

1-1 By: Huffman S.B. No. 318
 1-2 (In the Senate - Filed January 11, 2021; March 9, 2021, read
 1-3 first time and referred to Committee on Local Government;
 1-4 April 29, 2021, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 5, Nays 0; April 29, 2021,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10			X	
1-11			X	
1-12			X	
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17			X	

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 318 By: Zaffirini

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the records of certain condominium unit owners'
 1-22 associations.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 82.114(b), Property Code, is amended to
 1-25 read as follows:

1-26 (b) All financial and other records of the association shall
 1-27 be reasonably available at its registered office or its principal
 1-28 office in this state for examination and production in accordance
 1-29 with Section 82.1141 [by a unit owner and the owner's agents. An
 1-30 attorney's files and records relating to the association are not
 1-31 records of the association and are not subject to inspection by unit
 1-32 owners or production in a legal proceeding].

1-33 SECTION 2. Subchapter C, Chapter 82, Property Code, is
 1-34 amended by adding Section 82.1141 to read as follows:

1-35 Sec. 82.1141. ACCESS TO ASSOCIATION RECORDS. (a) This
 1-36 section applies to all associations governed by this chapter and
 1-37 controls over other law not specifically applicable to an
 1-38 association.

1-39 (b) Notwithstanding a provision in a dedicatory instrument,
 1-40 an association shall make the books and records of the association,
 1-41 including financial records, open to and reasonably available for
 1-42 examination by a unit owner, or a person designated in a writing
 1-43 signed by the unit owner as the unit owner's agent, attorney, or
 1-44 certified public accountant, in accordance with this section. A
 1-45 unit owner is entitled to obtain from the association copies of
 1-46 information contained in the books and records.

1-47 (c) Except as provided by this subsection, an attorney's
 1-48 files and records relating to the association, excluding invoices
 1-49 requested by a unit owner for attorney's fees and other costs
 1-50 relating only to a matter for which the association seeks
 1-51 reimbursement of fees and costs from the unit owner, are not records
 1-52 of the association and are not subject to inspection by the unit
 1-53 owner or production in a legal proceeding. If a document in an
 1-54 attorney's files and records relating to the association would be
 1-55 responsive to a legally authorized request to inspect or copy
 1-56 association documents, the document shall be produced by using the
 1-57 copy from the attorney's files and records if the association has
 1-58 not maintained a separate copy of the document. This subsection
 1-59 does not require production of a document that constitutes attorney
 1-60 work product or that is privileged as an attorney-client

2-1 communication.

2-2 (d) A unit owner or the unit owner's authorized
 2-3 representative described by Subsection (b) must submit a written
 2-4 request for access or information under Subsection (b) by certified
 2-5 mail, with sufficient detail describing the association's books and
 2-6 records requested, to the mailing address of the association or
 2-7 authorized representative as reflected on the most current
 2-8 management certificate filed under Section 82.116. The request
 2-9 must contain an election either to inspect the books and records
 2-10 before obtaining copies or to have the association forward copies
 2-11 of the requested books and records and:

2-12 (1) if an inspection is requested, the association, on
 2-13 or before the 10th business day after the date the association
 2-14 receives the request, shall send written notice of dates during
 2-15 normal business hours that the unit owner may inspect the requested
 2-16 books and records to the extent those books and records are in the
 2-17 possession, custody, or control of the association; or

2-18 (2) if copies of identified books and records are
 2-19 requested, the association shall, to the extent those books and
 2-20 records are in the possession, custody, or control of the
 2-21 association, produce the requested books and records for the
 2-22 requesting party on or before the 10th business day after the date
 2-23 the association receives the request, except as otherwise provided
 2-24 by this section.

2-25 (e) If the association is unable to produce the books or
 2-26 records requested under Subsection (d) on or before the 10th
 2-27 business day after the date the association receives the request,
 2-28 the association must provide to the requestor written notice that:

2-29 (1) informs the requestor that the association is
 2-30 unable to produce the information on or before the 10th business day
 2-31 after the date the association received the request; and

2-32 (2) states a date by which the information will be sent
 2-33 or made available for inspection to the requesting party that is not
 2-34 later than the 15th business day after the date notice under this
 2-35 subsection is given.

2-36 (f) If an inspection is requested or required, the
 2-37 inspection shall take place at a mutually agreed on time during
 2-38 normal business hours, and the requesting party shall identify the
 2-39 books and records for the association to copy and forward to the
 2-40 requesting party.

2-41 (g) An association may produce books and records requested
 2-42 under this section in hard copy, electronic, or other format
 2-43 reasonably available to the association.

