

A BILL TO BE ENTITLED

AN ACT

relating to the operation of property owners' associations; providing a civil penalty.

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

SECTION 1. The chapter heading for Chapter 203, Property Code, is amended to read as follows:

CHAPTER 203. ENFORCEMENT OF PROVISIONS RELATING TO LAND USE RESTRICTIONS OR PROPERTY OWNERS' ASSOCIATIONS IN CERTAIN COUNTIES

SECTION 2. Section 203.003, Property Code, is amended to read as follows:

Sec. 203.003. ENFORCEMENT AUTHORITY OF COUNTY ATTORNEY [~~AUTHORIZED TO ENFORCE RESTRICTIONS~~]. (a) The county attorney may:

(1) sue in a court of competent jurisdiction to enjoin or abate a violation of this title by a property owners' association or an owner or a violation [~~violations~~] of a restriction contained or incorporated by reference in a properly recorded plan, plat, replat, or other instrument affecting a real property subdivision located in the county, regardless of the date on which the instrument was recorded; and

(2) recover from a property owners' association or an owner that violates this title a reasonable penalty as determined by the court not to exceed:

(A) \$250 for each violation by an association;

1 and

2 (B) \$250 for each violation by an owner.

3 (b) The county attorney may not enforce a restriction  
4 relating to race or any other restriction that violates the state or  
5 federal constitution.

6 SECTION 3. Section 207.001, Property Code, is amended to  
7 read as follows:

8 Sec. 207.001. DEFINITIONS. In this chapter:

9 (1) [~~"Restrictions" has the meaning assigned by~~  
10 ~~Section 201.003.~~

11 [~~(2)~~] "Dedictory instrument," "property owners'  
12 association," and "restrictive covenant" have the meanings  
13 assigned by Section 209.002 [~~202.001~~].

14 (2) [~~(3)~~] "Owner" means a person who owns record title  
15 to property in a subdivision or the personal representative of an  
16 individual who owns record title to property in a subdivision.

17 (3) [~~(4)~~] "Regular assessment" and "special  
18 assessment" have the meanings assigned by Section 209.002  
19 [~~204.001~~].

20 (4) [~~(5)~~] "Resale certificate" means a written  
21 statement issued, signed, and dated by an officer or authorized  
22 agent of a property owners' association that contains the  
23 information specified by Section 207.003(b).

24 (5) "Residential subdivision" and "subdivision" have  
25 the meanings assigned by Section 209.002.

26 [~~(6) "Subdivision" means all land that has been~~  
27 ~~divided into two or more parts and that is or was burdened by~~

1 ~~restrictions limiting at least the majority of the land area~~  
2 ~~burdened by restrictions, excluding streets and public areas, to~~  
3 ~~residential use only, if the instrument or instruments creating the~~  
4 ~~restrictions are recorded in the deed or real property records of a~~  
5 ~~county.]~~

6 SECTION 4. Section 207.002, Property Code, is amended to  
7 read as follows:

8 Sec. 207.002. APPLICABILITY. This chapter applies only to  
9 a subdivision to which Chapter 209 applies [~~with a property owners'~~  
10 ~~association that is entitled to levy regular or special~~  
11 ~~assessments~~].

12 SECTION 5. The heading to Section 207.003, Property Code,  
13 is amended to read as follows:

14 Sec. 207.003. DELIVERY OF SUBDIVISION INFORMATION TO OWNER;  
15 RESALE OF PROPERTY.

16 SECTION 6. Section 207.003, Property Code, is amended by  
17 amending Subsection (a) and adding Subsection (f) to read as  
18 follows:

19 (a) Not later than the 10th day after the date a written  
20 request for subdivision information is received from an owner,  
21 owner's agent, or title insurance company or its agent acting on  
22 behalf of the owner, the property owners' association shall deliver  
23 to the owner, owner's agent, or title insurance company or its  
24 agent:

25 (1) a current copy of the restrictive covenants  
26 [~~restrictions~~] applying to the subdivision; and

27 (2) [~~a current copy of the bylaws and rules of the~~

1 ~~property owners' association; and~~

2 [~~3~~] a resale certificate that complies with  
3 Subsections [Subsection] (b) and (f).

4 (f) Except as provided by Section 207.004, an owner that  
5 sells the owner's property in the subdivision must, before  
6 executing a sales contract or conveying the property, provide the  
7 purchaser:

8 (1) a current copy of the restrictive covenants; and

9 (2) a resale certificate:

10 (A) issued by the association; and

11 (B) prepared not earlier than three months before  
12 the date it is delivered to the purchaser.

