

By: _____ B. No. _____

Substitute the following for _____.B. No. _____:

By: _____ C.S._____.B. No. _____

A BILL TO BE ENTITLED

1 AN ACT

2 relating to real property that is subject to restrictive covenants
3 and the operation of property owners' associations of subdivisions
4 that are subject to restrictive covenants.

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

6 SECTION 1. Section 5.006(a), Property Code, is amended to
7 read as follows:

8 (a) In an action based on breach of a restrictive covenant
9 pertaining to real property, the court shall allow to a prevailing
10 party [who asserted the action] reasonable attorney's fees in
11 addition to the party's costs and claim.

12 SECTION 2. Section 5.012, Property Code, is amended by
13 amending Subsection (a) and adding Subsections (a-1), (f), and (g)
14 to read as follows:

15 (a) A seller of residential real property that is subject to
16 membership in a property owners' association and that comprises not
17 more than one dwelling unit located in this state shall give to the
18 purchaser of the property a written notice that reads substantially
19 similar to the following:

20 NOTICE OF MEMBERSHIP IN PROPERTY OWNERS' ASSOCIATION CONCERNING THE

21 PROPERTY AT (street address) (name of residential community)

22 As a purchaser of property in the residential community in
23 which this property is located, you are obligated to be a member of
24 a property owners' association. Restrictive covenants governing

1 the use and occupancy of the property and all [a] dedicatory
2 instruments [~~instrument~~] governing the establishment, maintenance,
3 or [and] operation of this residential community have been or will
4 be recorded in the Real Property Records of the county in which the
5 property is located. Copies of the restrictive covenants and
6 dedicatory instruments [~~instrument~~] may be obtained from the county
7 clerk.

8 You are obligated to pay assessments to the property owners'
9 association. The amount of the assessments is subject to change.
10 Your failure to pay the assessments could result in enforcement of
11 the association's [a] lien on and the foreclosure of your property.

12 Section 207.003, Property Code, entitles an owner to receive
13 copies of any document that governs the establishment, maintenance,
14 or operation of a subdivision, including, but not limited to,
15 restrictions, bylaws, rules and regulations, and a resale
16 certificate from a property owners' association. A resale
17 certificate contains information including, but not limited to,
18 statements specifying the amount and frequency of regular
19 assessments and the style and cause number of lawsuits to which the
20 property owners' association is a party, other than lawsuits
21 relating to unpaid ad valorem taxes of an individual member of the
22 association. These documents must be made available to you by the
23 property owners' association or the association's agent on your
24 request.

25 Date: _____

26 _____ Signature of Purchaser

27 (a-1) The second paragraph of the notice prescribed by

1 Subsection (a) must be in bold print and underlined.

2 (f) On the purchaser's request for a resale certificate from
3 the property owners' association or the association's agent, the
4 association or its agent shall promptly deliver a copy of the most
5 recent resale certificate issued for the property under Chapter 207
6 so long as the resale certificate was prepared not earlier than the
7 60th day before the date the resale certificate is delivered to the
8 purchaser and reflects any special assessments approved before and
9 due after the resale certificate is delivered. If a resale
10 certificate that meets the requirements of this subsection has not
11 been issued for the property, the seller shall request the
12 association or its agent to issue a resale certificate under
13 Chapter 207, and the association or its agent shall promptly
14 prepare and deliver a copy of the resale certificate to the
15 purchaser.

16 (g) The purchaser shall pay the fee to the property owners'
17 association or its agent for issuing the resale certificate unless
18 otherwise agreed. The property owners' association may not process
19 a payment for a resale certificate requested under Chapter 207
20 until the certificate is available for delivery. The association
21 may not charge a fee if the certificate is not provided in the time
22 prescribed by Section 207.003(a).

23 SECTION 3. Section 5.017(c), Property Code, is amended to
24 read as follows:

25 (c) This section does not apply to a deed restriction or
26 other covenant running with the land that requires a fee associated
27 with the conveyance of property in a subdivision that is payable:

1 (1) to:

2 (A) [~~(1)~~] a property owners' association that
3 manages or regulates the subdivision or the association's managing
4 agent if the subdivision contains more than one platted lot;

5 (B) [~~(2)~~] an entity organized under Section
6 501(c)(3), Internal Revenue Code of 1986; [~~or~~]

7 (C) [~~(3)~~] a governmental entity; or

8 (D) an entity other than a property owners'
9 association that operates a golf course and country club in or
10 adjacent to the subdivision if property owners in the subdivision
11 are required by deed restriction to obtain and maintain a
12 membership in the golf course and country club; or

13 (2) for the benefit or in consideration of a
14 conservation easement created under Chapter 183, Natural Resources
15 Code, located in a county that:

16 (A) has a population of at least 750,000 and not
17 more than 1.1 million; and

18 (B) is not adjacent to a county with a population
19 of two million or more.

20 SECTION 4. Section 202.001(1), Property Code, is amended to
21 read as follows:

22 (1) "Dedicatory instrument" means each document
23 governing [~~instrument covering~~] the establishment, maintenance, or
24 [~~and~~] operation of a residential subdivision, planned unit
25 development, condominium or townhouse regime, or any similar
26 planned development. The term includes a declaration or similar
27 instrument subjecting real property to:

8 SECTION 5. Section 202.004(c), Property Code, is amended to
9 read as follows:

17 SECTION 6. Section 202.006, Property Code, is amended to
18 read as follows:

19 Sec. 202.006. PUBLIC RECORDS. (a) A property owners'
20 association shall file all [~~the~~] dedicatory instruments
21 [~~instrument~~] in the real property records of each county in which
22 the property to which the dedicatory instruments relate [~~instrument~~
23 ~~relates~~] is located.

