

BILL ANALYSIS

Senate Research Center

H.B. 1071
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Intergovernmental Relations
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Many real estate subdivisions in Texas have deed restrictions that place limitations on the use of the property. Deed restrictions are usually initiated by the developers who determine what the land will be used for and divide the land into plots to build homes, office buildings, or retail buildings. Often these deed restrictions come with the property and are difficult for subsequent owners to change or remove. H.B. 1071 seeks to establish new provisions in statute relating to the extension of deed restrictions in certain residential real estate subdivisions.

H.B. 1071 amends current law relating to the extension of deed restrictions in certain residential real estate subdivisions.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Chapter 210, Property Code, to read as follows:

CHAPTER 210. EXTENSION OR MODIFICATION OF RESIDENTIAL RESTRICTIVE COVENANTS BY PETITION IN CERTAIN SUBDIVISIONS

SECTION 2. Amends Title 11, Property Code, by adding Chapter 212, as follows:

CHAPTER 212. EXTENSION OF RESTRICTIONS BY MAJORITY VOTE IN CERTAIN SUBDIVISIONS

Sec. 212.001. DEFINITIONS. Defines, in this chapter, "lienholder," "owner," "restrictions," and "residential real estate subdivision" or "subdivision."

Sec. 212.002. APPLICABILITY OF CHAPTER. Provides that this chapter applies only to a residential real estate subdivision that:

- (1) is located wholly or partly in a municipality with a population of more than two million located in a county with a population of 3.3 million or more; and
- (2) is subject to restrictions the terms of which:
 - (A) provide that the restrictions expire;
 - (B) permit the restrictions to be extended after the initial restriction period expires if a majority of the owners of lots in the subdivision, by a written instrument that is acknowledged and filed for record, signify consent to the extension of the restrictions for a further period the maximum length of which is specified by the restrictions; and

(C) do not expressly provide for or expressly prohibit successive extensions of the restrictions after the expiration of the initial extension period.

Sec. 212.003. PROCEDURE FOR SUCCESSIVE EXTENSIONS. (a) Authorizes restrictions to be extended under this chapter by the written consent of the owners of a majority of the lots in the subdivision, without respect to the number of lots owned by a particular owner.

(b) Authorizes consent for the purposes of this section to be reflected by an owner's signature on a petition or written ballot.

(c) Authorizes petitions, written ballots, or both to be distributed to the owners of lots in the subdivision by any method, including one or both of the following methods:

(1) by door-to-door circulation; or

(2) at a meeting of the owners of lots in the subdivision called for the purpose of voting on the proposed extension.

(d) Requires that the required signatures be obtained during the same extension period. Requires that the petitions, written ballots, or both, as applicable, to be filed for record in the county in which the subdivision is located before the earlier of:

(1) the first anniversary of the date on which the first signature is obtained; or

(2) the expiration of the extension period during which the signatures are collected.

(e) Authorizes restrictions to be extended under this chapter only once during each unexpired extension period.

Sec. 212.004. EFFECT OF OWNER SIGNATURE. (a) Authorizes the vote of multiple owners of a lot to be reflected by the signature of one of the owners.

(b) Provides that after an owner signs a petition or ballot under Section 212.003 or 212.007, the owner's subsequent conveyance of the owner's interest in a lot or unplatted real property in the subdivision does not affect the validity of the signature for the purposes of that section.

Sec. 212.005. PROPERTY OWNERS' ASSOCIATION NOT REQUIRED. Authorizes restrictions to be extended under this chapter without the creation of or action by a property owners' association, homeowners association, community association, civic club, or similar organization.

Sec. 212.006. EFFECTIVE DATE OF EXTENSION; LENGTH OF EXTENSION PERIOD. (a) Provides that an extension of restrictions under this chapter takes effect on the date the petitions, written ballots, or both, as applicable, sufficient to reflect the consent required by Section 212.003 are filed and recorded in the real property records of the county in which the subdivision is located.

(b) Provides that, subject to Section 212.007, an extension of restrictions under this chapter is for a period equal to the original term of the restrictions or a shorter period agreed to by the owners of a majority of the lots in the subdivision in the petitions, written ballots, or both, as applicable, signed under Section 212.003.

Sec. 212.007. TERMINATION OF RESTRICTIONS. (a) Authorizes restrictions extended under this chapter to be terminated before their expiration date if:

(1) the consent of the owners of a majority of the lots in the subdivision to the termination of the restrictions on a specified date is obtained in the same manner as consent to the extension of restrictions is obtained under this chapter; and

(2) the petitions, written ballots, or both, as applicable, sufficient to reflect the required consent to termination are filed for record in the real property records of the county in which the subdivision is located before the earlier of the first anniversary of the date on which the first signature consenting to termination is obtained, or a date specified under Subsection (b)(2).

(b) Authorizes petitions, written ballots, or both, as applicable, used to extend restrictions under this section to provide that:

(1) the restrictions may be terminated only on one or more termination dates specified in the petitions, written ballots, or both, as applicable, used to extend the restrictions; or

(2) the petitions, written ballots, or both, as applicable, sufficient to reflect the required consent to termination must be filed for record before a time specified in the petitions, written ballots, or both, as applicable.

Sec. 212.008. APPLICABILITY OF EXTENDED RESTRICTIONS. (a) Provides that an extension of restrictions under this chapter is binding on all lots and all unplatted real property in the subdivision, without regard to whether the owner or owners of any individual lot or unplatted real property signify consent to extend the restrictions. Provides that any statute authorizing a property owner to opt out of the applicability of restrictions to the owner's property does not apply to restrictions extended under this chapter.

(b) Provides that an extension of restrictions under this chapter is binding on a lienholder or a person who acquires title to property at a foreclosure sale or by deed from a foreclosing lienholder.

Sec. 212.009. UNCONSTITUTIONAL RESTRICTIONS NOT EXTENDED. Provides that, if a provision in restrictions extended under this chapter is void and unenforceable under the United States Constitution, the restrictions are considered as if the void and unenforceable provision was never contained in the restrictions.

Sec. 212.010. USE OF ORIGINAL EXTENSION PROCEDURE; PROCEDURES CUMULATIVE. (a) Authorizes the procedure provided by the original restrictions for the initial extension of the restrictions, including the requirement that a specified percentage of a specified class approve the extension, in addition to the procedure provided by this chapter for the extension of restrictions, to be used for successive extensions of the original restrictions, provided that the approval obtained includes the approval of the owners of not less than a majority of the lots in the subdivision.

(b) Provides that an extension of the restrictions as described by Subsection (a) is for a period equal to the original term of the restrictions or a shorter period agreed to by the owners of a majority of the lots in the subdivision.

(c) Provides that the procedure provided by this chapter for the extension or termination of restrictions is cumulative of and not in lieu of any other method by which restrictions of a subdivision to which this chapter applies may be added to, modified, created, extended, or terminated.

Sec. 212.011. CONSTRUCTION OF CHAPTER AND EXTENDED RESTRICTIONS.

(a) Requires that this chapter and any petition or ballot made or action taken in connection with an attempt to comply with this chapter to be liberally construed to effectuate the intent of this chapter and the petition, ballot, or action.

(b) Requires a deed restriction that is extended under this chapter to be liberally construed to give effect to the restriction's purposes and intent.

SECTION 3. Effective date: upon passage or September 1, 2011.