

By: A. Johnson of Harris

H.B. No. 2274

A BILL TO BE ENTITLED

AN ACT

relating to the extension or amendment of deed restrictions in certain older subdivisions.

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

SECTION 1. Title 11, Property Code, is amended by adding Chapter 216 to read as follows:

CHAPTER 216. EXTENSION OR AMENDMENT OF RESTRICTIONS IN CERTAIN OLDER SUBDIVISIONS

Sec. 216.001. DEFINITIONS. In this chapter:

(1) "Dedictory instrument" has the meaning assigned by Section 202.001.

(2) "Lienholder" and "owner" have the meanings assigned by Section 201.003.

(3) "Older subdivision" means a subdivision described by a recorded map or plat filed before 1947 in the real property records of the county in which the subdivision is located.

(4) "Petition" has the meaning assigned by Section 202.001.

(5) "Property owners' association" means an incorporated or unincorporated homeowners' association, community association, civic club, or similar entity that:

(A) has a membership primarily consisting of the owners of real property in a subdivision; and

(B) supports the enforcement of or promotes the

1 observance of the deed restrictions applicable to all or part of the
2 property located in the subdivision.

3 (6) "Restrictions" has the meaning assigned by Section
4 209.002.

5 (7) "Subdivision" means land that:

6 (A) consists of multiple sections that have each
7 been divided into two or more parts on a map or plat that has been
8 recorded in the real property records of a county; and

9 (B) is or was subject to restrictions that:

10 (i) limit a majority of the land, excluding
11 streets and public areas, to residential use; and

12 (ii) were recorded in the real property
13 records of the county.

14 Sec. 216.002. FINDINGS AND PURPOSE. (a) The legislature
15 finds that:

16 (1) the inability of owners to extend or amend
17 property restrictions in older subdivisions in which no zoning
18 regulations apply creates uncertainty in living conditions and
19 discourages investments in those subdivisions;

20 (2) owners in affected older subdivisions are
21 reluctant or unable to provide proper maintenance, upkeep, and
22 repairs of structures because of the inability to amend the
23 restrictions in response to changing circumstances;

24 (3) these conditions will cause dilapidation of
25 housing and other structures and cause unhealthful and unsanitary
26 conditions in affected older subdivisions, contrary to the health,
27 safety, and welfare of the public; and

1 (4) the existence of race-related covenants in
2 restrictions, regardless of their unenforceability, is offensive,
3 repugnant, and harmful to members of racial or ethnic minority
4 groups and public policy requires that those covenants be removed.

5 (b) The purpose of this chapter is to provide a procedure
6 for extending or amending restrictions for certain older
7 subdivisions, including the removal of any restriction relating to
8 race, religion, or national origin that is void and unenforceable
9 under the United States Constitution or Section 5.026.

10 Sec. 216.003. APPLICABILITY OF CHAPTER. (a) This chapter
11 applies only to an older subdivision that:

12 (1) is wholly or partly located in a municipality with
13 a population of two million or more;

14 (2) had original restrictions that:

15 (A) did not have an express procedure that
16 provides for successive extensions of the restrictions;

17 (B) did not have an express procedure for
18 amending the restrictions;

19 (C) could not be amended without the unanimous
20 consent of:

21 (i) all owners in the subdivision; or

22 (ii) all owners in any section of the
23 subdivision; or

24 (D) may no longer be valid due to an inability to
25 extend or amend the restrictions; and

26 (3) has a single property owners' association in which
27 all owners in the subdivision are eligible for membership but in

1 which membership is not mandatory.

2 (b) This chapter applies to a restriction regardless of the
3 date on which the restriction was created.

4 (c) This chapter supersedes any contrary requirement for
5 the extension or amendment of a restriction in a dedicatory
6 instrument of a subdivision to which this chapter applies.

7 Sec. 216.004. AMENDMENT OF RESTRICTIONS. (a) For purposes
8 of this chapter, the amendment of restrictions includes the
9 adoption of new restrictions or the modification or removal of
10 existing restrictions.

11 (b) An amendment of restrictions under this chapter may not
12 create a property owners' association with mandatory membership.
13 An amendment of restrictions under this chapter that creates a
14 property owners' association with mandatory membership is void.

15 Sec. 216.005. PROPERTY OWNERS' ASSOCIATION ACTION NOT
16 REQUIRED. Restrictions may be extended or amended under this
17 chapter without action by the property owners' association.

18 Sec. 216.006. EXTENSION OF RESTRICTIONS. (a) Restrictions
19 may be extended as provided by Section 216.007 or, if a dedicatory
20 instrument provides a procedure for an initial extension of the
21 original restrictions, that procedure may be used for successive
22 extensions of the original restrictions unless the dedicatory
23 instrument expressly prohibits the procedure from being used for
24 successive extensions. If the dedicatory instrument prohibits the
25 procedure from being used to provide for automatic extension of
26 restrictions, the procedure may not be used under this subsection
27 to provide for automatic extension of the restrictions.

