

BILL ANALYSIS

Senate Research Center

S.B. 699
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DIGEST

In 1839, the Texas Homestead Act was enacted to protect Texans against foreclosure and to protect their cherished private property rights. Homeowners associations (HA) first appeared in New England in the mid-1800s, and have begun to encroach on Texans' private property rights. Since 1987, HAs have been able to foreclose on property.

Currently, approximately 42 million Americans are governed by over 205,000 HAs and Texas is one of the three states where HAs are most commonly found. Citizens turn to an HA as an auxiliary to provide traditional municipal functions such as police protection and trash collection, for which the HA collects fees in the form of assessments. Additionally, detailed codes of behavior and property maintenance are enforced through fines and liens on residents' homes. However, some HAs aggressively enforce restrictions on items such as swingsets, clotheslines, and wreaths, and even ban children and pets. Community code enforcement of such ambiguous subjective provisions has been found to be arbitrary and varies according to the current HA board membership.

While Article 1396, V.T.C.S., governs HAs, there is no state agency that monitors or regulates violations of this Act. The only homeowners' remedies provided under this Act require the homeowner to employ a private attorney to pursue a grievance against an HA board. This bill creates rights, obligations, and procedures for property owners and homeowners and property owners associations and HAs with mandatory membership.

PURPOSE

As proposed, S.B. 699 creates rights, obligations, and procedures for property owners and property owners associations with mandatory membership.

RULEMAKING AUTHORITY

Rulemaking authority is granted to a property owners' association, acting through its board of directors, in SECTION 1 (Sections 207.020(7) and (13), Property Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 11, Property Code, by adding Chapter 207, as follows:

CHAPTER 207. TEXAS PLANNED COMMUNITY ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 207.001. SHORT TITLE: Texas Planned Community Act.

Sec. 207.002. DEFINITIONS. Defines "association," "board," "builder," "declarant," "declaration," "dedicatory instrument," "lienholder," "owner," "petition," "property," "real property," "lot," "tract," "property owners' association," "real property records," "regular assessment," "residential subdivision," "subdivision," "restrictions," "restrictive covenant," and "special assessment."

Sec. 207.003. APPLICATION. Provides that this chapter applies only to the following: a residential subdivision burdened by restrictions or provisions in a certain declaration; a property owners' association (POA) requiring mandatory membership; and a POA as defined by Section

207.002, Property Code, regardless of a different name in the restrictions or dedicatory instrument. Provides that this chapter does not apply to certain condominium developments.

SUBCHAPTER B. CONSTRUCTION AND ENFORCEMENT OF RESTRICTIVE COVENANTS

Sec. 207.010. RESTRICTIVE COVENANTS. Sets forth provisions regarding non-unanimous POA decisions. Sets forth the conditions under which the provisions of Sections 207.011 (b) and (c) prevail.

Sec. 207.011. AMENDMENT OR EXTENSION OF EXISTING RESTRICTIONS. Authorizes a POA to circulate and approve a petition concerning changes to existing restrictions, under certain conditions. Sets forth conditions under which a petition becomes effective. Sets forth the required majority for approval of a petition involving a residential subdivision consisting of multiple sections. Provides that the petition is binding if approved. Requires a POA circulating a petition to notify certain entities in writing of the proposed changes to existing restrictions. Sets forth notification procedures. Authorizes the signature of a single co-owner to indicate approval of multiple owners of a property. Requires a challenge to a dedicatory instrument adopted by a POA to be brought by a certain deadline. Provides that a lien recorded before the adoption of a dedicatory instrument is subject to the dedicatory instrument when the instrument is recorded in the real property records.

Sec. 207.012. TEXAS NONPROFIT ORGANIZATION. Requires the provisions of the Texas Nonprofit Corporation Act to apply to a POA that is concurrently a Texas nonprofit corporation, and provides an exception to this provision.

SUBCHAPTER C. MANAGEMENT OF THE ASSOCIATION

Sec. 207.020. POWERS OF PROPERTY OWNERS' ASSOCIATION. Sets forth the powers of the POA acting through the POA board, including rulemaking authority. Prohibits a dedicatory instrument from imposing certain limitations on POA powers to deal with the declarant. Prohibits a POA bylaw or rule from being arbitrary or capricious. Sets forth the required procedures for notifying an owner, and requirements of the notification, before a POA is authorized to take certain actions against an owner. Sets forth requirements of an owner's request for a hearing, and hearing procedures. Prohibits Subsection (d) from applying to the filing of a suit with simultaneous application for a temporary restraining order or a suit which includes foreclosure as a cause of action. Provides that suits involving foreclosure are subject to Subchapter E. Sets forth the content of required written notice from the POA to the owner, before the POA is authorized to charge the owner certain fees. Authorizes a POA to collect costs it incurs while attempting to collect money from a violating owner, under certain conditions. Prohibits attorney's fees incurred by the POA prior to owner notification from being charged to the owner, and sets forth a condition under which this restriction does not apply. Authorizes the POA to give a copy of the required notification to an occupant of the property. Requires the POA to give the owner notification of penalties by a certain deadline.

