

By: West, Royce

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. Section 5.012, Property Code, is amended by amending Subsection (a) and adding Subsection (f) 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 copy of a resale certificate for the property issued under Chapter 207 with 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 residential community have been or will be recorded in the Real Property Records of the county in which the property is located. Copies of the restrictive covenants and dedicatory instrument may be obtained from the county clerk.

You are obligated to pay assessments to the property

1 owners' association. The amount of the assessments is subject to  
2 change. Your failure to pay the assessments could result in a lien  
3 on and the foreclosure of your property.

4 Date: \_\_\_\_\_

5 Signature of Purchaser

6 (f) The seller may obtain reimbursement from the purchaser  
7 for the cost of obtaining the resale certificate provided under  
8 this section, except that the amount reimbursed may not exceed  
9 one-eighth of one percent of the purchase price. If an updated  
10 resale certificate is provided on or before the 90th day after the  
11 date the first certificate was provided, the seller may obtain  
12 reimbursement for 25 percent of the amount reimbursed for providing  
13 the first certificate.

14 SECTION 2. Chapter 202, Property Code, is amended by adding  
15 Section 202.008 to read as follows:

16 Sec. 202.008. RIGHT OF FIRST REFUSAL PROHIBITED. A deed  
17 restriction applicable to residential property that reserves a  
18 right of first refusal for a property owners' association or  
19 condominium association to purchase property is void and  
20 unenforceable.

21 SECTION 3. Chapter 202, Property Code, is amended by adding  
22 Sections 209.0041 and 209.0042 to read as follows:

23 Sec. 209.0041. AMENDMENT OF RESTRICTIVE COVENANTS. (a)  
24 This section applies only to a residential subdivision in which  
25 property owners are subject to mandatory regular or special  
26 assessments, as those terms are defined by Section 204.001:

27 (1) for which the declaration creating the subdivision

1 is recorded on or after January 1, 2008; or

2 (2) for which the declaration creating the subdivision  
3 is recorded before January 1, 2008, to the extent that the deed  
4 restrictions or other provisions of this title applicable to the  
5 subdivision on that date do not conflict with this section.

6 (b) A declaration creating a residential subdivision and  
7 any subsequently enacted restrictions may be amended on a vote of  
8 not less than 67 percent of the total votes allocated to owners of  
9 property in the subdivision.

10 Sec. 209.0042. TABULATION OF VOTES. In a contested  
11 election held in the subdivision, the property owners' association  
12 shall retain a neutral party to tabulate the votes if the  
13 association receives a petition signed by at least 50 percent of the  
14 owners of property in the subdivision before the date on which  
15 voting in the election begins.

16 SECTION 4. Section 209.005, Property Code, is amended by  
17 adding Subsection (c) to read as follows:

18 (c) Notwithstanding this section or any other law, a  
19 property owners' association must redact any information that  
20 identifies a particular property owner or unit of property in the  
21 subdivision from any property owners' association records that are  
22 made public if the records relate to assessments, fines,  
23 foreclosures, lawsuits, or other enforcement actions of the  
24 association.

25 SECTION 5. Section 209.006, Property Code, is amended by  
26 amending Subsection (b) and adding Subsection (c) to read as  
27 follows:

1 (b) The notice must:

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

5 (2) inform the owner that the owner:

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

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

13 (3) specify a date certain by which the owner must cure  
14 the violation.

15 (c) The date specified in the notice under Subsection (b)(3)  
16 must provide a reasonable period for the owner to cure the  
17 violation.

18 SECTION 6. Chapter 209, Property Code, is amended by adding  
19 Sections 209.0061, 209.0062, 209.0063, 209.0091, and 209.012 to  
20 read as follows:

21 Sec. 209.0061. ASSESSMENT OF FINES. (a) A fine assessed by  
22 the association must be reasonable in the context of the nature,  
23 frequency, and effect of the violation. If the association allows  
24 finer for a continuing violation to accumulate against a lot or an  
25 owner, the association must establish a maximum fine amount for a  
26 continuing violation, at which point the total fine amount is  
27 capped.

1       (b) If a lot occupant other than the owner violates a  
2 provision of the dedicatory instrument, the association, in  
3 addition to exercising any of the association's powers against the  
4 owner, may assess a fine directly against the nonowner occupant in  
5 the same manner as provided for an owner.

6       (c) The association must give notice of a fine to the owner  
7 in accordance with Section 209.006 not later than the 30th day after  
8 the date the fine is assessed.

9       Sec. 209.0062. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN  
10 ASSESSMENTS. A property owners' association shall adopt guidelines  
11 to establish an alternative payment schedule by which an owner may  
12 make partial payments to the property owners' association for  
13 delinquent regular or special assessments on a showing by the owner  
14 of a substantial change in the owner's personal circumstances.

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

19               (1) any delinquent assessment;  
20               (2) any current assessment;  
21               (3) any fines assessed by the association; and  
22               (4) any attorney's fees incurred by the association  
23 solely associated with fines assessed by the association.

24       Sec. 209.0091. JUDICIAL FORECLOSURE REQUIRED. (a) Except  
25 as provided by a restriction created before September 1, 2007, or by  
26 Subsection (b), a property owners' association may not foreclose a  
27 property owners' association's assessment lien unless the

1 association first obtains a court judgment foreclosing the lien and  
2 providing for issuance of an order of sale.

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

6 Sec. 209.012. PLATS. A plat filed as part of a declaration  
7 that establishes a residential subdivision must:

8 (1) provide the location of each utility  
9 infrastructure to be built; and

10 (2) specifically identify amenities that must be built  
11 and label those amenities "MUST BE BUILT."

12 SECTION 7. (a) Section 5.012, Property Code, as amended by  
13 this Act, applies only to a sale of property that occurs on or after  
14 the effective date of this Act. For the purposes of this section, a  
15 sale of property occurs before the effective date of this Act if the  
16 executory contract binding the purchaser to purchase the property  
17 is executed before that date. A sale of property that occurs before  
18 the effective date of this Act is governed by the law in effect  
19 immediately before that date, and that law is continued in effect  
20 for that purpose.

21 (b) Section 202.008, Property Code, as added by this Act,  
22 applies to a deed restriction enacted before, on, or after the  
23 effective date of this Act.

24 (c) Sections 209.0061 and 209.0062, Property Code, as added  
25 by this Act, apply only to an assessment that becomes due on or  
26 after the effective date of this Act. An assessment that becomes  
27 due before the effective date of this Act is governed by the law in

1 effect immediately before the effective date of this Act, and that  
2 law is continued in effect for that purpose.

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

10 (e) Section 209.012, Property Code, as added by this Act,  
11 applies only to a declaration filed on or after the effective date  
12 of this Act. A declaration filed before the effective date of this  
13 Act is governed by the law in effect immediately before that date,  
14 and that law is continued in effect for that purpose.

15 (f) Section 209.0091, Property Code, as added by this Act,  
16 applies only to foreclosure of a lien that attaches on or after the  
17 effective date of this Act. Foreclosure of a lien that attaches  
18 before the effective date of this Act is governed by the law in  
19 effect immediately before that date, and that law is continued in  
20 effect for that purpose.

21 SECTION 8. This Act takes effect September 1, 2007.