

## **BILL ANALYSIS**

Senate Research Center

S.B. 1588  
By: Hughes  
Business & Commerce  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

It is estimated there are nearly six million Texans living in homes that are governed by a property owners' association. There are a wide variety of property owners' associations operating throughout Texas, but the total number of these entities is unknown. Many Texans prefer and seek out the orderly structure of a managed community; but living in a property owners' association is not without challenges for current and prospective residents. In addition to complex operating procedures and rules, many homeowners believe there is an imbalance of power between property owners' associations and owners.

S.B. 1588 seeks to address these issues by reforming the statutes governing homeowners' associations (HOAs) to ensure their operations are transparent and resident-friendly and provide an appropriate balance between private property rights and agreed-upon community standards.

S.B. 1588 addresses HOA powers regarding restrictive covenants found in Texas Property Code Chapter 204. Currently, this section is bracketed to properties in Harris County and two adjacent counties, and S.B. 1588 would remove those brackets and apply the standards to properties around the state in the same manner as is currently in Chapter 209.

S.B. 1588 also ensures property owners are protected from some conflicts of interest in their governing boards and sets reasonable and necessary fees for production of resale certificates. Additionally, in order to create a central database of property owners' associations, S.B. 1588 requires HOA management certificates to be filed with their county (current law) and the Texas Real Estate Commission (TREC), but does not give TREC any regulatory oversight of those entities. Failure to properly file would invalidate the HOA's lien authority. S.B. 1588 also requires management certificates and meeting information to be posted on the HOA's website so it is accessible to property owners, and extends the meeting notice timeline.

S.B. 1588 also seeks to protect property owners from negative credit reporting in cases where a fee is in dispute, and requires written notice to the owner before such reporting occurs. Also, it ensures property owners retain due process protections, such as presentation of evidence and the opportunity to appeal architectural standards or other violation decisions and affirms legislative intent of H.B. 2489 in the 84th Legislature to protect owners and tenants by specifying HOAs may not require access to lease agreements.

(Original Author's / Sponsor's Statement of Intent)

S.B. 1588 amends current law relating to the powers and duties of certain property 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 202.006, Property Code, by adding Subsection (c), to prohibit a property owners' association (association) from collecting a regular assessment, as defined by

Section 209.002 (Definitions), if the dedicatory instrument authorizing the collection of the regular assessment is not filed as required by Subsection (a) (relating to requiring an association to file all dedicatory instruments in the real property records of each county in which the property to which the dedicatory instruments relate is located).

SECTION 2. Amends Sections 202.018(a) and (b), Property Code, as follows:

(a) Prohibits an association, except as otherwise provided by Section 202.018 (Regulation of Display of Certain Religious Items), from enforcing or adopting a provision in a dedicatory instrument, including a restrictive covenant that prohibits a property owner or resident from displaying or affixing on the owner's or resident's property or dwelling, rather than on the entry to the owner's or resident's dwelling, one or more religious items the display of which is motivated by the owner's or resident's sincere religious belief. Makes conforming changes.

(b) Provides that this section does not prohibit the enforcement or adoption of a provision in a dedicatory instrument, including a restrictive covenant, that, to the extent allowed by the constitution of this state and the United States, prohibits the display or affixing of a religious item on the owner's or resident's property or dwelling that:

- (1) makes no changes to this subdivision;
- (2) violates a law other than a law prohibiting the display of religious speech;
- (3) contains language, graphics, or any display that is patently offensive to a passerby for reasons other than its religious content;
- (4) is installed on property owned or maintained by the association or owned in common by members of the association;
- (5) violates any applicable building line, right-of-way, setback, or easement; or
- (6) is attached to a traffic control device, street lamp, fire hydrant, or utility sign, pole, or fixture.

