

SUBJECT: Amending procedures on operation of homeowners' associations

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 8 ayes — Deshotel, Elkins, Christian, Keffer, S. Miller, Orr, Quintanilla,  
S. Turner

0 nays

3 absent — England, Gattis, Giddings

WITNESSES: For — Danita Haase; Matt Scott, City of Rockwall; (*Registered, but did not testify*: Lori Levy, Texas Association of Realtors; Cyrus Reed, Lone Star Chapter, Sierra Club; Tom “Smitty” Smith, Public Citizen)

Against — Irene “Beanie” Adolph, Lynn Walshak, Texas Homeowners for HOA Reform, Inc.; Charles Butera, Quail Valley Fund; Richard W. Craig; Dick Crain, Heritage Ranch HOA; James Fannin; Russell Fuller, North Fort Worth Alliance Vineyards at Heritage HOA; Gwen Gates, Owen Glaze; David Kahne; Philip MacDonald, Lake Ridge Property Owners Association; Amy McCorkle; Emile Nassar, Pines Condominium Association; Lisa Pfeiffer, Coalition of NE Neighborhoods (CONEN), Ventura Maintenance Association (VMA); Sharon Reuler; Pablo Ruiz; David Smith, Texas Neighborhoods Together; Susan Wright, Texas Association of Builders; (*Registered, but did not testify*: Karla Anaya, N.B. Avery Park HOA; Darrell Axline, Firewheel Swim & Recreation Center; Laurie Beppler, Walker’s Mark HOA; Orville R. Bevel, Jr., Greater Lake Palestine Council; Linda Blackstock, Robert Collier, Lake Livingston Village HOA, Inc.; Rodney Bouffard, Benders Landing POA; Carolyn Boyle, Stonebriar HOA; Shonda Britton, John Vickers, Elizabeth Welch, Select Management Co.; Cordelia Brown, Heritage Village HOA; Glenn Buckley, Montgomery Trace POA; C.A. Cockrell, Greater Lake Palestine Council, Callender Lake POA; Joseph Cook, Alamo Ranch Community Association, Hill Country Retreat Community Association; Chuck Davidson, Spring Shadows Civic Association; Henry DelCastillo Jr., Colleyville Spring Garden Townhome Association; Jason Delgado, Craig Place Townhomes; Jan Douglas, Glenn Lippman, Georgetown HOA; Judy Dreis, The Village at Frisco Lakes Community Association; Michael Foster, Wind Gate Ranch HOA; Alfredo Gonzalez, The

