

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 699
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Committee Report (Substituted)

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, C.S.S.B. 699 creates rights, obligations, procedures, and a civil penalty for property owners and property owners associations with mandatory membership.

RULEMAKING AUTHORITY

Rulemaking authority is granted to a property owners' association in SECTION 1 (Sections 207.061(a)(8) and (15), 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 "board," "builder," "declarant," "declaration," "dedicatory instrument," "lienholder," "lot," "owner," "petition," "property owners' association," "association," "regular assessment," "residential subdivision," "subdivision," "restrictions," "restrictive covenant," and "special assessment."

Sec. 207.003. APPLICABILITY OF CHAPTER. Provides that this chapter applies only to the following: a residential subdivision subject to restrictions or provisions in a certain declaration; a property owners' association (POA) requiring or which required mandatory membership; and a POA regardless of a different name in the restrictions or dedicatory instrument. Provides that this

chapter does not apply to condominium developments governed by Chapter 82, Property Code.

SUBCHAPTER B. AMENDMENT AND EXTENSION OF RESTRICTIVE COVENANTS

Sec. 207.031. AMENDMENT OR EXTENSION OF EXISTING RESTRICTIONS. Authorizes a POA to circulate and approve a petition concerning changes to existing restrictions, under certain conditions. Provides that a 100 percent approval requirement in the dedicatory instrument prevails over Subsections (c) or (d). Authorizes the circulation of a complying petition regarding the modification, extension, or continuance of existing restrictions by a POA, 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 a petition is binding if approved. Requires a POA circulating a petition to notify certain entities in writing of the proposed changes to existing restrictions, and sets forth notification procedures. Authorizes the signature of a single co-owner to indicate approval of multiple owners of a lot. 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. 207.032. TEXAS NONPROFIT ORGANIZATION. Requires the provisions of the Texas Non-Profit 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 ASSOCIATION

Sec. 207.061. POWERS OF PROPERTY OWNERS' ASSOCIATION. Sets forth the powers of the association board, including rulemaking authority. Limits the authorization of the association board by requiring the presence of a majority of owners at a POA vote in favor of granting powers. Provides that this section does not affect POA powers granted by the dedicatory instruments. Sets forth requirements regarding meeting notification. Prohibits a dedicatory instrument amendment under certain conditions. Prohibits a POA bylaw or rule from being arbitrary or capricious. Requires the POA to follow certain notification procedures prior to taking certain actions against an owner. Sets forth provisions regarding an owner's right to a hearing including requirements of the owner and the POA during the proceeding. 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 procedures regarding the administration of collected fees. Sets forth conditions under which this section does not apply. Authorizes the POA to give a copy of required notification to an occupant of the property. Prohibits the effectiveness of a POA board rule prior to a certain deadline. Sets forth provisions for the removal of a director from office.

Sec. 207.062. ASSESSMENTS. Authorizes a POA board to impose and increase certain assessments. Sets forth authorizations and procedures for certain annual assessment increases if they are limited by the dedicatory instrument. Authorizes a vote to set regular assessments under certain conditions, and prohibits the vote meeting from occurring before a certain deadline. Provides for the authorization and required procedures regarding a mail ballot for voting on an assessment change.

Sec. 207.063. ARCHITECTURAL CONTROL COMMITTEE. Authorizes the POA board to serve as an architectural control committee unless otherwise provided by the dedicatory instrument. 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. 207.064. MEETINGS. Requires a POA to hold a general membership meeting at least twice a year. 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. Authorizes the adoption of rules by a majority vote of owners, under certain conditions. Sets forth requirements of the POA in the case of a petition signed by at least 10 percent of all owners.

Sec. 207.065. VOTING AND PROXIES. Authorizes only one of the owners to vote in person or by proxy, if a lot is owned by more than one person. 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, including protests and a situation in which the vote will not be counted. Sets forth provisions regarding voting by proxy, the submission of multiple proxies for a single lot, and the void or termination procedure for the proxy. Prohibits cumulative voting. Authorizes an owner who arrives after the meeting commences for a POA meeting to vote on issues subsequent to arrival.

Sec. 207.066. ASSOCIATION RECORDS. Requires the POA to keep certain records. Authorizes certain entities to examine and copy relevant POA books and records, at their own expense. Requires the POA to obtain accounting services and provide copies of reports to owners. Requires a declarant to provide required information to the POA by the time the first lot is sold.

Sec. 207.067. FINANCIAL REPORT; AUDIT OR REVIEW. Requires a POA to obtain an annual audit by a public accountant, unless the owners vote to have records reviewed by the POA board. Provides that this section applies regardless of dedicatory instrument provisions.

