

1-1 By: Solomons, et al. (Senate Sponsor - West) H.B. No. 1976
1-2 (In the Senate - Received from the House May 18, 2009;
1-3 May 19, 2009, read first time and referred to Committee on
1-4 Intergovernmental Relations; May 23, 2009, reported adversely,
1-5 with favorable Committee Substitute by the following vote: Yeas 3,
1-6 Nays 2; May 23, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1976 By: West

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

1-10 relating to the operation of property owners' associations.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Subsection (a), Section 5.006, Property Code, is
1-13 amended to read as follows:

1-14 (a) In an action based on breach of a restrictive covenant
1-15 pertaining to real property or a statute pertaining to real
1-16 property subject to a restrictive covenant or to restrictive
1-17 covenants to which real property is subject, the court may ~~shall~~
1-18 allow to a prevailing party ~~[who asserted the action]~~ reasonable
1-19 attorney's fees in addition to the party's costs and claim.

1-20 SECTION 2. Section 5.012, Property Code, is amended by
1-21 amending Subsection (a) and adding Subsections (f) and (g) to read
1-22 as follows:

1-23 (a) A seller of residential real property that is subject to
1-24 membership in a property owners' association and that comprises not
1-25 more than one dwelling unit located in this state shall give to the
1-26 purchaser of the property a written notice that reads substantially
1-27 similar to the following:

1-28 NOTICE OF MEMBERSHIP IN PROPERTY OWNERS' ASSOCIATION CONCERNING THE
1-29 PROPERTY AT (street address) (name of residential community)

1-30 As a purchaser of property in the residential community in
1-31 which this property is located, you are obligated to be a member of
1-32 a property owners' association. Restrictive covenants governing
1-33 the use and occupancy of the property and all ~~a~~ dedicatory
1-34 instruments ~~[instrument]~~ governing the establishment, maintenance,
1-35 or ~~[and]~~ operation of this residential community have been or will
1-36 be recorded in the Real Property Records of the county in which the
1-37 property is located. Copies of the restrictive covenants and
1-38 dedicatory instruments ~~[instrument]~~ may be obtained from the county
1-39 clerk.

1-40 You are obligated to pay assessments to the property owners'
1-41 association. The amount of the assessments is subject to change.
1-42 Your failure to pay the assessments could result in a lien on and
1-43 the foreclosure of your property.

1-44 Section 207.003, Property Code, entitles an owner to receive
1-45 copies of any document that governs the establishment, maintenance,
1-46 or operation of a subdivision, including, but not limited to,
1-47 restrictions, bylaws, rules and regulations, and a resale
1-48 certificate from a property owners' association. A resale
1-49 certificate contains information including, but not limited to,
1-50 statements specifying the amount and frequency of regular
1-51 assessments and the style and cause number of lawsuits to which the
1-52 property owners' association is a party. These documents must be
1-53 made available to you by the seller on your request.

1-54 Date: _____

1-55 _____
Signature of Purchaser

1-56 (f) On the purchaser's request for a resale certificate from
1-57 the seller, the seller shall:

1-58 (1) promptly deliver a copy of a current resale
1-59 certificate if one has been issued for the property under Chapter
1-60 207; or

1-61 (2) if the seller does not have a current resale
1-62 certificate:

1-63 (A) request the property owners' association or

2-1 its agent to issue a resale certificate under Chapter 207; and
2-2 (B) promptly deliver a copy of the resale
2-3 certificate to the purchaser on receipt of the resale certificate
2-4 from the property owners' association or its agent.

2-5 (g) The seller or the purchaser, as agreed to by the
2-6 parties, shall pay the fee to the property owners' association or
2-7 its agent for issuing the resale certificate. The property owners'
2-8 association may not process payment for a resale certificate
2-9 requested under Chapter 207 until the certificate is available for
2-10 delivery. The association may not charge a fee if the certificate
2-11 is not provided in the time prescribed by Section 207.003(a).

2-12 SECTION 3. Subsection (c), Section 5.017, Property Code, is
2-13 amended to read as follows:

2-14 (c) This section does not apply to a deed restriction or
2-15 other covenant running with the land that requires a fee associated
2-16 with the conveyance of property in a subdivision that is payable:

2-17 (1) to:

2-18 (A) ~~[(1)]~~ a property owners' association that
2-19 manages or regulates the subdivision or the association's managing
2-20 agent if the subdivision contains more than one platted lot;

2-21 (B) ~~[(2)]~~ an entity organized under Section
2-22 501(c)(3), Internal Revenue Code of 1986; ~~[or]~~

2-23 (C) ~~[(3)]~~ a governmental entity; or

2-24 (D) an entity other than a property owners'
2-25 association that operates a golf course and country club in or
2-26 adjacent to the subdivision if property owners in the subdivision
2-27 are required by deed restriction to obtain and maintain a
2-28 membership in the golf course and country club; or

2-29 (2) for the benefit or in consideration of a
2-30 conservation easement created under Chapter 183, Natural Resources
2-31 Code, located in a county with a population of at least 500,000 and
2-32 not more than one million.

2-33 SECTION 4. Subdivision (1), Section 202.001, Property Code,
2-34 is amended to read as follows:

2-35 (1) "Dedictory instrument" means each document
2-36 governing ~~[instrument covering]~~ the establishment, maintenance, or
2-37 ~~[and]~~ operation of a residential subdivision, planned unit
2-38 development, condominium or townhouse regime, or any similar
2-39 planned development. The term includes:

2-40 (A) a declaration or similar instrument
2-41 subjecting real property to:

2-42 (i) restrictive covenants, bylaws, or
2-43 similar instruments governing the administration or operation of a
2-44 property owners' association;

2-45 (ii) ~~[, to]~~ properly adopted rules and
2-46 regulations of the property owners' association; or

2-47 (iii) ~~[, or to]~~ all lawful amendments to the
2-48 covenants, bylaws, instruments, rules, or regulations; and

2-49 (B) bylaws, rules, regulations, or guidelines
2-50 adopted by a property owners' association under an instrument
2-51 described by Paragraph (A).

2-52 SECTION 5. Section 202.004, Property Code, is amended by
2-53 adding Subsections (d) and (e) to read as follows:

2-54 (d) In evaluating an alleged or potential violation of a
2-55 restrictive covenant, the property owners' association or other
2-56 representative designated by an owner of real property may,
2-57 notwithstanding any provision in a dedicatory instrument, grant a
2-58 variance and in doing so not enforce the restrictive covenant if the
2-59 property owners' association board, in the board's reasonable
2-60 judgment, determines:

2-61 (1) the property owners' association's position is not
2-62 sufficiently strong to justify taking any action or further action;

2-63 (2) the provision alleged to have been violated may be
2-64 inconsistent with applicable law;

2-65 (3) the alleged violation is not of such a material or
2-66 visible nature as to be objectionable to a reasonable person or to
2-67 justify expending the property owners' association's resources;

2-68 (4) enforcement of the provision is not in the
2-69 association's best interests, based on hardship, expense, or other

3-1 reasonable criteria; or
3-2 (5) the facts of the particular circumstances, such as
3-3 topography of the owner's land or unforeseen circumstances unique
3-4 to the particular owner, justify the variance.

3-5 (e) A determination by the property owners' association
3-6 board to grant a variance under Subsection (d) may not be considered
3-7 a waiver of the association's ability to enforce any dedicatory
3-8 instrument provision in the future.

3-9 SECTION 6. Section 202.006, Property Code, is amended to
3-10 read as follows:

3-11 Sec. 202.006. PUBLIC RECORDS. (a) A property owners'
3-12 association shall file all ~~[the]~~ dedicatory instruments
3-13 ~~[instrument]~~ in the real property records of each county in which
3-14 the property to which the dedicatory instruments relate ~~[instrument~~
3-15 ~~relates]~~ is located.

3-16 (b) A dedicatory instrument that is not filed in accordance
3-17 with this section has no effect until filed.

