

By: West, Davis

S.B. No. 237

A BILL TO BE ENTITLED

AN ACT

relating to certain procedures and requirements for the operation of property owners' associations.

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 or a statute pertaining to real property subject to a restrictive covenant or to restrictive covenants to which real property is subject, the court may ~~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

1 a property owners' association. Restrictive covenants governing
2 the use and occupancy of the property and all [~~a~~] dedicatory
3 instruments [~~instrument~~] governing the establishment, maintenance,
4 or [~~and~~] operation of this residential community have been or will
5 be recorded in the Real Property Records of the county in which the
6 property is located. Copies of the restrictive covenants and
7 dedicatory instruments [~~instrument~~] may be obtained from the county
8 clerk.

9 You are obligated to pay assessments to the property owners'
10 association. The amount of the assessments is subject to change.
11 Your failure to pay the assessments could result in a lien on and
12 the foreclosure of your property.

13 Section 207.003, Property Code, entitles an owner to receive
14 copies of any document that governs the establishment, maintenance,
15 or operation of a subdivision, including, but not limited to,
16 restrictions, bylaws, rules and regulations, and a resale
17 certificate from a property owners' association. A resale
18 certificate contains information including, but not limited to,
19 statements specifying the amount and frequency of regular
20 assessments and the style and cause number of lawsuits to which the
21 property owners' association is a party. These documents must be
22 made available to you by the seller on your request.

23 Date: _____

24 _____
Signature of Purchaser

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

27 (1) promptly deliver a copy of a current resale

1 certificate if one has been issued for the property under Chapter
2 207; or

3 (2) if the seller does not have a current resale
4 certificate:

5 (A) request the property owners' association or
6 its agent to issue a resale certificate under Chapter 207; and

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

10 (g) The seller or the purchaser, as agreed to by the
11 parties, shall pay the fee to the property owners' association or
12 its agent for issuing the resale certificate. The property owners'
13 association may not process payment for a resale certificate
14 requested under Chapter 207 until the certificate is available for
15 delivery. The association may not charge a fee if the certificate
16 is not provided in the time prescribed by Section 207.003(a).

17 SECTION 3. Subdivision (1), Section 202.001, Property Code,
18 is amended to read as follows:

19 (1) "Dedictory instrument" means each document
20 governing [~~instrument covering~~] the establishment, maintenance, or
21 [~~and~~] operation of a residential subdivision, planned unit
22 development, condominium or townhouse regime, or any similar
23 planned development. The term includes:

24 (A) a declaration or similar instrument
25 subjecting real property to:

26 (i) restrictive covenants, bylaws, or
27 similar instruments governing the administration or operation of a

1 property owners' association;

2 (ii) [~~, to~~] properly adopted rules and
3 regulations of the property owners' association; or

4 (iii) [~~, or to~~] all lawful amendments to the
5 covenants, bylaws, instruments, rules, or regulations; and

6 (B) bylaws, rules, regulations, or guidelines
7 adopted by a property owners' association under an instrument
8 described by Paragraph (A).

9 SECTION 4. Section 202.004, Property Code, is amended by
10 adding Subsections (d) and (e) to read as follows:

11 (d) In evaluating an alleged or potential violation of a
12 restrictive covenant, the property owners' association or other
13 representative designated by an owner of real property may,
14 notwithstanding any provision in a dedicatory instrument, grant a
15 variance and in doing so not enforce the restrictive covenant if the
16 property owners' association board, in the board's reasonable
17 judgment, determines:

18 (1) the property owners' association's position is not
19 sufficiently strong to justify taking any action or further action;

20 (2) the provision alleged to have been violated may be
21 inconsistent with applicable law;

22 (3) the alleged violation is not of such a material or
23 visible nature as to be objectionable to a reasonable person or to
24 justify expending the property owners' association's resources;

25 (4) enforcement of the provision is not in the
26 association's best interests, based on hardship, expense, or other
27 reasonable criteria; or

1 (5) the facts of the particular circumstances, such as
2 topography of the owner's land or unforeseen circumstances unique
3 to the particular owner, justify the variance.

4 (e) A determination by the property owners' association
5 board to grant a variance under Subsection (d) may not be considered
6 a waiver of the association's ability to enforce any dedicatory
7 instrument provision in the future.

8 SECTION 5. Section 202.006, Property Code, is amended to
9 read as follows:

10 Sec. 202.006. PUBLIC RECORDS. (a) A property owners'
11 association shall file all [the] dedicatory instruments
12 [~~instrument~~] in the real property records of each county in which
13 the property to which the dedicatory instruments relate [~~instrument~~
14 ~~relates~~] is located.

15 (b) A dedicatory instrument that is not filed in accordance
16 with this section has no effect until filed.

17 SECTION 6. Chapter 202, Property Code, is amended by adding
18 Sections 202.008, 202.010, 202.011, 202.012, 202.013, 202.014, and
19 202.015 to read as follows:

20 Sec. 202.008. ASSOCIATION'S RIGHT OF ENTRY. (a) Except as
21 provided by this section, a provision in a dedicatory instrument
22 that provides a property owners' association the right or authority
23 to enter onto an owner's private property to enforce or abate an
24 alleged violation of a restrictive covenant is void as against
25 public policy except for entry:

26 (1) to cure a violation that involves an immediate
27 threat to persons or property;

1 (2) after 10 days' written notice, to:

2 (A) perform a forced mow; or

3 (B) remove trash or debris; or

4 (3) in circumstances in which it is reasonably
5 determined the property has been abandoned and not maintained for
6 at least 30 days.

7 (b) This section does not prohibit a provision in a
8 dedicatory instrument allowing a property owners' association a
9 right of entry on the property of an owner that is limited to a
10 dedicated access or other easement contained in a final plat or an
11 easement filed of record.

12 (c) This section does not apply to:

13 (1) an association regulated under Title 7;

14 (2) a property owners' association that funds through
15 assessments:

16 (A) insurance on residences;

17 (B) one or more utility payments for residences;

18 or

19 (C) exterior maintenance of residences; or

20 (3) a property owners' association that is a mixed use
21 master association that existed before January 1, 1974, and that
22 does not have the authority under a dedicatory instrument or other
23 governing document to impose fines.

24 Sec. 202.010. CERTAIN PARKING RESTRICTIONS PROHIBITED.

25 (a) A provision in a dedicatory instrument that restricts or
26 prohibits an owner from parking an operable, noncommercial, and
27 personal automobile or truck on a public street is void as against

1 public policy.

2 (b) A provision in a dedicatory instrument that restricts or
3 prohibits an owner from parking the owner's operable,
4 noncommercial, and personal automobile or truck in the owner's
5 driveway is void as against public policy.

