

By: Deshotel

H.B. No. 3348

Substitute the following for H.B. No. 3348:

By: Quintanilla

C.S.H.B. No. 3348

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the operation of certain condominium unit owners'
3 associations.

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

5 SECTION 1. Section 82.003(a)(11), Property Code, is amended
6 to read as follows:

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

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

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

15 (1) adopt and amend bylaws;

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

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

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

1 (5) make contracts and incur liabilities relating to
2 the operation of the condominium;

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

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

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

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

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

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

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

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

26 (14) adopt and amend rules regulating the termination
27 of utility service to a unit, the owner of which is delinquent in

1 the payment of an assessment that is used, in whole or in part, to
2 pay the cost of that utility;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 an amendment to the declaration reflecting the reallocation.
2 Section 82.068 governs the distribution of insurance proceeds if
3 the condominium is terminated.

4 SECTION 4. Section 82.113, Property Code, is amended by
5 adding Subsection (c-1) and amending Subsection (g) to read as
6 follows:

7 (c-1) A lien, lien affidavit, or other instrument
8 evidencing the nonpayment of assessments or other charges owed to
9 an association and filed in the official public records of a county
10 is a legal instrument affecting title to real property.

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

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

1 the redemption period to a person other than a redeeming owner.

2 SECTION 5. (a) Section 82.111(i), Property Code, as amended
3 by this Act, applies only to payment of costs incurred and a
4 resolution regarding payment of costs approved on or after the
5 effective date of this Act. Payment of costs incurred or a
6 resolution approved before the effective date of this Act is
7 governed by the law in effect immediately before the effective date
8 of this Act, and that law is continued in effect for that purpose.

9 (b) Section 82.113(c-1), Property Code, as added by this
10 Act, applies only to an instrument filed on or after the effective
11 date of this Act. An instrument filed before the effective date of
12 this Act is governed by the law applicable to the instrument
13 immediately before that date, and that law is continued in effect
14 for that purpose.

15 (c) Section 82.113(g), Property Code, as amended by this
16 Act, applies only to a condominium unit sold at a foreclosure sale
17 on or after the effective date of this Act. A unit sold at a
18 foreclosure sale before the effective date of this Act is governed
19 by the law in effect immediately before the effective date of this
20 Act, and that law is continued in effect for that purpose.

21 SECTION 6. This Act takes effect January 1, 2012.