

By: McClendon

H.B. No. 3803

A BILL TO BE ENTITLED

AN ACT

relating to the municipal and county regulation of and the oversight by the attorney general of property owners' associations and unit owners' associations; providing penalties.

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

SECTION 1. Subtitle A, Title 7, Local Government Code, is amended by adding Chapter 230 to read as follows:

CHAPTER 230. MUNICIPAL REGULATION OF PROPERTY OWNERS' ASSOCIATIONS
AND UNIT OWNERS' ASSOCIATIONS

Sec. 230.001. DEFINITIONS. In this chapter:

(1) "Association" means a property owners' association or unit owners' association.

(2) "Property owners' association" has the meaning assigned by Section 202.001, Property Code.

(3) "Unit owners' association" means an association organized under Section 82.101, Property Code.

Sec. 230.002. REGULATORY AUTHORITY. (a) Except as provided by this chapter, and notwithstanding any other law, a municipality may regulate the conduct of an association that manages property located wholly or partly in the municipality or the municipality's extraterritorial jurisdiction, with respect to matters of municipal concern, including matters relating to land use, health and safety, sanitation, infrastructure, and law enforcement.

(b) A municipality may require an association to which this

1 chapter applies to register with the municipality in the form and
2 manner determined by the municipality by ordinance.

3 SECTION 2. Subtitle B, Title 7, Local Government Code, is
4 amended by adding Chapter 237 to read as follows:

5 CHAPTER 237. COUNTY REGULATION OF PROPERTY OWNERS' ASSOCIATIONS AND
6 UNIT OWNERS' ASSOCIATIONS

7 Sec. 237.001. DEFINITIONS. In this chapter:

8 (1) "Association" means a property owners' association
9 or unit owners' association.

10 (2) "Property owners' association" has the meaning
11 assigned by Section 202.001, Property Code.

12 (3) "Unit owners' association" means an association
13 organized under Section 82.101, Property Code.

14 Sec. 237.002. REGULATORY AUTHORITY. (a) Except as provided
15 by this chapter, and notwithstanding any other law, a county may
16 regulate the conduct of an association that manages property wholly
17 located in the unincorporated areas of the county with respect to
18 matters of county concern, including matters relating to land use,
19 health and safety, sanitation, infrastructure, and law
20 enforcement.

21 (b) A county may require an association to which this
22 chapter applies to register with the county in the form and manner
23 determined by the county.

24 SECTION 3. Subchapter C, Chapter 82, Property Code, is
25 amended by adding Sections 82.1031, 82.1032, 82.1033, 82.1034, and
26 82.1035 to read as follows:

27 Sec. 82.1031. TRUST ACCOUNTS. (a) All money paid to a unit

1 owners' association board by or on behalf of a unit owner pursuant
2 to an assessment or fee collected for common purpose expenditures
3 is held in trust. Within two business days after receipt, the board
4 shall deposit the money in a financial institution in one or more
5 trust accounts established for the benefit of the unit owners. The
6 board shall maintain its operating expense accounts separately from
7 trust accounts maintained for capital expenditures and other common
8 purposes.

9 (b) Money held in trust by a unit owners' association board
10 is not property of the board or the board's designee.

11 (c) A unit owners' association board shall segregate funds
12 held for the benefit of unit owners from operating funds held on
13 deposit for use by the board, as follows:

14 (1) maintain separate records of account for each unit
15 owner who pays funds to the unit owners' association pursuant to an
16 assessment or common purpose expenditure; and

17 (2) disburse money paid by or on behalf of a unit owner
18 only to pay for assessments or fees collected for common purpose
19 expenditures as provided by the declaration, articles of
20 incorporation, bylaws, or rules of the association.

21 (d) A unit owners' association board may not commingle money
22 in a trust account established for the benefit of unit owners with
23 operating funds of the board or money of other persons or business
24 entities.

25 (e) A trust account under this section must at all times
26 have a cash balance equal to if not greater than the sum of the
27 balances of each individual unit owner's account record.

1 (f) A unit owners' association board shall reconcile a trust
2 account annually under this section. If the board or the board's
3 designee has more than one trust account, each trust account must be
4 reconciled separately.

5 Sec. 82.1032. BOND REQUIREMENT. (a) A person may not be a
6 member of a unit owners' association board unless the person has
7 obtained and maintains in force a surety bond issued by a surety
8 company authorized to do business in this state as prescribed by
9 this section. A copy of the bond currently in effect must be filed
10 contemporaneously with the secretary of state.

