

Amend CSHB 1976 (house committee printing) by striking all below the enacting clause and substituting the following:

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

(a) In an action based on breach of a restrictive covenant pertaining to real property or a statute pertaining to real property subject to a restrictive covenant or to restrictive covenants to which real property is subject, the court may [~~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 all [~~a~~] dedicatory instruments [~~instrument~~] governing the establishment, maintenance, or [~~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 instruments [~~instrument~~] may be obtained from the county clerk.

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

Section 207.003, Property Code, entitles an owner to receive copies of any document that governs the establishment, maintenance, or operation of a subdivision, including, but not limited to,

restrictions, bylaws, rules and regulations, and a resale certificate from a property owners' association. A resale certificate contains information including, but not limited to, statements specifying the amount and frequency of regular assessments and the style and cause number of lawsuits to which the property owners' association is a party. These documents must be made available to you by the seller on your request.

Date: _____

Signature of Purchaser

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

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

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

(A) request the property owners' association or its agent to issue a resale certificate under Chapter 207; and

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

(g) The seller or the purchaser, as agreed to by the parties, shall pay the fee to the property owners' association or its agent for issuing the resale certificate. The property owners' association may not require payment for a resale certificate requested under Chapter 207 until the certificate is available for delivery. The association may not charge a fee if the certificate is not provided in the time prescribed by Section 207.003(a).

SECTION 3. Section 202.001(1), Property Code, is amended to read as follows:

(1) "Dedictory instrument" means each document governing ~~[instrument covering]~~ the establishment, maintenance, or ~~[and]~~ operation of a residential subdivision, planned unit development, condominium or townhouse regime, or any similar planned development. The term includes:

(A) a declaration or similar instrument subjecting real property to:

(i) restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association;

(ii) ~~properly~~ properly adopted rules and regulations of the property owners' association; or

(iii) ~~all~~ all lawful amendments to the covenants, bylaws, instruments, rules, or regulations; and

(B) bylaws, rules, regulations, or guidelines adopted by a property owners' association under an instrument described by Paragraph (A).

SECTION 4. Section 202.004, Property Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) In evaluating an alleged or potential violation of a restrictive covenant, the property owners' association or other representative designated by an owner of real property may, notwithstanding any provision in a dedicatory instrument, grant a variance and in doing so not enforce the restrictive covenant if the property owners' association board, in the board's reasonable judgment, determines:

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

(2) the provision alleged to have been violated may be inconsistent with applicable law;

(3) the alleged violation is not of such a material or visible nature as to be objectionable to a reasonable person or to justify expending the property owners' association's resources;

(4) enforcement of the provision is not in the association's best interests, based on hardship, expense, or other reasonable criteria; or

(5) the facts of the particular circumstances, such as topography of the owner's land or unforeseen circumstances unique to the particular owner, justify the variance.

(e) A determination by the property owners' association board to grant a variance under Subsection (d) may not be considered a waiver of the association's ability to enforce any dedicatory instrument provision in the future.

SECTION 5. Section 202.006, Property Code, is amended to

read as follows:

Sec. 202.006. PUBLIC RECORDS. (a) A property owners' association shall file all [~~the~~] dedicatory instruments [~~instrument~~] in the real property records of each county in which the property to which the dedicatory instruments relate [~~instrument relates~~] is located.

(b) A dedicatory instrument that is not filed in accordance with this section has no effect until filed.

SECTION 6. Chapter 202, Property Code, is amended by adding Sections 202.008, 202.010, 202.011, 202.012, 202.013, 202.014, and 202.015 to read as follows:

Sec. 202.008. ASSOCIATION'S RIGHT OF ENTRY. (a) Except as provided by this section, a provision in a dedicatory instrument that provides a property owners' association the right or authority to enter onto an owner's private property to enforce or abate an alleged violation of a restrictive covenant is void as against public policy except for entry:

(1) to cure a violation that involves an immediate threat to persons or property;

(2) after 10 days' written notice, to:

(A) perform a forced mow; or

(B) remove trash or debris; or

(3) in circumstances in which it is reasonably determined the property has been abandoned and not maintained for at least 30 days.

(b) This section does not prohibit a provision in a dedicatory instrument allowing a property owners' association a right of entry on the property of an owner that is limited to a dedicated access or other easement contained in a final plat or an easement filed of record.

(c) This section does not apply to:

(1) an association regulated under Title 7; or

(2) a property owners' association that funds through assessments:

(A) insurance on residences;

(B) one or more utility payments for residences;

or

(C) exterior maintenance of residences.

Sec. 202.010. CERTAIN PARKING RESTRICTIONS PROHIBITED. (a) A provision in a dedicatory instrument that restricts or prohibits an owner from parking an operable, noncommercial, and personal automobile or truck on a public street is void as against public policy.