6 (c) For the purposes of this section, "noncommercial
7 automobile" means a motor vehicle that may be legally driven on
8 public roads under state law and that exhibits no commercial
9 advertising other than standard dealer or manufacturer
10 advertising.

11 (d) For the purposes of this section, a recreational
12 vehicle, motor home, camper, all-terrain vehicle, trailer, or
13 watercraft, a tow truck, cement mixer, or other similar commercial
14 vehicle, or a vehicle that is more than 30 feet long is not
15 considered to be a personal automobile or truck.

16 (e) This section does not apply to:

17 (1) an association regulated under Title 7; or

18 (2) a property owners' association that funds through
19 assessments:

20 (A) insurance on residences;

21 (B) one or more utility payments for residences;

22 or

23 (C) exterior maintenance of residences.

24 Sec. 202.011. RIGHT OF FIRST REFUSAL PROHIBITED. (a) In
25 this section, "development period" means a period stated in a
26 declaration during which a declarant reserves:

27 (1) a right to facilitate the development,

1 construction, and marketing of the subdivision; and

2 (2) a right to direct the size, shape, and composition
3 of the subdivision.

4 (b) To the extent a restrictive covenant provides a right of
5 first refusal for the sale or lease of a residential unit or
6 residential lot in favor of the property owners' association or the
7 association's members, the covenant is void.

8 (c) This section does not apply to a restrictive covenant
9 that provides a right of first refusal in favor of a developer or
10 builder during the development period.

11 Sec. 202.012. REGULATION OF SOLAR ENERGY DEVICES. (a) In
12 this section, "solar energy device" has the meaning assigned by
13 Section 171.107, Tax Code.

14 (b) Except as otherwise provided by this section, a property
15 owners' association may not include or enforce a provision in a
16 dedicatory instrument that prohibits or restricts a property owner
17 from installing a solar energy device.

18 (c) A provision that violates Subsection (b) is void.

19 (d) This section does not prohibit the inclusion or
20 enforcement of a provision in a dedicatory instrument that
21 prohibits a solar energy device that:

22 (1) as adjudicated by a court:

23 (A) threatens the public health or safety; or

24 (B) violates a law;

25 (2) is located on property owned or maintained by the
26 property owners' association;

27 (3) is located on property owned in common by the

1 members of the property owners' association; or

2 (4) is located in an area on the property owner's
3 property other than:

4 (A) on the roof of the home; or

5 (B) in a fenced yard or patio maintained by the
6 property owner.

7 Sec. 202.013. RENTAL RESTRICTIONS. (a) Except as provided
8 by Subsection (b), a property owners' association may not amend a
9 dedicatory instrument to prohibit or restrict the rental of
10 property subject to the dedicatory instrument without the consent
11 of at least 51 percent of the total votes allocated to property
12 owners subject to the dedicatory instrument.

13 (b) An amendment to a dedicatory instrument may require:

14 (1) an owner to:

15 (A) exercise due diligence in not leasing to an
16 occupant who is a registered sex offender or who has a history of
17 violent crime; or

18 (B) terminate the possessory right of any tenant
19 or occupant who is a registered sex offender or who has a history of
20 violent crime;

21 (2) all leases to be subject to the dedicatory
22 instruments of the property owners' association; or

23 (3) a minimum lease term of not more than six months.

24 Sec. 202.014. RESTRICTIONS REQUIRING CAPITAL IMPROVEMENTS.

25 (a) A dedicatory instrument may not be amended to retroactively
26 require a person who owns property subject to the dedicatory
27 instrument at the time the amendment is adopted to make a capital

1 improvement to the owner's property that is not required before the
2 amendment. A provision of a dedicatory instrument requiring an
3 owner to make a capital improvement to the owner's property may only
4 be adopted by a vote of at least 67 percent of the total votes
5 allocated to property owners subject to the dedicatory instrument
6 and may be applicable only to owners purchasing property subject to
7 the dedicatory instrument after the provision is adopted.

8 (b) For the purposes of this section, "capital improvement"
9 means items such as additional tree plantings, additional sodding,
10 fence construction, hardscape installation, new construction, or
11 any similar capital improvement. The term does not include repair
12 or maintenance of existing improvements or the removal of
13 conditions that are in violation of a dedicatory instrument.

14 Sec. 202.015. INJUNCTION; DAMAGES. (a) If a property
15 owners' association or other representative designated by the
16 property owners' association has violated, is violating, or is
17 threatening to violate this chapter, a member of the property
18 owners' association may bring a civil action against the property
19 owners' association but may not bring an action against an
20 association's officer or board member individually.

21 (b) A member of a property owners' association bringing an
22 action under this section may seek:

23 (1) injunctive relief;

24 (2) damages in an amount equal to the greater of:

25 (A) actual damages arising from the violation; or

26 (B) \$1,500 for each violation; or

27 (3) both injunctive relief and damages as provided in

1 this subsection.

2 (c) The court may increase an award under Subsection (b)(2)
3 to an amount not to exceed three times the amount awarded under
4 Subsection (b)(2) if the court finds that violations have occurred
5 with a frequency that constitutes a pattern or practice.

6 (d) Each day a violation continues is not considered a
7 separate violation for purposes of an assessment of damages.

8 (e) The court may award damages to a property owners'
9 association for a suit brought by a member of the property owners'
10 association that the court finds frivolous or groundless in an
11 amount that is not more than the greater of:

12 (1) three times the association's actual damages; or

13 (2) \$4,500.

14 (f) On or before the 30th day before the date a person files
15 a suit under this section, the person must provide notice to the
16 other party of the person's intent to file suit under this section.
17 The notice must be sent certified mail, return receipt requested,
18 or delivered by the United States Postal Service with signature
19 confirmation service.

