

By: Farrar

H.B. No. 3321

A BILL TO BE ENTITLED

AN ACT

relating to creation, re-creation, extension, renewal, or modification of or addition to deed restrictions in certain areas.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 201.001, Property Code, is amended by adding Subsections (e), (f), and (g) to read as follows:

(e) The following areas are "residential real estate subdivisions" for which restrictions may be created, regardless of whether restrictions previously applied to the area, or expired restrictions may be re-created under this chapter:

(1) a contiguous area, excluding streets, alleys, and public areas, that is at least 50 percent of an area within a municipality or its extraterritorial jurisdiction depicted on a recorded map or plat if the land encompassed within the maps or plats is or was burdened by restrictions limiting all or at least a majority of the land area covered by the map or plat, excluding streets and public areas, to residential use only;

(2) a contiguous area, excluding streets, alleys, and public areas, that is at least 50 percent of an area within a municipality or its extraterritorial jurisdiction that has been divided into two or more parts and that is or was burdened by restrictions limiting at least a majority of the land area burdened by restrictions, excluding streets and public areas, to residential use only, if the instrument or instruments creating the

1 restrictions are recorded in the deed or real property records of a
2 county; or

3 (3) an area designated as a historic, preservation, or
4 conservation district or any other official designation the purpose
5 of which is to preserve the historically primarily residential
6 character of the area, when the designation is granted by a
7 municipality.

8 (f) The following areas are "residential real estate
9 subdivisions" for which unexpired restrictions may be extended,
10 renewed, added to, or modified under this chapter:

11 (1) all land encompassed within one or more maps or
12 plats of land that is divided into two or more parts if the maps or
13 plats cover land within a city, town, or village, or within the
14 extraterritorial jurisdiction of a city, town, or village and are
15 recorded in the deed, map, or real property records of a county, and
16 the land encompassed within the maps or plats is or was burdened by
17 restrictions limiting all or at least a majority of the land area
18 covered by the map or plat, excluding streets and public areas, to
19 residential use only; or

20 (2) all land located within a city, town, or village,
21 or within the extraterritorial jurisdiction of a city, town, or
22 village that has been divided into two or more parts and that is or
23 was burdened by restrictions limiting at least a majority of the
24 land area burdened by restrictions, excluding streets and public
25 areas, to residential use only, if the instrument or instruments
26 creating the restrictions are recorded in the deed or real property
27 records of a county.

1 (g) For the purposes of Subsection (e), an area is at least
2 50 percent of a larger area if the smaller area contains at least 50
3 percent of the area, originally platted lots, or separately owned
4 parcels, tracts, or building sites contained in the larger area.

5 SECTION 2. Section 201.002(b), Property Code, is amended to
6 read as follows:

7 (b) The purpose of this chapter is to provide a procedure
8 for extending the term of, renewal of, creation of, re-creation of,
9 additions to, or modification of restrictions and to provide for
10 the removal of any restriction or other provision relating to race,
11 religion, or national origin that is void and unenforceable under
12 either the United States Constitution or Section 5.026.

13 SECTION 3. Chapter 201, Property Code, is amended by adding
14 Section 201.0021 to read as follows:

15 Sec. 201.0021. CONSTRUCTION. This chapter and any
16 documentation made in connection with an attempt to comply with
17 this chapter shall be liberally construed to effectuate the intent
18 of this chapter and the documentation, consistent with Section
19 201.002.

20 SECTION 4. Section 201.004, Property Code, is amended to
21 read as follows:

22 Sec. 201.004. EXTENSION, RENEWAL, CREATION, RE-CREATION,
23 MODIFICATION OF, OR ADDITION TO, RESTRICTIONS. (a) A petition may
24 be filed under this chapter to:

- 25 (1) extend or renew an unexpired restriction;
26 (2) create or re-create a restriction;
27 (3) add to or modify an existing restriction; or

1 (4) modify an existing provision in an instrument
2 creating a restriction that provides for extension of those
3 restrictions.