(b) A provision in a dedicatory instrument that restricts or prohibits an owner from parking the owner's operable, noncommercial, and personal automobile or truck in the owner's driveway is void as against public policy.

(c) For the purposes of this section, "noncommercial automobile" means a motor vehicle that may be legally driven on public roads under state law and that exhibits no commercial advertising other than standard dealer or manufacturer advertising.

(d) For the purposes of this section, a recreational vehicle, motor home, camper, all-terrain vehicle, trailer, or watercraft, a tow truck, cement mixer, or other similar commercial vehicle, or a vehicle that is more than 30 feet long is not considered to be a personal automobile or truck.

(e) This section does not apply to:

(1) an association regulated under Title 7; or

(2) a property owners' association that funds through assessments:

(A) insurance on residences;

(B) one or more utility payments for residences;

or

(C) exterior maintenance of residences.

Sec. 202.011. RIGHT OF FIRST REFUSAL PROHIBITED. (a) In this section, "development period" means a period stated in a declaration during which a declarant reserves:

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

(2) a right to direct the size, shape, and composition of the subdivision.

(b) To the extent a restrictive covenant provides a right of first refusal for the sale or lease of a residential unit or

residential lot in favor of the property owners' association or the association's members, the covenant is void.

(c) 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. 202.012. REGULATION OF SOLAR ENERGY DEVICES. (a) In this section, "solar energy device" has the meaning assigned by Section 171.107, Tax Code.

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

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

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

(1) as adjudicated by a court:

(A) threatens the public health or safety; or

(B) violates a law;

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

(3) is located on property owned in common by the members of the property owners' association; or

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

(A) on the roof of the home; or

(B) in a fenced yard or patio maintained by the property owner.

Sec. 202.013. RENTAL RESTRICTIONS. (a) Except as provided by Subsection (b), a property owners' association may not amend a dedicatory instrument to prohibit or restrict the rental of property subject to the dedicatory instrument without the consent of 51 percent of the total votes allocated to property owners subject to the dedicatory instrument.

(b) An amendment to a dedicatory instrument may require:

(1) an owner to:

(A) exercise due diligence in not leasing to an

occupant who is a registered sex offender or who has a history of violent crime; or

(B) terminate the possessory right of any tenant or occupant who is a registered sex offender or who has a history of violent crime;

(2) all leases to be subject to the dedicatory instruments of the property owners' association; or

(3) a minimum lease term of not more than six months.

Sec. 202.014. RESTRICTIONS REQUIRING CAPITAL IMPROVEMENTS.

(a) A dedicatory instrument may not be amended to retroactively require a person who owns property subject to the dedicatory instrument at the time the amendment is adopted to make a capital improvement to the owner's property that is not required before the amendment. A provision of a dedicatory instrument requiring an owner to make a capital improvement to the owner's property may only be adopted by a vote of 67 percent of the total votes allocated to property owners subject to the dedicatory instrument and may be applicable only to owners purchasing property subject to the dedicatory instrument after the provision is adopted.

(b) For the purposes of this section, "capital improvement" means items such as additional tree plantings, additional sodding, fence construction, hardscape installation, new construction, or any similar capital improvement. The term does not include repair or maintenance of existing improvements or the removal of conditions that are in violation of a dedicatory instrument.

Sec. 202.015. INJUNCTION; DAMAGES. (a) If a property owners' association or other representative designated by the property owners' association has violated, is violating, or is threatening to violate this chapter, a member of the property owners' association may bring a civil action against the property owners' association but may not bring an action against an association's officer or board member individually.

(b) A member of a property owners' association bringing an action under this section may seek:

(1) injunctive relief;

(2) damages in an amount equal to the greater of:

(A) actual damages arising from the violation; or

(B) \$1,500 for each violation; or

(3) both injunctive relief and damages as provided in this subsection.

(c) The court may increase an award under Subsection (b)(2) to an amount not to exceed three times the amount awarded under Subsection (b)(2) if the court finds that violations have occurred with a frequency that constitutes a pattern or practice.

(d) Each day a violation continues is not considered a separate violation for purposes of an assessment of damages.

(e) The court may award damages to a property owners' association for a suit brought by a member of the property owners' association that the court finds frivolous or groundless in an amount that is not more than the greater of:

(1) three times the association's actual damages; or

(2) \$4,500.

(f) On or before the 30th day before the date a person files a suit under this section, the person must provide notice to the other party of the person's intent to file suit under this section. The notice must be sent certified mail, return receipt requested, or delivered by the United States Postal Service with signature confirmation service.

