

By: Solomons, Martinez Fischer, et al.

H.B. No. 1976

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 5.006, Property Code, is amended by amending Subsection (a) and adding Subsection (a-1) 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.

(a-1) In an action based on a breach of the dedicatory instruments pertaining to an election of a property owners' association board or a meeting of a property owners' association board, the court may allow the prevailing party 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

1 similar to the following:

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

4 As a purchaser of property in the residential community in
5 which this property is located, you are obligated to be a member of
6 a property owners' association. Restrictive covenants governing
7 the use and occupancy of the property and all [~~a~~] dedicatory
8 instruments [~~instrument~~] governing the establishment, maintenance,
9 or [~~and~~] operation of this residential community have been or will
10 be recorded in the Real Property Records of the county in which the
11 property is located. Copies of the restrictive covenants and
12 dedicatory instruments [~~instrument~~] may be obtained from the county
13 clerk.

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

18 Section 207.003, Property Code, entitles an owner to receive
19 copies of any document that governs the establishment, maintenance,
20 or operation of a subdivision, including, but not limited to,
21 restrictions, bylaws, rules and regulations, and a resale
22 certificate from a property owners' association. A resale
23 certificate contains information including, but not limited to,
24 statements specifying the amount and frequency of regular
25 assessments and the style and cause number of lawsuits to which the
26 property owners' association is a party. These documents must be
27 made available to you by the seller on your request.

1 Date: _____

2 _____
Signature of Purchaser

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

5 (1) promptly deliver a copy of a current resale
6 certificate if one has been issued for the property under Chapter
7 207; or

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

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

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

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

22 SECTION 3. Section 82.102, Property Code, is amended by
23 amending Subsection (a) and adding Subsection (f) to read as
24 follows:

25 (a) Unless otherwise provided by the declaration, the
26 association, acting through its board, may:

27 (1) adopt and amend bylaws;

1 (2) adopt and amend budgets for revenues,
2 expenditures, and reserves, and collect assessments for common
3 expenses from unit owners;

4 (3) hire and terminate managing agents and other
5 employees, agents, and independent contractors;

6 (4) institute, defend, intervene in, settle, or
7 compromise litigation or administrative proceedings in its own name
8 on behalf of itself or two or more unit owners on matters affecting
9 the condominium;

10 (5) make contracts and incur liabilities relating to
11 the operation of the condominium;

12 (6) regulate the use, maintenance, repair,
13 replacement, modification, and appearance of the condominium;

14 (7) adopt and amend rules regulating the use,
15 occupancy, leasing or sale, maintenance, repair, modification, and
16 appearance of units and common elements, to the extent the
17 regulated actions affect common elements or other units;

18 (8) cause additional improvements to be made as a part
19 of the common elements;

20 (9) acquire, hold, encumber, and convey in its own
21 name any right, title, or interest to real or personal property,
22 except common elements of the condominium;

23 (10) grant easements, leases, licenses, and
24 concessions through or over the common elements;

25 (11) impose and receive payments, fees, or charges for
26 the use, rental, or operation of the common elements and for
27 services provided to unit owners;

1 (12) impose interest and late charges for late
2 payments of assessments, returned check charges, and, if notice and
3 an opportunity to be heard are given in accordance with Subsection
4 (d), reasonable fines for violations of the declaration, bylaws,
5 and rules of the association;

6 (13) adopt and amend rules regulating the collection
7 of delinquent assessments and the application of payments;

8 (14) adopt and amend rules regulating the termination
9 of utility service to a unit, the owner of which is delinquent in
10 the payment of an assessment that is used, in whole or in part, to
11 pay the cost of that utility;

12 (15) impose reasonable charges for preparing,
13 recording, or copying declaration amendments, resale certificates,
14 or statements of unpaid assessments;

15 (16) enter a unit for bona fide emergency purposes
16 when conditions present an imminent risk of harm or damage to the
17 common elements, another unit, or the occupants;

18 (17) [~~assign its right to future income, including the~~
19 ~~right to receive common expense assessments, but only to the extent~~
20 ~~the declaration so provides,~~

21 [~~(18)~~] suspend the voting privileges of or the use of
22 certain general common elements by an owner delinquent for more
23 than 30 days in the payment of assessments;

24 (18) [~~(19)~~] purchase insurance and fidelity bonds it
25 considers appropriate or necessary;

26 (19) [~~(20)~~] exercise any other powers conferred by the
27 declaration or bylaws;

1 (20) [~~(21)~~] exercise any other powers that may be
2 exercised in this state by a corporation of the same type as the
3 association; and

4 (21) [~~(22)~~] exercise any other powers necessary and
5 proper for the government and operation of the association.

