By:  Hughes S.B. No. 1588

A BILL TO BE ENTITLED

AN ACT

relating to the powers and duties of property owners' associations; authorizing a fee.

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

SECTION 1.  Subsections (a) and (c), Section 204.002, Property Code, are amended to read as follows:

Sec. 204.002.  [~~APPLICATION~~] APPLICABILITY. (a) This chapter applies [~~only~~] to [~~a~~] any residential real estate subdivision governed by Chapter 209, Title 11, Property Code, excluding a condominium [~~development~~] regime governed by Chapters 81 and 82, Title 7, 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:~~

~~(A)  is adjacent to a county with a population of 3.3 million or more; and~~

~~(B)  contains part of a national forest~~].

(c)  This chapter does not apply to [~~portions of~~] a subdivision property that [~~are~~] is zoned for [~~or that contain~~] a commercial structure, an industrial structure, or an apartment complex[~~, or a condominium development governed by Title 7, Property Code~~]. For purposes of this subsection, "apartment complex" means two or more dwellings in one or more buildings that are owned by the same owner, located on the same lot or tract, and managed by the same owner, agent, or management company.

SECTION 2.  Subsections (b), (c) and (d), Section 204.003,

Property Code, are amended to read as follows:

(b)  Notwithstanding Subsection (a), 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:

(1)  the designated number of owners of real property in the subdivision required for approval of an extension of, addition to, or modification of the document is more than 75 percent; or

(2)  the designation prohibits the extension of, addition to, or modification of an existing restriction for a certain time period and that time period has not expired.

(c)  [~~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.~~

~~(d)~~] A document creating restrictions that provides for the extension or renewal of restrictions and does not provide for modification or amendment of restrictions may be modified under this chapter, including modifying the provision that provides for extension or renewal of the restrictions.

SECTION 3.  Chapter 204, Property Code, is amended by adding Section 204.012 to read as follows:

Sec. 204.012.  RESTRICTIONS ON MEMBERSHIP OF ARCHITECTURAL CONTROL COMMITTEE. A member or spouse of the board of directors or trustees of a property owners' association, or a person in the lineal line of consanguinity of a member of the board of directors or trustees of a property owners' association may not be appointed or elected to serve on an architectural control committee.

SECTION 4.  Subsection (c), Section 207.003, Property Code, is amended to read as follows:

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

SECTION 5.  Subsection (b), Section 207.004, Property Code, is amended to read as follows:

(b)  If a property owners' association fails to deliver the information required under Section 207.003 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)  may seek one or any combination of the following:

(A)  a court order directing the property owners' association to furnish the required information;

(B)  a judgment against the property owners' association [~~for not more than $500~~];

(C)  a judgment against the property owners' association for court costs and attorney's fees; or

(D)  a judgment authorizing the owner or the owner's assignee to deduct the amounts awarded under Paragraphs (B) and (C) from any future regular or special assessments payable to the property owners' association; and

(2)  may provide a buyer under contract to purchase the owner's property an affidavit that states that the owner, owner's agent, or title insurance company or its agent acting on behalf of the owner made, in accordance with this chapter, two written requests to the property owners' association for the information described in Section 207.003 and that the association did not timely provide the information.

SECTION 6.  Section 207.006, Property Code, is amended to read as follows:

Sec. 207.006.  ONLINE SUBDIVISION INFORMATION REQUIRED. (a) A property owners' association shall 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 [~~a~~] the homepage of a publicly available website [~~if~~] the association [~~has,~~] or [~~a~~] the management company on behalf of the association maintains[~~, a publicly accessible website~~].

SECTION 7.  Section 209.002, Property Code, is amended by adding a new subdivision (2-a) to read as follows:

(2-a) "Commission" has the meaning assigned by Chapter 1101, Title 7, Occupations Code.

SECTION 8.  Sec. 209.004, Property Code, is amended to read as follows:

MANAGEMENT CERTIFICATES. (a) A property owners' association shall 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)  the name of the subdivision;

(2)  the name of the association;

(3)  the recording data for the subdivision;

(4)  the recording data for the declaration and its amendments;

(5)  the name and mailing address of the association;

(6)  the name, [~~and~~] mailing address, phone number, and email address of the person managing the association or the association's designated representative; [~~and~~]

(7)  the website address of a publicly available website for the association; and

(8) other information the association considers appropriate.

