

BILL ANALYSIS

Senate Research Center

S.B. 949
By: Lindsay
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DIGEST AND PURPOSE

Currently, a general framework exists for property owners' associations to follow with regard to the operations of associations and their boards. However, the statutes are vague or inadequate with regard to providing consumer protections to property owners. As proposed, S.B. 949 provides a number of protections for consumers pertaining to the collection of dues and fees and the enforcement of deed restrictions by association boards, including giving county attorneys in certain populous counties the authority to enforce state law and neighborhood bylaws; providing for open meetings and open records rules; limiting foreclosures; allowing redemption of property up to two years following foreclosure; disallowing attorney fees accrued in the first year following a restriction violation or dues arrearage; limiting charges to home purchasers for documents and transfers of information; limiting the power of Harris County association boards to raise fees without a vote of the owners; prohibiting attorneys from directly billing and collecting fees from owners; removing the provision that permits associations to charge \$200 a day in fines; and allowing the courts the discretion to award attorney fees and court costs to owners.

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 Chapter 51, Property Code, by adding Section 51.009, as follows:

Sec. 51.009. LIEN OF PROPERTY OWNERS' ASSOCIATION. (a) Defines "dedicatory instrument" and "property owners' association."

(b) Provides that notwithstanding the provisions of a dedicatory instrument, a property owners' association's lien on real property that arises under a dedicatory instrument governing the property does not have priority over a purchase money lien on the property arising from a mortgage insured by the Federal Housing Administration, the Veterans Administration, or a successor to one of those agencies.

SECTION 2. Amends the heading of Chapter 203, Property Code, to read as follows:

CHAPTER 203. ENFORCEMENT OF PROVISIONS RELATING TO LAND USE
RESTRICTIONS OR PROPERTY OWNERS' ASSOCIATIONS IN CERTAIN COUNTIES

SECTION 3. Amends Section 203.003, Property Code, as follows:

Sec. 203.003. New heading: ENFORCEMENT AUTHORITY OF COUNTY
ATTORNEY. (a) Authorizes the county attorney to sue in a court of competent jurisdiction to enjoin or abate a violation of this title by a property owners' association or owner or a violation of a restriction contained or incorporated by reference in a properly recorded plan, plat, replat,

or other instrument affecting a real property subdivision located in the county, including architectural control guidelines and a property owners' association's articles of incorporation or bylaws, regardless of the date on which the instrument was recorded and recover from a property owners' association that violates this title an administrative penalty of \$1,000 for each violation.

(b) No change to this subsection.

SECTION 4. Amends Section 204.010, Property Code, by amending Subsection (a) and adding Subsections (c), (d), and (e), as follows:

(a) Deletes certain powers previously granted to a property owners' association acting through its board of directors or trustees and renumbers remaining subdivisions.

(c) Authorizes a property owners' association to be granted certain powers not provided by the association's articles of incorporation or bylaws if the association follows the petition procedures prescribed by Section 204.005 for adding to or modifying existing restrictions, except that the approval requirements of Section 204.005(b)(1) are satisfied if the owners of at least 50 percent of the real property interests plus one owner of real property interests, excluding lienholders, contract purchasers, and the owners of mineral interests, approve the petition.

(d) Prohibits a property owners' association from exercising a power granted by petition under Subsection (c) before the petition is filed as a dedicatory instrument under Section 204.005(b).

(e) Requires any change to an existing architectural control guideline, notwithstanding Subsection (c), to be made by petition under Section 204.005.

SECTION 5. Amends the heading for Section 207.003, Property Code, to read as follows:

Sec. 207.003. DELIVERY OF SUBDIVISION INFORMATION TO OWNER OR BUYER.

SECTION 6. Amends Section 207.003(c), Property Code, to authorize a property owners' association or its representative to charge a reasonable fee to assemble, copy, and deliver the information required by this section but prohibits the association or its representative from charging more than 20 cents for each letter-sized or legal-sized page or more than a total of \$75, rather than a reasonable fee to prepare and deliver an update of a resale certificate.

