

By: Deshotel

H.B. No. 3347

Substitute the following for H.B. No. 3347:

By: Quintanilla

C.S.H.B. No. 3347

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 82.003(a)(11), Property Code, is amended to read as follows:

(11) "Declaration" means an [~~a-recorded~~] instrument, however denominated, that creates a condominium, and any [~~recorded~~] amendment to that instrument.

SECTION 2. Section 82.102, Property Code, is amended by amending Subsection (a) and adding Subsection (f) to read as follows:

(a) Unless otherwise provided by the declaration, the association, acting through its board, may:

(1) adopt and amend bylaws;

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

(3) hire and terminate managing agents and other employees, agents, and independent contractors;

(4) institute, defend, intervene in, settle, or compromise litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium;

(5) make contracts and incur liabilities relating to

1 the operation of the condominium;

2 (6) regulate the use, maintenance, repair,
3 replacement, modification, and appearance of the condominium;

4 (7) adopt and amend rules regulating the use,
5 occupancy, leasing or sale, maintenance, repair, modification, and
6 appearance of units and common elements, to the extent the
7 regulated actions affect common elements or other units;

8 (8) cause additional improvements to be made as a part
9 of the common elements;

10 (9) acquire, hold, encumber, and convey in its own
11 name any right, title, or interest to real or personal property,
12 except common elements of the condominium;

13 (10) grant easements, leases, licenses, and
14 concessions through or over the common elements;

15 (11) impose and receive payments, fees, or charges for
16 the use, rental, or operation of the common elements and for
17 services provided to unit owners;

18 (12) impose interest and late charges for late
19 payments of assessments, returned check charges, and, if notice and
20 an opportunity to be heard are given, reasonable fines for
21 violations of the declaration, bylaws, and rules of the
22 association;

23 (13) adopt and amend rules regulating the collection
24 of delinquent assessments and the application of payments;

25 (14) adopt and amend rules regulating the termination
26 of utility service to a unit, the owner of which is delinquent in
27 the payment of an assessment that is used, in whole or in part, to

1 pay the cost of that utility;

2 (15) impose reasonable charges for preparing,
3 recording, or copying declaration amendments, resale certificates,
4 or statements of unpaid assessments;

5 (16) enter a unit for bona fide emergency purposes
6 when conditions present an imminent risk of harm or damage to the
7 common elements, another unit, or the occupants;

8 (17) ~~[assign its right to future income, including the~~
9 ~~right to receive common expense assessments, but only to the extent~~
10 ~~the declaration so provides;~~

11 ~~[(18)]~~ suspend the voting privileges of or the use of
12 certain general common elements by an owner delinquent for more
13 than 30 days in the payment of assessments;

14 (18) ~~[(19)]~~ purchase insurance and fidelity bonds it
15 considers appropriate or necessary;

16 (19) ~~[(20)]~~ exercise any other powers conferred by the
17 declaration or bylaws;

18 (20) ~~[(21)]~~ exercise any other powers that may be
19 exercised in this state by a corporation of the same type as the
20 association; and

21 (21) ~~[(22)]~~ exercise any other powers necessary and
22 proper for the government and operation of the association.

23 (f) The association by resolution of the board of directors
24 may borrow money unless prohibited by the declaration, certificate
25 of formation, bylaws, or rules. If the board of directors approves
26 a resolution under this subsection, the association may assign the
27 association's right to future income, including the right to

1 receive common expense assessments and assign the association's
2 lien rights, as collateral for the loan authorized by the
3 resolution. The association shall comply with any member approval
4 requirement in the association's declaration, certificate of
5 formation, bylaws, or rules for borrowing money, except that not
6 more than 67 percent of all outstanding votes are required to
7 approve an authorization to borrow money.

8 SECTION 3. Sections 82.111(c) and (i), Property Code, are
9 amended to read as follows:

10 (c) If the insurance described by Subsections (a) and (b) is
11 not reasonably available, the association shall cause notice of
12 that fact to be delivered or mailed to all unit owners and
13 lienholders. The declaration may require the association to carry
14 any other insurance, and the association in any event may carry any
15 other insurance the board considers appropriate to protect the
16 condominium, the association, or the unit owners. Insurance
17 policies carried under Subsections (a) and (b) may provide for
18 deductibles as the board considers appropriate or necessary. This
19 section does not affect the right of a holder of a mortgage on a unit
20 to require a unit owner to acquire insurance in addition to that
21 provided by the association.

