

1 AN ACT

2 relating to the extension or amendment of deed restrictions in
3 certain older subdivisions.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Title 11, Property Code, is amended by adding
6 Chapter 216 to read as follows:

7 CHAPTER 216. EXTENSION OR AMENDMENT OF RESTRICTIONS IN CERTAIN
8 OLDER SUBDIVISIONS

9 Sec. 216.001. DEFINITIONS. In this chapter:

10 (1) "Dedictory instrument" has the meaning assigned
11 by Section 202.001.

12 (2) "Lienholder" and "owner" have the meanings
13 assigned by Section 201.003.

14 (3) "Older subdivision" means a subdivision described
15 by a recorded map or plat filed before 1947 in the real property
16 records of the county in which the subdivision is located.

17 (4) "Petition" has the meaning assigned by Section
18 202.001.

19 (5) "Property owners' association" means an
20 incorporated or unincorporated homeowners' association, community
21 association, civic club, or similar entity that:

22 (A) has a membership primarily consisting of the
23 owners of real property in a subdivision; and

24 (B) supports the enforcement of or promotes the

1 observance of the deed restrictions applicable to all or part of the
2 property located in the subdivision.

3 (6) "Restrictions" has the meaning assigned by Section
4 209.002.

5 (7) "Subdivision" means land that:

6 (A) consists of multiple sections that have each
7 been divided into two or more parts on a map or plat that has been
8 recorded in the real property records of a county; and

9 (B) is or was subject to restrictions that:

10 (i) limit a majority of the land, excluding
11 streets and public areas, to residential use; and

12 (ii) were recorded in the real property
13 records of the county.

14 (8) "University" means an institution of higher
15 education or a private or independent institution of higher
16 education, as those terms are defined by Section 61.003, Education
17 Code. The term includes a university's affiliate entity, including
18 an endowment instrument, and a unit, division, institution, or
19 agency established to operate as a component part of a university.

20 Sec. 216.002. FINDINGS AND PURPOSE. (a) The legislature
21 finds that:

22 (1) the inability of owners to extend or amend
23 property restrictions in older subdivisions in which no zoning
24 regulations apply creates uncertainty in living conditions and
25 discourages investments in those subdivisions;

26 (2) owners in affected older subdivisions are
27 reluctant or unable to provide proper maintenance, upkeep, and

1 repairs of structures because of the inability to amend the
2 restrictions in response to changing circumstances;

3 (3) these conditions will cause dilapidation of
4 housing and other structures and cause unhealthful and unsanitary
5 conditions in affected older subdivisions, contrary to the health,
6 safety, and welfare of the public; and

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

11 (b) The purpose of this chapter is to provide a procedure
12 for extending or amending restrictions for certain older
13 subdivisions, including the removal of any restriction relating to
14 race, religion, or national origin that is void and unenforceable
15 under the United States Constitution or Section 5.026.

16 Sec. 216.003. APPLICABILITY OF CHAPTER. (a) This chapter
17 applies only to an older subdivision that:

18 (1) is wholly or partly located in a municipality with
19 a population of two million or more;

20 (2) had original restrictions that:

21 (A) for at least one section of the subdivision,
22 did not have an express procedure that provides for successive
23 extensions of the restrictions;

24 (B) did not have an express procedure for
25 amending the restrictions;

26 (C) under the common law of this state could not
27 be amended without the unanimous consent of:

1 (i) all owners in the subdivision; or
2 (ii) all owners in any section of the
3 subdivision; and

4 (D) may no longer be valid due to an inability to
5 extend or amend the restrictions; and

6 (3) has a single property owners' association in which
7 all owners in the subdivision are eligible for membership but in
8 which membership is not mandatory.

9 (b) This chapter applies to a restriction regardless of the
10 date on which the restriction was created.

11 (c) This chapter supersedes any contrary requirement for
12 the extension or amendment of a restriction in a dedicatory
13 instrument of a subdivision to which this chapter applies.

