

BILL ANALYSIS

Senate Research Center

S.B. 1168
By: West
Business & Commerce
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In the 82nd regular session, a number of bills amending provisions of Chapter 209 of the Property Code, dealing with the operation of property owners' associations (POA), were passed into law. Since that time, the boards of numerous POAs have encountered operational and technical issues that require further legislative refinement.

Accordingly, S.B. 1168 makes a number of clarifying changes to this area of law. Those changes include providing a definition of "verified mailing" and a confirmation that the vote required to amend a declaration is 67 percent of those whose property is affected by the amendment (owners not subject to a deed restriction do not vote on amendments to the restriction). The bill also clarifies when a board may meet by electronic or telephonic means, and what they can consider, and also provides more detail regarding the recount process for an election conducted by the board.

Additionally, the bill sets out the matters for which a vote must be signed and in writing, permits POAs to require board members to reside in the subdivision, further defines a homeowner's notice of the right to cure, allows for either judicial or expedited foreclosure of a lien, and permits the offer of a payment plan that is longer in length than 18 months, while also clarifying when such a plan is required. Finally, the bill clarifies that ballots cast by a homeowner in a property association vote are "secret" – not subject to review by any other owner.

S.B. 1168 amends current law relating to the operation of certain property owners' associations, condominium unit owners' associations, and councils of owners.

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 Section 82.157(a), Property Code, as follows:

(a) Includes statements of the unit owners' association's (association) current operating budget and balance sheet and all fees payable to the association or an agent of the association that are associated with the transfer of ownership, including a description of each fee, to whom the fee is paid, and the amount of the fee, among information required to be contained within a resale certificate. Makes nonsubstantive changes.

SECTION 2. Amends Section 207.001(2), Property Code, to redefine "dedicatory instrument," "property owners' association," and "restrictive covenant."

SECTION 3. Amends Section 207.002, Property Code, as follows:

Sec. 207.002. APPLICABILITY. (a) Creates this subsection from existing text. Provides that this chapter applies to a subdivision with a property owners' association that is entitled to levy regular or special assessments.

(b) Provides that this chapter does not apply to a condominium council of owners governed by Chapter 81 (Condominiums Created Before Adoption of Uniform

Condominium Act) or a condominium unit owners' association governed by Chapter 82 (Uniform Condominium Act).

SECTION 4. Amends Section 209.002, Property Code, by amending Subdivision (4-a) and adding Subdivision (13), to redefine "development period" and define "verified mail."

SECTION 5. Amends Section 209.003(d), Property Code, to provide that this chapter does not apply to a condominium as defined by Section 81.002 (Definitions) or 82.003 (Definitions), rather than provide that this chapter does not apply to a condominium development governed by Chapter 82.

SECTION 6. Amends Section 209.0041, Property Code, by amending Subsection (h) and adding Subsections (h-1) and (h-2), as follows:

(h) Authorizes a declaration to be amended, except as provided by Subsection (h-1) or (h-2), only by a vote of 67 percent of the total votes allocated to property owners entitled to vote on the amendment of the declaration, rather than to property owners in the property owners' association, in addition to any governmental approval required by law. Makes a nonsubstantive change.

(h-1) Creates this subsection from existing text. Provides that, if the declaration contains a lower percentage than prescribed by Subsection (h), the percentage in the declaration controls.

(h-2) Authorizes the declaration, if the declaration is silent as to voting rights for an amendment, to be amended by a vote of owners owning 67 percent of the lots subject to the declaration.

SECTION 7. Amends Chapter 209, Property Code, by adding Section 209.0042, as follows:

Sec. 209.0042. METHODS OF PROVIDING NOTICES TO OWNERS. (a) Authorizes a property owners' association to adopt a method that may be used by the association to provide a notice from the association to a property owner subject to this section.

(b) Authorizes a property owners' association to use an alternative method of providing notice adopted under this section to provide a notice for which another method is prescribed by law only if the property owner to whom the notice is provided has affirmatively opted to allow the association to use the alternative method of providing notice to provide to the owner notices for which another method is prescribed by law.

(c) Prohibits a property owners' association from requiring an owner to allow the association to use an alternative method of providing notice adopted under this section to provide to the owner any notice for which another method of providing notice is prescribed by law.

SECTION 8. Amends Section 209.0051, Property Code, by amending Subsections (b), (c-1), and (h) and adding Subsection (c-2), as follows:

(b) Deletes definition of "development period" and makes nonsubstantive changes.