3-18 SECTION 7. Chapter 202, Property Code, is amended by adding
3-19 Sections 202.008, 202.010, 202.011, 202.012, 202.013, 202.014, and
3-20 202.015 to read as follows:

3-21 Sec. 202.008. ASSOCIATION'S RIGHT OF ENTRY. (a) Except as
3-22 provided by this section, a provision in a dedicatory instrument
3-23 that provides a property owners' association the right or authority
3-24 to enter onto an owner's private property to enforce or abate an
3-25 alleged violation of a restrictive covenant is void as against
3-26 public policy except for entry:

3-27 (1) to cure a violation that involves an immediate
3-28 threat to persons or property;

3-29 (2) after 10 days' written notice, to:

3-30 (A) perform a forced mow; or

3-31 (B) remove trash or debris; or

3-32 (3) in circumstances in which it is reasonably
3-33 determined the property has been abandoned and not maintained for
3-34 at least 30 days.

3-35 (b) This section does not prohibit a provision in a
3-36 dedicatory instrument allowing a property owners' association a
3-37 right of entry on the property of an owner that is limited to a
3-38 dedicated access or other easement contained in a final plat or an
3-39 easement filed of record.

3-40 (c) This section does not apply to:

3-41 (1) an association regulated under Title 7;

3-42 (2) a property owners' association that funds through
3-43 assessments:

3-44 (A) insurance on residences;

3-45 (B) one or more utility payments for residences;

3-46 or

3-47 (C) exterior maintenance of residences; or

3-48 (3) a property owners' association that is a mixed use
3-49 master association that existed before January 1, 1974, and that
3-50 does not have the authority under a dedicatory instrument or other
3-51 governing document to impose fines.

3-52 Sec. 202.010. CERTAIN PARKING RESTRICTIONS PROHIBITED.

3-53 (a) A provision in a dedicatory instrument that restricts or
3-54 prohibits an owner from parking an operable, noncommercial, and
3-55 personal automobile or truck on a public street is void as against
3-56 public policy.

3-57 (b) A provision in a dedicatory instrument that restricts or
3-58 prohibits an owner from parking the owner's operable,
3-59 noncommercial, and personal automobile or truck in the owner's
3-60 driveway is void as against public policy.

3-61 (c) For the purposes of this section, "noncommercial
3-62 automobile" means a motor vehicle that may be legally driven on
3-63 public roads under state law and that exhibits no commercial
3-64 advertising other than standard dealer or manufacturer
3-65 advertising.

3-66 (d) For the purposes of this section, a recreational
3-67 vehicle, motor home, camper, all-terrain vehicle, trailer, or
3-68 watercraft, a tow truck, cement mixer, or other similar commercial
3-69 vehicle, or a vehicle that is more than 30 feet long is not

4-1 considered to be a personal automobile or truck.
4-2 (e) This section does not apply to:
4-3 (1) an association regulated under Title 7; or
4-4 (2) a property owners' association that funds through
4-5 assessments:
4-6 (A) insurance on residences;
4-7 (B) one or more utility payments for residences;
4-8 or
4-9 (C) exterior maintenance of residences.
4-10 Sec. 202.011. RIGHT OF FIRST REFUSAL PROHIBITED. (a) In
4-11 this section, "development period" means a period stated in a
4-12 declaration during which a declarant reserves:
4-13 (1) a right to facilitate the development,
4-14 construction, and marketing of the subdivision; and
4-15 (2) a right to direct the size, shape, and composition
4-16 of the subdivision.
4-17 (b) To the extent a restrictive covenant provides a right of
4-18 first refusal for the sale or lease of a residential unit or
4-19 residential lot in favor of the property owners' association or the
4-20 association's members, the covenant is void.
4-21 (c) This section does not apply to a restrictive covenant
4-22 that provides a right of first refusal in favor of a developer or
4-23 builder during the development period.
4-24 Sec. 202.012. REGULATION OF SOLAR ENERGY DEVICES. (a) In
4-25 this section, "solar energy device" has the meaning assigned by
4-26 Section 171.107, Tax Code.
4-27 (b) Except as otherwise provided by this section, a property
4-28 owners' association may not include or enforce a provision in a
4-29 dedicatory instrument that prohibits or restricts a property owner
4-30 from installing a solar energy device.
4-31 (c) A provision that violates Subsection (b) is void.
4-32 (d) This section does not prohibit the inclusion or
4-33 enforcement of a provision in a dedicatory instrument that
4-34 prohibits a solar energy device that:
4-35 (1) as adjudicated by a court:
4-36 (A) threatens the public health or safety; or
4-37 (B) violates a law;
4-38 (2) is located on property owned or maintained by the
4-39 property owners' association;
4-40 (3) is located on property owned in common by the
4-41 members of the property owners' association; or
4-42 (4) is located in an area on the property owner's
4-43 property other than:
4-44 (A) on the roof of the home; or
4-45 (B) in a fenced yard or patio maintained by the
4-46 property owner.
4-47 Sec. 202.013. RENTAL RESTRICTIONS. (a) Except as provided
4-48 by Subsection (b), a property owners' association may not amend a
4-49 dedicatory instrument to prohibit or restrict the rental of
4-50 property subject to the dedicatory instrument without the consent
4-51 of at least 51 percent of the total votes allocated to property
4-52 owners subject to the dedicatory instrument.
4-53 (b) An amendment to a dedicatory instrument may require:
4-54 (1) an owner to:
4-55 (A) exercise due diligence in not leasing to an
4-56 occupant who is a registered sex offender or who has a history of
4-57 violent crime; or
4-58 (B) terminate the possessory right of any tenant
4-59 or occupant who is a registered sex offender or who has a history of
4-60 violent crime;
4-61 (2) all leases to be subject to the dedicatory
4-62 instruments of the property owners' association; or
4-63 (3) a minimum lease term of not more than six months.
4-64 Sec. 202.014. RESTRICTIONS REQUIRING CAPITAL IMPROVEMENTS.
4-65 (a) A dedicatory instrument may not be amended to retroactively
4-66 require a person who owns property subject to the dedicatory
4-67 instrument at the time the amendment is adopted to make a capital
4-68 improvement to the owner's property that is not required before the
4-69 amendment. A provision of a dedicatory instrument requiring an

5-1 owner to make a capital improvement to the owner's property may only
5-2 be adopted by a vote of at least 67 percent of the total votes
5-3 allocated to property owners subject to the dedicatory instrument
5-4 and may be applicable only to owners purchasing property subject to
5-5 the dedicatory instrument after the provision is adopted.

5-6 (b) For the purposes of this section, "capital improvement"
5-7 means items such as additional tree plantings, additional sodding,
5-8 fence construction, hardscape installation, new construction, or
5-9 any similar capital improvement. The term does not include repair
5-10 or maintenance of existing improvements or the removal of
5-11 conditions that are in violation of a dedicatory instrument.

5-12 Sec. 202.015. INJUNCTION; DAMAGES. (a) If a property
5-13 owners' association or other representative designated by the
5-14 property owners' association has violated, is violating, or is
5-15 threatening to violate this chapter, a member of the property
5-16 owners' association may bring a civil action against the property
5-17 owners' association but may not bring an action against an
5-18 association's officer or board member individually.

5-19 (b) A member of a property owners' association bringing an
5-20 action under this section may seek:

- 5-21 (1) injunctive relief;
5-22 (2) damages in an amount equal to the greater of:
5-23 (A) actual damages arising from the violation; or
5-24 (B) \$1,500 for each violation; or
5-25 (3) both injunctive relief and damages as provided in
5-26 this subsection.

5-27 (c) The court may increase an award under Subsection (b)(2)
5-28 to an amount not to exceed three times the amount awarded under
5-29 Subsection (b)(2) if the court finds that violations have occurred
5-30 with a frequency that constitutes a pattern or practice.

5-31 (d) Each day a violation continues is not considered a
5-32 separate violation for purposes of an assessment of damages.

5-33 (e) The court may award damages to a property owners'
5-34 association for a suit brought by a member of the property owners'
5-35 association that the court finds frivolous or groundless in an
5-36 amount that is not more than the greater of:

- 5-37 (1) three times the association's actual damages; or
5-38 (2) \$4,500.

