

By: A. Johnson of Harris

H.B. No. 1558

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the extension or amendment of deed restrictions in
3 certain older subdivisions.

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

5 SECTION 1. Title 11, Property Code, is amended by adding
6 Chapter 216 to read as follows:

7 CHAPTER 216. EXTENSION OR AMENDMENT OF RESTRICTIONS IN CERTAIN
8 OLDER SUBDIVISIONS

9 Sec. 216.001. DEFINITIONS. In this chapter:

10 (1) "Dedictory instrument" has the meaning assigned
11 by Section 202.001.

12 (2) "Lienholder" and "owner" have the meanings
13 assigned by Section 201.003.

14 (3) "Older subdivision" means a subdivision described
15 by a recorded map or plat filed before 1947 in the real property
16 records of the county in which the subdivision is located.

17 (4) "Petition" has the meaning assigned by Section
18 202.001.

19 (5) "Property owners' association" means an
20 incorporated or unincorporated homeowners' association, community
21 association, civic club, or similar entity that:

22 (A) has a membership primarily consisting of the
23 owners of real property in a subdivision; and

24 (B) supports the enforcement of or promotes the

1 observance of the deed restrictions applicable to all or part of the
2 property located in the subdivision.

3 (6) "Restrictions" has the meaning assigned by Section
4 209.002.

5 (7) "Subdivision" means land that:

6 (A) consists of multiple sections that have each
7 been divided into two or more parts on a map or plat that has been
8 recorded in the real property records of a county; and

9 (B) is or was subject to restrictions that:

10 (i) limit a majority of the land, excluding
11 streets and public areas, to residential use; and

12 (ii) were recorded in the real property
13 records of the county.

14 Sec. 216.002. FINDINGS AND PURPOSE. (a) The legislature
15 finds that:

16 (1) the inability of owners to extend or amend
17 property restrictions in older subdivisions in which no zoning
18 regulations apply creates uncertainty in living conditions and
19 discourages investments in those subdivisions;

20 (2) owners in affected older subdivisions are
21 reluctant or unable to provide proper maintenance, upkeep, and
22 repairs of structures because of the inability to amend the
23 restrictions in response to changing circumstances;

24 (3) these conditions will cause dilapidation of
25 housing and other structures and cause unhealthful and unsanitary
26 conditions in affected older subdivisions, contrary to the health,
27 safety, and welfare of the public; and

1 (4) the existence of race-related covenants in
2 restrictions, regardless of their unenforceability, is offensive,
3 repugnant, and harmful to members of racial or ethnic minority
4 groups and public policy requires that those covenants be removed.

5 (b) The purpose of this chapter is to provide a procedure
6 for extending or amending restrictions for certain older
7 subdivisions, including the removal of any restriction relating to
8 race, religion, or national origin that is void and unenforceable
9 under the United States Constitution or Section 5.026.

10 Sec. 216.003. APPLICABILITY OF CHAPTER. (a) This chapter
11 applies only to an older subdivision that:

12 (1) is wholly or partly located in a municipality with
13 a population of two million or more;

14 (2) had original restrictions that:

15 (A) did not have an express procedure that
16 provides for successive extensions of the restrictions;

17 (B) did not have an express procedure for
18 amending the restrictions;

19 (C) could not be amended without the unanimous
20 consent of:

21 (i) all owners in the subdivision; or

22 (ii) all owners in any section of the
23 subdivision; or

24 (D) may no longer be valid due to an inability to
25 extend or amend the restrictions; and

26 (3) has a single property owners' association in which
27 all owners in the subdivision are eligible for membership but in

1 which membership is not mandatory.

2 (b) This chapter applies to a restriction regardless of the
3 date on which the restriction was created.

4 (c) This chapter supersedes any contrary requirement for
5 the extension or amendment of a restriction in a dedicatory
6 instrument of a subdivision to which this chapter applies.

7 (d) This chapter does not apply to:

8 (1) a residential subdivision described by Section
9 209.0041(b); or

10 (2) a condominium, as defined by Section 81.002 or
11 82.003.

12 Sec. 216.004. AMENDMENT OF RESTRICTIONS. (a) For purposes
13 of this chapter, the amendment of restrictions includes the
14 adoption of new restrictions or the modification or removal of
15 existing restrictions.

16 (b) An amendment of restrictions under this chapter may not
17 create a property owners' association with mandatory membership.
18 An amendment of restrictions under this chapter that creates a
19 property owners' association with mandatory membership is void.

20 Sec. 216.005. PROPERTY OWNERS' ASSOCIATION ACTION NOT
21 REQUIRED. Except as provided by Section 216.008, restrictions may
22 be extended or amended under this chapter without action by the
23 property owners' association.

24 Sec. 216.006. EXTENSION OF RESTRICTIONS. (a) Restrictions
25 may be extended as provided by Section 216.007 or, if a dedicatory
26 instrument provides a procedure for an initial extension of the
27 original restrictions, that procedure may be used for successive

1 extensions of the original restrictions unless the dedicatory
2 instrument expressly prohibits the procedure from being used for
3 successive extensions. If the dedicatory instrument prohibits the
4 procedure from being used to provide for automatic extension of
5 restrictions, the procedure may not be used under this subsection
6 to provide for automatic extension of the restrictions.

7 (b) A provision in a dedicatory instrument that prohibits
8 the extension of an existing restriction during a certain period
9 does not apply to a successive extension under a procedure for
10 initial extension of original restrictions under Subsection (a).

