

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 including the operation of property owners' associations of
4 subdivisions that are subject to restrictive covenants, and to
5 certain foreclosure actions.

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

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

9 (a) In an action based on breach of a restrictive covenant
10 pertaining to real property or a statute pertaining to real
property subject to a restrictive covenant or to restrictive
covenants to which real property is subject, the court may [~~shall~~]
13 allow to a prevailing party ~~[who asserted the action]~~ reasonable
14 attorney's fees in addition to the party's costs and claim.

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

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

1 NOTICE OF MEMBERSHIP IN PROPERTY OWNERS' ASSOCIATION CONCERNING THE
2 PROPERTY AT (street address) (name of residential community)

3 As a purchaser of property in the residential community in
4 which this property is located, you are obligated to be a member of
5 a property owners' association. Restrictive covenants governing
6 the use and occupancy of the property and all [a] dedicatory
7 instruments [~~instrument~~] governing the establishment, maintenance,
8 or [~~and~~] operation of this residential community have been or will
9 be recorded in the Real Property Records of the county in which the
10 property is located. Copies of the restrictive covenants and
11 dedicatory instruments [~~instrument~~] may be obtained from the county
12 clerk.

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

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

1 property owners' association or the association's agent on your
2 request or the seller's request.

3 Date: _____

4 Signature of Purchaser

5 (a-1) The second paragraph of the notice prescribed by
6 Subsection (a) must be in bold print and underlined.

7 (f) On the purchaser's request for a resale certificate from
8 the property owners' association or the association's agent, the
9 association or its agent shall promptly deliver a copy of a current
10 resale certificate issued for the property under Chapter 207. If a
11 resale certificate that meets the requirements of this subsection
12 has not been issued for the property, the seller shall request the
13 association or its agent to issue a resale certificate under
14 Chapter 207, and the association or its agent shall promptly
15 prepare and deliver a copy of the resale certificate to the
16 purchaser.

25 SECTION 3. Section 51.002, Property Code, is amended by
26 adding Subsection (i) to read as follows:

27 (i) Notice served under Subsection (b)(3) or (d) must state

1 the name and address of the sender of the notice and contain a
2 statement that is conspicuous, printed in boldface or underlined
3 type, and substantially similar to the following: "Assert and
4 protect your rights as a member of the armed forces of the United
5 States. If you are or your spouse is serving on active military
6 duty, including active military duty as a member of the Texas
7 National Guard or the National Guard of another state or as a member
8 of a reserve component of the armed forces of the United States,
9 please send written notice of the active duty military service to
10 the sender of this notice immediately."

11 SECTION 4. Subsection (a), Section 51.015, Property Code,
12 is amended by adding Subdivision (1-a) to read as follows:

13 (1-a) "Assessment" and "assessments" have the
14 meanings assigned by Sections 82.113(a) and 209.002, as applicable.

15 SECTION 5. Subsection (b), Section 51.015, Property Code,
16 is amended to read as follows:

17 (b) This section applies only to an obligation:

18 (1) that is secured by a mortgage, deed of trust, or
19 other contract lien, including a lien securing payment of a lawful
20 assessment or assessments, as applicable, on real property or
21 personal property that is a dwelling owned by a military
22 servicemember;

23 (2) that originates before the date on which the
24 servicemember's active duty military service commences; and

25 (3) for which the servicemember is still obligated.

26 SECTION 6. Subdivision (1), Section 202.001, Property Code,
27 is amended to read as follows:

1 (1) "Dedicatorily instrument" means each document
2 governing [~~instrument covering~~] the establishment, maintenance, or
3 [~~and~~] operation of a residential subdivision, planned unit
4 development, condominium or townhouse regime, or any similar
5 planned development. The term includes a declaration or similar
6 instrument subjecting real property to:

14 SECTION 7. Subsection (c), Section 202.004, Property Code,
15 is amended to read as follows:

23 SECTION 8. Section 202.006, Property Code, is amended to
24 read as follows:

25 Sec. 202.006. PUBLIC RECORDS. (a) A property owners'
26 association shall file all [~~the~~] dedicatory instruments
27 [~~instrument~~] in the real property records of each county in which

1 the property to which the dedicatory instruments relate [instrument
2 relates] is located.

3 (b) A dedicatory instrument has no effect until the
4 instrument is filed in accordance with this section and may not be
5 enforced against a property owner who purchased the property before
6 the dedicatory instrument was filed unless the property owner
7 agrees to comply with the subsequently filed dedicatory instrument.

8 SECTION 9. Chapter 202, Property Code, is amended by adding
9 Sections 202.011, 202.012, 202.013, and 202.014 to read as follows:

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

13 (1) a right to facilitate the development,
14 construction, and marketing of the subdivision; and

15 (2) a right to direct the size, shape, and composition
16 of the subdivision.

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

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

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

27 (b) Except as otherwise provided by Subsection (d), a

1 property owners' association may not include or enforce a provision
2 in a dedicatory instrument that prohibits or restricts a property
3 owner from installing a solar energy device.

