

By: Coleman

H.B. No. 1866

A BILL TO BE ENTITLED

AN ACT

relating to the creation of restrictions, the extension of, addition to, or modification of existing restrictions, and the reinstatement of expired restrictions in certain residential subdivisions.

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

SECTION 1. Section 201.007(a), Property Code, is amended to read as follows:

(a) A petition filed under this chapter must contain or be supplemented by one or more instruments containing:

(1) the name of the subdivision;

(2) a reference to the real property records or map or plat records where the instrument or instruments that contain any restriction sought to be extended, added to, or modified are recorded or, in the case of the creation of a restriction, a reference to the place where the map or other document identifying the subdivision is recorded;

(3) a verbatim statement of any provisions for extension of the term of, or addition to, the restriction;

(4) if a restriction is being amended or modified, the text of the proposed instrument creating the amendment or modification, together with a comparison of the original restriction that is affected indicating by appropriate deletion and insertion the change to the restriction that is proposed to be

1 amended or modified;

2 (5) if a restriction is being created, the text of the
3 proposed instrument creating the restriction;

4 (6) original acknowledged signatures of the required
5 number of owners as provided by Section 201.006; and

6 ~~(7) [alternate boxes, clearly identified in a
7 conspicuous manner next to the place for signing the petition, that
8 enable each record owner to mark the appropriate box to show the
9 exercise of the owner's option of either including or excluding the
10 owner's property from being burdened by the restrictions being
11 extended, created, added to, or modified;~~

12 ~~[(8)]~~ a statement that owners who do not sign the
13 petition must file suit under Section 201.010 before the 181st day
14 after the date on which the certificate called for by Section
15 201.008(e) is filed in order to challenge the procedures followed
16 in extending, creating, adding to, or modifying a restriction [~~+~~
17 and

18 ~~[(9)] a statement that owners who do not sign the
19 petition may delete their property from the operation of the
20 extended, created, added to, or modified restriction by filing a
21 statement described in the fourth listed category in Section
22 201.009(b) before one year after the date on which the owner
23 receives actual notice of the filing of the petition authorized by
24 this chapter].~~

25 SECTION 2. Section 201.009(b), Property Code, is amended to
26 read as follows:

27 (b) A restriction added, modified, created, or extended

1 under this chapter does not affect or encumber property within the
2 subdivision that is included within one of the following
3 categories:

4 (1) property exclusively dedicated for use by the
5 public or for use by utilities;

6 (2) ~~[property of an owner who elected in the petition~~
7 ~~to exclude the property from the restriction;~~

8 ~~[(3)]~~ property of an owner who did not sign the petition
9 and has not received actual notice of the filing of the petition;
10 and

11 (3) ~~[(4)] property of an owner who did not sign the~~
12 ~~petition and who files, before one year after the date on which the~~
13 ~~owner received actual notice of the filing of the petition, an~~
14 ~~acknowledged statement describing the owner's property by~~
15 ~~reference to the recorded map or plat of the subdivision and stating~~
16 ~~that the owner elects to have the property deleted and excluded from~~
17 ~~the operation of the extended, modified, changed, or created~~
18 ~~restriction; and~~

19 ~~[(5)]~~ property owned by a minor or a person judicially
20 declared to be incompetent at the time the certificate is filed,
21 unless:

22 (A) actual notice of the filing of the petition
23 is given to a guardian of the minor or incompetent person, and the
24 guardian has not filed the statement described in the fourth listed
25 category in this subsection;

26 (B) a predecessor in title to the minor or
27 incompetent person signed a petition that was filed while the

property was owned by the predecessor; or

(C) the incompetent person signed a petition that was filed before the judicial declaration of the person's incompetency.

SECTION 3. Section 204.001, Property Code, is amended by amending Subdivision (1) and adding Subdivisions (5)-(7) to read as follows:

(1) ~~"Owner [Restrictions, " "residential real estate subdivision, " "subdivision, " "owner], " "real property records, " and "lienholder"~~ have the meanings assigned by Section 201.003.

(5) "Residential real estate subdivision" or "subdivision" means:

(A) all land encompassed within one or more maps or plats of land that is divided into two or more parts regardless of whether the map or plat is recorded or the division of land violated applicable law; and

(B) any other area of land that is divided into two or more parts by any other means.

(6) "Restrictions" has the meaning assigned by Section 201.003 and includes restrictive covenants contained in separate deeds to real property in a subdivision.

