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S.B. No. 979

A BILL TO BE ENTITLED

AN ACT

relating to the operation of property owners' associations.

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

SECTION 1. Subsection (a), Section 5.006, Property Code, is amended to read as follows:

(a) In an action based on breach of a restrictive covenant pertaining to real property, the court shall allow to a prevailing party ~~[who asserted the action]~~ reasonable attorney's fees in addition to the party's costs and claim.

SECTION 2. Section 5.012, Property Code, is amended by amending Subsection (a) and adding Subsections (f) and (g) 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:

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

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 governing the establishment, maintenance, and operation of this

1 residential community have been or will be recorded in the Real
2 Property Records of the county in which the property is located.
3 Copies of the restrictive covenants and dedicatory instrument may
4 be obtained from the county clerk.

5 You are obligated to pay assessments to the property owners'
6 association. The amount of the assessments is subject to change.
7 Your failure to pay the assessments could result in a lien on and
8 the foreclosure of your property.

9 Section 207.003, Property Code, entitles an owner to receive
10 copies of restrictions, bylaws, and a resale certificate from a
11 property owners' association. A resale certificate contains
12 information including, but not limited to, statements specifying
13 the amount and frequency of regular assessments, the property
14 owners' association's operating budget and balance sheet, and the
15 style and cause number of lawsuits to which the property owners'
16 association is a party. These documents must be made available to
17 you by the seller on your request.

18 Date: _____

19 Signature of Purchaser

20 (f) On the purchaser's request for a resale certificate from
21 the seller, the seller shall:

22 (1) promptly deliver a copy of a current resale
23 certificate if one has been issued for the property under Chapter
24 207; or

25 (2) if the seller does not have a current resale
26 certificate:

27 (A) request the property owners' association or

1 its agent to issue a resale certificate under Chapter 207; and

2 (B) promptly deliver a copy of the resale
3 certificate to the purchaser on receipt of the resale certificate
4 from the property owners' association or its agent.

5 (g) The seller or the purchaser, as agreed to by the
6 parties, shall pay the fee to the property owners' association or
7 its agent for issuing the resale certificate under Chapter 207.

8 SECTION 3. Chapter 202, Property Code, is amended by adding
9 Sections 202.008 and 202.010 to read as follows:

10 Sec. 202.008. RIGHT OF FIRST REFUSAL PROHIBITED. (a) In
11 this section, "development period" means a period stated in a
12 declaration during which a declarant reserves:

13 (1) a right to facilitate the development,
14 construction, and marketing of the subdivision;

15 (2) a right to direct the size, shape, and composition
16 of the subdivision; or

17 (3) any other right customarily reserved by a
18 declarant for the benefit of developers and builders.

19 (b) To the extent a restrictive covenant provides a right of
20 first refusal for the sale or lease of a residential unit or
21 residential lot in favor of the property owners' association or the
22 association's members, the covenant is void.

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

26 Sec. 202.010. REGULATION OF SOLAR ENERGY DEVICES. (a) In
27 this section, "solar energy device" has the meaning assigned by

1 Section 171.107, Tax Code.

2 (b) Except as otherwise provided by this section, a property
3 owners' association may not include or enforce a provision in a
4 dedicatory instrument that prohibits or restricts a property owner
5 from installing a solar energy device.

6 (c) A provision that violates Subsection (b) is void.

7 (d) This section does not prohibit the inclusion or
8 enforcement of a provision in a dedicatory instrument that
9 prohibits a solar energy device that:

10 (1) threatens the public health or safety;

11 (2) violates a law;

12 (3) is located on property owned or maintained by the
13 property owners' association;

14 (4) is located on property owned in common by the
15 members of the property owners' association;

16 (5) is located in an area on the property owner's
17 property other than:

18 (A) on the roof of the home; or

19 (B) in a fenced yard or patio maintained by the
20 property owner; or

21 (6) is mounted on a device that is taller or more
22 visually obtrusive than is necessary for the solar energy device to
23 operate at not less than 90 percent of its rated efficiency.

