

SENATE BILL 979 (as originally filed) by West

Analysis by Sharon Reuler - Revised March 11, 2007

SECTION	1
Main Purpose	MANDATORY RESALE CERTIFICATE
Relates to which statute?	Amends Sec. 5.012 Property Code, titled "Notice of Obligations Related to Membership in Property Owners' Association" by linking the resale certificate of Chapter 207 Property Code to the contract notice required by Sec. 5.012 Property Code.
Pertinent part of SB 979	<p>(a) A seller of residential real property that is subject to membership in a property owners' association and that comprises not more than one dwelling unit located in this state shall give to the purchaser of the property a <u>copy of a resale certificate for the property issued under Chapter 207 with a written notice that reads substantially similar to the following:</u></p> <p>(f) <u>The seller may obtain reimbursement from the purchaser for the cost of obtaining the resale certificate provided under this section, except that the amount reimbursed may not exceed one-eighth of one percent of the purchase price. If an updated resale certificate is provided on or before the 90th day after the date the first certificate was provided, the seller may obtain reimbursement for 25 percent of the amount reimbursed for providing the first certificate.</u></p>
Existing law 1	<p>Since 2000, Sec. 5.012 requires sellers to give buyers a specifically worded notice as part of the sales contract. Sec. 5.012 applies to:</p> <ul style="list-style-type: none"> -- Residential only - in mandatory HOA -- NEW HOME SALES and resales -- Not condominiums (specifically excluded)
Existing law 2	<p>Since 1999, Chapter 207 Property Code has provided a mechanism for the HOA to provide a "Resale Certificate" in connection with home sales. Although Chapter 207 was not written for new home sales, it is being used for new home sales at point of closing (not at time of contract), typically triggered by a title company's request for assessment information.</p>
Comment 1	<p>It is good public policy for the Seller to give HOA documents, HOA budget, and disclosures about the property to home buyers when they make their purchase decision (at time of contract). HOA managers are typically better able to provide the documentation than developers and home builders. HOA managers should be compensated for this service. The State should not specify the amount of compensation.</p>
Comment 2	<p>HOA managers are particularly attracted to large subdivisions of new homes that will ALL be closing in the near future, producing a bumper crop of significant resale fees. That potential resale income allows subdivision developers to negotiate lower rates for the HOA management contract. Lower rates translates into either lower HOA dues for the home buyers, which helps sell homes, OR less of a deficit in the HOA's operating funds that the developer funds out of pocket. DEVELOPERS DO NOT WANT CAPS on resale fees paid to HOA managers if it lowers management fees, except that it creates a false economy for the homeowners who may face higher management fees and higher dues when the project is completed.</p>
Comment 3	<p>The Uniform Act concept is that Buyer should either have the disclosures BEFORE signing the contract, or - if after signing - have a 5-day "free look" at the documents and a chance to cancel the contract without penalty. That practice has applied to Texas condominiums since 1994, but would be a new concept in the single family market. Neither SB 979 nor Chapter 207 Property Code allows Buyer to cancel the contract if the later-received disclosures are not to Buyer's liking.</p>

SECTION	1
Comment 4	The troublesome issue is who gets paid for providing the disclosures, and how much? Chapter 207 says the HOA may charge a reasonable fee for producing the materials. In practice (in the Dallas market), fees are typically charged by and paid directly to managers - not to the HOA - and the manager determines what is reasonable. There is no oversight or accountability for fees, and no incentive for making them "affordable."
Change #1 to existing law	In addition to contract notice, Seller must give buyer a copy (why a "copy"?) of a resale certificate issued under Property Code Chapter 207, i.e., a MANDATORY resale certificate with each contract
Change #2 to existing law	IF Seller pays for the resale certificate, Seller may seek reimbursement from Buyer. No cap on the amount of the fees charged to Seller, only a cap on how much reimbursement Buyer pays to Seller - 1/8 of 1% of purchase price (\$375 on \$300K house). If Seller pays for a certificate update within 90 days, Buyer is liable for reimbursement up to 25% of the reimbursement cap for initial certificate (\$93.75 on \$300K house), suggesting that after the 90th day the Buyer may be liable to Seller for another 1/8 of 1% of the purchase price (\$375 on \$300K house) if Seller pays for a certificate update.
Issue #1	HOAs & managers function best with uniform fees - same for each house, regardless of sales price. A different fee for each house closing is too cumbersome to administer (and would likely increase costs). If Legislature is adamant about a certificate fee tied to house values, it would be better if the rate were based on the "average" value for the subdivision.
Issue #2	Is the cap inclusive of fees related to the resale certificate and resale transaction, such as expedited processing fees, delivery fees, inspection fees, copying fees, transfer fees, fees paid to third party vendors (such as online resale certificate servicers)?
Issue #3	SB 979 does not address what Buyer (or Seller) pays to the HOA, the HOA manager, or a Title Company for issuance of a resale certificate. Why is the reimbursement from Buyer to Seller the only expense that is addressed?
Issue #4	Timing issue. The basis of Sec. 5.012 is a specifically-worded notice that the Seller must include with the contract. Seller does not have to involve any third party in order to contract with the Buyer. Under SB 979, the sales contract is not effective until the Seller has the resale certificate to give to the Buyer, which could take days and weeks. THIS INTERFERES WITH SALES. SB 979 needs a provision comparable to Property Code Sec. 82.156(a) which gives Buyer 5 days to cancel if Buyer receives the Resale Certificate after signing the contract.
Issue #5	Can the HOA manager issue a resale certificate for Seller/Buyer under Sec. 5.012 at time of contract, and another resale certificate for Title Company/Buyer under Chapter 207 at time of closing? Buyer could pay multiple resale certificate fees to multiple parties without violating this provision.
Issue #6	Can the Title Company request an assessment estoppel certificate at time of closing without triggering an order for a resale certificate? both of which are paid for by Buyer or Seller?
Issue #7	Why should NEW certificate fee (versus an update) be incurred if no change in information after 90 days?
Does it affect new home sales?	YES. ✓✓✓ It has a greater affect on new home sales than on resales because, in the expanding Texas economy, there are MORE sales of new homes than resales of used homes. This is an important issue for Builder/Developers.

SECTION	2
Main Purpose	RIGHT OF FIRST REFUSAL VOID (SALES ONLY) (HOA ONLY)
Relates to which statute?	Amends Chapter 202 Property Code, titled "Construction and Enforcement of Restrictive Covenants"
Pertinent part of SB 979	<u>Sec. 202.008. RIGHT OF FIRST REFUSAL PROHIBITED. A deed restriction applicable to residential property that reserves a right of first refusal for a property owners' association or condominium association to purchase property is void and unenforceable.</u>
SUGGESTED REWORDING	<u>Sec. 202.008. RIGHT OF FIRST REFUSAL PROHIBITED. To the extent a restrictive covenant provides a right of first refusal for the sale or lease of a residential unit or residential lot in favor of the property owners association or its members, the restrictive covenant is void. This Section does not apply to a restrictive covenant that provides a right of first refusal in favor of the developer or declarant during the build-out and marketing of the development.</u>
Existing law	Since 1987, Chapter 202 applies to all developments with restrictions and owners associations, including condominiums. Rights of first refusal in HOAs are mentioned in Texas Property Code Sections 5.014, 82.157, 207.003.
Change to existing law	Adds new Sec. 202.008 (Chapter 202 has Section 202.006 + 202.009, but no 202.008) for the purpose of abolishing rights of first refusal by HOAs for home sales
Problem #1	SB 979 uses terminology that is not consistent with Chapter 202, such as (1) "deed restriction" instead of "restrictive covenant", and (2) "property owners association or condominium association" when "property owners association" is defined in Chapter 202 to include a condominium association
Problem #2	Sec. 5.014 Property Code deals with right of first refusal in a condominium context. If Sec. 202.008 becomes law, Sec. 5.014 should be repealed as unnecessary.
Problem #3	SB 979 is limited to exercise by HOA. Some restrictions grant the right of first refusal to the individual members of HOA, requiring HOA to post or circulate the contract or lease. Does Sen. West want to preserve the right of first refusal for members?
Problem #4	SB 979 is limited to sales. Some restrictions grant the right of first refusal to leases as well as sales. Does Sen. West want to preserve the right of first refusal for leases?
Problem #5	Because mortgage lenders dislike rights of first refusal, they are rarely found in documents written since 1980. And where they exist, they are rarely exercised because (1) the HOAs do not have the funds and (2) the risk of a Fair Housing complaint. So, there is not much if any interest in preserving rights of first refusal.
Problem #6	There may be valid reasons for HOA to have a right of first refusal for common areas or non-residential parcels within the development. Accordingly, Sec. 202.008 should apply to residential units only.
Problem #7	A Builder/Developer may have a right of first refusal if homes are re-sold in competition with the Builder's inventory. The Builder may want to reserve the right to buy-back the home. The declarant or Builder may be a member of the HOA or in control of the HOA's governance. How to protect Builder/Developer's Right of First Refusal? <i>(This is not a common circumstance.)</i>
Does it affect new home sales?	YES ✓✓✓ (See Suggested Rewording and Problem #7)

SECTION	3 (PART 1 of 2)
Main Purpose	AMENDMENT OF RESTRICTIVE COVENANTS
Relates to which statute?	Amends Chapter 209 Property Code, titled Texas Residential Property Owners Protection Act, by adding a new Section - 209.0041 - titled "Amendment of Restrictive Covenants"
Pertinent part of SB 979	<p><u>Sec. 209.0041. AMENDMENT OF RESTRICTIVE COVENANTS. (a) This section applies only to a residential subdivision in which property owners are subject to mandatory regular or special assessments, as those terms are defined by Section 204.001:</u></p> <p><u>(1) for which the declaration creating the subdivision is recorded on or after January 1, 2008; or</u></p> <p><u>(2) for which the declaration creating the subdivision is recorded before January 1, 2008, to the extent that the deed restrictions or other provisions of this title applicable to the subdivision on that date do not conflict with this section.</u></p> <p><u>(b) A declaration creating a residential subdivision and any subsequently enacted restrictions may be amended on a vote of not less than 67 percent of the total votes allocated to owners of property in the subdivision.</u></p>
Existing law	Amendments of restrictions are addressed in many parts of the Property Code, but not in Chapter 209. Existing law regulating amendment of restrictions includes: Chapters 201, 206, 208, 210, and 211.
Change #1 to existing law	This may be a new issue for the legislature within the HOA context. I do not recall it arising in previous sessions or at legislative hearings. <i>(What is the genesis of this provision?)</i>
Change #2 to existing law	Adding one more amendment provision to State law further complicates the already complicated "which law applies?" and conflicts with other statutes. For example, Sec. 205.004 Property Code authorizes the HOA board - alone - to amend the restrictions to comply with HUD or VA requirements. Which would control 205.004 or 209.0041?
Change #3 to existing law	Although Chapter 82 Property Code (Uniform Condominium Act) requires approval by at least 67% of the ownership interests to amend the restrictions, it also exempts certain types of amendments from that requirement, such as the ones used by developers to ensure the successful completion of the project. SB 979 has no such exemptions.
Change #4 to existing law	Chapter 209 applies to all residential subdivisions with mandatory owners associations, other than condominiums. This new subsection of Chapter 209 relies instead on concepts from Chapter 204 for its applicability. Why?
Comment	This provision is adverse to the interests of real estate developers who create residential subdivisions and who must control the governing documents and the amendment process during the development period. Restrictions in the modern era are written to give Declarants (subdivision developers) liberal amendment powers to expand and complete their developments, and to tailor the documents to the actual development as it takes shape. If this were the law, we would have to find a creative way to protect development interests in Texas.
Does it affect new projects?	YES. ✓✓✓ It could jeopardize all the rights and protections that the developer customarily reserves in the restrictions, such as the right to annex. This is an important issue for Builder/Developers.

SECTION	3 (PART 2 of 2)
Main Purpose	TABULATING VOTES
Relates to which statute?	Amends Chapter 209 Property Code, titled Texas Residential Property Owners Protection Act, by adding a new Section - 209.0042 - titled "Tabulation of Votes"
Pertinent part of SB 979	<u>Sec. 209.0042. TABULATION OF VOTES. In a contested election held in the subdivision, the property owners' association shall retain a neutral party to tabulate the votes if the association receives a petition signed by at least 50 percent of the owners of property in the subdivision before the date on which voting in the election begins.</u>
SUGGESTED REWORDING	<u>Sec. 209.0042. TABULATION OF VOTES. In a contested election of the property owners' association, the association shall employ a disinterested and neutral person to tabulate the votes or to supervise the tallying if the association is so instructed by owners of at least 50 percent of the lots in the subdivision before the date on which voting in the election begins.</u>
Existing law	Texas law leaves election procedures to the bylaws of the organization and the decisions of the organization's directors, except for the few requirements of the Texas Business Organizations Code, which does not address the tallying of votes.
Change to existing law	This is a new issue for the legislature. This adds a new statutory requirement to HOA voting.
Problem #1	How is "contested" determined? Is voting "for" or "against" considered a "contested" election? If the contest arises at the election meeting, does that assembly have the right to demand independent tellers? Why does it matter whether or not the election is "contested" if the owners want an independent tally?
Problem #2	Is "election" defined somewhere in Texas law to include all decisions made by the electorate, and not just the election of directors?
Problem #3	"held in the subdivision" - what if the election is held at a school off-site or electronically?
Problem #4	"a petition signed by" - Nearly impossible to get so many signatures, much less multiple signatures on a single petition.
Problem #5	"50% of the owners" requires the HOA to count heads instead of lots. Should be "owners of 50% of the lots."
Problem #6	The HOA manager usually tabulates the votes. In some subdivisions, the managers computer program may be the only efficient way to tabulate the votes.
Comment	As a practical matter, the 50% threshold is a nearly impossible to fulfill, except in the smallest of HOAs.
Does it affect new home sales?	NO. This is a non-issue for Builder/Developers.

(See Next Page for SECTION 4)

SECTION	4
Main Purpose	REDACTING INFORMATION ABOUT UNIT OR OWNER
Relates to which statute?	Amends Chapter 209 Property Code, titled Texas Residential Property Owners Protection Act, by adding a new subsection (c) to Section 209.005, titled "Association Records."
Pertinent part of SB 979	<u>(c) Notwithstanding this section or any other law, a property owners' association must redact any information that identifies a particular property owner or unit of property in the subdivision from any property owners' association records that are made public if the records relate to assessments, fines, foreclosures, lawsuits, or other enforcement actions of the association.</u>
Existing law	Texas law prohibits the disclosure of Social Security numbers in public records. The "redaction" requirement for County Clerks is causing quite a ruckus this Session.
Change to existing law	This may be a new issue for the legislature within the HOA context. I do not recall it arising in previous sessions or at legislative hearings. <i>(What is the genesis of this provision?)</i>
Comment #1	This change should be opposed as ill-conceived with adverse unintended consequences. If "made public" is given its ordinary meaning, this change of law makes no sense. Information about unit owners and units is routinely "made public" for legitimate purposes that would be thwarted by this requirement. Disclosure of owners names and property addresses are required for assessment lien notices recorded in PUBLIC records, foreclosures conducted with PUBLIC postings and PUBLIC sales, suits to collect debt or enforce restrictions that are filed in PUBLIC courts, protecting the HOA's claim in owner's PUBLIC bankruptcy, and in communicating with mortgage lenders about the owner's debt.
Comment #2	This is directly opposed to other legislative initiatives for "open records" and holding HOAs to the same standards as governments - which allow <u>ANY PERSON</u> (not just HOA members) to inspect the HOA records. Tax records and court records are open for the world to see. What is the need for hyper-secrecy with HOA records?
Comment #3	There is a mistaken belief that governmental "Privacy of Information" Acts apply to HOAs and HOA records. Not true.
Comment #4	This proposal should be carefully analyzed for conflicts with other statutes. For example, the Texas Business Organizations Code requires the incorporated HOAs to make voting lists available for inspection by every member. Those lists identify who is and is not eligible to vote, based on assessment standing. If a record is available to HOA members only, is that different from "made public"?
Does it affect new home sales?	NO. But it does affect HOA operations during the Declarant-control period.

(See Next Page for SECTION 5)

SECTION	5
Main Purpose	CURING VIOLATIONS
Relates to which statute?	Amends Section 209.006 Property Code, titled "Notice Required Before Enforcement Action," by adding a new subpart (3) to Subsection (b), and adding a new Subsection (c).
Pertinent part of SB 979	<p>(b) The notice must:</p> <p>(1) describe the violation; and</p> <p>(2) inform the owner that the owner:</p> <p>(A) is entitled to a reasonable period to cure the violation and avoid the fine or suspension unless the owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six months; and</p> <p>(B) may request a hearing . . . ; <u>and</u></p> <p>(3) <u>specify a date certain by which the owner must cure the violation.</u></p> <p>(c) <u>The date specified in the notice under Subsection (b)(3) must provide a reasonable period for the owner to cure the violation.</u></p>
SUGGESTED REWORDING	<p>(b) The notice must:</p> <p>(1) describe the violation; and</p> <p>(2) inform the owner that the owner:</p> <p>(A) is entitled to a reasonable period, by a specified date certain, to cure the violation and avoid the fine or suspension unless the owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six months; and</p> <p>(B) may request a hearing</p>
Existing law	Existing law requires HOA to give a specified notice to an owner who violates the HOA's restrictions. The notice must give the owner a reasonable period to cure the violation.
Change to existing law	SB 979 tries to add an additional requirement of specifying the date by which the violation must be cured to avoid further penalties.
Problem #1	As written, SB 979 creates an internal conflict between 209.006(c) [NEW] and 209.006(b)(2)(A)[EXISTING]. The existing provision says the cure period does not apply if the same owner violated the same restriction within the past 6 months. The new provision does not recognize that exemption. The suggested rewording above fulfills the purpose of SB 979 while eliminating the conflict.
Problem #2	As written, SB 979 creates a second potential internal conflict between a date certain [NEW] and a reasonable period [EXISTING] by stating them as independent criteria. The suggested rewording above fulfills the purpose of SB 979 while eliminating the conflict.
Does it affect new home sales?	NO. But it does affect HOA operations during the Declarant-control period.

(See Next 4 Pages for SECTION 6)

SECTION	6 (PART 1 of 5)
Main Purpose	FINES
Relates to which statute?	Amends Chapter 209 Property Code, titled Texas Residential Property Owners Protection Act, by adding a new Sec. - 209.0061 - titled "Assessment of Fines," which relates to Sec. 209.006, titled "Notice Required Before Enforcement Action."
Pertinent part of SB 979	<p><u>Sec. 209.0061. ASSESSMENT OF FINES. (a) A fine assessed by the association must be reasonable in the context of the nature, frequency, and effect of the violation. If the association allows fines for a continuing violation to accumulate against a lot or an owner, the association must establish a maximum fine amount for a continuing violation, at which point the total fine amount is capped.</u></p> <p><u>(b) If a lot occupant other than the owner violates a provision of the dedicatory instrument, the association, in addition to exercising any of the association's powers against the owner, may assess a fine directly against the nonowner occupant in the same manner as provided for an owner.</u></p> <p><u>(c) The association must give notice of a fine to the owner in accordance with Section 209.006 not later than the 30th day after the date the fine is assessed.</u></p>
SUGGESTED REWORDING OF SUBSEC. (c)	<p><u>(c) In addition to the notice required by Section 209.006, the association must give notice of a fine to the owner not later than the 30th day after the date the fine is assessed.</u></p>
Existing law	Under Sec. 209.006, the owner must be given (1) notice of the violation, (2) opportunity to cure the violation, and (3) opportunity for hearing to protest the fine, BEFORE the HOA can assess a fine.
Change to existing law	The new Sec. 209.0061 is based on Sec. 83.154 of the proposed Texas Uniform Planned Community Act. Subpart (a) creates a standard for the amount of a fine - which is NEW. Subpart (b) authorizes fines against renters - which is NEW. Subpart (c) creates a notice requirement that may conflict with the notice requirement in Sec. 209.006.
Comment 1	Under the conservative legal theory, an HOA does not have a right to levy fines unless the declaration expressly authorizes fines. This Section helps create a statutory basis for fining, even if none exists in the declaration.
Comment 2	Subpart (c) directs the HOA to give a NOTICE OF FINE to the owner within 30 days after the fine is levied, but "in accordance with Sec. 209.006, which relates to a NOTICE OF VIOLATION. This seems contradictory. Does the owner get 2 opportunities for a hearing - one with the NOTICE OF VIOLATION, the other with the NOTICE OF FINE? Recommend deleting "in accordance with Section 209.006".
Does it affect new home sales?	<u>NO.</u> But it does affect HOA operations during the Declarant-control period.

(See Next 4 Pages for Rest of SECTION 6)

SECTION	6 (PART 2 of 5)
Main Purpose	PAYMENT PLANS
Relates to which statute?	Amends Chapter 209 Property Code, titled Texas Residential Property Owners Protection Act, by adding a new Section - 209.0062 - titled "Alternative Payment Schedule for Certain Assessments"
Pertinent part of SB 979	<u>Sec. 209.0062. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN ASSESSMENTS. A property owners' association shall adopt guidelines to establish an alternative payment schedule by which an owner may make partial payments to the property owners' association for delinquent regular or special assessments on a showing by the owner of a substantial change in the owner's personal circumstances.</u>
SUGGESTED REWORDING	<u>Sec. 209.0062. PAYMENT PLAN FOR DELINQUENT ASSESSMENTS. A property owners' association shall adopt guidelines to establish an installment payment schedule by which an owner may pay delinquent regular or special assessments. A plan for retiring delinquent regular or special assessments may be conditioned on the owner's timely payment of accruing assessments.</u>
Existing law	Existing law does not address payment plans.
Change to existing law	Requires HOA to have a payment plan policy
Comment 1	Unclear why the payment plan is limited to regular and special assessments. This suggests the HOA can refuse payment plans for owner's reimbursement of judgment awards, property damage, insurance deductible, fines, attorneys fees, rent for storage or parking spaces, etc.
Comment 2	The requirement of "a substantial change in the owner's personal circumstances" seems unusually limiting. Why "substantial" and "personal"? This standard gives HOA many grounds for refusing payment plans.
Does it affect new home sales?	<u>NO</u> . But it does affect HOA operations during the Declarant-control period.

(See Next 3 Pages for Rest of SECTION 6)

SECTION	6 (PART 3 of 5)
Main Purpose	APPLICATION OF PAYMENTS
Relates to which statute?	Amends TPC Chapter 209 Property Code, titled Texas Residential Property Owners Protection Act, by adding a new Section - 209.0063 - titled "Priority of Payments"
Pertinent part of SB 979	<p>Sec. 209.0063. PRIORITY OF PAYMENTS. Unless otherwise provided in a writing by the property owner, a payment received by a property owners' association from the owner shall be applied to the owner's debt in the following order of priority:</p> <p>(1) any delinquent assessment;</p> <p>(2) any current assessment;</p> <p>(3) any fines assessed by the association; and</p> <p>(4) any attorney's fees incurred by the association solely associated with fines assessed by the association.</p>
Existing law	TPC Chapter 204 (bracketed to Houston area) allows HOA board to adopt rules regulating the application of payments (See TPC Sec. 204.010(a)(13). Texas Uniform Condominium Act has a comparable provision (See TPC Sec. 82.102(a)(13).
Change to existing law	Limits the HOA board's discretion for applying an owner's payments.
ISSUE #1	Conflicts with other statutes. For example, TPC Sec. 209.011 dictates a different application of payments for an owner to redeem his home following the HOA's foreclosure sale.
ISSUE #2	Applies only to payments received "from the owner," suggesting that money received from the owner's mortgagee, the owner's tenant, or any one else who makes payment relating to the unit is not held to the same application policy.
ISSUE #3	What if the owner's debt to the HOA consists of categories not covered by the statute, such as reimbursement for damage to the clubhouse? If the first 4 categories are "current," can the HOA apply payment to the additional categories or is the HOA required to hold the money for future accruing assessments?
ISSUE #4	What is meant by " <u>(4) any attorney's fees incurred by the association solely associated with fines assessed by the association.</u> "??? What about attorneys fees incurred in collecting the owner's debt? Or fees incurred in seeking enforcement of the restrictions? Are there ever attorneys fees SOLELY associated with FINES?
Does it affect new home sales?	YES. ✓✓✓ Restrictions often obligate home buyers to make non-refundable one-time contributions to HOA reserve funds, or to the HOA operating funds, or to other dedicated funds of the HOA. SB 979 threatens that long-standing mechanism for financing the new HOA, and for funding reserves in established HOAs. This is an important issue for Builder/Developers.

(See Next 2 Pages for Rest of SECTION 6)

SECTION	6 (PART 4 of 5)
Main Purpose	JUDICIAL FORECLOSURE
Relates to which statute?	Amends Chapter 209 Property Code, titled Texas Residential Property Owners Protection Act, by adding a new Section - 209.0091 - titled "Judicial Foreclosure Required"
Pertinent part of SB 979	<p><u>Sec. 209.0091. JUDICIAL FORECLOSURE REQUIRED. (a) Except as provided by a restriction created before September 1, 2007, or by Subsection (b), a property owners' association may not foreclose 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.</u></p> <p><u>(b) Judicial foreclosure is not required under this section if the owner of the property that is subject to foreclosure agrees in writing to waive judicial foreclosure under this section.</u></p>
SUGGESTED REWORDING	<p><u>Sec. 209.0091. JUDICIAL FORECLOSURE REQUIRED. (a) Except as provided by a restriction created before September 1, 2007, or by Subsection (b), a property owners' association may not foreclose 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.</u></p> <p><u>(b) If the declaration contains a private power of sale authorizing nonjudicial foreclosure of the assessment lien, the property owners association may foreclose nonjudicially under the declaration if the owner of the property that is subject to foreclosure agrees in writing to waive judicial foreclosure under this section.</u></p>
Existing law	The lien and the type of foreclosure are created by the declaration, not by statute. The right of non-judicial foreclosure must be in the declaration. (Unlike condos, which have a statutory lien and right of foreclosure.)
Change to existing law	Statutory override of a declaration that authorizes nonjudicial foreclosure.
Does it affect new home sales?	<u>NO.</u> But it does affect HOA operations during the Declarant-control period.

(See Next Page for Rest of SECTION 6)

SECTION	6 (PART 5 of 5)
Main Purpose	PLATS
Relates to which statute?	Amends Chapter 209 Property Code, titled Texas Residential Property Owners Protection Act, by adding a new Section - 209.0012 - titled "Plats"
Pertinent part of SB 979	<u>Sec. 209.012. PLATS. A plat filed as part of a declaration that establishes a residential subdivision must:</u> <u>(1) provide the location of each utility infrastructure to be built; and</u> <u>(2) specifically identify amenities that must be built and label those amenities "MUST BE BUILT."</u>
Existing law	Platting is subject to the platting statutes, and is regulated by cities (and counties), pursuant to the Local Government Code, and local building codes and zoning ordinances.
Change to existing law	This may be a new issue for the legislature within the HOA context. I do not recall it arising in previous sessions or at legislative hearings.
Comment 1	<i>What is the genesis of this provision?</i> There is a difference between condo plats and traditional subdivision plats. Does this statutory proposal stem from a traditional single family neighborhood that was created as a condominium?
Comment 2	Plats are not recorded as "part of a declaration," except with condominiums, which are subject to unique platting requirements under TPC 82.059. For other types of property owners associations, the declaration may be recorded BEFORE the plat, or AFTER the plat, but never WITH the plat.
Comment 3	What is a "utility infrastructure to be built"? Plats show easements for utilities services.
Comment 4	Plats do not usually show amenities - such as swimming pools, playgrounds, and clubhouses. Instead, plats identify the "common area lots" of the subdivision on which the amenities may be built. On the other hand, site maps in the sales office often DO show community amenities.
Comment 5	This is a peculiar provision altogether. The "MUST BE BUILT" concept is found in TPC Secs. 82.059(c), 82.162, 82.163 - which pertain to condominiums.
Does it affect new home sales?	<u>YES.</u> ✓✓✓ This is an important issue for Builder/Developers.

SECTION	7
Main Purpose	APPLICABILITY OF SECTION 1 - 6
	-- Not reviewed --

SECTION	8
Main Purpose	EFFECTIVE DATE
Problem	September 1, 2007 is short notice for the HOAs of Texas, many of which are self-managed by volunteer homeowners who will not know about the law changes in such a short time.
Suggestion	January 1, 2008 is a more realistic effective date for "getting the word out" statewide.