

By: Parker, Romero, Jr.

H.B. No. 2594

Substitute the following for H.B. No. 2594:

By: Simmons

C.S.H.B. No. 2594

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the modification or termination of restrictions by  
3 petition in certain real estate developments with certain  
4 amenities.

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

6 SECTION 1. Title 11, Property Code, is amended by adding  
7 Chapter 213 to read as follows:

8 CHAPTER 213. MODIFICATION OR TERMINATION OF RESTRICTIONS BY  
9 PETITION IN REAL ESTATE DEVELOPMENTS WITH CERTAIN AMENITIES

10 Sec. 213.001. DEFINITIONS. In this chapter:

11 (1) "Amenity property" means real property the use of  
12 which is restricted by a dedicatory instrument to use as a golf  
13 course or country club.

14 (2) "Council of owners" has the meaning assigned by  
15 Section 81.002 as it relates to an existing condominium in a  
16 development.

17 (3) "Dedicatory instrument" means a governing  
18 instrument that:

19 (A) restricts amenity property to use as amenity  
20 property;

21 (B) designates real property in the development,  
22 other than amenity property, as a beneficiary of a restriction  
23 described by Paragraph (A); and

24 (C) addresses the establishment, maintenance,

1 and operation of amenity property.

2 (4) "Development" means:

3 (A) amenity property; and

4 (B) all real property designated as beneficiary  
5 property in the dedicatory instrument.

6 (5) "Owner" means a person, or the person's personal  
7 representative, who holds record title to:

8 (A) a lot or parcel of real property in a  
9 development; or

10 (B) a unit or apartment of a condominium in the  
11 development.

12 (6) "Petition circulator" means a person authorized to  
13 circulate a petition under Section 213.005.

14 (7) "Property owners' association" means an  
15 incorporated or unincorporated association that:

16 (A) is designated as the representative of the  
17 owners of lots or parcels of real property in a development;

18 (B) has a membership primarily consisting of  
19 those owners; and

20 (C) manages or regulates all or part of the  
21 development for the benefit of those owners.

22 (8) "Restrictions" means one or more restrictive  
23 covenants contained or incorporated by reference in a properly  
24 recorded map, plat, replat, declaration, or other instrument filed  
25 in the real property records or map or plat records. The term  
26 includes any amendment or extension of the restrictions.

27 (9) "Restrictive covenant" means any covenant,

1 condition, or restriction contained in a dedicatory instrument,  
2 whether mandatory, prohibitive, permissive, or administrative.

3 (10) "Unit owners' association" means an association  
4 of unit owners organized under Section 82.101 for a condominium in a  
5 development.

6 Sec. 213.002. FINDINGS AND PURPOSE. (a) The legislature  
7 finds that:

8 (1) a restriction on the use of an amenity property may  
9 create uncertainty if the owners of an amenity property are  
10 reluctant or unable to properly maintain or operate the amenity  
11 property;

12 (2) such uncertainty may discourage investment and  
13 negatively impact property values in the development;

14 (3) investors may be reluctant to or will not invest  
15 funds to revitalize an amenity property burdened with a restriction  
16 on its use;

17 (4) financial institutions may be reluctant to or will  
18 not provide financing to revitalize an amenity property burdened  
19 with a restriction on its use; and

20 (5) establishing a procedural option to allow for the  
21 modification or termination of the restriction would alleviate the  
22 uncertainty and encourage revitalization of the amenity property.

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

26 Sec. 213.003. MODIFICATION OR TERMINATION BY PETITION. (a)  
27 Except as provided by Subsection (b), a restriction on the use of an

1 amenity property may be modified or terminated by petition in  
2 accordance with this chapter.

3 (b) This chapter does not apply if:

4 (1) a dedicatory instrument includes a procedure to  
5 modify or terminate a restriction on the use of an amenity property  
6 on approval of the owners of 100 percent of, as applicable, the lots  
7 or parcels of land and units or apartments of condominiums in the  
8 development; or

9 (2) a restriction on the use of an amenity property may  
10 be modified or terminated under the procedures of Chapter 81, 82,  
11 201, or 209.

12 Sec. 213.004. PREREQUISITES FOR CIRCULATION. A petition  
13 may not be circulated under this chapter unless:

14 (1) for a continuous period of at least 36 months, the  
15 amenity property has not been in operation, has not been  
16 maintained, or has been operated or maintained in a dilapidated or  
17 substandard condition; and

18 (2) if zoning regulations apply to the amenity  
19 property, the owner of the amenity property has received all  
20 required zoning approvals for any proposed redevelopment of the  
21 amenity property.

22 Sec. 213.005. PETITION CIRCULATOR. A petition authorized  
23 by Section 213.003 may be circulated by:

24 (1) an owner;

25 (2) a property owners' association; or

26 (3) a unit owners' association or council of owners.

27 Sec. 213.006. CONTENTS OF PETITION. (a) The petition must

1 include all relevant information about the proposed modification or  
2 termination, including:

3 (1) the name of the development, if any;

4 (2) the name of the amenity property, if any;

5 (3) the recording information of the restriction to be  
6 modified or terminated;

7 (4) the text of the restriction subject to  
8 modification or termination;

9 (5) the text of the restriction as modified or  
10 terminated; and

11 (6) a comparison of the original language of the  
12 restriction and the restriction as modified or terminated, showing  
13 any insertion and deletion of language or punctuation.