22 (i) Any portion of the condominium for which insurance is
23 required that is damaged or destroyed shall be promptly repaired or
24 replaced by the association unless the condominium is terminated,
25 repair or replacement would be illegal under any state or local
26 health or safety statute or ordinance, or at least 80 percent of the
27 unit owners, including each owner of a unit or assigned limited

1 common element that will not be rebuilt or repaired, vote to not
2 rebuild. A vote to not rebuild does not increase an insurer's
3 liability to loss payment obligation under a policy, and the vote
4 does not cause a presumption of total loss. Costs of repair or
5 replacement incurred before any insurance proceeds are available
6 that are within the association's deductible, or that are in excess
7 of the insurance proceeds and reserves, shall be paid as determined
8 by resolution of the board of directors of the association, or, if
9 the board does not approve a resolution, the costs are a common
10 expense. A resolution regarding payment of costs under this
11 subsection is considered a dedicatory instrument and must be
12 recorded in accordance with Section 202.006. ~~[The cost of repair or~~
13 ~~replacement in excess of the insurance proceeds and reserves is a~~
14 ~~common expense.]~~ If the entire condominium is not repaired or
15 replaced, any insurance proceeds attributable to the damaged common
16 elements shall be used to restore the damaged area to a condition
17 compatible with the remainder of the condominium, the insurance
18 proceeds attributable to units and limited common elements that are
19 not rebuilt shall be distributed to the owners of those units and
20 the owners of the units to which those limited common elements were
21 assigned, or to their mortgagees, as their interests may appear,
22 and the remainder of the proceeds shall be distributed to all the
23 unit owners as their interests may appear. If the unit owners vote
24 to not rebuild any unit, that unit's allocated interests shall be
25 automatically reallocated on the vote as if the unit had been
26 condemned, and the association shall prepare, execute, and record
27 an amendment to the declaration reflecting the reallocation.

Section 82.068 governs the distribution of insurance proceeds if the condominium is terminated.

SECTION 4. Section 82.113(g), Property Code, is amended to read as follows:

(g) The owner of a unit ~~[used for residential purposes and]~~ purchased ~~[by an association]~~ at a foreclosure sale of the association's lien for assessments may redeem the unit not later than the 90th day after the date of the foreclosure sale. If the association is the purchaser [To redeem the unit], the owner must pay to the association to redeem the unit all amounts due the association at the time of the foreclosure sale, interest from the date of foreclosure sale to the date of redemption at the rate provided by the declaration for delinquent assessments, reasonable attorney's fees, and all costs incurred by the association in foreclosing the lien and in connection with the redemption process, any assessment levied against the unit by the association after the foreclosure sale, and any reasonable cost incurred by the association as owner of the unit, including costs of maintenance, ~~[and]~~ leasing, mortgage payments, taxes, and insurance. If a party other than the association is the purchaser of the unit at the foreclosure sale, the redeeming owner must pay to the purchaser an amount equal to the amount bid at the sale, interest on the bid amount computed from the date of the foreclosure sale to the date of redemption at the rate of six percent, any assessment paid by the purchaser after the date of foreclosure, and any reasonable costs incurred by the purchaser as the owner of the unit, including costs of maintenance, leasing, mortgage payments, taxes, and insurance.

1 The redeeming owner must also pay to the association all
2 assessments that are due as of the date of the redemption and
3 reasonable attorney's fees and all costs incurred by the
4 association in foreclosing the lien. On redemption, the purchaser
5 of the unit at the foreclosure sale ~~[association]~~ shall execute a
6 deed with special warranty to the redeeming unit owner. The
7 exercise of the right of redemption is not effective against a
8 subsequent purchaser or lender for value without notice of the
9 redemption after the redemption period expires unless the redeeming
10 unit owner records the deed from the purchaser of the unit at the
11 foreclosure sale ~~[association]~~ or an affidavit stating that the
12 owner has exercised the right of redemption. A unit that has been
13 redeemed remains subject to all liens and encumbrances on the unit
14 before foreclosure. All rents and other income collected from the
15 unit by the purchaser of the unit at the foreclosure sale
16 ~~[association]~~ from the date of foreclosure sale to the date of
17 redemption belong to the purchaser of the unit at the foreclosure
18 sale ~~[association]~~, but the rents and income shall be credited
19 against the redemption amount. The purchaser of ~~[An association~~
20 ~~purchasing]~~ a unit at a sale foreclosing an association's
21 assessment ~~[its]~~ lien may not transfer ownership of the unit during
22 the redemption period to a person other than a redeeming owner.

23 SECTION 5. Section 202.004, Property Code, is amended by
24 adding Subsections (d) and (e) to read as follows:

25 (d) In evaluating an alleged or potential violation of a
26 restrictive covenant, a property owners' association board or
27 another person with a right or duty to enforce a dedicatory

1 instrument may, notwithstanding any provision in a dedicatory
2 instrument, elect to not enforce the restrictive covenant if the
3 board or other person, in the board's or other person's reasonable
4 judgment, determines:

5 (1) the association's or other person's position is
6 not sufficiently strong to justify taking any action or further
7 action;

8 (2) the provision alleged to have been violated may be
9 inconsistent with applicable law;

10 (3) the alleged violation is not of such a material or
11 visible nature as to be objectionable to a reasonable person or to
12 justify expending the property owners' association's or other
13 person's resources;

14 (4) enforcement of the provision is not in the
15 association's or other person's best interests, based on hardship,
16 expense, or other reasonable criteria; or

17 (5) the facts of the particular circumstances, such as
18 topography of the owner's land or unforeseen circumstances unique
19 to the particular owner, justify the election to not enforce the
20 restrictive covenant.

21 (e) An election to not enforce a restrictive covenant under
22 Subsection (d) may not be considered a waiver of authority to
23 enforce any dedicatory instrument provision in the future.