Sec. 207.068. 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 management certificate. Sets forth required deadlines for the POA to record a management certificate. Provides that POA staff are not subject to liability for recording delay or failure to record a management certificate, unless such delay or failure is wilful or caused by gross negligence.

Sec. 207.069. BOARD MEMBER EDUCATION. Prohibits a POA board member from voting prior to viewing a videotape or attending an approved class regarding obligations, rights, and laws relating to POAs. Requires a board member to provide a certain signed statement to the POA. Sets forth procedures for automatic POA board member reinstatement upon compliance with Subsection (a).

SUBCHAPTER D. PROTECTION OF PURCHASERS

Sec. 207.091. FURNISHING OF SUBDIVISION INFORMATION. Requires the POA to furnish certain copies and a resale certificate by a certain deadline. Sets forth information required to be in a resale certificate. Provides that a POA is not required to inspect property prior to furnishing or updating a resale certificate. Requires the POA to furnish required information to a specified requestor, and provides an exception. Sets forth procedures for delivery of information, and authorizes the POA to charge a fee for its services.

Sec. 207.092. SECOND REQUEST FOR INFORMATION; AFFIDAVIT OF COMPLIANCE. Authorizes certain entities to submit a second request for required information from the POA. Sets forth required delivery procedures for the second request. Authorizes the owner to provide an affidavit to the purchaser, and sets forth information in the affidavit. Sets forth provisions regarding a purchaser who receives an affidavit.

Sec. 207.093. EFFECT OF RESALE CERTIFICATE; LIABILITY. Prohibits a POA which prepares a resale certificate from denying the validity of its statements. Provides that certain entities are not liable for undisclosed amounts of money. Sets forth circumstances which automatically terminate a lien. Sets forth issues, including a POA right and lien, which the resale certificate does not affect. Provides that certain owner-related entities are not liable for certain POA delays and failures. Provides that the POA is not liable to the owner for certain delays and failures.

SUBCHAPTER E. PROPERTY OWNERS' ASSOCIATION LIEN FOR ASSESSMENTS

Sec. 207.121. DEFINITION. Defines "assessment."

Sec. 207.122. ESTABLISHMENT OF LIEN. Provides that a POA assessment against property is a personal obligation of the lot 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 lot owner on January 1, 2000.

Sec. 207.123. PRIORITY OF LIEN. Provides that a POA assessment lien has priority over other liens, and provides exceptions to this provision. Provides that the priority of liens prescribed by Subsection (a) does not affect the priority of a lien recorded before January 1, 2000.

Sec. 207.124. PERFECTION OF LIEN. Provides that a POA lien is perfected by the enactment of this chapter or by recording the restrictions if the restrictions are recorded before the enactment of this chapter. Provides that additional record or notice of a lien is not required, unless the declaration provides otherwise.

Sec. 207.125. POWER OF SALE IF NONJUDICIAL FORECLOSURE IS PERMITTED. Provides that a lot owner grants a POA a power of sale in connection with a lien by acquiring certain property. Authorizes the POA to appoint certain entities to exercise the power of sale on its behalf.

Sec. 207.126. EXCHANGE OF INFORMATION. Authorizes a lien holder to provide information regarding a lot owner's debt, at the POA's request. Authorizes the POA to provide information regarding the property and lot 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. 207.127. FORECLOSURE OF LIEN. Entitles a POA to foreclose its lien under power of sale created by certain provisions, and sets forth those provisions. Authorizes an owner to request a hearing prior to the commencement of foreclosure proceedings, and sets forth procedures regarding a hearing. Authorizes a party to a foreclosure suit to file a motion to compel mediation. 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 foreclose 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 207.129, Property Code, authorizes the POA to administer that property. Requires the POA to refund excess proceeds to the owner under certain conditions. 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 or attorney fees. Provides that this section does not prevent an owner from filing certain wrongful foreclosure actions by a POA.

Sec. 207.128. NOTICE OF FORECLOSURE SALE. Requires a POA to notify an owner of redemption rights within 30 days of foreclosure sale. Provides that the foreclosure sale is invalid if the POA fails to send notice in a timely manner. Sets forth the required notification procedure. Requires the POA to record a certain affidavit, and provides that the foreclosure sale is invalid if the POA fails to accomplish this action.

Sec. 207.129. RIGHT OF REDEMPTION AFTER FORECLOSURE. 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, excess proceeds shall 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 a lot owner's partial payment of money due to the POA prior to the expiration of the redemption period.

