

By: West

S.B. No. 1370

A BILL TO BE ENTITLED

AN ACT

relating to meetings and records of and certain information provided by or concerning a property owners' association.

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

SECTION 1. Section 5.012, Property Code, is amended by amending Subsection (a) and adding Subsections (a-1), (f), and (g) to read as follows:

(a) A seller of residential real property that is subject to membership in a property owners' association and that comprises not more than one dwelling unit located in this state shall give to the purchaser of the property a written notice that reads substantially similar to the following:

NOTICE OF MEMBERSHIP IN PROPERTY OWNERS' ASSOCIATION

CONCERNING THE PROPERTY AT (street address)

(name of residential community)

As a purchaser of property in the residential community in which this property is located, you are obligated to be a member of a property owners' association. Restrictive covenants governing the use and occupancy of the property and all ~~the~~ dedicatory instruments ~~[instrument]~~ governing the establishment, maintenance, or ~~and~~ operation of this residential community have been or will be recorded in the Real Property Records of the county in which the property is located. Copies of the restrictive covenants and dedicatory instruments ~~[instrument]~~ may be obtained from the county

1 clerk.

2 You are obligated to pay assessments to the property owners'
3 association. The amount of the assessments is subject to change.
4 Your failure to pay the assessments could result in enforcement of
5 the association's [a] lien on and the foreclosure of your property.

6 Section 207.003, Property Code, entitles an owner to receive
7 copies of any document that governs the establishment, maintenance,
8 or operation of a subdivision, including, but not limited to,
9 restrictions, bylaws, rules and regulations, and a resale
10 certificate from a property owners' association. A resale
11 certificate contains information including, but not limited to,
12 statements specifying the amount and frequency of regular
13 assessments and the style and cause number of lawsuits to which the
14 property owners' association is a party. These documents must be
15 made available to you by the seller on your request.

16 Date: _____

Signature of Purchaser

17
18 (a-1) The second paragraph of the notice prescribed by
19 Subsection (a) must be in bold print and underlined.

20 (f) On the purchaser's request for a resale certificate from
21 the seller, the seller shall:

22 (1) promptly deliver a copy of a current resale
23 certificate if one has been issued for the property under Chapter
24 207; or

25 (2) if the seller does not have a current resale
26 certificate:

27 (A) request the property owners' association or

1 its agent to issue a resale certificate under Chapter 207; and

2 (B) promptly deliver a copy of the resale
3 certificate to the purchaser on receipt of the resale certificate
4 from the property owners' association or its agent.

5 (g) The seller or the purchaser, as agreed to by the
6 parties, shall pay the fee to the property owners' association or
7 its agent for issuing the resale certificate. The property owners'
8 association may not process a payment for a resale certificate
9 requested under Chapter 207 until the certificate is available for
10 delivery. The association may not charge a fee if the certificate
11 is not provided in the time prescribed by Section 207.003(a).

12 SECTION 2. Section 207.003(b), Property Code, is amended to
13 read as follows:

14 (b) A resale certificate under Subsection (a) must contain:

15 (1) a statement of any right of first refusal, other
16 than a right of first refusal that is prohibited by statute, and any
17 ~~or~~ other restraint contained in the restrictions or restrictive
18 covenants that restricts the owner's right to transfer the owner's
19 property;

20 (2) the frequency and amount of any regular
21 assessments;

22 (3) the amount and purpose of any special assessment
23 that is due after the date the resale certificate is prepared;

24 (4) the total of all amounts due and unpaid to the
25 property owners' association that are attributable to the owner's
26 property;

27 (5) capital expenditures, if any, approved by the

1 property owners' association for the property owners' association's
2 current fiscal year;

3 (6) the amount of reserves, if any, for capital
4 expenditures;

5 (7) the property owners' association's current
6 operating budget and balance sheet;

7 (8) the total of any unsatisfied judgments against the
8 property owners' association;

