

By: Anchia

H.B. No. 2075

A BILL TO BE ENTITLED

AN ACT

relating to the operation of certain condominium unit owners' associations.

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

SECTION 1. Section 82.002(c), Property Code, is amended to read as follows:

(c) This section and the following sections apply to a condominium in this state for which the declaration was recorded before January 1, 1994: Sections 82.005, 82.006, 82.007, 82.053, 82.054, 82.102(a)(1)-(7), (a)(12)-(21), (f), and (g) [~~and (12)-(22)~~], 82.108, 82.111, 82.113, 82.114, 82.116, 82.118, 82.157, and 82.161. The definitions prescribed by Section 82.003 apply to a condominium in this state for which the declaration was recorded before January 1, 1994, to the extent the definitions do not conflict with the declaration. The sections listed in this subsection apply only with respect to events and circumstances occurring on or after January 1, 1994, and do not invalidate existing provisions of the declaration, bylaws, or plats or plans of a condominium for which the declaration was recorded before January 1, 1994.

SECTION 2. Section 82.003(a), Property Code, is amended by amending Subdivision (11) and adding Subdivision (11-a) to read as follows:

(11) "Declaration" means an [~~a recorded~~] instrument,

1 however denominated, that creates a condominium, and any [~~recorded~~]
2 amendment to that instrument.

3 (11-a) "Dedictory instrument" means each document
4 governing the establishment, maintenance, or operation of a
5 condominium regime. The term includes a declaration or similar
6 instrument subjecting real property to:

7 (A) restrictive covenants, bylaws, or similar
8 instruments governing the administration or operation of a unit
9 owners' association;

10 (B) properly adopted rules and regulations of the
11 unit owners' association; or

12 (C) all lawful amendments to the covenants,
13 bylaws, instruments, rules, or regulations.

14 SECTION 3. Section 82.102, Property Code, is amended by
15 amending Subsection (a) and adding Subsections (f) and (g) to read
16 as follows:

17 (a) Unless otherwise provided by the declaration, the
18 association, acting through its board, may:

19 (1) adopt and amend bylaws;

20 (2) adopt and amend budgets for revenues,
21 expenditures, and reserves, and collect assessments for common
22 expenses from unit owners;

23 (3) hire and terminate managing agents and other
24 employees, agents, and independent contractors;

25 (4) institute, defend, intervene in, settle, or
26 compromise litigation or administrative proceedings in its own name
27 on behalf of itself or two or more unit owners on matters affecting

1 the condominium;

2 (5) make contracts and incur liabilities relating to
3 the operation of the condominium;

4 (6) regulate the use, maintenance, repair,
5 replacement, modification, and appearance of the condominium;

6 (7) adopt and amend rules regulating the use,
7 occupancy, leasing or sale, maintenance, repair, modification, and
8 appearance of units and common elements, to the extent the
9 regulated actions affect common elements or other units;

10 (8) cause additional improvements to be made as a part
11 of the common elements;

12 (9) acquire, hold, encumber, and convey in its own
13 name any right, title, or interest to real or personal property,
14 except common elements of the condominium;

15 (10) grant easements, leases, licenses, and
16 concessions through or over the common elements;

17 (11) impose and receive payments, fees, or charges for
18 the use, rental, or operation of the common elements and for
19 services provided to unit owners;

20 (12) impose interest and late charges for late
21 payments of assessments, returned check charges, and, if notice and
22 an opportunity to be heard are given in accordance with Subsection
23 (d), reasonable fines for violations of the declaration, bylaws,
24 and rules of the association;

25 (13) adopt and amend rules regulating the collection
26 of delinquent assessments and the application of payments;

27 (14) adopt and amend rules regulating the termination

1 of utility service to a unit, the owner of which is delinquent in
2 the payment of an assessment that is used, in whole or in part, to
3 pay the cost of that utility;

4 (15) impose reasonable charges for preparing,
5 recording, or copying declaration amendments, resale certificates,
6 or statements of unpaid assessments;

7 (16) enter a unit for bona fide emergency purposes
8 when conditions present an imminent risk of harm or damage to the
9 common elements, another unit, or the occupants;

10 (17) ~~[assign its right to future income, including the~~
11 ~~right to receive common expense assessments, but only to the extent~~
12 ~~the declaration so provides,~~

13 ~~[(18)]~~ suspend the voting privileges of or the use of
14 certain general common elements by an owner delinquent for more
15 than 30 days in the payment of assessments;

16 (18) ~~[(19)]~~ purchase insurance and fidelity bonds it
17 considers appropriate or necessary;

18 (19) ~~[(20)]~~ exercise any other powers conferred by the
19 declaration or bylaws;

20 (20) ~~[(21)]~~ exercise any other powers that may be
21 exercised in this state by a corporation of the same type as the
22 association; and

23 (21) ~~[(22)]~~ exercise any other powers necessary and
24 proper for the government and operation of the association.

