

BILL ANALYSIS

Senate Research Center

C.S.S.B. 142
By: West
Intergovernmental Relations
3/28/2011
Committee Report (Substituted)

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.

C.S.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 of 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 of 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.

C.S.S.B. 142 amends current law relating to real property that is subject to restrictive covenants and the operation of property owners' associations of subdivisions that are subject to restrictive covenants.

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 require a court of appropriate jurisdiction (court) in an action based on breach of a restrictive covenant pertaining to real property, to allow to a prevailing party, rather than a prevailing party who asserted the action, reasonable attorney's fees in addition to the party's costs and claims.

SECTION 2. Amends Section 5.012, Property Code, by amending Subsection (a) and adding Subsections (a-1), (f), and (g), as follows:

(a) Requires 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 to give the purchaser of the property a certain written notice. 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.

(a-1) Requires that the second paragraph of the notice prescribed by Subsection (a) (relating to property owners' association assessments) be in bold print and underlined.

(f) Requires the property owners' association or its agent, on the purchaser's request for a resale certificate from the association or the association's agent, to promptly deliver a copy of the most recent resale certificate issued for the property under Chapter 207 (Disclosure of Information by Property Owners' Associations) 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. Prohibits the property owners' association from processing a 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).

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 that has a population of at least 750,000 and not more than 1.1 million, and is not adjacent to a county with a population of two million or more.

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

SECTION 5. Amends Section 202.004(c), Property Code, 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 in an amount not to exceed \$200 for each day of the violation. Makes a nonsubstantive change.

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 nonsubstantive changes.

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

SECTION 7. Amends Chapter 202, Property Code, by adding Sections 202.011, 202.012, and 202.013, as follows:

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) Authorizes a property owners' association to include or enforce 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;

(4) is located in an area on the property owner's property other than on the roof of the home or of another structure allowed under a dedicatory instrument, or in a fenced yard or patio owned and maintained by the property owner;

(5) if mounted on the roof of the home:

(A) extends higher than or beyond the roofline;

(B) is located in an area other than an area designated by the property owners' association, unless the alternate location increases the estimated annual energy production of the device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than 10 percent above the energy production of the device if located in an area designated by the property owners' association;

(C) does not conform to the slope of the roof and has a top edge that is not parallel to the roofline; or

(D) has a frame, a support bracket, or visible piping or wiring that is not in a silver, bronze, or black tone commonly available in the marketplace;

(6) if located in a fenced yard or patio, is taller than the fence line;

(7) as installed, voids material warranties; or

(8) was installed without prior approval by the property owners' association or by a committee created in a dedicatory instrument for such

purposes that provides decisions within a reasonable period or within a period specified in the dedicatory instrument.

(e) Prohibits a property owners' association or the association's architectural review committee from withholding approval for installation of a solar energy device if the provisions of the dedicatory instruments, to the extent authorized by this section, are met or exceeded, unless the association or committee, as applicable, determines in writing that placement of the device as proposed by the property owner constitutes a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities.

Sec. 202.013. 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.

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

SECTION 8. Amends Sections 207.003(a), (b), and (c), Property Code, as follows:

(a) Requires the property owners' association, not later than the 10th day after the date a written request for subdivision information is received from an owner, owner's agent, or title insurance company or its agent acting on behalf of the owner, the property owners' association, to deliver to the owner, owner's agent, or title insurance company or its agent certain documents, including a resale certificate prepared not earlier than the 60th day before the date the certificate is delivered that complies with Subsection (b).

(b) Requires that a resale certificate under Subsection (a) contain certain information, including a statement of any right of first refusal, other than a right of first refusal that is prohibited by statute, and any, rather than or, 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 has been approved before and is due after the resale certificate is delivered, rather than 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, rather than a defendant, other than a lawsuit relating to unpaid ad valorem taxes of an individual member of the association; 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.

(c) Authorizes a property owners' association to charge a reasonable fee to assemble, copy, and deliver the information required by this section and may charge a reasonable fee to prepare and deliver an update of a resale certificate under Subsection (f). Requires a purchaser requesting a resale certificate under Section 5.012 or on whose behalf the resale certificate is requested to pay the fees charged under this subsection unless otherwise agreed.

SECTION 9. 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 10. 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 governing document to impose fines:

- (1) Section 209.005(c);
- (2) Section 209.0056;
- (3) Section 209.0057;
- (4) Section 209.0058;
- (5) Section 209.00592; and
- (6) Section 209.0062.