11 (b) The bond must be in favor of:

12 (1) any person who is damaged by a violation of this
13 chapter; and

14 (2) this state for the benefit of any person who is
15 damaged by a violation of this chapter.

16 (c) For a board member with access to or custody of unit
17 owners' association funds, the bond must be in the minimum amount
18 of:

19 (1) \$50,000, if the association is composed of 14
20 units or fewer;

21 (2) \$100,000, if the association is composed of more
22 than 14 units but not more than 100 units;

23 (3) \$250,000, if the association is composed of more
24 than 100 units but not more than 250 units; and

25 (4) \$500,000, if the association is composed of more
26 than 250 units.

27 (d) For a board member who does not have access to or custody

1 of unit owners' association funds, the bond must be in the minimum
2 amount of \$25,000.

3 (e) A person who is an agent, employee, or contractor of a
4 unit owners' association board shall obtain a bond described by
5 this section for the minimum amounts specified in subsection (c) of
6 this Section, if the person:

7 (1) has access to or custody of unit owners'
8 association funds; and

9 (2) is not required by other law to obtain a bond in
10 order to engage in activities described by this subsection.

11 Sec. 82.1033. INSURANCE REQUIREMENT. A unit owners'
12 association board shall obtain and maintain insurance as required
13 by Section 82.1031 during the six months preceding the date the
14 renewal report is filed that:

15 (1) provides for single limits of at least \$250,000
16 and aggregate limits of at least \$500,000, unless the highest daily
17 balance in the trust account exceeds the aggregate policy limits,
18 in which event the insurance limits would need to correspond to the
19 higher amount;

20 (2) insures against the risks of dishonesty, fraud,
21 theft, and other misconduct on the part of the unit owners'
22 association or a board member, employee, or agent of the
23 association;

24 (3) is issued by an insurance company authorized to
25 engage in business in this state and rated at least "A" or
26 equivalent by a nationally recognized rating organization approved
27 by the commissioner;

1 (4) has a deductible of not more than \$5,000; and

2 (5) is payable for the benefit of the association,
3 this state, a unit owner, or an individual who is a resident of this
4 state, as their interests may appear.

5 Sec. 82.1034. OVERSIGHT BY ATTORNEY GENERAL. (a) The
6 attorney general shall:

7 (1) monitor the operations of a unit owners'
8 association board, as appropriate and within the available
9 resources of the attorney general's office, to ensure compliance
10 with this subchapter; and

11 (2) receive and investigate complaints against a unit
12 owners' association board related to the fiduciary
13 responsibilities of the board.

14 (b) At the request of the attorney general, a property
15 owners' association board shall:

16 (1) inform the attorney general of the name, business
17 address, and telephone number of the financial institution at which
18 the board maintains a trust account under this section and the
19 account number of the account;

20 (2) produce evidence of current insurance coverage;

21 (3) produce evidence of current surety bond coverage.

22 (c) Failure by the board or its agents to comply with such a
23 request may result in injunctive relief under this enactment.

24 (d) If a property owners' association board discovers, or
25 has a reasonable suspicion of, embezzlement or other unlawful
26 appropriation of money held in trust, the board immediately shall
27 notify the attorney general by a method approved by the attorney

1 general by rule. Unless the attorney general by rule provides
2 otherwise, the board shall notify the attorney general of remedial
3 action that the board intends to take with regard to the unlawful
4 appropriation or suspected unlawful appropriation not later than
5 the fifth day after the date on which the board notifies the
6 attorney general of the appropriation in question.

7 (e) After notice and opportunity for a hearing, the attorney
8 general may require, on an ongoing basis, that a property owners'
9 association board, before transferring a trust account from one
10 financial institution to another, inform the attorney general of
11 the name, business address, and telephone number of the institution
12 to which the account will be transferred, and as soon as practicable
13 after the transfer, the account number at the transferee
14 institution.

15 (f) The attorney general may adopt rules as necessary or
16 appropriate to enforce Sections 82.1031, 82.1032, 82.1033,
17 82.1034, and 82.1035.

18 Sec. 82.1035. INJUNCTIVE OR DECLARATORY RELIEF; PROVIDING
19 PENALTIES. (a) The attorney general may institute an action for
20 injunctive or declaratory relief to restrain a violation of Section
21 82.1031, 82.1032, 82.1033, 82.1034, and 82.1035.

