

## BILL ANALYSIS

C.S.H.B. 3803  
By: McClendon  
Business & Industry  
Committee Report (Substituted)

### BACKGROUND AND PURPOSE

Although the Property Code requires condominium unit owners' associations and property owners' associations to provide open access to their financial records on member request, concerns have been raised that there is little recourse available to a member who discovers evidence of financial malfeasance. Interested parties have suggested that owners who pursue judicial action against the offending owners' associations often have little success and bear significant cost. C.S.H.B. 3803 seeks to create safeguards designed to prevent condominium unit owners' association boards and property owners' association boards from certain types of financial losses.

### 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. 3803 amends the Property Code to require the board of a unit owners' association of 20 units or more or a property owners' association of 20 lots or more to obtain and maintain a fidelity bond or fidelity insurance that covers losses resulting from dishonest or fraudulent acts. The bill requires the board to maintain the bond or insurance in force for all officers, directors, and employees of the association and all other persons handling or responsible for funds administered by the board. The bill prohibits the coverage from being less than a sum equal to three months' aggregate assessments on all units or lots, as applicable, plus reserve funds. The bill authorizes the governing documents of the association to provide for higher limits of coverage.

### EFFECTIVE DATE

September 1, 2013.

### COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3803 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

No equivalent provision, but see SECTION 3, Section 82.1032 and Section 82.1033, Property Code, below.

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter C, Chapter 82, Property Code, is amended by adding Section 82.1031 to read as follows:  
Sec. 82.1031. FIDELITY BOND OR

INSURANCE REQUIREMENT. The board of a unit owners' association of 20 units or more shall obtain and maintain a fidelity bond or fidelity insurance that covers losses resulting from dishonest or fraudulent acts. The board must maintain the bond or insurance in force for all officers, directors, and employees of the association and all other persons handling or responsible for funds administered by the board. The coverage must be not less than a sum equal to three months' aggregate assessments on all units plus reserve funds. The governing documents of the association may provide for higher limits of coverage.

No equivalent provision, but see SECTION 4, Section 209.0043 and Section 209.0044, Property Code, below.

SECTION 2. Chapter 209, Property Code, is amended by adding Section 209.00595 to read as follows:

Sec. 209.00595. FIDELITY BOND OR INSURANCE REQUIREMENT. The board of a property owners' association of 20 lots or more shall obtain and maintain a fidelity bond or fidelity insurance that covers losses resulting from dishonest or fraudulent acts. The board must maintain the bond or insurance in force for all officers, directors, and employees of the association and all other persons handling or responsible for funds administered by the board. The coverage must be not less than a sum equal to three months' aggregate assessments on all lots plus reserve funds. The governing documents of the association may provide for higher limits of coverage.

SECTION 1. Subtitle A, Title 7, Local Government Code, is amended by adding Chapter 230 to read as follows:

CHAPTER 230. MUNICIPAL REGULATION OF PROPERTY OWNERS' ASSOCIATIONS AND UNIT OWNERS' ASSOCIATIONS

Sec. 230.001. DEFINITIONS. In this chapter:

(1) "Association" means a property owners' association or unit owners' association.

(2) "Property owners' association" has the meaning assigned by Section 202.001, Property Code.

(3) "Unit owners' association" means an association organized under Section 82.101, Property Code.

Sec. 230.002. REGULATORY AUTHORITY. (a) Except as provided by

No equivalent provision.

this chapter, and notwithstanding any other law, a municipality may regulate the conduct of an association that manages property located wholly or partly in the municipality or the municipality's extraterritorial jurisdiction, with respect to matters of municipal concern, including matters relating to land use, health and safety, sanitation, infrastructure, and law enforcement.

(b) A municipality may require an association to which this chapter applies to register with the municipality in the form and manner determined by the municipality by ordinance.

SECTION 2. Subtitle B, Title 7, Local Government Code, is amended by adding Chapter 237 to read as follows:

CHAPTER 237. COUNTY REGULATION OF PROPERTY OWNERS' ASSOCIATIONS AND UNIT OWNERS' ASSOCIATIONS

Sec. 237.001. DEFINITIONS. In this chapter:

(1) "Association" means a property owners' association or unit owners' association.

(2) "Property owners' association" has the meaning assigned by Section 202.001, Property Code.

(3) "Unit owners' association" means an association organized under Section 82.101, Property Code.

Sec. 237.002. REGULATORY AUTHORITY. (a) Except as provided by this chapter, and notwithstanding any other law, a county may regulate the conduct of an association that manages property wholly located in the unincorporated areas of the county with respect to matters of county concern, including matters relating to land use, health and safety, sanitation, infrastructure, and law enforcement.

