

By: Parker

H.B. No. 2594

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

Sec. 213.001. DEFINITIONS. In this chapter:

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

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

(3) "Dedicatory instrument" means the governing instrument that:

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

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

(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 213.004.

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) "Restriction" and "restrictive covenant" have the
23 meanings assigned by Section 209.002.

24 (9) "Unit owners' association" means an association of
25 unit owners organized under Section 82.101 for a condominium in a
26 development.

27 Sec. 213.002. FINDINGS AND PURPOSE. (a) The legislature

1 finds that:

2 (1) a restriction on the use of an amenity property may
3 create uncertainty if the owners of an amenity property are
4 reluctant or unable to properly maintain or operate the amenity
5 property;

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

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

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

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

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

20 Sec. 213.003. MODIFICATION OR TERMINATION BY PETITION. In
21 addition to any procedure to modify or terminate a restriction
22 provided in the dedicatory instrument, a restriction on the use of
23 an amenity property may be modified or terminated by petition in
24 accordance with this chapter.

25 Sec. 213.004. PETITION CIRCULATOR. A petition authorized
26 by Section 213.003 may be circulated by:

27 (1) an owner;

1 (2) a property owners' association; or

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

3 Sec. 213.005. CONTENTS OF PETITION. (a) The petition must
4 include all relevant information about the proposed modification or
5 termination, including:

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

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

8 (3) the recording information of the restriction to be
9 modified or terminated;

10 (4) the text of the restriction subject to
11 modification or termination;

12 (5) the text of the restriction as modified or
13 terminated; and

14 (6) a comparison of the original language of the
15 restriction and the restriction as modified or terminated, showing
16 any insertion and deletion of language or punctuation.

17 (b) The petition must state the date by which a signed
18 statement required by Section 213.007 must be received to be
19 counted.

20 Sec. 213.006. CIRCULATION PROCEDURE. (a) A petition
21 circulator shall deliver a copy of the petition to:

22 (1) owners of:

23 (A) each lot or parcel of real property in the
24 development; and

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

27 (2) each property owners' association, unit owners'

1 association, and council of owners in the development.

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

4 (1) by regular mail or certified mail, return receipt
5 requested, to the last known address of the owner or entity
6 described by Subsections (a)(1) and (2);

7 (2) personal delivery to the owner or entity described
8 by Subsections (a)(1) and (2);

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

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

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

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

22 Sec. 213.007. VOTE ON PROPOSAL. (a) The modification or
23 termination of the restriction is adopted if at least 66 percent of
24 the total number of the lots and parcels of land and the units and
25 apartments of condominiums in the development vote in favor of the
26 modification or termination of the restriction.

27 (b) An owner may cast a vote only by delivering to the

1 petition circulator a signed statement that includes:

2 (1) the owner's name, the legal description or street
3 address of the owner's property, and the owner's mailing address;

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

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

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

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

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

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

26 (f) A vote may be counted only if the vote is received before
27 the deadline stated in the petition as required by Section

1 213.005(b).

2 (g) The signed statement of an owner conclusively
3 establishes that:

4 (1) the petition was received by the owner in
5 accordance with Section 213.006; and

6 (2) the statement accurately reflects the vote of the
7 owner.

8 Sec. 213.008. CERTIFICATION OF RESULTS BY RECORDED
9 AFFIDAVIT. (a) The petition circulator shall certify the result
10 of the votes by filing an affidavit with the county clerk of the
11 county in which the restriction modified or terminated is recorded.

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

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

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

15 (3) the recording information of the restriction that
16 was modified or terminated;

17 (4) the text of the restriction before modification or
18 termination;

19 (5) the text of the restriction as modified or
20 terminated;

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

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

24 and

25 (8) the name, address, and telephone number of the
26 person maintaining the documents in accordance with Section

27 213.011.

1 (c) The petition circulator must affirm in the affidavit
2 that the petition was delivered in accordance with Section 213.006.

3 Sec. 213.009. NOTICE. The recording of the affidavit
4 required by Section 213.008 constitutes notice that the restriction
5 is modified or terminated.

6 Sec. 213.010. EFFECTIVE DATE OF MODIFICATION OR
7 TERMINATION. The modification or termination of the restriction
8 takes effect on the later of:

9 (1) the date the affidavit required by Section 213.008
10 is filed with the county clerk; or

11 (2) the date, if any, specified as the effective date
12 in the petition.

13 Sec. 213.011. DOCUMENTATION AVAILABLE. At least one year
14 after the date the affidavit is filed with the county clerk, the
15 petition circulator shall make available for inspection and copying
16 the original petition, the signed statements described by Section
17 213.007, and the affidavit required by Section 213.008.

18 SECTION 2. The change in law made by this Act applies only
19 to a petition circulated on or after the effective date of this Act.
20 A petition circulated before the effective date of this Act is
21 governed by the law in effect immediately before the effective date
22 of this Act, and that law is continued in effect for that purpose.

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