SECTION 7. Section 207.003(b), Property Code, is amended to read as follows:

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

(1) a statement of any right of first refusal, other than a right of first refusal that is prohibited by statute, and any ~~or~~ other restraint contained in the restrictions or restrictive covenants that restricts the owner's right to transfer the owner's property;

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

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

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

(5) capital expenditures, if any, approved by the

property owners' association for the property owners' association's current fiscal year;

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

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

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

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

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

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

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

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

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

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

(16) 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 8. Chapter 209, Property Code, is amended by adding Sections 209.0035 and 209.0041 to read as follows:

Sec. 209.0035. INJUNCTION; DAMAGES. (a) If a property owners' association or other representative designated by the property owners' association has violated, is violating, or is threatening to violate this chapter, a member of the property owners' association may bring a civil action against the property owners' association but may not bring an action against an association's officer or board member individually.

(b) A member of a property owners' association bringing an action under this section may seek:

(1) injunctive relief;

(2) damages in an amount equal to the greater of:

(A) actual damages arising from the violation; or

(B) \$1,500 for each violation; or

(3) both injunctive relief and damages as provided in this subsection.

(c) The court may increase an award under Subsection (b)(2) to an amount not to exceed three times the amount awarded under Subsection (b)(2) if the court finds that violations have occurred with a frequency that constitutes a pattern or practice.

(d) Each day a violation continues is not considered a separate violation for purposes of assessment of damages.

(e) The court may award damages to a property owners' association for a suit brought by a member of the property owners' association that the court finds frivolous or groundless in an amount that is not more than the greater of:

(1) three times the association's actual damages; or

(2) \$4,500.

(f) On or before the 30th day before the date a person files a suit under this section, the person must provide notice to the other party of the person's intent to file suit under this section. The notice must be sent certified mail, return receipt requested, or delivered by the United States Postal Service with signature confirmation service.

Sec. 209.0041. AMENDMENT OF DEDICATORY INSTRUMENTS. (a) This section applies to a residential subdivision in which property

owners are subject to mandatory membership in a property owners' association.

(b) This section applies to all dedicatory instruments regardless of the date on which the dedicatory instruments were created.

(c) This section does not apply to the amendment of a dedicatory instrument during a development period, as defined by Section 202.011.

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

(e) Except as provided by Subsection (f), a dedicatory instrument may be amended only by a vote of 51 percent of the total votes allocated to property owners in the property owners' association, in addition to any governmental approval required by law.

(f) A rule or guideline that affects land owned, leased, maintained, or otherwise controlled by the property owners' association may be adopted or amended by majority vote of the association board. A rule or guideline that impacts the use and enjoyment of personal or real property owned exclusively by the owner or that may result in a fine or loss of privilege of a member of the association may be adopted or amended only by a vote of 51 percent of the total votes allocated to property owners who cast votes by any permissible method in an association-wide vote.

(g) A property owners' association board by majority vote may adopt ministerial, office-related procedural policies, such as payment plan guidelines under Section 209.0062, a collections policy, an enforcement policy, or other similar ministerial, office-related procedural policies. The policy may outline circumstances under which or the manner by which enforcement remedies may be carried out but may not otherwise impact the use and enjoyment of personal or real property owned exclusively by the owner. The policy may not:

(1) create a power to:

(A) levy a fine; or

(B) impose a loss of a privilege on a member of

the association; or

(2) expand the association's powers beyond the powers granted by any other dedicatory instrument.

(h) All ballots cast in a vote that results in an amendment to a restrictive covenant, bylaw, or rule are records of the association subject to inspection under Section 209.005.

(i) This section supersedes any contrary requirement in a dedicatory instrument.

(j) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

SECTION 9. Section 209.005, Property Code, is amended to read as follows:

Sec. 209.005. ASSOCIATION RECORDS. (a) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036.

(b) Notwithstanding a provision in a dedicatory instrument, a [A] property owners' association shall make the books and records of the association, including financial records, open to and reasonably available for examination by [to] an owner [in accordance with Section B, Article 2.23, Texas Non-Profit Corporation Act (Article 1396-2.23, Vernon's Texas Civil Statutes)]. An owner is entitled to obtain from the association copies of information contained in the books and records.

(c) [(a-1) A property owners' association described by Section 552.0036(2), Government Code, shall make the books and records of the association, including financial records, reasonably available to any person requesting access to the books or records in accordance with Chapter 552, Government Code. Subsection (a) does not apply to a property owners' association to which this subsection applies.]

[(b)] An attorney's files and records relating to the association, excluding invoices requested by an owner under Section 209.008(d), are not:

- (1) records of the association;
- (2) subject to inspection by the owner; or
- (3) subject to production in a legal proceeding.

(d) In addition to the requirements of Subsection (b), a

property owners' association shall make the association's books and records, including financial records and invoices, available in a building:

(1) in which the books and records are appropriately stored; and

(2) that is:

(A) staffed during normal business hours;

(B) accessible to members of the association during normal business hours; and

(C) located on property commonly owned by the association within the boundaries of the subdivision governed by the association.

