

1-1 By: West S.B. No. 472  
1-2 (In the Senate - Filed February 1, 2011; February 14, 2011,  
1-3 read first time and referred to Committee on Intergovernmental  
1-4 Relations; March 7, 2011, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 5, Nays 0;  
1-6 March 7, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 472 By: West

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to voting practices and elections of property owners'  
1-11 associations.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 209.003, Property Code, is amended by  
1-14 adding Subsection (e) to read as follows:

1-15 (e) The following provisions of this chapter do not apply to  
1-16 a property owners' association that is a mixed use master  
1-17 association that existed before January 1, 1974, and that does not  
1-18 have the authority under a dedicatory instrument or other governing  
1-19 document to impose fines:

1-20 (1) Section 209.0058; and

1-21 (2) Section 209.00593.

1-22 SECTION 2. Chapter 209, Property Code, is amended by adding  
1-23 Sections 209.0058, 209.0059, 209.00592, and 209.00593 to read as  
1-24 follows:

1-25 Sec. 209.0058. BALLOTS. (a) Any vote cast in an election  
1-26 or vote by a member of a property owners' association must be in  
1-27 writing and signed by the member.

1-28 (b) Electronic votes cast under Section 209.00593  
1-29 constitute written and signed ballots.

1-30 (c) In an association-wide election, written and signed  
1-31 ballots are not required for uncontested races.

1-32 Sec. 209.0059. RIGHT TO VOTE. (a) A provision in a  
1-33 dedicatory instrument that would disqualify a property owner from  
1-34 voting in an association election of board members or on any matter  
1-35 concerning the rights or responsibilities of the owner is void.

1-36 (b) This section does not apply to a property owners'  
1-37 association that is subject to Chapter 552, Government Code, by  
1-38 application of Section 552.0036, Government Code.

1-39 Sec. 209.00592. BOARD MEMBERSHIP. (a) Except as provided  
1-40 by Subsection (b), a provision in a dedicatory instrument that  
1-41 restricts a property owner's right to run for a position on the  
1-42 board of the property owners' association is void.

1-43 (b) If a board is presented with written, documented  
1-44 evidence from a database or other record maintained by a  
1-45 governmental law enforcement authority that a board member has been  
1-46 convicted of a felony or crime involving moral turpitude, the board  
1-47 member is immediately ineligible to serve on the board of the  
1-48 property owners' association, automatically considered removed  
1-49 from the board, and prohibited from future service on the board.

1-50 Sec. 209.00593. VOTING; QUORUM. (a) The voting rights of  
1-51 an owner may be cast or given:

1-52 (1) in person or by proxy at a meeting of the property  
1-53 owners' association;

1-54 (2) by absentee ballot in accordance with this  
1-55 section;

1-56 (3) by electronic ballot in accordance with this  
1-57 section; or

1-58 (4) by any method of representative or delegated  
1-59 voting provided by a dedicatory instrument.

1-60 (b) An absentee or electronic ballot:

1-61 (1) may be counted as an owner present and voting for  
1-62 the purpose of establishing a quorum only for items appearing on the  
1-63 ballot;

2-1 (2) may not be counted, even if properly delivered, if  
2-2 the owner attends any meeting to vote in person, so that any vote  
2-3 cast at a meeting by a property owner supersedes any vote submitted  
2-4 by absentee or electronic ballot previously submitted for that  
2-5 proposal; and

2-6 (3) may not be counted on the final vote of a proposal  
2-7 if the motion was amended at the meeting to be different from the  
2-8 exact language on the absentee or electronic ballot.

2-9 (c) A solicitation for votes by absentee ballot must  
2-10 include:

2-11 (1) an absentee ballot that contains each proposed  
2-12 action and provides an opportunity to vote for or against each  
2-13 proposed action;

2-14 (2) instructions for delivery of the completed  
2-15 absentee ballot, including the delivery location; and

2-16 (3) the following language: "By casting your vote via  
2-17 absentee ballot you will forgo the opportunity to consider and vote  
2-18 on any action from the floor on these proposals, if a meeting is  
2-19 held. This means that if there are amendments to these proposals  
2-20 your votes will not be counted on the final vote on these measures.  
2-21 If you desire to retain this ability, please attend any meeting in  
2-22 person. You may submit an absentee ballot and later choose to  
2-23 attend any meeting in person, in which case any in-person vote will  
2-24 prevail."

2-25 (d) For the purposes of this section, "electronic ballot"  
2-26 means a ballot:

- 2-27 (1) given by:
  - 2-28 (A) e-mail;
  - 2-29 (B) facsimile; or
  - 2-30 (C) posting on an Internet website;

2-31 (2) for which the identity of the property owner  
2-32 submitting the ballot can be confirmed; and

2-33 (3) for which the property owner may receive a receipt  
2-34 of the electronic transmission and receipt of the owner's ballot.

2-35 (e) If an electronic ballot is posted on an Internet  
2-36 website, a notice of the posting shall be sent to each owner that  
2-37 contains instructions on obtaining access to the posting on the  
2-38 website.

2-39 (f) This section supersedes any contrary provision in a  
2-40 dedicatory instrument.

2-41 (g) This section does not apply to a property owners'  
2-42 association that is subject to Chapter 552, Government Code, by  
2-43 application of Section 552.0036, Government Code.

2-44 SECTION 3. Section 209.0059, Subsection (a), Section  
2-45 209.00592, and Section 209.00593, Property Code, as added by this  
2-46 Act, apply to a provision in a dedicatory instrument enacted  
2-47 before, on, or after the effective date of this Act.

2-48 SECTION 4. This Act takes effect September 1, 2011.

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