(c-1) Requires a board (the governing board of a property owners' association) meeting to be held in a county in which all or part of the property in the subdivision is located or in a county adjacent to that county, except for a meeting held by electronic or telephonic means under Subsection (c-2), rather than Subsection (h).

(c-2) Authorizes a board meeting to be held by electronic or telephonic means provided that:

(1) each board member may hear and be heard by every other board member;

(2) except for any portion of the meeting conducted in executive session:

(A) all owners in attendance at the meeting may hear all board members;
and

(B) owners are allowed to listen using any electronic or telephonic communication method used or expected to be used by a board member to participate; and

(3) the notice of the meeting includes instructions for owners to access any communication method required to be accessible under Subdivision (2)(B).

(h) Authorizes a board to take action outside of a meeting, except as provided by this subsection, including voting by electronic or telephonic means, without prior notice to owners under Subsection (e) (requiring that members be given notice of the date, hour, place, and general subject of a regular or special board meeting, including a general description of any matter to be brought up for deliberation in executive session), if each board member is given a reasonable opportunity to express the board member's opinion to all other board members and to vote. Requires that any action taken without notice to owners under Subsection (e) be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes of the next regular or special board meeting. Prohibits the board, unless done in an open meeting for which prior notice was given to owners under Subsection (e), rather than prohibits the board, without prior notice to owners under Subsection (e), from considering or voting on:

(1)-(6) Makes no change to these subdivisions;

(7) and (8) Makes nonsubstantive changes;

(9) lending or borrowing money;

(10) the adoption or amendment of a dedicatory instrument;

(11) the approval of an annual budget or the approval of an amendment of an annual budget that increases the budget by more than 10 percent;

(12) the sale or purchase of real property;

(13) the filling of a vacancy on the board;

(14) the construction of capital improvements other than the repair, replacement, or enhancement of existing capital improvements; or

(15) the election of an officer.

Deletes existing text authorizing a board to meet by any method of communication, including electronic and telephonic, without prior notice to owners under Subsection (e), if each director may hear and be heard by every other director, or the board may take action by unanimous written consent to consider routine and administrative matters or a reasonably unforeseen emergency or urgent necessity that requires immediate board action.

Makes nonsubstantive changes.

SECTION 9. Amends Section 209.0056, Property Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires a property owners' association, for an election or vote taken at a meeting of the owners, not later than the 10th day or earlier than the 60th day before the date of the election or vote, to give written notice of the election or vote to certain owners as set forth.

(a-1) Requires the property owners' association, for an election or vote of owners not taken at the meeting, to give notice of the election or vote to all owners entitled to vote on any matter under consideration. Requires that the notice be given not later than the 20th day before the latest date on which a ballot may be submitted to be counted.

SECTION 10. Amends Section 209.0057, Property Code, by amending Subsections (b), (c), and (d) and adding Subsections (b-1), (b-2), (b-3), and (b-4), as follows:

(b) Authorizes any owner, not later than the 15th day after the later of the date of any meeting of owners at which the election or vote was held or the date of the announcement of the results of the election or vote, to require a recount of the votes. Requires that a demand for a recount be submitted in writing either:

(1) by verified mail or by delivery by the United States Postal Service with signature confirmation service to the property owners' association's mailing address as reflected on the latest management certificate filed under Section 209.004 (Management Certificates); or

(2) Makes no change to this subdivision.

Deletes existing text requiring that a demand for a recount be submitted in writing either by certified mail, return receipt requested, or by delivery by the United States Postal Service with signature confirmation service. Makes nonsubstantive changes.

(b-1) Requires the property owners' association to estimate the costs for performance of the recount by a person qualified to tabulate votes under Subsection (c) and to send an invoice for the estimated costs to the requesting owner at the owner's last known address according to association records not later than the 20th day after the date the association receives the owner's demand for the recount.

(b-2) Requires the owner demanding a recount under this section to pay the invoice described by Subsection (b-1) in full to the property owners' association on or before the 30th day after the date the invoice is sent to the owner.

(b-3) Provides that, if the invoice described by Subsection (b-1) is not paid by the deadline prescribed by Subsection (b-2), the owner's demand for a recount is considered withdrawn and a recount is not required.