24 (b) A dedicatory instrument has no effect until the
25 instrument is filed in accordance with this section.

26 SECTION 7. Chapter 202, Property Code, is amended by adding
27 Sections 202.011, 202.012, and 202.014 to read as follows:

1 Sec. 202.011. RIGHT OF FIRST REFUSAL PROHIBITED. (a) In
2 this section, "development period" means a period stated in a
3 declaration during which a declarant reserves:

4 (1) a right to facilitate the development,
5 construction, and marketing of the subdivision; and
6 (2) a right to direct the size, shape, and composition
7 of the subdivision.

8 (b) To the extent a restrictive covenant provides a right of
9 first refusal for the sale or lease of a residential unit or
10 residential lot in favor of the property owners' association or the
11 association's members, the covenant is void.

12 (c) This section does not apply to a restrictive covenant
13 that provides a right of first refusal in favor of a developer or
14 builder during the development period.

15 Sec. 202.012. REGULATION OF SOLAR ENERGY DEVICES. (a) In
16 this section, "solar energy device" has the meaning assigned by
17 Section 171.107, Tax Code.

18 (b) Except as otherwise provided by this section, a property
19 owners' association may not include or enforce a provision in a
20 dedicatory instrument that prohibits or restricts a property owner
21 from installing a solar energy device.

22 (c) A provision that violates Subsection (b) is void.

23 (d) A property owners' association may include or enforce a
24 provision in a dedicatory instrument that prohibits a solar energy
25 device that:

26 (1) as adjudicated by a court:

27 (A) threatens the public health or safety; or

(B) violates a law;

(2) is located on property owned or maintained by the
ners' association;

(3) is located on property owned in common by the
the property owners' association;

(4) is located in an area on the property owner's
her than:

(5) if mounted on the roof of the home:

(A) extends higher than or beyond the roofline;

(B) is located in an area other than an area the property owners' association, unless the location increases the estimated annual energy use of the device, as determined by using a publicly available tool provided by the National Renewable Energy Laboratory that shows more than 10 percent above the energy production of a device located in an area designated by the property owners' association.

24 (D) has a frame, a support bracket, or visible
25 piping or wiring that is not in a silver, bronze, or black tone
26 commonly available in the marketplace;

27 (6) if located in a fenced yard or patio, is taller

1 than the fence line;

2 (7) as installed, voids material warranties; or

3 (8) was installed without prior approval by the
4 property owners' association or by a committee created in a
5 dedicatory instrument for such purposes that provides decisions
6 within a reasonable period or within a period specified in the
7 dedicatory instrument.

8 (e) A property owners' association or the association's
9 architectural review committee may not withhold approval for
10 installation of a solar energy device if the provisions of the
11 dedicatory instruments, to the extent authorized by this section,
12 are met or exceeded, unless the association or committee, as
13 applicable, determines in writing that placement of the device as
14 proposed by the property owner constitutes a condition that
15 substantially interferes with the use and enjoyment of land by
16 causing unreasonable discomfort or annoyance to persons of ordinary
17 sensibilities.

18 Sec. 202.014. RESTRICTIONS REQUIRING CAPITAL IMPROVEMENTS.

19 (a) A dedicatory instrument may not be amended to retroactively
20 require a person who owns property subject to the dedicatory
21 instrument at the time the amendment is adopted to make a capital
22 improvement to the owner's property that is not required before the
23 amendment.

24 (b) For the purposes of this section, "capital improvement"
25 means items such as additional tree plantings, additional sodding,
26 fence construction, hardscape installation, new construction, or
27 any similar capital improvement. The term does not include repair

1 or maintenance of existing improvements or the removal of
2 conditions that are in violation of a dedicatory instrument.

3 SECTION 8. Sections 207.003(a), (b), and (c), Property
4 Code, are amended to read as follows:

5 (a) Not later than the 10th day after the date a written
6 request for subdivision information is received from an owner,
7 owner's agent, or title insurance company or its agent acting on
8 behalf of the owner, the property owners' association shall deliver
9 to the owner, owner's agent, or title insurance company or its
10 agent:

11 (1) a current copy of the restrictions applying to the
12 subdivision;

13 (2) a current copy of the bylaws and rules of the
14 property owners' association; and

15 (3) a resale certificate prepared not earlier than the
16 60th day before the date the certificate is delivered that complies
17 with Subsection (b).

18 (b) A resale certificate under Subsection (a) must contain:

19 (1) a statement of any right of first refusal, other
20 than a right of first refusal that is prohibited by statute, and any
21 ~~[or]~~ other restraint contained in the restrictions or restrictive
22 covenants that restricts the owner's right to transfer the owner's
23 property;

24 (2) the frequency and amount of any regular
25 assessments;

26 (3) the amount and purpose of any special assessment
27 that has been approved before and is due after [the date] the resale

1 certificate is delivered [prepared];

2 (4) the total of all amounts due and unpaid to the
3 property owners' association that are attributable to the owner's
4 property;

5 (5) capital expenditures, if any, approved by the
6 property owners' association for the property owners' association's
7 current fiscal year;

8 (6) the amount of reserves, if any, for capital
9 expenditures;

10 (7) the property owners' association's current
11 operating budget and balance sheet;

12 (8) the total of any unsatisfied judgments against the
13 property owners' association;