Deletes existing text providing that this section does not prohibit the enforcement or adoption of a covenant that, to the extent allowed by the constitution of this state and the United States, prohibits the display or affixing of a religious item on the entry to the owner's or resident's dwelling that is in a location other than the entry door or door frame or extends past the outer edge of the door frame of the owner's or resident's dwelling or that is individually or in combination with each other religious item displayed or affixed on the entry door or door frame has a total size of greater than 25 square inches.

SECTION 3. Amends Chapter 202, Property Code, by adding Section 202.022, as follows:

Sec. 202.022. SWIMMING POOL ENCLOSURES. (a) Defines "swimming pool enclosure."

(b) Provides that an association:

- (1) is prohibited from adopting or enforcing a provision in a dedicatory instrument that prohibits or restricts a property owner from installing on the property owner's property a swimming pool enclosure that conforms to applicable state or local safety requirements; and
- (2) is authorized to adopt and enforce a provision in a dedicatory instrument establishing limitations related to the appearance of a swimming pool enclosure, including limitations establishing permissible colors for a swimming pool enclosure, provided that the provision does

not prohibit a swimming pool enclosure that is black in color and consists of transparent mesh set in metal frames.

SECTION 4. Amends Chapter 202, Property Code, by adding Section 202.023, as follows:

Sec. 202.023. SECURITY MEASURES. (a) Provides that this section does not apply to a condominium as defined by Section 81.002 (Definitions) or 82.003 (Definitions), or to a master mixed-use association subject to Chapter 215 (Master Mixed-Use Property Owners' Associations).

(b) Prohibits an association, except as provided by Subsection (c), from adopting or enforcing a restrictive covenant that prevents a property owner from building or installing security measures, including but not limited to a security camera, motion detector, or perimeter fence.

(c) Provides that this section does not prohibit an association from prohibiting the installation of a security camera by a property owner in a place other than the property owner's private property or from regulating the type of fencing that a property owner is authorized to install.

SECTION 5. Amends Section 207.001, Property Code, by adding Subdivision (2-a) to define "management company" for Chapter 207 (Disclosure of Information by Property Owners' Associations).

SECTION 6. Amends Section 207.003(c), Property Code, to authorize an association to charge a reasonable and necessary fee, not to exceed \$375, rather than a reasonable fee, to assemble, copy, and deliver the information required by Section 207.003 (Delivery of Subdivision Information to Owner) and to charge a reasonable and necessary fee, not to exceed \$75, rather than a reasonable fee, to prepare and deliver an update of a resale certificate under Subsection (f) (relating to requiring an association to deliver by a certain date to an owner, owner's agent, or title insurance company or its agent an updated resale certificate that contains certain information).

SECTION 7. Amends Section 207.004(b), Property Code, as follows:

(b) Provides that if an association fails to deliver the information required under Section 207.003 before the fifth business day, rather than the seventh day, after the second request for the information was mailed by certified mail, return receipt requested, or hand delivered, evidenced by receipt, the owner:

(1) is authorized to seek one or any combination of the following:

(A) makes no changes to this paragraph;

(B) a judgment against the association for not more than \$5,000, rather than not more than \$500;

(C) a judgment against the association for court costs and reasonable attorney's fees, rather than for court costs and attorney's fees; or

(D) makes no changes to this paragraph; and

(2) makes no changes to this subdivision.

SECTION 8. Amends Section 207.006, Property Code, as follows:

Sec. 207.006. ONLINE SUBDIVISION INFORMATION REQUIRED. (a) Provides that this section applies only to the association of a subdivision composed of at least 60 lots or to an association that has contracted with a management company.

(b) Creates this subsection from existing text. Requires an association to which this section applies to make the current version of the association's dedicatory instruments relating to the association or subdivision and filed in the county deed records available on an Internet website maintained by the association or a management company on behalf of the association and available to association members. Deletes existing text requiring an association to make dedicatory instruments relating to the association or subdivision and filed in the county deed records available on a website if the association has, or a management company on behalf of the association maintains, a publicly accessible website. Makes nonsubstantive changes.

SECTION 9. Amends Section 209.002, Property Code, by adding Subdivision (5-a) to define "management company" for Chapter 209 (Texas Residential Property Owners Protection Act).