Sec. 207.130. REMEDIES FOR VIOLATIONS. Authorizes the owner to seek a certain court order and judgments if the POA fails to furnish required information. Provides that a POA is liable for a maximum civil penalty of \$1,000 for filing a suit against the owner in bad faith. Authorizes certain entities to seek judicial enforcement of the dedicatory instruments.

Sec. 207.131. EFFECT OF TAX LIEN FORECLOSURE. Provides that foreclosure of a tax lien does not release the owner of all obligations due the POA.

SECTION 2. (a) Effective date: January 1, 2000. Effective date for Section 207.069, Property Code: July 1, 2000.

(b) Makes application of this Act prospective.

(c) Requires the attorney general to approve certain videotapes and classes by July 1, 2000.

SECTION 3. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

Relating clause.

Amends the relating clause to provide that this bill relates to residential subdivisions that require membership in a POA, rather than residential subdivisions with mandatory membership in homeowner associations.

SECTION 1.

Amends Section 207.002, Property Code, to define "lot" and redefine "board," "builder," "declarant," "declaration," "dedicatory instrument," "lienholder," "owner," "petition," "property owner's association," "association," "regular assessment," "residential subdivision," "restrictions," "restrictive covenant," and "special assessment." Deletes text regarding association.

Amends Section 207.003, Property Code, to authorize the POA to collect assessments on subdivision property, and make nonsubstantive changes.

Amends Section 207.031, Property Code, to add text regarding approval percentages and restrictions, and make nonsubstantive and conforming changes.

Amends Section 207.032, Property Code, to make a nonsubstantive change.

Amends Section 207.061, Property Code to add text regarding rulemaking authority, POA authorization to exercise its powers, required notice, an owner's hearing request, the payment of attorney fees, and rule effectiveness. Makes conforming and nonsubstantive changes.

Amends Section 207.062, Property Code, to add text regarding a dedicatory instrument and a vote to set or change regular assessments.

Amends Section 207.063, Property Code, to revise the heading. Makes nonsubstantive changes.

Amends Section 207.064, Property Code, to add text regarding a general membership meeting, a required percentage of property owners, and rulemaking authority for a majority of members present at a certain meeting. Makes nonsubstantive changes.

Amends Section 207.065, Property Code, to add text regarding a situation when a vote will not

be counted, multiple proxy submission, and a tardy arrival at a POA meeting. Makes nonsubstantive and conforming changes.

Amends Section 207.066, Property Code, to add text regarding attorney invoices and copies of POA records. Makes nonsubstantive changes.

Adds Section 207.067, Property Code, to add text regarding a financial report, audit, or review.

Amends Section 207.068, Property Code, to make nonsubstantive changes.

Adds Section 207.069, Property Code, to add text regarding board member education.

Amends Section 207.091, Property Code, to add text regarding the furnishing of subdivision information. Makes nonsubstantive and conforming changes.

Adds Section 207.092, Property Code, to add text regarding a second request for information and an affidavit of compliance.

Adds Section 207.093, Property Code, to add text regarding the effect of a resale certificate and liability associated with this document.

Amends Section 207.121, Property Code, to redefine “assessment.”

Amends Section 207.122, Property Code, to make nonsubstantive and conforming changes.

Amends Section 207.123, Property Code, to add text regarding the priority of liens, and to make nonsubstantive changes.

Amends Section 207.124, Property Code, to make nonsubstantive changes.

Amends Section 207.125, Property Code, to create a new heading. Adds text regarding a dedicatory instrument.

Amends Section 207.126, Property Code, to make nonsubstantive changes.

Amends Section 207.127, Property Code, to add text regarding a dedicatory instrument, foreclosure of home equity, required notification regarding a foreclosure proceeding, request for a hearing, filing a suit to compel mediation, required notification regarding a nonjudicial foreclosure, manner of foreclosure, avoidance of foreclosure, a bid to purchase property, and the refund of excess proceeds to an owner. Makes nonsubstantive changes.

Amends Section 207.128, Property Code, to add text regarding notice of a foreclosure sale.

Amends Section 207.129, Property Code, to create a new heading, and add text regarding partial payments. Makes a conforming and nonsubstantive changes.

Amends Section 207.130, Property Code, to add text regarding remedies for violations.

Amends Section 207.131, Property Code, to delete text regarding the effect of violations on rights of action and attorney’s fees.

SECTION 2.

Amends the effective date to provide that Section 207.069, Property Code, takes effect July 1, 2000. Requires the attorney general to make certain approvals by July 1, 2000.