4 (b) A petition is not effective to extend, renew, create,
5 re-create, add to, or modify a restriction unless the petition is
6 filed with the county clerk's office in the county where the
7 subdivision is located before the second anniversary of the date
8 the committee files with the county clerk the notice required by
9 Section 201.005(a).

10 (c) If a petition meeting the requirements of this chapter
11 is filed with the county clerk within the required period, the
12 provisions of the petition extending, renewing, creating,
13 re-creating, adding to, or modifying a restriction apply to and
14 burden all of the property in the subdivision except property
15 excluded under Section 201.009. If a petition contains provisions
16 extending or renewing the term of a restriction, the petition may
17 provide for an initial extension or renewal period of not more than
18 10 years and additional automatic extensions of the term for not
19 more than 10 years each. The extension, renewal, creation,
20 re-creation, or modification of, or addition to, a restriction
21 takes effect on the later of the dates the petition is filed with
22 the county clerk or a date specified in the petition.

23 SECTION 5. Sections 201.005(b) and (c), Property Code, are
24 amended to read as follows:

25 (b) A notice filed under this chapter must contain:

26 (1) a statement that a petition committee has been
27 formed for the extension of the term of, creation, re-creation, or

1 renewal of, addition to, or modification of one or more
2 restrictions, as applicable;

3 (2) the name and residential address of each member of
4 the committee;

5 (3) the name of the subdivision to which the
6 restrictions apply and a reference to the real property records or
7 map or plat records where the instrument or instruments that
8 contain the restrictions sought to be extended, renewed, added to,
9 or modified are recorded or, if the creation or re-creation of a
10 restriction is proposed, a reference to the place where the map or
11 other document, if any, is recorded;

12 (4) a general statement of the matters to be included
13 in the petition;

14 (5) if the creation or re-creation of a restriction
15 for a subdivision is proposed, a copy of the proposed petition
16 creating the restriction; and

17 (6) if the amendment or modification of a restriction
18 is proposed, a copy of the proposed instrument creating the
19 amendment or modification, containing the original restriction
20 that is affected and indicating by appropriate deletion and
21 insertion the change to the restriction that is proposed to be
22 amended or modified.

23 (c) At least one [~~Each~~] member of the committee must sign
24 and acknowledge the notice before a notary or other official
25 authorized to take acknowledgments. The signatures of the other
26 members of the committee are not required to be notarized. The
27 signature of one owner of a tract or lot binds all owners of the

1 tract or lot for the purpose of establishment of the petition
2 committee.

3 SECTION 6. Sections 201.006(a), (b), and (d), Property
4 Code, are amended to read as follows:

5 (a) A petition may be circulated, approved, signed,
6 [~~acknowledged~~] and filed by or on behalf of owners at any time
7 during the circulating committee's existence. The petition must
8 conform to the requirements of Section 201.007. A signature on the
9 petition is not required to be notarized.

10 (b) The petition may be filed not later than one year after
11 the date on which the notice required by Section 201.005(a) is
12 filed. The petition must be approved [~~signed and acknowledged~~] by
13 owners who own, in the aggregate:

14 (1) a majority of the total number of lots in the
15 subdivision, in order to extend, renew, [~~or~~] create, or re-create
16 restrictions;

17 (2) a majority of the total number of separately owned
18 parcels, tracts, or building sites in the subdivision, whether or
19 not the parcels, tracts, or building sites contain part or all of
20 one or more platted lots or combinations of lots, in order to
21 extend, renew, [~~or~~] create, or re-create restrictions;

22 (3) a majority of the square footage within all of the
23 lots in the subdivision, excluding any area dedicated or used
24 exclusively for roadways or public purposes or by utilities, in
25 order to extend, renew, [~~or~~] create, or re-create restrictions;

26 (4) at least 75 percent of the total number of lots in
27 the subdivision, in order to modify or add to existing

1 restrictions;

2 (5) at least 75 percent of the total number of
3 separately owned parcels, tracts, or building sites in the
4 subdivision, whether or not the parcels, tracts, or building sites
5 contain part or all of one or more platted lots or combination of
6 lots, in order to modify or add to existing restrictions; or

7 (6) at least 75 percent of the square footage within
8 all of the lots in the subdivision, excluding any area dedicated or
9 used exclusively for roadways or public purposes or by utilities,
10 in order to modify or add to existing restrictions.