24 SECTION 4. Subsection (b), Section 207.003, Property Code,
25 is amended to read as follows:

26 (b) A resale certificate under Subsection (a) must contain:

27 (1) a statement of any right of first refusal or other

1 restraint contained in the restrictions or restrictive covenants
2 that restricts the owner's right to transfer the owner's property;

3 (2) the frequency and amount of any regular
4 assessments;

5 (3) the amount of any special assessment that is due
6 after the date the resale certificate is prepared;

7 (4) the total of all amounts due and unpaid to the
8 property owners' association that are attributable to the owner's
9 property;

10 (5) capital expenditures, if any, approved by the
11 property owners' association for the property owners' association's
12 current fiscal year;

13 (6) the amount of reserves, if any, for capital
14 expenditures;

15 (7) the property owners' association's current
16 operating budget and balance sheet;

17 (8) the total of any unsatisfied judgments against the
18 property owners' association;

19 (9) the style and cause number of any pending lawsuit
20 in which the property owners' association is a party, other than a
21 lawsuit relating to unpaid property taxes of an individual member
22 of the association [~~defendant~~];

23 (10) a copy of a certificate of insurance showing the
24 property owners' association's property and liability insurance
25 relating to the common areas and common facilities;

26 (11) a description of any conditions on the owner's
27 property that the property owners' association board has actual

1 knowledge are in violation of the restrictions applying to the
2 subdivision or the bylaws or rules of the property owners'
3 association;

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

10 (13) the amount of any administrative transfer fee
11 charged by the property owners' association for a change of
12 ownership of property in the subdivision;

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

15 (15) a statement indicating whether the restrictions
16 allow foreclosure of a property owners' association's lien on the
17 owner's property for failure to pay assessments; and

18 (16) a statement of all fees associated with the
19 transfer of ownership, including a description of each fee, to whom
20 each fee is paid, and the amount of each fee.

21 SECTION 5. Chapter 209, Property Code, is amended by adding
22 Sections 209.0041 through 209.0044 to read as follows:

23 Sec. 209.0041. AMENDMENT OF DECLARATION. (a) This section
24 applies only to a residential subdivision in which property owners
25 are subject to mandatory regular or special assessments.

26 (b) This section applies to a declaration regardless of the
27 date on which the declaration was created.

1 (c) This section does not apply to the amendment of a
2 declaration during a development period, as defined by Section
3 202.008.

4 (d) To the extent of any conflict with another provision of
5 this title, this section prevails.

6 (e) Unless a declaration creating a residential subdivision
7 provides a lower percentage, the declaration and any subsequently
8 enacted declarations may be amended on a vote of not less than 67
9 percent of the total votes allocated to owners of property in the
10 subdivision. If the declaration provides a lower percentage, the
11 percentage in the declaration controls.

12 (f) All ballots cast in an election that results in the
13 amendment of a declaration under this section shall be filed of
14 record in each county in which the declaration is recorded.

15 Sec. 209.0042. TABULATION OF VOTES. (a) In any matter
16 subject to a vote of the members of the property owners'
17 association, the association shall utilize a neutral third party to
18 tabulate the votes:

19 (1) if the association schedules the election with
20 less than 30 days' notice; or

21 (2) for an election scheduled with notice of 30 days or
22 more, if the association receives written requests from at least 25
23 percent of the owners of property in the subdivision or 50 owners of
24 property in the subdivision, whichever is less:

25 (A) at least 10 days before the date of the
26 meeting at which the vote will be taken; or

27 (B) if no meeting is to be held, at least 10 days

1 before the deadline to cast a vote.

2 (b) For the purposes of this section, a person is considered
3 a neutral third party if the person is anyone other than a candidate
4 for office, a current or former member or officer of the board of
5 directors, an attorney who represents the property owners'
6 association, or a representative of the association's management
7 company, or a person related to one of those persons within the
8 second degree by consanguinity or affinity, as determined under
9 Chapter 573, Government Code.

10 Sec. 209.0043. RIGHT TO VOTE. A provision of a dedicatory
11 instrument that would disqualify a property owner from voting in an
12 association election of board members or on any matter concerning
13 the rights or responsibilities of the owner is void.

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

18 (b) A property owners' association board may make
19 information available to members of the association regarding a
20 candidate for a position on the board regarding:

21 (1) any amount owed to the association by the
22 candidate that is six months or more overdue;

23 (2) any violation of a restrictive covenant of which
24 notice was delivered to a board candidate under Section 209.006
25 more than 30 days before the date of the election; and

26 (3) any lawsuits to which both the property owners'
27 association or any of its directors or agents and the board

1 candidate are a party.