Dominion Homeowners Association; Nelwyn Hardy, Champion Pines Condo; Donna Heard, UP Coppertree HOA; Catherine Heimer, Sally King, Villas at Ingram Hills; Marianne Hill, Highland Knolls CA, Inc.; Matt Hillstrom, The Tribute Owners Association, Inc.; Sheila Hitt, Safari Waters Ranch Property Owners Association, Cimmaron Estates HOA; Lana Hoelsing, Promenade at Stafford Run; Bart Hoggins, Heritage Oaks HOA; Karen Janczak, Lake Forest of Kelliwood HOA; Harvella Jones, National Homeowners Advocate Group, Texas Homeowners Advocate Group; Gary Josephson, Mountain Valley Country Club Estates Owners Association, Inc., Hills of Westchester HOA; Kevin Kernan, Heritage Ranch HOA; David Kincaid, Remington Heights HOA; Gary Klepperich, Singer Association Management; Samantha Lacewell, Deerfield Village Community Association, Inc.; Larry Leesman, Oak Shores Estates Homeowners Association; Peter Legee, Forest Cove Estate HOA, Inc.; Robert Leitner, Missionbend Civic Association and Greater MBA Council; Lisa Lemmond, Copperstone HOA; John Michael, 2016 Main Owner's Association; Robert Mohler, North Fort Worth Alliance and Arcadia Park Estates HOA; Robin Motley, Westchester, HOA; Theresa Ostrander, Heartland Community Association/Kaufman County Municipal Utility Districts 8-12; Margaret Parker, Capital Consultants Management Corporation; Robert Philo, Eldorado HOA; Lauren Ramella, Palo Blanco HOA; Margaret Rankin, Cypress Trails of Timberlane CTA., Champions Creek CTA; Rita Rasberry, Wynfield Farms HOA; Nancy Renfro, Walden on Lake Conroe Community Improvement Association; Cheryl Rhoads, Northpointe East Owners Association; Jim Rhodes, Terraces at Encino Park HOA; Eugene Riggs, Oak Shores HOA; Debra Romanow, Ashlynn Wells, Premium Communities; Reynaldo Saucedo, Deer Creek POA; Rachel Schmutz, Hannover Forest HOA; Kay Serventi, Spring Creek Court, Ponderosa Forest HOA, Normandy Forest; Hunters Valley HOA, Northpointe East, Norcher Maintenance Fund, Hearthstone Homeowners Association; Sam Simmons, Kelliwood Terrace; A. J. Simpson, Briargate HOA; Dodie Slama, Chimney Hill Homeowners Association; Lewis Smith, Greatwood HOA, Royal Lakes Estates HOA, The Promenade at Stafford Row, Meadow Creek, on behalf of Sugarland City Councilman Russell Jones, Huntington Village; Bob Stout, The Woodlands Development Co. and Newland Communities Texas, Woodlands Township; Susan Sweeney, Parker Estates Homeowners Association; Jamie Taylor, Gambridge Court HOA; L. Wayne Templeton, Hunters Valley HOA; Velma Thomas, Oak Hill HOA; Rhonda Van Tassell, Stonebridge Ranch HOA; Jimmy Vandagriff, Riverstone Ranch HOA, Inc.; Susan Vandagriff, Imperial Oaks Park POA, Inc.; Jesus

Varela, Northwest Park Homeowners Association; Christi Wells, Community Association Bank, Mutual of Omaha Bank; Jay Wiesner Callender Lake POA; Lance Williams, Champion Pines Condominiums, Millhollow Townhomes, 3000 S. Braeswood, Tanglegrove Townhomes Condo Association; Robert Wise, Stone Forest HOA; John Wynn, Summerfield Homeowners Association; Greg Yearsley, Hills at Firewheel HOA, and 98 others); (*On committee substitute:*) Judd Austin, Henry Oddo Austin & Fletcher; Sandra Denton, Community Associations Institute; Andy Hill, Texas Association of Community Management Companies; Kim Moran; (*Registered, but did not testify:* Brian Birdwell, Jim Romine)

On — Bill Davis

**BACKGROUND:** Homeowners' associations are groups formed to provide services for homeowners in exchange for mandatory assessments or dues. Property Code, ch. 202 provides that associations are governed by deed restrictions on the homes and by the association's articles of incorporation, bylaws, and rules. Deed restrictions and rules generally are enforced through a system of fines for infractions. In general, homeowners' associations are governed by Property Code, ch. 209 and are given powers of enforcement against owners in violation of association rules.

**DIGEST:** (*The author plans to offer a floor substitute for HB 3128. The analysis is of the proposed floor substitute:*)  
The floor substitute for HB 3128 would amend several sections of the Property Code, particularly Property Code, ch. 209 (Texas Residential Property Owners Protection Act) to:

- allow property owners to bring suit against the property owners' association for violation of any of the associations rules;
- change procedures on assessing fines and allow alternative payment schedules;
- require a hearing before a judge before any property owner association foreclosure;
- require public notice of property association board meetings and require that the sessions be open to all property owners;
- impose deadlines on associations to respond to record inspection requests by property owners;
- change voting procedures and requirements;

- require a detailed list for closings of fees associated with transfer of ownership of the property, including a requirement that a fee for a resale certificate could not be required until the certificate was available for delivery;
- limit the property owners' association's ability to enter onto a homeowner's property to inspect or remedy an alleged violation of deed restrictions; and
- change other provisions.

