

BILL ANALYSIS

Senate Research Center

S.B. 318
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Local Government
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Background

- Unit owners' associations and property owners' associations are governed by two different statutes of the Texas Property Code, causing discrepancies in a property owners' rights to access association records and the statutory requirements for these organizations.
- The bill is a refile from the 86th Legislative Session (S.B. 639) and includes additional changes from an interim review.

Purpose

- S.B. 318 seeks to amend Texas Property Code Section 82.1141 to guarantee property owners, regardless of whether they are under a unit owners' association or a property owners' association, access to certain association records, including financial records.
- The bill also provides a process for property owners to request and receive these association records.

Notable Changes

- After detailed discussions and negotiations with interested parties, changes were accepted and included in the proposed committee substitute to S.B. 318. The intent of the bill remains the same, however, there are some notable changes to:
 - Clarify that an association is only required to disclose attorney fees to a unit owner the fees concern;
 - Allow an association to charge third party costs for document preparation, if the association is unable to comply and the costs exceed TAC Section 70.3;
 - Include a unit owner's address as prohibited shareable personal information regarding a unit owner's violation history;
 - Change the applicability requirement for the adoption of a records retention policy to a community of eight or more units; and
 - Remove the ability for a unit owner to offset attorney fee awards against an owner's assessments. Condominium costs often include insurance and home maintenance for the units and allowing a unit owner to offset can create financial problems for an association and other unit owners within the community.

S.B. 318 amends current law relating to the records of certain condominium unit owners' associations.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 82.114(b), Property Code, as follows:

(b) Requires that all financial and other records of certain condominium unit owners' associations be reasonably available at the association's registered office or its principal office in this state for examination and production in accordance with Section 82.1141, rather than for examination by a unit owner and the owner's agents. Deletes existing text providing that an attorney's files and records relating to the association are not records of the association and are not subject to inspection by unit owners or production in a legal proceeding.

SECTION 2. Amends Subchapter C, Chapter 82, Property Code, by adding Section 82.1141, as follows:

Sec. 82.1141. ACCESS TO ASSOCIATION RECORDS. (a) Provides that this section applies to all associations governed by Chapter 82 (Uniform Condominium Act) and controls over other law not specifically applicable to an association.

(b) Requires that an association make the books and records of the association, including financial records, open to and reasonably available for examination by a unit owner, or a person designated in a writing signed by the unit owner as the unit owner's agent, attorney, or certified public accountant, in accordance with this section, notwithstanding a provision in a dedicatory instrument. Provides that a unit owner is entitled to obtain from the association copies of information contained in the books and records.

(c) Provides that an attorney's files and records relating to the association, excluding invoices requested by a unit owner for attorney's fees and other costs relating only to a matter for which the association seeks reimbursement of fees and costs from the unit owner, are not records of the association and are not subject to inspection by the unit owner or production in a legal proceeding, except as provided by this subsection. Requires that a document, if the document in an attorney's files and records relating to the association would be responsive to a legally authorized request to inspect or copy association documents, be produced by using the copy from the attorney's files and records if the association has not maintained a separate copy of the document. Provides that this subsection does not require production of a document that constitutes attorney work product or that is privileged as an attorney-client communication.

(d) Requires a unit owner or the unit owner's authorized representative described by Subsection (b) to submit a written request for access or information under Subsection (b) by certified mail, with sufficient detail describing the association's books and records requested, to the mailing address of the association or authorized representative as reflected on the most current management certificate filed under Section 82.116 (Management Certificate). Requires that the request contain an election either to inspect the books and records before obtaining copies or to have the association forward copies of the requested books and records and:

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

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

(e) Requires the association, if the association is unable to produce the books or records requested under Subsection (d) on or before the 10th business day after the date the association receives the request, to provide to the requestor written notice that:

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

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

(f) Requires that the inspection, if an inspection is requested or required, take place at a mutually agreed on time during normal business hours, and requires the requesting party to identify the books and records for the association to copy and forward to the requesting party.

