

SUBJECT: Requiring property owners associations to provide certain information

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 7 ayes — Brimer, Corte, George, Giddings, Ritter, Solomons, Woolley

0 nays

2 absent — Dukes, Siebert

SENATE VOTE: On final passage, April 13 — voice vote

WITNESSES: For — Sharon Tucker

Against — None

On — Yvonne Silva

DIGEST: SB 434 would add requirements for disclosure of information by property owners associations to Chapter 207 of the Property Code. The bill would apply only to a subdivision with an association entitled to levy assessments.

SB 434 would require a property owners association to deliver a current copy of bylaws and rules, a resale certificate, and restrictions applying to the subdivision, to an owner, owner's agent, or title insurance company acting on behalf of an owner within ten days of a written request.

A resale certificate would be required to contain:

- ! a statement of any right of first refusal or other restraint in restrictions on the owner's rights to transfer property;
- ! the frequency and amount of any regular assessments;
- ! the amount of any special assessment due after the date the resale certificate was prepared;
- ! total of all amounts amount due on the owner's property;
- ! any capital expenditures approved by the association for the current fiscal year;
- ! the amount of any reserves for capital expenditures;

- ! the association's current operating budget and balance sheet;
- ! the total of any unsatisfied adjustments against the association;
- ! information on any pending lawsuits against the association;
- ! a copy of a certificate of the association's property and liability insurance on common areas and facilities;
- ! description of the property owner's violations of bylaws or rules, based on the association's actual knowledge;
- ! a summary or copy of notices received by the association from a governmental authority regarding health or housing code violations of the owner's property or common areas;
- ! the amount of any administrative transfer fee charged by the association for transfer of ownership of a property;
- ! contact information for the association's managing agent; and
- ! a statement indicating whether restrictions would allow foreclosure of a property owners association's lien on an owner's property for failure to pay assessments.

A property owners association could not deny the validity of any statement in the resale certificate. The bill would allow associations to charge reasonable fees for providing the required information. Unless specified by a dedicatory instrument, neither an association nor its agent would be required to inspect a property before issuing a new or updated resale certificate.

If an association did not deliver information in a timely manner, or respond to a second request for information, the owner could seek one or a combination of:

- ! a court order directing the association to furnish the information;
- ! a judgment against the association for not more than \$500;
- ! a judgment for attorney's fees and court costs; or
- ! a judgment authorizing the owner or agent to deduct awarded amounts from future assessments.

The owner also could provide a buyer under contract to buy the property with an affidavit stating that the owner or agent had made two written requests and that the association did not provide the information in a timely manner. If the owner provided an affidavit to a buyer under contract, the buyer, lender, or title company would not be liable for money due to the association accruing

on or before the date of the affidavit. Further, an association's lien to secure amounts due on the property automatically would terminate.

Unless it failed to deliver information upon a second request, an association would not be liable to an owner selling property for delay or failure to deliver the required information. An officer or agent of the property owners association would not be liable for the delay or failure to furnish the resale certificate. An owner's agent or title company would not be liable to a buyer for any delay or failure by the association in delivering the required information.

A buyer, owner, lender, title company, or their agents, would not be liable for any debt or claim existing on the preparation date of the resale certificate that was not disclosed in the resale certificate. An association's lien to secure undisclosed amounts due on the date of the resale certificate would automatically terminate. A resale certificate would not affect an association's right to recover debts or claims arising after the date of the resale certificate or a lien securing future payment of assessments.

The bill would take effect on September 1, 1999.

**SUPPORTERS
SAY:**

In some subdivisions, membership in a property owners association is mandatory, and these associations may assess fees, provide services, and sometimes act as de facto political subdivisions. Yet they are not regulated, and they are not subject to the same information disclosure laws as governmental entities.

A homeowner or buyer might not be informed fully on association dues, liens on the property, previous violations on the property, suits against the association, and other important facts contained in a resale certificate because the associations are not bound by law to disclose this type of information.

Homeowners should have prompt and easy access to the type of information that SB 434 would require these organizations to provide. A resale certificate forewarns purchasers about potential problems with a property or an association. Some associations have refused to supply homeowners with resale certificates due to fears that details about an association or a property might dissuade a purchaser. Homeowners currently have no remedy when dealing with an association's refusal to cooperate.

The requirements for information contained in a resale certificate provided by SB 434 have been designed to help home buyers, homeowners, and property associations. Purchasers and property owners would be protected against abuses of power by a property owners association, while an association could be sure that owners and buyers had full knowledge of potential assessments and liens on property.

This bill would apply only to property associations that assess fees on property. Currently, this applies only to a handful of associations, most of which are in Harris County. These associations have multi-million-dollar budgets and very large staffs. The requirement to deliver resale certificates and other information only on request would not be a burden to the applicable associations.

OPPONENTS
SAY:

The list of information required to be provided in the resale certificate provisions is voluminous and would be a burden to homeowners associations. Many associations are small operations, sometimes run by a single person or by volunteers. A flood of unnecessary requests for resale certificates could absorb a small association's time and money.

NOTES:

HB 3407 by Williams, which would subject property owners associations to the Open Meetings Act, passed the House on May 13 and was reported favorably, without amendment, by the Senate State Affairs Committee on May 14 and recommended for the Senate Local and Uncontested Calendar.