

## **BILL ANALYSIS**

Senate Research Center  
87R19620 MWC-F

C.S.S.B. 1588  
By: Hughes  
Business & Commerce  
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Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

It is estimated there are nearly six million Texans living in homes that are governed by a property owners' association. There are a wide variety of property owners' associations operating throughout Texas, but the total number of these entities is unknown. Many Texans prefer and seek out the orderly structure of a managed community; but living in a property owners' association is not without challenges for current and prospective residents. In addition to complex operating procedures and rules, many homeowners believe there is an imbalance of power between property owners' associations and owners.

S.B. 1588 seeks to address these issues by reforming the statutes governing homeowners' associations (HOAs) to ensure their operations are transparent and resident-friendly and provide an appropriate balance between private property rights and agreed-upon community standards.

S.B. 1588 addresses HOA powers regarding restrictive covenants found in Texas Property Code Chapter 204. Currently, this section is bracketed to properties in Harris County and two adjacent counties, and S.B. 1588 would remove those brackets and apply the standards to properties around the state in the same manner as is currently in Chapter 209.

S.B. 1588 also ensures property owners are protected from some conflicts of interest in their governing boards and sets reasonable and necessary fees for production of resale certificates. Additionally, in order to create a central database of property owners' associations, S.B. 1588 requires HOA management certificates to be filed with their county (current law) and the Texas Real Estate Commission (TREC), but does not give TREC any regulatory oversight of those entities. Failure to properly file would invalidate the HOA's lien authority. S.B. 1588 also requires management certificates and meeting information to be posted on the HOA's website so it is accessible to property owners, and extends the meeting notice timeline.

S.B. 1588 also seeks to protect property owners from negative credit reporting in cases where a fee is in dispute, and requires written notice to the owner before such reporting occurs. Also, it ensures property owners retain due process protections, such as presentation of evidence and the opportunity to appeal architectural standards or other violation decisions and affirms legislative intent of H.B. 2489 in the 84th Legislature to protect owners and tenants by specifying HOAs may not require access to lease agreements.

(Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 1588 amends current law relating to the powers and duties of certain property owners' associations.

### **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 207.003(c), Property Code, as follows:

(c) Authorizes a property owners' association (association) to charge a reasonable and necessary fee, not to exceed \$250, rather than a reasonable fee, to assemble, copy, and deliver the information required by Section 207.003 (Delivery of Subdivision Information to Owner) and to charge a reasonable and necessary fee, not to exceed \$30, rather than a reasonable fee, to prepare and deliver an update of a resale certificate under Subsection (f) (relating to the requirement that a property owners' association deliver by a certain to an owner, owner's agent, or title insurance company or its agent an updated resale certificate that contains certain information).

SECTION 2. Amends Section 207.004(b), Property Code, as follows:

(b) Provides that if an association fails to deliver the information required under Section 207.003 before the fifth business day, rather than the seventh day, after the second request for the information was mailed by certified mail, return receipt requested, or hand delivered, evidenced by receipt, the owner:

(1) is authorized to seek one or any combination of the following:

(A) makes no changes to this paragraph;

(B) a judgment against the association for actual damages, rather than a judgment against the association for not more than \$500;

(C) a judgement against the association for court costs and reasonable attorney's fees, rather than for court costs and attorney's fees; or

(D) makes no changes to this paragraph; and

(2) makes no changes to this subdivision.

SECTION 3. Amends Section 207.006, Property Code, as follows:

Sec. 207.006. ONLINE SUBDIVISION INFORMATION REQUIRED. Requires an association to make the current version of the association's dedicatory instruments relating to the association or subdivision and filed in the county deed records available on the homepage of an Internet website accessible to association members that is maintained by the association or by a management company on behalf of the association. Makes nonsubstantive changes.

SECTION 4. Amends Section 209.004, Property Code, by amending Subsections (a), (b), (c), and (e) and adding Subsection (b-1), as follows:

(a) Requires an association to record in each county in which any portion of the residential subdivision is located a management certificate, signed and acknowledged by an officer or the managing agent of the association, stating certain information, including any amendments to the declaration, certain contact information of the person managing the association or the association's designated representative, and the website address of any Internet website on which the association's dedicatory instruments are available in accordance with Section 207.006. Makes nonsubstantive changes.

(b) Requires the association to record an amended management certificate in each county in which any portion of the residential subdivision is located, rather than record an amended management certificate, not later than the 30th day after the date the association has notice of a change in any information in the recorded certificate required by Subsection (a).