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

5 (d) A property owners' association may include or enforce a
6 provision in a dedicatory instrument that prohibits a solar energy
7 device that:

8 (1) as adjudicated by a court:

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

10 (B) violates a law;

11 (2) is located on property owned or maintained by the
12 property owners' association;

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

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

17 (A) on the roof of the home or of another
18 structure allowed under a dedicatory instrument; or

19 (B) in a fenced yard or patio owned and
20 maintained by the property owner;

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

22 (A) extends higher than the roofline;

23 (B) is located in an area other than an area
24 designated by the property owners' association, unless the
25 alternate location increases the estimated annual energy
26 production of the device, as determined by using a publicly
27 available modeling tool provided by the National Renewable Energy

1 Laboratory, by more than 10 percent above the energy production of
2 the device if located in an area designated by the property owners'
3 association;

11 (7) as installed:

12 (A) conflicts with the manufacturer's
13 installation requirements; or

14 (B) voids material warranties; or

19 (e) A committee described by Subsection (d)(8) may not
20 withhold approval for installation of a solar energy device that
21 meets or exceeds the minimum requirements of a dedicatory
22 instrument.

23 Sec. 202.013. REGULATION OF CERTAIN ROOFING MATERIALS. A
24 property owners' association may not include or enforce a provision
25 in a dedicatory instrument that prohibits or restricts a property
26 owner who is otherwise authorized to install shingles on the roof of
27 the owner's property from installing shingles that:

(1) are designed primarily to:

(A) be wind and hail resistant;

(B) provide heating and cooling efficiencies

4 greater than those provided by customary composite shingles; or

(C) provide solar generation capabilities; and

(2) when installed:

(A) resemble the shingles used or otherwise

8 authorized for use on property in the subdivision;

(B) are more durable than and are of equal or

10 superior quality to the shingles described by Paragraph (A); and

(C) match the aesthetics of the property

12 surrounding the owner's property.

Sec. 202.014. RESTRICTIONS REQUIRING CAPITAL IMPROVEMENTS.

14 (a) A dedicatory instrument may not be amended to retroactively
15 require a person who owns property subject to the dedicatory
16 instrument at the time the amendment is adopted to make a capital
17 improvement to the owner's property that is not required before the
18 amendment.

(b) For the purposes of this section, "capital improvement"

means items such as additional tree plantings, additional sodding, fence construction, hardscape installation, new construction, or any similar capital improvement. The term does not include repair or maintenance of existing improvements or the removal of conditions that are in violation of a dedicatory instrument.

25 SECTION 10. Subsections (a), (b), and (c), Section 207.003,
26 Property Code, are amended to read as follows:

27 (a) Not later than the 10th day after the date a written

1 request for subdivision information is received from an owner,
2 owner's agent, or title insurance company or its agent acting on
3 behalf of the owner, the property owners' association shall deliver
4 to the owner, owner's agent, or title insurance company or its
5 agent:

6 (1) a current copy of the restrictions applying to the
7 subdivision;

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

10 (3) a current resale certificate that complies with
11 Subsection (b).

12 (b) A current resale certificate under Subsection (a) must
13 contain:

14 (1) a statement of any right of first refusal or other
15 restraint contained in the restrictions or restrictive covenants
16 that restricts the owner's right to transfer the owner's property;

17 (2) the frequency and amount of any regular
18 assessments;

19 (3) the amount and purpose of any special assessment
20 that has been approved before and is due after the date the resale
21 certificate is prepared;

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

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

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

5 (8) the total of any unsatisfied judgments against the
6 property owners' association;

11 (10) a copy of a certificate of insurance showing the
12 property owners' association's property and liability insurance
13 relating to the common areas and common facilities;

14 (11) a description of any conditions on the owner's
15 property that the property owners' association board has actual
16 knowledge are in violation of the restrictions applying to the
17 subdivision or the bylaws or rules of the property owners'
18 association;

19 (12) a summary or copy of notices received by the
20 property owners' association from any governmental authority
21 regarding health or housing code violations existing on the
22 preparation date of the certificate relating to the owner's
23 property or any common areas or common facilities owned or leased by
24 the property owners' association:

25 (13) the amount of any administrative transfer fee
26 charged by the property owners' association for a change of
27 ownership of property in the subdivision:

19 SECTION 11. Chapter 207, Property Code, is amended by
20 adding Section 207.006 to read as follows:

21 Sec. 207.006. ONLINE SUBDIVISION INFORMATION REQUIRED. A
22 property owners' association shall make dedicatory instruments
23 relating to the association or subdivision and filed in the county
24 deed records available on a website if the association has, or a
25 management company on behalf of the association maintains, a
26 publicly accessible website.

27 SECTION 12. Section 209.003, Property Code, is amended by

1 adding Subsection (e) to read as follows:

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

7 (1) Section 209.005(b);
8 (2) Section 209.0056;
9 (3) Section 209.0057;
10 (4) Section 209.0058;
11 (5) Section 209.00592; and
12 (6) Section 209.0062.

13 SECTION 13. Chapter 209, Property Code, is amended by
14 adding Section 209.0041 to read as follows:

15 Sec. 209.0041. ADOPTION OR AMENDMENT OF CERTAIN DEDICATORY
16 INSTRUMENTS. (a) This section applies to a residential
17 subdivision in which property owners are subject to mandatory
18 membership in a property owners' association.

