

By: West

S.B. No. 1168

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 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), (a)(12)-(21), (f), and (g), 82.108, 82.111, 82.113, 82.114, 82.116, 82.118, 82.119, 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. Subchapter C, Chapter 82, Property Code, is amended by adding Section 82.119 to read as follows:

Sec. 82.119. ONLINE AVAILABILITY OF DEDICATORY INSTRUMENTS. If an association has, or a management company on the association's behalf maintains, a publicly accessible Internet

1 website, the association shall make available on that website all
2 dedicatory instruments relating to the association or condominium
3 regime, including bylaws and association rules, that are filed in
4 the county deed records.

5 SECTION 3. Section 82.157(a), Property Code, is amended to
6 read as follows:

7 (a) Except as provided by Subsection (c), if a unit owner
8 other than a declarant intends to sell a unit, before executing a
9 contract or conveying the unit, the unit owner must furnish to the
10 purchaser a current copy of the declaration, bylaws, any
11 association rules, and a resale certificate that must have been
12 prepared not earlier than three months before the date it is
13 delivered to the purchaser. The resale certificate must be issued
14 by the association and must contain the current operating budget of
15 the association and statements of:

16 (1) any right of first refusal or other restraint
17 contained in the declaration that restricts the right to transfer a
18 unit;

19 (2) the amount of the periodic common expense
20 assessment and the unpaid common expenses or special assessments
21 currently due and payable from the selling unit owner;

22 (3) other unpaid fees or amounts payable to the
23 association by the selling unit owner;

24 (4) capital expenditures, if any, approved by the
25 association for the next 12 months;

26 (5) the amount of reserves, if any, for capital
27 expenditures and of portions of those reserves designated by the

1 association for a specified project;

2 (6) any unsatisfied judgments against the
3 association;

4 (7) the nature of any pending suits against the
5 association;

6 (8) insurance coverage provided for the benefit of
7 unit owners;

8 (9) whether the board has knowledge that any
9 alterations or improvements to the unit or to the limited common
10 elements assigned to that unit violate the declaration, bylaws, or
11 association rules;

12 (10) whether the board has received notice from a
13 governmental authority concerning violations of health or building
14 codes with respect to the unit, the limited common elements
15 assigned to that unit, or any other portion of the condominium;

16 (11) the remaining term of any leasehold estate that
17 affects the condominium and the provisions governing an extension
18 or renewal of the lease; ~~and~~

19 (12) the name, mailing address, and telephone number
20 of the association's managing agent, if any;

21 (13) the association's current operating budget and
22 balance sheet; and

23 (14) a statement of all fees associated with the
24 transfer of ownership, including a description of each fee, to whom
25 each fee is paid, and the amount of each fee.

26 SECTION 4. Section 207.001(2), Property Code, is amended to
27 read as follows:

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

4 SECTION 5. Section 207.002, Property Code, is amended to
5 read as follows:

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

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

12 SECTION 6. Section 209.002, Property Code, is amended by
13 amending Subdivision (4-a) and adding Subdivision (13) to read as
14 follows:

15 (4-a) "Development period" means a period stated in a
16 declaration during which a declarant reserves:

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

19 (B) a right to direct the size, shape, and
20 composition of the subdivision.

21 (13) "Verified mail" means any method of mailing for
22 which evidence of mailing is provided by the United States Postal
23 Service or a common carrier.

24 SECTION 7. Section 209.003(d), Property Code, is amended to
25 read as follows:

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

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

4 (h) Except as provided by Subsection (h-1) [~~this~~
5 ~~subsection~~], a declaration may be amended only by a vote of 67
6 percent of those entitled to vote on the amendment of the
7 declaration [~~the total votes allocated to property owners in the~~
8 ~~property owners' association~~], in addition to any governmental
9 approval required by law.

10 (h-1) If the declaration contains a lower percentage than
11 prescribed by Subsection (h), the percentage in the declaration
12 controls.

