

## CHAPTER 309

## H.B. No. 2256

An Act relating to the extension of the term of, creation of, addition to, or modification of restrictive covenants applicable to certain real estate subdivisions.

*Be it enacted by the Legislature of the State of Texas:*

**SECTION 1.** The Property Code is amended by adding Title 11 to read as follows:

**TITLE 11. RESTRICTIVE COVENANTS**

**CHAPTER 201. RESTRICTIVE COVENANTS APPLICABLE TO CERTAIN SUBDIVISIONS**

*Sec. 201.001. APPLICATION.* This chapter applies to a residential real estate subdivision that is not subject to a comprehensive zoning ordinance and that is located in whole or in part within a city, town, or village, or within the extraterritorial jurisdiction of a city, town, or village. However, this chapter does not apply to a subdivision if, by the express terms of the instrument creating the restrictions, some or all of the restrictions affecting the real property within the subdivision provide:

(1) for automatic extensions of the term of the restrictions for an indefinite number of successive specified periods subject to a right of modification, waiver, or termination, in whole or in part, by a specified percentage of less than 75 percent of the owners of real property interests in the subdivision, as set forth in the instrument creating the restrictions; or

(2) for an indefinite number of successive extensions of the term of the restrictions, or for additions to or modification of the restrictions, by written and filed agreement of a specified percentage of less than 75 percent of the owners of real property interests in the subdivision, as authorized by the instrument creating the restrictions.

*Sec. 201.002. FINDINGS AND PURPOSE.* (a) The legislature finds that:

(1) the pending expiration of property restrictions applicable to real estate subdivisions in municipalities and in the extraterritorial jurisdiction area of municipalities where there is no zoning creates uncertainty in living conditions and discourages investments in affected subdivisions;

(2) owners of land in affected subdivisions are reluctant or unable to provide proper maintenance, upkeep, and repairs of structures because of the pending expiration of the restrictions;

(3) financial institutions cannot or will not lend money for investments, maintenance, upkeep, or repairs in affected subdivisions;

(4) these conditions cause dilapidation of housing and other structures and cause unhealthful and unsanitary conditions in affected subdivisions, contrary to the health, safety, and welfare of the citizens; and

(5) the existence of racial covenants in subdivisions, regardless of their unenforceability, is offensive, repugnant, and harmful to members of racial or ethnic minority groups, and public policy requires that these covenants be deleted.

(b) The purpose of this chapter is to provide a procedure for extending the term of, creation of, additions to, or modification of restrictions and to provide for the removal of any restriction or other provision relating to race, religion, or national origin that is void and unenforceable under either the United States Constitution or Section 5.026.

*Sec. 201.003. DEFINITIONS.* In this chapter:

(1) "Restrictions" means one or more restrictive covenants contained or incorporated by reference in a properly recorded map, plat, replat, declaration, or other instrument filed in the county real property records, map records, or deed records.

(2) "Residential real estate subdivision" or "subdivision" means:

(A) all land encompassed within one or more maps or plats of land that is divided into two or more parts if the maps or plats cover land within a city, town, or village, or within the extraterritorial jurisdiction of a city, town, or village and are recorded in the deed, map, or real property records of a county, and the land encompassed within the maps or plats is or was burdened by restrictions limiting all or at least 75 percent of the land area covered by the map or plat, excluding streets and public areas, to residential use only; or

(B) all land located within a city, town, or village, or within the extraterritorial jurisdiction of a city, town, or village that has been divided into two or more parts and that is or was burdened by restrictions limiting at least 75 percent of the land area burdened by

restrictions, excluding streets and public areas, to residential use only, if the instrument or instruments creating the restrictions are recorded in the deed or real property records of a county.

(3) "Owner" means an individual, fiduciary, partnership, joint venture, corporation, association, or other entity that owns record title to real property in a subdivision, or the personal representative of an individual who owns record title to subdivision property.

(4) "Petition" means one or more instruments, however designated or entitled, by which one or more of the purposes authorized by this chapter are sought to be accomplished.

(5) "Real property records" means the applicable records of a county clerk in which conveyances of real property are recorded.

(6) "Lienholder" means an individual, corporation, financial institution, or other entity that holds a vendor's or deed of trust lien secured by land within the subdivision.

(7) "Petition committee" or "committee" means a group of three or more owners who file with the county clerk a notice as required by Section 201.005(a) and who prepare and circulate a petition as allowed under this chapter.

