

S.B. No. 1588

AN ACT

relating to the powers and duties of certain property owners' associations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 202.006, Property Code, is amended by adding Subsection (c) to read as follows:

(c) A property owners' association may not collect a regular assessment, as defined by Section 209.002, if the dedicatory instrument authorizing the collection of the regular assessment is not filed as required by Subsection (a).

SECTION 2. Sections 202.018(a) and (b), Property Code, are amended to read as follows:

(a) Except as otherwise provided by this section, a property owners' association may not enforce or adopt a provision in a dedicatory instrument, including a restrictive covenant, that prohibits a property owner or resident from displaying or affixing **on the [entry to the] owner's or resident's property or dwelling one or more religious items the display of which is motivated by the owner's or resident's sincere religious belief.**

(b) This section does not prohibit the enforcement or adoption of a provision in a dedicatory instrument, including a restrictive covenant, that, to the extent allowed by the constitution of this state and the United States, prohibits the display or affixing of a religious item on the [entry to the] owner's or resident's property or dwelling that:

- (1) threatens the public health or safety;
 - (2) violates a law other than a law prohibiting the display of religious speech;
 - (3) contains language, graphics, or any display that is patently offensive to a passerby for reasons other than its religious content;
 - (4) is installed on property:
 - (A) owned or maintained by the property owners' association; or
 - (B) owned in common by members of the property owners' association;
 - (5) **violates any applicable building line, right-of-way, setback, or easement;** or
 - (6) is attached to a traffic control device, street lamp, fire hydrant, or utility sign, pole, or fixture [in a location other than the entry door or door frame or extends past the outer edge of the door frame of the owner's or resident's dwelling; or
- [(5) individually or in combination with each other religious item displayed or affixed on the entry door or door frame has a total size of greater than 25 square inches].

SECTION 3. Chapter 202, Property Code, is amended by adding Section 202.022 to read as follows:

Sec. 202.022. **SWIMMING POOL ENCLOSURES.** (a) In this section, "swimming pool enclosure" means a fence that:

- (1) surrounds a water feature, including a swimming pool or spa;
- (2) consists of transparent mesh or clear panels set in metal frames;
- (3) is not more than six feet in height; and
- (4) is designed to not be climbable.

(b) A property owners' association:

(1) may not adopt or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner from installing on the property owner's property a swimming pool enclosure that conforms to applicable state or local safety requirements; and

(2) may adopt and enforce a provision in a dedicatory instrument establishing limitations related to the appearance of a swimming pool enclosure, including limitations establishing permissible colors for a swimming pool enclosure, provided that the provision does not prohibit a swimming pool enclosure that is black in color and consists of transparent mesh set in metal frames.

SECTION 4. Chapter 202, Property Code, is amended by adding Section 202.023 to read as follows:

Sec. 202.023. **SECURITY MEASURES.** (a) This section does not apply to:

- (1) a condominium as defined by Section 81.002 or 82.003; or
- (2) a master mixed-use property owners' association subject to Chapter 215.

(b) Except as provided by Subsection (c), **a property owners' association may not adopt or enforce a restrictive covenant that prevents a property owner from building or installing security measures, including but not limited to a security camera, motion detector, or perimeter fence.**

(c) This section does not prohibit a property owners' association from:

- (1) prohibiting the installation of a security camera by a property owner in a place other than the property owner's private property; or
- (2) **regulating the type of fencing that a property owner may install.**

SECTION 5. Section 207.001, Property Code, is amended by adding Subdivision (2-a) to read as follows:

(2-a) "Management company" has the meaning assigned by Section 209.002.