13 SECTION 9. Section 209.0051, Property Code, is amended by
14 amending Subsections (b), (c-1), and (h) and adding Subsection
15 (c-2) to read as follows:

16 (b) In this section, "board [+
17 [~~(1)~~ ~~"Board~~] meeting":

18 (1) [~~(A)~~] means a deliberation between a quorum of the
19 voting board of the property owners' association, or between a
20 quorum of the voting board and another person, during which
21 property owners' association business is considered and the board
22 takes formal action; and

23 (2) [~~(B)~~] does not include the gathering of a quorum
24 of the board at a social function unrelated to the business of the
25 association or the attendance by a quorum of the board at a
26 regional, state, or national convention, ceremonial event, or press
27 conference, if formal action is not taken and any discussion of

1 association business is incidental to the social function,
2 convention, ceremonial event, or press conference.

3 ~~[(2) "Development period" means a period stated in a
4 declaration during which a declarant reserves.~~

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

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

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

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

15 (1) each board member may hear and be heard by every
16 other board member;

17 (2) except for any portion of the meeting conducted in
18 executive session:

19 (A) all owners in attendance at the meeting may
20 hear all board members; and

21 (B) owners are allowed to listen using any
22 electronic or telephonic communication method used or expected to
23 be used by a board member to participate; and

24 (3) the notice of the meeting includes instructions
25 for owners to access any communication method required to be
26 accessible under Subdivision (2)(B).

27 (h) Except as provided by this subsection, a [A] board may

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

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

1 before the owner has an opportunity to attend a board meeting to
2 present the owner's position, including any defense, on the issue;

3 (9) lending or borrowing money;

4 (10) the adoption or amendment of a dedicatory
5 instrument;

6 (11) the approval of an annual budget or the approval
7 of an amendment of an annual budget that increases the budget by
8 more than 10 percent;

9 (12) the sale or purchase of real property;

10 (13) the filling of a vacancy on the board;

11 (14) the construction of capital improvements other
12 than the repair, replacement, or enhancement of existing capital
13 improvements; or

14 (15) the election of an officer.

15 SECTION 10. Section 209.0056, Property Code, is amended by
16 amending Subsection (a) and adding Subsection (a-1) to read as
17 follows:

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

22 (1) each owner of property in the property owners'
23 association, for purposes of an association-wide election or vote;
24 or

25 (2) each owner of property in the property owners'
26 association entitled under the dedicatory instruments to vote in a
27 particular representative election, for purposes of a vote that

1 involves election of representatives of the association who are
2 vested under the dedicatory instruments of the property owners'
3 association with the authority to elect or appoint board members of
4 the property owners' association.

5 (a-1) For an election or vote of owners not taken at a
6 meeting, the property owners' association shall give notice of the
7 election or vote to all owners entitled to vote on any matter under
8 consideration. The notice shall be given not later than the 20th
9 day before the latest date on which a ballot may be submitted to be
10 counted.

11 SECTION 11. Section 209.0057, Property Code, is amended by
12 amending Subsections (b), (c), and (d) and adding Subsections
13 (b-1), (b-2), (b-3), and (b-4) to read as follows:

14 (b) Any owner may, not later than the 15th day after the
15 later of the date of any ~~[the]~~ meeting of owners at which the
16 election or vote was held or the date of the announcement of the
17 results of the election or vote, require a recount of the votes. A
18 demand for a recount must be submitted in writing either:

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

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

1 (b-1) The property owners' association must estimate the
2 costs for performance of the recount by a person qualified to
3 tabulate votes under Subsection (c) and must send an invoice for the
4 estimated costs to the requesting owner at the owner's last known
5 address according to association records not later than the 20th
6 day after the date the association receives the owner's demand for
7 the recount.

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

12 (b-3) If the invoice described by Subsection (b-1) is not
13 paid by the deadline prescribed by Subsection (b-2), the owner's
14 demand for a recount is considered withdrawn and a recount is not
15 required.

