

PROPERTY CODE

TITLE 11. RESTRICTIVE COVENANTS

CHAPTER 207. DISCLOSURE OF INFORMATION BY PROPERTY OWNERS'
ASSOCIATIONS

Sec. 207.001. DEFINITIONS. In this chapter:

(1) "Restrictions" has the meaning assigned by Section 201.003.

(2) "Dedictory instrument," "property owners' association," and "restrictive covenant" have the meanings assigned by Section 209.002.

(3) "Owner" means a person who owns record title to property in a subdivision or the personal representative of an individual who owns record title to property in a subdivision.

(4) "Regular assessment" and "special assessment" have the meanings assigned by Section 204.001.

(5) "Resale certificate" means a written statement issued, signed, and dated by an officer or authorized agent of a property owners' association that contains the information specified by Section 207.003(b).

(6) "Subdivision" means all land that has been divided into two or more parts and that is or was burdened by restrictions limiting at least the majority of the land area burdened by restrictions, excluding streets and public areas, to residential use only, if the instrument or instruments creating the restrictions are recorded in the deed or real property records of a county.

Added by Acts 1999, 76th Leg., ch. 1198, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 2, eff. September 1, 2015.

Sec. 207.002. APPLICABILITY. (a) This chapter applies to a subdivision with a property owners' association that is entitled to levy regular or special assessments.

(b) This chapter does not apply to a condominium council of owners governed by Chapter 81 or a condominium unit owners'

association governed by Chapter 82.

Added by Acts 1999, 76th Leg., ch. 1198, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 3, eff. September 1, 2015.

Sec. 207.003. DELIVERY OF SUBDIVISION INFORMATION TO OWNER.

(a) Not later than the 10th business day after the date a written request for subdivision information is received from an owner or the owner's agent, a purchaser of property in a subdivision or the purchaser's agent, or a title insurance company or its agent acting on behalf of the owner or purchaser and the evidence of the requestor's authority to order a resale certificate under Subsection (a-1) is received and verified, the property owners' association shall deliver to the owner or the owner's agent, the purchaser or the purchaser's agent, or the title insurance company or its agent:

(1) a current copy of the restrictions applying to the subdivision;

(2) a current copy of the bylaws and rules of the property owners' association; and

(3) a resale certificate prepared not earlier than the 60th day before the date the certificate is delivered that complies with Subsection (b).

(a-1) For a request from a purchaser of property in a subdivision or the purchaser's agent, the property owners' association may require the purchaser or purchaser's agent to provide to the association, before the association begins the process of preparing or delivers the items listed in Subsection (a), reasonable evidence that the purchaser has a contractual or other right to acquire property in the subdivision.

(b) A resale certificate under Subsection (a) must contain:

(1) a statement of any right of first refusal, other than a right of first refusal that is prohibited by statute, and any other restraint contained in the restrictions or restrictive covenants that restricts the owner's right to transfer the owner's property;

(2) the frequency and amount of any regular assessments;

(3) the amount and purpose of any special assessment that has been approved before and is due after the resale certificate is delivered;

(4) the total of all amounts due and unpaid to the property owners' association that are attributable to the owner's property;

(5) capital expenditures, if any, approved by the property owners' association for the property owners' association's current fiscal year;

(6) the amount of reserves, if any, for capital expenditures;

(7) the property owners' association's current operating budget and balance sheet;

(8) the total of any unsatisfied judgments against the property owners' association;

(9) the style and cause number of any pending lawsuit in which the property owners' association is a party, other than a lawsuit relating to unpaid ad valorem taxes of an individual member of the association;

(10) a copy of a certificate of insurance showing the property owners' association's property and liability insurance relating to the common areas and common facilities;

(11) a description of any conditions on the owner's property that the property owners' association board has actual knowledge are in violation of the restrictions applying to the subdivision or the bylaws or rules of the property owners' association;

(12) a summary or copy of notices received by the property owners' association from any governmental authority regarding health or housing code violations existing on the preparation date of the certificate relating to the owner's property or any common areas or common facilities owned or leased by the property owners' association;

(13) the amount of any administrative transfer fee charged by the property owners' association for a change of

ownership of property in the subdivision;

(14) the name, mailing address, and telephone number of the property owners' association's managing agent, if any;

(15) a statement indicating whether the restrictions allow foreclosure of a property owners' association's lien on the owner's property for failure to pay assessments; and

(16) a statement of all fees associated with the transfer of ownership, including a description of each fee, to whom each fee is paid, and the amount of each fee.

(c) A property owners' association may charge a reasonable fee to assemble, copy, and deliver the information required by this section and may charge a reasonable fee to prepare and deliver an update of a resale certificate under Subsection (f).

(c-1) The property owners' association may require payment before beginning the process of providing a resale certificate but may not process a payment for a resale certificate until the certificate is available for delivery. The association may not charge a fee if the certificate is not provided in the time prescribed by Subsection (a).

