

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 2274
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Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Houston subdivisions developed in the 1950s and after often have very robust and detailed deed restrictions that can be extended or amended with the consent of a majority or supermajority of the owners in the subdivision. However, many older Houston subdivisions (pre-1950) have very basic deed restrictions that do not explicitly provide for extensions or any kind of amendment. The inability of owners to extend or amend their deed restrictions in older subdivisions, in which no zoning regulations apply, creates uncertainty in living conditions and discourages investments in those subdivisions.

Additionally, many older subdivision deed restrictions also still contain exclusionary language regarding race, religion, and national origin that have since been found to be unenforceable under the United States Constitution. Although such language is considered to be unenforceable and void in practice, the language is still present in many deed restrictions and serves as a reminder to a regrettable portion of our state's history.

H.B. 2274 seeks to remedy this issue by providing for the extension or amendment of deed restrictions in certain older subdivisions. The bill also provides for a mechanism by which outdated and exclusionary clauses in older subdivision deed restrictions may be disregarded and removed.

(Original Author's / Sponsor's Statement of Intent)

C.S.H.B. 2274 amends current law relating to the extension or amendment of deed restrictions in certain older subdivisions.

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 Title 11, Property Code, by adding Chapter 216, as follows:

CHAPTER 216. EXTENSION OR AMENDMENT OF RESTRICTIONS IN CERTAIN OLDER SUBDIVISIONS

Sec. 216.001. DEFINITIONS. Defines "dedicatory instrument," "lienholder," "owner," "older subdivision," "petition," "property owners' association," "restrictions," and "subdivision."

Sec. 216.002. FINDINGS AND PURPOSE. (a) Provides that the legislature finds that:

- (1) the inability of owners to extend or amend property restrictions in older subdivisions in which no zoning regulations apply creates uncertainty in living conditions and discourages investments in those subdivisions;

(2) owners in affected older subdivisions are reluctant or unable to provide proper maintenance, upkeep, and repairs of structures because of the inability to amend the restrictions in response to changing circumstances;

(3) these conditions will cause dilapidation of housing and other structures and cause unhealthful and unsanitary conditions in affected older subdivisions, contrary to the health, safety, and welfare of the public; and

(4) the existence of race-related covenants in restrictions, regardless of their unenforceability, is offensive, repugnant, and harmful to members of racial or ethnic minority groups and public policy requires that those covenants be removed.

(b) Provides that the purpose of this chapter is to provide a procedure for extending or amending restrictions for certain older subdivisions, including the removal of any restriction relating to race, religion, or national origin that is void and unenforceable under the United States Constitution or Section 5.026 (Discriminatory Provisions).

Sec. 216.003. APPLICABILITY OF CHAPTER. (a) Provides that this chapter applies only to an older subdivision that:

(1) is wholly or partly located in a municipality with a population of two million or more;

(2) had original restrictions that:

(A) did not have an express procedure that provides for successive extensions of the restrictions;

(B) did not have an express procedure for amending the restrictions;

(C) could not be amended without the unanimous consent of all owners in the subdivision or all owners in any section of the subdivision; or

(D) may no longer be valid due to an inability to extend or amend the restrictions; and

(3) has a single property owners' association in which all owners in the subdivision are eligible for membership but in which membership is not mandatory.

(b) Provides that this chapter applies to a restriction regardless of the date on which the restriction was created.

(c) Provides that this chapter supersedes any contrary requirement for the extension or amendment of a restriction in a dedicatory instrument of a subdivision to which this chapter applies.

(d) Provides that this chapter does not apply to:

(1) a residential subdivision described by Section 209.0041(b) (relating to a residential subdivision in which property owners are subject to mandatory membership in a property owners' association); or

(2) a condominium, as defined by Section 81.002 (Definitions) or 82.003 (Definitions).

Sec. 216.004. AMENDMENT OF RESTRICTIONS. (a) Provides that for purposes of this chapter, the amendment of restrictions includes the adoption of new restrictions or the modification or removal of existing restrictions.

(b) Prohibits an amendment of restrictions under this chapter from creating a property owners' association with mandatory membership. Provides that an amendment of restrictions under this chapter that creates a property owners' association with mandatory membership is void.

Sec. 216.005. PROPERTY OWNERS' ASSOCIATION ACTION NOT REQUIRED. Authorizes restrictions, except as provided by Section 216.008, to be extended or amended under this chapter without action by the property owners' association.

Sec. 216.006. EXTENSION OF RESTRICTIONS. (a) Authorizes restrictions to be extended as provided by Section 216.007 or, if a dedicatory instrument provides a procedure for an initial extension of the original restrictions, that procedure to be used for successive extensions of the original restrictions unless the dedicatory instrument expressly prohibits the procedure from being used for successive extensions. Prohibits the procedure, if the dedicatory instrument prohibits the procedure from being used to provide for automatic extension of restrictions, from being used under this subsection to provide for automatic extension of the restrictions.