(b-1) Requires an association, not later than the seventh day after the date the association files a management certificate for recording under Subsection (a) or files an amended management certificate for recording under Subsection (b), to electronically file the management certificate or amended management certificate with the Texas Real Estate

Commission (TREC). Requires TREC to only collect the management certificate and amended management certificate for the purpose of making the data accessible to the general public through an Internet website.

(c) Provides that, except as provided under Subsections (d) (relating to a certain actor involving property in a transaction involving property in the property owners' association not being liable for certain debts if a property owners' association fails to record a certain management certificate) and (e), the association and its officers, directors, employees, and agents are not subject to liability 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 management certificate with TREC, unless the delay or failure is wilful or caused by gross negligence.

(e) Provides that an owner is not liable for attorney's fees incurred by an association relating to the collection of a delinquent assessment against the owner or interest on the amount of a delinquent assessment if the attorney's fees are incurred by the association or the interest accrues during the period a management certificate is not recorded with a county clerk or electronically filed with TREC as required by Section 209.004 (Management Certificates).

SECTION 5. Amends Chapter 209, Property Code, by adding Section 209.00505, as follows:

Sec. 209.00505. ARCHITECTURAL REVIEW AUTHORITY. (a) Defines "architectural review authority."

(b) Provides that this section:

(1) applies only to an association that consists of more than 40 lots; and

(2) does not apply during a development period or during any period in which the declarant appoints at least a majority of the members of the architectural review authority or otherwise controls the appointment of the architectural review authority, or in which the declarant has the right to veto or modify a decision of the architectural review authority.

(c) Prohibits a person from being appointed or elected to serve on an architectural review authority if the person is a current association board (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.

(d) Authorizes a decision by the architectural review authority denying an application or request by an owner for the construction of improvements in the subdivision to be appealed to the board. Requires that a written notice of the denial be provided to the owner by certified mail, hand delivery, or electronic delivery. Requires that the notice:

(1) 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

(2) inform the owner that the owner is authorized to request a hearing under Subsection (e) on or before the 30th day after the date the notice was mailed to the owner.

(e) Requires the board to hold a hearing under this section not later than the 30th day after the date the board receives the owner's request for a hearing and 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. Provides that only one hearing is required under this subsection.

(f) Provides that during a hearing, the board or the designated representative of the association and the owner or the owner's designated representative will 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 under Subsection (d).

(g) Authorizes the board or the owner to request a postponement. Requires that a postponement, if requested, be granted for a period of not more than 10 days. Authorizes additional postponements to be granted by agreement of the parties.

(h) Authorizes the association or the owner to make an audio recording of the meeting.

SECTION 6. Amends Sections 209.0051(e) and (h), Property Code, as follows:

(e) Requires that notice of the date, hour, place, and general subject of a regular or special board meeting be:

(1) makes no changes to this subdivision;

(2) provided at least 144 hours before the start of a regular board meeting and at least 72 hours before the start of a special board meeting, rather than provided at least 72 hours before the start of a meeting, by:

(A) posting the notice in a conspicuous manner reasonably designed to provide notice to association members:

(i) makes no changes to this subparagraph; or

(ii) on the home page of any Internet website accessible by association members that is maintained by the association or by a management company on behalf of the association, rather than on any Internet website maintained by the association or other Internet media; and

(B) makes no changes to this paragraph.

(h) Prohibits the board, unless done in an open meeting for which prior notice was given to owners under Subsection (e), from considering or voting on:

(1)-(6) makes no changes to these subdivisions;

(7) appeals from a denial of architectural review authority approval, rather than a denial of architectural control approval;

(8)-(10) makes no changes to these subdivisions;

(11) the approval of an annual budget or the approval of an amendment of an annual budget, rather than the approval of an annual budget or the approval of an amendment of an annual budget that increases the budget by more than 10 percent; or

(12)-(15) makes no changes to these subdivisions.

SECTION 7. Amends Section 209.0055(a), Property Code, as follows:

(a) Provides that Section 209.0055 (Voting) applies only to certain associations, including an association that provides maintenance, preservation, and architectural review authority, rather than architectural control, of residential and commercial property within a defined geographic area in a county with a population of 2.8 million or more.

SECTION 8. Amends Section 209.006(a), Property Code, as follows:

(a) Requires an association or its agent to give written notice to an owner by certified mail before suspending certain rights of the owner, including the owner's right to report any delinquency of an owner to a credit reporting agency or bureau.