SECTION 6. Section 207.003(c), Property Code, is amended to read as follows:

(c) **A property owners' association may charge a reasonable and necessary fee, not to exceed \$375, to assemble, copy, and deliver the information required by this section and may charge a reasonable and necessary fee, not to exceed \$75, to prepare and deliver an update of a resale certificate under Subsection (f).**

SECTION 7. Section 207.004(b), Property Code, is amended to read as follows:

(b) If a property owners' association fails to deliver the information required under Section 207.003 before the **fifth business** [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) may seek one or any combination of the following:

(A) a court order directing the property owners' association to furnish the required information;

(B) a judgment against the property owners' association for not more than \$5,000 [\$500];

(C) a judgment against the property owners' association for court costs and reasonable attorney's fees; or

(D) a judgment authorizing the owner or the owner's assignee to deduct the amounts awarded under Paragraphs (B) and (C) from any future regular or special assessments payable to the property owners' association; and

(2) may provide a buyer under contract to purchase the owner's property an affidavit that states that the owner, owner's agent, or title insurance company or its agent acting on behalf of the owner made, in accordance with this chapter, two written requests to the property owners' association for the information described in Section 207.003 and that the association did not timely provide the information.

SECTION 8. Section 207.006, Property Code, is amended to read as follows:

Sec. 207.006. **ONLINE SUBDIVISION INFORMATION REQUIRED.** (a) This section applies only to:

(1) the property owners' association of a subdivision composed of at least 60 lots;
or

(2) a property owners' association that has contracted with a management company.

(b) A property owners' association to which this section applies shall 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 an Internet [a] website: (1) maintained by [if] the association [has,] or a management company on behalf of the association; and

(2) available to association members [maintains, a publicly accessible website].

SECTION 9. Section 209.002, Property Code, is amended by adding Subdivision (5-a) to read as follows:

(5-a) "Management company" means a person or entity established or contracted to provide management or administrative services on behalf of a property owners' association.

SECTION 10. Section 209.004, Property Code, is amended by amending Subsections (a), (b), (c), and (e) and adding Subsection (b-1) to read as follows:

(a) A property owners' association shall 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:

- (1) the name of the subdivision;
- (2) the name of the association;
- (3) the recording data for the subdivision;
- (4) the recording data for the declaration and any amendments to the declaration;
- (5) the name and mailing address of the association;
- (6) the name, [and] mailing address, telephone number, and e-mail address of the person managing the association or the association's designated representative; [and]
- (7) **the website address of any Internet website on which the association's dedicatory instruments are available in accordance with Section 207.006;**
- (8) **the amount and description of a fee or fees charged by the association relating to a property transfer in the subdivision;** and
- (9) other information the association considers appropriate.

(b) The property owners' association shall record an amended management certificate in each county in which any portion of the residential subdivision is located 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) **Not later than the seventh day after the date a property owners' association files a management certificate for recording under Subsection (a) or files an amended management certificate for recording under Subsection (b), the property owners' association shall electronically file the management certificate or amended management certificate with the Texas Real Estate Commission. The Texas Real Estate Commission shall 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) Except as provided under Subsections (d) and (e), the property owners' 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 the Texas Real Estate Commission, **unless the delay or failure is wilful or caused by gross negligence.**

(e) A lien of a property owners' association that fails to file a management certificate or an amended management certificate under this section to secure an amount due on the effective date of a transfer to a bona fide purchaser is enforceable only for an amount incurred after the effective date of sale. An owner is not 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 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 the Texas Real Estate Commission as required by this section.

SECTION 11. Chapter 209, Property Code, is amended by adding Section 209.00505 to read as follows:

Sec. 209.00505. **ARCHITECTURAL REVIEW AUTHORITY.** (a) In this section, “architectural review authority” means the governing authority for the review and approval of improvements within a subdivision.

(b) This section:

(1) applies only to a property owners’ 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:

(A) appoints at least a majority of the members of the architectural review authority or otherwise controls the appointment of the architectural review authority; or

(B) has the right to veto or modify a decision of the architectural review authority.

(c) A person may not be appointed or elected to serve on an architectural review authority if the person is:

(1) a current board member;

(2) a current board member’s spouse; or

(3) a person residing in a current board member’s household.

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

(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 may request a hearing under Subsection (e) on or before the 30th day after the date the notice was mailed to the owner.

(e) The board shall 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 shall 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 is required under this subsection.

(f) During a hearing, the board or the designated representative of the property owners’ 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) The board or the owner may request a postponement. If requested, a postponement shall be granted for a period of not more than 10 days. Additional postponements may be granted by agreement of the parties.

(h) The property owners’ association or the owner may make an audio recording of the meeting.