**Sec. 201.004. EXTENSION, CREATION, MODIFICATION OF, OR ADDITION TO, RESTRICTIONS.** (a) A petition may be filed under this chapter to extend an unexpired restriction, to create a restriction, or to add to or modify an existing restriction.

(b) A petition is not effective to extend, create, add to, or modify a restriction unless the petition is filed with the county clerk's office in the county where the subdivision is located before the second anniversary of the date the committee files with the county clerk the notice required by Section 201.005(a).

(c) If a petition meeting the requirements of this chapter is filed with the county clerk within the required period, the provisions of the petition extending, creating, adding to, or modifying a restriction apply to and burden all of the property in the subdivision except property excluded under Section 201.009. If a petition contains provisions extending the term of a restriction, the petition may provide for an initial extension period of not more than 10 years and additional automatic extensions of the term for not more than 10 years each. The extension, creation, or modification of, or addition to, a restriction takes effect on the later of the dates the petition is filed with the county clerk or a date specified in the petition.

**Sec. 201.005. PETITION COMMITTEE.** (a) At least three owners may form a petition committee. The committee shall file written notice of its formation with the county clerk of each county in which the subdivision is located.

(b) A notice filed under this chapter must contain:

(1) a statement that a petition committee has been formed for the extension of the term of, creation of, addition to, or modification of one or more restrictions;

(2) the name and residential address of each member of the committee;

(3) the name of the subdivision to which the restrictions apply and a reference to the real property records or map or plat records where the instrument or instruments that contain the restrictions sought to be extended, added to, or modified are recorded or, if the creation of a restriction is proposed, a reference to the place where the map or other document, if any, is recorded;

(4) a general statement of the matters to be included in the petition;

(5) if the creation of a restriction for a subdivision is proposed, a copy of the proposed petition creating the restriction; and

(6) if the amendment or modification of a restriction is proposed, a copy of the proposed instrument creating the amendment or modification, containing the original restriction that is affected and indicating by appropriate deletion and insertion the change to the restriction that is proposed to be amended or modified.

(c) Each member of the committee must sign and acknowledge the notice before a notary or other official authorized to take acknowledgments.

(d) The county clerk shall enter on the notice the date it is filed and record it in the real property records of the county.

(e) An individual's membership on the committee terminates if the individual ceases to own land in the subdivision. If a vacancy on the committee occurs, either because a member ceases to own land in the subdivision or because a member resigns or dies, a majority of the remaining members may appoint as a successor an individual who owns land in the subdivision and who consents to serve as a committee member. If one or more successor committee members are appointed, the surviving committee members shall file written notice of the name and address of each successor committee member with the county clerk not later than the 10th day after the date of the appointment.

(f) After August 31, 1987, only one committee in a subdivision may file to operate under this chapter at one time. Before September 1, 1987, there is no limit on the number of committees in a subdivision with power to act under this chapter at one time. If more than one committee in a subdivision files a notice after August 31, 1987, the committee that files its notice first is the committee with the power to act. A committee that does not effect a successful petition within the time provided by this chapter is dissolved by operation of law. Except as provided by Section 201.006(c), a new committee for that subdivision may not be validly created under this chapter before the fifth anniversary of the date of dissolution of the previous committee. A petition circulated by a dissolved committee is ineffective for any of the purposes of this chapter.

**Sec. 201.006. PETITION PROCEDURE.** (a) A petition may be circulated, signed, acknowledged, and filed by or on behalf of owners at any time during the circulating committee's existence. The petition must conform to the requirements of Section 201.007.

(b) If the notice required by Section 201.005(a) is filed after August 31, 1987, the petition may be filed not later than one year after the date on which the notice is filed. Except as provided by Subsection (c), if the notice required by Section 201.005(a) is filed before September 1, 1987, the petition may be filed not later than August 31, 1987. In any event, the petition must be signed and acknowledged by owners who own, in the aggregate:

(1) at least 75 percent of the total number of lots in the subdivision;

(2) at least 75 percent of the total number of separately owned parcels, tracts, or building sites in the subdivision, whether or not the parcels, tracts, or building sites contain part or all of one or more platted lots or combinations of lots; or

(3) at least 75 percent of the square footage within all of the lots in the subdivision, excluding any area dedicated or used exclusively for roadways or public purposes or by utilities.

(c) If, after August 31, 1986, a court of competent jurisdiction holds any provision of a restrictive covenant affecting a subdivision to which this chapter applies invalid, a petition committee authorized by this chapter may file a petition not later than one year after the date on which the judgment is rendered. For this purpose, the five-year limitation period in Section 201.005(f) does not apply.