6 (f) The association by resolution of the board of directors
7 may borrow money unless prohibited by the declaration, articles of
8 incorporation, bylaws, rules, or other restrictions. If the board
9 of directors issues a resolution under this subsection, the
10 association may assign the association's right to future income,
11 including the right to receive common expense assessments and
12 assign the association's lien rights, as collateral for the loan
13 authorized by the resolution. The association shall comply with
14 any member approval requirement in the association's declaration,
15 articles of incorporation, bylaws, rules, or other restrictions for
16 borrowing money, except that not more than 67 percent of all
17 outstanding votes are required to approve an authorization to
18 borrow money.

19 SECTION 4. Sections 82.111(c) and (i), Property Code, are
20 amended to read as follows:

21 (c) If the insurance described by Subsections (a) and (b) is
22 not reasonably available, the association shall cause notice of
23 that fact to be delivered or mailed to all unit owners and
24 lienholders. The declaration may require the association to carry
25 any other insurance, and the association in any event may carry any
26 other insurance the board considers appropriate to protect the
27 condominium, the association, or the unit owners. Insurance

1 policies carried under Subsection (a) may provide for commercially
2 reasonable deductibles as the board considers appropriate or
3 necessary. This section does not affect the right of a holder of
4 a mortgage on a unit to require a unit owner to acquire insurance in
5 addition to that provided by the association.

6 (i) Any portion of the condominium for which insurance is
7 required that is damaged or destroyed shall be promptly repaired or
8 replaced by the association unless the condominium is terminated,
9 repair or replacement would be illegal under any state or local
10 health or safety statute or ordinance, or at least 80 percent of the
11 unit owners, including each owner of a unit or assigned limited
12 common element that will not be rebuilt or repaired, vote to not
13 rebuild. A vote to not rebuild does not increase an insurer's
14 liability to loss payment obligation under a policy, and the vote
15 does not cause a presumption of total loss. The cost of repair or
16 replacement in excess of the insurance proceeds and reserves is a
17 common expense. Costs of repair or replacement incurred before any
18 insurance proceeds are available, or that are within the
19 association's deductible, shall be paid as determined by resolution
20 of the board of directors of the association, or, if the board does
21 not approve a resolution, the costs are a common expense. A
22 resolution regarding payment of costs under this subsection is
23 considered a dedicatory instrument and must be recorded in each
24 location in which the declaration is recorded. If the entire
25 condominium is not repaired or replaced, any insurance proceeds
26 attributable to the damaged common elements shall be used to
27 restore the damaged area to a condition compatible with the

1 remainder of the condominium, the insurance proceeds attributable
2 to units and limited common elements that are not rebuilt shall be
3 distributed to the owners of those units and the owners of the units
4 to which those limited common elements were assigned, or to their
5 mortgagees, as their interests may appear, and the remainder of the
6 proceeds shall be distributed to all the unit owners as their
7 interests may appear. If the unit owners vote to not rebuild any
8 unit, that unit's allocated interests shall be automatically
9 reallocated on the vote as if the unit had been condemned, and the
10 association shall prepare, execute, and record an amendment to the
11 declaration reflecting the reallocation. Section 82.068 governs
12 the distribution of insurance proceeds if the condominium is
13 terminated.

14 SECTION 5. Section 82.113(g), Property Code, is amended to
15 read as follows:

16 (g) The owner of a unit [~~used for residential purposes and~~
17 purchased [~~by an association~~] at a foreclosure sale of the
18 association's lien for assessments may redeem the unit not later
19 than the 90th day after the date of the foreclosure sale. If the
20 association is the purchaser [~~To redeem the unit~~], the owner must
21 pay to the association to redeem the unit all amounts due the
22 association at the time of the foreclosure sale, interest from the
23 date of foreclosure sale to the date of redemption at the rate
24 provided by the declaration for delinquent assessments, reasonable
25 attorney's fees and costs incurred by the association in
26 foreclosing the lien, any assessment levied against the unit by the
27 association after the foreclosure sale, and any reasonable cost

1 incurred by the association as owner of the unit, including costs of
2 maintenance and leasing. If a party other than the association is
3 the purchaser, the redeeming owner must pay to the purchaser of the
4 unit at the foreclosure sale an amount equal to the amount bid at
5 the sale, interest on the bid amount computed from the date of the
6 foreclosure sale to the date of redemption at the rate of six
7 percent, any assessment paid by the purchaser after the date of
8 foreclosure, and any reasonable costs incurred by the purchaser as
9 the owner of the unit, including costs of maintenance and leasing.
10 The redeeming owner must also pay to the association all
11 assessments that are due as of the date of the redemption and
12 reasonable attorney's fees and costs incurred by the association in
13 foreclosing the lien. On redemption, the purchaser of the unit at
14 the foreclosure sale [~~association~~] shall execute a deed with no
15 warranty to the redeeming unit owner. The exercise of the right of
16 redemption is not effective against a subsequent purchaser or
17 lender for value without notice of the redemption after the
18 redemption period expires unless the redeeming unit owner records
19 the deed from the purchaser of the unit at the foreclosure sale
20 [~~association~~] or an affidavit stating that the owner has exercised
21 the right of redemption. A unit that has been redeemed remains
22 subject to all liens and encumbrances on the unit before
23 foreclosure. All rents and other income collected from the unit by
24 the purchaser of the unit at the foreclosure sale [~~association~~]
25 from the date of foreclosure sale to the date of redemption belong
26 to the purchaser of the unit at the foreclosure sale [~~association~~],
27 but the rents and income shall be credited against the redemption

1 amount. The purchaser of [~~An association purchasing~~] a unit at a
2 sale foreclosing an association's assessment [~~its~~] lien may not
3 transfer ownership of the unit during the redemption period to a
4 person other than a redeeming owner.

5 SECTION 6. Section 202.001(1), Property Code, is amended to
6 read as follows:

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

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

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

17 (ii) [~~, to~~] properly adopted rules and
18 regulations of the property owners' association; or

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

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

24 SECTION 7. Section 202.004, Property Code, is amended by
25 adding Subsections (d) and (e) to read as follows:

26 (d) In evaluating an alleged or potential violation of a
27 restrictive covenant, the property owners' association or other

1 representative designated by an owner of real property may,
2 notwithstanding any provision in a dedicatory instrument, grant a
3 variance and in doing so not enforce the restrictive covenant if the
4 property owners' association board, in the board's reasonable
5 judgment, determines:

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

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

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

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

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

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

23 SECTION 8. Section 202.006, Property Code, is amended to
24 read as follows:

25 Sec. 202.006. PUBLIC RECORDS. (a) A property owners'
26 association shall file all ~~[the]~~ dedicatory instruments
27 ~~[instrument]~~ in the real property records of each county in which

1 the property to which the dedicatory instruments relate [~~instrument~~
2 ~~relates~~] is located.

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

5 SECTION 9. Chapter 202, Property Code, is amended by adding
6 Sections 202.008, 202.010, 202.011, 202.012, 202.013, 202.014, and
7 202.015 to read as follows:

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

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

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

17 (A) perform a forced mow; or

18 (B) remove trash or debris;

19 (3) in circumstances in which it is reasonably
20 determined the property has been abandoned and not maintained for
21 at least 30 days; or

22 (4) during a development period, as defined by Section
23 202.011, to remove a sign that is prohibited by a dedicatory
24 instrument.

25 (b) This section does not prohibit a provision in a
26 dedicatory instrument allowing a property owners' association a
27 right of entry on the property of an owner that is limited to a

1 dedicated access or other easement contained in a final plat or an
2 easement filed of record.

3 (c) This section does not apply to:

4 (1) an association regulated under Title 7; or

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

7 (A) insurance on residences;

8 (B) one or more utility payments for residences;

9 or

10 (C) exterior maintenance of residences.

11 Sec. 202.010. CERTAIN PARKING RESTRICTIONS PROHIBITED. (a)

12 A provision in a dedicatory instrument that restricts or prohibits
13 an owner from parking an operable, noncommercial, and personal
14 automobile or truck on a public street is void as against public
15 policy.

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

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

25 (d) For the purposes of this section, a recreational
26 vehicle, motor home, camper, all-terrain vehicle, trailer, or
27 watercraft, a tow truck, cement mixer, or other similar commercial

1 vehicle, or a vehicle that is more than 30 feet long is not
2 considered to be a personal automobile or truck.

3 (e) This section does not apply to:

4 (1) an association regulated under Title 7; or

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

7 (A) insurance on residences;

8 (B) one or more utility payments for residences;

9 or

10 (C) exterior maintenance of residences.

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

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

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

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

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

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

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

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

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

9 (1) as adjudicated by a court:

10 (A) threatens the public health or safety; or

11 (B) violates a law;

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

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

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

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

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

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

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

1 (1) an owner to:

2 (A) exercise due diligence in not leasing to an
3 occupant who is a registered sex offender or who has a history of
4 violent crime; or

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

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

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

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

14 Sec. 202.014. RESTRICTIONS REQUIRING CAPITAL IMPROVEMENTS.

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

25 (b) For the purposes of this section, "capital improvement"
26 means items such as additional tree plantings, additional sodding,
27 fence construction, hardscape installation, new construction, or

1 any similar capital improvement. The term does not include repair
2 or maintenance of existing improvements or the removal of
3 conditions that are in violation of a dedicatory instrument.

4 (c) This section does not apply to a dedicatory instrument
5 or to the amendment of a dedicatory instrument pertaining to a
6 capital improvement on a vacant lot owned by a developer or home
7 builder during a development period, as defined by Section 202.011.

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

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

17 (1) injunctive relief;

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

19 (A) actual damages arising from the violation; or

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

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

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

27 (d) Each day a violation continues is not considered a

1 separate violation for purposes of an assessment of damages.

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

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

7 (2) \$4,500.

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

14 SECTION 10. Chapter 202, Property Code, is amended by
15 adding Section 202.018 to read as follows:

16 Sec. 202.018. REGULATION OF DISPLAY OF CERTAIN RELIGIOUS
17 ITEMS. (a) Except as otherwise provided by this section, a
18 property owners' association may not enforce or adopt a restrictive
19 covenant that prohibits a property owner or resident from
20 displaying or affixing on the entry to the owner's or resident's
21 dwelling one or more religious items that reflect a tenet of the
22 owner's or resident's religion.

23 (b) This section does not prohibit the enforcement or
24 adoption of a covenant that, to the extent allowed by the
25 constitution of this state and the United States, prohibits the
26 display or affixing of a religious item on the entry to the owner's
27 dwelling that:

1 (1) threatens the public health or safety;

2 (2) violates a law;

3 (3) contains language, graphics, or any display that
4 would be offensive to the ordinary person;

5 (4) is in a location other than the entry door or door
6 frame or extends past the outer edge of the door frame of the
7 owner's or resident's dwelling; or

8 (5) individually or in combination with each other
9 religious item displayed or affixed on the entry door or door frame
10 has a total size of greater than 25 square inches.

11 (c) Except as otherwise provided by this section, this
12 section does not authorize an owner or resident to use a material or
13 color for an entry door or door frame of the owner's or resident's
14 dwelling or make an alteration to the entry door or door frame that
15 is not authorized by the restrictive covenants governing the
16 dwelling.

17 (d) A property owners' association may remove an item
18 displayed in violation of a restrictive covenant permitted by this
19 section.

20 SECTION 11. Section 207.003(b), Property Code, is amended
21 to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

1 association;

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

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

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

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

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

19 SECTION 12. Chapter 209, Property Code, is amended by
20 adding Sections 209.0035 and 209.0041 to read as follows:

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

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

3 (1) injunctive relief;

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

5 (A) actual damages arising from the violation; or

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

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

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

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

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

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

20 (2) \$4,500.

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

27 Sec. 209.0041. AMENDMENT OF DEDICATORY INSTRUMENTS. (a)

1 This section applies to a residential subdivision in which property
2 owners are subject to mandatory membership in a property owners'
3 association.

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

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

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

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

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

26 (g) A property owners' association board by majority vote
27 may adopt ministerial, office-related procedural policies, such as

1 payment plan guidelines under Section 209.0062, a collections
2 policy, an enforcement policy, or other similar ministerial,
3 office-related procedural policies. The policy may outline
4 circumstances under which or the manner by which enforcement
5 remedies may be carried out but may not otherwise impact the use and
6 enjoyment of personal or real property owned exclusively by the
7 owner. The policy may not:

8 (1) create a power to:

9 (A) levy a fine; or

10 (B) impose a loss of a privilege on a member of
11 the association; or

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

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

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

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

22 SECTION 13. Section 209.005, Property Code, is amended to
23 read as follows:

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

27 (b) Notwithstanding a provision in a dedicatory instrument,

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

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

15 [~~(b)~~] An attorney's files and records relating to the
16 association, excluding invoices requested by an owner under Section
17 209.008(d), are not:

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

21 (d) In addition to the requirements of Subsection (b), a
22 property owners' association shall make the association's books and
23 records, including financial records and invoices, available in a
24 building:

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

27 (2) that is:

1 (A) staffed during normal business hours;

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

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

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

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

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

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

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

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

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

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

5 (1) informs the requestor that the property owners'
6 association is unable to produce the information on or before the
7 10th business day after the date of the receipt of the request; and

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

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

14 (1) an electronic format:

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

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

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

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

24 (2) a hard-copy format:

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

27 (B) if the requesting party does not provide a

1 mailing address:

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

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

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

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

13 (m) Any information maintained by the association that is
14 released under this section may not identify an individual member
15 of an association or an individual's personal financial
16 information. Information may be released in an aggregate manner
17 that would not identify an individual property owner.

18 (n) All ballots cast in an election that results in an
19 amendment to a dedicatory instrument, as required by Section
20 209.0041, are records of the property owners' association subject
21 to inspection under this section.

22 (o) All ballots cast in an election of property owners'
23 association board members are considered records of the association
24 but may not be made available for inspection under this section
25 except for the purposes of a recount under Section 209.0057(e) or
26 without a court order or subpoena. The association shall take
27 reasonable measures to safeguard the security and privacy of those

1 ballots.

2 (p) A property owners' association shall:

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

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

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

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

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

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

24 (3) a judgment authorizing the owner or the owner's
25 assignee to deduct the amounts awarded under Subdivisions (1) and
26 (2) from any future regular or special assessments payable to the
27 property owners' association.

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

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

9 SECTION 14. Chapter 209, Property Code, is amended by
10 adding Sections 209.0051, 209.0056, 209.0057, 209.0058, 209.0059,
11 209.00591, 209.00592, and 209.00593 to read as follows:

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

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

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

7 (d) The board shall keep a record of each regular,
8 emergency, or special board meeting in the form of written minutes
9 or an audio recording of the meeting. A record of a meeting must
10 state the subject of each motion or inquiry, regardless of whether
11 the board takes action on the motion or inquiry, and indicate each
12 vote, order, decision, or other action taken by the board. The
13 board shall make meeting records, including approved minutes,
14 available to a member for inspection and copying on the member's
15 written request to the board or the board's representative. The
16 board shall approve the minutes of a board meeting not later than
17 the next regular board meeting.

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

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

24 and

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

27 (A) in a place located on:

1 (i) the association's common property; or
2 (ii) other conspicuously located property
3 within the association, with the property owner's consent; and
4 (B) on any Internet website maintained by the
5 association.

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

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

18 (1) a statement by the board of specific factual
19 information given in response to the inquiry; or
20 (2) a recitation of existing policy in response to the
21 inquiry.

