

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. Chapter 209, Property Code, is amended by adding Sections 209.0058, 209.0059, 209.00591, 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 dedicatory instrument that would disqualify a property owner from voting in an association election of board members or on any matter concerning the rights or responsibilities of the owner is void.

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

Sec. 209.00591. PROXY VOTING. A provision in any dedicatory instrument that provides for a proxy vote in any matter subject to a vote of the members of the property owners' association

1 is void.

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

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

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

15 (1) in person at a meeting of the property owners'
16 association;

17 (2) by absentee ballot in accordance with this
18 section; or

19 (3) by electronic ballot in accordance with this
20 section.

21 (b) An absentee or electronic ballot:

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

25 (2) may not be counted, even if properly delivered, if
26 the owner attends any meeting to vote in person, so that any vote
27 cast at a meeting by a property owner supersedes any vote submitted

1 by absentee or electronic ballot previously submitted for that
2 proposal; and

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

6 (c) A solicitation for votes by absentee ballot must
7 include:

8 (1) an absentee ballot that contains each proposed
9 action and provides an opportunity to vote for or against each
10 proposed action;

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

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

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

24 (1) given by:

25 (A) electronic mail;

26 (B) facsimile; or

27 (C) posting on an Internet website;

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

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

5 (e) If an electronic ballot is posted on an Internet
6 website, a notice of the posting shall be sent to each owner that
7 contains instructions on obtaining access to the posting on the
8 website.

9 (f) This section supersedes any contrary provision in a
10 dedicatory instrument.

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

14 SECTION 2. Sections 209.0059, 209.00591, 209.00592(a), and
15 209.00593, Property Code, as added by this Act, apply to a provision
16 in a dedicatory instrument enacted before, on, or after the
17 effective date of this Act.

18 SECTION 3. This Act takes effect September 1, 2011.