

SUBJECT: Authority to amend restrictions applicable to residential subdivisions

COMMITTEE: Business and Industry —favorable, without amendment

VOTE: 5 ayes — Giddings, Darby, Castro, Solomons, Zedler

0 nays

4 absent — Elkins, Bailey, Bohac, Martinez

WITNESSES: For — David M. Smith, Texas Neighborhoods Together; (*Registered, but did not testify*: Aston M. Bryan, Arroyo Verde Homeowners' Association; Reynaldo Saucedo, Gardens Medical Center Condo Association; Andrea Smith, Select Management; Dawn Tomaschefsky, Encino Creek Homeowners' Association; Lynn G. Walshak, Texas Homeowners for HOA Reform Inc; Carolyn Bryan; and 11 others)

Against — William D. Davis; (*Registered, but did not testify*: Joey Park, Texas College of Real Estate Attorneys; Tiffany M Becker)

On — Patrick Vedra, Pulte Homes of Texas; (*Registered, but did not testify*: Judd Austin, Community Associations Institute of Texas – TLAC; Amy McLin)

BACKGROUND: Homeowners' associations are groups formed to provide services for homeowners in exchange for mandatory assessments or dues. The associations are governed by 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 3709 would add Property Code, sec. 209.012, providing that a developer who no longer controlled a property owner's association or board of directors of a residential subdivision could not, regardless of whether the developer had a majority of voting rights, prohibit an association from amending any dedicatory instruments associated with the subdivision. Any provision in a dedicatory instrument that provided otherwise would be void and unenforceable.

The bill would take effect September 1, 2007, and would affect dedicatory instruments created before, on, or after that date.

**SUPPORTERS  
SAY:**

HB 3709 would guarantee the right of a homeowners' association to amend deed restrictions and other instruments governing a residential subdivision. Current statutory provisions allow residential subdivision developers to create a homeowners' association for the subdivision. In so doing, a developer also may establish regulatory instruments for that subdivision, such as restrictive covenants and association by-laws. In some cases, developers have adopted dedicatory instruments that are ineligible for subsequent amendment by an association. Instruments that are immune to future adjustments prohibit residents from making decisions regarding matters that impact them significantly and effectively remove local self-determination for affected subdivisions.

HB 3709 would prohibit a developer from implementing a deed restriction or other instrument that was immune from future amendment once the developer no longer had a controlling interest on the association's board. The bill would preserve an association's ability to modify an instrument as a result of the changing needs of the subdivision and to accord with the desires of homeowners. Guaranteeing self-determination for property owners now would help prevent the growth of a dangerous practice taking place in new residential subdivisions before it became widespread.

**OPPONENTS  
SAY:**

Piecemeal legislative corrections aimed at a specific instance or a handful of issues involving homeowners' associations could have significant unintended consequences. Homeowners' associations in Texas are poorly regulated and governed by statutes in need of comprehensive reform. HB

3709 would be a band-aid approach in a subject area in dire need of comprehensive legislation.

HB 3709 would nullify any contractual provisions that prohibited a homeowners' association from making future changes to restrictive covenants and other instruments. The bill would not, however, establish any positive procedures for homeowners' associations to make amendments to instruments upon the dissolution of an existing contract. A homeowners' association governed by a contract that was voided in part would not have a procedure for making amendments to dedicatory instruments and would be placed in a legally indefinite position.