

## **BILL ANALYSIS**

Senate Research Center  
82R28498 AJA-F

C.S.H.B. 1821  
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Intergovernmental Relations  
5/19/2011  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, a purchaser under contract to purchase residential property in a property owners' association has limited options for obtaining a resale certificate, requiring involvement of third parties, which restricts the ability of the purchaser to gain information needed to complete the transaction. C.S.H.B. 1821 seeks to provide more flexibility among the parties in such a transaction by providing the purchaser with the ability to obtain a resale certificate.

C.S.H.B. 1821 amends current law relating to certain information or guidelines provided by or concerning a property owners' association or concerning subdivisions that are subject to restrictive covenants.

### **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 Subsections (a-1), (f), and (g), as follows:

(a) Sets forth the form of the written notice a seller of residential real property that is subject to membership in a property owners' association and that comprises not more than one dwelling unit located in this state is required to give to the purchaser of the property.

(a-1) Requires that the second paragraph of the notice prescribed by Subsection (a) be in bold print and underlined.

(f) Requires the association or its agent, on the purchaser's request for a resale certificate from the property owners' association or the association's agent, to promptly deliver a copy of the most recent resale certificate issued for the property under Chapter 207 so long as the resale certificate was prepared not earlier than the 60th day before the date the resale certificate is delivered to the purchaser and reflects any special assessments approved before and due after the resale certificate is delivered. Requires the seller, if a resale certificate that meets the requirements of this subsection has not been issued for the property, to request the association or its agent to issue a resale certificate under Chapter 207, and the association or its agent to promptly prepare and deliver a copy of the resale certificate to the purchaser.

(g) Requires the purchaser to pay the fee to the property owners' association or its agent for issuing the resale certificate unless otherwise agreed by the purchaser and seller of the property. Authorizes the property owners' association to require payment before beginning the process of providing a resale certificate requested under Chapter 207 but prohibits the association from processing a payment for a resale certificate until the certificate is available for delivery. Prohibits the association from charging a fee if the certificate is not provided in the time prescribed by Section 207.003(a).

SECTION 2. Amends Section 202.001(1), Property Code, to redefine "dedicatory instrument."

SECTION 3. Amends Section 202.006, Property Code, as follows:

Sec. 202.006. PUBLIC RECORDS. (a) Creates this subsection from existing text. Requires a property owners' association to file all dedicatory instruments, rather than the dedicatory instrument, in the real property records of each county in which the property to which the dedicatory instruments relate is located. Makes a nonsubstantive and conforming change.

(b) Provides that a dedicatory instrument has no effect until the instrument is filed in accordance with this section.

SECTION 4. Amends Section 207.003, Property Code, by amending Subsections (a), (b), and (f) and adding Subsections (a-1) and (c-1), as follows:

(a) Requires the property owners' association, not later than the 10th business day after the date a written request for subdivision information is received from an owner or the owner's agent, a purchaser of property in a subdivision or the purchaser's agent, or a title insurance company or its agent acting on behalf of the owner or purchaser and the evidence of the requestor's authority to order a resale certificate under Subsection (a-1) is received and verified, to deliver to the owner or the owner's agent, the purchaser or the purchaser's agent, or the title insurance company or its agent a current copy of the restrictions applying to the subdivision; a current copy of the bylaws and rules of the property owners' association; and a resale certificate prepared not earlier than the 60th day before the date the certificate is delivered that complies with Subsection (b). Makes nonsubstantive changes.

(a-1) Authorizes the property owners' association, for a request from a purchaser of property in a subdivision or the purchaser's agent, to require the purchaser or purchaser's agent to provide to the association, before the association begins the process of preparing or delivers the items listed in Subsection (a), reasonable evidence that the purchaser has a contractual or other right to acquire property in the subdivision.

