

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Anderson of Dallas

H.B. No. 1821

A BILL TO BE ENTITLED

AN ACT

relating to the delivery of subdivision information by a property owners' association to purchasers.

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

SECTION 1. The heading to Section 207.003, Property Code, is amended to read as follows:

Sec. 207.003. DELIVERY OF SUBDIVISION INFORMATION TO OWNER OR PURCHASER.

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

(a) Not later than the 10th business day after the date a written request for subdivision information is received from an owner or the[7] owner's agent, a purchaser of property in a subdivision or the purchaser's agent, or a title insurance company or its agent acting on behalf of the owner or purchaser, payment for the requested information is received, and the evidence of the requestor's authority to order a resale certificate under Subsection (a-1) is received and verified, the property owners' association shall deliver to the owner or the[7] owner's agent, the purchaser or the purchaser's agent, or the title insurance company or its agent:

(1) a current copy of the restrictions applying to the subdivision;

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

3           (3) a resale certificate that complies with Subsection  
4 (b).

5           (a-1) For a request from a purchaser of property in a  
6 subdivision or the purchaser's agent, the property owners'  
7 association may require the purchaser or purchaser's agent to  
8 provide to the association, before the association begins the  
9 process of preparing or delivers the items listed in Subsection  
10 (a), reasonable evidence that the purchaser has a contractual or  
11 other right to acquire property in the subdivision.

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

13           (1) a statement of any right of first refusal, other  
14 than a right of first refusal that is prohibited by statute, and any  
15 ~~[or]~~ other restraint contained in the restrictions or restrictive  
16 covenants that restricts the owner's right to transfer the owner's  
17 property;

18           (2) the frequency and amount of any regular  
19 assessments;

20           (3) the amount of any special assessment that has been  
21 approved as of ~~[is due after]~~ the date the resale certificate is  
22 prepared;

23           (4) the total of all amounts due and unpaid to the  
24 property owners' association that are attributable to the owner's  
25 property;

26           (5) capital expenditures, if any, approved by the  
27 property owners' association for the property owners' association's

1 current fiscal year;

2 (6) the amount of reserves, if any, for capital  
3 expenditures;

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

6 (8) the total of any unsatisfied judgments against the  
7 property owners' association;

8 (9) the style and cause number of any pending lawsuit  
9 in which the property owners' association is a defendant, other  
10 than a lawsuit relating to unpaid property taxes of an individual  
11 member of the association;

12 (10) a copy of a certificate of insurance showing the  
13 property owners' association's property and liability insurance  
14 relating to the common areas and common facilities;

15 (11) a description of any conditions on the owner's  
16 property that the property owners' association board has actual  
17 knowledge are in violation of the restrictions applying to the  
18 subdivision or the bylaws or rules of the property owners'  
19 association;

20 (12) a summary or copy of notices received by the  
21 property owners' association from any governmental authority  
22 regarding health or housing code violations existing on the  
23 preparation date of the certificate relating to the owner's  
24 property or any common areas or common facilities owned or leased by  
25 the property owners' association;

26 (13) the amount of any administrative transfer fee  
27 charged by the property owners' association for a change of

1 ownership of property in the subdivision;

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

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

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

10 (c-1) A purchaser of the property shall pay the fee to the  
11 property owners' association or its agent for issuing the resale  
12 certificate unless otherwise agreed by the purchaser and seller of  
13 the property. The property owners' association may require payment  
14 before beginning the process of providing a resale certificate but  
15 may not process a payment for a resale certificate until the  
16 certificate is available for delivery. The association may not  
17 charge a fee if the certificate is not provided in the time  
18 prescribed by Subsection (a).

19 (f) Not later than the seventh business day after the date a  
20 written request for an update of ~~to~~ a resale certificate  
21 delivered under Subsection (a) is received from an owner, owner's  
22 agent, or title insurance company or its agent acting on behalf of  
23 the owner, the property owners' association shall deliver to the  
24 owner, owner's agent, or title insurance company or its agent an  
25 updated resale certificate that contains the following  
26 information:

27 (1) if a right of first refusal or other restraint on

1 sale is contained in the restrictions, a statement of whether the  
2 property owners' association waives the restraint on sale;

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

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

7 SECTION 3. The change in law made by this Act applies only  
8 to a written request for subdivision information submitted on or  
9 after the effective date of this Act. A written request for  
10 subdivision information submitted before the effective date of this  
11 Act is governed by the law in effect immediately before that date,  
12 and that law is continued in effect for that purpose.

