

BILL ANALYSIS

Senate Research Center
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S.B. 1234
By: Fraser
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Blue Lake Estates is a residential subdivision located in Llano County. The subdivision is composed of nine parcels (Unit One through Unit Nine) and the entire subdivision is governed and administered by the Blue Lake Estates Property Owners Association. Unit One was the first developed parcel in the neighborhood and is governed by covenants and building restrictions which have no means or method for amendment or modification, while the remainder of the parcels in Blue Lake Estates (Units Two through Nine) have covenants and building restrictions which do provide a means to amend and modify.

Current law does not give the property owners' association any mechanism to call an election to amend the neighborhood covenant or deed restrict if that instrument creating the restrictions may not be amended without unanimous consent of all property owners in the subdivision. With no mechanism to amend or modify outlined in the deed restrictions, 100 percent of all property owners in Unit One must agree to any amendments or modifications. The amendment procedure for the remaining parcels (Two through Nine) requires the property owners' association to propose amendments, obtain a two-thirds approval of the board of directors of the Blue Lake Estates Property Owners' Association, and finally obtain a majority approval of the property owners by mail-in ballot.

Without the ability to update the deed restrictions for Unit One, the property owners' association claims that the entire neighborhood will suffer a decline in property values. This inability to provide improvements and beautification of the entire subdivision is due to the disparity of the financial support from Unit One property owners and unmanageable hodgepodge construction.

As proposed, S.B. 1234 provides a method to amend the covenant and deed restrictions in residential subdivisions in small rural counties when those covenants and deed restrictions fail to provide any means for amendment or require 100 percent approval for amendment.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 11, Property Code, by adding Chapter 211, as follows:

CHAPTER 211. AMENDMENT AND ENFORCEMENT OF RESTRICTIONS IN CERTAIN SUBDIVISIONS

Sec. 211.001. DEFINITIONS. Defines "dedicatory instrument," "lienholder," "owner," "real property records," "restrictions," "property owners' association," "residential real estate subdivision," and "subdivision."

Sec. 211.002. APPLICABILITY OF CHAPTER. (a) Provides that this chapter applies only to a residential real estate subdivision or any unit or parcel of a subdivision located in whole or in part within an unincorporated area of a county if the county has a population of less than 65,000.

(b) Provides that this chapter applies only to certain restrictions that affect real property within a residential real estate subdivision or any units or parcels of the subdivision.

(c) Provides that this chapter applies to a restriction regardless of the date on which is created.

Sec. 211.003. FINDINGS AND PURPOSE. (a) Sets forth legislative findings.

(b) Provides that the purpose of this chapter is to provide a procedure for creating, modifying, or adding to residential restrictions and to provide for the removal of any restriction or other provision relating to race, religion, or national origin that is void and unenforceable under either the United States Constitution or Section 5.026 (Discriminatory Provisions).

Sec. 211.004. CREATION OR MODIFICATION OF PROCEDURE TO AMEND RESTRICTIONS. (a) Authorizes a property owners' association by a two-thirds vote of the association's governing body to submit a procedure for amending restrictions to a vote of the property owners in the subdivision or in the unit or parcel of the subdivision governed by restrictions.

(b) Provides that an amendment procedure submitted to a vote under Subsection (a) binds all property owners in the subdivision or the unit parcel of the subdivision to which the procedure applies if more than two-thirds of the voting property owners vote in favor of the procedure.

(c) Requires, no later than the 30th day before the date a ballot for a vote under this section must be received to be counted, the property owners' association to mail to each affected property owner a notice that includes certain information.

(d) Requires the property owners' association to pay all costs of printing and mailing the required notices and ballots; and canvassing, tabulating, and certifying the vote.

(e) Prohibits a property owner from casting more than one vote, regardless of the number of lots the person owns. Authorizes the owners, if more than one person owns an interest in a lot, to cast only one vote for the lot. Prohibits a person from voting if the person has interest in a lot only by virtue of being a lienholder.

(f) Provides that a ballot cast under this section is secret and prohibited from being counted unless it is placed inside an unmarked envelope that is placed inside another that bears the signature and printed name of the property owner casting the enclosed ballot.

(g) Requires the presiding officer of the property owners' association to appoint an election canvassing committee and a committee chairperson to canvass and count the votes and determine the outcome.

(h) Requires the election canvassing committee chairperson, if the amendment procedure receives the number of votes required under Subsection (b), to certify the results to the presiding officer of the property owners' association. Requires the presiding officer to file in the real property records of each county in which all or part of the subdivision is located an instrument that indicates that the procedure was adopted.

(i) Prohibits the property owners' association, if the amendment procedure is not adopted, from submitting the same amendment procedure to a vote under this section on or before the first anniversary of the date the previous votes on the procedure were certified.

Sec. 211.005. EFFECT OF ADOPTING AMENDMENT PROCEDURE. Requires any proposed amendment to the restrictions described by Section 211.002(b) applicable to the subdivision or unit or parcel of the subdivision, as applicable, after the effective date of the adoption of the amendment procedure under this chapter, to be submitted for approval to the owners under the amendment procedure.

SECTION 2. Effective date: September 1, 2005.