13 SECTION 7. Chapter 207, Property Code, is amended by adding  
14 Section 207.006 to read as follows:

15 Sec. 207.006. REQUIREMENT TO FURNISH RESALE CERTIFICATE.

16 (a) In this section, "declarant" means a person or a group of  
17 persons acting in concert who:

18 (1) as part of a common promotional plan, offer to  
19 dispose of the person's or group's interest in a subdivision lot not  
20 previously disposed of; or

21 (2) reserve or succeed to any special declarant right.

22 (b) Except as provided by Section 207.004, an owner, other  
23 than a declarant selling an unimproved lot to a party that intends  
24 to resell the lot after constructing improvements on the lot, who  
25 sells a lot in a subdivision shall provide to the purchaser a resale  
26 certificate containing the information described by Section  
27 207.003.

1       (c) A resale certificate provided under this section must be  
2 issued by the property owners' association and must have been  
3 prepared not earlier than 30 days before the date the certificate is  
4 delivered to the purchaser.

5       (d) An owner's failure to provide a resale certificate under  
6 this section does not void a deed to a purchaser.

7       (e) This section does not apply to a sale made under a lien  
8 foreclosure, deed in lieu of foreclosure, or court order.

9       SECTION 8. Section 209.005, Property Code, is amended by  
10 adding Subsections (c), (d), and (e) to read as follows:

11       (c) Records of an owner's payment or nonpayment of regular  
12 assessments and special assessments, fees, fines, or any other sums  
13 that have been charged to an owner are not subject to inspection by  
14 any other owner who is not a member of the association's board or an  
15 owner's representative or to production in a legal proceeding,  
16 unless:

17               (1) the express written approval of the owner whose  
18 records are the subject of the request for inspection is submitted  
19 to the association; or

20               (2) a court orders the inspection or production.

21       (d) The association shall retain records as follows:

22               (1) articles of incorporation, bylaws, restrictive  
23 covenants, and all amendments to the articles of incorporation,  
24 bylaws, and covenants shall be retained permanently;

25               (2) financial books and records shall be retained for  
26 five years;

27               (3) owner account records shall be retained for five

1 years;

2 (4) a contract shall be retained for five years after  
3 expiration of the term of the contract;

4 (5) minutes of meetings of the board shall be retained  
5 for seven years;

6 (6) tax returns and audit records shall be retained  
7 for seven years; and

8 (7) any other records not specified above shall be  
9 retained for five years.

10 (e) This section does not apply to a property owners'  
11 association that is subject to Chapter 552, Government Code.

12 SECTION 9. Chapter 209, Property Code, is amended by adding  
13 Section 209.0051 to read as follows:

14 Sec. 209.0051. ASSOCIATION AND BOARD MEETINGS. (a) A  
15 property owners' association shall meet at least once each year.  
16 Unless the declaration, restrictions, bylaws, or articles of  
17 incorporation provide otherwise, a special meeting of the  
18 association may be called by the president of the board, by a  
19 majority of the board, or by owners having at least 10 percent of  
20 the votes in the association.

21 (b) Meetings of the association and the board must be open  
22 to the owners, subject to the right of the board to adjourn a  
23 meeting of the board and reconvene in closed executive session to  
24 consider actions involving personnel, pending litigation, contract  
25 negotiations, enforcement actions, matters involving the invasion  
26 of privacy of an owner, or matters that are to remain confidential  
27 by request of the affected parties and agreement of the board. The

1 general nature of any business to be considered in executive  
2 session must first be announced at the open meeting.

3 (c) Unless the declaration, restrictions, bylaws, or  
4 articles of incorporation provide otherwise:

5 (1) a meeting of the board may be held by any method of  
6 communication, including electronic and telephonic, if:

7 (A) notice of the meeting has been given in  
8 accordance with Subsection (e);

9 (B) each member of the board may hear and be heard  
10 by every other member of the board; and

11 (C) the meeting does not involve the board's  
12 voting on:

13 (i) a fine, damage assessment, or appeal  
14 from a denial of architectural control approval; or

15 (ii) suspension of a member of the  
16 association's right before the member has an opportunity to attend  
17 a meeting of the board to present the member's position, including  
18 any defense, on the issue; and

19 (2) the board, without a meeting, may act by unanimous  
20 written consent of all the members of the board if:

21 (A) the board action does not involve voting on:

22 (i) a fine, damage assessment, or appeal  
23 from a denial of architectural control approval; or

24 (ii) suspension of a member of the  
25 association's right before the member has an opportunity to attend  
26 a meeting of the board to present the member's position, including  
27 any defense, on the issue; and

1           (B) a record of the board action is filed with the  
2 minutes of meetings of the board.

