

SUBJECT: Modifying regulations for a master mixed-use property owners association

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Oliveira, Bohac, Orr, E. Rodriguez, Villalba, Walle, Workman
0 nays

WITNESSES: For — Rick Bidne and Albert Zapanta, Las Colinas Association;
(*Registered, but did not testify:* Judd Austin, Texas Community
Advocates; Chuck Bailey, Las Colinas Association; Robert Burton;
Kassandra Kell, City of Irving; Worth Ross, Texas Community
Associations Advocates)

Against — None

BACKGROUND: Property Code, ch. 215 regulates a master mixed-use property owners association that, among other things, governs at least 6,000 acres of deed-restricted property with at least 10 incorporated residential and property owners associations and at least 3,400 platted residential and 400 platted commercial properties (Las Colinas).

Property Code, ch. 209 is the Texas Residential Property Owners Protection Act, which governs the rights of residential property owners and regulates homeowners associations. Property Code, sec. 209.007 applies to how owners may pursue a hearing before a homeowners association board and mechanisms for alternative dispute resolution; sec. 209.008 describes how attorney's fees are collected by the property owners association; sec. 209.011 describes how owners may redeem the property after a foreclosure by a property owners association on a lien; sec. 209.012 states that a property owners association may not amend a dedicatory instrument to get an easement without consent of the owner.

DIGEST: The bill would allow the master mixed-use property owners association to amend by a simple majority of the voters any declaration and supplementary declaration, including amendments, modifications or corrections.

Property Code, secs. 209.007, 209.008, 209.011, and 209.012 no longer

would apply to single-family residential properties in a master mixed-use property owners association, nor would any portion of Property Code, ch. 209, the Texas Residential Property Owners Act, apply to ch. 215, which regulates a master mixed-use property owners association.

CSHB 1824 would apply a number of provisions to a master mixed-use property owners association, including who, how, and when the association's records could be examined and released and the legal recourse for the owner if the request for records were denied.

The bill also outlines how the property owners association would notify a property owner of a violation and how the property owner could ameliorate the violation, such as requesting a board hearing, before enforcement action was taken.

The bill would take effect September 1, 2013.

**SUPPORTERS
SAY:**

CSHB 1824 would clarify legislation enacted by the 82nd Legislature in 2011, which created chapter 215 of the Property Code and related to the powers and duties of a master mixed-use property owners association. A master mixed-use property association, notably the one governing the 31,000-acre Las Colinas, is unique because it incorporates both commercial and residential property owners. The statute governing such an association needs to carefully balance the needs and rights of both types of property owners. CSHB 1824 would modify ch. 215 in this spirit, recognizing that provisions governing residential homeowners associations may not be appropriate for this type of property owners association.

CSHB 1824 would modify the method for voting on changes to dedicatory instruments — the documents that set forth the rules and policies for the planned development — to a simple majority of votes cast. The association currently allocates votes based on property values, which empowers commercial property owners over the residential property owners. These commercial property owners may be scattered throughout the United States and have a low rate of voter turnout, making the passage of amendments, modifications, or corrections almost impossible. The bill would empower local residents to make changes when needed.

The additions to code in the bill also would add a needed consistency and transparency to these types of property owners associations. It would set in

place a process for owners to request association records and for the association to issue notice before taking enforcement actions.

**OPPONENTS
SAY:**

The bill would remove protections from residential homeowners living in an area governed by a master mixed-use property owners association that they would otherwise have under a traditional homeowners association. One protection that would no longer apply to these residential homeowners is Property Code, sec. 209.012, which protects HOA members from an association granting itself an easement through or over an owner's lot.

**OTHER
OPPONENTS
SAY:**

By changing the method of voting on an amendment in the association's rules to a simple majority, CSHB 1824 would diminish the voting power of commercial property owners. This would be inconsistent with the previous methods, which allocated voting power based on property values, a more reasonable voting procedure for an organization mainly dedicated to preserving property values.