24 SECTION 6. Section 207.003, Property Code, is amended by
25 amending Subsections (a), (b), (c), and (f) and adding Subsection
26 (a-1) to read as follows:

27 (a) Not later than the 10th business day after the date a

1 written request for subdivision information is received from an
2 owner or an~~[7]~~ owner's agent, a purchaser of property in a
3 subdivision or the purchaser's agent, or a title insurance company
4 or its agent acting on behalf of the owner or purchaser, the
5 property owners' association shall deliver to the owner or the~~[7]~~
6 owner's agent, the purchaser or the purchaser's agent, or the title
7 insurance company or its agent:

8 (1) a current copy of the restrictions applying to the
9 subdivision;

10 (2) a current copy of the bylaws and rules of the
11 property owners' association; and

12 (3) a resale certificate that complies with Subsection
13 (b).

14 (a-1) For a request from a purchaser of property in a
15 subdivision or the purchaser's agent, the property owners'
16 association may require the purchaser or purchaser's agent to
17 provide to the association, before the association delivers the
18 items listed in Subsection (a), reasonable evidence that the
19 purchaser has a contractual or other right to acquire property in
20 the subdivision.

21 (b) A resale certificate under Subsection (a) must:

22 (1) be in writing;

23 (2) be issued, signed, and dated by an officer or
24 authorized agent of the property owners' association; and

25 (3) contain:

26 (A) ~~[(1)]~~ a statement of any right of first
27 refusal, other than a right of first refusal that is prohibited by

1 statute, and any ~~[(or)]~~ other restraint contained in the restrictions
2 or restrictive covenants that restricts the owner's right to
3 transfer the owner's property;

4 (B) ~~[(2)]~~ the frequency and amount of any regular
5 assessments;

6 (C) ~~[(3)]~~ the amount of any special assessment
7 that has been approved as of ~~[is due after]~~ the date the resale
8 certificate is prepared;

9 (D) ~~[(4)]~~ the total of all amounts due and unpaid
10 to the property owners' association that are attributable to the
11 owner's property;

12 (E) ~~[(5)]~~ capital expenditures, if any, approved
13 by the property owners' association for the property owners'
14 association's current fiscal year;

15 (F) ~~[(6)]~~ the amount of reserves, if any, for
16 capital expenditures;

17 (G) ~~[(7)]~~ the property owners' association's
18 current operating budget and balance sheet;

19 (H) ~~[(8)]~~ the total of any unsatisfied judgments
20 against the property owners' association;

21 (I) ~~[(9)]~~ the style and cause number of any
22 pending lawsuit in which the property owners' association is a
23 defendant, other than a lawsuit relating to unpaid property taxes
24 of an individual member of the association;

25 (J) ~~[(10)]~~ a copy of a certificate of insurance
26 showing the property owners' association's property and liability
27 insurance relating to the common areas and common facilities;

1 (K) [~~(11)~~] a description of any conditions on the
2 owner's property that the property owners' association board has
3 actual knowledge are in violation of the restrictions applying to
4 the subdivision or the bylaws or rules of the property owners'
5 association;

6 (L) [~~(12)~~] a summary or copy of notices received
7 by the property owners' association from any governmental authority
8 regarding health or housing code violations existing on the
9 preparation date of the certificate relating to the owner's
10 property or any common areas or common facilities owned or leased by
11 the property owners' association;

12 (M) [~~(13)~~] the amount of any administrative
13 transfer fee charged by the property owners' association for a
14 change of ownership of property in the subdivision;

15 (N) [~~(14)~~] the name, mailing address, and
16 telephone number of the property owners' association's managing
17 agent, if any; ~~and~~

18 (O) [~~(15)~~] a statement indicating whether the
19 restrictions allow foreclosure of a property owners' association's
20 lien on the owner's property for failure to pay assessments; and

21 (P) a statement of all fees associated with the
22 transfer of ownership, including a description of each fee, to whom
23 each fee is paid, and the amount of each fee.

24 (c) A property owners' association may charge a reasonable
25 fee to assemble, copy, and deliver the information required by this
26 section and may charge a reasonable fee to prepare and deliver an
27 update of a resale certificate under Subsection (f). The person

1 requesting a resale certificate or an update of a resale
2 certificate is responsible for the payment of any fee charged for
3 the resale certificate or the update of the certificate.

4 (f) Not later than the seventh business day after the date a
5 written request for an update of ~~[to]~~ a resale certificate
6 delivered under Subsection (a) is received from a person entitled
7 to request a resale certificate under Subsection (a) ~~[an owner,~~
8 ~~owner's agent, or title insurance company or its agent acting on~~
9 ~~behalf of the owner]~~, the property owners' association shall
10 deliver to the requestor ~~[owner, owner's agent, or title insurance~~
11 ~~company or its agent]~~ an updated resale certificate that contains
12 the following information:

13 (1) if a right of first refusal or other restraint on
14 sale is contained in the restrictions, a statement of whether the
15 property owners' association waives the restraint on sale;

16 (2) the status of any unpaid special assessments,
17 dues, or other payments attributable to the owner's property; and

18 (3) any changes to the information provided in the
19 resale certificate issued under Subsection (a).