11 (d) The petition is effective if approved [~~signed and~~
12 ~~acknowledged~~] by the required number of owners of any one of the
13 classifications of property specified in Subsection (b) and is
14 filed as provided by Subsection (f).

15 SECTION 7. Section 201.007, Property Code, is amended to
16 read as follows:

17 Sec. 201.007. CONTENTS OF PETITION. (a) A petition filed
18 under this chapter must contain or be supplemented by one or more
19 instruments containing:

20 (1) the name of the subdivision;

21 (2) a reference to the real property records or map or
22 plat records where the instrument or instruments that contain any
23 restriction sought to be extended, renewed, added to, or modified
24 are recorded or, in the case of the creation or re-creation of a
25 restriction, a reference to the place where the map or other
26 document identifying the subdivision is recorded;

27 (3) a verbatim statement of any provisions for

1 extension of the term of, or addition to, the restriction;

2 (4) if a restriction is being amended or modified, the
3 text of the proposed instrument creating the amendment or
4 modification, together with a comparison of the original
5 restriction that is affected indicating by appropriate deletion and
6 insertion the change to the restriction that is proposed to be
7 amended or modified;

8 (5) if a restriction is being created or re-created,
9 the text of the proposed instrument creating the restriction or of
10 the restriction being re-created;

11 (6) original [~~acknowledged~~] signatures of the
12 required number of owners as provided by Section 201.006;

13 (7) alternate boxes, clearly identified in a
14 conspicuous manner next to the place for signing the petition, that
15 enable each record owner to mark the appropriate box to show the
16 exercise of the owner's option of either including or excluding the
17 owner's property from being burdened by the restrictions being
18 extended, renewed, created, re-created, added to, or modified;

19 (8) a statement that owners who do not sign the
20 petition must file suit under Section 201.010 before the 181st day
21 after the date on which the certificate called for by Section
22 201.008(e) is filed in order to challenge the procedures followed
23 in extending, renewing, creating, re-creating, adding to, or
24 modifying a restriction; and

25 (9) a statement that owners who do not sign the
26 petition may delete their property from the operation of the
27 extended, renewed, created, re-created, added to, or modified

1 restriction by filing a statement described in the fourth listed
2 category in Section 201.009(b) before one year after the date on
3 which the owner receives actual notice of the filing of the petition
4 authorized by this chapter.

5 (b) If a restriction being added to, modified, [~~or~~]
6 extended, or re-created contains any provision relating to race,
7 religion, or national origin that is void and unenforceable under
8 either the United States Constitution or Section 5.026, the void
9 and unenforceable restriction shall, by the provisions of the
10 petition, be declared to be deleted from the restriction as if the
11 provision had never been contained in the restriction.

12 (c) Each petition filed under this chapter must contain an
13 assertion from the signing owners that they own record title to
14 property within the subdivision, and the legal description and
15 street address of the property of each signing owner must be shown
16 beside or above the signature. If there is more than one [~~record~~]
17 owner of a tract or lot, the signature of one [~~each record~~] owner of
18 the tract or lot binds all owners of the tract or lot for the purpose
19 of approving the petition. If the owner of a tract or lot is
20 married, the signature of the spouse of the record owner binds the
21 record owner, even if the spouse is not a record owner, if the
22 signing spouse asserts on the petition that the signing spouse has a
23 community property interest in the tract or lot [~~must sign the~~
24 ~~petition before the property can be counted as a part of the number~~
25 ~~required by Section 201.006~~].

26 SECTION 8. Sections 201.008(a) and (c), Property Code, are
27 amended to read as follows:

1 (a) Not later than the 60th day after the date on which a
2 petition that meets the requirements of this chapter is filed, the
3 committee shall give notice directed to all persons who then are
4 record owners of property in the subdivision. The notice must
5 contain:

6 (1) the name of the subdivision covered by the
7 petition;

8 (2) a copy of the petition;

9 (3) a statement that the proper number of property
10 owners in the subdivision have approved [~~signed and acknowledged~~]
11 the petition; and

12 (4) the date the petition was filed with the county
13 clerk.

14 (c) If the committee acts in good faith in determining
15 ownership and giving notice as required by this section, the
16 failure to give personal notice to an owner does not affect the
17 application of an extension, renewal, modification, [~~or~~] creation,
18 or re-creation of, or addition to, a restriction under this chapter
19 to the property of a person who signed the petition.

20 SECTION 9. Sections 201.009(b), (c), (d), and (e), Property
21 Code, are amended to read as follows:

22 (b) A restriction added, modified, created, re-created,
23 [~~or~~] extended, or renewed under this chapter does not affect or
24 encumber property within the subdivision that is included within
25 one of the following categories:

26 (1) property exclusively dedicated for use by the
27 public or for use by utilities;

1 (2) property of an owner who elected in the petition to
2 exclude the property from the restriction;

3 (3) property of an owner who did not sign the petition
4 and has not received actual notice of the filing of the petition;

5 (4) property of an owner who did not sign the petition
6 and who files, before one year after the date on which the owner
7 received actual notice of the filing of the petition, an
8 acknowledged statement describing the owner's property by
9 reference to the recorded map or plat of the subdivision and stating
10 that the owner elects to have the property deleted and excluded from
11 the operation of the extended, renewed, modified, added [~~changed~~],
12 [~~or~~] created, or re-created restriction; and

13 (5) property owned by a minor or a person judicially
14 declared to be incompetent at the time the certificate is filed,
15 unless:

16 (A) actual notice of the filing of the petition
17 is given to a guardian of the minor or incompetent person, and the
18 guardian has not filed the statement described in the fourth listed
19 category in this subsection;

20 (B) a predecessor in title to the minor or
21 incompetent person signed a petition that was filed while the
22 property was owned by the predecessor; or

23 (C) the incompetent person signed a petition that
24 was filed before the judicial declaration of the person's
25 incompetency.

26 (c) The county clerk shall file a statement described in the
27 fourth listed category in Subsection (b) in the same manner as the

1 petition and certificate. Substantial compliance by an owner with
2 the requirements for the statement prevents the owner's property
3 from being burdened by an extended, renewed, created, re-created,
4 added to, or modified restriction if the statement is filed within
5 the time required.

6 (d) A lienholder whose lien was established before the
7 effective date of a petition is not bound by the petition unless the
8 lienholder signs it and it is later filed. If such a lienholder who
9 does not sign the filed petition later acquires title to the
10 property in the subdivision through foreclosure, the acquisition is
11 free of the restrictions added, modified, created, re-created, [~~or~~]
12 extended, or renewed by the petition. However, if any other person
13 acquires the title to the property at a foreclosure sale, that
14 person takes the property subject to the restriction added,
15 modified, created, re-created, [~~or~~] extended, or renewed by the
16 petition, if any prior owner of the foreclosed property signed and
17 acknowledged the petition.

18 (e) Notwithstanding any other provision of this chapter,
19 property that is excluded in any manner from the operation of
20 restrictions that are modified, added to, [~~or~~] created, or
21 re-created by a petition under this chapter is, unless the petition
22 expressly provides otherwise, subject to those restrictions, if
23 any, affecting the excluded property as the restrictions existed
24 immediately before the effective date of the petition, and those
25 restrictions are continued in effect to the extent originally
26 applicable to the excluded property. After the filing of such a
27 petition, those restrictions may be added to, modified, [~~or~~]

1 extended, or renewed by a specified percentage of the owners of real
2 property interests in accordance with this chapter or the
3 instruments evidencing the restrictions as they existed
4 immediately before the effective date of the petition, if otherwise
5 still applicable. Any petition filed under this chapter that
6 creates, re-creates, adds to, or modifies restrictions may provide
7 for the subsequent addition to or extension, renewal, creation, or
8 modification of, the resulting restrictions by a specified
9 percentage of the owners of real property interests in the
10 subdivision as set forth in the instruments evidencing the
11 continued restrictions. This subsection does not abrogate, alter,
12 affect, or impair the rights of a lienholder under Subsection (d) to
13 not be bound by a petition adopted under this chapter when the
14 lienholder subsequently acquires title to the excluded property
15 through foreclosure.

