

BILL ANALYSIS

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S.B. 1370
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

An estimated 57 million Americans live in more than 200,000 community associations, including approximately 4.8 million Texans who pay assessments of \$3.2 billion annually. Property owners' associations may be classified as a condominium association, a cooperative association, or a homeowners' association. In Texas, these entities are regulated under the Property Code. As the popularity of homeowners' associations increases, so does the potential for abuse. Existing statutory provisions regarding these associations do not provide adequate protection for homeowners.

S.B. 1370 ensures the basic private property rights of individuals residing within community associations by changing statutory provisions regarding disclosure of association dedicatory instruments, by-laws, and guidelines prior to homeownership; adequate descriptions of fees and fines assessed against homeowners; access to association books and records, including financial documents; and timely notice and the ability for homeowners to participate in the association.

As proposed, S.B. 1370 amends current law relating to meetings and records of and certain information provided by or concerning a property owners' association.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 5.012, Property Code, by amending Subsection (a) and adding Subsections (a-1), (f), and (g), as follows:

(a) Requires a seller of residential real property that is subject to membership in a property owners' association and that comprises not more than one dwelling unit located in this state to give to the purchaser of the property a certain notice. Sets forth the required language.

(a-1) Requires that the second paragraph of the notice prescribed by Subsection (a) be in bold print and underlined.

(f) Requires the seller, on the purchaser's request for a resale certificate from the seller, to:

(1) promptly deliver a copy of a current resale certificate if one has been issued for the property under Chapter 207 (Disclosure of Information by Property Owners' Associations); or

(2) if the seller does not have a current resale certificate:

(A) request the property owners' association or its agent to issue a resale certificate under Chapter 207; and

(B) promptly deliver a copy of the resale certificate to the purchaser on receipt of the resale certificate from the property owners' association or its agent.

(g) Requires the seller or the purchaser, as agreed to by the parties, to pay the fee to the property owners' association or its agent for issuing the resale certificate. Prohibits the property owners' association from processing a payment for a resale certificate requested under Chapter 207 until the certificate is available for delivery. Prohibits the association from charging a fee if the certificate is not provided in the time prescribed by Section 207.003(a) (relating to requiring a property owners' association to deliver to the owner, owner's agent, or title insurance company or its agent certain information).

SECTION 2. Amends Section 207.003(b), Property Code, to require that a resale certificate under Subsection (a) contains certain information, including a statement of any right of first refusal, other than a right of first refusal that is prohibited by statute, and any other restraint, rather than a statement of any right of first refusal or other restraint, contained in the restrictions or restrictive covenants that restricts the owner's right to transfer the owner's property; the amount and purpose of any special assessment that is due after the date the resale certificate is prepared; the style and cause number of any pending lawsuit in which the property owners' association is a party, other than a lawsuit relating to unpaid property taxes of an individual member of the association, rather than the style and cause number of any pending lawsuit in which the property owners' association is a defendant; and a statement of all fees associated with the transfer of ownership, including a description of each fee, to whom each fee is paid, and the amount of each fee.

SECTION 3. Amends Section 209.005, Property Code, as follows:

Sec. 209.005. ASSOCIATION RECORDS. (a) Provides that this section does not apply to a property owners' association that is subject to Chapter 552 (Public Information), Government Code, by application of Section 552.0036 (Certain Property Owners' Association Subject to Law), Government Code. Deletes existing text requiring a property owners' association to make the books and records of the association, including financial records, reasonably available to an owner in accordance with Section B, Article 2.23, Texas Non-Profit Corporation Act (Article 1396-2.23, V.T.C.S.).

(b) Creates this subsection from existing text. Deletes existing Subsection (a-1) designation. Requires a property owners' association, notwithstanding a provision in a dedicatory instrument, to make the books and records of the association, including financial records and invoices, open to and reasonably available for examination by an owner, except as otherwise provided by this section. Entitles an owner to obtain from the association copies of the information contained in the books and records. Deletes existing text requiring a property owners' association described by Section 552.0036(2) (relating to a property owners' association being subject to this chapter in the same manner as a governmental body under certain conditions), Government Code, to make the books and records of the association, including financial records and invoices, open to and reasonably available to any person requesting access to the books or records in accordance with Chapter 552, Government Code. Deletes existing text providing that Subsection (a) does not apply to a property owners' association to which this subsection applies.

(c) Redesignates existing Subsection (b) as Subsection (c). Makes no further changes.

(d) Requires a property owners' association, in addition to the requirements of Subsection (b), to make the association's books and records, including financial records and invoices, available in a building:

(1) in which the books and records are appropriately stored; and

(2) that is:

(A) staffed during normal business hours;

(B) accessible to an owner during normal business hours; and

(C) located on property commonly owned by the association within the boundaries of the subdivision governed by the association.

