

BILL ANALYSIS

C.S.H.B. 971
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Reports indicate that Texas is estimated to have almost 20,000 property owners' associations, which are managed by an estimated 130,000 volunteer property owners serving on the governing body of the respective association. The reports also estimate that several million Texans live in a real estate development administered by a property owners' association and that the property owners pay several billion dollars in annual assessments and reserve fund contributions to these associations. Interested parties explain that these property owners' associations administer real estate developments consisting of real property valued at more than \$250 billion and are charged with the duty to maintain common area facilities and property, insure commonly owned property, administer property damage insurance claims, enforce land use regulations, contract on behalf of association members, engage in litigation on behalf of association members, maintain streets and recreational facilities, operate security services, and perform other related functions.

With this great responsibility, the parties have expressed concerns regarding inconsistent standards of care and eligibility requirements currently imposed upon the individuals serving on the boards of the various types of property owners' associations. As the popularity and number of property owners' associations increase, the parties contend that there is more potential for abuse and harm to property owners if these associations are not properly managed in compliance with applicable dedicatory instruments and state law. C.S.H.B. 971 seeks to address these concerns.

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. 971 amends the Property Code to establish that each officer or member of a board of directors or other governing body, if any, of a condominium regime is liable as a fiduciary of the unit owners for the officer's or member's acts or omissions and is subject to provisions of the Uniform Condominium Act and the bill regarding condominium unit owners' association board member and officer powers, duties, and liability. The bill establishes that such fiduciary duty and a fiduciary duty imposed under the act prevails in the event of a conflict with a duty imposed by Business Organizations Code provisions relating to nonprofit corporations.

C.S.H.B. 971 requires an officer or board member of a condominium unit owners' association or property owners' association to read before taking office the Uniform Condominium Act and the Texas Residential Property Owners Protection Act, respectively; the dedicatory instruments and

written policies of the condominium regime and the unit owners' association or the residential subdivision and the property owners' association, respectively; and Business Organizations Code provisions relating to nonprofit corporations, if applicable. The bill requires an officer or board member of a condominium unit owners' association or property owners' association, not later than the 90th day after the date the officer or board member is elected or appointed, to file a sworn statement with the secretary of the applicable association affirming that the officer or board member has complied with the respective requirements before taking office. The bill requires an association officer or board member to comply with that filing requirement only after being first appointed or elected unless the officer or member does not serve continuously, provides for an officer's or member's temporary suspension and for the appointment of a temporary replacement for noncompliance with that filing requirement, and requires an association to keep each filed sworn statement with the association records for a specified period. The bill provides for the removal from office a board member of a unit owners' association based on evidence of a conviction for a felony or crime involving moral turpitude not more than 20 years before the date the board is presented with the evidence.

C.S.H.B. 971 requires an officer or board member of a condominium unit owners' association or a property owners' association serving in office on the bill's effective date to comply with the bill's requirements not later than December 1, 2015.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 971 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter C, Chapter 81, Property Code, is amended by adding Section 81.2011.

SECTION 2. Section 82.103, Property Code, is amended.

SECTION 3. Subchapter C, Chapter 82, Property Code, is amended by adding Sections 82.1031 and 82.1032 to read as follows:

Sec. 82.1031. BOARD MEMBER AND OFFICER DUTIES. (a) Before taking office, an officer or board member of a unit owners' association shall read:

- (1) this chapter;
- (2) the dedicatory instruments and written policies of the condominium regime and the unit owners' association; and
- (3) if applicable, Chapter 22, Business Organizations Code.

(b) While in office, an officer or board member of a unit owners' association shall:

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Same as introduced version.

SECTION 3. Subchapter C, Chapter 82, Property Code, is amended by adding Sections 82.1031 and 82.1032 to read as follows:

Sec. 82.1031. BOARD MEMBER AND OFFICER DUTIES. (a) Before taking office, an officer or board member of a unit owners' association shall read:

- (1) this chapter;
- (2) the dedicatory instruments and written policies of the condominium regime and the unit owners' association; and
- (3) if applicable, Chapter 22, Business Organizations Code.

(1) uphold and comply with:
(A) this chapter;
(B) the dedicatory instruments and written policies of the condominium regime and the unit owners' association; and
(C) if applicable, Chapter 22, Business Organizations Code; and
(2) faithfully discharge the fiduciary duties the officer or board member owes to the unit owners.

(c) Not later than the 90th day after the date an officer or board member is elected or appointed, the officer or board member shall file a sworn statement with the secretary of the association affirming that the officer or board member:

(1) has complied with Subsection (a); and
(2) while serving as an officer or board member, will comply with Subsection (b).

(d) An officer or board member is required to comply with Subsection (c) only after the officer or board member is first elected or appointed, unless the officer or board member does not serve continuously.

(e) An officer or board member who fails to comply with Subsection (c) is temporarily suspended from office until the date the officer or board member complies with that subsection. The board may appoint another person to perform the duties of the office until the earlier of the date the officer's or board member's term of office expires or the date the officer or board member complies with Subsection (c). The temporary appointee must comply with Subsection (c).

(f) The association shall keep with the association records under Section 82.114 each sworn statement filed under Subsection (c) until at least the fifth anniversary of the date the officer or board member who filed the statement was elected or appointed.

Sec. 82.1032. REMOVAL FROM OFFICE. If the board of a unit owners' association is presented with written, documented evidence from a database or other record maintained by a governmental law enforcement authority that a board member of the association has been convicted of a felony or crime involving moral turpitude, the board member is immediately ineligible to serve in that capacity, automatically removed from office, and prohibited from future service as a board member of the association.

(b) Not later than the 90th day after the date an officer or board member is elected or appointed, the officer or board member shall file a sworn statement with the secretary of the association affirming that the officer or board member has complied with Subsection (a).

(c) An officer or board member is required to comply with Subsection (b) only after the officer or board member is first elected or appointed, unless the officer or board member does not serve continuously.

(d) An officer or board member who fails to comply with Subsection (b) is temporarily suspended from office until the date the officer or board member complies with that subsection. The board may appoint another person to perform the duties of the office until the earlier of the date the officer's or board member's term of office expires or the date the officer or board member complies with Subsection (b). The temporary appointee must comply with Subsection (b).

(e) The association shall keep with the association records under Section 82.114 each sworn statement filed under Subsection (b) until at least the fifth anniversary of the date the officer or board member who filed the statement was elected or appointed.

Sec. 82.1032. REMOVAL FROM OFFICE. If the board of a unit owners' association is presented with written, documented evidence from a database or other record maintained by a governmental law enforcement authority that a board member of the association was convicted of a felony or crime involving moral turpitude not more than 20 years before the date the board is presented with the evidence, the board member is immediately ineligible to serve in that capacity, automatically considered removed from office, and prohibited from future service as a board member of the

SECTION 4. Chapter 209, Property Code, is amended by adding Section 209.00595 to read as follows:

Sec. 209.00595. OFFICER OR BOARD MEMBER DUTIES. (a) Before taking office, an officer or board member of a property owners' association shall read:

- (1) this chapter; and
- (2) the dedicatory instruments and written policies of the property owners' association.

(b) While in office, an officer or board member of a property owners' association shall:

- (1) uphold and comply with:
 - (A) this chapter; and
 - (B) the dedicatory instruments and written policies of the residential subdivision and the property owners' association; and
- (2) faithfully discharge the officer's or board member's duties.

(c) Not later than the 90th day after the date an officer or board member is elected or appointed, the officer or board member shall file a sworn statement with the secretary of the association affirming that the officer or board member:

- (1) has complied with Subsection (a); and
- (2) while serving as an officer or board member, will comply with Subsection (b).

(d) An officer or board member is required to comply with Subsection (c) only after the officer or board member is first elected or appointed, unless the officer or board member does not serve continuously.

(e) An officer or board member who fails to comply with Subsection (c) is temporarily suspended from office until the date the officer or board member complies with that subsection. The board may appoint another person to perform the duties of the office until the earlier of the date the officer's or board member's term of office expires or the date the officer or board member complies with Subsection (c). The temporary appointee must comply with Subsection (c).

(f) The association shall keep with the association records under Section 209.005 each sworn statement filed under Subsection (c) until at least the fifth anniversary of the date the officer or board member who filed

association.

SECTION 4. Chapter 209, Property Code, is amended by adding Section 209.00595 to read as follows:

Sec. 209.00595. OFFICER OR BOARD MEMBER DUTIES. (a) Before taking office, an officer or board member of a property owners' association shall read:

- (1) this chapter;
- (2) the dedicatory instruments and written policies of the property owners' association; and
- (3) if applicable, Chapter 22, Business Organizations Code.

(b) Not later than the 90th day after the date an officer or board member is elected or appointed, the officer or board member shall file a sworn statement with the secretary of the association affirming that the officer or board member has complied with Subsection (a).

(c) An officer or board member is required to comply with Subsection (b) only after the officer or board member is first elected or appointed, unless the officer or board member does not serve continuously.

(d) An officer or board member who fails to comply with Subsection (b) is temporarily suspended from office until the date the officer or board member complies with that subsection. The board may appoint another person to perform the duties of the office until the earlier of the date the officer's or board member's term of office expires or the date the officer or board member complies with Subsection (b). The temporary appointee must comply with Subsection (b).

(e) The association shall keep with the association records under Section 209.005 each sworn statement filed under Subsection (b) until at least the fifth anniversary of the date the officer or board member who filed

the statement was elected or appointed.

SECTION 5. (a) The changes in law made by this Act apply to an officer or board member of a unit owners' association or a property owners' association who is:

(1) elected or appointed to office on or after the effective date of this Act; or

(2) serving in office on the effective date of this Act.

(b) Not later than December 1, 2015, an officer or board member of a unit owners' association or a property owners' association serving in office on the effective date of this Act must comply with the requirements imposed by Section 82.1031 or 209.00595, Property Code, as added by this Act, as applicable.

SECTION 6. This Act takes effect September 1, 2015.

the statement was elected or appointed.

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.