22 (b) In addition to instituting an action for injunctive or
23 declaratory relief under Subsection (a), the attorney general may
24 institute an action for civil penalties against a property owners'
25 association and its agents for a violation of Section 82.1031,
26 82.1032, 82.1033, 82.1034, and 82.1035. A civil penalty assessed
27 under this section may not exceed:

1 (1) \$20,000 per violation; and

2 (2) if the act or practice that is the subject of the
3 proceeding was calculated to acquire or deprive money or other
4 property from an owner who was 65 years of age or older when the act
5 or practice occurred, an additional amount of not more than
6 \$250,000.

7 SECTION 4. Chapter 209, Property Code, is amended by adding
8 Sections 209.0042, 209.0043, 209.0044, 209.0045, and 209.0046 to
9 read as follows:

10 Sec. 209.0042. TRUST ACCOUNTS. (a) All money paid to a
11 property owners' association board by or on behalf of a property
12 owner pursuant to an assessment or fee collected for common purpose
13 expenditures is held in trust. Within two business days after
14 receipt, the board shall deposit the money in a financial
15 institution in one or more trust accounts established for the
16 benefit of the property owners. The board shall maintain its
17 operating expense accounts separately from trust accounts
18 maintained for capital expenditures and for common purposes.

19 (b) Money held in trust by a property owners' association
20 board is not property of the board or the board's designee.

21 (c) A property owners' association board shall segregate
22 funds held for the benefit of unit owners from operating funds held
23 on deposit for use by the board, as follows:

24 (1) maintain separate records of account for each
25 individual owner who pays funds to the property owners' association
26 pursuant to an assessment or fee collected for common purpose
27 expenditures; and

1 (2) disburse money paid by or on behalf of an owner
2 only to pay for common purpose expenditures as provided by the
3 dedicatory instruments of the association.

4 (d) A property owners' association board may not commingle
5 money held in a trust account established for the benefit of owners
6 with operating funds of the board or money of other persons or
7 business entities.

8 (e) A trust account under this section must at all times
9 have a cash balance equal to if not greater than the sum of the
10 balances of each individual owner's account record.

11 (f) A property owners' association board shall reconcile a
12 trust account annually under this section. If the board or the
13 board's designee has more than one trust account, each trust
14 account must be reconciled separately.

15 Sec. 209.0043. BOND REQUIREMENT. (a) A person may not be a
16 member of a property owners' association board unless the person
17 has obtained and maintains in force a surety bond issued by a surety
18 company authorized to do business in this state as prescribed by
19 this section. A copy of the bond currently in effect must be filed
20 contemporaneously with the secretary of state.

21 (b) The bond must be in favor of:

22 (1) any person who is damaged by a violation of this
23 chapter; and

24 (2) this state for the benefit of any person who is
25 damaged by a violation of this chapter.

26 (c) For a board member with access to or custody of property
27 owners' association funds, the bond must be in the minimum amount

1 of:

2 (1) \$50,000, if the association is composed of 14
3 units or fewer;

4 (2) \$100,000, if the association is composed of more
5 than 14 units but not more than 100 units;

6 (3) \$250,000, if the association is composed of more
7 than 100 units but not more than 250 units; and

8 (4) \$500,000, if the association is composed of more
9 than 250 units.

10 (d) For a board member who does not have access to or custody
11 of property owners' association funds, the bond must be in the
12 amount of \$25,000.

13 (e) A person who is an agent, employee, or contractor of a
14 property owners' association board shall obtain a bond described by
15 this section for the minimum amounts specified in subsection (c) of
16 this Section, if the person:

17 (1) has access to or custody of property owners'
18 association funds; and

19 (2) is not required by other law to obtain a bond in
20 order to engage in activities described by this subsection.

21 Sec. 209.0044. INSURANCE REQUIREMENT. A property owners'
22 association board shall obtain and maintain insurance as required
23 by Section 209.0042 during the six months preceding the date the
24 renewal report is filed, that:

25 (1) provides for single limits of at least \$250,000
26 and aggregate limits of at least \$500,000, unless the highest daily
27 balance in the trust account exceeds the aggregate policy limits,

1 in which event the insurance limits would need to correspond to the
2 higher amount;

3 (2) insures against the risks of dishonesty, fraud,
4 theft, and other misconduct on the part of the property owners'
5 association or a board member, employee, or agent of the
6 association;

7 (3) is issued by an insurance company authorized to
8 engage in business in this state and rated at least "A" or
9 equivalent by a nationally recognized rating organization approved
10 by the commissioner;

11 (4) has a deductible of not more than \$5,000; and

12 (5) is payable for the benefit of the association,
13 this state, a property owner, or an individual who is a resident of
14 this state, as their interests may appear.

