

BILL ANALYSIS

Senate Research Center

S.B. 1588
By: Hughes
Business & Commerce
4/1/2021
As Filed

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.

As proposed, S.B. 1588 amends current law relating to the powers and duties of property owners' associations and authorizes a fee.

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 Subsections (a) and (c), Section 204.002, Property Code, as follows:

Sec. 204.002. New heading: APPLICABILITY. (a) Provides that Chapter 204 (Powers of Property Owners' Association Relating to Restrictive Covenants in Certain Subdivisions)

applies to any residential real estate subdivision governed by Chapter 209 (Texas Residential Property Owners Protection Act), Title 11, Property Code, excluding a condominium regime governed by Chapters 81 (Condominiums Created Before Adoption of Uniform Condominium Act) and 82 (Uniform Condominium Act), Title 7, Property Code.

Deletes existing text providing that this chapter applies only to a residential real estate subdivision, excluding a condominium development governed by Title 7 (Condominiums), Property Code, that is located in whole or in part:

(1) in a county with a population of 3.3 million or more;

(2) in a county with a population of not less than 285,000 and not more than 300,000 that is adjacent to the Gulf of Mexico and that is adjacent to a county having a population of 3.3 million or more; or

(3) in a county with a population of 275,000 or more that is adjacent to a county with a population of 3.3 million or more and contains part of a national forest.

(c) Provides that this chapter does not apply to a subdivision property that is zoned for a commercial structure, an industrial structure, or an apartment complex. Deletes existing text providing that this chapter does not apply to portions of a subdivision that are zoned for or that contain a commercial structure, an industrial structure, an apartment complex, or a condominium development governed by Title 7, Property Code.

SECTION 2. Amends Subsections (b), (c) and (d), Section 204.003, Property Code, as follows:

(b) Provides that, notwithstanding Subsection (a), for a residential subdivision, rather than for a residential subdivision described by Subsection (c), the provisions of this chapter prevail over an express designation in a document described by Subsection (a) if certain criteria are met.

(c) Redesignates existing Subsection (d) as Subsection (c). Deletes existing text providing that Subsection (b) applies to a residential subdivision that is located in a county described by Section 204.002(a)(3) other than a gated community with private streets.

SECTION 3. Amends Chapter 204, Property Code, by adding Section 204.012, as follows:

Sec. 204.012. RESTRICTIONS ON MEMBERSHIP OF ARCHITECTURAL CONTROL COMMITTEE. Prohibits a member or spouse of the board of directors or trustees of a property owners' association (association), or a person in the lineal line of consanguinity of a member of the board of directors or trustees of an association from being appointed or elected to serve on an architectural control committee.

SECTION 4. Amends Subsection (c), Section 207.003, Property Code, as follows:

(c) Authorizes an association to charge a reasonable and necessary fee, not to exceed \$250, rather than a reasonable fee, to assemble, copy, and deliver the information required by this section and to charge a reasonable and necessary fee, not to exceed \$30, rather than a reasonable fee, to prepare and deliver an update of a resale certificate under Subsection (f).

SECTION 5. Amends Subsection (b), Section 207.004, Property Code, as follows:

(b) Provides that if an association fails to deliver the information required under Section 207.003 (Delivery of Subdivision Information to Owner) before the seventh calendar 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 certain court judgments, including a judgment against the association, rather than a judgment against the association for not more than \$500;

(2) makes no changes to this subdivision.

SECTION 6. Amends Section 207.006, Property Code, as follows:

Sec. 207.006. ONLINE SUBDIVISION INFORMATION REQUIRED. (a) Creates this subsection from existing text. Requires an association to make the most recent versions of its dedicatory instruments, including its amendments, relating to the association or subdivision and filed in the county deed records available on the homepage of a publicly available website the association or the management company on behalf of the association maintains, rather than available on a website if the association has, or a management company on behalf of the association maintains, a publicly accessible website.

SECTION 7. Amends Section 209.002, Property Code, by adding a new subdivision (2-a) to define "commission" for Chapter 209.

SECTION 8. Amends Sec. 209.004, Property Code, as follows:

Sec. 209.004. MANAGEMENT CERTIFICATES. (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 certain information.

(b) Requires an association currently formed and operating as of August 31, 2021, not later than July 1 of each calendar year, to also electronically file a management certificate, or an amended management certificate required under this chapter to the Texas Real Estate Commission (TREC). Authorizes TREC to charge a fee for the electronic filing of a management certificate, or an amended management certificate. Prohibits a fee adopted by TREC from exceeding the amount charged by an association for a resale certificate under Chapter 207 (Disclosure of Information by Property Owners' Associations), Title 11, Property Code.

(b-1) Requires an association formed and operating as of September 1, 2021 and after to also electronically file a management certificate, or an amended management certificate required under this chapter to TREC within 10 calendar days of filing the required management certificate with a county clerk under this chapter. Authorizes TREC to charge a fee for the electronic filing of a management certificate, or an amended management certificate. Prohibits a fee adopted by TREC from exceeding the amount charged by an association for a resale certificate under Chapter 207, Title 11, Property Code.