(b-4) Requires the property owners' association to send a final invoice to the owner on or before the 30th business day after the date the results of the recount are provided if the estimated costs under Subsection (b-1) are lesser or greater than the actual costs. Authorizes any additional amounts not paid to the association before the 30th business day after the date the invoice is sent to the owner to be added to the owner's account as an assessment if the final invoice includes additional amounts owed by the owner. Provides that, if the estimated costs exceed the final invoice amount, the owner is entitled to a refund. Requires that the refund be paid to the owner at the time the final invoice is sent under this subsection.

(c) Requires the property owners' association, following receipt of payment under Subsection (b-2), at the expense of the owner requesting the recount, retain for the purpose of performing the recount the services of a person qualified to tabulate

votes under this subsection. Requires the association to enter into a contract for the services of certain persons as set forth. Makes nonsubstantive changes.

(d) Requires that the recount, on or before the 30th day after the date of receipt of payment for a recount in accordance with Subsection (b-2), be completed and requires the property owners' association to provide each owner who requested the recount with notice of the results of the recount. Requires the association, if the recount changes the results of the election, to reimburse the requesting owner for the cost of the recount not later than the 30th day after the date the results of the recount are provided.

Deletes existing text of Subsection (d) requiring that any recount under Subsection (b) be performed on or before the 30th day after the date of receipt of a request and payment for a recount in accordance with Subsections (b) and (c). Deletes existing text requiring the property owners' association to provide the results of the recount to each owner who requested the recount. Makes conforming and nonsubstantive changes.

SECTION 11. Amends Section 209.0058, Property Code, by amending Subsections (a) and (c) and adding Subsections (a-1) and (d), as follows:

(a) Requires that a vote cast by a member of a property owners' association, except as provided by Subsection (d), be in writing and signed by the member if the vote is cast:

- (1) outside of a meeting;
- (2) in an election to fill a position on the board;
- (3) on a proposed adoption or amendment of a dedicatory instrument;
- (4) on a proposed increase in the amount of a regular assessment or the proposed adoption of a special assessment; or
- (5) on the proposed removal of a board member.

Deletes existing text of Subsection (a) requiring that any vote cast in an election or vote by a member of a property owners' association be in writing and signed by the member.

(a-1) Requires that the ballot, if a property owners' association elects to use a ballot for a vote on a matter other than a matter described by Subsection (a), be in writing and signed by the member or cast by secret ballot in accordance with Subsection (d).

(c) Provides that, in a property owners' association election, rather than in an association-wide election, written and signed ballots are not required for uncontested races.

(d) Authorizes a property owners' association to adopt rules to allow voting by secret ballot by association members. Requires the association to take measures to reasonably ensure that:

- (1) a member cannot cast more votes than the member is eligible to cast in an election or vote;
- (2) the association counts each vote cast by a member that the member is eligible to cast; and
- (3) in any election for the board, each candidate may name one person to observe the counting of the ballots, provided that this does not entitle any observer to see the name of the person who cast any ballot, and that any disruptive observer may be removed.

SECTION 12. Amends Section 209.0059, Property Code, by adding Subsection (c) to prohibit a person, in a residential development with 10 or fewer lots for which the declaration was recorded before January 1, 2015, from voting in a property owners' association election unless the person is subject to a dedicatory instrument governing the association through which the association exercises its authority.

SECTION 13. Amends Section 209.00591, Property Code, by adding Subsection (a-1) and amending Subsection (c), as follows:

(a-1) Authorizes a property owners' association's bylaws, notwithstanding any other provision of this chapter, to require one or more board members to reside in the subdivision subject to the dedicatory instruments, but prohibits such bylaws from requiring all board members to reside in that subdivision. Provides that a requirement described by this subsection is not applicable during the development period.

(c) Provides that, regardless of the period of declarant control provided by the declaration, on or before the 120th day after the date 75 percent of the lots that may be created and made subject to the declaration are conveyed to owners other than a declarant or a builder in the business of constructing homes who purchased the lots from the declarant for the purpose of selling completed homes built on the lots, at least one-third of the board members must be elected by owners other than the declarant.

SECTION 14. Amends Section 209.00592, Property Code, by amending Subsection (a) and adding Subsections (a-1) and (b-1), as follows:

(a) Authorizes the voting rights of an owner, subject to Subsection (a-1), to be cast or given:

(1)-(4) Makes no change to these subdivisions.

(a-1) Provides that, except as provided by this subsection, unless a dedicatory instrument provides otherwise, a property owners' association is not required to provide an owner with more than one voting method. Requires that an owner be allowed to vote by absentee ballot or proxy.