(e) Requires the property owners' association, if a building described by Subsection (d) does not exist on property described by Subsection (d), to make the books and records available in accordance with Subsections (g) and (h).

(f) Requires a requestor to submit the request in writing:

(1) in person by hand delivery to a current board member;

(2) to the mailing address of the association or authorized representative as provided on the most current management certificate filed under Section 209.004 (Management Certificates); or

(3) in person to a managing agent as reflected on the most current management certificate filed under Section 209.004.

(g) Requires a property owners' association to make books and records requested under Subsection (b) available to the requestor within a reasonable time of the property owners' association's receipt of the request.

(h) Provides that a reasonable time for providing information requested under Subsection (b) is 10 business days after the date the property owners' association receives a request, except as otherwise provided by this section.

(i) Requires the property owners' association, if the property owners' association is unable to produce a requested book or record on or before the 10th business day after the date the request is received, to provide to the requestor written notice that:

(1) informs the requestor that the property owners' association is unable to produce the information on or before the 10th business day after the date of the receipt of the request; and

(2) states a date by which the information will be available for inspection that occurs not later than the 30th day after the date notice under this subsection is given.

(j) Requires a property owners' association to make books and records requested under this section available to the requestor in one or more of the following formats, as specified by the requestor:

(1) an electronic format:

(A) delivered to an e-mail address provided by the requestor; or

(B) delivered in a disc or other standard electronic format:

(i) to the mailing address of the requestor; or

(ii) if the requestor does not provide a mailing address, to the address of the requestor's property in the subdivision; or

(2) a hard-copy format:

(A) delivered to the mailing address of the requestor; or

(B) if the requestor does not provide a mailing address:

(i) mailed to the address of the requestor's property in the subdivision; or

(ii) made available at a location not more than 25 miles from the boundary of the subdivision governed by the association.

(k) Provides that this section does not require a property owners' association to staff a building described by Subsection (d).

(l) Authorizes a property owners' association to charge an owner for copies of the requested information in an amount that reasonably includes all costs related to reproducing the information, including costs of materials, labor, and overhead.

(m) Prohibits any information maintained by the association that is released under this section from identifying an individual owner or an individual owner's personal financial information. Authorizes information to be released in an aggregate manner that would not identify an individual owner.

(n) Provides that all ballots cast in an election that results in an amendment to a dedicatory instrument are records of the property owners' association subject to inspection under this section.

(o) Provides that all ballots cast in an election of property owners' association board or other committee members are considered records of the association but are prohibited from being made available for inspection under this section, except for the purposes of a recount, without a court order or subpoena. Requires the association to take reasonable measures to safeguard the security and privacy of those ballots.

(p) Requires a property owners' association to:

(1) keep all records as to changes to the dedicatory instruments in perpetuity;

(2) maintain and secure all ballots in association-wide elections for four years; and

(3) maintain records related to financial matters of the association, including assessments, fines, foreclosures, and enforcement actions, for at least seven years.

(q) Authorizes an owner who is denied access to or a copy of association books or records to which the owner is entitled under this section to file a petition with the justice of the peace of a justice precinct in which all or part of the subdivision that is governed by the association is located, requesting relief in accordance with this subsection. Authorizes the justice of peace, if the justice of the peace finds that the owner is entitled to access to or copies of the books or records, to grant one or more of the following remedies:

(1) a judgment against the property owners' association for a penalty of not more than \$1,500;

(2) a judgment against the property owners' association for court costs and attorney's fees incurred in connection with seeking a remedy under this section; or

(3) a judgment authorizing the owner or the owner's assignee to deduct the amounts awarded under Subdivisions (1) and (2) from any future regular or special assessments payable to the property owners' association.

(r) Defines, for the purposes of this section, "business day."

(s) Requires the owner, on or before the 10th day before the date an owner files a suit under this section, to provide notice to the other party of the person's intent to file suit under this section. Requires that the notice be sent by certified mail, return receipt requested, or delivered by the United States Postal Service with signature confirmation service.

SECTION 4. Amends Chapter 209, Property Code, by adding Sections 209.0051 and 209.0056, as follows:

Sec. 209.0051. OPEN BOARD MEETINGS. (a) Provides that this section does not apply to a property owners' association that is subject to Chapter 551 (Open Meetings), Government Code, by application of Section 551.0015 (Certain Property Owners' Associations Subject to Law), Government Code.

(b) Defines, in this section, "board meeting" and "development period."

(c) Provides that this section applies to a meeting of a property owners' association during the development period only if the meeting is conducted for the purpose of:

(1) adopting or amending the governing documents, including declarations, bylaws, rules, and regulations of the association;

(2) increasing the amount of regular assessments of the association or adopting or increasing a special assessment;

(3) electing non-developer board members of the association or establishing a process by which those members are elected; or

(4) changing the voting rights of members of the association.

