

By: Solomons

H.B. No. 222

A BILL TO BE ENTITLED

AN ACT

relating to property owners' associations.

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

SECTION 1. Section 212.002, Local Government Code, is amended to read as follows:

Sec. 212.002. RULES. After a public hearing on the matter, the governing body of a municipality may adopt rules governing plats and subdivisions of land within the municipality's jurisdiction to promote the health, safety, morals, or general welfare of the municipality and the safe, orderly, and healthful development of the municipality. A municipality may not adopt a rule that requires the creation of a property owners' association as a condition of approving a plat.

SECTION 2. Section 5.012(a), Property Code, is amended to read as follows:

(a) A seller of residential real property that is subject to membership in a property owners' association and that comprises not more than one dwelling unit located in this state shall give to the purchaser of the property a written notice that reads substantially similar to the following:

As a purchaser of property in the residential community in which this property is located, you are obligated to be a member of a property owners' association. Restrictive covenants governing the use and occupancy of the property and a dedicatory instrument

1 governing the establishment, maintenance, and operation of this  
2 residential community have been or will be recorded in the Real  
3 Property Records of the county in which the property is located.  
4 The restrictive covenants and information about the association are  
5 filed with the Texas Real Estate Commission and are available on its  
6 website. [~~Copies of the restrictive covenants and dedicatory~~  
7 ~~instrument may be obtained from the county clerk.~~]

8 NOTICE OF MEMBERSHIP IN PROPERTY OWNERS' ASSOCIATION  
9 CONCERNING THE PROPERTY AT (street address) (name of residential  
10 community)

11 You are obligated to pay assessments to the property owners'  
12 association. The amount of the assessments is subject to change.  
13 Your failure to pay the assessments could result in a lien on and  
14 the foreclosure of your property.

15 Date: \_\_\_\_\_

16 \_\_\_\_\_  
Signature of Purchaser

17 SECTION 3. Section 5.027, Property Code, is amended to read  
18 as follows:

19 Sec. 5.027. Right of Refusal to Purchase Property by  
20 Property Owners' Association. To the extent that a restriction in a  
21 deed, declaration or dedicatory instrument applicable to a  
22 residential property reserves the right of refusal to a property,  
23 the restriction is void. This section applies to a property owners'  
24 association or condominium owners' association that is entitled to  
25 levy regular or special assessments.

26 SECTION 4. Chapter 5, Property Code, is amended by adding  
27 new Section 5.028 to read as follows:

1       Sec. 5.028. Transfer Fees Prohibited. To the extent that a  
2 restriction in a deed, declaration, dedicatory instrument, or  
3 covenant applicable to a residential property imposes a fee for or  
4 because of the transfer or sale of the property, the restriction is  
5 void.

6       SECTION 5. 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 Section  
10 201.003.

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

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

17           (4) "Regular assessment" and "special assessment"  
18 have the meanings assigned by Section 204.001.

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

24           (6) "Subdivision" means all land that has been divided  
25 into two or more parts and that is or was burdened by restrictions  
26 limiting at least the majority of the land area burdened by  
27 restrictions, excluding streets and public areas, to residential

1 use only, if the instrument or instruments creating the  
2 restrictions are recorded in the deed or real property records of a  
3 county.

4 SECTION 6. Section 207.003, Property Code is amended to  
5 read as follows:

6 Sec. 207.003. DELIVERY OF SUBDIVISION INFORMATION TO THE  
7 TEXAS REAL ESTATE COMMISSION [~~OWNER~~]. (a) A property owner's  
8 association shall annually file the following information with the  
9 commission [~~Not later than the 10th day after the date a written~~  
10 ~~request for subdivision information is received from an owner,~~  
11 ~~owner's agent, or title insurance company or its agent acting on~~  
12 ~~behalf of the owner, the property owners' association shall deliver~~  
13 ~~to the owner, owner's agent, or title insurance company or its~~  
14 ~~agent~~]:

15 (1) a current copy of the restrictions applying to the  
16 subdivision;

17 (2) a current copy of the bylaws and rules of the  
18 property owners' association; and

19 (3) information [~~a resale certificate~~] that complies  
20 with Subsection (b).