19 (b) 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 (c) This section does not apply to the amendment of a
23 declaration during a development period, as defined by Section
24 202.011.

25 (d) This section applies to a dedicatory instrument
26 regardless of the date on which the dedicatory instrument was
27 created.

1 (e) This section supersedes any contrary requirement in a
2 dedicatory instrument.

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

5 (g) Except as provided by this subsection, a declaration may
6 be amended only by a vote of 67 percent of the total votes allocated
7 to property owners in the property owners' association, in addition
8 to any governmental approval required by law. If the declaration
9 contains a lower percentage, the percentage in the declaration
10 controls.

11 (h) A bylaw may not be amended to conflict with the
12 declaration.

13 (i) All ballots cast in a vote that results in an amendment
14 to a restrictive covenant or bylaw are records of the association
15 subject to inspection under Section 209.005.

16 SECTION 14. Section 209.005, Property Code, is amended to
17 read as follows:

18 Sec. 209.005. ASSOCIATION RECORDS. (a) This section does
19 not apply to a property owners' association that is subject to
20 Chapter 552, Government Code, by application of Section 552.0036,
21 Government Code.

22 (b) A property owners' association shall make the books and
23 records of the association, including financial records, open to
24 and reasonably available for examination by [to] an owner, or a
25 person designated in a writing signed by the owner as the owner's
26 agent, attorney, or certified public accountant, in accordance with
27 this section. An owner is entitled to obtain from the association

1 copies of information contained in the books and records [Section
2 B, Article 2.23, Texas Non-Profit Corporation Act (Article
3 1396-2.23, Vernon's Texas Civil Statutes)].

4 (c) [(-1) A property owners' association described by
5 Section 552.0036(2), Government Code, shall make the books and
6 records of the association, including financial records,
7 reasonably available to any person requesting access to the books
8 or records in accordance with Chapter 552, Government Code.
9 Subsection (a) does not apply to a property owners' association to
10 which this subsection applies.

11 [(b)] An attorney's files and records relating to the
12 property owners' association, excluding invoices requested by an
13 owner under Section 209.008(d), are not [+]

14 [(-1)] records of the association and are not [+]
15 [(-2)] subject to inspection by the owner [+] or
16 [(-3)] subject to production in a legal proceeding. If
17 a document in an attorney's files and records relating to the
18 association would be responsive to a legally authorized request to
19 inspect or copy association documents, the document shall be
20 produced by using the copy from the attorney's files and records if
21 the association has not maintained a separate copy of the document.
22 This subsection does not require production of a document that
23 constitutes attorney work product or that is privileged as an
24 attorney-client communication.

25 (d) An owner or the owner's authorized representative
26 described by Subsection (b) must submit a written request for
27 access or information under Subsection (b) by certified mail or

1 another method providing evidence of mailing or delivery, with
2 sufficient detail describing the property owners' association's
3 books and records requested, to the mailing address of the
4 association or authorized representative as reflected on the most
5 current management certificate filed under Section 209.004. The
6 request must contain an election either to inspect the books and
7 records before obtaining copies or to have the property owners'
8 association forward copies of the requested books and records and:

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

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

22 (e) If the property owners' association is unable to produce
23 the books or records requested under Subsection (d) on or before the
24 10th business day after the date the association receives the
25 request, the association must provide to the requestor written
26 notice that:

27 (1) informs the requestor of the reason that the

1 association is unable to produce the information on or before the
2 10th business day after the date the association received the
3 request; and

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

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

13 (g) A property owners' association may produce books and
14 records requested under this section in hard copy, electronic, or
15 other format reasonably available to the association.

16 (h) A property owners' association board must adopt a
17 records production and copying policy that prescribes the actual
18 costs the association will charge for the compilation, production,
19 and reproduction of information requested under this section. The
20 prescribed charges may include all reasonable costs of materials,
21 labor, and overhead but may not exceed costs that would be
22 applicable for an item under 1 T.A.C. Section 70.3. The policy
23 required by this subsection must be recorded as a dedicatory
24 instrument in accordance with Section 202.006. An association may
25 not charge an owner for the compilation, production, or
26 reproduction of information requested under this section unless the
27 policy prescribing those costs has been recorded as required by

1 this subsection. An owner is responsible for costs related to the
2 compilation, production, and reproduction of the requested
3 information in the amounts prescribed by the policy adopted under
4 this subsection. The association may require advance payment of
5 the costs of compilation, production, and reproduction of the
6 requested information.

7 (i) A property owners' association must estimate costs
8 under this section using amounts prescribed by the policy adopted
9 under Subsection (h).

10 (j) Except as provided by Subsection (k) and to the extent
11 the information is provided in the meeting minutes, the property
12 owners' association is not required to release or allow inspection
13 of any books or records that identify the dedicatory instrument
14 violation history of an individual owner of an association, an
15 owner's personal financial information, including records of
16 payment or nonpayment of amounts due the association, an owner's
17 contact information, other than the owner's address, or information
18 related to an employee of the association, including personnel
19 files. Information may be released in an aggregate or summary
20 manner that would not identify an individual property owner.

