

1-1 By: West S.B. No. 979  
1-2 (In the Senate - Filed February 27, 2007; March 7, 2007,  
1-3 read first time and referred to Committee on Intergovernmental  
1-4 Relations; April 16, 2007, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 4, Nays 0;  
1-6 April 16, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 979 By: West

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the operation of property owners' associations.  
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
1-12 SECTION 1. Subsection (a), Section 5.006, Property Code, is  
1-13 amended to read as follows:

1-14 (a) In an action based on breach of a restrictive covenant  
1-15 pertaining to real property, the court shall allow to a prevailing  
1-16 party ~~[who asserted the action]~~ reasonable attorney's fees in  
1-17 addition to the party's costs and claim.

1-18 SECTION 2. Section 5.012, Property Code, is amended by  
1-19 amending Subsection (a) and adding Subsection (f) to read as  
1-20 follows:

1-21 (a) A seller of residential real property that is subject to  
1-22 membership in a property owners' association and that comprises not  
1-23 more than one dwelling unit located in this state shall give to the  
1-24 purchaser of the property a written notice that reads substantially  
1-25 similar to the following:

1-26 NOTICE OF MEMBERSHIP IN PROPERTY OWNERS' ASSOCIATION CONCERNING THE  
1-27 PROPERTY AT (street address) (name of residential community)

1-28 As a purchaser of property in the residential community in  
1-29 which this property is located, you are obligated to be a member of  
1-30 a property owners' association. Restrictive covenants governing  
1-31 the use and occupancy of the property and a dedicatory instrument  
1-32 governing the establishment, maintenance, and operation of this  
1-33 residential community have been or will be recorded in the Real  
1-34 Property Records of the county in which the property is located.  
1-35 Copies of the restrictive covenants and dedicatory instrument may  
1-36 be obtained from the county clerk.

1-37 You are obligated to pay assessments to the property owners'  
1-38 association. The amount of the assessments is subject to change.  
1-39 Your failure to pay the assessments could result in a lien on and  
1-40 the foreclosure of your property.

1-41 Section 207.003, Property Code, entitles an owner to receive  
1-42 copies of restrictions, bylaws, and a resale certificate from a  
1-43 property owners' association. A resale certificate contains  
1-44 information including, but not limited to, statements specifying  
1-45 the amount and frequency of regular assessments, the property  
1-46 owners' association's operating budget and balance sheet, and the  
1-47 style and cause number of lawsuits to which the property owners'  
1-48 association is a party. These documents must be made available to  
1-49 you by the seller on your request.

1-50 Date: \_\_\_\_\_

1-51 \_\_\_\_\_  
1-52 Signature of Purchaser

1-53 (f) On the purchaser's request, the seller shall provide the  
1-54 purchaser with a copy of a resale certificate issued for the  
1-55 property under Chapter 207. A seller is not required to provide a  
1-56 purchaser with more than one resale certificate and one updated  
1-57 resale certificate in a six-month period.

1-58 SECTION 3. Chapter 202, Property Code, is amended by adding  
1-59 Sections 202.008 and 202.010 to read as follows:

1-60 Sec. 202.008. RIGHT OF FIRST REFUSAL PROHIBITED. (a) In  
1-61 this section, "development period" means a period stated in a  
1-62 declaration during which a declarant reserves:

1-63 (1) a right to facilitate the development,  
construction, and marketing of the subdivision;

2-1 (2) a right to direct the size, shape, and composition  
 2-2 of the subdivision; or

2-3 (3) any other right customarily reserved by a  
 2-4 declarant for the benefit of developers and builders.

2-5 (b) To the extent a restrictive covenant provides a right of  
 2-6 first refusal for the sale or lease of a residential unit or  
 2-7 residential lot in favor of the property owners' association or the  
 2-8 association's members, the covenant is void.

2-9 (c) This section does not apply to a restrictive covenant  
 2-10 that provides a right of first refusal in favor of a developer or  
 2-11 builder during the development period.

2-12 Sec. 202.010. REGULATION OF SOLAR ENERGY DEVICES. (a) In  
 2-13 this section, "solar energy device" has the meaning assigned by  
 2-14 Section 171.107, Tax Code.