SECTION 9. Amends Section 209.0063(a), Property Code, as follows:

(a) Requires that a payment received by an association from the owner, except as provided by Subsection (b) (relating to a property owner being in default under a payment plan entered into with the association if the property owners' association receives a payment from the owner at the time), be applied to the owner's debt in the following order of priority:

(1) and (2) makes no changes to these subdivisions;

(3) any reasonable attorney's fees or reasonable third party collection costs, rather than any attorney's fees or third party collection costs, incurred by the association associated solely with assessments or any other charge that could provide the basis for foreclosure;

(4) any reasonable attorney's fees, rather than any attorney's fees, incurred by the association that are not subject to Subdivision (3);

(5) any reasonable fines, rather than any fines, assessed by the association; and

(6) any other reasonable amount, rather than any other amount, owed to the association.

SECTION 10. Amends Section 209.0064(b), Property Code, as follows:

(b) Prohibits an association from holding an owner liable for fees of a collection agent retained by the association unless the association first provides written notice to the owner by certified mail that:

(1) and (2) makes no changes to these subdivisions; and

(3) provides a period of at least 45 days, rather than at least 30 days, for the owner to cure the delinquency before further collection action is taken.

SECTION 11. Amends Chapter 209, Property Code, by adding Section 209.0065, as follows:

Sec. 209.0065. CREDIT REPORTING SERVICES. (a) Prohibits an association or the association's collection agent from reporting any delinquent fines, fees, or assessments to a credit reporting service that are the subject of a pending dispute between the owner and the association.

(b) Authorizes an association to report delinquent payment history assessments, fines, and fees of property owners within its jurisdiction to a credit reporting service only if:

(1) at least 30 business days before reporting to a credit reporting service, the association sends, via certified mail, hand delivery, electronic delivery, or by other delivery means acceptable between the parties, a detailed report of all delinquent charges owed; and

(2) a property owner has been given the opportunity to enter into a payment plan.

SECTION 12. Amends Section 209.007, Property Code, by amending Subsection (a) and adding Subsections (f), (g), and (h), as follows:

(a) Provides that, except as provided by Subsection (d) (relating to the conditions in which notice and hearing provisions of Section 209.006 (Notice Required Before Enforcement Action) and Section 209.007 (Hearing Before Board; Alternative Dispute Resolution) do not apply) and only if the owner is entitled to an opportunity to cure the violation, the owner has the right to submit a written request for a hearing to discuss and verify facts and resolve the matter in issue before the board, rather than before a committee appointed by the board or before the board if the board does not appoint a committee.

(f) Requires the association, not later than 10 days before the association holds a hearing under Section 209.007, to provide to an owner a packet containing all documents, photographs, and communications relating to the matter the association intends to introduce at the hearing.

(g) Entitles an owner to an automatic 15-day postponement of the hearing if an association does not provide a packet within the period described by Subsection (f).

(h) Requires a member of the board or the association's designated representative, during a hearing, to first present the association's case against the owner. Entitles an owner or the owner's designated representative to rebut the association's information, present the owner's information, and present issues relevant to the appeal or dispute.

SECTION 13. Amends Section 209.015(c), Property Code, to make a conforming change.

SECTION 14. Amends Section 209.016, Property Code, by amending Subsection (d) and adding Subsection (e), as follows:

(d) Deletes existing text providing an exception under Subsection (b) (relating to the prohibition of a property owner's association to adopt or enforce provisions in a certain dedicatory instrument). Makes a nonsubstantive change.

(e) Authorizes an association to request certain information to be submitted to the association regarding a lease or rental applicant.

SECTION 15. (1) Repealers: Sections 204.003(c) (relating to the applicability of Subsection (b) to a certain residential subdivision other than a gated community with private streets) and (d) (relating to the authorization that a document creating restrictions that provides for the extension or renewal of restrictions and does not provide for modification or amendment of restrictions be modified), Property Code.

(2) Repealer: Section 209.007(b) (relating to requiring that a notice of a hearing must state that the owner has the right to appeal the committee's decision to the board by written notice to the board), Property Code.

(3) Repealers: Sections 209.016(a) (related to defining "sensitive personal information") and (c) (relating to authorizing any sensitive personal information to be redacted in a copy of the lease or rental agreement required by the association), Property Code.

SECTION 16. (a) Requires TREC, not later than December 1, 2021, to establish and make available the system necessary for the electronic filing of management certificates and amended management certificates as required under Section 209.004(b-1), Property Code, as added by this Act.

(b) Requires an association that has on or before December 1, 2021, recorded a management certificate or amended management certificate with a county clerk under Section 209.004, Property Code, notwithstanding Section 209.004(b-1), Property Code,

as added by this Act, to electronically file the most recently recorded management certificate or amended management certificate with TREC not later than June 1, 2022.

SECTION 17. Makes application of Section 209.0065, Property Code, as added by this Act, prospective.

SECTION 18. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2021.

(b) Effective date, Section 209.004(b-1), Property Code, as added by this Act: December 1, 2021.