(b-1) Provides that, for purposes of Subsection (b), a nomination taken from the floor in a board member election is not considered an amendment to the proposal for the election.

SECTION 15. Amends Section 209.00593, Property Code, by adding Subsections (a-1), (a-2), and (a-3) and amending Subsection (d), as follows:

(a-1) Requires a property owners' association composed of more than 100 lots, at least 10 days before the date the association disseminates absentee ballots or other ballots to association members for purposes of voting in a board member election, to provide notice to the association members soliciting candidates interested in running for a position on the board. Requires that the notice contain instructions for an eligible candidate to notify the association of the candidate's request to be placed on the ballot and the deadline to submit the candidate's request. Prohibits the deadline from being earlier than the 10th day after the date the association provides the notice required by this subsection.

(a-2) Requires that the notice required by Subsection (a-1) be distributed as set forth.

(a-3) Requires an association described by Subsection (a-1) to include on each absentee ballot or other ballot for a board member election the name of each eligible candidate from whom the association received a request to be placed on the ballot in accordance with this section.

(d) Provides that this section does not apply to the appointment of a board member during a development period. Deletes existing text defining "development period."

SECTION 16. Amends Section 209.00594, Property Code, by amending Subsections (b) and (c) and adding Subsections (b-1) and (d), as follows:

(b) Deletes existing text prohibiting a person other than a person described by Subsection (a) (prohibiting certain persons from tabulating or otherwise being given access to the ballots cast in that election or vote) from disclosing to any other person how an individual voted.

(b-1) Prohibits a person who tabulates votes under Subsection (b) or who performs a recount under Section 209.0057(c) from disclosing to any other person how an individual voted.

(c) Provides that only a person who tabulates votes under Subsection (b) or who performs a recount under Section 209.0057(c) is authorized to be given access to the ballots cast in the election or vote, notwithstanding any other provision of this chapter or any other law, rather than authorizes a person other than a person who tabulates votes under Subsection (b), including a person described by Subsection (a), to be given access to the ballots cast in the election or vote only as part of a recount process authorized by law, notwithstanding any other provision of this chapter or any other law.

(d) Prohibits this section from being construed to affect a person's obligation to comply with a court order for the release of ballots or other voting records.

SECTION 17. Amends Section 209.006, Property Code, as follows:

Sec. 209.006. NOTICE REQUIRED BEFORE ENFORCEMENT ACTION. (a) Deletes existing text requiring the association or its agent to give written notice to the owner by certified mail, return receipt requested, before a property owners' association may suspend an owner's right to use a common area, file a suit against an owner other than a suit to collect a regular or special assessment or foreclose under an association's lien, charge an owner for property damage, or levy a fine for a violation of the restrictions or bylaws or rules of the association.

(b) Requires that the notice:

(1) Makes a nonsubstantive change;

(2) except as provided by Subsection (d), inform the owner that the owner:

(A) is entitled to a reasonable period to cure the violation and avoid the fine or suspension if the violation is of a curable nature and does not pose a threat to public health or safety;

(B) may request a hearing under Section 209.007 (Hearing Before Board; Alternative Dispute Resolution) on or before the 30th day after the date the notice was mailed to the owner, rather than may request a hearing under Section 209.007 on or before the 30th day after the date the owner receives the notice; and

(C) may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. App. Section 501 et seq.), if the owner is serving on active military duty;

(3) specify the date by which the owner must cure the violation if the violation is of a curable nature and does not pose a threat to public health or safety; and

(4) be sent by verified mail to the owner at the owner's last known address as shown on the association records.

Deletes existing text requiring that the notice inform the owner that the owner is entitled to a reasonable period to cure the violation and avoid the fine or suspension unless the owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six months.

(c) Requires that the date specified in the notice under Subsection (b)(3) provide a reasonable period to cure the violation if the violation is of a curable nature and does not pose a threat to public health or safety.

(d) Provides that Subsections (a) and (b) do not apply to a violation for which the owner has been previously given notice under this section and the opportunity to exercise any rights available under this section in the preceding six months.

(e) Prohibits a fine from being assessed for the violation if the owner cures the violation before the expiration of the period for cure described by Subsection (c).

(f) Provides that, for purposes of this section, a violation is considered a threat to public health or safety if the violation could materially affect the physical health or safety of an ordinary resident.