(d) The property owners' association shall deliver the information required by Subsection (a) or (f) to the person specified in the written request. A written request that does not specify the name and location to which the information is to be sent is not effective. The property owners' association may deliver the information required by Subsection (a) and any update to the resale certificate required by Subsection (f) by mail, hand delivery, or alternative delivery means specified in the written request.

(e) Unless required by a dedicatory instrument, neither a property owners' association or its agent is required to inspect a property before issuing a resale certificate or an update to a resale certificate.

(f) Not later than the seventh business day after the date a written request for an update of a resale certificate delivered under Subsection (a) is received from an owner, owner's agent, or title insurance company or its agent acting on behalf of the owner, the property owners' association shall deliver to the owner, owner's agent, or title insurance company or its agent an updated

resale certificate that contains the following information:

(1) if a right of first refusal or other restraint on sale is contained in the restrictions, a statement of whether the property owners' association waives the restraint on sale;

(2) the status of any unpaid special assessments, dues, or other payments attributable to the owner's property; and

(3) any changes to the information provided in the resale certificate issued under Subsection (a).

(g) Requests for an updated resale certificate pursuant to Subsection (f) must be made within 180 days of the date a resale certificate is issued under Subsection (a). The update request may be made only by the party requesting the original resale certificate.

Added by Acts 1999, 76th Leg., ch. 1198, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 147 (S.B. 1918), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1142 (H.B. 1821), Sec. 4, eff. January 1, 2012.

Sec. 207.004. OWNER'S REMEDIES FOR FAILURE BY PROPERTY OWNERS' ASSOCIATION TO TIMELY DELIVER INFORMATION. (a) If a property owners' association does not timely deliver information in accordance with Section 207.003, the owner, owner's agent, or title insurance company or its agent acting on behalf of the owner may submit a second request for the information.

(b) If a property owners' association fails to deliver the information required under Section 207.003 before the seventh day after the second request for the information was mailed by certified mail, return receipt requested, or hand delivered, evidenced by receipt, the owner:

(1) may seek one or any combination of the following:

(A) a court order directing the property owners' association to furnish the required information;

(B) a judgment against the property owners' association for not more than \$500;

(C) a judgment against the property owners'

association for court costs and attorney's fees; or

(D) a judgment authorizing the owner or the owner's assignee to deduct the amounts awarded under Paragraphs (B) and (C) from any future regular or special assessments payable to the property owners' association; and

(2) may provide a buyer under contract to purchase the owner's property an affidavit that states that the owner, owner's agent, or title insurance company or its agent acting on behalf of the owner made, in accordance with this chapter, two written requests to the property owners' association for the information described in Section 207.003 and that the association did not timely provide the information.

(c) If the owner provides a buyer under contract to purchase the owner's property an affidavit in accordance with Subsection (b)(2):

(1) the buyer, lender, or title insurance company or its agent is not liable to the property owners' association for:

(A) any money that is due and unpaid to the property owners' association on the date the affidavit was prepared; and

(B) any debt to the property owners' association or claim by the property owners' association that accrued before the date the affidavit was prepared; and

(2) the property owners' association's lien to secure the amounts due the property owners' association on the owner's property on the date the affidavit was prepared shall automatically terminate.

Added by Acts 1999, 76th Leg., ch. 1198, Sec. 1, eff. Sept. 1, 1999.

Sec. 207.005. EFFECT OF RESALE CERTIFICATE; LIABILITY.

(a) A property owners' association may not deny the validity of any statement in the resale certificate. The property owners' association's lien to secure undisclosed amounts due the property owners' association on the date the resale certificate is prepared shall automatically terminate as a lien securing the undisclosed amount. A buyer, buyer's agent, owner, owner's agent, lender, and title insurance company and its agent are not liable for any debt or

claim existing on the preparation date of the resale certificate that is not disclosed in the resale certificate.

(b) A resale certificate does not affect:

(1) the right of a property owners' association to recover debts or claims that arise or become due after the date the resale certificate is prepared; or

(2) a lien on a property securing payment of future assessments held by the property owners' association.

(c) The owner's agent and the title insurance company and its agent are not liable to a buyer for any delay or failure by the property owners' association in delivering the information required by Section 207.003.

(d) Except as provided by Section 207.004, the property owners' association is not liable to an owner selling property in the subdivision for delay or failure to deliver the information required by Section 207.003. An officer or agent of the property owners' association is not liable for a delay or failure to furnish a resale certificate.

Added by Acts 1999, 76th Leg., ch. 1198, Sec. 1, eff. Sept. 1, 1999.

Sec. 207.006. ONLINE SUBDIVISION INFORMATION REQUIRED. A property owners' association shall make dedicatory instruments relating to the association or subdivision and filed in the county deed records available on a website if the association has, or a management company on behalf of the association maintains, a publicly accessible website.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1142 (H.B. 1821), Sec. 5, eff. January 1, 2012.