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

23 (1) the express written approval of the owner whose
24 records are the subject of the request for inspection is provided to
25 the property owners' association; or

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

1 inspection.

2 (1) A property owners' association composed of more than 14
3 lots shall adopt and comply with a document retention policy that
4 includes, at a minimum, the following requirements:

5 (1) certificates of formation, bylaws, restrictive
6 covenants, and all amendments to the certificates of formation,
7 bylaws, and covenants shall be retained permanently;

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

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

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

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

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

18 (m) A member of a property owners' association who is denied
19 access to or copies of association books or records to which the
20 member is entitled under this section may file a petition with the
21 justice of the peace of a justice precinct in which all or part of
22 the property that is governed by the association is located
23 requesting relief in accordance with this subsection. If the
24 justice of the peace finds that the member is entitled to access to
25 or copies of the records, the justice of the peace may grant one or
26 more of the following remedies:

27 (1) a judgment ordering the property owners'

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

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

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

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

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

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

25 SECTION 15. Chapter 209, Property Code, is amended by
26 adding Sections 209.0051, 209.0056, 209.0057, 209.0058, 209.0059,
27 209.00591, 209.00592, and 209.00593 to read as follows:

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

5 (b) In this section, "board meeting" means a deliberation
6 between a quorum of the voting board of the property owners'
7 association, or between a quorum of the voting board and another
8 person, during which property owners' association business or
9 policies are considered or during which the board takes formal
10 action. The term does not include the gathering of a quorum of the
11 board at a social function unrelated to the business of the
12 association or the attendance by a quorum of the board at a
13 regional, state, or national convention, ceremonial event, or press
14 conference, if formal action is not taken and any discussion of
15 association business is incidental to the social function,
16 convention, ceremonial event, or press conference.

17 (c) Regular and special board meetings must be open to
18 owners, subject to the right of the board to adjourn a board meeting
19 and reconvene in closed executive session to consider actions
20 involving personnel, pending or threatened litigation, contract
21 negotiations, enforcement actions, confidential communications
22 with the property owners' association's attorney, matters involving
23 the invasion of privacy of individual owners, or matters that are to
24 remain confidential by request of the affected parties and
25 agreement of the board. Following an executive session, any
26 decision made in the executive session must be summarized orally
27 and placed in the minutes, in general terms, without breaching the

1 privacy of individual owners, violating any privilege, or
2 disclosing information that was to remain confidential at the
3 request of the affected parties. The oral summary must include a
4 general explanation of expenditures approved in executive session.

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

9 (d) The board shall keep a record of each regular,
10 emergency, or special board meeting in the form of written minutes
11 or an audio recording of the meeting. The board shall make meeting
12 records, including approved minutes, available to a member for
13 inspection and copying on the member's written request to the
14 property owners' association's managing agent at the address
15 appearing on the most recently filed management certificate or, if
16 there is not a managing agent, to the board.

17 (e) Members shall be given notice of the date, hour, place,
18 and general subject of a regular, emergency, or special board
19 meeting, including a general description of any matter to be
20 brought up for deliberation in executive session. The notice shall
21 be:

22 (1) mailed to each property owner not later than the
23 10th day or earlier than the 60th day before the date of the
24 meeting; or

25 (2) provided at least 72 hours before the start of the
26 meeting by:

27 (A) posting the notice in a conspicuous manner

1 reasonably designed to provide notice to property owners'
2 association members:

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

24 (h) A board may meet by any method of communication,
25 including electronic and telephonic, without prior notice to owners
26 under Subsection (e), if each director may hear and be heard by
27 every other director, to consider a reasonably unforeseen emergency

1 or urgent necessity that requires immediate board action. Any
2 action taken without notice to owners under Subsection (e) must be
3 recorded by an audio device and kept as part of the association
4 records and shall be summarized orally, including an explanation of
5 any known actual or estimated expenditures approved at the meeting,
6 and documented in the minutes of the next regular or special board
7 meeting. The board may not, without prior notice to owners under
8 Subsection (e), consider or vote on:

9 (1) fines;
10 (2) damage assessments;
11 (3) initiation of foreclosure actions;
12 (4) initiation of enforcement actions, excluding
13 temporary restraining orders or violations involving a threat to
14 health or safety;

15 (5) increases in assessments;
16 (6) levying of special assessments;
17 (7) appeals from a denial of architectural control
18 approval; or

19 (8) a suspension of a right of a particular owner
20 before the owner has an opportunity to attend a board meeting to
21 present the owner's position, including any defense, on the issue.

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

26 (1) adopting or amending the governing documents,
27 including declarations, bylaws, rules, and regulations of the

1 association;

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

7 (4) changing the voting rights of members of the
8 association.

9 Sec. 209.0056. NOTICE OF ELECTION OR ASSOCIATION VOTE.

10 (a) Not later than the 10th day or earlier than the 60th day before
11 the date of an election or vote, a property owners' association
12 shall give written notice of the election or vote to:

13 (1) each owner of property in the property owners'
14 association, for purposes of an association-wide election or vote;
15 or

16 (2) each owner of property in the property owners'
17 association entitled under the dedicatory instruments to vote in a
18 particular representative election, for purposes of a vote that
19 involves election of representatives of the association who are
20 vested under the dedicatory instruments of the property owners'
21 association with the authority to elect or appoint board members of
22 the property owners' association.