20 SECTION 7. Subsection (b), Section 207.003, Property Code,
21 is amended to read as follows:

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

23 (1) a statement of any right of first refusal, other
24 than a right of first refusal that is prohibited by statute, and any
25 [~~or~~] other restraint contained in the restrictions or restrictive
26 covenants that restricts the owner's right to transfer the owner's
27 property;

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

3 (3) the amount and purpose of any special assessment
4 that is due after the date the resale certificate is prepared;

5 (4) the total of all amounts due and unpaid to the
6 property owners' association that are attributable to the owner's
7 property;

8 (5) capital expenditures, if any, approved by the
9 property owners' association for the property owners' association's
10 current fiscal year;

11 (6) the amount of reserves, if any, for capital
12 expenditures;

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

15 (8) the total of any unsatisfied judgments against the
16 property owners' association;

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

21 (10) a copy of a certificate of insurance showing the
22 property owners' association's property and liability insurance
23 relating to the common areas and common facilities;

24 (11) a description of any conditions on the owner's
25 property that the property owners' association board has actual
26 knowledge are in violation of the restrictions applying to the
27 subdivision or the bylaws or rules of the property owners'

1 association;

2 (12) a summary or copy of notices received by the
3 property owners' association from any governmental authority
4 regarding health or housing code violations existing on the
5 preparation date of the certificate relating to the owner's
6 property or any common areas or common facilities owned or leased by
7 the property owners' association;

8 (13) the amount of any administrative transfer fee
9 charged by the property owners' association for a change of
10 ownership of property in the subdivision;

11 (14) the name, mailing address, and telephone number
12 of the property owners' association's managing agent, if any; ~~and~~

13 (15) a statement indicating whether the restrictions
14 allow foreclosure of a property owners' association's lien on the
15 owner's property for failure to pay assessments; and

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

19 SECTION 8. Section 209.003, Property Code, is amended by
20 adding Subsection (e) to read as follows:

21 (e) The following provisions of this chapter do not apply to
22 a property owners' association that is a mixed use master
23 association that existed before January 1, 1974, and that does not
24 have the authority under a dedicatory instrument or other governing
25 document to impose fines:

26 (1) Section 209.005(b);

27 (2) Section 209.0056;

- 1 (3) Section 209.0057;
- 2 (4) Section 209.0058;
- 3 (5) Section 209.00591;
- 4 (6) Section 209.006(c);
- 5 (7) Section 209.0062; and
- 6 (8) Section 209.014.

7 SECTION 9. Chapter 209, Property Code, is amended by adding
8 Sections 209.0035 and 209.0041 to read as follows:

9 Sec. 209.0035. INJUNCTION; DAMAGES. (a) If a property
10 owners' association or other representative designated by the
11 property owners' association has violated, is violating, or is
12 threatening to violate this chapter, a member of the property
13 owners' association may bring a civil action against the property
14 owners' association but may not bring an action against an
15 association's officer or board member individually.

16 (b) A member of a property owners' association bringing an
17 action under this section may seek:

- 18 (1) injunctive relief;
- 19 (2) damages in an amount equal to the greater of:
 - 20 (A) actual damages arising from the violation; or
 - 21 (B) \$1,500 for each violation; or
- 22 (3) both injunctive relief and damages as provided in

23 this subsection.

24 (c) The court may increase an award under Subsection (b)(2)
25 to an amount not to exceed three times the amount awarded under
26 Subsection (b)(2) if the court finds that violations have occurred
27 with a frequency that constitutes a pattern or practice.

1 (d) Each day a violation continues is not considered a
2 separate violation for purposes of assessment of damages.

3 (e) The court may award damages to a property owners'
4 association for a suit brought by a member of the property owners'
5 association that the court finds frivolous or groundless in an
6 amount that is not more than the greater of:

7 (1) three times the association's actual damages; or

8 (2) \$4,500.

9 (f) On or before the 30th day before the date a person files
10 a suit under this section, the person must provide notice to the
11 other party of the person's intent to file suit under this section.
12 The notice must be sent certified mail, return receipt requested,
13 or delivered by the United States Postal Service with signature
14 confirmation service.

15 Sec. 209.0041. AMENDMENT OF DEDICATORY INSTRUMENTS.

16 (a) This section applies to a residential subdivision in which
17 property owners are subject to mandatory membership in a property
18 owners' association.

19 (b) This section applies to all dedicatory instruments
20 regardless of the date on which the dedicatory instruments were
21 created.

22 (c) This section does not apply to the amendment of a
23 dedicatory instrument during a development period, as defined by
24 Section 202.011.

25 (d) To the extent of any conflict with another provision of
26 this title, this section prevails.

27 (e) Except as provided by Subsection (f), a dedicatory

1 instrument may be amended only by a vote of at least 51 percent of
2 the total votes allocated to property owners in the property
3 owners' association, in addition to any governmental approval
4 required by law.

5 (f) A rule or guideline that affects land owned, leased,
6 maintained, or otherwise controlled by the property owners'
7 association may be adopted or amended by majority vote of the
8 association board. A rule or guideline that impacts the use and
9 enjoyment of personal or real property owned exclusively by the
10 owner or that may result in a fine or loss of privilege of a member
11 of the association may be adopted or amended only by a vote of at
12 least 51 percent of the total votes allocated to property owners who
13 cast votes by any permissible method in an association-wide vote.

14 (g) A property owners' association board by majority vote
15 may adopt ministerial, office-related procedural policies, such as
16 payment plan guidelines under Section 209.0062, a collections
17 policy, an enforcement policy, or other similar ministerial,
18 office-related procedural policies. The policy may outline
19 circumstances under which or the manner by which enforcement
20 remedies may be carried out but may not otherwise impact the use and
21 enjoyment of personal or real property owned exclusively by the
22 owner. The policy may not:

23 (1) create a power to:
24 (A) levy a fine; or
25 (B) impose a loss of a privilege on a member of
26 the association; or

27 (2) expand the association's powers beyond the powers

1 granted by any other dedicatory instrument.

2 (h) All ballots cast in a vote that results in an amendment
3 to a restrictive covenant, bylaw, or rule are records of the
4 association subject to inspection under Section 209.005.

5 (i) This section supersedes any contrary requirement in a
6 dedicatory instrument.

7 (j) This section does not apply to a property owners'
8 association that is subject to Chapter 552, Government Code, by
9 application of Section 552.0036, Government Code.

10 SECTION 10. Section 209.005, Property Code, is amended to
11 read as follows:

12 Sec. 209.005. ASSOCIATION RECORDS. (a) This section does
13 not apply to a property owners' association that is subject to
14 Chapter 552, Government Code, by application of Section 552.0036,
15 Government Code.

16 (b) Notwithstanding a provision in a dedicatory instrument,
17 a [A] property owners' association shall make the books and records
18 of the association, including financial records, open to and
19 reasonably available for examination by [to] an owner [in
20 accordance with Section B, Article 2.23, Texas Non-Profit
21 Corporation Act (Article 1396-2.23, Vernon's Texas Civil
22 Statutes)]. An owner is entitled to obtain from the association
23 copies of information contained in the books and records.

24 (c) [(a-1) A property owners' association described by
25 Section 552.0036(2), Government Code, shall make the books and
26 records of the association, including financial records,
27 reasonably available to any person requesting access to the books

1 ~~or records in accordance with Chapter 552, Government~~
2 ~~Code. Subsection (a) does not apply to a property owners'~~
3 ~~association to which this subsection applies.~~

4 ~~[(b)]~~ An attorney's files and records relating to the
5 association, excluding invoices requested by an owner under Section
6 209.008(d), are not:

- 7 (1) records of the association;
- 8 (2) subject to inspection by the owner; or
- 9 (3) subject to production in a legal proceeding.