(d) The petition is effective if signed and acknowledged by the required number of owners of any one of the classifications of property specified in Subsection (b) and is filed as provided by Subsection (f).

(e) After an owner signs a petition, the fact that the owner subsequently conveys the land in the subdivision does not affect the previous signing of the petition.

(f) The petition must be filed with the county clerk of each county in which the subdivision is located.

**Sec. 201.007. CONTENTS OF PETITION.** (a) A petition filed under this chapter must contain or be supplemented by one or more instruments containing:

(1) the name of the subdivision;

(2) a reference to the real property records or map or plat records where the instrument or instruments that contain any restriction sought to be extended, added to, or modified are recorded or, in the case of the creation of a restriction, a reference to the place where the map or other document identifying the subdivision is recorded;

(3) a verbatim statement of any provisions for extension of the term of, or addition to, the restriction;

(4) if a restriction is being amended or modified, the text of the proposed instrument creating the amendment or modification, together with a comparison of the original restriction that is affected indicating by appropriate deletion and insertion the change to the restriction that is proposed to be amended or modified;

(5) if a restriction is being created, the text of the proposed instrument creating the restriction;

(6) original acknowledged signatures of the required number of owners as provided by Section 201.006;

(7) alternate boxes, clearly identified in a conspicuous manner next to the place for signing the petition, that enable each record owner to mark the appropriate box to show the exercise of the owner's option of either including or excluding the owner's property from being burdened by the restrictions being extended, created, added to, or modified;

(8) a statement that owners who do not sign the petition must file suit under Section 201.010 before the 181st day after the date on which the certificate called for by Section 201.008(e) is filed in order to challenge the procedures followed in extending, creating, adding to, or modifying a restriction; and

(9) a statement that owners who do not sign the petition may delete their property from the operation of the extended, created, added to, or modified restriction by filing a statement

described in the fourth listed category in Section 201.009(b) before one year after the date on which the owner receives actual notice of the filing of the petition authorized by this chapter.

(b) If a restriction being added to, modified, or extended contains any provision relating to race, religion, or national origin that is void and unenforceable under either the United States Constitution or Section 5.026, the void and unenforceable restriction shall, by the provisions of the petition, be declared to be deleted from the restriction as if the provision had never been contained in the restriction.

(c) Each petition filed under this chapter must contain an assertion from the signing owners that they own record title to property within the subdivision, and the legal description and street address of the property of each signing owner must be shown beside or above the signature. If there is more than one record owner of a tract, each record owner must sign the petition before the property can be counted as a part of the number required by Section 201.006.

Sec. 201.008. NOTICE AND CERTIFICATE OF COMPLIANCE. (a) Not later than the 60th day after the date on which a petition that meets the requirements of this chapter is filed, the committee shall give notice directed to all persons who then are record owners of property in the subdivision. The notice must contain:

- (1) the name of the subdivision covered by the petition;
- (2) a copy of the petition;
- (3) a statement that the proper number of property owners in the subdivision have signed and acknowledged the petition; and
- (4) the date the petition was filed with the county clerk.

(b) Except as provided by Subsection (d), the notice required by Subsection (a) must be:

- (1) published once a week for two consecutive weeks in a newspaper of general circulation in the county or counties where the subdivision is located; and
- (2) sent by certified mail, return receipt requested, to each person who owned land in the subdivision as of the date the notice is given, excluding the owners of land dedicated for public use or for use by utilities.

(c) If the committee acts in good faith in determining ownership and giving notice as required by this section, the failure to give personal notice to an owner does not affect the application of an extension, modification, or creation of, or addition to, a restriction under this chapter to the property of a person who signed the petition.

(d) Instead of the information required by Subsection (a)(2), a notice published as required by Subsection (b)(1) may contain a general description of the purpose and effect of the petition.

(e) On compliance with the notice requirements of this section, a majority of the members of the committee shall execute a certificate of compliance and file the certificate with the county clerk of each county where the subdivision is located.

(f) The county clerk of each county shall record the certificate in the real property records of the county.

Sec. 201.009. PROPERTY WITHIN SUBDIVISION NOT AFFECTED BY PETITION. (a) The procedures called for under this chapter are considered complete and regular in all respects unless challenged by a declaratory judgment suit under Section 201.010.

