

CHAPTER 712

H.B. No. 356

AN ACT

relating to the construction, enforcement, creation, extension, modification, waiver, or termination of, or addition to, restrictive covenants affecting real property.

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

SECTION 1. Title 11, Property Code, is amended by adding Chapters 202 and 203 to read as follows:

**CHAPTER 202. CONSTRUCTION AND ENFORCEMENT OF
RESTRICTIVE COVENANTS**

Sec. 202.001. DEFINITIONS. In this chapter:

(1) "Dedicator instrument" means each governing instrument covering the establishment, maintenance, and operation of a residential subdivision, planned unit development, condominium or townhouse regime, or any similar planned development. The term includes a declaration or similar instrument subjecting real property to restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association, to properly adopted rules and regulations of the property owners' association, or to all lawful amendments to the covenants, bylaws, instruments, rules, or regulations.

(2) "Property owners' association" means an incorporated or unincorporated association owned by or whose members consist primarily of the owners of the property covered by the dedicatory instrument and through which the owners, or the board of directors or similar governing body, manage or regulate the residential subdivision, planned unit development, condominium or townhouse regime, or similar planned development.

(3) "Petition" means one or more instruments, however designated or entitled, by which one or more actions relating to restrictive covenants are sought to be accomplished.

(4) "Restrictive covenant" means any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative.

Sec. 202.002. APPLICABILITY OF CHAPTER. (a) This chapter applies to all restrictive covenants regardless of the date on which they were created.

(b) This chapter does not affect the requirements of the Community Homes for Disabled Persons Location Act (Article 1011n, Vernon's Texas Civil Statutes).

Sec. 202.003. CONSTRUCTION OF RESTRICTIVE COVENANTS. (a) A restrictive covenant shall be liberally construed to give effect to its purposes and intent.

(b) In this subsection, "family home" is a residential home that meets the definition of and requirements applicable to a family home under the Community Homes for Disabled Persons Location Act (Article 1011n, Vernon's Texas Civil Statutes). A dedicatory instrument or restrictive covenant may not be construed to prevent the use of property as a family home. However, any restrictive covenant that applies to property used as a family home shall be liberally construed to give effect to its purposes and intent except to the extent that the construction would restrict the use as a family home.

Sec. 202.004. ENFORCEMENT OF RESTRICTIVE COVENANTS. (a) An exercise of discretionary authority by a property owners' association or other representative designated by an owner of real property concerning a restrictive covenant is presumed reasonable unless the court determines by a preponderance of the evidence that the exercise of discretionary authority was arbitrary, capricious, or discriminatory.

(b) A property owners' association or other representative designated by an owner of real property may initiate, defend, or intervene in litigation or an administrative

proceeding affecting the enforcement of a restrictive covenant or the protection, preservation, or operation of the property covered by the dedicatory instrument.

(c) A court may assess civil damages for the violation of a restrictive covenant in an amount not to exceed \$200 for each day of the violation.

Sec. 202.005. WITHDRAWAL OF SIGNATURE. (a) A signature may be withdrawn from a petition authorized to be filed in connection with terminating restrictive covenants, as provided by this section.

(b) To withdraw a signature, the signer must request that the signature be withdrawn.

(c) To be effective, a withdrawal request must:

(1) be in writing and be signed and acknowledged by the signer of the petition;

(2) be filed with the authority with whom the petition is required to be filed not later than the day before the petition filing deadline, if any; and

(3) be delivered in the form of a copy of the request to the circulator of the petition not later than the date the request is filed or by the effective date of this chapter, whichever is later.

(d) A withdrawal request or copy filed or delivered by mail is considered to be filed or delivered at the time of its receipt by the appropriate person.

(e) The filing of an effective withdrawal request nullifies the signature on the petition and places the signer in the same position as if the signer had not signed the petition.

CHAPTER 203. ENFORCEMENT OF LAND USE RESTRICTIONS IN COUNTY WITH POPULATION OF MORE THAN TWO MILLION

Sec. 203.001. APPLICABILITY OF CHAPTER. This chapter applies only to a county with a population of more than two million.

Sec. 203.002. DEFINITION. In this chapter, "restriction" means a limitation that affects the use to which real property may be put, fixes the distance at which buildings or other structures must be set back from property, street, or lot lines, affects the size of lots, or affects the size, type, or number of buildings or other structures that may be built on the property.

