

By: Solomons, et al.

H.B. No. 1976

Substitute the following for H.B. No. 1976:

By: Quintanilla

C.S.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(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

1 the use and occupancy of the property and all [~~a~~] dedicatory  
2 instruments [~~instrument~~] governing the establishment, maintenance,  
3 or [~~and~~] operation of this residential community have been or will  
4 be recorded in the Real Property Records of the county in which the  
5 property is located. Copies of the restrictive covenants and  
6 dedicatory instruments [~~instrument~~] may be obtained from the county  
7 clerk.

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

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

22 Date: \_\_\_\_\_

23 Signature of Purchaser

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

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

1 207; or

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

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

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

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

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

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

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

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

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

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

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

8           SECTION 4. Section 202.004, Property Code, is amended by  
9 adding Subsection (d) to read as follows:

10          (d) In evaluating an alleged violation of a restrictive  
11 covenant, the property owners' association or other representative  
12 designated by an owner of real property may not take action if:

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

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

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

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

23           SECTION 5. 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 and cannot be enforced  
5 against a property owner who purchased the property before the  
6 dedicatory instrument was filed unless the unfiled dedicatory  
7 instrument differs from a dedicatory instrument filed at the time  
8 of purchase only with respect to modifications or amendments  
9 necessary to comply with state or federal law.

10 SECTION 6. Chapter 202, Property Code, is amended by adding  
11 Sections 202.008, 202.010, 202.011, 202.012, 202.013, 202.014, and  
12 202.015 to read as follows:

13 Sec. 202.008. ASSOCIATION'S RIGHT OF ENTRY. (a) Except as  
14 provided by this section, a provision in a dedicatory instrument  
15 that provides a property owners' association the right or authority  
16 to enter onto an owner's private property to enforce or abate an  
17 alleged violation of a restrictive covenant is void as against  
18 public policy except for entry in circumstances in which it is  
19 reasonably determined the property has been abandoned and not  
20 maintained for more than 30 days. This subsection does not apply to  
21 an entry for a forced mow or to remove trash or debris if the  
22 dedicatory instrument allows entry for that purpose.

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

27 (c) This section does not apply to:

- 1           (1) an association regulated under Title 7; or  
2           (2) a property owners' association that funds through  
3 assessments:

4                   (A) insurance on residences;

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

6 or

7                   (C) exterior maintenance of residences.

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

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

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

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

22           (d) For the purposes of this section, a recreational  
23 vehicle, motor home, camper, all-terrain vehicle, trailer, or  
24 watercraft is not considered to be a personal automobile or truck.

25           (e) This section does not apply to:

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

27                   (2) a property owners' association that funds through

1 assessments:

2 (A) insurance on residences;

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

4 or

5 (C) exterior maintenance of residences.

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

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

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

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

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

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

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

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

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

4            (1) as adjudicated by a court:

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

6                    (B) violates a law;

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

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

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

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

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

16        Sec. 202.013. RENTAL RESTRICTIONS. A property owners'  
17 association may not amend a dedicatory instrument to prohibit the  
18 rental of property subject to the dedicatory instrument without the  
19 consent of 67 percent of all owners of property subject to the  
20 dedicatory instrument, except that a property owners' association  
21 may require an owner to exercise due diligence in not leasing to an  
22 occupant who is a registered sex offender or who has a history of  
23 violent crime.

24        Sec. 202.014. RESTRICTIONS REQUIRING CAPITAL IMPROVEMENTS.

25        (a) A dedicatory instrument may not be amended to retroactively  
26 require a person who owns property subject to the dedicatory  
27 instrument at the time the amendment is adopted to make a capital



1 improvement to the owner's property that is not required before the  
2 amendment. A provision of a dedicatory instrument requiring an  
3 owner to make a capital improvement to the owner's property may only  
4 be adopted by a vote of 67 percent of all owners of property subject  
5 to the dedicatory instrument and may be applicable only to owners  
6 purchasing property subject to the dedicatory instrument after the  
7 provision is adopted.

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

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

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

23 (1) injunctive relief;

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

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

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

27 (3) both injunctive relief and damages as provided in

1 this subsection.

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

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

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

- 12 (1) three times the association's actual damages; or  
13 (2) \$4,500.

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

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

17 (1) a statement of any right of first refusal or other  
18 restraint contained in the restrictions or restrictive covenants  
19 that restricts the owner's right to transfer the owner's property;

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

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

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

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

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

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

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

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

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

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

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

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

27 (13) the amount of any administrative transfer fee

1 charged by the property owners' association for a change of  
2 ownership of property in the subdivision;

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

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

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

11 SECTION 8. Chapter 209, Property Code, is amended by adding  
12 Sections 209.0035 and 209.0041 to read as follows:

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

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

22 (1) injunctive relief;

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

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

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

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

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

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

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

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

12               (2) \$4,500.