14 (d) This chapter does not apply to:

15 (1) a residential subdivision described by Section
16 209.0041(b);

17 (2) a condominium, as defined by Section 81.002 or
18 82.003;

19 (3) any portion of a residential subdivision in which
20 restrictions are no longer enforceable due to nonresidential use;
21 or

22 (4) property that is owned by a university that was
23 owned by the university on the effective date of this chapter.

24 Sec. 216.004. AMENDMENT OF RESTRICTIONS. (a) For purposes
25 of this chapter, the amendment of restrictions includes the
26 adoption of new restrictions or the modification or removal of
27 existing restrictions.

1 (b) An amendment of restrictions under this chapter may not
2 create a property owners' association with mandatory membership.

3 An amendment of restrictions under this chapter that creates a
4 property owners' association with mandatory membership is void.

5 Sec. 216.005. PROPERTY OWNERS' ASSOCIATION ACTION NOT
6 REQUIRED. Except as provided by Section 216.008, restrictions may
7 be extended or amended under this chapter without action by the
8 property owners' association.

9 Sec. 216.006. EXTENSION OF RESTRICTIONS. (a) Restrictions
10 may be extended as provided by Section 216.007 or, if a dedicatory
11 instrument provides a procedure for an initial extension of the
12 original restrictions, that procedure may be used for successive
13 extensions of the original restrictions unless the dedicatory
14 instrument expressly prohibits the procedure from being used for
15 successive extensions. If the dedicatory instrument prohibits the
16 procedure from being used to provide for automatic extension of
17 restrictions, the procedure may not be used under this subsection
18 to provide for automatic extension of the restrictions.

19 (b) A provision in a dedicatory instrument that prohibits
20 the extension of an existing restriction during a certain period
21 does not apply to a successive extension under a procedure for
22 initial extension of original restrictions under Subsection (a).

23 (c) An extension of restrictions under this chapter may:

24 (1) be for a period equal to the original term of the
25 restrictions or a shorter period; and

26 (2) subject to Subsection (a), provide for additional
27 automatic extensions of the term of the restrictions for a period of

1 not more than 10 years for each extension.

2 (d) A dedicatory instrument that provides for the extension
3 of restrictions and does not provide for amendment of restrictions
4 may be amended under this chapter, including by amending the
5 provision providing for the extension of the restrictions.

6 Sec. 216.007. CONSENT REQUIRED FOR EXTENSION OR AMENDMENT
7 OF RESTRICTIONS. (a) A restriction may be extended or amended by a
8 petition or ballots that indicate the written consent of the owners
9 of at least 66.6 percent of the total number of separately owned
10 parcels or tracts in the subdivision, regardless of whether the
11 parcels or tracts contain part or all of one or more platted lots or
12 combination of lots, but not including any parcels or tracts
13 excluded from applicability of this chapter under Section
14 216.003(d).

15 (b) A restriction that is extended or amended as described
16 by Subsection (a) applies to all sections of the subdivision other
17 than property excluded from applicability of this chapter under
18 Section 216.003(d) to the extent that the extended or amended
19 restriction expressly applies to the entire subdivision,
20 regardless of whether:

21 (1) each section has separate restrictions; or

22 (2) each owner is a member of the property owners'
23 association.

24 (c) If the original restrictions for a subdivision contain a
25 lower percentage to extend or amend the restrictions, the
26 percentage in the original restrictions controls.

27 Sec. 216.008. PETITION OR BALLOTS. (a) After receiving

1 written approval of a petition or ballot by the property owners'
2 association, the petition or ballots for the extension or amendment
3 of restrictions must be distributed to the owners in the
4 subdivision by any public method, including:

5 (1) by United States mail;

6 (2) by electronic mail or other method of electronic
7 transmission or publication, including publication on an Internet
8 website;

9 (3) by door-to-door circulation;

10 (4) by publication in a newspaper or similar
11 publication of general circulation in the municipality in which the
12 subdivision is located; or

13 (5) at a meeting of the owners in the subdivision
14 called for the purpose of voting on the proposed extension or
15 amendment.

