

BILL ANALYSIS

Senate Research Center

S.B. 142
By: West
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

An estimated 57 million Americans live in more than 200,000 areas with community associations, including approximately 4.8 million Texans paying assessments in amounts of \$3.2 billion annually. Property owners associations may be classified as a condominium association, a cooperative association, or homeowners association. In Texas, these entities are regulated under the Property Code. As the popularity of homeowners associations increases, so does the potential for abuse. Existing statutory provisions regarding these associations do not provide adequate protections for homeowners.

S.B. 142 seeks to ensure the basic private property rights of individuals residing within community associations by changing statutory provisions regarding disclosure of association dedicatory instruments, by-laws, and guidelines prior to homeownership; adequate descriptions of fees and fines assessed against homeowners and the ability to cure violations prior to legal enforcement actions; access to association books and records, including financial documents; timely notice and the ability for homeowners to participate in association meetings; appropriate procedures for the election of board members; and avenues for redress and redemption of property in case of foreclosure.

As proposed, S.B. 142 amends current law relating to the operation of property owners' associations.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Supreme Court of Texas in SECTION 16 (Section 209.0091, Property Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 5.006(a), Property Code, to authorize, rather than require, a court of appropriate jurisdiction (court) in an action based on breach of a restrictive covenant pertaining to real property or a statute pertaining to real property subject to a restrictive covenant or to restrictive covenants to which real property is subject, to allow a prevailing party, rather than a prevailing party who asserted the action, reasonable attorney's fees in addition to the party's costs and claim.

SECTION 2. Amends Section 5.012, Property Code, by amending Subsection (a) and adding Subsections (f) and (g), as follows:

(a) Amends the content of the written notice to include a statement providing that restrictive covenants governing the use and occupancy of the property and all dedicatory instruments, rather than a dedicatory instrument, governing the establishment, maintenance, or, rather than and, operation of this residential community have been or will be recorded in the Real Property Records of the county in which the property is located, and an explanatory statement relating to Section 207.003 (Delivery of Subdivision Information to Owner), Property Code.

(f) Requires the seller, upon the purchaser's request for a resale certificate from the seller, to:

(1) promptly deliver a copy of a current resale certificate if one has been issued for the property under Chapter 207 (Disclosure of Information by Property Owner's Associations); or

(2) if the seller does not have a current resale certificate, request the property owners' association or its agent to issue a resale certificate under Chapter 207, and promptly deliver a copy of the resale certificate to the purchaser on receipt of the resale certificate from the property owners' association or its agent.

(g) Requires the seller or purchaser, as agreed to by the parties, to pay the fee to the property owners' association or its agent for issuing the resale certificate. Prohibits the association from processing payment for a resale certificate requested under Chapter 207 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) (related to delivery of information to owners).

SECTION 3. Amends Section 5.017(c), Property Code, as follows:

(c) Provides that this section does not apply to a deed restriction or other covenant running with the land that requires a fee associated with the conveyance of property in a subdivision that is payable to certain entities, including to an entity other than a property owners' association that operates a golf course and country club in or adjacent to the subdivision, if property owners in the subdivision are required by deed restriction to obtain and maintain a membership in the golf course and country club; or for the benefit or in consideration of a conservation easement created under Chapter 183 (Conservation Easements), Natural Resources Code, located in a county with a population of at least 500,000 and not more than one million.

SECTION 4. Amends Section 202.001, Property Code, by amending Subdivision (1) to redefine "dedicatory instrument."

SECTION 5. Amends Section 202.004, Property Code, by adding Subsections (d) and (e), as follows:

(d) Authorizes the property owners' association or other representative designated by an owner of real property, in evaluating an alleged or potential violation of a restrictive covenant, notwithstanding any provision in a dedicatory instrument, to grant a variance and in doing so not enforce the restrictive covenant if the property owners' association board, in the board's reasonable judgment, determines:

(1) the property owners' association's position is not sufficiently strong to justify taking any action or further action;

(2) the provision alleged to have been violated may be inconsistent with applicable law;

(3) the alleged violation is not of such a material or visible nature as to be objectionable to a reasonable person or to justify expending the property owners' association's resources;

(4) enforcement of the provision is not in the association's best interests, based on hardship, expense, or other reasonable criteria; or

(5) the facts of the particular circumstances, such as topography of the owner's land or unforeseen circumstances unique to the particular owner, justify the variance.

(e) Prohibits a determination by the property owners' association board to grant a variance under Subsection (d) from being considered a waiver of the association's ability to enforce any dedicatory instrument provision in the future.

SECTION 6. 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 in the real property records of each county in which the property to which the dedicatory instruments relate is located. Makes conforming changes.

(b) Provides that a dedicatory instrument that is not filed in accordance with this section has no effect until filed.