21 (b) The information [~~A resale certificate~~] under Subsection  
22 (a)(3) [~~Subsection (a)~~] must contain:

23 (1) a statement of any right of first refusal or other  
24 restraint contained in the restrictions or restrictive covenants  
25 that restricts an [~~the~~] owner's right to transfer the owner's  
26 property in the subdivision;

27 (2) the frequency and amount of any regular

1 assessments imposed on each lot in the subdivision;

2 (3) [~~the amount of any unpaid special assessment that~~  
3 ~~is due after the date the resale certificate is prepared;~~

4 [~~(4) the total of all amounts due and unpaid to the~~  
5 ~~property owners' association that are attributable to the owner's~~  
6 ~~property;~~

7 [~~(5) capital expenditures, if any, approved by the~~  
8 ~~property owners' association for the property owners' association's~~  
9 ~~current fiscal year;~~

10 [~~(6) the amount of reserves, if any, for capital~~  
11 ~~expenditures;~~

12 ~~(7)]~~ the property owners' association's current  
13 operating budget and balance sheet, including any capital  
14 expenditures for the current fiscal year and the amount of reserves  
15 for capital expenditures;

16 (4) [~~(8)]~~ the total of any unsatisfied judgments  
17 against the property owners' association;

18 (5) [~~(9)]~~ the style and cause number of any pending  
19 lawsuit in which the property owners' association is a party  
20 [~~defendant~~];

21 (6) [~~(10)]~~ a copy of a current certificate of  
22 insurance showing the property owners' association's property and  
23 liability insurance relating to the common areas and common  
24 facilities;

25 (7) [~~(11) a description of any conditions on the~~  
26 ~~owner's property that the property owners' association board has~~  
27 ~~actual knowledge are in violation of the restrictions applying to~~

1 ~~the subdivision or the bylaws or rules of the property owners'~~  
2 ~~association;~~

3 ~~[(12) a summary or copy of notices received by the~~  
4 ~~property owners' association from any governmental authority~~  
5 ~~regarding health or housing code violations existing on the~~  
6 ~~preparation date of the certificate relating to the owner's~~  
7 ~~property or any common areas or common facilities owned or leased by~~  
8 ~~the property owners' association;~~

9 ~~(13)]~~ the amount of any fee or charge [~~administrative~~  
10 ~~transfer fee charged]~~ by the property owners' association for a  
11 change of ownership of property in the subdivision;

12 (8) [~~(14)~~] the name, mailing address, and telephone  
13 number of the property owners' association's managing agent, if  
14 any; and

15 (9) [~~(15)~~] a statement indicating whether the  
16 restrictions allow foreclosure of a property owners' association's  
17 lien on an [~~the~~] owner's property for failure to pay assessments.

18 (c) A property owners' association shall promptly file new  
19 or amended information with the commission whenever the information  
20 under subsection (b) materially changes prior to the next annual  
21 filing ~~may charge a reasonable fee to assemble, copy, and deliver~~  
22 ~~the information required by this section and may charge a~~  
23 ~~reasonable fee to prepare and deliver an update of a resale~~  
24 ~~certificate.~~

25 (d) The commission shall post the information filed under  
26 this section on its website in a manner that enables the public to  
27 view the information in a searchable format.

1        (e) The commission may adopt rules to implement this  
2 section. By rule the commission may charge a property owners'  
3 association an amount equal to the lesser of:

4            (1) the amount necessary to cover the commission's  
5 cost for implementing this section; or

6            (2) \$50.