10 (d) In addition to the requirements of Subsection (b), a
11 property owners' association shall make the association's books and
12 records, including financial records and invoices, available in a
13 building:

14 (1) in which the books and records are appropriately
15 stored; and

16 (2) that is:

17 (A) staffed during normal business hours;

18 (B) accessible to members of the association
19 during normal business hours; and

20 (C) located on property commonly owned by the
21 association within the boundaries of the subdivision governed by
22 the association.

23 (e) If a building described by Subsection (d) does not exist
24 on property described by Subsection (d), the property owners'
25 association shall make the books and records available in
26 accordance with Subsections (g) and (h).

27 (f) A party requesting association books or records shall

1 submit the request in writing:

2 (1) in person by hand delivery to a current board
3 member;

4 (2) to the mailing address of the association or
5 authorized representative as provided on the most current
6 management certificate filed under Section 209.004; or

7 (3) in person to a managing agent as reflected on the
8 most current management certificate filed under Section 209.004.

9 (g) A property owners' association shall make books and
10 records requested under Subsection (b) available to the requesting
11 party within a reasonable time of the property owners'
12 association's receipt of the request.

13 (h) A reasonable time for providing information requested
14 under Subsection (b) is considered to be 10 business days after the
15 date the property owners' association receives a request, except as
16 otherwise provided by this section.

17 (i) If the property owners' association is unable to produce
18 a requested book or record on or before the 10th business day after
19 the date the request is received, the property owners' association
20 must provide to the requestor written notice that:

21 (1) informs the requestor that the property owners'
22 association is unable to produce the information on or before the
23 10th business day after the date of the receipt of the request; and

24 (2) states a date by which the information will be
25 available for inspection that occurs not later than the 30th day
26 after the date notice under this subsection is given.

27 (j) A property owners' association shall make books and

1 records requested under this section available to the requestor in
2 one or more of the following formats, as specified by the requestor:

3 (1) an electronic format:

4 (A) delivered to an electronic mail address
5 provided by the requestor; or

6 (B) delivered in a disc or other standard
7 electronic format:

8 (i) to the mailing address of the
9 requestor; or

10 (ii) if the requesting party does not
11 provide a mailing address, to the address of the requestor's
12 property in the subdivision; or

13 (2) a hard-copy format:

14 (A) delivered to the mailing address of the
15 requestor; or

16 (B) if the requesting party does not provide a
17 mailing address:

18 (i) mailed to the address of the requestor's
19 property in the subdivision; or

20 (ii) made available at a location not more
21 than 25 miles from the boundary of the subdivision governed by the
22 association.

23 (k) This section does not require a property owners'
24 association to staff a building described by Subsection (d).

25 (l) A property owners' association may charge an owner for
26 copies of the requested information in an amount that reasonably
27 includes all costs related to reproducing the information,

1 including costs of materials, labor, and overhead.

2 (m) Any information maintained by the association that is
3 released under this section may not identify an individual member
4 of an association or an individual's personal financial
5 information. Information may be released in an aggregate manner
6 that would not identify an individual property owner.

7 (n) All ballots cast in an election that results in an
8 amendment to a dedicatory instrument, as required by Section
9 209.0041, are records of the property owners' association subject
10 to inspection under this section.

11 (o) All ballots cast in an election of property owners'
12 association board or other committee members are considered records
13 of the association but may not be made available for inspection
14 under this section, except for the purposes of a recount under
15 Section 209.0057(e), without a court order or subpoena. The
16 association shall take reasonable measures to safeguard the
17 security and privacy of those ballots.

18 (p) A property owners' association shall:

19 (1) keep all records as to changes to the dedicatory
20 instruments in perpetuity;

21 (2) maintain and secure all ballots in
22 association-wide elections for four years; and

23 (3) maintain records related to financial matters of
24 the association, including assessments, fines, foreclosures, and
25 enforcement actions, for at least seven years.

26 (q) A member of a property owners' association who is denied
27 access to or copies of association books or records to which the

1 member is entitled under this section may file a petition with the
2 justice of the peace of a justice precinct in which all or part of
3 the property that is governed by the association is located
4 requesting relief in accordance with this subsection. If the
5 justice of the peace finds that the member is entitled to access to
6 or copies of the records, the justice of the peace may grant one or
7 more of the following remedies:

8 (1) a judgment against the property owners'
9 association for a penalty of not more than \$1,500;

10 (2) a judgment against the property owners'
11 association for court costs and attorney's fees incurred in
12 connection with seeking a remedy under this section; or

13 (3) a judgment authorizing the owner or the owner's
14 assignee to deduct the amounts awarded under Subdivisions (1) and
15 (2) from any future regular or special assessments payable to the
16 property owners' association.

17 (r) For the purposes of this section, "business day" means a
18 day other than Saturday, Sunday, or a state or federal holiday.

19 (s) On or before the 10th day before the date a person files
20 a suit under this section, the person must provide notice to the
21 other party of the person's intent to file suit under this section.
22 The notice must be sent certified mail, return receipt requested,
23 or delivered by the United States Postal Service with signature
24 confirmation service.

25 SECTION 11. Chapter 209, Property Code, is amended by
26 adding Sections 209.0051, 209.0056, 209.0057, 209.0058, 209.0059,
27 209.00591, 209.00592, and 209.00593 to read as follows:

1 Sec. 209.0051. OPEN BOARD MEETINGS. (a) This section does
2 not apply to a property owners' association that is subject to
3 Chapter 551, Government Code, by application of Section 551.0015,
4 Government Code.

5 (b) In this section, "board meeting" means a deliberation
6 between a quorum of the voting board of the property owners'
7 association, or between a quorum of the voting board and another
8 person, during which property owners' association business or
9 policy over which the board has responsibility is discussed or
10 considered or during which the board takes formal action. The term
11 does not include the gathering of a quorum of the board at a social
12 function unrelated to the business of the association, or the
13 attendance by a quorum of the board at a regional, state, or
14 national convention, workshop, ceremonial event, or press
15 conference, if formal action is not taken and any discussion of
16 association business is incidental to the social function,
17 convention, workshop, ceremonial event, or press conference.

18 (c) Except as provided by this section, a meeting of the
19 property owners' association board or a committee or subcommittee
20 of the board is open to members of the property owners' association
21 and shall be held in a county in which all or part of the property
22 governed by the association is located or a county adjacent to that
23 county.

