

- SUBJECT:** Changing requirements for voting, notice, and meetings for POAs
- COMMITTEE:** Business and Industry — favorable, without amendment
- VOTE:** 6 ayes — Oliveira, Simmons, Collier, Rinaldi, Romero, Villalba
0 nays
1 absent — Fletcher
- SENATE VOTE:** On final passage, May 6 — 27-4 (Campbell, Creighton, L. Taylor, V. Taylor)
- WITNESSES:** (*On House companion bill, HB 2797*)
For — Judd Austin and Pam Bailey, Texas Community Association Advocates; (*Registered, but did not testify:* Julián Muñoz Villarreal and David M. Smith, Texas Neighborhoods Together)
Against — Bill Davis; David Kahne
- BACKGROUND:** In 2011, the 82nd Legislature made various changes to the law governing property owners’ associations (POAs) when it enacted HB 1228 by Dutton, HB 1821 by R. Anderson, and HB 2761 by Garza.

Property Code, sec. 51.002 establishes the procedure for a sale of property under a power of sale contained in a deed of trust or other contract lien. Texas Rule of Civil Procedure 736 provides the procedure for obtaining a court order, when required, to allow foreclosure of a lien containing a power of sale in the dedicatory instrument, including a lien securing a POA’s assessment.
- DIGEST:** SB 1168 would change provisions of current law governing property owners’ associations (POAs) related to foreclosures, meetings, notice of violations, and voting procedures.

Foreclosure. The bill would specify that a POA could send notice related

to foreclosure actions to any lienholder of record on the property, not only subordinate lienholders as required by current law. POAs that had a dedicatory instrument granting a right of foreclosure would be considered to have any power of sale required to use the expedited foreclosure process allowed under the Texas Rules of Civil Procedure. Under this process, a POA must obtain a court order in an application for an expedited foreclosure. A POA eligible to pursue an expedited foreclosure could elect to seek a judicial foreclosure instead.

Board meetings. A POA board meeting could be held electronically or by phone if every board member could hear and be heard by every other board member, owners were allowed to listen, and the notice of the meeting provided relevant instructions for the owners.

The board could take actions outside of a meeting if all board members was given reasonable time to vote and express their opinions to other board members. Under current law, the board cannot consider or vote on certain matters outside of an open meeting requiring notice. The bill would add to those matters.

The bill also would amend voting procedures for POA members, including procedures related to vote recounts.

Notice of violation and curing. Written notice required by current law before a POA can take certain enforcement actions against an owner for a violation could be sent by a POA to an owner by verified, rather than certified, mail. "Verified mail" would mean any method of mailing for which evidence of mailing was provided by the U.S. Postal Service or a common carrier.

The notice would have to specify a reasonable date by which the owner would be required to cure the violation. If the owner cured the violation before the deadline, no fine could be assessed by the POA.

Curable violations would include parking violations or an ongoing noise violation, such as a barking dog. A violation would be un-curable if it

occurred but was not a continuous action or a condition capable of being remedied by affirmative action. Un-curable violations would include shooting fireworks or property damage.

The bill would take effect September 1, 2015.

**SUPPORTERS
SAY:**

SB 1168 would give clarity to property owners' associations (POAs) that were experiencing operational and technical issues caused by ambiguities and contradictions in current law created by previous legislation. It would provide POAs with guidance and flexibility in day-to-day operations by allowing meetings to be held via telephone or other electronic means, authorizing the use of secret ballots, and allowing some routine actions to be decided outside of a meeting.

The bill would align the Property Code with Texas Rule of Civil Procedure 736 on expedited foreclosure. It would not give foreclosure authority to a POA that did not already have it but would make clear that POAs could pursue expedited foreclosure under rule 736 if its dedicatory instrument provided for it. The bill would specify that POAs still could pursue judicial foreclosure.

SB 1168 would authorize POAs to notify all lienholders, not just subordinate lienholders, of an owner's delinquent payments to allow the lienholders an opportunity to pay the debts to protect their interests before the POA foreclosed on the property. This would be helpful because sometimes it is difficult to determine which entities have subordinate liens due to frequent lien transfers.

The bill would allow verified mail, rather than certified mail, to satisfy certain notice requirements, which would be less expensive for the sender and more effective because many people do not pick up certified mail. This would not harm a property owner's right to notice because evidence still would be required to show the mail was sent.

**OPPONENTS
SAY:**

SB 1168 could grant a new power of sale to POAs that did not have one previously. Many POAs have the right of foreclosure contained in their

dedicatory instruments, but it is different from a power of sale.

For the two main categories of foreclosure, judicial and non-judicial, judicial foreclosure is available if a POA's dedicatory instrument contains the right to foreclosure, while a non-judicial foreclosure is available only if the instrument contains a power of sale. The bill could create a power of sale for a POA with a right of foreclosure and allow POAs to circumvent the judicial system.

The bill would authorize a POA to send notice of an owner's delinquent payments to superior lienholders before it foreclosed on the property. The lien of a superior lienholder is not threatened by the foreclosure of a subordinate lienholder. This would allow a POA to involve a lienholder, such as a bank that provided a mortgage, to pressure the owner into paying whatever assessments the POA believed it was owed.

SB 1168 would allow POAs to send notice to an owner via verified mail when the POA sought certain enforcement actions against a homeowner. Removing the requirement of certified mail could weaken the owner's right to notice.

NOTES:

The House companion bill, HB 2797 by Villalba, was sent to the Local and Consent Calendars Committee on April 28.