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

26 (i) In the event of a reasonably unforeseen emergency or
27 urgent necessity that requires immediate board action, the board

1 may meet in an emergency board meeting. Notice for an emergency
2 board meeting may be given in at least one manner prescribed by
3 Subsection (e)(2) at least two hours before the emergency session
4 is convened and must clearly identify the emergency or urgent
5 necessity for which the notice is given. A board in an emergency
6 meeting may not consider fines, foreclosures, enforcement actions,
7 increases in assessments, or any other foreseeable business or
8 policy over which the board has responsibility. Any action taken in
9 an emergency board meeting must be summarized orally, including an
10 explanation of any known actual or estimated expenditures approved
11 at the meeting, and documented in the minutes or tape recording of
12 the next regular or special board meeting.

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

20 (k) Before the board calls an executive session, the board
21 shall convene in a regular or special board meeting for which notice
22 has been given as provided by this section. During that board
23 meeting, the presiding board member may call an executive session
24 by announcing that an executive session will be held to deliberate a
25 matter described by Subsection (l) and identifying the specific
26 subdivision of Subsection (l) under which the executive session
27 will be held. A vote or other action item may not be taken in

1 executive session.

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

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

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

11 (3) a payment plan under Section 209.0062;

12 (4) a foreclosure of a lien;

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

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

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

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

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

1 owner of property in the property owners' association written
2 notice of the election or vote.

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

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

8 Sec. 209.0057. TABULATION OF VOTES. (a) This section does
9 not apply to a property owners' association that is subject to
10 Chapter 552, Government Code, by application of Section 552.0036,
11 Government Code.

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

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

27 (c) The name of each person tabulating votes of the members

1 of a property owners' association and the results of the tabulation
2 must be reflected in the minutes of the association.

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

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

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

12 (3) in person to the association's managing agent as
13 reflected on the latest management certificate filed under Section
14 209.004.

15 (e) The property owners' association shall, at the expense
16 of the owner requesting the recount, retain for the purpose of
17 performing the recount, the services of a person who is not a member
18 of the association or related to a member of the association board
19 within the third degree by consanguinity or affinity, as determined
20 under Chapter 573, Government Code, and who is a current or former:

21 (1) county judge;

22 (2) county elections administrator;

23 (3) justice of the peace; or

24 (4) county voter registrar.

25 (f) Any recount under Subsection (d) must be performed on or
26 before the 30th day after the date of receipt of a request for and
27 payment for a recount in accordance with Subsections (d) and (e).

1 If the recount changes the results of the election, the association
2 shall reimburse the requesting owner for the cost of the recount.
3 Any action taken by the board in the period between the initial
4 election vote tally and the completion of the recount may not be
5 affected by any recount.

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

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

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

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

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

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

24 Sec. 209.00592. BOARD MEMBERSHIP. (a) Except as provided
25 by Subsection (b), a provision in a dedicatory instrument that
26 restricts a property owner's right to run for a position on the
27 board of the property owners' association is void.

1 (b) If a board is presented with written, documented
2 evidence from a database or other record maintained by a
3 governmental law enforcement authority that a board member has been
4 convicted of a felony or crime involving moral turpitude, the board
5 member is immediately ineligible to serve on the board of the
6 property owners' association, automatically considered removed
7 from the board, and prohibited from future service on the board.

8 (c) This section does not apply during a period stated in a
9 declaration during which a declarant reserves a right to appoint
10 and remove officers and directors of the property owners'
11 association.

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

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

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

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

20 (b) An absentee or electronic ballot:

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

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

1 proposal; and

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

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

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

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

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

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

23 (1) given by:

24 (A) electronic mail;

25 (B) facsimile; or

26 (C) posting on an Internet website;

27 (2) for which the identity of the property owner

1 submitting the ballot can be confirmed; and

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

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

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

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

13 SECTION 15. Section 209.006, Property Code, is amended by
14 amending Subsection (b) and adding Subsections (c), (d), (e), and
15 (f) to read as follows:

16 (b) The notice must:

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

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

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

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

1 owner;

2 (3) specify the date by which the owner must cure the
3 violation if the violation is of a curable nature and does not pose
4 a threat to public health or safety;

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

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

9 (6) be sent by certified mail, return receipt
10 requested, or delivered by the United States Postal Service with
11 signature confirmation service to the owner at the owner's last
12 known address as shown on the association's records [~~receives the~~
13 notice].

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

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

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

1 assessed for the violation is void.

