

BILL ANALYSIS

C.S.H.B. 3367
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There are concerns that there may be imbalances in power between property owners' associations and the property owners and residents in those communities. These concerns cover a wide variety of topics but often include challenges between property owners and oversight boards, costly fees related to real estate transfers, and difficulty accessing necessary governance and operations information. C.S.H.B. 3367 seeks to address concerns about property owners' associations, including high costs to produce documents needed to close a home sale, lack of due process when a dispute arises between an owner and the association, lack of transparency in association operations, and access to association and management contact information and other governing documents.

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. 3367 amends the Property Code to revise provisions relating to certain disclosures, notices, and fees of a property owners' association. With respect to an association's disclosure of a subdivision's current restrictions, bylaws and rules of the association, and a specified resale certificate, the bill does the following:

- caps at \$250 a fee to assemble, copy, and deliver the resale certificate;
- caps at \$30 a fee to prepare and deliver an update of a resale certificate;
- adds the specification that the applicable fees are necessary;
- changes the judgments for an association's failure to deliver the subdivision information by the prescribed deadline from judgments capped at \$500 to judgments for actual damages;
- adds the specification that judgments against the property owners' association for attorneys fees are reasonable.

The bill specifies that the dedicatory instruments that an association is required to make available on a website accessible by association members is the current version of the association's dedicatory instruments and that the dedicatory instruments must be made available on the homepage of the website.

C.S.H.B. 3367, with respect to an association certificate of management, provides the following:

- includes in the certificate any amendments to the association's declaration, the telephone number and email address of the person managing the association or the association's

designated representative, and the website address on which the association's dedicatory instruments are available;

- clarifies that the association must record an amended management certificate in each county in which any portion of the residential subdivision is located;
- requires an association, not later than the seventh day after the date the association files a certificate or files an amended certificate, to electronically file the certificate or amended certificate with the Texas Real Estate Commission (TREC);
- requires the TREC to only collect the certificate and amended certificate for the purpose of making the data accessible to the general public through a website;
- grants immunity from liability to an association and its officers, directors, employees, and agents for a failure to electronically file the management certificate with the TREC; and
- grants immunity from liability to an owner for attorney's fees incurred by the association relating to the collection of a delinquent assessment against the owner or interest on the amount of a 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 the TREC.

The bill requires the TREC, not later than December 1, 2021, to establish and make available the system necessary for the electronic filing of management certificates and amended management certificates. The requirement for an association to electronically file a certificate takes effect December 1, 2021. The bill requires an association that has on or before December 1, 2021, recorded a certificate or amended certificate with a county clerk to electronically file the most recently recorded certificate or amended certificate with the TREC not later than June 1, 2022.

C.S.H.B. 3367 sets out provisions relating to an architectural review authority, defined by the bill as the governing authority for the review and approval of improvements within a subdivision. The bill provides for the applicability of these provisions and the persons who may not serve on the authority. The bill establishes that a decision by the authority denying an application or request by an owner for the construction of improvements in a subdivision may be appealed to the board of the association. The bill provides for a written notice of the denial, a hearing relating to the denial, and postponement of the hearing.

C.S.H.B. 3367 revises provisions relating to a required notice of a regular or special meeting of an association's board by:

- changing the period in which a member is required to be provided notice of a meeting to require notice as follows:
 - at least 144 hours before the start of a regular board meeting; and
 - at least 72 hours before the start of a special board meeting;
- specifying that notice must be provided on the home page of any website accessible by association members that is maintained by the association;
- adding as an alternative website for notice a website maintained by a management company on behalf of the association; and
- requiring notice before board approval of an annual budget or the approval of an amendment of an annual budget under all circumstances and without regard to whether the budget is increased.

C.S.H.B. 3367 requires an association to give written notice to an owner before the association reports any delinquency of an owner to a credit reporting service. The bill requires that certain attorney's fees or third party collection costs incurred by an association, the fines assessed by an association, and other amounts owed to the association to which a payment received from an owner is required to be applied in a certain order of preference be reasonable fees, costs, fines, and amounts, respectively. The bill changes from at least 30 days to at least 45 days the period to cure a delinquency before further collection action is taken.

C.S.H.B. 3367 prohibits an association or its collection agent from reporting any delinquent fines, fees, or assessments to a credit reporting service that are the subject of a pending dispute between an owner and the association. The bill authorizes an association to report delinquent payment history assessments, fines, and fees of property owners within its jurisdiction to a credit reporting service only if a property owner has been given the opportunity to enter into a payment plan and, at least 30 business days before reporting to a service, the association sends, via certified mail, hand delivery, electronic delivery, or by other delivery means acceptable between the parties, a detailed report of all delinquent charges owed.