(e) If a building described by Subsection (d) does not exist on property described by Subsection (d), the property owners' association shall make the books and records available in accordance with Subsections (g) and (h).

(f) A party requesting association books or records shall submit the request in writing:

(1) in person by hand delivery to a current board member;

(2) to the mailing address of the association or authorized representative as provided on the most current management certificate filed under Section 209.004; or

(3) in person to a managing agent as reflected on the most current management certificate filed under Section 209.004.

(g) A property owners' association shall make books and records requested under Subsection (b) available to the requesting party within a reasonable time of the property owners' association's receipt of the request.

(h) A reasonable time for providing information requested under Subsection (b) is considered to be 10 business days after the date the property owners' association receives a request, except as otherwise provided by this section.

(i) If the property owners' association is unable to produce a requested book or record on or before the 10th business day after the date the request is received, the property owners' association must provide to the requestor written notice that:

(1) informs the requestor that the property owners' association is unable to produce the information on or before the 10th business day after the date of the receipt of the request; and

(2) states a date by which the information will be available for inspection that occurs not later than the 30th day after the date notice under this subsection is given.

(j) A property owners' association shall make books and records requested under this section available to the requestor in one or more of the following formats, as specified by the requestor:

(1) an electronic format:

(A) delivered to an electronic mail address provided by the requestor; or

(B) delivered in a disc or other standard electronic format:

(i) to the mailing address of the requestor; or

(ii) if the requesting party does not provide a mailing address, to the address of the requestor's property in the subdivision; or

(2) a hard-copy format:

(A) delivered to the mailing address of the requestor; or

(B) if the requesting party does not provide a mailing address:

(i) mailed to the address of the requestor's property in the subdivision; or

(ii) made available at a location not more than 25 miles from the boundary of the subdivision governed by the association.

(k) This section does not require a property owners' association to staff a building described by Subsection (d).

(l) A property owners' association may charge an owner for copies of the requested information in an amount that reasonably includes all costs related to reproducing the information, including costs of materials, labor, and overhead.

(m) Any information maintained by the association that is released under this section may not identify an individual member

of an association or an individual's personal financial information. Information may be released in an aggregate manner that would not identify an individual property owner.

(n) All ballots cast in an election that results in an amendment to a dedicatory instrument, as required by Section 209.0041, are records of the property owners' association subject to inspection under this section.

(o) All ballots cast in an election of property owners' association board members are considered records of the association but may not be made available for inspection under this section without a court order or subpoena. The association shall take reasonable measures to safeguard the security and privacy of those ballots.

(p) A property owners' association shall:

(1) keep all records as to changes to the dedicatory instruments in perpetuity;

(2) maintain and secure all ballots in association-wide elections for four years; and

(3) maintain records related to financial matters of the association, including assessments, fines, foreclosures, and enforcement actions for at least seven years.

(q) A member of a property owners' association who is denied access to or copies of association books or records to which the member is entitled under this section may file a petition with the justice of the peace of a justice precinct in which all or part of the property that is governed by the association is located, requesting relief in accordance with this subsection. If the justice of the peace finds that the member is entitled to access to or copies of the records, the justice of the peace may grant one or more of the following remedies:

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

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

(3) a judgment authorizing the owner or the owner's assignee to deduct the amounts awarded under Subdivisions (1) and

(2) from any future regular or special assessments payable to the property owners' association.

(r) For the purposes of this section, "business day" means a day other than Saturday, Sunday, or a state or federal holiday.

(s) On or before the 10th day before the date a person files a suit under this section, the person must provide notice to the other party of the person's intent to file suit under this section. The notice must be sent certified mail, return receipt requested, or delivered by the United States Postal Service with signature confirmation service.

SECTION 10. Chapter 209, Property Code, is amended by adding Sections 209.0051, 209.0056, 209.0057, 209.0058, 209.0059, 209.00591, 209.00592, and 209.00593 to read as follows:

Sec. 209.0051. OPEN BOARD MEETINGS. (a) This section does not apply to a property owners' association that is subject to Chapter 551, Government Code, by application of Section 551.0015.

(b) In this section, "board meeting" means a deliberation between a quorum of the voting board of the property owners' association, or between a quorum of the voting board and another person, during which property owners' association business or policy over which the board has responsibility is discussed or considered, or during which the board takes formal action. The term does not include the gathering of a quorum of the board at a social function unrelated to the business of the association, or the attendance by a quorum of the board at a regional, state, or national convention, workshop, ceremonial event, or press conference, if formal action is not taken and any discussion of association business is incidental to the social function, convention, workshop, ceremonial event, or press conference.

(c) Except as provided by this section, a meeting of the property owners' association board or a committee or subcommittee of the board is open to members of the property owners' association and shall be held in a county in which all or part of the property governed by the association is located or a county adjacent to that county.

(d) The board shall keep a record of each regular, emergency, or special board meeting in the form of written minutes

or an audio recording of the meeting. A record of a meeting must state the subject of each motion or inquiry, regardless of whether the board takes action on the motion or inquiry, and indicate each vote, order, decision, or other action taken by the board. The board shall make meeting records, including approved minutes, available to a member for inspection and copying on the member's written request to the board or the board's representative. The board shall approve the minutes of a board meeting not later than the next regular board meeting.

(e) The board shall give members notice of the date, hour, place, and subject of a regular or special board meeting, including a general description of any matters to be brought up for deliberation in executive session. The notice shall be mailed to each member or posted:

(1) at least 72 hours before the start of the meeting;
and

(2) in a conspicuous manner reasonably designed to provide notice to association members:

(A) in a place located on:
(i) the association's common property; or
(ii) other conspicuously located property
within the association, with the property owner's consent; and

(B) on any Internet website maintained by the association.

(f) If the board recesses a regular or special board meeting to continue the following regular business day, the board is not required to post notice of the continued meeting if the recess is taken in good faith and not to circumvent this section. If a regular or special board meeting is continued to the following regular business day, and on that following day the board continues the meeting to another day, the board shall give notice as required by this section of the meeting continued to that other day.

(g) If at a regular, emergency, administrative, or special meeting, a member makes an inquiry regarding a subject for which notice has not been given as required by this section, the notice provisions of this section do not apply to:

(1) a statement by the board of specific factual

information given in response to the inquiry; or

(2) a recitation of existing policy in response to the inquiry.

(h) Any deliberation of or decision relating to the subject of an inquiry made under Subsection (g) shall be limited to a proposal to place the subject on the agenda for a subsequent board meeting.

(i) In the event of a reasonably unforeseen emergency or urgent necessity that requires immediate board action, the board may meet in an emergency board meeting. Notice for an emergency board meeting may be given in at least one manner prescribed by Subsection (e)(2) at least two hours before the emergency session is convened and must clearly identify the emergency or urgent necessity for which the notice is given. A board in an emergency meeting may not consider fines, foreclosures, enforcement actions, increases in assessments, or any other foreseeable business or policy over which the board has responsibility. Any action taken in an emergency board meeting must be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes or tape recording of the next regular or special board meeting.

(j) A property owners' association board may hold an administrative session, and that session is not subject to the notice requirements of this section. In any administrative session, the board may not take action regarding issuance of fines, commencement of foreclosure proceedings, levying of a special assessment, increases in assessments, approval of items not previously approved in the association's budget, or approval of items not previously approved in a regular or special board meeting.

(k) Before the board calls an executive session, the board shall convene in a regular or special board meeting for which notice has been given as provided by this section. During that board meeting, the presiding board member may call an executive session by announcing that an executive session will be held to deliberate a matter described by Subsection (l) and identifying the specific subdivision of Subsection (l) under which the executive session

will be held. A vote or other action item may not be taken in executive session.

(1) A board of a property owners' association may meet in executive session, to which the members do not have access, to deliberate:

(1) anticipated or pending litigation, settlement offers, or interpretations of the law with the association's legal counsel;

(2) complaints or charges against or issues regarding a board member, or agent, employee, contractor, or other representative of the property owners' association;

(3) a payment plan under Section 209.0062;

(4) a foreclosure of a lien;

(5) an enforcement action against a member of the association, including for nonpayment of amounts due;

(6) the purchase, exchange, lease, or value of real property, if the board determines in good faith that deliberation in an open board meeting may have a detrimental effect on the association;

(7) business and financial issues relating to the negotiation of a contract, if the board determines in good faith that deliberation in an open board meeting may have a detrimental effect on the position of the association; or

(8) matters involving the invasion of privacy of an individual owner.

Sec. 209.0056. NOTICE OF ELECTION OR ASSOCIATION VOTE. (a) On or before the 30th day before the date an election or vote is held by a property owners' association, the association shall give each owner of property in the property owners' association written notice of the election or vote.

(b) This section supersedes any contrary requirement in a dedicatory instrument.

(c) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

Sec. 209.0057. TABULATION OF VOTES. (a) This section does not apply to a property owners' association that is subject to

Chapter 552, Government Code, by application of Section 552.0036, Government Code.

(b) On the written petition of owners having at least 10 percent of all voting interests in a property owners' association for a vote tabulation under this subsection, received by the association at least 15 days before the first date that votes may be cast, to tabulate the votes in any matter subject to a vote of the members of a mandatory property owners' association, the association shall enter into a contract for the services of a person who is not a member of the association or related to a member of the association board within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code, and who is:

- (1) a county judge;
- (2) a county elections administrator;
- (3) a justice of the peace; or
- (4) a county voter registrar.

(c) The name of each person tabulating votes of the members of a property owners' association and the results of the tabulation must be reflected in the minutes of the association.

(d) Any owner may, not later than the fifth day after the date of the initial tabulation of votes, require a recount of the votes. A demand for a recount must be submitted in writing either:

(1) in person to a property owners' association board member;

(2) by certified mail, return receipt requested, or by delivery by the United States Postal Service with signature confirmation service to the association's mailing address on the latest management certificate filed under Section 209.004; or

(3) in person to the association's managing agent as reflected on the latest management certificate filed under Section 209.004.

(e) The property owners' association shall, at the expense of the owner requesting the recount, retain for the purpose of performing the recount, the services of:

- (1) a county judge;
- (2) a county elections administrator;

(3) a justice of the peace; or

(4) a county voter registrar.

(f) Any recount under Subsection (d) must be performed on or before the 30th day after the date of receipt of a request for and payment for a recount in accordance with Subsections (d) and (e). If the recount changes the results of the election, the association shall reimburse the requesting owner for the cost of the recount. Any action taken by the board in the period between the initial election vote tally and the completion of the recount may not be affected by any recount.

Sec. 209.0058. BALLOTS. (a) Any vote cast in an election or vote by a member of a property owners' association must be in writing and signed by the member.

(b) Electronic votes cast under Section 209.00593 constitute written and signed ballots.

(c) In an association-wide election, written and signed ballots are not required for uncontested races.

Sec. 209.0059. RIGHT TO VOTE. (a) A provision in a dedicatory instrument that would disqualify a property owner from voting in an association election of board members or on any matter concerning the rights or responsibilities of the owner is void.

(b) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

Sec. 209.00591. PROXY VOTING. A provision in any dedicatory instrument that provides for a proxy vote in any matter subject to a vote of the members of the property owners' association is void.

Sec. 209.00592. BOARD MEMBERSHIP. (a) Except as provided by Subsection (b), a provision in 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) If a board is presented with written, documented evidence from a database or other record maintained by a governmental law enforcement authority that a board member has been convicted of a felony or crime involving moral turpitude, the board member is immediately ineligible to serve on the board of the

property owners' association, automatically considered removed from the board, and prohibited from future service on the board.

Sec. 209.00593. VOTING; QUORUM. (a) The voting rights of an owner may be cast or given:

(1) in person at a meeting of the property owners' association;

(2) by absentee ballot in accordance with this section; or

(3) by electronic ballot in accordance with this section.

(b) An absentee or electronic ballot:

(1) may be counted as an owner present and voting for the purpose of establishing a quorum only for items appearing on the ballot;

(2) may not be counted, even if properly delivered, if the owner attends any meeting to vote in person, so that any vote cast at a meeting by a property owner supersedes any vote submitted by absentee or electronic ballot previously submitted for that proposal; and

(3) may not be counted on the final vote of a proposal if the motion was amended at the meeting to be different from the exact language on the absentee or electronic ballot.

(c) A solicitation for votes by absentee ballot must include:

(1) an absentee ballot that contains each proposed action and provides an opportunity to vote for or against each proposed action;

(2) instructions for delivery of the completed absentee ballot, including the delivery location; and

(3) the following language: "By casting your vote via absentee ballot you will forgo the opportunity to consider and vote on any action from the floor on these proposals, if a meeting is held. This means that if there are amendments to these proposals your votes will not be counted on the final vote on these measures. If you desire to retain this ability, please attend any meeting in person. You may submit an absentee ballot and later choose to attend any meeting in person, in which case any in-person vote will

prevail."

(d) For the purposes of this section, "electronic ballot" means a ballot:

(1) given by:

(A) electronic mail;

(B) facsimile; or

(C) posting on an Internet website;

(2) for which the identity of the property owner submitting the ballot can be confirmed; and

(3) for which the property owner may receive a receipt of the electronic transmission and receipt of the owner's ballot.

(e) If an electronic ballot is posted on an Internet website, a notice of the posting shall be sent to each owner that contains instructions on obtaining access to the posting on the website.

(f) This section supersedes any contrary provision in a dedicatory instrument.

(g) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

SECTION 11. Section 209.006, Property Code, is amended by amending Subsection (b) and adding Subsections (c), (d), (e), and (f) to read as follows:

(b) The notice must:

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

(2) except as provided by Subsection (d), inform the owner that the owner:

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

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

(3) specify the date by which the owner must cure the

violation if the violation is of a curable nature and does not pose a threat to public health or safety;

(4) specify the dollar amount of any fine the association seeks to levy;

(5) specify each provision of the dedicatory instrument the owner is alleged to have violated; and

(6) be sent by certified mail, 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 [~~receives the notice~~].

