

## **BILL ANALYSIS**

S.B. 979  
By: West, Royce  
Business & Industry  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Currently, provisions under the Property Code regulate the operation of property owners' associations (association). Property owners around this state have expressed dissatisfaction with a variety of issues related to their membership in mandatory associations. Testimony taken by both Senate and House committees during the interim of the 79th Legislature, found that relationships between builders, realtors, association management companies, association boards, and individual property owners need to be brought into better balance.

S.B. 979 requires the seller of residential real property, upon request of the buyer, to provide a prospective home buyer with information related to the operation of a property owner's association and the expenses and responsibilities of being a member of such an association. This bill also prevents discriminatory practices by prohibiting deed restrictions that create rights of first refusal. This bill authorizes the voting threshold for an amendment of declarations and restrictions to be passed at 67 percent. This bill also provides for the counting of ballots by a neutral party under certain circumstances. Finally, this bill provides additional notice for property owners concerning the time in which they have to cure a noticed violation, requires the adoption by associations of alternative payment plans for property owners, sets out the order in which an association is required to apply payments made by a property owner, and ensures that a property owner contesting foreclosure proceedings initiated by an association is authorized to have the matter decided by a judge.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

SECTION 1. Amends Section 5.006(a), Property Code, to require the court to allow to a prevailing party, rather than a prevailing party who asserted the action, reasonable attorney's fees in addition to the party's costs and claim in an action based on breach of a restrictive covenant pertaining to real property.

SECTION 2. Amends Section 5.012, Property Code, by amending Subsection (a) and adding Subsection (f) and (g) as follows:

(a) Requires a seller of residential real property that is subject to membership in a property owners' association (association) and that comprises not more than one dwelling unit located in this state to give to the purchaser of the property a written notice, as set forth in this subsection.

(f) Requires the seller to provide, on the purchaser's request, the purchaser with a current copy of a resale certificate issued for the property under Chapter 207 or, if not available, request the issuance of one and upon delivery, promptly deliver a copy to the purchaser.

(g) Requires the seller or the purchaser, as agreed to by the parties, to pay the fee to the association or its agent for issuing the resale certificate under Chapter 207.

SECTION 3. Amends Chapter 202, Property Code, by adding Sections 202.008 and 202.010, as follows:

S.B. 979 80(R)

Sec. 202.008. RIGHT OF FIRST REFUSAL PROHIBITED. (a) Defines "development period."

(b) Provides that a restrictive covenant is void, to the extent the covenant provides a right of first refusal for the sale or lease of a residential unit or residential lot in favor of the an association or its members.

(c) Provides that this section does not apply to a restrictive covenant that provides a right of first refusal in favor of a developer or builder during the development period.

Sec. 202.010. REGULATION OF SOLAR ENERGY DEVICES. (a) Defines "solar energy device."

(b) Prohibits an association, except as otherwise provided by this section, from including or enforcing a provision in a dedicatory instrument that prohibits or restricts a property owner from installing a solar energy device.

(c) Provides that a provision that violates Subsection (b) is void.

(d) Provides that this section does not prohibit the inclusion or enforcement of a provision in a dedicatory instrument that prohibits a solar energy device that threatens the public health or safety, violates the law, or is located in certain places.

SECTION 4. Amends Section 207.003(b), Property Code, to require the resale certificate under Subsection (a) to contain the style and cause number of any pending lawsuit in which the property owners' association is a party, rather than defendant, other than a lawsuit relating to unpaid taxes of an individual member of the association, among other provisions required to be included in a resale certificate and to include a statement of all fees associated with the transfer of ownership, including a description of each fee, to whom each fee is paid, and the amount of each fee.

SECTION 5. Amends Chapter 209, Property Code, by adding Section 209.0041, 209.0042, 209.0043, and 209.0044, as follows:

Sec. 209.0041. AMENDMENT OF DECLARATION. (a) Provides that this section applies only to a residential subdivision in which property owners are subject to mandatory regular or special assessments.

(b) Provides that this section applies to a declaration regardless of the date on which the declaration was created.

(c) Provides that this section does not apply to the amendment of a declaration during a development period, as defined by Section 202.008 (Right of First Refusal Prohibited).

(d) Provides that this section prevails, to the extent of any conflict with another provision of this title.

(e) Authorizes a declaration creating a residential subdivision and any subsequently enacted declarations to be amended on a vote of not less than 67 percent of the total votes allocated to owners of property in the subdivision. Provides that the percentage in the declaration controls if the declaration provides a lower percentage.

(f) Requires all ballots cast in an election that results in the amendment of a declaration under this section to be filed of record in each county in which the declaration is recorded.

Sec. 209.0042. TABULATION OF VOTES. (a) Requires the association, in any matter subject to a vote of the members of the property owners' association, to utilize a neutral third party to tabulate the votes if the association schedules the election on less than 30 days notice or for an election scheduled on 30 days or more notice and the association receives, at least 10 days before the date of the meeting at which the vote will be taken or, if no meeting is to be held, at least 10 days before the deadline to cast a vote, written requests from at least 25 percent of the owners or 50 owners of property in the subdivision.

(b) Provides that a person is considered a neutral third party, for the purposes of this section, if the person is anyone other than a candidate for office, a current or former member or officer of the board of directors, an attorney who represents the association, or a representative of the association's management company, or a person related to one of those persons within the second degree by consanguinity or affinity, as determined under Chapter 573 (Degrees of Relationship; Nepotism Prohibitions), Government Code.

Sec. 209.0043. RIGHT TO VOTE. Provides that a provision of a dedicatory instrument as defined in Section 202.001 that would disqualify a property owner from voting in an association election of board members or on any matter concerning rights or responsibilities of the owner, is void.

