

By: West

S.B. No. 429

A BILL TO BE ENTITLED

AN ACT

relating to the operation of property owners' associations.

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

SECTION 1. Section 5.006(a), Property Code, is amended to read as follows:

(a) In an action based on breach of a restrictive covenant pertaining to real property, the court shall allow to a prevailing party ~~[who asserted the action]~~ reasonable attorney's fees in addition to the party's costs and claim.

SECTION 2. Section 5.012, Property Code, is amended by amending Subsection (a) and adding Subsections (f) and (g) to read as follows:

(a) A seller of residential real property that is subject to membership in a property owners' association and that comprises not more than one dwelling unit located in this state shall give to the purchaser of the property a written notice that reads substantially similar to the following:

NOTICE OF MEMBERSHIP IN PROPERTY OWNERS' ASSOCIATION CONCERNING THE PROPERTY AT (street address) (name of residential community)

As a purchaser of property in the residential community in which this property is located, you are obligated to be a member of a property owners' association. Restrictive covenants governing the use and occupancy of the property and a dedicatory instrument governing the establishment, maintenance, and operation of this

1 residential community have been or will be recorded in the Real  
2 Property Records of the county in which the property is located.  
3 Copies of the restrictive covenants and dedicatory instrument may  
4 be obtained from the county clerk.

5 You are obligated to pay assessments to the property owners'  
6 association. The amount of the assessments is subject to change.  
7 Your failure to pay the assessments could result in a lien on and  
8 the foreclosure of your property.

9 Section 207.003, Property Code, entitles an owner to receive  
10 copies of restrictions, bylaws, and a resale certificate from a  
11 property owners' association. A resale certificate contains  
12 information including, but not limited to, statements specifying  
13 the amount and frequency of regular assessments, the property  
14 owners' association's operating budget and balance sheet, and the  
15 style and cause number of lawsuits to which the property owners'  
16 association is a party. These documents must be made available to  
17 you by the seller on your request.

18 Date: \_\_\_\_\_

19 \_\_\_\_\_  
Signature of Purchaser

20 (f) On the purchaser's request for a resale certificate from  
21 the seller, the seller shall:

22 (1) promptly deliver a copy of a current resale  
23 certificate if one has been issued for the property under Chapter  
24 207; or

25 (2) if the seller does not have a current resale  
26 certificate:

27 (A) request the property owners' association or

1 its agent to issue a resale certificate under Chapter 207; and

2 (B) promptly deliver a copy of the resale  
3 certificate to the purchaser on receipt of the resale certificate  
4 from the property owners' association or its agent.

5 (g) The seller or the purchaser, as agreed to by the  
6 parties, shall pay the fee to the property owners' association or  
7 its agent for issuing the resale certificate under Chapter 207.

8 SECTION 3. Chapter 202, Property Code, is amended by adding  
9 Sections 202.008 and 202.010 to read as follows:

10 Sec. 202.008. RIGHT OF FIRST REFUSAL PROHIBITED. (a) In  
11 this section, "development period" means a period stated in a  
12 declaration during which a declarant reserves:

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

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

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

19 (b) To the extent a restrictive covenant provides a right of  
20 first refusal for the sale or lease of a residential unit or  
21 residential lot in favor of the property owners' association or the  
22 association's members, the covenant is void.

23 (c) This section does not apply to a restrictive covenant  
24 that provides a right of first refusal in favor of a developer or  
25 builder during the development period.

26 Sec. 202.010. REGULATION OF SOLAR ENERGY DEVICES. (a) In  
27 this section, "solar energy device" has the meaning assigned by

1 Section 171.107, Tax Code.

2 (b) Except as otherwise provided by this section, a property  
3 owners' association may not include or enforce a provision in a  
4 dedicatory instrument that prohibits or restricts a property owner  
5 from installing a solar energy device.

6 (c) A provision that violates Subsection (b) is void.