20 SECTION 7. Section 209.002, Property Code, is amended by
21 amending Subdivisions (3), (5), and (9) and adding Subdivision
22 (3-a) to read as follows:

23 (3) "Declarant" means:

24 (A) any person or group of persons acting in
25 concert that:

26 (i) as part of a common promotional plan,
27 offers to dispose of the person's or group's interest in a

1 subdivision; and

2 (ii) files a declaration; and

3 (B) one or more successors to a person or group
4 described by Paragraph (A) to whom the person's or group's rights as
5 a declarant under the declaration are transferred by a written
6 instrument evidencing the transfer that is recorded in the real
7 property records of each county in which the declaration is
8 recorded.

9 (3-a) "Declaration" means an instrument filed in the
10 real property records of a county that creates the original
11 ~~[includes]~~ restrictive covenants for a ~~[governing a residential]~~
12 subdivision, as amended or supplemented.

13 (5) "Lot" means any designated parcel of land ~~[located~~
14 ~~in a residential subdivision]~~, including any improvements on the
15 designated parcel.

16 (9) "Residential subdivision" or "subdivision" means
17 a subdivision, planned unit development, townhouse regime, or
18 similar planned development in which all land has been divided into
19 two or more lots ~~[parts]~~ and is subject to restrictions that:

20 (A) limit a majority of the land subject to the
21 dedicatory instruments, excluding streets, common areas, and
22 public areas, to residential use for single-family homes,
23 townhomes, or duplexes only;

24 (B) are recorded in the real property records of
25 the county in which the residential subdivision is located; and

26 (C) require membership in a property owners'
27 association that has authority to impose regular or special

assessments on the property in the subdivision.

SECTION 8. Section 209.003, Property Code, is amended by amending Subsection (d) and adding Subsection (e) to read as follows:

(d) This chapter does not apply to a condominium development governed wholly or partly by Chapter 82.

(e) The following provisions of this chapter do not apply to a property owners' association that is a mixed use master association that existed before January 1, 1974, and that does not have the authority under a dedicatory instrument or other governing document to impose fines:

(1) Section 209.005;

(2) Section 209.0051;

(3) Section 209.006; and

(4) Section 209.0062.

SECTION 9. Chapter 209, Property Code, is amended by adding Section 209.0041 to read as follows:

Sec. 209.0041. AMENDMENT OF DECLARATION. (a) This section applies only to a residential subdivision, or a mixed-use subdivision that contains residential units, in which property owners are subject to mandatory regular or special assessments.

(b) This section applies to a declaration regardless of the date on which the declaration was created.

(c) This section does not apply to the amendment of a declaration during a development period. For purposes of this subsection, "development period" means a period stated in a declaration during which a declarant reserves:

1 (1) a right to facilitate the development,
2 construction, and marketing of the subdivision; and

3 (2) a right to direct the size, shape, and composition
4 of the subdivision.

5 (d) Subject to Section 209.013, the declaration and any
6 subsequently enacted declarations may be amended at any time on a
7 vote of at least 67 percent of the total votes entitled to be cast
8 with respect to the declaration amendment. If the declaration
9 provides a lower percentage, the percentage in the declaration
10 controls. During the development period, amendments to the
11 declaration require the joinder of the developer.

12 (e) This section does not preclude amendment of a
13 declaration under other statutory authority.

14 SECTION 10. Section 209.005, Property Code, is amended to
15 read as follows:

16 Sec. 209.005. ASSOCIATION RECORDS. (a) Except as provided
17 by Subsection (b) or Section 209.003, this section applies to all
18 property owners' associations and controls over other law not
19 specifically applicable to a property owners' association.

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

23 (c) Notwithstanding a provision in a dedicatory instrument,
24 a [A] property owners' association shall make the books and records
25 of the association, including financial records, open to and
26 reasonably available for examination by [to] an owner, a person
27 designated in a writing signed by the owner as the owner's agent, 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) Except as provided by this subsection, an [(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, reasonably available to any person requesting access to the books or records in accordance with Chapter 552, Government Code. Subsection (a) does not apply to a property owners' association to which this subsection applies.

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

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

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

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

(e) An owner or the owner's authorized representative

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

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

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

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

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

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

8 (g) If an inspection is requested or required, the
9 inspection shall take place at a mutually agreed on time during
10 normal business hours, and the requesting party shall identify the
11 books and records for the association to copy and forward to the
12 requesting party.

13 (h) A property owners' association may produce books and
14 records requested under this section in hard copy, electronic, or
15 other format reasonably available to the association.

16 (i) A property owners' association board must adopt a
17 records production and copying policy that prescribes the costs the
18 association will charge for the compilation, production, and
19 reproduction of information requested under this section. The
20 prescribed charges may include all reasonable costs of materials,
21 labor, and overhead, but may not exceed the costs that would be
22 applicable for an item under 70 T.A.C. Section 70.3. Labor costs
23 and overhead costs related to inspection of documents may not
24 exceed 1-1/2 times the applicable amount prescribed by 70 T.A.C.
25 Section 70.3. The policy required by this subsection must be
26 recorded as a dedicatory instrument in accordance with Section
27 202.006. An association may not charge an owner for the

