

1-1 By: Anderson of Dallas (Senate Sponsor - West) H.B. No. 1821
1-2 (In the Senate - Received from the House May 6, 2011;
1-3 May 9, 2011, read first time and referred to Committee on
1-4 Intergovernmental Relations; May 19, 2011, reported adversely,
1-5 with favorable Committee Substitute by the following vote: Yeas 5,
1-6 Nays 0; May 19, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1821 By: West

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

1-10 relating to certain information or guidelines provided by or
1-11 concerning a property owners' association or concerning
1-12 subdivisions that are subject to restrictive covenants.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 5.012, Property Code, is amended by
1-15 amending Subsection (a) and adding Subsections (a-1), (f), and (g)
1-16 to read as follows:

1-17 (a) A seller of residential real property that is subject to
1-18 membership in a property owners' association and that comprises not
1-19 more than one dwelling unit located in this state shall give to the
1-20 purchaser of the property a written notice that reads substantially
1-21 similar to the following:

1-22 NOTICE OF MEMBERSHIP IN PROPERTY OWNERS' ASSOCIATION CONCERNING THE
1-23 PROPERTY AT (street address) (name of residential community)

1-24 As a purchaser of property in the residential community in
1-25 which this property is located, you are obligated to be a member of
1-26 a property owners' association. Restrictive covenants governing
1-27 the use and occupancy of the property and all ~~[a]~~ dedicatory
1-28 instruments ~~[instrument]~~ governing the establishment, maintenance,
1-29 or ~~[and]~~ operation of this residential community have been or will
1-30 be recorded in the Real Property Records of the county in which the
1-31 property is located. Copies of the restrictive covenants and
1-32 dedicatory instruments ~~[instrument]~~ may be obtained from the county
1-33 clerk.

1-34 You are obligated to pay assessments to the property owners'
1-35 association. The amount of the assessments is subject to change.
1-36 Your failure to pay the assessments could result in enforcement of
1-37 the association's ~~[a]~~ lien on and the foreclosure of your property.

1-38 Section 207.003, Property Code, entitles an owner to receive
1-39 copies of any document that governs the establishment, maintenance,
1-40 or operation of a subdivision, including, but not limited to,
1-41 restrictions, bylaws, rules and regulations, and a resale
1-42 certificate from a property owners' association. A resale
1-43 certificate contains information including, but not limited to,
1-44 statements specifying the amount and frequency of regular
1-45 assessments and the style and cause number of lawsuits to which the
1-46 property owners' association is a party, other than lawsuits
1-47 relating to unpaid ad valorem taxes of an individual member of the
1-48 association. These documents must be made available to you by the
1-49 property owners' association or the association's agent on your
1-50 request.

1-51 Date: _____

1-52 _____
Signature of Purchaser

1-53 (a-1) The second paragraph of the notice prescribed by
1-54 Subsection (a) must be in bold print and underlined.

1-55 (f) On the purchaser's request for a resale certificate from
1-56 the property owners' association or the association's agent, the
1-57 association or its agent shall promptly deliver a copy of the most
1-58 recent resale certificate issued for the property under Chapter 207
1-59 so long as the resale certificate was prepared not earlier than the
1-60 60th day before the date the resale certificate is delivered to the
1-61 purchaser and reflects any special assessments approved before and
1-62 due after the resale certificate is delivered. If a resale
1-63 certificate that meets the requirements of this subsection has not

2-1 been issued for the property, the seller shall request the
 2-2 association or its agent to issue a resale certificate under
 2-3 Chapter 207, and the association or its agent shall promptly
 2-4 prepare and deliver a copy of the resale certificate to the
 2-5 purchaser.

2-6 (g) The purchaser shall pay the fee to the property owners'
 2-7 association or its agent for issuing the resale certificate unless
 2-8 otherwise agreed by the purchaser and seller of the property. The
 2-9 property owners' association may require payment before beginning
 2-10 the process of providing a resale certificate requested under
 2-11 Chapter 207 but may not process a payment for a resale certificate
 2-12 until the certificate is available for delivery. The association
 2-13 may not charge a fee if the certificate is not provided in the time
 2-14 prescribed by Section 207.003(a).

2-15 SECTION 2. Subdivision (1), Section 202.001, Property Code,
 2-16 is amended to read as follows:

2-17 (1) "Dedicatory instrument" means each document
 2-18 governing [~~instrument covering~~] the establishment, maintenance, or
 2-19 [~~and~~] operation of a residential subdivision, planned unit
 2-20 development, condominium or townhouse regime, or any similar
 2-21 planned development. The term includes a declaration or similar
 2-22 instrument subjecting real property to:

2-23 (A) restrictive covenants, bylaws, or similar
 2-24 instruments governing the administration or operation of a property
 2-25 owners' association;

2-26 (B) [~~to~~] properly adopted rules and regulations
 2-27 of the property owners' association; or

2-28 (C) [~~or to~~] all lawful amendments to the
 2-29 covenants, bylaws, instruments, rules, or regulations.