14 (b) The petition must state the date by which a signed  
15 statement required by Section 213.008 must be received to be  
16 counted.

17 Sec. 213.007. CIRCULATION PROCEDURE. (a) A petition  
18 circulator shall deliver a copy of the petition to:

19 (1) all owners of:

20 (A) each lot or parcel of real property in the  
21 development; and

22 (B) each unit or apartment of each condominium,  
23 if any, in the development; and

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

26 (b) The petition circulator may deliver a copy of the  
27 petition in any reasonable manner, including:

1           (1) by regular mail or certified mail, return receipt  
2 requested, to the last known address of the owners or entities  
3 described by Subsections (a)(1) and (2);

4           (2) personal delivery to the owners or entities  
5 described by Subsections (a)(1) and (2);

6           (3) at a meeting of owners in the development called  
7 for the purpose of voting on the petition;

8           (4) at a regular meeting of a property owners'  
9 association, unit owners' association, or council of owners; or

10           (5) at a special meeting of a property owners'  
11 association, unit owners' association, or council of owners called  
12 for the purpose of voting on the petition.

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

19           Sec. 213.008. VOTE ON PROPOSAL. (a) The modification or  
20 termination of the restriction is adopted if the owners of at least  
21 75 percent of the total number, as applicable, of the lots or  
22 parcels of land and the units or apartments of condominiums in the  
23 development, including the owner of the amenity property, vote in  
24 favor of the modification or termination of the restriction.

25           (b) An owner may cast a vote only by delivering to the  
26 petition circulator a signed statement that includes:

27           (1) the owner's name, the legal description or street

1 address of the owner's property, and the owner's mailing address;

2 (2) a statement that the owner holds record title to  
3 the property;

4 (3) if more than one person owns an interest in the  
5 property, the name and mailing address of each co-owner; and

6 (4) a statement indicating whether the owner is in  
7 favor of or against the modification or termination proposed by the  
8 petition.

9 (c) An owner may vote only in favor of or against the  
10 modification or termination as proposed in the petition.

11 (d) If more than one person owns an interest in a lot or  
12 parcel of land or a unit or apartment of a condominium, the owners  
13 may cast only one vote for that lot, parcel, unit, or apartment.  
14 Except as otherwise provided by this subsection, the vote of  
15 multiple owners in favor of or against the modification or  
16 termination may be reflected by the signatures of a majority of the  
17 co-owners who return a signed statement. The vote of owners who are  
18 married may be reflected by the signature of only one of those  
19 owners.

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

24 (f) A vote may be counted only if the vote is received before  
25 the deadline stated in the petition as required by Section  
26 213.006(b).

27 (g) The signed statement of an owner conclusively

1 establishes that:

2 (1) the petition was received by the owner in  
3 accordance with Section 213.007; and

4 (2) the statement accurately reflects the vote of the  
5 owner.

6 Sec. 213.009. CERTIFICATION OF RESULTS BY RECORDED  
7 AFFIDAVIT. (a) The petition circulator shall certify the result  
8 of the votes by filing an affidavit with the county clerk of the  
9 county in which the restriction modified or terminated is recorded.

10 (b) The affidavit required by Subsection (a) must state:

11 (1) the name of the development, if any;

12 (2) the name of the amenity property, if any;

13 (3) the recording information of the restriction that  
14 was modified or terminated;

15 (4) the text of the restriction before modification or  
16 termination;

17 (5) the text of the restriction as modified or  
18 terminated;

19 (6) the number of votes in favor of and against the  
20 proposed modification or termination;

21 (7) the name and address of the petition circulator;

22 and

23 (8) the name, address, and telephone number of the  
24 person maintaining the documents in accordance with Section  
25 213.012.

26 (c) The petition circulator must affirm in the affidavit  
27 that the petition was delivered in accordance with Section 213.007.

1       Sec. 213.010. NOTICE. (a) The recording of the affidavit  
2 required by Section 213.009 constitutes notice that the restriction  
3 is modified or terminated.

4       (b) Notwithstanding Subsection (a), the petition circulator  
5 must deliver to each person who resides within 200 feet of the  
6 boundary of the amenity property a copy of the affidavit. The  
7 affidavit may be delivered by regular mail, by certified mail,  
8 return receipt requested, or by personal delivery.

9       Sec. 213.011. EFFECTIVE DATE OF MODIFICATION OR  
10 TERMINATION. The modification or termination of the restriction  
11 takes effect on the later of:

12               (1) the date the affidavit required by Section 213.009  
13 is filed with the county clerk; or

14               (2) the date, if any, specified as the effective date  
15 in the petition.

16       Sec. 213.012. DOCUMENTATION AVAILABLE. At least one year  
17 after the date the affidavit is filed with the county clerk, the  
18 petition circulator shall make available for inspection and copying  
19 the original petition, the signed statements described by Section  
20 213.008, and the affidavit required by Section 213.009.

21       Sec. 213.013. EXPIRATION. This chapter expires September  
22 1, 2021.

23       SECTION 2. The change in law made by this Act does not apply  
24 to a petition circulated before the effective date of this Act.

25       SECTION 3. This Act takes effect September 1, 2015.