

TEXAS PROPERTY CODE
TITLE 11
RESTRICTIVE COVENANTS

CHAPTER 202

CONSTRUCTION AND ENFORCEMENT OF RESTRICTIVE COVENANTS

[With changes from 82nd Legislature - 2011]

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Prepared to illustrate

NEW DAY FOR TEXAS HOAS:
OVERVIEW OF 2011 REFORM LEGISLATION
FOR CONDOS AND OWNERS ASSOCIATIONS

Presented June 30, 2011

[Corrected 7/14/11 to fix some effective dates]

State Bar of Texas Webcast

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TEXAS PROPERTY CODE

TITLE 11. RESTRICTIVE COVENANTS

CHAPTER 202. CONSTRUCTION AND ENFORCEMENT OF RESTRICTIVE COVENANTS

[With changes from 82nd Legislature – 2011]

Sec. 202.001. DEFINITIONS. In this chapter:

(1) "Dedictory instrument" means each **document** governing ~~[instrument covering]~~ the establishment, maintenance, **or** ~~[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:

(A) restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association;

(B) ~~[-to]~~ properly adopted rules and regulations of the property owners' association; **or**

(C) ~~[-or-to]~~ all lawful amendments to the covenants, bylaws, instruments, rules, or regulations.

[Changes to 202.001(1) eff 1/1/12 - HB 1821, 82nd Legislature]

(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,

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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.

Sec. 202.006. PUBLIC RECORDS. (a) A property owners' association shall file all [the] dedicatory instruments [instrument] in the real property records of each county in which the property to which the dedicatory instruments relate [instrument-relates] is located.

(b) A dedicatory instrument has no effect until the instrument is filed in accordance with this section.

[Changes to 202.006 – eff 1/1/12 - HB 1821, 82nd Legislature]

Sec. 202.007. CERTAIN RESTRICTIVE COVENANTS PROHIBITED. (a) A property owners' association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner from:

(1) implementing measures promoting solid-waste composting of vegetation, including grass clippings, leaves, or brush, or leaving grass clippings uncollected on grass;

(2) installing rain barrels or a rainwater harvesting system; or

(3) implementing efficient irrigation systems, including underground drip or other drip systems.

(b) A provision that violates Subsection (a) is void.

(c) A property owners' association may restrict the type of turf used by a property owner in the planting of new turf to encourage or require water-conserving turf.

(d) This section does not:

(1) restrict a property owners' association from regulating the requirements, including size, type, shielding, and materials, for or the location of a composting device~~[- rain barrel, rain harvesting device, or any other~~

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appurtenance if the restriction does not prohibit the economic installation of the device [or appurtenance] on the property owner's property where there is reasonably sufficient area to install the device [or appurtenance];

(2) require a property owners' association to permit a device [or appurtenance] described by Subdivision (1) to be installed in or on property:

- (A) owned by the property owners' association;
- (B) owned in common by the members of the property owners' association; or
- (C) in an area other than the fenced yard or patio of a property owner;

(3) prohibit a property owners' association from regulating the installation of efficient irrigation systems, including establishing visibility limitations for aesthetic purposes;

(4) prohibit a property owners' association from regulating the installation or use of gravel, rocks, or cacti; [or]

(5) restrict a property owners' association from regulating yard and landscape maintenance if the restrictions or requirements do not restrict or prohibit turf or landscaping design that promotes water conservation;

(6) require a property owners' association to permit a rain barrel or rainwater harvesting system to be installed in or on property if:

(A) the property is:

(i) owned by the property owners' association;

(ii) owned in common by the members of the property owners' association; or

(iii) located between the front of the property owner's home and an adjoining or

adjacent street; or

(B) the barrel or system:

(i) is of a color other than a color consistent with the color scheme of the property

owner's home; or

(ii) displays any language or other content that is not typically displayed by such a

barrel or system as it is manufactured; or

(7) restrict a property owners' association from regulating the size, type, and shielding of, and the materials used in the construction of, a rain barrel, rainwater harvesting device, or other appurtenance that is located on the side of a house or at any other location that is visible from a street, another lot, or a common area if:

(A) the restriction does not prohibit the economic installation of the device or appurtenance on the property owner's property; and

(B) there is a reasonably sufficient area on the property owner's property in which to install the device or appurtenance.