C.S.H.B. 3367 removes the option of a committee appointed by the board of an association conducting a hearing to resolve an owner's violation as an alternative to the board conducting the hearing. The bill provides the following:

- an association, not later than 10 days before the association holds a hearing, must provide to an owner a packet containing all documents, photographs, and communications relating to the matter the association intends to introduce at the hearing;
- an owner is entitled to an automatic 15-day postponement of the hearing if the association does not provide the packet within the required period;
- a member of the board or the association's designated representative, during the hearing, must first present the association's case against the owner; and
- an owner or the owner's designated representative is entitled to rebut the association's information, present the owner's information, and present issues relevant to the appeal or dispute.

C.S.H.B. 3367 clarifies that a property owner's association is not prohibited from adopting or enforcing a provision in a dedicatory instrument establishing a restriction relating to occupancy or leasing.

C.S.H.B. 3367 authorizes an association to request the following information to be submitted to the association regarding a lease or rental applicant:

- contact information, including the name, mailing address, phone number, and email address of each person who will reside at a property in the subdivision under a lease; and
- the commencement date and term of the lease.

C.S.H.B. 3367 repeals an authorization for any sensitive personal information to be redacted or otherwise made unreadable or indecipherable if a copy of a lease or rental agreement is required by the association.

C.S.H.B. 3367 repeals the following provisions of the Property Code:

- Sections 204.003(c) and (d);
- Section 209.007(b); and
- Sections 209.016(a) and (c).

EFFECTIVE DATE

Except as otherwise provided, September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3367 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not set out any of the provisions the original amended with respect to the applicability of the statutory provisions governing the powers of associations relating to restrictive covenants in certain residential real estate subdivisions, which the original expanded by making those provisions applicable to any residential real estate subdivision governed by the

Texas Residential Property Owners Protection Act without regard to the population or location of the county in which the subdivision is located in whole or in part and excluding a condominium regime governed by the Condominium Act and the Uniform Condominium Act.

The substitute repeals two provisions, which were set out in the original but were unamended by the original, establishing an applicability bracket and establishing that a document creating restrictions that provides for the extension or renewal of restrictions and does not provide for modification or amendment of restrictions may be modified, including modifying the provision that provides for extension or renewal of the restrictions.

The substitute does not include the original's manner of restricting the membership of an architectural control committee by prohibiting the appointment or election to serve of a member or spouse of the board of directors or trustees of an association or a person in the lineal line of consanguinity of a member of the board of directors or trustees of an association. However, the substitute imposes on the architectural review authority, which is created in the substitute, for purposes of the Texas Residential Property Owners Protection Act, substantially the same prohibition but specifies the lineal line of consanguinity as the second degree. The substitute also includes a person residing in a current board member's household as a prohibited appointment or election.

The substitute includes a provision not in the original that establishes an applicable subdivision's architectural review authority under the Texas Residential Property Owners Protection Act for the review and approval of improvements within a subdivision applicable only to an association that consists of more than 40 lots and inapplicable during a development period or during certain other periods as specified in the substitute. This provision in the substitute authorizes the appeal to the applicable board of a decision of such an authority denying an application or request by an owner for the construction of improvements in the subdivision and provides for the applicable hearing process. The substitute also updates applicable references in the Texas Residential Property Owners Protection Act to change references to architectural control to references to architectural review authority.

The original entitled an owner to appeal a violation, an architectural control committee decision, or dispute any fines or fees to the board of directors of an association. The substitute does not include that entitlement but instead retains the statutory entitlement of an owner to cure the violation and an owner's statutory right to submit a written request for a hearing before the board, as clarified by the substitute, to discuss and verify facts and resolve the matter in issue. The substitute, with regard to the hearing process established in the original for such a hearing and to the entitlement to certain rebuttals in a hearing, includes a specification not in the original's rebuttal language entitling rebuttal to the dispute generally. The substitute does not include the original's revisions, with respect to an appeal under the original's appeal provisions regarding alternative dispute resolution, regarding audio recordings of certain meetings regarding appeals.