(g) Provides that, for purposes of this section, a violation is considered incurable if the violation has occurred but is not a continuous action or a condition capable of being remedied by affirmative action. Provides that, for purposes of this subsection, the nonrepetition of a one-time violation or other violation that is not ongoing is not considered an adequate remedy.

(h) Provides that the examples set forth are acts considered incurable for purposes of this section.

(i) Provides that the examples set forth are acts considered curable for purposes of this section.

SECTION 18. Amends Section 209.0062(c), Property Code, as follows:

(c) Provides that a property owners' association is not required to allow a payment plan for any amount that extends more than 18 months from the date of the owner's request for a payment plan. Provides that the association is not required to make a payment plan available to an owner after the period for cure described by Section 209.0064(b)(3) (providing a period of at least 30 days for the owner to cure the delinquency before further collection action is taken) expires. Provides that the association is not required to allow an owner to enter into a payment plan more than once in any 12-month period. Makes a nonsubstantive change.

SECTION 19. Amends Section 209.0064(b), Property Code, as follows:

(b) Prohibits a property owners' association from holding an owner liable for fees of a collection agent retained by the association unless the association first provides written notice to the owner by certified mail, rather than by certified mail, return receipt requested, that:

(1) Makes no change to this subdivision;

(2) if the association is subject to Section 209.0062 (Alternative Payment Schedule for Certain Assessments) or the association's dedicatory instruments contain a requirement to offer a payment plan, describes the options the owner has to avoid having the account turned over to a collection agent, including information regarding availability of a payment plan through the association; and

(3) Makes no change to this subdivision.

SECTION 20. Amends Section 209.009, Property Code, as follows:

Sec. 209.009. FORECLOSURE SALE PROHIBITED IN CERTAIN CIRCUMSTANCES. Adds a reference to Section 209.0057(b-4) and makes no further change.

SECTION 21. Amends Section 209.0091, Property Code, as follows:

Sec. 209.0091. PREREQUISITES TO FORECLOSURE: NOTICE AND OPPORTUNITY TO CURE FOR CERTAIN OTHER LIENHOLDERS. (a) Prohibits a property owners' association from filing an application for an expedited court order authorizing foreclosure of the association's assessment lien as described by Section 209.0092(a) or a petition for judicial foreclosure of the association's assessment lien as described by Section 209.0092(d), unless the association has:

(1) Makes no change to this subdivision;

(2) provided the recipient of the notice an opportunity to cure the delinquency before the 61st day after the date the association mails the notice described in Subdivision (1).

(b) Deletes existing text requiring that notice under this section be sent by certified mail, return receipt requested, to the address for the lienholder shown in the deed records relating to the property that is subject to the property owners' association assessment lien.

(c) Authorizes notice under this section to be provided to any holder of a lien of record on the property, notwithstanding any other law.

Deletes existing text of Subsection (a) prohibiting a property owners' association from foreclosing a property owners' association assessment lien on real property by giving notice of sale under Section 51.002 (Sale of Real Property Under Contract Lien) or commencing a judicial foreclosure action.

SECTION 22. Amends Section 209.0092, Property Code, by amending Subsection (a) and adding Subsections (d) and (e), as follows:

(a) Prohibits a property owners' association from foreclosing a property owners' association assessment lien unless the association first obtains a court order in an application for expedited foreclosure under the rules adopted by the supreme court under Subsection (b), except as provided by Subsection (c) or (d), and subject to Section 209.009 (Foreclosure Sale Prohibited in Certain Circumstances). Provides that a property owners' association whose dedicatory instruments grant a right of foreclosure is considered to have any power of sale required by law as a condition of using the procedure described by this subsection.

(d) Authorizes a property owners' association authorized to use the procedure described by Subsection (a) to in its discretion elect not to use that procedure and instead foreclose the association's assessment lien under court judgment foreclosing the lien and ordering the sale, pursuant to Rules 309 and 646a, Texas Rules of Civil Procedure.

(e) Provides that this section does not affect any right an association that is not authorized to use the procedure described by Subsection (a) may have to judicially foreclose the association's assessment lien as described by Subsection (d).