(b) A county may require an association to which this chapter applies to register with the county in the form and manner determined by the county.

No equivalent provision.

SECTION 3. Subchapter C, Chapter 82, Property Code, is amended by adding Sections 82.1031, 82.1032, 82.1033, 82.1034, and 82.1035 to read as follows:

No equivalent provision.

Sec. 82.1031. TRUST ACCOUNTS. (a) All money paid to a unit owners' association board by or on behalf of a unit owner pursuant to an assessment or fee collected for common purpose expenditures is held in trust. Within two business days after receipt, the board shall deposit the money in a financial institution in one or more trust accounts established for the benefit of the unit owners. The board shall maintain its operating expense accounts separately from trust accounts maintained for capital expenditures and other common purposes.

(b) Money held in trust by a unit owners' association board is not property of the board or the board's designee.

(c) A unit owners' association board shall segregate funds held for the benefit of unit owners from operating funds held on deposit for use by the board, as follows:

(1) maintain separate records of account for each unit owner who pays funds to the unit owners' association pursuant to an assessment or common purpose expenditure; and

(2) disburse money paid by or on behalf of a unit owner only to pay for assessments or fees collected for common purpose expenditures as provided by the declaration, articles of incorporation, bylaws, or rules of the association.

(d) A unit owners' association board may not commingle money in a trust account established for the benefit of unit owners with operating funds of the board or money of other persons or business entities.

(e) A trust account under this section must at all times have a cash balance equal to if not greater than the sum of the balances of each individual unit owner's account record.

(f) A unit owners' association board shall reconcile a trust account annually under this section. If the board or the board's designee has more than one trust account, each trust account must be reconciled separately.

No equivalent provision.

Sec. 82.1032. BOND REQUIREMENT. (a) A person may not be a member of a unit owners' association board unless the person has obtained and maintains in force a surety bond issued by a surety company authorized to do business in this state as prescribed by this section. A copy of the bond currently in effect must be filed contemporaneously with the secretary of state.

No equivalent provision, but see SECTION 1 above.

- (b) The bond must be in favor of:
- (1) any person who is damaged by a violation of this chapter; and
  - (2) this state for the benefit of any person who is damaged by a violation of this chapter.
- (c) For a board member with access to or custody of unit owners' association funds, the bond must be in the minimum amount of:
- (1) \$50,000, if the association is composed of 14 units or fewer;
  - (2) \$100,000, if the association is composed of more than 14 units but not more than 100 units;
  - (3) \$250,000, if the association is composed of more than 100 units but not more than 250 units; and
  - (4) \$500,000, if the association is composed of more than 250 units.
- (d) For a board member who does not have access to or custody of unit owners' association funds, the bond must be in the minimum amount of \$25,000.
- (e) A person who is an agent, employee, or contractor of a unit owners' association board shall obtain a bond described by this section for the minimum amounts specified in subsection (c) of this Section, if the person:
- (1) has access to or custody of unit owners' association funds; and
  - (2) is not required by other law to obtain a bond in order to engage in activities described by this subsection.

Sec. 82.1033. INSURANCE REQUIREMENT. A unit owners' association board shall obtain and maintain insurance as required by Section 82.1031 during the six months preceding the date the renewal report is filed that:

- (1) provides for single limits of at least \$250,000 and aggregate limits of at least \$500,000, unless the highest daily balance in the trust account exceeds the aggregate policy limits, in which event the insurance limits would need to correspond to the higher amount;
- (2) insures against the risks of dishonesty, fraud, theft, and other misconduct on the part of the unit owners' association or a board member, employee, or agent of the association;
- (3) is issued by an insurance company

No equivalent provision, but see SECTION 1 above.

authorized to engage in business in this state and rated at least "A" or equivalent by a nationally recognized rating organization approved by the commissioner;

(4) has a deductible of not more than \$5,000; and

(5) is payable for the benefit of the association, this state, a unit owner, or an individual who is a resident of this state, as their interests may appear.

Sec. 82.1034. OVERSIGHT BY ATTORNEY GENERAL. (a) The attorney general shall:

(1) monitor the operations of a unit owners' association board, as appropriate and within the available resources of the attorney general's office, to ensure compliance with this subchapter; and

(2) receive and investigate complaints against a unit owners' association board related to the fiduciary responsibilities of the board.

(b) At the request of the attorney general, a property owners' association board shall:

(1) inform the attorney general of the name, business address, and telephone number of the financial institution at which the board maintains a trust account under this section and the account number of the account;

(2) produce evidence of current insurance coverage;

(3) produce evidence of current surety bond coverage.

(c) Failure by the board or its agents to comply with such a request may result in injunctive relief under this enactment.