**Legal action against property owners associations.** HB 1976 would allow a property owner to bring a lawsuit alleging that the property owners' association had violated, was violating, or was threatening to violate provisions in Property Code, ch. 202 on deed restrictions or in Property Code, ch. 209 on operations of property owner associations.

The property owner in the association would be allowed to seek:

- injunctive relief;
- the greater amount of either actual damages or \$1,500; or
- both injunctive relief and damages.

The court would be allowed to award up to three times the amount of damages, either the actual damages or \$1,500, if the court determined that the violations occurred with a frequency that constituted a pattern or practice.

The bill would require that a property owner provide 30 days of notice, sent by certified mail with return receipt requested or with U.S. mail with signature confirmation, before filing the lawsuit.

HB 1976 would provide limits on legal action by prohibiting any lawsuit against a property owners' association officer or board member individually and would allow the court to award damages to the property owners' association of the greater of three times actual damages or \$4,500 for actions the court determined to be frivolous or groundless.

**Assessing fines and alternative payment schedules.** HB 1976 would amend Property Code, sec. 209.006 to provide that a property owners' association would have to notify a property owner by certified mail, return receipt requested, or USPS signature confirmation sent to the owner's last

known address, of alleged violations. The notice also would be required to include:

- a date by which the violation had to be cured, if the violation could be cured and did not pose a threat to public health or safety;
- dollar amount of proposed fine; and
- provision of dedicatory instrument the owner was alleged to have violated.

The notice would be required to provide a reasonable period of at least 30 days to cure the violation, if the violation could be cured and did not pose a threat to public health or safety.

The bill also would amend Property Code, sec. 209.007 to provide that if the property owner and property owners' association failed to reach an agreement on resolving the dispute after a hearing, the property owners' association would be required to file a suit in a justice of the peace or small claims court within 180 days. If the property owners' association did not file the suit by that deadline, its claim to collect the fine would be considered to be waived.

Other provisions would require that the fine would have to be reasonable in the context of the nature and frequency of the violation and that the property owners' association would have to establish a reasonable maximum fine for a continuing violation. The bill would allow the property owners' association to assess a fine against a non-owner occupant of a property, but would not be able to assess a fine against both the owner and non-owner occupant.

The bill would allow for a property owners' association to establish a procedure for guidelines to allow a property owner to make partial payments for delinquent regular or special assessments or other charges. The payments could extend over a 12-month interval for a special assessment, but the property owners' association could provide for a discount for a one-time lump sum payment of the special assessment. However, a payment plan would not be allowed for someone who had defaulted on a previous payment plan in the past five years.

HB 1976 would provide for a priority of payments for money received by a property owners' association by a property owner. The payments would be applied in turn to:

- any delinquent assessment;
- any current assessment;
- any attorney's fees incurred by the association in the collection associated solely with assessments or any other charges that could provide the basis for foreclosure;
- any fines assessed by the association;
- any other attorney's fees not associated with assessments associated with foreclosure; and
- any other amounts owed to the association.

The bill would create a 10-year statute of limitation for a property owners' association to file suit or otherwise begin collection actions authorized by the dedicatory instrument or other law. The provision would not apply to collection of debts owed by the owner to the property owners' association.

HB 1976 also would amend Property Code, sec. 5.006(a) to allow a court to order payment of attorney fees to the prevailing party in a lawsuit alleging a breach of a restrictive covenant or a statute pertaining to those restrictive covenants.

**Judicial review.** The bill would require that a property owners' association obtain a court order under an expedited foreclosure process before foreclosing on a lien against a property owner, unless the property owner waived the expedited foreclosure process. The Texas Supreme Court would be required to adopt the rules of civil procedure for the expedited foreclosure procedure by January 1, 2010.

