

1-1 By: West S.B. No. 234  
1-2 (In the Senate - Filed November 10, 2008; February 11, 2009,  
1-3 read first time and referred to Committee on Intergovernmental  
1-4 Relations; March 9, 2009, reported favorably by the following  
1-5 vote: Yeas 4, Nays 0; March 9, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to real property subject to restrictive covenants.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Subsection (a), Section 5.006, Property Code, is  
1-11 amended to read as follows:

1-12 (a) In an action based on breach of a restrictive covenant  
1-13 pertaining to real property, the court shall allow to a prevailing  
1-14 party ~~[who asserted the action]~~ reasonable attorney's fees in  
1-15 addition to the party's costs and claim.

1-16 SECTION 2. Section 5.012, Property Code, is amended by  
1-17 amending Subsection (a) and adding Subsections (f) and (g) to read  
1-18 as follows:

1-19 (a) A seller of residential real property that is subject to  
1-20 membership in a property owners' association and that comprises not  
1-21 more than one dwelling unit located in this state shall give to the  
1-22 purchaser of the property a written notice that reads substantially  
1-23 similar to the following:

1-24 NOTICE OF MEMBERSHIP IN PROPERTY OWNERS' ASSOCIATION CONCERNING THE  
1-25 PROPERTY AT (street address) (name of residential community)

1-26 As a purchaser of property in the residential community in  
1-27 which this property is located, you are obligated to be a member of  
1-28 a property owners' association. Restrictive covenants governing  
1-29 the use and occupancy of the property and a dedicatory instrument  
1-30 governing the establishment, maintenance, and operation of this  
1-31 residential community have been or will be recorded in the Real  
1-32 Property Records of the county in which the property is located.  
1-33 Copies of the restrictive covenants and dedicatory instrument may  
1-34 be obtained from the county clerk.

1-35 You are obligated to pay assessments to the property owners'  
1-36 association. The amount of the assessments is subject to change.  
1-37 Your failure to pay the assessments could result in a lien on and  
1-38 the foreclosure of your property.

1-39 Section 207.003, Property Code, entitles an owner to receive  
1-40 copies of restrictions, bylaws, and a resale certificate from a  
1-41 property owners' association. A resale certificate contains  
1-42 information including, but not limited to, statements specifying  
1-43 the amount and frequency of regular assessments, the property  
1-44 owners' association's operating budget and balance sheet, and the  
1-45 style and cause number of lawsuits to which the property owners'  
1-46 association is a party. These documents must be made available to  
1-47 you by the seller on your request.

1-48 Date: \_\_\_\_\_  
1-49 \_\_\_\_\_  
1-50 Signature of Purchaser

1-51 (f) On the purchaser's request for a resale certificate from  
1-52 the seller, the seller shall:

1-53 (1) promptly deliver a copy of a current resale  
1-54 certificate if one has been issued for the property under Chapter  
1-55 207; or

1-56 (2) if the seller does not have a current resale  
1-57 certificate:

1-58 (A) request the property owners' association or  
1-59 its agent to issue a resale certificate under Chapter 207; and

1-60 (B) promptly deliver a copy of the resale  
1-61 certificate to the purchaser on receipt of the resale certificate  
1-62 from the property owners' association or its agent.

1-63 (g) The seller or the purchaser, as agreed to by the  
1-64 parties, shall pay the fee to the property owners' association or  
1-65 its agent for issuing the resale certificate under Chapter 207.

1-66 SECTION 3. Subsection (b), Section 207.003, Property Code,  
is amended to read as follows:

2-1 (b) A resale certificate under Subsection (a) must contain:  
 2-2 (1) a statement of any right of first refusal or other  
 2-3 restraint contained in the restrictions or restrictive covenants  
 2-4 that restricts the owner's right to transfer the owner's property;  
 2-5 (2) the frequency and amount of any regular  
 2-6 assessments;  
 2-7 (3) the amount of any special assessment that is due  
 2-8 after the date the resale certificate is prepared;  
 2-9 (4) the total of all amounts due and unpaid to the  
 2-10 property owners' association that are attributable to the owner's  
 2-11 property;  
 2-12 (5) capital expenditures, if any, approved by the  
 2-13 property owners' association for the property owners' association's  
 2-14 current fiscal year;  
 2-15 (6) the amount of reserves, if any, for capital  
 2-16 expenditures;  
 2-17 (7) the property owners' association's current  
 2-18 operating budget and balance sheet;  
 2-19 (8) the total of any unsatisfied judgments against the  
 2-20 property owners' association;  
 2-21 (9) the style and cause number of any pending lawsuit  
 2-22 in which the property owners' association is a party, other than a  
 2-23 lawsuit relating to unpaid property taxes of an individual member  
 2-24 of the association [defendant];  
 2-25 (10) a copy of a certificate of insurance showing the  
 2-26 property owners' association's property and liability insurance  
 2-27 relating to the common areas and common facilities;  
 2-28 (11) a description of any conditions on the owner's  
 2-29 property that the property owners' association board has actual  
 2-30 knowledge are in violation of the restrictions applying to the  
 2-31 subdivision or the bylaws or rules of the property owners'  
 2-32 association;  
 2-33 (12) a summary or copy of notices received by the  
 2-34 property owners' association from any governmental authority  
 2-35 regarding health or housing code violations existing on the  
 2-36 preparation date of the certificate relating to the owner's  
 2-37 property or any common areas or common facilities owned or leased by  
 2-38 the property owners' association;  
 2-39 (13) the amount of any administrative transfer fee  
 2-40 charged by the property owners' association for a change of  
 2-41 ownership of property in the subdivision;  
 2-42 (14) the name, mailing address, and telephone number  
 2-43 of the property owners' association's managing agent, if any; ~~and~~  
 2-44 (15) a statement indicating whether the restrictions  
 2-45 allow foreclosure of a property owners' association's lien on the  
 2-46 owner's property for failure to pay assessments; and  
 2-47 (16) a statement of all fees associated with the  
 2-48 transfer of ownership, including a description of each fee, to whom  
 2-49 each fee is paid, and the amount of each fee.

2-50 SECTION 4. (a) Subsection (a), Section 5.006, Property  
 2-51 Code, as amended by this Act, applies only to an action filed on or  
 2-52 after the effective date of this Act. An action filed before the  
 2-53 effective date of this Act is governed by the law in effect  
 2-54 immediately before the effective date of this Act, and that law is  
 2-55 continued in effect for that purpose.

2-56 (b) Section 5.012, Property Code, as amended by this Act,  
 2-57 applies only to a sale of property that occurs on or after the  
 2-58 effective date of this Act. For the purposes of this section, a  
 2-59 sale of property occurs before the effective date of this Act if the  
 2-60 executory contract binding the purchaser to purchase the property  
 2-61 is executed before that date. A sale of property that occurs before  
 2-62 the effective date of this Act is governed by the law in effect  
 2-63 immediately before that date, and that law is continued in effect  
 2-64 for that purpose.

2-65 SECTION 5. This Act takes effect January 1, 2010.

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