(7) "Unrestricted subdivision" means a subdivision that has never been burdened by restrictions or that was formerly burdened by restrictions that limited all or at least a majority of the land area, excluding streets and public areas, to residential use and that are no longer in effect for all or part of the subdivision.

SECTION 4. Section 204.002(a), Property Code, is amended to read as follows:

(a) This chapter applies only to a residential real estate subdivision, excluding a condominium development governed by Title 7, Property Code, that is located in whole or in part in a county with a population of 2.8 million or more. For purposes of this chapter, a residential real estate subdivision includes an unrestricted subdivision and a subdivision that created, modified, or extended restrictions under Chapter 201 that burden only a portion of the subdivision as provided by Section 201.009(b).

SECTION 5. Section 204.005, Property Code, is amended to read as follows:

Sec. 204.005. CREATION OF RESTRICTIONS AND EXTENSION OF, ADDITION TO, OR MODIFICATION OF EXISTING RESTRICTIONS BY PROPERTY OWNERS' ASSOCIATION. (a) A property owners' association has authority to approve and circulate a petition relating to the creation of restrictions or the extension of, addition to, or modification of existing restrictions. A property owners' association is not required to comply with Sections 201.009-201.012.

(b) A petition to create restrictions or extend, add to, or modify existing restrictions approved and circulated by a property owners' association is effective if:

(1) the petition is approved by the owners, excluding lienholders, contract purchasers, ~~[and the]~~ owners of mineral interests, and persons who own residential lots in the subdivision but who, according to the records of the appraisal district for the

1 subdivision, reside outside the subdivision, of at least 75 percent
2 of the real property in the subdivision or a smaller percentage
3 required by the original dedicatory instrument; and

4 (2) the petition is filed as a dedicatory instrument
5 with the county clerk of the county in which the subdivision is
6 located.

7 (c) If a subdivision consisting of multiple sections, each
8 with its own restrictions, is represented by a single property
9 owners' association, the approval requirement may be satisfied by
10 obtaining approval of at least 75 percent of the owners on a
11 section-by-section basis or of the total number of properties in
12 the property owners' association's jurisdiction.

13 (d) If approved, the petition is binding on all properties
14 in the subdivision or section, as applicable.

15 (e) A property owners' association that circulates a
16 petition must notify all record owners of property in the
17 subdivision in writing of the proposed creation of restrictions or
18 extension of, addition to, or modification of [~~the~~] existing
19 restrictions. Notice may be hand-delivered to residences within the
20 subdivision or sent by regular mail to the owner's last known
21 mailing address as reflected in the ownership records maintained by
22 the property owners' association or in the records of the
23 appropriate appraisal district. The approval of multiple owners of
24 a property may be reflected by the signature of a single co-owner.

25 SECTION 6. The heading to Section 204.006, Property Code,
26 is amended to read as follows:

27 Sec. 204.006. CREATION OF PROPERTY OWNERS' ASSOCIATION:

1 SUBDIVISIONS GENERALLY.

2 SECTION 7. Section 204.006, Property Code, is amended by
3 adding Subsection (d) to read as follows:

4 (d) This section does not apply to an unrestricted
5 subdivision or a subdivision that created, modified, or extended
6 restrictions under Chapter 201 that burden only a portion of the
7 subdivision as provided by Section 201.009(b).

8 SECTION 8. Chapter 204, Property Code, is amended by adding
9 Section 204.0065 to read as follows:

10 Sec. 204.0065. DESIGNATED PROPERTY OWNERS' ASSOCIATION IN
11 UNRESTRICTED SUBDIVISIONS. For the purpose of creating
12 restrictions under this chapter in an unrestricted subdivision, an
13 entity is considered a property owners' association under this
14 chapter if:

15 (1) the entity is a Texas nonprofit corporation;

16 (2) the articles of incorporation or bylaws of the
17 entity state that the entity is:

18 (A) a designated representative of the property
19 owners in the unrestricted subdivision; or

20 (B) designated as the "homeowners' association,"
21 "community association," "civic association," or "civic club" for
22 the unrestricted subdivision;

23 (3) membership in the entity is open to all property
24 owners in the unrestricted subdivision; and

25 (4) on the date the entity initiates an action under
26 this chapter, the membership of the entity consists of owners of at
27 least 50 percent of the number of lots or separately owned parcels

1 in the unrestricted subdivision or 50 percent of the amount of
2 square footage within all of the lots or separately owned parcels in
3 the unrestricted subdivision, excluding streets and public areas.

