

By: Huffman

S.B. No. 639

A BILL TO BE ENTITLED

AN ACT

relating to the operation and management of certain condominium unit owners' associations.

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

SECTION 1. Section 82.002(c), Property Code, is amended to read as follows:

(c) This section and the following sections apply to a condominium in this state for which the declaration was recorded before January 1, 1994: Sections 82.005, 82.006, 82.007, 82.053, 82.054, 82.102(a)(1)-(7), (a)(12)-(21), (f), and (g), 82.1031, 82.1032, 82.1051, 82.108, 82.1081 through 82.1087, 82.111, 82.113, 82.114, 82.1141, 82.116, 82.118, 82.157, and 82.161. The definitions prescribed by Section 82.003 apply to a condominium in this state for which the declaration was recorded before January 1, 1994, to the extent the definitions do not conflict with the declaration. The sections listed in this subsection apply only with respect to events and circumstances occurring on or after January 1, 1994, and do not invalidate existing provisions of the declaration, bylaws, or plats or plans of a condominium for which the declaration was recorded before January 1, 1994.

SECTION 2. Section 82.067, Property Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) A unit owner may cast or give a vote to adopt an amendment to a declaration under Subsection (a) by any method

1 authorized by Section 82.1085.

2 SECTION 3. Section 82.102(g), Property Code, is amended to
3 read as follows:

4 (g) If a dedicatory instrument requires a vote of members of
5 the association to borrow money or assign the association's right
6 to future income or the association's lien rights, the loan or
7 assignment must be approved as provided by the dedicatory
8 instrument. The [~~board may determine whether a~~] vote for that
9 purpose may be cast as provided by Section 82.1085 [~~electronically,~~
10 ~~by absentee ballot, in person or by proxy~~] at a meeting called for
11 that purpose[~~7~~] or by written consent. If a lower approval
12 threshold is not provided by the dedicatory instrument, approval
13 requires the consent of owners holding 67 percent of all voting
14 interests.

15 SECTION 4. Subchapter C, Chapter 82, Property Code, is
16 amended by adding Sections 82.1031, 82.1032, and 82.1051 to read as
17 follows:

18 Sec. 82.1031. ELECTION OF BOARD MEMBERS. (a)
19 Notwithstanding any provision in a dedicatory instrument, any board
20 member whose term has expired must be elected by unit owners who are
21 members of the association. A board member may be appointed by the
22 board to fill a vacancy on the board. A board member appointed to
23 fill a vacant position shall serve for the remainder of the
24 unexpired term of the position.

25 (b) At least 10 days before the date an association
26 disseminates absentee ballots or other ballots to association
27 members for purposes of voting in a board member election, the

1 association must provide notice to the association members
2 soliciting candidates interested in running for a position on the
3 board. The notice must contain instructions for an eligible
4 candidate to notify the association of the candidate's request to
5 be placed on the ballot and the deadline to submit the candidate's
6 request. The deadline may not be earlier than the 10th day after
7 the date the association provides the notice required by this
8 subsection.

9 (c) The notice required by Subsection (b) must be:

10 (1) mailed to each unit owner; or

11 (2) provided by:

12 (A) posting the notice in a conspicuous manner
13 reasonably designed to provide notice to unit owners:

14 (i) in a place located on the common
15 elements or, with the unit owner's consent, on other conspicuously
16 located privately owned property in or on the condominium; or

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

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

21 (d) An association shall include on each absentee ballot or
22 other ballot for a board member election the name of each eligible
23 candidate from whom the association received a request to be placed
24 on the ballot in accordance with this section.

25 (e) The board of an association may amend the bylaws of the
26 association to provide for elections to be held as required by
27 Subsection (a).

1 (f) The appointment of a board member in violation of this
2 section is void.

3 (g) This section does not apply to the appointment of a
4 board member during a period of declarant control.

5 Sec. 82.1032. BOARD MEMBERSHIP. (a) Except as provided by
6 this section, a provision in a dedicatory instrument that restricts
7 a unit owner's right to run for a position on the board of the
8 association is void.

9 (b) Notwithstanding any other provision of this chapter, an
10 association's bylaws may require one or more board members to
11 reside in the condominium subject to the dedicatory instruments but
12 may not require all board members to reside in the condominium. A
13 requirement described by this subsection is not applicable during
14 the period of declarant control.

