

By: West

S.B. No. 240

A BILL TO BE ENTITLED

AN ACT

relating to the enforcement of deed restrictions.

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

SECTION 1. Subsection (c), Section 202.004, Property Code, is amended to read as follows:

(c) For a violation of a restrictive covenant of a planned development governed by a property owners' association that existed before January 1, 1974, and that does not have the authority under a dedicatory instrument or other governing document to impose fines, a [A] court may assess civil damages [~~for the violation of a restrictive covenant~~] in an amount not to exceed \$200 for each day of the violation.

SECTION 2. Chapter 209, Property Code, is amended by adding Sections 209.0061 through 209.0064 to read as follows:

Sec. 209.0061. ASSESSMENT OF FINES. (a) A fine assessed by the property owners' association must be reasonable in the context of the nature, frequency, and effect of the violation. If the association allows fines for a continuing violation to accumulate against a lot or an owner, the association must establish a maximum fine amount for a continuing violation, not to exceed 10 times the amount of the initial fine, at which point the total fine amount is capped.

(b) If a lot occupant other than the owner violates a provision of the dedicatory instrument, the property owners'

1 association, in addition to exercising any of the association's  
2 powers against the owner, may assess a fine directly against the  
3 nonowner occupant in the same manner as provided for an owner but  
4 may not require payment from both the owner and a nonowner occupant  
5 for the same violation.

6 (c) If the property owners' association assesses a fine  
7 against a nonowner occupant under this section, the notice  
8 provisions of Section 209.006 and the hearing provisions of Section  
9 209.007 apply to the nonowner occupant in the same manner as those  
10 provisions apply to an owner.

11 Sec. 209.0062. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN  
12 ASSESSMENTS. (a) A property owners' association shall adopt  
13 reasonable guidelines to establish an alternative payment schedule  
14 by which an owner may make partial payments to the property owners'  
15 association for delinquent regular or special assessments or any  
16 other amount owed to the association.

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

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

25 Sec. 209.0063. PRIORITY OF PAYMENTS. Unless otherwise  
26 provided in a writing by the property owner, a payment received by a  
27 property owners' association from the owner shall be applied to the

1 owner's debt in the following order of priority:

2 (1) any delinquent assessment;

3 (2) any current assessment;

4 (3) any attorney's fees incurred by the association  
5 associated solely with assessments or any other charge that could  
6 provide the basis for foreclosure;

7 (4) any fines assessed by the association;

8 (5) any attorney's fees incurred by the association  
9 that are not subject to Subdivision (3); and

10 (6) any other amount owed to the association.

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

18 SECTION 3. (a) Subsection (c), Section 202.004, Property  
19 Code, as amended by this Act, applies only to an action filed on or  
20 after the effective date of this Act. An action filed before the  
21 effective date of this Act is governed by the law in effect  
22 immediately before the effective date of this Act, and that law is  
23 continued in effect for that purpose.

24 (b) Sections 209.0061, 209.0062, and 209.0064, Property  
25 Code, as added by this Act, apply only to an assessment or other  
26 debt that becomes due on or after the effective date of this Act. An  
27 assessment or other debt that becomes due before the effective date

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

4 (c) Section 209.0063, Property Code, as added by this Act,  
5 applies only to a payment received by a property owners'  
6 association on or after the effective date of this Act. A payment  
7 received by a property owners' association before the effective  
8 date of this Act is governed by the law in effect immediately before  
9 the effective date of this Act, and that law is continued in effect  
10 for that purpose.

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