

1-1 By: West S.B. No. 240  
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. 240 By: West

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

1-10 relating to the enforcement of deed restrictions.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Subsection (c), Section 202.004, Property Code,  
1-13 is amended to read as follows:

1-14 (c) For a violation of a restrictive covenant of a planned  
1-15 development governed by a property owners' association that existed  
1-16 before January 1, 1974, and that does not have the authority under a  
1-17 dedicatory instrument or other governing document to impose fines,  
1-18 a [A] court may assess civil damages [~~for the violation of a~~  
1-19 ~~restrictive covenant~~] in an amount not to exceed \$200 for each day  
1-20 of the violation.

1-21 SECTION 2. Chapter 209, Property Code, is amended by adding  
1-22 Sections 209.0061 through 209.0064 to read as follows:

1-23 Sec. 209.0061. ASSESSMENT OF FINES. (a) A fine assessed  
1-24 by the property owners' association must be reasonable in the  
1-25 context of the nature, frequency, and effect of the violation. If  
1-26 the association allows fines for a continuing violation to  
1-27 accumulate against a lot or an owner, the association must  
1-28 establish a maximum fine amount for a continuing violation, not to  
1-29 exceed 10 times the amount of the initial fine, at which point the  
1-30 total fine amount is capped.

1-31 (b) If a lot occupant other than the owner violates a  
1-32 provision of the dedicatory instrument, the property owners'  
1-33 association, in addition to exercising any of the association's  
1-34 powers against the owner, may assess a fine directly against the  
1-35 nonowner occupant in the same manner as provided for an owner but  
1-36 may not require payment from both the owner and a nonowner occupant  
1-37 for the same violation.

1-38 (c) If the property owners' association assesses a fine  
1-39 against a nonowner occupant under this section, the notice  
1-40 provisions of Section 209.006 and the hearing provisions of Section  
1-41 209.007 apply to the nonowner occupant in the same manner as those  
1-42 provisions apply to an owner.

1-43 Sec. 209.0062. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN  
1-44 ASSESSMENTS. (a) A property owners' association shall adopt  
1-45 reasonable guidelines to establish an alternative payment schedule  
1-46 by which an owner may make partial payments to the property owners'  
1-47 association for delinquent regular or special assessments or any  
1-48 other amount owed to the association.

1-49 (b) A property owners' association is not required to allow  
1-50 a payment plan that extends more than 12 months from the date of the  
1-51 owner's request for a payment plan or to enter into a payment plan  
1-52 with an owner during the five years following the owner's failure to  
1-53 honor the terms of a previous payment plan.

1-54 (c) The property owners' association shall file the  
1-55 association's guidelines under this section in the real property  
1-56 records of each county in which the subdivision is located.

1-57 Sec. 209.0063. PRIORITY OF PAYMENTS. Unless otherwise  
1-58 provided in a writing by the property owner, a payment received by a  
1-59 property owners' association from the owner shall be applied to the  
1-60 owner's debt in the following order of priority:

1-61 (1) any delinquent assessment;

1-62 (2) any current assessment;

1-63 (3) any attorney's fees incurred by the association

2-1 associated solely with assessments or any other charge that could  
2-2 provide the basis for foreclosure;

2-3 (4) any fines assessed by the association;

2-4 (5) any attorney's fees incurred by the association  
2-5 that are not subject to Subdivision (3); and

2-6 (6) any other amount owed to the association.

2-7 Sec. 209.0064. COLLECTIONS. A property owners' association  
2-8 must bring suit or otherwise initiate against an owner a collection  
2-9 action authorized by the dedicatory instruments or other law on or  
2-10 before the 10th anniversary of the date on which the cause of action  
2-11 for collection of the debt accrues. Section 16.004, Civil Practice  
2-12 and Remedies Code, does not apply to the collection of a debt owed  
2-13 by an owner to a property owners' association.

2-14 SECTION 3. (a) Subsection (c), Section 202.004, Property  
2-15 Code, as amended by this Act, applies only to an action filed on or  
2-16 after the effective date of this Act. An action filed before the  
2-17 effective date of this Act is governed by the law in effect  
2-18 immediately before the effective date of this Act, and that law is  
2-19 continued in effect for that purpose.

2-20 (b) Sections 209.0061, 209.0062, and 209.0064, Property  
2-21 Code, as added by this Act, apply only to an assessment or other  
2-22 debt that becomes due on or after the effective date of this Act. An  
2-23 assessment or other debt that becomes due before the effective date  
2-24 of this Act is governed by the law in effect immediately before the  
2-25 effective date of this Act, and that law is continued in effect for  
2-26 that purpose.

2-27 (c) Section 209.0063, Property Code, as added by this Act,  
2-28 applies only to a payment received by a property owners'  
2-29 association on or after the effective date of this Act. A payment  
2-30 received by a property owners' association before the effective  
2-31 date of this Act is governed by the law in effect immediately before  
2-32 the effective date of this Act, and that law is continued in effect  
2-33 for that purpose.

2-34 SECTION 4. This Act takes effect January 1, 2010.

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