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

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

SECTION 1. Section 82.002(c), Property Code, is amended to read as follows:
(c) This section and the following sections apply to a condominium in this state for which the declaration was recorded before January 1, 1994: Sections 82.005, 82.006, 82.007, 82.053, 82.054, 82.102(a)(1)-(7), (a)(12)-(22), (f), and (g) [and (12)-(22)], 82.108, 82.111, 82.113, 82.114, 82.116, 82.118, 82.157, and 82.161. The definitions prescribed by Section 82.003 apply to a condominium in this state for which the declaration was recorded before January 1, 1994, to the extent the definitions do not conflict with the declaration. The sections listed in this subsection apply only with respect to events and circumstances occurring on or after January 1, 1994, and do not invalidate existing provisions of the declaration, bylaws, or plats or plans of a condominium for which the declaration was recorded before January 1, 1994.

SECTION 2. Section 82.003(a), Property Code, is amended by amending Subdivision (11) and adding Subdivision (11-a) to read as follows:
(11) "Declaration" means an [a recorded] instrument,
however denominated, that creates a condominium, and any [recorded] amendment to that instrument.

(11-a) "Dedicatory instrument" means each document governing the establishment, maintenance, or operation of a condominium regime. The term includes a declaration or similar instrument subjecting real property to:

(A) restrictive covenants, bylaws, or similar instruments governing the administration or operation of a unit owners' association;

(B) properly adopted rules and regulations of the unit owners' association; or

(C) all lawful amendments to the covenants, bylaws, instruments, rules, or regulations.

SECTION 3. Section 82.102, Property Code, is amended by amending Subsection (a) and adding Subsections (f) and (g) to read as follows:

(a) Unless otherwise provided by the declaration, the association, acting through its board, may:

(1) adopt and amend bylaws;

(2) adopt and amend budgets for revenues, expenditures, and reserves, and collect assessments for common expenses from unit owners;

(3) hire and terminate managing agents and other employees, agents, and independent contractors;

(4) institute, defend, intervene in, settle, or compromise litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting
the condominium;

(5) make contracts and incur liabilities relating to
the operation of the condominium;

(6) regulate the use, maintenance, repair,
replacement, modification, and appearance of the condominium;

(7) adopt and amend rules regulating the use,
occupancy, leasing or sale, maintenance, repair, modification, and
appearance of units and common elements, to the extent the
regulated actions affect common elements or other units;

(8) cause additional improvements to be made as a part
of the common elements;

(9) acquire, hold, encumber, and convey in its own
name any right, title, or interest to real or personal property,
except common elements of the condominium;

(10) grant easements, leases, licenses, and
concessions through or over the common elements;

(11) impose and receive payments, fees, or charges for
the use, rental, or operation of the common elements and for
services provided to unit owners;

(12) impose interest and late charges for late
payments of assessments, returned check charges, and, if notice and
an opportunity to be heard are given in accordance with Subsection
(d), reasonable fines for violations of the declaration, bylaws,
and rules of the association;

(13) adopt and amend rules regulating the collection
of delinquent assessments and the application of payments;

(14) adopt and amend rules regulating the termination
of utility service to a unit, the owner of which is delinquent in
the payment of an assessment that is used, in whole or in part, to
pay the cost of that utility;
(15) impose reasonable charges for preparing,
recording, or copying declaration amendments, resale certificates,
or statements of unpaid assessments;
(16) enter a unit for bona fide emergency purposes
when conditions present an imminent risk of harm or damage to the
common elements, another unit, or the occupants;
(17) [assign its right to future income, including the
right to receive common expense assessments, but only to the extent
the declaration so provides;
(18) ] suspend the voting privileges of or the use of
certain general common elements by an owner delinquent for more
than 30 days in the payment of assessments;
(18) ] purchase insurance and fidelity bonds it
considers appropriate or necessary;
(19) ] exercise any other powers conferred by the
declaration or bylaws;
(20) ] exercise any other powers that may be
exercised in this state by a corporation of the same type as the
association; and
(21) ] exercise any other powers necessary and
proper for the government and operation of the association.
(f) Except as provided by Subsection (g), the association by
resolution of the board of directors may:
(1) borrow money; and
(2) assign as collateral for the loan authorized by the resolution:

(A) the association's right to future income, including the right to receive assessments; and

(B) the association's lien rights.

