

By: Villalba

H.B. No. 2797

A BILL TO BE ENTITLED

AN ACT

relating to the operation of certain property owners' associations.

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

SECTION 1. Section 207.001(2), Property Code, is amended to read as follows:

(2) "Dedictory instrument," "property owners' association," and "restrictive covenant" have the meanings assigned by Section 209.002 [~~202.001~~].

SECTION 2. Section 207.002, Property Code, is amended to read as follows:

Sec. 207.002. APPLICABILITY. (a) This chapter applies to a subdivision with a property owners' association that is entitled to levy regular or special assessments.

(b) This chapter does not apply to a condominium council of owners governed by Chapter 81 or a condominium unit owners' association governed by Chapter 82.

SECTION 3. Section 209.002, Property Code, is amended by amending Subdivision (4-a) and adding Subdivision (13) to read as follows:

(4-a) "Development period" means a period stated in a declaration during which a declarant reserves:

(A) a right to facilitate the development, construction, and marketing of the subdivision; or [~~and~~]

(B) a right to direct the size, shape, and

1 composition of the subdivision.

2 (13) "Verified mail" means any method of mailing that
3 provides evidence of mailing.

4 SECTION 4. Section 209.003(d), Property Code, is amended to
5 read as follows:

6 (d) This chapter does not apply to a condominium as defined
7 [development governed] by Section 81.002 or 82.003 [Chapter 82].

8 SECTION 5. Section 209.0041, Property Code, is amended by
9 amending Subsection (h) and adding Subsection (h-1) to read as
10 follows:

11 (h) Except as provided by Subsection (h-1) [~~this~~
12 ~~subsection~~], a declaration may be amended only by a vote of:

13 (1) 67 percent of the total votes allocated to
14 property owners in the property owners' association, in addition to
15 any governmental approval required by law; or

16 (2) 67 percent of those entitled to vote on the
17 amendment of the declaration, in addition to any governmental
18 approval required by law.

19 (h-1) If the declaration contains a lower percentage than
20 prescribed by Subsection (h), the percentage in the declaration
21 controls.

22 SECTION 6. Section 209.0051, Property Code, is amended by
23 amending Subsections (b), (c-1), and (h) and adding Subsection
24 (c-2) to read as follows:

25 (b) In this section, "board [+
26 [(-1) "Board] meeting":

27 (1) [(-A)] means a deliberation between a quorum of the

1 voting board of the property owners' association, or between a
2 quorum of the voting board and another person, during which
3 property owners' association business is considered and the board
4 takes formal action; and

5 (2) ~~[(B)]~~ does not include the gathering of a quorum
6 of the board at a social function unrelated to the business of the
7 association or the attendance by a quorum of the board at a
8 regional, state, or national convention, ceremonial event, or press
9 conference, if formal action is not taken and any discussion of
10 association business is incidental to the social function,
11 convention, ceremonial event, or press conference.

12 ~~[(2) "Development period" means a period stated in a
13 declaration during which a declarant reserves:~~

14 ~~[(A) a right to facilitate the development,
15 construction, and marketing of the subdivision; and~~

16 ~~[(B) a right to direct the size, shape, and
17 composition of the subdivision.]~~

18 (c-1) Except for a meeting held by electronic or telephonic
19 means under Subsection (c-2) ~~[(h)]~~, a board meeting must be held in
20 a county in which all or part of the property in the subdivision is
21 located or in a county adjacent to that county.

22 (c-2) A board meeting may be held by electronic or
23 telephonic means provided that:

24 (1) all directors may hear and be heard by every other
25 director; and

26 (2) except for any portion of the meeting conducted in
27 executive session, all owners in attendance at the meeting may hear

1 all directors.

2 (h) Except as provided by this subsection, a [A] board may
3 take action outside of a meeting [~~meet by any method of~~
4 ~~communication~~], including voting by electronic or [~~and~~] telephonic
5 means, without prior notice to owners under Subsection (e), if each
6 director is given a reasonable opportunity to express the
7 director's opinion to all other directors and to vote [~~may hear and~~
8 ~~be heard by every other director, or the board may take action by~~
9 ~~unanimous written consent to consider routine and administrative~~
10 ~~matters or a reasonably unforeseen emergency or urgent necessity~~
11 ~~that requires immediate board action~~]. Any action taken without
12 notice to owners under Subsection (e) must be summarized orally,
13 including an explanation of any known actual or estimated
14 expenditures approved at the meeting, and documented in the minutes
15 of the next regular or special board meeting. The board may not,
16 without prior notice to owners under Subsection (e), [~~consider or~~
17 vote on:

