

## **BILL ANALYSIS**

S.B. 1168  
By: West  
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. S.B. 1168 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**

S.B. 1168 amends the Property Code to require a condominium unit owners' association, if the association has, or a management company on the association's behalf maintains, a publicly accessible website, to make available on that website all dedicatory instruments relating to the association or condominium regime, including bylaws and association rules, that are filed in the county deed records. The bill includes this requirement among specified Uniform Condominium Act provisions that are applicable to a condominium in Texas for which the declaration was recorded before January 1, 1994. The bill includes statements of a condominium unit owners' association's current operating budget and balance sheet and of all fees associated with the transfer of ownership among the statements required to be contained in a resale certificate issued by the association for a unit owner other than a declarant intending to sell a unit.

S.B. 1168 exempts 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 the term "development period," for purposes of that act, to mean a period stated in a declaration during which a declarant reserves either 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, rather than a period during which a declarant reserves both of those rights, and removes and repeals the

duplicative definitions of the term from that act. The bill exempts a condominium as defined by the Condominium Act from the Texas Residential Property Owners Protection Act and clarifies that a condominium as defined by the Uniform Condominium Act is also exempt from the Texas Residential Property Owners Protection Act.

S.B. 1168 changes the circumstance under which a declaration adopted by a property owners' association may be amended, with certain exceptions and in addition to any governmental approval required by law, from a vote of 67 percent of the total votes allocated to property owners in the association to a vote of 67 percent of those entitled to vote on an amendment of the declaration. The bill authorizes a board meeting of a property owners' association to be held by electronic or telephonic means provided that each board member may hear and be heard by every other board member; that, except for any portion of the meeting conducted in executive session, all owners in attendance at the meeting may hear all board members and owners are allowed to listen using any electronic or telephonic communication method used or expected to be used by a board member to participate; and that the notice of the meeting includes instructions for owners to access any communication method required to be accessible for listening using those methods. The bill removes the authorization for the board to meet by any method of communication, without prior notice to the owners, or to take action by unanimous written consent to consider routine and 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 board member is given a reasonable opportunity to express the board member's opinion to all other board members and to vote. The bill revises the prohibition against a board considering and voting on certain matters without prior notice to owners to specify that the prohibition against such consideration and voting applies unless such consideration and voting are done in an open meeting for which prior notice was given. The bill expands the matters subject to this prohibition.

S.B. 1168 makes a statutory provision requiring written notice to be given to specified owners of property in the property owners' association not later than the 10th day or earlier than the 60th day before the date of an election or association vote applicable only to an election or vote taken at a meeting of the 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 entitled to vote on any matter under consideration not later than the 20th day before the latest date on which a ballot may be submitted to be counted.

S.B. 1168 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 any meeting of 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 later of the date that the election or vote was held or the date of the announcement of the results of the election or vote. The bill changes a method by which a demand for a recount may be submitted, other than in person, from a method using certified mail, return receipt requested, or by delivery by the U.S. Postal Service with signature confirmation service to a method using verified mail, defined in the bill as any method of mailing for which evidence of mailing is provided by the U.S. Postal Service or a common carrier. 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 but prohibits the association from foreclosing an association assessment lien if the debt securing the lien consists solely of such amounts. The bill entitles the owner to a refund if the estimated costs exceed the final invoice amount and requires the refund to be paid to the owner at the time the final invoice is sent. The bill conditions the statutory requirement that an association retain the services of a person qualified to tabulate recount votes on receipt of payment for the performance of the recount. The bill removes a provision requiring the recount to be performed on or before the 30th day after the date of receipt of a request and payment for the recount and instead requires the recount to be completed and the association to provide each owner who requested the recount with notice of the results on or before the 30th day after the date of receipt of payment for a recount. The bill specifies that the reimbursement of the cost of the recount by the association to the requesting owner, if applicable, be provided not later than the 30th day after the date the results of the recount are provided.

