

By: Huffman

S.B. No. 318

A BILL TO BE ENTITLED

AN ACT

relating to the records of certain condominium unit owners' associations.

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

SECTION 1. Section 82.114(b), Property Code, is amended to read as follows:

(b) All financial and other records of the association shall be reasonably available at its registered office or its principal office in this state for examination and production in accordance with Section 82.1141 [~~by a unit owner and the owner's agents. 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. Subchapter C, Chapter 82, Property Code, is amended by adding Section 82.1141 to read as follows:

Sec. 82.1141. ACCESS TO ASSOCIATION RECORDS. (a) This section applies to all associations governed by this chapter and controls over other law not specifically applicable to an association.

(b) Notwithstanding a provision in a dedicatory instrument, an association shall 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

1 certified public accountant, in accordance with this section. A
2 unit owner is entitled to obtain from the association copies of
3 information contained in the books and records.

4 (c) Except as provided by this subsection, an attorney's
5 files and records relating to the association, excluding invoices
6 requested by a unit owner for attorney's fees and other costs
7 relating only to a matter for which the association seeks
8 reimbursement of fees and costs from the unit owner, are not records
9 of the association and are not subject to inspection by the unit
10 owner or production in a legal proceeding. If a document in an
11 attorney's files and records relating to the association would be
12 responsive to a legally authorized request to inspect or copy
13 association documents, the document shall be produced by using the
14 copy from the attorney's files and records if the association has
15 not maintained a separate copy of the document. This subsection
16 does not require production of a document that constitutes attorney
17 work product or that is privileged as an attorney-client
18 communication.

19 (d) A unit owner or the unit owner's authorized
20 representative described by Subsection (b) must submit a written
21 request for access or information under Subsection (b) by certified
22 mail, with sufficient detail describing the association's books and
23 records requested, to the mailing address of the association or
24 authorized representative as reflected on the most current
25 management certificate filed under Section 82.116. The request
26 must contain an election either to inspect the books and records
27 before obtaining copies or to have the association forward copies

1 of the requested books and records and:

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

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

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

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

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

26 (f) If an inspection is requested or required, the
27 inspection shall take place at a mutually agreed on time during

1 normal business hours, and the requesting party shall identify the
2 books and records for the association to copy and forward to the
3 requesting party.

4 (g) An association may produce books and records requested
5 under this section in hard copy, electronic, or other format
6 reasonably available to the association.

7 (h) An association board must adopt a records production and
8 copying policy that prescribes the costs the association will
9 charge for the compilation, production, and reproduction of
10 information requested under this section. The prescribed charges
11 may include all reasonable costs of materials, labor, and overhead
12 but may not exceed costs that would be applicable for an item under
13 1 T.A.C. Section 70.3 for an item produced by the association and
14 may not exceed actual costs for an item produced by a third party.
15 The policy required by this subsection must be recorded as a
16 dedicatory instrument in accordance with Section [202.006](#). An
17 association may not charge a unit owner for the compilation,
18 production, or reproduction of information requested under this
19 section unless the policy prescribing those costs has been recorded
20 as required by this subsection. A unit owner is responsible for
21 costs related to the compilation, production, and reproduction of
22 the requested information in the amounts prescribed by the policy
23 adopted under this subsection. The association may require advance
24 payment of the estimated costs of compilation, production, and
25 reproduction of the requested information. If the estimated costs
26 are lesser or greater than the actual costs, the association shall
27 submit a final invoice to the unit owner on or before the 30th

1 business day after the date the information is delivered. If the
2 final invoice includes additional amounts due from the unit owner,
3 the additional amounts, if not reimbursed to the association before
4 the 30th business day after the date the invoice is sent to the unit
5 owner, may be added to the unit owner's account as an assessment.
6 If the estimated costs exceeded the final invoice amount, the unit
7 owner is entitled to a refund, and the refund shall be issued to the
8 unit owner not later than the 30th business day after the date the
9 invoice is sent to the unit owner.

10 (i) An association must estimate costs under this section
11 using amounts prescribed by the policy adopted under Subsection
12 (h).

13 (j) Except as provided by Subsection (k) and to the extent
14 the information is provided in the meeting minutes, the association
15 is not required to release or allow inspection of any books or
16 records that identify the dedicatory instrument violation history
17 of an individual unit owner of an association, a unit owner's
18 personal financial information, including records of payment or
19 nonpayment of amounts due the association, a unit owner's contact
20 information, a unit owner's address, or information related to an
21 employee of the association, including personnel files.
22 Information may be released in an aggregate or summary manner that
23 would not identify an individual unit owner.

24 (k) The books and records described by Subsection (j) shall
25 be released or made available for inspection if:

26 (1) the express written approval of the unit owner
27 whose records are the subject of the request for inspection is

1 provided to the association; or

2 (2) a court orders the release of the books and records
3 or orders that the books and records be made available for
4 inspection.

5 (1) In addition to retaining records as necessary for
6 compliance with Section 82.114, an association composed of eight or
7 more units shall adopt and comply with a document retention policy
8 that includes, at a minimum, the following requirements:

9 (1) certificates of formation, bylaws, dedicatory
10 instruments, and all amendments to the certificates of formation,
11 bylaws, and dedicatory instruments shall be retained permanently;

12 (2) financial books and records shall be retained for
13 seven years;

14 (3) account records of current unit owners shall be
15 retained for five years;

16 (4) contracts with a term of one year or more shall be
17 retained for four years after the expiration of the contract term;

18 (5) minutes of meetings of the unit owners and the
19 board shall be retained for seven years; and

20 (6) tax returns and audit records shall be retained
21 for seven years.

22 (m) A member of an association who is denied access to or
23 copies of association books or records to which the member is
24 entitled under this section may file a petition with the justice of
25 the peace of a justice precinct in which all or part of the
26 condominium is located requesting relief in accordance with this
27 subsection. If the justice of the peace finds that the member is

1 entitled to access to or copies of the records, the justice of the
2 peace may grant one or more of the following remedies:

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

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

8 (n) If the association prevails in an action under
9 Subsection (m), the association is entitled to a judgment for court
10 costs and attorney's fees incurred by the association in connection
11 with the action.

12 (o) On or before the 10th business day before the date a
13 person brings an action against an association under this section,
14 the person must send written notice to the association of the
15 person's intent to bring the action. The notice must:

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

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

23 (p) For the purposes of this section, "business day" means a
24 day other than Saturday, Sunday, or a state or federal holiday.

25 SECTION 3. Section 82.1141, Property Code, as added by this
26 Act, applies only to a request for association records or
27 information made on or after the effective date of this Act.

1 SECTION 4. This Act takes effect September 1, 2021.