

1-1 By: Hilderbran (Senate Sponsor - Fraser) H.B. No. 1631  
1-2 (In the Senate - Received from the House May 10, 2005;  
1-3 May 12, 2005, read first time and referred to Committee on  
1-4 Intergovernmental Relations; May 20, 2005, reported favorably by  
1-5 the following vote: Yeas 5, Nays 0; May 20, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to amendment of restrictions governing certain  
1-9 residential subdivisions.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Title 11, Property Code, is amended by adding  
1-12 Chapter 211 to read as follows:

1-13 CHAPTER 211. AMENDMENT AND ENFORCEMENT OF RESTRICTIONS IN CERTAIN  
1-14 SUBDIVISIONS

1-15 Sec. 211.001. DEFINITIONS. In this chapter:

1-16 (1) "Dedictory instrument" means each governing  
1-17 instrument covering the establishment, maintenance, and operation  
1-18 of a residential subdivision or any similar planned development.  
1-19 The term includes a declaration or similar instrument subjecting  
1-20 real property to restrictive covenants, bylaws, or similar  
1-21 instruments governing the administration or operation of a property  
1-22 owners' association, to properly adopted rules and regulations of  
1-23 the property owners' association, or to all lawful amendments to  
1-24 the covenants, bylaws, instruments, rules, or regulations.

1-25 (2) "Lienholder," "owner," "real property records,"  
1-26 and "restrictions" have the meanings assigned by Section 201.003.

1-27 (3) "Property owners' association" means an  
1-28 incorporated or unincorporated association owned by or whose  
1-29 members consist primarily of the owners of the property covered by  
1-30 the dedicatory instrument and through which the owners, or the  
1-31 board of directors or similar governing body, manage or regulate  
1-32 the residential subdivision or similar planned development.

1-33 (4) "Residential real estate subdivision" or  
1-34 "subdivision" means all land encompassed within one or more maps or  
1-35 plats of land that is divided into two or more parts if:

1-36 (A) the maps or plats cover land that is not  
1-37 within a municipality or within the extraterritorial jurisdiction  
1-38 of a municipality;

1-39 (B) the land encompassed within the maps or plats  
1-40 is or was burdened by restrictions limiting all or at least a  
1-41 majority of the land area covered by the map or plat, excluding  
1-42 streets and public areas, to residential use only; and

1-43 (C) all instruments creating the restrictions  
1-44 are recorded in the deed or real property records of a county.

1-45 Sec. 211.002. APPLICABILITY OF CHAPTER. (a) This chapter  
1-46 applies only to a residential real estate subdivision or any unit or  
1-47 parcel of a subdivision located in whole or in part within an  
1-48 unincorporated area of a county if the county has a population of  
1-49 less than 65,000.

1-50 (b) This chapter applies only to restrictions that affect  
1-51 real property within a residential real estate subdivision or any  
1-52 units or parcels of the subdivision and that, by the express terms  
1-53 of the instrument creating the restrictions:

1-54 (1) are not subject to a procedure by which the  
1-55 restrictions may be amended; or

1-56 (2) may not be amended without the unanimous consent  
1-57 of:

1-58 (A) all property owners in the subdivision; or

1-59 (B) all property owners in any unit or parcel of  
1-60 the subdivision.

1-61 (c) This chapter applies to a restriction regardless of the  
1-62 date on which it was created.

1-63 Sec. 211.003. FINDINGS AND PURPOSE. (a) The legislature  
1-64 finds that:

2-1 (1) owners of land in certain real estate subdivisions  
 2-2 are unable to govern the subdivisions by democratic principles of  
 2-3 self-government;

2-4 (2) requiring unanimous consent to amend or modify  
 2-5 restrictions in affected subdivisions or units or parcels of the  
 2-6 subdivisions is impractical and unworkable to bring needed change  
 2-7 and improvement;

2-8 (3) the inability of owners to amend or modify  
 2-9 property restrictions in certain real estate subdivisions in which  
 2-10 no zoning regulations apply creates uncertainty in living  
 2-11 conditions and discourages investments in those subdivisions;

2-12 (4) owners of land in affected subdivisions are  
 2-13 reluctant or unable to provide proper maintenance, upkeep, and  
 2-14 repairs of structures because of the inability to amend or modify  
 2-15 the restrictions in response to changing circumstances;