Sec. 203.003. COUNTY ATTORNEY AUTHORIZED TO ENFORCE RESTRICTIONS. (a) The county attorney may sue in a court of competent jurisdiction to enjoin or abate violations 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.

(b) The county attorney may not enforce a restriction relating to race or any other restriction that violates the state or federal constitution.

Sec. 203.004. ADMINISTRATIVE FEE. (a) A complaint filed in connection with Section 203.003 must be accompanied by an administrative fee prescribed by the county commissioners court. The amount of the fee may not exceed the administrative costs to be incurred by the county in pursuing the matter.

(b) The administrative fee shall be deposited in a special county fund. The fund may be used only to administer this chapter.

(c) The commissioners court may waive the administrative fee if the complainant files with the complaint a hardship affidavit in a form approved by the commissioners court.

Sec. 203.005. COURT COSTS AND ATTORNEY'S FEES. (a) The county may be awarded court costs and attorney's fees in a successful action under this chapter.

(b) If the court costs and attorney's fees awarded to the county, together with the administrative fee collected under Section 203.004, exceed the county's expenses in a successful action under this chapter, any portion of the excess that does not exceed the

amount of the administrative fee collected by the county shall be refunded to the complainant.

SECTION 2. Section 201.001, Property Code, is amended to read as follows:

Sec. 201.001. APPLICATION. (a) 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.

(b) *The provisions of* [~~However,~~] *this chapter relating to extension of the term of or creation of restrictions do* [~~does~~] *not apply to a subdivision if, by the express terms of the instrument creating existing* [~~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.

(c) *The provisions of this chapter relating to addition to or modification of existing restrictions do not apply to a subdivision if, by the express terms of the instrument creating the restrictions, the restrictions affecting the real property within the subdivision provide for addition 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 set forth in the instrument creating the restrictions.*

SECTION 3. Section 201.005(f), Property Code, is amended to read as follows:

(f) After August 31, 1989 [1987], only one committee in a subdivision may file to operate under this chapter at one time. Before September 1, 1989 [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, 1989 [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.

SECTION 4. Subsections (b) and (c), Section 201.006, Property Code, are amended to read as follows:

(b) If the notice required by Section 201.005(a) is filed after August 31, 1989 [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, 1989 [1987], the petition may be filed not later than August 31, 1989 [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, 1988 [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.

SECTION 5. Section 201.009, Property Code, is amended by amending Subsection (d) and by adding Subsection (e) to read as follows:

(d) A lienholder *whose lien was established before the effective date of a petition* is not bound by *the [a] petition unless the lienholder signs it and it is later filed. If such a lienholder who does not sign the [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 a [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.*

(e) Notwithstanding any other provision of this chapter, property that is excluded in any manner from the operation of restrictions that are modified, added to, or created by a petition under this chapter is, unless the petition expressly provides otherwise, subject to those restrictions, if any, affecting the excluded property as the restrictions existed immediately before the effective date of the petition, and those restrictions are continued in effect to the extent originally applicable to the excluded property. After the filing of such a petition, those restrictions may be added to, modified, or extended by a specified percentage of the owners of real property interests in accordance with this chapter or the instruments evidencing the restrictions as they existed immediately before the effective date of the petition, if otherwise still applicable. Any petition filed under this chapter that creates, adds to, or modifies restrictions may provide for the subsequent addition to or extension, creation, or modification of, the resulting restrictions by a specified percentage of the owners of real property interests in the subdivision as set forth in the instruments evidencing the continued restrictions. This subsection does not abrogate, alter, affect, or impair the rights of a lienholder under Subsection (d) to not be bound by a petition adopted under this chapter when the lienholder subsequently acquires title to the excluded property through foreclosure.

SECTION 6. Sections 2, 3, 4, and 5 of this Act apply only to restrictive covenants affected by a petition for which the first day of circulation occurs on or after the effective date of this Act.

SECTION 7. 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, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 2, 1987, by the following vote: Yeas 128, Nays 0, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 356 on May 28, 1987, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 356 on June 1, 1987, by the following vote: Yeas 137, Nays 0, 1 present, not voting. Passed by the Senate, with amendments, on May 23, 1987, by the following vote: Yeas 30, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 356 on June 1, 1987, by the following vote: Yeas 31, Nays 0.

Approved June 18, 1987.

Effective June 18, 1987.