

By: Harper-Brown, Ratliff

H.B. No. 1824

Substitute the following for H.B. No. 1824:

By: Villalba

C.S.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.