14 (9) the style and cause number of any pending lawsuit
15 in which the property owners' association is a party, other than a
16 lawsuit relating to unpaid ad valorem taxes of an individual member
17 of the association [defendant];

18 (10) a copy of a certificate of insurance showing the
19 property owners' association's property and liability insurance
20 relating to the common areas and common facilities;

21 (11) a description of any conditions on the owner's
22 property that the property owners' association board has actual
23 knowledge are in violation of the restrictions applying to the
24 subdivision or the bylaws or rules of the property owners'
25 association;

26 (12) a summary or copy of notices received by the
27 property owners' association from any governmental authority

1 regarding health or housing code violations existing on the
2 preparation date of the certificate relating to the owner's
3 property or any common areas or common facilities owned or leased by
4 the property owners' association;

5 (13) the amount of any administrative transfer fee
6 charged by the property owners' association for a change of
7 ownership of property in the subdivision;

8 (14) the name, mailing address, and telephone number
9 of the property owners' association's managing agent, if any; ~~and~~

10 (15) a statement indicating whether the restrictions
11 allow foreclosure of a property owners' association's lien on the
12 owner's property for failure to pay assessments; and

13 (16) a statement of all fees associated with the
14 transfer of ownership, including a description of each fee, to whom
15 each fee is paid, and the amount of each fee.

16 (c) A property owners' association may charge a reasonable
17 fee to assemble, copy, and deliver the information required by this
18 section and may charge a reasonable fee to prepare and deliver an
19 update of a resale certificate under Subsection (f). A purchaser
20 requesting a resale certificate under Section 5.012 or on whose
21 behalf the resale certificate is requested shall pay the fees
22 charged under this subsection unless otherwise agreed.

23 SECTION 9. Chapter 207, Property Code, is amended by adding
24 Section 207.006 to read as follows:

25 Sec. 207.006. ONLINE SUBDIVISION INFORMATION REQUIRED. A
26 property owners' association shall make dedicatory instruments
27 relating to the association or subdivision and filed in the county

1 deed records available on a website if the association has, or a
2 management company on behalf of the association maintains, a
3 publicly accessible website.

4 SECTION 10. Section 209.003, Property Code, is amended by
5 adding Subsection (e) to read as follows:

6 (e) The following provisions of this chapter do not apply to
7 a property owners' association that is a mixed use master
8 association that existed before January 1, 1974, and that does not
9 have the authority under a dedicatory instrument or other governing
10 document to impose fines:

11 (1) Section 209.005(b);
12 (2) Section 209.0056;
13 (3) Section 209.0057;
14 (4) Section 209.0058;
15 (5) Section 209.00593; and
16 (6) Section 209.0062.

17 SECTION 11. Chapter 209, Property Code, is amended by
18 adding Section 209.0041 to read as follows:

19 Sec. 209.0041. ADOPTION OR AMENDMENT OF CERTAIN DEDICATORY
20 INSTRUMENTS. (a) This section applies to a residential
21 subdivision in which property owners are subject to mandatory
22 membership in a property owners' association.

23 (b) This section does not apply to a property owners'
24 association that is subject to Chapter 552, Government Code, by
25 application of Section 552.0036, Government Code.

26 (c) This section does not apply to the amendment of a
27 declaration during a development period, as defined by Section

1 202.011.

2 (d) This section applies to a dedicatory instrument
3 regardless of the date on which the dedicatory instrument was
4 created.

5 (e) This section supersedes any contrary requirement in a
6 dedicatory instrument.

7 (f) To the extent of any conflict with another provision of
8 this title, this section prevails.

9 (g) A declaration may be amended only by a vote of at least
10 67 percent of the total votes allocated to property owners in the
11 property owners' association, in addition to any governmental
12 approval required by law.

13 (h) A provision in a dedicatory instrument may not be
14 adopted that allows the property owners' association board to
15 self-perpetuate. A provision in a dedicatory instrument that
16 violates this subsection is void.

17 (i) A bylaw may not be amended, and a rule or guideline may
18 not be adopted, to expand the association's powers beyond the
19 powers granted by any other dedicatory instrument.

20 SECTION 12. Section 209.005, Property Code, is amended to
21 read as follows:

22 Sec. 209.005. ASSOCIATION RECORDS. (a) Except as provided
23 by Subsection (b), this section applies to all property owners'
24 associations and controls over other law not specifically
25 applicable to a property owners' association.

26 (b) This section does not apply to a property owners'
27 association that is subject to Chapter 552, Government Code, by

1 application of Section 552.0036, Government Code.

2 (c) Notwithstanding a provision in a dedicatory instrument,
3 a [A] property owners' association shall make the books and records
4 of the association, including financial records, open to and
5 reasonably available for examination by [+] an owner, or an
6 owner's agent, attorney, or certified public accountant, in
7 accordance with this section. An owner is entitled to obtain from
8 the association copies of information contained in the books and
9 records [Section B, Article 2.23, Texas Non-Profit Corporation Act
10 (Article 1396-2.23, Vernon's Texas Civil Statutes)].

11 (d) Except as provided by this subsection, an [(-1) A
12 property owners' association described by Section 552.0036(2),
13 Government Code, shall make the books and records of the
14 association, including financial records, reasonably available to
15 any person requesting access to the books or records in accordance
16 with Chapter 552, Government Code. Subsection (a) does not apply to
17 a property owners' association to which this subsection applies.

