

PROPERTY CODE
CHAPTER 211. AMENDMENT AND ENFORCEMENT OF RESTRICTIONS IN CERTAIN
SUBDIVISIONS

Sec. 211.001. DEFINITIONS. In this chapter:

(1) "Dedictory instrument" means each governing instrument covering the establishment, maintenance, and operation of a residential subdivision 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) "Lienholder," "owner," "real property records," and "restrictions" have the meanings assigned by Section 201.003.

(3) "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 or similar planned development.

(4) "Residential real estate subdivision" or "subdivision" means all land encompassed within one or more maps or plats of land that is divided into two or more parts if:

(A) the maps or plats cover land that is not within a municipality or within the extraterritorial jurisdiction of a municipality;

(B) the land encompassed within the maps or plats is or was burdened by restrictions limiting all or at least a majority of the land area covered by the map or plat, excluding streets and public areas, to residential use only; and

(C) all instruments creating the restrictions are recorded in the deed or real property records of a county.

Added by Acts 2005, 79th Leg., ch. 1077, Sec. 1, eff. Sept. 1, 2005.

Sec. 211.002. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a residential real estate subdivision or any unit or parcel of a subdivision located in whole or in part within an unincorporated area of a county if the county has a population of less than 65,000.

(b) This chapter applies only to restrictions that affect real property within a residential real estate subdivision or any units or parcels of the subdivision and that, by the express terms of the instrument creating the restrictions:

(1) are not subject to a procedure by which the restrictions may be amended; or

(2) may not be amended without the unanimous consent of:

(A) all property owners in the subdivision; or

(B) all property owners in any unit or parcel of the subdivision.

(c) This chapter applies to a restriction regardless of the date on which it was created.

Added by Acts 2005, 79th Leg., ch. 1077, Sec. 1, eff. Sept. 1, 2005.

Sec. 211.003. FINDINGS AND PURPOSE. (a) The legislature finds that:

(1) owners of land in certain real estate subdivisions are unable to govern the subdivisions by democratic principles of self-government;

(2) requiring unanimous consent to amend or modify restrictions in affected subdivisions or units or parcels of the subdivisions is impractical and unworkable to bring needed change and improvement;

(3) the inability of owners to amend or modify property restrictions in certain real estate subdivisions in which no zoning regulations apply creates uncertainty in living conditions and discourages investments in those subdivisions;

(4) owners of land in affected subdivisions are reluctant or unable to provide proper maintenance, upkeep, and repairs of structures because of the inability to amend or modify the restrictions in response to changing circumstances;

(5) financial institutions are reluctant to or will not lend money for investments, maintenance, upkeep, or repairs in affected subdivisions;

(6) these conditions will 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 public; and

(7) the existence of race-related covenants in restrictions, regardless of their unenforceability, is offensive, repugnant, and harmful to members of racial or ethnic minority groups and public policy requires that those covenants be removed.

(b) The purpose of this chapter is to provide a procedure for creating, modifying, or adding to residential 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.

Added by Acts 2005, 79th Leg., ch. 1077, Sec. 1, eff. Sept. 1, 2005.

Sec. 211.004. CREATION OR MODIFICATION OF PROCEDURE TO AMEND RESTRICTIONS. (a) A property owners' association by a two-thirds vote of the association's governing body may submit a procedure for amending restrictions to a vote of the property owners in the subdivision or in the unit or parcel of the subdivision governed by restrictions.

(b) An amendment procedure submitted to a vote under Subsection (a) binds all property owners in the subdivision or the unit or parcel of the subdivision to which the procedure applies if more than two-thirds of the voting property owners vote in favor of the procedure.

(c) Not later than the 30th day before the date a ballot for a vote under this section must be received to be counted, the property owners' association shall mail to each affected property owner a notice that includes:

(1) the exact wording of the amendment procedure; and

(2) the date by which a property owner's ballot must be received to be counted.

(d) The property owners' association shall pay all costs of:

(1) printing and mailing the required notices and ballots; and

(2) canvassing, tabulating, and certifying the vote.

(e) A property owner may not cast more than one vote, regardless of the number of lots the person owns. If more than one person owns an interest in a lot, the owners may cast only one vote for that lot. A person may not vote if the person has an interest in a lot only by virtue of being a lienholder.

(f) A ballot cast under this section is secret and may not be counted unless it is placed inside an unmarked envelope that is placed inside another envelope that bears the signature and printed name of the property owner casting the enclosed ballot.

(g) The presiding officer of the property owners' association shall appoint an election canvassing committee and a committee chairperson to canvass and count the votes and determine the outcome.

(h) If the amendment procedure receives the number of votes required under Subsection (b), the election canvassing committee chairperson shall certify the result to the presiding officer of the property owners' association. The presiding officer shall file in the real property records of each county in which all or part of the subdivision is located an instrument that indicates that the procedure was adopted.

(i) If the amendment procedure is not adopted, the property owners' association may not submit the same amendment procedure to a vote under this section on or before the first anniversary of the date the previous votes on the procedure were certified.

Added by Acts 2005, 79th Leg., ch. 1077, Sec. 1, eff. Sept. 1, 2005.

Sec. 211.005. EFFECT OF ADOPTING AMENDMENT PROCEDURE. After the effective date of the adoption of the amendment procedure under this chapter, any proposed amendment to the restrictions described by Section 211.002(b) applicable to the subdivision or unit or parcel of the subdivision, as applicable, must be submitted for approval to the owners under the amendment procedure.

Added by Acts 2005, 79th Leg., ch. 1077, Sec. 1, eff. Sept. 1, 2005.