

By: West

S.B. No. 240

Substitute the following for S.B. No. 240:

By: Quintanilla

C.S.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 owner's 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, 209.0062, 209.0063, 209.0064, and 209.0091 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 and frequency of the violation and the effect of the violation on the subdivision as a whole. If the association allows fines for a continuing violation to accumulate against a lot or an owner, the association must establish a reasonable maximum fine amount for a continuing violation at which point the total fine amount is capped.

(b) If a lot occupant other than the owner violates a

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

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

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

21 (b) For any approved special assessment in an amount greater
22 than the equivalent of the sum of all regular assessments payable in
23 the year the special assessment is approved, a property owners'
24 association shall allow partial payments of the special assessment
25 for 12 months unless the property owner requests a shorter payment
26 period in writing at the time the property owner requests an
27 alternative payment plan. A property owners' association may offer

1 a reasonable discount for an owner making a one-time lump sum
2 payment of the special assessment.

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

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

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

21 (f) A property owners' association's failure to file as
22 required by this section the association's guidelines in the real
23 property records of each county in which the subdivision is located
24 does not prohibit a property owner from receiving an alternative
25 payment schedule by which the owner may make partial payments to
26 the property owners' association for delinquent regular or special
27 assessments or any other amount owed to the association without

1 accruing additional monetary penalties, as defined by Subsection
2 (a).

3 Sec. 209.0063. PRIORITY OF PAYMENTS. Unless otherwise
4 provided in writing by the property owner at the time payment is
5 made, a payment received by a property owners' association from the
6 owner shall be applied to the owner's debt in the following order of
7 priority:

8 (1) any delinquent assessment;

9 (2) any current assessment;

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

13 (4) any fines assessed by the association;

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

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

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

24 SECTION 3. (a) Subsection (c), Section 202.004, Property
25 Code, as amended by this Act, applies only to an action filed on or
26 after the effective date of this Act. An action filed before the
27 effective date of this Act is governed by the law in effect

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

3 (b) Sections 209.0061, 209.0062, and 209.0064, Property
4 Code, as added by this Act, apply only to an assessment or other
5 debt that becomes due on or after the effective date of this Act. An
6 assessment or other debt that becomes due before the effective date
7 of this Act is governed by the law in effect immediately before the
8 effective date of this Act, and that law is continued in effect for
9 that purpose.

10 (c) Section 209.0063, Property Code, as added by this Act,
11 applies only to a payment received by a property owners'
12 association on or after the effective date of this Act. A payment
13 received by a property owners' association before the effective
14 date of this Act is governed by the law in effect immediately before
15 the effective date of this Act, and that law is continued in effect
16 for that purpose.

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