SECTION 7. Amends Chapter 202, Property Code, by adding Sections 202.008, 202.010, 202.011, 202.012, 202.013, 202.014, 202.015, as follows:

Sec. 202.008. ASSOCIATION'S RIGHT OF ENTRY. (a) Provides that except as provided by this section, a provision in a dedicatory instrument that provides a property owners' association the right or authority to enter onto an owners' private property to enforce or abate an alleged violation of a restrictive covenant is void as against public policy except for entry:

(1) to cure a violation that involves an immediate threat to persons or property;

(2) after 10 days' written notice, to perform a forced mow, or remove trash or debris; or

(3) in circumstances in which it is reasonably determined the property has been abandoned and not maintained for at least 30 days.

(b) Provides that this section does not prohibit a provision in a dedicatory instrument allowing a property owners' association a right of entry on the property of an owner that is limited to a dedicated access or other easement contained in a final plat or an easement filed of record.

(c) Provides that this section does not apply to an association regulated under Title 7; a property owners' association that funds through assessments, insurance on residences, one or more utility payments for residences, or exterior maintenance of residences; or 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.

Sec. 202.010. CERTAIN PARKING RESTRICTIONS PROHIBITED. (a) Provides that a provision in a dedicatory instrument that restricts or prohibits an owner from parking an operable, noncommercial, and personal automobile or truck on a public street is void as against public policy.

(b) Provides that a provision in a dedicatory instrument that restricts or prohibits an owner from parking the owner's operable, noncommercial, and personal automobile or truck in the owner's driveway is void as against public policy.

(c) Defines "noncommercial automobile," for purposes of this section.

(d) Provides that, for the purposes of this section, a recreational vehicle, motor home, camper, all-terrain vehicle, trailer, or watercraft, a tow truck, cement mixer, or other similar commercial vehicle, or a vehicle that is more than 30 feet long is not considered to be a personal automobile or truck.

(e) Provides that this section does not apply to an association regulated under Title 7; or a property owners' association that funds through assessments insurance on residences, one or more utility payments for residences, or exterior maintenance of residence.

Sec. 202.011. RIGHT OF FIRST REFUSAL PROHIBITED. (a) Defines "development period" in this section.

(b) Provides that to the extent a restrictive covenant provides a right of first refusal for the sale or lease of a residential unit or residential lot in favor of the property owners' association or the association's members, the covenant is void.

(c) Provides that this section does not apply to a restrictive covenant that provides a right of first refusal in favor of a developer or builder during the development period.

Sec. 202.012. REGULATION OF SOLAR ENERGY DEVICES. (a) Defines "solar energy device" in this section.

(b) Prohibits a property owners' association, except as otherwise provided by this section, from including or enforcing a provision in a dedicatory instrument that prohibits or restricts a property owner from installing a solar energy device.

(c) Provides that a provision that violates Subsection (b) is void.

(d) Provides that this section does not prohibit the inclusion or enforcement of a provision in a dedicatory instrument that prohibits a solar energy device that:

(1) as adjudicated by a court threatens the public health or safety, or violates a law;

(2) is located on property owned or maintained by the property owners' association;

(3) is located on property owned in common by the members of the property owners' association; or

(4) is located in an area on the property owner's property other than on the roof of the home, or in a fenced yard or patio maintained by the property owner.

Sec. 202.013. RENTAL RESTRICTIONS. (a) Prohibits a property owners' association, except as provided by Subsection (b), from amending a dedicatory instrument to prohibit or restrict the rental of property subject to the dedicatory instrument without the consent of at least 51 percent of the total votes allocated to property owners subject to the dedicatory instrument.

(b) Authorizes an amendment to a dedicatory instrument to require:

(1) an owner to exercise due diligence in not leasing to an occupant who is a registered sex offender or who has a history of violent crime, or terminate the possessory right of any tenant or occupant who is a registered sex offender or who has a history of violent crime;

(2) all leases to be subject to the dedicatory instruments of the property owners' association; or

(3) a minimum lease term of not more than six months.

Sec. 202.014. RESTRICTIONS REQUIRING CAPITAL IMPROVEMENTS. (a) Prohibits a dedicatory instrument from being amended to retroactively require a person who owns property subject to the dedicatory instrument at the time the amendment is adopted to make a capital improvement to the owner's property that is not required before the amendment. Authorizes a provision of a dedicatory instrument requiring an owner to make capital improvement to the owner's property to only be adopted by a vote of at least 67 percent of the total votes allocated to property owners subject to the dedicatory instrument and be applicable only to owners purchasing property subject to the dedicatory instrument after the provision is adopted.

(b) Defines "capital improvement" for purposes of this section.

Sec. 202.045. INJUNCTION; DAMAGES. (a) Authorizes a member of the property owners' association to bring a civil action against the property owners' association if a property owners' association or other representative designated by the property owners' association, has violated, is violating, or is threatening to violate this chapter. Prohibits a member of the property owners' association from bringing action against an association's officer or board member individually.

(b) Authorizes a member of a property owners' association bringing an action under this section to seek injunctive relief, damages in an amount equal to the greater of actual damages arising from the violation, \$1,500 for each violation, or both injunctive relief and damages as provided in this subsection.

(c) Authorizes the court to increase an award under Subsection (b)(2) to an amount not to exceed three times the amount awarded under Subsection (b)(2), if the court finds that violations have occurred with a frequency that constitutes a pattern or practice.

(d) Provides that each day a violation continues is not considered a separate violation for purposes of an assessment of damages.

(e) Authorizes the court to award damages to a property owners' association for a suit brought by a member of the property owners' association that the court finds frivolous or groundless in an amount that is not more than the greater of three times the association's actual damages or \$4,500.

(f) Requires a person, on or before the 30th day before the date the person files a suit under this section, to provide notice to the other party of the person's intent to file suit under this section. Requires that the notice be sent certified mail, return receipt requested, or delivered by the United States Postal Service with signature confirmation service.

SECTION 8. Amends Section 207.003(b), Property Code, as follows:

(b) Requires a resale certificate under Subsection (a) to contain, among other certain information, 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; the amount and purpose of any special assessment that is due after the date the resale certificate is prepared; the style and cause number of any pending lawsuit in which the property owners' association is a party other than a lawsuit relating to unpaid property taxes of an individual member of the association, rather than a defendant; and 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.

SECTION 9. Amends Section 209.003, Property Code, by adding Subsection (e), as follows:

(e) Provides that the following provisions of this chapter do 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 document to impose fines: Sections 209.005(b), 209.0056, 209.0057, 209.0058, 209.00591, 209.00593, 209.006(c), 209.0062, and 209.014.

SECTION 10. Amends Chapter 209, Property Code, by adding Sections 209.0035 and 209.0041, as follows:

Sec. 209.0035. INJUNCTION; DAMAGES. (a) Authorizes a member of a property owners' association to bring a civil action against the property owners' association if a property owners' association or other representative designated by the property owners' association has violated, is violating, or is threatening to violate this chapter. Prohibits a member of the property owners' association from bringing an action against an association's officer or board member individually.

(b) Authorizes a member of a property owners' association bringing an action under this section to seek injunctive relief; damages in an amount equal to the greater of actual damages arising from the violation, or \$1,500 for each violation; or both injunctive relief and damages as provided in this subsection.

(c) Authorizes the court to increase an award under Subsection (b)(2) to an amount not to exceed three times the amount awarded under Subsection (b)(2) if the court finds that violations have occurred with a frequency that constitutes a pattern or practice.

(d) Provides that each day a violation continues is not considered a separate violation for purposes of assessment of damages.

(e) Authorizes the court to award damages to a property owners' association for a suit brought by a member of the property owners' association that the court finds frivolous or groundless in an amount that is not more than greater of three times the association's actual damages, or \$4,500.

(f) Requires a person, on or before the 30th day before the date a person files a suit under this section, to provide notice to the other party of the person's intent to file suit under this section. Requires that the notice to be sent certified mail, return receipt requested, or delivered by the United States Postal Service with signature confirmation service.

Sec. 209.0041. AMENDMENT OF DEDICATORY INSTRUMENTS. (a) Provides that this section applies to a residential subdivision in which property owners are subject to mandatory membership in a property owners' association.

(b) Provides that this section applies to all dedicatory instruments regardless of the date on which the dedicatory instruments were created.

(c) Provides that this section does not apply to the amendment of a dedicatory instrument during a development period, as defined by Section 202.011.

(d) Provides that, to the extent of any conflict with another provision of this title, this section prevails.

(e) Authorizes a dedicatory instrument, except as provided by Subsection (f), to be amended only by a vote of at least 51 percent of the total votes allocated to property owners in the property owners' association, in addition to any governmental approval required by law.

(f) Authorizes a rule or guideline that affects land owned, leased, maintained, or otherwise controlled by the property owners' association to be adopted or amended by majority vote of the association board. Authorizes a rule or guideline that impacts the use and enjoyment of personal or real property owned exclusively

by the owner or that may result in a fine or loss of privilege of a member of the association to be adopted or amended only by a vote of at least 51 percent of the total votes allocated to property owners who cast votes by any permissible method in an association-wide vote.

(g) Authorizes a property owners' association board by majority vote to adopt ministerial, office-related procedural policies, such as payment plan guidelines under Section 209.0062, a collections policy, an enforcement policy, or other similar ministerial, office-related procedural policies. Authorizes the policy to outline circumstances under which or the manner by which enforcement remedies may be carried out, but prohibits the policy from otherwise impacting the use and enjoyment of personal or real property owned exclusively by the owner. Prohibits the policy from creating a power to levy a fine or impose a loss of a privilege on a member of the association, or expand the association's powers beyond the powers granted by any other dedicatory instrument.

(h) Provides that all ballots cast in a vote that results in an amendment to a restrictive covenant, bylaw, or rule are records of the association subject to inspection under Section 209.005.

(i) Provides that this section supersedes any contrary requirement in a dedicatory instrument.

(j) Provides that this section does not apply to a property owners' association that is subject to Chapter 552 (Public Information), Government Code, by application of Section 552.0036 (Certain Property Owners' Association Subject to Law), Government Code.