[Changes to 202.007(d), eff 9/1/11 - HB 3391, 82nd Legislature]

(e) This section does not apply to a property owners' association that:

(1) is located in a municipality with a population of more than 175,000 that is located in a county in which another municipality with a population of more than one million is predominantly located; and

(2) manages or regulates a development in which at least 4,000 acres of the property is subject to a covenant, condition, or restriction designating the property for commercial use, multifamily dwellings, or open space.

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Sec. 202.009. REGULATION OF DISPLAY OF POLITICAL SIGNS. (a) Except as otherwise provided by this section, a property owners' association may not enforce or adopt a restrictive covenant that prohibits a property owner from displaying on the owner's property one or more signs advertising a political candidate or ballot item for an election:

- (1) on or after the 90th day before the date of the election to which the sign relates; or
- (2) before the 10th day after that election date.

(b) This section does not prohibit the enforcement or adoption of a covenant that:

- (1) requires a sign to be ground-mounted; or
- (2) limits a property owner to displaying only one sign for each candidate or ballot item.

(c) This section does not prohibit the enforcement or adoption of a covenant that prohibits a sign that:

- (1) contains roofing material, siding, paving materials, flora, one or more balloons or lights, or any other similar building, landscaping, or nonstandard decorative component;
- (2) is attached in any way to plant material, a traffic control device, a light, a trailer, a vehicle, or any other existing structure or object;
- (3) includes the painting of architectural surfaces;
- (4) threatens the public health or safety;
- (5) is larger than four feet by six feet;
- (6) violates a law;
- (7) contains language, graphics, or any display that would be offensive to the ordinary person; or
- (8) is accompanied by music or other sounds or by streamers or is otherwise distracting to motorists.

(d) A property owners' association may remove a sign displayed in violation of a restrictive covenant permitted by this section.

Sec. 202.010. REGULATION OF SOLAR ENERGY DEVICES. (a) In this section:

(1) "Development period" means a period stated in a declaration during which a declarant reserves:

(A) a right to facilitate the development, construction, and marketing of the subdivision; and

(B) a right to direct the size, shape, and composition of the subdivision.

(2) "Solar energy device" has the meaning assigned by Section 171.107, Tax Code.

(b) Except as otherwise provided by Subsection (d), a property owners' association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner from installing a solar energy device.

(c) A provision that violates Subsection (b) is void.

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(d) A property owners' association may include or enforce a provision in a dedicatory instrument that prohibits a solar energy device that:

(1) as adjudicated by a court:

- (A) threatens the public health or safety; or
- (B) violates a law;

(2) is located on property owned or maintained by the property owners' association;

(3) is located on property owned in common by the members of the property owners' association;

(4) is located in an area on the property owner's property other than:

- (A) on the roof of the home or of another structure allowed under a dedicatory instrument; or
- (B) in a fenced yard or patio owned and maintained by the property owner;

(5) if mounted on the roof of the home:

- (A) extends higher than or beyond the roofline;
 - (B) is located in an area other than an area designated by the property owners' association, unless the alternate location increases the estimated annual energy production of the device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than 10 percent above the energy production of the device if located in an area designated by the property owners' association;
 - (C) does not conform to the slope of the roof and has a top edge that is not parallel to the roofline; or
 - (D) has a frame, a support bracket, or visible piping or wiring that is not in a silver, bronze, or black tone commonly available in the marketplace;
- (6) if located in a fenced yard or patio, is taller than the fence line;
- (7) as installed, voids material warranties; or
- (8) was installed without prior approval by the property owners' association or by a committee created in a dedicatory instrument for such purposes that provides decisions within a reasonable period or within a period specified in the dedicatory instrument.

(e) A property owners' association or the association's architectural review committee may not withhold approval for installation of a solar energy device if the provisions of the dedicatory instruments to the extent authorized by Subsection (d) are met or exceeded, unless the association or committee, as applicable, determines in writing that placement of the device as proposed by the property owner constitutes a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. For purposes of making a determination under this subsection, the written approval of the proposed placement of the device by all property owners of adjoining property constitutes prima facie evidence that such a condition does not exist.