SECTION 11. Amends Chapter 209, Property Code, by adding Section 209.0041, as follows:

Sec. 209.0041. ADOPTION OR AMENDMENT OF CERTAIN 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 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' Associations Subject to Law), Government Code.

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

(d) Provides that this section applies to a dedicatory instrument regardless of the date on which the dedicatory instrument was created.

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

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

(g) Authorizes a declaration to be amended only by a vote of at least 67 percent of the total votes allocated to property owners in the property owners' association, in addition to any governmental approval required by law.

(h) Prohibits a provision in a dedicatory instrument from being adopted that allows the property owners' association board to self-perpetuate. Provides that a provision in a dedicatory instrument that violates this subsection is void.

(i) Prohibits a bylaw from being amended, and a rule or guideline from being adopted, to expand the property owners' association's powers beyond the powers granted by any other dedicatory instrument.

SECTION 12. Amends Section 209.005, Property Code, as follows:

Sec. 209.005. ASSOCIATION RECORDS. (a) Provides that except as provided by Subsection (b), this section applies to all property owners' associations and controls over other law not specifically applicable to a property owners' association.

(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.

(c) Requires a property owners' association, notwithstanding a provision in a dedicatory instrument, to make the books and records of the association, including financial records, open to and reasonably available for examination by an owner, or an owner's agent, attorney, or certified public accountant, in accordance with this section. Entitles an owner to obtain from the association copies of information contained in the books and records. Deletes existing reference to Section B, Article 2.23, Texas Non-Profit Corporation Act (Article 1396-2.23, V.T.C.S.)._Makes nonsubstantive changes.

(d) Creates this subsection from text of existing Subsection (b). Provides that except as provided by this subsection, an attorney's files and records relating to the property owners' association, excluding invoices requested by an owner under Section 209.008(d) (relating to requiring the association on written request from the owner, to provide copies of invoices for attorney's fees and other costs), are not records of the association and are not subject to inspection by the owner or production in a legal proceeding. Requires that a document, if a document in an attorney's files and records relating to the association would be responsive to a legally authorized request to inspect or copy association documents, be produced by using the copy from the attorney's files and records if the association has not maintained a separate copy of the document. Provides that this subsection does not require production of a document that constitutes attorney work product or that is privileged as an attorney-client communication. Deletes existing Subsection (a-1) requiring a property owners' association described by Section 552.0036(2), Government Code, to make the books and records of the association, including financial records, reasonably available to any person requesting access to the books or 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. Makes nonsubstantive changes.

(e) Requires an owner or the owner's authorized representative described by Subsection (c) to submit a written request for access or information under Subsection (c) by certified mail, with sufficient detail describing the property owners' association's books and records requested, to the mailing address of the association or authorized representative as reflected on the most current management certificate filed under Section 209.004. Requires that the request contain an election either to inspect the books and records before obtaining copies or to have the property owners' association forward copies of the requested books and records and:

(1) if an inspection is requested, the association, on or before the 10th business day after the date the association receives the request, is required to send written notice of dates during normal business hours that the owner may inspect the requested books and records to the extent those books and records are in the possession, custody, or control of the association; or

(2) if copies of identified books and records are requested, the association is required, to the extent those books and records are in the possession, custody, or control of the association, to produce the requested books and records for the requesting party on or before the 10th business day after the date the association receives the request, except as otherwise provided by this section.

(f) Requires the property owners' association, if the property owners' association is unable to produce the books or records requested under Subsection (e) on or before the 10th business day after the date the association receives the request, to provide to the requestor written notice that:

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

(2) states a date by which the information will be sent or made available for inspection to the requesting party that is not later than the 15th business day after the date notice under this subsection is given.

(g) Requires that the inspection, if an inspection is requested or required, take place at a mutually agreed on time during normal business hours, and the requesting party is required to identify the books and records for the property owners' association to copy and forward to the requesting party.

(h) Authorizes a property owners' association to produce books and records requested under this section in hard copy, electronic, or other format reasonably available to the association.

(i) Provides that an owner is responsible for costs related to compilation and reproduction of the requested information in an amount that would be allowed under Section 552.261 (Charge for Providing Copies of Public Information), Government Code, for public information. Authorizes the property owners' association to require advance payment of the estimated costs of compilation and reproduction if the request will result in costs that would exceed the costs for which a written itemized statement would be required under Section 552.2615(a) (relating to requiring a governmental body to provide the requestor with a written itemized statement that details all estimated charges that will be imposed), Government Code, for a similar request. Requires the association, if the estimated costs are lesser or greater than the actual costs, to submit a final invoice to the owner on or before the 30th business day after the date the information is delivered. Provides that if the final invoice includes additional amounts due from the owner, the additional amounts, if not reimbursed to the association before the 30th business day after the date the invoice is sent to the owner, may be added to the owner's account as an assessment. Entitles the owner, if the estimated costs exceeded the final invoice amount, to a refund, and the refund is required to be issued to the owner not later than the 30th business day after the date the invoice is sent to the owner.

(j) Requires a property owners' association to estimate costs under this section using the Public Information Cost Estimate Model provided by the open records division of the office of the attorney general or a similar model.

(k) Provides that except as provided by Subsection (l), the property owners' association is not required, other than in meeting minutes, to release or allow inspection of any books or records that identify the dedicatory instrument violation history of an individual owner of an association, an owner's personal financial information, including records of payment or nonpayment of amounts due the association, an owner's contact information, other than the owner's address, or information related to an employee of the association, including personnel files. Authorizes that information be released in an aggregate or summary manner that would not identify an individual property owner.

(l) Requires that the books and records described by Subsection (k) be released or made available for inspection if the express written approval of the owner whose records are the subject of the request for inspection is provided to the property owners' association, or a court orders the release of the books and records or orders that the books and records be made available for inspection.

(m) Requires a property owners' association composed of more than 14 lots to adopt and comply with a document retention policy that includes, at a minimum, certain requirements. Sets forth the certain requirements.

(n) 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 certain remedies. Sets forth the certain available remedies.

(o) Entitles the property owners' association, if the association prevails in an action under Subsection (n), to a judgment for court costs and attorney's fees incurred by the association in connection with the action.

(p) Requires a person, on or before the 10th business day before the date a person brings an action against a property owners' association under this section, to send written notice to the association of the person's intent to bring the action. Requires that the notice be sent certified mail, return receipt requested, or delivered by the United States Postal Service with signature confirmation service, and describe with sufficient detail the books and records being requested.

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

SECTION 13. Amends Chapter 209, Property Code, by adding Sections 209.0051, 209.0056, 209.0057, 209.0058, 209.0059, 209.00591, and 209.00592, 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, Government Code, by application of Section 551.0015 (Certain Property Owners' Associations Subject to Law), Government Code.

(b) Defines, in this section, "board meeting."

(c) Requires that regular and special board meetings be open to owners, subject to the right of the board to adjourn a board meeting and reconvene in closed executive session to consider actions involving personnel, pending or threatened litigation, contract negotiations, enforcement actions, confidential communications with the property owners' association's attorney, matters involving the invasion of privacy of individual owners, or matters that are to remain confidential by request of the affected parties and agreement of the board. Requires that, following an executive session, any decision made in the executive session be summarized orally, in general terms, without breaching the privacy of individual owners, violating any privilege, or disclosing information that was to remain confidential at the request of the affected parties. Requires that the oral summary include a general explanation of expenditures approved in executive session.

(c-1) Requires a board meeting, except for a meeting held by electronic or telephonic means under Subsection (h), to be held in a county in which all or part of the property in the subdivision is located or in a county adjacent to that county.

(d) Requires the board to keep a record of each regular or special board meeting in the form of written minutes of the meeting. 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 property owners' association's managing agent at the address appearing on the most recently filed management certificate or, if there is not a managing agent, to the board.

(e) Requires members to be given notice of the date, hour, place, and general subject of a regular or special board meeting, including a general description of

any matter to be brought up for deliberation in executive session. Requires that the notice be mailed to each property owner not later than the 10th day or earlier than the 60th day before the date of the meeting, or provided at least 72 hours before the start of the meeting by posting the notice in a certain manner or by sending the notice by e-mail to each owner who has registered an e-mail address with the association.

(f) Provides that it is an owner's duty to keep an updated e-mail address registered with the property owners' association under Subsection (e)(2)(B) (relating to receiving notice by e-mail).

(g) Provides that if the board recesses a regular or special board meeting to continue the following regular business day, the board 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 of the continuation in at least one manner prescribed by Subsection (e)(2)(A) (relating to posting the notice in a conspicuous manner) within two hours after adjourning the meeting being continued.