11 (c) An extension of restrictions under this chapter may:

12 (1) be for a period equal to the original term of the
13 restrictions or a shorter period; and

14 (2) subject to Subsection (a), provide for additional
15 automatic extensions of the term of the restrictions for a period of
16 not more than 10 years for each extension.

17 (d) A dedicatory instrument that provides for the extension
18 of restrictions and does not provide for amendment of restrictions
19 may be amended under this chapter, including by amending the
20 provision providing for the extension of the restrictions.

21 Sec. 216.007. CONSENT REQUIRED FOR EXTENSION OR AMENDMENT
22 OF RESTRICTIONS. (a) A restriction may be extended or amended by a
23 petition or ballots that indicate the written consent of the owners
24 of at least 66.6 percent of the total number of separately owned
25 parcels or tracts in the subdivision, regardless of whether the
26 parcels or tracts contain part or all of one or more platted lots or
27 combination of lots.

1 (b) A restriction that is extended or amended as described
2 by Subsection (a) applies to all sections of the subdivision,
3 including any annex, to the extent that the extended or amended
4 restriction expressly applies to the entire subdivision,
5 regardless of whether:

6 (1) each section has separate restrictions; or

7 (2) each owner is a member of the property owners'
8 association.

9 (c) If the original restrictions for a subdivision contain a
10 lower percentage to extend or amend the restrictions, the
11 percentage in the original restrictions controls.

12 Sec. 216.008. PETITION OR BALLOTS. (a) After receiving
13 written approval of a petition or ballot by the property owners'
14 association, the petition or ballots for the extension or amendment
15 of restrictions must be distributed to the owners in the
16 subdivision by any public method, including:

17 (1) by United States mail;

18 (2) by electronic mail or other method of electronic
19 transmission or publication, including publication on an Internet
20 website;

21 (3) by door-to-door circulation;

22 (4) by publication in a newspaper or similar
23 publication of general circulation in the municipality in which the
24 subdivision is located; or

25 (5) at a meeting of the owners in the subdivision
26 called for the purpose of voting on the proposed extension or
27 amendment.

1 (b) The petition or ballots may be provided to owners in
2 separate documents. The separate documents are considered to be
3 one instrument.

4 (c) If a restriction is amended under this chapter, a
5 petition or ballot for a subsequent amendment of the restrictions
6 may not be distributed under Subsection (a) before the fifth
7 anniversary of the effective date of the amended restriction under
8 Section 216.010.

9 Sec. 216.009. EFFECT OF OWNER'S SIGNATURE. (a) An owner's
10 signature on a petition or ballot conclusively establishes the
11 owner's consent for the purposes of this chapter.

12 (b) The vote of multiple owners of a lot, parcel, or tract
13 may be reflected by the signature of one of the owners.

14 (c) After an owner signs a petition or ballot for an
15 extension or amendment of a restriction, the owner's subsequent
16 conveyance of the owner's interest in real property in the
17 subdivision covered by the extension or amendment does not affect
18 the validity of the signature for the purposes of the petition or
19 ballot.

20 Sec. 216.010. EFFECTIVE DATE OF EXTENSION OR AMENDMENT. An
21 extension or amendment of a restriction under this chapter takes
22 effect on the date the extension or amendment and the petition or
23 ballots that reflect the written consent of the required number of
24 owners in the subdivision for the adoption of the extension or
25 amendment are filed and recorded in the real property records of the
26 county in which the subdivision is located.

27 Sec. 216.011. APPLICABILITY OF EXTENSION OR AMENDMENT. (a)

1 An extension or amendment of a restriction under this chapter is
2 binding on a lot, parcel, or tract in the subdivision as provided by
3 the restriction, regardless of whether the owner or owners of the
4 lot, parcel, or tract consented to the extension or amendment.

5 (b) Notwithstanding any other law, an owner may not opt out
6 of the applicability to the owner's property of a restriction that
7 is extended or amended under this chapter.

8 (c) An extension or amendment of a restriction under this
9 chapter is binding on a lienholder or a person who acquires title to
10 property at a foreclosure sale or by deed from a foreclosing
11 lienholder.

12 Sec. 216.012. UNCONSTITUTIONAL RESTRICTIONS NOT EXTENDED.
13 If a provision in restrictions extended under this chapter is void
14 and unenforceable under the United States Constitution or Section
15 5.026, the restrictions are considered as if the void and
16 unenforceable provision was never contained in the restrictions.

17 Sec. 216.013. PROCEDURES CUMULATIVE. The procedure
18 provided by this chapter for the extension or amendment of
19 restrictions is cumulative of and not in lieu of any other method by
20 which restrictions of a subdivision to which this chapter applies
21 may be extended or amended.

22 Sec. 216.014. CONSTRUCTION OF CHAPTER AND RESTRICTIONS.
23 (a) This chapter and any petition or ballot made or action taken in
24 connection with an attempt to comply with this chapter shall be
25 liberally construed to effectuate the intent of this chapter and
26 the petition, ballot, or action.

27 (b) A restriction that is extended or amended under this

1 chapter shall be liberally construed to give effect to the
2 restriction's purposes and intent.

3 SECTION 2. This Act takes effect immediately if it receives
4 a vote of two-thirds of all the members elected to each house, as
5 provided by Section 39, Article III, Texas Constitution. If this
6 Act does not receive the vote necessary for immediate effect, this
7 Act takes effect September 1, 2023.