SECTION 7. Amends Section 209.005, Property Code, as follows:

Sec. 209.005. ASSOCIATION RECORDS. (a) Requires a property owners' association to make the books and records of the association, including financial records, available to an owner for inspection at its principal office on request.

(b) Requires the property owners' association or its representative, if the requested information is not available to examine at the time of the request because it is in active use or in storage, to certify this fact in writing to the requestor and set a date and time that is not later than the fifth business day after the date the association receives the request when the information will be available for inspection.

(c) Prohibits the property owners' association or its representative from questioning the basis for the requestor's request for information but authorizes the association or representative to verify that the requestor is an owner.

(d) Authorizes a property owners' association or its representative to charge a reasonable fee for providing copies of documents under this section but prohibits charging more than 20 cents per letter-sized or legal-sized page. Prohibits the charge, for a request of 50 or fewer pages, from including costs of materials, labor, or overhead, other than photocopying costs.

(e) Requires the property owners' association or its representative to treat all requests for information uniformly.

(f) Requires the property owners' association or its representative to provide all reasonable comfort and facility for the full exercise of the right granted by this section.

(g) Provides that this section does not authorize a requestor to remove an original of a property owners' association record from the location where it is kept.

(h) Authorizes an action for a declaratory judgment or injunctive relief to be brought in accordance with this section against a property owners' association that violates this chapter.

(i) Authorizes the county attorney, if a property owners' association fails to deliver the information required under this section, to seek a court order directing the property owners' association to furnish the required information. Authorizes the county attorney, in an action under this section, to also seek a judgment against the property owners' association for court costs and attorney's fees.

(j) Requires this section to be liberally construed in favor of granting a request for information. Deletes existing Subsection(b) regarding an attorney's records relating to the association.

SECTION 8. Amends Chapter 209, Property Code, by adding Sections 209.0051 and 209.0052, as follows:

Sec. 209.0051. AVAILABILITY OF ANNUAL BUDGET PROPOSALS. Requires the association, not later than the 10th business day before the date of a property owners' association meeting to approve an annual budget, to post a written copy of the proposed budget on a bulletin board at a place convenient to the public at the meeting location of the board.

Sec. 209.0052. ASSOCIATION MEETINGS. (a) Requires a property owners' association to meet at least once each year.

(b) Requires a meeting of a property owners' association and its board to be conducted as provided by the bylaws. Requires meetings, if the bylaws do not provide a manner for conducting meetings, to be open to the owners, subject to the right of the board to adjourn a meeting of the board and reconvene in closed executive session to consider actions involving personnel, pending litigation, contract negotiations, enforcement actions, 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 the general nature of any business to be considered in executive session to first be announced at the open meeting.

(c) Requires notice of a meeting of the property owners' association and board to be given as provided by the bylaws. Requires the purpose for which the meeting is called, if the bylaws do not provide for notice, written or printed notice stating the place, day, and time of a meeting of the association, and, if the meeting is a special meeting, to be

posted on a bulletin board at a place convenient to the public at the meeting location of the board not later than the 10th day before the date of the meeting and to be delivered not later than the 10th day or earlier than the 60th day before the date of the meeting to each member entitled to vote at the meeting.

(d) Authorizes notice under Subsection (c) to be delivered in person, by facsimile transmission, or by mail, as provided by the president, secretary, or officers or persons calling the meeting. Provides that if mailed, the notice is considered to be delivered when deposited in the United States mail addressed to the member at the member's address as it appears on the records of the corporation, with postage paid. Provides that if transmitted by facsimile, notice is considered delivered when the facsimile is successfully transmitted.