23 (b) This section supersedes any contrary requirement in a
24 dedicatory instrument.

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

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

5 (b) Any owner may, not later than the 15th day after the date
6 of the meeting at which the election was held, require a recount of
7 the votes. A demand for a recount must be submitted in writing
8 either:

9 (1) by certified mail, return receipt requested, or by
10 delivery by the United States Postal Service with signature
11 confirmation service to the property owners' association's mailing
12 address on the latest management certificate filed under Section
13 209.004; or

14 (2) in person to the property owners' association's
15 managing agent as reflected on the latest management certificate
16 filed under Section 209.004 or to the address to which absentee and
17 proxy ballots are mailed.

18 (c) The property owners' association shall, at the expense
19 of the owner requesting the recount, retain for the purpose of
20 performing the recount, the services of a person qualified to
21 tabulate votes under this subsection. The association shall enter
22 into a contract for the services of a person who:

23 (1) is not a member of the association or related to a
24 member of the association board within the third degree by
25 consanguinity or affinity, as determined under Chapter 573,
26 Government Code; and

27 (2) is:

(A) a current or former:

(i) county judge;

(ii) county elections administrator;

(iii) justice of the peace; or

(iv) county voter registrar; or

(B) a person agreed on by the association and the
ng the recount.

8 (d) Any recount under Subsection (b) must be performed on or
9 before the 30th day after the date of receipt of a request and
10 payment for a recount in accordance with Subsections (b) and (c).
11 If the recount changes the results of the election, the property
12 owners' association shall reimburse the requesting owner for the
13 cost of the recount. The property owners' association shall
14 provide the results of the recount to each owner who requested the
15 recount. Any action taken by the board in the period between the
16 initial election vote tally and the completion of the recount is not
17 affected by any recount.

21 (b) Electronic votes cast under Section 209.00592
22 constitute written and signed ballots.

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

25 Sec. 209.0059. RIGHT TO VOTE. (a) A provision in a
26 dedicatory instrument that would disqualify a property owner from
27 voting in a property owners' association election of board members

1 or on any matter concerning the rights or responsibilities of the
2 owner is void.

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

6 Sec. 209.00591. BOARD MEMBERSHIP. (a) Except as provided
7 by this section, a provision in a dedicatory instrument that
8 restricts a property owner's right to run for a position on the
9 board of the property owners' association is void.

10 (b) If a board is presented with written, documented
11 evidence from a database or other record maintained by a
12 governmental law enforcement authority that a board member has been
13 convicted of a felony or crime involving moral turpitude, the board
14 member is immediately ineligible to serve on the board of the
15 property owners' association, automatically considered removed
16 from the board, and prohibited from future service on the board.

17 (c) The declaration may provide for a period of declarant
18 control of the association during which a declarant, or persons
19 designated by the declarant, may appoint and remove board members
20 and the officers of the association, other than board members or
21 officers elected by members of the property owners' association.
22 Regardless of the period of declarant control provided by the
23 declaration, on or before the 120th day after the date 75 percent of
24 the lots that may be created and made subject to the declaration are
25 conveyed to owners other than a declarant, at least one-third of the
26 board members must be elected by owners other than the declarant.
27 If the declaration does not include the number of lots that may be

1 created and made subject to the declaration, at least one-third of
2 the board members must be elected by owners other than the declarant
3 not later than the 10th anniversary of the date the declaration was
4 recorded.

5 Sec. 209.00592. VOTING; QUORUM. (a) The voting rights of
6 an owner may be cast or given:

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

9 (2) by absentee ballot in accordance with this
10 section; or

11 (3) by electronic ballot in accordance with this
12 section.

13 (b) An absentee or electronic ballot:

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

17 (2) may not be counted, even if properly delivered, if
18 the owner attends any meeting to vote in person, so that any vote
19 cast at a meeting by a property owner supersedes any vote submitted
20 by absentee or electronic ballot previously submitted for that
21 proposal; and

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

25 (c) A solicitation for votes by absentee ballot must
26 include:

27 (1) an absentee ballot that contains each proposed

1 action and provides an opportunity to vote for or against each
2 proposed action;

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

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

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

16 (1) given by:

17 (A) e-mail;

18 (B) facsimile; or

19 (C) posting on an Internet website;

20 (2) for which the identity of the property owner
21 submitting the ballot can be confirmed; and

22 (3) for which the property owner may receive a receipt
23 of the electronic transmission and receipt of the owner's ballot.

24 (e) If an electronic ballot is posted on an Internet
25 website, a notice of the posting shall be sent to each owner that
26 contains instructions on obtaining access to the posting on the
27 website.

1 (f) This section supersedes any contrary provision in a
2 dedicatory instrument.

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

6 Sec. 209.00593. ELECTION OF BOARD MEMBERS. (a) Any board
7 member whose term has expired must be elected by owners who are
8 members of the property owners' association. A board member may be
9 appointed by the board only to fill a vacancy caused by a
10 resignation, death, or disability. A board member appointed to
11 fill a vacant position shall serve only until the end of the
12 unexpired term of the predecessor board member.