13 SECTION 4. This Act takes effect September 1, 2011.

**ADOPTED**

MAY 23 2011

*Atay Spaul*  
Secretary of the Senate

By: *Roger Wey*  
Substitute the following for *Roger Wey*  
By: *Roger Wey*

H.B. No. 1821

H.B. No. 1821

C.S. H.B. No. 1821

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Section 5.012, Property Code, is amended by amending Subsection (a) and adding Subsections (a-1), (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 all [~~a~~] dedicatory instruments [~~instrument~~] governing the establishment, maintenance, or [~~and~~] operation of this residential community have been or will be recorded in the Real Property Records of the county in which the property is located. Copies of the restrictive covenants and dedicatory instruments [~~instrument~~] may be obtained from the county

1 clerk.

2 You are obligated to pay assessments to the property owners'  
3 association. The amount of the assessments is subject to change.  
4 Your failure to pay the assessments could result in enforcement of  
5 the association's [a] lien on and the foreclosure of your property.

6 Section 207.003, Property Code, entitles an owner to receive  
7 copies of any document that governs the establishment, maintenance,  
8 or operation of a subdivision, including, but not limited to,  
9 restrictions, bylaws, rules and regulations, and a resale  
10 certificate from a property owners' association. A resale  
11 certificate contains information including, but not limited to,  
12 statements specifying the amount and frequency of regular  
13 assessments and the style and cause number of lawsuits to which the  
14 property owners' association is a party, other than lawsuits  
15 relating to unpaid ad valorem taxes of an individual member of the  
16 association. These documents must be made available to you by the  
17 property owners' association or the association's agent on your  
18 request.

19 Date: \_\_\_\_\_  
20 \_\_\_\_\_  
Signature of Purchaser

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

23 (f) On the purchaser's request for a resale certificate from  
24 the property owners' association or the association's agent, the  
25 association or its agent shall promptly deliver a copy of the most  
26 recent resale certificate issued for the property under Chapter 207  
27 so long as the resale certificate was prepared not earlier than the

1 60th day before the date the resale certificate is delivered to the  
2 purchaser and reflects any special assessments approved before and  
3 due after the resale certificate is delivered. If a resale  
4 certificate that meets the requirements of this subsection has not  
5 been issued for the property, the seller shall request the  
6 association or its agent to issue a resale certificate under  
7 Chapter 207, and the association or its agent shall promptly  
8 prepare and deliver a copy of the resale certificate to the  
9 purchaser.

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

19 SECTION 2. Subdivision (1), Section 202.001, Property Code,  
20 is amended to read as follows:

21 (1) "Dedictory instrument" means each document  
22 governing [~~instrument covering~~] the establishment, maintenance, or  
23 [~~and~~] operation of a residential subdivision, planned unit  
24 development, condominium or townhouse regime, or any similar  
25 planned development. The term includes a declaration or similar  
26 instrument subjecting real property to:

27 (A) restrictive covenants, bylaws, or similar



1 instruments governing the administration or operation of a property  
2 owners' association;

3 (B) ~~[7-te]~~ properly adopted rules and regulations  
4 of the property owners' association; or

5 (C) ~~[7-er-te]~~ all lawful amendments to the  
6 covenants, bylaws, instruments, rules, or regulations.

7 SECTION 3. Section 202.006, Property Code, is amended to  
8 read as follows:

9 Sec. 202.006. PUBLIC RECORDS. (a) A property owners'  
10 association shall file all ~~[the]~~ dedicatory instruments  
11 ~~[instrument]~~ in the real property records of each county in which  
12 the property to which the dedicatory instruments relate ~~[instrument~~  
13 ~~relates]~~ is located.

14 (b) A dedicatory instrument has no effect until the  
15 instrument is filed in accordance with this section.

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

19 (a) Not later than the 10th business day after the date a  
20 written request for subdivision information is received from an  
21 owner or the ~~[7]~~ owner's agent, a purchaser of property in a  
22 subdivision or the purchaser's agent, or a title insurance company  
23 or its agent acting on behalf of the owner or purchaser and the  
24 evidence of the requestor's authority to order a resale certificate  
25 under Subsection (a-1) is received and verified, the property  
26 owners' association shall deliver to the owner or the ~~[7]~~ owner's  
27 agent, the purchaser or the purchaser's agent, or the title

1 insurance company or its agent:

2 (1) a current copy of the restrictions applying to the  
3 subdivision;

4 (2) a current copy of the bylaws and rules of the  
5 property owners' association; and

6 (3) a resale certificate prepared not earlier than the  
7 60th day before the date the certificate is delivered that complies  
8 with Subsection (b).

