

1-1 By: Carona S.B. No. 892
1-2 (In the Senate - Filed March 2, 2005; March 10, 2005, read
1-3 first time and referred to Committee on Intergovernmental
1-4 Relations; May 2, 2005, reported favorably by the following vote:
1-5 Yeas 4, Nays 0; May 2, 2005, sent to printer.)

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

1-8 relating to the operation of property owners' associations;
1-9 providing a civil penalty.

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

1-11 SECTION 1. The chapter heading for Chapter 203, Property
1-12 Code, is amended to read as follows:

1-13 CHAPTER 203. ENFORCEMENT OF PROVISIONS RELATING TO LAND USE
1-14 RESTRICTIONS OR PROPERTY OWNERS' ASSOCIATIONS IN CERTAIN COUNTIES

1-15 SECTION 2. Section 203.003, Property Code, is amended to
1-16 read as follows:

1-17 Sec. 203.003. ENFORCEMENT AUTHORITY OF COUNTY ATTORNEY
1-18 [~~AUTHORIZED TO ENFORCE RESTRICTIONS~~]. (a) The county attorney
1-19 may:

1-20 (1) sue in a court of competent jurisdiction to enjoin
1-21 or abate a violation of this title by a property owners' association
1-22 or an owner or a violation [~~violations~~] of a restriction contained
1-23 or incorporated by reference in a properly recorded plan, plat,
1-24 replat, or other instrument affecting a real property subdivision
1-25 located in the county, regardless of the date on which the
1-26 instrument was recorded; and

1-27 (2) recover from a property owners' association or an
1-28 owner that violates this title a reasonable penalty as determined
1-29 by the court not to exceed:

1-30 (A) \$250 for each violation by an association;
1-31 and

1-32 (B) \$250 for each violation by an owner.

1-33 (b) The county attorney may not enforce a restriction
1-34 relating to race or any other restriction that violates the state or
1-35 federal constitution.

1-36 SECTION 3. Section 207.001, Property Code, is amended to
1-37 read as follows:

1-38 Sec. 207.001. DEFINITIONS. In this chapter:

1-39 (1) [~~"Restrictions" has the meaning assigned by~~
1-40 ~~Section 201.003.~~

1-41 [(2)] "Dedictory instrument," "property owners'
1-42 association," and "restrictive covenant" have the meanings
1-43 assigned by Section 209.002 [~~202.001~~].

1-44 (2) [(3)] "Owner" means a person who owns record title
1-45 to property in a subdivision or the personal representative of an
1-46 individual who owns record title to property in a subdivision.

1-47 (3) [(4)] "Regular assessment" and "special
1-48 assessment" have the meanings assigned by Section 209.002
1-49 [~~204.001~~].

1-50 (4) [(5)] "Resale certificate" means a written
1-51 statement issued, signed, and dated by an officer or authorized
1-52 agent of a property owners' association that contains the
1-53 information specified by Section 207.003(b).

1-54 (5) "Residential subdivision" and "subdivision" have
1-55 the meanings assigned by Section 209.002.

1-56 [(6)] "~~Subdivision~~" means ~~all land that has been~~
1-57 ~~divided into two or more parts and that is or was burdened by~~
1-58 ~~restrictions limiting at least the majority of the land area~~
1-59 ~~burdened by restrictions, excluding streets and public areas, to~~
1-60 ~~residential use only, if the instrument or instruments creating the~~
1-61 ~~restrictions are recorded in the deed or real property records of a~~
1-62 ~~county.~~

1-63 SECTION 4. Section 207.002, Property Code, is amended to
1-64 read as follows:

2-1 Sec. 207.002. APPLICABILITY. This chapter applies only to
 2-2 a subdivision to which Chapter 209 applies [~~with a property owners'~~
 2-3 ~~association that is entitled to levy regular or special~~
 2-4 ~~assessments~~].

2-5 SECTION 5. The heading to Section 207.003, Property Code,
 2-6 is amended to read as follows:

2-7 Sec. 207.003. DELIVERY OF SUBDIVISION INFORMATION TO OWNER;
 2-8 RESALE OF PROPERTY.

2-9 SECTION 6. Section 207.003, Property Code, is amended by
 2-10 amending Subsection (a) and adding Subsection (f) to read as
 2-11 follows:

2-12 (a) Not later than the 10th day after the date a written
 2-13 request for subdivision information is received from an owner,
 2-14 owner's agent, or title insurance company or its agent acting on
 2-15 behalf of the owner, the property owners' association shall deliver
 2-16 to the owner, owner's agent, or title insurance company or its
 2-17 agent:

2-18 (1) a current copy of the restrictive covenants
 2-19 [~~restrictions~~] applying to the subdivision; and

2-20 (2) [~~a current copy of the bylaws and rules of the~~
 2-21 ~~property owners' association; and~~

2-22 [~~(3)~~] a resale certificate that complies with
 2-23 Subsections [Subsection] (b) and (f).

