

BILL ANALYSIS

Senate Research Center
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H.B. 1824
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Intergovernmental Relations
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties have noted some need for clarification regarding certain provisions of the recently enacted legislation governing master mixed-use property owners' associations. H.B. 1824 seeks to provide clarity and consistency in the law applicable to such property owners' associations.

H.B. 1824 amends current law relating to the operation of master mixed-use property owners' associations.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 215.003, Property Code, as follows:

Sec. 215.003. **APPLICABILITY OF CHAPTER 209.** Provides that Chapter 209 (Texas Residential Property Owners Protection Act) does not apply to a property owners' association subject to this chapter (Master Mixed-Use Property Owners' Associations). Deletes existing text providing that Sections 209.007 (Hearing Before Board; Alternative Dispute Resolution), 209.008 (Attorney's Fees), 209.011 (Right of Redemption After Foreclosure), and 209.012 (Restrictive Covenants Granting Easements to Certain Property Owners' Associations) apply only to single-family residential properties governed by a property owners' association subject to this chapter.

SECTION 2. Amends Section 215.008, Property Code, by adding Subsection (d), to authorize the declaration and any supplementary declaration, including amendments, modifications, or corrections, notwithstanding any provision of the certificate of formation, declaration, or bylaws to the contrary, to be amended by a simple majority of the eligible votes being cast in favor of the amendment.

SECTION 3. Amends Chapter 215, Property Code, by adding Section 215.0135, as follows:

Sec. 215.0135. **ASSOCIATION RECORDS.** (a) Provides that to the extent of any conflict or inconsistency, this section prevails over other provisions of law and the dedicatory instruments of a property owners' association subject to this chapter. Provides that this section is the exclusive procedure for a property owner to inspect the books and records of the association.

(b) Requires a property owners' association, except as provided by Subsection (c) or (j), to, on written request as provided by this section, make the books and records of the association open to and reasonably available for examination by an owner or a person designated in a written instrument signed by the owner as the owner's agent, attorney, or certified public accountant. Entitles an owner, except as provided by Subsection (c) or (j), to obtain copies of the books and records from the association.

(c) Provides that an attorney's files and records relating to the property owners' association, excluding invoices, are not records of the association and are not subject to inspection by the owner or the owner's authorized representative or to production in a legal proceeding. Provides that this subsection does not require production of a document that is covered by the attorney-client privilege.

(d) Requires an owner or the owner's authorized representative described by Subsection (b) to submit a written request by certified mail to the mailing address of the property owners' association or the association's authorized representative, as reflected on the most current management certificate filed under Section 215.013 (Management Certificate), for access to the books and records of the association. Requires that the request describe, in sufficient detail, the association's books and records requested by the owner or the owner's representative and:

(1) if an inspection is requested, the association is required to, on or before the 10th business day after the date the association receives the request, send written notice of dates that the owner is authorized to inspect, during normal business hours, the requested books and records to the extent those books and records are in the actual physical possession, custody, and control of the association; or

(2) if copies of identified books and records are requested, the association is required to, to the extent those books and records are in the actual physical possession, custody, and control of the association, produce copies of the requested books and records on or before the 10th business day after the date the association receives the request, except as otherwise provided by this section.

(e) Requires the association, if the property owners' association fails to produce the books or records requested under Subsection (d) on or before the 10th business day after the date the association receives the request, to provide to the requestor written notice that:

(1) informs the requestor that the association is unable to produce the information and the specific reasons for that inability on or before the 10th business day after the date the association received the request; and

(2) if the association can produce the information, notifies the requestor of the date by which the information will be sent or made available for inspection to the requesting party, which is prohibited from being later than the 15th day after the date notice under this subsection is given.

(f) Requires that the inspection, if an inspection is requested or required, take place at a mutually agreed on time during normal business hours of the property owners' association, and the requesting party is required to identify the books and records for the association to copy and forward to the requesting party.

(g) Authorizes a property owners' association to produce books and records requested under this section in hard copy, electronic, or other format reasonably available to the association.

(h) Requires a property owners' association board to adopt a records production and copying policy that prescribes the costs the association will charge for the compilation, production, and reproduction of information requested under this section. Authorizes the prescribed charges to include all reasonable costs of materials, labor, and overhead. Requires that the policy required by this subsection be recorded as a dedicatory instrument. Prohibits the association, if the policy is not recorded, from charging an owner for the compilation,

production, or reproduction of information requested under this section. Provides that if the policy is recorded, the requesting owner or the owner's representative is responsible for all costs related to the compilation, production, and reproduction of the requested information based on the amounts prescribed by the policy. Authorizes the association to require advance payment of the estimated costs of compilation, production, and reproduction of the requested information. Requires the association, if the total of the estimated costs differs from the total of the actual costs, to submit a final invoice to the owner on or before the 30th business day after the date the requested copies are delivered. Authorizes the association, if the actual total cost is higher than the estimated total cost, and the owner fails to reimburse the association before the 30th business day after the date the invoice is sent to the owner, to add the amount due to the owner's account as an assessment. Requires the association, if the actual total cost is less than the estimated total cost, to issue a refund to the owner not later than the 30th business day after the date the requested copies are delivered.

(i) Requires a property owners' association to estimate costs under this section using amounts prescribed by the policy adopted under Subsection (h).

