

By: Chisum

H.B. No. 3038

A BILL TO BE ENTITLED

AN ACT

relating to unenforceable restrictive covenants affecting residential homes.

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

SECTION 1. Chapter 202, Property Code, is amended by adding Sections 202.020, 202.021, and 202.022 to read as follows:

Sec. 202.020. FLAG DISPLAY. (a) A property owners' association may not, except as provided in this section, adopt or enforce a dedicatory instrument provision that prohibits, restricts, or has the effect of prohibiting or restricting a property owner from the display of:

(1) the flag of the United States of America;

(2) the flag of the State of Texas;

(3) an official or replica flag of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, or other United States armed forces branch.

(b) A property owners' association may adopt or enforce reasonable dedicatory instrument provisions:

(1) that require:

(A) the flag of the United States be displayed in accordance with the federal flag code, 4 U.S.C. Sections 5-10, or successor laws;

(B) a flagpole attached to a dwelling or a freestanding flagpole be constructed of permanent, long-lasting

1 materials, with a finish appropriate to the materials used in the  
2 construction of the flagpole and harmonious with the dwelling;

3 (C) the display of a flag, or the location and  
4 construction of the supporting flagpole, to comply with applicable  
5 zoning ordinances, easements, and setbacks of record;

6 (D) a displayed flag and the flagpole on which it  
7 is flown be maintained in good condition and that any deteriorated  
8 flag or deteriorated or structurally unsafe flagpole be repaired,  
9 replaced, or removed;

10 (2) that regulate the location of the flagpole on  
11 which a flag is displayed, but no such regulation may prevent the  
12 flag from being seen or a flagpole from being installed or erected;

13 (3) that govern the size of a displayed flag;

14 (4) that regulate the size, location, and intensity of  
15 any lights used to illuminate a displayed flag.

16 (c) In this section, "owner" has the meaning assigned by  
17 Section 201.003 and includes a relative or tenant of an owner.

18 Sec. 202.021. RADIO APPARATUS. (a) A property owners'  
19 association may not, except as provided in this section, adopt or  
20 enforce a dedicatory instrument provision that prohibits,  
21 restricts, or has the effect of prohibiting or restricting a  
22 property owner from owning, operating, installing, or maintaining  
23 any radio apparatus operated pursuant to federal authorization or  
24 with the consent of the holder of a federal license.

25 (b) In this section, "apparatus" means any item, equipment,  
26 component, element, or structure used or usable for carrying on  
27 radiocommunications or facilitating the carrying on of

1 radiocommunications.

2 (c) A property owners' association may adopt or enforce  
3 reasonable dedicatory instrument provisions requiring radio  
4 apparatus located exterior to a structure:

5 (1) be constructed and installed in compliance with  
6 applicable zoning ordinances, easements, setbacks of record, and  
7 national or governmental building codes;

8 (2) be constructed of permanent, long-lasting  
9 materials, with a finish appropriate to the materials used in the  
10 construction of the apparatus;

11 (3) be maintained in good condition and that any  
12 deteriorated or structurally unsafe apparatus be repaired,  
13 replaced, or removed;

14 (4) other than radio apparatus made of wire, not  
15 extend closer than the front setback line from any street on which  
16 the dwelling on the lot faces;

17 (5) be removed if the property on which it is located  
18 is sold to a person who does not have federal authorization to  
19 operate the radio apparatus installed on the property.

20 (d) In this section, "owner" has the meaning assigned by  
21 Section 201.003 and includes a relative or tenant of an owner.

22 Sec. 202.022. STANDBY ELECTRIC GENERATORS. (a) A property  
23 owners' association may not, except as provided in this section,  
24 adopt or enforce a dedicatory instrument provision that prohibits,  
25 restricts, or has the effect of prohibiting or restricting a  
26 property owner from owning, operating, installing, or maintaining a  
27 permanently installed standby electric generator.

1        (b) In this section, "standby electric generator" means a  
2 device that converts mechanical energy to electrical energy and:

3            (1) is powered by natural gas, liquefied petroleum  
4 gas, diesel fuel, biodiesel fuel, or hydrogen;

5            (2) is fully enclosed in an integral manufacturer-  
6 supplied sound attenuating enclosure;

7            (3) is connected to the main electrical panel of a  
8 residence by a manual or automatic transfer switch; and

9            (4) is rated for a generating capacity of not less than  
10 seven kilowatts.

11        (c) A property owners' association may adopt or enforce  
12 reasonable dedicatory instrument provisions:

13            (1) that require:

14                    (A) a standby electric generator to be installed  
15 and maintained in compliance with the manufacturer's  
16 specifications;

17                    (B) a standby electric generator be installed and  
18 maintained in compliance with applicable health, safety,  
19 electrical codes, and building codes;

20                    (C) all electrical, plumbing, and fuel line  
21 connections be installed only by licensed contractors;

22                    (D) all electrical and fuel line connections be  
23 installed underground;

24                    (E) nonintegral standby electric generator fuel  
25 tanks be installed and maintained to comply with applicable zoning  
26 ordinances, health, safety, electrical, and building codes;

27                    (F) the standby electric generator, its

1 electrical lines, and its fuel lines be maintained in good  
2 condition and that any deteriorated or unsafe components be  
3 repaired, replaced, or removed;

4 (2) that set reasonable times for the periodic testing  
5 of a standby electric generator;

6 (3) that prohibit the use of the standby electric  
7 generator to generate all or substantially all of the electrical  
8 power to a residence except when utility-generated electrical power  
9 is not available or is intermittent;

10 (4) that regulate the location and exterior appearance  
11 of the standby electric generator.

12 (d) A property owners' association dedicatory instrument  
13 provision regulating the location of a standby electrical generator  
14 that increases the cost of installing the standby electric  
15 generator by more than 10 percent or the cost of installing and  
16 connecting the electrical and fuel lines by more than 20 percent is  
17 void and unenforceable.

18 (e) In this section, "owner" has the meaning assigned by  
19 Section 201.003 and includes a relative or tenant of an owner.

20 SECTION 2. Sections 202.020, 202.021, and 202.022, Property  
21 Code, as added by this Act, apply to a dedicatory instrument adopted  
22 before, on, or after the effective date of this Act.

23 SECTION 3. This Act takes effect immediately if it receives  
24 a vote of two-thirds of all the members elected to each house, as  
25 provided by Section 39, Article III, Texas Constitution. If this  
26 Act does not receive the vote necessary for immediate effect, this  
27 Act takes effect September 1, 2