

Amend CSSB 142 (senate committee printing) as follows:

(1) In SECTION 5 of the bill, strike the recital (page 2, lines 58-59) and substitute the following:

Section 202.004, Property Code, is amended by amending Subsection (c) and adding Subsections (d), (e), (f), (g), (h), and (i) to read as follows:

(2) In SECTION 5 of the bill, after amended Section 202.004(c), Property Code (page 2, between lines 66 and 67), insert the following:

(d) In evaluating an alleged or potential violation of a restrictive covenant, a property owners' association board may, notwithstanding any provision in a dedicatory instrument, elect to not enforce the restrictive covenant if the board, in the board's reasonable judgment, determines:

(1) the property owners' association's position is not sufficiently strong to justify taking any action or further action;

(2) the provision alleged to have been violated may be inconsistent with applicable law;

(3) the alleged violation is not of such a material or visible nature as to be objectionable to a reasonable person or to justify expending the property owners' association's resources;

(4) enforcement of the provision is not in the association's best interests, based on hardship, expense, or other reasonable criteria; or

(5) the facts of the particular circumstances, such as topography of the owner's land or unforeseen circumstances unique to the particular owner, justify the board's election to not enforce the restrictive covenant.

(e) In evaluating an alleged or potential violation of a restrictive covenant, a property owners' association board shall make reasonable accommodations with respect to persons with disabilities and, in the absence of a showing of compelling necessity, may not enforce a restrictive covenant in a manner that imposes an undue hardship on persons with disabilities.

(f) A determination by the property owners' association board to not enforce a restrictive covenant under Subsection (d) or (e) may not be considered a waiver of the association's authority to

enforce any dedicatory instrument provision in the future.

(g) A property owners' association board shall document each election by the board to not enforce a restrictive covenant under Subsection (d) made by the board at a meeting by noting in the minutes of the board meeting at which the election was made:

(1) the person who was not subjected to enforcement of the covenant;

(2) the specific covenant the board did not enforce;
and

(3) the board's rationale for not enforcing the covenant.

(h) A property owners' association board shall document the following information in the minutes of the board meeting and provide a copy of the minutes to a person subject to an enforcement of a restrictive covenant under circumstances described by Subsection (e):

(1) the specific facts and circumstances constituting a compelling necessity under Subsection (e);

(2) the person subjected to the enforcement of the covenant; and

(3) the board members voting for and against the enforcement of the covenant.

(i) A determination made in violation of Subsection (e) or (h) is void and unenforceable.