Sec. 207.021. ASSESSMENTS. Authorizes a POA acting through the POA board to impose and increase complying regular assessments. Authorizes a POA to adjust the assessment to reflect certain increases within a certain time frame. Requires the POA to take index numbers from the Consumer Price Index (CPI), in accordance with Subsections (c) and (e). Sets forth required procedures for determining the regular assessment adjustment. Requires owners to pay the greater of two amounts as the regular assessment until the next adjustment, under certain conditions. Prohibits the regular assessment from adjustment under certain conditions, and requires owners to pay the maximum fixed dollar assessment. Prohibits the POA from adjusting the regular assessment more than once annually. Sets forth provisions for determining adjustments if certain publications currently used are discontinued. Sets forth provisions authorizing the POA to assess accumulated assessments.

Sec. 207.022. ARCHITECTURAL CONTROL. Authorizes the POA board to serve as an architectural control committee with the power to approve or deny applications for proposed construction and modifications. Sets forth conditions under which the architectural control authority automatically vests in the POA. Provides that the POA retains architectural control until

the restrictions are modified to reflect otherwise, or the restrictions are terminated. Authorizes certain entities to enforce a restrictive covenant on a lot contained in the dedicatory instrument.

Sec. 207.023. MEETINGS. Requires a POA meeting to be held at least annually. Authorizes certain entities to call a special POA meeting if a dedicatory instrument fails to provide less restrictive requirements. Requires POA meetings to be open to owners, except for the board's right to adjourn and reconvene in a closed session. Requires the general nature of business to be divulged at an open meeting before its consideration in a closed session. Sets forth provisions regarding board meetings. Requires notification of POA meetings. Requires notification of board meetings. Requires the POA to inform an owner of regular and special meetings, upon written request.

Sec. 207.024. VOTING AND PROXIES. Limits one vote to multiple owners of a lot. Requires unanimous owner agreement on such a vote, unless an exception is provided, and sets forth provisions for voting by one lot owner of a multiple owner lot. Sets forth provisions regarding voting by proxy, and the void or termination procedure for the proxy. Prohibits cumulative voting.

Sec. 207.025. ASSOCIATION RECORDS. Requires the POA to keep certain records. Requires the POA to provide an owner with certain documentation, upon written request of, and at the expense of the owner, within a certain time frame. Entitles an owner to examine and copy relevant POA books and records, at the owner's expense, with the exception of an attorney's documentation relating to the POA. Requires the POA to obtain accounting services and provide copies of reports to owners. Sets forth guidelines for the financial records based on subdivision size. Requires a declarant to provide required information to the POA by the time the first lot is sold.

Sec. 207.026. MANAGEMENT CERTIFICATES. Requires a POA to officially record the counties in which portions of subdivisions are located, and sets forth information to be contained in the certificate. Sets forth required deadlines for the POA to record a management certificate. Provides that POA staff are not subject to liability for delay or failure to record a management certificate, unless such delay or failure is willful or caused by gross negligence.

SUBCHAPTER D. PROTECTION OF PURCHASERS

Sec. 207.031. RESALE CERTIFICATES. Requires an owner to provide a potential purchaser with certain information before executing a contract or conveying the lot. Sets forth requirements regarding the resale certificate's delivery to the purchaser. Requires the POA to issue a resale certificate and sets forth certificate requirements. Requires the POA to provide the resale certificate within 10 days of receiving a written request by the owner. Excludes the owner from liability for erroneous information in the certificate provided by the POA. Sets forth affidavit provisions if the POA fails to provide the required certificate. Provides that the POA is not liable for delay or failure to provide a required resale certificate, unless it willfully refuses, or is grossly negligent in its failure. Provides that failure to provide a resale certificate does not void a purchaser's deed. Provides that a purchaser is not liable for a previous owner's delinquent payments, under certain conditions. Provides that an owner is not liable to a purchaser for a POA failure or delay to provide the certificate in a timely manner. Sets forth debts, claims, and liens which a resale certificate does not affect. Provides that certain entities are not liable for undisclosed debts and claims in the certificate. Prohibits the POA from denying any statement in the certificate. Provides that an owner is not liable for erroneous certificate information. Authorizes a POA to charge a fee for the preparation and update of a resale certificate prior to a closing of a sale.

Sec. 207.032. PURCHASER'S RIGHT TO CANCEL. Sets forth conditions under which, and deadlines by which, a purchaser is authorized to cancel a contract regarding the failure to receive a resale certificate and related documents. Sets forth the required cancellation procedure and requires payments made by the purchaser before cancellation to be refunded. Prohibits a selling owner from requiring a purchaser to close prior to being furnished with certain documentation, to the extent they exist. Provides that after a sale's consummation, failure to provide a resale certificate is not grounds for rescission of the sale.