**Open meetings requirements.** HB 1976 would amend Property Code, ch. 209 and would define "board meetings," provide requirements on notice and the ability of property owners to attend the sessions, and provide exemptions to the open meetings requirements.

A board meeting would be defined as a session where a quorum of the board members deliberated on the business or policy of the property owners' association. The definition would exempt gatherings of a quorum at a social function unrelated to the business of the association, at a regional, state, or national convention, workshop, ceremonial event, or press conference, as long as no discussion or formal action on association business took place.

The property owners' association would be required to place notice of the date, hour, and place of a regular or special meeting at least 72 hours in advance of the meeting on a conspicuous place of the association's common property or on its website. All meetings would be open to all property owners, and the association would be required to keep and maintain records, including minutes, of the meetings and to make them available upon request to property owners.

HB 1976 would permit a property owners' association's board to hold an emergency meeting, and notice could be given at least two hours in advance of the meeting. Actions taken at the emergency meeting would have to be summarized orally at the next regular meeting. The bill also would allow administrative sessions that would not be subject to the notice requirements. Other provisions would prohibit certain actions by the board at either emergency meetings or administrative sessions, including the consideration of fines, foreclosures, levying a special assessment or increased assessments, or approving items not previously approved in a regular or special board meeting.

Other sections would allow a property owners' association to go into executive session, which would be closed to the public, to deliberate:

- anticipated or pending litigation, settlement offers, or consultations with the property owners' attorneys;
- complaints or charges against or issues regarding a board member, agent, employee, contractor, or other representative of the property owners' association;
- a payment plan for delinquent dues, assessments, or other charges;
- foreclosure of a lien;
- enforcement actions against an association, including for nonpayment of amounts due;
- purchase, exchange, lease, or value of real estate property, if the board determined in good faith in an open meeting that a deliberation would have a detrimental effect on the position of the association;
- business and legal aspects of negotiating a contract if the board determined in good faith in an open meeting that a deliberation would have a detrimental effect on the position of the association; and
- matters involving the invasion of privacy of an individual.

The board would be required to convene a regular or special board meeting before going into executive session. The presiding officer would have to announce the type of deliberations being held in the executive session. No vote or other action item would be permitted during executive session.

These provisions would not apply to property associations in Harris County that were added to Government Code, ch. 552, the Open Meetings Act, last session by HB 3674 by J. Davis.

**Open records.** HB 1976 would require that property owners' association records be open and reasonably available for examination by a property owner, and that the property owner would be entitled to receive copies of information contained in the associations' books and records.

The records would have to be kept in a building on property commonly owned by the property owners' association and would have to be staffed and accessible to property owners' association members during business hours unless such a building did not exist. Staffing of a common building would not be required to comply with the bill. The property owner would have to make a request by hand-delivering the request to a current board member or by mailing it to the address of the association or its authorized representatives.

The property owners' association would have to provide copies of the requested information, in either electronic or hard copy format, to the property owner making the request within 10 business days. If the property association could not produce the documents within that period, it would be required to notify that the information would not be available within 10 days and to state a date, no later than 30 days after the original request date, when the information would be available. The property owners' association would be permitted to charge a reasonable fee for reproducing the information.

HB 1976 would require that any information released could not identify an individual property owner, nor provide any personal financial information. The information could be released in an aggregate manner that would not identify an individual property owner.

The association would be required to keep all records to changes in dedicatory instruments in perpetuity, ballots in associate-wide votes for



four years, and all financial records, including assessments, fines, foreclosures, and enforcement actions for at least seven years. Other provisions would prevent release of ballots in a board of directors' election for inspection unless there was a court order or subpoena.

