

By: West

S.B. No. 1231

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) and (12)-(21) [~~(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 adding Subdivision (11-a) to read as follows:

(11-a) "Dedictory instrument" means each document governing the establishment, maintenance, or operation of a condominium regime. The term includes a declaration or similar

1 instrument subjecting real property to:

2 (A) restrictive covenants, bylaws, or similar
3 instruments governing the administration or operation of a unit
4 owners' association;

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

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

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

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

14 (1) adopt and amend bylaws;

15 (2) adopt and amend budgets for revenues,
16 expenditures, and reserves, and collect assessments for common
17 expenses from unit owners;

18 (3) hire and terminate managing agents and other
19 employees, agents, and independent contractors;

20 (4) institute, defend, intervene in, settle, or
21 compromise litigation or administrative proceedings in its own name
22 on behalf of itself or two or more unit owners on matters affecting
23 the condominium;

24 (5) make contracts and incur liabilities relating to
25 the operation of the condominium;

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

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

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

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

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

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

15 (12) impose interest and late charges for late
16 payments of assessments, returned check charges, and, if notice and
17 an opportunity to be heard are given in accordance with Subsection
18 (d), reasonable fines for violations of the declaration, bylaws,
19 and rules of the association;

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

22 (14) adopt and amend rules regulating the termination
23 of utility service to a unit, the owner of which is delinquent in
24 the payment of an assessment that is used, in whole or in part, to
25 pay the cost of that utility;

26 (15) impose reasonable charges for preparing,
27 recording, or copying declaration amendments, resale certificates,

1 or statements of unpaid assessments;

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

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

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

11 (18) [~~(19)~~] purchase insurance and fidelity bonds it
12 considers appropriate or necessary;

13 (19) [~~(20)~~] exercise any other powers conferred by the
14 declaration or bylaws;

15 (20) [~~(21)~~] exercise any other powers that may be
16 exercised in this state by a corporation of the same type as the
17 association; and

18 (21) [~~(22)~~] exercise any other powers necessary and
19 proper for the government and operation of the association.

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

22 (1) borrow money; and

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

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

27 (B) the association's lien rights.

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

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

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

1 a holder of a mortgage on a unit to require a unit owner to acquire
2 insurance in addition to that provided by the association.

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

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

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

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

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

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

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

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

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

27 SECTION 6. Section 82.116, Property Code, is amended by

1 adding Subsection (a-1) to read as follows:

2 (a-1) The county clerk shall file a management certificate
3 in the real property records of the county under the label
4 "Condominium Association Management Certificate" and organize the
5 certificates in a manner that is easily accessible and searchable
6 by the public.

7 SECTION 7. (a) The change in law made by this Act to Section
8 82.111, Property Code, applies only to payment of costs incurred on
9 or after the effective date of this Act. Payment of costs incurred
10 before the effective date of this Act is governed by the law in
11 effect immediately before the effective date of this Act, and that
12 law is continued in effect for that purpose.

13 (b) Section 82.113(g), Property Code, as amended by this
14 Act, applies only to a condominium unit sold at a foreclosure sale
15 on or after the effective date of this Act. A unit sold at a
16 foreclosure sale before the effective date of this Act is subject to
17 the law in effect immediately before the effective date of this Act,
18 and that law is continued in effect for that purpose.

19 (c) Each condominium unit owners' association that recorded
20 a management certificate under Section 82.116, Property Code,
21 before the effective date of this Act shall record a new management
22 certificate under that section on or before January 1, 2014.

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