7 (d) This section does not prohibit the inclusion or  
8 enforcement of a provision in a dedicatory instrument that  
9 prohibits a solar energy device that:

10 (1) threatens the public health or safety;

11 (2) violates a law;

12 (3) is located on property owned or maintained by the  
13 property owners' association;

14 (4) is located on property owned in common by the  
15 members of the property owners' association;

16 (5) is located in an area on the property owner's  
17 property other than:

18 (A) on the roof of the home; or

19 (B) in a fenced yard or patio maintained by the  
20 property owner; or

21 (6) is mounted on a device that is taller or more  
22 visually obtrusive than is necessary for the solar energy device to  
23 operate at not less than 90 percent of its rated efficiency.

24 SECTION 4. Section 207.003(b), Property Code, is amended to  
25 read as follows:

26 (b) A resale certificate under Subsection (a) must contain:

27 (1) a statement of any right of first refusal or other

1 restraint contained in the restrictions or restrictive covenants  
2 that restricts the owner's right to transfer the owner's property;

3 (2) the frequency and amount of any regular  
4 assessments;

5 (3) the amount of any special assessment that is due  
6 after the date the resale certificate is prepared;

7 (4) the total of all amounts due and unpaid to the  
8 property owners' association that are attributable to the owner's  
9 property;

10 (5) capital expenditures, if any, approved by the  
11 property owners' association for the property owners' association's  
12 current fiscal year;

13 (6) the amount of reserves, if any, for capital  
14 expenditures;

15 (7) the property owners' association's current  
16 operating budget and balance sheet;

17 (8) the total of any unsatisfied judgments against the  
18 property owners' association;

19 (9) the style and cause number of any pending lawsuit  
20 in which the property owners' association is a party, other than a  
21 lawsuit relating to unpaid property taxes of an individual member  
22 of the association [~~defendant~~];

23 (10) a copy of a certificate of insurance showing the  
24 property owners' association's property and liability insurance  
25 relating to the common areas and common facilities;

26 (11) a description of any conditions on the owner's  
27 property that the property owners' association board has actual

1 knowledge are in violation of the restrictions applying to the  
2 subdivision or the bylaws or rules of the property owners'  
3 association;

4 (12) a summary or copy of notices received by the  
5 property owners' association from any governmental authority  
6 regarding health or housing code violations existing on the  
7 preparation date of the certificate relating to the owner's  
8 property or any common areas or common facilities owned or leased by  
9 the property owners' association;

10 (13) the amount of any administrative transfer fee  
11 charged by the property owners' association for a change of  
12 ownership of property in the subdivision;

13 (14) the name, mailing address, and telephone number  
14 of the property owners' association's managing agent, if any; ~~and~~

15 (15) a statement indicating whether the restrictions  
16 allow foreclosure of a property owners' association's lien on the  
17 owner's property for failure to pay assessments; and

18 (16) a statement of all fees associated with the  
19 transfer of ownership, including a description of each fee, to whom  
20 each fee is paid, and the amount of each fee.

21 SECTION 5. Chapter 209, Property Code, is amended by adding  
22 Sections 209.0041 through 209.0044 to read as follows:

23 Sec. 209.0041. AMENDMENT OF DECLARATION. (a) This section  
24 applies only to a residential subdivision in which property owners  
25 are subject to mandatory regular or special assessments.

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

1       (c) This section does not apply to the amendment of a  
2 declaration during a development period, as defined by Section  
3 202.008.

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

6       (e) Unless a declaration creating a residential subdivision  
7 provides a lower percentage, the declaration and any subsequently  
8 enacted declarations may be amended on a vote of 67 percent of the  
9 total votes allocated to owners of property in the subdivision. If  
10 the declaration provides a lower percentage, the percentage in the  
11 declaration controls.

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

20       Sec. 209.0042. TABULATION OF VOTES. (a) In any matter  
21 subject to a vote of the members of the property owners'  
22 association, the association shall utilize a neutral third party to  
23 tabulate the votes:

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

26               (2) for an election scheduled with notice of 30 days or  
27 more, if the association receives written requests from at least 25

1 percent of the owners of property in the subdivision or 50 owners of  
2 property in the subdivision, whichever is less:

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

5 (B) if no meeting is to be held, at least 10 days  
6 before the deadline to cast a vote.