2-24 (f) Except as provided by Section 207.004, an owner that
 2-25 sells the owner's property in the subdivision must, before
 2-26 executing a sales contract or conveying the property, provide the
 2-27 purchaser:

2-28 (1) a current copy of the restrictive covenants; and

2-29 (2) a resale certificate:

2-30 (A) issued by the association; and

2-31 (B) prepared not earlier than three months before
 2-32 the date it is delivered to the purchaser.

2-33 SECTION 7. Section 209.005, Property Code, is amended by
 2-34 adding Subsections (c), (d), (e), and (f) to read as follows:

2-35 (c) Records of an owner's payment or nonpayment of regular
 2-36 assessments and special assessments, fees, fines, or any other sums
 2-37 that have been charged to an owner are not subject to inspection by
 2-38 any other owner who is not a member of the association's board or an
 2-39 owner's representative or to production in a legal proceeding,
 2-40 unless:

2-41 (1) the express written approval of the owner whose
 2-42 records are the subject of the request for inspection is submitted
 2-43 to the association; or

2-44 (2) a court orders the inspection or production.

2-45 (d) Salary or payroll records of an association employee
 2-46 that disclose the employee's amount of salary or income are not
 2-47 subject to inspection by an owner who is not a member of the
 2-48 association's board or an owner's representative unless a court
 2-49 orders the inspection.

2-50 (e) The association shall retain records as follows:

2-51 (1) articles of incorporation, bylaws, restrictive
 2-52 covenants, and all amendments to the articles of incorporation,
 2-53 bylaws, and covenants shall be retained permanently;

2-54 (2) financial books and records shall be retained for
 2-55 five years;

2-56 (3) owner account records shall be retained for five
 2-57 years;

2-58 (4) a contract shall be retained for five years after
 2-59 expiration of the term of the contract;

2-60 (5) minutes of meetings of the board shall be retained
 2-61 for seven years;

2-62 (6) tax returns and audit records shall be retained
 2-63 for seven years; and

2-64 (7) any other records not specified above shall be
 2-65 retained for five years.

2-66 (f) This section does not apply to a property owners'
 2-67 association that is subject to Chapter 552, Government Code.

2-68 SECTION 8. Chapter 209, Property Code, is amended by adding
 2-69 Section 209.0051 to read as follows:

3-1 Sec. 209.0051. ASSOCIATION AND BOARD MEETINGS. (a) A
 3-2 property owners' association shall meet at least once each year.
 3-3 Unless the declaration, restrictions, bylaws, or articles of
 3-4 incorporation provide otherwise, a special meeting of the
 3-5 association may be called by the president of the board, by a
 3-6 majority of the board, or by owners having at least 10 percent of
 3-7 the votes in the association.

3-8 (b) Meetings of the association and the board must be open
 3-9 to the owners, subject to the right of the board to adjourn a
 3-10 meeting of the board and reconvene in closed executive session to
 3-11 consider actions involving personnel, pending litigation, contract
 3-12 negotiations, enforcement actions, matters involving the invasion
 3-13 of privacy of an owner, or matters that are to remain confidential
 3-14 by request of the affected parties and agreement of the board. The
 3-15 general nature of any business to be considered in executive
 3-16 session must first be announced at the open meeting.

3-17 (c) Unless the declaration, restrictions, bylaws, or
 3-18 articles of incorporation provide otherwise:

3-19 (1) a meeting of the board may be held by any method of
 3-20 communication, including electronic and telephonic, if:

3-21 (A) notice of the meeting has been given in
 3-22 accordance with Subsection (e);

3-23 (B) each member of the board may hear and be heard
 3-24 by every other member of the board; and

3-25 (C) the meeting does not involve the board's
 3-26 voting on:

3-27 (i) a fine, damage assessment, or appeal
 3-28 from a denial of architectural control approval; or

3-29 (ii) suspension of a member of the
 3-30 association's right before the member has an opportunity to attend
 3-31 a meeting of the board to present the member's position, including
 3-32 any defense, on the issue; and

3-33 (2) the board, without a meeting, may act by unanimous
 3-34 written consent of all the members of the board if:

3-35 (A) the board action does not involve voting on:

3-36 (i) a fine, damage assessment, or appeal
 3-37 from a denial of architectural control approval; or

3-38 (ii) suspension of a member of the
 3-39 association's right before the member has an opportunity to attend
 3-40 a meeting of the board to present the member's position, including
 3-41 any defense, on the issue; and

3-42 (B) a record of the board action is filed with the
 3-43 minutes of meetings of the board.