2-15 (b) Except as otherwise provided by this section, a property  
 2-16 owners' association may not include or enforce a provision in a  
 2-17 dedicatory instrument that prohibits or restricts a property owner  
 2-18 from installing a solar energy device.

2-19 (c) A provision that violates Subsection (b) is void.

2-20 (d) This section does not prohibit the inclusion or  
 2-21 enforcement of a provision in a dedicatory instrument that  
 2-22 prohibits a solar energy device that:

2-23 (1) threatens the public health or safety;

2-24 (2) violates a law;

2-25 (3) is located on property owned or maintained by the  
 2-26 property owners' association;

2-27 (4) is located on property owned in common by the  
 2-28 members of the property owners' association;

2-29 (5) is located in an area on the property owner's  
 2-30 property other than:

2-31 (A) on the roof of the home; or

2-32 (B) in a fenced yard or patio maintained by the  
 2-33 property owner; or

2-34 (6) is mounted on a device that is taller or more  
 2-35 visually obtrusive than is necessary for the solar energy device to  
 2-36 operate at not less than 90 percent of its rated efficiency.

2-37 SECTION 4. Subsection (b), Section 207.003, Property Code,  
 2-38 is amended to read as follows:

2-39 (b) A resale certificate under Subsection (a) must contain:

2-40 (1) a statement of any right of first refusal or other  
 2-41 restraint contained in the restrictions or restrictive covenants  
 2-42 that restricts the owner's right to transfer the owner's property;

2-43 (2) the frequency and amount of any regular  
 2-44 assessments;

2-45 (3) the amount of any special assessment that is due  
 2-46 after the date the resale certificate is prepared;

2-47 (4) the total of all amounts due and unpaid to the  
 2-48 property owners' association that are attributable to the owner's  
 2-49 property;

2-50 (5) capital expenditures, if any, approved by the  
 2-51 property owners' association for the property owners' association's  
 2-52 current fiscal year;

2-53 (6) the amount of reserves, if any, for capital  
 2-54 expenditures;

2-55 (7) the property owners' association's current  
 2-56 operating budget and balance sheet;

2-57 (8) the total of any unsatisfied judgments against the  
 2-58 property owners' association;

2-59 (9) the style and cause number of any pending lawsuit  
 2-60 in which the property owners' association is a party, other than a  
 2-61 lawsuit relating to unpaid property taxes of an individual member  
 2-62 of the association [defendant];

2-63 (10) a copy of a certificate of insurance showing the  
 2-64 property owners' association's property and liability insurance  
 2-65 relating to the common areas and common facilities;

2-66 (11) a description of any conditions on the owner's  
 2-67 property that the property owners' association board has actual  
 2-68 knowledge are in violation of the restrictions applying to the  
 2-69 subdivision or the bylaws or rules of the property owners'

3-1 association;  
3-2 (12) a summary or copy of notices received by the  
3-3 property owners' association from any governmental authority  
3-4 regarding health or housing code violations existing on the  
3-5 preparation date of the certificate relating to the owner's  
3-6 property or any common areas or common facilities owned or leased by  
3-7 the property owners' association;

3-8 (13) the amount of any administrative transfer fee  
3-9 charged by the property owners' association for a change of  
3-10 ownership of property in the subdivision;

3-11 (14) the name, mailing address, and telephone number  
3-12 of the property owners' association's managing agent, if any; and

3-13 (15) a statement indicating whether the restrictions  
3-14 allow foreclosure of a property owners' association's lien on the  
3-15 owner's property for failure to pay assessments.

3-16 SECTION 5. Chapter 209, Property Code, is amended by adding  
3-17 Sections 209.0041 through 209.0044 to read as follows:

3-18 Sec. 209.0041. AMENDMENT OF RESTRICTIVE COVENANTS.

3-19 (a) This section applies only to a residential subdivision in  
3-20 which property owners are subject to mandatory regular or special  
3-21 assessments.

3-22 (b) This section applies to a declaration or restriction  
3-23 regardless of the date on which the declaration or restriction was  
3-24 created.

3-25 (c) This section does not apply to the amendment of a  
3-26 declaration during a development period, as defined by Section  
3-27 202.008.

3-28 (d) To the extent of any conflict with another provision of  
3-29 this title, this section prevails.

3-30 (e) Unless a declaration creating a residential subdivision  
3-31 provides a lower percentage, the declaration and any subsequently  
3-32 enacted restrictions may be amended on a vote of not less than 51  
3-33 percent of the total votes allocated to owners of property in the  
3-34 subdivision. If the declaration provides a lower percentage, the  
3-35 percentage in the declaration controls.

3-36 Sec. 209.0042. TABULATION OF VOTES. (a) In a contested  
3-37 election held in the subdivision, the property owners' association  
3-38 shall retain a neutral third party to tabulate the votes if the  
3-39 association receives, at least 10 days before the date of the  
3-40 meeting at which the vote will be taken or, if no meeting is to be  
3-41 held, at least 10 days before the deadline to cast a vote, written  
3-42 requests from at least 25 percent of the owners of property in the  
3-43 subdivision.

3-44 (b) For the purposes of this section, a person is considered  
3-45 a neutral third party if the person is anyone other than a candidate  
3-46 for office, a current or former member or officer of the board of  
3-47 directors, an attorney who represents the property owners'  
3-48 association, or a representative of the association's management  
3-49 company, or a person related to one of those persons within the  
3-50 second degree by consanguinity or affinity, as determined under  
3-51 Chapter 573, Government Code.

3-52 Sec. 209.0043. RIGHT TO VOTE. A restrictive covenant that  
3-53 would disqualify a property owner from voting in an association  
3-54 election is void.

3-55 Sec. 209.0044. BOARD MEMBERSHIP. (a) A restrictive  
3-56 covenant that restricts a property owner's right to run for a  
3-57 position on the board of the property owners' association is void.

3-58 (b) A board member of a property owners' association may not  
3-59 serve more than six consecutive years.

3-60 (c) A board member who owes an amount to the association  
3-61 that is six months or more overdue may not vote on the initiation of  
3-62 legal proceedings against a member of the property owners'  
3-63 association related to a debt owed by the member to the association.

3-64 SECTION 6. Section 209.005, Property Code, is amended by  
3-65 adding Subsection (c) to read as follows:

3-66 (c) If a property owners' association fails to comply with  
3-67 this section, an owner may seek one or more of the following  
3-68 remedies:

3-69 (1) a court order directing the property owners'

4-1 association to provide the required information;  
 4-2 (2) a judgment against the property owners'  
 4-3 association for a penalty of not more than \$1,500;  
 4-4 (3) a judgment against the property owners'  
 4-5 association for court costs and attorney's fees incurred in  
 4-6 connection with seeking a remedy under this section; or  
 4-7 (4) a judgment authorizing the owner or the owner's  
 4-8 assignee to deduct the amounts awarded under Subdivisions (2) and  
 4-9 (3) from any future regular or special assessments payable to the  
 4-10 property owners' association.

4-11 SECTION 7. Section 209.006, Property Code, is amended by  
 4-12 amending Subsection (b) and adding Subsections (c) and (d) to read  
 4-13 as follows:

4-14 (b) The notice must:  
 4-15 (1) describe the violation or property damage that is  
 4-16 the basis for the suspension action, charge, or fine and state any  
 4-17 amount due the association from the owner; ~~and~~  
 4-18 (2) inform the owner that the owner:  
 4-19 (A) is entitled to a reasonable period to cure  
 4-20 the violation and avoid the fine or suspension unless the owner was  
 4-21 given notice and a reasonable opportunity to cure a similar  
 4-22 violation within the preceding six months; and  
 4-23 (B) may request a hearing under Section 209.007  
 4-24 on or before the 30th day after the date notice was delivered to the  
 4-25 owner; and  
 4-26 (3) specify a date certain by which the owner must cure  
 4-27 the violation [receives the notice].

4-28 (c) Notice under Subsection (b) must be personally  
 4-29 delivered, sent by certified mail with a five-day return requested,  
 4-30 or delivered by the United States Postal Service with signature  
 4-31 confirmation service to the owner at the owner's last known address  
 4-32 as shown on the association's records.

4-33 (d) The date specified in the notice under Subsection (b)(3)  
 4-34 must provide a reasonable period for the owner to cure the  
 4-35 violation.

