

By: Deshotel

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(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.

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

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

5 (g) The owner of a unit [~~used for residential purposes and~~
6 purchased [~~by an association~~] at a foreclosure sale of the
7 association's lien for assessments may redeem the unit not later
8 than the 90th day after the date of the foreclosure sale. If the
9 association is the purchaser [~~To redeem the unit~~], the owner must
10 pay to the association to redeem the unit all amounts due the
11 association at the time of the foreclosure sale, interest from the
12 date of foreclosure sale to the date of redemption at the rate
13 provided by the declaration for delinquent assessments, reasonable
14 attorney's fees, and all costs incurred by the association in
15 foreclosing the lien and in connection with the redemption process,
16 any assessment levied against the unit by the association after the
17 foreclosure sale, and any reasonable cost incurred by the
18 association as owner of the unit, including costs of maintenance,
19 [~~and~~] leasing, mortgage payments, taxes, and insurance. If a party
20 other than the association is the purchaser of the unit at the
21 foreclosure sale, the redeeming owner must pay to the purchaser an
22 amount equal to the amount bid at the sale, interest on the bid
23 amount computed from the date of the foreclosure sale to the date of
24 redemption at the rate of six percent, any assessment paid by the
25 purchaser after the date of foreclosure, and any reasonable costs
26 incurred by the purchaser as the owner of the unit, including costs
27 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

1 assessments on the property in the subdivision.

2 SECTION 8. Section 209.003(d), Property Code, is amended to
3 read as follows:

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

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

8 Sec. 209.0041. AMENDMENT OF DECLARATION. (a) This section
9 applies only to a residential subdivision in which property owners
10 are subject to mandatory regular or special assessments.

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

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

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

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

21 (d) Subject to Section 209.013, the declaration and any
22 subsequently enacted declarations may be amended at any time on a
23 vote of at least 67 percent of the total votes entitled to be cast
24 with respect to the declaration amendment. If the declaration
25 provides a lower percentage, the percentage in the declaration
26 controls. During the development period, amendments to the
27 declaration require the joinder of the developer.

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

3 SECTION 10. Section 209.005, Property Code, is amended to
4 read as follows:

5 Sec. 209.005. ASSOCIATION RECORDS. (a) Except as provided
6 by Subsection (b), this section applies to all property owners'
7 associations and controls over other law not specifically
8 applicable to a property owners' association.

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

12 (c) Notwithstanding a provision in a dedicatory instrument,
13 a [A] property owners' association shall make the books and records
14 of the association, including financial records, open to and
15 reasonably available for examination by [to] an owner, or an
16 owner's attorney or certified public accountant, in accordance with
17 this section. An owner is entitled to obtain from the association
18 copies of information contained in the books and records [Section
19 B, Article 2.23, Texas Non-Profit Corporation Act (Article
20 1396-2.23, Vernon's Texas Civil Statutes)].

21 (d) [(a-1)] A property owners' association described by
22 Section 552.0036(2), Government Code, shall make the books and
23 records of the association, including financial records,
24 reasonably available to any person requesting access to the books
25 or records in accordance with Chapter 552, Government Code[
26 Subsection (a) does not apply to a property owners' association to
27 which this subsection applies].

1 (e) [~~(b)~~] An attorney's files and records relating to the
2 association, excluding invoices requested by an owner under Section
3 209.008(d), are not:

- 4 (1) records of the association;
- 5 (2) subject to inspection by the owner; or
- 6 (3) subject to production in a legal proceeding.

7 (f) An owner or the owner's attorney or certified public
8 accountant must submit a written request for access or information
9 under Subsection (c) by certified mail, with sufficient
10 particularity detailing the association's books and records
11 requested, to the mailing address of the association or authorized
12 representative as reflected on the most current management
13 certificate filed under Section 209.004. The request must contain
14 an election either to inspect the books and records before
15 obtaining copies or to have the property owners' association
16 forward copies of the requested books and records and:

17 (1) if an inspection is requested, the association, on
18 or before the 10th business day after the date the association
19 receives the request, shall send written notice of dates during
20 normal business hours that the owner may inspect the requested
21 books and records to the extent those books and records are required
22 to be retained by the association; or

23 (2) if copies of identified books and records are
24 requested, the association shall, to the extent those books and
25 records are required to be retained by the association, produce the
26 requested books and records for the requesting party on or before
27 the 10th business day after the date the association receives the

1 request, except as otherwise provided by this section.

2 (g) If the property owners' association is unable to produce
3 the books or records requested under Subsection (f) on or before the
4 10th business day after the date the association receives the
5 request, the association must provide to the requestor written
6 notice that:

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

10 (2) states a date by which the information will be sent
11 or made available for inspection to the requesting party that is not
12 later than the 30th business day after the date notice under this
13 subsection is given.

14 (h) If an inspection is requested or required, the
15 inspection shall take place at a mutually agreed on time during
16 normal business hours, and the requesting party shall identify the
17 books and records for the association to copy and forward to the
18 requesting party.