SECTION 11. Amends Section 209.005, Property Code, as follows:

Sec. 209.005. ASSOCIATION RECORDS. (a) Provides that this section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

(b) Creates this subsection from existing text. Requires a property owners' association, notwithstanding a provision in a dedicatory instrument, to make books and records of the association, including financial records, open to and reasonably available for examination by an owner. Provides that an owner is entitled to obtain from the association copies of information contained in the books and records. Deletes existing text requiring that books and records of the association, including financial records, be reasonably available to an owner in accordance with Section B, Article 2.23, Texas Non-Profit Corporation Act (Article 1396-2.23, V.T.C.S.)

(c) Redesignates existing Subsection (b) as Subsection (c). Makes no further changes to this subsection.

(d) Requires a property owners' association, in addition to the requirements of Subsection (b), to make the association's books and records, including financial records and invoices, available in a building in which the books and records are appropriately stored, that is staffed during normal business hours, accessible to members of the association during normal business hours, and located on property commonly owned by the association within the boundaries of the subdivision governed by the association.

(e) Requires the property owners' association to make the books and records available in accordance with Subsections (g) and (h) if a building described by Subsection (d) does not exist on property described by Subsection (d).

(f) Requires a party requesting association books or records to submit the request in writing in person by hand delivery to a current board member, to the mailing address of the association or authorized representative as provided on the most current management certificate filed under Section 209.004 (Management Certificates), or in person to a managing agent as reflected on the most current management certificate filed under Section 209.004.

(g) Requires a property owners' association to make books and records requested under Subsection (b) available to the requesting party within a reasonable time of the property owners' association's receipt of the request.

(h) Provides that a reasonable time for providing information requested under Subsection (b) is considered to be 10 business days after the date the property owners' association receives a request, except as otherwise provided by this section.

(i) Requires the property owners' association, if the property owners' association is unable to produce a requested book or record on or before the 10th business day after the date the request is received, to provide to the requestor written notice that:

(1) informs the requestor that the property owners' association is unable to produce the information on or before the 10th business day after the date of the receipt of the request; and

(2) states a date by which the information will be available for inspection that occurs not later than the 30th day after the date notice under this subsection is given.

(j) Requires a property owners' association to make books and records requested under this section available to the requestor in one or more of the following formats, as specified by the requestor:

(1) an electronic format delivered to an electronic mail address provided by the requestor, or delivered in a disc or other standard electronic format to the mailing address of the requestor, or if the requesting party does not provide a mailing address, to the address of the requestor's property in the subdivision; or

(2) a hard-copy format delivered to the mailing address of the requestor, or if the requesting party does not provide a mailing address, mailed to the address of the requestor's property in the subdivision, or made available at a location not more than 25 miles from the boundary of the subdivision governed by the association.

(k) Provides that this section does not require a property owners' association to staff a building described by Subsection (d).

(l) Authorizes a property owners' association to charge an owner for copies of the requested information in an amount that reasonably includes all costs related to reproducing the information, including costs of materials, labor, and overhead.

(m) Prohibits any information maintained by the association that is released under this section from identifying an individual member of an association or an individual's personal financial information. Authorizes information to be released in an aggregate manner that would not identify an individual property owner.

(n) Provides that all ballots cast in an election that results in an amendment to a dedicatory instrument, as required by Section 209.0041, are records of the property owners' association subject to inspection under this section.

(o) Provides that all ballots cast in an election of property owners' association board or other committee members are considered records of the association but may not be made available for inspection under this section, except for the purposes of a recount under Section 209.0057(e), without a court order or subpoena. Requires the association to take reasonable measures to safeguard the security and privacy of those ballots.

(p) Requires a property owners' association to keep all records as to changes to the dedicatory instruments in perpetuity; maintain and secure all ballots in association-wide elections for four years; and maintain records related to financial matters of the association, including assessments, fines, foreclosures, and enforcement actions, for at least seven years.

(q) Authorizes a member of a property owners' association who is denied access to or copies of association books or records to which the member is entitled under this section to file a petition with the justice of the peace of a justice precinct in which all or part of the property that is governed by the association is located requesting relief in accordance with this subsection. Authorizes the justice of the peace, if the justice of the peace finds that the member is entitled to access to or copies of the records, to grant one or more of the following remedies:

(1) a judgment against the property owners' association for a penalty of not more than \$1,500;

(2) a judgment against the property owners' association for court costs and attorney's fees incurred in connection with seeking a remedy under this section; or

(3) or a judgment authorizing the owner or the owner's assignee to deduct the amounts awarded under Subdivisions (1) and (2) from any future regular or special assessments payable to the property owners' association.

(r) Defines "business day," for the purposes of this section.

(s) Requires the person, on or before the 10th day before the date a person files a suit under this section, to provide notice to the other party of the person's intent to file suit under this section. Requires that the notice be sent certified mail, return receipt requested, or delivered by the United States Postal Service with signature confirmation service.

Deletes existing Subsection (a-1) relating to a property owners' association being required to make books and records, including, financial records, available to any person requesting such records in accordance with Chapter 552, Government Code. Deletes existing text providing that Subsection (a) does not apply to a property owners' association to which this subsection applies.

