

By: Vo

H.B. No. 3946

A BILL TO BE ENTITLED

AN ACT

relating to establishing the office of property owners' association
ombudsman.

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. OFFICE OF PROPERTY OWNERS' ASSOCIATION OMBUDSMAN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 212.001. DEFINITIONS. In this chapter:

(1) "Homeowner" means a person who holds record title
to property in a residential subdivision and includes the personal
representative of a person who holds record title to property in a
residential subdivision.

(2) "Office" means the office of property owners'
association ombudsman established under this chapter.

(3) "Ombudsman" means the individual who has been
appointed to the office of property owners' association ombudsman.

(4) "Property owners' association" has the meaning
assigned by Section 209.002.

(5) "Residential subdivision" has the meaning
assigned by Section 209.002.

(6) "Restrictive covenant" has the meaning assigned by
Section 209.002.

Sec. 212.002. OFFICE OF PROPERTY OWNERS' ASSOCIATION

1 OMBUDSMAN. The independent office of property owners' association
2 ombudsman is established to provide a simple, affordable, and
3 neutral forum for the resolution of disputes between homeowners and
4 property owners' associations in residential subdivisions that are
5 subject to restrictive covenants that authorize a property owners'
6 association to collect regular or special assessments on all or a
7 majority of property in the subdivision.

8 Sec. 212.003. SUNSET PROVISION. The office is subject to
9 Chapter 325, Government Code (Texas Sunset Act). Unless continued
10 in existence as provided by that chapter, the office is abolished
11 September 1, 2023.

12 Sec. 212.004. RULES. The ombudsman may adopt rules as
13 necessary to implement this chapter.

14 Sec. 212.005. PUBLIC INTEREST INFORMATION. (a) The office
15 shall prepare information of public interest describing the
16 functions of the office.

17 (b) The office shall make the information available to the
18 public and appropriate state agencies.

19 Sec. 212.006. ACCESS TO PROGRAMS AND FACILITIES. (a) The
20 office shall prepare and maintain a written plan that describes how
21 a person who does not speak English can be provided reasonable
22 access to the office's programs.

23 (b) The office shall comply with federal and state laws for
24 program and facility accessibility.

25 [Sections 212.007-212.050 reserved for expansion]

26 SUBCHAPTER B. OMBUDSMAN

27 Sec. 212.051. APPOINTMENT; TERM. (a) The governor, with

1 the advice and consent of the senate, shall appoint a property
2 owners' association ombudsman to serve as the executive director of
3 the office. The ombudsman serves a two-year term that expires on
4 February 1 of each odd-numbered year.

5 (b) The governor shall appoint the ombudsman without regard
6 to the race, color, disability, sex, religion, age, or national
7 origin of the appointee.

8 Sec. 212.052. QUALIFICATIONS. To be eligible to serve as
9 ombudsman, a person must possess the knowledge and experience
10 necessary to practice mediation and other methods of dispute
11 resolution.

12 Sec. 212.053. BUSINESS INTEREST; SERVICE AS OMBUDSMAN. A
13 person is not eligible for appointment as ombudsman if the person or
14 the person's spouse is employed by or participates in the
15 management of a property owners' association or a business engaged
16 in residential construction, real estate sales, or property
17 management.

18 Sec. 212.054. LOBBYING ACTIVITIES. A person may not serve
19 as ombudsman or act as general counsel to the office if the person
20 is required to register as a lobbyist under Chapter 305, Government
21 Code, because of the person's activities for compensation related
22 to the operation of the office.

23 Sec. 212.055. GROUNDS FOR REMOVAL. (a) It is a ground for
24 removal from office if the ombudsman:

25 (1) does not have at the time of appointment or
26 maintain during service as ombudsman the qualifications required by
27 Section 212.052;

1 (2) violates a prohibition established by Section
2 212.053, 212.054, 212.056, or 212.102; or

3 (3) cannot, because of illness or disability,
4 discharge the ombudsman's duties for a substantial part of the
5 ombudsman's term.

6 (b) The validity of an action of the office is not affected
7 by the fact that the action is taken when a ground for removal of the
8 ombudsman exists.

9 Sec. 212.056. PROHIBITED REPRESENTATION OR EMPLOYMENT. A
10 former ombudsman may not represent any person or receive
11 compensation for services rendered on behalf of any person
12 regarding a case pending before the office before the second
13 anniversary of the date the person ceases to serve as ombudsman.

14 Sec. 212.057. ADMINISTRATION OF OFFICE. The ombudsman
15 shall administer and enforce this chapter, including preparing and
16 submitting to the legislature a budget for the office and approving
17 expenditures for professional services, travel, per diem, and other
18 actual and necessary expenses incurred in administering the office.

19 [Sections 212.058-212.100 reserved for expansion]

20 SUBCHAPTER C. PERSONNEL

21 Sec. 212.101. OFFICE PERSONNEL. (a) The ombudsman shall
22 employ professional, technical, and other employees necessary to
23 implement this chapter.

24 (b) Compensation for an employee shall be set under the
25 General Appropriations Act as provided by the legislature.

26 Sec. 212.102. TRADE ASSOCIATIONS. (a) In this section,
27 "trade association" means a cooperative and voluntarily joined

1 association of business or professional competitors designed to
2 assist its members and its industry or profession in dealing with
3 mutual business or professional problems and in promoting their
4 common interest.

5 (b) A person may not serve as ombudsman or be an employee of
6 the office employed in a "bona fide executive, administrative, or
7 professional capacity" as that phrase is used for purposes of
8 establishing an exemption to the overtime provisions of the federal
9 Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if
10 the person is:

11 (1) an officer, employee, or paid consultant of a
12 trade association in the field of residential construction, real
13 estate sales, or property management; or

14 (2) the spouse of an officer, manager, or paid
15 consultant of a trade association in the field of residential
16 construction, real estate sales, or property management.

17 Sec. 212.103. CAREER LADDER PROGRAM; PERFORMANCE
18 EVALUATIONS. (a) The ombudsman or the ombudsman's designee shall
19 develop an intra-agency career ladder program. The program must
20 require intra-agency posting of all nonentry level positions
21 concurrently with any public posting.

22 (b) The ombudsman or the ombudsman's designee shall develop
23 a system of annual performance evaluations. All merit pay for
24 office employees must be based on the system established under this
25 subsection.

26 Sec. 212.104. QUALIFICATIONS AND STANDARDS OF CONDUCT. The
27 office shall provide to the ombudsman and office employees, as

1 often as necessary, information regarding their:

2 (1) qualifications for office or employment under this
3 chapter; and

4 (2) responsibilities under applicable laws relating
5 to standards of conduct for state officers or employees.

6 [Sections 212.105-212.150 reserved for expansion]

7 SUBCHAPTER D. REGISTRATION OF ASSOCIATIONS; FEES

8 Sec. 212.151. DUTY TO REGISTER. Each property owners'
9 association shall register annually with the office, providing:

10 (1) the name and contact information for the
11 association;

12 (2) the name and contact information for any
13 management company for the association;

14 (3) the location of each recorded governing document;

15 (4) the number of homeowners and the number of lots in
16 the subdivision governed by the association; and

17 (5) any other information required by the ombudsman.

18 Sec. 212.152. FEE. Each property owners' association shall
19 submit to the office with the association's registration under
20 Section 212.151 a fee equal to \$4.00 multiplied by the number of
21 lots located in the subdivision governed by the association.

22 [Sections 212.153-212.200 reserved for expansion]

23 SUBCHAPTER E. POWERS AND DUTIES

24 Sec. 212.201. DUTIES OF OFFICE. The office shall:

25 (1) prepare, maintain, and make available to the
26 public:

27 (A) informational brochures regarding the

1 operation of property owners' associations, the law applicable to
2 deed restrictions and property owners' associations, and the rights
3 of homeowners with respect to property owners' associations,
4 including information regarding a property owners' association's
5 right to foreclose a lien on homeowner's property for unpaid
6 assessments and the right of the homeowner to redeem the property;

7 (B) disclosure forms and any other forms that may
8 assist owners of property in deed-restricted subdivisions; and

9 (C) a list of free and low-cost mediation
10 programs that may be available to mediate disputes between
11 homeowners and property owners' associations; and

12 (2) promote the availability of the materials prepared
13 under Subdivision (1) and other services provided by the office.

14 Sec. 212.202. HOMEOWNER PETITION FOR INVESTIGATION OF
15 ALLEGED VIOLATION. (a) A homeowner who is affected by an alleged
16 violation by a property owners' association or an agent of the
17 homeowner's rights under the law may submit a petition to the
18 ombudsman, in the form prescribed by the ombudsman, requesting that
19 the ombudsman investigate the alleged violation.

20 (b) In performing an investigation under this section, the
21 ombudsman may hold hearings, take testimony, subpoena witnesses,
22 and issue subpoenas for the production of relevant books, records,
23 or documents.

24 (c) Except as provided by Subsection (d) or (e), not later
25 than the 90th day after the date the office receives a petition
26 under this section, the office shall provide the petitioning
27 homeowner and the responding association with a statement of facts

1 and legal conclusions regarding the allegations made in the
2 petition.

3 (d) If the ombudsman determines that additional time is
4 needed to complete the investigation or to provide the statement of
5 facts and legal conclusions under this section, the office may
6 provide the statement of facts and legal conclusions not later than
7 the 180th day after the date the office receives the petition, if
8 the office notifies the petitioning homeowner and the responding
9 association of the need for the extension before the expiration of
10 the time for providing the statement under Subsection (c).

11 (e) Except as provided by this subsection, the ombudsman
12 shall complete an investigation concerning an election supervised
13 by the ombudsman under this chapter not later than the 15th day
14 after the date on which the petition is received by the office. For
15 good cause, the ombudsman may extend the time for completing the
16 investigation under this subsection by not more than 15 days.

17 Sec. 212.203. OMBUDSMAN PARTICIPATION IN MEDIATION. The
18 ombudsman may offer to participate in any mediation of a dispute
19 between a homeowner and a property owners' association.

20 Sec. 212.204. SUPERVISION OF ASSOCIATION ELECTIONS. The
21 ombudsman may offer to supervise a property owners' association
22 election, including a vote to elect or recall board members or to
23 decide a ballot proposition.

24 Sec. 212.205. OMBUDSMAN'S POWERS AND DUTIES NOT IMPAIRED.
25 An offer by the ombudsman to participate in a mediation or supervise
26 an election under this chapter, or the ombudsman's participation in
27 a mediation or supervision of an election, does not disqualify the

1 ombudsman from exercising any power or duty of the ombudsman under
2 this chapter, except that the ombudsman and the parties to a dispute
3 may, by written agreement, provide that the ombudsman is required
4 to maintain confidentiality of communications regarding the
5 mediation or election or adhere to other conditions regarding
6 action by the ombudsman.

7 Sec. 212.206. ENFORCEMENT ACTION BY ATTORNEY GENERAL OR
8 DISTRICT OR COUNTY ATTORNEY. (a) If an investigation by the
9 ombudsman results in a recommendation by the ombudsman that the
10 attorney general or a district or county attorney pursue litigation
11 concerning a property owners' association or the association's
12 agent, the ombudsman shall notify each petitioning homeowner and
13 each association board member of the recommendation.

14 (b) This section does not limit the authority of the
15 attorney general or a district or county attorney to take any action
16 with respect to a violation of a law or restrictive covenant or
17 limit a homeowner's right to seek any remedy provided by law.

18 (c) The attorney general shall enforce the ombudsman's
19 subpoenas and decisions regarding association elections supervised
20 by the ombudsman under this chapter or a determination by the
21 ombudsman that a violation of law justifies the removal of an
22 association board member, officer, manager, or other agent.

23 (d) If the attorney general determines that a property
24 owners' association has violated or threatened to violate a
25 homeowner's rights, the attorney general may seek temporary,
26 preliminary, or final injunctions, independent audits, removal of
27 directors, statutory penalties, or any other relief or penalty

1 provided by law.

2 Sec. 212.207. ANNUAL REPORT. The ombudsman shall publish
3 annually on the office's Internet website a report regarding:

4 (1) the number, type, and size of property owners'
5 associations in this state;

6 (2) how state law affects the operation and management
7 of associations;

8 (3) investigations of violations under this chapter
9 that result in a finding against an association by the ombudsman;

10 (4) how often homeowners use options for mediation or
11 arbitration, the costs incurred by homeowners in using those
12 options, and the decisions and awards resulting from those
13 mediation and arbitration procedures;

14 (5) the number of judicial and nonjudicial foreclosure
15 proceedings initiated by associations and the number of those
16 foreclosures completed by the associations and the reason for the
17 initiation of the proceedings; and

18 (6) any other issues the ombudsman considers of
19 concern to homeowners and associations.

20 SECTION 2. As soon as practicable after the effective date
21 of this Act, the governor shall appoint a property owners'
22 association ombudsman in accordance with Chapter 212, Property
23 Code, as added by this Act, to a term expiring February 1, 2011.

24 SECTION 3. This Act takes effect September 1, 2009.