25 (f) Except as provided by Subsection (g), the association by
26 resolution of the board of directors may:

27 (1) borrow money; and

1 (2) assign as collateral for the loan authorized by
2 the resolution:

3 (A) the association's right to future income,
4 including the right to receive assessments; and

5 (B) the association's lien rights.

6 (g) If a dedicatory instrument requires a vote of members of
7 the association to borrow money or assign the association's right
8 to future income or the association's lien rights, the loan or
9 assignment must be approved as provided by the dedicatory
10 instrument. The board may determine whether a vote for that purpose
11 may be cast electronically, by absentee ballot, in person or by
12 proxy at a meeting called for that purpose, or by written consent.
13 If a lower approval threshold is not provided by the dedicatory
14 instrument, approval requires the consent of owners holding 67
15 percent of all voting interests.

16 SECTION 4. Section 82.111, Property Code, is amended by
17 amending Subsections (c), (i), and (j) and adding Subsections (k),
18 (l), and (m) to read as follows:

19 (c) If the insurance described by Subsections (a) and (b) is
20 not reasonably available, the association shall cause notice of
21 that fact to be delivered or mailed to all unit owners and
22 lienholders. The declaration may require the association to carry
23 any other insurance, and the association in any event may carry any
24 other insurance the board considers appropriate to protect the
25 condominium, the association, or the unit owners. Insurance
26 policies maintained under Subsection (a) may provide for
27 commercially reasonable deductibles as the board determines

1 appropriate or necessary. This section does not affect the right of
2 a holder of a mortgage on a unit to require a unit owner to acquire
3 insurance in addition to that provided by the association.

4 (i) Except as provided by this section, any [~~Any~~] portion of
5 the condominium for which insurance is required that is damaged or
6 destroyed shall be promptly repaired or replaced by the association
7 unless the condominium is terminated, repair or replacement would
8 be illegal under any state or local health or safety statute or
9 ordinance, or at least 80 percent of the unit owners[~~, including~~
10 ~~each owner of a unit or assigned limited common element that will~~
11 ~~not be rebuilt or repaired,~~] vote to not rebuild. Each owner of a
12 unit may vote, regardless of whether the owner's unit or limited
13 common element has been damaged or destroyed. A vote may be cast
14 electronically or by written ballot if a meeting is not held for
15 that purpose or in person or by proxy at a meeting called for that
16 purpose. A vote to not rebuild does not increase an insurer's
17 liability to loss payment obligation under a policy, and the vote
18 does not cause a presumption of total loss. Except as provided by
19 this section, the [~~The~~] cost of repair or replacement in excess of
20 the insurance proceeds [~~and reserves~~] is a common expense, and the
21 board may levy an assessment to pay the expenses in accordance with
22 each owner's common expense liability. If the entire condominium is
23 not repaired or replaced, any insurance proceeds attributable to
24 the damaged common elements shall be used to restore the damaged
25 area to a condition compatible with the remainder of the
26 condominium, the insurance proceeds attributable to units and
27 limited common elements that are not rebuilt shall be distributed

1 to the owners of those units and the owners of the units to which
2 those limited common elements were assigned, or to their
3 mortgagees, as their interests may appear, and the remainder of the
4 proceeds shall be distributed to all the unit owners in accordance
5 with each owner's undivided interest in the common elements unless
6 otherwise provided in the declaration [~~as their interests may~~
7 ~~appear~~]. If the unit owners vote to not rebuild any unit, that
8 unit's allocated interests shall be automatically reallocated on
9 the vote as if the unit had been condemned, and the association
10 shall prepare, execute, and record an amendment to the declaration
11 reflecting the reallocation. Section 82.068 governs the
12 distribution of insurance proceeds if the condominium is
13 terminated.

14 (j) If the cost to repair damage to a unit or common element
15 covered by the association's insurance is less than the amount of
16 the applicable insurance deductible, the party who would be
17 responsible for the repair in the absence of insurance shall pay the
18 cost for the repair of the unit or common element.

19 (k) If the association's insurance provides coverage for
20 the loss and the cost to repair the damage to a unit or common
21 element is more than the amount of the applicable insurance
22 deductible, the dedicatory instruments determine payment for the
23 cost of the association's deductible and costs incurred before
24 insurance proceeds are available. If the dedicatory instruments
25 are silent, the board of directors of the association by resolution
26 shall determine the payment of those costs, or if the board does not
27 approve a resolution, the costs are a common expense. A resolution

1 under this subsection is considered a dedicatory instrument and
2 must be recorded in each location in which the declaration is
3 recorded.