13       Sec. 209.0041. AMENDMENT OF RESTRICTIVE COVENANTS AND  
14 BYLAWS. (a) This section applies to a residential subdivision in  
15 which property owners are subject to mandatory membership in a  
16 property owners' association.

17       (b) This section applies to a restrictive covenant or bylaw  
18 regardless of the date on which the restrictive covenant or bylaw  
19 was created.

20       (c) This section does not apply to the amendment of a  
21 restrictive covenant or bylaw during a development period, as  
22 defined by Section 202.011.

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

25       (e) A restrictive covenant or bylaw may be amended only by a  
26 vote of 51 percent of the total votes allocated to property owners  
27 in the property owners' association if the amendment impacts the

1 use and enjoyment of personal or real property or may result in a  
2 fine or loss of a privilege of a member of the association.

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

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

8 Sec. 209.005. ASSOCIATION RECORDS. (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 (b) A property owners' association shall make the books and  
12 records of the association, including financial records, open to  
13 and reasonably available for examination by [to] an owner [in  
14 accordance with Section B, Article 2.23, Texas Non-Profit  
15 Corporation Act (Article 1396-2.23, Vernon's Texas Civil  
16 Statutes)]. An owner is entitled to copies of information  
17 contained in the books and records.

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

25 [(b)] An attorney's files and records relating to the  
26 association, excluding invoices requested by an owner under Section  
27 209.008(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 maintain a copy of the association's books and records, including financial records and invoices, 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 to a current board member or to the mailing address of the association or authorized representative as provided 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

1 party within a reasonable time of the property owners'  
2 association's receipt of the request.

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

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

11 (1) informs the requestor that the property owners'  
12 association is unable to produce the information on or before the  
13 10th business day after the date of the request; and

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

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

21 (1) an electronic format:

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

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

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



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

4                   (2) a hard-copy format:

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

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

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

11                   (ii) made available at a location not more  
12 than 50 miles from the boundary of the county in which the  
13 requestor's property is located.

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

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

20                   (m) Any information maintained by the association that is  
21 released under this section may not identify an individual member  
22 of an association or an individual's personal financial  
23 information. Information may be released in an aggregate manner  
24 that would not identify an individual property owner.

25                   (n) A property owners' association shall keep all records as  
26 to changes to the dedicatory instruments in perpetuity and shall  
27 maintain records related to financial matters of the association,

1 including assessments, fines, foreclosures, and enforcement  
2 actions for at least seven years.

3 (o) A member of a property owners' association who is denied  
4 access to or copies of association books or records to which the  
5 member is entitled under this section may file a petition with the  
6 justice of the peace of a justice precinct in which all or part of  
7 the property that is governed by the association is located,  
8 requesting relief in accordance with this subsection. If the  
9 justice of the peace finds that the member is entitled to access to  
10 or copies of the records, the justice of the peace shall order the  
11 association to:

12 (1) provide the access or copies requested by the  
13 member; and

14 (2) pay the court costs and the member's reasonable  
15 attorney's fees and court costs.

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

18 SECTION 10. Chapter 209, Property Code, is amended by  
19 adding Sections 209.0051, 209.0056, 209.0057, 209.0058, 209.0059,  
20 209.00591, 209.00592, and 209.00593 to read as follows:

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

24 (b) In this section, "board meeting" means a deliberation  
25 between a quorum of the voting board of the property owners'  
26 association, or between a quorum of the voting board and another  
27 person, during which property owners' association business or

1 policy over which the board has responsibility is discussed or  
2 considered, or during which the board takes formal action. The term  
3 does not include the gathering of a quorum of the board at a social  
4 function unrelated to the business of the association, or the  
5 attendance by a quorum of the board at a regional, state, or  
6 national convention or workshop, ceremonial event, or press  
7 conference, if formal action is not taken and any discussion of  
8 association business is incidental to the social function,  
9 convention, workshop, ceremonial event, or press conference.

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

15 (d) The board shall keep a record of each regular,  
16 emergency, or special board meeting in the form of written minutes  
17 or an audio recording of the meeting. A record of a meeting must  
18 state the subject of each deliberation and indicate each vote,  
19 order, decision, or other action taken by the board. The board  
20 shall make meeting records available to a member for inspection and  
21 copying on the member's written request to the board or the board's  
22 representative.

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

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

1 and

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

4 (A) in a place located on the association's  
5 common property; or

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

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

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

20 (1) a statement by the board of specific factual  
21 information given in response to the inquiry; or

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

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

1       (i) In the event of an emergency or urgent necessity that  
2 requires immediate board action, the board may meet in an emergency  
3 board meeting to address a reasonably unforeseeable situation.  
4 Notice for an emergency board meeting may be given in the manner  
5 prescribed by Subsection (e) at least two hours before the  
6 emergency session is convened and must clearly identify the  
7 emergency or urgent necessity for which the notice is given. A  
8 board in an emergency meeting may not consider fines, foreclosures,  
9 enforcement actions, increases in assessments, or any other  
10 foreseeable business or policy over which the board has  
11 responsibility. Any action taken in an emergency session must be  
12 ratified by a vote of the board at their next regular board meeting.