24 (d) The board shall keep a record of each regular,
25 emergency, or special board meeting in the form of written minutes
26 or an audio recording of the meeting. A record of a meeting must
27 state the subject of each motion or inquiry, regardless of whether

1 the board takes action on the motion or inquiry, and indicate each
2 vote, order, decision, or other action taken by the board. The
3 board shall make meeting records, including approved minutes,
4 available to a member for inspection and copying on the member's
5 written request to the board or the board's representative. The
6 board shall approve the minutes of a board meeting not later than
7 the next regular board meeting.

8 (e) The board shall give members notice of the date, hour,
9 place, and subject of a regular or special board meeting, including
10 a general description of any matters to be brought up for
11 deliberation in executive session. The notice shall be mailed to
12 each member or:

13 (1) posted at least 72 hours before the start of the
14 meeting in a conspicuous manner reasonably designed to provide
15 notice to association members:

16 (A) in a place located on the association's
17 common property or other conspicuously located property within the
18 association, with the property owner's consent; or

19 (B) on any Internet website maintained by the
20 association; and

21 (2) sent via e-mail to each owner who has registered an
22 e-mail address with the property owners' association; it is an
23 owner's duty to keep an e-mail address registered with the property
24 owners' association updated.

25 (f) If the board recesses a regular or special board meeting
26 to continue the following regular business day, the board is not
27 required to post notice of the continued meeting if the recess is

1 taken in good faith and not to circumvent this section. If a
2 regular or special board meeting is continued to the following
3 regular business day, and on that following day the board continues
4 the meeting to another day, the board shall give notice as required
5 by this section of the meeting continued to that other day.

6 (g) If at a regular, emergency, administrative, or special
7 meeting a member makes an inquiry regarding a subject for which
8 notice has not been given as required by this section, the notice
9 provisions of this section do not apply to:

10 (1) a statement by the board of specific factual
11 information given in response to the inquiry; or

12 (2) a recitation of existing policy in response to the
13 inquiry.

14 (h) Any deliberation of or decision relating to the subject
15 of an inquiry made under Subsection (g) shall be limited to a
16 proposal to place the subject on the agenda for a subsequent board
17 meeting.

18 (i) In the event of a reasonably unforeseen emergency or
19 urgent necessity that requires immediate board action, the board
20 may meet in an emergency board meeting. Notice for an emergency
21 board meeting may be given in at least one manner prescribed by
22 Subsection (e)(1) at least two hours before the emergency session
23 is convened and must clearly identify the emergency or urgent
24 necessity for which the notice is given. A board in an emergency
25 meeting may not consider fines, foreclosures, enforcement actions,
26 increases in assessments, or any other foreseeable business or
27 policy over which the board has responsibility. Any action taken in

1 an emergency board meeting must be summarized orally, including an
2 explanation of any known actual or estimated expenditures approved
3 at the meeting, and documented in the minutes or tape recording of
4 the next regular or special board meeting.

5 (j) A property owners' association board may hold an
6 administrative session, and that session is not subject to the
7 notice requirements of this section. In any administrative
8 session, the board may not take action regarding issuance of fines,
9 commencement of foreclosure proceedings, levying of a special
10 assessment, increases in assessments, or approval of items not
11 previously approved in the association's budget.

12 (k) Before the board calls an executive session, the board
13 shall convene in a regular or special board meeting for which notice
14 has been given as provided by this section. During that board
15 meeting, the presiding board member may call an executive session
16 by announcing that an executive session will be held to deliberate a
17 matter described by Subsection (l) and identifying the specific
18 subdivision of Subsection (l) under which the executive session
19 will be held. A vote or other action item may not be taken in
20 executive session.

21 (l) A board of a property owners' association may meet in
22 executive session, to which the members do not have access, to
23 deliberate:

24 (1) anticipated or pending litigation, settlement
25 offers, or interpretations of the law with the association's legal
26 counsel;

27 (2) complaints or charges against or issues regarding

1 a board member or agent, employee, contractor, or other
2 representative of the property owners' association;

3 (3) a payment plan under Section 209.0062;

4 (4) a foreclosure of a lien;

5 (5) an enforcement action against a member of the
6 association, including for nonpayment of amounts due;

7 (6) the purchase, exchange, lease, or value of real
8 property, if the board determines in good faith that deliberation
9 in an open board meeting may have a detrimental effect on the
10 association;

11 (7) business and financial issues relating to the
12 negotiation of a contract, if the board determines in good faith
13 that deliberation in an open board meeting may have a detrimental
14 effect on the position of the association; or

15 (8) matters involving the invasion of privacy of an
16 individual owner.

17 Sec. 209.0056. NOTICE OF ELECTION OR ASSOCIATION VOTE.

18 (a) On or before the 30th day before the date an election or vote
19 is held by a property owners' association, the association shall
20 give each owner of property in the property owners' association
21 written notice of the election or vote.

22 (b) This section supersedes any contrary requirement in a
23 dedicatory instrument.

24 (c) This section does not apply to a property owners'
25 association that is subject to Chapter 552, Government Code, by
26 application of Section 552.0036, Government Code.

27 Sec. 209.0057. TABULATION OF VOTES. (a) This section does

1 not apply to a property owners' association that is subject to
2 Chapter 552, Government Code, by application of Section 552.0036,
3 Government Code.

4 (b) On the written petition of owners having at least 10
5 percent of all voting interests in a property owners' association
6 for a vote tabulation under this subsection, received by the
7 association at least 15 days before the first date that votes may be
8 cast, to tabulate the votes in any matter subject to a vote of the
9 members of a mandatory property owners' association, the
10 association shall enter into a contract for the services of a person
11 who is not a member of the association or related to a member of the
12 association board within the third degree by consanguinity or
13 affinity, as determined under Chapter 573, Government Code, and who
14 is a current or former:

- 15 (1) county judge;
- 16 (2) county elections administrator;
- 17 (3) justice of the peace; or
- 18 (4) county voter registrar.

19 (c) The name of each person tabulating votes of the members
20 of a property owners' association and the results of the tabulation
21 must be reflected in the minutes of the association.

22 (d) Any owner may, not later than the fifth day after the
23 date of the initial tabulation of votes, require a recount of the
24 votes. A demand for a recount must be submitted in writing either:

- 25 (1) in person to a property owners' association board
26 member;
- 27 (2) by certified mail, return receipt requested, or by

1 delivery by the United States Postal Service with signature
2 confirmation service to the association's mailing address on the
3 latest management certificate filed under Section 209.004; or

4 (3) in person to the association's managing agent as
5 reflected on the latest management certificate filed under Section
6 209.004.