(b) Requires that a resale certificate under Subsection (a) contain:

(1) a statement of any right of first refusal, other than a right of first refusal that is prohibited by statute, and any other restraint contained in the restrictions or restrictive covenants that restricts the owner's right to transfer the owner's property;

(2) Makes no changes to this subdivision;

(3) the amount and purpose of any special assessment that has been approved before and is due after the date the resale certificate is delivered, rather than the amount of any special assessment that is due after the date the resale certificate is prepared;

(4)-(8) Makes no changes to these subdivisions;

(9) the style and cause number of any pending lawsuit in which the property owners' association is a party, rather than a defendant, other than a lawsuit relating to unpaid ad valorem taxes of an individual member of the association;

(10)-(15) Makes no changes to these subdivisions; and

(16) a statement of all fees associated with the transfer of ownership, including a description of each fee, to whom each fee is paid, and the amount of each fee.

Makes nonsubstantive changes.

(c-1) Authorizes the property owners' association to require payment before beginning the process of providing a resale certificate, but prohibits the association from processing a payment for a resale certificate until the certificate is available for delivery. Prohibits the association from charging a fee if the certificate is not provided in the time prescribed by Subsection (a).

(f) Requires the property owners' association, not later than the seventh business day after the date a written request for an update of a resale certificate delivered under Subsection (a) is received from an owner, owner's agent, or title insurance company or its agent acting on behalf of the owner, to deliver to the owner, owner's agent, or title insurance company or its agent an updated resale certificate that contains certain information.

SECTION 5. Amends Chapter 207, Property Code, by adding Section 207.006, as follows:

Sec. 207.006. ONLINE SUBDIVISION INFORMATION REQUIRED. Requires a property owners' association to make dedicatory instruments relating to the association or subdivision and filed in the county deed records available on a website if the association has, or a management company on behalf of the association maintains, a publicly accessible website.

SECTION 6. Amends Section 209.003, Property Code, by adding Subsection (e) to provide that Section 209.0062 does not apply to a property owners' association that is a mixed-use master association that existed before January 1, 1974, and that does not have the authority under a dedicatory instrument or other governing document to impose fines.

SECTION 7. Amends Chapter 209, Property Code, by adding Section 209.0062, as follows:

Sec. 209.0062. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN ASSESSMENTS. (a) Requires a property owners' association to file the association's alternative payment schedule guidelines adopted under this section in the real property records of each county in which the subdivision is located.

(b) Requires a property owners' association composed of more than 14 lots to adopt reasonable guidelines to establish an alternative payment schedule by which an owner may make partial payments to the property owners' association for delinquent regular or special assessments or any other amount owed to the association without accruing additional monetary penalties. Provides that for purposes of this section, monetary penalties do not include reasonable costs associated with administering the payment plan or interest.

(c) Provides that the minimum term for a payment plan offered by a property owners' association is three months.

(d) Provides that a property owners' association is not required to allow a payment plan for any amount that extends more than 18 months from the date of the owner's request for a payment plan or to enter into a payment plan with an owner who failed to honor the terms of a previous payment plan during the two years following the owner's default under the previous payment plan.

(e) Provides that a property owners' association's failure to file as required by this section the association's guidelines in the real property records of each county in which the subdivision is located does not prohibit a property owner from receiving an alternative payment schedule by which the owner may make partial payments to the property owners' association for delinquent regular or special assessments or any other amount owed to the association without accruing additional monetary penalties, as defined by Subsection (b).

SECTION 8. (a) Makes application of Section 5.012, Property Code, as amended by this Act, prospective.

(b) Provides that Section 202.006, Property Code, as amended by this Act, applies to a provision in a dedicatory instrument or a restrictive covenant enacted before, on, or after the effective date of this Act, except that any action taken before the effective date of this Act based on an unfiled dedicatory instrument is not invalidated by Section 202.006, Property Code, as amended by this Act.

(c) Makes application of Section 207.003, Property Code, as amended by this Act, prospective.

(d) Makes application of Section 209.0062, Property Code, as added by this Act, prospective.

SECTION 9. Requires each property owners' association, not later than January 1, 2012, to present for recording with the county clerk as prescribed by Section 202.006, Property Code, as amended by this Act, each dedicatory instrument governing the association that has not been previously recorded in the real property records of the county.

SECTION 10. Effective date: January 1, 2012.