

## **BILL ANALYSIS**

S.B. 1588  
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Business & Industry  
Committee Report (Unamended)

### **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. S.B. 1588 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**

S.B. 1588 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 \$375 a fee to assemble, copy, and deliver the subdivision information;
- caps at \$75 a fee to prepare and deliver an update of a resale certificate;
- adds the specification that the applicable fees are necessary;
- changes the deadline by which an association must deliver subdivision information to an owner or an owner's agent from before the seventh day after the second request was made to before the fifth business day after the second request was made;
- 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; and
- adds the specification that judgments against the property owners' association for attorney's fees are reasonable.

The bill specifies that the dedicatory instruments that an association is required to make available on a website available to 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.

S.B. 1588, with respect to an association management certificate, 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 delay in recording or failure to record a management certificate with a county clerk or for a failure to electronically file the management certificate with the TREC, unless the delay or failure is wilful or caused by gross negligence; 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.

S.B. 1588 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 limits the applicability of these provisions to a property owners' association that consists of more than 40 lots and does not apply during a development period or during any period in which the declarant has the right to veto or modify a decision of the authority or appoints at least a majority of the authority's members or otherwise controls the appointment of the authority.

S.B. 1588 provides for the persons who may not be appointed or elected to 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, the method of delivery for such a notice by certified mail, hand delivery, or electronic delivery, and specification that the notice must describe the basis for the denial in reasonable detail and any changes to the application or improvements necessary for approval and inform the owner of the owner's ability to request a hearing relating to the denial on or before the 30th day after the date the notice was mailed to the owner. With respect to that hearing, the bill:

- provides for the time frames within which it must be held and within which the owner must be notified of its date, time, and place;
- establishes what the hearing entails;
- establishes that only one hearing is required;
- provides for the postponement of the hearing; and
- authorizes the association or owner to make an audio recording of the hearing.

The bill updates references to "architectural committee."

S.B. 1588 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 any website available to 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.

S.B. 1588 requires an association to give written notice by certified mail to an owner before the association reports any delinquency of an owner to a credit reporting service. The bill clarifies that the provision requiring certain attorney's fees or third party collection costs incurred by an association, fines assessed by an association, and other amounts owed to the association for which a payment received from an owner to be applied in a specified order of priority relates to reasonable fees, costs, fines, and amounts. 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.

S.B. 1588 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 of 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.

S.B. 1588 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 present the owner's information and issues relevant to the appeal or dispute.

S.B. 1588 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. The bill 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.

S.B. 1588 defines "management company," for purposes of the Texas Residential Property Owners Protection Act and provisions relating to disclosure of information by property owners' associations, as a person or entity established or contracted to provide management or administrative services on behalf of a property owners' association.

S.B. 1588 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 and a related definition for "sensitive personal information."

S.B. 1588 repeals the following provisions of the Property Code:

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

**EFFECTIVE DATE**

Except as otherwise provided, September 1, 2021.