13 (b) The board of a property owners' association may amend
14 the bylaws of the property owners' association to provide for
15 elections to be held as required by Subsection (a).

16 (c) The appointment of a board member in violation of this
17 section is void.

18 (d) This section does not apply to the appointment of a
19 board member during a development period, as defined by Section
20 202.011.

21 (e) This section does not apply to a representative board
22 whose members or delegates are elected or appointed by
23 representatives of a property owners' association who are elected
24 by owner members of a property owners' association.

25 SECTION 16. Subsection (b), Section 209.006, Property Code,
26 is amended to read as follows:

27 (b) The notice must:

4 (2) inform the owner that the owner:

5 (A) is entitled to a reasonable period to cure
6 the violation and avoid the fine or suspension unless the owner was
7 given notice and a reasonable opportunity to cure a similar
8 violation within the preceding six months; and

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

12 SECTION 17. Chapter 209, Property Code, is amended by
13 adding Sections 209.0061, 209.0062, 209.0063, and 209.0064 to read
14 as follows:

15 Sec. 209.0061. ASSESSMENT OF FINES. (a) A fine assessed
16 by the property owners' association must be reasonable in the
17 context of the nature and frequency of the violation and the effect
18 of the violation on the subdivision as a whole. If the association
19 allows fines for a continuing violation to accumulate against a lot
20 or an owner, the association must establish a reasonable maximum
21 fine amount for a continuing violation at which point the total fine
22 amount is capped.

23 (b) If a lot occupant other than the owner violates a
24 provision of the dedicatory instrument, the property owners'
25 association, in addition to exercising any of the association's
26 powers against the owner, may assess a fine directly against the
27 nonowner occupant in the same manner as provided for an owner but

1 may not require payment from both the owner and a nonowner occupant
2 for the same violation.

3 (c) If the property owners' association assesses a fine
4 against a nonowner occupant under this section, the notice
5 provisions of Section 209.006 and the hearing provisions of Section
6 209.007 apply to the nonowner occupant in the same manner as those
7 provisions apply to an owner.

8 Sec. 209.0062. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN
9 ASSESSMENTS. (a) A property owners' association composed of more
10 than 14 lots shall adopt reasonable guidelines to establish an
11 alternative payment schedule by which an owner shall have a right to
12 make partial payments to the property owners' association for
13 delinquent regular or special assessments or any other amount owed
14 to the association without accruing additional monetary penalties.
15 For purposes of this section, monetary penalties do not include
16 reasonable costs associated with administering the payment plan or
17 interest.

18 (b) The minimum term for a payment plan offered by a
19 property owners' association is three months.

20 (c) A property owners' association is not required to allow
21 a payment plan for any amount that extends more than 18 months from
22 the date of the owner's request for a payment plan or to enter into a
23 payment plan with an owner who failed to honor the terms of a
24 previous payment plan during the two years following the owner's
25 default under the previous payment plan.

26 (d) A property owners' association shall file the
27 association's guidelines under this section in the real property

1 records of each county in which the subdivision is located.

2 (e) A property owners' association's failure to file as
3 required by this section the association's guidelines in the real
4 property records of each county in which the subdivision is located
5 does not affect a property owner's right to an alternative payment
6 schedule by which the owner may make partial payments to the
7 property owners' association for delinquent regular or special
8 assessments or any other amount owed to the association without
9 accruing additional monetary penalties, as defined by Subsection
10 (a).

11 Sec. 209.0063. PRIORITY OF PAYMENTS. A payment received by
12 a property owners' association from the owner shall be applied to
13 the owner's debt in the following order of priority:

14 (1) any delinquent assessment;
15 (2) any current assessment;
16 (3) any attorney's fees or third party collection
17 costs incurred by the association associated solely with
18 assessments or any other charge that could provide the basis for
19 foreclosure;
20 (4) any fines assessed by the association;
21 (5) any attorney's fees incurred by the association
22 that are not subject to Subdivision (3); and
23 (6) any other amount owed to the association.

24 Sec. 209.0064. THIRD PARTY COLLECTIONS. Before a property
25 owners' association may assess the account of an owner for
26 reimbursement of reasonable attorney's fees and other reasonable
27 costs payable by the association to another party or billed by a

1 third party to the association on a contingency basis and that are
2 related to collecting assessments or other amounts owed the
3 association by the owner, the association must provide a notice to
4 the owner by certified mail, return receipt requested, that:

5 (1) specifies each delinquent amount and the total
6 amount of the payment required to make the account current;

7 (2) describes the options the owner has to avoid
8 liability for attorney's fees or other costs related to collection
9 of those amounts, including information regarding the availability
10 of a payment plan through the association; and

11 (3) provides a period of at least 30 days for the owner
12 to cure the delinquency before further action is taken by the
13 association.