(b) A restriction added, modified, created, or extended under this chapter does not affect or encumber property within the subdivision that is included within one of the following categories:

- (1) property exclusively dedicated for use by the public or for use by utilities;
- (2) property of an owner who elected in the petition to exclude the property from the restriction;
- (3) property of an owner who did not sign the petition and has not received actual notice of the filing of the petition;
- (4) property of an owner who did not sign the petition and who files, before one year after the date on which the owner received actual notice of the filing of the petition, an acknowledged statement describing the owner's property by reference to the recorded map or plat of the subdivision and stating that the owner elects to have the property deleted and excluded from the operation of the extended, modified, changed, or created restriction; and
- (5) property owned by a minor or a person judicially declared to be incompetent at the time the certificate is filed, unless:

(A) actual notice of the filing of the petition is given to a guardian of the minor or incompetent person, and the guardian has not filed the statement described in the fourth listed category in this subsection;

(B) a predecessor in title to the minor or incompetent person signed a petition that was filed while the property was owned by the predecessor; or

(C) the incompetent person signed a petition that was filed before the judicial declaration of the person's incompetency.

(c) *The county clerk shall file a statement described in the fourth listed category in Subsection (b) in the same manner as the petition and certificate. Substantial compliance by an owner with the requirements for the statement prevents the owner's property from being burdened by an extended, created, added to, or modified restriction if the statement is filed within the time required.*

(d) *A lienholder is not bound by a petition unless the lienholder signs it and it is later filed. If a lienholder who does not sign a filed petition later acquires title to the property in the subdivision through foreclosure, the acquisition is free of the restrictions added, modified, created, or extended by the petition. However, if any other person acquires the title to the property at the foreclosure sale, that person takes the property subject to the restriction added, modified, created, or extended by the petition, if any prior owner of the foreclosed property signed and acknowledged the petition.*

**Sec. 201.010. ACTION AND LIMITATIONS OF REMEDIES.** (a) *If an owner and the owner's predecessors in interest neither signed the petition nor filed the statement described in the fourth listed category in Section 201.009(b), the owner may file a suit for declaratory judgment in a court of competent jurisdiction:*

(1) *to challenge the completeness or regularity of the procedures leading to the recordation of a certificate, if the suit is filed before the 181st day after the date on which the certificate is filed with the county clerk; or*

(2) *to exclude the owner's property from the operation of the extended, modified, added to, or created restriction.*

(b) *A suit for a declaratory judgment must name as defendants the final members of the petition committee who are owners of property in the subdivision at the time of the filing of the suit. In addition, a suit for a declaratory judgment must name all other owners of property in the subdivision as defendants, either as individuals or as members of a class.*

(c) *An owner who files a suit for the second listed purpose in Subsection (a) is entitled to relief only if the owner pleads and establishes that the conditions of land use within the subdivision at the time the certificate was filed were incompatible with the restriction. As an alternative to excluding a specific parcel of land from the operation of the restriction, a court may alter the restriction as it applies to the parcel to better conform to the incompatible conditions.*

(d) *The remedies in this section are exclusive of all others in actions brought to challenge a restriction extended, modified, added to, or created under this chapter. The filing of an action for the first listed purpose in Subsection (a) does not prevent the restriction from taking effect in accordance with its terms pending a final judgment.*

**Sec. 201.011. PROHIBITION OF CLAIM OF LACK OF MUTUALITY.** *If a petition procedure is completed under this chapter, the owners of property within the subdivision whose property is covered by the petition may not raise in any judicial proceeding the issue that the restrictions added, modified, created, or extended under this chapter are not enforceable on the grounds that the restrictions are not applicable to all of the property in the subdivision.*

**Sec. 201.012. MULTIPLE FILING; COMPUTATION OF FILING DATE.** *For purposes of this chapter, an instrument required to be filed with the clerk of more than one county is considered filed on the date on which the last required filing is made.*

**Sec. 201.013. CUMULATIVE EFFECT.** *The procedure prescribed by this chapter for adding to, modifying, creating, or extending the term of a restriction is cumulative and not in lieu of other methods of adding to, modifying, creating, or extending a restriction.*

**SECTION 2.** *If any provision of this Act or its application to any person or circumstance, including any procedure for renewing, creating, or modifying restrictive covenants, is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.*

**SECTION 3.** *This Act takes effect September 1, 1985.*

**SECTION 4.** *The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.*

*Passed by the House on May 8, 1985, by a non-record vote; passed by the Senate on May 24, 1985, by the following vote: Yeas 29, Nays 0.*

*Approved: June 7, 1985*

*Effective: September 1, 1985*