

1-1 By: Hughes S.B. No. 1588
 1-2 (In the Senate - Filed March 11, 2021; March 24, 2021, read
 1-3 first time and referred to Committee on Business & Commerce;
 1-4 April 19, 2021, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 7, Nays 1; April 19, 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. 1588 By: Hancock

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

1-21 relating to the powers and duties of certain property owners'
 1-22 associations.

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

1-24 SECTION 1. Section 207.003(c), Property Code, is amended to
 1-25 read as follows:

1-26 (c) A property owners' association may charge a reasonable
 1-27 and necessary fee, not to exceed \$250, to assemble, copy, and
 1-28 deliver the information required by this section and may charge a
 1-29 reasonable and necessary fee, not to exceed \$30, to prepare and
 1-30 deliver an update of a resale certificate under Subsection (f).

1-31 SECTION 2. Section 207.004(b), Property Code, is amended to
 1-32 read as follows:

1-33 (b) If a property owners' association fails to deliver the
 1-34 information required under Section 207.003 before the fifth
 1-35 business [~~seventh~~] day after the second request for the information
 1-36 was mailed by certified mail, return receipt requested, or hand
 1-37 delivered, evidenced by receipt, the owner:

1-38 (1) may seek one or any combination of the following:

1-39 (A) a court order directing the property owners'
 1-40 association to furnish the required information;

1-41 (B) a judgment against the property owners'
 1-42 association for actual damages [~~not more than \$500~~];

1-43 (C) a judgment against the property owners'
 1-44 association for court costs and reasonable attorney's fees; or

1-45 (D) a judgment authorizing the owner or the
 1-46 owner's assignee to deduct the amounts awarded under Paragraphs (B)
 1-47 and (C) from any future regular or special assessments payable to
 1-48 the property owners' association; and

1-49 (2) may provide a buyer under contract to purchase the
 1-50 owner's property an affidavit that states that the owner, owner's
 1-51 agent, or title insurance company or its agent acting on behalf of
 1-52 the owner made, in accordance with this chapter, two written
 1-53 requests to the property owners' association for the information
 1-54 described in Section 207.003 and that the association did not
 1-55 timely provide the information.

1-56 SECTION 3. Section 207.006, Property Code, is amended to
 1-57 read as follows:

1-58 Sec. 207.006. ONLINE SUBDIVISION INFORMATION REQUIRED. A
 1-59 property owners' association shall make the current version of the
 1-60 association's dedicatory instruments relating to the association

2-1 or subdivision and filed in the county deed records available on the
2-2 homepage of an Internet [a] website accessible to association
2-3 members that is maintained by [if] the association [has,] or by a
2-4 management company on behalf of the association [maintains, a
2-5 publicly accessible website].

2-6 SECTION 4. Section 209.004, Property Code, is amended by
2-7 amending Subsections (a), (b), (c), and (e) and adding Subsection
2-8 (b-1) to read as follows:

2-9 (a) A property owners' association shall record in each
2-10 county in which any portion of the residential subdivision is
2-11 located a management certificate, signed and acknowledged by an
2-12 officer or the managing agent of the association, stating:

- 2-13 (1) the name of the subdivision;
- 2-14 (2) the name of the association;
- 2-15 (3) the recording data for the subdivision;
- 2-16 (4) the recording data for the declaration and any
2-17 amendments to the declaration;

2-18 (5) the name and mailing address of the association;

2-19 (6) the name, [and] mailing address, telephone number,
2-20 and e-mail address of the person managing the association or the
2-21 association's designated representative; [and]

2-22 (7) the website address of any Internet website on
2-23 which the association's dedicatory instruments are available in
2-24 accordance with Section 207.006; and

2-25 (8) other information the association considers
2-26 appropriate.

2-27 (b) The property owners' association shall record an
2-28 amended management certificate in each county in which any portion
2-29 of the residential subdivision is located not later than the 30th
2-30 day after the date the association has notice of a change in any
2-31 information in the recorded certificate required by Subsection (a).

