

By: Lucio III

H.B. No. 4637

A BILL TO BE ENTITLED

AN ACT

relating to unenforceable restrictive covenants affecting residential homes.

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

SECTION 1. Chapter 202, Property Code, is amended by adding Sections 202.014, 202.015, 202.016, and 202.017 to read as follows:

Sec. 202.014. FLAG DISPLAY. (a) A property owners' association may not, except as provided in this section, adopt or enforce a dedicatory instrument provision that prohibits, restricts, or has the effect of prohibiting or restricting a property owner from the display of:

(1) the flag of the United States of America;

(2) the flag of the State of Texas;

(3) an official or replica flag of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, or other United States armed forces branch.

(b) A property owners' association may adopt or enforce reasonable dedicatory instrument provisions:

(1) that require:

(A) the flag of the United States be displayed in accordance with the federal flag code, 4 U.S.C. Sections 5-10, or successor laws;

(B) a flagpole attached to a dwelling or a freestanding flagpole be constructed of permanent, long-lasting

1 materials, with a finish appropriate to the materials used in the
2 construction of the flagpole and harmonious with the dwelling;

3 (C) the display of a flag, or the location and
4 construction of the supporting flagpole, to comply with applicable
5 zoning ordinances, easements, and setbacks of record;

6 (D) a displayed flag and the flagpole on which it
7 is flown be maintained in good condition and that any deteriorated
8 flag or deteriorated or structurally unsafe flagpole be repaired,
9 replaced, or removed;

10 (2) that regulate the location of the flagpole on
11 which a flag is displayed, but no such regulation may prevent the
12 flag from being seen or a flagpole from being installed or erected;

13 (3) that govern the size of a displayed flag;

14 (4) that regulate the size, location, and intensity of
15 any lights used to illuminate a displayed flag.

16 (c) In this section, "owner" has the meaning assigned by
17 Section 201.003 and includes a relative or tenant of an owner.

18 Sec. 202.015. RADIO APPARATUS. (a) A property owners'
19 association may not, except as provided in this section, adopt or
20 enforce a dedicatory instrument provision that prohibits,
21 restricts, or has the effect of prohibiting or restricting a
22 property owner from owning, operating, installing, or maintaining
23 any radio apparatus operated pursuant to federal authorization or
24 with the consent of the holder of a federal license.

25 (b) In this section, "apparatus" means any item, equipment,
26 component, element, or structure used or usable for carrying on
27 radiocommunications or facilitating the carrying on of

1 radiocommunications.

2 (c) A property owners' association may adopt or enforce
3 reasonable dedicatory instrument provisions requiring radio
4 apparatus located exterior to a structure:

5 (1) be constructed and installed in compliance with
6 applicable zoning ordinances, easements, setbacks of record, and
7 national or governmental building codes;

8 (2) be constructed of permanent, long-lasting
9 materials, with a finish appropriate to the materials used in the
10 construction of the apparatus;

11 (3) be maintained in good condition and that any
12 deteriorated or structurally unsafe apparatus be repaired,
13 replaced, or removed;

14 (4) other than radio apparatus made of wire, not
15 extend closer than the front setback line from any street on which
16 the dwelling on the lot faces;

17 (5) be removed if the property on which it is located
18 is sold to a person who does not have federal authorization to
19 operate the radio apparatus installed on the property.

20 (d) In this section, "owner" has the meaning assigned by
21 Section 201.003 and includes a relative or tenant of an owner.

22 Sec. 202.016. SOLAR ENERGY SYSTEMS. (a) A property owners'
23 association may not, except as provided in this section, adopt or
24 enforce a dedicatory instrument provision that prohibits,
25 restricts, or has the effect of prohibiting or restricting a
26 property owner from owning, operating, installing, or maintaining a
27 solar energy system.

1 (b) In this section, "solar energy system" means:

2 (1) equipment, accessories, structures, and fixtures
3 that collect or convert radiant energy from the sun into thermal,
4 mechanical, or electrical energy; and

5 (2) any structural design feature of a building, whose
6 primary purpose is to provide for the collection, storage, and
7 distribution of the radiant energy of the sun in order to generate
8 thermal, mechanical, or electrical energy.

9 (c) A property owners' association may adopt or enforce
10 reasonable dedicatory instrument provisions:

11 (1) that require a solar energy system to be installed
12 and maintained in compliance with:

13 (A) the manufacturer's specifications; and

14 (B) applicable zoning ordinances, health,
15 safety, electrical, and building codes;

16 (2) that regulate the location and appearance of the
17 publicly viewable components of the solar energy system;

18 (3) that prohibit the location of a solar energy
19 system by the property owner on property:

20 (A) owned or maintained by the property owners'
21 association;

22 (B) owned in common by the members of the
23 property owners' association.

24 (d) A property owners' association dedicatory instrument
25 provision that increases the cost of a solar energy system by more
26 than 10 percent or decreases the efficiency of the solar energy
27 system by more than 10 percent is void and unenforceable.

1 (e) In this section, "owner" has the meaning assigned by
2 Section 201.003 and includes a relative or tenant of an owner.

3 Sec. 202.017. STANDBY ELECTRIC GENERATORS. (a) A property
4 owners' association may not, except as provided in this section,
5 adopt or enforce a dedicatory instrument provision that prohibits,
6 restricts, or has the effect of prohibiting or restricting a
7 property owner from owning, operating, installing, or maintaining a
8 permanently installed standby electric generator.

9 (b) In this section, "standby electric generator" means a
10 device that converts mechanical energy to electrical energy and:

11 (1) is powered by natural gas, liquefied petroleum
12 gas, diesel fuel, biodiesel fuel, or hydrogen;

13 (2) is fully enclosed in an integral
14 manufacturer-supplied sound attenuating enclosure;

15 (3) is connected to the main electrical panel of a
16 residence by a manual or automatic transfer switch; and

17 (4) is rated for a generating capacity of not less than
18 seven kilowatts.

19 (c) A property owners' association may adopt or enforce
20 reasonable dedicatory instrument provisions:

21 (1) that require:

22 (A) a standby electric generator to be installed
23 and maintained in compliance with the manufacturer's
24 specifications;

25 (B) a standby electric generator be installed and
26 maintained in compliance with applicable health, safety,
27 electrical codes, and building codes;

1 (C) all electrical, plumbing, and fuel line
2 connections be installed only by licensed contractors;

3 (D) all electrical and fuel line connections be
4 installed underground;

5 (E) nonintegral standby electric generator fuel
6 tanks be installed and maintained to comply with applicable zoning
7 ordinances, health, safety, electrical, and building codes;

8 (F) the standby electric generator, its
9 electrical lines, and its fuel lines be maintained in good
10 condition and that any deteriorated or unsafe components be
11 repaired, replaced, or removed;

12 (2) that set reasonable times for the periodic testing
13 of a standby electric generator;

14 (3) that prohibit the use of the standby electric
15 generator to generate all or substantially all of the electrical
16 power to a residence except when utility-generated electrical power
17 is not available or is intermittent;

18 (4) that regulate the location and exterior appearance
19 of the standby electric generator.

20 (d) A property owners' association dedicatory instrument
21 provision regulating the location of a standby electrical generator
22 that increases the cost of installing the standby electric
23 generator by more than 10 percent or the cost of installing and
24 connecting the electrical and fuel lines by more than 20 percent is
25 void and unenforceable.

26 (e) In this section, "owner" has the meaning assigned by
27 Section 201.003 and includes a relative or tenant of an owner.

1 SECTION 2. Sections 202.014, 202.015, 202.016, and 202.017,
2 Property Code, as added by this Act, apply to a dedicatory
3 instrument adopted before, on, or after the effective date of this
4 Act.

5 SECTION 3. This Act takes effect immediately if it receives
6 a vote of two-thirds of all the members elected to each house, as
7 provided by Section 39, Article III, Texas Constitution. If this
8 Act does not receive the vote necessary for immediate effect, this
9 Act takes effect September 1, 2009.