(i) The board may affirm, modify, or reverse, in whole or in part, any decision of the architectural review authority as consistent with the subdivision’s declaration.

SECTION 12. Sections 209.0051(e) and (h), Property Code, are amended to read as follows:

(e) Members shall be given **notice of the date, hour, place, and general subject of a regular or special board meeting**, including a general description of any matter to be brought up for deliberation in executive session. The notice shall be:

(1) mailed to each property owner not later than the 10th day or earlier than the 60th day before the date of the meeting; or

(2) provided at least **144 [72] hours before the start of a regular board [the] meeting and at least 72 hours before the start of a special board meeting by:**

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

(i) in a place located on the association's common property or, with the property owner's consent, on other conspicuously located privately owned property within the subdivision; or

(ii) on any Internet website available to association members that is maintained by the association or by a management company on behalf of the association [other Internet media]; and

(B) sending the notice by e-mail to each owner who has registered an e-mail address with the association.

(h) Except as provided by this subsection, a board may take action outside of a meeting, including voting by electronic or telephonic means, without prior notice to owners under Subsection (e), if each board member is given a reasonable opportunity to express the board member's opinion to all other board members and to vote. Any action taken without notice to owners under Subsection (e) must be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes of the next regular or special board meeting. The board may not, unless done in an open meeting for which prior notice was given to owners under Subsection (e), consider or vote on:

- (1) fines;
- (2) damage assessments;
- (3) initiation of foreclosure actions;
- (4) initiation of enforcement actions, excluding temporary restraining orders or violations involving a threat to health or safety;
- (5) increases in assessments;
- (6) levying of special assessments;
- (7) appeals from a denial of architectural control approval;
- (8) a suspension of a right of a particular owner before the owner has an opportunity to attend a board meeting to present the owner's position, including any defense, on the issue;
- (9) lending or borrowing money;
- (10) the adoption or amendment of a dedicatory instrument;
- (11) 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 - deleted]**;
- (12) the sale or purchase of real property;
- (13) the filling of a vacancy on the board;
- (14) the construction of capital improvements other than the repair, replacement, or enhancement of existing capital improvements; or
- (15) the election of an officer.

SECTION 13. Section 209.0052, Property Code, is amended by adding Subsection (c) to read as follows:

(c) In addition to the other applicable requirements of this section, an association that proposes to contract for **services that will cost more than \$50,000** shall solicit **bids or proposals using a bid process established by the association.**

SECTION 14. Section 209.006(a), Property Code, is amended to read as follows:

(a) Before a property owners' association may suspend an owner's right to use a common area, file a suit against an owner other than a suit to collect a regular or special assessment or foreclose under an association's lien, charge an owner for property damage, [or] levy a fine for a violation of the restrictions or bylaws or rules of the association, **or report any delinquency of an owner to a credit reporting service**, the association or its agent must give written notice to the owner by certified mail.

SECTION 15. Section 209.0063(a), Property Code, is amended to read as follows:

(a) Except as provided by Subsection (b), a payment received by a property owners' association from the owner shall be applied to the owner's debt in the following order of priority:

- (1) any delinquent assessment;
- (2) any current assessment;
- (3) any reasonable attorney's fees or reasonable 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 incurred by the association that are not subject to Subdivision (3);
- (5) any reasonable fines assessed by the association; and
- (6) any other reasonable amount owed to the association.

SECTION 16. Section 209.0064(b), Property Code, is amended to read as follows:

(b) A **property owners' association may not hold 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) specifies each delinquent amount and the total amount of the payment required to make the account current;
- (2) if the association is subject to Section 209.0062 or the association's dedicatory instruments contain a requirement to offer a payment plan, describes the options the owner has to avoid having the account turned over to a collection agent, including information regarding availability of a payment plan through the association; and
- (3) provides a period of at least **45 [30] days** for the owner to cure the delinquency before further collection action is taken.

SECTION 17. Chapter 209, Property Code, is amended by adding Section 209.0065 to read as follows:

Sec. 209.0065. **CREDIT REPORTING SERVICES.** (a) A property owners' association or the association's collection agent **may not** report any delinquent fines, fees, or assessments to a credit reporting service that are the subject of a pending dispute between the owner and the property owners' association.

