

## **BILL ANALYSIS**

Senate Research Center  
88R24799 KBB-F

C.S.S.B. 1668  
By: Hughes  
Jurisprudence  
4/20/2023  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 1668 is a refinement of pro-property owner legislation that was passed with overwhelming support in the 87th Legislature and is a product of significant stakeholder involvement.

Since the Property Code governs condominium associations and other types of property owners' associations in separate chapters, S.B. 1668 ensures that residents in all types of homeowners' associations are given the same access to important information about their associations. Further, it allows associations to ensure that they have the flexibility needed to manage their communities.

S.B. 1668 would extend the transparency measures created in S.B. 1588 (87R) to condominium associations. These measures provide better information (such as updated contact information, including phone numbers and email addresses, as well as fee schedules) on property association management certificates that are filed with the county and maintained in an online public database by the Texas Real Estate Commission.

The bill would allow property owners' associations to appoint residents to their architectural review committees when there are insufficient applicants for the roles.

The bill would also allow property owners' associations the ability to regulate placement of private fences in certain circumstances to maintain needed access to easements and walkways.

(Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 1668 amends current law relating to property owners' associations, including condominium owners' associations.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 82.003(a), Property Code, by adding Subdivision (17-a) to define "management company."

SECTION 2. Amends Subchapter C, Chapter 82, Property Code, by adding Section 82.1142, as follows:

Sec. 82.1142. ONLINE ASSOCIATION INFORMATION REQUIRED. (a) Provides that this section only applies to the association of a condominium composed of at least 60 units or an association that has contracted with a management company.

(b) Requires an association to which this section applies to make the current version of the association's dedicatory instruments relating to the association and filed in the county deed records available on an Internet website that is maintained

by the association or a management company on behalf of the association and is accessible to association members.

SECTION 3. Amends Section 82.116, Property Code, by amending Subsections (a), (b), and (c) and adding Subsections (b-1) and (d), as follows:

(a) Requires an association to record in each county in which any portion of the condominium is located a management certificate, signed and acknowledged by an officer of the association, stating:

(1)-(3) makes no changes to these subdivisions;

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

(5) makes a nonsubstantive change to this subdivision;

(6) the name, mailing address, telephone number, and e-mail address of any management company, rather than the name and mailing address of the person or entity managing the association;

(7) the website address of any Internet website on which the association's dedicatory instruments are available in accordance with Section 82.1142;

(8) 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; and

(9) makes a nonsubstantive change to this subdivision.

(b) Requires the association to record an amended management certificate not later than the 30th day after the date the association has notice of a change in any information in a recorded certificate required by Subsection (a), rather than by Subdivisions (a)(1)-(5). Makes a nonsubstantive change.

(b-1) Requires the association, not later than the seventh day after the date an association files a management certificate for recording under Subsection (a) or files an amended management certificate for recording under Subsection (b), to electronically file the management certificate or amended management certificate with the Texas Real Estate Commission (TREC). Requires TREC to collect only the management certificate and amended management certificate for the purpose of making the data accessible to the public through an Internet website.

(c) Provides that the association and its officers, directors, employees, and agents, except as provided by Subsection (d), are not subject to liability to any person for delay or failure to record a management certificate with a county clerk's office or to electronically file the management certificate with TREC, unless the delay or failure is wilful or caused by gross negligence.

(d) Provides 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 attorney's fees are incurred by the association or the interest accrues during the period a management certificate is not recorded with a county clerk or electronically filed with TREC, as required by Section 82.116 (Management Certificate).

SECTION 4. Amends Section 82.157, Property Code, by adding Subsection (f), as follows:

(f) Authorizes an association to charge a reasonable and necessary fee, not to exceed \$375, to furnish a resale certificate under Subsection (a) (relating to requiring a unit owner other than a declarant, if the unit owner intended to sell a unit, before executing a contract or conveying the unit, to furnish to the purchaser certain documents).

SECTION 5. Amends Section 202.023, Property Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Provides that Section 202.023 (Security Measures) does not prohibit a property owners' association from:

(1)-(2) makes nonsubstantive changes to these subdivisions;

(3) prohibiting the placement of fencing that obstructs:

(A) a license area, as defined by a written license agreement or plat or other dedicatory instrument; or

(B) a sidewalk or drainage easement or drainage area;

(4) 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, as defined by Section 541.302 (Traffic Areas), Transportation Code; or

(5) if provided by a dedicatory instrument, prohibiting the installation of fencing in front of the frontmost building line of a dwelling.

(d) Authorizes a property owner, notwithstanding Subsection (c), to maintain any perimeter fencing or fencing in front of a dwelling's frontmost building line installed or constructed before September 1, 2023.

SECTION 6. Redesignates Section 209.00505(c), Property Code, as Section 209.00506, Property Code, and amends it, as follows:

Sec. 209.00506. ELIGIBILITY TO SERVE ON ARCHITECTURAL REVIEW AUTHORITY. (a) Provides that this section applies only to an architectural review authority to which Section 209.00505 (Architectural Review Authority) applies.

(b) Prohibits a person, except as provided by Subsection (d), from being appointed or elected to serve on an architectural review authority unless the person timely notifies the association of the person's interest in serving on the authority in accordance with Section 209.00507.

(c) Creates an exception under Subsection (d).

(d) Authorizes the association, if a vacancy remains on the architectural review authority after each person eligible under Subsection (c) who timely notifies the association in accordance with Section 209.00507 is appointed or elected to the authority, to appoint any person to fill the vacancy, including a person not otherwise eligible under Subsection (c).

SECTION 7. Amends Chapter 209, Property Code, by adding Section 209.00507, as follows:

Sec. 209.00507. SOLICITATION OF CANDIDATES FOR ARCHITECTURAL REVIEW AUTHORITY. (a) Provides that this section applies only to an architectural review authority to which Section 209.00505 applies.

(b) Requires the association, not later than the 10th day before the date a property owners' association or board takes action to elect or appoint or meets to elect or appoint a person to serve on the architectural review authority, to provide notice to the association members soliciting persons interested in serving on the architectural review authority.

(c) Requires that the notice required under Subsection (b):

(1) be provided:

(A) by mail to each owner; or

(B) by:

(i) posting the notice in a conspicuous manner reasonably designed to provide notice to association members:

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

(b) on any Internet website maintained by the association or other Internet media; and

(ii) sending the notice by e-mail to each owner who has registered an e-mail address with the association; and

(2) contain instructions for a person to notify the association of the person's interest in serving on the architectural review authority, including the date by which the person's notification is required to be received by the association.

(d) Prohibits the date by which a person is required to notify the association of the person's interest in serving on the architectural review authority from being earlier than the 10th day after the date the association provides the notice described by Subsection (c).

SECTION 8. Requires a condominium unit owners' association that has recorded a management certificate or amended management certificate with a county clerk under Section 82.116, Property Code, before the effective date of this Act to electronically file the most recently recorded management certificate or amended management certificate with the Texas Real Estate Commission as required by Section 82.116(b-1), Property Code, as added by this Act, not later than March 1, 2024.

SECTION 9. Effective date: September 1, 2023.