The bill provides that a property owner denied access to association records could file a suit in a justice of the peace court, in the justice of the peace precinct in which any part of the property owners' association neighborhood was located. The justice of the peace could grant one or more of the following remedies through a judgment:

- judgment against the property owners' association for a penalty of up to \$1,500;
- judgment against the property owners' association for court costs and attorney's fees; or
- authorizing that the amount of judgment be deducted from any future regular or special assessment due by the property owner to the property owners' association.

**Voting requirements.** HB 1976 would require that a property owners' association provide notice of at least 30 days of any election or vote held by the association. The bill also would require the association to contract with a third party such as a county judge, county elections administrator, justice of the peace, or county voter registrar to count the votes, if a petition signed by 10 percent of the voting interests in the association was submitted at least 15 days before the date voting began.

The bill would provide for a written request for a recount of an election within five days by a member of the association. The recount would be conducted by county judge, county elections administrator, justice of the peace, or county voter registrar and would have to be completed within 30 days of the request. If the recount were to change the result of the election, the association would reimburse the requestor for the costs of conducting the recount.

The bill would require that any vote cast would have to be in writing and signed by the member. Other provisions would prohibit any dedicatory instruments that disqualified a property owner from voting and would prohibit proxy voting. The bill would add provisions for the removal of a board member upon conviction of a felony or crime involving moral

turpitude and would allow an owner to cast a vote at a meeting in person, by absentee ballot, or by electronic ballot.

**Other voting requirements.** The bill would also allow for removal of a provision in a dedicatory document granting the right to foreclose on a lien by a vote of 51 percent of the votes allocated to property owners. The election would be held if requested by owners of 10 percent of all voting interests in the association and would require a special meeting to call the vote.

Votes required by dedicatory documents to make capital improvements would have to be 67 percent of the total votes allocated to property owners.

**Resale certificates.** HB 1976 would require that a seller of a property in a property owners' association deliver promptly a current resale certificate to a purchaser upon demand. The seller would make a request to the property owners' association to issue a revised resale certificate if a current one was not available. The seller or purchaser would agree through the terms of the contract which would pay for the resale certificate, but the property owners' association would not be allowed to require payment until the resale certificate was completed.

**Right of entry.** HB 1976 would declare void any provision of a dedicatory instrument allowing a property owners' association to enter private property to enforce or abate an alleged violation of a restrictive covenant, except for:

- curing violation that involved an immediate threat to persons or property;
- a forced mow or removal or trash, after 10-days written notice; or
- circumstances in which it was reasonably determined that the property had been abandoned and not maintained for at least 30 days.

The provision would not apply to recorded easements or to property owners' associations that fund insurance on residences, one or more utility payments, or exterior maintenance of residences through assessments.

**Other provisions.** HB 1976 would allow property owners' associations to grant reasonable variances in enforcement of deed restrictions, and would

limit or void provisions to require the right of first refusal by property associations, restrict parking, and prevent ownership of multiple properties in the subdivision as long as the ownership would not constitute more than 25 percent of the voting interests in the property owners' association.

The bill also would allow revisions to restrictions on renting property in property owners' association neighborhoods with the approval of 51 percent of the total votes allocated to property owners by the dedicatory instrument. However, the bill would allow dedicatory documents to require an owner to exercise due diligence in not leasing to a registered sex offender or a person with a history of violent crime, and would allow for the landlord to terminate a lease with a tenant who was a registered sex offender or violent criminal.

HB 1976 would prevent a property owners' or homeowners' association from including or enforcing a deed restriction or other provision in a real estate dedicatory instrument that would prohibit a homeowner from installing a solar energy device. The bill would not disallow deed restrictions that prohibited solar energy devices that threatened public health or safety; violated a law; were located on property owned or maintained by the property owners' association; were located on property owned in common by the members of the property owners association; were located anywhere on the individual property owner's premises other than the roof of the home or in a fenced yard or patio; or were mounted on a device that was taller or more visually obtrusive than was necessary for the solar energy device to operate at 90 percent or more of its rated efficiency.