7 (e) The property owners' association shall, at the expense
8 of the owner requesting the recount, retain for the purpose of
9 performing the recount the services of a person who is not a member
10 of the association or related to a member of the association board
11 within the third degree of consanguinity or affinity, as determined
12 under Chapter 573, Government Code and who is a current or former:

13 (1) county judge;

14 (2) county elections administrator;

15 (3) justice of the peace; or

16 (4) county voter registrar.

17 (f) Any recount under Subsection (d) must be performed on or
18 before the 30th day after the date of receipt of a request for and
19 payment for a recount in accordance with Subsections (d) and (e).
20 If the recount changes the results of the election, the association
21 shall reimburse the requesting owner for the cost of the recount.
22 Any action taken by the board in the period between the initial
23 election vote tally and the completion of the recount may not be
24 affected by any recount.

25 Sec. 209.0058. BALLOTS. (a) Any vote cast in an election
26 or vote by a member of a property owners' association must be in
27 writing and signed by the member.

1 (b) Electronic votes cast under Section 209.00593
2 constitute written and signed ballots.

3 (c) In an association-wide election, written and signed
4 ballots are not required for uncontested races.

5 Sec. 209.0059. RIGHT TO VOTE. (a) A provision in a
6 dedicatory instrument that would disqualify a property owner from
7 voting in an association election of board members or on any matter
8 concerning the rights or responsibilities of the owner is void.

9 (b) This section does not apply to a property owners'
10 association that is subject to Chapter 552, Government Code, by
11 application of Section 552.0036, Government Code.

12 Sec. 209.00591. PROXY VOTING. A provision in any
13 dedicatory instrument that provides for a proxy vote in any matter
14 subject to a vote of the members of the property owners' association
15 is void.

16 Sec. 209.00592. BOARD MEMBERSHIP. (a) Except as provided
17 by Subsection (b), a provision in a dedicatory instrument that
18 restricts a property owner's right to run for a position on the
19 board of the property owners' association is void.

20 (b) If a board is presented with written, documented
21 evidence from a database or other record maintained by a
22 governmental law enforcement authority that a board member has been
23 convicted of a felony or crime involving moral turpitude, the board
24 member is immediately ineligible to serve on the board of the
25 property owners' association, automatically considered removed
26 from the board, and prohibited from future service on the board.

27 Sec. 209.00593. VOTING; QUORUM. (a) The voting rights of

1 an owner may be cast or given:

2 (1) in person at a meeting of the property owners'
3 association;

4 (2) by absentee ballot in accordance with this
5 section; or

6 (3) by electronic ballot in accordance with this
7 section.

8 (b) An absentee or electronic ballot:

9 (1) may be counted as an owner present and voting for
10 the purpose of establishing a quorum only for items appearing on the
11 ballot;

12 (2) may not be counted, even if properly delivered, if
13 the owner attends any meeting to vote in person, so that any vote
14 cast at a meeting by a property owner supersedes any vote submitted
15 by absentee or electronic ballot previously submitted for that
16 proposal; and

17 (3) may not be counted on the final vote of a proposal
18 if the motion was amended at the meeting to be different from the
19 exact language on the absentee or electronic ballot.

20 (c) A solicitation for votes by absentee ballot must
21 include:

22 (1) an absentee ballot that contains each proposed
23 action and provides an opportunity to vote for or against each
24 proposed action;

25 (2) instructions for delivery of the completed
26 absentee ballot, including the delivery location; and

27 (3) the following language: "By casting your vote via

1 absentee ballot you will forgo the opportunity to consider and vote
2 on any action from the floor on these proposals, if a meeting is
3 held. This means that if there are amendments to these proposals
4 your votes will not be counted on the final vote on these measures.
5 If you desire to retain this ability, please attend any meeting in
6 person. You may submit an absentee ballot and later choose to
7 attend any meeting in person, in which case any in-person vote will
8 prevail."

9 (d) For the purposes of this section, "electronic ballot"
10 means a ballot:

11 (1) given by:

12 (A) electronic mail;

13 (B) facsimile; or

14 (C) posting on an Internet website;

15 (2) for which the identity of the property owner
16 submitting the ballot can be confirmed; and

17 (3) for which the property owner may receive a receipt
18 of the electronic transmission and receipt of the owner's ballot.

19 (e) If an electronic ballot is posted on an Internet
20 website, a notice of the posting shall be sent to each owner that
21 contains instructions on obtaining access to the posting on the
22 website.

23 (f) This section supersedes any contrary provision in a
24 dedicatory instrument.

25 (g) This section does not apply to a property owners'
26 association that is subject to Chapter 552, Government Code, by
27 application of Section 552.0036, Government Code.

1 SECTION 12. Section 209.006, Property Code, is amended by
2 amending Subsection (b) and adding Subsections (c), (d), (e), and
3 (f) to read as follows:

4 (b) The notice must:

5 (1) describe the violation or property damage that is
6 the basis for the suspension action, charge, or fine and state any
7 amount due the association from the owner; ~~and~~

8 (2) except as provided by Subsection (d), inform the
9 owner that the owner:

10 (A) is entitled to a reasonable period to cure
11 the violation and avoid the fine ~~[or suspension unless the owner was~~
12 ~~given notice and a reasonable opportunity to cure a similar~~
13 ~~violation within the preceding six months]~~; and

14 (B) may request a hearing under Section 209.007
15 on or before the 30th day after the date notice was delivered to the
16 owner;

17 (3) specify the date by which the owner must cure the
18 violation if the violation is of a curable nature and does not pose
19 a threat to public health or safety;

20 (4) specify the dollar amount of any fine the
21 association seeks to levy;

22 (5) specify each provision of the dedicatory
23 instrument the owner is alleged to have violated; and

24 (6) be sent by certified mail, return receipt
25 requested, or delivered by the United States Postal Service with
26 signature confirmation service to the owner at the owner's last
27 known address as shown on the association's records ~~[receives the~~

1 ~~notice]~~.

2 (c) The date specified in the notice under Subsection (b)(3)
3 must provide a reasonable period of at least 30 days for the owner
4 to cure the violation if the violation is of a curable nature and
5 does not pose a threat to public health or safety.

6 (d) Subsections (a) and (b) do not apply to a violation for
7 which the owner has been previously given notice under this section
8 and the opportunity to exercise any rights available under this
9 section in the preceding six months.

10 (e) If the property owner does not cure the violation in the
11 time provided under Subsection (c) and does not request a hearing
12 under Subsection (b)(2)(B), the property owners' association may
13 assess the fine and shall provide notice of the assessment to the
14 owner. If the property owner cures the violation before the
15 expiration period for cure specified under Subsection (c), any fine
16 assessed for the violation is void.

17 (f) For purposes of this section, a violation is considered
18 a threat to public health or safety if the violation could
19 materially affect the physical health or safety of an ordinary
20 resident.

