

By: Harper-Brown

H.B. No. 1824

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the operation of master mixed-use property owners'
3 associations.

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

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

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

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

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

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

20 Sec. 215.0135. ASSOCIATION RECORDS. (a) To the extent of
21 any conflict or inconsistency, this section prevails over other
22 provisions of law and the dedicatory instruments of a property
23 owners' association subject to this chapter. This section is the
24 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 but may not exceed costs that would be
13 applicable for an item under 1 T.A.C. Section 70.3. The policy
14 required by this subsection must be recorded as a dedicatory
15 instrument. If the policy is not recorded, the association may not
16 charge an owner for the compilation, production, or reproduction of
17 information requested under this section. If the policy is
18 recorded, the requesting owner or the owner's representative is
19 responsible for all costs related to the compilation, production,
20 and reproduction of the requested information based on the amounts
21 prescribed by the policy. The association may require advance
22 payment of the estimated costs of compilation, production, and
23 reproduction of the requested information. If the total of the
24 estimated costs differs from the total of the actual costs, the
25 association shall submit a final invoice to the owner on or before
26 the 30th business day after the date the requested copies are
27 delivered. If the actual total cost is higher than the estimated

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

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

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

17 (1) the dedicatory instrument violation history of an
18 individual owner;

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

22 (3) an owner's contact information, other than the
23 owner's address;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (m) A member of a property owners' association who is denied

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

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

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

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

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

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

27 (1) be sent certified mail, return receipt requested,

1 or delivered by the United States Postal Service with signature
2 confirmation service, to the mailing address of the association or
3 the association's authorized representative as reflected on the
4 most current management certificate filed under Section 215.013;
5 and

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

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

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

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

19 (b) The notice must:

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

23 (2) inform the owner that the owner:

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

1 preceding six months;

2 (B) may request a hearing under Section 215.017
3 on or before the 30th day after the date the owner receives the
4 notice; and

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

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

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

25 (c) The notice and hearing provisions of this section and
26 Section 215.016 do not apply if the association files a suit seeking
27 a temporary restraining order or temporary injunctive relief or a

1 suit that includes foreclosure as a cause of action.

2 Sec. 215.018. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN
3 ASSESSMENTS. (a) A property owners' association shall adopt
4 reasonable guidelines to establish an alternative payment schedule
5 by which an owner may make partial payments to the association for
6 delinquent regular or special assessments or any other amount owed
7 to the association without accruing additional monetary penalties.
8 For purposes of this section, monetary penalties do not include
9 reasonable costs associated with administering the payment plan or
10 interest.

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

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

18 SECTION 5. The following provisions are repealed:

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

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

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

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

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

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