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

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

17 (1) membership in the property owners' association is  
18 mandatory for owners or for a defined class of owners of private  
19 real property in a defined geographic area in a county with a  
20 population of 2.8 million or more or in a county adjacent to a  
21 county with a population of 2.8 million or more;

22 (2) the property owners' association has the power to  
23 make mandatory special assessments for capital improvements or  
24 mandatory regular assessments; and

25 (3) the amount of the mandatory special or regular  
26 assessments is or has ever been based in whole or in part on the  
27 value at which the state or a local governmental body assesses the



1 property for purposes of ad valorem taxation under Section 20,  
2 Article VIII, Texas Constitution.

3 Sec. 209.0043. RIGHT TO VOTE. A provision of a dedicatory  
4 instrument that would disqualify a property owner from voting in an  
5 association election of board members or on any matter concerning  
6 the rights or responsibilities of the owner is void.

7 Sec. 209.0044. BOARD MEMBERSHIP. (a) A provision of a  
8 dedicatory instrument that restricts a property owner's right to  
9 run for a position on the board of the property owners' association  
10 is void.

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

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

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

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

22 SECTION 6. Section 209.005, Property Code, is amended by  
23 amending Subsection (a) and adding Subsection (c) to read as  
24 follows:

25 (a) A property owners' association shall make the books and  
26 records of the association, including financial records,  
27 reasonably available to an owner in accordance with Section B,

1 Article 2.23, Texas Non-Profit Corporation Act (Article 1396-2.23,  
2 Vernon's Texas Civil Statutes), or a successor to that statute.

3 (c) If a property owners' association subject to Subsection  
4 (a) fails to comply with Subsection (a), an owner may seek one or  
5 more of the following remedies:

6 (1) a court order directing the property owners'  
7 association to provide the required information;

8 (2) a judgment against the property owners'  
9 association for a penalty of not more than \$1,500;

10 (3) a judgment against the property owners'  
11 association for court costs and attorney's fees incurred in  
12 connection with seeking a remedy under this section; or

13 (4) a judgment authorizing the owner or the owner's  
14 assignee to deduct the amounts awarded under Subdivisions (2) and  
15 (3) from any future regular or special assessments payable to the  
16 property owners' association.

17 SECTION 7. Section 209.006, Property Code, is amended by  
18 amending Subsection (b) and adding Subsections (c) and (d) to read  
19 as follows:

20 (b) The notice must:

21 (1) describe the violation or property damage that is  
22 the basis for the suspension action, charge, or fine and state any  
23 amount due the association from the owner; ~~and~~

24 (2) inform the owner that the owner:

25 (A) is entitled to a reasonable period to cure  
26 the violation and avoid the fine or suspension unless the owner was  
27 given notice and a reasonable opportunity to cure a similar

1 violation within the preceding six months; and

2 (B) may request a hearing under Section 209.007  
3 on or before the 30th day after the date notice was delivered to the  
4 owner; and

5 (3) specify a date certain by which the owner must cure  
6 the violation [~~receives the notice~~].

7 (c) Notice under Subsection (b) must be personally  
8 delivered, sent by certified mail with a return receipt requested,  
9 or delivered by the United States Postal Service with signature  
10 confirmation service to the owner at the owner's last known address  
11 as shown on the association's records.

12 (d) The date specified in the notice under Subsection (b)(3)  
13 must provide a reasonable period for the owner to cure the  
14 violation.

15 SECTION 8. Chapter 209, Property Code, is amended by adding  
16 Sections 209.0061 through 209.0064 and Section 209.0091 to read as  
17 follows:

18 Sec. 209.0061. ASSESSMENT OF FINES. (a) A fine assessed by  
19 the property owners' association must be reasonable in the context  
20 of the nature, frequency, and effect of the violation. If the  
21 association allows fines for a continuing violation to accumulate  
22 against a lot or an owner, the association must establish a maximum  
23 fine amount for a continuing violation at which point the total fine  
24 amount is capped.