9 (a-1) For a request from a purchaser of property in a  
10 subdivision or the purchaser's agent, the property owners'  
11 association may require the purchaser or purchaser's agent to  
12 provide to the association, before the association begins the  
13 process of preparing or delivers the items listed in Subsection  
14 (a), reasonable evidence that the purchaser has a contractual or  
15 other right to acquire property in the subdivision.

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

17 (1) a statement of any right of first refusal, other  
18 than a right of first refusal that is prohibited by statute, and any  
19 ~~or~~ other restraint contained in the restrictions or restrictive  
20 covenants that restricts the owner's right to transfer the owner's  
21 property;

22 (2) the frequency and amount of any regular  
23 assessments;

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

27 (4) the total of all amounts due and unpaid to the

1 property owners' association that are attributable to the owner's  
2 property;

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

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

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

10 (8) the total of any unsatisfied judgments against the  
11 property owners' association;

12 (9) the style and cause number of any pending lawsuit  
13 in which the property owners' association is a party, other than a  
14 lawsuit relating to unpaid ad valorem taxes of an individual member  
15 of the association [~~defendant~~];

16 (10) a copy of a certificate of insurance showing the  
17 property owners' association's property and liability insurance  
18 relating to the common areas and common facilities;

19 (11) a description of any conditions on the owner's  
20 property that the property owners' association board has actual  
21 knowledge are in violation of the restrictions applying to the  
22 subdivision or the bylaws or rules of the property owners'  
23 association;

24 (12) a summary or copy of notices received by the  
25 property owners' association from any governmental authority  
26 regarding health or housing code violations existing on the  
27 preparation date of the certificate relating to the owner's

1 property or any common areas or common facilities owned or leased by  
2 the property owners' association;

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

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

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

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

14 (c-1) The property owners' association may require payment  
15 before beginning the process of providing a resale certificate but  
16 may not process a payment for a resale certificate until the  
17 certificate is available for delivery. The association may not  
18 charge a fee if the certificate is not provided in the time  
19 prescribed by Subsection (a).

20 (f) Not later than the seventh business day after the date a  
21 written request for an update of ~~to~~ a resale certificate  
22 delivered under Subsection (a) is received from an owner, owner's  
23 agent, or title insurance company or its agent acting on behalf of  
24 the owner, the property owners' association shall deliver to the  
25 owner, owner's agent, or title insurance company or its agent an  
26 updated resale certificate that contains the following  
27 information:

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

4 (2) the status of any unpaid special assessments,  
5 dues, or other payments attributable to the owner's property; and

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

8 SECTION 5. Chapter 207, Property Code, is amended by adding  
9 Section 207.006 to read as follows:

10 Sec. 207.006. ONLINE SUBDIVISION INFORMATION REQUIRED. A  
11 property owners' association shall make dedicatory instruments  
12 relating to the association or subdivision and filed in the county  
13 deed records available on a website if the association has, or a  
14 management company on behalf of the association maintains, a  
15 publicly accessible website.

16 SECTION 6. Section 209.003, Property Code, is amended by  
17 adding Subsection (e) to read as follows:

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

22 SECTION 7. Chapter 209, Property Code, is amended by adding  
23 Section 209.0062 to read as follows:

24 Sec. 209.0062. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN  
25 ASSESSMENTS. (a) A property owners' association shall file the  
26 association's alternative payment schedule guidelines adopted  
27 under this section in the real property records of each county in

1 which the subdivision is located.

2 (b) A property owners' association composed of more than 14  
3 lots shall adopt reasonable guidelines to establish an alternative  
4 payment schedule by which an owner may make partial payments to the  
5 property owners' association for delinquent regular or special  
6 assessments or any other amount owed to the association without  
7 accruing additional monetary penalties. For purposes of this  
8 section, monetary penalties do not include reasonable costs  
9 associated with administering the payment plan or interest.

10 (c) The minimum term for a payment plan offered by a  
11 property owners' association is three months.

12 (d) A property owners' association is not required to allow  
13 a payment plan for any amount that extends more than 18 months from  
14 the date of the owner's request for a payment plan or to enter into a  
15 payment plan with an owner who failed to honor the terms of a  
16 previous payment plan during the two years following the owner's  
17 default under the previous payment plan.

18 (e) A property owners' association's failure to file as  
19 required by this section the association's guidelines in the real  
20 property records of each county in which the subdivision is located  
21 does not prohibit a property owner from receiving an alternative  
22 payment schedule by which the owner may make partial payments to the  
23 property owners' association for delinquent regular or special  
24 assessments or any other amount owed to the association without  
25 accruing additional monetary penalties, as defined by Subsection  
26 (b).