(d) If a property owners' association board discovers, or has a reasonable suspicion of, embezzlement or other unlawful appropriation of money held in trust, the board immediately shall notify the attorney general by a method approved by the attorney general by rule. Unless the attorney general by rule provides otherwise, the board shall notify the attorney general of remedial action that the board intends to take with regard to the unlawful appropriation or suspected unlawful appropriation not later than the fifth day after the date on which the board notifies the attorney general of the appropriation in question.

(e) After notice and opportunity for a hearing, the attorney general may require, on an ongoing basis, that a property owners'

No equivalent provision.

association board, before transferring a trust account from one financial institution to another, inform the attorney general of the name, business address, and telephone number of the institution to which the account will be transferred, and as soon as practicable after the transfer, the account number at the transferee institution.

(f) The attorney general may adopt rules as necessary or appropriate to enforce Sections 82.1031, 82.1032, 82.1033, 82.1034, and 82.1035.

Sec. 82.1035. INJUNCTIVE OR DECLARATORY RELIEF; PROVIDING PENALTIES. (a) The attorney general may institute an action for injunctive or declaratory relief to restrain a violation of Section 82.1031, 82.1032, 82.1033, 82.1034, and 82.1035.

(b) In addition to instituting an action for injunctive or declaratory relief under Subsection (a), the attorney general may institute an action for civil penalties against a property owners' association and its agents for a violation of Section 82.1031, 82.1032, 82.1033, 82.1034, and 82.1035. A civil penalty assessed under this section may not exceed:

- (1) \$20,000 per violation; and
- (2) if the act or practice that is the subject of the proceeding was calculated to acquire or deprive money or other property from an owner who was 65 years of age or older when the act or practice occurred, an additional amount of not more than \$250,000.

SECTION 4. Chapter 209, Property Code, is amended by adding Sections 209.0042, 209.0043, 209.0044, 209.0045, and 209.0046 to read as follows:

Sec. 209.0042. TRUST ACCOUNTS. (a) All money paid to a property owners' association board by or on behalf of a property owner pursuant to an assessment or fee collected for common purpose expenditures is held in trust. Within two business days after receipt, the board shall deposit the money in a financial institution in one or more trust accounts established for the benefit of the property owners. The board shall maintain its operating expense

No equivalent provision.

No equivalent provision.

No equivalent provision.

accounts separately from trust accounts maintained for capital expenditures and for common purposes.

(b) Money held in trust by a property owners' association board is not property of the board or the board's designee.

(c) A property owners' association board shall segregate funds held for the benefit of unit owners from operating funds held on deposit for use by the board, as follows:

(1) maintain separate records of account for each individual owner who pays funds to the property owners' association pursuant to an assessment or fee collected for common purpose expenditures; and

(2) disburse money paid by or on behalf of an owner only to pay for common purpose expenditures as provided by the dedicatory instruments of the association.

(d) A property owners' association board may not commingle money held in a trust account established for the benefit of owners with operating funds of the board or money of other persons or business entities.

(e) A trust account under this section must at all times have a cash balance equal to if not greater than the sum of the balances of each individual owner's account record.

(f) A property owners' association board shall reconcile a trust account annually under this section. If the board or the board's designee has more than one trust account, each trust account must be reconciled separately.

Sec. 209.0043. BOND REQUIREMENT.

(a) A person may not be a member of a property owners' association board unless the person has obtained and maintains in force a surety bond issued by a surety company authorized to do business in this state as prescribed by this section. A copy of the bond currently in effect must be filed contemporaneously with the secretary of state.

(b) The bond must be in favor of:

(1) any person who is damaged by a violation of this chapter; and

(2) this state for the benefit of any person who is damaged by a violation of this chapter.

(c) For a board member with access to or custody of property owners' association funds, the bond must be in the minimum amount of:

No equivalent provision, but see SECTION 2 above.



- (1) \$50,000, if the association is composed of 14 units or fewer;
- (2) \$100,000, if the association is composed of more than 14 units but not more than 100 units;
- (3) \$250,000, if the association is composed of more than 100 units but not more than 250 units; and
- (4) \$500,000, if the association is composed of more than 250 units.
- (d) For a board member who does not have access to or custody of property owners' association funds, the bond must be in the amount of \$25,000.
- (e) A person who is an agent, employee, or contractor of a property owners' association board shall obtain a bond described by this section for the minimum amounts specified in subsection (c) of this Section, if the person:
  - (1) has access to or custody of property owners' association funds; and
  - (2) is not required by other law to obtain a bond in order to engage in activities described by this subsection.