18 [(b) An] attorney's files and records relating to the
19 association, excluding invoices requested by an owner under Section
20 209.008(d), are not[+]

21 [(1)] records of the association and are not[+]
22 [(2)] subject to inspection by the owner[+] or
23 [(3)] subject to production in a legal proceeding. If
24 a document in an attorney's files and records relating to the
25 association would be responsive to a legally authorized request to
26 inspect or copy association documents, the document shall be
27 produced by using the copy from the attorney's files and records if

1 the association has not maintained a separate copy of the document.
2 This subsection does not require production of a document that
3 constitutes attorney work product or that is privileged as an
4 attorney-client communication.

5 (e) An owner or the owner's authorized representative
6 described by Subsection (c) must submit a written request for
7 access or information under Subsection (c) by certified mail, with
8 sufficient detail describing the association's books and records
9 requested, to the mailing address of the association or authorized
10 representative as reflected on the most current management
11 certificate filed under Section 209.004. The request must contain
12 an election either to inspect the books and records before
13 obtaining copies or to have the property owners' association
14 forward copies of the requested books and records and:

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

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

1 (f) If the property owners' association is unable to produce
2 the books or records requested under Subsection (e) on or before the
3 10th business day after the date the association receives the
4 request, the association must provide to the requestor written
5 notice that:

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

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

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

18 (h) A property owners' association may produce books and
19 records requested under this section in hard copy, electronic, or
20 other format reasonably available to the association.

21 (i) An owner is responsible for costs related to compilation
22 and reproduction of the requested information in an amount that
23 would be allowed under Section 552.261, Government Code, for public
24 information. The association may require advance payment of the
25 estimated costs of compilation and reproduction if the request will
26 result in costs that would exceed the costs for which a written
27 itemized statement would be required under Section 552.2615(a),

1 Government Code, for a similar request. If the estimated costs are
2 lesser or greater than the actual costs, the association shall
3 submit a final invoice to the owner on or before the 30th business
4 day after the date the information is delivered. If the final
5 invoice includes additional amounts due from the owner, the
6 additional amounts, if not reimbursed to the association before the
7 30th business day after the date the invoice is sent to the owner,
8 may be added to the owner's account as an assessment. If the
9 estimated costs exceeded the final invoice amount, the owner is
10 entitled to a refund, and the refund shall be issued to the owner
11 not later than the 30th business day after the date the invoice is
12 sent to the owner.

13 (j) A property owners' association must estimate costs
14 under this section using the Public Information Cost Estimate Model
15 provided by the open records division of the office of the attorney
16 general or a similar model.

17 (k) Except as provided by Subsection (l), the association is
18 not required, other than in meeting minutes, to release or allow
19 inspection of any books or records that identify the dedicatory
20 instrument violation history of an individual owner of an
21 association, an owner's personal financial information, including
22 records of payment or nonpayment of amounts due the association, an
23 owner's contact information, other than the owner's address, or
24 information related to an employee of the association, including
25 personnel files. Information may be released in an aggregate or
26 summary manner that would not identify an individual property
27 owner.

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

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

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

9 (m) A property owners' association composed of more than 14
10 lots shall adopt and comply with a document retention policy that
11 includes, at a minimum, the following requirements:

12 (1) certificates of formation, bylaws, restrictive
13 covenants, and all amendments to the certificates of formation,
14 bylaws, and covenants shall be retained permanently;

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

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

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

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

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

25 (n) A member of a property owners' association who is denied
26 access to or copies of association books or records to which the
27 member is entitled under this section may file a petition with the

1 justice of the peace of a justice precinct in which all or part of
2 the property that is governed by the association is located
3 requesting relief in accordance with this subsection. If the
4 justice of the peace finds that the member is entitled to access to
5 or copies of the records, the justice of the peace may grant one or
6 more of the following remedies:

7 (1) a judgment ordering the property owners'
8 association to release or allow access to the books or records;
9 (2) a judgment against the property owners'
10 association for court costs and attorney's fees incurred in
11 connection with seeking a remedy under this section; or
12 (3) a judgment authorizing the owner or the owner's
13 assignee to deduct the amounts awarded under Subdivision (2) from
14 any future regular or special assessments payable to the property
15 owners' association.

16 (o) If the property owners' association prevails in an
17 action under Subsection (n), the association is entitled to a
18 judgment for court costs and attorney's fees incurred by the
19 association in connection with the action.

20 (p) On or before the 10th business day before the date a
21 person brings an action against a property owners' association
22 under this section, the person must send written notice to the
23 association of the person's intent to bring the action. The notice
24 must:

25 (1) be sent certified mail, return receipt requested,
26 or delivered by the United States Postal Service with signature
27 confirmation service; and

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

5 SECTION 13. Chapter 209, Property Code, is amended by
6 adding Sections 209.0051, 209.0056, 209.0057, 209.0058, 209.0059,
7 209.00592, and 209.00593 to read as follows:

8 Sec. 209.0051. OPEN BOARD MEETINGS. (a) This section does
9 not apply to a property owners' association that is subject to
10 Chapter 551, Government Code, by application of Section 551.0015,
11 Government Code.

27 (c) Regular and special board meetings must be open to

1 owners, subject to the right of the board to adjourn a board meeting
2 and reconvene in closed executive session to consider actions
3 involving personnel, pending or threatened litigation, contract
4 negotiations, enforcement actions, confidential communications
5 with the association's attorney, matters involving the invasion of
6 privacy of individual owners, or matters that are to remain
7 confidential by request of the affected parties and agreement of
8 the board. Following an executive session, any decision made in the
9 executive session must be summarized orally, in general terms,
10 without breaching the privacy of individual owners, violating any
11 privilege, or disclosing information that was to remain
12 confidential at the request of the affected parties. The oral
13 summary must include a general explanation of expenditures approved
14 in executive session.

