

SUBJECT: Requiring owner consent for homeowners association to grant an easement

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 7 ayes — Giddings, Elkins, Darby, Bohac, Martinez, Solomons, Zedler

0 nays

1 present not voting — Castro

1 absent — Bailey

WITNESSES: For — (*Registered, but did not testify:* Douglas Athas and David M. Smith, Texas Neighborhoods Together; Judd Austin, Sandy Denton, and Robert Garza, Community Associations Institute of Texas – Legislative Action Committee; Aston M. Bryan, Arroyo Verde Homeowners’ Association; Chade Nelson and Stephanie Redding, Communities for Fair Legislation; Reynaldo Saucedo, Gardens Medical Center Condo Association; Fred Shapiro, SBB Management Company; Andrea Smith and Stephanie Smith, Select Management Co.; Dawn Tomaschefsky, Encino Creek HOA; Lynn G Walshak, Texas Homeowners for HOA Reform Inc, and 12 others)

Against — (*Registered, but did not testify:* Joey Park, Texas College of Real Estate Attorneys; Amy McLin)

BACKGROUND: Homeowners’ associations are groups formed to provide services for homeowners in exchange for mandatory assessments or dues. The associations are governed deed restrictions on the homes and by the association’s articles of incorporation, bylaws, and rules. Deed restrictions and rules generally are enforced through a system of fines for infractions. In general, homeowners’ associations are governed by Property Code, ch. 209 and are given powers of enforcement against owners’ in violation of association rules.

A dedicatory instrument is defined as an instrument covering the establishment, maintenance, and operation of a residential subdivision. The term includes provisions that subject property to:

- restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association;
- properly adopted rules and regulations of the property owners' association; and
- all lawful amendments to the covenants, bylaws, rules, or regulations.

DIGEST: HB 2402 would prohibit a property owners' association from amending a dedicatory instrument to grant itself an easement through or over an owner's lot without the owner's consent. The bill would not prohibit an association from adopting or enforcing a restriction that allowed the association to access an owner's lot to remedy a violation of association rules or take any other enforcement action related to a violation.

The bill would take effect September 1, 2007.

SUPPORTERS SAY: HB 2402 is necessary to protect the rights of owners whose property is subject to a homeowners' association. Current law provides no limitation on an association's ability to grant an easement on property against the will of the property owner. HB 2402 would require that an association obtain the consent of subject property owners prior to granting any easements on their property. This would create an important safeguard against the unauthorized establishment of easements to the detriment of individual property owners.

The bill specifically would be limited to easements and would not curtail an association's ability to grant easements on property owned by consenting individuals. The bill expressly would not interfere with an association's ability to adopt or enforce a restriction providing for the remedy or enforcement of violations of association rules. HB 2402 would offer a minor and circumscribed modification to association powers in the interest of property rights.

OPPONENTS SAY: Piecemeal legislative corrections aimed at a specific instance or a handful of issues involving homeowners' associations could have unintended consequences. Homeowners' associations in Texas are poorly regulated and governed by statutes in need of comprehensive reform. HB 2402 would be a band-aid approach to lawmaking in a subject area in dire need of comprehensive legislation.