- 18 (1) fines;
- 19 (2) damage assessments;
- 20 (3) initiation of foreclosure actions;
- 21 (4) initiation of enforcement actions, excluding
- 22 temporary restraining orders or violations involving a threat to
- 23 health or safety;
- 24 (5) increases in assessments;
- 25 (6) levying of special assessments;
- 26 (7) appeals from a denial of architectural control
- 27 approval; or

1 (8) a suspension of a right of a particular owner
2 before the owner has an opportunity to attend a board meeting to
3 present the owner's position, including any defense, on the issue.

4 SECTION 7. Section 209.0056, Property Code, is amended by
5 amending Subsection (a) and adding Subsection (a-1) to read as
6 follows:

7 (a) For an election or vote taken at a meeting of the
8 association owners, not ~~[Not]~~ later than the 10th day or earlier
9 than the 60th day before the date of the ~~[an]~~ election or vote, a
10 property owners' association shall give written notice of the
11 election or vote to:

12 (1) each owner of property in the property owners'
13 association, for purposes of an association-wide election or vote;
14 or

15 (2) each owner of property in the property owners'
16 association entitled under the dedicatory instruments to vote in a
17 particular representative election, for purposes of a vote that
18 involves election of representatives of the association who are
19 vested under the dedicatory instruments of the property owners'
20 association with the authority to elect or appoint board members of
21 the property owners' association.

22 (a-1) For an election or vote of association owners not
23 taken at a meeting, the property owners' association shall give
24 notice of the election or vote to all owners.

25 SECTION 8. Section 209.0057, Property Code, is amended by
26 amending Subsections (b), (c), and (d) and adding Subsections
27 (b-1), (b-2), (b-3), and (b-4) to read as follows:

1 (b) Any owner may, not later than the 15th day after the date
2 of the meeting of association owners at which the election or vote
3 was held or the date of the announcement of the results of the
4 election or vote if no meeting was held, require a recount of the
5 votes. A demand for a recount must be submitted in writing either:

6 (1) by verified [~~certified~~] mail[, ~~return receipt~~
7 ~~requested, or by delivery by the United States Postal Service with~~
8 ~~signature confirmation service~~] to the property owners'
9 association's mailing address as reflected on the latest management
10 certificate filed under Section 209.004; or

11 (2) in person to the property owners' association's
12 managing agent as reflected on the latest management certificate
13 filed under Section 209.004 or to the address to which absentee and
14 proxy ballots are mailed.

15 (b-1) The association must estimate the costs for
16 performance of the recount by a person qualified to tabulate votes
17 under Subsection (c) and must send an invoice for the estimated
18 costs to the requesting owner at the owner's last known address
19 according to association records not later than the 20th day after
20 the date the association receives the owner's demand for the
21 recount.

22 (b-2) The owner demanding a recount under this section must
23 pay the invoice described by Subsection (b-1) in full to the
24 property owners' association on or before the 30th day after the
25 date the invoice is sent to the owner.

26 (b-3) If the invoice described by Subsection (b-1) is not
27 paid by the deadline prescribed by Subsection (b-2), the owner's

1 demand for a recount is considered withdrawn and a recount is not
2 required.

3 (b-4) If the estimated costs under Subsection (b-1) are
4 lesser or greater than the actual costs, the association must send a
5 final invoice to the owner on or before the 30th business day after
6 the date the results of the recount are provided. If the final
7 invoice includes additional amounts owed by the owner, any
8 additional amounts not paid to the association before the 30th
9 business day after the date the invoice is sent to the owner may be
10 added to the owner's account as an assessment. If the estimated
11 costs exceed the final invoice amount, the owner is entitled to a
12 refund. The association shall issue the refund to the owner not
13 later than the 30th business day after the date the invoice is sent
14 to the owner.

15 (c) Following receipt of payment under Subsection (b-2),
16 the [The] property owners' association shall, at the expense of the
17 owner requesting the recount, retain for the purpose of performing
18 the recount[7] the services of a person qualified to tabulate votes
19 under this subsection. The association shall enter into a contract
20 for the services of a person who:

21 (1) is not a member of the association or related to a
22 member of the association board within the third degree by
23 consanguinity or affinity, as determined under Chapter 573,
24 Government Code; and

25 (2) is:

26 (A) a current or former:

27 (i) county judge;

1 (ii) county elections administrator;

2 (iii) justice of the peace; or

3 (iv) county voter registrar; or

4 (B) a person agreed on by the association and
5 each person [~~the persons~~] requesting the recount.