5-39 (f) On or before the 30th day before the date a person files
5-40 a suit under this section, the person must provide notice to the
5-41 other party of the person's intent to file suit under this section.
5-42 The notice must be sent certified mail, return receipt requested,
5-43 or delivered by the United States Postal Service with signature
5-44 confirmation service.

5-45 SECTION 8. Subsection (b), Section 207.003, Property Code,
5-46 is amended to read as follows:

5-47 (b) A resale certificate under Subsection (a) must contain:

5-48 (1) a statement of any right of first refusal, other
5-49 than a right of first refusal that is prohibited by statute, and any
5-50 ~~or~~ other restraint contained in the restrictions or restrictive
5-51 covenants that restricts the owner's right to transfer the owner's
5-52 property;

5-53 (2) the frequency and amount of any regular
5-54 assessments;

5-55 (3) the amount and purpose of any special assessment
5-56 that is due after the date the resale certificate is prepared;

5-57 (4) the total of all amounts due and unpaid to the
5-58 property owners' association that are attributable to the owner's
5-59 property;

5-60 (5) capital expenditures, if any, approved by the
5-61 property owners' association for the property owners' association's
5-62 current fiscal year;

5-63 (6) the amount of reserves, if any, for capital
5-64 expenditures;

5-65 (7) the property owners' association's current
5-66 operating budget and balance sheet;

5-67 (8) the total of any unsatisfied judgments against the
5-68 property owners' association;

5-69 (9) the style and cause number of any pending lawsuit

6-1 in which the property owners' association is a party, other than a
6-2 lawsuit relating to unpaid property taxes of an individual member
6-3 of the association [defendant];

6-4 (10) a copy of a certificate of insurance showing the
6-5 property owners' association's property and liability insurance
6-6 relating to the common areas and common facilities;

6-7 (11) a description of any conditions on the owner's
6-8 property that the property owners' association board has actual
6-9 knowledge are in violation of the restrictions applying to the
6-10 subdivision or the bylaws or rules of the property owners'
6-11 association;

6-12 (12) a summary or copy of notices received by the
6-13 property owners' association from any governmental authority
6-14 regarding health or housing code violations existing on the
6-15 preparation date of the certificate relating to the owner's
6-16 property or any common areas or common facilities owned or leased by
6-17 the property owners' association;

6-18 (13) the amount of any administrative transfer fee
6-19 charged by the property owners' association for a change of
6-20 ownership of property in the subdivision;

6-21 (14) the name, mailing address, and telephone number
6-22 of the property owners' association's managing agent, if any; ~~and~~

6-23 (15) a statement indicating whether the restrictions
6-24 allow foreclosure of a property owners' association's lien on the
6-25 owner's property for failure to pay assessments; and

6-26 (16) a statement of all fees associated with the
6-27 transfer of ownership, including a description of each fee, to whom
6-28 each fee is paid, and the amount of each fee.

6-29 SECTION 9. Section 209.003, Property Code, is amended by
6-30 adding Subsection (e) to read as follows:

6-31 (e) The following provisions of this chapter do not apply to
6-32 a property owners' association that is a mixed use master
6-33 association that existed before January 1, 1974, and that does not
6-34 have the authority under a dedicatory instrument or other governing
6-35 document to impose fines:

6-36 (1) Section 209.005(b);

6-37 (2) Section 209.0056;

6-38 (3) Section 209.0057;

6-39 (4) Section 209.0058;

6-40 (5) Section 209.00591;

6-41 (6) Section 209.00593;

6-42 (7) Section 209.006(c);

6-43 (8) Section 209.0062; and

6-44 (9) Section 209.014.

6-45 SECTION 10. Chapter 209, Property Code, is amended by
6-46 adding Sections 209.0035 and 209.0041 to read as follows:

6-47 Sec. 209.0035. INJUNCTION; DAMAGES. (a) If a property
6-48 owners' association or other representative designated by the
6-49 property owners' association has violated, is violating, or is
6-50 threatening to violate this chapter, a member of the property
6-51 owners' association may bring a civil action against the property
6-52 owners' association but may not bring an action against an
6-53 association's officer or board member individually.

6-54 (b) A member of a property owners' association bringing an
6-55 action under this section may seek:

6-56 (1) injunctive relief;

6-57 (2) damages in an amount equal to the greater of:

6-58 (A) actual damages arising from the violation; or

6-59 (B) \$1,500 for each violation; or

6-60 (3) both injunctive relief and damages as provided in
6-61 this subsection.

6-62 (c) The court may increase an award under Subsection (b)(2)
6-63 to an amount not to exceed three times the amount awarded under
6-64 Subsection (b)(2) if the court finds that violations have occurred
6-65 with a frequency that constitutes a pattern or practice.

6-66 (d) Each day a violation continues is not considered a
6-67 separate violation for purposes of assessment of damages.

6-68 (e) The court may award damages to a property owners'
6-69 association for a suit brought by a member of the property owners'

7-1 association that the court finds frivolous or groundless in an
7-2 amount that is not more than the greater of:

- 7-3 (1) three times the association's actual damages; or
- 7-4 (2) \$4,500.

7-5 (f) On or before the 30th day before the date a person files
7-6 a suit under this section, the person must provide notice to the
7-7 other party of the person's intent to file suit under this section.
7-8 The notice must be sent certified mail, return receipt requested,
7-9 or delivered by the United States Postal Service with signature
7-10 confirmation service.

7-11 Sec. 209.0041. AMENDMENT OF DEDICATORY INSTRUMENTS.

7-12 (a) This section applies to a residential subdivision in which
7-13 property owners are subject to mandatory membership in a property
7-14 owners' association.

7-15 (b) This section applies to all dedicatory instruments
7-16 regardless of the date on which the dedicatory instruments were
7-17 created.

7-18 (c) This section does not apply to the amendment of a
7-19 dedicatory instrument during a development period, as defined by
7-20 Section 202.011.

7-21 (d) To the extent of any conflict with another provision of
7-22 this title, this section prevails.

7-23 (e) Except as provided by Subsection (f), a dedicatory
7-24 instrument may be amended only by a vote of at least 51 percent of
7-25 the total votes allocated to property owners in the property
7-26 owners' association, in addition to any governmental approval
7-27 required by law.

7-28 (f) A rule or guideline that affects land owned, leased,
7-29 maintained, or otherwise controlled by the property owners'
7-30 association may be adopted or amended by majority vote of the
7-31 association board. A rule or guideline that impacts the use and
7-32 enjoyment of personal or real property owned exclusively by the
7-33 owner or that may result in a fine or loss of privilege of a member
7-34 of the association may be adopted or amended only by a vote of at
7-35 least 51 percent of the total votes allocated to property owners who
7-36 cast votes by any permissible method in an association-wide vote.

7-37 (g) A property owners' association board by majority vote
7-38 may adopt ministerial, office-related procedural policies, such as
7-39 payment plan guidelines under Section 209.0062, a collections
7-40 policy, an enforcement policy, or other similar ministerial,
7-41 office-related procedural policies. The policy may outline
7-42 circumstances under which or the manner by which enforcement
7-43 remedies may be carried out but may not otherwise impact the use and
7-44 enjoyment of personal or real property owned exclusively by the
7-45 owner. The policy may not:

- 7-46 (1) create a power to:
 - 7-47 (A) levy a fine; or
 - 7-48 (B) impose a loss of a privilege on a member of
7-49 the association; or

7-50 (2) expand the association's powers beyond the powers
7-51 granted by any other dedicatory instrument.

7-52 (h) All ballots cast in a vote that results in an amendment
7-53 to a restrictive covenant, bylaw, or rule are records of the
7-54 association subject to inspection under Section 209.005.

7-55 (i) This section supersedes any contrary requirement in a
7-56 dedicatory instrument.

7-57 (j) This section does not apply to a property owners'
7-58 association that is subject to Chapter 552, Government Code, by
7-59 application of Section 552.0036, Government Code.