(j) Authorizes information to be released in an aggregate or summary manner that would not identify an individual property owner. Provides that the property owners' association, except as provided by Subsection (k) and to the extent the information is provided in the meeting minutes, is not required to release or allow inspection of any books or records that identify:

- (1) the dedicatory instrument violation history of an individual owner;
- (2) an owner's personal financial information, including records of payment or nonpayment of amounts due the association;
- (3) an owner's contact information, other than the owner's address;
- (4) an owner's property files or building plans;
- (5) books or records described by Subsection (c);
- (6) any information to which an owner objects to releasing or has not granted approval for releasing; or
- (7) information related to an employee of the association, including personnel files.

(k) Requires that the books and records described by Subsection (j) be released or made available for inspection if:

- (1) the express written approval of the owner whose records are the subject of the request for inspection is provided to the property owners' association; or
- (2) a court orders the release of the books and records or orders that the books and records be made available for inspection.

(l) Requires a property owners' association to adopt and comply with a document retention policy that includes, at a minimum, the following requirements:

- (1) certificates of formation, bylaws, restrictive covenants, and all amendments to the certificates of formation, bylaws, and covenants are required to be retained permanently;

(2) financial books and records are required to be retained for seven years;

(3) account records of current owners are required to be retained for five years;

(4) contracts with a term of one year or more are required to be retained for four years after the expiration of the contract term;

(5) minutes of meetings of the owners and the board are required to be retained for seven years; and

(6) tax returns and audit records are required to be retained for seven years.

(m) Authorizes a member of a property owners' association who is denied access to or copies of the association books or records to which the member is entitled under this section to file a petition with the county court at law in which all or part of the property that is governed by the association is located requesting relief in accordance with this subsection. Authorizes the county court at law, if the county court at law finds that the member is entitled to access to or copies of the records, to grant one or more of the following remedies:

(1) a judgment ordering the association to release or allow access to the books or records;

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

(3) a judgment authorizing the owner or the owner's assignee to deduct the amounts awarded under Subdivision (2) from any future regular or special assessments payable to the association.

(n) Entitles the association, if the property owners' association prevails in an action under Subsection (m), to a judgment for court costs and attorney's fees incurred by the association in connection with the action.

(o) Requires a person, on or before the 10th business day before the date the person brings an action against a property owners' association under this section, to send written notice to the association of the person's intent to bring the action. Requires that the notice:

(1) be sent certified mail, return receipt requested, or delivered by the United States Postal Service with signature confirmation service, to the mailing address of the association or the association's authorized representative as reflected on the most current management certificate filed under Section 215.013; and

(2) describe with sufficient detail the books and records being requested.

(p) Defines "business day" for the purposes of this section.

SECTION 4. Amends Chapter 215, Property Code, by adding Sections 215.016, 215.017, and 215.018, as follows:

Sec. 215.016. NOTICE REQUIRED BEFORE CERTAIN ENFORCEMENT ACTIONS. (a) Requires the association or its agent, before a property owners' association is authorized to file a suit against an owner, other than a suit to collect a regular or special assessment or judicial foreclosure under the association's lien, or charge

an owner for property damage, to give written notice sent to the owner by certified mail, return receipt requested, to the property address of the owner.

(b) Requires that the notice:

(1) describe the violation of the declaration or property damage that is the basis for the suit or charge and state any amount due to the association from the owner; and

(2) inform the owner that the owner:

(A) is entitled, as applicable, to a reasonable period to cure the violation and avoid the suit unless the owner was previously given notice and a reasonable opportunity to cure by the association for the same or a similar violation within the preceding six months;

(B) is authorized to request a hearing under Section 215.017 on or before the 30th day after the date the owner receives the notice; and

(C) is authorized to have special rights or relief related to the suit or charge under federal law, including, without limitation, the Servicemembers Civil Relief Act (50 U.S.C. app. Section 501 et seq.), if the owner is serving on active military duty.

Sec. 215.017. HEARING BEFORE BOARD. (a) Provides that if the owner is entitled to an opportunity to cure a violation, the owner, except as provided by Section 215.009(c) (relating to authorizing an association to use self-help to enforce its restrictive covenants against a residential or commercial property owner under certain circumstances), has the right to submit a written request for a hearing to discuss and verify facts and resolve the matter at issue before a committee appointed by the board of the property owners' association or before the board if the board does not appoint a committee.

(b) Requires the association to hold a hearing under this section not later than the 30th day after the date the board receives the owner's request for a hearing and to notify the owner of the date, time, and place of the hearing not later than the 10th day before the date of the hearing. Authorizes the board or committee or the owner to request a postponement, and if requested, a postponement is required to be granted for a period of not more than 10 days. Authorizes additional postponements to be granted by agreement of the parties.

(c) Provides that the notice and hearing provisions of this section and Section 215.016 do not apply if the association files a suit seeking a temporary restraining order or temporary injunctive relief or a suit that includes foreclosure as a cause of action.

Sec. 215.018. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN ASSESSMENTS. (a) Requires a property owners' association to adopt reasonable guidelines to establish an alternative payment schedule by which an owner is authorized to make partial payments to the association for delinquent regular or special assessments or any other amount owed to the association without accruing additional monetary penalties. Provides that for purposes of this section, monetary penalties do not include reasonable costs associated with administering the payment plan or interest.

(b) Provides that a property owners' association is not required to enter into a payment plan with an owner who failed to honor the terms of a previous payment plan.

(c) Requires a property owners' association to file the association's guidelines under this section in the real property records of each county in which any portion of the subdivision is located.

SECTION 5. Effective date: September 1, 2013.