

By: Carona

S.B. No. 892

A BILL TO BE ENTITLED

AN ACT

relating to the operation of property owners' associations;
providing an administrative 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. Section 209.005, Property Code, is amended by
14 adding Subsections (c), (d), (e), and (f) to read as follows:

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

21 (1) the express written approval of the owner whose
22 records are the subject of the request for inspection is submitted
23 to the association; or

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

25 (d) Salary or payroll records of an association employee
26 that disclose the employee's amount of salary or income are not
27 subject to inspection by an owner who is not a member of the

1 association's board or an owner's representative unless a court
2 orders the inspection.

3 (e) The association shall retain records as follows:

4 (1) articles of incorporation, bylaws, restrictive
5 covenants, and all amendments to the articles of incorporation,
6 bylaws, and covenants shall be retained permanently;

7 (2) financial books and records shall be retained for
8 five years;

9 (3) owner account records shall be retained for five
10 years;

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

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

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

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

19 (f) This section does not apply to a property owners'
20 association that is subject to Chapter 552, Government Code.

21 SECTION 8. Chapter 209, Property Code, is amended by adding
22 Section 209.0051 to read as follows:

23 Sec. 209.0051. ASSOCIATION AND BOARD MEETINGS. (a) A
24 property owners' association shall meet at least once each year.
25 Unless the declaration, restrictions, bylaws, or articles of
26 incorporation provide otherwise, a special meeting of the
27 association may be called by the president of the board, a majority

1 of the board, or by owners having at least 10 percent of the votes in
2 the association.

3 (b) Meetings of the association and the board must be open
4 to the owners, subject to the right of the board to adjourn a
5 meeting of the board and reconvene in closed executive session to
6 consider actions involving personnel, pending litigation, contract
7 negotiations, enforcement actions, matters involving the invasion
8 of privacy of an owner, or matters that are to remain confidential
9 by request of the affected parties and agreement of the board. The
10 general nature of any business to be considered in executive
11 session must first be announced at the open meeting.

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

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

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

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

20 (C) the meeting does not involve the board's
21 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 (2) the board, without a meeting, may act by unanimous
2 written consent of all the members of the board if:

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

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

6 (ii) suspension of a member of the
7 association's right before the member has an opportunity to attend
8 a meeting of the board to present the member's position, including
9 any defense, on the issue; and

10 (B) a record of the board action is filed with the
11 minutes of meetings of the board.

12 (d) Notice of a regular or special meeting of the
13 association must be given as provided by the restrictions, bylaws,
14 or articles of incorporation or, if those instruments do not
15 provide for notice, notice must be given to each owner in the same
16 manner in which notice is given to members of a nonprofit
17 corporation under Section A, Article 2.11, Texas Non-Profit
18 Corporation Act (Article 1396-2.11, Vernon's Texas Civil
19 Statutes).

20 (e) Notice of a meeting of the board must be given as
21 provided by the restrictions, bylaws, or articles of incorporation
22 or, if those instruments do not provide for notice, notice must be
23 given to each board member in the same manner in which notice is
24 given to members of the board of a nonprofit corporation under
25 Section B, Article 2.19, Texas Non-Profit Corporation Act (Article
26 1396-2.19, Vernon's Texas Civil Statutes).

27 (f) An association, on the written request of an owner,

1 shall inform the owner of the time and place of the next regular or
2 special meeting of the association or board. If the association
3 representative to whom the request is made does not know the time
4 and place of the meeting, the association shall promptly obtain the
5 information and disclose it to the owner or inform the owner where
6 the information may be obtained.

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

9 SECTION 9. Section 209.009, Property Code, is amended to
10 read as follows:

11 Sec. 209.009. FORECLOSURE SALE PROHIBITED IN CERTAIN
12 CIRCUMSTANCES. (a) A property owners' association may not
13 foreclose a property owners' association's assessment lien if the
14 debt securing the lien consists solely of:

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

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

21 SECTION 10. Chapter 209, Property Code, is amended by
22 adding Sections 209.012 and 209.013 to read as follows:

23 Sec. 209.012. CONFLICTS OF INTEREST. A person who is a
24 member of the board of a property owners' association or related
25 within the third degree by consanguinity or within the second
26 degree by affinity to a member of the board may not be compensated
27 for providing legal representation or management services to the

1 association.

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

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

7 (2) the violation of the deed restriction remains
8 uncured after notice and opportunity for a hearing under Sections
9 209.006 and 209.007 or after the violation has been otherwise
10 mediated or adjudicated.

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

17 (b) Except as provided by Subsection (c) of this section,
18 Section 207.003, Property Code, as amended by this Act, applies
19 only to information requested on or after the effective date of this
20 Act.

21 (c) Section 207.003(f), Property Code, as added by this Act,
22 applies only to a sale or conveyance of property on or after the
23 effective date of this Act. A sale or conveyance of property before
24 the effective date of this Act is governed by the law in effect
25 immediately before that date, and that law is continued in effect
26 for that purpose.

27 (d) Section 209.009, Property Code, as amended by this Act,

1 applies only to foreclosure proceedings initiated on or after the
2 effective date of this Act. Foreclosure proceedings initiated
3 before the effective date of this Act are governed by the law in
4 effect immediately before that date, and that law is continued in
5 effect for that purpose.

6 (e) Section 209.012, Property Code, as added by this Act,
7 does not apply to legal representation or management services
8 provided under a contract entered into before the effective date of
9 this Act.

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

15 SECTION 12. This Act takes effect September 1, 2005.