16 (b-4) If the estimated costs under Subsection (b-1) are
17 lesser or greater than the actual costs, the property owners'
18 association must send a final invoice to the owner on or before the
19 30th business day after the date the results of the recount are
20 provided. If the final invoice includes additional amounts owed by
21 the owner, any additional amounts not paid to the association
22 before the 30th business day after the date the invoice is sent to
23 the owner may be added to the owner's account as an assessment. If
24 the estimated costs exceed the final invoice amount, the owner is
25 entitled to a refund. The refund shall be paid to the owner at the
26 time the final invoice is sent under this subsection.

27 (c) Following receipt of payment under Subsection (b-2),

1 the [~~The~~] property owners' association shall, at the expense of the
2 owner requesting the recount, retain for the purpose of performing
3 the recount[~~7~~] the services of a person qualified to tabulate votes
4 under this subsection. The association shall enter into a contract
5 for the services of a person who:

6 (1) is not a member of the association or related to a
7 member of the association board within the third degree by
8 consanguinity or affinity, as determined under Chapter 573,
9 Government Code; and

10 (2) is:

11 (A) a current or former:

- 12 (i) county judge;
13 (ii) county elections administrator;
14 (iii) justice of the peace; or
15 (iv) county voter registrar; or

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

18 (d) On [~~Any recount under Subsection (b) must be performed~~
19 ~~on~~] or before the 30th day after the date of receipt of [~~a request~~
20 ~~and~~] payment for a recount in accordance with Subsection (b-2), the
21 recount must be completed and the property owners' association must
22 provide each owner who requested the recount with notice of the
23 results of the recount [~~Subsections (b) and (c)~~]. If the recount
24 changes the results of the election, the [~~property owners'~~]
25 association shall reimburse the requesting owner for the cost of
26 the recount not later than the 30th day after the date the results
27 of the recount are provided. [~~The property owners' association~~

1 ~~shall provide the results of the recount to each owner who requested~~
2 ~~the recount.]~~ Any action taken by the board in the period between
3 the initial election vote tally and the completion of the recount is
4 not affected by any recount.

5 SECTION 12. Section 209.0058, Property Code, is amended by
6 amending Subsections (a) and (c) and adding Subsections (a-1) and
7 (d) to read as follows:

8 (a) Except as provided by Subsection (d), a [Any] vote cast
9 [in an election or vote] by a member of a property owners'
10 association must be in writing and signed by the member if the vote
11 is cast:

- 12 (1) outside of a meeting;
- 13 (2) in an election to fill a position on the board;
- 14 (3) on a proposed adoption or amendment of a
15 dedicatory instrument;
- 16 (4) on a proposed increase in the amount of a regular
17 assessment or the proposed adoption of a special assessment; or
- 18 (5) on the proposed removal of a board member.

19 (a-1) If a property owners' association elects to use a
20 ballot for a vote on a matter other than a matter described by
21 Subsection (a), the ballot must be:

- 22 (1) in writing and signed by the member; or
- 23 (2) cast by secret ballot in accordance with
24 Subsection (d).

25 (c) In a property owners' association ~~[an association-wide]~~
26 election, written and signed ballots are not required for
27 uncontested races.

1 (d) A property owners' association may adopt rules to allow
2 voting by secret ballot by association members. The association
3 must take measures to reasonably ensure that:

4 (1) a member cannot cast more votes than the member is
5 eligible to cast in an election or vote; and

6 (2) the association counts each vote cast by a member
7 that the member is eligible to cast.

8 SECTION 13. Section 209.00591, Property Code, is amended by
9 adding Subsection (a-1) and amending Subsection (c) to read as
10 follows:

11 (a-1) Notwithstanding any other provision of this chapter,
12 a property owners' association's bylaws may require one or more
13 board members to reside in the subdivision subject to the
14 dedicatory instruments but may not require all board members to
15 reside in that subdivision. A requirement described by this
16 subsection is not applicable during the development period.