SECTION 10. Amends Section 209.004, Property Code, by amending Subsections (a), (b), (c), and (e) and adding Subsection (b-1), as follows:

(a) Requires an association to record in each county in which any portion of the residential subdivision is located a management certificate, signed and acknowledged by an officer or the managing agent of the association, stating:

(1)-(3) makes no changes to these subdivisions;

(4) the recording data for the declaration and any amendments to the declaration, rather than the recording data for the declaration;

(5) makes no changes to this subdivision;

(6) the name, mailing address, telephone number, and e-mail address, rather than the name and mailing address, of the person managing the association or the association's designated representative;

(7) the website address of any Internet website on which the association's dedicatory instruments are available in accordance with Section 207.006;

(8) the amount and description of a fee or fees charged by the association relating to a property transfer in the subdivision; and

(9) redesignates existing Subdivision (7) as Subdivision (9) and makes no further changes.

Makes nonsubstantive changes.

(b) Requires the association to record an amended management certificate in each county in which any portion of the residential subdivision is located, rather than record an amended management certificate, not later than the 30th day after the date the association has notice of a change in any information in the recorded certificate required by Subsection (a).

(b-1) Requires an association, not later than the seventh day after the date the association files a management certificate for recording under Subsection (a) or files an amended management certificate for recording under Subsection (b), to electronically file the management certificate or amended management certificate with the Texas Real Estate Commission (TREC). Requires TREC to only collect the management certificate and amended management certificate for the purpose of making the data accessible to the general public through an Internet website.

(c) Provides that, except as provided under Subsections (d) (relating to providing that certain actors in a transaction involving property in the association is not liable for certain debts if an association fails to record a management certificate or amended management

certificate) and (e), the association and its officers, directors, employees, and agents are not subject to liability to any person for a delay in recording or failure to record a management certificate with a county clerk's office or electronically file the management certificate with TREC, unless the delay or failure is wilful or caused by gross negligence.

(e) Provides that an owner is not liable for attorney's fees incurred by an association relating to the collection of a delinquent assessment against the owner or interest on the amount of a delinquent assessment if the attorney's fees are incurred by the association or the interest accrues during the period a management certificate is not recorded with a county clerk or electronically filed with TREC as required by Section 209.004 (Management Certificates).

SECTION 11. Amends Chapter 209, Property Code, by adding Section 209.00505, as follows:

Sec. 209.00505. ARCHITECTURAL REVIEW AUTHORITY. (a) Defines "architectural review authority."

(b) Provides that this section:

(1) applies only to an association that consists of more than 40 lots; and

(2) does not apply during a development period or during any period in which the declarant appoints at least a majority of the members of the architectural review authority or otherwise controls the appointment of the architectural review authority, or in which the declarant has the right to veto or modify a decision of the architectural review authority.

(c) Prohibits a person from being appointed or elected to serve on an architectural review authority if the person is a current association board (board) member, a current board member's spouse, or a person residing in a current board member's household.

(d) Authorizes a decision by the architectural review authority denying an application or request by an owner for the construction of improvements in the subdivision to be appealed to the board. Requires that a written notice of the denial be provided to the owner by certified mail, hand delivery, or electronic delivery. Requires that the notice:

(1) describe the basis for the denial in reasonable detail and changes, if any, to the application or improvements required as a condition to approval; and

(2) inform the owner that the owner is authorized to request a hearing under Subsection (e) on or before the 30th day after the date the notice was mailed to the owner.

(e) Requires the board to hold a hearing under this section not later than the 30th day after the date the board receives the owner's request for a hearing and to notify the owner of the date, time, and place of the hearing not later than the 10th day before the date of the hearing. Provides that only one hearing is required under this subsection.

(f) Provides that during a hearing, the board or the designated representative of the association and the owner or the owner's designated representative will each be provided the opportunity to discuss, verify facts, and resolve the denial of the owner's application or request for the construction of improvements, and the changes, if any, requested by the architectural review authority in the notice provided to the owner under Subsection (d).

