

By: West

S.B. No. 472

A BILL TO BE ENTITLED

AN ACT

relating to voting practices and elections of property owners' associations.

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

SECTION 1. Section 209.003, Property Code, is amended by adding Subsection (e) to read as follows:

(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 209.0058; and

(2) Section 209.00593.

SECTION 2. Chapter 209, Property Code, is amended by adding Sections 209.0058, 209.0059, 209.00592, and 209.00593 to read as follows:

Sec. 209.0058. BALLOTS. (a) Any vote cast in an election or vote by a member of a property owners' association must be in writing and signed by the member.

(b) Electronic votes cast under Section 209.00593 constitute written and signed ballots.

(c) In an association-wide election, written and signed ballots are not required for uncontested races.

Sec. 209.0059. RIGHT TO VOTE. (a) A provision in a

1 dedicatory instrument that would disqualify a property owner from
2 voting in an association election of board members or on any matter
3 concerning the rights or responsibilities of the owner is void.

4 (b) 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 Sec. 209.00592. BOARD MEMBERSHIP. (a) Except as provided
8 by Subsection (b), a provision in a dedicatory instrument that
9 restricts a property owner's right to run for a position on the
10 board of the property owners' association is void.

11 (b) If a board is presented with written, documented
12 evidence from a database or other record maintained by a
13 governmental law enforcement authority that a board member has been
14 convicted of a felony or crime involving moral turpitude, the board
15 member is immediately ineligible to serve on the board of the
16 property owners' association, automatically considered removed
17 from the board, and prohibited from future service on the board.

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

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

22 (2) by absentee ballot in accordance with this
23 section;

24 (3) by electronic ballot in accordance with this
25 section; or

26 (4) by any method of representative or delegated
27 voting provided by a dedicatory instrument.

1 (b) An absentee or electronic ballot:

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

5 (2) may not be counted, even if properly delivered, if
6 the owner attends any meeting to vote in person, so that any vote
7 cast at a meeting by a property owner supersedes any vote submitted
8 by absentee or electronic ballot previously submitted for that
9 proposal; and

10 (3) may not be counted on the final vote of a proposal
11 if the motion was amended at the meeting to be different from the
12 exact language on the absentee or electronic ballot.

13 (c) A solicitation for votes by absentee ballot must
14 include:

15 (1) an absentee ballot that contains each proposed
16 action and provides an opportunity to vote for or against each
17 proposed action;

18 (2) instructions for delivery of the completed
19 absentee ballot, including the delivery location; and

20 (3) the following language: "By casting your vote via
21 absentee ballot you will forgo the opportunity to consider and vote
22 on any action from the floor on these proposals, if a meeting is
23 held. This means that if there are amendments to these proposals
24 your votes will not be counted on the final vote on these measures.
25 If you desire to retain this ability, please attend any meeting in
26 person. You may submit an absentee ballot and later choose to
27 attend any meeting in person, in which case any in-person vote will

1 prevail."

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

4 (1) given by:

5 (A) e-mail;

6 (B) facsimile; or

7 (C) posting on an Internet website;

8 (2) for which the identity of the property owner
9 submitting the ballot can be confirmed; and

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

12 (e) If an electronic ballot is posted on an Internet
13 website, a notice of the posting shall be sent to each owner that
14 contains instructions on obtaining access to the posting on the
15 website.

16 (f) This section supersedes any contrary provision in a
17 dedicatory instrument.

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

21 SECTION 3. Section 209.0059, Subsection (a), Section
22 209.00592, and Section 209.00593, Property Code, as added by this
23 Act, apply to a provision in a dedicatory instrument enacted
24 before, on, or after the effective date of this Act.

25 SECTION 4. This Act takes effect September 1, 2011.