SECTION 23. Amends Title 11, Property Code, by adding Chapter 213, as follows:

CHAPTER 213. MODIFICATION OR TERMINATION OF RESTRICTIONS IN CERTAIN REAL ESTATE DEVELOPMENTS BY PROPERTY OWNERS' ASSOCIATION OR PROPERTY OWNER PETITION

Sec. 213.001. DEFINITIONS. Defines “amenity property,” “council of owners,” “dedicatory instrument,” “development,” “owner,” “petition circulator,” “property owners’ association,” “restrictions,” “restrictive covenant,” and “unit owners’ association.”

Sec. 213.002. FINDINGS AND PURPOSE. (a) Provides that the legislature finds that:

- (1) a restriction on the use of an amenity property may create uncertainty if the owners of an amenity property are reluctant or unable to properly maintain or operate the amenity property;
- (2) such uncertainty may discourage investment and negatively impact property values in the development;
- (3) investors may be reluctant to or will not invest funds to revitalize an amenity property burdened with a restriction on its use;
- (4) financial institutions may be reluctant to or will not provide financing to revitalize an amenity property burdened with a restriction on its use; and
- (5) establishing a procedural option to allow for the modification or termination of the restriction would alleviate the uncertainty and encourage revitalization of the amenity property.

(b) Provides that the purpose of this chapter is to provide a procedural option for the modification or termination of a restriction on the use of an amenity property.

Sec. 213.003. MODIFICATION OR TERMINATION BY PETITION. (a) Authorizes a restriction on the use of an amenity property to be modified or terminated by petition in accordance with this chapter except as provided by Subsection (b).

(b) Provides that this chapter does not apply if:

- (1) a dedicatory instrument includes a procedure to modify or terminate a restriction on the use of an amenity property on approval of the owners of less than 75 percent of, as applicable, the lots or parcels of land and units or apartments of condominiums in the development; or
- (2) a restriction on the use of an amenity property may be modified or terminated under the procedures of Chapter 81, 82, 201 (Restrictive Covenants Applicable to Certain Subdivisions), or 209 (Texas Residential Property Owners Protection Act).

Sec. 213.004. PREREQUISITES FOR CIRCULATION. Prohibits a petition from being circulated under this chapter unless, for a continuous period of at least 36 months, the amenity property has not been in operation and if zoning regulations apply to the amenity property, the owner of the amenity property has received all required zoning approvals for any proposed redevelopment of the amenity property.

Sec. 213.005. PETITION CIRCULATOR. Authorizes a petition authorized by Section 213.003 to be circulated by an owner, a property owners' association that owns and manages the amenity property, or a unit owners' association or council of owners that owns and manages the amenity property.

Sec. 213.006. CONTENTS OF PETITION. (a) Requires that the petition include all relevant information about the proposed modification or termination, including information as set forth.

(b) Requires that the petition state information as set forth.

Sec. 213.007. CIRCULATION PROCEDURE. (a) Requires a petition circulator to deliver a copy of the petition to:

(1) all owners of each lot or parcel of real property in the development and each unit or apartment of each condominium, if any, in the development; and

(2) each property owners' association, unit owners' association, and council of owners in the development.

(b) Authorizes the petition circulator to deliver a copy of the petition in any reasonable manner, including by regular mail or certified mail, return receipt requested, to the last known address of the owners or entities described by Subsections (a)(1) and (2), personal delivery to the owners or entities described by Subsections (a)(1) and (2), or at a regular meeting of a property owners' association, unit owners' association, or council of owners.

(c) Provides that, if the petition circulator acts in good faith in determining ownership and delivering copies of the petition as required by this section, an owner's lack of receipt of a copy of the petition does not affect the application of a modification or termination of a restriction under this chapter to the amenity property.

Sec. 213.008. VOTE ON PROPOSAL. (a) Provides that the modification or termination of the restriction is adopted if the owners of at least 75 percent of the total number, as applicable, of the lots or parcels of land and the units or apartments of condominiums in the development, including the owner of the amenity property, vote in favor of the modification or termination of the restriction.

(b) Authorizes an owner to cast a vote only by delivering to the petition circulator in accordance with Section 213.009 a signed statement that includes information as set forth.

(c) Authorizes an owner to vote only in favor of or against the modification or termination as proposed in the petition.

(d) Authorizes the owners, if more than one person owns an interest in a lot or parcel of land or a unit or apartment of a condominium, to cast only one vote for that lot, parcel, unit, or apartment. Provides that, except as otherwise provided by this subsection, the vote of multiple owners in favor of or against the modification or termination may be reflected by the signatures of a majority of the co-owners who return a signed statement. Provides that the vote of owners who are married may be reflected by the signature of only one of those owners.

