

## **BILL ANALYSIS**

H.B. 2797  
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Business & Industry  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Interested parties contend that recent amendments to statutory provisions regarding property owners' associations have left ambiguities and contradictions in the law. Citing significant operational and technical issues faced by property owners' associations following the implementation of these changes, the parties assert that clarity needs to be provided. The parties are concerned about the lack of clarity regarding the procedure for recounting votes of association elections, notice procedures to property owners, and the expedited foreclosure process and payment plans, among other things. H.B. 2797 amends the applicable law to address these issues and concerns as they relate to the operation of certain property owners' associations.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

H.B. 2797 amends the Property Code to exempt a condominium council of owners and a condominium unit owners' association from statutory provisions relating to the disclosure of information by property owners' associations. The bill redefines "dedicatory instrument," "property owners' association," and "restrictive covenant," for purposes of statutory provisions relating to the disclosure of information by a property owners' association, to have the meanings assigned by the Texas Residential Property Owners Protection Act. The bill redefines "development period," for purposes of that act, to mean a period stated in a declaration during which a declarant reserves a right to facilitate the development, construction, and marketing of the subdivision or a right to direct the size, shape, and composition of the subdivision and removes or repeals all other definitions of the term from that act. The bill exempts a condominium under the Condominium Act from the Texas Residential Property Owners Protection Act.

H.B. 2797 authorizes a declaration adopted by a property owners' association to be amended by a vote of 67 percent of those entitled to vote on the amendment of the declaration, in addition to any governmental approval required by law. The bill authorizes a board meeting of a property owners' association to be held by electronic or telephonic means provided that all directors may hear and be heard by every other director and that, except for any portion of the meeting conducted in executive session, all owners in attendance at the meeting may hear all directors. The bill removes the authorization for the board to meet by any method of communication, without prior notice to the owners, to take action by unanimous written consent to consider

routine administrative matters or a reasonably unforeseen emergency or urgent necessity that requires immediate board action. The bill instead authorizes the board to take action outside of a meeting, without prior notice to owners, including voting by electronic or telephonic means, if each director is given a reasonable opportunity to express the director's opinion to all other directors and to vote. The bill removes a prohibition against the board considering certain subjects without prior notice to owners.

H.B. 2797 makes a statutory provision requiring written notice to be given to specified owners of the property owners' association not later than the 10th day or earlier than the 60th day before the date of an association election or vote applicable only to an election or vote taken at a meeting of the association owners. The bill requires the association to give notice of an election or vote not taken at a meeting to all owners of the association.

H.B. 2797 revises the statutory provision authorizing any owner of property in certain property owners' associations to require a recount of votes not later than the 15th day after the date of the meeting at which the election was held to clarify that the meeting is a meeting of association owners at which the election or vote was held and to add the specification that any owner may require a recount not later than the 15th day after the date of the announcement of the results of the election or vote if no meeting was held. The bill changes the method by which a demand for a recount may be submitted, other than in person, from certified mail, return receipt requested, or by delivery by the U.S. Postal Service with signature confirmation service to verified mail, defined in the bill as any method of mailing that provides evidence of mailing. The bill requires the association to estimate the costs for the performance of the recount by a person qualified to tabulate recount votes and requires the association to send an invoice for the estimated costs to the requesting owner at the owner's last known address according to association records not later than the 20th day after the date the association receives the owner's demand for the recount. The bill requires the owner demanding a recount to pay the invoice in full to the association on or before the 30th day after the date the invoice is sent to the owner. The bill specifies that if the invoice is not paid by the deadline, the owner's demand for a recount is considered withdrawn and a recount is not required. The bill requires the association, if the estimated costs for the performance of the recount are lesser or greater than the actual costs, to send a final invoice to the owner on or before the 30th business day after the date the results of the recount are provided. The bill authorizes any additional amounts not paid to the association before the 30th business day after the date the invoice is sent to the owner to be added to the owner's account as an assessment. The bill entitles the owner to a refund if the estimated costs exceed the final invoice amount and requires the association to issue the refund to the owner not later than the 30th business day after the date the invoice is sent to the owner. The bill conditions the statutory requirement of an association to retain the services of a person qualified to tabulate recount votes on receipt of payment for the performance of the recount.