S.B. 1168 conditions the requirement that any vote cast in a property owners' association election by a member of the association be in writing and signed by the member on the vote being cast outside of a meeting, in an election to fill a position on the board, on a proposed adoption or amendment of a dedicatory instrument, on a proposed increase in the amount of a regular assessment or the proposed adoption of a special assessment, or on the proposed removal of a board member. The bill requires a ballot for a vote on any other matter to be in writing and signed by the member or to be cast by secret ballot. The bill authorizes an association to adopt rules to allow voting by secret ballot by association members and requires the association to take measures to reasonably ensure that a member cannot cast more votes than the member is eligible to cast in an election or vote and that the association counts each vote cast by a member that the member is eligible to cast. The bill specifies that the type of election for which written and signed ballots are not required in uncontested races is a property owners' association election rather than an association-wide election.

S.B. 1168 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 may not require all board members to reside in that subdivision and 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.

S.B. 1168 specifies that a property owners' association, unless a dedicatory instrument provides otherwise, is not required to provide an owner with more than one voting method but specifies that an owner must be allowed to vote by absentee ballot or proxy. The bill specifies that, for purposes of a statutory provision relating to the counting of an absentee or electronic ballot, a nomination taken from the floor in a board member election is not considered an amendment to the proposal for the election.

S.B. 1168 requires a property owners' association composed of more than 100 lots to provide notice to the association members soliciting candidates interested in running for a position on the board at least 10 days before the date the association disseminates absentee ballots or other ballots to members for purposes of voting in a board member election and the bill sets out requirements relating to such notice and ballots.

S.B. 1168 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 establishes that only a person tabulating the votes for an election or vote or a qualified person who performs a recount vote may be given access to the ballots cast in the election or vote. The bill prohibits statutory provisions and the bill's provisions relating to tabulation of and access to ballots in a property owners' association from being construed to affect a person's obligation to comply with a court order for the release of ballots or other voting records.

S.B. 1168 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 a method using certified mail, return receipt requested, to a method using verified mail, as that term is defined by the bill, and revises the requirements and applicability of such notice. The bill prohibits a fine from being assessed for the violation 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. The bill specifies that a violation is considered incurable if the violation has occurred but is not a continuous action or a condition capable of being remedied by affirmative action, specifies that the nonrepetition of a one-time violation or other violation that is not ongoing is not considered an adequate remedy, and sets out examples of acts considered to be incurable acts and examples of acts considered to be curable acts.

S.B. 1168 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 establishes that a property owners' association is not required to allow such a plan. The bill 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 and establishes that the association is not required to allow an owner to enter into a payment plan more than once in any 12-month period.

With regard to the prohibition against the association holding an owner liable for fees of a collection agent retained by the association unless the association first provides certain written notice to the owner, S.B. 1168 makes the statutory requirement that the written notice describe the options for the owner to avoid having the account turned over to a collection agent conditional on the association being subject to statutory provisions and the bill's provisions requiring the adoption of reasonable guidelines to establish an alternative payment schedule for certain assessments or the association's dedicatory instruments containing a requirement to offer a payment plan. The bill, for purposes of the provision requiring that the method of sending the written notice to the owner be by certified mail, return receipt requested, removes the specification that such certified mail be sent with return receipt requested.

S.B. 1168 removes a prohibition against 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 filing an application for an expedited court order authorizing foreclosure of the association's assessment lien or a petition for judicial foreclosure of the association's assessment lien unless the association has provided such notice and opportunity. The bill, for purposes of the provision requiring that the method of sending such notice to the address for the lienholder shown in the deed records relating to the property that is subject to the assessment lien be by certified mail, return receipt requested, removes the specification that such certified mail be sent with return receipt requested. The bill, for purposes of the requirement that the association provide the recipient of the notice an opportunity to cure the delinquency after the date the recipient receives the notice, specifies that the opportunity to cure the delinquency instead occurs after the date the association mails the notice. The bill authorizes the specified notice to be provided to any holder of a lien of record on the property.

S.B. 1168 specifies that a property owners' association using the expedited foreclosure procedure to foreclose a lien whose dedicatory instruments grant a right of foreclosure is considered to have 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. The bill specifies that statutory and bill provisions relating to such expedited foreclosure of an association's assessment lien does not affect any right an association that is not authorized to use the procedure may have to judicially 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.

S.B. 1168 repeals Section 209.0041(a), Property Code.

**EFFECTIVE DATE**

September 1, 2015.