1 compilation, production, or reproduction of information requested
2 under this section unless the policy prescribing those costs has
3 been recorded as required by this subsection. An owner is
4 responsible for costs related to the compilation, production, and
5 reproduction of the requested information in the amounts prescribed
6 by the policy adopted under this subsection. The association may
7 require advance payment of the estimated costs of compilation,
8 production, and reproduction of the requested information. If the
9 estimated costs are lesser or greater than the actual costs, the
10 association shall submit a final invoice to the owner on or before
11 the 30th business day after the date the information is delivered to
12 the requestor. If the final invoice includes additional amounts
13 due from the owner, the additional amounts, if not reimbursed to the
14 association before the 30th business day after the date the invoice
15 is sent to the owner, may be added to the owner's account as an
16 assessment. If the estimated costs exceeded the final invoice
17 amount, the owner is entitled to a refund, and the refund shall be
18 issued to the owner not later than the 30th business day after the
19 date the invoice is sent to the owner.

20 (j) A property owners' association must estimate costs
21 under this section using amounts prescribed by the policy adopted
22 under Subsection (i).

23 (k) Except as provided by Subsection (l) and to the extent
24 the information is provided in meeting minutes, the association is
25 not required to release or allow inspection of any books or records
26 that identify the dedicatory instrument violation history of an
27 individual owner of an association, an owner's personal financial

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

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

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

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

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

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

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

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

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

27 (5) minutes of meetings of the owners and the board

1 shall be retained for seven years; and

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

4 (n) A member of a property owners' association who is denied
5 access to or copies of association books or records to which the
6 member is entitled under this section may file a petition with the
7 justice of the peace of a justice precinct in which all or part of
8 the property that is governed by the association is located
9 requesting relief in accordance with this subsection. If the
10 justice of the peace finds that the member is entitled to access to
11 or copies of the records, the justice of the peace may grant one or
12 more of the following remedies:

13 (1) a judgment ordering the property owners'
14 association to release or allow access to the books or records;

15 (2) a judgment against the property owners'
16 association for court costs and attorney's fees incurred in
17 connection with seeking a remedy under this section; or

18 (3) a judgment authorizing the owner or the owner's
19 assignee to deduct the amounts awarded under Subdivision (2) from
20 any future regular or special assessments payable to the property
21 owners' association.

22 (o) If the property owners' association prevails in an
23 action under Subsection (n), the association is entitled to a
24 judgment for court costs and attorney's fees incurred by the
25 association in connection with the action.

26 (p) On or before the 10th business day before the date a
27 person brings an action against a property owners' association

1 under this section, the person must send written notice to the
2 association of the person's intent to bring the action. The notice
3 must:

4 (1) be sent certified mail, return receipt requested,
5 or delivered by the United States Postal Service with signature
6 confirmation service; and

7 (2) describe with sufficient detail the books and
8 records being requested.

9 (g) For the purposes of this section, "business day" means a
10 day other than Saturday, Sunday, or a state or federal holiday.

11 SECTION 11. Chapter 209, Property Code, is amended by
12 adding Sections 209.0051, 209.0056, 209.00593, and 209.00594 to
13 read as follows:

14 Sec. 209.0051. OPEN BOARD MEETINGS. (a) This section does
15 not apply to a property owners' association that is subject to
16 Chapter 551, Government Code, by application of Section 551.0015,
17 Government Code.

18 (b) In this section, "board meeting" means a deliberation
19 between a quorum of the voting board of the property owners'
20 association, or between a quorum of the voting board and another
21 person, during which property owners' association business is
22 considered and the board takes formal action. The term does not
23 include the gathering of a quorum of the board at a social function
24 unrelated to the business of the association or the attendance by a
25 quorum of the board at a regional, state, or national convention,
26 ceremonial event, or press conference, if formal action is not
27 taken and any discussion of association business is incidental to

1 the social function, convention, ceremonial event, or press
2 conference.

3 (c) Regular and special board meetings must be open to
4 owners, subject to the right of the board to adjourn a board meeting
5 and reconvene in closed executive session to consider actions
6 involving personnel, pending or threatened litigation, contract
7 negotiations, enforcement actions, confidential communications
8 with the association's attorney, matters involving the invasion of
9 privacy of individual owners, or matters that are to remain
10 confidential by request of the affected parties and agreement of
11 the board. Following an executive session, any decision made in the
12 executive session must be summarized orally and placed in the
13 minutes, in general terms, without breaching the privacy of
14 individual owners, violating any privilege, or disclosing
15 information that was to remain confidential at the request of the
16 affected parties. The oral summary must include a general
17 explanation of expenditures approved in executive session.

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

22 (d) The board shall keep a record of each regular or special
23 board meeting in the form of written minutes of the meeting. The
24 board shall make meeting records, including approved minutes,
25 available to a member for inspection and copying on the member's
26 written request to the property owners' association's managing
27 agent at the address appearing on the most recently filed

1 management certificate or, if there is not a managing agent, to the
2 board.

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

7 (1) mailed to each property owner not later than the
8 10th day or earlier than the 60th day before the date of the
9 meeting; or

10 (2) provided at least 72 hours before the start of the
11 meeting by:

12 (A) posting the notice in a conspicuous manner
13 reasonably designed to provide notice to association members:

14 (i) in a place located on the association's
15 common property or, with the property owner's consent, on other
16 conspicuously located privately owned property within the
17 subdivision; or

18 (ii) on any Internet website maintained by
19 the association or other Internet media; and

20 (B) sending the notice by e-mail to each owner
21 who has registered an e-mail address with the association.