(f) During the development period, the declarant may prohibit or restrict a property owner from installing a solar energy device.

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[202.010 Solar – eff 6/17/11 - HB 362, 82nd Legislature]

Sec. 202.011. REGULATION OF CERTAIN ROOFING MATERIALS. A property owners' association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner who is otherwise authorized to install shingles on the roof of the owner's property from installing shingles that:

(1) are designed primarily to:

(A) be wind and hail resistant;

(B) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or

(C) provide solar generation capabilities; and

(2) when installed:

(A) resemble the shingles used or otherwise authorized for use on property in the subdivision;

(B) are more durable than and are of equal or superior quality to the shingles described by Paragraph (A); and

(C) match the aesthetics of the property surrounding the owner's property.

[202.011 Roofing – eff 6/17/11 - HB 362, 82nd Legislature]

{ALERT > Two sections are numbered "202.011" – one is Roofs, the other Flags.}

Sec. 202.011. FLAG DISPLAY. (a) A property owners' association may not, except as provided in this section, adopt or enforce a dedicatory instrument provision that prohibits, restricts, or has the effect of prohibiting or restricting an owner from the display of:

(1) the flag of the United States of America;

(2) the flag of the State of Texas; or

(3) an official or replica flag of any branch of the United States armed forces.

(b) A property owners' association may adopt or enforce reasonable dedicatory instrument provisions:

(1) that require:

(A) the flag of the United States be displayed in accordance with 4 U.S.C. Sections 5-10;

(B) the flag of the State of Texas be displayed in accordance with Chapter 3100, Government

Code;

(C) a flagpole attached to a dwelling or a freestanding flagpole be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the dwelling;

(D) the display of a flag, or the location and construction of the supporting flagpole, to comply with applicable zoning ordinances, easements, and setbacks of record; and

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(E) a displayed flag and the flagpole on which it is flown be maintained in good condition and that any deteriorated flag or deteriorated or structurally unsafe flagpole be repaired, replaced, or removed;

(2) that regulate the size, number, and location of flagpoles on which flags are displayed, except that the regulation may not prevent the installation or erection of at least one flagpole per property that is not more than 20 feet in height;

(3) that govern the size of a displayed flag;

(4) that regulate the size, location, and intensity of any lights used to illuminate a displayed flag;

(5) that impose reasonable restrictions to abate noise caused by an external halyard of a flagpole; or

(6) that prohibit a property owner from locating a displayed flag or flagpole on property that is:

(A) owned or maintained by the property owners' association; or

(B) owned in common by the members of the association.

[Sec. 202.011-FLAGS – eff 6/17/11 - HB 2779, 82nd Legislature]

Sec. 202.018. REGULATION OF DISPLAY OF CERTAIN RELIGIOUS ITEMS. (a) Except as otherwise provided by this section, a property owners' association may not enforce or adopt a restrictive covenant that prohibits a property owner or resident from displaying or affixing on the entry to the owner's or resident's dwelling one or more religious items the display of which is motivated by the owner's or resident's sincere religious belief.

(b) This section does not prohibit the enforcement or adoption of a covenant that, to the extent allowed by the constitution of this state and the United States, prohibits the display or affixing of a religious item on the entry to the owner's or resident's dwelling that:

(1) threatens the public health or safety;

(2) violates a law;

(3) contains language, graphics, or any display that is patently offensive to a passerby;

(4) is in a location other than the entry door or door frame or extends past the outer edge of the door frame of the owner's or resident's dwelling; or

(5) individually or in combination with each other religious item displayed or affixed on the entry door or door frame has a total size of greater than 25 square inches.

(c) Except as otherwise provided by this section, this section does not authorize an owner or resident to use a material or color for an entry door or door frame of the owner's or resident's dwelling or make an alteration to the entry door or door frame that is not authorized by the restrictive covenants governing the dwelling.

(d) A property owners' association may remove an item displayed in violation of a restrictive covenant permitted by this section.

[Sec. 202.018 – eff 6/17/11 - HB 1278, 82nd Legislature]

End of Chapter 202

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