

S.B. No. 318

AN ACT relating to the records of certain condominium unit owners' associations.

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

SECTION 1. Section 82.114(b), Property Code, is amended to read as follows:

(b) All financial and other records of the association shall be reasonably available at its registered office or its principal office in this state for examination and production in accordance with Section 82.1141 [by a unit owner and the owner's agents. An attorney's files and records relating to the association are not records of the association and are not subject to inspection by unit owners or production in a legal proceeding].

SECTION 2. Subchapter C, Chapter 82, Property Code, is amended by adding Section 82.1141 to read as follows:

Sec. 82.1141. ACCESS TO ASSOCIATION RECORDS. (a) This section applies to all associations governed by this chapter and controls over other law not specifically applicable to an association.

(b) Notwithstanding a provision in a dedicatory instrument, an association shall make the books and records of the association, including financial records, open to and reasonably available for examination by a unit owner, or a person designated in a writing signed by the unit owner as the unit owner's agent, attorney, or certified public accountant, in accordance with this section. A unit owner is entitled to obtain from the association copies of information contained in the books and records.

(c) Except as provided by this subsection, an attorney's files and records relating to the association, excluding invoices requested by a unit owner for attorney's fees and other costs relating only to a matter for which the association seeks reimbursement of fees and costs from the unit owner, are not records of the association and are not subject to inspection by the unit owner or production in a legal proceeding. If a document in an attorney's files and records relating to the association would be responsive to a legally authorized request to inspect or copy association documents, the document shall be produced by using the copy from the attorney's files and records if the association has not maintained a separate copy of the document. This subsection does not require production of a document that constitutes attorney work product or that is privileged as an attorney-client communication.

(d) A unit owner or the unit owner's authorized representative described by Subsection (b) must submit a written request for access or information under Subsection (b) by certified mail, with sufficient detail describing the association's books and records requested, to the mailing address of the association or authorized representative as reflected on the most current management certificate filed under Section 82.116. The request must contain an election either to inspect the books and records before obtaining copies or to have the association forward copies of the requested books and records and:

(1) if an inspection is requested, the association, on or before the 10th business day after the date the association receives the request, shall send written notice of dates during normal business hours that the unit owner may inspect the requested books and records to the extent those books and records are in the possession, custody, or control of the association; or

(2) if copies of identified books and records are requested, the association shall, to the extent those books and records are in the possession, custody, or control of the association, produce the requested books and records for the requesting party on or before the 10th business day after the date the association receives the request, except as otherwise provided by this section.

(e) If the association is unable to produce the books or records requested under Subsection (d) on or before the 10th business day after the date the association receives the request, the association must provide to the requestor written notice that:

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

(2) states a date by which the information will be sent or made available for inspection to the requesting party that is not later than the 15th business day after the date notice under this subsection is given.

(f) If an inspection is requested or required, the inspection shall take place at a mutually agreed on time during normal business hours, and the requesting party shall identify the books and records for the association to copy and forward to the requesting party.

(g) An association may produce books and records requested under this section in hard copy, electronic, or other format reasonably available to the association.

(h) An association board must adopt a records production and copying policy that prescribes the costs the association will charge for the compilation, production, and reproduction of information requested under this section. The prescribed charges may include all reasonable costs of materials, labor, and overhead but may not exceed costs that would be applicable for an item under 1 T.A.C. Section 70.3 for an item produced by the association and may not exceed actual costs for an item produced by a third party. The policy required by this subsection must be recorded as a dedicatory instrument in accordance with Section 202.006. An association may not charge a unit owner for the compilation, production, or reproduction of information requested under this section unless the policy prescribing those costs has been recorded as required by this subsection. A unit owner is responsible for costs related to the compilation, production, and reproduction of the requested information in the amounts prescribed by the policy adopted under this subsection. The association may require advance payment of the estimated costs of compilation, production, and reproduction of the requested information. If the estimated costs are lesser or greater than the actual costs, the association shall submit a final invoice to the unit owner on or before the 30th business day after the date the information is delivered. If the final invoice includes additional amounts due from the unit owner, the additional amounts, if not reimbursed to the association before the 30th business day after the date the invoice is sent to the unit owner, may be added to the unit owner's account as an assessment. If the estimated costs exceeded the final invoice amount, the unit owner is entitled to a refund, and the refund shall be issued to the unit owner not later than the 30th business day after the date the invoice is sent to the unit owner.

(i) An association must estimate costs under this section using amounts prescribed by the policy adopted under Subsection (h).

(j) Except as provided by Subsection (k) and to the extent the information is provided in the meeting minutes, the association is not required to release or allow inspection of any books or records that identify the dedicatory instrument violation history of an individual unit owner of an association, a unit owner's personal financial information, including records of payment or

nonpayment of amounts due the association, a unit owner's contact information, a unit owner's address, or information related to an employee of the association, including personnel files. Information may be released in an aggregate or summary manner that would not identify an individual unit owner.

(k) The books and records described by Subsection (j) shall be released or made available for inspection if:

(1) the express written approval of the unit owner whose records are the subject of the request for inspection is provided to the association; or

(2) a court orders the release of the books and records or orders that the books and records be made available for inspection.

(l) In addition to retaining records as necessary for compliance with Section 82.114, an association composed of eight or more units shall adopt and comply with a document retention policy that includes, at a minimum, the following requirements:

(1) certificates of formation, bylaws, dedicatory instruments, and all amendments to the certificates of formation, bylaws, and dedicatory instruments shall be retained permanently;

(2) financial books and records shall be retained for seven years;

(3) account records of current unit owners shall be retained for five years;

(4) contracts with a term of one year or more shall be retained for four years after the expiration of the contract term;

(5) minutes of meetings of the unit owners and the board shall be retained for seven years; and

(6) tax returns and audit records shall be retained for seven years.

(m) A member of an association who is denied access to or copies of association books or records to which the member is entitled under this section may file a petition with the justice of the peace of a justice precinct in which all or part of the condominium is located requesting relief in accordance with this subsection. If the justice of the peace finds that the member is entitled to access to or copies of the records, the justice of the peace may grant one or more of the following remedies:

(1) a judgment ordering the association to release or allow access to the books or records; or

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

(n) If the association prevails in an action under Subsection (m), the association is entitled to a judgment for court costs and attorney's fees incurred by the association in connection with the action.

(o) On or before the 10th business day before the date a person brings an action against an association under this section, the person must send written notice to the association of the person's intent to bring the action. The notice must:

(1) be sent certified mail, return receipt requested, or delivered by the United States Postal Service with signature confirmation service to the mailing address of the association or authorized representative as reflected on the most current management certificate filed under Section 82.116; and

(2) describe with sufficient detail the books and records being requested.

(p) For the purposes of this section, "business day" means a day other than Saturday, Sunday, or a state or federal holiday.

SECTION 3. Section 82.1141, Property Code, as added by this Act, applies only to a request for association records or information made on or after the effective date of this Act.

SECTION 4. This Act takes effect September 1, 2021.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 318 passed the Senate on May 5, 2021, by the following vote:
Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 318 passed the House on May 26, 2021, by the following vote:
Yeas 116, Nays 31, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor