

BILL ANALYSIS

C.S.S.B. 234
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Homeowners' associations are responsible for maintaining common areas in residential neighborhoods and protecting homeowners' investments in their property by enforcing certain aesthetic guidelines. In recent years, however, many homeowners have become dissatisfied with the operation of their associations. Disputes between homeowners' association boards and individual homeowners can generate considerable acrimony and expense. This bill attempts to restore balance to the relationship between homeowners' association boards and individual homeowners.

C.S.S.B. 234 authorizes a court to allow the prevailing party in an action on a breach of a restrictive covenant or a statute reasonable attorney's fees, in addition to the party's costs and claim. The bill requires the seller of residential property that is subject to membership in a property owners' association to provide certain information and notice to the purchaser, including a resale certificate. The bill sets forth certain requirements relating to the content of and fee for a resale certificate.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 234 amends the Property Code to authorize, rather than require, a court in an action based on breach of a restrictive covenant or a statute pertaining to real property to allow to a prevailing party reasonable attorney's fees in addition to the party's costs and claim. The bill makes the court's authorization applicable to any prevailing party, rather than only to a prevailing party who asserted the action.

C.S.S.B. 234 requires the written notice that a seller of residential property subject to membership in a property owners' association and comprising not more than one dwelling unit located in Texas is required to give to the purchaser of the property to include notice that an owner is entitled by law 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. The bill requires the written notice to specify that 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. The bill requires the notice to state that such documents are required to be made available to the purchaser by the seller on the owner's request. The bill requires the written notice to specify that all dedicatory instruments governing the establishment, maintenance, or operation of the residential community have been or will be recorded, rather than limiting such specification to a dedicatory instrument that governs the establishment, maintenance, and operation of the residential community.

C.S.S.B. 234 requires the seller, on the purchaser's request for a resale certificate, to deliver promptly a copy of a current resale certificate if one has been issued for the property or, if the seller does not have a current resale certificate, to request the property owners' association or its agent to issue a resale certificate and to deliver promptly a copy of the resale certificate to the purchaser on receipt of the resale certificate from the association or its agent. The bill requires the seller or the purchaser, as agreed to by the parties, to pay the fee to the association or its agent for issuing the resale certificate within 10 days of delivery of the certificate.

C.S.S.B. 234 specifies that a resale certificate delivered by a property owners' association to an owner, the owner's agent, or the title insurance company or its agent is required to contain the style and cause number of any pending lawsuit in which the property owners' association is a party, rather than a defendant, and excludes a lawsuit relating to unpaid property taxes of an individual member of the association. The bill also requires the resale certificate to contain 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.

EFFECTIVE DATE

January 1, 2010.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 234 differs from the original by authorizing a court in an action based on breach of either a restrictive covenant or a statute to allow to any prevailing party reasonable attorney's fees in addition to the party's costs and claim, whereas the original amends the existing statutory requirement imposed on the court in an action based on a breach of a restrictive covenant only to the extent of requiring the court to allow any prevailing party, not only the prevailing party who asserted the action, the fees, costs, and claim.

C.S.S.B. 234 differs from the original by requiring the written notice that a seller of certain residential real properties is required to give to a purchaser of such a property to inform the purchaser that an owner is entitled by law 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, whereas the original requires the notice to inform the purchaser that an owner is entitled to receive copies of restrictions, bylaws, and a resale certificate from a property owners' association. The substitute removes a provision included in the original requiring the notice to specify that a resale certificate contains the property owners' association's operating budget and balance sheet. The substitute differs from the original by requiring the notice to specify that all dedicatory instruments governing the establishment, maintenance, or operation of the residential community have been or will be recorded in the appropriate county's real property records, rather than limiting such specification to a dedicatory instrument that governs the establishment, maintenance, and operation of the residential community as in the original.

C.S.S.B. 234 requires the seller or the purchaser, as agreed to by the parties, to pay the fee to the property owners' association or its agent for issuing the resale certificate within 10 days of the certificate's delivery, whereas the original does not specify a time frame for payment of the fee.