

By: _____

___B. No. _____

A BILL TO BE ENTITLED

AN ACT

relating to substantive revisions to sections of the Property Code referencing Vernon's Texas Civil Statutes.

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

SECTION 1. Chapter 5 of the Property Code, is amended by deletion of Section 5.018 in its entirety:

~~Sec. 5.018. DISCLOSURE OF ABSENCE OF CERTAIN WARRANTIES. (a) A seller of residential real property that is exempt from Title 16 under Section 401.005 shall give to the purchaser of the property a written notice that reads substantially similar to the following:~~

~~NOTICE OF NONAPPLICABILITY OF CERTAIN WARRANTIES AND BUILDING AND PERFORMANCE STANDARDS~~

~~The property that is subject to this contract is exempt from Title 16, Property Code, including the provisions of that title that provide statutory warranties and building and performance standards.~~

~~(b) A notice required by this section shall be delivered by the seller to the purchaser on or before the effective date of an executory contract binding the purchaser to purchase the property. If a contract is entered into without the seller providing the notice, the purchaser may terminate the contract for any reason on or before the seventh day after the date the purchaser receives the notice.~~

~~(c) This section does not apply to a transfer:~~

~~(1) under a court order or foreclosure sale;~~

~~(2) by a trustee in bankruptcy;~~

~~(3) to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;~~

~~(4) by a mortgagee or a beneficiary under a deed of trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure;~~

~~(5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;~~

~~(6) from one co-owner to another co-owner of an undivided interest in the real property;~~

~~(7) to a spouse or a person in the lineal line of consanguinity of the seller;~~

~~(8) to or from a governmental entity; or~~

~~(9) of only a mineral interest, leasehold interest, or security interest.~~

SECTION 2. Chapter 24 of the Property Code, is amended by revisions to Section 24.011 as follows:

Sec. 24.011. NONLAWYER REPRESENTATION "IN JUSTICE COURT CASES"

~~[(a) In eviction suits, justice court cases for nonpayment of rent or holding over beyond a rental term, the parties may represent themselves or be represented by their authorized agents, who need not be attorneys, in the following manner: In any eviction suit in justice court, an authorized agent requesting or obtaining a default judgment need not be an attorney.]~~

“(a) Representation of an Individual. An individual may:

- (1) Represent himself or herself;
- (2) Be represented by an authorized agent in an eviction case; or
- (3) Be represented by an attorney.

(b) Representation of a Corporation or Other Entity. A corporation or other entity may:

- (1) Be represented by an employee, owner, officer, or partner of the entity who is not an attorney;
- (2) Be represented by a property manager or other authorized agent in an eviction case; or
- (3) Be represented by an attorney.

(c) Assisted Representation. The court may, for good cause, allow an individual representing himself or herself to be assisted in court by a family member or other individual who is not being compensated."

SECTION 3. Chapter 27 of the Property Code, is amended by revisions to Section 27.001 as follows:

Sec. 27.001. DEFINITIONS. In this chapter:

(1) "Action" means a court or judicial proceeding or an arbitration.

(2) "Appurtenance" means any structure or recreational facility that is appurtenant to a residence but is not a part of the dwelling unit.

~~(3) "Commission" means the Texas Residential Construction Commission.~~

~~(4) "Construction defect" has the meaning assigned by Section 401.004 for an action to which Subtitle D, Title 16, applies and for any other action means a matter concerning the design, construction, or repair of a new residence, of an alteration of or repair or addition to an existing residence, or of an appurtenance to a residence, on which a person has a complaint against a contractor. The term may include any physical damage to the residence, any appurtenance, or the real property on which the residence and appurtenance are affixed proximately caused by a construction defect.~~

~~(5) "Contractor":~~

~~(A) means:~~

(i) a builder, ~~as defined by Section 401.003~~, contracting with an owner for the construction or repair of a new residence, for the repair or alteration of or an addition to an existing residence, or for the construction, sale, alteration, addition, or repair of an appurtenance to a new or existing residence;

(ii) any person contracting with a purchaser for the sale of a new residence constructed by or on behalf of that person; or

(iii) a person contracting with an owner or the developer of a condominium for the construction of a new residence, for an alteration of or an addition to an existing residence, for repair of a new or existing residence, or for the construction, sale, alteration, addition, or repair of an appurtenance to a new or existing residence; and

(B) includes:

(i) an owner, officer, director, shareholder, partner, or employee of the contractor; and

(ii) a risk retention group registered under Article 21.54, Insurance Code, that insures all or any part of a contractor's liability for the cost to repair a residential construction defect.