2 SECTION 6. Section 209.005, Property Code, is amended by
3 amending Subsection (a) and adding Subsection (c) to read as
4 follows:

5 (a) A property owners' association shall make the books and
6 records of the association, including financial records,
7 reasonably available to an owner in accordance with Section B,
8 Article 2.23, Texas Non-Profit Corporation Act (Article 1396-2.23,
9 Vernon's Texas Civil Statutes), or a successor to that statute.

10 (c) If a property owners' association fails to comply with
11 this section, an owner may seek one or more of the following
12 remedies:

13 (1) a court order directing the property owners'
14 association to provide the required information;

15 (2) a judgment against the property owners'
16 association for a penalty of not more than \$1,500;

17 (3) a judgment against the property owners'
18 association for court costs and attorney's fees incurred in
19 connection with seeking a remedy under this section; or

20 (4) a judgment authorizing the owner or the owner's
21 assignee to deduct the amounts awarded under Subdivisions (2) and
22 (3) from any future regular or special assessments payable to the
23 property owners' association.

24 SECTION 7. Section 209.006, Property Code, is amended by
25 amending Subsection (b) and adding Subsections (c) and (d) to read
26 as follows:

27 (b) The notice must:

1 (1) describe the violation or property damage that is
2 the basis for the suspension action, charge, or fine and state any
3 amount due the association from the owner; ~~and~~

4 (2) inform the owner that the owner:

5 (A) is entitled to a reasonable period to cure
6 the violation and avoid the fine or suspension unless the owner was
7 given notice and a reasonable opportunity to cure a similar
8 violation within the preceding six months; and

9 (B) may request a hearing under Section 209.007
10 on or before the 30th day after the date notice was delivered to the
11 owner; and

12 (3) specify a date certain by which the owner must cure
13 the violation ~~[receives the notice]~~.

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

19 (d) The date specified in the notice under Subsection (b)(3)
20 must provide a reasonable period for the owner to cure the
21 violation.

22 SECTION 8. Chapter 209, Property Code, is amended by adding
23 Sections 209.0061 through 209.0064 and Section 209.0091 to read as
24 follows:

25 Sec. 209.0061. ASSESSMENT OF FINES. (a) A fine assessed
26 by the property owners' association must be reasonable in the
27 context of the nature, frequency, and effect of the violation. If

1 the association allows fines for a continuing violation to
2 accumulate against a lot or an owner, the association must
3 establish a maximum fine amount for a continuing violation, at
4 which point the total fine amount is capped.

5 (b) If a lot occupant other than the owner violates a
6 provision of the dedicatory instrument, the property owners'
7 association, in addition to exercising any of the association's
8 powers against the owner, may assess a fine directly against the
9 nonowner occupant in the same manner as provided for an owner but
10 may not require payment from both the owner and a nonowner occupant
11 for the same violation.

12 (c) Sections 209.006 and 209.007 apply to a nonowner
13 occupant.

14 Sec. 209.0062. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN
15 ASSESSMENTS. (a) A property owners' association shall adopt
16 reasonable guidelines to establish an alternative payment schedule
17 by which an owner may make partial payments to the property owners'
18 association for delinquent regular or special assessments or any
19 other amount owed to the association.

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

25 (c) The property owners' association shall file the
26 association's guidelines under this section in the real property
27 records of each county in which the subdivision is located.

1 Sec. 209.0063. PRIORITY OF PAYMENTS. Unless otherwise
2 provided in a writing by the property owner, a payment received by a
3 property owners' association from the owner shall be applied to the
4 owner's debt in the following order of priority:

5 (1) any delinquent assessment;

6 (2) any current assessment;

7 (3) any attorney's fees incurred by the association
8 associated solely with assessments or any other charge that could
9 provide the basis for foreclosure;

10 (4) any fines assessed by the association;

11 (5) any attorney's fees incurred by the association
12 that are not subject to Subdivision (3); and

13 (6) any other amount owed to the association.