15 (c) If a board is presented with written, documented
16 evidence from a database or other record maintained by a
17 governmental law enforcement authority that a board member was
18 convicted of a felony or crime involving moral turpitude not more
19 than 20 years before the date the board is presented with the
20 evidence, the board member is immediately ineligible to serve on
21 the board of the association, automatically considered removed from
22 the board, and prohibited from future service on the board.

23 Sec. 82.1051. ASSOCIATION CONTRACTS. (a) This section
24 does not apply to a contract entered into by an association during a
25 period of declarant control.

26 (b) An association may enter into an enforceable contract
27 with a current association board member, a person related to a

1 current association board member within the third degree by
2 consanguinity or affinity, as determined under Chapter 573,
3 Government Code, a company in which a current association board
4 member has a financial interest in at least 51 percent of profits,
5 or a company in which a person related to a current association
6 board member within the third degree by consanguinity or affinity,
7 as determined under Chapter 573, Government Code, has a financial
8 interest in at least 51 percent of profits only if the following
9 conditions are satisfied:

10 (1) the board member, relative, or company bids on the
11 proposed contract and the association has received at least two
12 other bids for the contract from persons not associated with the
13 board member, relative, or company, if reasonably available in the
14 community;

15 (2) the board member:

16 (A) is not given access to the other bids;

17 (B) does not participate in any board discussion
18 regarding the contract; and

19 (C) does not vote on the award of the contract;

20 (3) the material facts regarding the relationship or
21 interest with respect to the proposed contract are disclosed to or
22 known by the association board and the board, in good faith and with
23 ordinary care, authorizes the contract by an affirmative vote of
24 the majority of the board members who do not have an interest
25 governed by this subsection; and

26 (4) the association board certifies that the other
27 requirements of this subsection have been satisfied by a resolution

1 approved by an affirmative vote of the majority of the board members
2 who do not have an interest governed by this subsection.

3 SECTION 5. Section 82.108(b), Property Code, is amended to
4 read as follows:

5 (b) Meetings of the association and board must be open to
6 unit owners as provided by Section 82.1081~~[, subject to the right of~~
7 ~~the board to adjourn a meeting of the board and reconvene in closed~~
8 ~~executive session to consider actions involving personnel, pending~~
9 ~~litigation, contract negotiations, enforcement actions, matters~~
10 ~~involving the invasion of privacy of individual unit owners, or~~
11 ~~matters that are to remain confidential by request of the affected~~
12 ~~parties and agreement of the board. The general nature of any~~
13 ~~business to be considered in executive session must first be~~
14 ~~announced at the open meeting].~~

15 SECTION 6. Subchapter C, Chapter 82, Property Code, is
16 amended by adding Sections 82.1081 through 82.1087 to read as
17 follows:

18 Sec. 82.1081. OPEN MEETINGS. (a) In this section, "board
19 meeting":

20 (1) means a deliberation between a quorum of the
21 association board, or between a quorum of the board and another
22 person, during which association business is considered and the
23 board takes formal action; and

24 (2) does not include the gathering of a quorum of the
25 board at a social function unrelated to the business of the
26 association or the attendance by a quorum of the board at a
27 regional, state, or national convention, ceremonial event, or press

1 conference, if formal action is not taken and any discussion of
2 association business is incidental to the social function,
3 convention, ceremonial event, or press conference.

4 (b) Meetings of the association and regular and special
5 board meetings must be open to unit owners, subject to the right of
6 the board to adjourn a board meeting and reconvene in closed
7 executive session to consider actions involving personnel, pending
8 or threatened litigation, contract negotiations, enforcement
9 actions, confidential communications with the association's
10 attorney, matters involving the invasion of privacy of individual
11 unit owners, or matters that are to remain confidential by request
12 of the affected parties and agreement of the board. Following an
13 executive session, any decision made in the executive session must
14 be summarized orally and placed in the minutes, in general terms,
15 without breaching the privacy of individual unit owners, violating
16 any privilege, or disclosing information that was to remain
17 confidential at the request of the affected parties. The oral
18 summary must include a general explanation of expenditures approved
19 in executive session.