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

25 (g) If the board recesses a regular or special board meeting
26 to continue the following regular business day, the board is not
27 required to post notice of the continued meeting if the recess is

1 taken in good faith and not to circumvent this section. If a
2 regular or special board meeting is continued to the following
3 regular business day, and on that following day the board continues
4 the meeting to another day, the board shall give notice of the
5 continuation in at least one manner prescribed by Subsection
6 (e)(2)(A) within two hours after adjourning the meeting being
7 continued.

8 (h) A board may meet by any method of communication,
9 including electronic and telephonic, without prior notice to owners
10 under Subsection (e), if each director may hear and be heard by
11 every other director, or the board may take action by unanimous
12 written consent to consider routine and administrative matters or a
13 reasonably unforeseen emergency or urgent necessity that requires
14 immediate board action. The board may not, without prior notice to
15 owners under Subsection (e), consider or vote on fines, damage
16 assessments, initiation of foreclosure actions, initiation of
17 enforcement actions, excluding temporary restraining orders or
18 violations involving a threat to health or safety, increases in
19 assessments, levying of special assessments, appeals from a denial
20 of architectural control approval, or a suspension of a right of a
21 particular owner before the owner has an opportunity to attend a
22 board meeting to present the owner's position, including any
23 defense, on the issue. Any action taken without notice to owners
24 under Subsection (e) must be summarized orally, including an
25 explanation of any known actual or estimated expenditures approved
26 at the meeting, and documented in the minutes of the next regular or
27 special board meeting.

1 (i) This section applies to a meeting of a property owners'
2 association board during the development period, as defined by
3 Section 209.0041, only if the meeting is conducted for the purpose
4 of:

5 (1) adopting or amending the governing documents,
6 including declarations, bylaws, rules, and regulations of the
7 association;

8 (2) increasing the amount of regular assessments of
9 the association or adopting or increasing a special assessment;

10 (3) electing non-developer board members of the
11 association or establishing a process by which those members are
12 elected; or

13 (4) changing the voting rights of members of the
14 association.

15 (j) An action taken by a board at a meeting held in violation
16 of this section is voidable.

17 Sec. 209.0056. BOARD REPRESENTATION. The declaration may
18 provide for a period of declarant control of the association during
19 which period a declarant, or persons designated by the declarant,
20 may appoint and remove members of the board and the officers of the
21 association. Regardless of the period of declarant control
22 prescribed by the declaration, at least one-third of the board
23 members must be elected by owners other than the declarant on or
24 before the 120th day after the date on which 75 percent of the lots
25 that may be created and made subject to the declaration are conveyed
26 to owners other than a declarant. If the declaration does not
27 include the number of lots that may be created and made subject to

1 the declaration, at least one-third of the members of the board must
2 be elected by owners other than the declarant not later than the
3 10th anniversary of the date the declaration was recorded.

4 Sec. 209.00593. VOTING; QUORUM. (a) The voting rights of
5 an owner may be cast or given:

6 (1) in person or by proxy at a meeting of the property
7 owners' association;

8 (2) by absentee ballot in accordance with this
9 section;

10 (3) by any method of representative or delegated
11 voting provided by a dedicatory instrument; or

12 (4) by electronic ballot in accordance with this
13 section.

14 (b) Ballots, including any written or printed evidence of
15 any vote cast or given as provided by Subsection (a), must be
16 preserved until the period for requesting a recount under Section
17 209.00594 has expired.

18 (c) An absentee or electronic ballot:

19 (1) may be counted as an owner present and voting for
20 the purpose of establishing a quorum only for items appearing on the
21 ballot;

22 (2) may be withdrawn by an owner if the owner attends a
23 meeting at which votes on the ballot items are cast; and

24 (3) may not be counted, except for quorum purposes, on
25 the final vote of a proposal if the motion was amended at the
26 meeting to be different from the exact language on the absentee or
27 electronic ballot.

1 (d) A solicitation for votes by absentee or electronic
2 ballot must include:

3 (1) an absentee or electronic ballot that contains
4 each proposed action and provides an opportunity to vote for or
5 against each proposed action;

6 (2) instructions for delivery of the completed
7 absentee or electronic ballot, including the delivery location; and

8 (3) the following language: "By casting your vote via
9 absentee or electronic ballot you will forgo the opportunity to
10 consider and vote on any action from the floor on these proposals,
11 if a meeting is held. This means that if there are amendments to
12 these proposals your votes will not be counted on the final vote on
13 these measures. If you desire to retain this ability, please attend
14 any meeting in person. You may submit an absentee or electronic
15 ballot and later choose to attend any meeting in person, in which
16 case any in-person vote will prevail."

17 (e) For the purposes of this section, "electronic ballot"
18 means a ballot:

19 (1) conveyed in an electronic manner and format
20 prescribed by the property owners' association board;

21 (2) for which the identity of the property owner
22 submitting the ballot can be reasonably established; and

23 (3) for which the property owner may receive a receipt
24 of the electronic transmission and receipt of the owner's ballot.