4-36 SECTION 8. Chapter 209, Property Code, is amended by adding  
 4-37 Sections 209.0061 through 209.0064 and Section 209.0091 to read as  
 4-38 follows:

4-39 Sec. 209.0061. ASSESSMENT OF FINES. (a) A fine assessed  
 4-40 by the property owners' association must be reasonable in the  
 4-41 context of the nature, frequency, and effect of the violation. If  
 4-42 the association allows fines for a continuing violation to  
 4-43 accumulate against a lot or an owner, the association must  
 4-44 establish a maximum fine amount for a continuing violation, at  
 4-45 which point the total fine amount is capped.

4-46 (b) If a lot occupant other than the owner violates a  
 4-47 provision of the dedicatory instrument, the property owners'  
 4-48 association, in addition to exercising any of the association's  
 4-49 powers against the owner, may assess a fine directly against the  
 4-50 nonowner occupant in the same manner as provided for an owner but  
 4-51 may not require payment from both the owner and a nonowner occupant  
 4-52 for the same violation.

4-53 Sec. 209.0062. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN  
 4-54 ASSESSMENTS. (a) A property owners' association shall adopt  
 4-55 guidelines to establish an alternative payment schedule by which an  
 4-56 owner may make partial payments to the property owners' association  
 4-57 for delinquent regular or special assessments or any other amount  
 4-58 owed to the association.

4-59 (b) A property owners' association is not required to allow  
 4-60 a payment plan that extends more than 12 months from the date of the  
 4-61 owner's request for a payment plan or to enter into a payment plan  
 4-62 with an owner who failed to honor the terms of a previous payment  
 4-63 plan.

4-64 (c) The property owners' association shall file the  
 4-65 association's guidelines under this section in the real property  
 4-66 records of each county in which the subdivision is located.

4-67 Sec. 209.0063. PRIORITY OF PAYMENTS. Unless otherwise  
 4-68 provided in a writing by the property owner, a payment received by a  
 4-69 property owners' association from the owner shall be applied to the

5-1 owner's debt in the following order of priority:

5-2 (1) any delinquent assessment;

5-3 (2) any current assessment;

5-4 (3) any attorney's fees incurred by the association  
5-5 associated solely with assessments;

5-6 (4) any fines assessed by the association;

5-7 (5) any attorney's fees incurred by the association  
5-8 associated solely with fines assessed by the association; and

5-9 (6) any other amount owed to the association.

5-10 Sec. 209.0064. COLLECTIONS. A property owners' association  
5-11 must bring suit or otherwise initiate against an owner a collection  
5-12 action authorized by the dedicatory instruments or other law on or  
5-13 before the 10th anniversary of the date on which the cause of action  
5-14 for collection of the debt accrues. Section 16.004, Civil Practice  
5-15 and Remedies Code, does not apply to the collection of a debt owed  
5-16 by an owner to a property owners' association.

5-17 Sec. 209.0091. JUDICIAL FORECLOSURE REQUIRED. (a) Except  
5-18 as provided by Subsection (b), a property owners' association may  
5-19 not foreclose a property owners' association's assessment lien  
5-20 unless the association first obtains a court judgment foreclosing  
5-21 the lien and providing for issuance of an order of sale.

5-22 (b) Judicial foreclosure is not required under this section  
5-23 if the owner of the property that is subject to foreclosure agrees  
5-24 in writing to waive judicial foreclosure under this section.

5-25 SECTION 9. Subsection (a), Section 209.010, Property Code,  
5-26 is amended to read as follows:

5-27 (a) A property owners' association that conducts a  
5-28 foreclosure sale of an owner's lot must send to the lot owner not  
5-29 later than the 30th day after the date of the foreclosure sale:

5-30 (1) a written notice stating the date and time the sale  
5-31 occurred and informing the lot owner of the owner's right to redeem  
5-32 the property under Section 209.011; and

5-33 (2) a copy of Section 209.011.