(g) Authorizes the board or the owner to request a postponement. Requires that a postponement, if requested, be granted for a period of not more than 10 days. Authorizes additional postponements to be granted by agreement of the parties.

(h) Authorizes the association or the owner to make an audio recording of the meeting.

(i) Authorizes the board to affirm, modify, or reverse, in whole or in part, any decision of the architectural review authority as consistent with the subdivision's declaration.

SECTION 12. Amends Sections 209.0051(e) and (h), Property Code, as follows:

(e) Requires that notice of the date, hour, place, and general subject of a regular or special board meeting be:

(1) makes no changes to this subdivision;

(2) provided at least 144 hours before the start of a regular board meeting and at least 72 hours before the start of a special board meeting, rather than provided at least 72 hours before the start of the meeting, by:

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

(i) makes no changes to this subparagraph; or

(ii) on any Internet website available to association members that is maintained by the association or by a management company on behalf of the association, rather than on any Internet website maintained by the association or other Internet media; and

(B) makes no changes to this paragraph.

(h) Prohibits the board, unless done in an open meeting for which prior notice was given to owners under Subsection (e), from considering or voting on certain issues, including the approval of an annual budget or the approval of an amendment of an annual budget, rather than the approval of an annual budget or the approval of an amendment of an annual budget that increases the budget by more than 10 percent.

SECTION 13. Amends Section 209.0052, Property Code, by adding Subsection (c), to require an association that proposes to contract for services that will cost more than \$50,000, in addition to the other applicable requirements of Section 209.0052 (Association Contracts), to solicit bids or proposals using a bid process established by the association.

SECTION 14. Amends Section 209.006(a), Property Code, to require an association or its agent to give written notice to an owner by certified mail before suspending certain rights of the owner, including the owner's right to report any delinquency of an owner to a credit reporting service. Makes a nonsubstantive change.

SECTION 15. Amends Section 209.0063(a), Property Code, as follows:

(a) Requires that a payment received by an association from the owner, except as provided by Subsection (b) (relating to certain actions required of an association if the association receives a payment from a property owner in default under a payment plan entered into with the association), be applied to the owner's debt in the following order of priority:

(1) and (2) makes no changes to these subdivisions;

(3) any reasonable attorney's fees or reasonable third party collection costs, rather than any attorney's fees or third party collection costs, incurred by the association associated solely with assessments or any other charge that could provide the basis for foreclosure;

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

(5) any reasonable fines, rather than any fines, assessed by the association; and

(6) any other reasonable amount, rather than any other amount, owed to the association.

SECTION 16. Amends Section 209.0064(b), Property Code, as follows:

(b) Prohibits an association from holding an owner liable for fees of a collection agent retained by the association unless the association first provides written notice to the owner by certified mail that:

(1) and (2) makes no changes to these subdivisions; and

(3) provides a period of at least 45 days, rather than at least 30 days, for the owner to cure the delinquency before further collection action is taken.

SECTION 17. Amends Chapter 209, Property Code, by adding Section 209.0065, as follows:

Sec. 209.0065. CREDIT REPORTING SERVICES. (a) Prohibits an association or the association's collection agent from reporting any delinquent fines, fees, or assessments to a credit reporting service that are the subject of a pending dispute between the owner and the association.

(b) Authorizes an association to report the delinquent payment history of assessments, fines, and fees of property owners within its jurisdiction to a credit reporting service only if:

(1) at least 30 business days before reporting to a credit reporting service, the association sends, via certified mail, hand delivery, electronic delivery, or by other delivery means acceptable between the parties, a detailed report of all delinquent charges owed; and

(2) a property owner has been given the opportunity to enter into a payment plan.

(c) Prohibits an association from charging a fee to an individual property owner for the reporting under Subsection (b) of the delinquent payment history of assessments, fines, and fees of property owners within the association's jurisdiction to a credit reporting service.