4 (1) If damage to a unit or the common elements is due wholly
5 or partly to an act or omission of any unit owner or a guest or
6 invitee of the unit owner, the association may assess the
7 deductible expense and any other expense in excess of insurance
8 proceeds against the owner and the owner's unit.

9 (m) The provisions of this section may be varied or waived
10 if all the units in a condominium are restricted to nonresidential
11 use.

12 SECTION 5. Section 82.113(g), Property Code, is amended to
13 read as follows:

14 (g) The owner of a unit [~~used for residential purposes and~~
15 ~~purchased [by an association]~~ at a foreclosure sale of the
16 association's lien for assessments may redeem the unit not later
17 than the 90th day after the date of the foreclosure sale. If the
18 association is the purchaser [To redeem the unit], the owner must
19 pay to the association to redeem the unit all amounts due the
20 association at the time of the foreclosure sale, interest from the
21 date of foreclosure sale to the date of redemption at the rate
22 provided by the declaration for delinquent assessments, reasonable
23 attorney's fees and costs incurred by the association in
24 foreclosing the lien, any assessment levied against the unit by the
25 association after the foreclosure sale, and any reasonable cost
26 incurred by the association as owner of the unit, including costs of
27 maintenance and leasing. If a party other than the association is

1 the purchaser, the redeeming owner must pay to the purchaser of the
2 unit at the foreclosure sale an amount equal to the amount bid at
3 the sale, interest on the bid amount computed from the date of the
4 foreclosure sale to the date of redemption at the rate of six
5 percent, any assessment paid by the purchaser after the date of
6 foreclosure, and any reasonable costs incurred by the purchaser as
7 the owner of the unit, including costs of maintenance and leasing.
8 The redeeming owner must also pay to the association all
9 assessments that are due as of the date of the redemption and
10 reasonable attorney's fees and costs incurred by the association in
11 foreclosing the lien. On redemption, the purchaser of the unit at
12 the foreclosure sale [~~association~~] shall execute a deed with no
13 warranty to the redeeming unit owner. The exercise of the right of
14 redemption is not effective against a subsequent purchaser or
15 lender for value without notice of the redemption after the
16 redemption period expires unless the redeeming unit owner records
17 the deed from the purchaser of the unit at the foreclosure sale
18 [~~association~~] or an affidavit stating that the owner has exercised
19 the right of redemption. A unit that has been redeemed remains
20 subject to all liens and encumbrances on the unit before
21 foreclosure. All rents and other income collected from the unit by
22 the purchaser of the unit at the foreclosure sale [~~association~~]
23 from the date of foreclosure sale to the date of redemption belong
24 to the purchaser of the unit at the foreclosure sale [~~association~~],
25 but the rents and income shall be credited against the redemption
26 amount. The purchaser of [~~An association purchasing~~] a unit at a
27 sale foreclosing an association's assessment [~~its~~] lien may not

1 transfer ownership of the unit during the redemption period to a
2 person other than a redeeming owner.

3 SECTION 6. Section 82.116, Property Code, is amended by
4 adding Subsections (a-1) and (a-2) to read as follows:

5 (a-1) The county clerk of each county in which a management
6 certificate is filed as required by this section shall record the
7 management certificate in the real property records of the county
8 and index the document as a "Condominium Association Management
9 Certificate."

10 (a-2) To ensure that all management certificates are
11 recorded and indexed as provided by Subsection (a-1), each
12 condominium unit owners' association that recorded a management
13 certificate under this section before September 1, 2013, shall
14 record a new management certificate on or before January 1, 2014.
15 This subsection expires January 1, 2015.

16 SECTION 7. (a) The change in law made by this Act to Section
17 82.111, Property Code, applies only to payment of costs incurred on
18 or after the effective date of this Act. Payment of costs incurred
19 before the effective date of this Act is governed by the law in
20 effect immediately before the effective date of this Act, and that
21 law is continued in effect for that purpose.

22 (b) Section 82.113(g), Property Code, as amended by this
23 Act, applies only to a condominium unit sold at a foreclosure sale
24 on or after the effective date of this Act. A unit sold at a
25 foreclosure sale before the effective date of this Act is subject to
26 the law in effect immediately before the effective date of this Act,
27 and that law is continued in effect for that purpose.

1 SECTION 8. This Act takes effect September 1, 2013.