SECTION 9. Amends Section 209.006, Property Code, as follows:

Sec. 209.006. NOTICE REQUIRED BEFORE ENFORCEMENT ACTION. (a) Requires the association or its agent, before a property owners' association may suspend an owner's right to use a common area, file a suit against an owner, charge an owner for property damage, or levy a fine for a violation of the restrictions, architectural control guidelines, bylaws, or rules of the association, to give written notice to the owner by certified mail, return receipt requested.

(b) Requires the notice to meet certain guidelines.

SECTION 10. Amends Section 209.007(c), Property Code, to require that a hearing be postponed upon request by the board or an owner, for a period of not more than 10 days unless the association and the owner agree in writing to a longer period. Authorizes additional postponements to be granted by agreement of the parties.

SECTION 11. Amends Chapter 209, Property Code, by adding Section 209.0071, as follows:

Sec. 209.0071. PAYMENT OF CERTAIN ASSESSMENTS. (a) Requires a property owners' association to adopt guidelines under which an owner who is unable to pay a delinquent regular or special assessment in full may, at the owner's request, make partial payments of the delinquent assessments until the delinquency is cured.

(b) Authorizes guidelines adopted under Subsection (a) to provide for the payment of a reasonable amount of interest on unpaid assessments, not to exceed 10 percent interest annually. Authorizes interest charged under this subsection to accrue from the time the assessment becomes delinquent.

(c) Authorizes a payment plan under this section to require an owner to make payments to the property owners' association weekly, biweekly, semimonthly, monthly, or as otherwise agreed by the association and the owner.

(d) Authorizes a property owners' association, before agreeing to allow an owner to make payments under this section, to require an owner to provide substantive proof of financial hardship.

(e) Provides that a property owners' association is not required to agree to a payment plan that does not meet certain criteria.

SECTION 12. Amends Section 209.008, Property Code, by amending Subsection (b) and adding Subsection (h), as follows:

(b) Provides that an owner is not liable for attorney's fees incurred by the association relating

to a matter involving a violation of the association's restrictions, bylaws, rules, or architectural control guidelines, including a violation involving overdue assessments, before the first anniversary of the date on which the violation occurred or arrearage accrued.

(h) Authorizes a court to assess costs of litigation and reasonable attorney's fees incurred by a plaintiff or defendant who substantially prevails in an action involving a property owners' association, including an action by or against a management company or attorney representing a property owners' association. Requires the court, in exercising its discretion under this subsection, to consider whether the action was brought, defended, or conducted in good faith.

SECTION 13. Amends Section 209.009, Property Code, as follows:

Sec. 209.009. FORECLOSURE SALE PROHIBITED IN CERTAIN CIRCUMSTANCES. (a) Prohibits a property owners' association from foreclosing a property owners' association's assessment lien unless certain conditions exist.

(b) Authorizes a debt described by Subsection (a)(1) to include certain assessments, costs, and fees. .

SECTION 14. Amends Chapter 209, Property Code, by adding Section 209.0091, as follows:

Sec. 209.0091. JUDICIAL FORECLOSURE REQUIRED. Prohibits a property owners' association from foreclosing a property owners' association's assessment lien unless the association first obtains a court judgment foreclosing the lien and providing for issuance of an order of sale.

SECTION 15. Amends Section 209.011, Property Code, by amending Subsections (b) and (m) and adding Subsection (q), as follows:

(b) Authorizes the owner of property in a residential subdivision to redeem the property from any purchaser at a sale foreclosing a property owners' association's assessment lien not later than the second anniversary of, rather than the 180th day after, the date the association mails written notice of the sale to the owner under Section 209.010.

(m) Provides that if a third party foreclosure purchaser does not provide the person's current mailing address as required under Subsection (q) and a lot owner is unable to contact the purchaser, the redemption period is extended by one day for each day the required notification of a change in address is not provided.

(q) Requires a person, other than the property owners' association, who purchases the property at the foreclosure sale to provide the association with the person's mailing address not later than the 10th business day after the sale and notify the association of any change in the person's mailing address during the redemption period not later than the 10th business day after the date the change becomes effective.