The substitute changes the original's revision of the deadline for notice requirements given for a regular or special board meeting as follows:

- the substitute retains the original's requirement for the notice to be provided at least 144 hours, rather than the statutorily imposed deadline of 72 hours, before a meeting but clarifies that this deadline applies to a regular board meeting;
- the substitute further clarifies that the 72-hour deadline applies to a special board meeting; and
- the substitute includes the following regarding the original's requisite manner of posting the notice on the home page of a website maintained by the association:
 - the website must be accessible by association members on the association-maintained website; and
 - a website may be maintained by a management company on behalf of the association.

The substitute includes a similar clarification and specification regarding the original's revisions to the required online availability of an association's dedicatory instruments and regarding the

statements required to be recorded in each applicable county regarding the association's management certificate.

The substitute does not include the original's provisions that revised an association's authorization to collect reimbursement of certain reasonable costs of collection, with the requisite notice, to specify that the reimbursable reasonable costs are also necessary.

The original revised the statutory requirement for the payment received by an association from an owner to be applied to the owner's debt in a certain order of priority to specify that, with respect to application of a payment to any other amount owed to the association after payment is applied to all the other prioritized debt, such amount is applied to a reasonable and necessary incurred amount owed. The substitute revises the original's specification to provide that the payment applied is instead only for any other reasonable amount owed to the association.

The substitute includes a provision not included in the original authorizing an association to request the following information to be submitted to the association regarding a lease or rental applicant:

- contact information, including the name, mailing address, phone number, and email address of each person who will reside at a property in the subdivision under a lease; and
- the commencement date and term of the lease.

The substitute repeals the authorization for the redaction of certain sensitive personal information from a copy of a lease or rental agreement required by an association but the original removed that authorization by striking it instead.

The substitute includes a provision changing the deadline, as specified in the original, by which an association's failure to deliver applicable required information to an owner triggers the authorization for an owner to take certain action. The changes are as follows:

- the substitute changes the original's deadline from before the seventh calendar day after the second request for information was mailed or hand delivered to before the fifth business day after that mailing or delivery;
- the substitute revises the original's change to the authorized actions by an owner triggered by such failure to, as follows:
 - retain the original's removal of the cap of \$500 as the maximum judgment that may be sought;
 - include a specification not in the original that the judgment that may be sought is for actual damages; and
- the substitute includes a specification not in the original that the judgment that may be sought for attorney's fees is for reasonable attorney's fees.

The substitute does not include the provisions in the original requiring an association to electronically file a management certificate or an amended management certificate with the TREC by July 1 of each calendar year and authorizing the TREC to charge a fee for the filing. The substitute instead requires the TREC to only collect the certificates for the purpose of making the data accessible to the general public on a publicly accessible website and does not authorize a fee for that collection. The substitute includes a provision not in the original requiring an association to electronically file a certificate or amended certificate with the TREC not later than the seventh day after the association files such a certificate for recording with the applicable county.

The substitute includes a provision exempting an owner from liability for attorney's fees incurred by an association relating to the collection of a delinquent assessment under certain conditions but does not include provisions from the original that revised a provision making an association's a lien unenforceable if the association's management certificate was not properly filed. The substitute includes a provision not in the original that the owner is not liable for attorney's fees or interest relating to the collection of a delinquent assessment during the period

of time a management certificate is not properly recorded or electronically filed. The substitute does not include the original's provision granting a seller in a transaction involving property in an association immunity from liability for any amount due to the association and any debt or claim to the association.

The substitute changes a provision contained in the original regarding the association's or its collection agent's prohibited reporting of certain matters to a credit reporting agency until certain action is taken by the respective entity, as follows:

- the substitute clarifies that the entity to which the matters are reported is a credit reporting service, instead of a credit report agency or bureau as specified in the original, and updates references in the substitute to reflect that clarification;
- the substitute clarifies that such matters are the subject of a pending dispute between the owner and the association instead of, as in the original, only a pending dispute of charges; and
- the substitute changes the deadline triggering an association's authority to report to a credit reporting service, under the conditions specified by both the substitute and the original, from least 45 business days before reporting to at least 30 business days before reporting.

The substitute changes the original's effective date of the bill and provides a related procedural provision that is not included in the original, as follows:

- the original's effective date was on passage, with the applicable vote, or on September 1, 2021;
- the substitute's effective date is September 1, 2021, but the effective date of the provision requiring the TREC to establish and make available the system necessary for the electronic filing of management certificates or amended management certificates is December 1, 2021; and
- the substitute requires an association that has, on or before December 1, 2021, recorded a management certificate or amended management certificate with the county clerk to electronically file the most recently recorded certificate or amended certificate not later than June 1, 2022.