25 (b) If a lot occupant other than the owner violates a  
26 provision of the dedicatory instrument, the property owners'  
27 association, in addition to exercising any of the association's

1 powers against the owner, may assess a fine directly against the  
2 nonowner occupant in the same manner as provided for an owner but  
3 may not require payment from both the owner and a nonowner occupant  
4 for the same violation.

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

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

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

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

24 Sec. 209.0063. PRIORITY OF PAYMENTS. Unless otherwise  
25 provided in writing by the property owner, a payment received by a  
26 property owners' association from the owner shall be applied to the  
27 owner's debt in the following order of priority:

1           (1) any delinquent assessment;

2           (2) any current assessment;

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

6           (4) any fines assessed by the association;

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

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

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

17          Sec. 209.0091. JUDICIAL FORECLOSURE REQUIRED. (a) Except  
18 as provided by Subsection (b), a property owners' association may  
19 not foreclose a property owners' association's assessment lien  
20 unless the association first obtains a court judgment foreclosing  
21 the lien and providing for issuance of an order of sale.

22          (b) Judicial foreclosure is not required under this section  
23 if the owner of the property that is subject to foreclosure agrees  
24 in writing to waive judicial foreclosure under this section.

25          SECTION 9. Section 209.010(a), Property Code, is amended to  
26 read as follows:

27          (a) A property owners' association that conducts a

1 foreclosure sale of an owner's lot must send to the lot owner not  
2 later than the 30th day after the date of the foreclosure sale;

3 (1) a written notice stating the date and time the sale  
4 occurred and informing the lot owner of the owner's right to redeem  
5 the property under Section 209.011; and

6 (2) a copy of Section 209.011.

7 SECTION 10. Section 211.002(a), Property Code, is amended  
8 to read as follows:

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

15 SECTION 11. Section 202.004(c), Property Code, is repealed.

16 SECTION 12. (a) Section 5.006(a), Property Code, as amended  
17 by this Act, and the repeal by this Act of Section 202.004(c),  
18 Property Code, apply only to an action filed on or after the  
19 effective date of this Act. An action filed before the effective  
20 date of this Act is governed by the law in effect immediately before  
21 the effective date of this Act, and that law is continued in effect  
22 for that purpose.

23 (b) Section 5.012, Property Code, as amended by this Act,  
24 applies only to a sale of property that occurs on or after the  
25 effective date of this Act. For the purposes of this section, a  
26 sale of property occurs before the effective date of this Act if the  
27 executory contract binding the purchaser to purchase the property

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

5 (c) Sections 202.008, 202.010, 209.0043, and 209.0044(a),  
6 Property Code, as added by this Act, apply to a deed restriction  
7 enacted before, on, or after the effective date of this Act.

8 (d) Section 209.005(c), Property Code, as added by this Act,  
9 applies only to a property owners' association's failure to comply  
10 with Section 209.005(a), Property Code, on or after the effective  
11 date of this Act. A property owners' association's failure to  
12 comply with that section before the effective date of this Act is  
13 governed by the law in effect immediately before the effective date  
14 of this Act, and that law is continued in effect for that purpose.

15 (e) Sections 209.0061, 209.0062, and 209.0064, Property  
16 Code, as added by this Act, apply only to an assessment or other  
17 debt that becomes due on or after the effective date of this Act. An  
18 assessment or other debt that becomes due before the effective date  
19 of this Act is governed by the law in effect immediately before the  
20 effective date of this Act, and that law is continued in effect for  
21 that purpose.

22 (f) Section 209.0063, Property Code, as added by this Act,  
23 applies only to a payment received by a property owners'  
24 association on or after the effective date of this Act. A payment  
25 received by a property owners' association before the effective  
26 date of this Act is governed by the law in effect immediately before  
27 the effective date of this Act, and that law is continued in effect

1 for that purpose.

2 (g) Section 209.0091, Property Code, as added by this Act,  
3 applies only to foreclosure of a lien that attaches on or after the  
4 effective date of this Act. Foreclosure of a lien that attaches  
5 before the effective date of this Act is governed by the law in  
6 effect immediately before that date, and that law is continued in  
7 effect for that purpose.

8 SECTION 13. This Act takes effect January 1, 2010.