7-60 SECTION 11. Section 209.005, Property Code, is amended to
7-61 read as follows:

7-62 Sec. 209.005. ASSOCIATION RECORDS. (a) This section does
7-63 not apply to a property owners' association that is subject to
7-64 Chapter 552, Government Code, by application of Section 552.0036,
7-65 Government Code.

7-66 (b) Notwithstanding a provision in a dedicatory instrument,
7-67 a [A] property owners' association shall make the books and records
7-68 of the association, including financial records, open to and
7-69 reasonably available for examination by ~~the~~ an owner ~~in~~

8-1 ~~accordance with Section B, Article 2.23, Texas Non-Profit~~
8-2 ~~Corporation Act (Article 1396-2.23, Vernon's Texas Civil~~
8-3 ~~Statutes)]. An owner is entitled to obtain from the association~~
8-4 ~~copies of information contained in the books and records.~~

8-5 ~~(c) [(a-1) A property owners' association described by~~
8-6 ~~Section 552.0036(2), Government Code, shall make the books and~~
8-7 ~~records of the association, including financial records,~~
8-8 ~~reasonably available to any person requesting access to the books~~
8-9 ~~or records in accordance with Chapter 552, Government~~
8-10 ~~Code. Subsection (a) does not apply to a property owners'~~
8-11 ~~association to which this subsection applies.~~

8-12 ~~[(b)] An attorney's files and records relating to the~~
8-13 ~~association, excluding invoices requested by an owner under Section~~
8-14 ~~209.008(d), are not:~~

- 8-15 ~~(1) records of the association;~~
- 8-16 ~~(2) subject to inspection by the owner; or~~
- 8-17 ~~(3) subject to production in a legal proceeding.~~

8-18 ~~(d) In addition to the requirements of Subsection (b), a~~
8-19 ~~property owners' association shall make the association's books and~~
8-20 ~~records, including financial records and invoices, available in a~~
8-21 ~~building:~~

8-22 ~~(1) in which the books and records are appropriately~~
8-23 ~~stored; and~~

8-24 ~~(2) that is:~~

- 8-25 ~~(A) staffed during normal business hours;~~
- 8-26 ~~(B) accessible to members of the association~~
8-27 ~~during normal business hours; and~~
- 8-28 ~~(C) located on property commonly owned by the~~
8-29 ~~association within the boundaries of the subdivision governed by~~
8-30 ~~the association.~~

8-31 ~~(e) If a building described by Subsection (d) does not exist~~
8-32 ~~on property described by Subsection (d), the property owners'~~
8-33 ~~association shall make the books and records available in~~
8-34 ~~accordance with Subsections (g) and (h).~~

8-35 ~~(f) A party requesting association books or records shall~~
8-36 ~~submit the request in writing:~~

8-37 ~~(1) in person by hand delivery to a current board~~
8-38 ~~member;~~

8-39 ~~(2) to the mailing address of the association or~~
8-40 ~~authorized representative as provided on the most current~~
8-41 ~~management certificate filed under Section 209.004; or~~

8-42 ~~(3) in person to a managing agent as reflected on the~~
8-43 ~~most current management certificate filed under Section 209.004.~~

8-44 ~~(g) A property owners' association shall make books and~~
8-45 ~~records requested under Subsection (b) available to the requesting~~
8-46 ~~party within a reasonable time of the property owners'~~
8-47 ~~association's receipt of the request.~~

8-48 ~~(h) A reasonable time for providing information requested~~
8-49 ~~under Subsection (b) is considered to be 10 business days after the~~
8-50 ~~date the property owners' association receives a request, except as~~
8-51 ~~otherwise provided by this section.~~

8-52 ~~(i) If the property owners' association is unable to produce~~
8-53 ~~a requested book or record on or before the 10th business day after~~
8-54 ~~the date the request is received, the property owners' association~~
8-55 ~~must provide to the requestor written notice that:~~

8-56 ~~(1) informs the requestor that the property owners'~~
8-57 ~~association is unable to produce the information on or before the~~
8-58 ~~10th business day after the date of the receipt of the request; and~~

8-59 ~~(2) states a date by which the information will be~~
8-60 ~~available for inspection that occurs not later than the 30th day~~
8-61 ~~after the date notice under this subsection is given.~~

8-62 ~~(j) A property owners' association shall make books and~~
8-63 ~~records requested under this section available to the requestor in~~
8-64 ~~one or more of the following formats, as specified by the requestor:~~

8-65 ~~(1) an electronic format:~~

8-66 ~~(A) delivered to an electronic mail address~~
8-67 ~~provided by the requestor; or~~

8-68 ~~(B) delivered in a disc or other standard~~
8-69 ~~electronic format:~~

9-1 (i) to the mailing address of the
9-2 requestor; or
9-3 (ii) if the requesting party does not
9-4 provide a mailing address, to the address of the requestor's
9-5 property in the subdivision; or
9-6 (2) a hard-copy format:
9-7 (A) delivered to the mailing address of the
9-8 requestor; or
9-9 (B) if the requesting party does not provide a
9-10 mailing address:
9-11 (i) mailed to the address of the requestor's
9-12 property in the subdivision; or
9-13 (ii) made available at a location not more
9-14 than 25 miles from the boundary of the subdivision governed by the
9-15 association.
9-16 (k) This section does not require a property owners'
9-17 association to staff a building described by Subsection (d).
9-18 (l) A property owners' association may charge an owner for
9-19 copies of the requested information in an amount that reasonably
9-20 includes all costs related to reproducing the information,
9-21 including costs of materials, labor, and overhead.
9-22 (m) Any information maintained by the association that is
9-23 released under this section may not identify an individual member
9-24 of an association or an individual's personal financial
9-25 information. Information may be released in an aggregate manner
9-26 that would not identify an individual property owner.
9-27 (n) All ballots cast in an election that results in an
9-28 amendment to a dedicatory instrument, as required by Section
9-29 209.0041, are records of the property owners' association subject
9-30 to inspection under this section.
9-31 (o) All ballots cast in an election of property owners'
9-32 association board or other committee members are considered records
9-33 of the association but may not be made available for inspection
9-34 under this section, except for the purposes of a recount under
9-35 Section 209.0057(e), without a court order or subpoena. The
9-36 association shall take reasonable measures to safeguard the
9-37 security and privacy of those ballots.
9-38 (p) A property owners' association shall:
9-39 (1) keep all records as to changes to the dedicatory
9-40 instruments in perpetuity;
9-41 (2) maintain and secure all ballots in
9-42 association-wide elections for four years; and
9-43 (3) maintain records related to financial matters of
9-44 the association, including assessments, fines, foreclosures, and
9-45 enforcement actions, for at least seven years.
9-46 (q) A member of a property owners' association who is denied
9-47 access to or copies of association books or records to which the
9-48 member is entitled under this section may file a petition with the
9-49 justice of the peace of a justice precinct in which all or part of
9-50 the property that is governed by the association is located
9-51 requesting relief in accordance with this subsection. If the
9-52 justice of the peace finds that the member is entitled to access to
9-53 or copies of the records, the justice of the peace may grant one or
9-54 more of the following remedies:
9-55 (1) a judgment against the property owners'
9-56 association for a penalty of not more than \$1,500;
9-57 (2) a judgment against the property owners'
9-58 association for court costs and attorney's fees incurred in
9-59 connection with seeking a remedy under this section; or
9-60 (3) a judgment authorizing the owner or the owner's
9-61 assignee to deduct the amounts awarded under Subdivisions (1) and
9-62 (2) from any future regular or special assessments payable to the
9-63 property owners' association.
9-64 (r) For the purposes of this section, "business day" means a
9-65 day other than Saturday, Sunday, or a state or federal holiday.
9-66 (s) On or before the 10th day before the date a person files
9-67 a suit under this section, the person must provide notice to the
9-68 other party of the person's intent to file suit under this section.
9-69 The notice must be sent certified mail, return receipt requested,

10-1 or delivered by the United States Postal Service with signature
10-2 confirmation service.

