

- SUBJECT:** Providing for removal of discriminatory provisions by amendment
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 6 ayes — C. Turner, Hefner, Crockett, Lambert, Ordaz Perez, Patterson
0 nays
3 absent — Cain, Shine, S. Thompson
- WITNESSES:** For — Leah Burton, CAI San Antonio; Nancy Kozanecki, HOA Reform Coalition; David Kahne (*Registered, but did not testify*: John Krueger, Associa; Jay Propes, Spectrum Association Management; Shannon Jaquette, Texas Catholic Conference of Bishops; Mia McCord, Texas Conservative Coalition; Joshua Houston, Texas Impact; Julia Parenteau, Texas Realtors)
Against — None
- BACKGROUND:** Concerns have been raised that currently available methods for amending deed restrictions in this state make it impractical for communities who wish to remove certain discriminatory content from their deed restrictions to do so.
- DIGEST:** CSHB 1202 would provide specified methods to dedicatory instruments to remove discriminatory content.
- Definitions.** "Dedicatory instrument" would have the meaning assigned by Property Code sec. 202.001 to include any document governing the establishment, maintenance, or operation of a residential subdivision, planned unit development, condominium or townhouse regime, or any similar planned development. The term would include instruments subjecting real property to restrictive covenants.
- "Discriminatory provision" would mean a restrictive covenant that was void under state law and that prohibited the occupancy by or the sale,

lease, conveyance, or transfer of real property or interest in real property to a person because of race, color, religion, or national origin.

Property subject to a property owners' association. The governing body of a property owners association would be able to amend a dedicatory instrument to remove a discriminatory provision by a majority vote on its own motion or that of any other member of the association.

The governing body of a property owners association under a dedicatory instrument that allowed for the circulation of a petition would be required to amend a dedicatory instrument to remove a discriminatory provision if a petition to remove the provisions was circulated in accordance with the instrument's provisions and regardless of any threshold for approval under the instrument, was approved by the owners of at least 10 percent of the relevant lots or units.

An amendment under these provisions would be effective if it indicated its adoption under the relevant statute with specific reference to the statute, was filed in the relevant county records, and, in the case of a dedicatory instrument without petition provisions, was signed by the majority of the association's governing body.

Property not subject to a property owners' association. Property owners under a dedicatory instrument that did not establish an association would be able to form a committee of at least three members for the sole purpose of amending the instrument to remove a discriminatory provision. The committee would be required to file written notice of its formation with the county clerk. The notice would have to contain:

- a statement that an amendment committee had been formed to remove a discriminatory provision;
- the name and address of each committee member;
- a reference to the real property records, map, or plat records where the relevant dedicatory instrument was recorded and the name of the subdivision or development, as applicable; and
- a copy of the proposed amendment indicating the deletion of the

discriminatory provision from the original restrictive covenant or restating the original covenant without the provision.

Before filing the notice, each committee member would have to sign it in the presence of a notary or other authorized official. The notice would be recorded with its filing date in the county's real property records. No later than 30 days after filing, the committee would have to provide a copy of the notice to the property owners subject to the dedicatory instrument by one of various means described by the bill.

A property owner subject to the instrument would be able to file an objection to the proposed amendment if it was :

- signed by the owners of at least 25 percent of the relevant units or lots; and
- filed with any county clerk with which the committee notice was filed no later than 90 days after the notice filing.

If no such objection were filed, the proposed amendment would be effective from the day it was filed. A committee that did not file an amendment before the 120th day after filing notice of the committee's formation would be dissolved, and any amendment filed thereafter would be void.

Other provisions. Any amendment that amended any provision other than a discriminatory provision would be void. The bill would apply to any dedicatory instrument, regardless of when the instrument was recorded.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.