20 (c) Except for a meeting held by electronic or telephonic
21 means under Subsection (d), a board meeting must be held in a county
22 in which all or any part of the condominium is located or in a county
23 adjacent to that county.

24 (d) A board meeting may be held by electronic or telephonic
25 means provided that:

26 (1) each board member may hear and be heard by every
27 other board member;

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

3 (A) all unit owners in attendance at the meeting
4 may hear all board members; and

5 (B) unit owners are allowed to listen using any
6 electronic or telephonic communication method used or expected to
7 be used by a board member to participate; and

8 (3) the notice of the meeting includes instructions
9 for unit owners to access any communication method required to be
10 accessible under Subdivision (2)(B).

11 (e) The board shall keep a record of each regular or special
12 board meeting in the form of written minutes of the meeting. The
13 board shall make meeting records, including approved minutes,
14 available to a unit owner for inspection and copying on the unit
15 owner's written request to the association's managing agent at the
16 address appearing on the most recently filed management certificate
17 or, if there is not a managing agent, to the board.

18 (f) Unit owners shall be given notice of the date, hour,
19 place, and general subject of a meeting of the association or a
20 regular or special board meeting, including a general description
21 of any matter to be brought up for deliberation in executive
22 session. Except as provided by Section 82.070, the notice shall be:

23 (1) mailed to each unit owner not later than the 10th
24 day or earlier than the 60th day before the date of the meeting; or

25 (2) provided at least 72 hours before the start of the
26 meeting by:

27 (A) posting the notice in a conspicuous manner

1 reasonably designed to provide notice to unit owners:

2 (i) in a place located on the common
3 elements or, with the unit owner's consent, on other conspicuously
4 located privately owned property in or on the condominium; or

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

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

9 (g) It is a unit owner's duty to keep an updated e-mail
10 address registered with the association under Subsection
11 (f)(2)(B).

12 (h) If the board recesses a regular or special board meeting
13 to continue the following regular business day, the board is not
14 required to post notice of the continued meeting if the recess is
15 taken in good faith and not to circumvent this section. If a
16 regular or special board meeting is continued to the following
17 regular business day, and on that following day the board continues
18 the meeting to another day, the board shall give notice of the
19 continuation in at least one manner prescribed by Subsection
20 (f)(2)(A) not later than two hours after adjourning the meeting
21 being continued.

22 (i) Except as provided by this subsection, a board may take
23 action outside of a meeting, including voting by electronic or
24 telephonic means, without prior notice to unit owners under
25 Subsection (f), if each board member is given a reasonable
26 opportunity to express the board member's opinion to all other
27 board members and to vote. Any action taken without notice to unit

1 owners under Subsection (f) must be summarized orally, including an
2 explanation of any known actual or estimated expenditures approved
3 at the meeting, and documented in the minutes of the next regular or
4 special board meeting. The board may not, unless done in an open
5 meeting for which prior notice was given to unit owners under
6 Subsection (f), consider or vote on:

7 (1) fines;

8 (2) damage assessments;

9 (3) initiation of foreclosure actions;

10 (4) initiation of enforcement actions, excluding
11 temporary restraining orders or violations involving a threat to
12 health or safety;

13 (5) increases in assessments;

14 (6) levying of special assessments;

15 (7) appeals from a denial of a request for approval of
16 an alteration of a unit under Section [82.061](#);

17 (8) a suspension of a right of a particular unit owner
18 before the unit owner has an opportunity to attend a board meeting
19 to present the unit owner's position, including any defense, on the
20 issue;

21 (9) lending or borrowing money;

22 (10) the adoption or amendment of a dedicatory
23 instrument;

24 (11) the approval of an annual budget or the approval
25 of an amendment of an annual budget that increases the budget by
26 more than 10 percent;

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

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

2 (14) the construction of capital improvements other
3 than the repair, replacement, or enhancement of existing capital
4 improvements; or

5 (15) the election of an officer.

6 (j) This section applies to a meeting of an association
7 board during a period of declarant control only if the meeting is
8 conducted for the purpose of:

9 (1) adopting or amending the governing documents,
10 including declarations, bylaws, rules, and regulations of the
11 association;

12 (2) increasing the amount of regular assessments of
13 the association or adopting or increasing a special assessment;

14 (3) electing non-declarant board members of the
15 association or establishing a process by which those members are
16 elected; or

17 (4) changing the voting rights of members of the
18 association.