SECTION 12. Amends Chapter 209, Property Code, by adding Sections 209.0051, 209.0056, 209.0057, 209.0058, 209.0059, 209.00591, 209.00592, and 209.00593, as follows:

Sec. 209.0051. OPEN BOARD MEETINGS. (a) Provides that this section does not apply to a property owners' association that is subject to Chapter 551 (Open Meetings), Government Code, by application of Section 551.0015 (Certain Property Owners' Association Subject to Law), Government Code.

(b) Defines "board meeting."

(c) Provides that, except as provided by this section, a meeting of the property owners' association board or a committee or subcommittee of the board is open to members of the property owners' association and requires that the meeting be held

in a county in which all or part of the property governed by the association is located or a county adjacent to that county.

(d) Requires the board to keep a record of each regular, emergency, or special board meeting in the form of written minutes or an audio recording of the meeting. Requires that a record of a meeting state the subject of each motion or inquiry, regardless of whether the board takes action on the motion or inquiry, and indicate each vote, order, decision, or other action taken by the board. Requires the board to make meeting records, including approved minutes, available to a member for inspection and copying on the member's written request to the board or the board's representative. Requires the board to approve the minutes of a board meeting not later than the next regular board meeting.

(e) Requires the board to give members notice of the date, hour, place, and subject of a regular or special board meeting, including a general description of any matters to be brought up for deliberation in executive session. Requires that the notice be mailed to each member or:

(1) posted at least 72 hours before the start of the meeting in a conspicuous manner reasonably designed to provide notice to association members in a place located on the association's common property or other conspicuously located property within the association, with the property owner's consent, or on any Internet website maintained by the association; and

(2) sent via e-mail to each owner who has registered an e-mail address with the property owners' association; it is an owner's duty to keep an e-mail address registered with the property owners' association updated.

(f) Provides that the board, if the board recesses a regular or special board meeting to continue the following regular business day, is not required to post notice of the continued meeting if the recess is taken in good faith and not to circumvent this section. Requires the board, if a regular or special board meeting is continued to the following regular business day, and on that following day the board continues the meeting to another day, to give notice as required by this section of the meeting continued to that other day.

(g) Provides that, if at a regular, emergency, administrative, or special meeting a member makes an inquiry regarding a subject for which notice has not been given as required by this section, the notice provisions of this section do not apply to a statement by the board of specific factual information given in response to the inquiry, or a recitation of existing policy in response to the inquiry.

(h) Requires that any deliberation of or decision relating to the subject of an inquiry made under Subsection (g) be limited to a proposal to place the subject on the agenda for a subsequent board meeting.

(i) Authorizes the board, in the event of a reasonably unforeseen emergency or urgent necessity that requires immediate board action, to meet in an emergency board meeting. Authorizes that notice for an emergency board meeting be given in at least one manner prescribed by Subsection (e)(1) at least two hours before the emergency session is convened. Requires that the notice clearly identify the emergency or urgent necessity for which the notice is given. Prohibits a board in an emergency from considering fines, foreclosures, enforcement actions, increases in assessments, or any other foreseeable business or policy over which the board has responsibility. Requires that any action taken in an emergency board meeting be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes or tape recording of the next regular or special board meeting.

(j) Authorizes a property owners' association board to hold an administrative session, and that session is not subject to the notice requirements of this section. Prohibits the board, in any administrative session, from taking action regarding issuance of fines, commencement of foreclosure proceedings, levying of a special assessment, increases in assessments, or approval of items not previously approved in the association's budget.

(k) Requires the board, before the board calls an executive session, to convene in a regular or special board meeting for which notice has been given as provided by this section. Authorizes the presiding board member, during that board meeting, to call an executive session by announcing that an executive session will be held to deliberate a matter described by Subsection (1) and identifying the specific subdivision of Subsection (1) under which the executive session will be held. Prohibits a vote or other action item from being taken in executive session.

(l) Authorizes a board of property owners' association to meet in executive session, to which the members do not have access, to deliberate:

(1) anticipated or pending litigation, settlement offers, or interpretations of the law with the association's legal counsel;

(2) complaints or charges against or issues regarding a board member or agent, employee, contractor, or other representative of the property owners' association;

(3) a payment plan under Section 209.0062;

(4) a foreclosure of a lien;

(5) an enforcement action against a member of the association, including for nonpayment of amounts due;

(6) the purchase, exchange, lease, or value of real property, if the board determines in good faith that deliberation in an open board meeting may have a detrimental effect on the association;

(7) business and financial issues relating to the negotiations of a contract, if the board determines in good faith that deliberation in an open board meeting may have a detrimental effect on the position of the association;
or

(8) matters involving the invasion of privacy of an individual owner.

Sec. 209.0056. NOTICE OF ELECTION OR ASSOCIATION VOTE. (a) Requires the association, on or before the 30th day before the date an election or vote is held by a property owners' association, to give each owner of property in the property owners' association written notice of the election or vote.

(b) Provides that this section supersedes any contrary requirement in a dedicatory instrument.