(c) The date specified in the notice under Subsection (b)(3) must provide a reasonable period of at least 30 days for the owner to cure the violation if the violation is of a curable nature and does not pose a threat to public health or safety.

(d) Subsections (a) and (b) do not apply to a violation for which the owner has been previously given notice under this section and the opportunity to exercise any rights available under this section in the preceding six months.

(e) If the property owner does not cure the violation in the time provided under Subsection (c) and does not request a hearing under Subsection (b)(2)(B), the property owners' association may assess the fine and shall provide notice of the assessment to the owner. If the property owner cures the violation before the expiration period for cure specified under Subsection (c), any fine assessed for the violation is void.

(f) For purposes of this section, a violation is considered a threat to public health or safety if the violation could materially affect the physical health or safety of an ordinary resident.

SECTION 12. Chapter 209, Property Code, is amended by adding Sections 209.0061, 209.0062, 209.0063, and 209.0064 to read as follows:

Sec. 209.0061. ASSESSMENT OF FINES. (a) A fine assessed by the property owners' association must be reasonable in the context of the nature and frequency of the violation and the effect of the violation on the subdivision as a whole. If the association allows

finer for a continuing violation to accumulate against a lot or an owner, the association must establish a reasonable maximum fine amount for a continuing violation at which point the total fine amount is capped.

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

(c) If the property owners' association assesses a fine against a nonowner occupant under this section, the notice provisions of Section 209.006 and the hearing provisions of Section 209.007 apply to the nonowner occupant in the same manner as those provisions apply to an owner.

Sec. 209.0062. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN ASSESSMENTS. (a) A property owners' association shall adopt reasonable guidelines to establish an alternative payment schedule by which an owner may make partial payments to the property owners' association for delinquent regular or special assessments or any other amount owed to the association without accruing additional monetary penalties. For purposes of this section, monetary penalties do not include reasonable costs associated with administering the payment plan or interest.

(b) For any approved special assessment in an amount greater than the equivalent of the sum of all regular assessments payable in the year the special assessment is approved, a property owners' association shall allow partial payments of the special assessment for 12 months unless the property owner requests a shorter payment period in writing at the time the property owner requests an alternative payment plan. A property owners' association may offer a reasonable discount for an owner making a one-time lump sum payment of the special assessment.

(c) For any approved special assessment in an amount greater than the equivalent of one-half the sum of all regular assessments payable in the year the special assessment is approved, a property

owners' association shall allow partial payments of the special assessment for six months unless the property owner requests a shorter payment period in writing at the time the property owner requests an alternative payment plan. A property owners' association may offer a reasonable discount to an owner making a one-time lump sum payment of the special assessment.

(d) A property owners' association is not required to allow a payment plan for any amount 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 during the five years following an owner's default under a previous payment plan.

(e) A property owners' association shall file the association's guidelines under this section in the real property records of each county in which the subdivision is located.

(f) A property owners' association's failure to file as required by this section the association's guidelines in the real property records of each county in which the subdivision is located does not prohibit a property owner from receiving an alternative payment schedule by which the owner may make partial payments to the property owners' association for delinquent regular or special assessments or any other amount owed to the association without accruing additional monetary penalties, as defined by Subsection (a).

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

- (1) any delinquent assessment;
- (2) any current assessment;
- (3) any attorney's fees incurred by the association associated solely with assessments or any other charge that could provide the basis for foreclosure;
- (4) any fines assessed by the association;
- (5) any attorney's fees incurred by the association that are not subject to Subdivision (3); and

(6) any other amount owed to the association.

Sec. 209.0064. COLLECTIONS. A property owners' association must 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. Section 16.004, Civil Practice and Remedies Code, does not apply to the collection of a debt owed by an owner to a property owners' association.

SECTION 13. Section 209.007, Property Code, is amended by amending Subsection (a) and adding Subsections (f), (g), (h), (i), and (j) to read as follows:

(a) If the owner is entitled to an opportunity to cure the violation, the owner has the right to submit a written request for a hearing to discuss and verify facts and resolve the matter in issue before a committee appointed by the board of the property owners' association or before the board if the board does not appoint a committee. The written request must contain a statement of the grounds on which the owner believes the owner is not in violation and citations of the dedicatory instrument for each violation alleged.

(f) If the parties fail to reach agreement in or after the hearing described by this section, the property owners' association must file suit to uphold and enforce any fine sought to be assessed. The suit must be filed in a justice court or small claims court not later than the 180th day after the date of the hearing described by this section or an appeal under Subsection (b), whichever is later. The complaint must list each violation and be accompanied by citation of the dedicatory instrument for each violation. If the property owners' association does not file suit within the time prescribed by this subsection, the association's right to collect the fine is considered waived.