17 (c) The declaration may provide for a period of declarant
18 control of the association during which a declarant, or persons
19 designated by the declarant, may appoint and remove board members
20 and the officers of the association, other than board members or
21 officers elected by members of the property owners' association.
22 Regardless of the period of declarant control provided by the
23 declaration, on or before the 120th day after the date 75 percent of
24 the lots that may be created and made subject to the declaration are
25 conveyed to owners other than a declarant or a builder in the
26 business of constructing homes who purchased the lots from the
27 declarant for the purpose of selling completed homes built on the

1 lots, at least one-third of the board members must be elected by
2 owners other than the declarant. If the declaration does not
3 include the number of lots that may be created and made subject to
4 the declaration, at least one-third of the board members must be
5 elected by owners other than the declarant not later than the 10th
6 anniversary of the date the declaration was recorded.

7 SECTION 14. Section 209.00592, Property Code, is amended by
8 amending Subsection (a) and adding Subsections (a-1) and (b-1) to
9 read as follows:

10 (a) Subject to Subsection (a-1), the ~~[The]~~ voting rights of
11 an owner may be cast or given:

12 (1) in person or by proxy at a meeting of the property
13 owners' association;

14 (2) by absentee ballot in accordance with this
15 section;

16 (3) by electronic ballot in accordance with this
17 section; or

18 (4) by any method of representative or delegated
19 voting provided by a dedicatory instrument.

20 (a-1) Except as provided by this subsection, unless a
21 dedicatory instrument provides otherwise, a property owners'
22 association is not required to provide an owner with more than one
23 voting method. An owner must be allowed to vote by absentee ballot
24 or proxy.

25 (b-1) For purposes of Subsection (b), a nomination taken
26 from the floor in a board member election is not considered an
27 amendment to the proposal for the election.

1 SECTION 15. Section 209.00593, Property Code, is amended by
2 adding Subsections (a-1), (a-2), and (a-3) and amending Subsection
3 (d) to read as follows:

4 (a-1) At least 10 days before the date a property owners'
5 association composed of more than 100 lots disseminates absentee
6 ballots or other ballots to association members for purposes of
7 voting in a board member election, the association must provide
8 notice to the association members soliciting candidates interested
9 in running for a position on the board. The notice must contain
10 instructions for an eligible candidate to notify the association of
11 the candidate's request to be placed on the ballot and the deadline
12 to submit the candidate's request. The deadline may not be earlier
13 than the 10th day after the date the association provides the notice
14 required by this subsection.

15 (a-2) The notice required by Subsection (a-1) must be:

16 (1) mailed to each owner; or

17 (2) provided by:

18 (A) posting the notice in a conspicuous manner
19 reasonably designed to provide notice to association members:

20 (i) in a place located on the association's
21 common property or, with the property owner's consent, on other
22 conspicuously located privately owned property within the
23 subdivision; or

24 (ii) on any Internet website maintained by
25 the association or other Internet media; and

26 (B) sending the notice by e-mail to each owner
27 who has registered an e-mail address with the association.

1 (a-3) An association described by Subsection (a-1) shall
2 include on each absentee ballot or other ballot for a board member
3 election the name of each eligible candidate from whom the
4 association received a request to be placed on the ballot in
5 accordance with this section.

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

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

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

14 SECTION 16. Section 209.00594, Property Code, is amended by
15 amending Subsections (b) and (c) and adding Subsections (b-1) and
16 (d) to read as follows:

17 (b) A person other than a person described by Subsection (a)
18 may tabulate votes in an association election or vote [~~but may not~~
19 ~~disclose to any other person how an individual voted].~~

20 (b-1) A person who tabulates votes under Subsection (b) or
21 who performs a recount under Section 209.0057(c) may not disclose
22 to any other person how an individual voted.

23 (c) Notwithstanding any other provision of this chapter or
24 any other law, only a person [~~other than a person~~] who tabulates
25 votes under Subsection (b) or who performs a recount under Section
26 209.0057(c) [~~, including a person described by Subsection (a),~~] may
27 be given access to the ballots cast in the election or vote [~~only as~~

1 ~~part of a recount process authorized by law].~~

2 (d) This section may not be construed to affect a person's
3 obligation to comply with a court order for the release of ballots
4 or other voting records.