(c) Provides that this section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

Sec. 209.0057. TABULATION OF VOTES. (a) Provides that this section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

(b) Requires the association, on the written petition of owners having at least 10 percent of all voting interests in a property owners' association for a vote tabulation under this subsection, received by the association at least 15 days before the first date that votes may be cast, to tabulate the votes in any matter subject to a vote of the members of a mandatory property owners' association, to enter into a contract for the services of a person who is not a member of the association or related to a member of the association board within the third degree by consanguinity or affinity, as determined under Chapter 573 (Degrees of Relationship; Nepotism Prohibitions), Government Code, and who is a current or former county judge, county elections administrator, justice of the peace, or county voter registrar.

(c) Requires that the name of each person tabulating votes of the members of a property owners' association and the results of the tabulation be reflected in the minutes of the association.

(d) Authorizes any owner, not later than the fifth day after the date of the initial tabulation of votes, to require a recount of the votes. Requires that a demand for a recount be submitted in writing either:

(1) in person to a property owners' association board member;

(2) by certified mail, return receipt requested, or by delivery by the United States Postal Service with signature confirmation service to the association's mailing address on the latest management certificate filed under Section 209.004; or

(3) in person to the association's managing agent as reflected on the latest management certificate filed under Section 209.004.

(e) Requires the property owners' association, at the expense of the owner requesting the recount, to retain for the purpose of performing the recount the services of a person who is not a member of the association or related to a member of the association board within the third degree of consanguinity or affinity, as determined under Chapter 573, Government Code and who is a current or former county judge, county elections administrator, justice of the peace, or county voter registrar.

(f) Requires that any recount under Subsection (d) be performed on or before the 30th day after the date of receipt of a request for and payment for a recount in accordance with Subsections (d) and (e). Requires the association, if the recount changes the results of the election, to reimburse the requesting owner for the cost of the recount. Prohibits any action taken by the board in the period between the initial election vote tally and the completion of the recount from being affected by any recount.

Sec. 209.0058. **BALLOTS.** (a) Requires that any vote cast in an election or vote by a member of a property owners' association be in writing and signed by the member.

(b) Provides that electronic votes cast under Section 209.00593 constitute written and signed ballots.

(c) Provides that, in an association-wide election, written and signed ballots are not required for uncontested race.

Sec. 209.0059. **RIGHT TO VOTE.** (a) Provides a provision in a dedicatory instrument that would disqualify a property owner from voting in an association election of board members or on any matter concerning the rights or responsibilities of the owner is void.

(b) Provides that this section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

Sec. 209.00591. PROXY VOTING. Provides that a provision in any dedicatory instrument that provides for a proxy vote in any matter subject to a vote of the members of the property owners' association is void.

Sec. 209.00592. BOARD MEMBERSHIP. (a) Provides that, except as provided by Subsection (b), a provision in a dedicatory instrument that restricts a property owners' right to run for a position on the board of the property owners' association is void.

(b) Provides that, if a board is presented with written, documented evidence from a database or other record maintained by a governmental law enforcement authority that a board member has been convicted of a felony or crime involving moral turpitude, the board member is immediately ineligible to serve on the board of the property owners' association, automatically considered removed from the board, and prohibited from future service on the board.

Sec. 209.00593. VOTING; QUORUM. (a) Authorizes the voting rights of an owner to be cast or given in person at a meeting of the property owners' association, by absentee ballot in accordance with this section, or by electronic ballot in accordance with this section.

(b) Provides that an absentee or electronic ballot:

(1) is authorized to be counted as an owner present and voting for the purpose of establishing a quorum only for items appearing on the ballot;

(2) is prohibited from being counted, even if properly delivered, if the owner attends any meeting to vote in person, so that any vote cast at a meeting by a property owner supersedes any vote submitted by absentee or electronic ballot previously submitted for that proposal; and

(3) is prohibited from being counted on the final vote of a proposal if the motion was amended at the meeting to be different from the exact language on the absentee or electronic ballot.

(c) Requires that a solicitation for votes by absentee ballot include:

(1) an absentee ballot that contains each proposed action and provides an opportunity to vote for or against each proposed action;

(2) instructions for delivery of the completed absentee ballot, including the delivery location; and

(3) certain language relating to the impact of casting a vote via absentee ballot.

(d) Provides that for the purposes of this section, "electronic ballot" means a ballot:

(1) given by electronic mail, facsimile, or posting on an Internet website;

(2) for which the identity of the property owner submitting the ballot can be confirmed; and

(3) for which the property owner is authorized to receive a receipt of the electronic transmission and receipt of the owner's ballot.

(e) Requires a notice of posting, if an electronic ballot is posted on an Internet website, to be sent to each owner that contains instructions on obtaining access to the posting on the website.

(f) Provides that this section supersedes any contrary provision in a dedicatory instrument.