6 (d) Any recount under Subsection (b) must be performed on or
7 before the 30th day after the date of receipt of [~~a request and~~]
8 payment for a recount in accordance with Subsection (b-2)
9 [~~Subsections (b) and (c)~~]. If the recount changes the results of
10 the election, the property owners' association shall reimburse the
11 requesting owner for the cost of the recount. The property owners'
12 association shall provide the results of the recount to each owner
13 who requested the recount. Any action taken by the board in the
14 period between the initial election vote tally and the completion
15 of the recount is not affected by any recount.

16 SECTION 9. Sections 209.0058(a) and (c), Property Code, are
17 amended to read as follows:

18 (a) Any vote cast by a member of a property owners'
19 association in a director [~~an~~] election or in a vote on the issue of
20 whether to amend a dedicatory instrument, increase a regular
21 assessment, adopt a special assessment, or remove a director [~~or~~
22 ~~vote by a member of a property owners' association~~] must be in
23 writing and signed by the member.

24 (c) In an association [~~association-wide~~] election, written
25 and signed ballots are not required for uncontested races.

26 SECTION 10. Section 209.00591, Property Code, is amended by
27 adding Subsection (b-1) and amending Subsection (c) to read as

1 follows:

2 (b-1) Notwithstanding any other provision of this chapter,
3 a property owners' association's bylaws may require one or more
4 board members to reside in the subdivision subject to the
5 dedicatory instruments. A requirement described by this subsection
6 is not applicable during the development period.

7 (c) The declaration may provide for a period of declarant
8 control of the association during which a declarant, or persons
9 designated by the declarant, may appoint and remove board members
10 and the officers of the association, other than board members or
11 officers elected by members of the property owners'
12 association. Regardless of the period of declarant control
13 provided by the declaration, on or before the 120th day after the
14 date 75 percent of the lots that may be created and made subject to
15 the declaration are conveyed to owners other than a declarant or a
16 builder in the business of constructing homes who purchased the
17 lots from the declarant for the purpose of selling completed homes
18 built on the lots, at least one-third of the board members must be
19 elected by owners other than the declarant. If the declaration
20 does not include the number of lots that may be created and made
21 subject to the declaration, at least one-third of the board members
22 must be elected by owners other than the declarant not later than
23 the 10th anniversary of the date the declaration was recorded.

24 SECTION 11. Section 209.00592, Property Code, is amended by
25 amending Subsection (a) and adding Subsections (a-1) and (c-1) to
26 read as follows:

27 (a) The voting rights of an owner may be cast or given:

1 (1) if a meeting of the property owners' association is
2 held, in person or by proxy at the [a] meeting [of the property
3 owners' association];

4 (2) by absentee ballot in accordance with this
5 section; or

6 (3) [~~by electronic ballot in accordance with this~~
7 ~~section; or~~

8 [~~(4)~~] by any method of representative or delegated
9 voting provided by a dedicatory instrument.

10 (a-1) The board may in its discretion use electronic ballots
11 in accordance with this section as an additional method of voting.

12 (c-1) For purposes of Subsection (b), a nomination taken
13 from the floor in an election of directors is not considered an
14 amendment to the proposal for the election.

15 SECTION 12. Section 209.00593(d), Property Code, is amended
16 to read as follows:

17 (d) This section does not apply to the appointment of a
18 board member during a development period. [~~In this subsection,~~
19 ~~"development period" means a period stated in a declaration during~~
20 ~~which a declarant reserves:~~

21 [~~(1) a right to facilitate the development,~~
22 ~~construction, and marketing of the subdivision; and~~

23 [~~(2) a right to direct the size, shape, and~~
24 ~~composition of the subdivision.]~~

25 SECTION 13. Section 209.00594, Property Code, is amended by
26 adding Subsection (b-1) and amending Subsection (c) to read as
27 follows:

1 (b-1) A person performing a recount under Section
2 209.0057(c) may not disclose to any other person how an individual
3 voted.

4 (c) Notwithstanding any other provision of this chapter or
5 any other law, only a person [~~other than a person~~] who tabulates
6 votes under Subsection (b) or who performs a recount under Section
7 209.0057(c) [~~, including a person described by Subsection (a),~~] may
8 be given access to the ballots cast in the election or vote [~~only as~~
9 ~~part of a recount process authorized by law~~].