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

6 SECTION 16. Chapter 209, Property Code, is amended by
7 adding Sections 209.0061, 209.0062, 209.0063, 209.0064, and
8 209.0065 to read as follows:

9 Sec. 209.0061. ASSESSMENT OF FINES. (a) A fine assessed by
10 the property owners' association must be reasonable in the context
11 of the nature and frequency of the violation and the effect of the
12 violation on the subdivision as a whole. If the association allows
13 finer for a continuing violation to accumulate against a lot or an
14 owner, the association must establish a reasonable maximum fine
15 amount for a continuing violation at which point the total fine
16 amount is capped.

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

24 (c) If the property owners' association assesses a fine
25 against a nonowner occupant under this section, the notice
26 provisions of Section 209.006 and the hearing provisions of Section
27 209.007 apply to the nonowner occupant in the same manner as those

1 provisions apply to an owner.

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

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

20 (c) For any approved special assessment in an amount greater
21 than the equivalent of one-half the sum of all regular assessments
22 payable in the year the special assessment is approved, a property
23 owners' association shall allow partial payments of the special
24 assessment for six months unless the property owner requests a
25 shorter payment period in writing at the time the property owner
26 requests an alternative payment plan. A property owners'
27 association may offer a reasonable discount to an owner making a

1 one-time lump sum payment of the special assessment.

2 (d) A property owners' association is not required to allow
3 a payment plan for any amount that extends more than 12 months from
4 the date of the owner's request for a payment plan or to enter into a
5 payment plan with an owner who failed to honor the terms of a
6 previous payment plan during the five years following an owner's
7 default under a previous payment plan.

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

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

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

- 25 (1) any delinquent assessment;
26 (2) any current assessment;
27 (3) any attorney's fees incurred by the association

1 associated solely with assessments or any other charge that could
2 provide the basis for foreclosure;

3 (4) any fines assessed by the association;

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

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

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

14 Sec. 209.0065. REGULATION OF CERTAIN ROOFING MATERIALS. A
15 property owners' association may not include or enforce a provision
16 in a dedicatory instrument that prohibits or restricts a property
17 owner who is otherwise authorized to install shingles on the roof of
18 the owner's property from installing shingles primarily designed to
19 be wind and hail resistant and provide heating and cooling
20 efficiencies greater than customary composite shingles if the
21 installed shingles:

22 (1) resemble the shingles used or otherwise authorized
23 for use on property in the subdivision;

24 (2) are more durable and of equal or superior quality
25 to the shingles described by Subdivision (1); and

26 (3) match the aesthetics of the property surrounding
27 the owner's property.

1 SECTION 17. Section 209.007, Property Code, is amended by
2 amending Subsection (a) and adding Subsections (f), (g), (h), (i),
3 and (j) to read as follows:

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

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

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

1 (h) At the evidentiary hearing, the property owners'
2 association has the burden of proving by a preponderance of the
3 evidence that the property owner has violated a restrictive
4 covenant.

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

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

12 SECTION 18. Chapter 209, Property Code, is amended by
13 adding Section 209.0091 to read as follows:

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

22 (b) The supreme court, as an exercise of the court's
23 authority under Section 74.024, Government Code, shall adopt rules
24 establishing expedited foreclosure proceedings for use by a
25 property owners' association in foreclosing an assessment lien of
26 the association. The rules adopted under this subsection must be
27 substantially similar to the rules adopted by the supreme court

1 under Section 50(r), Article XVI, Texas Constitution.

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

8 (d) A provision granting a right to foreclose a lien on real
9 property for unpaid amounts due to a property owners' association
10 may be removed from a dedicatory instrument or adopted in a
11 dedicatory instrument by a vote of 51 percent or more of the total
12 votes allocated to property owners in the property owners'
13 association. Owners holding at least 10 percent of all voting
14 interests in the property owners' association may petition the
15 association and require a special meeting to be called for the
16 purposes of taking a vote for the purposes of this section.

17 SECTION 19. Section 209.010(a), Property Code, is amended
18 to read as follows:

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

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

25 (2) a copy of Section 209.011.