(g) If a dedicatory instrument requires a vote of members of the association to borrow money or assign the association's right to future income or the association's lien rights, the loan or assignment must be approved as provided by the dedicatory instrument. The board may determine whether a vote for that purpose may be cast electronically, by absentee ballot, in person or by proxy at a meeting called for that purpose, or by written consent. If a lower approval threshold is not provided by the dedicatory instrument, approval requires the consent of owners holding 67 percent of all voting interests.

SECTION 4. Section 82.111, Property Code, is amended by amending Subsections (c), (i), and (j) and adding Subsections (k), (l), and (m) to read as follows:

(c) If the insurance described by Subsections (a) and (b) is not reasonably available, the association shall cause notice of that fact to be delivered or mailed to all unit owners and lienholders. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance the board considers appropriate to protect the condominium, the association, or the unit owners. Insurance policies maintained under Subsection (a) may provide for commercially reasonable deductibles as the board determines.
appropriate or necessary. This section does not affect the right of
a holder of a mortgage on a unit to require a unit owner to acquire
insurance in addition to that provided by the association.

(i) Except as provided by this section, any [Any] portion of
the condominium for which insurance is required that is damaged or
destroyed shall be promptly repaired or replaced by the association
unless the condominium is terminated, repair or replacement would
be illegal under any state or local health or safety statute or
ordinance, or at least 80 percent of the unit owners[, including
each owner of a unit or assigned limited common element that will
not be rebuilt or repaired,] vote to not rebuild. Each owner of a
unit may vote, regardless of whether the owner's unit or limited
common element has been damaged or destroyed. A vote may be cast
electronically or by written ballot if a meeting is not held for
that purpose or in person or by proxy at a meeting called for that
purpose. A vote to not rebuild does not increase an insurer's
liability to loss payment obligation under a policy, and the vote
does not cause a presumption of total loss. Except as provided by
this section, the [The] cost of repair or replacement in excess of
the insurance proceeds [and reserves] is a common expense, and the
board may levy an assessment to pay the expenses in accordance with
each owner's common expense liability. If the entire condominium is
not repaired or replaced, any insurance proceeds attributable to
the damaged common elements shall be used to restore the damaged
area to a condition compatible with the remainder of the
condominium, the insurance proceeds attributable to units and
limited common elements that are not rebuilt shall be distributed
to the owners of those units and the owners of the units to which those limited common elements were assigned, or to their mortgagees, as their interests may appear, and the remainder of the proceeds shall be distributed to all the unit owners in accordance with each owner's undivided interest in the common elements unless otherwise provided in the declaration [as their interests may appear]. If the unit owners vote to not rebuild any unit, that unit's allocated interests shall be automatically reallocated on the vote as if the unit had been condemned, and the association shall prepare, execute, and record an amendment to the declaration reflecting the reallocation. Section 82.068 governs the distribution of insurance proceeds if the condominium is terminated.

(j) If the cost to repair damage to a unit or common element covered by the association's insurance is less than the amount of the applicable insurance deductible, the party who would be responsible for the repair in the absence of insurance shall pay the cost for the repair of the unit or common element.

(k) If the association's insurance provides coverage for the loss and the cost to repair the damage to a unit or common element is more than the amount of the applicable insurance deductible, the dedicatory instruments determine payment for the cost of the association's deductible and costs incurred before insurance proceeds are available. If the dedicatory instruments are silent, the board of directors of the association by resolution shall determine the payment of those costs, or if the board does not approve a resolution, the costs are a common expense. A resolution
under this subsection is considered a dedicatory instrument and must be recorded in each location in which the declaration is recorded.