7        (f) If a property owners' association fails to timely file  
8 the information required by this section, the commission may impose  
9 an administrative fine not to exceed \$2,500. [~~The property owners'~~  
10 association shall deliver the information required by Subsection  
11 (a) to the person specified in the written request. A written  
12 request that does not specify the name and location to which the  
13 information is to be sent is not effective. The property owners'  
14 association may deliver the information required by Subsection (a)  
15 and any update to the resale certificate by mail, hand delivery, or  
16 alternative delivery means specified in the written request.

17        ~~(e) Unless required by a dedicatory instrument, neither a~~  
18 ~~property owners' association or its agent is required to inspect a~~  
19 ~~property before issuing a resale certificate or an update to a~~  
20 ~~resale certificate.]~~

21        SECTION 7. Chapter 207, Property Code is amended by adding a  
22 new Section 207.0035 to read as follows:

23        Sec. 207.0035. (a) Not later than the 5th day after the  
24 date a written request for the following information is received  
25 from an owner, owner's agent, or title insurance company or its  
26 agent acting on behalf of the owner, the property owners'  
27 association shall deliver to the owner, owner's agent, or title

1 insurance company or its agent:

2 (1) the amount of any unpaid special assessment  
3 against the owner's property;

4 (2) the total of all amounts due and unpaid to the  
5 property owners' association that are attributable to the owner's  
6 property;

7 (3) a description of any conditions on the owner's  
8 property which the property owners' association board has actual  
9 knowledge are in violation of the restrictions applying to the  
10 subdivision or the bylaws or rules of the property owners'  
11 association; and

12 (4) a summary or copy of notices received by the  
13 property owners' association from any governmental authority  
14 regarding existing health or housing code violations relating to  
15 the owner's property.

16 (b) The property owners' association shall deliver the  
17 information required by Subsection (a) to the person specified in  
18 the written request. A written request that does not specify the  
19 name and location to which the information is to be sent is not  
20 effective. The property owners' association may deliver the  
21 information required by Subsection (a) by mail, hand delivery,  
22 facsimile, electronic mail, or alternative delivery means  
23 specified in the written request.

24 SECTION 8. Section 207.004, Property Code is amended to  
25 read as follows:

26 Sec. 207.004. OWNER'S REMEDIES FOR FAILURE BY PROPERTY  
27 OWNERS' ASSOCIATION TO TIMELY DELIVER INFORMATION. (a) [~~If a~~



1 ~~property owners' association does not timely deliver information in~~  
2 ~~accordance with Section 207.003, the owner, owner's agent, or title~~  
3 ~~insurance company or its agent acting on behalf of the owner may~~  
4 ~~submit a second request for the information.~~

5 ~~(b)]~~ If a property owners' association fails to timely  
6 deliver the information required under Section 207.0035 [~~207.003~~  
7 ~~before the seventh day after the second request for the information~~  
8 ~~was mailed by certified mail, return receipt requested, or hand~~  
9 ~~delivered, evidenced by receipt,~~] the owner:

10 (1) may seek one or any combination of the following:

11 (A) a court order directing the property owners'  
12 association to furnish the required information;

13 (B) a judgment against the property owners'  
14 association for not more than \$1,000 [~~500~~];

15 (C) a judgment against the property owners'  
16 association for court costs and attorney's fees; or

17 (D) a judgment authorizing the owner or the  
18 owner's assignee to deduct the amounts awarded under Paragraphs (B)  
19 and (C) from any future regular or special assessments payable to  
20 the property owners' association; and

21 (2) may provide a buyer under contract to purchase the  
22 owner's property an affidavit that states that the owner, owner's  
23 agent, or title insurance company or its agent acting on behalf of  
24 the owner made, a [~~in accordance with this chapter,~~] [~~two~~] written  
25 request[s] to the property owners' association for the information  
26 described in Section 207.0035 [~~207.003~~] and that the association  
27 did not timely provide the information.

1           **(b)** [~~(c)~~] If the owner provides a buyer under contract to  
2 purchase the owner's property an affidavit in accordance with  
3 Subsection **(a)** [~~(b)~~](2):

4                   (1) the buyer, lender, or title insurance company or  
5 its agent is not liable to the property owners' association for:

6                           (A) any money that is due and unpaid to the  
7 property owners' association on the date the affidavit was  
8 prepared; and

9                           (B) any debt to the property owners' association  
10 or claim by the property owners' association that accrued before  
11 the date the affidavit was prepared; and

12                   (2) the property owners' association's lien to secure  
13 the amounts due the property owners' association on the owner's  
14 property on the date the affidavit was prepared shall automatically  
15 terminate.

16           SECTION 9. Section 207.005, Property Code, is amended to  
17 read as follows:

18           Sec. 207.005. EFFECT OF INFORMATION PROVIDED [~~RESALE~~  
19 ~~CERTIFICATE~~]; LIABILITY. (a) A property owners' association may  
20 not deny the validity of any statement included in the information  
21 required under Section 207.0035 [~~in the resale certificate~~]. The  
22 property owners' association's lien to secure undisclosed amounts  
23 due the property owners' association on the date the information  
24 [~~resale certificate~~] is prepared shall automatically terminate as a  
25 lien securing the undisclosed amount. A buyer, buyer's agent,  
26 owner, owner's agent, lender, and title insurance company and its  
27 agent are not liable for any debt or claim existing on the

1 preparation date of the information [~~resale certificate~~] that is  
2 not disclosed in the information [~~resale certificate~~].

3 (b) Statements in the information do [~~A resale certificate~~  
4 ~~does~~] not affect:

5 (1) the right of a property owners' association to  
6 recover debts or claims that arise or become due after the date the  
7 information [~~resale certificate~~] is prepared; or

8 (2) a lien on a property securing payment of future  
9 assessments held by the property owners' association.

10 (c) The owner's agent and the title insurance company and  
11 its agent are not liable to a buyer for any delay or failure by the  
12 property owners' association in delivering the information  
13 required by Section 207.0035 [~~207.003~~].

14 (d) Except as provided by Section 207.004, the property  
15 owners' association is not liable to an owner selling property in  
16 the subdivision for delay or failure to deliver the information  
17 required by Section 207.0035 [~~207.003~~]. An officer or agent of the  
18 property owners' association is not liable for a delay or failure to  
19 furnish the information required by Section 027.0035 [~~a resale~~  
20 ~~certificate~~].

21 SECTION 10. Chapter 209, Property Code, is amended by  
22 adding Section 209.0045 to read as follows:

23 Sec. 209.0045. BYLAWS. (a) The administration and  
24 operation of a property owners' association are governed by the  
25 bylaws. The bylaws must provide for:

26 (1) the qualifications and number of directors of the  
27 association, which number may not be less than three;

1           (2) the qualifications and titles of the officers of  
2 the association, which officers must include a president,  
3 secretary, and treasurer;

4           (3) terms of office for directors;

5           (4) the manner of electing and removing a board member  
6 or officer and of filling vacancies;

7           (5) the powers, if any, that the board or an officer  
8 may delegate to another person or to a managing agent;

9           (6) the method of amending the bylaws; and

10           (7) the manner of notice of meetings of the  
11 association.

12           (b) The bylaws may not expand the powers of the association  
13 beyond those powers specifically granted in the dedicatory  
14 instrument.

15           SECTION 11. Chapter 209, Property Code, is amended by  
16 adding a new Section 209.0055 to read as follows:

17           Sec. 209.0055. REASONABLE RULES. To be enforceable against  
18 an owner or an occupant of an owner's lot, a bylaw or rule adopted by  
19 the board:

20           (1) may not regulate the use of a lot by a resident or  
21 the behavior of a resident on the resident's lot, except to the  
22 extent the use or behavior adversely affects the appearance or use  
23 and enjoyment of a common area or another lot;

24           (2) may not require the owner to construct or  
25 substantially modify an improvement on the owner's lot that is not  
26 required by the restrictions;

27           (3) must be reasonable and directly related to the

1 purpose for which the rule was adopted;

2 (4) must be enforced in a manner that is not arbitrary  
3 or capricious;

4 (5) must be worded with sufficient clarity to inform  
5 an owner or occupant of any act or omission required for compliance;  
6 and

7 (6) may not be contrary to the restrictions.

