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H.B. No. 1824

A BILL TO BE ENTITLED

AN ACT

relating to the operation of master mixed-use property owners' associations.

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

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:

(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

1 records of the association.

2 (b) Except as provided by Subsection (c) or (j), a property  
3 owners' association shall, on written request as provided by this  
4 section, make the books and records of the association open to and  
5 reasonably available for examination by an owner or a person  
6 designated in a written instrument signed by the owner as the  
7 owner's agent, attorney, or certified public accountant. Except as  
8 provided by Subsection (c) or (j), an owner is entitled to obtain  
9 copies of the books and records from the association.

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

16 (d) An owner or the owner's authorized representative  
17 described by Subsection (b) must submit a written request by  
18 certified mail to the mailing address of the property owners'  
19 association or the association's authorized representative, as  
20 reflected on the most current management certificate filed under  
21 Section 215.013, for access to the books and records of the  
22 association. The request must describe, in sufficient detail, the  
23 association's books and records requested by the owner or the  
24 owner's representative and:

25 (1) if an inspection is requested, the association  
26 shall, on or before the 10th business day after the date the  
27 association receives the request, send written notice of dates that

1 the owner may inspect, during normal business hours, the requested  
2 books and records to the extent those books and records are in the  
3 actual physical possession, custody, and control of the  
4 association; or

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

12 (e) If the property owners' association fails to produce the  
13 books or records requested under Subsection (d) on or before the  
14 10th business day after the date the association receives the  
15 request, the association must provide to the requestor written  
16 notice that:

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

21 (2) if the association can produce the information,  
22 notifies the requestor of the date by which the information will be  
23 sent or made available for inspection to the requesting party,  
24 which may not be later than the 15th day after the date notice under  
25 this subsection is given.

26 (f) If an inspection is requested or required, the  
27 inspection shall take place at a mutually agreed on time during

1 normal business hours of the property owners' association, and the  
2 requesting party shall identify the books and records for the  
3 association to copy and forward to the requesting party.

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

7 (h) A property owners' association board must adopt a  
8 records production and copying policy that prescribes the costs the  
9 association will charge for the compilation, production, and  
10 reproduction of information requested under this section. The  
11 prescribed charges may include all reasonable costs of materials,  
12 labor, and overhead. The policy required by this subsection must be  
13 recorded as a dedicatory instrument. If the policy is not recorded,  
14 the association may not charge an owner for the compilation,  
15 production, or reproduction of information requested under this  
16 section. If the policy is recorded, the requesting owner or the  
17 owner's representative is responsible for all costs related to the  
18 compilation, production, and reproduction of the requested  
19 information based on the amounts prescribed by the policy. The  
20 association may require advance payment of the estimated costs of  
21 compilation, production, and reproduction of the requested  
22 information. If the total of the estimated costs differs from the  
23 total of the actual costs, the association shall submit a final  
24 invoice to the owner on or before the 30th business day after the  
25 date the requested copies are delivered. If the actual total cost  
26 is higher than the estimated total cost, and the owner fails to  
27 reimburse the association before the 30th business day after the

1 date the invoice is sent to the owner, the association may add the  
2 amount due to the owner's account as an assessment. If the actual  
3 total cost is less than the estimated total cost, the association  
4 shall issue a refund to the owner not later than the 30th business  
5 day after the date the requested copies are delivered.

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

9 (j) Information may be released in an aggregate or summary  
10 manner that would not identify an individual property owner. Except  
11 as provided by Subsection (k) and to the extent the information is  
12 provided in the meeting minutes, the property owners' association  
13 is not required to release or allow inspection of any books or  
14 records that identify:

15 (1) the dedicatory instrument violation history of an  
16 individual owner;

17 (2) an owner's personal financial information,  
18 including records of payment or nonpayment of amounts due the  
19 association;

20 (3) an owner's contact information, other than the  
21 owner's address;

22 (4) an owner's property files or building plans;

23 (5) books or records described by Subsection (c);

24 (6) any information to which an owner objects to  
25 releasing or has not granted approval for releasing; or

26 (7) information related to an employee of the  
27 association, including personnel files.

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

3           (1) the express written approval of the owner whose  
4 records are the subject of the request for inspection is provided to  
5 the property owners' association; or

6           (2) a court orders the release of the books and records  
7 or orders that the books and records be made available for  
8 inspection.

9           (1) A property owners' association shall adopt and comply  
10 with a document retention policy that includes, at a minimum, the  
11 following requirements:

12           (1) certificates of formation, bylaws, restrictive  
13 covenants, and all amendments to the certificates of formation,  
14 bylaws, and covenants shall be retained permanently;

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

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

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

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

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

25       (m) A member of a property owners' association who is denied  
26 access to or copies of the association books or records to which the  
27 member is entitled under this section may file a petition with the

1 county court at law in which all or part of the property that is  
2 governed by the association is located requesting relief in  
3 accordance with this subsection. If the county court at law finds  
4 that the member is entitled to access to or copies of the records,  
5 the county court at law may grant one or more of the following  
6 remedies:

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

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

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

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

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

25 (1) be sent certified mail, return receipt requested,  
26 or delivered by the United States Postal Service with signature  
27 confirmation service, to the mailing address of the association or

1 the association's authorized representative as reflected on the  
2 most current management certificate filed under Section 215.013;  
3 and

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

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

8 SECTION 4. Chapter 215, Property Code, is amended by adding  
9 Sections 215.016, 215.017, and 215.018 to read as follows:

10 Sec. 215.016. NOTICE REQUIRED BEFORE CERTAIN ENFORCEMENT  
11 ACTIONS. (a) Before a property owners' association may file a suit  
12 against an owner, other than a suit to collect a regular or special  
13 assessment or judicial foreclosure under the association's lien, or  
14 charge an owner for property damage, the association or its agent  
15 must give written notice sent to the owner by certified mail, return  
16 receipt requested, to the property address of the owner.

17 (b) The notice must:

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

21 (2) inform the owner that the owner:

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

27 (B) may request a hearing under Section 215.017



1 on or before the 30th day after the date the owner receives the  
2 notice; and

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

8 Sec. 215.017. HEARING BEFORE BOARD. (a) Except as provided  
9 by Section 215.009(c), if the owner is entitled to an opportunity to  
10 cure a violation, the owner has the right to submit a written  
11 request for a hearing to discuss and verify facts and resolve the  
12 matter at issue before a committee appointed by the board of the  
13 property owners' association or before the board if the board does  
14 not appoint a committee.

15 (b) The association shall hold a hearing under this section  
16 not later than the 30th day after the date the board receives the  
17 owner's request for a hearing and shall notify the owner of the  
18 date, time, and place of the hearing not later than the 10th day  
19 before the date of the hearing. The board or committee or the owner  
20 may request a postponement, and if requested, a postponement shall  
21 be granted for a period of not more than 10 days. Additional  
22 postponements may be granted by agreement of the parties.

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

27 Sec. 215.018. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN

1 ASSESSMENTS. (a) A property owners' association shall adopt  
2 reasonable guidelines to establish an alternative payment schedule  
3 by which an owner may make partial payments to the association for  
4 delinquent regular or special assessments or any other amount owed  
5 to the association without accruing additional monetary penalties.  
6 For purposes of this section, monetary penalties do not include  
7 reasonable costs associated with administering the payment plan or  
8 interest.

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

12 (c) A property owners' association shall file the  
13 association's guidelines under this section in the real property  
14 records of each county in which any portion of the subdivision is  
15 located.

16 SECTION 5. This Act takes effect September 1, 2013.