

1-1 By: Anchia (Senate Sponsor - West) H.B. No. 2075
1-2 (In the Senate - Received from the House May 10, 2013;
1-3 May 10, 2013, read first time and referred to Committee on
1-4 Intergovernmental Relations; May 17, 2013, reported favorably by
1-5 the following vote: Yeas 3, Nays 0; May 17, 2013, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9			X	
1-10	X			
1-11			X	
1-12	X			

1-13 A BILL TO BE ENTITLED
1-14 AN ACT

1-15 relating to the operation of certain condominium unit owners'
1-16 associations.

1-17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-18 SECTION 1. Section 82.002(c), Property Code, is amended to
1-19 read as follows:

1-20 (c) This section and the following sections apply to a
1-21 condominium in this state for which the declaration was recorded
1-22 before January 1, 1994: Sections 82.005, 82.006, 82.007, 82.053,
1-23 82.054, 82.102(a)(1)-(7), (a)(12)-(21), (f), and (g) [and
1-24 (12)-(22)], 82.108, 82.111, 82.113, 82.114, 82.116, 82.118,
1-25 82.157, and 82.161. The definitions prescribed by Section 82.003
1-26 apply to a condominium in this state for which the declaration was
1-27 recorded before January 1, 1994, to the extent the definitions do
1-28 not conflict with the declaration. The sections listed in this
1-29 subsection apply only with respect to events and circumstances
1-30 occurring on or after January 1, 1994, and do not invalidate
1-31 existing provisions of the declaration, bylaws, or plats or plans
1-32 of a condominium for which the declaration was recorded before
1-33 January 1, 1994.

1-34 SECTION 2. Section 82.003(a), Property Code, is amended by
1-35 amending Subdivision (11) and adding Subdivision (11-a) to read as
1-36 follows:

1-37 (11) "Declaration" means an [a recorded] instrument,
1-38 however denominated, that creates a condominium, and any [recorded]
1-39 amendment to that instrument.

1-40 (11-a) "Dedictory instrument" means each document
1-41 governing the establishment, maintenance, or operation of a
1-42 condominium regime. The term includes a declaration or similar
1-43 instrument subjecting real property to:

1-44 (A) restrictive covenants, bylaws, or similar
1-45 instruments governing the administration or operation of a unit
1-46 owners' association;

1-47 (B) properly adopted rules and regulations of the
1-48 unit owners' association; or

1-49 (C) all lawful amendments to the covenants,
1-50 bylaws, instruments, rules, or regulations.

1-51 SECTION 3. Section 82.102, Property Code, is amended by
1-52 amending Subsection (a) and adding Subsections (f) and (g) to read
1-53 as follows:

1-54 (a) Unless otherwise provided by the declaration, the
1-55 association, acting through its board, may:

1-56 (1) adopt and amend bylaws;

1-57 (2) adopt and amend budgets for revenues,
1-58 expenditures, and reserves, and collect assessments for common
1-59 expenses from unit owners;

1-60 (3) hire and terminate managing agents and other
1-61 employees, agents, and independent contractors;