(b)  Not later than July 1 of each calendar year, a property owners' association currently formed and operating as of August 31, 2021 shall also electronically file a management certificate, or an amended management certificate required under this chapter to the commission. The commission may charge a fee for the electronic filing of a management certificate, or an amended management certificate. A fee adopted by the commission may not exceed the amount charged by a property owners' association for a resale certificate under Chapter 207, Title 11, Property Code.

(b-1)  A property owners' association formed and operating as of September 1, 2021 and after shall also electronically file a management certificate, or an amended management certificate required under this chapter to the commission within 10 calendar days of filing the required management certificate with a county clerk under this chapter. The commission may charge a fee for the electronic filing of a management certificate, or an amended management certificate. A fee adopted by the commission may not exceed the amount charged by a property owners' association for a resale certificate under Chapter 207, Title 11, Property Code.

[~~(a-1)~~] (c) The county clerk of each county in which a management certificate is filed as required by this section shall

record the management certificate in the real property records of the county and index the document as a "Property Owners' Association Management Certificate."

[~~(b)~~] (d) The property owners' association shall record an amended management certificate in each county in which any portion of the residential subdivision is located 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).

[~~(c)~~] (e) Except as provided under Subsections (d) and (e), the property owners' 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 the commission a management certificate, unless the delay or failure is [~~wilful~~] willful or caused by gross negligence.

[~~(d)~~] (f) If a property owners' association fails to record a management certificate or an amended management certificate under this section, the seller, the purchaser, lender, or title insurance company or its agent in a transaction involving property in the property owners' association is not liable to the property owners' association for:

(1)  any amount due to the association on the date of a transfer to a bona fide purchaser; and

(2)  any debt to or claim of the association that accrued before the date of a transfer to a bona fide purchaser.

[~~(e)~~] (g) A lien of a property owners' association that fails to file a management certificate or an amended management certificate under this section is unenforceable [~~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~~].

[~~(f)~~] (h) For purposes of this section, "bona fide purchaser" means:

(1)  a person who pays valuable consideration without notice of outstanding rights of others and acts in good faith; or

(2)  a third-party lender who acquires a security interest in the property under a deed of trust.

SECTION 9.  Subsections (e) and (h), Section 209.0051, Property Code, are amended to read as follows:

(e)  Members shall be given notice of the date, hour, place, and general subject of a regular or special board meeting, including a general description of any matter to be brought up for deliberation in executive session. The notice shall be:

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

(2)  provided at least [~~72~~] 144 hours before the start of the meeting by:

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

(i)  in a place located on the association's common property or, with the property owner's consent, on other conspicuously located privately owned property within the subdivision; or

(ii)  on the homepage of an [~~any~~] Internet website maintained by the association [~~or~~] and other Internet media; and

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

(h)  Except as provided by this subsection, a board may take action outside of a meeting, including voting by electronic or telephonic means, without prior notice to owners under Subsection (e), if each board member is given a reasonable opportunity to express the board member's opinion to all other board members and to vote. Any action taken without notice to owners under Subsection (e) must be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes of the next regular or special board meeting. The board may not, unless done in an open meeting for which prior notice was given to owners under Subsection (e), consider or vote on:

(1)  fines;

(2)  damage assessments;

(3)  initiation of foreclosure actions;

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

(5)  increases in assessments;

(6)  levying of special assessments;

(7)  appeals from a denial of architectural control approval;

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

(9)  lending or borrowing money;

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

(11)  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~~];

(12)  the sale or purchase of real property;

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

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

(15)  the election of an officer.

SECTION 10.  Subsection (a), Section 209.006, Property Code, is amended to read as follows:

(a)  Before a property owners' association may suspend an owner's right to use a common area, file a suit against an owner other than a suit to collect a regular or special assessment or foreclose under an association's lien, charge an owner for property damage, [~~or~~] levy a fine for a violation of the restrictions or bylaws or rules of the association, or report any delinquency of an owner to a credit reporting agency or bureau, the association or its agent must give written notice to the owner by certified mail.

SECTION 11.  Subsection (a), Section 209.0063, Occupations Code, is amended to read as follows:

(a)  Except as provided by Subsection (b), a payment received by a property owners' association from the owner shall be applied to the owner's debt in the following order of priority:

(1)  any delinquent assessment;

(2)  any current assessment;

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

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

(6)  any other reasonable and necessary incurred amount owed to the association.