5-34 SECTION 10. Chapter 209, Property Code, is amended by  
5-35 adding Section 209.012 to read as follows:

5-36 Sec. 209.012. PLATS. A filed plat that establishes a  
5-37 residential subdivision that is subject to this chapter must:

5-38 (1) provide the location of all utility easements and  
5-39 any utility infrastructure to be built; and

5-40 (2) specifically identify amenities that must be built  
5-41 and label those amenities "MUST BE BUILT."

5-42 SECTION 11. Subsection (a), Section 211.002, Property Code,  
5-43 is amended to read as follows:

5-44 (a) This chapter applies only to a residential real estate  
5-45 subdivision or any unit or parcel of a subdivision to which another  
5-46 chapter in this title that provides a procedure under which a  
5-47 subdivision's restrictions may be amended does not apply [~~located~~  
5-48 ~~in whole or in part within an unincorporated area of a county if the~~  
5-49 ~~county has a population of less than 65,000].~~

5-50 SECTION 12. Subsection (c), Section 202.004, Property Code,  
5-51 is repealed.

5-52 SECTION 13. (a) Subsection (a), Section 5.006, Property  
5-53 Code, as amended by this Act, and the repeal by this Act of  
5-54 Subsection (c), Section 202.004, Property Code, apply only to an  
5-55 action filed on or after the effective date of this Act. An action  
5-56 filed before the effective date of this Act is governed by the law  
5-57 in effect immediately before the effective date of this Act, and  
5-58 that law is continued in effect for that purpose.

5-59 (b) Section 5.012, Property Code, as amended by this Act,  
5-60 applies only to a sale of property that occurs on or after the  
5-61 effective date of this Act. For the purposes of this section, a  
5-62 sale of property occurs before the effective date of this Act if the  
5-63 executory contract binding the purchaser to purchase the property  
5-64 is executed before that date. A sale of property that occurs before  
5-65 the effective date of this Act is governed by the law in effect  
5-66 immediately before that date, and that law is continued in effect  
5-67 for that purpose.

5-68 (c) Sections 202.008, 202.010, 209.0043, and Subsection  
5-69 (a), Section 209.0044, Property Code, as added by this Act, apply to

6-1 a deed restriction enacted before, on, or after the effective date  
6-2 of this Act.

6-3 (d) Subsection (b), Section 209.0044, Property Code, as  
6-4 added by this Act, applies to a property owners' association board  
6-5 member elected before, on, or after the effective date of this Act.

6-6 (e) Subsection (c), Section 209.005, Property Code, as  
6-7 added by this Act, applies only to a property owners' association's  
6-8 failure to comply with that section on or after the effective date  
6-9 of this Act. A property owners' association's failure to comply  
6-10 with that section before the effective date of this Act is governed  
6-11 by the law in effect immediately before the effective date of this  
6-12 Act, and that law is continued in effect for that purpose.

6-13 (f) Sections 209.0061, 209.0062, and 209.0064, Property  
6-14 Code, as added by this Act, apply only to an assessment or other  
6-15 debt that becomes due on or after the effective date of this Act. An  
6-16 assessment or other debt that becomes due before the effective date  
6-17 of this Act is governed by the law in effect immediately before the  
6-18 effective date of this Act, and that law is continued in effect for  
6-19 that purpose.

6-20 (g) Section 209.0063, Property Code, as added by this Act,  
6-21 applies only to a payment received by a property owners'  
6-22 association on or after the effective date of this Act. A payment  
6-23 received by a property owners' association before the effective  
6-24 date of this Act is governed by the law in effect immediately before  
6-25 the effective date of this Act, and that law is continued in effect  
6-26 for that purpose.

6-27 (h) Section 209.0091, Property Code, as added by this Act,  
6-28 applies only to foreclosure of a lien that attaches on or after the  
6-29 effective date of this Act. Foreclosure of a lien that attaches  
6-30 before the effective date of this Act is governed by the law in  
6-31 effect immediately before that date, and that law is continued in  
6-32 effect for that purpose.

6-33 (i) Section 209.012, Property Code, as added by this Act,  
6-34 applies only to a plat filed on or after the effective date of this  
6-35 Act. A plat filed before the effective date of this Act is governed  
6-36 by the law in effect immediately before that date, and that law is  
6-37 continued in effect for that purpose.

6-38 SECTION 14. This Act takes effect January 1, 2008.

\* \* \* \* \*

6-39