

SUBJECT: Modifying and introducing regulations for property owners' associations

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 6 ayes — C. Turner, Hefner, Cain, Crockett, Ordaz Perez, Patterson

1 nay — Lambert

2 absent — Shine, S. Thompson

WITNESSES: For — J.D. Hale, Texas Association of Builders; Marvin Jolly and Burt Solomons, Texas Realtors; David Kahne; (*Registered, but did not testify*: Nancy Kozanecki, HOA Reform Coalition; Daniel Gonzalez and Julia Parenteau, Texas Realtors)

Against — John Krueger, Associa; Kevin Autin, Crystal Falls HOA; Connie Heyer, Texas Community Association Advocates; Linda Badilo; (*Registered, but did not testify*: Jay Propes, Spectrum Association Management)

On — (*Registered, but did not testify*: Tony Slagle, Texas Real Estate Commission)

DIGEST: CSHB 3367 would modify certain existing regulations and introduce new provisions relating to property owners' associations.

Resale certificate fee cap. The bill would cap a fee charged by a property owners' association to assemble, copy, and deliver a resale certificate to an owner at \$250, and cap a fee to prepare and deliver a resale certificate update at \$30.

Damages. The bill would specify that if a property owners' association failed to deliver required information related to a subdivision before the fifth business day, rather than the seventh day, after the second request for the information was mailed or delivered, the owner could seek a judgement against the property owners' association for actual damages,

instead of the \$500 cap under current law. The bill also would specify that attorney's fees for which an owner sought a judgment against an association would have to be reasonable.

Website. The bill would require a property owners' association to make the current version of the association's dedicatory instruments relating to the association or subdivision available on the homepage of an internet website, accessible to association members, that was maintained by the association or a management company on behalf of the association.

Management certificates. The bill would add to the list of information a property owners' association had to record on a management certificate:

- any amendments to a declaration;
- the telephone number and email address of the person managing the association or the association's designated representative; and
- the website address where the association's dedicatory instruments were located.

A property owners' association would have to record an amended management certificate in each county in which any portion of a residential subdivision was located.

By the seventh day after the date a property owners' association filed a management certificate or amended management certificate for recording, the association would have to electronically file the certificate or amended certificate with the Texas Real Estate Commission (TREC). TREC only would collect a certificate or amended certificate for the purpose of making the data accessible to the general public through an internet website. This provision would take effect December 1, 2021, and TREC would have to establish and make available the system necessary for electronic filing of management certificates by that date.

A property owners' association that had on or before December 1, 2021, recorded a management certificate or amended management certificate with a county clerk would have to electronically file the most recently

recorded certificate with TREC no later than June 1, 2022.

With certain exceptions, a property owners' association and its officers, directors, employees, and agents would not be liable to any person for a delay in recording or failure to record a management certificate with a county clerk's office or electronically file the certificate with TREC.

An owner would not be liable for attorney's fees incurred by a property owners' association relating to the collection of a delinquent assessment against the owner or interest on the amount of a delinquent assessment if the fees were incurred by the association or the interest accrued during the period a management certificate was not recorded with a county clerk or electronically filed with TREC.

Architectural review authority. The bill would define an "architectural review authority" as the governing authority for the review and approval of improvements within a subdivision.

Provisions related to an architectural review authority would apply only to a property owners' association that consisted of more than 40 lots and would not apply during a development period or during an period in which the declarant:

- appointed at least a majority of the members of the architectural review authority or otherwise controlled the appointment of the authority; or
- had the right to veto or modify a decision of the authority.

Authority membership restrictions. A person could not be appointed or elected to serve on an architectural review authority if the person was a current property owners' association board member, a current board member's spouse, a person related to a current board member within the second degree of consanguinity, or a person residing in a current board member's household.

Notice. A decision by the architectural review authority denying an

application or request by an owner for the construction of improvements in the subdivision could be appealed to the board. A written notice of the denial would have to be provided to the owner by certified mail, hand delivery, or electronic delivery. The notice would have to:

- describe the basis for the denial in reasonable detail and changes, if any, to the application or improvements required as a condition to approval; and
- inform the owner that the owner could request a hearing on or before the 30th day after the date the notice was mailed.

Hearings. The board would have to hold a hearing not later than the 30th day after the date the board received the owner's request for a hearing and would have to notify the owner of the date, time, and place of the hearing not later than the 10th day before the date of the hearing. Only one hearing would be required.

During a hearing, the board or the designated representative of the property owners' association and the owner or the owner's designated representative would each be provided the opportunity to discuss, verify facts, and resolve the denial of the owner's application or request for the construction of improvements, and the changes, if any, requested by the architectural review authority in the notice provided to the owner.

The board or owner could request a postponement. If requested, a postponement would have to be granted for a period of not more than 10 days. Additional postponements could be granted by agreement of the parties.

The property owners' association or the owner could make an audio recording of the meeting.