26 SECTION 20. Chapter 209, Property Code, is amended by
27 adding Section 209.014 to read as follows:

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

8 SECTION 21. Section 211.002(a), Property Code, is amended
9 to read as follows:

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

16 SECTION 22. (a) Section 171.1011, Tax Code, is amended by
17 adding Subsection (g-7) to read as follows:

18 (g-7) A taxable entity that is a property owners'
19 association shall exclude from its total revenue, to the extent
20 included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3),
21 assessments received by the association and used for the benefit of
22 the residential subdivision. In this subsection, "assessment,"
23 "property owners' association," and "residential subdivision" have
24 the meanings assigned by Section 209.002, Property Code.

25 (b) This section applies only to a report originally due on
26 or after the effective date of this section.

27 (c) This section takes effect January 1, 2010.

1 SECTION 23. Section 202.004(c), Property Code, is repealed.

2 SECTION 24. (a) Section 82.111(i), Property Code, as
3 amended by this Act, applies only to payment of costs incurred on or
4 after the effective date of this Act. Payment of costs incurred
5 before the effective date of this Act are governed by the law in
6 effect immediately before the effective date of this Act, and that
7 law is continued in effect for that purpose.

8 (b) Section 82.113(g), Property Code, as amended by this
9 Act, applies only to a condominium unit sold at a foreclosure sale
10 on or after the effective date of this Act. A unit sold at a
11 foreclosure sale before the effective date of this Act is governed
12 by the law in effect immediately before the effective date of this
13 Act, and that law is continued in effect for that purpose.

14 SECTION 25. (a) Section 5.006(a), Property Code, as
15 amended by this Act, and the repeal by this Act of Section
16 202.004(c), Property Code, apply only to an action filed on or after
17 the effective date of this Act. An action filed before the
18 effective date of this Act is governed by the law in effect
19 immediately before the effective date of this Act, and that law is
20 continued in effect for that purpose.

21 (b) Section 5.012, Property Code, as amended by this Act,
22 applies only to a sale of property that occurs on or after the
23 effective date of this Act. For the purposes of this section, a
24 sale of property occurs before the effective date of this Act if the
25 executory contract binding the purchaser to purchase the property
26 is executed before that date. A sale of property that occurs before
27 the effective date of this Act is governed by the law in effect

1 immediately before that date, and that law is continued in effect
2 for that purpose.

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

9 (d) Section 202.006, Property Code, as amended by this Act,
10 and Sections 202.008, 202.010, 202.011, 202.012, 202.014,
11 209.0059, 209.00591, 209.00592(a), 209.0065, and 209.014, Property
12 Code, as added by this Act, apply to a provision in a dedicatory
13 instrument or a restrictive covenant enacted before, on, or after
14 the effective date of this Act, except that any action taken before
15 the effective date of this Act based on an unfiled dedicatory
16 instrument is not invalidated by Section 202.006, Property Code, as
17 amended by this Act.

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

25 (f) Sections 209.0061, 209.0062, and 209.0064, Property
26 Code, as added by this Act, apply only to an assessment or other
27 debt that becomes due on or after the effective date of this Act. An

1 assessment or other debt that becomes due before the effective date
2 of this Act is governed by the law in effect immediately before the
3 effective date of this Act, and that law is continued in effect for
4 that purpose.

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

12 (h) Section 209.0091, Property Code, as added by this Act,
13 applies only to a foreclosure sale that occurs after January 1,
14 2010. A foreclosure sale that occurs on or before January 1, 2010,
15 is governed by the law in effect immediately before the effective
16 date of this Act, and that law is continued in effect for that
17 purpose.

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

24 SECTION 26. Not later than January 1, 2010, each property
25 owners' association shall present for recording with the county
26 clerk as prescribed by Section 202.006, Property Code, as amended
27 by this Act, each dedicatory instrument governing the association

1 that has not been previously recorded in the real property records
2 of the county.

3 SECTION 27. Not later than January 1, 2010, the Supreme
4 Court of Texas shall adopt rules of civil procedure under Section
5 209.0091, Property Code, as added by this Act.

6 SECTION 28. The changes in law provided for in this Act do
7 not apply to mixed use master associations founded before January
8 1, 1974, and that do not have governing documents that allow for the
9 imposition of fines.

10 SECTION 29. This Act takes effect January 1, 2010.