(e) Provides that a person whose only property interest in a lot or parcel of land or unit or apartment of a condominium is that of a contract purchaser, lienholder, or mineral interest holder may not cast a vote for that property under this chapter.

(f) Authorizes a vote to be counted only if the vote is received before the deadline stated in the petition as required by Section 213.006(b).

(g) Provides that the signed statement of an owner conclusively establishes that the petition was received by the owner in accordance with Section 213.007 and the statement accurately reflects the vote of the owner.

Sec. 213.009. DELIVERY OF SIGNED STATEMENT. (a) Requires the petition circulator to accept a signed statement described by Section 213.008 that is delivered by methods as set forth.

(b) Provides that this section supersedes any contrary provision in a dedicatory instrument.

Sec. 213.010. CERTIFICATION OF RESULTS BY RECORDED AFFIDAVIT. (a) Requires the petition circulator to certify the result of the votes by filing an affidavit with the county clerk of the county in which the restriction modified or terminated is recorded.

(b) Requires that the affidavit required by Subsection (a) state information as set forth.

(c) Requires the petition circulator to affirm in the affidavit that the petition was delivered in accordance with Section 213.007.

Sec. 213.011. NOTICE. (a) Provides that the recording of the affidavit required by Section 213.010 constitutes notice that the restriction is modified or terminated.

(b) Requires the petition circulator, notwithstanding Subsection (a), to deliver to each person who resides within 200 feet of the boundary of the amenity property a copy of the affidavit. Authorizes the affidavit to be delivered by regular mail, by certified mail, return receipt requested, or by personal delivery.

Sec. 213.012. EFFECTIVE DATE OF MODIFICATION OR TERMINATION. Provides that the modification or termination of the restriction takes effect on the later of the date the affidavit required by Section 213.010 is filed with the county clerk or the date, if any, specified as the effective date in the petition.

Sec. 213.013. DOCUMENTATION AVAILABLE. Requires the petition circulator, at least one year after the date the affidavit is filed with the county clerk, to make available for inspection and copying the original petition, the signed statements described by Section 213.008, and the affidavit required by Section 213.010.

Sec. 213.014. EXPIRATION. Provides that this chapter expires September 1, 2021.

SECTION 24. Repealer: Section 209.0041(a) (defining "development period"), Property Code.

SECTION 25. (a) Provides that Section 82.157(a), Property Code, as amended by this Act, applies only to a resale certificate issued on or after the effective date of this Act. Provides that a resale certificate issued before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) Provides that the changes in law made by this Act to Chapter 207 (Disclosure of Information by Property Owners' Associations), Property Code, apply only to a request for subdivision information made on or after the effective date of this Act and any resale certificate delivered in response to that request. Makes application of this Act prospective.

(c) Provides that Sections 209.0041 (Adoption or Amendment of Certain Dedicatory Instruments), 209.0056 (Notice of Election or Association Vote) , 209.0057 (Recount of Votes), 209.0058 (Ballots), 209.00592 (Voting; Quorum), Section 209.00593 (Election of Board Members), and 209.00594(c) (authorizing a person other than a person who tabulates votes under Subsection (b), including a person described by Subsection (a), be

given access to the ballots cast in the election or vote only as part of a recount process authorized by law, notwithstanding any other provision of this chapter or any other law), Property Code, as amended by this Act, apply only to an election or vote held on or after the effective date of this Act. Makes application of this Act prospective.

(d) Provides that Section 209.006 (Notice Required Before Enforcement Action), Property Code, as amended by this Act, applies only to an enforcement action taken on or after the effective date of this Act. Makes application of this Act prospective.

(e) Provides that Section 209.0064 (Third Party Collections), Property Code, as amended by this Act, applies only to a collection action taken on or after the effective date of this Act. Makes application of this Act prospective.

(f) Provides that Section 209.0091 (Prerequisites to Foreclosure: Notice and Opportunity to Cure for Certain Other Lienholders), Property Code, as amended by this Act, applies only to an application or petition filed on or after the effective date of this Act. Provides that an application or petition filed before the effective date of this Act is governed by the law as it existed immediately before that date, and that law is continued in effect for that purpose.

SECTION 26. Provides that Chapter 213, Property Code, as added by this Act, does not apply to a petition circulated before the effective date of this Act.

SECTION 27. Effective date: September 1, 2015.