5 SECTION 17. Section 209.006, Property Code, is amended to
6 read as follows:

7 Sec. 209.006. NOTICE REQUIRED BEFORE ENFORCEMENT ACTION.

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

16 (b) The notice must:

17 (1) describe the violation or property damage that is
18 the basis for the suspension action, charge, or fine and state any
19 amount due the association from the owner; [~~and~~]

20 (2) except as provided by Subsection (d), inform the
21 owner that the owner:

22 (A) is entitled to a reasonable period to cure
23 the violation and avoid the fine or suspension [~~unless the owner was~~
24 ~~given notice and a reasonable opportunity to cure a similar~~
25 ~~violation within the preceding six months~~];

26 (B) may request a hearing under Section 209.007
27 on or before the 30th day after the date [~~the owner receives~~] the

1 notice was mailed to the owner; and

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

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

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

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

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

19 (e) If the owner cures the violation before the expiration
20 of the period for cure described by Subsection (c), a fine may not
21 be assessed for the violation.

22 (f) For purposes of this section, a violation is considered
23 a threat to public health or safety if the violation could
24 materially affect the physical health or safety of an ordinary
25 resident.

26 (g) For purposes of this section, a violation is considered
27 uncurable if the violation has occurred but is not a continuous

1 action or a condition capable of being remedied by affirmative
2 action. For purposes of this subsection, the nonrepetition of a
3 one-time violation or other violation that is not ongoing is not
4 considered an adequate remedy.

5 (h) The following are examples of acts considered uncurable
6 for purposes of this section:

7 (1) shooting fireworks;

8 (2) an act constituting a threat to health or safety;

9 (3) a noise violation that is not ongoing;

10 (4) property damage, including the removal or
11 alteration of landscape; and

12 (5) holding a garage sale or other event prohibited by
13 a dedicatory instrument.

14 (i) The following are examples of acts considered curable
15 for purposes of this section:

16 (1) a parking violation;

17 (2) a maintenance violation;

18 (3) the failure to construct improvements or
19 modifications in accordance with approved plans and
20 specifications; and

21 (4) an ongoing noise violation such as a barking dog.

22 SECTION 18. Section 209.0062(c), Property Code, is amended
23 to read as follows:

24 (c) A property owners' association is [~~may~~] not required to
25 allow a payment plan for any amount that extends more than 18 months
26 from the date of the owner's request for a payment plan. The
27 association is not required to enter into a payment plan with an

1 owner who failed to honor the terms of a previous payment plan
2 during the two years following the owner's default under the
3 previous payment plan. The association is not required to make a
4 payment plan available to an owner after the period for cure
5 described by Section 209.0064(b)(3) expires. The association is
6 not required to allow an owner to enter into a payment plan more
7 than once in any 12-month period.

8 SECTION 19. Section 209.0064(b), Property Code, is amended
9 to read as follows:

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

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

17 (2) if the association is subject to Section 209.0062
18 or the association's dedicatory instruments contain a requirement
19 to offer a payment plan, describes the options the owner has to
20 avoid having the account turned over to a collection agent,
21 including information regarding availability of a payment plan
22 through the association; and

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

25 SECTION 20. Section 209.009, Property Code, is amended to
26 read as follows:

27 Sec. 209.009. FORECLOSURE SALE PROHIBITED IN CERTAIN

1 CIRCUMSTANCES. A property owners' association may not foreclose a
2 property owners' association's assessment lien if the debt securing
3 the lien consists solely of:

- 4 (1) fines assessed by the association;
5 (2) attorney's fees incurred by the association solely
6 associated with fines assessed by the association; or
7 (3) amounts added to the owner's account as an
8 assessment under Section 209.005(i) or 209.0057(b-4).

