

BILL ANALYSIS

Senate Research Center
80R4554 AJA-D

S.B. 979
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Intergovernmental Relations
3/25/2007
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, provisions under the Property Code regulate the operation of property owners' associations (association). Property owners around this state have expressed dissatisfaction with a variety of issues related to their membership in mandatory associations. Testimony taken by the Senate Intergovernmental Relations Committee during the interim of the 79th Legislature, 2005, found that relationships between builders, realtors, association management companies, association boards, and individual property owners need to be brought into better balance.

As proposed, S.B. 979 requires the seller of residential real property to provide a prospective home buyer with information related to the operation of a property owner's association and the expenses and responsibilities of being a member of such an association. This bill also prevents discriminatory practices by prohibiting deed restrictions that create rights of first refusal. Unwieldy requirements concerning the amendment of declarations and restrictions are eased through this bill by setting the voting threshold for an amendment to be passed at 67 percent. This bill also provides for the counting of ballots by a neutral party under certain circumstances. Finally, this bill provides additional notice for property owners concerning the time in which they have to cure a noticed violation, requires the adoption by associations of alternative payment plans for property owners, sets out the order in which an association is required to apply payments made by a property owner, and ensures that a property owner contesting foreclosure proceedings initiated by the association is authorized to have the matter decided by a judge.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 5.012, Property Code, by amending Subsection (a) and adding Subsection (f), as follows:

(a) Requires a seller of residential real property that is subject to membership in a property owners' association (association) and that comprises not more than one dwelling unit located in this state to give to the purchaser of the property a copy of a resale certificate for the property issued under Chapter 207 (Disclosure of Information By Property Owners' Associations).

(f) Authorizes such a seller to obtain reimbursement from the purchaser for the cost of obtaining the resale certificate provided under this section, except that the amount reimbursed is prohibited from exceeding one-eighth of one percent of the purchase price. Authorizes the seller to obtain reimbursement for 25 percent of the amount reimbursed for providing the first certificate if an updated resale certificate is provided on or before the 90th day after the date the first certificate was provided.

SECTION 2. Amends Chapter 202, Property Code, by adding Section 202.008, as follows:

Sec. 202.008. RIGHT OF FIRST REFUSAL PROHIBITED. Provides that a deed restriction applicable to residential property that reserves a right of first refusal for an association or condominium association to purchase property is void and unenforceable.

SECTION 3. Amends Chapter 202, Property Code, by adding Sections 209.0041 and 209.0042, as follows:

Sec. 209.0041. AMENDMENT OF RESTRICTIVE COVENANTS. (a) Provides that this section applies only to a residential subdivision in which property owners are subject to mandatory regular or special assessments, as those terms are defined by Section 204.001, for certain declarations creating the subdivision.

(b) Authorizes a declaration creating a residential subdivision and any subsequently enacted restrictions to be amended on a vote of not less than 67 percent of the total votes allocated to owners of property in the subdivision.

Sec. 209.0042. TABULATION OF VOTES. Requires the association, in a contested election held in the subdivision, to retain a neutral party to tabulate the votes in a contested election held in the subdivision if the association receives a petition signed by at least 50 percent of the owners of property in the subdivision before the date on which voting in the election begins.

SECTION 4. Amends Section 209.005, Property Code, by adding Subsection (c), to require an association to redact any information that identifies a particular property owner or unit of property in the subdivision from any association records that are made public if the records relate to assessments, fines, foreclosures, lawsuits, or other enforcement actions of the association, notwithstanding this section or any other law.

SECTION 5. Amends Section 209.006, Property Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b)(3) Requires a notice by an association for actions taken against an owner for certain violations to specify a date certain by which the owner must cure the violation.

(c) Requires the date specified in the notice under Subsection (b)(3) to provide a reasonable period for the owner to cure the violation.

SECTION 6. Amends Chapter 209, Property Code, by adding Sections 209.0061, 209.0062, 209.0063, 209.0091, and 209.012, as follows:

Sec. 209.0061. ASSESSMENT OF FINES. (a) Requires a fine assessed by the association to be reasonable in the context of the nature, frequency, and effect of the violation. Requires the association to establish a maximum fine amount for a continuing violation, at which the total fine amount is capped, if the association allows fines for a continuing violation to accumulate against a lot or an owner.

(b) Authorizes the association, in addition to exercising any of the association's powers against an owner, to assess a fine directly against the nonowner occupant in the same manner as provided for an owner if a lot occupant other than the owner violates a provision of the dedicatory instrument.

(c) Requires the association to give notice of a fine to the owner in accordance with Section 209.006 not later than the 30th day after the date the fine is assessed.

Sec. 209.0062. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN ASSESSMENTS. Requires an association to adopt guidelines to establish an alternative payment schedule by which an owner is authorized to make partial payments to the association for delinquent regular or special assessments on a showing by the owner of a substantial change in the owner's personal circumstances.

Sec. 209.0063. PRIORITY OF PAYMENTS. Requires a payment received by an association from the owner to be applied to the owner's debt in a certain order of priority, unless otherwise provided in a writing by the property owner.

Sec. 209.0091. JUDICIAL FORECLOSURE REQUIRED. (a) Prohibits an association from foreclosing an association's assessment lien unless the association first obtains a court judgment foreclosing the lien and providing for issuance of an order of sale, except as provided by a restriction created before September 1, 2007, or by Subsection (b).

(b) Provides that judicial foreclosure is not required under this section if the owner of the property that is subject to foreclosure agrees in writing to waive judicial foreclosure under this section.

Sec. 209.012. PLATS. Requires a plat filed as part of a declaration that establishes a residential subdivision to provide the location of each utility infrastructure to be built and to specifically identify amenities that must be built and label those amenities "MUST BE BUILT."

SECTION 7. (a) Makes application of Section 5.012, Property Code, as amended by this Act, prospective.

(b) Provides that Section 202.008, Property Code, as added by this Act, applies to a deed restriction enacted before, on, or after the effective date of this Act.

(c) Makes application of Sections 209.0061 and 209.0062, Property Code, as added by this Act, prospective.

(d) Makes application of Section 209.0063, Property Code, as added by this Act, prospective.

(e) Makes application of Section 209.012, Property Code, as added by this Act, prospective.

(f) Makes application of Section 209.0091, Property Code, as added by this Act, prospective.

SECTION 8. Effective date: September 1, 2007.