

BILL ANALYSIS

C.S.H.B. 3503
By: Turner
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Condominium owners' associations could benefit from some of the changes made to the statutes governing property owners' associations by the passage of S.B. 1588 during the 87th Legislature, Regular Session. Current statutory language has separate requirements for property owners' and condominium owners' associations, but broadening the application of changes made by S.B. 1588 would increase clarity regarding the operation of these organizations. C.S.H.B. 3503 seeks to address these concerns by revising provisions relating to condominium owners' and property owners' associations.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3503 amends the Property Code to revise provisions relating to property owners' associations and condominium owners' associations. The bill requires a condominium owners' association to make the current version of the association's dedicatory instruments relating to the association and filed in the county deed records available on a website that is accessible to association members and maintained by the association or a management company on behalf of the association. The requirement applies only to an association of a condominium governed under the Uniform Condominium Act that is composed of at least 60 units or an association that has contracted with a management company.

C.S.H.B. 3503 specifies that the certificate the association is required to record in each applicable county is a management certificate, and the bill includes the following among the information such a management certificate is required to state:

- any amendments to the declaration that created the condominium association;
- the telephone number and email address of any management company;
- the website address of any website on which the association's dedicatory instruments are available; and
- the amount and description of a fee or fees charged to a unit seller or buyer relating to a transfer of a property interest in a unit of the condominium.

C.S.H.B. 3503 requires the association to electronically file the management certificate or an amended management certificate with the Texas Real Estate Commission (TREC) not later than the seventh day after the date an association files such a certificate with the applicable county. The bill requires TREC to only collect the management certificate and amended management

certificate for the purpose of making the data accessible to the public through a website. The bill sets out the following with respect to liability for a delay or failure in recording or filing the certificate:

- establishes that the association and its officers, directors, employees, and agents are not subject to liability to any person for delay or failure to electronically file the management certificate with TREC, unless the delay or failure is wilful or caused by gross negligence; and
- establishes that a unit owner is not liable for attorney's fees incurred by an association relating to the collection of a delinquent assessment against the unit owner, or interest on the delinquent assessment, if the fees are incurred or the interest accrues during the period the management certificate is not recorded with a county clerk or electronically filed with TREC.

A condominium owners' association that has recorded a management certificate or amended management certificate with a county clerk before the bill's effective date is required to electronically file the most recently recorded management certificate or amended management certificate with TREC not later than March 1, 2024.

C.S.H.B. 3503 authorizes a condominium owners' association to charge a reasonable and necessary fee, not to exceed \$375, to furnish a resale certificate to a unit owner other than a declarant who intends to sell a unit.

C.S.H.B. 3503 includes the following among the actions that a property owners' association is not prohibited from taking under the prohibition against adopting or enforcing a restrictive covenant that prevents a property owner from building or installing certain security measures:

- prohibiting the placement of fencing that obstructs a sidewalk or drainage easement or drainage area;
- requiring a driveway gate to be set back at least 18 feet from the right-of-way if the driveway intersects with a laned roadway; and
- if provided by a dedicatory instrument, prohibiting the installation of fencing in front of the frontmost building line of a dwelling.

The bill authorizes a property owner to maintain any perimeter fencing or fencing in front of a dwelling's frontmost building line installed or constructed before September 1, 2023.

C.S.H.B. 3503 revises provisions relating to an architectural review authority of a property owners' association that consists of more than 40 lots as follows:

- requires the association to provide notice to the association members soliciting persons interested in serving on the authority no later than the 10th day before the date the association or its governing body takes action to elect or appoint or meets to elect or appoint a person to serve on the authority;
- sets out the required contents of and methods for providing that notice;
- establishes that the date by which a person must notify the association of the person's interest in serving on the architectural review authority may not be earlier than the 10th day after the date the association provides the notice;
- prohibits a person from being appointed or elected to serve on an authority unless the person timely notifies the unit owners' association of the person's interest in serving on the authority; and
- if a vacancy remains on the architectural review authority after each eligible person is appointed or elected, authorizes the association to appoint any person to fill the vacancy, including a person not otherwise eligible on the grounds that the person is or is a current board member, a current board member's spouse, or a person residing in a current board member's household.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 3503 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute revises the following actions that a property owners' association is not prohibited from taking under the prohibition against adopting or enforcing a restrictive covenant that prevents a property owner from building or installing certain security measures:

- omits from those actions the prohibition against the placement of fencing that obstructs license areas, which the introduced included;
- omits from those actions the imposition of other regulations related to the building or installation of security measures that the property owners' association determines are necessary to prevent or minimize a hazard or risk to health or safety; and
- includes among those actions the requirement for a driveway gate to be set back at least 18 feet from the right-of-way if the driveway intersects with a laned roadway, whereas the introduced included requiring a driveway gate to be set back a sufficient distance from the street to prevent a vehicle entering the gate from impeding a passing vehicle or pedestrian.

The substitute includes an authorization absent from the introduced for a property owner to maintain any perimeter fencing or fencing in front of a dwelling's frontmost building line installed or constructed before September 1, 2023.