(c) Redesignates existing Subsection (a-1) as Subsection (c) and makes no further changes.

(d) 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). Makes a nonsubstantive change.

(e) Provides that, except as provided under Subsections (d) 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 with a county clerk's office or with TREC a management certificate, rather than failure to record

a management certificate, unless the delay or failure is willful or caused by gross negligence. Makes nonsubstantive changes.

(f) Provides that if an association fails to record a management certificate or an amended management certificate under this section, certain entities, including the seller, are not liable to the association for any amount due to the association on the date of a transfer to a bona fide purchaser, and for any debt to or claim of the association that accrued before the date of a transfer to a bona fide purchaser. Makes a nonsubstantive change.

(g) Provides that a lien of an association that fails to file a management certificate or an amended management certificate under this section is unenforceable.

Deletes existing text providing that a lien of an association that fails to file a management certificate or an amended management certificate under this section to secure an amount due on the effective date of a transfer to a bona fide purchaser is enforceable only for an amount incurred after the effective date of sale.

(h) Redesignates existing Subsection (f) as Subsection (h) and makes no further changes.

SECTION 9. Amends Subsections (e) and (h), Section 209.0051, Property Code, as follows:

(e) Increases the minimum number of hours of notice of a regular or special association board (board) meeting required to be provided to board members from 72 hours to 144 hours before the start of the meeting. Makes conforming changes.

(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 topics, 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 10. Amends Subsection (a), Section 209.006, Property Code, as follows:

(a) Requires 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 agency or bureau.

SECTION 11. Amends Subsection (a), Section 209.0063, Occupations Code, as follows:

(a) Requires that a payment received by an association from the owner, except as provided by Subsection (b), 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 and necessary incurred amount, rather than any other amount, owed to the association.

SECTION 12. Amends Subsection (b), Section 209.0064, 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 13. Amends Chapter 209, Property Code, by adding a new Section 209.0065, as follows:

Sec. 209.0065. CREDIT REPORTING AGENCIES. (a) Prohibits an association or the association's collection agent from reporting any delinquent fines, fee, or assessments to a credit reporting agency if the property owner has a pending dispute of the charges with the association.

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

(1) the association has sent, via certified mail, hand delivery, electronic delivery, or by other delivery means acceptable between the parties, a detailed report of all delinquent charges owed;

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

(2) the detailed report of delinquent charges was sent to a property owner at least 45 business days before reporting to a credit reporting agency or bureau.

SECTION 14. Amends Section 209.007, Property Code, as follows:

Sec. 209.007. HEARING BEFORE BOARD; ALTERNATIVE DISPUTE RESOLUTION. (a) Entitles an owner to appeal a violation, an architectural control committee decision, or dispute any fines or fees to the board of directors of an association. Deletes existing text providing that, 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 a committee appointed by the board or before the board if the board does not appoint a committee.

(b) Redesignates existing Subsection (c) as Subsection (b). Requires the association to hold a hearing under this section not later than the 30th day after the date the board receives the owner's request for an appeal hearing, rather than 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. Requires the association to make an audio recording of the meeting, rather than authorizing the owner or the association to make an audio recording of the meeting. Authorizes an owner to make an audio recording of the meeting.

Deletes existing text requiring that the notice prescribed by Section 209.006 state that the owner has the right to appeal the committee's decision to the board by written notice to the board if a hearing is to be held before a committee.

(c) Requires the association, no later than 10 days before the association holds a hearing under this section, to provide to an owner an evidence packet containing

all documents, photographs, or communications relating to the matter in issue which the association intends to introduce at the hearing.

(d) Entitles an owner to an automatic 15 day postponement of the hearing if an association does not provide a complete evidence packet within the time frame described in Subsection (c).

(e) Requires a member of the board of directors or their designated representative of the association, during a hearing, to present the association's evidence against the owner first. Entitles a property owner or their designated representative to rebut the association's evidence, present their evidence, and present issues relevant to the appeal.

(f) Creates this subsection from existing text and makes no further changes.

(g) Redesignates existing Subsection (c) as Subsection (g) and makes no further changes.

SECTION 15. Amends Subsection (a), Section 209.008, Property Code, to make a conforming change.

SECTION 16. Amends Subsection (a), Section 209.008, Property Code, as follows:

Sec. 209.016. REGULATION OF RESIDENTIAL LEASES OR RENTAL AGREEMENTS. (a) Redesignates existing Subsection (b) as Subsection (a) and makes no further changes.

Deletes existing text defining "sensitive personal information." Deletes existing text authorizing any sensitive personal information to be redacted or otherwise made unreadable or indecipherable if a copy of the lease or rental agreement is required by the association. Deletes existing text requiring that nothing in this section be construed to prohibit the adoption or enforcement of a provision in a dedicatory instrument establishing a restriction relating to occupancy or leasing, except as provided by Subsection (b).

SECTION 17. Repealer: Section 204.003(d) (relating to the authority of an association to modify a document creating restrictions that provides for the extension or renewal of restrictions applicable to a residential real estate subdivision and does not provide for modification or amendment of restrictions), Property Code.

SECTION 18. Effective date: upon passage or September 1, 2021.