19 Sec. 82.1082. NOTICE OF ELECTION OR ASSOCIATION VOTE. (a)
20 Except as provided in Section 82.070, for an election or vote taken
21 at a meeting of the unit owners, not later than the 10th day or
22 earlier than the 60th day before the date of the election or vote,
23 an association shall give written notice of the election or vote to:

24 (1) each unit owner in the association, for purposes
25 of an association-wide election or vote; or

26 (2) each unit owner in the association entitled under
27 the dedicatory instruments to vote in a particular representative

1 election, for purposes of a vote that involves election of
2 representatives of the association who are vested under the
3 dedicatory instruments of the association with the authority to
4 elect or appoint board members of the association.

5 (b) For an election or vote of unit owners not taken at a
6 meeting, the association shall give notice of the election or vote
7 to all unit 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 (c) This section supersedes any contrary requirement in a
12 dedicatory instrument.

13 Sec. 82.1083. RIGHT TO VOTE. A provision in a dedicatory
14 instrument that would disqualify a unit owner from voting in an
15 association election of board members or on any matter concerning
16 the rights or responsibilities of the unit owner is void.

17 Sec. 82.1084. BALLOTS. (a) Except as provided by
18 Subsection (d), any vote cast in an election or vote by an
19 association member must be in writing and signed by the member.

20 (b) Electronic votes cast under Section 82.1085 constitute
21 written and signed ballots.

22 (c) In an association election, written and signed ballots
23 are not required for uncontested races.

24 (d) An association may adopt rules to allow voting by secret
25 ballot by members of the association. The association must take
26 measures to reasonably ensure that:

27 (1) a member cannot cast more votes than the member is

1 eligible to cast in an election or vote; and

2 (2) the association counts every vote cast by a member
3 that is eligible to cast a vote.

4 Sec. 82.1085. VOTING METHODS; ABSENTEE OR ELECTRONIC
5 BALLOTS. (a) Subject to Subsection (b), the voting rights of a
6 unit owner may be cast or given:

7 (1) in person or by proxy at a meeting of the
8 association;

9 (2) by absentee ballot in accordance with this
10 section;

11 (3) by electronic ballot in accordance with this
12 section; or

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

15 (b) Except as provided by this subsection, unless a
16 dedicatory instrument provides otherwise, an association is not
17 required to provide a unit owner with more than one voting method.
18 A unit owner must be allowed to vote by absentee ballot or proxy.

19 (c) An absentee or electronic ballot:

20 (1) may be counted as a unit owner present and voting
21 for the purpose of establishing a quorum only for items appearing on
22 the ballot;

23 (2) may not be counted, even if properly delivered, if
24 the unit owner attends any meeting to vote in person, so that any
25 vote cast at a meeting by a unit owner supersedes any vote submitted
26 by absentee or electronic ballot previously submitted for that
27 proposal; and

1 (3) may not be counted on the final vote of a proposal
2 if the motion was amended at the meeting to be different from the
3 exact language on the absentee or electronic ballot.

4 (d) For purposes of Subsection (c), a nomination taken from
5 the floor in a board member election is not considered an amendment
6 to the proposal for the election.

7 (e) A solicitation for votes by absentee ballot must
8 include:

9 (1) an absentee ballot that contains each proposed
10 action and provides an opportunity to vote for or against each
11 proposed action;

12 (2) instructions for delivery of the completed
13 absentee ballot, including the delivery location; and

14 (3) the following language: "By casting your vote via
15 absentee ballot you will forgo the opportunity to consider and vote
16 on any action from the floor on these proposals, if a meeting is
17 held. This means that if there are amendments to these proposals
18 your votes will not be counted on the final vote on these measures.
19 If you desire to retain this ability, please attend any meeting in
20 person. You may submit an absentee ballot and later choose to
21 attend any meeting in person, in which case any in-person vote will
22 prevail."

23 (f) For the purposes of this section, "electronic ballot"
24 means a ballot:

25 (1) given by:

26 (A) e-mail;

27 (B) facsimile; or

1 (C) posting on an Internet website;
2 (2) for which the identity of the unit owner
3 submitting the ballot can be confirmed; and
4 (3) for which the unit owner may receive a receipt of
5 the electronic transmission and receipt of the unit owner's ballot.