15 (c-1) Except for a meeting held by electronic or telephonic
16 means under Subsection (h), a board meeting must be held in a county
17 in which all or part of the property in the subdivision is located
18 or in a county adjacent to that county.

19 (d) The board shall keep a record of each regular or special
20 board meeting in the form of written minutes of the meeting. The
21 board shall make meeting records, including approved minutes,
22 available to a member for inspection and copying on the member's
23 written request to the property owners' association's managing
24 agent at the address appearing on the most recently filed
25 management certificate or, if there is not a managing agent, to the
26 board.

27 (e) Members shall be given notice of the date, hour, place,

1 and general subject of a regular or special board meeting,
2 including a general description of any matter to be brought up for
3 deliberation in executive session. The notice shall be:

4 (1) mailed to each property owner not later than the
5 10th day or earlier than the 60th day before the date of the
6 meeting; or

7 (2) provided at least 72 hours before the start of the
8 meeting by:

9 (A) posting the notice in a conspicuous manner
10 reasonably designed to provide notice to association members:

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

15 (ii) on any Internet website maintained by
16 the association or other Internet media; and

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

19 (f) It is an owner's duty to keep an updated e-mail address
20 registered with the property owners' association under Subsection
21 (e)(2)(B).

22 (g) If the board recesses a regular or special board meeting
23 to continue the following regular business day, the board is not
24 required to post notice of the continued meeting if the recess is
25 taken in good faith and not to circumvent this section. If a
26 regular or special board meeting is continued to the following
27 regular business day, and on that following day the board continues

1 the meeting to another day, the board shall give notice of the
2 continuation in at least one manner prescribed by Subsection
3 (e)(2)(A) within two hours after adjourning the meeting being
4 continued.

5 (h) A board may meet by any method of communication,
6 including electronic and telephonic, without prior notice to owners
7 under Subsection (e), if each director may hear and be heard by
8 every other director, or the board may take action by unanimous
9 written consent to consider routine and administrative matters or a
10 reasonably unforeseen emergency or urgent necessity that requires
11 immediate board action. The board may not, without prior notice to
12 owners under Subsection (e), consider or vote on fines, damage
13 assessments, initiation of foreclosure actions, initiation of
14 enforcement actions, excluding temporary restraining orders or
15 violations involving a threat to health or safety, increases in
16 assessments, levying of special assessments, appeals from a denial
17 of architectural control approval, or a suspension of a right of a
18 particular owner before the owner has an opportunity to attend a
19 board meeting to present the owner's position, including any
20 defense, on the issue. Any action taken without notice to owners
21 under Subsection (e) must be summarized orally, including an
22 explanation of any known actual or estimated expenditures approved
23 at the meeting, and documented in the minutes of the next regular or
24 special board meeting.

25 (i) This section applies to a meeting of a property owners'
26 association board during the development period, as defined by
27 Section 202.011, only if the meeting is conducted for the purpose

1 of:

2 (1) adopting or amending the governing documents,
3 including declarations, bylaws, rules, and regulations of the
4 association;

5 (2) increasing the amount of regular assessments of
6 the association or adopting or increasing a special assessment;
7 (3) electing non-developer board members of the
8 association or establishing a process by which those members are
9 elected; or

10 (4) changing the voting rights of members of the
11 association.

12 Sec. 209.0056. NOTICE OF ELECTION OR ASSOCIATION VOTE. (a)
13 A property owners' association shall give each owner of property in
14 the property owners' association written notice of the election or
15 vote not later than the 10th day or earlier than the 60th day before
16 the date of the election or vote.

17 (b) This section supersedes any contrary requirement in a
18 dedicatory instrument.

19 (c) This section does not apply to a property owners'
20 association that is subject to Chapter 552, Government Code, by
21 application of Section 552.0036, Government Code.

22 Sec. 209.0057. RECOUNT OF VOTES. (a) This section does not
23 apply to a property owners' association that is subject to Chapter
24 552, Government Code, by application of Section 552.0036,
25 Government Code.

26 (b) Any owner may, not later than the 15th day after the date
27 of the meeting at which the election was held, require a recount of

1 the votes. A demand for a recount must be submitted in writing
2 either:

3 (1) by certified mail, return receipt requested, or by
4 delivery by the United States Postal Service with signature
5 confirmation service to the association's mailing address on the
6 latest management certificate filed under Section 209.004; or
7 (2) in person to the association's managing agent as
8 reflected on the latest management certificate filed under Section
9 209.004 or to the address to which absentee and proxy ballots are
10 mailed.

11 (c) The property owners' association shall, at the expense
12 of the owner requesting the recount, retain for the purpose of
13 performing the recount, the services of a person qualified to
14 tabulate votes under this subsection. The association shall enter
15 into a contract for the services of a person who:

16 (1) is not a member of the association or related to a
17 member of the association board within the third degree by
18 consanguinity or affinity, as determined under Chapter 573,
19 Government Code; and

20 (2) is:

21 (A) a current or former:

22 (i) county judge;

23 (ii) county elections administrator;

24 (iii) justice of the peace; or

25 (iv) county voter registrar; or

26 (B) a person agreed on by the association and the
27 persons requesting the recount.