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

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

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

27           (2) complaints or charges against a board member or a

1 representative of the property owners' association;  
2 (3) a payment plan under Section 209.0062;  
3 (4) a foreclosure under Chapter 51; or  
4 (5) an enforcement action against a member of the  
5 association.

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

11 Sec. 209.0057. TABULATION OF VOTES. (a) This section does  
12 not apply to a property owners' association if:

13 (1) membership in the property owners' association is  
14 mandatory for owners or for a defined class of owners of private  
15 real property in a defined geographic area in a county with a  
16 population of 2.8 million or more or in a county adjacent to a  
17 county with a population of 2.8 million or more;

18 (2) the property owners' association has the power to  
19 make mandatory special assessments for capital improvements or  
20 mandatory regular assessments; and

21 (3) the amount of the mandatory special or regular  
22 assessments is or has ever been based wholly or partly on the value  
23 at which the state or a local governmental body assesses the  
24 property for purposes of ad valorem taxation under Section 20,  
25 Article VIII, Texas Constitution.

26 (b) To tabulate the votes in any matter subject to a vote of  
27 the members of a mandatory property owners' association, the

1 association shall enter into a contract for the services of a person  
2 who is not a member of the association or related to a member of the  
3 association board within the third degree by consanguinity or  
4 affinity, as determined under Chapter 573, Government Code, and who  
5 is:

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

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

13 (b) Not later than the 20th day after the date of an election  
14 or vote, a property owners' association shall deposit in the county  
15 clerk's office of each county in which the association's  
16 declaration is recorded all ballots cast in an election or vote that  
17 results in the amendment of a dedicatory instrument.

18 (c) Ballots deposited with a county clerk under this section  
19 are subject to public inspection.

20 (d) A county clerk shall retain ballots deposited with the  
21 clerk under this section until the fourth anniversary of the date  
22 the ballots are deposited.

23 (e) A county clerk may not charge a fee for the deposit of  
24 ballots under this section.

25 (f) The results of an election or vote subject to this  
26 section are not valid until the ballots are deposited with the  
27 county clerk as provided by this section.

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

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

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

13       (b) If a board is presented with written, documented  
14 evidence from a database or other record maintained by a  
15 governmental law enforcement authority that a board member has been  
16 convicted of a felony or crime involving moral turpitude, the board  
17 member is immediately ineligible to serve on the board of the  
18 property owners' association, automatically considered removed  
19 from the board, and prohibited from future service on the board.

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

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

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

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



1           (b) An absentee or electronic ballot:

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

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

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

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

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

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

20                   (3) the following language: "By casting your vote via  
21 absentee ballot you will forego the opportunity to consider and  
22 vote on any action from the floor on these proposals. This means  
23 that if there are amendments to these proposals your votes will not  
24 be counted on the final vote on these measures. If you desire to  
25 retain this ability, please attend the meeting in person."

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

1           (1) given by:

2                   (A) electronic mail;

3                   (B) facsimile; or

4                   (C) posting on an Internet website;

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

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

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

13           SECTION 11. Section 209.006, Property Code, is amended by  
14 amending Subsection (b) and adding Subsections (c), (d), (e), (f),  
15 (g), (h), (i), (j), and (k) 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), the property owners'  
24 association may assess the fine and shall provide notice of the  
25 assessment to the owner. If the property owner disputes the  
26 violation, the owner may challenge the fine by providing, within  
27 the time prescribed by Subsection (f), written notice to the

1 property owners' association of the challenge accompanied by a  
2 statement of the grounds on which the owner believes the owner is  
3 not in violation and citations of the dedicatory instrument for  
4 each violation alleged. If the property owner cures the violation  
5 before the expiration period for cure specified under Subsection  
6 (c), any fine assessed for the violation is void.

7 (f) If the property owner contests the violation on or  
8 before the 30th day after the date the owner receives a notice of an  
9 assessment of a fine but does not cure the violation within the same  
10 30-day period, the property owners' association must file suit to  
11 uphold and enforce the fine in a justice court or small claims court  
12 not later than the 60th day after the expiration of the 30-day  
13 period. The complaint must list each violation and be accompanied  
14 by citation of the dedicatory instrument for each violation. If the  
15 property owners' association does not file suit within the time  
16 prescribed by this subsection, the association's right to collect  
17 the fine is considered waived.

