

SUBJECT: Revising requirements for information from a property owners' association

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 7 ayes — Deshotel, Orr, Bohac, Garza, Giddings, Quintanilla, Solomons

0 nays

2 absent — S. Miller, Workman

WITNESSES: For — Janet Ahmad, Homeowners for Better Building, HOA Reform Coalition; John Rothermel, Stewart Title Guaranty Co., Texas Land Title Association; Nancy Hentschel; (*Registered, but did not testify*: Irene Adolph, Texas Homeowners for HOA Reform, Texas HOA Reform Coalition, HOAdata; Mark Borskey, First American Title Co.; Aaron Day, Texas Land Title Association; Roy Hailey, Texas Community Association Advocates)

Against — (*Registered, but did not testify*: Lynn Walshak, HOA Reform Coalition)

On — (*Registered, but did not testify*: Aurelio N. Garcia; Evelyn Garcia)

BACKGROUND: Property Code, ch. 207 governs the disclosure of information by property owners' associations. Sec. 207.003 sets forth requirements for an association that received a request for subdivision information from an owner, an owner's agent, or the owner's title insurance company. Within 10 days of receiving a request, an association must provide:

- a current copy of the restrictions applying to the subdivision;
- a current copy of the association's bylaws and rules; and
- a resale certificate that complies with statutory requirements.

A resale certificate, which is a written statement issued by an association or its agent, must contain a variety of information about the association and the property subject to the request. The specific informational requirements are enumerated in law.

DIGEST:

(The analysis is of the author's proposed floor amendment:)

HB 1821 would modify requirements that govern the delivery of information to a property owner under Property Code, sec. 207.003. The bill would add buyers or their agents to the parties entitled to request information. An association delivering information to buyers or their agents could require reasonable evidence of a contract to buy property in the subdivision. The bill would extend current response windows that associations must adhere to from calendar days to business days.

The bill would require a buyer to pay fees for a resale certificate to the association unless the buyer and seller agreed to another arrangement. The association could not process a payment for a certificate until it was available for delivery. The association could not charge a fee if the certificate was not provided within 10 business days of receiving a written request.

HB 1821 would add to the required resale certificate a description of all fees associated with the transfer of ownership, including the amount and recipient of each fee. The statement would not have to include information about a lawsuit relating to unpaid property taxes of an association member. Current requirements would be revised to include any special assessment that "had been approved" when the statement was prepared.

The bill would take effect September 1, 2011. It would apply only to a request for information submitted on or after its effective date.

SUPPORTERS
SAY:

HB 1821 would resolve some ongoing issues with resale certificates that a homeowners' association must provide upon the transfer of property in an association.

Under current practices, only a seller or a title company may request a resale certificate. This option to request a certificate should also be available to a party planning to buy property in an association. A buyer should not have to wait to receive a copy of the resale certificate from their title company or the seller. The bill would allow buyers to directly request a resale certificate from the association and negotiate with the seller to determine which party would pay the costs of compiling the certificate. Including the buyer as an eligible requestor would grant parties to a property transaction more flexibility in structuring the sales agreement.

The floor amendment to HB 1821 would clarify that buyers would have to pay the costs of compiling a resale certificate unless they could come to an agreement with the seller to pay. The amendment would also add important provisions prohibiting an association from processing a payment for a certificate until it was available for delivery and barring any charges for a certificate not compiled in a timely manner. These changes will add a strong enforcement provision to the 10-day turnaround period, which, with the change of calendar days to business days, would be ample time to process a certificate. Preventing an association from processing a payment until a certificate was available would also provide a strong incentive to compile a certificate as quickly as possible.

These changes will help address some of the problems related to resale certificates without more drastic measures that could have negative consequences for associations. Capping fees charged for the certificates, for instance, would cause many associations to incur significant, unrecoverable expenses.

**OPPONENTS
SAY:**

HB 1821 would miss an opportunity to meaningfully reform issues with resale certificates and what they contain — a mounting problem in many associations. Many associations significantly overcharge for these certificates, since there are no statutory caps on fees that an association or a management company may charge. Much of the information included in these certificates, such as an association’s bylaws, restrictive covenants, fees, and other information, including unsatisfied judgments against an association, should be publicly and readily available for no charge. Ideally, these documents should be available on the association’s website.

NOTES:

The committee version of HB 1821 would require the party requesting a disclosure statement to pay any fee for the information. The author’s floor amendment would modify this by requiring a buyer to pay fees for a resale certificate to the association unless the buyer and seller agreed to another arrangement. It also would add a provision prohibiting a payment for a certificate until it was available for delivery and preventing an association from charging a fee if the certificate was not provided within 10 business days.

The committee substitute also would have changed references to “resale certificates” to “association disclosure statements,” a provision the floor amendment would not include.