1 (d) Any recount under Subsection (b) must be performed on or
2 before the 30th day after the date of receipt of a request and
3 payment for a recount in accordance with Subsections (b) and (c).
4 If the recount changes the results of the election, the association
5 shall reimburse the requesting owner for the cost of the recount.
6 Any action taken by the board in the period between the initial
7 election vote tally and the completion of the recount is not
8 affected by any recount.

9 Sec. 209.0058. BALLOTS. (a) Any vote cast in an election
10 or vote by a member of a property owners' association must be in
11 writing and signed by the member.

12 (b) Electronic votes cast under Section 209.00593
13 constitute written and signed ballots.

14 (c) In an association-wide election, written and signed
15 ballots are not required for uncontested races.

16 Sec. 209.0059. RIGHT TO VOTE. (a) A provision in a
17 dedicatory instrument that would disqualify a property owner from
18 voting in an association election of board members or on any matter
19 concerning the rights or responsibilities of the owner is void.

20 (b) This section does not apply to a property owners'
21 association that is subject to Chapter 552, Government Code, by
22 application of Section 552.0036, Government Code.

23 Sec. 209.00592. BOARD MEMBERSHIP. (a) Except as provided
24 by this section, a provision in a dedicatory instrument that
25 restricts a property owner's right to run for a position on the
26 board of the property owners' association is void.

27 (b) If a board is presented with written, documented

1 evidence from a database or other record maintained by a
2 governmental law enforcement authority that a board member has been
3 convicted of a felony or crime involving moral turpitude, the board
4 member is immediately ineligible to serve on the board of the
5 property owners' association, automatically considered removed
6 from the board, and prohibited from future service on the board.

7 (c) A declaration may provide for a developer control period
8 during which a developer or a person designated by the developer may
9 appoint and remove members of the property owners' association
10 board and officers of the association.

11 Sec. 209.00593. VOTING; QUORUM. (a) The voting rights of
12 an owner may be cast or given:

13 (1) in person or by proxy at a meeting of the property
14 owners' association;

15 (2) by absentee ballot in accordance with this
16 section;

17 (3) by electronic ballot in accordance with this
18 section; or

19 (4) by any method of representative or delegated
20 voting provided by a dedicatory instrument.

21 (b) An absentee or electronic ballot:

22 (1) may be counted as an owner present and voting for
23 the purpose of establishing a quorum only for items appearing on the
24 ballot;

25 (2) may not be counted, even if properly delivered, if
26 the owner attends any meeting to vote in person, so that any vote
27 cast at a meeting by a property owner supersedes any vote submitted

1 by absentee or electronic ballot previously submitted for that
2 proposal; and

3 (3) may not be counted on the final vote of a proposal
4 if the motion was amended at the meeting to be different from the
5 exact language on the absentee or electronic ballot.

6 (c) A solicitation for votes by absentee ballot must
7 include:

8 (1) an absentee ballot that contains each proposed
9 action and provides an opportunity to vote for or against each
10 proposed action;

11 (2) instructions for delivery of the completed
12 absentee ballot, including the delivery location; and

13 (3) the following language: "By casting your vote via
14 absentee ballot you will forgo the opportunity to consider and vote
15 on any action from the floor on these proposals, if a meeting is
16 held. This means that if there are amendments to these proposals
17 your votes will not be counted on the final vote on these measures.
18 If you desire to retain this ability, please attend any meeting in
19 person. You may submit an absentee ballot and later choose to
20 attend any meeting in person, in which case any in-person vote will
21 prevail."

22 (d) For the purposes of this section, "electronic ballot"
23 means a ballot:

24 (1) given by:

25 (A) e-mail;

26 (B) facsimile; or

27 (C) posting on an Internet website;

1 (2) for which the identity of the property owner
2 submitting the ballot can be confirmed; and
3 (3) for which the property owner may receive a receipt
4 of the electronic transmission and receipt of the owner's ballot.

5 (e) If an electronic ballot is posted on an Internet
6 website, a notice of the posting shall be sent to each owner that
7 contains instructions on obtaining access to the posting on the
8 website.

9 (f) This section supersedes any contrary provision in a
10 dedicatory instrument.

11 (g) This section does not apply to a property owners'
12 association that is subject to Chapter 552, Government Code, by
13 application of Section 552.0036, Government Code.

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

16 (b) The notice must:

17 (1) describe the violation or property damage that is
18 the basis for the suspension action, charge, or fine and state any
19 amount due the association from the owner; and

20 (2) inform the owner that the owner:

21 (A) is entitled to a reasonable period to cure
22 the violation and avoid the fine or suspension unless the owner was
23 given notice and a reasonable opportunity to cure a similar
24 violation within the preceding six months; and

25 (B) may request a hearing under Section 209.007
26 on or before the 30th day after the date notice was delivered to the
27 owner [receives the notice].

1 SECTION 15. Chapter 209, Property Code, is amended by
2 adding Sections 209.0061, 209.0062, 209.0063, and 209.0065 to read
3 as follows:

4 Sec. 209.0061. ASSESSMENT OF FINES. (a) A fine assessed by
5 the property owners' association must be reasonable in the context
6 of the nature and frequency of the violation and the effect of the
7 violation on the subdivision as a whole. If the association allows
8 fines for a continuing violation to accumulate against a lot or an
9 owner, the association must establish a reasonable maximum fine
10 amount for a continuing violation at which point the total fine
11 amount is capped.