3-44 (d) Notice of a regular or special meeting of the
 3-45 association must be given as provided by the restrictions, bylaws,
 3-46 or articles of incorporation, or, if those instruments do not
 3-47 provide for notice, notice must be given to each owner in the same
 3-48 manner in which notice is given to members of a nonprofit
 3-49 corporation under Section A, Article 2.11, Texas Non-Profit
 3-50 Corporation Act (Article 1396-2.11, Vernon's Texas Civil
 3-51 Statutes).

3-52 (e) Notice of a meeting of the board must be given as
 3-53 provided by the restrictions, bylaws, or articles of incorporation,
 3-54 or, if those instruments do not provide for notice, notice must be
 3-55 given to each board member in the same manner in which notice is
 3-56 given to members of the board of a nonprofit corporation under
 3-57 Section B, Article 2.19, Texas Non-Profit Corporation Act (Article
 3-58 1396-2.19, Vernon's Texas Civil Statutes).

3-59 (f) An association, on the written request of an owner,
 3-60 shall inform the owner of the time and place of the next regular or
 3-61 special meeting of the association or board. If the association
 3-62 representative to whom the request is made does not know the time
 3-63 and place of the meeting, the association shall promptly obtain the
 3-64 information and disclose it to the owner or inform the owner where
 3-65 the information may be obtained.

3-66 (g) This section does not apply to an association subject to
 3-67 Chapter 551, Government Code.

3-68 SECTION 9. Section 209.009, Property Code, is amended to
 3-69 read as follows:

4-1 Sec. 209.009. FORECLOSURE SALE PROHIBITED IN CERTAIN
4-2 CIRCUMSTANCES. (a) A property owners' association may not
4-3 foreclose a property owners' association's assessment lien if the
4-4 debt securing the lien consists solely of:

- 4-5 (1) fines assessed by the association; [~~or~~]
- 4-6 (2) attorney's fees incurred by the association solely
- 4-7 associated with fines assessed by the association; or
- 4-8 (3) debt that is not more than 90 days delinquent.

4-9 (b) Subsection (a)(3) does not apply to an association in
4-10 which an assessment is due on a monthly basis.

4-11 SECTION 10. Chapter 209, Property Code, is amended by
4-12 adding Sections 209.012 and 209.013 to read as follows:

4-13 Sec. 209.012. CONFLICTS OF INTEREST. A person who is a
4-14 member of the board of a property owners' association or related
4-15 within the third degree by consanguinity or within the second
4-16 degree by affinity to a member of the board may not be compensated
4-17 for providing legal representation or management services to the
4-18 association.

4-19 Sec. 209.013. SUSPENSION OF VOTING PRIVILEGES. A property
4-20 owners' association may not suspend an owner's voting privileges in
4-21 the association because of the owner's overdue assessments or
4-22 failure to cure a violation of a deed restriction unless:

- 4-23 (1) the assessments are more than 60 days overdue; or
- 4-24 (2) the violation of the deed restriction remains
4-25 uncured after notice and opportunity for a hearing under Sections
4-26 209.006 and 209.007 or after the violation has been otherwise
4-27 mediated or adjudicated.

4-28 SECTION 11. (a) Section 203.003, Property Code, as amended
4-29 by this Act, applies only to a violation of Title 11, Property Code,
4-30 that occurs on or after the effective date of this Act. A violation
4-31 that occurs before the effective date of this Act is governed by the
4-32 law in effect immediately before that date, and that law is
4-33 continued in effect for that purpose.

4-34 (b) Except as provided by Subsection (c) of this section,
4-35 Section 207.003, Property Code, as amended by this Act, applies
4-36 only to information requested on or after the effective date of this
4-37 Act.

4-38 (c) Subsection (f), Section 207.003, Property Code, as
4-39 added by this Act, applies only to a sale or conveyance of property
4-40 on or after the effective date of this Act. A sale or conveyance of
4-41 property before the effective date of this Act is governed by the
4-42 law in effect immediately before that date, and that law is
4-43 continued in effect for that purpose.

4-44 (d) Section 209.009, Property Code, as amended by this Act,
4-45 applies only to foreclosure proceedings initiated on or after the
4-46 effective date of this Act. Foreclosure proceedings initiated
4-47 before the effective date of this Act are governed by the law in
4-48 effect immediately before that date, and that law is continued in
4-49 effect for that purpose.

4-50 (e) Section 209.012, Property Code, as added by this Act,
4-51 does not apply to legal representation or management services
4-52 provided under a contract entered into before the effective date of
4-53 this Act.

4-54 (f) Section 209.013, Property Code, as added by this Act,
4-55 applies only to a vote taken on or after the effective date of this
4-56 Act. A vote taken before the effective date of this Act is governed
4-57 by the law in effect immediately before that date, and that law is
4-58 continued in effect for that purpose.

4-59 SECTION 12. This Act takes effect September 1, 2005.

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