21 SECTION 13. Chapter 209, Property Code, is amended by
22 adding Sections 209.0061, 209.0062, 209.0063, and 209.0064 to read
23 as follows:

24 Sec. 209.0061. ASSESSMENT OF FINES. (a) A fine assessed
25 by the property owners' association must be reasonable in the
26 context of the nature and frequency of the violation and the effect
27 of the violation on the subdivision as a whole. If the association

1 allows fines for a continuing violation to accumulate against a lot
2 or an owner, the association must establish a reasonable maximum
3 fine amount for a continuing violation, at which point the total
4 fine amount is capped.

5 (b) If a lot occupant other than the owner violates a
6 provision of the dedicatory instrument, the property owners'
7 association, in addition to exercising any of the association's
8 powers against the owner, may assess a fine directly against the
9 nonowner occupant in the same manner as provided for an owner but
10 may not require payment from both the owner and a nonowner occupant
11 for the same violation.

12 (c) If the property owners' association assesses a fine
13 against a nonowner occupant under this section, the notice
14 provisions of Section 209.006 and the hearing provisions of Section
15 209.007 apply to the nonowner occupant in the same manner as those
16 provisions apply to an owner.

17 Sec. 209.0062. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN
18 ASSESSMENTS. (a) A property owners' association shall adopt
19 reasonable guidelines to establish an alternative payment schedule
20 by which an owner may make partial payments to the property owners'
21 association for delinquent regular or special assessments or any
22 other amount owed to the association without accruing additional
23 monetary penalties. For purposes of this section, monetary
24 penalties do not include reasonable costs associated with
25 administering the payment plan or interest.

26 (b) For any approved special assessment in an amount greater
27 than the equivalent of the sum of all regular assessments payable in

1 the year the special assessment is approved, a property owners'
2 association shall allow partial payments of the special assessment
3 for 12 months unless the property owner requests a shorter payment
4 period in writing at the time the property owner requests an
5 alternative payment plan. A property owners' association may offer
6 a reasonable discount for an owner making a one-time lump sum
7 payment of the special assessment.

8 (c) For any approved special assessment in an amount greater
9 than the equivalent of one-half the sum of all regular assessments
10 payable in the year the special assessment is approved, a property
11 owners' association shall allow partial payments of the special
12 assessment for six months unless the property owner requests a
13 shorter payment period in writing at the time the property owner
14 requests an alternative payment plan. A property owners'
15 association may offer a reasonable discount to an owner making a
16 one-time lump sum payment of the special assessment.

17 (d) A property owners' association is not required to allow
18 a payment plan for any amount that extends more than 12 months from
19 the date of the owner's request for a payment plan or to enter into a
20 payment plan with an owner who failed to honor the terms of a
21 previous payment plan during the five years following an owner's
22 default under a previous payment plan.

23 (e) A property owners' association shall file the
24 association's guidelines under this section in the real property
25 records of each county in which the subdivision is located.

26 (f) A property owners' association's failure to file as
27 required by this section the association's guidelines in the real

1 property records of each county in which the subdivision is located
2 does not prohibit a property owner from receiving an alternative
3 payment schedule by which the owner may make partial payments to the
4 property owners' association for delinquent regular or special
5 assessments or any other amount owed to the association without
6 accruing additional monetary penalties, as defined by Subsection
7 (a).

8 Sec. 209.0063. PRIORITY OF PAYMENTS. Unless otherwise
9 provided in writing by the property owner at the time payment is
10 made, a payment received by a property owners' association from the
11 owner shall be applied to the owner's debt in the following order of
12 priority:

- 13 (1) any delinquent assessment;
14 (2) any current assessment;
15 (3) any attorney's fees incurred by the association
16 associated solely with assessments or any other charge that could
17 provide the basis for foreclosure;
18 (4) any fines assessed by the association;
19 (5) any attorney's fees incurred by the association
20 that are not subject to Subdivision (3); and
21 (6) any other amount owed to the association.

22 Sec. 209.0064. COLLECTIONS. A property owners' association
23 must bring suit or otherwise initiate against an owner a collection
24 action authorized by the dedicatory instruments or other law on or
25 before the 10th anniversary of the date on which the cause of action
26 for collection of the debt accrues. Section 16.004, Civil Practice
27 and Remedies Code, does not apply to the collection of a debt owed

1 by an owner to a property owners' association.

2 SECTION 14. Section 209.007, Property Code, is amended by
3 amending Subsection (a) and adding Subsections (f), (g), (h), (i),
4 and (j) to read as follows:

5 (a) If the owner is entitled to an opportunity to cure the
6 violation, the owner has the right to submit a written request for a
7 hearing to discuss and verify facts and resolve the matter in issue
8 before a committee appointed by the board of the property owners'
9 association or before the board if the board does not appoint a
10 committee. The written request must contain a statement of the
11 grounds on which the owner believes the owner is not in violation
12 and citations of the dedicatory instrument for each violation
13 alleged.

14 (f) If the parties fail to reach agreement in or after the
15 hearing described by this section, the property owners' association
16 must file suit to uphold and enforce any fine sought to be assessed.
17 The suit must be filed in a justice court or small claims court not
18 later than the 180th day after the date of the hearing described by
19 this section or an appeal under Subsection (b), whichever is later.
20 The complaint must list each violation and be accompanied by
21 citation of the dedicatory instrument for each violation. If the
22 property owners' association does not file suit within the time
23 prescribed by this subsection, the association's right to collect
24 the fine is considered waived.

25 (g) Not later than the 30th day after the date a suit is
26 filed under Subsection (f), the court shall hold an evidentiary
27 hearing on the matter. The parties are not entitled to any

1 discovery.

2 (h) At the evidentiary hearing, the property owners'
3 association has the burden of proving by a preponderance of the
4 evidence that the property owner has violated a restrictive
5 covenant.

6 (i) The court shall determine whether a violation has
7 occurred and, if so, whether the fine for the violation is
8 reasonable considering the type, duration, and severity of the
9 violation.

10 (j) If the court finds that the position taken by either
11 party is groundless or is taken in bad faith, the court may award
12 the prevailing party's attorney's fees.

13 SECTION 15. Chapter 209, Property Code, is amended by
14 adding Section 209.0091 to read as follows:

15 Sec. 209.0091. JUDICIAL FORECLOSURE REQUIRED. (a) Except
16 as provided by Subsection (c), a property owners' association may
17 not foreclose a property owners' association assessment lien unless
18 the association first obtains a court order in an application for
19 expedited foreclosure under the rules adopted by the supreme court
20 under Subsection (b). A property owners' association may use the
21 procedure described by this subsection to foreclose any lien
22 described by the association's dedicatory instruments.