12 (b) If a lot occupant other than the owner violates a
13 provision of the dedicatory instrument, the property owners'
14 association, in addition to exercising any of the association's
15 powers against the owner, may assess a fine directly against the
16 nonowner occupant in the same manner as provided for an owner but
17 may not require payment from both the owner and a nonowner occupant
18 for the same violation.

19 (c) If the property owners' association assesses a fine
20 against a nonowner occupant under this section, the notice
21 provisions of Section 209.006 and the hearing provisions of Section
22 209.007 apply to the nonowner occupant in the same manner as those
23 provisions apply to an owner.

24 Sec. 209.0062. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN
25 ASSESSMENTS. (a) A property owners' association composed of more
26 than 14 lots shall adopt reasonable guidelines to establish an
27 alternative payment schedule by which an owner may make partial

1 payments to the property owners' association for delinquent regular
2 or special assessments or any other amount owed to the association
3 without accruing additional monetary penalties. For purposes of
4 this section, monetary penalties do not include reasonable costs
5 associated with administering the payment plan or interest.

6 (b) The minimum term for a payment plan offered by a
7 property owner's association is three months.

8 (c) A property owners' association is not required to allow
9 a payment plan for any amount that extends more than 12 months from
10 the date of the owner's request for a payment plan or to enter into a
11 payment plan with an owner who failed to honor the terms of a
12 previous payment plan during the two years following the owner's
13 default under the previous payment plan.

14 (d) A property owners' association shall file the
15 association's guidelines under this section in the real property
16 records of each county in which the subdivision is located.

17 (e) A property owners' association's failure to file as
18 required by this section the association's guidelines in the real
19 property records of each county in which the subdivision is located
20 does not prohibit a property owner from receiving an alternative
21 payment schedule by which the owner may make partial payments to the
22 property owners' association for delinquent regular or special
23 assessments or any other amount owed to the association without
24 accruing additional monetary penalties, as defined by Subsection
25 (a).

26 Sec. 209.0063. PRIORITY OF PAYMENTS. (a) Except as
27 provided by Subsection (b) or otherwise provided in writing by the

1 property owner at the time payment is made, a payment received by a
2 property owners' association from the owner shall be applied to the
3 owner's debt in the following order of priority:

4 (1) any delinquent assessment;

5 (2) any current assessment;

6 (3) any attorney's fees or third party collection
7 costs incurred by the association associated solely with
8 assessments or any other charge that could provide the basis for
9 foreclosure;

10 (4) any attorney's fees incurred by the association
11 that are not subject to Subdivision (3);

12 (5) any fines assessed by the association; and

13 (6) any other amount owed to the association.

14 (b) If, at the time the property owners' association
15 receives a payment from a property owner, the owner is in default
16 under a payment plan entered into with the association:

17 (1) the association is not required to apply the
18 payment in the order of priority specified by Subsection (a); and

19 (2) in applying the payment, a fine assessed by the
20 association may not be given priority over any other amount owed to
21 the association.

22 Sec. 209.0065. THIRD PARTY COLLECTIONS. Before a property
23 owners' association turns a property owner's account information
24 over to a third party for collection of delinquent amounts owed to
25 the association, the association must provide a notice to the owner
26 by certified mail, return receipt requested, that:

27 (1) specifies each delinquent amount and the total

1 amount of the payment required to make the account current;
2 (2) describes the options the owner has to avoid
3 having the account turned over to a third party for collection,
4 including information regarding the availability of a payment plan
5 through the association; and
6 (3) provides a period of at least 30 days for the owner
7 to cure the delinquency before further action is taken by the
8 association.

9 SECTION 16. Chapter 209, Property Code, is amended by
10 adding Sections 209.0091, 209.0092, and 209.0093 to read as
11 follows:

12 Sec. 209.0091. JUDICIAL FORECLOSURE REQUIRED. (a) Except
13 as provided by Subsection (c), a property owners' association may
14 not foreclose a property owners' association assessment lien unless
15 the association first obtains a court order in an application for
16 expedited foreclosure under the rules adopted by the supreme court
17 under Subsection (b). A property owners' association may use the
18 procedure described by this subsection to foreclose any lien
19 described by the association's dedicatory instruments.

20 (b) The supreme court, as an exercise of the court's
21 authority under Section 74.024, Government Code, shall adopt rules
22 establishing expedited foreclosure proceedings for use by a
23 property owners' association in foreclosing an assessment lien of
24 the association. The rules adopted under this subsection must be
25 substantially similar to the rules adopted by the supreme court
26 under Section 50(r), Article XVI, Texas Constitution.

27 (c) Expedited foreclosure is not required under this

1 section if the owner of the property that is subject to foreclosure
2 agrees in writing at the time the foreclosure is sought to waive
3 expedited foreclosure under this section. A waiver under this
4 subsection may not be required as a condition of the transfer of
5 title to real property.

6 Sec. 209.0092. REMOVAL OR ADOPTION OF FORECLOSURE
7 AUTHORITY. A provision granting a right to foreclose a lien on real
8 property for unpaid amounts due to a property owners' association
9 may be removed from a dedicatory instrument or adopted in a
10 dedicatory instrument by a vote of at least 67 percent of the total
11 votes allocated to property owners in the property owners'
12 association. Owners holding at least 10 percent of all voting
13 interests in the property owners' association may petition the
14 association and require a special meeting to be called for the
15 purposes of taking a vote for the purposes of this section.

16 Sec. 209.0093. ASSESSMENT LIEN FILING. A lien, lien
17 affidavit, or other instrument evidencing the nonpayment of
18 assessments or other charges owed to a property owners' association
19 and filed in the official public records of a county is a legal
20 instrument affecting title to real property.

