

- SUBJECT:** Modifying condominium owners' associations regulation
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 4 ayes — Bohac, Orr, Villalba, Walle  
0 nays  
3 absent — Oliveira, E. Rodriguez, Workman
- WITNESSES:** For — Robert Burton and Worth Ross, Texas Community Association Advocates; Scott Norman, Texas Association of Builders; (*Registered, but did not testify:* Judd Austin and Susan Wright, Texas Community Association Advocates; Rick Bidne; Randy Lee, Stewart Title Guaranty Company; Allen Place, Texas Land Title Association; David Smith, Texas Neighborhoods Together)  
  
Against — None
- BACKGROUND:** Property Code, ch. 82 is the Uniform Condominium Act.  
  
Sec. 82.111 requires a condominium unit owners' association to take out property insurance on common elements as well as commercial general liability insurance on commonly insured occurrences. Under sec. 82.111(i), condominium property for which insurance is required that has been damaged or destroyed must be promptly rebuilt or repaired by the association unless at least 80 percent of the unit owners, including each owner of a unit that will not be rebuilt, vote not to rebuild.
- DIGEST:** CSHB 2075 would make a number of changes to the regulations governing condominium owners' associations and unit owners, including the right of associations to borrow money, insurance requirements, redemption by the owner of a foreclosed unit, and the recording of association management certificates.  
  
Under the Uniform Condominium Act, the bill would define an association's dedicatory instrument as each document governing the establishment, maintenance, or operation of an association, including covenants, bylaws, other rules, and lawful amendments.

**Borrowing.** A condominium owners' association would be able to borrow money using the association's right to future income (including assessments) and the association's lien rights as collateral. If the association's dedicatory instrument required a vote of the members to approve the loan, 67 percent of the owners would have to approve, unless the dedicatory instrument set a lower threshold. Voting — including the possible use of electronic voting and voting by proxy or absentee ballot — would proceed in the manner decided by the association's board.

**Insurance and repairs.** CSHB 2075 would allow an association to take out insurance policies with commercially reasonable deductibles. The bill would change the voting threshold to prevent the association from repairing or rebuilding insurance-covered, damaged condominium property by allowing the owners to block the repairs by a vote of 80 percent and specifying that each owner could vote, regardless of whether the owner's unit had been damaged or destroyed. This vote would be held electronically or by written ballot if no meeting was held to make this decision; otherwise, voting at a meeting held to make this decision would be performed in person or by proxy.

If the cost to repair damage was less than the amount of the insurance deductible, the party who would otherwise be responsible in the absence of insurance would pay for the repair.

If the cost of repairs was more than the deductible amount, the dedicatory instrument would determine payment. The payment decision would fall to the association's board through the adoption of a resolution if the instrument was silent. If the board did not adopt a resolution, the damage would be a common expense. If damage were due to a unit owner's act or omission, the association would be able to assess the deductible or any other expenses above the insurance proceeds against the responsible owner.

The bill would allow the board to levy assessments to pay expenses from an insurance payout shortfall in proportion to each owner's common expense liability. Any extra insurance proceeds not used to restore damaged common elements or limited common elements would also be allocated to each owner in proportion to the owner's undivided interest in common elements, unless the dedicatory instrument stated otherwise.

**Redemption rights.** The bill would grant new rights to the owner of a unit sold in an association lien foreclosure sale to a party other than the association. An owner would be able to redeem the unit within the 90 days following the date of the foreclosure sale. A redeeming owner would have to pay the price of the purchaser's bid on the unit, interest on the bid, any assessment paid by purchaser after the date of foreclosure, and reasonable costs. A redeeming owner also would pay assessments due after the date of redemption and the association's attorney's fees in foreclosing on the unit. The unit's foreclosure sale purchaser would execute a deed without warranty to the redeeming unit owner.

**Recording of certificates.** CSHB 2075 would require county clerks to record an association's management certificates in the real property records of the county. Each condominium owners' association that had recorded a management certificate before September 1, 2013, would be required to record a new certificate by January 1, 2014.

The bill would take effect September 1, 2013, and would apply to any payment of costs or to units sold at a foreclosure sale on or after that date.

**SUPPORTERS  
SAY:**

CSHB 2075 would give condominium associations the ability to borrow money, change provisions on insurance and repairs, and grant more rights to owners in redeeming foreclosed properties.

Many of the changes in this bill were proposed in the wake of recent natural disasters. Condominium owners' associations found they had the responsibility to clean up damage but not the statutory flexibility to take needed decisions with regard to borrowing money or paying out insurance claims. Many of the changes in the bill reflect common practice already stipulated by association declarations.

**Insurance and repairs.** Associations were formerly hamstrung by dedicatory instruments prohibiting insurance policies with deductibles above a certain amount. The bill would help associations comply with their obligation to carry insurance by giving them authority to purchase policies with commercially reasonable deductibles.

Further, the bill would clarify a law the courts have struggled to interpret by specifying that each member of an association could vote on a decision

to prevent the association from making an insurance-covered repair of damaged property. The bill would make it easier for owners to participate in these votes as well, by providing for electronic or written balloting if no meeting was held to make the decision.

**Right of redemption.** Allowing owners to redeem their foreclosed properties from third-party purchasers is fair and appropriately would protect homeowners. The bill would mitigate the exploitative practice of third-party bidders purchasing foreclosed condominiums at a low price and turning them over to a buyer at a much higher price closer to market value.

**Recording of certificates.** Recording the condominium owners' association management certificates — which contain information including the association's name, its location, and declaration recording data — would help determine exactly how many of these associations exist in the state and where they are predominantly located. An exact count of these associations could help inform legislators in making related policy.

OPPONENTS  
SAY:

**Borrowing.** Condominium unit owners' associations should not be allowed to borrow money, especially when the only collateral they can offer are the association's lien rights and future assessments, which are not stable sources of revenue.

In addition, the bill would set a default approval threshold of 67 percent in voting to take out a loan for associations whose declarations did not specify a lower threshold, but it appears the bill would require the approval of only 67 percent of owners in associations whose declarations specified a higher threshold. This would be problematic because taking out a loan is a serious step, which could lead to an association coercing members to pay higher assessment fees to repay it. Such decisions should be made with the widespread consent of condominium unit owners, including approval by more than 80 percent of owners if the owners in a particular association deemed it appropriate.