2-1 (4) institute, defend, intervene in, settle, or
 2-2 compromise litigation or administrative proceedings in its own name
 2-3 on behalf of itself or two or more unit owners on matters affecting
 2-4 the condominium;
 2-5 (5) make contracts and incur liabilities relating to
 2-6 the operation of the condominium;
 2-7 (6) regulate the use, maintenance, repair,
 2-8 replacement, modification, and appearance of the condominium;
 2-9 (7) adopt and amend rules regulating the use,
 2-10 occupancy, leasing or sale, maintenance, repair, modification, and
 2-11 appearance of units and common elements, to the extent the
 2-12 regulated actions affect common elements or other units;
 2-13 (8) cause additional improvements to be made as a part
 2-14 of the common elements;
 2-15 (9) acquire, hold, encumber, and convey in its own
 2-16 name any right, title, or interest to real or personal property,
 2-17 except common elements of the condominium;
 2-18 (10) grant easements, leases, licenses, and
 2-19 concessions through or over the common elements;
 2-20 (11) impose and receive payments, fees, or charges for
 2-21 the use, rental, or operation of the common elements and for
 2-22 services provided to unit owners;
 2-23 (12) impose interest and late charges for late
 2-24 payments of assessments, returned check charges, and, if notice and
 2-25 an opportunity to be heard are given in accordance with Subsection
 2-26 (d), reasonable fines for violations of the declaration, bylaws,
 2-27 and rules of the association;
 2-28 (13) adopt and amend rules regulating the collection
 2-29 of delinquent assessments and the application of payments;
 2-30 (14) adopt and amend rules regulating the termination
 2-31 of utility service to a unit, the owner of which is delinquent in
 2-32 the payment of an assessment that is used, in whole or in part, to
 2-33 pay the cost of that utility;
 2-34 (15) impose reasonable charges for preparing,
 2-35 recording, or copying declaration amendments, resale certificates,
 2-36 or statements of unpaid assessments;
 2-37 (16) enter a unit for bona fide emergency purposes
 2-38 when conditions present an imminent risk of harm or damage to the
 2-39 common elements, another unit, or the occupants;
 2-40 (17) ~~[assign its right to future income, including the~~
 2-41 ~~right to receive common expense assessments, but only to the extent~~
 2-42 ~~the declaration so provides;~~
 2-43 ~~[(18)]~~ suspend the voting privileges of or the use of
 2-44 certain general common elements by an owner delinquent for more
 2-45 than 30 days in the payment of assessments;
 2-46 (18) [(19)] purchase insurance and fidelity bonds it
 2-47 considers appropriate or necessary;
 2-48 (19) [(20)] exercise any other powers conferred by the
 2-49 declaration or bylaws;
 2-50 (20) [(21)] exercise any other powers that may be
 2-51 exercised in this state by a corporation of the same type as the
 2-52 association; and
 2-53 (21) [(22)] exercise any other powers necessary and
 2-54 proper for the government and operation of the association.
 2-55 (f) Except as provided by Subsection (g), the association by
 2-56 resolution of the board of directors may:
 2-57 (1) borrow money; and
 2-58 (2) assign as collateral for the loan authorized by
 2-59 the resolution:
 2-60 (A) the association's right to future income,
 2-61 including the right to receive assessments; and
 2-62 (B) the association's lien rights.
 2-63 (g) If a dedicatory instrument requires a vote of members of
 2-64 the association to borrow money or assign the association's right
 2-65 to future income or the association's lien rights, the loan or
 2-66 assignment must be approved as provided by the dedicatory
 2-67 instrument. The board may determine whether a vote for that purpose
 2-68 may be cast electronically, by absentee ballot, in person or by
 2-69 proxy at a meeting called for that purpose, or by written consent.

3-1 If a lower approval threshold is not provided by the dedicatory
 3-2 instrument, approval requires the consent of owners holding 67
 3-3 percent of all voting interests.

3-4 SECTION 4. Section 82.111, Property Code, is amended by
 3-5 amending Subsections (c), (i), and (j) and adding Subsections (k),
 3-6 (l), and (m) to read as follows:

3-7 (c) If the insurance described by Subsections (a) and (b) is
 3-8 not reasonably available, the association shall cause notice of
 3-9 that fact to be delivered or mailed to all unit owners and
 3-10 lienholders. The declaration may require the association to carry
 3-11 any other insurance, and the association in any event may carry any
 3-12 other insurance the board considers appropriate to protect the
 3-13 condominium, the association, or the unit owners. Insurance
 3-14 policies maintained under Subsection (a) may provide for
 3-15 commercially reasonable deductibles as the board determines
 3-16 appropriate or necessary. This section does not affect the right of
 3-17 a holder of a mortgage on a unit to require a unit owner to acquire
 3-18 insurance in addition to that provided by the association.