14 Sec. 209.0064. COLLECTIONS. A property owners' association
15 must bring suit or otherwise initiate against an owner a collection
16 action authorized by the dedicatory instruments or other law on or
17 before the 10th anniversary of the date on which the cause of action
18 for collection of the debt accrues. Section 16.004, Civil Practice
19 and Remedies Code, does not apply to the collection of a debt owed
20 by an owner to a property owners' association.

21 Sec. 209.0091. JUDICIAL FORECLOSURE REQUIRED. (a) Except
22 as provided by Subsection (b), a property owners' association may
23 not foreclose a property owners' association's assessment lien
24 unless the association first obtains a court judgment foreclosing
25 the lien and providing for issuance of an order of sale.

26 (b) Judicial foreclosure is not required under this section
27 if the owner of the property that is subject to foreclosure agrees

1 in writing to waive judicial foreclosure under this section.

2 SECTION 9. Subsection (a), Section 209.010, Property Code,
3 is amended to read as follows:

4 (a) A property owners' association that conducts a
5 foreclosure sale of an owner's lot must send to the lot owner not
6 later than the 30th day after the date of the foreclosure sale:

7 (1) a written notice stating the date and time the sale
8 occurred and informing the lot owner of the owner's right to redeem
9 the property under Section 209.011; and

10 (2) a copy of Section 209.011.

11 SECTION 10. Subsection (a), Section 211.002, Property Code,
12 is amended to read as follows:

13 (a) This chapter applies only to a residential real estate
14 subdivision or any unit or parcel of a subdivision to which another
15 chapter in this title that provides a procedure under which a
16 subdivision's restrictions may be amended does not apply [~~located~~
17 ~~in whole or in part within an unincorporated area of a county if the~~
18 ~~county has a population of less than 65,000~~].

19 SECTION 11. Subsection (c), Section 202.004, Property Code,
20 is repealed.

21 SECTION 12. (a) Subsection (a), Section 5.006, Property
22 Code, as amended by this Act, and the repeal by this Act of
23 Subsection (c), Section 202.004, Property Code, apply only to an
24 action filed on or after the effective date of this Act. An action
25 filed before the effective date of this Act is governed by the law
26 in effect immediately before the effective date of this Act, and
27 that law is continued in effect for that purpose.

1 (b) Section 5.012, Property Code, as amended by this Act,
2 applies only to a sale of property that occurs on or after the
3 effective date of this Act. For the purposes of this section, a
4 sale of property occurs before the effective date of this Act if the
5 executory contract binding the purchaser to purchase the property
6 is executed before that date. A sale of property that occurs before
7 the effective date of this Act is governed by the law in effect
8 immediately before that date, and that law is continued in effect
9 for that purpose.

10 (c) Sections 202.008, 202.010, 209.0043, and Subsection
11 (a), Section 209.0044, Property Code, as added by this Act, apply to
12 a deed restriction enacted before, on, or after the effective date
13 of this Act.

14 (d) Subsection (c), Section 209.005, Property Code, as
15 added by this Act, applies only to a property owners' association's
16 failure to comply with that section on or after the effective date
17 of this Act. A property owners' association's failure to comply
18 with that section before the effective date of this Act is governed
19 by the law in effect immediately before the effective date of this
20 Act, and that law is continued in effect for that purpose.

21 (e) Sections 209.0061, 209.0062, and 209.0064, Property
22 Code, as added by this Act, apply only to an assessment or other
23 debt that becomes due on or after the effective date of this Act. An
24 assessment or other debt that becomes due before the effective date
25 of this Act is governed by the law in effect immediately before the
26 effective date of this Act, and that law is continued in effect for
27 that purpose.

1 (f) Section 209.0063, Property Code, as added by this Act,
2 applies only to a payment received by a property owners'
3 association on or after the effective date of this Act. A payment
4 received by a property owners' association before the effective
5 date of this Act is governed by the law in effect immediately before
6 the effective date of this Act, and that law is continued in effect
7 for that purpose.

8 (g) Section 209.0091, Property Code, as added by this Act,
9 applies only to foreclosure of a lien that attaches on or after the
10 effective date of this Act. Foreclosure of a lien that attaches
11 before the effective date of this Act is governed by the law in
12 effect immediately before that date, and that law is continued in
13 effect for that purpose.

14 SECTION 13. This Act takes effect January 1, 2008.