4 SECTION 9. Section 204.007(a), Property Code, is amended to
5 read as follows:

6 (a) Restrictions created, extended, added to, or modified
7 ~~[Extensions of, additions to, or modifications of restrictions]~~
8 under this chapter are binding on a lienholder, excluding
9 restrictions relating to regular or special assessment increases if
10 the assessment is not subordinated to purchase money or home
11 improvement liens.

12 SECTION 10. Section 204.008, Property Code, is amended to
13 read as follows:

14 Sec. 204.008. METHOD OF ADOPTION. Restrictions ~~[An~~
15 ~~extension, addition to, or modification of restrictions]~~ proposed
16 by a property owners' association as provided by this chapter may be
17 adopted:

18 (1) by a written ballot that states the substance of
19 the amendment and specifies the date by which a ballot must be
20 received to be counted;

21 (2) at a meeting of the members represented by the
22 property owners' association if written notice of the meeting
23 stating the purpose of the meeting is delivered to each owner of
24 property in the subdivision;

25 (3) by door-to-door circulation of a petition by the
26 property owners' association or a person authorized by the property
27 owners' association;

1 (4) by a method permitted by the existing
2 restrictions; or

3 (5) by a combination of the methods described by this
4 section.

5 SECTION 11. Section 204.009(a), Property Code, is amended
6 to read as follows:

7 (a) If the property owners' association is referenced [~~in~~
8 ~~the existing, extended, added to, or modified restrictions~~] as a
9 Texas nonprofit corporation in existing restrictions or in
10 restrictions created, extended, added to, or modified under this
11 chapter, the instrument contemplates the interaction of a nonprofit
12 corporation, its articles of incorporation, and its bylaws.

13 SECTION 12. Chapter 204, Property Code, is amended by
14 adding Section 204.012 to read as follows:

15 Sec. 204.012. CREATION OF OR REINSTATEMENT OF RESTRICTIONS
16 BY PETITION COMMITTEE IN UNRESTRICTED SUBDIVISIONS. (a) An
17 unrestricted subdivision may create restrictions or reinstate
18 expired restrictions by petition if:

19 (1) a petition committee is formed as provided by
20 Section 201.005;

21 (2) the petition is approved by the owners, excluding
22 lienholders, contract purchasers, owners of mineral interests, and
23 persons who own residential lots in the subdivision but who,
24 according to the records of the appraisal district for the
25 subdivision, reside outside the subdivision, of at least:

26 (A) 60 percent of the real property in the
27 subdivision for reinstatement of expired restrictions; or

1 (B) 75 percent of the real property in the
2 subdivision for creation of restrictions; and

3 (3) the procedure used in the circulation and approval
4 of the petition complies with the requirements of this chapter,
5 excluding Section 204.005(b).

6 (b) If the petition is not approved by the required
7 percentage of owners on or before the first anniversary of the date
8 the petition committee was created, the petition is void and
9 another petition committee may be formed.

10 (c) If the petition is approved, the petition is binding on
11 all properties in the subdivision or section, as applicable.

12 (d) Expired restrictions reinstated under this section are
13 effective for 10 years and may be automatically renewed for 10-year
14 terms unless the owners of at least 60 percent of the real property
15 in the subdivision vote to amend or terminate the restrictions.

16 (e) Expired restrictions reinstated under this section may
17 be modified only to:

18 (1) establish 10-year terms as provided by Subsection
19 (d);

20 (2) remove an unlawful provision, including an
21 unlawful provision relating to race;

22 (3) create a formal property owners' association that
23 provides for mandatory membership and equivalent voting rights for
24 each member;

25 (4) restrict the use of the real property in the
26 subdivision to residential use; or

27 (5) clarify ambiguous provisions as identified by the

1 petition committee.

2 (f) The voting rights granted under Subsection (e)(3) may be
3 contingent on the payment of association dues or assessments. The
4 association created under Subsection (e)(3) may not impose
5 mandatory assessments.

6 (g) A subdivision that created, modified, or extended
7 restrictions under Chapter 201 that burden only a portion of the
8 subdivision as provided by Section 201.009(b) before the former
9 restrictions expired may use the procedures provided by this
10 section to reinstate the former restrictions. Unless the petition
11 to reinstate the former restrictions provides otherwise, the
12 restrictions created, extended, or modified under Chapter 201
13 continue in effect.

14 SECTION 13. This Act takes effect immediately if it
15 receives a vote of two-thirds of all the members elected to each
16 house, as provided by Section 39, Article III, Texas Constitution.
17 If this Act does not receive the vote necessary for immediate
18 effect, this Act takes effect September 1, 2003.