3-19 (i) Except as provided by this section, any [Any] portion of
 3-20 the condominium for which insurance is required that is damaged or
 3-21 destroyed shall be promptly repaired or replaced by the association
 3-22 unless the condominium is terminated, repair or replacement would
 3-23 be illegal under any state or local health or safety statute or
 3-24 ordinance, or at least 80 percent of the unit owners[, including
 3-25 each owner of a unit or assigned limited common element that will
 3-26 not be rebuilt or repaired,] vote to not rebuild. Each owner of a
 3-27 unit may vote, regardless of whether the owner's unit or limited
 3-28 common element has been damaged or destroyed. A vote may be cast
 3-29 electronically or by written ballot if a meeting is not held for
 3-30 that purpose or in person or by proxy at a meeting called for that
 3-31 purpose. A vote to not rebuild does not increase an insurer's
 3-32 liability to loss payment obligation under a policy, and the vote
 3-33 does not cause a presumption of total loss. Except as provided by
 3-34 this section, the [The] cost of repair or replacement in excess of
 3-35 the insurance proceeds [and reserves] is a common expense, and the
 3-36 board may levy an assessment to pay the expenses in accordance with
 3-37 each owner's common expense liability. If the entire condominium is
 3-38 not repaired or replaced, any insurance proceeds attributable to
 3-39 the damaged common elements shall be used to restore the damaged
 3-40 area to a condition compatible with the remainder of the
 3-41 condominium, the insurance proceeds attributable to units and
 3-42 limited common elements that are not rebuilt shall be distributed
 3-43 to the owners of those units and the owners of the units to which
 3-44 those limited common elements were assigned, or to their
 3-45 mortgagees, as their interests may appear, and the remainder of the
 3-46 proceeds shall be distributed to all the unit owners in accordance
 3-47 with each owner's undivided interest in the common elements unless
 3-48 otherwise provided in the declaration [as their interests may
 3-49 appear]. If the unit owners vote to not rebuild any unit, that
 3-50 unit's allocated interests shall be automatically reallocated on
 3-51 the vote as if the unit had been condemned, and the association
 3-52 shall prepare, execute, and record an amendment to the declaration
 3-53 reflecting the reallocation. Section 82.068 governs the
 3-54 distribution of insurance proceeds if the condominium is
 3-55 terminated.

3-56 (j) If the cost to repair damage to a unit or common element
 3-57 covered by the association's insurance is less than the amount of
 3-58 the applicable insurance deductible, the party who would be
 3-59 responsible for the repair in the absence of insurance shall pay the
 3-60 cost for the repair of the unit or common element.

3-61 (k) If the association's insurance provides coverage for
 3-62 the loss and the cost to repair the damage to a unit or common
 3-63 element is more than the amount of the applicable insurance
 3-64 deductible, the dedicatory instruments determine payment for the
 3-65 cost of the association's deductible and costs incurred before
 3-66 insurance proceeds are available. If the dedicatory instruments
 3-67 are silent, the board of directors of the association by resolution
 3-68 shall determine the payment of those costs, or if the board does not
 3-69 approve a resolution, the costs are a common expense. A resolution

4-1 under this subsection is considered a dedicatory instrument and
 4-2 must be recorded in each location in which the declaration is
 4-3 recorded.

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

4-9 (m) The provisions of this section may be varied or waived
 4-10 if all the units in a condominium are restricted to nonresidential
 4-11 use.

