

By: West

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. Chapter 209, Property Code, is amended by adding Sections 209.0041 through 209.0046 to read as follows:

Sec. 209.0041. AMENDMENT OF DECLARATION. (a) In this section, "development period" means a period stated in a declaration during which a declarant reserves:

(1) a right to facilitate the development, construction, and marketing of the subdivision;

(2) a right to direct the size, shape, and composition of the subdivision; or

(3) any other right customarily reserved by a declarant for the benefit of developers and builders.

(b) This section applies only to a residential subdivision in which property owners are subject to mandatory regular or special assessments.

(c) This section applies to a declaration regardless of the date on which the declaration was created.

(d) This section does not apply to the amendment of a declaration during a development period.

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

1 (f) Unless a declaration creating a residential subdivision
2 provides a lower percentage, the declaration and any subsequently
3 enacted declarations may be amended on a vote of 67 percent of the
4 total votes allocated to owners of property in the subdivision. If
5 the declaration provides a lower percentage, the percentage in the
6 declaration controls.

7 (g) All ballots cast in an election that results in the
8 amendment of a declaration under this section shall be deposited in
9 the county clerk's office of each county in which the declaration is
10 recorded and are subject to inspection by the public. A county
11 clerk shall retain ballots deposited with the clerk under this
12 subsection until the fourth anniversary of the date the ballots
13 were deposited. A county clerk may not charge a fee for the deposit
14 of ballots under this subsection.

15 Sec. 209.0042. TABULATION OF VOTES. (a) In any matter
16 subject to a vote of the members of the property owners'
17 association, the association shall utilize a neutral third party to
18 tabulate the votes:

19 (1) if the association schedules the election with
20 less than 30 days' notice; or

21 (2) for an election scheduled with notice of 30 days or
22 more, if the association receives written requests from at least 25
23 percent of the owners of property in the subdivision or 50 owners of
24 property in the subdivision, whichever is less:

25 (A) at least 10 days before the date of the
26 meeting at which the vote will be taken; or

27 (B) if no meeting is to be held, at least 10 days

1 before the deadline to cast a vote.

2 (b) For the purposes of this section, a person is considered
3 a neutral third party if the person is anyone other than a candidate
4 for office, a current or former member or officer of the board of
5 directors, an attorney who represents the property owners'
6 association, or a representative of the association's management
7 company, or a person related to one of those persons within the
8 second degree by consanguinity or affinity, as determined under
9 Chapter 573, Government Code.

10 (c) This section does not apply to a property owners'
11 association if:

12 (1) membership in the property owners' association is
13 mandatory for owners or for a defined class of owners of private
14 real property in a defined geographic area in a county with a
15 population of 2.8 million or more or in a county adjacent to a
16 county with a population of 2.8 million or more;

17 (2) the property owners' association has the power to
18 make mandatory special assessments for capital improvements or
19 mandatory regular assessments; and

20 (3) the amount of the mandatory special or regular
21 assessments is or has ever been based in whole or in part on the
22 value at which the state or a local governmental body assesses the
23 property for purposes of ad valorem taxation under Section 20,
24 Article VIII, Texas Constitution.

25 Sec. 209.0043. RIGHT TO VOTE. A provision of a dedicatory
26 instrument that would disqualify a property owner from voting in an
27 association election of board members or on any matter concerning

1 the rights or responsibilities of the owner is void.

2 Sec. 209.0044. BOARD MEMBERSHIP. (a) A provision of a
3 dedicatory instrument that restricts a property owner's right to
4 run for a position on the board of the property owners' association
5 is void.

6 (b) A property owners' association board may make
7 information available to members of the association regarding a
8 candidate for a position on the board regarding:

9 (1) any amount owed to the association by the
10 candidate that is six months or more overdue;

11 (2) any violation of a restrictive covenant of which
12 notice was delivered to a board candidate under Section 209.006
13 more than 30 days before the date of the election; and

14 (3) any lawsuits to which both the property owners'
15 association or any of its directors or agents and the board
16 candidate are a party.

17 (c) A person may not serve as a board member of a property
18 owners' association if the person has been convicted of an offense
19 involving moral turpitude. A property owners' association or its
20 agent shall obtain from the Department of Public Safety or a private
21 vendor approved by the department and offering services comparable
22 to the services offered by the department all criminal history
23 record information relating to each person who declares a candidacy
24 for a position of the board.

25 (d) A property owners' association board member may not be
26 elected to a term of longer than three years.

27 Sec. 209.0045. CONDUCT OF ELECTION. If a physical polling

1 place is open for association members to vote, the polling place for
2 an association election must be open from 7 a.m. to 7 p.m. on any day
3 on which an election is held on an issue on which all the members of
4 the association are polled.

5 Sec. 209.0046. BYLAWS. (a) The administration and
6 operation of a property owners' association are governed by the
7 bylaws. The bylaws must provide for:

8 (1) the qualifications and number of directors of the
9 association, which number may not be less than three;

10 (2) the qualifications and titles of the officers of
11 the association, which must include a president, secretary, and
12 treasurer;

13 (3) terms of office for directors;

14 (4) the manner of electing and removing a board member
15 or officer and of filling vacancies;

16 (5) the powers, if any, that the board or an officer
17 may delegate to another person or to a managing agent;

18 (6) the method of amending the bylaws; and

19 (7) the manner of notice of meetings of the
20 association.

21 (b) The bylaws may not expand the powers of the association
22 beyond those powers specifically granted in the dedicatory
23 instrument.

24 SECTION 2. Subsection (a), Section 211.002, Property Code,
25 is amended to read as follows:

26 (a) This chapter applies only to a residential real estate
27 subdivision or any unit or parcel of a subdivision to which another

1 chapter in this title that provides a procedure under which a
2 subdivision's restrictions may be amended does not apply [~~located~~
3 ~~in whole or in part within an unincorporated area of a county if the~~
4 ~~county has a population of less than 65,000~~].

5 SECTION 3. (a) Section 209.0043, and Subsection (a),
6 Section 209.0044, Property Code, as added by this Act, apply to a
7 deed restriction enacted before, on, or after the effective date of
8 this Act.

9 (b) Subsections (c) and (d), Section 209.0044, Property
10 Code, as added by this Act, apply only to a board member of a
11 property owners' association elected on or after the effective date
12 of this Act. A board member elected before the effective date of
13 this Act is subject to the law as it existed immediately before the
14 effective date of this Act, and that law is continued in effect for
15 that purpose.

16 SECTION 4. This Act takes effect January 1, 2010.