6 (g) If an electronic ballot is posted on an Internet
7 website, a notice of the posting shall be sent to each unit owner
8 that contains instructions on obtaining access to the posting on
9 the website.

10 (h) This section supersedes any contrary provision in a
11 dedicatory instrument.

12 Sec. 82.1086. TABULATION OF AND ACCESS TO BALLOTS. (a)
13 Notwithstanding any other provision of this chapter or any other
14 law, a person who is a candidate in an association election or who
15 is otherwise the subject of an association vote, or a person related
16 to that person within the third degree by consanguinity or
17 affinity, as determined under Chapter 573, Government Code, may not
18 tabulate or otherwise be given access to the ballots cast in that
19 election or vote except as provided by this section.

20 (b) A person other than a person described by Subsection (a)
21 may tabulate votes in an association election or vote.

22 (c) A person who tabulates votes under Subsection (b) or who
23 performs a recount under Section 82.1087 may not disclose to any
24 other person how an individual voted.

25 (d) Notwithstanding any other provision of this chapter or
26 any other law, only a person who tabulates votes under Subsection
27 (b) or who performs a recount under Section 82.1087 may be given

1 access to the ballots cast in the election or vote.

2 (e) 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 Sec. 82.1087. RECOUNT OF VOTES. (a) Any unit owner may,
6 not later than the 15th day after the later of the date of any
7 meeting of unit owners at which the election or vote was held or the
8 date of the announcement of the results of the election or vote,
9 require a recount of the votes. A demand for a recount must be
10 submitted in writing either:

11 (1) by verified mail or by delivery by the United
12 States Postal Service with signature confirmation service to the
13 association's mailing address as reflected on the latest management
14 certificate filed under Section 82.116; or

15 (2) in person to the association's managing agent as
16 reflected on the latest management certificate filed under Section
17 82.116 or to the address to which absentee and proxy ballots are
18 mailed.

19 (b) The association must estimate the costs for performance
20 of the recount by a person qualified to tabulate votes under
21 Subsection (f) and must send an invoice for the estimated costs to
22 the requesting unit owner at the unit owner's last known address
23 according to association records not later than the 20th day after
24 the date the association receives the unit owner's demand for the
25 recount.

26 (c) The unit owner demanding a recount under this section
27 must pay the invoice described by Subsection (b) in full to the

1 association on or before the 30th day after the date the invoice is
2 sent to the unit owner.

3 (d) If the invoice described by Subsection (b) is not paid
4 by the deadline prescribed by Subsection (c), the unit owner's
5 demand for a recount is considered withdrawn and a recount is not
6 required.

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

18 (f) Following receipt of payment under Subsection (c), the
19 association shall, at the expense of the unit owner requesting the
20 recount, retain for the purpose of performing the recount the
21 services of a person qualified to tabulate votes under this
22 subsection. The association shall enter into a contract for the
23 services of a person who:

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

1 (2) is:

2 (A) a current or former:

3 (i) county judge;

4 (ii) county elections administrator;

5 (iii) justice of the peace; or

6 (iv) county voter registrar; or

7 (B) a person agreed on by the association and
8 each person requesting the recount.

9 (g) On or before the 30th day after the date of receipt of
10 payment for a recount in accordance with Subsection (c), the
11 recount must be completed and the association must provide each
12 unit owner who requested the recount with notice of the results of
13 the recount. If the recount changes the results of the election,
14 the association shall reimburse the requesting unit owner for the
15 cost of the recount not later than the 30th day after the date the
16 results of the recount are provided. Any action taken by the board
17 in the period between the initial election vote tally and the
18 completion of the recount is not affected by any recount.

19 SECTION 7. Section 82.114(b), Property Code, is amended to
20 read as follows:

21 (b) All financial and other records of the association shall
22 be reasonably available at its registered office or its principal
23 office in this state for examination and production in accordance
24 with Section 82.1141 [~~by a unit owner and the owner's agents. An~~
25 ~~attorney's files and records relating to the association are not~~
26 ~~records of the association and are not subject to inspection by unit~~
27 ~~owners or production in a legal proceeding)].~~

1 SECTION 8. Subchapter C, Chapter 82, Property Code, is
2 amended by adding Section 82.1141 to read as follows:

3 Sec. 82.1141. ACCESS TO ASSOCIATION RECORDS. (a) This
4 section applies to all associations governed by this chapter and
5 controls over other law not specifically applicable to an
6 association.