2-32 (b-1) Not later than the seventh day after the date a
2-33 property owners' association files a management certificate for
2-34 recording under Subsection (a) or files an amended management
2-35 certificate for recording under Subsection (b), the property
2-36 owners' association shall electronically file the management
2-37 certificate or amended management certificate with the Texas Real
2-38 Estate Commission. The Texas Real Estate Commission shall only
2-39 collect the management certificate and amended management
2-40 certificate for the purpose of making the data accessible to the
2-41 general public through an Internet website.

2-42 (c) Except as provided under Subsections (d) and (e), the
2-43 property owners' association and its officers, directors,
2-44 employees, and agents are not subject to liability to any person for
2-45 a delay in recording or failure to record a management certificate
2-46 with a county clerk's office or electronically file the management
2-47 certificate with the Texas Real Estate Commission, unless the delay
2-48 or failure is wilful or caused by gross negligence.

2-49 (e) A lien of a property owners' association that fails to
2-50 file a management certificate or an amended management certificate
2-51 under this section to secure an amount due on the effective date of
2-52 a transfer to a bona fide purchaser is enforceable only for an
2-53 amount incurred after the effective date of sale. An owner is not
2-54 liable for attorney's fees incurred by a property owners'
2-55 association relating to the collection of a delinquent assessment
2-56 against the owner or interest on the amount of a delinquent
2-57 assessment if the attorney's fees are incurred by the association
2-58 or the interest accrues during the period a management certificate
2-59 is not recorded with a county clerk or electronically filed with the
2-60 Texas Real Estate Commission as required by this section.

2-61 SECTION 5. Chapter 209, Property Code, is amended by adding
2-62 Section 209.00505 to read as follows:

2-63 Sec. 209.00505. ARCHITECTURAL REVIEW AUTHORITY. (a) In
2-64 this section, "architectural review authority" means the governing
2-65 authority for the review and approval of improvements within a
2-66 subdivision.

2-67 (b) This section:

- 2-68 (1) applies only to a property owners' association
2-69 that consists of more than 40 lots; and

3-1 (2) does not apply during a development period or
3-2 during any period in which the declarant:
3-3 (A) appoints at least a majority of the members
3-4 of the architectural review authority or otherwise controls the
3-5 appointment of the architectural review authority; or
3-6 (B) has the right to veto or modify a decision of
3-7 the architectural review authority.
3-8 (c) A person may not be appointed or elected to serve on an
3-9 architectural review authority if the person is:
3-10 (1) a current board member;
3-11 (2) a current board member's spouse;
3-12 (3) a person related to a current board member within
3-13 the second degree of consanguinity; or
3-14 (4) a person residing in a current board member's
3-15 household.
3-16 (d) A decision by the architectural review authority
3-17 denying an application or request by an owner for the construction
3-18 of improvements in the subdivision may be appealed to the board. A
3-19 written notice of the denial must be provided to the owner by
3-20 certified mail, hand delivery, or electronic delivery. The notice
3-21 must:
3-22 (1) describe the basis for the denial in reasonable
3-23 detail and changes, if any, to the application or improvements
3-24 required as a condition to approval; and
3-25 (2) inform the owner that the owner may request a
3-26 hearing under Subsection (e) on or before the 30th day after the
3-27 date the notice was mailed to the owner.
3-28 (e) The board shall hold a hearing under this section not
3-29 later than the 30th day after the date the board receives the
3-30 owner's request for a hearing and shall notify the owner of the
3-31 date, time, and place of the hearing not later than the 10th day
3-32 before the date of the hearing. Only one hearing is required under
3-33 this subsection.
3-34 (f) During a hearing, the board or the designated
3-35 representative of the property owners' association and the owner or
3-36 the owner's designated representative will each be provided the
3-37 opportunity to discuss, verify facts, and resolve the denial of the
3-38 owner's application or request for the construction of
3-39 improvements, and the changes, if any, requested by the
3-40 architectural review authority in the notice provided to the owner
3-41 under Subsection (d).
3-42 (g) The board or the owner may request a postponement. If
3-43 requested, a postponement shall be granted for a period of not more
3-44 than 10 days. Additional postponements may be granted by agreement
3-45 of the parties.
3-46 (h) The property owners' association or the owner may make
3-47 an audio recording of the meeting.
3-48 SECTION 6. Sections 209.0051(e) and (h), Property Code, are
3-49 amended to read as follows:
3-50 (e) Members shall be given notice of the date, hour, place,
3-51 and general subject of a regular or special board meeting,
3-52 including a general description of any matter to be brought up for
3-53 deliberation in executive session. The notice shall be:
3-54 (1) mailed to each property owner not later than the
3-55 10th day or earlier than the 60th day before the date of the
3-56 meeting; or
3-57 (2) provided at least 144 [72] hours before the start
3-58 of a regular board [the] meeting and at least 72 hours before the
3-59 start of a special board meeting by:
3-60 (A) posting the notice in a conspicuous manner
3-61 reasonably designed to provide notice to property owners'
3-62 association members:
3-63 (i) in a place located on the association's
3-64 common property or, with the property owner's consent, on other
3-65 conspicuously located privately owned property within the
3-66 subdivision; or
3-67 (ii) on the home page of any Internet
3-68 website accessible by association members that is maintained by the
3-69 association or by a management company on behalf of the association