10-3 SECTION 12. Chapter 209, Property Code, is amended by
10-4 adding Sections 209.0051, 209.0056, 209.0057, 209.0058, 209.0059,
10-5 209.00591, 209.00592, and 209.00593 to read as follows:

10-6 Sec. 209.0051. OPEN BOARD MEETINGS. (a) This section does
10-7 not apply to a property owners' association that is subject to
10-8 Chapter 551, Government Code, by application of Section 551.0015,
10-9 Government Code.

10-10 (b) In this section, "board meeting" means a deliberation
10-11 between a quorum of the voting board of the property owners'
10-12 association, or between a quorum of the voting board and another
10-13 person, during which property owners' association business or
10-14 policy over which the board has responsibility is discussed or
10-15 considered or during which the board takes formal action. The term
10-16 does not include the gathering of a quorum of the board at a social
10-17 function unrelated to the business of the association, or the
10-18 attendance by a quorum of the board at a regional, state, or
10-19 national convention, workshop, ceremonial event, or press
10-20 conference, if formal action is not taken and any discussion of
10-21 association business is incidental to the social function,
10-22 convention, workshop, ceremonial event, or press conference.

10-23 (c) Except as provided by this section, a meeting of the
10-24 property owners' association board or a committee or subcommittee
10-25 of the board is open to members of the property owners' association
10-26 and shall be held in a county in which all or part of the property
10-27 governed by the association is located or a county adjacent to that
10-28 county.

10-29 (d) The board shall keep a record of each regular,
10-30 emergency, or special board meeting in the form of written minutes
10-31 or an audio recording of the meeting. A record of a meeting must
10-32 state the subject of each motion or inquiry, regardless of whether
10-33 the board takes action on the motion or inquiry, and indicate each
10-34 vote, order, decision, or other action taken by the board. The
10-35 board shall make meeting records, including approved minutes,
10-36 available to a member for inspection and copying on the member's
10-37 written request to the board or the board's representative. The
10-38 board shall approve the minutes of a board meeting not later than
10-39 the next regular board meeting.

10-40 (e) The board shall give members notice of the date, hour,
10-41 place, and subject of a regular or special board meeting, including
10-42 a general description of any matters to be brought up for
10-43 deliberation in executive session. The notice shall be mailed to
10-44 each member or:

10-45 (1) posted at least 72 hours before the start of the
10-46 meeting in a conspicuous manner reasonably designed to provide
10-47 notice to association members:

10-48 (A) in a place located on the association's
10-49 common property or other conspicuously located property within the
10-50 association, with the property owner's consent; or

10-51 (B) on any Internet website maintained by the
10-52 association; and

10-53 (2) sent via e-mail to each owner who has registered an
10-54 e-mail address with the property owners' association; it is an
10-55 owner's duty to keep an e-mail address registered with the property
10-56 owners' association updated.

10-57 (f) If the board recesses a regular or special board meeting
10-58 to continue the following regular business day, the board is not
10-59 required to post notice of the continued meeting if the recess is
10-60 taken in good faith and not to circumvent this section. If a
10-61 regular or special board meeting is continued to the following
10-62 regular business day, and on that following day the board continues
10-63 the meeting to another day, the board shall give notice as required
10-64 by this section of the meeting continued to that other day.

10-65 (g) If at a regular, emergency, administrative, or special
10-66 meeting a member makes an inquiry regarding a subject for which
10-67 notice has not been given as required by this section, the notice
10-68 provisions of this section do not apply to:

10-69 (1) a statement by the board of specific factual

11-1 information given in response to the inquiry; or
 11-2 (2) a recitation of existing policy in response to the
 11-3 inquiry.
 11-4 (h) Any deliberation of or decision relating to the subject
 11-5 of an inquiry made under Subsection (g) shall be limited to a
 11-6 proposal to place the subject on the agenda for a subsequent board
 11-7 meeting.
 11-8 (i) In the event of a reasonably unforeseen emergency or
 11-9 urgent necessity that requires immediate board action, the board
 11-10 may meet in an emergency board meeting. Notice for an emergency
 11-11 board meeting may be given in at least one manner prescribed by
 11-12 Subsection (e)(1) at least two hours before the emergency session
 11-13 is convened and must clearly identify the emergency or urgent
 11-14 necessity for which the notice is given. A board in an emergency
 11-15 meeting may not consider fines, foreclosures, enforcement actions,
 11-16 increases in assessments, or any other foreseeable business or
 11-17 policy over which the board has responsibility. Any action taken in
 11-18 an emergency board meeting must be summarized orally, including an
 11-19 explanation of any known actual or estimated expenditures approved
 11-20 at the meeting, and documented in the minutes or tape recording of
 11-21 the next regular or special board meeting.
 11-22 (j) A property owners' association board may hold an
 11-23 administrative session, and that session is not subject to the
 11-24 notice requirements of this section. In any administrative
 11-25 session, the board may not take action regarding issuance of fines,
 11-26 commencement of foreclosure proceedings, levying of a special
 11-27 assessment, increases in assessments, or approval of items not
 11-28 previously approved in the association's budget.
 11-29 (k) Before the board calls an executive session, the board
 11-30 shall convene in a regular or special board meeting for which notice
 11-31 has been given as provided by this section. During that board
 11-32 meeting, the presiding board member may call an executive session
 11-33 by announcing that an executive session will be held to deliberate a
 11-34 matter described by Subsection (l) and identifying the specific
 11-35 subdivision of Subsection (l) under which the executive session
 11-36 will be held. A vote or other action item may not be taken in
 11-37 executive session.
 11-38 (l) A board of a property owners' association may meet in
 11-39 executive session, to which the members do not have access, to
 11-40 deliberate:
 11-41 (1) anticipated or pending litigation, settlement
 11-42 offers, or interpretations of the law with the association's legal
 11-43 counsel;
 11-44 (2) complaints or charges against or issues regarding
 11-45 a board member or agent, employee, contractor, or other
 11-46 representative of the property owners' association;
 11-47 (3) a payment plan under Section 209.0062;
 11-48 (4) a foreclosure of a lien;
 11-49 (5) an enforcement action against a member of the
 11-50 association, including for nonpayment of amounts due;
 11-51 (6) the purchase, exchange, lease, or value of real
 11-52 property, if the board determines in good faith that deliberation
 11-53 in an open board meeting may have a detrimental effect on the
 11-54 association;
 11-55 (7) business and financial issues relating to the
 11-56 negotiation of a contract, if the board determines in good faith
 11-57 that deliberation in an open board meeting may have a detrimental
 11-58 effect on the position of the association; or
 11-59 (8) matters involving the invasion of privacy of an
 11-60 individual owner.
 11-61 Sec. 209.0056. NOTICE OF ELECTION OR ASSOCIATION VOTE.
 11-62 (a) On or before the 30th day before the date an election or vote
 11-63 is held by a property owners' association, the association shall
 11-64 give each owner of property in the property owners' association
 11-65 written notice of the election or vote.
 11-66 (b) This section supersedes any contrary requirement in a
 11-67 dedicatory instrument.
 11-68 (c) This section does not apply to a property owners'
 11-69 association that is subject to Chapter 552, Government Code, by

12-1 application of Section 552.0036, Government Code.
 12-2 Sec. 209.0057. TABULATION OF VOTES. (a) This section does
 12-3 not apply to a property owners' association that is subject to
 12-4 Chapter 552, Government Code, by application of Section 552.0036,
 12-5 Government Code.

12-6 (b) On the written petition of owners having at least 10
 12-7 percent of all voting interests in a property owners' association
 12-8 for a vote tabulation under this subsection, received by the
 12-9 association at least 15 days before the first date that votes may be
 12-10 cast, to tabulate the votes in any matter subject to a vote of the
 12-11 members of a mandatory property owners' association, the
 12-12 association shall enter into a contract for the services of a person
 12-13 who is not a member of the association or related to a member of the
 12-14 association board within the third degree by consanguinity or
 12-15 affinity, as determined under Chapter 573, Government Code, and who
 12-16 is a current or former:

- 12-17 (1) county judge;
- 12-18 (2) county elections administrator;
- 12-19 (3) justice of the peace; or
- 12-20 (4) county voter registrar.

