

SUBJECT: Requirements for meetings, records of property owners' associations

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 8 ayes — Deshotel, Orr, Bohac, Garza, Giddings, S. Miller, Quintanilla, Workman

0 nays — None

1 absent — Solomons

WITNESSES: For — Sandra Denton, Texas Community Association Advocates; David Smith, Texas Neighborhoods Together; Susan Wright, Texas Association of Builders; (*Registered, but did not testify*: Pamela Bailey, Chaparral Management Company; Elaine Harris)

Against — Harvella Jones, The Texas Homeowners Advocate Group, The National Homeowners Advocate Group, L.L.C., The National HAGS Coalition; Yvonne Silva; (*Registered, but did not testify*: Irene Adolph, Coalition HOA for Reform, HOADATA.ORG; Janet Ahmad, Home Owners for Better Building, President, HOA Reform Coalition; Pat Carlson, Texas Eagle Forum; Robin Lent, HOA Reform Coalition; Lynn Walshak, HOA Reform Coalition)

On — Sylvia Silva Adams

BACKGROUND: In 2001, the 77th Legislature added Property Code, ch. 209, the Texas Residential Property Owners Protection Act, which applies to all mandatory homeowners' associations (HOAs) and establishes requirements for association records, voting, attorneys' fees, foreclosing on property, and other procedures.

DIGEST: CSHB 2761 would establish requirements to govern the access by property owners to the books and records of property owners associations and would require that association board meetings be open.

The bill would take effect January 1, 2012.

Records. CSHB 2761 would require that associations' books be open to owner's attorneys and certified public accountants, not just to owners, and that they be available to be examined, not just available. Owners would be entitled to obtain copies of the information in an association's books and records.

Owners or their attorneys or certified public accountants would have to submit a written request for access to information under this section. CSHB 2761 would detail how the request had to be made and would require that it be either a request to inspect the books and records before obtaining copies or a request for copies. The bill would establish deadlines for making books and records available. Inspections of books and records would have to take place at a mutually agreed time, during normal business hours. Books or records could be produced in hard copy, electronic, or other reasonably available format.

Owners would be responsible for costs of compiling and reproducing requested information, in an amount that reasonably included all related costs, including for materials, labor, and overhead. Associations could require advanced payment of the estimated costs. CSHB 2761 would establish a procedure for assessing and refunding these costs. If, after the bill's procedures were followed, a final invoice for the costs included an amount due from the owner and the owner did not pay the amount within the deadlines set by the bill, the costs could be added to the owner's account as an assessment.

Associations would not be required, other than in meeting minutes, to release or allow inspection of books or records that included certain identifying information about individual owners. The books and records would have to be released or made available for inspection if the individual owner whose records were subject to the request gave express, written approval or if a court ordered their release or ordered that they be made available.

Associations with more than 12 lots would have to adopt a records retention policy that conformed to the retention policy adopted by the Texas State Library and Archives Commission for all local governments. This would apply only to records generated on or after CSHB 2761's effective date.

CSHB 2761's provisions on producing books and records would apply only to requests for information received by an association on or after the bill's effective date. These provisions would apply to all property owners associations and would control over laws not specifically applicable to property owners' associations. However, they would not apply to certain property owners' associations in and near Harris County that currently are subject to the state public information/open records law.

Open board meetings. CSHB 2761 would establish requirements for association board meetings. Actions taken by boards at meetings held in violation of CSHB 2761 would be voidable.

Upon written request of an owner, associations would have to inform the owner of the time and place of the next board meeting. Meetings of a board would have to be open to owners unless the board adjourned and reconvened in a closed executive session that met criteria outlined in CSHB 2761. The general nature of business to be considered in an executive session would have to be announced at the open meeting.

If certain conditions were met, board meetings could be held by any method of communication, including electronic or by telephone, unless prohibited by an association's declaration, bylaws, or certificate of formation. Notice of the meeting, as required by law, would have to have been given. Each director would have to be able to hear and be heard by every other director. The meeting could not involve voting on certain actions against an individual owner before the owner had an opportunity to attend a meeting to present the owner's position.

If certain conditions were met, boards could act by unanimous, written consent of their directors without a meeting, unless such an action was prohibited by an association's declaration, bylaws, or certificate of formation. This could occur if a board's actions did not involve certain actions against an individual owner before the owner had an opportunity to attend a meeting to present the owner's position and if a record of a board's actions was filed in the meeting minutes.

These provisions would not apply to board meetings held during a development period.

SUPPORTERS
SAY:

CSHB 2761 would establish reasonable, fair requirements for access to property owners' association books and records and for open meetings of associations. CSHB 2761 would place these provisions in the Property Code section dealing with property associations so that they were uniform throughout the state and easily accessible and clear to all owners and associations.

Some property owners have had difficulty gaining access to the books and records of the homeowners associations to which they belong. This can make it hard for owners to monitor and provide oversight of a board. In some situations, associations may be acting in bad faith by not allowing access to books and records and in other situations it may simply be a misunderstanding about their obligations to owners. CSHB 2761 would clear up confusion on this issue and establish uniform requirements for the inspection of records.

By establishing clear deadlines on what both boards and owners were required to do to request and inspect association books and records, CSHB 2761 would be fair to both sides.

CSHB 2761 would strike a fair balance for owners and associations in allowing associations to charge owners for compiling records. It would be appropriate for this cost to be borne by those wanting the records, not the rest of the property owners in the association. CSHB 2761 would not put a per-page charge for records into the law because these costs could vary significantly depending on the records requested and could involve labor and overhead costs. The bill would limit the costs to those that were reasonable. Allowing these charges, if not paid as required by the bill, to be part of the assessment would fairly treat them like other expenses related to associations. To forestall these charges contributing to a foreclosure, CSHB 2761 would allow associations to require advance payment, and owners could request that they be allowed to prepay.

CSHB 2761 would ensure a uniform records retention policy by applying the Texas State Library and Archives Commission policy to associations. This policy is routinely updated by the commission, so associations would have the benefit of using a policy for both retention and deletion that took into account new media and other changes.

The open meetings provisions of CSHB 2761 would balance the needs of owners to monitor board meetings with flexibility the boards need to

conduct business. CSHB 2761 would require board meetings to occur in the open, while setting parameters for executive sessions if they were necessary. The bill would help ensure that owners knew when board meetings were held. Boards would have the flexibility to operate through teleconference, as long as certain conditions were met.

**OPPONENTS
SAY:**

While establishing requirements that property owners associations make their books, records, and meetings open and accessible is a good idea, some provisions of CSHB 2761 could be unfair to property owners. For example, the bill's open-ended language allowing associations to charge property owners for overhead and labor involved in copying books and records could result in owners being charged exorbitant amounts. It would be better to establish a reasonable, set, per-page charge for copying. In addition, it would be inappropriate to allow overdue copying charges to be added to an owners' account as an assessment which, eventually, could contribute to a foreclosure procedure against the owner.