4-1 [~~other Internet media~~]; and
 4-2 (B) sending the notice by e-mail to each owner
 4-3 who has registered an e-mail address with the association.
 4-4 (h) Except as provided by this subsection, a board may take
 4-5 action outside of a meeting, including voting by electronic or
 4-6 telephonic means, without prior notice to owners under Subsection
 4-7 (e), if each board member is given a reasonable opportunity to
 4-8 express the board member's opinion to all other board members and to
 4-9 vote. Any action taken without notice to owners under Subsection
 4-10 (e) must be summarized orally, including an explanation of any
 4-11 known actual or estimated expenditures approved at the meeting, and
 4-12 documented in the minutes of the next regular or special board
 4-13 meeting. The board may not, unless done in an open meeting for
 4-14 which prior notice was given to owners under Subsection (e),
 4-15 consider or vote on:
 4-16 (1) fines;
 4-17 (2) damage assessments;
 4-18 (3) initiation of foreclosure actions;
 4-19 (4) initiation of enforcement actions, excluding
 4-20 temporary restraining orders or violations involving a threat to
 4-21 health or safety;
 4-22 (5) increases in assessments;
 4-23 (6) levying of special assessments;
 4-24 (7) appeals from a denial of architectural review
 4-25 authority [~~control~~] approval;
 4-26 (8) a suspension of a right of a particular owner
 4-27 before the owner has an opportunity to attend a board meeting to
 4-28 present the owner's position, including any defense, on the issue;
 4-29 (9) lending or borrowing money;
 4-30 (10) the adoption or amendment of a dedicatory
 4-31 instrument;
 4-32 (11) the approval of an annual budget or the approval
 4-33 of an amendment of an annual budget [~~that increases the budget by~~
 4-34 ~~more than 10 percent~~];
 4-35 (12) the sale or purchase of real property;
 4-36 (13) the filling of a vacancy on the board;
 4-37 (14) the construction of capital improvements other
 4-38 than the repair, replacement, or enhancement of existing capital
 4-39 improvements; or
 4-40 (15) the election of an officer.

4-41 SECTION 7. Section 209.0055(a), Property Code, is amended
 4-42 to read as follows:

4-43 (a) This section applies only to a property owners'
 4-44 association that:

4-45 (1) provides maintenance, preservation, and
 4-46 architectural review authority [~~control~~] of residential and
 4-47 commercial property within a defined geographic area in a county
 4-48 with a population of 2.8 million or more or in a county adjacent to a
 4-49 county with a population of 2.8 million or more; and

4-50 (2) is a corporation that:
 4-51 (A) is governed by a board of trustees who may
 4-52 employ a general manager to execute the association's bylaws and
 4-53 administer the business of the corporation;
 4-54 (B) does not require membership in the
 4-55 corporation by the owners of the property within the defined area;
 4-56 and

4-57 (C) was incorporated before January 1, 2006.