9 (9) the style and cause number of any pending lawsuit
10 in which the property owners' association is a party, other than a
11 lawsuit relating to unpaid property taxes of an individual member
12 of the association [~~defendant~~];

13 (10) a copy of a certificate of insurance showing the
14 property owners' association's property and liability insurance
15 relating to the common areas and common facilities;

16 (11) a description of any conditions on the owner's
17 property that the property owners' association board has actual
18 knowledge are in violation of the restrictions applying to the
19 subdivision or the bylaws or rules of the property owners'
20 association;

21 (12) a summary or copy of notices received by the
22 property owners' association from any governmental authority
23 regarding health or housing code violations existing on the
24 preparation date of the certificate relating to the owner's
25 property or any common areas or common facilities owned or leased by
26 the property owners' association;

27 (13) the amount of any administrative transfer fee

1 charged by the property owners' association for a change of
2 ownership of property in the subdivision;

3 (14) the name, mailing address, and telephone number
4 of the property owners' association's managing agent, if any; ~~and~~

5 (15) a statement indicating whether the restrictions
6 allow foreclosure of a property owners' association's lien on the
7 owner's property for failure to pay assessments; and

8 (16) a statement of all fees associated with the
9 transfer of ownership, including a description of each fee, to whom
10 each fee is paid, and the amount of each fee.

11 SECTION 3. Section 209.005, Property Code, is amended to
12 read as follows:

13 Sec. 209.005. ASSOCIATION RECORDS. (a) This section does
14 not apply to a property owners' association that is subject to
15 Chapter 552, Government Code, by application of Section 552.0036,
16 Government Code [~~A property owners' association shall make the~~
17 ~~books and records of the association, including financial records,~~
18 ~~reasonably available to an owner in accordance with Section B,~~
19 ~~Article 2.23, Texas Non-Profit Corporation Act (Article 1396-2.23,~~
20 ~~Vernon's Texas Civil Statutes)].~~

21 (b) Notwithstanding a provision in a dedicatory instrument,
22 a [(a-1) A] property owners' association [described by Section
23 552.0036(2), Government Code,] shall make the books and records of
24 the association, including financial records and invoices, open to
25 and reasonably available for examination by an owner, except as
26 otherwise provided by this section. An owner is entitled to obtain
27 from the association copies of the information contained in the

1 books and records [~~to any person requesting access to the books or~~
2 ~~records in accordance with Chapter 552, Government~~
3 ~~Code. Subsection (a) does not apply to a property owners'~~
4 ~~association to which this subsection applies].~~

5 (c) [~~(b)~~] An attorney's files and records relating to the
6 association, excluding invoices requested by an owner under Section
7 209.008(d), are not:

- 8 (1) records of the association;
- 9 (2) subject to inspection by the owner; or
- 10 (3) subject to production in a legal proceeding.

11 (d) In addition to the requirements of Subsection (b), a
12 property owners' association shall make the association's books and
13 records, including financial records and invoices, available in a
14 building:

15 (1) in which the books and records are appropriately
16 stored; and

17 (2) that is:

18 (A) staffed during normal business hours;

19 (B) accessible to an owner during normal business
20 hours; and

21 (C) located on property commonly owned by the
22 association within the boundaries of the subdivision governed by
23 the association.

24 (e) If a building described by Subsection (d) does not exist
25 on property described by Subsection (d), the property owners'
26 association shall make the books and records available in
27 accordance with Subsections (g) and (h).

1 (f) A requestor shall submit the request in writing:

2 (1) in person by hand delivery to a current board
3 member;

4 (2) to the mailing address of the association or
5 authorized representative as provided on the most current
6 management certificate filed under Section 209.004; or

7 (3) in person to a managing agent as reflected on the
8 most current management certificate filed under Section 209.004.

9 (g) A property owners' association shall make books and
10 records requested under Subsection (b) available to the requestor
11 within a reasonable time of the property owners' association's
12 receipt of the request.

13 (h) A reasonable time for providing information requested
14 under Subsection (b) is 10 business days after the date the property
15 owners' association receives a request, except as otherwise
16 provided by this section.

17 (i) If the property owners' association is unable to produce
18 a requested book or record on or before the 10th business day after
19 the date the request is received, the property owners' association
20 shall provide to the requestor written notice that:

21 (1) informs the requestor that the property owners'
22 association is unable to produce the information on or before the
23 10th business day after the date of the receipt of the request; and

24 (2) states a date by which the information will be
25 available for inspection that occurs not later than the 30th day
26 after the date notice under this subsection is given.

27 (j) A property owners' association shall make books and

1 records requested under this section available to the requestor in
2 one or more of the following formats, as specified by the requestor:

3 (1) an electronic format:

4 (A) delivered to an e-mail address provided by
5 the requestor; or

6 (B) delivered in a disc or other standard
7 electronic format:

8 (i) to the mailing address of the
9 requestor; or

10 (ii) if the requestor does not provide a
11 mailing address, to the address of the requestor's property in the
12 subdivision; or

13 (2) a hard-copy format:

14 (A) delivered to the mailing address of the
15 requestor; or

16 (B) if the requestor does not provide a mailing
17 address:

18 (i) mailed to the address of the requestor's
19 property in the subdivision; or

20 (ii) made available at a location not more
21 than 25 miles from the boundary of the subdivision governed by the
22 association.

23 (k) This section does not require a property owners'
24 association to staff a building described by Subsection (d).

25 (l) A property owners' association may charge an owner for
26 copies of the requested information in an amount that reasonably
27 includes all costs related to reproducing the information,

1 including costs of materials, labor, and overhead.

2 (m) Any information maintained by the association that is
3 released under this section may not identify an individual owner or
4 an individual owner's personal financial information. Information
5 may be released in an aggregate manner that would not identify an
6 individual owner.

7 (n) All ballots cast in an election that results in an
8 amendment to a dedicatory instrument are records of the property
9 owners' association subject to inspection under this section.

10 (o) All ballots cast in an election of property owners'
11 association board or other committee members are considered records
12 of the association but may not be made available for inspection
13 under this section, except for the purposes of a recount, without a
14 court order or subpoena. The association shall take reasonable
15 measures to safeguard the security and privacy of those ballots.

16 (p) A property owners' association shall:

17 (1) keep all records as to changes to the dedicatory
18 instruments in perpetuity;

19 (2) maintain and secure all ballots in
20 association-wide elections for four years; and

21 (3) maintain records related to financial matters of
22 the association, including assessments, fines, foreclosures, and
23 enforcement actions, for at least seven years.

24 (q) An owner who is denied access to or a copy of association
25 books or records to which the owner is entitled under this section
26 may file a petition with the justice of the peace of a justice
27 precinct in which all or part of the subdivision that is governed by

1 the association is located, requesting relief in accordance with
2 this subsection. If the justice of the peace finds that the owner
3 is entitled to access to or copies of the books or records, the
4 justice of the peace may grant one or more of the following
5 remedies:

6 (1) a judgment against the property owners'
7 association for a penalty of not more than \$1,500;

8 (2) a judgment against the property owners'
9 association for court costs and attorney's fees incurred in
10 connection with seeking a remedy under this section; or

11 (3) a judgment authorizing the owner or the owner's
12 assignee to deduct the amounts awarded under Subdivisions (1) and
13 (2) from any future regular or special assessments payable to the
14 property owners' association.

15 (r) For the purposes of this section, "business day" means a
16 day other than Saturday, Sunday, or a state or federal holiday.

17 (s) On or before the 10th day before the date an owner files
18 a suit under this section, the owner must provide notice to the
19 other party of the person's intent to file suit under this section.
20 The notice must be sent by certified mail, return receipt
21 requested, or delivered by the United States Postal Service with
22 signature confirmation service.

23 SECTION 4. Chapter 209, Property Code, is amended by adding
24 Sections 209.0051 and 209.0056 to read as follows:

25 Sec. 209.0051. OPEN BOARD MEETINGS. (a) This section does
26 not apply to a property owners' association that is subject to
27 Chapter 551, Government Code, by application of Section 551.0015,

1 Government Code.

2 (b) In this section:

3 (1) "Board meeting":

4 (A) means a deliberation between a quorum of the
5 voting board of the property owners' association, or between a
6 quorum of the voting board and another person, during which
7 property owners' association business or policy over which the
8 board has responsibility is discussed or considered, or during
9 which the board takes formal action; and

10 (B) does not include the gathering of a quorum of
11 the board at a social function unrelated to the business of the
12 association, or the attendance by a quorum of the board at a
13 regional, state, or national convention, workshop, ceremonial
14 event, or press conference, if formal action is not taken and any
15 discussion of association business is incidental to the social
16 function, convention, workshop, ceremonial event, or press
17 conference.

18 (2) "Development period" means a period stated in a
19 declaration during which a declarant reserves:

20 (A) a right to facilitate the development,
21 construction, and marketing of the subdivision; and

22 (B) a right to direct the size, shape, and
23 composition of the subdivision.

24 (c) This section applies to a meeting of a property owners'
25 association during the development period only if the meeting is
26 conducted for the purpose of:

27 (1) adopting or amending the governing documents,

1 including declarations, bylaws, rules, and regulations of the
2 association;

3 (2) increasing the amount of regular assessments of
4 the association or adopting or increasing a special assessment;

5 (3) electing non-developer board members of the
6 association or establishing a process by which those members are
7 elected; or

8 (4) changing the voting rights of members of the
9 association.

10 (d) Except as provided by this section, a meeting of the
11 property owners' association board or a committee or subcommittee
12 of the board is open to owners and shall be held within the boundary
13 of the subdivision governed by the association.

14 (e) The board shall keep a record of each regular,
15 emergency, or special board meeting in the form of written minutes
16 or an audio recording of the meeting. A record of a meeting must
17 state the subject of each motion or inquiry, regardless of whether
18 the board takes action on the motion or inquiry, and indicate each
19 vote, order, decision, or other action taken by the board. The
20 board shall make meeting records, including approved minutes,
21 available to an owner for inspection and copying on the owner's
22 written request to the board or the board's representative. The
23 board shall approve the minutes of a board meeting not later than
24 the next regular board meeting.

25 (f) The board shall give owners notice of the date, hour,
26 place, and subject of a regular or special board meeting, including
27 a general description of any matters to be brought up for

1 deliberation in executive session. The notice shall be mailed to
2 each owner or:

3 (1) posted at least 72 hours before the start of the
4 meeting in a conspicuous manner reasonably designed to provide
5 notice to owners:

6 (A) in a place located on:

7 (i) the association's common property; or

8 (ii) other property located within the
9 boundary of the subdivision governed by the association, with the
10 property owner's consent; or

11 (B) on an Internet website maintained by the
12 association; and

13 (2) sent by e-mail to each owner who registers an
14 e-mail address with the property owners' association.

15 (g) An owner who registers an e-mail address with the
16 property owners' association as provided by Subsection (f)(2) must
17 update the e-mail address if the address changes.

18 (h) If the board recesses a regular or special board meeting
19 to continue the following regular business day, the board is not
20 required to post notice of the continued meeting if the recess is
21 taken in good faith and not to circumvent this section. If a
22 regular or special board meeting is continued to the following
23 regular business day, and on that following day the board continues
24 the meeting to another day, the board shall give notice as required
25 by this section of the meeting continued to that other day.

26 (i) If at a regular, emergency, or special meeting, an owner
27 makes an inquiry regarding a subject for which notice has not been

1 given as required by this section, the notice provisions of this
2 section do not apply to:

3 (1) a statement by the board of specific factual
4 information given in response to the inquiry; or

5 (2) a recitation of existing policy in response to the
6 inquiry.

7 (j) Any deliberation of or decision relating to the subject
8 of an inquiry made under Subsection (i) shall be limited to a
9 proposal to place the subject on the agenda for a subsequent board
10 meeting.

11 (k) In the event of a reasonably unforeseen emergency or
12 urgent necessity that requires immediate board action, the board
13 may meet in an emergency board meeting. Notice for an emergency
14 board meeting may be given in at least one manner prescribed by
15 Subsection (f)(1) at least two hours before the emergency session
16 is convened and must clearly identify the emergency or urgent
17 necessity for which the notice is given. A board in an emergency
18 meeting may not consider fines, foreclosures, enforcement actions,
19 increases in assessments, or any other foreseeable business or
20 policy over which the board has responsibility. Any action taken in
21 an emergency board meeting must be summarized orally, including an
22 explanation of any known actual or estimated expenditures approved
23 at the meeting, and documented in the minutes or tape recording of
24 the next regular or special board meeting.

25 (l) Before the board calls an executive session, the board
26 shall convene in a regular or special board meeting for which notice
27 has been given as provided by this section. During that board

1 meeting, the presiding board member may call an executive session
2 by announcing that an executive session will be held to deliberate a
3 matter described by Subsection (m) and identifying the specific
4 subdivision of Subsection (m) under which the executive session
5 will be held. A vote or other action item may not be taken in
6 executive session.

7 (m) A board of a property owners' association may meet in
8 executive session, to which the owners do not have access, to
9 deliberate:

10 (1) anticipated or pending litigation, settlement
11 offers, or interpretations of the law with the association's legal
12 counsel;

13 (2) complaints or charges against or issues regarding
14 a board member, or agent, employee, contractor, or other
15 representative of the property owners' association;

16 (3) a payment plan under which an owner may make
17 partial payments to the property owners' association for delinquent
18 assessments or other amounts owed without accruing additional
19 penalties;

20 (4) a foreclosure of a lien;

21 (5) an enforcement action against an owner, including
22 for nonpayment of amounts due;

23 (6) the purchase, exchange, lease, or value of real
24 property, if the board determines in good faith that deliberation
25 in an open board meeting may have a detrimental effect on the
26 association;

27 (7) business and financial issues relating to the

1 negotiation of a contract, if the board determines in good faith
2 that deliberation in an open board meeting may have a detrimental
3 effect on the position of the association; or

4 (8) matters involving the invasion of privacy of an
5 individual owner.

6 Sec. 209.0056. NOTICE OF ELECTION OR ASSOCIATION VOTE.

7 (a) On or before the 30th day before the date an election or vote
8 is held by a property owners' association, the association shall
9 give each owner of property in the property owners' association
10 written notice of the election or vote.

11 (b) This section supersedes any contrary requirement in a
12 dedicatory instrument.

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

16 SECTION 5. (a) Section 5.012, Property Code, as amended by
17 this Act, applies only to a sale of property that occurs on or after
18 the effective date of this Act. For the purposes of this section, a
19 sale of property occurs before the effective date of this Act if the
20 executory contract binding the purchaser to purchase the property
21 is executed before that date. A sale of property that occurs before
22 the effective date of this Act is governed by the law in effect
23 immediately before that date, and that law is continued in effect
24 for that purpose.

25 (b) Sections 207.003 and 209.005, Property Code, as amended
26 by this Act, apply only to a request for information received by a
27 property owners' association on or after the effective date of this

1 Act. A request for information received by a property owners'
2 association before the effective date of this Act is governed by the
3 law in effect immediately before the effective date of this Act, and
4 that law is continued in effect for that purpose.

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