7 (b) Notwithstanding a provision in a dedicatory instrument,
8 an association shall make the books and records of the association,
9 including financial records, open to and reasonably available for
10 examination by a unit owner, or a person designated in a writing
11 signed by the unit owner as the unit owner's agent, attorney, or
12 certified public accountant, in accordance with this section. A
13 unit owner is entitled to obtain from the association copies of
14 information contained in the books and records.

15 (c) Except as provided by this subsection, an attorney's
16 files and records relating to the association, excluding invoices
17 requested by a unit owner for attorney's fees and other costs
18 relating only to a matter for which the association seeks
19 reimbursement of fees and costs, are not records of the association
20 and are not subject to inspection by the unit owner or production in
21 a legal proceeding. If a document in an attorney's files and
22 records relating to the association would be responsive to a
23 legally authorized request to inspect or copy association
24 documents, the document shall be produced by using the copy from the
25 attorney's files and records if the association has not maintained
26 a separate copy of the document. This subsection does not require
27 production of a document that constitutes attorney work product or

1 that is privileged as an attorney-client communication.

2 (d) A unit owner or the unit owner's authorized
3 representative described by Subsection (b) must submit a written
4 request for access or information under Subsection (b) by certified
5 mail, with sufficient detail describing the association's books and
6 records requested, to the mailing address of the association or
7 authorized representative as reflected on the most current
8 management certificate filed under Section 82.116. The request
9 must contain an election either to inspect the books and records
10 before obtaining copies or to have the association forward copies
11 of the requested books and records and:

12 (1) if an inspection is requested, the association, on
13 or before the 10th business day after the date the association
14 receives the request, shall send written notice of dates during
15 normal business hours that the unit owner may inspect the requested
16 books and records to the extent those books and records are in the
17 possession, custody, or control of the association; or

18 (2) if copies of identified books and records are
19 requested, the association shall, to the extent those books and
20 records are in the possession, custody, or control of the
21 association, produce the requested books and records for the
22 requesting party on or before the 10th business day after the date
23 the association receives the request, except as otherwise provided
24 by this section.

25 (e) If the association is unable to produce the books or
26 records requested under Subsection (d) on or before the 10th
27 business day after the date the association receives the request,

1 the association must provide to the requestor written notice that:

2 (1) informs the requestor that the association is
3 unable to produce the information on or before the 10th business day
4 after the date the association received the request; and

5 (2) states a date by which the information will be sent
6 or made available for inspection to the requesting party that is not
7 later than the 15th business day after the date notice under this
8 subsection is given.

9 (f) If an inspection is requested or required, the
10 inspection shall take place at a mutually agreed on time during
11 normal business hours, and the requesting party shall identify the
12 books and records for the association to copy and forward to the
13 requesting party.

14 (g) An association may produce books and records requested
15 under this section in hard copy, electronic, or other format
16 reasonably available to the association.

17 (h) An association board must adopt a records production and
18 copying policy that prescribes the costs the association will
19 charge for the compilation, production, and reproduction of
20 information requested under this section. The prescribed charges
21 may include all reasonable costs of materials, labor, and overhead
22 but may not exceed costs that would be applicable for an item under
23 1 T.A.C. Section 70.3. The policy required by this subsection must
24 be recorded as a dedicatory instrument in accordance with Section
25 202.006. An association may not charge a unit owner for the
26 compilation, production, or reproduction of information requested
27 under this section unless the policy prescribing those costs has

1 been recorded as required by this subsection. A unit owner is
2 responsible for costs related to the compilation, production, and
3 reproduction of the requested information in the amounts prescribed
4 by the policy adopted under this subsection. The association may
5 require advance payment of the estimated costs of compilation,
6 production, and reproduction of the requested information. If the
7 estimated costs are lesser or greater than the actual costs, the
8 association shall submit a final invoice to the unit owner on or
9 before the 30th business day after the date the information is
10 delivered. If the final invoice includes additional amounts due
11 from the unit owner, the additional amounts, if not reimbursed to
12 the association before the 30th business day after the date the
13 invoice is sent to the unit owner, may be added to the unit owner's
14 account as an assessment. If the estimated costs exceeded the final
15 invoice amount, the unit owner is entitled to a refund, and the
16 refund shall be issued to the unit owner not later than the 30th
17 business day after the date the invoice is sent to the unit owner.