12-21 (c) The name of each person tabulating votes of the members
 12-22 of a property owners' association and the results of the tabulation
 12-23 must be reflected in the minutes of the association.

12-24 (d) Any owner may, not later than the fifth day after the
 12-25 date of the initial tabulation of votes, require a recount of the
 12-26 votes. A demand for a recount must be submitted in writing either:

12-27 (1) in person to a property owners' association board
 12-28 member;

12-29 (2) by certified mail, return receipt requested, or by
 12-30 delivery by the United States Postal Service with signature
 12-31 confirmation service to the association's mailing address on the
 12-32 latest management certificate filed under Section 209.004; or

12-33 (3) in person to the association's managing agent as
 12-34 reflected on the latest management certificate filed under Section
 12-35 209.004.

12-36 (e) The property owners' association shall, at the expense
 12-37 of the owner requesting the recount, retain for the purpose of
 12-38 performing the recount the services of a person who is not a member
 12-39 of the association or related to a member of the association board
 12-40 within the third degree of consanguinity or affinity, as determined
 12-41 under Chapter 573, Government Code and who is a current or former:

- 12-42 (1) county judge;
- 12-43 (2) county elections administrator;
- 12-44 (3) justice of the peace; or
- 12-45 (4) county voter registrar.

12-46 (f) Any recount under Subsection (d) must be performed on or
 12-47 before the 30th day after the date of receipt of a request for and
 12-48 payment for a recount in accordance with Subsections (d) and (e).
 12-49 If the recount changes the results of the election, the association
 12-50 shall reimburse the requesting owner for the cost of the recount.
 12-51 Any action taken by the board in the period between the initial
 12-52 election vote tally and the completion of the recount may not be
 12-53 affected by any recount.

12-54 Sec. 209.0058. BALLOTS. (a) Any vote cast in an election
 12-55 or vote by a member of a property owners' association must be in
 12-56 writing and signed by the member.

12-57 (b) Electronic votes cast under Section 209.00593
 12-58 constitute written and signed ballots.

12-59 (c) In an association-wide election, written and signed
 12-60 ballots are not required for uncontested races.

12-61 Sec. 209.0059. RIGHT TO VOTE. (a) A provision in a
 12-62 dedicatory instrument that would disqualify a property owner from
 12-63 voting in an association election of board members or on any matter
 12-64 concerning the rights or responsibilities of the owner is void.

12-65 (b) This section does not apply to a property owners'
 12-66 association that is subject to Chapter 552, Government Code, by
 12-67 application of Section 552.0036, Government Code.

12-68 Sec. 209.00591. PROXY VOTING. A provision in any
 12-69 dedicatory instrument that provides for a proxy vote in any matter

13-1 subject to a vote of the members of the property owners' association
13-2 is void.

13-3 Sec. 209.00592. BOARD MEMBERSHIP. (a) Except as provided
13-4 by Subsection (b), a provision in a dedicatory instrument that
13-5 restricts a property owner's right to run for a position on the
13-6 board of the property owners' association is void.

13-7 (b) If a board is presented with written, documented
13-8 evidence from a database or other record maintained by a
13-9 governmental law enforcement authority that a board member has been
13-10 convicted of a felony or crime involving moral turpitude, the board
13-11 member is immediately ineligible to serve on the board of the
13-12 property owners' association, automatically considered removed
13-13 from the board, and prohibited from future service on the board.

13-14 Sec. 209.00593. VOTING; QUORUM. (a) The voting rights of
13-15 an owner may be cast or given:

13-16 (1) in person at a meeting of the property owners'
13-17 association;

13-18 (2) by absentee ballot in accordance with this
13-19 section; or

13-20 (3) by electronic ballot in accordance with this
13-21 section.

13-22 (b) An absentee or electronic ballot:

13-23 (1) may be counted as an owner present and voting for
13-24 the purpose of establishing a quorum only for items appearing on the
13-25 ballot;

13-26 (2) may not be counted, even if properly delivered, if
13-27 the owner attends any meeting to vote in person, so that any vote
13-28 cast at a meeting by a property owner supersedes any vote submitted
13-29 by absentee or electronic ballot previously submitted for that
13-30 proposal; and

13-31 (3) may not be counted on the final vote of a proposal
13-32 if the motion was amended at the meeting to be different from the
13-33 exact language on the absentee or electronic ballot.

13-34 (c) A solicitation for votes by absentee ballot must
13-35 include:

13-36 (1) an absentee ballot that contains each proposed
13-37 action and provides an opportunity to vote for or against each
13-38 proposed action;

13-39 (2) instructions for delivery of the completed
13-40 absentee ballot, including the delivery location; and

13-41 (3) the following language: "By casting your vote via
13-42 absentee ballot you will forgo the opportunity to consider and vote
13-43 on any action from the floor on these proposals, if a meeting is
13-44 held. This means that if there are amendments to these proposals
13-45 your votes will not be counted on the final vote on these measures.
13-46 If you desire to retain this ability, please attend any meeting in
13-47 person. You may submit an absentee ballot and later choose to
13-48 attend any meeting in person, in which case any in-person vote will
13-49 prevail."

13-50 (d) For the purposes of this section, "electronic ballot"
13-51 means a ballot:

13-52 (1) given by:

13-53 (A) electronic mail;

13-54 (B) facsimile; or

13-55 (C) posting on an Internet website;

13-56 (2) for which the identity of the property owner
13-57 submitting the ballot can be confirmed; and

13-58 (3) for which the property owner may receive a receipt
13-59 of the electronic transmission and receipt of the owner's ballot.

13-60 (e) If an electronic ballot is posted on an Internet
13-61 website, a notice of the posting shall be sent to each owner that
13-62 contains instructions on obtaining access to the posting on the
13-63 website.

13-64 (f) This section supersedes any contrary provision in a
13-65 dedicatory instrument.

13-66 (g) This section does not apply to a property owners'
13-67 association that is subject to Chapter 552, Government Code, by
13-68 application of Section 552.0036, Government Code.

13-69 SECTION 13. Section 209.006, Property Code, is amended by

14-1 amending Subsection (b) and adding Subsections (c), (d), (e), and
 14-2 (f) to read as follows:

14-3 (b) The notice must:

14-4 (1) describe the violation or property damage that is
 14-5 the basis for the suspension action, charge, or fine and state any
 14-6 amount due the association from the owner; ~~and~~

14-7 (2) except as provided by Subsection (d), inform the
 14-8 owner that the owner:

14-9 (A) is entitled to a reasonable period to cure
 14-10 the violation and avoid the fine ~~[or suspension unless the owner was~~
 14-11 ~~given notice and a reasonable opportunity to cure a similar~~
 14-12 ~~violation within the preceding six months]; and~~

14-13 (B) may request a hearing under Section 209.007
 14-14 on or before the 30th day after the date notice was delivered to the
 14-15 owner;

14-16 (3) specify the date by which the owner must cure the
 14-17 violation if the violation is of a curable nature and does not pose
 14-18 a threat to public health or safety;

14-19 (4) specify the dollar amount of any fine the
 14-20 association seeks to levy;

14-21 (5) specify each provision of the dedicatory
 14-22 instrument the owner is alleged to have violated; and

14-23 (6) be sent by certified mail, return receipt
 14-24 requested, or delivered by the United States Postal Service with
 14-25 signature confirmation service to the owner at the owner's last
 14-26 known address as shown on the association's records ~~[receives the~~
 14-27 ~~notice].~~

14-28 (c) The date specified in the notice under Subsection (b)(3)
 14-29 must provide a reasonable period of at least 30 days for the owner
 14-30 to cure the violation if the violation is of a curable nature and
 14-31 does not pose a threat to public health or safety.

14-32 (d) Subsections (a) and (b) do not apply to a violation for
 14-33 which the owner has been previously given notice under this section
 14-34 and the opportunity to exercise any rights available under this
 14-35 section in the preceding six months.