(g) Not later than the 30th day after the date a suit is filed under Subsection (f), the court shall hold an evidentiary hearing on the matter. The parties are not entitled to any discovery.

(h) At the evidentiary hearing, the property owners' association has the burden of proving by a preponderance of the

evidence that the property owner has violated a restrictive covenant.

(i) The court shall determine whether a violation has occurred and, if so, whether the fine for the violation is reasonable considering the type, duration, and severity of the violation.

(j) If the court finds that the position taken by either party is groundless or is taken in bad faith, the court may award the prevailing party's attorney's fees.

SECTION 14. Chapter 209, Property Code, is amended by adding Section 209.0091 to read as follows:

Sec. 209.0091. JUDICIAL FORECLOSURE REQUIRED. (a) Except as provided by Subsection (c), a property owners' association may not foreclose a property owners' association assessment lien unless the association first obtains a court order in an application for expedited foreclosure under the rules adopted by the supreme court under Subsection (b). A property owners' association may use the procedure described by this subsection to foreclose any lien described by the association's dedicatory instruments.

(b) The supreme court, as an exercise of the court's authority under Section 74.024, Government Code, shall adopt rules establishing expedited foreclosure proceedings for use by a property owners' association in foreclosing an assessment lien of the association. The rules adopted under this subsection must be substantially similar to the rules adopted by the supreme court under Section 50(r), Article XVI, Texas Constitution.

(c) Expedited foreclosure is not required under this section if the owner of the property that is subject to foreclosure agrees in writing at the time the foreclosure is sought to waive expedited foreclosure under this section. A waiver under this subsection may not be required as a condition of the transfer of title to real property.

(d) A provision granting a right to foreclose a lien on real property for unpaid amounts due to a property owners' association may be removed from a dedicatory instrument or adopted in a dedicatory instrument by a vote of 51 percent of the total votes allocated to property owners in the property owners' association.

Owners holding at least 10 percent of all voting interests in the property owners' association may petition the association and require a special meeting to be called for the purposes of taking a vote for the purposes of this section.

SECTION 15. Section 209.010(a), Property Code, is amended to read as follows:

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

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

(2) a copy of Section 209.011.

SECTION 16. Chapter 209, Property Code, is amended by adding Section 209.014 to read as follows:

Sec. 209.014. RESTRICTIONS ON OWNERSHIP VOID. A property owners' association may not prohibit an owner from owning multiple properties governed by the property owners' association if the cumulative voting rights of all of that owner's properties are 25 percent or less of all voting interests in the property owners' association. This section does not apply during a development period as defined by Section 202.011.

SECTION 17. Section 211.002(a), Property Code, is amended to read as follows:

(a) 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 may be amended does not apply ~~[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 18. Section 202.004(c), Property Code, is repealed.

SECTION 19. (a) Section 5.006(a), Property Code, as amended by this Act, and the repeal by this Act of Section 202.004(c), Property Code, apply only to an action filed on or after the effective date of this Act. An action filed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is

continued in effect for that purpose.

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

(c) Sections 202.015 and 209.0035, Property Code, as added by this Act, apply only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(d) Section 202.006, Property Code, as amended by this Act, and Sections 202.008, 202.010, 202.011, 202.012, 202.014, 209.0059, 209.00591, 209.00592(a), and 209.014, Property Code, as added by this Act, apply to a provision in a dedicatory instrument or a restrictive covenant enacted before, on, or after the effective date of this Act, except that any action taken before the effective date of this Act based on an unfiled dedicatory instrument is not invalidated by Section 202.006, Property Code, as amended by this Act.

(e) Section 209.005, Property Code, as amended by this Act, applies only to a request for information received by a property owners' association on or after the effective date of this Act. A request for information received by a property owners' association before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(f) Sections 209.0061, 209.0062, and 209.0064, Property Code, as added by this Act, apply only to an assessment or other debt that becomes due on or after the effective date of this Act. An assessment or other debt that becomes due before the effective date of this Act is governed by the law in effect immediately before the

effective date of this Act, and that law is continued in effect for that purpose.

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

(h) Section 209.0091, Property Code, as added by this Act, applies only to a foreclosure sale that occurs after January 1, 2010. A foreclosure sale that occurs on or before January 1, 2010, is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(i) Section 209.010(a), Property Code, as amended by this Act, applies only to a foreclosure sale conducted on or after the effective date of this Act. A foreclosure sale conducted before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 20. Not later than January 1, 2010, each property owners' association shall present for recording with the county clerk as prescribed by Section 202.006, Property Code, as amended by this Act, each dedicatory instrument governing the association that has not been previously recorded in the real property records of the county.

SECTION 21. Not later than January 1, 2010, the Supreme Court of Texas shall adopt rules of civil procedure under Section 209.0091, Property Code, as added by this Act.

SECTION 22. This Act takes effect January 1, 2010.