~~(65)~~ "Economic damages" means compensatory damages for pecuniary loss proximately caused by a construction defect. The term does not include exemplary damages or damages for physical pain and mental anguish, loss of consortium, disfigurement, physical impairment, or loss of companionship and society.

~~(76)~~ "Residence" means the real property and improvements for a single-family house, duplex, triplex, or quadruplex or a unit and the common elements in a multiunit residential structure in which title to the individual units is transferred to the owners under a condominium or cooperative system.

~~(87)~~ "Structural failure" ~~has the meaning assigned by Section 401.002 for an action to which Subtitle D, Title 16, applies and for any other action~~ means actual physical damage to the load-bearing portion of a residence caused by a failure of the load-bearing portion.

~~(9)~~ "Third-party inspector" ~~has the meaning assigned by Section 401.002.~~

~~(4)~~ (8) "Developer of a condominium" means a declarant, as defined by Section [82.003](#), of a condominium consisting of one or more residences.

SECTION 4. Chapter 27 of the Property Code, is amended by revisions to Section 27.003 as follows:

Sec. 27.003. LIABILITY. (a) In an action to recover damages or other relief arising from a construction defect:

(1) a contractor is not liable for any percentage of damages caused by:

(A) negligence of a person other than the contractor or an agent, employee, or subcontractor of the contractor;

(B) failure of a person other than the contractor or an agent, employee, or subcontractor of the contractor to:

(i) take reasonable action to mitigate the damages; or

(ii) take reasonable action to maintain the residence;

(C) normal wear, tear, or deterioration;

(D) normal shrinkage due to drying or settlement of construction components within the tolerance of building standards; or

(E) the contractor's reliance on written information relating to the residence, appurtenance, or real property on which the residence and appurtenance are affixed that was obtained from official government records, if the written information was false or inaccurate and the contractor did not know and could not reasonably have known of the falsity or inaccuracy of the information; and

(2) if an assignee of the claimant or a person subrogated to the rights of a claimant fails to provide the contractor with the written notice and opportunity to inspect and offer to repair required by Section [27.004](#) ~~or fails to request state-sponsored inspection and dispute resolution under Chapter 428, if applicable,~~ before performing repairs, the contractor is not liable for the cost of any repairs or any percentage of damages caused by repairs made to a construction defect at the request of an assignee of the claimant or a person subrogated to the rights of a claimant by a person other than the contractor or an agent, employee, or subcontractor of the contractor.

(b) Except as provided by this chapter, this chapter does not limit or bar any other defense or defensive matter or other defensive cause of action applicable to an action to recover damages or other relief arising from a construction defect.

SECTION 5. Chapter 27 of the Property Code, is amended by revisions to Section 27.004 as follows:

Sec. 27.004. NOTICE AND OFFER OF SETTLEMENT. (a) ~~In a claim not subject to Subtitle D, Title 16, b~~Before the 60th day preceding the date a claimant seeking from a contractor damages or other relief arising from a construction defect initiates an action, the claimant shall give written notice by certified mail, return receipt requested, to the contractor, at the contractor's last known address, specifying in reasonable detail the construction defects that are the subject of the complaint. On the request of the contractor, the claimant shall provide to the contractor any evidence that depicts the nature and cause of the defect and the nature and extent of repairs necessary to remedy the defect, including expert reports, photographs, and videotapes, if that evidence would be discoverable under Rule 192, Texas Rules of Civil Procedure. During the 35-day period after the date the contractor receives the notice, and on the contractor's written request, the contractor shall be given a reasonable opportunity to inspect and have inspected the property that is the subject of the complaint to determine the nature and cause of the defect and the nature and extent of repairs necessary to remedy the defect. The contractor may take

reasonable steps to document the defect. ~~In a claim subject to Subtitle D, Title 16, a contractor is entitled to make an offer of repair in accordance with Subsection (b). A claimant is not required to give written notice to a contractor under this subsection in a claim subject to Subtitle D, Title 16.~~