10 SECTION 14. Section 209.006, Property Code, is amended to
11 read as follows:

12 Sec. 209.006. NOTICE REQUIRED BEFORE ENFORCEMENT ACTION.

13 (a) Before a property owners' association may suspend an owner's
14 right to use a common area, file a suit against an owner other than a
15 suit to collect a regular or special assessment or foreclose under
16 an association's lien, charge an owner for property damage, or levy
17 a fine for a violation of the restrictions or bylaws or rules of the
18 association, the association or its agent must give written notice
19 to the owner by verified [~~certified~~] mail [~~, return receipt~~
20 ~~requested~~].

21 (b) The notice must:

22 (1) describe the nature of the violation or property
23 damage that is the basis for the suspension action, charge, or fine
24 and state any amount due the association from the owner; [~~and~~]

25 (2) except as provided in Subsection (d), inform the
26 owner that the owner:

27 (A) is entitled to a reasonable period to cure

1 the violation and avoid the fine or suspension [~~unless the owner was~~
2 ~~given notice and a reasonable opportunity to cure a similar~~
3 ~~violation within the preceding six months~~];

4 (B) may request a hearing under Section 209.007
5 on or before the 30th day after the date [~~the owner receives~~] the
6 notice was mailed to the owner; and

7 (C) may have special rights or relief related to
8 the enforcement action under federal law, including the
9 Servicemembers Civil Relief Act (50 U.S.C. App. [~~app.~~] Section 501
10 et seq.), if the owner is serving on active military duty;

11 (3) specify the date by which the owner must cure the
12 violation if the violation is of a curable nature and does not pose
13 a threat to public health or safety; and

14 (4) be sent by verified mail to the owner at the
15 owner's last known address as shown on the association records.

16 (c) The date specified in the notice under Subsection (b)(3)
17 must provide a reasonable period to cure the violation if the
18 violation is of a curable nature and does not pose a threat to
19 public health or safety.

20 (d) Subsections (a) and (b) do not apply to a violation for
21 which the owner has been previously given notice under this section
22 and the opportunity to exercise any rights available under this
23 section in the preceding six months.

24 (e) If the owner cures the violation before the expiration
25 of the period for cure described by Subsection (c), any fine
26 assessed for the violation is void.

27 (f) For purposes of this section, a violation is considered

1 a threat to public health or safety if the violation could
2 materially affect the physical health or safety of an ordinary
3 resident.

4 SECTION 15. Section 209.0062(c), Property Code, is amended
5 to read as follows:

6 (c) A property owners' association is ~~[may]~~ not required to
7 allow a payment plan for any amount that extends more than 18 months
8 from the date of the owner's request for a payment plan. The
9 association is not required to enter into a payment plan with an
10 owner who failed to honor the terms of a previous payment plan
11 during the two years following the owner's default under the
12 previous payment plan. The association is not required to make a
13 payment plan available to an owner after the period for cure
14 described by Section 209.0064(b)(3) expires. The association is
15 not required to allow an owner to enter into a payment plan more
16 than once in any 12-month period.

17 SECTION 16. Section 209.0063, Property Code, is amended by
18 amending Subsection (a) and adding Subsection (c) to read as
19 follows:

20 (a) Except as provided by Subsections ~~[Subsection]~~ (b) and
21 (c), a payment received by a property owners' association from the
22 owner shall be applied to the owner's debt in the following order of
23 priority:

- 24 (1) any delinquent assessment;
25 (2) any current assessment;
26 (3) any attorney's fees or third party collection
27 costs incurred by the association associated solely with

1 assessments or any other charge that could provide the basis for
2 foreclosure;

3 (4) any attorney's fees incurred by the association
4 that are not subject to Subdivision (3);

5 (5) any fines assessed by the association; and

6 (6) any other amount owed to the association.

7 (c) This section does not apply to a payment made pursuant
8 to a final judgment, another binding court order, or any mutual
9 agreement of the parties entered into after the 30-day period
10 described in Section 209.0064(b)(3).

11 SECTION 17. Section 209.0064(b), Property Code, is amended
12 to read as follows:

13 (b) A property owners' association may not hold an owner
14 liable for fees of a collection agent retained by the property
15 owners' association unless the association first provides written
16 notice to the owner by certified mail, return receipt requested,
17 that:

18 (1) specifies each delinquent amount and the total
19 amount of the payment required to make the account current;

20 (2) if the property owners' association is subject to
21 Section 209.0062, describes the options the owner has to avoid
22 having the account turned over to a collection agent, including
23 information regarding availability of a payment plan through the
24 association; and

25 (3) provides a period of at least 30 days for the owner
26 to cure the delinquency before further collection action is taken.