2-16 (5) financial institutions are reluctant to or will  
 2-17 not lend money for investments, maintenance, upkeep, or repairs in  
 2-18 affected subdivisions;

2-19 (6) these conditions will cause dilapidation of  
 2-20 housing and other structures and cause unhealthful and unsanitary  
 2-21 conditions in affected subdivisions, contrary to the health,  
 2-22 safety, and welfare of the public; and

2-23 (7) the existence of race-related covenants in  
 2-24 restrictions, regardless of their unenforceability, is offensive,  
 2-25 repugnant, and harmful to members of racial or ethnic minority  
 2-26 groups and public policy requires that those covenants be removed.

2-27 (b) The purpose of this chapter is to provide a procedure  
 2-28 for creating, modifying, or adding to residential restrictions and  
 2-29 to provide for the removal of any restriction or other provision  
 2-30 relating to race, religion, or national origin that is void and  
 2-31 unenforceable under either the United States Constitution or  
 2-32 Section 5.026.

2-33 Sec. 211.004. CREATION OR MODIFICATION OF PROCEDURE TO  
 2-34 AMEND RESTRICTIONS. (a) A property owners' association by a  
 2-35 two-thirds vote of the association's governing body may submit a  
 2-36 procedure for amending restrictions to a vote of the property  
 2-37 owners in the subdivision or in the unit or parcel of the  
 2-38 subdivision governed by restrictions.

2-39 (b) An amendment procedure submitted to a vote under  
 2-40 Subsection (a) binds all property owners in the subdivision or the  
 2-41 unit or parcel of the subdivision to which the procedure applies if  
 2-42 more than two-thirds of the voting property owners vote in favor of  
 2-43 the procedure.

2-44 (c) Not later than the 30th day before the date a ballot for  
 2-45 a vote under this section must be received to be counted, the  
 2-46 property owners' association shall mail to each affected property  
 2-47 owner a notice that includes:

2-48 (1) the exact wording of the amendment procedure; and  
 2-49 (2) the date by which a property owner's ballot must be  
 2-50 received to be counted.

2-51 (d) The property owners' association shall pay all costs of:  
 2-52 (1) printing and mailing the required notices and  
 2-53 ballots; and

2-54 (2) canvassing, tabulating, and certifying the vote.

2-55 (e) A property owner may not cast more than one vote,  
 2-56 regardless of the number of lots the person owns. If more than one  
 2-57 person owns an interest in a lot, the owners may cast only one vote  
 2-58 for that lot. A person may not vote if the person has an interest in  
 2-59 a lot only by virtue of being a lienholder.

2-60 (f) A ballot cast under this section is secret and may not be  
 2-61 counted unless it is placed inside an unmarked envelope that is  
 2-62 placed inside another envelope that bears the signature and printed  
 2-63 name of the property owner casting the enclosed ballot.

2-64 (g) The presiding officer of the property owners'  
 2-65 association shall appoint an election canvassing committee and a  
 2-66 committee chairperson to canvass and count the votes and determine  
 2-67 the outcome.

2-68 (h) If the amendment procedure receives the number of votes  
 2-69 required under Subsection (b), the election canvassing committee

3-1 chairperson shall certify the result to the presiding officer of  
3-2 the property owners' association. The presiding officer shall file  
3-3 in the real property records of each county in which all or part of  
3-4 the subdivision is located an instrument that indicates that the  
3-5 procedure was adopted.

3-6 (i) If the amendment procedure is not adopted, the property  
3-7 owners' association may not submit the same amendment procedure to  
3-8 a vote under this section on or before the first anniversary of the  
3-9 date the previous votes on the procedure were certified.

3-10 Sec. 211.005. EFFECT OF ADOPTING AMENDMENT PROCEDURE.  
3-11 After the effective date of the adoption of the amendment procedure  
3-12 under this chapter, any proposed amendment to the restrictions  
3-13 described by Section 211.002(b) applicable to the subdivision or  
3-14 unit or parcel of the subdivision, as applicable, must be submitted  
3-15 for approval to the owners under the amendment procedure.

3-16 SECTION 2. This Act takes effect September 1, 2005.

3-17 \* \* \* \* \*