19 (i) A property owners' association may produce books and
20 records requested under this section in hard copy, electronic, or
21 other format reasonably available to the association.

22 (j) An owner is responsible for costs related to compilation
23 and reproduction of the requested information in an amount that
24 reasonably includes all costs related to compilation and
25 reproduction of the information, including costs of materials,
26 labor, and overhead. The association may require advance payment
27 of the estimated costs of compilation and reproduction. If the

1 estimated costs are lesser or greater than actual costs, the
2 association shall submit a final invoice to the owner on or before
3 the 30th business day after the date the information is delivered to
4 the requestor. If the final invoice includes additional amounts
5 due from the owner, the additional amounts, if not reimbursed to the
6 association before the 30th business day after the date the invoice
7 is sent to the owner, may be added to the owner's account as an
8 assessment. If the estimated costs exceeded the final invoice
9 amount, the owner is entitled to a refund, and the refund shall be
10 issued to the owner not later than the 30th business day after the
11 date the invoice is sent to the owner.

12 (k) Except as provided in Subsection (l), the association is
13 not required, other than in meeting minutes, to release or allow
14 inspection of any books or records that identify the dedicatory
15 instrument violation history of an individual owner of an
16 association, an owner's personal financial information, including
17 records of payment or nonpayment of amounts due the association, an
18 owner's contact information, other than the owner's address, or
19 information related to an employee of the association, including
20 personnel files. Information may be released in an aggregate or
21 summary manner that would not identify an individual property
22 owner.

23 (l) The books and records described by Subsection (k) shall
24 be released or made available for inspection if:

25 (1) the express written approval of the owner whose
26 records are the subject of the request for inspection is provided to
27 the association; or

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

4 (m) A property owners' association composed of more than 12
5 lots may adopt a document retention policy that supersedes this
6 subsection. In the absence of the adoption of a document retention
7 policy, the property owners' association shall retain books and
8 records as follows:

9 (1) certificates of formation, bylaws, restrictive
10 covenants, and all amendments to the certificates of formation,
11 bylaws, and covenants shall be retained permanently;

12 (2) financial books and records shall be retained for
13 seven years;

14 (3) account records of current owners shall be
15 retained for five years;

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

18 (5) minutes of meetings of the owners and the board
19 shall be retained for seven years; and

20 (6) tax returns and audit records shall be retained
21 for seven years.

22 SECTION 11. Chapter 209, Property Code, is amended by
23 adding Sections 209.0051, 209.0056, and 209.00593 to read as
24 follows:

25 Sec. 209.0051. OPEN BOARD MEETINGS. (a) Meetings of the
26 board must be open to owners, subject to the right of the board to
27 adjourn a board meeting and reconvene in closed executive session

1 to consider actions involving personnel, pending or threatened
2 litigation, contract negotiations, enforcement actions,
3 confidential communications with the association's attorney,
4 matters involving the invasion of privacy of individual owners, or
5 matters that are to remain confidential by request of the affected
6 parties and agreement of the board. The general nature of any
7 business to be considered in executive session must first be
8 announced at the open meeting.

9 (b) Unless the declaration, bylaws, or certificate of
10 formation of the association provide otherwise:

11 (1) a meeting of the board may be held by any method of
12 communication, including electronic and telephonic, if:

13 (A) notice of the meeting has been given as
14 required by law;

15 (B) each director may hear and be heard by every
16 other director; and

17 (C) the meeting does not involve voting on a
18 fine, damage assessment, appeal from a denial of architectural
19 control approval, or suspension of a right of a particular owner
20 before the owner has an opportunity to attend a board meeting to
21 present the owner's position, including any defense, on the issue;
22 and

23 (2) the board may act by unanimous written consent of
24 all the directors, without a meeting, if:

25 (A) the board action does not involve voting on a
26 fine, damage assessment, appeal from a denial of architectural
27 control approval, or suspension of a right of a particular owner

1 before the owner has an opportunity to attend a board meeting to
2 present the owner's position, including any defense, on the issue;
3 and

4 (B) a record of the board action is filed with the
5 minutes of board meetings.

6 (c) An association, on the written request of an owner,
7 shall inform the owner of the time and place of the next regular or
8 special meeting of the board. If the association representative to
9 whom the request is made does not know the time and place of the
10 meeting, the association promptly shall obtain the information and
11 disclose it to the owner or inform the owner where the information
12 may be obtained.

13 (d) This section does not apply to meetings of the board
14 during a development period, as defined by Section 209.0041.

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

1 10th anniversary of the date the declaration was recorded.

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

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

6 (2) by absentee ballot in accordance with this
7 section;

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

10 (4) by electronic ballot in accordance with this
11 section.