16 SECTION 10. Sections 201.010(a) and (d), Property Code, are
17 amended to read as follows:

18 (a) If an owner and the owner's predecessors in interest
19 neither signed the petition nor filed the statement described in
20 the fourth listed category in Section 201.009(b), the owner may
21 file a suit for declaratory judgment in a court of competent
22 jurisdiction:

23 (1) to challenge the completeness or regularity of the
24 procedures leading to the recordation of a certificate, if the suit
25 is filed before the 181st day after the date on which the
26 certificate is filed with the county clerk; or

27 (2) to exclude the owner's property from the operation

1 of the extended, renewed, modified, added to, [~~or~~] created, or
2 re-created restriction.

3 (d) The remedies in this section are exclusive of all others
4 in actions brought to challenge a restriction extended, renewed,
5 modified, added to, [~~or~~] created, or re-created under this chapter.
6 The filing of an action for the first listed purpose in Subsection
7 (a) does not prevent the restriction from taking effect in
8 accordance with its terms pending a final judgment.

9 SECTION 11. Section 201.011, Property Code, is amended to
10 read as follows:

11 Sec. 201.011. PROHIBITION OF CLAIM OF LACK OF
12 MUTUALITY. If a petition procedure is completed under this
13 chapter, the owners of property within the subdivision whose
14 property is covered by the petition may not raise in any judicial
15 proceeding the issue that the restrictions added, modified,
16 created, re-created, [~~or~~] extended, or renewed under this chapter
17 are not enforceable on the grounds that the restrictions are not
18 applicable to all of the property in the subdivision.

19 SECTION 12. Section 201.013, Property Code, is amended to
20 read as follows:

21 Sec. 201.013. CUMULATIVE EFFECT. The procedure prescribed
22 by this chapter for adding to, modifying, creating, re-creating,
23 [~~or~~] extending, or renewing the term of a restriction is cumulative
24 and not in lieu of other methods of adding to, modifying, creating,
25 re-creating, [~~or~~] extending, or renewing a restriction.

26 SECTION 13. Chapter 201, Property Code, is amended by
27 adding Sections 201.014 and 201.015 to read as follows:

1 Sec. 201.014. JOINDER TO RESTRICTIONS. Property not
2 affected by the creation, re-creation, extension, renewal,
3 addition to, or modification of a restriction under this chapter
4 for a reason provided by Section 201.009 or 201.010 or property
5 outside the subdivision but within the boundaries of the map or plat
6 within which the subdivision is located as described by Section
7 201.001(e) may be subjected to the restriction by filing in the real
8 property records of the county in which the property is located an
9 acknowledged joinder statement signed by one owner of the property
10 electing to restrict the property identified in the statement,
11 referencing the recording information for the relevant petition or
12 certificate of compliance and stating the owner's intent to be
13 bound by or subject to the restriction.

14 Sec. 201.015. RATIFICATION OF CERTAIN ACTIONS. An attempt
15 before September 1, 2009, to create, re-create, extend, renew, add
16 to, or modify a restriction under this chapter that did not satisfy
17 the requirements of the chapter as they existed at the time the
18 attempt was made is ratified on September 1, 2009, if the attempt
19 would satisfy the requirements of this chapter as they existed on
20 September 1, 2009.

21 SECTION 14. Section 201.003(2), Property Code, is repealed.

22 SECTION 15. This Act takes effect immediately if it
23 receives a vote of two-thirds of all the members elected to each
24 house, as provided by Section 39, Article III, Texas Constitution.
25 If this Act does not receive the vote necessary for immediate
26 effect, this Act takes effect September 1, 2009.