H.B. 2797 removes a provision requiring any vote cast in a property owners' association election or vote by a member of the association to be in writing and signed by the member and instead requires any vote cast by a member of a property owners' association in a director election or in a vote on the issue of whether to amend a dedicatory instrument, increase a regular assessment, adopt a special assessment, or remove a director to be in writing and signed by the member.

H.B. 2797 authorizes a property owners' association's bylaws to require one or more board members to reside in the subdivision subject to the association's dedicatory instruments but specifies that this requirement is not applicable during the development period. The bill revises the statutory provision requiring at least one-third of the board members to be elected by owners other than the declarant on or before the 120th day after the date 75 percent of the lots that may be created and made subject to the declaration are conveyed to owners other than the declarant to exclude as a non-electing owner, along with the declarant, a builder in the business of constructing homes who purchased the lots from the declarant for the purpose of selling completed homes built on the lots.

H.B. 2797 removes a provision specifying that the voting rights of an owner may be cast or given by electronic ballot and instead authorizes the board of a property owners' association in its discretion to use electronic ballots as an additional method of voting. The bill specifies that, for an absentee or electronic ballot, a nomination taken from the floor in an election of directors is not considered an amendment to the proposal for the election.

H.B. 2797 prohibits a person performing a recount from disclosing to any other person how an individual voted. The bill removes a provision stating that a person other than a person who tabulates the votes for an election or vote may be given access to the ballots cast in the election or vote for a recount process and instead establishes that only a person tabulating the votes for an election or vote or a person qualified to perform a recount vote may be given access to the ballots cast in the election or vote.

H.B. 2797 changes the method by which the association or its agent is required to give written notice before certain enforcement actions are taken against the owner from certified mail, return receipt requested, to verified mail and revises the requirements and applicability of such notice, including minimum notice and opportunity to cure requirements for a violation that is of a curable nature and does not pose a threat to public health or safety. The bill specifies that any fine assessed for the violation is void if the owner cures the violation before the expiration of the period for cure described by the date specified in the notice. The bill specifies that a violation is considered a threat to public health or safety for purposes of the notice if the violation could materially affect the physical health or safety of an ordinary resident.

H.B. 2797 removes the prohibition against a property owners' association allowing an alternative payment plan for certain assessments for any amount that extends more than 18 months from the date of the owner's request for the plan and instead establishes that a property owners' association is not required to allow such a plan. The bill also establishes that the association is not required to make a payment plan available to an owner after a period expires for curing a delinquency before its referral to a collection agent or to allow an owner to enter into a payment plan more than once in any 12-month period. The bill specifies that statutory provisions establishing the required priority by which a payment received by an association from an owner is applied to the owner's debt does not apply to a payment made pursuant to a final judgment, another binding court order, or any mutual agreement of the parties entered into after the 30-day period for the owner to cure a delinquency before its referral to a collection agent.

H.B. 2797 makes the requirement of the association providing a certain written notice to an owner before the association may hold an owner liable for fees of a collection agent retained by the association applicable only to a property owners' association subject to statutory provisions authorizing an alternative payment schedule for certain assessments.

H.B. 2797 removes a prohibition on a property owners' association from foreclosing a property owners' association assessment lien on real property by giving notice of sale or commencing a judicial foreclosure action unless the association has provided a specified written notice and provided an opportunity to cure the delinquency and instead prohibits an association from selling a property pursuant to a foreclosure right unless the association has provided such notice and opportunity. The bill changes from certified mail, return receipt requested, to verified mail the method of delivery of the specified notice and changes from before the 61st day after the date the recipient receives the notice to before the 61st date after the association mails the notice the period for which the recipient of the notice has the opportunity to cure the delinquency. The bill authorizes the specified notice to be provided to any holder of a lien of record on the property.

H.B. 2797 specifies that a property owners' association using the expedited foreclosure procedure to foreclose a lien is considered to have with respect to the lien any power of sale required by law as a condition of using such procedure. The bill authorizes the association in its discretion to elect not to use the expedited procedure and instead foreclose the association's assessment lien under court judgment foreclosing the lien and ordering the sale, pursuant to

specified rules of the Texas Rules of Civil Procedure.

H.B. 2797 repeals Section 209.0041(a), Property Code.

**EFFECTIVE DATE**

September 1, 2015.