

By: Hughes, Springer

S.B. No. 1588

A BILL TO BE ENTITLED

AN ACT

relating to the powers and duties of certain property owners' associations.

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

SECTION 1. Section 207.003(c), Property Code, is amended to read as follows:

(c) A property owners' association may charge a reasonable and necessary fee, not to exceed \$375, to assemble, copy, and deliver the information required by this section and may charge a reasonable and necessary fee, not to exceed \$75, to prepare and deliver an update of a resale certificate under Subsection (f).

SECTION 2. Section 207.004(b), 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 fifth business [~~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) 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 actual damages [~~not more than \$500~~];

(C) a judgment against the property owners'

1 association for court costs and reasonable attorney's fees; or

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

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

13 SECTION 3. Section 207.006, Property Code, is amended to
14 read as follows:

15 Sec. 207.006. ONLINE SUBDIVISION INFORMATION REQUIRED. A
16 property owners' association shall make the current version of the
17 association's dedicatory instruments relating to the association
18 or subdivision and filed in the county deed records available on the
19 homepage of an Internet [a] website available to association
20 members that is maintained by [if] the association [has,] or by a
21 management company on behalf of the association [maintains, a
22 publicly accessible website].

23 SECTION 4. Section 207.001, Property Code, is amended by
24 adding Subdivision (2-a) to read as follows:

25 (2-a) "Management company" has the meaning assigned by
26 Section 209.002.

27 SECTION 5. Section 209.004, Property Code, is amended by

1 amending Subsections (a), (b), (c), and (e) and adding Subsection
2 (b-1) to read as follows:

3 (a) A property owners' association shall record in each
4 county in which any portion of the residential subdivision is
5 located a management certificate, signed and acknowledged by an
6 officer or the managing agent of the association, stating:

7 (1) the name of the subdivision;

8 (2) the name of the association;

9 (3) the recording data for the subdivision;

10 (4) the recording data for the declaration and any
11 amendments to the declaration;

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

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

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

19 (8) other information the association considers
20 appropriate.

21 (b) The property owners' association shall record an
22 amended management certificate in each county in which any portion
23 of the residential subdivision is located not later than the 30th
24 day after the date the association has notice of a change in any
25 information in the recorded certificate required by Subsection (a).

26 (b-1) Not later than the seventh day after the date a
27 property owners' association files a management certificate for

1 recording under Subsection (a) or files an amended management
2 certificate for recording under Subsection (b), the property
3 owners' association shall electronically file the management
4 certificate or amended management certificate with the Texas Real
5 Estate Commission. The Texas Real Estate Commission shall only
6 collect the management certificate and amended management
7 certificate for the purpose of making the data accessible to the
8 general public through an Internet website.

9 (c) Except as provided under Subsections (d) and (e), the
10 property owners' association and its officers, directors,
11 employees, and agents are not subject to liability to any person for
12 a delay in recording or failure to record a management certificate
13 with a county clerk's office or electronically file the management
14 certificate with the Texas Real Estate Commission, unless the delay
15 or failure is wilful or caused by gross negligence.

16 (e) A lien of a property owners' association that fails to
17 file a management certificate or an amended management certificate
18 under this section to secure an amount due on the effective date of
19 a transfer to a bona fide purchaser is enforceable only for an
20 amount incurred after the effective date of sale. An owner is not
21 liable for attorney's fees incurred by a property owners'
22 association relating to the collection of a delinquent assessment
23 against the owner or interest on the amount of a delinquent
24 assessment if the attorney's fees are incurred by the association
25 or the interest accrues during the period a management certificate
26 is not recorded with a county clerk or electronically filed with the
27 Texas Real Estate Commission as required by this section.

1 SECTION 6. Chapter 209, Property Code, is amended by adding
2 Section 209.00505 to read as follows:

3 Sec. 209.00505. ARCHITECTURAL REVIEW AUTHORITY. (a) In
4 this section, "architectural review authority" means the governing
5 authority for the review and approval of improvements within a
6 subdivision.

7 (b) This section:

8 (1) applies only to a property owners' association
9 that consists of more than 40 lots; and

10 (2) does not apply during a development period or
11 during any period in which the declarant:

12 (A) appoints at least a majority of the members
13 of the architectural review authority or otherwise controls the
14 appointment of the architectural review authority; or

15 (B) has the right to veto or modify a decision of
16 the architectural review authority.

