

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 949
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Intergovernmental Relations
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Committee Report (Substituted)

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. C.S.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 Section 5.006(a), Property Code, to require the court, except as provided by Section 209.008(f), in an action based on breach of a restrictive covenant pertaining to real property, to allow to a prevailing party who asserted the action reasonable attorney's fees in addition to the party's costs and claims.

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 an 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, regardless of the date on which the instrument was recorded and recover from a property owners' association or an owner that violates this title a reasonable penalty as determined by the court not to exceed a certain amount.

(b) No change to this subsection.

SECTION 4. Amends Section 204.010, Property Code, by amending Subsection (a) and adding Subsections (c) and (d), 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 the association, if the restrictions or the association's articles of incorporation or bylaws do not enumerate a certain power, to obtain the power by following 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 a majority of the owners of real property in the subdivision 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).

SECTION 5. 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, reasonably available to an owner in accordance with Section B, Article 2.23, Texas Non-Profit Corporation Act (Article 1396-2.23, V.T.C.S.).

(b) Provides that records of an owner's payment or nonpayment of regular assessments and special assessments, fees, fines, or any other sums that have been charged to an owner are not subject to inspection by any other owner who is not a member of the association's board or an owner's representative or to production in a legal proceeding, unless a certain condition exists.

(c) Provides that salary or payroll records of an association employee that disclose the employee's amount of salary or income are not subject to inspection by an owner who is not a member of the association's board or an owner's representative unless a court orders the inspection.

(d) Requires the association to retain certain records.

(e) Requires the property owners' association or its representative, if information requested under this section is not available for examination at the time of the request because it is in active use or in storage or if the association is unable to make the information available immediately, to certify this fact in writing to the requestor and set a date and time on which the information will be available for inspection that is not later than the 15th business day after the date the association receives the request.

(f) Provides that any unauthorized removal of an original property owners' association record from the location where it is kept is a violation of this title.

(g) Requires this section to be liberally construed in favor of granting a request for information.

(h) Provides that this section does not affect the scope or availability of the attorney-client privilege.

(i) Provides that this section does not apply to a property owner's association that is subject to Chapter 552, Government Code.

SECTION 6. 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 budget is approved, to be available for inspection as provided by Section 209.005.

Sec. 209.0052. ASSOCIATION MEETINGS. (a) Requires a property owners' association to meet at least once each year. Authorizes a special meeting of the association, unless the declaration, restrictions, bylaws, or articles of incorporation provide otherwise, to be called by a majority of the board or by owners having at least 10 percent of the votes in the association.

(b) Requires meetings of the association and the board 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 an owner, 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 regular or special meeting of the association to be given as provided by the restrictions, bylaws, or articles of incorporation or, if those instruments do not provide for notice, requires notice to be given to each owner in the same manner in which notice is given to members of a nonprofit corporation under Section A, Article 2.11, Texas Non-Profit Corporation Act (Article 1396-2.11, V.T.C.S.).

(d) Requires notice of a meeting of the board to be given as provided by the restrictions, bylaws, or articles of incorporation or, if those instruments do not provide for notice, requires notice to be given to each board member in the same manner in which notice is given to members of the board of a nonprofit corporation under Section B, Article 2.19, Texas Non-Profit Corporation Act (Article 1396-2.19, V.T.C.S.).

(e) Requires an association, on the written request of an owner, to inform the owner of the time and place of the next regular or special meeting of the association or board. Requires the association, if the association representative to whom the request is made does not know the time and place of the meeting, to promptly obtain the information and disclose it to the owner or inform the owner where the information may be obtained.

(f) Provides that this section does not apply to an association subject to Chapter 551, Government Code.

SECTION 7. 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 or 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 8. 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 9. Amends Section 209.008, Property Code, as follows:

Sec. 209.008. ATTORNEY'S FEES. (a) Makes nonsubstantive changes.

(b) Provides that an owner is not liable for attorney's fees incurred by the association relating to a matter described by the notice under Section 209.006 if the attorney's fees are incurred before the 60th day after the date the owner receives the notice.

(c) Makes nonsubstantive changes.

(d) Makes nonsubstantive changes.

(e) Makes nonsubstantive changes.

(f) Authorizes a court to assess costs of litigation and reasonable attorney's fees incurred by a plaintiff or defendant who 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.

(g) Prohibits an attorney from entering into a contract or agreement to represent a property owners' association in a matter involving collection of delinquent regular or special assessments under which legal fees are charged to an owner's assessment account and payment of the fees is delayed until after the account is collected from the owner or the occurrence of another specified event. Prohibits an attorney who provides services described by this subsection from collecting payment of legal fees for those services directly from the homeowner from whom the association has the right to collect the legal fees or defer payment of the fees until the association receives payment from the homeowner. Provides that this subsection does not prohibit an attorney from collecting a debt, including legal fees, and forwarding the amount collected to the association.

(h) Provides that an owner is not liable for attorney's fees incurred by the property owners' association relating to a matter involving collections of mandatory or special assessments if the attorney's fees are incurred before the 180th day after the assessment is delinquent.

SECTION 10. 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 the debt for which the lien secures payment includes a mandatory regular or special assessment.

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

SECTION 11. 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 12. Amends Section 209, Property Code, by adding Sections 209.012, 209.013, and 209.014, as follows:

Sec. 209.012. ENFORCEMENT BY MANAGEMENT COMPANY. (a) Authorizes a property owners' association, if expressly provided in a budget approved by the board, to

pay a management company only a flat fee plus actual postage costs for the enforcement of all restrictions, bylaws, rules, or guidelines not involving the payment of assessments during 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.

SECTION 13. Repealer: Section 202.004(c) (Enforcement of Restrictive Covenants).

SECTION 14. (a) Makes application of Section 203.003, Property Code, as amended by this Act, prospective.

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

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

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

(e) Makes application of Section 209.008(b), Property Code, as amended by this Act, except as provided by Subsection (f), prospective.

(f) Makes application of Section 209.008(f), Property Code, as added by this Act, prospective.

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

(h) Makes application of Section 209.013, Property Code, as added by this Act, prospective.

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

(j) Makes application of Section 209.009, Property Code, as amended by this Act, and Section 209.0091, Property Code, as added by this Act, prospective.

SECTION 15. Effective date: September 1, 2003.