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

22 (h) At the evidentiary hearing, the property owners'  
23 association has the burden of proving by a preponderance of the  
24 evidence that the property owner has violated a restrictive  
25 covenant.

26 (i) The court shall determine whether a violation has  
27 occurred and if so, whether the fine for the violation is reasonable

1 considering the type, duration, and severity of the violation.

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

5 (k) For purposes of this section, a violation is considered  
6 a threat to public health or safety if the violation materially  
7 affects the physical health or safety of an ordinary resident.

8 SECTION 12. Chapter 209, Property Code, is amended by  
9 adding Sections 209.0061, 209.0062, 209.0063, 209.0064, and  
10 209.0091 to read as follows:

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

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

26 (c) If the property owners' association assesses a fine  
27 against a nonowner occupant under this section, the notice

1 provisions of Section 209.006 and the hearing provisions of Section  
2 209.007 apply to the nonowner occupant in the same manner as those  
3 provisions apply to an owner.

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

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

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

1 requests an alternative payment plan. A property owners'  
2 association may offer a reasonable discount to an owner making a  
3 one-time lump sum payment of the special assessment.

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

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

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

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

27 (1) any delinquent assessment;

1           (2) any current assessment;

2           (3) any attorney's fees incurred by the association  
3 associated solely with assessments or any other charge that could  
4 provide the basis for foreclosure;

5           (4) any fines assessed by the association;

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

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

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

16           Sec. 209.0091. JUDICIAL FORECLOSURE REQUIRED. (a) Except  
17 as provided by Subsection (c), a property owners' association may  
18 not foreclose a property owners' association assessment lien unless  
19 the association first obtains a court order in an application for  
20 expedited foreclosure under the rules adopted by the supreme court  
21 under Subsection (b).

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 SECTION 13. Section 209.010(a), Property Code, is amended  
9 to read as follows:

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

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

16 (2) a copy of Section 209.011.

17 SECTION 14. Chapter 209, Property Code, is amended by  
18 adding Sections 209.014 and 209.015 to read as follows:

19 Sec. 209.014. BOARD POWERS. Bylaws adopted by the board of  
20 a property owners' association may not expand the powers of the  
21 association beyond those powers specifically granted in the  
22 declaration. To the extent of any conflict between the bylaws and  
23 any declaration, the declaration prevails.

24 Sec. 209.015. RESTRICTIONS ON OWNERSHIP VOID. A property  
25 owners' association may not include or enforce a provision in a  
26 dedicatory instrument that restricts the number of properties  
27 within the subdivision that an individual may own.

1 SECTION 15. Section 211.002(a), Property Code, is amended  
2 to read as follows:

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

9 SECTION 16. Section 202.004(c), Property Code, is repealed.

10 SECTION 17. (a) Section 5.006(a), Property Code, as  
11 amended by this Act, and the repeal by this Act of Section  
12 202.004(c), Property Code, apply only to an action filed on or after  
13 the effective date of this Act. An action filed before the  
14 effective date of this Act is governed by the law in effect  
15 immediately before the effective date of this Act, and that law is  
16 continued in effect for that purpose.

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

26 (c) Sections 202.015 and 209.0035, Property Code, as added  
27 by this Act, apply only to a cause of action that accrues on or after

1 the effective date of this Act. A cause of action that accrues  
2 before the effective date of this Act is governed by the law in  
3 effect immediately before the effective date of this Act, and that  
4 law is continued in effect for that purpose.

5 (d) Section 202.006, Property Code, as amended by this Act,  
6 and Sections 202.008, 202.010, 202.011, 202.012, 202.014,  
7 209.0059, 209.00591, 209.00592(a), and 209.015, Property Code, as  
8 added by this Act, apply to a provision in a dedicatory instrument  
9 or a restrictive covenant enacted before, on, or after the  
10 effective date of this Act, except that any action taken before the  
11 effective date of this Act based on an unfiled dedicatory  
12 instrument is not invalidated by Section 202.006, Property Code, as  
13 amended by this Act.

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

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

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

8           (h) Section 209.0091, Property Code, as added by this Act,  
9 applies only to a foreclosure sale that occurs after January 1,  
10 2010. A foreclosure sale that occurs on or before January 1, 2010,  
11 is governed by the law in effect immediately before the effective  
12 date of this Act, and that law is continued in effect for that  
13 purpose.

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

20           SECTION 18. Not later than January 1, 2010, each property  
21 owners' association shall present for recording with the county  
22 clerk as prescribed by Section 202.006, Property Code, as amended  
23 by this Act, each dedicatory instrument governing the association  
24 that has not been previously recorded in the real property records  
25 of the county.

26           SECTION 19. Not later than January 1, 2010, the Supreme  
27 Court of Texas shall adopt rules of civil procedure under Section

1 209.0091, Property Code, as added by this Act.

2 SECTION 20. This Act takes effect January 1, 2010.