14-36 (e) If the property owner does not cure the violation in the
 14-37 time provided under Subsection (c) and does not request a hearing
 14-38 under Subsection (b)(2)(B), the property owners' association may
 14-39 assess the fine and shall provide notice of the assessment to the
 14-40 owner. If the property owner cures the violation before the
 14-41 expiration period for cure specified under Subsection (c), any fine
 14-42 assessed for the violation is void.

14-43 (f) For purposes of this section, a violation is considered
 14-44 a threat to public health or safety if the violation could
 14-45 materially affect the physical health or safety of an ordinary
 14-46 resident.

14-47 SECTION 14. Chapter 209, Property Code, is amended by
 14-48 adding Sections 209.0061, 209.0062, 209.0063, and 209.0064 to read
 14-49 as follows:

14-50 Sec. 209.0061. ASSESSMENT OF FINES. (a) A fine assessed
 14-51 by the property owners' association must be reasonable in the
 14-52 context of the nature and frequency of the violation and the effect
 14-53 of the violation on the subdivision as a whole. If the association
 14-54 allows fines for a continuing violation to accumulate against a lot
 14-55 or an owner, the association must establish a reasonable maximum
 14-56 fine amount for a continuing violation, at which point the total
 14-57 fine amount is capped.

14-58 (b) If a lot occupant other than the owner violates a
 14-59 provision of the dedicatory instrument, the property owners'
 14-60 association, in addition to exercising any of the association's
 14-61 powers against the owner, may assess a fine directly against the
 14-62 nonowner occupant in the same manner as provided for an owner but
 14-63 may not require payment from both the owner and a nonowner occupant
 14-64 for the same violation.

14-65 (c) If the property owners' association assesses a fine
 14-66 against a nonowner occupant under this section, the notice
 14-67 provisions of Section 209.006 and the hearing provisions of Section
 14-68 209.007 apply to the nonowner occupant in the same manner as those
 14-69 provisions apply to an owner.

15-1 Sec. 209.0062. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN
 15-2 ASSESSMENTS. (a) A property owners' association shall adopt
 15-3 reasonable guidelines to establish an alternative payment schedule
 15-4 by which an owner may make partial payments to the property owners'
 15-5 association for delinquent regular or special assessments or any
 15-6 other amount owed to the association without accruing additional
 15-7 monetary penalties. For purposes of this section, monetary
 15-8 penalties do not include reasonable costs associated with
 15-9 administering the payment plan or interest.

15-10 (b) For any approved special assessment in an amount greater
 15-11 than the equivalent of the sum of all regular assessments payable in
 15-12 the year the special assessment is approved, a property owners'
 15-13 association shall allow partial payments of the special assessment
 15-14 for 12 months unless the property owner requests a shorter payment
 15-15 period in writing at the time the property owner requests an
 15-16 alternative payment plan. A property owners' association may offer
 15-17 a reasonable discount for an owner making a one-time lump sum
 15-18 payment of the special assessment.

15-19 (c) For any approved special assessment in an amount greater
 15-20 than the equivalent of one-half the sum of all regular assessments
 15-21 payable in the year the special assessment is approved, a property
 15-22 owners' association shall allow partial payments of the special
 15-23 assessment for six months unless the property owner requests a
 15-24 shorter payment period in writing at the time the property owner
 15-25 requests an alternative payment plan. A property owners'
 15-26 association may offer a reasonable discount to an owner making a
 15-27 one-time lump sum payment of the special assessment.

15-28 (d) A property owners' association is not required to allow
 15-29 a payment plan for any amount that extends more than 12 months from
 15-30 the date of the owner's request for a payment plan or to enter into a
 15-31 payment plan with an owner who failed to honor the terms of a
 15-32 previous payment plan during the five years following an owner's
 15-33 default under a previous payment plan.

15-34 (e) A property owners' association shall file the
 15-35 association's guidelines under this section in the real property
 15-36 records of each county in which the subdivision is located.

15-37 (f) A property owners' association's failure to file as
 15-38 required by this section the association's guidelines in the real
 15-39 property records of each county in which the subdivision is located
 15-40 does not prohibit a property owner from receiving an alternative
 15-41 payment schedule by which the owner may make partial payments to the
 15-42 property owners' association for delinquent regular or special
 15-43 assessments or any other amount owed to the association without
 15-44 accruing additional monetary penalties, as defined by Subsection
 15-45 (a).

15-46 Sec. 209.0063. PRIORITY OF PAYMENTS. Unless otherwise
 15-47 provided in writing by the property owner at the time payment is
 15-48 made, a payment received by a property owners' association from the
 15-49 owner shall be applied to the owner's debt in the following order of
 15-50 priority:

15-51 (1) any delinquent assessment;
 15-52 (2) any current assessment;
 15-53 (3) any attorney's fees incurred by the association
 15-54 associated solely with assessments or any other charge that could
 15-55 provide the basis for foreclosure;

15-56 (4) any fines assessed by the association;
 15-57 (5) any attorney's fees incurred by the association
 15-58 that are not subject to Subdivision (3); and

15-59 (6) any other amount owed to the association.

15-60 Sec. 209.0064. COLLECTIONS. A property owners' association
 15-61 must bring suit or otherwise initiate against an owner a collection
 15-62 action authorized by the dedicatory instruments or other law on or
 15-63 before the 10th anniversary of the date on which the cause of action
 15-64 for collection of the debt accrues. Section 16.004, Civil Practice
 15-65 and Remedies Code, does not apply to the collection of a debt owed
 15-66 by an owner to a property owners' association.

15-67 SECTION 15. Section 209.007, Property Code, is amended by
 15-68 amending Subsection (a) and adding Subsections (f), (g), (h), (i),
 15-69 and (j) to read as follows:

16-1 (a) If the owner is entitled to an opportunity to cure the
 16-2 violation, the owner has the right to submit a written request for a
 16-3 hearing to discuss and verify facts and resolve the matter in issue
 16-4 before a committee appointed by the board of the property owners'
 16-5 association or before the board if the board does not appoint a
 16-6 committee. The written request must contain a statement of the
 16-7 grounds on which the owner believes the owner is not in violation
 16-8 and citations of the dedicatory instrument for each violation
 16-9 alleged.

16-10 (f) If the parties fail to reach agreement in or after the
 16-11 hearing described by this section, the property owners' association
 16-12 must file suit to uphold and enforce any fine sought to be assessed.
 16-13 The suit must be filed in a justice court or small claims court not
 16-14 later than the 180th day after the date of the hearing described by
 16-15 this section or an appeal under Subsection (b), whichever is later.
 16-16 The complaint must list each violation and be accompanied by
 16-17 citation of the dedicatory instrument for each violation. If the
 16-18 property owners' association does not file suit within the time
 16-19 prescribed by this subsection, the association's right to collect
 16-20 the fine is considered waived.

16-21 (g) Not later than the 30th day after the date a suit is
 16-22 filed under Subsection (f), the court shall hold an evidentiary
 16-23 hearing on the matter. The parties are not entitled to any
 16-24 discovery.

16-25 (h) At the evidentiary hearing, the property owners'
 16-26 association has the burden of proving by a preponderance of the
 16-27 evidence that the property owner has violated a restrictive
 16-28 covenant.

16-29 (i) The court shall determine whether a violation has
 16-30 occurred and, if so, whether the fine for the violation is
 16-31 reasonable considering the type, duration, and severity of the
 16-32 violation.

16-33 (j) If the court finds that the position taken by either
 16-34 party is groundless or is taken in bad faith, the court may award
 16-35 the prevailing party's attorney's fees.

16-36 SECTION 16. Chapter 209, Property Code, is amended by
 16-37 adding Section 209.0091 to read as follows:

16-38 Sec. 209.0091. JUDICIAL FORECLOSURE REQUIRED. (a) Except
 16-39 as provided by Subsection (c), a property owners' association may
 16-40 not foreclose a property owners' association assessment lien unless
 16-41 the association first obtains a court order in an application for
 16-42 expedited foreclosure under the rules adopted by the supreme court
 16-43 under Subsection (b). A property owners' association may use the
 16-44 procedure described by this subsection to foreclose any lien
 16-45 described by the association's dedicatory instruments.

