

1-1 By: West S.B. No. 237
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 30, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 4, Nays 0;
1-6 March 30, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 237 By: West

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to certain procedures and requirements for the operation
1-11 of property owners' associations.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter 209, Property Code, is amended by adding
1-14 Sections 209.0041 through 209.0046 and 209.0051 to read as follows:

1-15 Sec. 209.0041. AMENDMENT OF DECLARATION. (a) In this
1-16 section, "development period" means a period stated in a
1-17 declaration during which a declarant reserves:

1-18 (1) a right to facilitate the development,
1-19 construction, and marketing of the subdivision;

1-20 (2) a right to direct the size, shape, and composition
1-21 of the subdivision; or

1-22 (3) any other right customarily reserved by a
1-23 declarant for the benefit of developers and builders.

1-24 (b) This section applies only to a residential subdivision
1-25 in which property owners are subject to mandatory regular or
1-26 special assessments.

1-27 (c) This section applies to a declaration regardless of the
1-28 date on which the declaration was created.

1-29 (d) This section does not apply to the amendment of a
1-30 declaration during a development period.

1-31 (e) To the extent of any conflict with another provision of
1-32 this title, this section prevails.

1-33 (f) Unless a declaration creating a residential subdivision
1-34 provides a lower percentage, the declaration and any subsequently
1-35 enacted declarations may be amended on a vote of 67 percent of the
1-36 total votes allocated to owners of property in the subdivision. If
1-37 the declaration provides a lower percentage, the percentage in the
1-38 declaration controls.

1-39 (g) All ballots cast in an election that results in the
1-40 amendment of a declaration under this section shall be deposited in
1-41 the county clerk's office of each county in which the declaration is
1-42 recorded and are subject to inspection by the public. A county
1-43 clerk shall retain ballots deposited with the clerk under this
1-44 subsection until the fourth anniversary of the date the ballots
1-45 were deposited. A county clerk may not charge a fee for the deposit
1-46 of ballots under this subsection.

1-47 Sec. 209.0042. TABULATION OF VOTES. (a) In any matter
1-48 subject to a vote of the members of the property owners'
1-49 association, the association shall utilize a neutral third party to
1-50 tabulate the votes:

1-51 (1) if the association schedules the election with
1-52 less than 30 days' notice; or

1-53 (2) for an election scheduled with notice of 30 days or
1-54 more, if the association receives written requests from at least 25
1-55 percent of the owners of property in the subdivision or 50 owners of
1-56 property in the subdivision, whichever is less:

1-57 (A) at least 10 days before the date of the
1-58 meeting at which the vote will be taken; or

1-59 (B) if no meeting is to be held, at least 10 days
1-60 before the deadline to cast a vote.

1-61 (b) For the purposes of this section, a person is considered
1-62 a neutral third party if the person is anyone other than a candidate
1-63 for office, a current or former member or officer of the board of

2-1 directors, an attorney who represents the property owners'
 2-2 association, or a representative of the association's management
 2-3 company, or a person related to one of those persons within the
 2-4 second degree by consanguinity or affinity, as determined under
 2-5 Chapter 573, Government Code.

2-6 (c) This section does not apply to a property owners'
 2-7 association if:

2-8 (1) membership in the property owners' association is
 2-9 mandatory for owners or for a defined class of owners of private
 2-10 real property in a defined geographic area in a county with a
 2-11 population of 2.8 million or more or in a county adjacent to a
 2-12 county with a population of 2.8 million or more;

2-13 (2) the property owners' association has the power to
 2-14 make mandatory special assessments for capital improvements or
 2-15 mandatory regular assessments; and

2-16 (3) the amount of the mandatory special or regular
 2-17 assessments is or has ever been based wholly or partly on the value
 2-18 at which the state or a local governmental body assesses the
 2-19 property for purposes of ad valorem taxation under Section 20,
 2-20 Article VIII, Texas Constitution.

2-21 Sec. 209.0043. RIGHT TO VOTE. A provision of a dedicatory
 2-22 instrument that would disqualify a property owner from voting in an
 2-23 association election of board members or on any matter concerning
 2-24 the rights or responsibilities of the owner is void.

2-25 Sec. 209.0044. BOARD MEMBERSHIP. (a) A provision of a
 2-26 dedicatory instrument that restricts a property owner's right to
 2-27 run for a position on the board of the property owners' association
 2-28 is void.