9 SECTION 21. Section 209.0091, Property Code, is amended to
10 read as follows:

11 Sec. 209.0091. PREREQUISITES TO FORECLOSURE: NOTICE AND
12 OPPORTUNITY TO CURE FOR CERTAIN OTHER LIENHOLDERS. (a) A property
13 owners' association may not file an application for an expedited
14 court order authorizing foreclosure of the association's
15 assessment lien as described by Section 209.0092(a) or a petition
16 for judicial foreclosure of the association's assessment lien as
17 described by Section 209.0092(d) [~~foreclose a property owners'~~
18 ~~association assessment lien on real property by giving notice of~~
19 ~~sale under Section 51.002 or commencing a judicial foreclosure~~
20 ~~action]~~ unless the association has:

- 21 (1) provided written notice of the total amount of the
22 delinquency giving rise to the foreclosure to any other holder of a
23 lien of record on the property whose lien is inferior or subordinate
24 to the association's lien and is evidenced by a deed of trust; and
25 (2) provided the recipient of the notice an
26 opportunity to cure the delinquency before the 61st day after the
27 date the association mails [~~recipient receives~~] the notice

1 described in Subdivision (1).

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

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

9 SECTION 22. Section 209.0092, Property Code, is amended by
10 amending Subsection (a) and adding Subsections (d) and (e) to read
11 as follows:

12 (a) Except as provided by Subsection (c) or (d) and subject
13 to Section 209.009, a property owners' association may not
14 foreclose a property owners' association assessment lien unless the
15 association first obtains a court order in an application for
16 expedited foreclosure under the rules adopted by the supreme court
17 under Subsection (b). A property owners' association may use the
18 procedure described by this subsection to foreclose any lien
19 described by the association's dedicatory instruments. A property
20 owners' association whose dedicatory instruments grant a right of
21 foreclosure is considered to have any power of sale required by law
22 as a condition of using the procedure described by this subsection.

23 (d) A property owners' association authorized to use the
24 procedure described by Subsection (a) may in its discretion elect
25 not to use that procedure and instead foreclose the association's
26 assessment lien under court judgment foreclosing the lien and
27 ordering the sale, pursuant to Rules 309 and 646a, Texas Rules of

1 Civil Procedure.

2 (e) This section does not affect any right an association
3 that is not authorized to use the procedure described by Subsection
4 (a) may have to judicially foreclose the association's assessment
5 lien as described by Subsection (d).

6 SECTION 23. Section 209.0041(a), Property Code, is
7 repealed.

8 SECTION 24. (a) Section 82.157(a), Property Code, as
9 amended by this Act, applies only to a resale certificate issued on
10 or after the effective date of this Act. A resale certificate
11 issued before the effective date of this Act is governed by the law
12 as it existed immediately before the effective date of this Act, and
13 that law is continued in effect for that purpose.

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

23 (c) Sections 209.0041, 209.0056, 209.0057, 209.0058,
24 209.00592, 209.00593, and 209.00594(c), Property Code, as amended
25 by this Act, apply only to an election or vote held on or after the
26 effective date of this Act. An election or vote held before the
27 effective date of this Act is governed by the law as it existed

1 immediately before that date, and that law is continued in effect
2 for that purpose.

3 (d) Section 209.006, Property Code, as amended by this Act,
4 applies only to an enforcement action taken on or after the
5 effective date of this Act. An enforcement action taken before the
6 effective date of this Act is governed by the law as it existed
7 immediately before that date, and that law is continued in effect
8 for that purpose.

9 (e) Section 209.0064, Property Code, as amended by this Act,
10 applies only to a collection action taken on or after the effective
11 date of this Act. A collection action taken before the effective
12 date of this Act is governed by the law as it existed immediately
13 before that date, and that law is continued in effect for that
14 purpose.

15 (f) Section 209.0091, Property Code, as amended by this Act,
16 applies only to an application or petition filed on or after the
17 effective date of this Act. An application or petition filed before
18 the effective date of this Act is governed by the law as it existed
19 immediately before that date, and that law is continued in effect
20 for that purpose.

21 SECTION 25. This Act takes effect September 1, 2015.