The bill would require a property owners' association to file any previously unrecorded dedicatory instruments by January 1, 2010,

The bill would take effect January 1, 2010.

**SUPPORTERS  
SAY:**

HB 1976 represents a balanced compromise that would provide transparency and accountability for the operations of property owners' associations without affecting unduly their ability to perform the managerial functions needed to protect property values of their members. Increasing numbers of Texans live in property owners' association neighborhoods. Many of these entities are larger than small- and medium-sized municipalities and have the extreme power to foreclose on residential homestead property. However, the state lacks the level of

oversight for property owners' associations that it has over general law cities. The bill would culminate review and debate that has lasted for eight legislative sessions and would provide comprehensive reform.

**Legal actions against property owners associations.** HB 1976 would provide another level of accountability for property owners' associations by allowing lawsuits by property owners should an association violate the deed restrictions or ignore the provisions of state law, including the other consumer protection provisions that would be added by the bill. The property owner would be able to seek legal redress in a justice of the peace court, which would not necessarily require hiring an attorney, and could collect monetary penalties from the association.

The bill would provide for adequate notice so that the property owner and the association could resolve any dispute before it ended up in the courthouse. Other provisions would provide personal protection for board officers and members, who often serve as volunteers, and would discourage use of the process for frivolous or groundless litigation.

**Assessing fines and alternative payment schedules.** HB 1976 would provide a fair compromise and resolution of the concerns that property owners' associations might act too quickly to foreclose to collect on liens for relatively small amounts. The extension of the statute of limitations to 10 years would allow property owners' associations, particularly those with healthy cash flows already, to be patient in collecting delinquent assessments and fines and to wait to receive the money when the house is sold. In exchange, the property owners' associations and their management companies could agree to assign fines a lower ranking in the priority of payments.

CSHB 1976 would provide protection for homeowners by defining a priority of payment to ensure that money paid for dues would be credited properly. Current law prohibits property owners' associations from foreclosing on a home for failure to pay fines or attorneys' fees, but many associations will redirect a homeowner's association dues to pay other outstanding fees and fines, leaving their dues in arrears. The use of this kind of bookkeeping trick allows property owners' associations to foreclose on homeowners who have made good-faith efforts to stay current with their obligations. The bill would help bring an end to this practice.

The bill also would require that associations offer payment plans to enable owners to pay delinquencies over time, but it would provide some protection to the associations from those who had defaulted on previous payment agreements.

**Judicial review of foreclosures.** HB 1976 would address a major complaint — that property owners' associations possess the ability to foreclose without a judicial process. The bill would make all such actions be decided in the court system, where due process protections are afforded to both the property owner and the association.

Changes in court procedures are handled best by the judiciary, and it would create no separation-of-powers issue if the Legislature set a deadline for the Texas Supreme Court to set rules on an expedited foreclosures process.

**Open meetings, open records and voting requirements.** HB 1976 would help end the situation where the unique design of property owners' associations have made some associations, but not others, subject to provisions in Texas law that allow property owner access to open records, open meetings, and association election voting. Operational transparency is a necessary part of federal, state, and local government. No property owners' association should be excluded from that transparency. While some property owners' associations currently are structured in such a way as to make their records and meetings available to all members, other associations structure themselves in a way that intentionally avoids this transparency. These differences should be eliminated.

HB 1976 would set a clear and enforceable requirement on responding to requests for records. The requirement to respond to a request within 10 days and to produce the documents within 30 days would be appropriate under the management practices of most property owners' associations.

HB 1976 would bring voting into the modern era by providing for absentee ballots and electronic voting. Property owners would not lose a vote due to conflicts in schedule. The bill also would prohibit proxy voting, which would limit disproportionate power of developers and management companies.

**Voting requirements.** HB 1976 would provide a more manageable system to change deed restrictions, with approval of 51 percent of those

with property interests required rather than 90 percent or unanimity. Decisions to restrict the ability of homeowners' associations to foreclose should be made at the local level, by those immediately affected.