4-12 SECTION 5. Section 82.113(g), Property Code, is amended to
 4-13 read as follows:

4-14 (g) The owner of a unit [~~used for residential purposes and~~
 4-15 purchased [~~by an association~~] at a foreclosure sale of the
 4-16 association's lien for assessments may redeem the unit not later
 4-17 than the 90th day after the date of the foreclosure sale. If the
 4-18 association is the purchaser [~~To redeem the unit~~], the owner must
 4-19 pay to the association to redeem the unit all amounts due the
 4-20 association at the time of the foreclosure sale, interest from the
 4-21 date of foreclosure sale to the date of redemption at the rate
 4-22 provided by the declaration for delinquent assessments, reasonable
 4-23 attorney's fees and costs incurred by the association in
 4-24 foreclosing the lien, any assessment levied against the unit by the
 4-25 association after the foreclosure sale, and any reasonable cost
 4-26 incurred by the association as owner of the unit, including costs of
 4-27 maintenance and leasing. If a party other than the association is
 4-28 the purchaser, the redeeming owner must pay to the purchaser of the
 4-29 unit at the foreclosure sale an amount equal to the amount bid at
 4-30 the sale, interest on the bid amount computed from the date of the
 4-31 foreclosure sale to the date of redemption at the rate of six
 4-32 percent, any assessment paid by the purchaser after the date of
 4-33 foreclosure, and any reasonable costs incurred by the purchaser as
 4-34 the owner of the unit, including costs of maintenance and leasing.
 4-35 The redeeming owner must also pay to the association all
 4-36 assessments that are due as of the date of the redemption and
 4-37 reasonable attorney's fees and costs incurred by the association in
 4-38 foreclosing the lien. On redemption, the purchaser of the unit at
 4-39 the foreclosure sale [~~association~~] shall execute a deed with no
 4-40 warranty to the redeeming unit owner. The exercise of the right of
 4-41 redemption is not effective against a subsequent purchaser or
 4-42 lender for value without notice of the redemption after the
 4-43 redemption period expires unless the redeeming unit owner records
 4-44 the deed from the purchaser of the unit at the foreclosure sale
 4-45 [~~association~~] or an affidavit stating that the owner has exercised
 4-46 the right of redemption. A unit that has been redeemed remains
 4-47 subject to all liens and encumbrances on the unit before
 4-48 foreclosure. All rents and other income collected from the unit by
 4-49 the purchaser of the unit at the foreclosure sale [~~association~~]
 4-50 from the date of foreclosure sale to the date of redemption belong
 4-51 to the purchaser of the unit at the foreclosure sale [~~association~~],
 4-52 but the rents and income shall be credited against the redemption
 4-53 amount. The purchaser of [~~An association purchasing~~] a unit at a
 4-54 sale foreclosing an association's assessment [~~its~~] lien may not
 4-55 transfer ownership of the unit during the redemption period to a
 4-56 person other than a redeeming owner.

4-57 SECTION 6. Section 82.116, Property Code, is amended by
 4-58 adding Subsections (a-1) and (a-2) to read as follows:

4-59 (a-1) The county clerk of each county in which a management
 4-60 certificate is filed as required by this section shall record the
 4-61 management certificate in the real property records of the county
 4-62 and index the document as a "Condominium Association Management
 4-63 Certificate."

4-64 (a-2) To ensure that all management certificates are
 4-65 recorded and indexed as provided by Subsection (a-1), each
 4-66 condominium unit owners' association that recorded a management
 4-67 certificate under this section before September 1, 2013, shall
 4-68 record a new management certificate on or before January 1, 2014.
 4-69 This subsection expires January 1, 2015.

5-1 SECTION 7. (a) The change in law made by this Act to Section
5-2 82.111, Property Code, applies only to payment of costs incurred on
5-3 or after the effective date of this Act. Payment of costs incurred
5-4 before the effective date of this Act is governed by the law in
5-5 effect immediately before the effective date of this Act, and that
5-6 law is continued in effect for that purpose.

5-7 (b) Section 82.113(g), Property Code, as amended by this
5-8 Act, applies only to a condominium unit sold at a foreclosure sale
5-9 on or after the effective date of this Act. A unit sold at a
5-10 foreclosure sale before the effective date of this Act is subject to
5-11 the law in effect immediately before the effective date of this Act,
5-12 and that law is continued in effect for that purpose.

5-13 SECTION 8. This Act takes effect September 1, 2013.

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