2-44 (h) An association board must adopt a records production and
 2-45 copying policy that prescribes the costs the association will
 2-46 charge for the compilation, production, and reproduction of
 2-47 information requested under this section. The prescribed charges
 2-48 may include all reasonable costs of materials, labor, and overhead
 2-49 but may not exceed costs that would be applicable for an item under
 2-50 1 T.A.C. Section 70.3 for an item produced by the association and
 2-51 may not exceed actual costs for an item produced by a third party.
 2-52 The policy required by this subsection must be recorded as a
 2-53 dedicatory instrument in accordance with Section 202.006. An
 2-54 association may not charge a unit owner for the compilation,
 2-55 production, or reproduction of information requested under this
 2-56 section unless the policy prescribing those costs has been recorded
 2-57 as required by this subsection. A unit owner is responsible for
 2-58 costs related to the compilation, production, and reproduction of
 2-59 the requested information in the amounts prescribed by the policy
 2-60 adopted under this subsection. The association may require advance
 2-61 payment of the estimated costs of compilation, production, and
 2-62 reproduction of the requested information. If the estimated costs
 2-63 are lesser or greater than the actual costs, the association shall
 2-64 submit a final invoice to the unit owner on or before the 30th
 2-65 business day after the date the information is delivered. If the
 2-66 final invoice includes additional amounts due from the unit owner,
 2-67 the additional amounts, if not reimbursed to the association before
 2-68 the 30th business day after the date the invoice is sent to the unit
 2-69 owner, may be added to the unit owner's account as an assessment.

3-1 If the estimated costs exceeded the final invoice amount, the unit
 3-2 owner is entitled to a refund, and the refund shall be issued to the
 3-3 unit owner not later than the 30th business day after the date the
 3-4 invoice is sent to the unit owner.

3-5 (i) An association must estimate costs under this section
 3-6 using amounts prescribed by the policy adopted under Subsection
 3-7 (h).

3-8 (j) Except as provided by Subsection (k) and to the extent
 3-9 the information is provided in the meeting minutes, the association
 3-10 is not required to release or allow inspection of any books or
 3-11 records that identify the dedicatory instrument violation history
 3-12 of an individual unit owner of an association, a unit owner's
 3-13 personal financial information, including records of payment or
 3-14 nonpayment of amounts due the association, a unit owner's contact
 3-15 information, a unit owner's address, or information related to an
 3-16 employee of the association, including personnel files.
 3-17 Information may be released in an aggregate or summary manner that
 3-18 would not identify an individual unit owner.

3-19 (k) The books and records described by Subsection (j) shall
 3-20 be released or made available for inspection if:

3-21 (1) the express written approval of the unit owner
 3-22 whose records are the subject of the request for inspection is
 3-23 provided to the association; or

3-24 (2) a court orders the release of the books and records
 3-25 or orders that the books and records be made available for
 3-26 inspection.

3-27 (l) In addition to retaining records as necessary for
 3-28 compliance with Section 82.114, an association composed of eight or
 3-29 more units shall adopt and comply with a document retention policy
 3-30 that includes, at a minimum, the following requirements:

3-31 (1) certificates of formation, bylaws, dedicatory
 3-32 instruments, and all amendments to the certificates of formation,
 3-33 bylaws, and dedicatory instruments shall be retained permanently;

3-34 (2) financial books and records shall be retained for
 3-35 seven years;

3-36 (3) account records of current unit owners shall be
 3-37 retained for five years;

3-38 (4) contracts with a term of one year or more shall be
 3-39 retained for four years after the expiration of the contract term;

3-40 (5) minutes of meetings of the unit owners and the
 3-41 board shall be retained for seven years; and

3-42 (6) tax returns and audit records shall be retained
 3-43 for seven years.

3-44 (m) A member of an association who is denied access to or
 3-45 copies of association books or records to which the member is
 3-46 entitled under this section may file a petition with the justice of
 3-47 the peace of a justice precinct in which all or part of the
 3-48 condominium is located requesting relief in accordance with this
 3-49 subsection. If the justice of the peace finds that the member is
 3-50 entitled to access to or copies of the records, the justice of the
 3-51 peace may grant one or more of the following remedies:

3-52 (1) a judgment ordering the association to release or
 3-53 allow access to the books or records; or

3-54 (2) a judgment against the association for court costs
 3-55 and attorney's fees incurred in connection with seeking a remedy
 3-56 under this section.

3-57 (n) If the association prevails in an action under
 3-58 Subsection (m), the association is entitled to a judgment for court
 3-59 costs and attorney's fees incurred by the association in connection
 3-60 with the action.

3-61 (o) On or before the 10th business day before the date a
 3-62 person brings an action against an association under this section,
 3-63 the person must send written notice to the association of the
 3-64 person's intent to bring the action. The notice must:

3-65 (1) be sent certified mail, return receipt requested,
 3-66 or delivered by the United States Postal Service with signature
 3-67 confirmation service to the mailing address of the association or
 3-68 authorized representative as reflected on the most current
 3-69 management certificate filed under Section 82.116; and