2-29 (b) A property owners' association board may make
 2-30 information available to members of the association regarding a
 2-31 candidate for a position on the board regarding:

2-32 (1) any amount owed to the association by the
 2-33 candidate that is six months or more overdue;

2-34 (2) any violation of a restrictive covenant of which
 2-35 notice was delivered to a board candidate under Section 209.006
 2-36 more than 30 days before the date of the election; and

2-37 (3) any lawsuits to which both the property owners'
 2-38 association or any of its directors or agents and the board
 2-39 candidate are a party.

2-40 (c) A person may not serve as a board member of a property
 2-41 owners' association if the person has been convicted of an offense
 2-42 involving moral turpitude. A property owners' association or its
 2-43 agent shall obtain from the computerized criminal history system
 2-44 maintained by the Department of Public Safety and made available to
 2-45 the public through the department's Internet website all criminal
 2-46 history record information relating to each person who declares a
 2-47 candidacy for a position on the board.

2-48 (d) A property owners' association board member may not be
 2-49 elected to a term of longer than three years.

2-50 Sec. 209.0045. CONDUCT OF ELECTION. If a physical polling
 2-51 place is open for association members to vote, the polling place for
 2-52 an association election must be open from 7 a.m. to 7 p.m. on any day
 2-53 on which an election is held on an issue on which all the members of
 2-54 the association are polled.

2-55 Sec. 209.0046. BYLAWS. (a) The administration and
 2-56 operation of a property owners' association are governed by the
 2-57 bylaws. The bylaws must provide for:

2-58 (1) the qualifications and number of directors of the
 2-59 association, which number may not be less than three;

2-60 (2) the qualifications and titles of the officers of
 2-61 the association, which must include a president, secretary, and
 2-62 treasurer;

2-63 (3) terms of office for directors;

2-64 (4) the manner of electing and removing a board member
 2-65 or officer and of filling vacancies;

2-66 (5) the powers, if any, that the board or an officer
 2-67 may delegate to another person or to a managing agent;

2-68 (6) the method of amending the bylaws; and

2-69 (7) the manner of notice of meetings of the

3-1 association.
3-2 (b) The bylaws may not expand the powers of the association
3-3 beyond those powers specifically granted in the dedicatory
3-4 instrument.

3-5 Sec. 209.0051. OPEN MEETINGS. (a) Each meeting of the
3-6 board or a committee of a property owners' association shall be open
3-7 to every member of the association and shall be held in a county in
3-8 which the property to which the association relates is located.

3-9 (b) A property owners' association shall give written
3-10 notice to every member of the property owners' association of the
3-11 date, hour, place, and subject of each regular or special meeting of
3-12 the board or a committee of the property owners' association. The
3-13 notice must include a written agenda that states in clear and
3-14 precise language the item or items to be addressed and considered at
3-15 the meeting and shall be posted:

3-16 (1) at least 72 hours before the start of the meeting;
3-17 and

3-18 (2) in a conspicuous manner or place reasonably
3-19 designed to provide notice to the association members.

3-20 (c) A property owners' association shall prepare and keep
3-21 minutes or make a tape recording of each meeting of the board or a
3-22 committee of the property owners' association. The minutes must:

3-23 (1) state the subject of each deliberation; and

3-24 (2) indicate each vote, order, decision, or other
3-25 action taken.

3-26 (d) The minutes of the board or a committee meeting of a
3-27 property owners' association shall be made available for inspection
3-28 and copying by a member of the property owners' association not
3-29 later than the seventh day after the date of the meeting.

3-30 SECTION 2. Subsection (a), Section 211.002, Property Code,
3-31 is amended to read as follows:

3-32 (a) This chapter applies only to a residential real estate
3-33 subdivision or any unit or parcel of a subdivision to which another
3-34 chapter in this title that provides a procedure under which a
3-35 subdivision's restrictions may be amended does not apply [~~located~~
3-36 ~~in whole or in part within an unincorporated area of a county if the~~
3-37 ~~county has a population of less than 65,000].~~

3-38 SECTION 3. (a) Section 209.0043 and Subsection (a),
3-39 Section 209.0044, Property Code, as added by this Act, apply to a
3-40 deed restriction enacted before, on, or after the effective date of
3-41 this Act.

3-42 (b) Subsections (c) and (d), Section 209.0044, Property
3-43 Code, as added by this Act, apply only to a board member of a
3-44 property owners' association elected on or after the effective date
3-45 of this Act. A board member elected before the effective date of
3-46 this Act is subject to the law as it existed immediately before the
3-47 effective date of this Act, and that law is continued in effect for
3-48 that purpose.

3-49 SECTION 4. This Act takes effect January 1, 2010.

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