1 (b) A provision in a dedicatory instrument that prohibits
2 the extension of an existing restriction during a certain period
3 does not apply to a successive extension under a procedure for
4 initial extension of original restrictions under Subsection (a).

5 (c) An extension of restrictions under this chapter may:

6 (1) be for a period equal to the original term of the
7 restrictions or a shorter period; and

8 (2) subject to Subsection (a), provide for additional
9 automatic extensions of the term of the restrictions for a period of
10 not more than 10 years for each extension.

11 (d) A dedicatory instrument that provides for the extension
12 of restrictions and does not provide for amendment of restrictions
13 may be amended under this chapter, including by amending the
14 provision providing for the extension of the restrictions.

15 Sec. 216.007. CONSENT REQUIRED FOR EXTENSION OR AMENDMENT
16 OF RESTRICTIONS. (a) A restriction may be extended or amended by a
17 petition or ballots that indicate the written consent of the owners
18 of at least 66.6 percent of the total number of separately owned
19 parcels or tracts in the subdivision, regardless of whether the
20 parcels or tracts contain part or all of one or more platted lots or
21 combination of lots.

22 (b) A restriction that is extended or amended as described
23 by Subsection (a) applies to all sections of the subdivision,
24 including any annex, to the extent that the extended or amended
25 restriction expressly applies to the entire subdivision,
26 regardless of whether:

27 (1) each section has separate restrictions; or

1 (2) each owner is a member of the property owners'
2 association.

3 (c) If the original restrictions for a subdivision contain a
4 lower percentage to extend or amend the restrictions, the
5 percentage in the original restrictions controls.

6 Sec. 216.008. PETITION OR BALLOTS. (a) A petition or
7 ballots for the extension or amendment of restrictions may be
8 distributed to the owners in the subdivision by any method,
9 including:

10 (1) by United States mail;

11 (2) by electronic mail or other method of electronic
12 transmission;

13 (3) by door-to-door circulation; or

14 (4) at a meeting of the owners in the subdivision
15 called for the purpose of voting on the proposed extension or
16 amendment.

17 (b) The petition or ballots may be provided to owners in
18 separate documents. The separate documents are considered to be
19 one instrument.

20 Sec. 216.009. EFFECT OF OWNER'S SIGNATURE. (a) An owner's
21 signature on a petition or ballot conclusively establishes the
22 owner's consent for the purposes of this chapter.

23 (b) The vote of multiple owners of a lot, parcel, or tract
24 may be reflected by the signature of one of the owners.

25 (c) After an owner signs a petition or ballot for an
26 extension or amendment of a restriction, the owner's subsequent
27 conveyance of the owner's interest in real property in the

1 subdivision covered by the extension or amendment does not affect
2 the validity of the signature for the purposes of the petition or
3 ballot.

4 Sec. 216.010. EFFECTIVE DATE OF EXTENSION OR AMENDMENT. An
5 extension or amendment of a restriction under this chapter takes
6 effect on the date the extension or amendment and the petition or
7 ballots that reflect the written consent of the required number of
8 owners in the subdivision for the adoption of the extension or
9 amendment are filed and recorded in the real property records of the
10 county in which the subdivision is located.

11 Sec. 216.011. APPLICABILITY OF EXTENSION OR AMENDMENT. (a)
12 An extension or amendment of a restriction under this chapter is
13 binding on a lot, parcel, or tract in the subdivision as provided by
14 the restriction, regardless of whether the owner or owners of the
15 lot, parcel, or tract consented to the extension or amendment.

16 (b) Notwithstanding any other law, an owner may not opt out
17 of the applicability to the owner's property of a restriction that
18 is extended or amended under this chapter.

19 (c) An extension or amendment of a restriction under this
20 chapter is binding on a lienholder or a person who acquires title to
21 property at a foreclosure sale or by deed from a foreclosing
22 lienholder.

23 Sec. 216.012. UNCONSTITUTIONAL RESTRICTIONS NOT EXTENDED.
24 If a provision in restrictions extended under this chapter is void
25 and unenforceable under the United States Constitution or Section
26 5.026, the restrictions are considered as if the void and
27 unenforceable provision was never contained in the restrictions.

1 Sec. 216.013. PROCEDURES CUMULATIVE. The procedure
2 provided by this chapter for the extension or amendment of
3 restrictions is cumulative of and not in lieu of any other method by
4 which restrictions of a subdivision to which this chapter applies
5 may be extended or amended.

6 Sec. 216.014. CONSTRUCTION OF CHAPTER AND RESTRICTIONS.

7 (a) This chapter and any petition or ballot made or action taken in
8 connection with an attempt to comply with this chapter shall be
9 liberally construed to effectuate the intent of this chapter and
10 the petition, ballot, or action.

11 (b) A restriction that is extended or amended under this
12 chapter shall be liberally construed to give effect to the
13 restriction's purposes and intent.

14 SECTION 2. This Act takes effect immediately if it receives
15 a vote of two-thirds of all the members elected to each house, as
16 provided by Section 39, Article III, Texas Constitution. If this
17 Act does not receive the vote necessary for immediate effect, this
18 Act takes effect September 1, 2021.