18 (i) An association must estimate costs under this section
19 using amounts prescribed by the policy adopted under Subsection
20 (h).

21 (j) Except as provided by Subsection (k) and to the extent
22 the information is provided in the meeting minutes, the association
23 is not required to release or allow inspection of any books or
24 records that identify the dedicatory instrument violation history
25 of an individual unit owner of an association, a unit owner's
26 personal financial information, including records of payment or
27 nonpayment of amounts due the association, a unit owner's contact

1 information, other than the unit owner's address, or information
2 related to an employee of the association, including personnel
3 files. Information may be released in an aggregate or summary
4 manner that would not identify an individual unit owner.

5 (k) The books and records described by Subsection (j) shall
6 be released or made available for inspection if:

7 (1) the express written approval of the unit owner
8 whose records are the subject of the request for inspection is
9 provided to the association; or

10 (2) a court orders the release of the books and records
11 or orders that the books and records be made available for
12 inspection.

13 (l) In addition to retaining records as necessary for
14 compliance with Section 82.114 an association shall adopt and
15 comply with a document retention policy that includes, at a
16 minimum, the following requirements:

17 (1) certificates of formation, bylaws, dedicatory
18 instruments, and all amendments to the certificates of formation,
19 bylaws, and dedicatory instruments shall be retained permanently;

20 (2) financial books and records shall be retained for
21 seven years;

22 (3) account records of current unit owners shall be
23 retained for five years;

24 (4) contracts with a term of one year or more shall be
25 retained for four years after the expiration of the contract term;

26 (5) minutes of meetings of the unit owners and the
27 board shall be retained for seven years; and

1 (6) tax returns and audit records shall be retained
2 for seven years.

3 (m) A member of an association who is denied access to or
4 copies of association books or records to which the member is
5 entitled under this section may file a petition with the justice of
6 the peace of a justice precinct in which all or part of the
7 condominium is located requesting relief in accordance with this
8 subsection. If the justice of the peace finds that the member is
9 entitled to access to or copies of the records, the justice of the
10 peace may grant one or more of the following remedies:

11 (1) a judgment ordering the association to release or
12 allow access to the books or records;

13 (2) a judgment against the association for court costs
14 and attorney's fees incurred in connection with seeking a remedy
15 under this section; or

16 (3) a judgment authorizing the unit owner or the unit
17 owner's assignee to deduct the amounts awarded under Subdivision
18 (2) from any future regular or special assessments payable to the
19 association.

20 (n) If the association prevails in an action under
21 Subsection (m), the association is entitled to a judgment for court
22 costs and attorney's fees incurred by the association in connection
23 with the action.

24 (o) On or before the 10th business day before the date a
25 person brings an action against an association under this section,
26 the person must send written notice to the association of the
27 person's intent to bring the action. The notice must:

1 (1) be sent certified mail, return receipt requested,
2 or delivered by the United States Postal Service with signature
3 confirmation service to the mailing address of the association or
4 authorized representative as reflected on the most current
5 management certificate filed under Section 82.116; and

6 (2) describe with sufficient detail the books and
7 records being requested.

8 (p) For the purposes of this section, "business day" means a
9 day other than Saturday, Sunday, or a state or federal holiday.

10 SECTION 9. Sections 82.108(c), (d), (e), and (f), Property
11 Code, are repealed.

12 SECTION 10. (a) Section 82.1051, Property Code, as added by
13 this Act, applies only to a contract entered into on or after the
14 effective date of this Act.

15 (b) The changes in law made by this Act apply only to an
16 election or vote held on or after the effective date of this Act.

17 (c) Section 82.1141, Property Code, as added by this Act,
18 applies only to a request for association records or information
19 made on or after the effective date of this Act.

20 SECTION 11. This Act takes effect September 1, 2019.