SECTION 12.  Subsection (b), Section 209.0064, Property Code, is amended to read as follows:

(b)  A property owners' association may not hold 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)  specifies each delinquent amount and the total amount of the payment required to make the account current;

(2)  if the association is subject to Section 209.0062 or the association's dedicatory instruments contain a requirement to offer a payment plan, describes the options the owner has to avoid having the account turned over to a collection agent, including information regarding availability of a payment plan through the association; and

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

SECTION 13.  Chapter 209, Property Code, is amended by adding a new Section 209.0065 to read as follows:

Sec. 209.0065.  CREDIT REPORTING AGENCIES. (a) A property owners' association or the association's collection agent may not report any delinquent fines, fee, or assessments to a credit reporting agency if the property owner has a pending dispute of the charges with the property owners' association.

(b)  A property owners' association may 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.  Section 209.007, Property Code, is amended to read as follows:

Sec. 209.007.  HEARING BEFORE BOARD; ALTERNATIVE DISPUTE RESOLUTION. (a)  [~~If the~~] An owner is entitled to appeal a violation, an architectural control committee decision, or dispute any fines or fees to the board of directors of a property owners' association [~~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 of the property owners' association or before the board if the board does not appoint a committee~~].

(b)  [~~If a hearing is to be held before a committee, the notice prescribed by Section 209.006 must state that the owner has the right to appeal the committee's decision to the board by written notice to the board.~~

~~(c)~~] The association shall hold a hearing under this section not later than the 30th day after the date the board receives the owner's request for [~~a~~] an appeal hearing and shall notify the owner of the date, time, and place of the hearing not later than the 10th day before the date of the hearing. The board or the owner may request a postponement, and, if requested, a postponement shall be granted for a period of not more than 10 days. Additional postponements may be granted by agreement of the parties. The [~~owner or the~~] association [~~may~~] shall make an audio recording of the meeting. An owner may make an audio recording of the meeting.

(c)  No later than 10 days before the association holds a hearing under this section, the association shall 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)  If an association does not provide a complete evidence packet within the time frame described in subsection (c), an owner is entitled to an automatic 15 day postponement of the hearing.

(e)  During a hearing, a member of the board of directors or their designated representative of the association shall present the association's evidence against the owner first. A property owner or their designated representative is entitled to rebut the association's evidence, present their evidence, and present issues relevant to the appeal.

(f)  The notice and hearing provisions of Section 209.006 and this section do not apply if the association files a suit seeking a temporary restraining order or temporary injunctive relief or files a suit that includes foreclosure as a cause of action. If a suit is filed relating to a matter to which those sections apply, a party to the suit may file a motion to compel mediation. The notice and hearing provisions of Section 209.006 and this section do not apply to a temporary suspension of a person's right to use common areas if the temporary suspension is the result of a violation that occurred in a common area and involved a significant and immediate risk of harm to others in the subdivision. The temporary suspension is effective until the board makes a final determination on the suspension action after following the procedures prescribed by this section.

[~~(e)~~] (g) An owner or property owners' association may use alternative dispute resolution services.

SECTION 15.  Subsection (a), Section 209.008, Property Code, is amended to read as follows:

(a)  A property owners' association may collect reimbursement of reasonable attorney's fees and other reasonable and necessary costs incurred by the association relating to collecting amounts, including damages, due the association for enforcing restrictions or the bylaws or rules of the association only if the owner is provided a written notice that attorney's fees and costs will be charged to the owner if the delinquency or violation continues after a date certain.

SECTION 16.  Subsection (a), Section 209.008, Property Code, is amended to read as follows:

Sec. 209.016.  REGULATION OF RESIDENTIAL LEASES OR RENTAL AGREEMENTS. (a)  [~~In this section, "sensitive personal information" means an individual's:~~

~~(1)  social security number;~~

~~(2)  driver's license number;~~

~~(3)  government-issued identification number; or~~

~~(4)  account, credit card, or debit card number.~~

~~(b)~~] A property owners' association may not adopt or enforce a provision in a dedicatory instrument that:

(1)  requires a lease or rental applicant or a tenant to be submitted to and approved for tenancy by the property owners' association; or

(2)  requires the following information to be submitted to a property owners' association regarding a lease or rental applicant or current tenant:

(A)  a consumer or credit report; or

(B)  a lease or rental application submitted by the applicant, tenant, or that person's agent to the property owner or property owner's agent when applying for tenancy.

[~~(c)  If a copy of the lease or rental agreement is required by the property owners' association, any sensitive personal information may be redacted or otherwise made unreadable or indecipherable.~~

~~(d)  Except as provided by Subsection (b), nothing in this section shall be construed to prohibit the adoption or enforcement of a provision in a dedicatory instrument establishing a restriction relating to occupancy or leasing.~~]

SECTION 17.  Section 204.003(d), Property Code, is repealed.

SECTION 18.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.