27 SECTION 8. (a) Section 5.012, Property Code, as amended by

1 this Act, applies only to a sale of property that occurs on or after  
2 the effective date of this Act. For the purposes of this  
3 subsection, a sale of property occurs before the effective date of  
4 this Act if the executory contract binding the purchaser to  
5 purchase the property is executed before that date. A sale of  
6 property that occurs before the effective date of this Act is  
7 governed by the law in effect immediately before that date, and that  
8 law is continued in effect for that purpose.

9 (b) Section 202.006, Property Code, as amended by this Act,  
10 applies to a provision in a dedicatory instrument or a restrictive  
11 covenant enacted before, on, or after the effective date of this  
12 Act, except that any action taken before the effective date of this  
13 Act based on an unfiled dedicatory instrument is not invalidated by  
14 Section 202.006, Property Code, as amended by this Act.

15 (c) Section 207.003, Property Code, as amended by this Act,  
16 applies only to a request for information received by a property  
17 owners' association on or after the effective date of this Act. A  
18 request for information received by a property owners' association  
19 before the effective date of this Act is governed by the law in  
20 effect immediately before the effective date of this Act, and that  
21 law is continued in effect for that purpose.

22 (d) Section 209.0062, Property Code, as added by this Act,  
23 applies only to an assessment or other debt that becomes due on or  
24 after the effective date of this Act. An assessment or other debt  
25 that becomes due before the effective date of this Act is governed  
26 by the law in effect immediately before the effective date of this  
27 Act, and that law is continued in effect for that purpose.


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

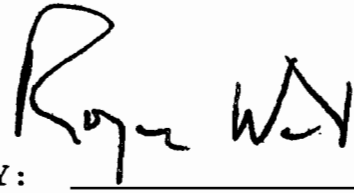
7           SECTION 10. This Act takes effect January 1, 2012.



# ADOPTED

MAY 23 2011

  
Secretary of the Senate



FLOOR AMENDMENT NO. 1

BY: \_\_\_\_\_

1 Amend C.S.H.B. No. 1821 (senate committee printing) as  
2 follows:

3 (1) In SECTION 7 of the bill, in added Section 209.0062(d),  
4 Property Code (page 4, line 32), strike "is not required to" and  
5 substitute "may not".

6 (2) In SECTION 7 of the bill, in added Section 209.0062(d),  
7 Property Code (page 4, line 34), strike "plan or" and substitute  
8 "plan. The association is not required".

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**May 24, 2011**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** John S O'Brien, Director, Legislative Budget Board

**IN RE: HB1821** by Anderson, Rodney (Relating to certain information or guidelines provided by or concerning a property owners' association or concerning subdivisions that are subject to restrictive covenants.), **As Passed 2nd House**

<b>No fiscal implication to the State is anticipated.</b>
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**Local Government Impact**

The bill would require a property owners' association to file the association's alternative payment schedule in each county in which a subdivision is located. It is assumed that any additional work required by counties could be absorbed with existing resources.

**Source Agencies:**

**LBB Staff:** JOB, SD, KKR, AG, TP

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**May 19, 2011**

**TO:** Honorable Royce West, Chair, Senate Committee on Intergovernmental Relations

**FROM:** John S O'Brien, Director, Legislative Budget Board

**IN RE: HB1821** by Anderson, Rodney (Relating to certain information or guidelines provided by or concerning a property owners' association or concerning subdivisions that are subject to restrictive covenants.), **Committee Report 2nd House, Substituted**

**No fiscal implication to the State is anticipated.**

**Local Government Impact**

The bill would require a property owners' association to file the association's alternative payment schedule in each county in which a subdivision is located. It is assumed that any additional work required by counties could be absorbed with existing resources.

**Source Agencies:**

**LBB Staff:** JOB, KKR, AG, TP

**LEGISLATIVE BUDGET BOARD  
Austin, Texas**

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**May 16, 2011**

**TO:** Honorable Royce West, Chair, Senate Committee on Intergovernmental Relations

**FROM:** John S O'Brien, Director, Legislative Budget Board

**IN RE: HB1821** by Anderson, Rodney (Relating to the delivery of subdivision information by a property owners' association to purchasers.), **As Engrossed**

**No fiscal implication to the State is anticipated.**

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:**

**LBB Staff:** JOB, KKR, AG, TP

**LEGISLATIVE BUDGET BOARD  
Austin, Texas**

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**March 17, 2011**

**TO:** Honorable Joe Deshotel, Chair, House Committee on Business & Industry

**FROM:** John S O'Brien, Director, Legislative Budget Board

**IN RE: HB1821** by Anderson, Rodney (Relating to the delivery of subdivision information by a property owners' association to purchasers.), **As Introduced**

**No fiscal implication to the State is anticipated.**

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:**

**LBB Staff:** JOB, AG, TP