

BILL ANALYSIS

S.B. 318
By: Huffman
Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Condominium unit owners' associations and property owners' associations are governed by different provisions of the Property Code, causing a discrepancy in property owners' rights to access those associations' records depending on the type of association. S.B. 318 seeks to guarantee property owners' access to certain records, including financial records, regardless of whether they are part of a unit owners' association under the Uniform Condominium Act or another type of property owners' association. The bill also provides a process for property owners to request and receive those association records.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 318 amends the Property Code to require a condominium unit owners' association governed by the Uniform Condominium Act to 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 owner as the owner's agent, attorney, or certified public accountant, notwithstanding a provision in a dedicatory instrument. The bill entitles an owner to obtain from the association copies of information contained in the books and records.

S.B. 318 establishes that an attorney's files and records relating to the association, subject to certain exceptions, are not records of the association and are not subject to inspection by the unit owner or to production in a legal proceeding. The bill requires a document in an attorney's files and records relating to the association that would be responsive to a legally authorized request to inspect or copy association documents to be produced by using the copy from the attorney's files and records if the association has not maintained a separate copy. These provisions of the bill do not require production of a document that constitutes attorney work product or that is privileged as an attorney-client communication.

S.B. 318 requires a unit owner or the owner's applicable representative to submit a written request for access or information, with sufficient detail describing the requested material, by certified mail to the mailing address of the association or its authorized representative as reflected on the most current management certificate filed with the county clerk. The bill requires the request to 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 provides for the manner in which the association must respond, on or before the 10th business day after the receipt date of the request, to provide access for inspection or to produce the books and records to be copied, as appropriate. The bill authorizes the association to produce the requested books and records in hard copy, electronic, or other reasonably available format.

S.B. 318 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 the bill's provisions. The bill sets out requirements for the policy and charges, including the following:

- prescribed charges may include reasonable costs of materials, labor, and overhead but may not exceed costs that would be applicable under attorney general rules for an item produced under state public information law, if the item is produced by the association;
- charges for an item produced by a third party may not exceed actual costs;
- the policy must be recorded as a dedicatory instrument in the applicable county, and an association may not charge a unit owner for the compilation, production, or reproduction of requested information unless the policy has been so recorded;
- an owner is otherwise responsible for those costs according to the policy; and
- the association must estimate costs for purposes of any advance payment using amounts prescribed by the policy.

S.B. 318 establishes that, except in response to a court order or with the express written approval of a unit owner whose records are requested for inspection, the association is not required to release or allow inspection of any books or records that identify the following:

- the dedicatory instrument violation history of an individual owner;
- an owner's personal financial information, contact information, or address; or
- information related to an employee of the association, including personnel files.

Information may be released in an aggregate or summary manner that would not identify an individual owner.

S.B. 318 requires an association composed of eight or more units, in addition to retaining records as necessary for compliance with certain statutory requirements, to adopt and comply with a document retention policy that includes specified minimum retention requirements. The bill authorizes a member of an association who is denied access to or copies of books or records to which the bill entitles the member to file a petition requesting relief with the justice of the peace of a justice precinct in which all or part of the condominium is located. The bill authorizes the justice of the peace, on finding that the member is entitled to the access or copies of records, to grant one or more of the following remedies:

- a judgment ordering the association to release or allow access to the books or records; or
- a judgment for court costs and attorney's fees.

The bill entitles an association that prevails in such an action to court costs and attorney's fees. The bill requires a person, on or before the 10th business day before the date the person brings such an action, to send written notice to the association of the person's intent to do so and sets out requirements for the notice.

EFFECTIVE DATE

September 1, 2021.