

BILL ANALYSIS

C.S.H.B. 1824
By: Harper-Brown
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1824 amends the Property Code to remove language specifying that certain provisions of the Texas Residential Property Owners Protection Act apply only to single-family residential properties governed by a master mixed-use property owners' association and to instead exempt such association from the Texas Residential Property Owners Protection Act. The bill, notwithstanding any provision of the certificate of formation, declaration, or bylaws to the contrary, authorizes a master mixed-use property owners' association's declaration and any supplementary declaration, including amendments, modifications, or corrections, to be amended by a simple majority of the eligible votes being cast in favor of the amendment. The bill establishes that its provisions prevail over other provisions of law and the dedicatory instruments of a master mixed-use property owners' association. The bill establishes that its provisions provide for the exclusive procedure for a property owner to inspect the books and records of a master mixed-use property owners' association.

C.S.H.B. 1824 requires a master mixed-use property owners' association, on written request, to 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. The bill specifies that, except as provided by certain provisions within the bill, an owner is entitled to obtain copies of the books and records from the association. The bill specifies 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 and that the bill's provisions do not require production of a document covered by attorney-client privilege.

C.S.H.B. 1824 sets out provisions relating to the submission of a written request for access to the association's books and records, the authorized format of produced books and records, procedures for the associations' failure to produce the books and records, and procedures for the inspection of the books and records. The bill requires the board of the association to adopt a records production and copying policy that prescribes the costs the association will charge for the compilation, production, and reproduction of requested information and sets out provisions relating to the policy. The bill authorizes information to be released in an aggregate or summary

manner that would not identify an individual property owner and specifies that the association, with certain exceptions, is not required to release or allow inspection of any books or records that identify certain information. The bill requires the association to adopt and comply with a document retention policy and establishes the minimum requirements for the policy. The bill authorizes a member of the association who is denied access to or copies of the association's books and records to which the member is entitled 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 and sets out provisions relating to such an action.

C.S.H.B. 1824 requires an association or its agent to give written notice to an owner before charging the owner for property damage or filing a suit against the owner, other than a suit to collect a regular or special assessment or judicial foreclosure under the association's lien, and sets out requirements for the notice. The bill authorizes an owner who is entitled to an opportunity to cure a violation 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 association or before the board if the board does not appoint a committee. The bill sets out provisions relating to such a hearing and specifies that the provisions 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.

C.S.H.B. 1824 requires an association to adopt reasonable guidelines to establish an alternative payment schedule by which an owner may 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, which do not include reasonable costs associated with administering the payment plan or interest. The bill specifies that the association is not required to enter into a payment plan with an owner who failed to honor the terms of a previous payment plan. The bill requires the association to file its guidelines for an alternative payment schedule in the real property records of each county in which any portion of the subdivision is located.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1824 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 215.003, Property Code, is amended to read as follows:

Sec. 215.003. **APPLICABILITY OF CHAPTER 209.** Chapter 209 does not apply to ~~[Sections 209.007, 209.008, 209.011, and 209.012 apply only to single-family residential properties governed by]~~ a property owners' association subject to this chapter.

SECTION 2. Section 215.008, Property Code, is amended by adding Subsection (d) to read as follows:

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Same as introduced version.

(d) Notwithstanding any provision of the certificate of formation, declaration, or bylaws to the contrary, the declaration and any supplementary declaration, including amendments, modifications, or corrections, may be amended by a simple majority of the eligible votes being cast in favor of the amendment.

SECTION 3. Chapter 215, Property Code, is amended by adding Section 215.0135 to read as follows:

Sec. 215.0135. ASSOCIATION RECORDS. (a) 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. This section is the exclusive procedure for a property owner to inspect the books and records of the association.

(b) Except as provided by Subsection (c) or (j), a property owners' association shall, 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. Except as provided by Subsection (c) or (j), an owner is entitled to obtain copies of the books and records from the association.

(c) 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. This subsection does not require production of a document that is covered by the attorney-client privilege.

(d) An owner or the owner's authorized representative described by Subsection (b) must 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, for access to the books and records of the association. The request must describe, in sufficient detail, the association's books and records requested by the owner or the owner's representative and:

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(b) Except as provided by Subsection (c) or (j), a property owners' association shall, 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. Except as provided by Subsection (c) or (j), an owner is entitled to obtain copies of the books and records from the association.

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(1) if an inspection is requested, the association shall, on or before the 10th business day after the date the association receives the request, send written notice of dates that the owner may 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 shall, 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) 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, the association must 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 may not be later than the 15th day after the date notice under this subsection is given.

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

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

(h) A property owners' association board must 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. The prescribed charges may include all reasonable costs of

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(2) if copies of identified books and records are requested, the association shall, 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) 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, the association must 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

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

(h) A property owners' association board must 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. The prescribed charges may include all reasonable costs of

materials, labor, and overhead but may not exceed costs that would be applicable for an item under 1 T.A.C. Section 70.3. The policy required by this subsection must be recorded as a dedicatory instrument. If the policy is not recorded, the association may not charge an owner for the compilation, production, or reproduction of information requested under this section. 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. The association may require advance payment of the estimated costs of compilation, production, and reproduction of the requested information. If the total of the estimated costs differs from the total of the actual costs, the association shall submit a final invoice to the owner on or before the 30th business day after the date the requested copies are delivered. 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, the association may add the amount due to the owner's account as an assessment. If the actual total cost is less than the estimated total cost, the association shall issue a refund to the owner not later than the 30th business day after the date the requested copies are delivered.

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

(j) Information may be released in an aggregate or summary manner that would not identify an individual property owner. Except as provided by Subsection (k) and to the extent the information is provided in the meeting minutes, the property owners' association 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

materials, labor, and overhead.

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- (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) The books and records described by Subsection (j) shall 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.

(1) A property owners' association shall 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 shall be retained permanently;

(2) financial books and records shall be retained for seven years;

(3) account records of current owners shall be retained for five years;

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

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

(6) tax returns and audit records shall be retained for seven years.

(m) 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 may 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. If the county court at law finds that the member is entitled to access to or copies of the records, the county court at law may 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

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

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(k) The books and records described by Subsection (j) shall be released or made available for inspection if:

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(m) 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 may 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. If the county court at law finds that the member is entitled to access to or copies of the records, the county court at law may 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) If the property owners' association prevails in an action under Subsection (m), the association is entitled to a judgment for court costs and attorney's fees incurred by the association in connection with the action.

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

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

SECTION 4. Chapter 215, Property Code, is amended.

SECTION 5. The following provisions are repealed:

(1) Section 209.003(e), Property Code, as added by Chapter 1026 (H.B. 2761), Acts of the 82nd Legislature, Regular Session, 2011;

(2) Section 209.003(e), Property Code, as added by Chapter 1142 (H.B. 1821), Acts of the 82nd Legislature, Regular Session, 2011;

(3) Section 209.003(e), Property Code, as added by Chapter 1217 (S.B. 472), Acts of the 82nd Legislature, Regular Session, 2011;

(4) Section 209.003(e), Property Code, as added by Chapter 1282 (H.B. 1228), Acts of the 82nd Legislature, Regular Session, 2011; and

(5) Section 215.009(b), Property Code.

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

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

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

SECTION 4. Same as introduced version.

No equivalent provision.

SECTION 6. This Act takes effect
September 1, 2013.

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