(1) If damage to a unit or the common elements is due wholly or partly to an act or omission of any unit owner or a guest or invitee of the unit owner, the association may assess the deductible expense and any other expense in excess of insurance proceeds against the owner and the owner's unit.

(m) The provisions of this section may be varied or waived if all the units in a condominium are restricted to nonresidential use.

SECTION 5. Section 82.113(g), Property Code, is amended to read as follows:

(g) The owner of a unit [used for residential purposes and] purchased [by an association] at a foreclosure sale of the association's lien for assessments may redeem the unit not later than the 90th day after the date of the foreclosure sale. If the association is the purchaser [To redeem the unit], the owner must pay to the association to redeem the unit all amounts due the association at the time of the foreclosure sale, interest from the date of foreclosure sale to the date of redemption at the rate provided by the declaration for delinquent assessments, reasonable attorney's fees and costs incurred by the association in foreclosing the lien, any assessment levied against the unit by the association after the foreclosure sale, and any reasonable cost incurred by the association as owner of the unit, including costs of maintenance and leasing. If a party other than the association is
the purchaser, the redeeming owner must pay to the purchaser of the unit at the foreclosure sale an amount equal to the amount bid at the sale, interest on the bid amount computed from the date of the foreclosure sale to the date of redemption at the rate of six percent, any assessment paid by the purchaser after the date of foreclosure, and any reasonable costs incurred by the purchaser as the owner of the unit, including costs of maintenance and leasing. The redeeming owner must also pay to the association all assessments that are due as of the date of the redemption and reasonable attorney's fees and costs incurred by the association in foreclosing the lien. On redemption, the purchaser of the unit at the foreclosure sale [association] shall execute a deed with no warranty to the redeeming unit owner. The exercise of the right of redemption is not effective against a subsequent purchaser or lender for value without notice of the redemption after the redemption period expires unless the redeeming unit owner records the deed from the purchaser of the unit at the foreclosure sale [association] or an affidavit stating that the owner has exercised the right of redemption. A unit that has been redeemed remains subject to all liens and encumbrances on the unit before foreclosure. All rents and other income collected from the unit by the purchaser of the unit at the foreclosure sale [association] from the date of foreclosure sale to the date of redemption belong to the purchaser of the unit at the foreclosure sale [association], but the rents and income shall be credited against the redemption amount. The purchaser of [An association purchasing] a unit at a sale foreclosing an association's assessment [its] lien may not
transfer ownership of the unit during the redemption period to a
person other than a redeeming owner.

SECTION 6. Section 82.116, Property Code, is amended by
adding Subsections (a-1) and (a-2) to read as follows:

(a-1) The county clerk of each county in which a management
certificate is filed as required by this section shall record the
management certificate in the real property records of the county
and index the document as a "Condominium Association Management
Certificate."

(a-2) To ensure that all management certificates are
recorded and indexed as provided by Subsection (a-1), each
condominium unit owners' association that recorded a management
certificate under this section before September 1, 2013, shall
record a new management certificate on or before January 1, 2014.
This subsection expires January 1, 2015.

SECTION 7. (a) The change in law made by this Act to Section
82.111, Property Code, applies only to payment of costs incurred on
or after the effective date of this Act. Payment of costs incurred
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.

(b) Section 82.113(g), Property Code, as amended by this
Act, applies only to a condominium unit sold at a foreclosure sale
on or after the effective date of this Act. A unit sold at a
foreclosure sale before the effective date of this Act is subject to
the law in effect immediately before the effective date of this Act,
and that law is continued in effect for that purpose.
SECTION 8. This Act takes effect September 1, 2013.
H.B. No. 2075

President of the Senate

Speaker of the House

I certify that H.B. No. 2075 was passed by the House on May 9, 2013, by the following vote: Yeas 131, Nays 6, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2075 was passed by the Senate on May 22, 2013, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: __________________________

Date

Governor