4-58 SECTION 8. Section 209.006(a), Property Code, is amended to
 4-59 read as follows:

4-60 (a) Before a property owners' association may suspend an
 4-61 owner's right to use a common area, file a suit against an owner
 4-62 other than a suit to collect a regular or special assessment or
 4-63 foreclose under an association's lien, charge an owner for property
 4-64 damage, [~~or~~] levy a fine for a violation of the restrictions or
 4-65 bylaws or rules of the association, or report any delinquency of an
 4-66 owner to a credit reporting service, the association or its agent
 4-67 must give written notice to the owner by certified mail.

4-68 SECTION 9. Section 209.0063(a), Property Code, is amended
 4-69 to read as follows:

- 5-1 (a) Except as provided by Subsection (b), a payment received
- 5-2 by a property owners' association from the owner shall be applied to
- 5-3 the owner's debt in the following order of priority:
- 5-4 (1) any delinquent assessment;
- 5-5 (2) any current assessment;
- 5-6 (3) any reasonable attorney's fees or reasonable third
- 5-7 party collection costs incurred by the association associated
- 5-8 solely with assessments or any other charge that could provide the
- 5-9 basis for foreclosure;
- 5-10 (4) any reasonable attorney's fees incurred by the
- 5-11 association that are not subject to Subdivision (3);
- 5-12 (5) any reasonable fines assessed by the association;
- 5-13 and
- 5-14 (6) any other reasonable amount owed to the
- 5-15 association.

5-16 SECTION 10. Section 209.0064(b), Property Code, is amended

5-17 to read as follows:
5-18 (b) A property owners' association may not hold an owner

5-19 liable for fees of a collection agent retained by the association

5-20 unless the association first provides written notice to the owner

5-21 by certified mail that:

5-22 (1) specifies each delinquent amount and the total

5-23 amount of the payment required to make the account current;

5-24 (2) if the association is subject to Section 209.0062

5-25 or the association's dedicatory instruments contain a requirement

5-26 to offer a payment plan, describes the options the owner has to

5-27 avoid having the account turned over to a collection agent,

5-28 including information regarding availability of a payment plan

5-29 through the association; and

5-30 (3) provides a period of at least 45 [~~30~~] days for the

5-31 owner to cure the delinquency before further collection action is

5-32 taken.

5-33 SECTION 11. Chapter 209, Property Code, is amended by

5-34 adding Section 209.0065 to read as follows:

5-35 Sec. 209.0065. CREDIT REPORTING SERVICES. (a) A property

5-36 owners' association or the association's collection agent may not

5-37 report any delinquent fines, fees, or assessments to a credit

5-38 reporting service that are the subject of a pending dispute between

5-39 the owner and the property owners' association.

5-40 (b) A property owners' association may report delinquent

5-41 payment history assessments, fines, and fees of property owners

5-42 within its jurisdiction to a credit reporting service only if:

5-43 (1) at least 30 business days before reporting to a

5-44 credit reporting service, the association sends, via certified

5-45 mail, hand delivery, electronic delivery, or by other delivery

5-46 means acceptable between the parties, a detailed report of all

5-47 delinquent charges owed; and

5-48 (2) a property owner has been given the opportunity to

5-49 enter into a payment plan.

5-50 SECTION 12. Section 209.007, Property Code, is amended by

5-51 amending Subsection (a) and adding Subsections (f), (g), and (h) to

5-52 read as follows:

5-53 (a) Except as provided by Subsection (d) and only if [~~if~~]

5-54 the owner is entitled to an opportunity to cure the violation, the

5-55 owner has the right to submit a written request for a hearing to

5-56 discuss and verify facts and resolve the matter in issue before [a

5-57 committee appointed by] the board [of the property owners'

5-58 association or before the board if the board does not appoint a

5-59 committee].

5-60 (f) Not later than 10 days before the association holds a

5-61 hearing under this section, the association shall provide to an

5-62 owner a packet containing all documents, photographs, and

5-63 communications relating to the matter the association intends to

5-64 introduce at the hearing.

5-65 (g) If an association does not provide a packet within the

5-66 period described by Subsection (f), an owner is entitled to an

5-67 automatic 15-day postponement of the hearing.

5-68 (h) During a hearing, a member of the board or the

5-69 association's designated representative shall first present the

6-1 association's case against the owner. An owner or the owner's
6-2 designated representative is entitled to rebut the association's
6-3 information, present the owner's information, and present issues
6-4 relevant to the appeal or dispute.

6-5 SECTION 13. Section 209.015(c), Property Code, is amended
6-6 to read as follows:

6-7 (c) An owner must obtain the approval of the property
6-8 owners' association or, if applicable, an architectural review
6-9 authority, as defined by Section 209.00505(a), [committee]
6-10 established by the association or the association's dedicatory
6-11 instruments, based on criteria prescribed by the dedicatory
6-12 instruments specific to the use of a lot for residential purposes,
6-13 including reasonable restrictions regarding size, location,
6-14 shielding, and aesthetics of the residential purpose, before the
6-15 owner begins the construction, placement, or erection of a
6-16 building, structure, or other improvement for the residential
6-17 purpose on an adjacent lot.

6-18 SECTION 14. Section 209.016, Property Code, is amended by
6-19 amending Subsection (d) and adding Subsection (e) to read as
6-20 follows:

6-21 (d) Nothing ~~[Except as provided by Subsection (b), nothing]~~
6-22 in this section shall be construed to prohibit the adoption or
6-23 enforcement of a provision in a dedicatory instrument establishing
6-24 a restriction relating to occupancy or leasing.

6-25 (e) A property owners' association may request the
6-26 following information to be submitted to the association regarding
6-27 a lease or rental applicant:

6-28 (1) contact information, including the name, mailing
6-29 address, phone number, and e-mail address of each person who will
6-30 reside at a property in the subdivision under a lease; and

6-31 (2) the commencement date and term of the lease.

6-32 SECTION 15. The following provisions of the Property Code
6-33 are repealed:

- 6-34 (1) Sections 204.003(c) and (d);
- 6-35 (2) Section 209.007(b); and
- 6-36 (3) Sections 209.016(a) and (c).

6-37 SECTION 16. (a) Not later than December 1, 2021, the Texas
6-38 Real Estate Commission shall establish and make available the
6-39 system necessary for the electronic filing of management
6-40 certificates and amended management certificates as required under
6-41 Section 209.004(b-1), Property Code, as added by this Act.

6-42 (b) Notwithstanding Section 209.004(b-1), Property Code, as
6-43 added by this Act, a property owners' association that has on or
6-44 before December 1, 2021, recorded a management certificate or
6-45 amended management certificate with a county clerk under Section
6-46 209.004, Property Code, shall electronically file the most recently
6-47 recorded management certificate or amended management certificate
6-48 with the Texas Real Estate Commission not later than June 1, 2022.

6-49 SECTION 17. Section 209.0065, Property Code, as added by
6-50 this Act, applies only to a fine, fee, or assessment that becomes
6-51 due on or after the effective date of this Act. A fine, fee, or
6-52 assessment that becomes due before the effective date of this Act is
6-53 governed by the law in effect immediately before the effective date
6-54 of this Act, and that law is continued in effect for that purpose.

6-55 SECTION 18. (a) Except as provided by Subsection (b) of
6-56 this section, this Act takes effect September 1, 2021.

6-57 (b) Section 209.004(b-1), Property Code, as added by this
6-58 Act, takes effect December 1, 2021.

6-59 * * * * *