(d) Provides that, except as provided by this section, a meeting of the property owners' association board or a committee or subcommittee of the board (board) is open to owners and is required to be held within the boundary of the subdivision governed by the association.

(e) Requires the board to keep a record of each regular, emergency, or special board meeting in the form of written minutes or an audio recording of the meeting. Requires that a record of a meeting state the subject of each motion or inquiry, regardless of whether the board takes action on the motion or inquiry, and indicate each vote, order, decision, or other action taken by the board. Requires the board to make meeting records, including approved minutes, available to an owner for inspection and copying on the owner's written request to the board or the board's representative. Requires the board to approve the minutes of a board meeting not later than the next regular board meeting.

(f) Requires the board to give owners notice of the date, hour, place, and subject of a regular or special board meeting, including a general description of any matters to be brought up for deliberation in executive session. Requires that the notice be mailed to each owner or:

(1) posted at least 72 hours before the start of the meeting in a conspicuous manner reasonably designed to provide notice to owners:

(A) in a place located on:

(i) the association's common property; or

(ii) other property located within the boundary of the subdivision governed by the association, with the property owner's consent; or

(B) on an Internet website maintained by the association; and

(2) sent by e-mail to each owner who registers an e-mail address with the property owners' association.

(g) Requires an owner who registers an e-mail address with the property owners' association as provided by Subsection (f)(2) to update the e-mail address if the address changes.

(h) Provides that, if the board recesses a regular or special board meeting to continue the following regular business day, the board is not required to post notice of the continued meeting if the recess is taken in good faith and not to circumvent this section. Requires the board, if a regular or special board meeting is continued to the following regular business day, and on that following day the board continues the meeting to another day, to give notice as required by this section of the meeting continued to that other day.

(i) Provides that, if at a regular, emergency, or special meeting, an owner makes an inquiry regarding a subject for which notice has not been given as required by this section, the notice provisions of this section do not apply to:

(1) a statement by the board of specific factual information given in response to the inquiry; or

(2) a recitation of existing policy in response to the inquiry.

(j) Requires that any deliberation of or decision relating to the subject of an inquiry made under Subsection (i) be limited to a proposal to place the subject on the agenda for a subsequent board meeting.

(k) Authorizes the board, in the event of a reasonably unforeseen emergency or urgent necessity that requires immediate board action, to meet in an emergency board meeting. Authorizes that notice for an emergency board meeting be given in at least one manner prescribed by Subsection (f)(1) at least two hours before the emergency session is convened and must clearly identify the emergency or urgent necessity for which the notice is given. Prohibits a board in an emergency meeting from considering fines, foreclosures, enforcement actions, increases in assessments, or any other foreseeable business or policy over which the board has responsibility. Requires that any action taken in an emergency board meeting be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes or tape recording of the next regular or special board meeting.

(l) Requires the board, before the board calls an executive session, to convene in a regular or special board meeting for which notice has been given as provided by this section. Authorizes the presiding board member, during that board meeting, to call an executive session by announcing that an executive session will be held to deliberate a matter described by Subsection (m) and identifying the specific

subdivision of Subsection (m) under which the executive session will be held. Prohibits a vote or other action item from being taken in executive session.

(m) Authorizes a board of a property owners' association to meet in executive session, to which the owners do not have access, to deliberate:

(1) anticipated or pending litigation, settlement offers, or interpretations of the law with the association's legal counsel;

(2) complaints or charges against or issues regarding a board member, or agent, employee, contractor, or other representative of the property owners' association;

(3) a payment plan under which an owner may make partial payments to the property owners' association for delinquent assessments or other amounts owed without accruing additional penalties;

(4) a foreclosure of a lien;

(5) an enforcement action against an owner, including for nonpayment of amounts due;

(6) the purchase, exchange, lease, or value of real property, if the board determines in good faith that deliberation in an open board meeting may have a detrimental effect on the association;

(7) business and financial issues relating to the negotiation of a contract, if the board determines in good faith that deliberation in an open board meeting may have a detrimental effect on the position of the association; or

(8) matters involving the invasion of privacy of an individual owner.

Sec. 209.0056. NOTICE OF ELECTION OR ASSOCIATION VOTE. (a) Requires a property owners' association, on or before the 30th day before the date an election or vote is held by a property owners' association, to give each owner of property in the property owners' association written notice of the election or vote.

(b) Provides that this section supersedes any contrary requirement in a dedicatory instrument.

(c) Provides that this section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

SECTION 5. (a) Makes application of Section 5.012, Property Code, as amended by this Act, prospective.

(b) Makes application of Sections 207.003 and 209.005, Property Code, as amended by this Act, prospective.

SECTION 6. Effective date: January 1, 2012.