(g) Authorizes an association to produce books and records requested under this section in hard copy, electronic, or other format reasonably available to the association.

(h) Requires an association board to adopt a records production and copying policy that prescribes the costs the association will charge for the compilation, production, and reproduction of information requested under this section. Authorizes the prescribed charges to include all reasonable costs of materials, labor, and overhead but prohibits the charges from exceeding costs that would be applicable for an item under 1 T.A.C. Section 70.3 for an item produced by the association and prohibits the charges from exceeding actual costs for an item produced by a third party. Requires that the policy required by this subsection be recorded as a dedicatory instrument in accordance with Section 202.006 (Public Records). Prohibits an association from charging a unit owner for the compilation, production, or reproduction of the requested information unless the policy prescribing those costs has been recorded as required by this subsection. Provides that a unit owner is responsible for costs related to the compilation, production, and reproduction of the requested information in the amounts prescribed by the adopted policy. Authorizes the association to require advance payment of the estimated costs of compilation, production, and reproduction of the requested information. Requires the association, if the estimated costs are lesser than or greater than the actual costs, to submit a final invoice to the unit owner on or before the 30th business day after the date the information is delivered. Provides that if the final invoice includes additional amounts due from the unit owner, the additional amounts, if not reimbursed to the association before the 30th business day after the date the invoice is sent to the unit owner, may be added to the unit owner's account as an assessment. Provides that if the estimated costs exceeded the final invoice amount, the unit owner is entitled to a refund, and requires that the refund be issued to the unit owner not later than the 30th business day after the date the invoice is sent to the unit owner.

(i) Requires an association to estimate costs under this section using amounts prescribed by the policy adopted under Subsection (h).

(j) Provides that the association is not required to release or allow inspection of any books or records that identify the dedicatory instrument violation history of an individual unit owner of an association, a unit owner's personal financial information, including records of payment or nonpayment of amounts due the association, a unit owner's contact information, a unit owner's address, or information related to an employee of the association, including personnel files, except as provided by Subsection (k) and to the extent the information is provided in the meeting minutes. Authorizes information to be released in an aggregate or summary manner that would not identify an individual unit owner.

(k) Requires that the books and records described by Subsection (j) be released or made available for inspection if the express written approval of the unit owner whose records are the subject of the request for inspection is provided to the association, or if a court orders the release of the books and records or orders that the books and records be made available for inspection.

(l) Requires an association composed of eight or more units to adopt and comply with a document retention policy that includes, at a minimum, in addition to retaining records as necessary for compliance with Section 82.114 (Association Records), the following requirements:

(1) certificates of formation, bylaws, dedicatory instruments, and all amendments to the certificates of formation, bylaws, and dedicatory instruments are required to be retained permanently;

(2) financial books and records are required to be retained for seven years;

(3) account records of current unit owners are required to be retained for five years;

(4) contracts with a term of one year or more are required to be retained for four years after the expiration of the contract term;

(5) minutes of meetings of the unit owners and the board are required to be retained for seven years; and

(6) tax returns and audit records are required to be retained for seven years.

(m) Authorizes a member of an association who is denied access to or copies of association books or records to which the member is entitled under this section to file a petition with the justice of the peace of a justice precinct in which all or part of the condominium is located requesting relief in accordance with this subsection. Authorizes the justice of the peace, if the justice of the peace finds that the member is entitled to access to or copies of the records, to grant one or more of the following remedies:

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

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

(n) Provides that the association is entitled to a judgment for court costs and attorney's fees incurred by the association in connection with the action if the association prevails in an action under Subsection (m).

(o) Requires a person to send written notice to the association of the person's intent to bring an action against an association under this section on or before the 10th business day before the date the person brings the action. Requires that the notice:

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

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

(p) Defines "business day."

SECTION 3. Makes application of Section 82.1141, Property Code, as added by this Act, prospective.

SECTION 4. Effective date: September 1, 2021.