3           (d) Notice of a regular or special meeting of the  
4 association must be given as provided by the restrictions, bylaws,  
5 or articles of incorporation, or, if those instruments do not  
6 provide for notice, notice must be given to each owner in the same  
7 manner in which notice is given to members of a nonprofit  
8 corporation under Section A, Article 2.11, Texas Non-Profit  
9 Corporation Act (Article 1396-2.11, Vernon's Texas Civil  
10 Statutes).

11           (e) Notice of a meeting of the board must be given as  
12 provided by the restrictions, bylaws, or articles of incorporation,  
13 or, if those instruments do not provide for notice, notice must be  
14 given to each board member in the same manner in which notice is  
15 given to members of the board of a nonprofit corporation under  
16 Section B, Article 2.19, Texas Non-Profit Corporation Act (Article  
17 1396-2.19, Vernon's Texas Civil Statutes).

18           (f) An association, on the written request of an owner,  
19 shall inform the owner of the time and place of the next regular or  
20 special meeting of the association or board. If the association  
21 representative to whom the request is made does not know the time  
22 and place of the meeting, the association shall promptly obtain the  
23 information and disclose it to the owner or inform the owner where  
24 the information may be obtained.

25           (g) This section does not apply to an association subject to  
26 Chapter 551, Government Code.

27           SECTION 10. Section 209.009, Property Code, is amended to



1 read as follows:

2           Sec. 209.009. FORECLOSURE SALE PROHIBITED IN CERTAIN  
3 CIRCUMSTANCES. (a) A property owners' association may not  
4 foreclose a property owners' association's assessment lien if the  
5 debt securing the lien consists solely of:

- 6                   (1) fines assessed by the association; [~~or~~]  
7                   (2) attorney's fees incurred by the association solely  
8 associated with fines assessed by the association; or  
9                   (3) debt that is not more than 90 days delinquent.

10           (b) Subsection (a)(3) does not apply to an association in  
11 which an assessment is due on a monthly basis.

12           SECTION 11. Chapter 209, Property Code, is amended by  
13 adding Sections 209.012 and 209.013 to read as follows:

14           Sec. 209.012. CONFLICTS OF INTEREST. (a) Before the board  
15 of a property owners' association hires a person who is related  
16 within the third degree of consanguinity to a member of the board:

- 17                   (1) the board member to whom the person is related must  
18 disclose the relationship between the person and the member to the  
19 other members of the board; and

- 20                   (2) the board must vote on whether to hire the person.

21           (b) The member to whom the person to be hired is related may  
22 not participate in a vote described by Subsection (a)(2).

23           Sec. 209.013. SUSPENSION OF VOTING PRIVILEGES. A property  
24 owners' association may not suspend an owner's voting privileges in  
25 the association because of the owner's overdue assessments or  
26 failure to cure a violation of a deed restriction unless:

- 27                   (1) the assessments are more than 60 days overdue; or

1           (2) the violation of the deed restriction remains  
2 uncured after notice and opportunity for a hearing under Sections  
3 209.006 and 209.007 or after the violation has been otherwise  
4 mediated or adjudicated.

5           SECTION 12. (a) Section 203.003, Property Code, as amended  
6 by this Act, applies only to a violation of Title 11, Property Code,  
7 that occurs on or after the effective date of this Act. A violation  
8 that occurs before the effective date of this Act is governed by the  
9 law in effect immediately before that date, and that law is  
10 continued in effect for that purpose.

11           (b) Except as provided by Subsection (c) of this section,  
12 Section 207.003, Property Code, as amended by this Act, applies  
13 only to information requested on or after the effective date of this  
14 Act.

15           (c) Subsection (f), Section 207.003, Property Code, as  
16 added by this Act, applies only to a sale or conveyance of property  
17 on or after the effective date of this Act. A sale or conveyance of  
18 property before the effective date of this Act is governed by the  
19 law in effect immediately before that date, and that law is  
20 continued in effect for that purpose.

21           (d) Section 209.009, Property Code, as amended by this Act,  
22 applies only to foreclosure proceedings initiated on or after the  
23 effective date of this Act. Foreclosure proceedings initiated  
24 before the effective date of this Act are governed by the law in  
25 effect immediately before that date, and that law is continued in  
26 effect for that purpose.

27           (e) Section 209.012, Property Code, as added by this Act,

1 does not apply to legal representation or management services  
2 provided under a contract entered into before the effective date of  
3 this Act.

4 (f) Section 209.013, Property Code, as added by this Act,  
5 applies only to a vote taken on or after the effective date of this  
6 Act. A vote taken before the effective date of this Act is governed  
7 by the law in effect immediately before that date, and that law is  
8 continued in effect for that purpose.

9 SECTION 13. This Act takes effect September 1, 2005.