16-46 (b) The supreme court, as an exercise of the court's
 16-47 authority under Section 74.024, Government Code, shall adopt rules
 16-48 establishing expedited foreclosure proceedings for use by a
 16-49 property owners' association in foreclosing an assessment lien of
 16-50 the association. The rules adopted under this subsection must be
 16-51 substantially similar to the rules adopted by the supreme court
 16-52 under Section 50(r), Article XVI, Texas Constitution.

16-53 (c) Expedited foreclosure is not required under this
 16-54 section if the owner of the property that is subject to foreclosure
 16-55 agrees in writing at the time the foreclosure is sought to waive
 16-56 expedited foreclosure under this section. A waiver under this
 16-57 subsection may not be required as a condition of the transfer of
 16-58 title to real property.

16-59 (d) A provision granting a right to foreclose a lien on real
 16-60 property for unpaid amounts due to a property owners' association
 16-61 may be removed from a dedicatory instrument or adopted in a
 16-62 dedicatory instrument by a vote of at least 51 percent of the total
 16-63 votes allocated to property owners in the property owners'
 16-64 association. Owners holding at least 10 percent of all voting
 16-65 interests in the property owners' association may petition the
 16-66 association and require a special meeting to be called for the
 16-67 purposes of taking a vote for the purposes of this section.

16-68 SECTION 17. Subsection (a), Section 209.010, Property Code,
 16-69 is amended to read as follows:

17-1 (a) A property owners' association that conducts a
17-2 foreclosure sale of an owner's lot must send to the lot owner not
17-3 later than the 30th day after the date of the foreclosure sale:

17-4 (1) a written notice stating the date and time the sale
17-5 occurred and informing the lot owner of the owner's right to redeem
17-6 the property under Section 209.011; and

17-7 (2) a copy of Section 209.011.

17-8 SECTION 18. Chapter 209, Property Code, is amended by
17-9 adding Section 209.014 to read as follows:

17-10 Sec. 209.014. RESTRICTIONS ON OWNERSHIP VOID. A property
17-11 owners' association may not prohibit an owner from owning multiple
17-12 properties governed by the property owners' association if the
17-13 cumulative voting rights of all of that owner's properties are 25
17-14 percent or less of all voting interests in the property owners'
17-15 association. This section does not apply during a development
17-16 period as defined by Section 202.011.

17-17 SECTION 19. Subsection (a), Section 211.002, Property Code,
17-18 is amended to read as follows:

17-19 (a) This chapter applies only to a residential real estate
17-20 subdivision or any unit or parcel of a subdivision to which another
17-21 chapter in this title that provides a procedure under which a
17-22 subdivision's restrictions may be amended does not apply [~~located~~
17-23 ~~in whole or in part within an unincorporated area of a county if the~~
17-24 ~~county has a population of less than 65,000~~].

17-25 SECTION 20. Subsection (c), Section 202.004, Property Code,
17-26 is amended to read as follows:

17-27 (c) For a violation of a restrictive covenant of a property
17-28 owners' association that is a mixed use master association that
17-29 existed before January 1, 1974, and that does not have the authority
17-30 under a dedicatory instrument or other governing document to impose
17-31 finer, a [A] court may assess civil damages [~~for the violation of a~~
17-32 ~~restrictive covenant~~] in an amount not to exceed \$200 for each day
17-33 of the violation.

17-34 SECTION 21. (a) Subsection (a), Section 5.006, Property
17-35 Code, as amended by this Act, applies only to an action filed on or
17-36 after the effective date of this Act. An action filed before the
17-37 effective date of this Act is governed by the law in effect
17-38 immediately before the effective date of this Act, and that law is
17-39 continued in effect for that purpose.

17-40 (b) Section 5.012, Property Code, as amended by this Act,
17-41 applies only to a sale of property that occurs on or after the
17-42 effective date of this Act. For the purposes of this section, a
17-43 sale of property occurs before the effective date of this Act if the
17-44 executory contract binding the purchaser to purchase the property
17-45 is executed before that date. A sale of property that occurs before
17-46 the effective date of this Act is governed by the law in effect
17-47 immediately before that date, and that law is continued in effect
17-48 for that purpose.

17-49 (c) Sections 202.015 and 209.0035, Property Code, as added
17-50 by this Act, apply only to a cause of action that accrues on or after
17-51 the effective date of this Act. A cause of action that accrues
17-52 before the effective date of this Act is governed by the law in
17-53 effect immediately before the effective date of this Act, and that
17-54 law is continued in effect for that purpose.

17-55 (d) Subsection (c), Section 202.004, Property Code, as
17-56 amended by this Act, applies only to an action brought on or after
17-57 the effective date of this Act. An action brought before the
17-58 effective date of this Act is governed by the law in effect
17-59 immediately before the effective date of this Act, and that law is
17-60 continued in effect for that purpose.

17-61 (e) Section 202.006, Property Code, as amended by this Act,
17-62 and Sections 202.008, 202.010, 202.011, 202.012, 202.014,
17-63 209.0059, and 209.00591 and Subsection (a), Section 209.00592, and
17-64 Section 209.014, Property Code, as added by this Act, apply to a
17-65 provision in a dedicatory instrument or a restrictive covenant
17-66 enacted before, on, or after the effective date of this Act, except
17-67 that any action taken before the effective date of this Act based on
17-68 an unfiled dedicatory instrument is not invalidated by Section
17-69 202.006, Property Code, as amended by this Act.

18-1 (f) Section 209.005, Property Code, as amended by this Act,
18-2 applies only to a request for information received by a property
18-3 owners' association on or after the effective date of this Act. A
18-4 request for information received by a property owners' association
18-5 before the effective date of this Act is governed by the law in
18-6 effect immediately before the effective date of this Act, and that
18-7 law is continued in effect for that purpose.

18-8 (g) Sections 209.0061, 209.0062, and 209.0064, Property
18-9 Code, as added by this Act, apply only to an assessment or other
18-10 debt that becomes due on or after the effective date of this Act. An
18-11 assessment or other debt that becomes due before the effective date
18-12 of this Act is governed by the law in effect immediately before the
18-13 effective date of this Act, and that law is continued in effect for
18-14 that purpose.

18-15 (h) Section 209.0063, Property Code, as added by this Act,
18-16 applies only to a payment received by a property owners'
18-17 association on or after the effective date of this Act. A payment
18-18 received by a property owners' association before the effective
18-19 date of this Act is governed by the law in effect immediately before
18-20 the effective date of this Act, and that law is continued in effect
18-21 for that purpose.

18-22 (i) Section 209.0091, Property Code, as added by this Act,
18-23 applies only to a foreclosure sale that occurs after January 1,
18-24 2010. A foreclosure sale that occurs on or before January 1, 2010,
18-25 is governed by the law in effect immediately before the effective
18-26 date of this Act, and that law is continued in effect for that
18-27 purpose.

18-28 (j) Subsection (a), Section 209.010, Property Code, as
18-29 amended by this Act, applies only to a foreclosure sale conducted on
18-30 or after the effective date of this Act. A foreclosure sale
18-31 conducted before the effective date of this Act is governed by the
18-32 law in effect immediately before the effective date of this Act, and
18-33 that law is continued in effect for that purpose.

18-34 SECTION 22. Not later than January 1, 2010, each property
18-35 owners' association shall present for recording with the county
18-36 clerk as prescribed by Section 202.006, Property Code, as amended
18-37 by this Act, each dedicatory instrument governing the association
18-38 that has not been previously recorded in the real property records
18-39 of the county.

18-40 SECTION 23. Not later than January 1, 2010, the Supreme
18-41 Court of Texas shall adopt rules of civil procedure under Section
18-42 209.0091, Property Code, as added by this Act.

18-43 SECTION 24. This Act takes effect January 1, 2010.

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