(h) Authorizes a board to meet by any method of communication, including electronic and telephonic, without prior notice to owners under Subsection (e), if each director may hear and be heard by every other director, or to take action by unanimous written consent to consider routine and administrative matters or a reasonably unforeseen emergency or urgent necessity that requires immediate board action. Prohibits the board from, without prior notice to owners under Subsection (e), considering or voting on fines, damage assessments, initiation of foreclosure actions, initiation of enforcement actions, excluding temporary restraining orders or violations involving a threat to health or safety, increases in assessments, levying of special assessments, appeals from a denial of architectural control approval, or a suspension of a right of a particular owner before the owner has an opportunity to attend a board meeting to present the owner's position, including any defense, on the issue. Requires that any action taken without notice to owners under Subsection (e) be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes of the next regular or special board meeting.

(i) Provides that this section applies to a meeting of a property owners' association board during the development period, as defined by Section 202.011, only if the meeting is conducted for the purpose of:

- (1) adopting or amending the governing documents, including declarations, bylaws, rules, and regulations of the association;
- (2) increasing the amount of regular assessments of the association or adopting or increasing a special assessment;
- (3) electing non-developer board members of the association or establishing a process by which those members are elected; or
- (4) changing the voting rights of members of the association.

Sec. 209.0056. NOTICE OF ELECTION OR ASSOCIATION VOTE. (a) Requires a property owners' association to give each owner of property in the property owners' association written notice of the election or vote not later than the 10th day or earlier than the 60th day before the date 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. RECOUNT 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) Authorizes any owner to, not later than the 15th day after the date of the meeting at which the election was held, require a recount of the votes. Requires that a demand for a recount be submitted in writing either by certified mail, return receipt requested, or by delivery by the United States Postal Service with signature confirmation service to the property owners' association's mailing address on the latest management certificate filed under Section 209.004; or in person to the property owners' association's managing agent as reflected on the latest management certificate filed under Section 209.004 or to the address to which absentee and proxy ballots are mailed.

(c) Requires the property owners' association to, at the expense of the owner requesting the recount, retain for the purpose of performing the recount, the services of a person qualified to tabulate votes under this subsection. Requires the association to enter into a contract for the services of a person who:

(1) 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

(2) is:

(A) a current or former:

(i) county judge;

(ii) county elections administrator;

(iii) justice of the peace; or

(iv) county voter registrar; or

(B) a person agreed on by the association and the persons requesting the recount.

(d) Requires that any recount under Subsection (b) be performed on or before the 30th day after the date of receipt of a request and payment for a recount in accordance with Subsections (b) and (c). Requires the property owners' association, if the recount changes the results of the election, to reimburse the requesting owner for the cost of the recount. Provides that any action taken by the board in the period between the initial election vote tally and the completion of the recount is not 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 209.00592 constitute written and signed ballots.

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

Sec. 209.0059. RIGHT TO VOTE. (a) Provides that a provision in a dedicatory instrument that would disqualify a property owner from voting in a property owners' 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. BOARD MEMBERSHIP. (a) Provides that, except as provided by this section, a provision in a dedicatory instrument that restricts a property owner's 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.

(c) Authorizes a declaration to provide for a developer control period during which a developer or a person designated by the developer is authorized to appoint and remove members of the property owners' association board and officers of the association.

Sec. 209.00592. VOTING; QUORUM. (a) Authorizes the voting rights of an owner to be cast or given:

- (1) in person or by proxy at a meeting of the property owners' association;
- (2) by absentee ballot in accordance with this section;
- (3) by electronic ballot in accordance with this section; or
- (4) by any method of representative or delegated voting provided by a dedicatory instrument.

(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) sets forth the required language.

(d) Defines "electronic ballot" for purposes of this section.

(e) Requires that a notice of the posting, if an electronic ballot is posted on an Internet website, 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 14. Amends Section 209.006(b), Property Code, to require that the notice 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, and inform the owner of certain information, including that the owner is authorized to request a hearing under Section 209.007 on or before the 30th day after the date notice was delivered to the owner, rather than the date the owner receives the notice.

SECTION 15. 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 accumulate against a lot or an owner, to establish a reasonable maximum fine amount for a continuing violation 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 but is prohibited from requiring payment from both the owner and a 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 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.

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

(c) 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 two years following the owner's default under the previous payment plan.

(d) 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.

(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 (a).