(g) Provides that this section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

SECTION 13. Amends Section 209.006, Property Code, by amending Subsection (b) and adding Subsections (c), (d), (e), and (f), as follows:

(b) Requires the notice to:

(1) describe the violation or property damage that is the basis for the suspension action, charge, or fine and state any amount due the association from the owner;

(2) except as provided by Subsection (d), inform the owner that the owner is entitled to a reasonable period to cure the violation and avoid the fine and to request a hearing under Section 209.007 (Hearing Before Board; Alternative Dispute Resolution) on or before the 30th day after the date notice was delivered to the owner. Deletes existing text providing that the owner is entitled to a reasonable period to cure the violation or suspension unless the owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six months and to request a hearing under Section 209.007 on or before the 30th day after the date the owner receives notice;

(3) specify the date by which the owner is required to cure the violation if the violation is of a curable nature and does not pose a threat to public health or safety;

(4) specify the dollar amount of any fine the association seeks to levy;

(5) specify each provision of the dedicatory instrument the owner is alleged to have violated; and

(6) be sent by certified mail, return receipt requested, or delivered by the United State Postal Service with signature confirmation service to the owner at the owner's last known address as shown on the association's record, rather than receives the notice.

(c) Requires the date specified in the notice under Subsection (b)(3) to provide a reasonable period of at least 30 days for the owner to cure the violations if the violation is of a curable nature and does not pose a threat to public health or safety.

(d) Provides that Subsections (a) and (b) do not apply to a violation for which the owner has been previously given notice under this section and the opportunity to exercise any rights available under this section in the preceding six months.

(e) Authorizes the property owners' association to assess the fine and requires the association to provide notice of the assessment to the owner, if the property owner does not cure the violation in the time provided under Subsection (c) and does not request a hearing under Subsection (b)(2)(B). Provides that if the property owner cures the violation before the expiration period for cure specified under Subsection (c), any fine assessed for the violation is void.

(f) Provides that, for purposes of this section, a violation is considered a threat to public health or safety if the violation could materially affect the physical health or safety of an ordinary resident.

SECTION 14. Amends Chapter 209, Property Code, by adding Sections 209.0061, 209.0062, 209.0063, 209.0064, as follows:

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

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

(c) Provides that, if the property owners' association assesses a fine against a nonowner occupant under this section, the notice provisions of Section 209.006 and the hearing provisions of Section 209.007 apply to the nonowner occupant in the same manner as those provisions apply to an owner.

Sec. 209.0062. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN ASSESSMENTS. (a) Requires a property owners' association to adopt reasonable 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 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.

(b) Requires the property owners' association, for any approved special assessment in an amount greater than the equivalent of the sum of all regular assessments payable in the year the special assessment is approved, to allow partial payments of the special assessment for 12 months unless the property owner requests a shorter payment period in writing at the time the property owner requests an alternative payment plan. Authorizes a property owners' association to offer a reasonable discount for an owner making a one-time lump sum payment of the special assessment.

(c) Requires a property owners' association, for any approved special assessment in an amount greater than the equivalent of one-half the sum of all regular assessments payable in the year the special assessment is approved, to allow partial payments of the special assessment for six months unless the property owner requests a shorter payment period in writing at the time the property owner requests an alternative payment plan. Authorizes a property owners' association to offer a reasonable discount to an owner making a one-time lump sum payment of the special assessment.

(d) Provides that a property owners' association is not required to allow a payment plan for any amount that extends more than 12 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 five years following on owner's default under a previous payment plan.

(e) Requires a property owners' association to file the association's guidelines under this section in the real property records of each county in which the subdivision is located.

(f) 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 is authorized to 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 (a).

Sec. 209.0063. **PRIORITY OF PAYMENTS.** Requires a payment received by a property owners' association from the owner, unless otherwise provided in writing by the property owner at the time payment is made, to be applied to the owner's debt in the following order of priority:

(1) any delinquent assessment;

(2) any current assessment;

(3) any attorney's fees incurred by the association associated solely with assessments or any other charge that could provide the basis for foreclosure;

(4) any fines assessed by the association;

(5) any attorney's fees incurred by the association that are not subject to Subdivision (3); and

(6) any other amount owed to the association.

Sec. 209.0064. **COLLECTIONS.** Requires a property owners' association to bring suit or otherwise initiate against an owner a collection action authorized by the dedicatory instruments or other law on or before the 10th anniversary of the date on which the cause of action for collection of the debt accrues. Provides that Section 16.004 (Four-Year Limitations Period), Civil Practices and Remedies Code, does not apply to the collection of a debt owed by an owner to a property owners' association.

SECTION 15. Amends Section 209.007, Property Code, by amending Subsection (a) and adding Subsections (f), (g), (h), (i), and (j), as follows:

(a) Requires a written request from an owner to contain a statement of the grounds on which the owner believes the owner is not in violation and citations of the dedicatory instrument for each violation alleged.

(f) Requires the property owners' association, if the parties fail to reach agreement in or after the hearing described by this section, to file suit to uphold and enforce any fine sought to be assessed. Requires that the suit be filed in a justice court or small claims court not later than the 180th day after the date of hearing described by this section or an appeal under Subsection (b), whichever is later. Requires that the complaint list each violation and be accompanied by citation of the dedicatory instrument for each violation. Provides that if the property owners' association does not file suit within the time prescribed by this subsection, the association's right to collect the fine is considered waived.

