance, annual  
5-9 notice of maintenance requirements is considered notice to the  
5-10 extent notice is required.

5-11 Sec. 215.010. ATTORNEY'S FEES IN BREACH OF RESTRICTIVE  
5-12 COVENANT ACTION. In an action based on breach of a restrictive  
5-13 covenant, the prevailing party is entitled to reasonable attorney's  
5-14 fees, costs, and actual damages.

5-15 Sec. 215.011. COMMON AREAS. A property owners' association  
5-16 may adopt reasonable rules regulating common areas.

5-17 Sec. 215.012. RESALE CERTIFICATES. A property owners'  
5-18 association shall provide resale certificates only for residential  
5-19 properties and in the manner provided by Section 207.003.

5-20 Sec. 215.013. MANAGEMENT CERTIFICATE. (a) A property  
5-21 owners' association shall record in each county in which any  
5-22 portion of the development governed by the association is located a  
5-23 management certificate, signed and acknowledged by an officer of  
5-24 the association, stating:

- 5-25 (1) the name of the development;
- 5-26 (2) the name of the association;
- 5-27 (3) the recording data for the declaration and all  
5-28 supplementary declarations;
- 5-29 (4) the applicability of any supplementary  
5-30 declarations to residential communities;
- 5-31 (5) the name and mailing address of the association;  
5-32 and
- 5-33 (6) other information the association considers  
5-34 appropriate.

5-35 (b) A property owners' association shall record an amended  
5-36 management certificate not later than the 30th day after the date  
5-37 the association has notice of a change in information in the  
5-38 recorded certificate required by Subsection (a).

5-39 (c) The association and its officers, directors, employees,  
5-40 and agents are not liable to any person or corporation for delay in  
5-41 recording or failure to record a management certificate unless the  
5-42 delay or failure is willful or caused by gross negligence.

5-43 Sec. 215.014. PRIORITY OF PAYMENTS. Unless otherwise  
5-44 provided in writing by the property owner at the time payment is  
5-45 made, a payment received by a property owners' association from the  
5-46 owner shall be applied to the owner's debt in the following order of  
5-47 priority:

- 5-48 (1) any delinquent assessment;
- 5-49 (2) any current assessment;
- 5-50 (3) any attorney's fees incurred by the association  
5-51 associated solely with assessments or any other charge that could  
5-52 provide the basis for foreclosure;
- 5-53 (4) any fines assessed by the association;
- 5-54 (5) any attorney's fees incurred by the association  
5-55 that are not subject to Subdivision (3); and
- 5-56 (6) any other amount owed to the association.

5-57 Sec. 215.015. FORECLOSURE. A property owners' association  
5-58 may not foreclose an association assessment lien unless the  
5-59 association first obtains a court order of sale.

5-60 SECTION 2. This Act takes effect September 1, 2011.

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