Sec. 209.0044. BOARD MEMBERSHIP. (a) Provides that a provision of a dedicatory instrument that restricts a property owner's right to run for a position on the board of the property owners' association is void.

(b) Authorizes an association board may make information certain available to members of the association regarding a candidate for a position on the board.

(c) A board member who owes an amount to the association that is six months or more overdue may not vote on the initiation of legal proceedings against a member of the property owners' association related to a debt owed by the member to the association.

SECTION 6. Amends Section 209.005, Property Code, by amending Subsection (a) and adding Subsection (c) as follows:

(a) Amends the current requirement that a property owners' association which shall make books and records of the association available to an owner under the Texas Non-Profit Corporation Act also comply with successor statutes.

(c) Authorizes an owner to seek certain remedies if an association fails to comply with this section.

SECTION 7. Amends Section 209.006, Property Code, by amending Subsection (b) and adding Subsections (c) and (d), as follows:

(b) Requires a notice by an association for actions taken against an owner to describe the violation or property damage, to inform the owner that the owner has certain rights, and to specify a date certain by which the owner must cure the violation. Makes a conforming change.

(c) Provides that notice under Subsection (b) must be personally delivered, sent by certified mail with a return receipt requested, or delivered by the United States Postal Service with signature confirmation service to the owner at the owner's last known address as shown on the association's records.

(d) Requires the date specified in the notice under Subsection (b)(3) to provide a reasonable period for the owner to cure the violation.

SECTION 8. Amends Chapter 209, Property Code, by adding Sections 209.0061, 209.0062, 209.0063, 209.0064, and 209.0091, as follows:

Sec. 209.0061. ASSESSMENT OF FINES. (a) Requires a fine assessed by the association to be reasonable in the context of the nature, frequency, and effect of the violation. Requires the association to establish a maximum fine amount for a continuing violation, at which the total fine amount is capped, if the association allows fines for a continuing violation to accumulate against a lot or an owner.

(b) Authorizes the association, in addition to exercising any of the association's powers against an owner, to assess a fine directly against the nonowner occupant in the same manner as provided for an owner if a lot occupant other than the owner violates a provision of the dedicatory instrument but prohibits the association from requiring payment from both the owner and a nonowner occupant for the same violation

(c) Provides that Sections 209.006 and 209.007 apply to a nonowner occupant.

Sec. 209.0062. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN ASSESSMENTS. (a) Requires an association to adopt reasonable guidelines to establish an alternative payment schedule by which an owner is authorized to make partial payments to the association for delinquent regular or special assessments or any other amount owed to the association.

(b) Provides that an association is not required to allow a payment plan that extends more than 12 months from the date of the owner's request for a payment plan or to enter into a payment plan with an owner who failed to honor the terms of a previous payment plan.

(c) Requires the association to file the association's guidelines under this section in the real property records of each county in which the subdivision is located.

Sec. 209.0063. PRIORITY OF PAYMENTS. Requires a payment received by an association from the owner to be applied to the owner's debt in a certain order of priority, unless otherwise provided in a writing by the property owner.

Sec. 209.0064. COLLECTIONS. Requires the association to bring suit or otherwise initiate against an owner a collection action authorized by the dedicatory instruments or other law on or before the 10th anniversary of the date on which the cause of action for collection of the debt accrues. Provides that Section 16.004 (Four-year Limitations Period), Civil Practice and Remedies Code, does not apply to the collection of a debt owed by an owner to an association.

Sec. 209.0091. JUDICIAL FORECLOSURE REQUIRED. (a) Prohibits an association from foreclosing an association's assessment lien unless the association first obtains a court judgment foreclosing the lien and providing for issuance of an order of sale, except as provided by Subsection (b).

(b) Provides that judicial foreclosure is not required under this section if the owner of the property that is subject to foreclosure agrees in writing to waive judicial foreclosure under this section.

SECTION 9. Amends Section 209.010(a), Property Code, to require an association that conducts a foreclosure sale of an owner's lot not later than the 30th day after the date of the foreclosure sale to send to the lot owner a copy of Section 209.011, in addition to a written notice stating certain information.

SECTION 10. Amends Section 211.002(a), Property Code, as follows:

(a) Provides that this chapter applies only to a residential real estate subdivision or any unit or parcel of a subdivision to which another chapter in this title that provides a procedure under which a subdivision's restrictions are authorized to be amended does not apply, rather than located in whole or in part within an unincorporated area of a county if the county has a population of less than 65,000.

SECTION 11. Repealer: Section 202.004(c) (authorizing a court to assess civil damages for violation of a restrictive covenant in an amount not to exceed \$200 for each day of the violation), Property Code.

SECTION 12. (a) Makes application of Section 5.006(a), Property Code, as amended by this Act, and the repeal by this Act of Section 202.004(c), Property Code, prospective.

(b) Makes application of Section 5.012, Property Code, as amended by this Act, prospective.

(c) Provides that Sections 202.008, 202.010, 209.0043, and 209.0044(a), Property Code, as added by this Act, applies to a deed restriction enacted before, on, or after the effective date of this Act.

(d) Makes application of Section 209.005(c), Property Code, as amended by this Act, prospective.

(e) Makes application of Sections 209.0061, 209.0062, and 209.0064, Property Code, as added by this Act, prospective.

(f) Makes application of Section 209.0063, Property Code, as added by this Act, prospective.

(g) Makes application of Section 209.0091, Property Code, as added by this Act, prospective.

SECTION 13. Effective date: January 1, 2008.

**EFFECTIVE DATE**

January 1, 2008.