SECTION 18. Amends Section 209.007, Property Code, by amending Subsection (a) and adding Subsections (f), (g), and (h), as follows:

(a) Provides that, except as provided by Subsection (d) (relating to the conditions in which notice and hearing provisions of Section 209.006 (Notice Required Before Enforcement Action) and Section 209.007 (Hearing Before Board; Alternative Dispute Resolution) do not apply) and only if the owner is entitled to an opportunity to cure the violation, the owner has the right to submit a written request for a hearing to discuss and verify facts and resolve the matter in issue before the board, rather than before a committee appointed by the board or before the board if the board does not appoint a committee.

(f) Requires the association, not later than 10 days before the association holds a hearing under Section 209.007, to provide to an owner a packet containing all documents, photographs, and communications relating to the matter the association intends to introduce at the hearing.

(g) Entitles an owner to an automatic 15-day postponement of the hearing if an association does not provide a packet within the period described by Subsection (f).

(h) Requires a member of the board or the association's designated representative, during a hearing, to first present the association's case against the owner. Entitles an owner or the owner's designated representative to present the owner's information and issues relevant to the appeal or dispute.

SECTION 19. Amends Section 209.015(c), Property Code, to make a conforming change.

SECTION 20. Amends Section 209.016, Property Code, by amending Subsection (d) and adding Subsection (e), as follows:

(d) Deletes existing text providing an exception under Subsection (b) (relating to prohibiting an association from adopting or enforcing provisions in a certain dedicatory instrument) to the requirement that nothing in Section 209.016 (Regulation of Residential Leases or Rental Agreements) be construed to prohibit the adoption or enforcement of a provision in a dedicatory instrument establishing a restriction relating to occupancy or leasing.

Makes a nonsubstantive change.

(e) Authorizes an association to request that certain information be submitted to the association regarding a lease or rental applicant.

SECTION 21. Amends Chapter 209, Property Code, by adding Section 209.017, as follows:

Sec. 209.017. JUSTICE COURT JURISDICTION. Authorizes an owner of property in a subdivision to bring an action for a violation of Chapter 209 against the association of the subdivision in the justice court of a precinct in which all or part of the subdivision is located.

SECTION 22. (1) Repealers: Sections 202.018(c) (relating to providing that Section 202.018 does not authorize an owner or resident to use a material or color for, or make an alteration to, an entry door or door frame of the owner's or resident's dwelling that is not authorized by the restrictive covenants governing the dwelling) and (d) (relating to authorizing an association to remove an item displayed in violation of a restrictive covenant permitted by Section 202.018), Property Code.

(2) Repealer: Section 209.007(b) (relating to requiring that the notice of a hearing on a violation state that the owner has the right to appeal the committee's decision to the board by written notice), Property Code.

(3) Repealers: Sections 209.016(a) (related to defining "sensitive personal information") and (c) (relating to authorizing any sensitive personal information to be redacted in a copy of the lease or rental agreement required by the association), Property Code.

SECTION 23. (a) Requires TREC, not later than December 1, 2021, to establish and make available the system necessary for the electronic filing of management certificates and amended management certificates as required under Section 209.004(b-1), Property Code, as added by this Act.

(b) Requires an association that has on or before December 1, 2021, recorded a management certificate or amended management certificate with a county clerk under Section 209.004, Property Code, notwithstanding Section 209.004(b-1), Property Code,

as added by this Act, to electronically file the most recently recorded management certificate or amended management certificate with TREC not later than June 1, 2022.

SECTION 24. Makes application of Section 209.0052(c), Property Code, as added by this Act, prospective.

SECTION 25. Makes application of Section 209.0065, Property Code, as added by this Act, prospective.

SECTION 26. Makes application of Section 209.017, Property Code, as added by this Act, prospective to September 1, 2021.

SECTION 27. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2021.

(b) Effective date, Section 209.004(b-1), Property Code, as added by this Act: December 1, 2021.