2-30 SECTION 3. Section 202.006, Property Code, is amended to
 2-31 read as follows:

2-32 Sec. 202.006. PUBLIC RECORDS. (a) A property owners'
 2-33 association shall file all [~~the~~] dedicatory instruments
 2-34 [~~instrument~~] in the real property records of each county in which
 2-35 the property to which the dedicatory instruments relate [~~instrument~~
 2-36 ~~relates~~] is located.

2-37 (b) A dedicatory instrument has no effect until the
 2-38 instrument is filed in accordance with this section.

2-39 SECTION 4. Section 207.003, Property Code, is amended by
 2-40 amending Subsections (a), (b), and (f) and adding Subsections (a-1)
 2-41 and (c-1) to read as follows:

2-42 (a) Not later than the 10th business day after the date a
 2-43 written request for subdivision information is received from an
 2-44 owner or the [~~]~~ owner's agent, a purchaser of property in a
 2-45 subdivision or the purchaser's agent, or a title insurance company
 2-46 or its agent acting on behalf of the owner or purchaser and the
 2-47 evidence of the requestor's authority to order a resale certificate
 2-48 under Subsection (a-1) is received and verified, the property
 2-49 owners' association shall deliver to the owner or the [~~]~~ owner's
 2-50 agent, the purchaser or the purchaser's agent, or the title
 2-51 insurance company or its agent:

2-52 (1) a current copy of the restrictions applying to the
 2-53 subdivision;

2-54 (2) a current copy of the bylaws and rules of the
 2-55 property owners' association; and

2-56 (3) a resale certificate prepared not earlier than the
 2-57 60th day before the date the certificate is delivered that complies
 2-58 with Subsection (b).

2-59 (a-1) For a request from a purchaser of property in a
 2-60 subdivision or the purchaser's agent, the property owners'
 2-61 association may require the purchaser or purchaser's agent to
 2-62 provide to the association, before the association begins the
 2-63 process of preparing or delivers the items listed in Subsection
 2-64 (a), reasonable evidence that the purchaser has a contractual or
 2-65 other right to acquire property in the subdivision.

2-66 (b) A resale certificate under Subsection (a) must contain:

2-67 (1) a statement of any right of first refusal, other
 2-68 than a right of first refusal that is prohibited by statute, and any
 2-69 [~~or~~] other restraint contained in the restrictions or restrictive

3-1 covenants that restricts the owner's right to transfer the owner's
3-2 property;

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

3-5 (3) the amount and purpose of any special assessment
3-6 that has been approved before and is due after ~~[the date]~~ the resale
3-7 certificate is delivered ~~[prepared]~~;

3-8 (4) the total of all amounts due and unpaid to the
3-9 property owners' association that are attributable to the owner's
3-10 property;

3-11 (5) capital expenditures, if any, approved by the
3-12 property owners' association for the property owners' association's
3-13 current fiscal year;

3-14 (6) the amount of reserves, if any, for capital
3-15 expenditures;

3-16 (7) the property owners' association's current
3-17 operating budget and balance sheet;

3-18 (8) the total of any unsatisfied judgments against the
3-19 property owners' association;

3-20 (9) the style and cause number of any pending lawsuit
3-21 in which the property owners' association is a party, other than a
3-22 lawsuit relating to unpaid ad valorem taxes of an individual member
3-23 of the association ~~[defendant]~~;

3-24 (10) a copy of a certificate of insurance showing the
3-25 property owners' association's property and liability insurance
3-26 relating to the common areas and common facilities;

3-27 (11) a description of any conditions on the owner's
3-28 property that the property owners' association board has actual
3-29 knowledge are in violation of the restrictions applying to the
3-30 subdivision or the bylaws or rules of the property owners'
3-31 association;

3-32 (12) a summary or copy of notices received by the
3-33 property owners' association from any governmental authority
3-34 regarding health or housing code violations existing on the
3-35 preparation date of the certificate relating to the owner's
3-36 property or any common areas or common facilities owned or leased by
3-37 the property owners' association;

3-38 (13) the amount of any administrative transfer fee
3-39 charged by the property owners' association for a change of
3-40 ownership of property in the subdivision;

3-41 (14) the name, mailing address, and telephone number
3-42 of the property owners' association's managing agent, if any; ~~[and]~~
3-43

3-44 (15) a statement indicating whether the restrictions
3-45 allow foreclosure of a property owners' association's lien on the
3-46 owner's property for failure to pay assessments; and

3-47 (16) a statement of all fees associated with the
3-48 transfer of ownership, including a description of each fee, to whom
3-49 each fee is paid, and the amount of each fee.

3-50 (c-1) The property owners' association may require payment
3-51 before beginning the process of providing a resale certificate but
3-52 may not process a payment for a resale certificate until the
3-53 certificate is available for delivery. The association may not
3-54 charge a fee if the certificate is not provided in the time
3-55 prescribed by Subsection (a).