8 SECTION 12. Chapter 209, Property Code, is amended by  
9 adding a new section 209.0056 to read as follows:

10 Sec. 209.0056. PROTECTION FROM FINES. A fine levied by the  
11 association must be reasonable in light of the nature, frequency,  
12 and effect of the violation. If the association allows fines for a  
13 continuing violation to accumulate, the association must establish  
14 a maximum fine amount, not to exceed ten times the amount of the  
15 initial fine, at which point the total fine is capped.

16 SECTION 13. Section 209.006, Property Code, is amended by  
17 adding new subsections (c) and (d) to read as follows:

18 Sec. 209.006. (c) When pursuing a violation of the  
19 restrictions, bylaws or rules of the association, the board shall  
20 not act in an arbitrary, capricious, or discriminatory manner.

21 (d) In evaluating a violation, the board may not take action  
22 if it determines that under the particular circumstances:

23 (1) the association's position is not sufficiently  
24 strong to justify taking any or further action;

25 (2) the provision being enforced may be inconsistent  
26 with applicable law;

27 (3) the violation is not of such a material or visible

1 nature as to be objectionable to a reasonable person or to justify  
2 expending the association's resources; or

3 (4) enforcement is not in the association's best  
4 interests, based on hardship, expense, or other reasonable  
5 criteria.

6 SECTION 14. Chapter 209, Property Code is amended by adding  
7 a new Section 209.0065 to read as follows:

8 Sec. 209.0065. PAYMENT PLAN FOR DEBT. If the owner of a lot  
9 against which an assessment or assessments are delinquent requests  
10 a payment plan, the association must accept a plan that is  
11 reasonable under the circumstances. Factors to consider may  
12 include the amount of the delinquent assessment or assessments,  
13 employment status and income, assets and liabilities, credit score,  
14 number of dependents, and current and anticipated expenses.

15 SECTION 15. (a) Section 212.002, Local Government Code, as  
16 amended by this Act, applies to a rule adopted before, on, or after  
17 the effective date of this Act.

18 (b) Sections 5.027 and 5.028, Property Code, as added by  
19 this Act, apply to a restriction in a deed, declaration or  
20 dedicatory instrument adopted before, on, or after the effective  
21 date of this Act.

22 (c) The Texas Real Estate Commission shall adopt rules,  
23 procedures, fines and fees relating to the receipt and posting of  
24 information under Chapter 207, Property Code, as amended by this  
25 Act.

26 (d) Not later than March 1, 2008, each property owners'  
27 association shall file the information required under Section

1 207.003, Property Code, as amended by this Act.

2 (e) Section 209.0055, Property Code, as added by this Act,  
3 applies to a rule adopted before, on, or after the effective date of  
4 this Act.

5 (f) Section 209.0056, Property Code, as added by this Act,  
6 applies to fine levied on or after the effective date of this Act.

7 (g) Sections 209.006(c) and (d), Property Code, as added by  
8 this Act, apply only to enforcement actions initiated on or after  
9 the effective date of this Act.

10 (h) Section 209.0065, Property Code, as added by this Act,  
11 applies to an assessment imposed on or after the effective date of  
12 this Act.

13 SECTION 16. Sections 3 and 4 of this Act take effect  
14 immediately if it receives a vote of two-thirds of all the members  
15 elected to each house, as provided by Section 39, Article III, Texas  
16 Constitution. If this Act does not receive the vote necessary for  
17 immediate effect, Sections 3 and 4 of this Act takes effect  
18 September 1, 2007. All other sections of this Act take effect  
19 September 1, 2007.