(b) A property owners' association **may** report the delinquent payment history of 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.

(c) A property owners' association **may not charge a fee** to an individual property owner for the reporting under Subsection (b) of the delinquent payment history of assessments, fines, and fees of property owners within the association's jurisdiction to a credit reporting service.

SECTION 18. Section 209.007, Property Code, is amended by amending Subsection (a) and adding Subsections (f), (g), and (h) to read as follows:

(a) Except as provided by Subsection (d) and only if [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 [a committee appointed by] the **board** [of the property owners' association or before the board if the board does not appoint a committee].

(f) **Not later than 10 days before the association holds a hearing under this section, the association shall 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) **If an association does not provide a packet within the period described by Subsection (f), an owner is entitled to an automatic 15-day postponement of the hearing.**

(h) **During a hearing, a member of the board or the association's designated representative shall first present the association's case against the owner. An owner or the owner's designated representative is entitled to present the owner's information and issues relevant to the appeal or dispute.**

SECTION 19. Section 209.015(c), Property Code, is amended to read as follows:

(c) An owner must obtain the approval of the property owners' association or, if applicable, an architectural review authority, as defined by Section 209.00505(a), [committee] established by the association or the association's dedicatory instruments, based on criteria prescribed by the dedicatory instruments specific to the use of a lot for residential purposes, including reasonable restrictions regarding size, location, shielding, and aesthetics of the residential purpose, before the owner begins the construction, placement, or erection of a building, structure, or other improvement for the residential purpose on an **adjacent lot**.

SECTION 20. Section 209.016, Property Code, is amended by amending Subsection (d) and adding Subsection (e) to read as follows:

(d) Nothing [Except as provided by Subsection (b), nothing] in this section shall be construed to prohibit the adoption or enforcement of a provision in a dedicatory instrument establishing a restriction relating to **occupancy or leasing**.

(e) A property owners' association may request the following information to be submitted to the association regarding a lease or rental applicant:

(1) contact information, including the name, mailing address, phone number, and e-mail address of each person who will reside at a property in the subdivision under a lease; and

(2) the commencement date and term of the lease.

SECTION 21. Chapter 209, Property Code, is amended by adding Section 209.017 to read as follows:

Sec. 209.017. **JUSTICE COURT JURISDICTION**. An owner of property in a subdivision may bring an action for a violation of this chapter against the property owners' association of the subdivision in the justice court of a precinct in which all or part of the subdivision is located.

SECTION 22. The following provisions of the Property Code are **repealed**:

- (1) Sections 202.018(c) and (d);
- (2) Section 209.007(b); and
- (3) Sections 209.016(a) and (c).

SECTION 23. (a) Not later than **December 1, 2021**, the Texas Real Estate Commission shall 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) Notwithstanding Section 209.004(b-1), Property Code, as added by this Act, a property owners' 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, shall electronically file the most recently recorded management certificate or amended management certificate with the Texas Real Estate Commission not later than **June 1, 2022**.

SECTION 24. Section 209.0052(c), Property Code, as added by this Act, applies only to a **contract for services proposed by a property owners' association on or after the effective date of this Act**.

SECTION 25. Section 209.0065, Property Code, as added by this Act, applies only to a **fine, fee, or assessment that becomes due on or after the effective date of this Act**. A fine, fee, or assessment that becomes due before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 26. Section 209.017, Property Code, as added by this Act, applies only to an action brought **on or after September 1, 2021**.

SECTION 27. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2021.

(b) Section 209.004(b-1), Property Code, as added by this Act, takes effect **December 1, 2021**.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1588 passed the Senate on April 28, 2021, by the following vote: Yeas 28, Nays 3; May 25, 2021, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 27, 2021, House granted request of the Senate; May 30, 2021, Senate adopted Conference Committee Report by the following vote: Yeas 28, Nays 3.

Secretary of the Senate

I hereby certify that S.B. No. 1588 passed the House, with amendments, on May 20, 2021, by the following vote: Yeas 144, Nays 2, one present not voting; May 27, 2021, House granted request of the Senate for appointment of Conference Committee; May 30, 2021, House adopted Conference Committee Report by the following vote: Yeas 139, Nays 4, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor