

By: West

S.B. No. 234

A BILL TO BE ENTITLED

AN ACT

relating to real property subject to restrictive covenants.

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

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

(a) In an action based on breach of a restrictive covenant pertaining to real property, the court shall allow to a prevailing party ~~[who asserted the action]~~ reasonable attorney's fees in addition to the party's costs and claim.

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

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

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

As a purchaser of property in the residential community in which this property is located, you are obligated to be a member of a property owners' association. Restrictive covenants governing the use and occupancy of the property and a dedicatory instrument governing the establishment, maintenance, and operation of this

1 residential community have been or will be recorded in the Real
2 Property Records of the county in which the property is located.
3 Copies of the restrictive covenants and dedicatory instrument may
4 be obtained from the county clerk.

5 You are obligated to pay assessments to the property owners'
6 association. The amount of the assessments is subject to change.
7 Your failure to pay the assessments could result in a lien on and
8 the foreclosure of your property.

9 Section 207.003, Property Code, entitles an owner to receive
10 copies of restrictions, bylaws, and a resale certificate from a
11 property owners' association. A resale certificate contains
12 information including, but not limited to, statements specifying
13 the amount and frequency of regular assessments, the property
14 owners' association's operating budget and balance sheet, and the
15 style and cause number of lawsuits to which the property owners'
16 association is a party. These documents must be made available to
17 you by the seller on your request.

18 Date: _____

19 Signature of Purchaser

20 (f) On the purchaser's request for a resale certificate from
21 the seller, the seller shall:

22 (1) promptly deliver a copy of a current resale
23 certificate if one has been issued for the property under Chapter
24 207; or

25 (2) if the seller does not have a current resale
26 certificate:

27 (A) request the property owners' association or

1 its agent to issue a resale certificate under Chapter 207; and

2 (B) promptly deliver a copy of the resale
3 certificate to the purchaser on receipt of the resale certificate
4 from the property owners' association or its agent.

5 (g) The seller or the purchaser, as agreed to by the
6 parties, shall pay the fee to the property owners' association or
7 its agent for issuing the resale certificate under Chapter 207.

8 SECTION 3. Subsection (b), Section 207.003, Property Code,
9 is amended to read as follows:

10 (b) A resale certificate under Subsection (a) must contain:

11 (1) a statement of any right of first refusal or other
12 restraint contained in the restrictions or restrictive covenants
13 that restricts the owner's right to transfer the owner's property;

14 (2) the frequency and amount of any regular
15 assessments;

16 (3) the amount of any special assessment that is due
17 after the date the resale certificate is prepared;

18 (4) the total of all amounts due and unpaid to the
19 property owners' association that are attributable to the owner's
20 property;

21 (5) capital expenditures, if any, approved by the
22 property owners' association for the property owners' association's
23 current fiscal year;

24 (6) the amount of reserves, if any, for capital
25 expenditures;

26 (7) the property owners' association's current
27 operating budget and balance sheet;

1 (8) the total of any unsatisfied judgments against the
2 property owners' association;

3 (9) the style and cause number of any pending lawsuit
4 in which the property owners' association is a party, other than a
5 lawsuit relating to unpaid property taxes of an individual member
6 of the association [~~defendant~~];

7 (10) a copy of a certificate of insurance showing the
8 property owners' association's property and liability insurance
9 relating to the common areas and common facilities;

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

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

21 (13) the amount of any administrative transfer fee
22 charged by the property owners' association for a change of
23 ownership of property in the subdivision;

24 (14) the name, mailing address, and telephone number
25 of the property owners' association's managing agent, if any; [~~and~~]

26 (15) a statement indicating whether the restrictions
27 allow foreclosure of a property owners' association's lien on the

1 owner's property for failure to pay assessments; and

2 (16) a statement of all fees associated with the
3 transfer of ownership, including a description of each fee, to whom
4 each fee is paid, and the amount of each fee.

5 SECTION 4. (a) Subsection (a), Section 5.006, Property
6 Code, as amended by this Act, applies only to an action filed on or
7 after the effective date of this Act. An action filed before the
8 effective date of this Act is governed by the law in effect
9 immediately before the effective date of this Act, and that law is
10 continued in effect for that purpose.

11 (b) Section 5.012, Property Code, as amended by this Act,
12 applies only to a sale of property that occurs on or after the
13 effective date of this Act. For the purposes of this section, a
14 sale of property occurs before the effective date of this Act if the
15 executory contract binding the purchaser to purchase the property
16 is executed before that date. A sale of property that occurs before
17 the effective date of this Act is governed by the law in effect
18 immediately before that date, and that law is continued in effect
19 for that purpose.

20 SECTION 5. This Act takes effect January 1, 2010.