27 SECTION 18. Section 209.0091, Property Code, is amended to

1 read as follows:

2 Sec. 209.0091. PREREQUISITES TO FORECLOSURE: NOTICE AND
3 OPPORTUNITY TO CURE FOR CERTAIN OTHER LIENHOLDERS. (a) A property
4 owners' association may not sell a property pursuant to a
5 foreclosure right [~~foreclose a property owners' association~~
6 ~~assessment lien on real property by giving notice of sale under~~
7 ~~Section 51.002 or commencing a judicial foreclosure action~~] unless
8 the association has:

9 (1) provided written notice of the total amount of the
10 delinquency giving rise to the foreclosure to any other holder of a
11 lien of record on the property whose lien is inferior or subordinate
12 to the association's lien and is evidenced by a deed of trust; and

13 (2) provided the recipient of the notice an
14 opportunity to cure the delinquency before the 61st day after the
15 date the association mails [~~recipient receives~~] the notice
16 described in Subdivision (1).

17 (b) Notice under this section must be sent by verified
18 [~~certified~~] mail[, ~~return receipt requested,~~] to the address for
19 the lienholder shown in the deed records relating to the property
20 that is subject to the property owners' association assessment
21 lien.

22 (c) Notwithstanding any other law, notice under this
23 section may be provided to any holder of a lien of record on the
24 property.

25 SECTION 19. Section 209.0092, Property Code, is amended by
26 amending Subsection (a) and adding Subsection (d) to read as
27 follows:

1 (a) Except as provided by Subsection (c) or (d) and subject
2 to Section 209.009, a property owners' association may not
3 foreclose a property owners' association assessment lien unless the
4 association first obtains a court order in an application for
5 expedited foreclosure under the rules adopted by the supreme court
6 under Subsection (b). A property owners' association may use the
7 procedure described by this subsection to foreclose any lien
8 described by the association's dedicatory instruments and is
9 considered to have with respect to the lien any power of sale
10 required by law as a condition of using the procedure described by
11 this subsection.

12 (d) The association may in its discretion elect not to use
13 the expedited procedure described by Subsection (b) and instead
14 foreclose the association's assessment lien under court judgment
15 foreclosing the lien and ordering the sale, pursuant to Rules 309
16 and 646a, Texas Rules of Civil Procedure.

17 SECTION 20. Section 209.0041(a), Property Code, is
18 repealed.

19 SECTION 21. (a) The changes in law made by this Act to
20 Chapter 207, Property Code, apply only to a request for subdivision
21 information made on or after the effective date of this Act and any
22 resale certificate delivered in response to that request. A
23 request for subdivision information made before the effective date
24 of this Act, any resale certificate delivered in response to that
25 request, and any request for an update of that resale certificate
26 are governed by the law as it existed immediately before that date,
27 and that law is continued in effect for that purpose.

1 (b) Sections 209.0041, 209.0056, 209.0057, 209.0058,
2 209.00592, and 209.00594(c), Property Code, as amended by this Act,
3 apply only to an election or vote held on or after the effective
4 date of this Act. An election or vote held before the effective
5 date of this Act is governed by the law as it existed immediately
6 before that date, and that law is continued in effect for that
7 purpose.

8 (c) Section 209.006, Property Code, as amended by this Act,
9 applies only to an enforcement action taken on or after the
10 effective date of this Act. An enforcement action taken before the
11 effective date of this Act is governed by the law as it existed
12 immediately before that date, and that law is continued in effect
13 for that purpose.

14 (d) Section 209.0064, Property Code, as amended by this Act,
15 applies only to a collection action taken on or after the effective
16 date of this Act. A collection action taken before the effective
17 date of this Act is governed by the law as it existed immediately
18 before that date, and that law is continued in effect for that
19 purpose.

20 (e) Section 209.0091, Property Code, as amended by this Act,
21 applies only to a foreclosure sale that takes place on or after the
22 effective date of this Act. A foreclosure sale that takes place
23 before the effective date of this Act is governed by the law as it
24 existed immediately before that date, and that law is continued in
25 effect for that purpose.

26 SECTION 22. This Act takes effect September 1, 2015.