15 Sec. 209.0045. OVERSIGHT BY ATTORNEY GENERAL. (a) The
16 attorney general shall:

17 (1) monitor the operations of a property owners'
18 association board, as appropriate and within the available
19 resources of the attorney general's office, to ensure compliance
20 with this chapter; and

21 (2) receive and investigate complaints against a
22 property owners' association board related to the fiduciary
23 responsibilities of the board.

24 (b) At the request of the attorney general, a property
25 owners' association board shall:

26 (1) inform the attorney general of the name, business
27 address, and telephone number of the financial institution at which

1 the board maintains a trust account under this section and the
2 account number of the account;

3 (2) produce evidence of current insurance coverage;

4 (3) produce evidence of current surety bond coverage.

5 (c) Failure by the board or its agents to comply with such a
6 request may result in injunctive relief under this enactment.

7 (d) If a property owners' association board discovers, or
8 has a reasonable suspicion of, embezzlement or other unlawful
9 appropriation of money held in trust, the board immediately shall
10 notify the attorney general by a method approved by the attorney
11 general by rule. Unless the attorney general by rule provides
12 otherwise, the board shall notify the attorney general of remedial
13 action that the board intends to take with regard to the unlawful
14 appropriation or suspected unlawful appropriation not later than
15 the fifth day after the date on which the board notifies the
16 attorney general of the appropriation in question.

17 (e) After notice and opportunity for a hearing, the attorney
18 general may require, on an ongoing basis, that a property owners'
19 association board, before transferring a trust account from one
20 financial institution to another, inform the attorney general of
21 the name, business address, and telephone number of the institution
22 to which the account will be transferred, and as soon as practicable
23 after the transfer, the account number at the transferee
24 institution.

25 (f) The attorney general may adopt rules as necessary or
26 appropriate to enforce Sections 209.0042-209.0046.

27 Sec. 209.0046. INJUNCTIVE OR DECLARATORY RELIEF; PROVIDING

1 PENALTIES. (a) The attorney general may institute an action for
2 injunctive or declaratory relief to restrain a violation of Section
3 209.0042, 209.0043, 209.0044, or 209.0045.

4 (b) In addition to instituting an action for injunctive or
5 declaratory relief under Subsection (a), the attorney general may
6 institute an action for civil penalties against a property owners'
7 association and its agents for a violation of Section 209.0042,
8 209.0043, 209.0044, or 209.0045. A civil penalty assessed under
9 this section may not exceed:

10 (1) \$20,000 per violation; and

11 (2) if the act or practice that is the subject of the
12 proceeding was calculated to acquire or deprive money or other
13 property from an owner who was 65 years of age or older when the act
14 or practice occurred, an additional amount of not more than
15 \$250,000.

16 SECTION 5. Section 17, Business and Commerce Code, is
17 amended to read as follows:

18 Sec. 17.46. DECEPTIVE TRADE PRACTICES UNLAWFUL. (a) False,
19 misleading, or deceptive acts or practices in the conduct of any
20 trade or commerce are hereby declared unlawful and are subject to
21 action by the consumer protection division under Sections 17.47,
22 17.58, 17.60, and 17.61 of this code and Chapters 82 and 209,
23 Property Code.

24 Sec. 17.47. RESTRAINING ORDERS. (a) Whenever the consumer
25 protection division has reason to believe that any person is
26 engaging in, has engaged in, or is about to engage in any act or
27 practice declared to be unlawful by this subchapter or Chapters 82

1 and 209, Property Code, and that proceedings would be in the public
2 interest, the division may bring an action in the name of the state
3 against the person to restrain by temporary restraining order,
4 temporary injunction, or permanent injunction the use of such
5 method, act, or practice.

6 SECTION 6. The remedies made available to an association
7 member under this enactment shall be in addition to and not in lieu
8 of other remedies available under other applicable laws or the
9 constitution of this state or of the United States. The oversight
10 authority granted to the Attorney General under this enactment is
11 not to be construed as an administrative prerequisite to the
12 pursuit by an association member of any other rights and remedies
13 available to an association member either at law or in equity.

14 SECTION 7. The changes in law made by this Act apply to a
15 unit owners' association or property owners' association regardless
16 of whether the unit owners' association or property owners'
17 association was created before, on, or after the effective date of
18 this Act.

19 SECTION 8. The provisions of this Act take effect September
20 1, 2013; provided, however, that the provisions relating to
21 oversight by the office of the attorney general take effect January
22 1, 2014.