Open board meetings. The bill would require notices to members of a regular or special board meeting of a property owners' association to be provided at least 144 hours, rather than 72 hours, before the start of regular board meeting and at least 72 hours before the start of a special

board meeting. Notice would have to be posted on the home page of any internet website accessible by association members that was maintained by the association, including a website maintained by a management company on behalf of the association.

The bill would specify that a board could not, unless in an open meeting for which prior notice to owners was given, consider or vote on the approval of any amendment of an annual budget.

Attorney's fees and collection costs. CSHB 3367 would specify that certain attorney's fees, third party collection costs, and assessed fines to which a payment received by a property owners' association from an owner would be applied would have to be reasonable. The bill would change from 30 days to 45 days the period in which an owner could cure a delinquency before further collection action was taken.

Credit reporting services. The bill would require a property owners' association to give written notice to an owner by certified mail before reporting any delinquency of an owner to a credit reporting service. A property owners' association or the association's collection agent could not report any delinquent fines, fees, or assessments to a credit reporting service that were the subject of a pending dispute between the owner and the association.

An association could report delinquent payment history assessments, fines, and fees of property owners within its jurisdiction to a credit reporting service only if:

- at least 30 business days before reporting to a credit reporting service, the association sent a detailed report of all delinquent charges owed; and
- a property owner had been given the opportunity to enter into a payment plan.

The bill's provisions relating to credit reporting would apply only to a fine, fee, or assessment that became due on or after the bill's effective

date.

Hearings. The bill would require that certain hearings related to dispute resolution be held before the board, rather than allowing such hearings to be held before a board-appointed committee.

A property owners' association would have to provide to an owner a packet containing all documents, photographs, and communications relating to the matter the association intended to introduce at the hearing no later than 10 days before the hearing. If an association did not provide the information packet within the required period, an owner would be entitled to a 15-day postponement of the hearing.

During a hearing, a member of the association board or the association's designated representative would have to first present the association's case against the owner. An owner or the owner's designated representative would be entitled to rebut the association's information, present the owner's information, and present issues relevant to the appeal or dispute.

Lease and rental applicants. A property owners' association could request the following information be submitted to the association regarding a lease or rental applicant:

- contact information, including the name, mailing address, phone number, and email address of each person who would reside at a property in the subdivision under a lease; and
- the commencement date and term of the lease.

Repeals. The bill would repeal provisions authorizing sensitive personal information on a copy of a lease or rental agreement required by a property owners' association to be redacted or otherwise made unreadable or indecipherable. The bill also would repeal certain provisions related to restrictive covenants and make conforming changes.

The bill would take effect September 1, 2021, except as otherwise specified.

SUPPORTERS
SAY:

CSHB 3367 would balance the rights of property owners and property owners' associations by limiting excessive fees on resale certificates, requiring associations to maintain websites with information accessible to owners, requiring electronic filing of management certificates with the Texas Real Estate Commission (TREC), providing for an appeals process, and protecting owners from negative credit reports during pending disputes.

Resale certificate fee cap. The bill would address the excessively high costs some property owners' associations charge for resale certificates by placing a cap of \$250 for the preparation and issuance of such certificates. A statutory cap is needed because market competition is insufficient to rein in excessive fees on owners.

Website. Requiring property owners' associations in Texas to possess and maintain websites would help make useful information accessible to property owners and provide data to the state on the number of associations. Mandating websites would not be a burden on small property owners' associations or those without professional management because the bill's website requirements are simple and could be met without great expenditure or technical expertise.

Management certificates. The bill would make management certificates more accessible to the public by requiring property owners' associations to file such certificates electronically with TREC. This would not place an administrative burden on property owners' associations since it would be simple and easy to file such certificates with the commission.

Hearings. The bill would not create an adversarial environment between property owners and association boards in hearings but rather provide fairness to the proceedings and ensure that property owners had all necessary documents to articulate their appeals.

CRITICS
SAY:

CSHB 3367 could interfere in the relationship between property owners' associations and property owners with onerous and duplicative

regulations, setting a cap on resale certificate fees, and creating a potentially adversarial environment in board hearings. This could discourage individuals from volunteering to serve on association boards.

Resale certificate fee cap. The bill would place a statutory cap on the preparation and issuance of resale certificates, which take time and expertise to prepare. Capping fees at \$250 could discourage entities from providing preparation services and require property owners' associations to prepare the certificates themselves, despite lacking personnel or expertise to do so. Instead of a statutory cap, the market should regulate resale certificate fees.

Website. Requiring all property owners' associations to maintain a website and update certain information could be onerous for small associations and those without professional management. In addition, the information is available in public records at county clerks offices.

Management certificates. The bill would require the duplicative filing of management certificates with the Texas Real Estate Commission, creating an administrative burden for property owners' associations.

Hearings. The bill could inadvertently create an adversarial environment in hearings between property owners and association boards by over-regulating what should be informal, neighbor-to-neighbor proceedings.