SECTION 16. Amends Chapter 209, Property Code, by adding Sections 209.012 through 209.015, as follows:

Sec. 209.012. CONTRACT WITH MANAGEMENT COMPANY. (a) Prohibits a property owners' association or a person in privity with a property owners' association, except as provided by Subsection (b), from contracting with or compensating any person to manage, enforce, or represent the association in connection with enforcing restrictions, bylaws, rules, or guidelines.

(b) Authorizes a property owners' association or a person in privity with a property

owners' association, if expressly described in a budget approved by the board, to pay a management company a flat fee plus actual postage costs for enforcing all restrictions, bylaws, rules, or guidelines, including payment of assessments, for the budget period.

Sec. 209.013. CONFLICTS OF INTEREST. Prohibits a person who is a member of the board of a property owners' association or related within the third degree by consanguinity or within the second degree by affinity to a member of the board from being compensated for providing legal representation or management services to the association.

Sec. 209.014. SUSPENSION OF VOTING PRIVILEGES. Prohibits a property owners' association from suspending an owner's voting privileges in the association because of the owner's overdue assessments or failure to cure a violation of a deed restriction unless certain conditions apply.

Sec. 209.015. FEE FOR TRANSFER OF CERTAIN INFORMATION. Prohibits a property owners' association or its representative from charging a homebuyer more than \$75 for the transfer of personal and contact information in connection with the purchase of a home in the subdivision.

SECTION 17. Amends Chapter 82C, Government Code, by adding Section 82.067, as follows:

Sec. 82.067. DEFERRED BILLING FOR CERTAIN LEGAL SERVICES AND CERTAIN COLLECTION PRACTICES PROHIBITED. (a) Defines "property owners' association."

(b) Prohibits an attorney who provides legal services to a property owners' association or management company in matters involving collections of mandatory or special assessments or violations of the association's restrictions, bylaws, or rules from collecting the attorney's fees for those services directly from a homeowner from whom the association or company has the right to collect the attorney's fees.

SECTION 18. Repealer: Section 5.006(c) (Attorney's Fee in Breach of Restrictive Covenant Action), Section 202.004 (Enforcement of Restrictive Covenants), and Section 209.008(d), (f), and (g) (Attorney's Fees), Property Code.

SECTION 19. (a) Provides that Section 51.009, Property Code, as added by this Act, applies to a property owners' association's lien that attaches to real property before, on, or after the effective date of this Act.

(b) Makes application of Section 203.003, Property Code, as amended by this Act, prospective.

(c) Makes application of Section 204.010, Property Code, as amended by this Act, prospective.

(d) Makes application of Section 209.012, Property Code, as added by this Act, prospective.

(e) Provides that Section 209.013, Property Code, as added by this Act, does not apply to legal representation or management services provided under a contract entered into before the effective date of this Act.

(f) Makes application of Section 209.014, Property Code, as added by this Act, prospective.

(g) Makes application of Section 209.0051, Property Code, as added by this Act, prospective.

- (h) Makes application of Section 209.006, Property Code, as amended by this Act, prospective.
- (i) Makes application of Section 209.0071, Property Code, as added by this Act, prospective.
- (j) Makes application of Section 209.008(b), Property Code, as amended by this Act, prospective.
- (k) Makes application of Section 209.008(h), Property Code, as added by this Act, prospective.
- (l) Makes application of Section 209.009 and Sections 209.011(b) and (m), Property Code, as amended by this Act, and Section 209.0091 and Section 209.011(q), Property Code, as added by this Act, prospective.
- (m) Provides that the repeal of Section 5.006, Property Code, by this Act applies only to the award of attorney's fees in an action filed on or after the effective date of this Act.
- (n) Provides that the repeal of Section 202.004(c), Property Code, by this Act applies only to civil damages assessed for a violation of a restrictive covenant that occurs on or after the effective date of this Act.

SECTION 20. Effective date: September 1, 2003.