25 (f) If an electronic ballot is posted on an Internet
26 website, a notice shall be provided to each owner that contains
27 instructions on obtaining access to the posting on the website.

1 (g) The property owners' association board has the sole
2 authority to prescribe or cause to be prescribed all proxy and
3 ballot forms.

4 (h) This section supersedes any contrary provision in a
5 dedicatory instrument.

6 (i) Except as provided by Subsection (j) or Section 209.003,
7 this section applies to all property owners' associations and
8 controls over any other law not specifically applicable to a
9 property owners' association.

10 (j) This section does not apply to a property owners'
11 association that is subject to Chapter 552, Government Code, by
12 application of Section 552.0036, Government Code.

13 Sec. 209.00594. RECOUNT OF VOTES. (a) This section does
14 not apply to a property owners' association that is subject to
15 Chapter 552, Government Code, by application of Section 552.0036,
16 Government Code.

17 (b) Any owner may, not later than the 15th day after the date
18 of the meeting at which the election was held, require a recount of
19 the votes. A demand for a recount must be submitted in writing
20 either:

21 (1) by certified mail, return receipt requested, or by
22 delivery by the United States Postal Service with signature
23 confirmation service to the association's mailing address on the
24 latest management certificate filed under Section 209.004; or

25 (2) in person to the association's managing agent as
26 reflected on the latest management certificate filed under Section
27 209.004 or to the address to which absentee and proxy ballots are

1 mailed.

2 (c) The property owners' association shall, at the expense
3 of the owner requesting the recount, retain for the purpose of
4 performing the recount, the services of a person qualified to
5 tabulate votes under this subsection. The association shall enter
6 into a contract for the services of a person who:

7 (1) is not a member of the association or related to a
8 member of the association board within the third degree by
9 consanguinity or affinity, as determined under Chapter 573,
10 Government Code; and

11 (2) is:

12 (A) a current or former:

13 (i) county judge;

14 (ii) county elections administrator;

15 (iii) justice of the peace; or

16 (iv) county voter registrar; or

17 (B) a person agreed on by the association and the
18 persons requesting the recount.

19 (d) Any recount under Subsection (b) must be performed on or
20 before the 30th day after the date of receipt of a request and
21 payment for a recount in accordance with Subsections (b) and (c).
22 If the recount changes the results of the election, the association
23 shall reimburse the requesting owner for the cost of the recount.
24 The association shall provide the results of a recount to the owner
25 requesting the recount. Any action taken by the board in the period
26 between the initial election vote tally and the completion of the
27 recount is not affected by any recount.

SECTION 12. Section 209.006, Property Code, is amended to read as follows:

Sec. 209.006. NOTICE REQUIRED BEFORE ENFORCEMENT ACTION.

(a) Before a property owners' association may suspend an owner's right to use a common area, file a suit against an owner to enforce a nonmonetary obligation ~~[other than a suit to collect a regular or special assessment or foreclose under an association's lien]~~, charge an owner for property damage, or levy a fine for a violation of the restrictions or bylaws or rules of the association, the association or its agent must give written notice to the owner by certified mail, return receipt requested.

(b) The notice required by Subsection (a) must:

(1) describe the violation or property damage that is the basis for the suspension action, charge, or fine and state any amount due the association from the owner; ~~[and]~~

(2) except as provided by Subsection (d), inform the owner that the owner:

(A) is entitled to a reasonable period to cure the violation and avoid the fine ~~[or suspension unless the owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six months]~~; and

(B) may request a hearing under Section 209.007 on or before the 30th day after the date notice was mailed to the owner; and

(3) specify the date by which the owner must cure the violation if the violation is of a curable nature and does not pose a threat to public health or safety ~~[receives the notice]~~.

1 (c) The date specified in the notice under Subsection (b)(3)
2 must provide a reasonable period of at least 30 days for the owner
3 to cure the violation if the violation is of a curable nature. A
4 shorter notice period is permitted in the case of a threat to public
5 health or safety.

6 (d) Subsections (a) and (b) do not apply to:

7 (1) a violation for which the owner has been
8 previously given notice under this section and the opportunity to
9 exercise any rights available under this section in the preceding
10 six months; or

11 (2) a violation that is not of a curable nature.

12 (e) If the property owner does not cure the violation in the
13 time provided by Subsection (c) and does not request a hearing under
14 Section 209.007 in the time provided by Subsection (b)(2)(B), the
15 property owners' association may assess the fine and shall provide
16 notice of the assessment to the owner. If the violation is of a
17 curable nature and the property owner cures the violation before
18 the expiration period for cure specified under Subsection (c), any
19 fine assessed for the violation is void.

20 (f) For purposes of this section, a violation is considered
21 a threat to public health or safety if the violation could
22 materially affect the physical health or safety of an ordinary
23 resident.

24 (g) Before a property owners' association may file a suit
25 against an owner to collect a regular or special assessment or
26 foreclose the association's lien on the owner's property, the
27 association or the association's agent must send written notice to

1 the owner by certified mail, return receipt requested, that:

2 (1) describes the amount that is due the association
3 and that must be paid to avoid further collection actions; and

4 (2) specifies a date not earlier than the 30th day
5 after the date the notice is sent by which the owner must cure the
6 delinquency to avoid further collection actions.