17 (c) A person may not be appointed or elected to serve on an
18 architectural review authority if the person is:

19 (1) a current board member;

20 (2) a current board member's spouse; or

21 (3) a person residing in a current board member's
22 household.

23 (d) A decision by the architectural review authority
24 denying an application or request by an owner for the construction
25 of improvements in the subdivision may be appealed to the board. A
26 written notice of the denial must be provided to the owner by
27 certified mail, hand delivery, or electronic delivery. The notice

1 must:

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

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

8 (e) The board shall hold a hearing under this section not
9 later than the 30th day after the date the board receives the
10 owner's request for a hearing and shall notify the owner of the
11 date, time, and place of the hearing not later than the 10th day
12 before the date of the hearing. Only one hearing is required under
13 this subsection.

14 (f) During a hearing, the board or the designated
15 representative of the property owners' association and the owner or
16 the owner's designated representative will each be provided the
17 opportunity to discuss, verify facts, and resolve the denial of the
18 owner's application or request for the construction of
19 improvements, and the changes, if any, requested by the
20 architectural review authority in the notice provided to the owner
21 under Subsection (d).

22 (g) The board or the owner may request a postponement. If
23 requested, a postponement shall be granted for a period of not more
24 than 10 days. Additional postponements may be granted by agreement
25 of the parties.

26 (h) The property owners' association or the owner may make
27 an audio recording of the meeting.

1 SECTION 7. Sections 209.0051(e) and (h), Property Code, are
2 amended to read as follows:

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

7 (1) mailed to each property owner not later than the
8 10th day or earlier than the 60th day before the date of the
9 meeting; or

10 (2) provided at least 144 [~~72~~] hours before the start
11 of a regular board [~~the~~] meeting and at least 72 hours before the
12 start of a special board meeting by:

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

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

20 (ii) on any Internet website available to
21 association members that is maintained by the association or by a
22 management company on behalf of the association [~~other Internet~~
23 ~~media~~]; and

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

26 (h) Except as provided by this subsection, a board may take
27 action outside of a meeting, including voting by electronic or

1 telephonic means, without prior notice to owners under Subsection
2 (e), if each board member is given a reasonable opportunity to
3 express the board member's opinion to all other board members and to
4 vote. Any action taken without notice to owners under Subsection
5 (e) must be summarized orally, including an explanation of any
6 known actual or estimated expenditures approved at the meeting, and
7 documented in the minutes of the next regular or special board
8 meeting. The board may not, unless done in an open meeting for
9 which prior notice was given to owners under Subsection (e),
10 consider or vote on:

- 11 (1) fines;
- 12 (2) damage assessments;
- 13 (3) initiation of foreclosure actions;
- 14 (4) initiation of enforcement actions, excluding
15 temporary restraining orders or violations involving a threat to
16 health or safety;
- 17 (5) increases in assessments;
- 18 (6) levying of special assessments;
- 19 (7) appeals from a denial of architectural control
20 approval;
- 21 (8) a suspension of a right of a particular owner
22 before the owner has an opportunity to attend a board meeting to
23 present the owner's position, including any defense, on the issue;
- 24 (9) lending or borrowing money;
- 25 (10) the adoption or amendment of a dedicatory
26 instrument;
- 27 (11) the approval of an annual budget or the approval

1 of an amendment of an annual budget [~~that increases the budget by~~
2 ~~more than 10 percent~~];

3 (12) the sale or purchase of real property;

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

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

8 (15) the election of an officer.

9 SECTION 8. Section 209.006(a), Property Code, is amended to
10 read as follows:

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

19 SECTION 9. Section 209.0063(a), Property Code, is amended
20 to read as follows:

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

24 (1) any delinquent assessment;

25 (2) any current assessment;

26 (3) any reasonable attorney's fees or reasonable third
27 party collection costs incurred by the association associated

1 solely with assessments or any other charge that could provide the
2 basis for foreclosure;

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

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

7 (6) any other reasonable amount owed to the
8 association.

9 SECTION 10. Section 209.0064(b), Property Code, is amended
10 to read as follows:

11 (b) A property owners' association may not hold an owner
12 liable for fees of a collection agent retained by the association
13 unless the association first provides written notice to the owner
14 by certified mail that:

15 (1) specifies each delinquent amount and the total
16 amount of the payment required to make the account current;

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

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

26 SECTION 11. Chapter 209, Property Code, is amended by
27 adding Section 209.0065 to read as follows:

1 Sec. 209.0065. CREDIT REPORTING SERVICES. (a) A property
2 owners' association or the association's collection agent may not
3 report any delinquent fines, fees, or assessments to a credit
4 reporting service that are the subject of a pending dispute between
5 the owner and the property owners' association.

6 (b) A property owners' association may report delinquent
7 payment history assessments, fines, and fees of property owners
8 within its jurisdiction to a credit reporting service only if:

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

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

16 SECTION 12. Section 209.007, Property Code, is amended by
17 amending Subsection (a) and adding Subsections (f), (g), and (h) to
18 read as follows:

19 (a) Except as provided by Subsection (d) and only if [~~if~~
20 the owner is entitled to an opportunity to cure the violation, the
21 owner has the right to submit a written request for a hearing to
22 discuss and verify facts and resolve the matter in issue before [~~a~~
23 committee appointed by] the board [~~of the property owners'~~
24 association or before the board if the board does not appoint a
25 committee].

26 (f) Not later than 10 days before the association holds a
27 hearing under this section, the association shall provide to an

1 owner a packet containing all documents, photographs, and
2 communications relating to the matter the association intends to
3 introduce at the hearing.

4 (g) If an association does not provide a packet within the
5 period described by Subsection (f), an owner is entitled to an
6 automatic 15-day postponement of the hearing.

7 (h) During a hearing, a member of the board or the
8 association's designated representative shall first present the
9 association's case against the owner. An owner or the owner's
10 designated representative is entitled to present the owner's
11 information and issues relevant to the appeal or dispute.

12 SECTION 13. Section 209.015(c), Property Code, is amended
13 to read as follows:

14 (c) An owner must obtain the approval of the property
15 owners' association or, if applicable, an architectural review
16 authority, as defined by Section 209.00505(a), [~~committee~~]
17 established by the association or the association's dedicatory
18 instruments, based on criteria prescribed by the dedicatory
19 instruments specific to the use of a lot for residential purposes,
20 including reasonable restrictions regarding size, location,
21 shielding, and aesthetics of the residential purpose, before the
22 owner begins the construction, placement, or erection of a
23 building, structure, or other improvement for the residential
24 purpose on an adjacent lot.

25 SECTION 14. Section 209.016, Property Code, is amended by
26 amending Subsection (d) and adding Subsection (e) to read as
27 follows:

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

5 (e) A property owners' association may request the
6 following information to be submitted to the association regarding
7 a lease or rental applicant:

8 (1) contact information, including the name, mailing
9 address, phone number, and e-mail address of each person who will
10 reside at a property in the subdivision under a lease; and

11 (2) the commencement date and term of the lease.

12 SECTION 15. Section 209.002, Property Code, is amended by
13 adding Subdivision (5-a) to read as follows:

14 (5-a) "Management company" means a person or entity
15 established or contracted to provide management or administrative
16 services on behalf of a property owners' association.

17 SECTION 16. The following provisions of the Property Code
18 are repealed:

19 (1) Section 209.007(b); and

20 (2) Sections 209.016(a) and (c).

21 SECTION 17. (a) Not later than December 1, 2021, the Texas
22 Real Estate Commission shall establish and make available the
23 system necessary for the electronic filing of management
24 certificates and amended management certificates as required under
25 Section 209.004(b-1), Property Code, as added by this Act.

26 (b) Notwithstanding Section 209.004(b-1), Property Code, as
27 added by this Act, a property owners' association that has on or

1 before December 1, 2021, recorded a management certificate or
2 amended management certificate with a county clerk under Section
3 209.004, Property Code, shall electronically file the most recently
4 recorded management certificate or amended management certificate
5 with the Texas Real Estate Commission not later than June 1, 2022.

6 SECTION 18. Section 209.0065, Property Code, as added by
7 this Act, applies only to a fine, fee, or assessment that becomes
8 due on or after the effective date of this Act. A fine, fee, or
9 assessment that becomes due before the effective date of this Act is
10 governed by the law in effect immediately before the effective date
11 of this Act, and that law is continued in effect for that purpose.

12 SECTION 19. (a) Except as provided by Subsection (b) of
13 this section, this Act takes effect September 1, 2021.

14 (b) Section 209.004(b-1), Property Code, as added by this
15 Act, takes effect December 1, 2021.