14 SECTION 18. Section 209.009, Property Code, is amended to
15 read as follows:

16 Sec. 209.009. FORECLOSURE SALE PROHIBITED IN CERTAIN
17 CIRCUMSTANCES. A property owners' association may not foreclose a
18 property owners' association's assessment lien if the debt securing
19 the lien consists solely of:

20 (1) fines assessed by the association; [or]
21 (2) attorney's fees incurred by the association solely
22 associated with fines assessed by the association; or
23 (3) amounts added to the owner's account as an
24 assessment under Section 209.005(h) or 209.0064.

25 SECTION 19. Chapter 209, Property Code, is amended by
26 adding Sections 209.0091, 209.0092, and 209.0093 to read as
27 follows:

1 Sec. 209.0091. JUDICIAL FORECLOSURE REQUIRED. (a) Except
2 as provided by Subsection (d) and subject to Section 209.009, a
3 property owners' association may not foreclose a property owners'
4 association assessment lien unless the association first obtains a
5 court order in an application for expedited foreclosure under the
6 rules adopted by the supreme court under Subsection (b).

7 (b) The supreme court, as an exercise of the court's
8 authority under Section 74.024, Government Code, shall adopt rules
9 establishing expedited foreclosure proceedings for use by a
10 property owners' association in foreclosing an assessment lien of
11 the association. Except as provided by this section, the rules
12 adopted under this subsection must be substantially similar to the
13 rules adopted by the supreme court under Section 50(r), Article
14 XVI, Texas Constitution.

15 (c) Rules adopted under Subsection (b) must require service
16 on the record owners of the property of a copy of the notice and
17 application for foreclosure of the lien by the same methods of
18 service prescribed for service of citation under Rules 106 through
19 119, Texas Rules of Civil Procedure.

20 (d) Expedited foreclosure is not required under this
21 section if the owner of the property that is subject to foreclosure
22 agrees in writing at the time the foreclosure is sought to waive
23 expedited foreclosure under this section. A waiver under this
24 subsection may not be required as a condition of the transfer of
25 title to real property.

26 Sec. 209.0092. REMOVAL OR ADOPTION OF FORECLOSURE
27 AUTHORITY. A provision granting a right to foreclose a lien on real

1 property for unpaid amounts due to a property owners' association
2 may be removed from a dedicatory instrument or adopted in a
3 dedicatory instrument by a vote of at least 67 percent of the total
4 votes allocated to property owners in the property owners'
5 association. Owners holding at least 10 percent of all voting
6 interests in the property owners' association may petition the
7 association and require a special meeting to be called for the
8 purposes of taking a vote for the purposes of this section.

9 Sec. 209.0093. ASSESSMENT LIEN FILING. A lien, lien
10 affidavit, or other instrument evidencing the nonpayment of
11 assessments or other charges owed to a property owners' association
12 and filed in the official public records of a county is a legal
13 instrument affecting title to real property.

14 SECTION 20. Subsection (a), Section 209.010, Property Code,
15 is amended to read as follows:

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

20 (1) [r] a written notice stating the date and time the
21 sale occurred and informing the lot owner and each lienholder of
22 record of the right of the lot owner and lienholder to redeem the
23 property under Section 209.011; and

24 (2) a copy of Section 209.011.

25 SECTION 21. Chapter 209, Property Code, is amended by
26 adding Sections 209.014 and 209.015 to read as follows:

27 Sec. 209.014. MANDATORY ELECTION REQUIRED AFTER FAILURE TO

1 CALL ANNUAL MEETING. (a) Notwithstanding any provision in a
2 dedicatory instrument, a board of a property owners' association
3 shall call an annual meeting of the members of the association.

4 (b) If a board of a property owners' association does not
5 call an annual meeting of the association members, an owner may
6 demand that a meeting of the association members be called not later
7 than the 30th day after the date of the owner's demand. The owner's
8 demand must be made in writing and sent by certified mail, return
9 receipt requested, to the registered agent of the property owners'
10 association and to the association at the address for the
11 association according to the most recently filed management
12 certificate. A copy of the notice must be sent to each property
13 owner who is a member of the association.

14 (c) If the board does not call a meeting of the members of
15 the property owners' association on or before the 30th day after the
16 date of a demand under Subsection (b), three or more owners may form
17 an election committee. The election committee shall file written
18 notice of the committee's formation with the county clerk of each
19 county in which the subdivision is located.

20 (d) A notice filed by an election committee must contain:
21 (1) a statement that an election committee has been
22 formed to call a meeting of owners who are members of the property
23 owners' association for the sole purpose of electing board members;
24 (2) the name and residential address of each committee
25 member; and
26 (3) the name of the subdivision over which the
27 property owners' association has jurisdiction under a dedicatory

1 instrument.

2 (e) Each committee member must sign and acknowledge the
3 notice before a notary or other official authorized to take
4 acknowledgments.

5 (f) The county clerk shall enter on the notice the date the
6 notice is filed and record the notice in the county's real property
7 records.

8 (g) Only one committee in a subdivision may operate under
9 this section at one time. If more than one committee in a
10 subdivision files a notice, the first committee that files a
11 notice, after having complied with all other requirements of this
12 section, is the committee with the power to act under this section.
13 A committee that does not hold or conduct a successful election
14 within four months after the date the notice is filed with the
15 county clerk is dissolved by operation of law. An election held or
16 conducted by a dissolved committee is ineffective for any purpose
17 under this section.