21 SECTION 17. Section 209.010(a), Property Code, is amended
22 to read as follows:

23 (a) A property owners' association that conducts a
24 foreclosure sale of an owner's lot must send to the lot owner and to
25 each lienholder of record, not later than the 30th day after the
26 date of the foreclosure sale:

27 (1) [r] a written notice stating the date and time the

1 sale occurred and informing the lot owner and each lienholder of
2 record of the right of the lot owner and lienholder to redeem the
3 property under Section 209.011; and

4 (2) a copy of Section 209.011.

5 SECTION 18. Chapter 209, Property Code, is amended by
6 adding Section 209.014 to read as follows:

7 Sec. 209.014. MANDATORY ELECTION REQUIRED AFTER FAILURE TO
8 CALL REGULAR MEETING. (a) Notwithstanding any provision in a
9 dedicatory instrument, the board of the property owners'
10 association shall call a special election to elect a new board not
11 later than the 30th day after the date on which the board fails to
12 call a regular meeting of the members of the association as required
13 by a dedicatory instrument.

14 (b) If the board fails to call a special election as
15 required under Subsection (a), an owner may demand that the
16 election be held within a reasonable time. The demand must be made
17 in writing and sent to each board member by certified mail, return
18 receipt requested.

19 (c) If the board fails to call the special election before
20 the 61st day after the date the owner mailed the demand under
21 Subsection (b), an owner may compel the association to hold the
22 special election by initiating legal action against the board
23 members. Each owner has a justiciable interest sufficient to
24 initiate and prosecute a legal action described by this subsection.

25 SECTION 19. Section 211.002(a), Property Code, is amended
26 to read as follows:

27 (a) This chapter applies only to a residential real estate

1 subdivision or any unit or parcel of a subdivision to which another
2 chapter in this title that provides a procedure under which a
3 subdivision's restrictions may for general purposes be amended does
4 not apply [located in whole or in part within an unincorporated area
5 of a county if the county has a population of less than 65,000].

6 SECTION 20. (a) Sections 5.006(a) and 202.004(c), Property
7 Code, as amended by this Act, apply only to an action filed on or
8 after the effective date of this Act. An action filed before the
9 effective date of this Act is governed by the law in effect
10 immediately before the effective date of this Act, and that law is
11 continued in effect for that purpose.

12 (b) Section 5.012, Property Code, as amended by this Act,
13 applies only to a sale of property that occurs on or after the
14 effective date of this Act. For the purposes of this section, a
15 sale of property occurs before the effective date of this Act if the
16 executory contract binding the purchaser to purchase the property
17 is executed before that date. A sale of property that occurs before
18 the effective date of this Act is governed by the law in effect
19 immediately before that date, and that law is continued in effect
20 for that purpose.

21 (c) Section 202.006, Property Code, as amended by this Act,
22 and Sections 202.011, 202.012, 209.0059, and 209.00592(a),
23 Property Code, as added by this Act, apply to a provision in a
24 dedicatory instrument or a restrictive covenant enacted before, on,
25 or after the effective date of this Act, except that any action
26 taken before the effective date of this Act based on an unfiled
27 dedicatory instrument is not invalidated by Section 202.006,

1 Property Code, as amended by this Act.

2 (d) Sections 207.003 and 209.005, Property Code, as amended
3 by this Act, apply only to a request for information received by a
4 property owners' association on or after the effective date of this
5 Act. A request for information received by a property owners'
6 association before the effective date of this Act is governed by the
7 law in effect immediately before the effective date of this Act, and
8 that law is continued in effect for that purpose.

9 (e) Section 209.005(m), Property Code, as added by this Act,
10 applies only with respect to books and records generated on or after
11 the effective date of this Act. Books and records generated before
12 the effective date of this Act are governed by the law in effect
13 immediately before the effective date of this Act, and that law is
14 continued in effect for that purpose.

15 (f) Section 209.006, Property Code, as amended by this Act,
16 applies only to an enforcement action initiated by a property
17 owners' association on or after the effective date of this Act. An
18 enforcement action initiated before the effective date of this Act
19 is governed by the law in effect immediately before the effective
20 date of this Act, and that law is continued in effect for that
21 purpose.

22 (g) Section 209.0062, Property Code, as added by this Act,
23 applies only to an assessment or other debt that becomes due on or
24 after the effective date of this Act. An assessment or other debt
25 that becomes due before the effective date of this Act is governed
26 by the law in effect immediately before the effective date of this
27 Act, and that law is continued in effect for that purpose.

15 (j) Section 209.0093, Property Code, as added by this Act,
16 applies only to an instrument filed on or after January 1, 2012. An
17 instrument filed before January 1, 2012, is governed by the law in
18 effect on the date the instrument was filed, and that law is
19 continued in effect for that purpose.

23 SECTION 21. Not later than January 1, 2012, each property
24 owners' association shall present for recording with the county
25 clerk as prescribed by Section 202.006, Property Code, as amended
26 by this Act, each dedicatory instrument governing the association
27 that has not been previously recorded in the real property records

1 of the county.

2 SECTION 22. Not later than January 1, 2012, the Supreme
3 Court of Texas shall adopt rules of civil procedure under Section
4 209.0091, *Property Code*, as added by this Act.

5 SECTION 23. (a) Except as provided by Subsection (b) of
6 this section, this Act takes effect January 1, 2012.

7 (b) Section 209.0091(b), *Property Code*, as added by this
8 Act, takes effect September 1, 2011.