Sec. 209.0063. PRIORITY OF PAYMENTS. (a) Requires that a payment received by a property owners' association from the owner, except as provided by Subsection (b) or otherwise provided in writing by the property owner at the time payment is made, 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 or third party collection costs incurred by the association associated solely with assessments or any other charge that could provide the basis for foreclosure;
- (4) any attorney's fees incurred by the association that are not subject to Subdivision (3);
- (5) any fines assessed by the association; and
- (6) any other amount owed to the association.

(b) Provides that, if, at the time the property owners' association receives a payment from a property owner, the owner is in default under a payment plan entered into with the association the association is not required to apply the payment in the order of priority specified by Subsection (a), and in applying the payment, a fine assessed by the association may not be given priority over any other amount owed to the association.

Sec. 209.0064. THIRD PARTY COLLECTIONS. Requires the property owners' association, before an association turns a property owner's account information over to a third party for collection of delinquent amounts owed to the association, to provide a notice to the owner by certified mail, return receipt requested, that specifies each delinquent amount and the total amount of the payment required to make the account current; describes the options the owner has to avoid having the account turned over to a third party for collection, including information regarding the availability of a payment plan through the association; and provides a period of at least 30 days for the owner to cure the delinquency before further action is taken by the association.

SECTION 16. Amends Chapter 209, Property Code by adding Sections 209.0091, 209.0092, and 209.0093, 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 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 the rules adopted under this subsection be substantially similar to the rules adopted by the supreme court under Section 50(r), Article XVI, Texas Constitution.

(c) Provides that 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.

Sec. 209.0092. REMOVAL OR ADOPTION OF FORECLOSURE AUTHORITY. 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 67 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 property owners' association to petition the association and require a special meeting to be called for the purposes of taking a vote for the purposes of this section.

Sec. 209.0093. ASSESSMENT LIEN FILING. Provides that a lien, lien affidavit, or other instrument evidencing the nonpayment of assessments or other charges owed to a property owners' association and filed in the official public records of a county is a legal instrument affecting title to real property.

SECTION 17. Amends Section 209.010(a), Property Code, to require 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, a copy of Section 209.011. Makes nonsubstantive changes.

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

Sec. 209.014. MANDATORY ELECTION REQUIRED AFTER FAILURE TO CALL REGULAR MEETING. (a) Requires the board of the property owners' association, notwithstanding any provision in a dedicatory instrument, to call a special election to elect a new board not later than the 30th day after the date on which the board fails to call a regular meeting of the members of the association as required by a dedicatory instrument.

(b) Authorizes an owner, if the board fails to call a special election as required under Subsection (a), to demand that the election be held within a reasonable time. Requires that the demand be made in writing and sent to each board member by certified mail, return receipt requested.

(c) Authorizes an owner, if the board fails to call the special election before the 61st day after the date the owner mailed the demand under Subsection (b), to compel the property owners' association to hold the special election by initiating legal action against the association. Provides that each owner has a justiciable interest sufficient to initiate and prosecute a legal action described by this subsection.

SECTION 19. Amends Section 211.002(a), Property Code, 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 for general purposes be amended does not apply. Deletes existing text relating to 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. (a) Makes application of Section 5.006(a) and Section 202.004(c), Property Code, as amended by this Act, prospective.

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

(c) Provides that Section 202.006, Property Code, as amended by this Act, and Sections 202.011, 202.012, and 209.0059, and Section 209.00592(a), 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 an unfiled dedicatory instrument is not invalidated by Section 202.006, Property Code, as amended by this Act.

(d) Makes application Sections 207.003 and 209.005, Property Code, as amended by this Act, prospective.

(e) Makes application of Section 209.005(m), Property Code, as added by this Act, prospective.

(f) Makes application of Section 209.006, Property Code, as amended by this Act, prospective.

(g) Makes application of Section 209.0062, Property Code, 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, and Section 209.010(a), Property Code, as amended by this Act, prospective.

(j) Makes application of Section 209.0093, Property Code, as added by this Act, prospective to January 1, 2012.

(k) Provides that Section 209.014, Property Code, as added by this Act, applies to a property owners' association created before, on, or after the effective date of this Act.

SECTION 21. 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 22. Requires the Supreme Court of Texas, not later than January 1, 2012, to adopt rules of civil procedure under Section 209.0091, Property Code, as added by this Act.

SECTION 23. (a) Effective date, except as provided by Subsection (b) of this section: January 1, 2012.

(b) Effective date, Section 209.0091(b), Property Code, as added by this Act: September 1, 2011.