3-56 (f) Not later than the seventh business day after the date a
3-57 written request for an update of ~~[to]~~ a resale certificate
3-58 delivered under Subsection (a) is received from an owner, owner's
3-59 agent, or title insurance company or its agent acting on behalf of
3-60 the owner, the property owners' association shall deliver to the
3-61 owner, owner's agent, or title insurance company or its agent an
3-62 updated resale certificate that contains the following
3-63 information:

3-64 (1) if a right of first refusal or other restraint on
3-65 sale is contained in the restrictions, a statement of whether the
3-66 property owners' association waives the restraint on sale;

3-67 (2) the status of any unpaid special assessments,
3-68 dues, or other payments attributable to the owner's property; and

3-69 (3) any changes to the information provided in the
resale certificate issued under Subsection (a).

4-1 SECTION 5. Chapter 207, Property Code, is amended by adding
4-2 Section 207.006 to read as follows:

4-3 Sec. 207.006. ONLINE SUBDIVISION INFORMATION REQUIRED. A
4-4 property owners' association shall make dedicatory instruments
4-5 relating to the association or subdivision and filed in the county
4-6 deed records available on a website if the association has, or a
4-7 management company on behalf of the association maintains, a
4-8 publicly accessible website.

4-9 SECTION 6. Section 209.003, Property Code, is amended by
4-10 adding Subsection (e) to read as follows:

4-11 (e) Section 209.0062 does not apply to a property owners'
4-12 association that is a mixed-use master association that existed
4-13 before January 1, 1974, and that does not have the authority under a
4-14 dedicatory instrument or other governing document to impose fines.

4-15 SECTION 7. Chapter 209, Property Code, is amended by adding
4-16 Section 209.0062 to read as follows:

4-17 Sec. 209.0062. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN
4-18 ASSESSMENTS. (a) A property owners' association shall file the
4-19 association's alternative payment schedule guidelines adopted
4-20 under this section in the real property records of each county in
4-21 which the subdivision is located.

4-22 (b) A property owners' association composed of more than 14
4-23 lots shall adopt reasonable guidelines to establish an alternative
4-24 payment schedule by which an owner may make partial payments to the
4-25 property owners' association for delinquent regular or special
4-26 assessments or any other amount owed to the association without
4-27 accruing additional monetary penalties. For purposes of this
4-28 section, monetary penalties do not include reasonable costs
4-29 associated with administering the payment plan or interest.

4-30 (c) The minimum term for a payment plan offered by a
4-31 property owners' association is three months.

4-32 (d) A property owners' association is not required to allow
4-33 a payment plan for any amount that extends more than 18 months from
4-34 the date of the owner's request for a payment plan or to enter into a
4-35 payment plan with an owner who failed to honor the terms of a
4-36 previous payment plan during the two years following the owner's
4-37 default under the previous payment plan.

4-38 (e) A property owners' association's failure to file as
4-39 required by this section the association's guidelines in the real
4-40 property records of each county in which the subdivision is located
4-41 does not prohibit a property owner from receiving an alternative
4-42 payment schedule by which the owner may make partial payments to the
4-43 property owners' association for delinquent regular or special
4-44 assessments or any other amount owed to the association without
4-45 accruing additional monetary penalties, as defined by Subsection
4-46 (b).

4-47 SECTION 8. (a) Section 5.012, Property Code, as amended by
4-48 this Act, applies only to a sale of property that occurs on or after
4-49 the effective date of this Act. For the purposes of this
4-50 subsection, a sale of property occurs before the effective date of
4-51 this Act if the executory contract binding the purchaser to
4-52 purchase the property is executed before that date. A sale of
4-53 property that occurs before the effective date of this Act is
4-54 governed by the law in effect immediately before that date, and that
4-55 law is continued in effect for that purpose.

4-56 (b) Section 202.006, Property Code, as amended by this Act,
4-57 applies to a provision in a dedicatory instrument or a restrictive
4-58 covenant enacted before, on, or after the effective date of this
4-59 Act, except that any action taken before the effective date of this
4-60 Act based on an unfiled dedicatory instrument is not invalidated by
4-61 Section 202.006, Property Code, as amended by this Act.

4-62 (c) Section 207.003, Property Code, as amended by this Act,
4-63 applies only to a request for information received by a property
4-64 owners' association on or after the effective date of this Act. A
4-65 request for information received by a property owners' association
4-66 before the effective date of this Act is governed by the law in
4-67 effect immediately before the effective date of this Act, and that
4-68 law is continued in effect for that purpose.

4-69 (d) Section 209.0062, Property Code, as added by this Act,

5-1 applies only to an assessment or other debt that becomes due on or
5-2 after the effective date of this Act. An assessment or other debt
5-3 that becomes due before the effective date of this Act is governed
5-4 by the law in effect immediately before the effective date of this
5-5 Act, and that law is continued in effect for that purpose.

5-6 SECTION 9. Not later than January 1, 2012, each property
5-7 owners' association shall present for recording with the county
5-8 clerk as prescribed by Section 202.006, Property Code, as amended
5-9 by this Act, each dedicatory instrument governing the association
5-10 that has not been previously recorded in the real property records
5-11 of the county.

5-12 SECTION 10. This Act takes effect January 1, 2012.

5-13

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