

By: Kleinschmidt

H.B. No. 3440

A BILL TO BE ENTITLED

AN ACT

relating to amendment and enforcement of restrictive covenants in certain areas.

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

SECTION 1. Title 11, Property Code, is amended by adding Chapter 212 to read as follows:

CHAPTER 212. AMENDMENT AND ENFORCEMENT OF RESTRICTIONS IN CERTAIN AREAS

Sec. 212.001. DEFINITIONS. In this chapter:

(1) "Dedictory instrument" means each governing instrument covering the establishment, maintenance, and operation of a residential subdivision or any similar planned development. The term includes a declaration or similar instrument subjecting real property to restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association, to properly adopted rules and regulations of the property owners' association, or to all lawful amendments to the covenants, bylaws, instruments, rules, or regulations.

(2) "Lienholder," "owner," "real property records," and "restrictions" have the meanings assigned by Section 201.003.

(3) "Property owners' association" means an incorporated or unincorporated association owned by or whose members consist primarily of the owners of the property covered by

1 the dedicatory instrument and through which the owners, or the
2 board of directors or similar governing body, manage or regulate
3 the residential subdivision or similar planned development.

4 (4) "Residential real estate subdivision" or
5 "subdivision" means all land encompassed within one or more maps or
6 plats of land that is divided into two or more parts if:

7 (A) the maps or plats cover land that is not
8 within a municipality or within the extraterritorial jurisdiction
9 of a municipality;

10 (B) the land encompassed within the maps or plats
11 is or was burdened by restrictions limiting all or at least a
12 majority of the land area covered by the map or plat, excluding
13 streets and public areas, to residential use only; and

14 (C) all instruments creating the restrictions
15 are recorded in the deed or real property records of a county.

16 Sec. 212.002. APPLICABILITY OF CHAPTER. (a) This chapter
17 applies only to a residential real estate subdivision or any unit or
18 parcel of a subdivision located, wholly or partly, in a county that
19 is not subject to another chapter of this title regarding the
20 amendment and enforcement of a restriction.

21 (b) This chapter applies only to restrictions that affect
22 real property within a residential real estate subdivision or any
23 units or parcels of the subdivision and that, by the express terms
24 of the instrument creating the restrictions:

25 (1) are not subject to a procedure by which the
26 restrictions may be amended; or

27 (2) may not be amended without the unanimous consent

1 of:

2 (A) all property owners in the subdivision; or

3 (B) all property owners in any unit or parcel of
4 the subdivision.

5 (c) This chapter applies to a restriction regardless of the
6 date on which it was created.

7 Sec. 212.003. FINDINGS AND PURPOSE. (a) The legislature
8 finds that:

9 (1) owners of land in certain real estate subdivisions
10 are unable to govern the subdivisions by democratic principles of
11 self-government;

12 (2) requiring unanimous consent to amend or modify
13 restrictions in affected subdivisions or units or parcels of the
14 subdivisions is impractical and unworkable to bring needed change
15 and improvement;

16 (3) the inability of owners to amend or modify
17 property restrictions in certain real estate subdivisions in which
18 no zoning regulations apply creates uncertainty in living
19 conditions and discourages investments in those subdivisions;

20 (4) owners of land in affected subdivisions are
21 reluctant or unable to provide proper maintenance, upkeep, and
22 repairs of structures because of the inability to amend or modify
23 the restrictions in response to changing circumstances;

24 (5) financial institutions are reluctant to or will
25 not lend money for investments, maintenance, upkeep, or repairs in
26 affected subdivisions;

27 (6) these conditions will cause dilapidation of

1 housing and other structures and cause unhealthful and unsanitary
2 conditions in affected subdivisions, contrary to the health,
3 safety, and welfare of the public; and

4 (7) the existence of race-related covenants in
5 restrictions, regardless of their unenforceability, is offensive,
6 repugnant, and harmful to members of racial or ethnic minority
7 groups and public policy requires that those covenants be removed.

8 (b) The purpose of this chapter is to provide a procedure
9 for creating, modifying, or adding to residential restrictions and
10 to provide for the removal of any restriction or other provision
11 relating to race, religion, or national origin that is void and
12 unenforceable under either the United States Constitution or
13 Section 5.026.

14 Sec. 212.004. CREATION OR MODIFICATION OF PROCEDURE TO
15 AMEND RESTRICTIONS. (a) A property owners' association by a
16 two-thirds vote of the association's governing body may submit a
17 procedure for amending restrictions to a vote of the property
18 owners in the subdivision or in the unit or parcel of the
19 subdivision governed by restrictions.

20 (b) An amendment procedure submitted to a vote under
21 Subsection (a) binds all property owners in the subdivision or the
22 unit or parcel of the subdivision to which the procedure applies if
23 more than two-thirds of the voting property owners vote in favor of
24 the procedure.

25 (c) Not later than the 30th day before the date a ballot for
26 a vote under this section must be received to be counted, the
27 property owners' association shall mail to each affected property

1 owner a notice that includes:

2 (1) the exact wording of the amendment procedure; and

3 (2) the date by which a property owner's ballot must be
4 received to be counted.

5 (d) The property owners' association shall pay all costs of:

6 (1) printing and mailing the required notices and
7 ballots; and

8 (2) canvassing, tabulating, and certifying the vote.

9 (e) A property owner may not cast more than one vote,
10 regardless of the number of lots the person owns. If more than one
11 person owns an interest in a lot, the owners may cast only one vote
12 for that lot. A person may not vote if the person has an interest
13 in a lot only by virtue of being a lienholder.

14 (f) A ballot cast under this section is secret and may not be
15 counted unless it is placed inside an unmarked envelope that is
16 placed inside another envelope that bears the signature and printed
17 name of the property owner casting the enclosed ballot.

18 (g) The presiding officer of the property owners'
19 association shall appoint an election canvassing committee and a
20 committee chairperson to canvass and count the votes and determine
21 the outcome.

22 (h) If the amendment procedure receives the number of votes
23 required under Subsection (b), the election canvassing committee
24 chairperson shall certify the result to the presiding officer of
25 the property owners' association. The presiding officer shall
26 file in the real property records of each county in which all or
27 part of the subdivision is located an instrument that indicates

1 that the procedure was adopted.

2 (i) If the amendment procedure is not adopted, the property
3 owners' association may not submit the same amendment procedure to
4 a vote under this section on or before the first anniversary of the
5 date the previous votes on the procedure were certified.

6 Sec. 212.005. EFFECT OF ADOPTING AMENDMENT PROCEDURE.
7 After the effective date of the adoption of the amendment procedure
8 under this chapter, any proposed amendment to the restrictions
9 described by Section 212.002(b) applicable to the subdivision or
10 unit or parcel of the subdivision, as applicable, must be submitted
11 for approval to the owners under the amendment procedure.

12 SECTION 2. This Act takes effect September 1, 2009.