**Resale certificates.** HB 1976 would help ensure prompt delivery of a resale certificate, as a property owners' association only could collect payment on delivery.

The bill would not set artificial deadlines on the production of resale certificates. Reviews of past violations and charges, drive by checks, and other research are necessary. Several staffers may be involved in the process. Property owners' associations already have an incentive to complete resale certificates on a timely basis or else lose any outstanding assessments or charges. Current law allows title companies to close a sale if the seller and buyer provide an affidavit that a certificate was requested but not provided on a timely basis. In such cases, the homeowners' association would be unable to collect any delinquent assessments or fees from either party.

**Right of entry.** The bill would provide an appropriate balance between an owner's private property rights and the need to address threats to public health and safety. A property owners' association would be limited in its ability to enter a member's property to cure violations, but would be able to mow or remove trash after providing notice or to address situations when houses are abandoned.

**Other provisions.** HB 1976 would give discretion to property owners' associations and allow them to grant variances when circumstances would justify taking no enforcement actions. For example, having a fence two inches too high would not pose a real threat to deed restrictions and should be allowed to pass.

Provisions in HB 1976 would allow homeowners to take advantage of solar power systems to heat or cool their homes or to generate electricity. Most deed restrictions were written before technologies such as solar panels became readily available. Too many of the covenants on aesthetics represent "dollhouse documents" that reflect a developer's original vision of an ideal neighborhood. The bill would establish a reasonable exception that would take into account modern life.

Restrictions against leasing property to registered sex offenders and other violent criminals would promote the safety of all who live in the area.

HB 1976 also would help ensure that homeowners were aware of all changes in dedicatory documents with the requirement that property owners' associations file those documents by January 1, 2010.

OPPONENTS  
SAY:

HB 1976 would not address the fundamental flaw of property owners' associations — the concept of a private government. Without the checks and balances of a true government and without a separation of powers, property owners' associations enable unregulated third party vendors, such as management companies and attorneys, to profit by asserting a violations and collecting fines in a private judicial system.

**Legal actions against property owners associations.** Requiring a 30-day notice prior to filing suit potentially could raise the legal fees charged by a property owners' association to review and respond to the possible legal action. The property owners' association should not be allowed to impose its attorney's fees upon the homeowner. It should bear the cost of its own attorney's fees as do the homeowners. Also, in the event that the property management company complied with the request without the lawsuit, there should be some provision for payment of the homeowner for the cost of providing notice and other incidental expenses.

The bill should allow for recovery against the members of the property owners' association's board or officers of the management company if they failed to perform their fiduciary duty. These entities should be held accountable and not exempted from all culpability if they failed to perform their duties.

**Assessing fines and alternative payment schedules.** Enactment of HB 1976 would delegate explicitly fining authority to private organizations and would legitimize a source of much abuse by property owners' associations. Texas should follow the example of Rhode Island and Virginia, which have declared fines by property owners' associations unconstitutional.

Not only would HB 1976 make the statute of limitations for purported property owners' association debt longer than the statute of limitations for any other type of debt, but it also would make it the equivalent of some criminal offenses as well.

Additionally, this provision would require homeowners to maintain payment records for at least 10 years, which is longer than what is required by the IRS, and longer than the period HB 1976 would require a property owners' association to keep its financial records.

**Judicial review of foreclosures.** HB 1976 would provide some safeguards, but it would not address the basic flaw of allowing a private entity to foreclose on residential homesteads. If the objective is to mandate payment of assessments, there are alternatives that would be less expensive and would not require a homeowner to forfeit an asset worth hundreds of thousands of dollars for an original debt of only a few hundred dollars.