23 (b) The supreme court, as an exercise of the court's
24 authority under Section 74.024, Government Code, shall adopt rules
25 establishing expedited foreclosure proceedings for use by a
26 property owners' association in foreclosing an assessment lien of
27 the association. The rules adopted under this subsection must be

1 substantially similar to the rules adopted by the supreme court
2 under Section 50(r), Article XVI, Texas Constitution.

3 (c) Expedited foreclosure is not required under this
4 section if the owner of the property that is subject to foreclosure
5 agrees in writing at the time the foreclosure is sought to waive
6 expedited foreclosure under this section. A waiver under this
7 subsection may not be required as a condition of the transfer of
8 title to real property.

9 (d) A provision granting a right to foreclose a lien on real
10 property for unpaid amounts due to a property owners' association
11 may be removed from a dedicatory instrument or adopted in a
12 dedicatory instrument by a vote of at least 51 percent of the total
13 votes allocated to property owners in the property owners'
14 association. Owners holding at least 10 percent of all voting
15 interests in the property owners' association may petition the
16 association and require a special meeting to be called for the
17 purposes of taking a vote for the purposes of this section.

18 SECTION 16. Subsection (a), Section 209.010, Property Code,
19 is amended to read as follows:

20 (a) A property owners' association that conducts a
21 foreclosure sale of an owner's lot must send to the lot owner not
22 later than the 30th day after the date of the foreclosure sale:

23 (1) a written notice stating the date and time the sale
24 occurred and informing the lot owner of the owner's right to redeem
25 the property under Section 209.011; and

26 (2) a copy of Section 209.011.

27 SECTION 17. Chapter 209, Property Code, is amended by

1 adding Section 209.014 to read as follows:

2 Sec. 209.014. RESTRICTIONS ON OWNERSHIP VOID. A property
3 owners' association may not prohibit an owner from owning multiple
4 properties governed by the property owners' association if the
5 cumulative voting rights of all of that owner's properties are 25
6 percent or less of all voting interests in the property owners'
7 association. This section does not apply during a development
8 period as defined by Section 202.011.

9 SECTION 18. Subsection (a), Section 211.002, Property Code,
10 is amended to read as follows:

11 (a) This chapter applies only to a residential real estate
12 subdivision or any unit or parcel of a subdivision to which another
13 chapter in this title that provides a procedure under which a
14 subdivision's restrictions may be amended does not apply [~~located~~
15 ~~in whole or in part within an unincorporated area of a county if the~~
16 ~~county has a population of less than 65,000~~].

17 SECTION 19. Subsection (c), Section 202.004, Property Code,
18 is amended to read as follows:

19 (c) For a violation of a restrictive covenant of a property
20 owners' association that is a mixed use master association that
21 existed before January 1, 1974, and that does not have the authority
22 under a dedicatory instrument or other governing document to impose
23 finer, a [A] court may assess civil damages [~~for the violation of a~~
24 ~~restrictive covenant~~] in an amount not to exceed \$200 for each day
25 of the violation.

26 SECTION 20. (a) Subsection (a), Section 5.006, Property
27 Code, as amended by this Act, applies only to an action filed on or

1 after the effective date of this Act. An action filed before the
2 effective date of this Act is governed by the law in effect
3 immediately before the effective date of this Act, and that law is
4 continued in effect for that purpose.

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

14 (c) Sections 202.015 and 209.0035, Property Code, as added
15 by this Act, apply only to a cause of action that accrues on or after
16 the effective date of this Act. A cause of action that accrues
17 before the effective date of this Act is governed by the law in
18 effect immediately before the effective date of this Act, and that
19 law is continued in effect for that purpose.

20 (d) Subsection (c), Section 202.004, Property Code, as
21 amended by this Act, applies only to an action brought on or after
22 the effective date of this Act. An action brought before the
23 effective date of this Act is governed by the law in effect
24 immediately before the effective date of this Act, and that law is
25 continued in effect for that purpose.

26 (e) Section 202.006, Property Code, as amended by this Act,
27 and Sections 202.008, 202.010, 202.011, 202.012, 202.014,

1 209.0059, and 209.00591 and Subsection (a), Section 209.00592, and
2 Section 209.014, Property Code, as added by this Act, apply to a
3 provision in a dedicatory instrument or a restrictive covenant
4 enacted before, on, or after the effective date of this Act, except
5 that any action taken before the effective date of this Act based on
6 an unfiled dedicatory instrument is not invalidated by Section
7 202.006, Property Code, as amended by this Act.

8 (f) Section 209.005, Property Code, as amended by this Act,
9 applies only to a request for information received by a property
10 owners' association on or after the effective date of this Act. A
11 request for information received by a property owners' association
12 before the effective date of this Act is governed by the law in
13 effect immediately before the effective date of this Act, and that
14 law is continued in effect for that purpose.

15 (g) Sections 209.0061, 209.0062, and 209.0064, Property
16 Code, as added by this Act, apply only to an assessment or other
17 debt that becomes due on or after the effective date of this Act. An
18 assessment or other debt that becomes due before the effective date
19 of this Act is governed by the law in effect immediately before the
20 effective date of this Act, and that law is continued in effect for
21 that purpose.

22 (h) Section 209.0063, Property Code, as added by this Act,
23 applies only to a payment received by a property owners'
24 association on or after the effective date of this Act. A payment
25 received by a property owners' association before the effective
26 date of this Act is governed by the law in effect immediately before
27 the effective date of this Act, and that law is continued in effect

1 for that purpose.

2 (i) Section 209.0091, Property Code, as added by this Act,
3 applies only to a foreclosure sale that occurs after January 1,
4 2010. A foreclosure sale that occurs on or before January 1, 2010,
5 is governed by the law in effect immediately before the effective
6 date of this Act, and that law is continued in effect for that
7 purpose.

8 (j) Subsection (a), Section 209.010, Property Code, as
9 amended by this Act, applies only to a foreclosure sale conducted on
10 or after the effective date of this Act. A foreclosure sale
11 conducted before the effective date of this Act is governed by the
12 law in effect immediately before the effective date of this Act, and
13 that law is continued in effect for that purpose.

14 SECTION 21. Not later than January 1, 2010, each property
15 owners' association shall present for recording with the county
16 clerk as prescribed by Section 202.006, Property Code, as amended
17 by this Act, each dedicatory instrument governing the association
18 that has not been previously recorded in the real property records
19 of the county.

20 SECTION 22. Not later than January 1, 2010, the Supreme
21 Court of Texas shall adopt rules of civil procedure under Section
22 209.0091, Property Code, as added by this Act.

23 SECTION 23. This Act takes effect January 1, 2010.