(b) Provides that a provision in a dedicatory instrument that prohibits the extension of an existing restriction during a certain period does not apply to a successive extension under a procedure for initial extension of original restrictions under Subsection (a).

(c) Authorizes an extension of restrictions under this chapter to be for a period equal to the original term of the restrictions or a shorter period and, subject to Subsection (a), provide for additional automatic extensions of the term of the restrictions for a period of not more than 10 years for each extension.

(d) Authorizes a dedicatory instrument that provides for the extension of restrictions and does not provide for amendment of restrictions to be amended under this chapter, including by amending the provision providing for the extension of the restrictions.

Sec. 216.007. CONSENT REQUIRED FOR EXTENSION OR AMENDMENT OF RESTRICTIONS. (a) Authorizes a restriction to be extended or amended by a petition or ballots that indicate the written consent of the owners of at least 66.6 percent of the total number of separately owned parcels or tracts in the subdivision, regardless of whether the parcels or tracts contain part or all of one or more platted lots or combination of lots.

(b) Provides that a restriction that is extended or amended as described by Subsection (a) applies to all sections of the subdivision, including any annex, to the extent that the extended or amended restriction expressly applies to the entire subdivision, regardless of whether each section has separate restrictions or each owner is a member of the property owners' association.

(c) Provides that if the original restrictions for a subdivision contain a lower percentage to extend or amend the restrictions, the percentage in the original restrictions controls.

Sec. 216.008. PETITION OR BALLOTS. (a) Requires that the petition or ballots for the extension or amendment of restrictions, after receiving written approval of a petition or ballot by the property owners' association, be distributed to the owners in the subdivision by any public method, including:

(1) by United States mail;

- (2) by electronic mail or other method of electronic transmission or publication, including publication on an Internet website;
- (3) by door-to-door circulation;
- (4) by publication in a newspaper or similar publication of general circulation in the municipality in which the subdivision is located; or
- (5) at a meeting of the owners in the subdivision called for the purpose of voting on the proposed extension or amendment.

(b) Authorizes the petition or ballots to be provided to owners in separate documents. Provides that the separate documents are considered to be one instrument.

(c) Prohibits a petition or ballot for a subsequent amendment of the restrictions, if a restriction is amended under this chapter, from being distributed under Subsection (a) before the fifth anniversary of the effective date of the amended restriction under Section 216.010.

Sec. 216.009. EFFECT OF OWNER'S SIGNATURE. (a) Provides that an owner's signature on a petition or ballot conclusively establishes the owner's consent for the purposes of this chapter.

(b) Authorizes the vote of multiple owners of a lot, parcel, or tract to be reflected by the signature of one of the owners.

(c) Provides that after an owner signs a petition or ballot for an extension or amendment of a restriction, the owner's subsequent conveyance of the owner's interest in real property in the subdivision covered by the extension or amendment does not affect the validity of the signature for the purposes of the petition or ballot.

Sec. 216.010. EFFECTIVE DATE OF EXTENSION OR AMENDMENT. Provides that an extension or amendment of a restriction under this chapter takes effect on the date the extension or amendment and the petition or ballots that reflect the written consent of the required number of owners in the subdivision for the adoption of the extension or amendment are filed and recorded in the real property records of the county in which the subdivision is located.

Sec. 216.011. APPLICABILITY OF EXTENSION OR AMENDMENT. (a) Provides that an extension or amendment of a restriction under this chapter is binding on a lot, parcel, or tract in the subdivision as provided by the restriction, regardless of whether the owner or owners of the lot, parcel, or tract consented to the extension or amendment.

(b) Prohibits an owner, notwithstanding any other law, from opting out of the applicability to the owner's property of a restriction that is extended or amended under this chapter.

(c) Provides that an extension or amendment of a restriction under this chapter is binding on a lienholder or a person who acquires title to property at a foreclosure sale or by deed from a foreclosing lienholder.

Sec. 216.012. UNCONSTITUTIONAL RESTRICTIONS NOT EXTENDED. Provides that if a provision in restrictions extended under this chapter is void and unenforceable under the United States Constitution or Section 5.026, the restrictions are considered as if the void and unenforceable provision was never contained in the restrictions.

Sec. 216.013. PROCEDURES CUMULATIVE. Provides that the procedure provided by this chapter for the extension or amendment of restrictions is cumulative of and not in

lieu of any other method by which restrictions of a subdivision to which this chapter applies are authorized to be extended or amended.

Sec. 216.014. CONSTRUCTION OF CHAPTER AND RESTRICTIONS. (a) Requires that this chapter and any petition or ballot made or action taken in connection with an attempt to comply with this chapter be liberally construed to effectuate the intent of this chapter and the petition, ballot, or action.

(b) Requires that a restriction that is extended or amended under this chapter be liberally construed to give effect to the restriction's purposes and intent.

SECTION 2. Effective date: upon passage or September 1, 2021.