7 SECTION 13. Chapter 209, Property Code, is amended by
8 adding Sections 209.0061 and 209.0062 to read as follows:

9 Sec. 209.0061. ASSESSMENT OF FINES. A fine assessed by the
10 property owners' association must be reasonable in the context of
11 the nature and frequency of the violation and the effect of the
12 violation on the subdivision as a whole. If the association allows
13 finer for a continuing violation to accumulate against a lot or an
14 owner, the association must establish a maximum fine amount for a
15 continuing violation at which point the total fine amount is
16 capped. A fine may be collected in the same manner as assessments
17 under the dedicatory instrument.

18 Sec. 209.0062. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN
19 ASSESSMENTS. (a) This section applies only to a property owners'
20 association composed of more than 15 lots.

21 (b) A property owners' association shall adopt reasonable
22 guidelines to establish an alternative payment schedule by which an
23 owner may make partial payments to the property owners' association
24 for delinquent regular or special assessments or any other amount
25 owed to the association without accruing additional monetary
26 penalties. For purposes of this section, monetary penalties do not
27 include reasonable costs associated with administering the payment

1 plan or interest.

2 (c) A property owners' association is not required to offer
3 a payment plan to an owner more than once each year. The minimum
4 term for a payment plan offered by a property owners' association is
5 three months. A property owners' association is not required to
6 allow a payment plan for any amount that extends more than 12 months
7 from the date of the owner's request for a payment plan or to enter
8 into a payment plan with an owner who failed to honor the terms of a
9 previous payment plan during the five years following the owner's
10 default under the previous payment plan.

11 SECTION 14. Section 209.007(d), Property Code, is amended
12 to read as follows:

13 (d) The notice and hearing provisions of Section 209.006 and
14 this section do not apply if the association files a suit seeking a
15 temporary restraining order or temporary injunctive relief or files
16 a suit that includes foreclosure as a cause of action. The hearing
17 provisions of Section 209.006 and this section do not apply if the
18 association files a suit against an owner to collect a regular or
19 special assessment or foreclose the association's lien on an
20 owner's property. If a suit is filed relating to a matter to which
21 Sections 209.006 and this section ~~[those sections]~~ apply, a party
22 to the suit may file a motion to compel mediation. The notice and
23 hearing provisions of Section 209.006 and this section do not apply
24 to a temporary suspension of a person's right to use common areas if
25 the temporary suspension is the result of a violation that occurred
26 in a common area and involved a significant and immediate risk of
27 harm to others in the subdivision. The temporary suspension is

1 effective until the board makes a final determination on the
2 suspension action after following the procedures prescribed by this
3 section.

4 SECTION 15. Section 209.009, Property Code, is amended to
5 read as follows:

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

- 10 (1) fines assessed by the association; ~~[or]~~
11 (2) attorney's fees incurred by the association solely
12 associated with fines assessed by the association; or
13 (3) amounts added to the owner's account as an
14 assessment under Section 209.005(i).

15 SECTION 16. (a) Section 82.111(i), Property Code, as
16 amended by this Act, applies only to payment of costs incurred and a
17 resolution regarding payment of costs approved on or after the
18 effective date of this Act. Payment of costs incurred or a
19 resolution approved before the effective date of this Act is
20 governed by the law in effect immediately before the effective date
21 of this Act, and that law is continued in effect for that purpose.

22 (b) Section 82.113(g), Property Code, as amended by this
23 Act, applies only to a condominium unit sold at a foreclosure sale
24 on or after the effective date of this Act. A unit sold at a
25 foreclosure sale before the effective date of this Act is governed
26 by the law in effect immediately before the effective date of this
27 Act, and that law is continued in effect for that purpose.

1 (c) Sections 207.003 and 209.005, Property Code, as amended
2 by this Act, apply only to a request for information received by a
3 property owners' association on or after the effective date of this
4 Act. A request for information received by a property owners'
5 association before the effective date of this Act is governed by the
6 law in effect immediately before the effective date of this Act, and
7 that law is continued in effect for that purpose.

8 (d) Section 209.005(m), Property Code, as added by this Act,
9 applies only with respect to books and records generated on or after
10 the effective date of this Act. Books and records generated before
11 the effective date of this Act are governed by the law in effect
12 immediately before the effective date of this Act, and that law is
13 continued in effect for that purpose.

14 (e) Section 209.0056, Property Code, as added by this Act,
15 applies only to a property owners' association created on or after
16 January 1, 2012.

17 (f) Sections 209.006 and 209.007, Property Code, as amended
18 by this Act, apply only to an enforcement action initiated by a
19 property owners' association on or after the effective date of this
20 Act. An enforcement action initiated before the effective date of
21 this Act is governed by the law in effect immediately before the
22 effective date of this Act, and that law is continued in effect for
23 that purpose.

24 (g) Sections 209.0061 and 209.0062, Property Code, as added
25 by this Act, apply only to an assessment, fine, or other debt that
26 becomes due on or after the effective date of this Act. An
27 assessment, fine, or other debt that becomes due before the

C.S.H.B. No. 3347

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

4 SECTION 17. This Act takes effect January 1, 2012.