Sec. 207.033. OBLIGATIONS OF PROPERTY OWNERS. Sets forth requirements of owners

in addition to obligations of the declaration, bylaws, and rules of the POA. Requires an owner to provide the POA with certain information by the 30th day after acquisition of subdivision property, and authorizes the POA to charge the owner for costs incurred while obtaining such required information if the owner fails to provide the information by the deadline.

SUBCHAPTER E. PROPERTY OWNERS' ASSOCIATION LIEN FOR ASSESSMENTS

Sec. 207.041. DEFINITION OF ASSESSMENT. Defines "assessment."

Sec. 207.042. ESTABLISHMENT OF LIEN. Provides that a POA assessment against property is a personal obligation of the owner, and sets forth provisions regarding a continuing lien. Sets forth conditions under which a lien does not attach to property until the lot ceases to be the homestead of the owner on January 1, 2000.

Sec. 207.043. PRIORITY OF LIEN. Provides that a POA assessment lien has priority over other liens, and provides exceptions to this provision.

Sec. 207.044. PERFECTION OF LIEN. Provides that a POA lien is perfected by the enactment of this chapter or by recording a certain declaration. Provides that additional record or notice of a lien is not required, unless the declaration provides otherwise.

Sec. 207.045. POWER OF SALE. Sets forth the procedure for an owner to grant a POA a power of sale in connection with a lien. Authorizes the POA to appoint certain entities to exercise the power of sale under Section 207.047, Property Code.

Sec. 207.046. EXCHANGE OF INFORMATION. Authorizes a lien holder to provide information regarding an owner's debt, at the POA's request. Authorizes the POA to provide information regarding the property and owner's obligations, at the lien holder's request. Authorizes the POA to notify lien holders of an owner's default regarding obligations to the POA, and the POA's intent to foreclose. Requires the POA to notify certain lien holders who provide written request for notification, of POA foreclosure intentions and owner default.

Sec. 207.047. FORECLOSURE OF LIEN. Entitles a POA to foreclose its lien under power of sale created by certain provisions, and sets forth those provisions. Requires the POA to send written notice to an owner prior to foreclosure on an owner's lot, and sets forth information required to be in the notification. Limits the POA to foreclosure in the manner elected by the owner, under certain conditions. Authorizes the POA to foreclosure options available under Subsection (a) if the owner fails to provide notice of election in a timely manner. Authorizes an owner to avoid foreclosure by paying all amounts due the POA, including foreclosure-related costs incurred by the POA. Authorizes the POA to purchase foreclosed property, and subject to Section 207.049, Property Code, authorizes the POA to administer that property. Prohibits a court from taking certain actions based on insufficient purchase price at a foreclosure sale. Prohibits a POA from a foreclosing a lien based solely on fines. Provides that this section does not prevent an owner from filing certain wrongful foreclosure actions.

Sec. 207.048. NOTICE OF FORECLOSURE SALE. Requires a POA to notify an owner of redemption rights within 14 days of foreclosure sale. Sets forth the required notification procedure.

Sec. 207.049. RIGHT OF REDEMPTION. Authorizes an owner to redeem foreclosed property within 90 days of the POA mailing notification of the foreclosure sale. Prohibits a foreclosed property purchaser from transferring ownership of that property to a redeeming owner during the redemption period. Sets forth required POA payments for an owner wishing to redeem POA property. Sets forth procedures and payments for property purchased by a non-POA entity. Requires a foreclosed property purchaser to immediately execute and deliver a deed to a owner of that property. Provides that the owner's right of redemption expires after the 90-day redemption period, under certain conditions regarding failure to complete certain actions. Requires certain monies to be credited to the POA, if the POA purchases foreclosed property, and that excess proceeds be refunded to the owner, and sets forth provisions if a non-POA entity purchases the property. Provides that redeemed property remains subject to all encumbrances before foreclosure. Sets forth provisions regarding the right to occupy redeemed property.

Sec. 207.050. OTHER REMEDIES OF ASSOCIATION AND OWNER. Provides that this subchapter does not prohibit a POA or owner from exercising other lawful remedies.

Sec. 207.051. EFFECT OF TAX LIEN FORECLOSURE. Provides that foreclosure of a tax lien does not release the owner of all obligations due to the POA.

Sec. 207.052. EFFECT OF VIOLATIONS ON RIGHTS OF ACTION AND ATTORNEY'S FEES. Provides that any victim of a violator of this chapter has a claim for appropriate relief. Entitles the prevailing party to certain costs of litigation from the nonprevailing party. Authorizes the court to assess a maximum \$1,000 civil penalty against a POA that commits a violation to the owner's detriment.

SECTION 2. Effective date: January 1, 2000.
Makes application of this Act prospective.

SECTION 3. Emergency clause.