Sec. 209.0044. INSURANCE REQUIREMENT. A property owners' association board shall obtain and maintain insurance as required by Section 209.0042 during the six months preceding the date the renewal report is filed, that:

- (1) provides for single limits of at least \$250,000 and aggregate limits of at least \$500,000, unless the highest daily balance in the trust account exceeds the aggregate policy limits, in which event the insurance limits would need to correspond to the higher amount;
- (2) insures against the risks of dishonesty, fraud, theft, and other misconduct on the part of the property owners' association or a board member, employee, or agent of the association;
- (3) is issued by an insurance company authorized to engage in business in this state and rated at least "A" or equivalent by a nationally recognized rating organization approved by the commissioner;
- (4) has a deductible of not more than \$5,000; and
- (5) is payable for the benefit of the association, this state, a property owner, or an individual who is a resident of this state, as their interests may appear.

No equivalent provision, but see SECTION 2 above.

Sec. 209.0045. OVERSIGHT BY ATTORNEY GENERAL. (a) The attorney general shall:

No equivalent provision.

(1) monitor the operations of a property owners' association board, as appropriate and within the available resources of the attorney general's office, to ensure compliance with this chapter; and

(2) receive and investigate complaints against a property owners' association board related to the fiduciary responsibilities of the board.

(b) At the request of the attorney general, a property owners' association board shall:

(1) inform the attorney general of the name, business address, and telephone number of the financial institution at which the board maintains a trust account under this section and the account number of the account;

(2) produce evidence of current insurance coverage;

(3) produce evidence of current surety bond coverage.

(c) Failure by the board or its agents to comply with such a request may result in injunctive relief under this enactment.

(d) If a property owners' association board discovers, or has a reasonable suspicion of, embezzlement or other unlawful appropriation of money held in trust, the board immediately shall notify the attorney general by a method approved by the attorney general by rule. Unless the attorney general by rule provides otherwise, the board shall notify the attorney general of remedial action that the board intends to take with regard to the unlawful appropriation or suspected unlawful appropriation not later than the fifth day after the date on which the board notifies the attorney general of the appropriation in question.

(e) After notice and opportunity for a hearing, the attorney general may require, on an ongoing basis, that a property owners' association board, before transferring a trust account from one financial institution to another, inform the attorney general of the name, business address, and telephone number of the institution to which the account will be transferred, and as soon as practicable after the transfer, the account number at the transferee institution.

(f) The attorney general may adopt rules as necessary or appropriate to enforce Sections 209.0042-209.0046.

Sec. 209.0046. INJUNCTIVE OR DECLARATORY RELIEF; PROVIDING PENALTIES. (a) The attorney general may institute an action for injunctive or declaratory relief to restrain a violation of Section 209.0042, 209.0043, 209.0044, or 209.0045.

(b) In addition to instituting an action for injunctive or declaratory relief under Subsection (a), the attorney general may institute an action for civil penalties against a property owners' association and its agents for a violation of Section 209.0042, 209.0043, 209.0044, or 209.0045. A civil penalty assessed under this section may not exceed:

- (1) \$20,000 per violation; and
- (2) if the act or practice that is the subject of the proceeding was calculated to acquire or deprive money or other property from an owner who was 65 years of age or older when the act or practice occurred, an additional amount of not more than \$250,000.

No equivalent provision.

SECTION 5. Section 17, Business and Commerce Code, is amended to read as follows:

Sec. 17.46. DECEPTIVE TRADE PRACTICES UNLAWFUL. (a) False, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful and are subject to action by the consumer protection division under Sections 17.47, 17.58, 17.60, and 17.61 of this code and Chapters 82 and 209, Property Code.

Sec. 17.47. RESTRAINING ORDERS. (a) Whenever the consumer protection division has reason to believe that any person is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by this subchapter or Chapters 82 and 209, Property Code, and that proceedings would be in the public interest, the division may bring an action in the name of the state against the person to restrain by temporary restraining order, temporary injunction, or permanent injunction the use of such method, act, or practice.

No equivalent provision.

SECTION 6. The remedies made available to an association member under this

No equivalent provision.

enactment shall be in addition to and not in lieu of other remedies available under other applicable laws or the constitution of this state or of the United States. The oversight authority granted to the Attorney General under this enactment is not to be construed as an administrative prerequisite to the pursuit by an association member of any other rights and remedies available to an association member either at law or in equity.

SECTION 7. The changes in law made by this Act apply to a unit owners' association or property owners' association regardless of whether the unit owners' association or property owners' association was created before, on, or after the effective date of this Act.

SECTION 8. The provisions of this Act take effect September 1, 2013; provided, however, that the provisions relating to oversight by the office of the attorney general take effect January 1, 2014.

No equivalent provision.

SECTION 3. This Act takes effect September 1, 2013.