18 (h) The election committee may call meetings of the owners
19 who are members of the property owners' association for the sole
20 purpose of electing board members. Notice, quorum, and voting
21 provisions contained in the bylaws of the property owners'
22 association apply to any meeting called by the election committee.

23 Sec. 209.015. BOARD POWERS. Bylaws adopted by the board of
24 a property owners' association may not expand the powers of the
25 association beyond those powers specifically granted in the
26 declaration. To the extent of any conflict between the bylaws and
27 any declaration, the declaration prevails.

1 SECTION 22. Subsection (a), Section 211.002, Property Code,
2 is amended to read as follows:

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

9 SECTION 23. (a) Subsection (a), Section 5.006, and
10 Subsection (c), Section 202.004, Property Code, as amended by this
11 Act, apply only to an action filed on or after the effective date of
12 this Act. An action filed before the effective date of this Act is
13 governed by the law in effect immediately before the effective date
14 of this Act, and that law is continued in effect for that purpose.

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

24 (c) Section 51.015, Property Code, as amended by this Act,
25 applies only to the levy of an assessment or assessments as
26 described by Section 51.015, Property Code, as amended by this Act,
27 the effective date of which is on or after the effective date of

1 this Act. A levy of an assessment or assessments the effective date
2 of which is before the effective date of this Act is governed by the
3 law as it existed immediately before the effective date of this Act,
4 and that law is continued in effect for that purpose.

5 (d) Section 202.006, Property Code, as amended by this Act,
6 and Sections 202.011, 202.012, 202.013, and 209.0059 and Subsection
7 (a), Section 209.00592, Property Code, as added by this Act, apply
8 to a provision in a dedicatory instrument or a restrictive covenant
9 enacted before, on, or after the effective date of this Act, except
10 that any action taken before the effective date of this Act based on
11 an unfiled dedicatory instrument is not invalidated by Section
12 202.006, Property Code, as amended by this Act.

13 (e) Sections 207.003 and 209.005, Property Code, as amended
14 by this Act, apply only to a request for information received by a
15 property owners' association on or after the effective date of this
16 Act. A request for information received by a property owners'
17 association before the effective date of this Act is governed by the
18 law in effect immediately before the effective date of this Act, and
19 that law is continued in effect for that purpose.

20 (f) Subsection (1), Section 209.005, Property Code, as
21 added by this Act, applies only with respect to books and records
22 generated on or after the effective date of this Act. Books and
23 records generated before the effective date of this Act are
24 governed by the law in effect immediately before the effective date
25 of this Act, and that law is continued in effect for that purpose.

26 (g) Section 209.006, Property Code, as amended by this Act,
27 applies only to an enforcement action initiated by a property

1 owners' association on or after the effective date of this Act. An
2 enforcement action initiated before the effective date of this Act
3 is governed by the law in effect immediately before the effective
4 date of this Act, and that law is continued in effect for that
5 purpose.

6 (h) Section 209.0062, Property Code, as added by this Act,
7 applies only to an assessment or other debt that becomes due on or
8 after the effective date of this Act. An assessment or other debt
9 that becomes due before the effective date of this Act is governed
10 by the law in effect immediately before the effective date of this
11 Act, and that law is continued in effect for that purpose.

12 (i) Section 209.0063, Property Code, as added by this Act,
13 applies only to a payment received by a property owners'
14 association on or after the effective date of this Act. A payment
15 received by a property owners' association before the effective
16 date of this Act is governed by the law in effect immediately before
17 the effective date of this Act, and that law is continued in effect
18 for that purpose.

19 (j) Section 209.0091, Property Code, as added by this Act,
20 and Subsection (a), Section 209.010, Property Code, as amended by
21 this Act, apply only to a foreclosure sale conducted on or after the
22 effective date of this Act. A foreclosure sale conducted before the
23 effective date of this Act is governed by the law in effect
24 immediately before the effective date of this Act, and that law is
25 continued in effect for that purpose.

26 (k) Section 209.0093, Property Code, as added by this Act,
27 applies only to an instrument filed on or after January 1, 2012. An

1 instrument filed before January 1, 2012, is governed by the law in
2 effect on the date the instrument was filed, and that law is
3 continued in effect for that purpose.

4 (1) Section 209.014, Property Code, as added by this Act,
5 applies to a property owners' association created before, on, or
6 after the effective date of this Act.

7 SECTION 24. Not later than January 1, 2012, each property
8 owners' association shall present for recording with the county
9 clerk as prescribed by Section 202.006, Property Code, as amended
10 by this Act, each dedicatory instrument governing the association
11 that has not been previously recorded in the real property records
12 of the county.

13 SECTION 25. Not later than January 1, 2012, the Supreme
14 Court of Texas shall adopt rules of civil procedure under Section
15 209.0091, Property Code, as added by this Act.

16 SECTION 26. (a) Except as provided by Subsection (b) of
17 this section, this Act takes effect January 1, 2012.

18 (b) Subsection (b), Section 209.0091, Property Code, as
19 added by this Act, takes effect September 1, 2011.