

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

1 subdivision property that [~~are~~] is zoned for [~~or that contain~~] a
2 commercial structure, an industrial structure, or an apartment
3 complex[~~, or a condominium development governed by Title 7,~~
4 ~~Property Code~~]. For purposes of this subsection, "apartment
5 complex" means two or more dwellings in one or more buildings that
6 are owned by the same owner, located on the same lot or tract, and
7 managed by the same owner, agent, or management company.

8 SECTION 2. Subsections (b), (c) and (d), Section 204.003,
9 Property Code, are amended to read as follows:

10 (b) Notwithstanding Subsection (a), for a residential
11 subdivision [~~described by Subsection (c)~~], the provisions of this
12 chapter prevail over an express designation in a document described
13 by Subsection (a) if:

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

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

21 (c) [~~Subsection (b) applies to a residential subdivision~~
22 ~~that is located in a county described by Section 204.002(a)(3)~~
23 ~~other than a gated community with private streets.~~

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

1 extension or renewal of the restrictions.

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

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

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

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

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

19 (b) If a property owners' association fails to deliver the
20 information required under Section 207.003 before the seventh
21 calendar day after the second request for the information was
22 mailed by certified mail, return receipt requested, or hand
23 delivered, evidenced by receipt, the owner:

24 (1) may seek one or any combination of the following:

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

27 (B) a judgment against the property owners'

1 association [~~for not more than \$500~~];

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

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

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

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

17 Sec. 207.006. ONLINE SUBDIVISION INFORMATION REQUIRED. (a)
18 A property owners' association shall make the most recent versions
19 of its dedicatory instruments, including its amendments, relating
20 to the association or subdivision and filed in the county deed
21 records available on [~~a~~] the homepage of a publicly available
22 website [~~if~~] the association [~~has,~~] or [~~a~~] the management company
23 on behalf of the association maintains [~~, a publicly accessible~~
24 ~~website~~].

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

27 (2-a) "Commission" has the meaning assigned by Chapter 1101,

1 Title 7, Occupations Code.

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

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

9 (1) the name of the subdivision;

10 (2) the name of the association;

11 (3) the recording data for the subdivision;

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

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

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

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

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

22 (b) Not later than July 1 of each calendar year, a property
23 owners' association currently formed and operating as of August 31,
24 2021 shall also electronically file a management certificate, or an
25 amended management certificate required under this chapter to the
26 commission. The commission may charge a fee for the electronic
27 filing of a management certificate, or an amended management

1 certificate. A fee adopted by the commission may not exceed the
2 amount charged by a property owners' association for a resale
3 certificate under Chapter 207, Title 11, Property Code.

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

14 ~~[(a-1)]~~ (c) The county clerk of each county in which a
15 management certificate is filed as required by this section shall
16 record the management certificate in the real property records of
17 the county and index the document as a "Property Owners'
18 Association Management Certificate."

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

24 ~~[(c)]~~ (e) Except as provided under Subsections (d) and (e),
25 the property owners' association and its officers, directors,
26 employees, and agents are not subject to liability to any person for
27 a delay in recording or failure to record with a county clerk's

1 office or with the commission a management certificate, unless the
2 delay or failure is [~~willful~~] willful or caused by gross negligence.

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

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

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

13 [~~(e)~~] (g) A lien of a property owners' association that fails
14 to file a management certificate or an amended management
15 certificate under this section is unenforceable [~~to secure an~~
16 ~~amount due on the effective date of a transfer to a bona fide~~
17 ~~purchaser is enforceable only for an amount incurred after the~~
18 ~~effective date of sale~~].

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

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

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

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

27 (e) Members shall be given notice of the date, hour, place,

1 and general subject of a regular or special board meeting,
2 including a general description of any matter to be brought up for
3 deliberation in executive session. The notice shall be:

4 (1) mailed to each property owner not later than the
5 10th day or earlier than the 60th day before the date of the
6 meeting; or

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

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

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

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

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

21 (h) Except as provided by this subsection, a board may take
22 action outside of a meeting, including voting by electronic or
23 telephonic means, without prior notice to owners under Subsection
24 (e), if each board member is given a reasonable opportunity to
25 express the board member's opinion to all other board members and to
26 vote. Any action taken without notice to owners under Subsection
27 (e) must be summarized orally, including an explanation of any

1 known actual or estimated expenditures approved at the meeting, and
2 documented in the minutes of the next regular or special board
3 meeting. The board may not, unless done in an open meeting for which
4 prior notice was given to owners under Subsection (e), consider or
5 vote on:

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

1 than the repair, replacement, or enhancement of existing capital
2 improvements; or

3 (15) the election of an officer.

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

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

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

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

19 (1) any delinquent assessment;

20 (2) any current assessment;

21 (3) any reasonable attorney's fees or reasonable third
22 party collection costs incurred by the association associated
23 solely with assessments or any other charge that could provide the
24 basis for foreclosure;

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

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

1 and

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

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

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

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

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

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

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

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

1 (b) A property owners' association may report delinquent
2 payment history assessments, fines, and fees of property owners
3 within its jurisdiction to a credit reporting agency or bureau only
4 if:

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

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

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

14 SECTION 14. Section 209.007, Property Code, is amended to
15 read as follows:

16 Sec. 209.007. HEARING BEFORE BOARD; ALTERNATIVE DISPUTE
17 RESOLUTION. (a) ~~[If the]~~ An owner is entitled to appeal a
18 violation, an architectural control committee decision, or dispute
19 any fines or fees to the board of directors of a property owners'
20 association ~~[an opportunity to cure the violation, the owner has~~
21 ~~the right to submit a written request for a hearing to discuss and~~
22 ~~verify facts and resolve the matter in issue before a committee~~
23 ~~appointed by the board of the property owners' association or~~
24 ~~before the board if the board does not appoint a committee].~~

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

1 ~~notice to the board.~~

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

12 (c) No later than 10 days before the association holds a
13 hearing under this section, the association shall provide to an
14 owner an evidence packet containing all documents, photographs, or
15 communications relating to the matter in issue which the
16 association intends to introduce at the hearing.

17 (d) If an association does not provide a complete evidence
18 packet within the time frame described in subsection (c), an owner
19 is entitled to an automatic 15 day postponement of the hearing.

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

26 (f) The notice and hearing provisions of Section 209.006 and
27 this section do not apply if the association files a suit seeking a

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

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

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

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

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

27 Sec. 209.016. REGULATION OF RESIDENTIAL LEASES OR RENTAL

1 AGREEMENTS. (a) ~~[In this section, "sensitive personal~~
2 ~~information" means an individual's:~~

- 3 ~~(1) social security number;~~
- 4 ~~(2) driver's license number;~~
- 5 ~~(3) government-issued identification number; or~~
- 6 ~~(4) account, credit card, or debit card number.~~

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

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

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

15 (A) a consumer or credit report; or

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

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

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

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

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