**Open meetings, open records, and voting requirements.** Compliance with open meetings and open records standards could be costly and burdensome for property owners' associations, especially those run by volunteers rather than by management companies. Even a smaller association holds dozens of committee meetings each month, and it would be unwieldy to provide notice and keep records for all these meetings. Complying with the requirements on open meetings and open records could expose board members to possible criminal and civil penalties. All associations would be forced to retain attorneys at meetings to help comply with the standards, and those costs would have to be absorbed by property owners through assessments.

**Resale certificates.** The Legislature should mandate a strict deadline on producing resale certificates. Delays in providing these documents could cause problems in closing real estate sales. Most of the information would be readily available. Also, the Legislature should establish a clearer dollar limit for providing these documents other than just a "reasonable fee." The bill also should expressly prohibit property owners' associations from charging "transfer fees" based on percentage of the sales price.

**Other provisions.** If property owners' associations had exercised common sense judgment in setting and enforcing restrictions, HB 1976 would not have been necessary. It is uncertain how the change in law would change attitudes and practices by boards and management companies.

The bill would not protect sufficiently homeowners desiring to install solar generation devices on their property and could create opportunities for



future litigation. The exceptions for threats to public health or safety or for violations of other laws — which the homeowners’ associations cannot authorize — should be eliminated. Such provisions could invite homeowners’ associations to make determinations on what constitutes a threat to public health or safety or a violation of law and to impose fines without any judicial determination.

Proposed restrictions on renting to sex offenders and violent criminals would be just another property owners’ association subterfuge to impose restrictions on use of members’ property. Currently, the association cannot prohibit a registered sex offender or violent criminal from purchasing the property and could face legal challenges to restrictions against renters with those backgrounds.

OTHER  
OPPONENTS  
SAY:

**Judicial review of foreclosures.** HB 1976 would raise possible separation-of-powers concerns in its provisions that would require the Texas Supreme Court to develop procedures on expedited foreclosure procedures by January 1, 2010. The court has demonstrated in many cases that it is willing to ignore the Legislature.

**Open meetings, open records, and voting requirements.** All property owners associations should be included explicitly in Government Code, ch. 552 requiring open meetings and open records, as are Houston property owners’ associations, added last session. It would make clear that property owners’ associations are subject to the requirements and possible penalties for violation.

Allowing property owners’ associations to hold administrative sessions could lead to efforts to skirt open meeting and open records requirements contained elsewhere in the bill. The Legislature wrestled many years with abuses caused by the “staff meeting” exemption in local government open meeting and open records provisions, and this provision in HB 1976 could reopen that debate for property owners’ associations.

The floor substitute should restore a provision in the committee substitute that would have protected an owner from the possibility of being held responsible for violations of an unrecorded dedicatory document. Without this provision, homeowners could be threatened for having suddenly non-conforming improvements or conditions on their property that become “nonconforming” once the document is filed. This would be an invitation

to record a document and to claim that it previously existed, but was unrecorded.

HB 1976 should be amended to allow only those required to pay for a capital improvement be eligible to vote in the election to approve those expenditures.

NOTES:

HJR 76 by Solomons, a proposed constitutional amendment that would limit property owners' associations' ability to foreclose to collect their fees, is on the May 11 Constitutional Amendments Calendar, and HB 2392 by England, which would provide notice to additional lien holders in foreclosures by property owners' associations, is on the May 8 General State Calendar.

HB 1976 provisions that would restrict the ability of property owners' association to prohibit solar energy devices also were included in HB 25 by Leibowitz, which passed the House on April 2, and SB 263 by West, the companion, which passed the Senate on March 19.

The floor substitute differs from the committee substitute in provisions that would allow a property owners' association to grant variances on enforcement actions and to consider particular conditions of the property, such as its topography. The floor substitute would add other provisions to require a 10-day notice for forced mows or removal of trash and would except easements. Other provisions added in the substitute would allow dedicatory instrument restrictions on leasing to sex offenders or violent criminals, requirements of a 30-day notice to file suit against the property owners association, and on restricting access of ballots absent a court order or subpoena.