12 (b) An absentee or electronic ballot:

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

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

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

22 (c) A solicitation for votes by absentee or electronic
23 ballot must include:

24 (1) an absentee or electronic ballot that contains
25 each proposed action and provides an opportunity to vote for or
26 against each proposed action;

27 (2) instructions for delivery of the completed

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

11 (d) For the purposes of this section, "electronic ballot"
12 means a ballot:

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

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

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

19 (e) If an electronic ballot is posted on an Internet
20 website, a notice shall be provided to each owner that contains
21 instructions on obtaining access to the posting on the website.

22 (f) The property owners' association board has the sole
23 authority to prescribe or cause to be prescribed all proxy and
24 ballot forms.

25 (g) This section supersedes any contrary provision in a
26 dedicatory instrument.

27 (h) Except as provided by Subsection (i), this section

1 applies to all property owners' associations and controls over any
2 other law not specifically applicable to a property owners'
3 association.

4 (i) This section does not apply to a property owners'
5 association that is subject to Chapter 552, Government Code, by
6 application of Section 552.0036, Government Code.

7 SECTION 12. Section 209.006, Property Code, is amended by
8 amending Subsection (b) and adding Subsections (c), (d), (e), and
9 (f) to read as follows:

10 (b) The notice must:

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

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

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

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

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

26 (c) The date specified in the notice under Subsection (b)(3)
27 must provide a reasonable period of at least 30 days for the owner

1 to cure the violation if the violation is of a curable nature. A
2 shorter notice period is permitted in the case of a threat to public
3 health or safety.

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

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

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

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

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

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

24 Sec. 209.0061. ASSESSMENT OF FINES. A fine assessed by the
25 property owners' association must be reasonable in the context of
26 the nature and frequency of the violation and the effect of the
27 violation on the subdivision as a whole. If the association allows

1 finest for a continuing violation to accumulate against a lot or an
2 owner, the association must establish a maximum fine amount for a
3 continuing violation at which point the total fine amount is
4 capped. A fine may be collected in the same manner as assessments
5 under the dedicatory instrument.

6 Sec. 209.0062. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN
7 ASSESSMENTS. (a) This section applies only to a property owners'
8 association composed of more than 12 lots.

9 (b) A property owners' association shall adopt reasonable
10 guidelines to establish an alternative payment schedule by which an
11 owner may make partial payments to the property owners' association
12 for delinquent regular or special assessments or any other amount
13 owed to the association without accruing additional monetary
14 penalties. For purposes of this section, monetary penalties do not
15 include reasonable costs associated with administering the payment
16 plan or interest.

17 (c) A property owners' association is not required to offer
18 a payment plan to an owner more than once each year. The minimum
19 term for a payment plan offered by a property owners' association is
20 three months. A property owners' association is not required to
21 allow a payment plan for any amount that extends more than 12 months
22 from the date of the owner's request for a payment plan or to enter
23 into a payment plan with an owner who failed to honor the terms of a
24 previous payment plan during the five years following the owner's
25 default under the previous payment plan.

26 SECTION 14. (a) Section 82.111(i), Property Code, as
27 amended by this Act, applies only to payment of costs incurred and a

1 resolution regarding payment of costs approved on or after the
2 effective date of this Act. Payment of costs incurred or a
3 resolution approved before the effective date of this Act is
4 governed by the law in effect immediately before the effective date
5 of this Act, and that law is continued in effect for that purpose.

6 (b) Section 82.113(g), Property Code, as amended by this
7 Act, applies only to a condominium unit sold at a foreclosure sale
8 on or after the effective date of this Act. A unit sold at a
9 foreclosure sale before the effective date of this Act is governed
10 by the law in effect immediately before the effective date of this
11 Act, and that law is continued in effect for that purpose.

12 (c) Sections 207.003 and 209.005, Property Code, as amended
13 by this Act, apply only to a request for information received by a
14 property owners' association on or after the effective date of this
15 Act. A request for information received by a property owners'
16 association before the effective date of this Act is governed by the
17 law in effect immediately before the effective date of this Act, and
18 that law is continued in effect for that purpose.

19 (d) Section 209.005(m), Property Code, as added by this Act,
20 applies only with respect to books and records generated on or after
21 the effective date of this Act. Books and records generated before
22 the effective date of this Act are governed by the law in effect
23 immediately before the effective date of this Act, and that law is
24 continued in effect for that purpose.

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

1 (f) Section 209.006, Property Code, as amended by this Act,
2 applies only to an enforcement action initiated by a property
3 owners' association on or after the effective date of this Act. An
4 enforcement action initiated before the effective date of this Act
5 is governed by the law in effect immediately before the effective
6 date of this Act, and that law is continued in effect for that
7 purpose.

8 (g) Sections 209.0061 and 209.0062, Property Code, as added
9 by this Act, apply only to an assessment, fine, or other debt that
10 becomes due on or after the effective date of this Act. An
11 assessment, fine, or other debt that becomes due before the
12 effective date of this Act is governed by the law in effect
13 immediately before the effective date of this Act, and that law is
14 continued in effect for that purpose.

15 SECTION 15. This Act takes effect January 1, 2012.