(g) Requires the court, not later than the 30th day after the date a suit is filed under Subsection (f), to hold evidentiary hearing on the matter. Provides that the parties are not entitled to any discovery.

(h) Provides that, at the evidentiary hearing, the property owners' association has the burden of proving by a preponderance of the evidence that the property owner has violated a restrictive covenant.

(i) Requires the court to determine whether a violation has occurred and, if so, whether the fine for the violation is reasonable considering the type, duration, and severity of the violation.

(j) Authorizes the court, if the court finds that the position taken by either party is groundless or is taken in bad faith, to award the prevailing party's attorney's fees.

SECTION 16. Amends Chapter 209, Property Code, by adding Section 209.0091, as follows:

Sec. 209.0091. JUDICIAL FORECLOSURE REQUIRED. (a) Prohibits a property owners' association, except as provided by Subsection (c), from foreclosing a property owners' association assessment lien unless the association first obtains a court order in an application for expedited foreclosure under the rules adopted by the Supreme Court of Texas (supreme court) under Subsection (b). Authorizes a property owners' association to use the procedure described by this subsection to foreclose any lien described by the association's dedicatory instruments.

(b) Requires the supreme court, as an exercise of the court's authority under Section 74.024 (Rules), Government Code, to adopt rules establishing expedited foreclosure proceedings for use by a property owners' association in foreclosing an assessment lien of the association. Requires that rules adopted under this subsection to be substantially similar to the rules adopted by the supreme court under Section 50(r), Article XVI, Texas Constitution.

(c) Provides that an expedited foreclosure is not required under this section if the owner of the property that is subject to foreclosure agrees in writing at the time the foreclosure is sought to waive expedited foreclosure under this section. Prohibits a waiver under this subsection from being required as a condition of the transfer of title to real property.

(d) Authorizes a provision granting a right to foreclose a lien on real property for unpaid amounts due to a property owners' association to be removed from a dedicatory instrument or adopted in a dedicatory instrument by a vote of at least 51 percent of the total votes allocated to property owners in the property owners' association. Authorizes owners holding at least 10 percent of all voting interests in the association to petition the property owners' association and require a special meeting to be called for the purposes of taking a vote for the purposes of this section.

SECTION 17. Amends Section 209.010, Property Code, by amending Subsection (a) to require a property owners' association that conducts a foreclosure sale of an owner's lot to send to the lot owner and to each lienholder of record, not later than the 30th day after the date of the foreclosure sale, a written notice stating the date and time the sale occurred and informing the lot owner and each lienholder of record of the right of the lot owner and lienholder to redeem the property under Section 209.011 and a copy of Section 209.011.

SECTION 18. Amends Chapter 209, Property Code, by adding Section 209.014, as follows;

Sec. 209.014. RESTRICTIONS ON OWNERSHIP VOID. Provides that a property owners association may not prohibit an owner from owning multiple properties governed by the property owners' association if the cumulative voting rights of all of that owner's properties are 25 percent or less of all voting interests in the property owners' association. Provides that this section does not apply during a development period as defined by Section 202.011.

SECTION 19. Amends Section 211.002, Property Code, by amending Subsection (a) as follows:

(a) Provides that this chapter applies only to a residential real estate subdivision or any unit or parcel of a subdivision to which another chapter in this title that provides a procedure under which a subdivision's restrictions may be amended does not apply. Deletes existing text providing that this chapter applies only to a residential real estate subdivision or any unit or parcel of a subdivision located in whole or in part within an unincorporated area of a county if the county has a population of less than 65,000.

SECTION 20. Amends Section 202.004, Property Code, by amending Subsection (c) to authorize a court, for a violation of a restrictive covenant of 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 to assess civil damages, rather than authorizes a court to assess civil damages for the violation of a restrictive covenant, in an amount not exceed \$200 for each day of the violation.

SECTION 21. (a) Makes application of Section 5.006(a), Property Code, as amended by this Act, prospective.

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

(c) Makes application of Sections 202.015 and 209.0035, Property Code, as added by this Act, prospective.

(d) Makes application of Section 202.004(c), Property Code, as amended by this Act, prospective.

(e) Provides that Section 202.0006, Property Code, as amended by this Act, and Sections 202.008, 202.010, 202.011, 202.012, 202.014, 209.0059, 209.00591, 209.00592(a), and 209.014, Property Code, as added by this Act, apply 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 unfiled dedicatory instrument is not invalidated by Section 202.006, Property Code, as amended by this Act.

(f) Makes application of Section 209.005, Property Code, as amended by this Act, prospective.

(g) Makes application of Sections 209.0061, 209.0062, and 209.0064, as added by this Act, prospective.

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

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

(j) Makes application of Section 209.010(a), Property Code, as amended by this Act, prospective.

SECTION 22. 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 property owners' association that has not been previously recorded in the real property records of the county..

SECTION 23. Requires the supreme court, not later than January 1, 2012, to adopt rules of civil procedure under Section 209.0091, Property Code.

SECTION 24. Effective date: January 1, 2012.