16 (b) The petition or ballots may be provided to owners in
17 separate documents. The separate documents are considered to be
18 one instrument.

19 (c) If a restriction is amended under this chapter, a
20 petition or ballot for a subsequent amendment of the restrictions
21 may not be distributed under Subsection (a) before the fifth
22 anniversary of the effective date of the amended restriction under
23 Section 216.010.

24 Sec. 216.009. EFFECT OF OWNER'S SIGNATURE. (a) An owner's
25 signature on a petition or ballot conclusively establishes the
26 owner's consent for the purposes of this chapter.

27 (b) The vote of multiple owners of a lot, parcel, or tract

1 may be reflected by the signature of one of the owners.

2 (c) After an owner signs a petition or ballot for an
3 extension or amendment of a restriction, the owner's subsequent
4 conveyance of the owner's interest in real property in the
5 subdivision covered by the extension or amendment does not affect
6 the validity of the signature for the purposes of the petition or
7 ballot.

8 Sec. 216.010. EFFECTIVE DATE OF EXTENSION OR AMENDMENT. An
9 extension or amendment of a restriction under this chapter takes
10 effect on the date the extension or amendment and the petition or
11 ballots that reflect the written consent of the required number of
12 owners in the subdivision for the adoption of the extension or
13 amendment are filed and recorded in the real property records of the
14 county in which the subdivision is located.

15 Sec. 216.011. APPLICABILITY OF EXTENSION OR AMENDMENT. (a)
16 An extension or amendment of a restriction under this chapter is
17 binding on a lot, parcel, or tract in the subdivision as provided by
18 the restriction, regardless of whether the owner or owners of the
19 lot, parcel, or tract consented to the extension or amendment.

20 (b) Notwithstanding any other law, an owner may not opt out
21 of the applicability to the owner's property of a restriction that
22 is extended or amended under this chapter.

23 (c) An extension or amendment of a restriction under this
24 chapter is binding on a lienholder or a person who acquires title to
25 property at a foreclosure sale or by deed from a foreclosing
26 lienholder.

27 Sec. 216.012. UNCONSTITUTIONAL RESTRICTIONS NOT EXTENDED.

1 If a provision in restrictions extended under this chapter is void
2 and unenforceable under the United States Constitution or Section
3 5.026, the restrictions are considered as if the void and
4 unenforceable provision was never contained in the restrictions.

5 Sec. 216.013. PROCEDURES CUMULATIVE. The procedure
6 provided by this chapter for the extension or amendment of
7 restrictions is cumulative of and not in lieu of any other method by
8 which restrictions of a subdivision to which this chapter applies
9 may be extended or amended.

10 Sec. 216.014. CONSTRUCTION OF CHAPTER AND RESTRICTIONS.

11 (a) This chapter and any petition or ballot made or action taken in
12 connection with an attempt to comply with this chapter shall be
13 liberally construed to effectuate the intent of this chapter and
14 the petition, ballot, or action.

15 (b) A restriction that is extended or amended under this
16 chapter shall be liberally construed to give effect to the
17 restriction's purposes and intent.

18 SECTION 2. This Act takes effect immediately if it receives
19 a vote of two-thirds of all the members elected to each house, as
20 provided by Section 39, Article III, Texas Constitution. If this
21 Act does not receive the vote necessary for immediate effect, this
22 Act takes effect September 1, 2023.

President of the Senate

Speaker of the House

I certify that H.B. No. 1558 was passed by the House on April 20, 2023, by the following vote: Yeas 117, Nays 29, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1558 on May 25, 2023, by the following vote: Yeas 118, Nays 20, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1558 was passed by the Senate, with amendments, on May 18, 2023, by the following vote: Yeas 26, Nays 5.

Secretary of the Senate

APPROVED: _____

Date

Governor