(b) ~~Not later than the 15th day after the date of a final, unappealable determination of a dispute under Subtitle D, Title 16, if applicable, or not later than the 45th day after the date the contractor receives the notice under this section, if Subtitle D, Title 16, does not apply, the contractor may make a written offer of settlement to the claimant.~~ Not later than the 45th day after the date the contractor receives the notice under this section, the contractor may make a written offer of settlement to the claimant. The offer must be sent to the claimant at the claimant's last known address or to the claimant's attorney by certified mail, return receipt requested. The offer may include either an agreement by the contractor to repair or to have repaired by an independent contractor partially or totally at the contractor's expense or at a reduced rate to the claimant any construction defect described in the notice and shall describe in reasonable detail the kind of repairs which will be made. The repairs shall be made not later than the 45th day after the date the contractor receives written notice of acceptance of the settlement offer, unless completion is delayed by the claimant or by other events beyond the control of the contractor. If a contractor makes a written offer of settlement that the claimant considers to be unreasonable:

(1) on or before the 25th day after the date the claimant receives the offer, the claimant shall advise the contractor in writing and in reasonable detail of the reasons why the claimant considers the offer unreasonable; and

(2) not later than the 10th day after the date the contractor receives notice under Subdivision (1), the contractor may make a supplemental written offer of settlement to the claimant by sending the offer to the claimant or the claimant's attorney.

(c) ~~If compliance with Subtitle D, Title 16, or the giving of the notice under Subsections (a) and (b) within the period prescribed by those subsections is impracticable because of the~~

necessity of initiating an action at an earlier date to prevent expiration of the statute of limitations or if the complaint is asserted as a counterclaim, ~~compliance with Subtitle D, Title 16,~~ or the notice is not required. However, the action or counterclaim shall specify in reasonable detail each construction defect that is the subject of the complaint. ~~If Subtitle D, Title 16, applies to the complaint, simultaneously with the filing of an action by a claimant, the claimant must submit a request under Section 428.001. If Subtitle D, Title 16, does not apply, [T]he~~ The inspection provided for by Subsection (a) may be made not later than the 75th day after the date of service of the suit, request for arbitration, or counterclaim on the contractor, and the offer provided for by Subsection (b) may be made not later than the ~~15th day after the date the state-sponsored inspection and dispute resolution process is completed, if Subtitle D, Title 16, applies, or not later than the 60th day after the date of service[.], if Subtitle D, Title 16, does not apply.~~ 60th day after the date of service. If, while an action subject to this chapter is pending, the statute of limitations for the cause of action would have expired and it is determined that the provisions of Subsection (a) were not properly followed, the action shall be abated to allow compliance with Subsections (a) and (b).

(d) The court or arbitration tribunal shall abate an action governed by this chapter if Subsection (c) does not apply and the court or tribunal, after a hearing, finds that the contractor is entitled to abatement because the claimant failed to ~~comply with the requirements of Subtitle D, Title 16, if applicable,~~ failed to provide the notice or failed to give the contractor a reasonable opportunity to inspect the property as required by Subsection (a), or failed to follow the procedures specified by Subsection (b). An action is automatically abated without the order of the court or tribunal beginning on the 11th day after the date a motion to abate is filed if the motion:

(1) is verified and alleges that the person against whom the action is pending did not receive the written notice required by Subsection (a), the person against whom the action is pending was not given a reasonable opportunity to inspect the property as required by Subsection

~~(a), or the claimant failed to follow the procedures specified by Subsection (b) or Subtitle D, Title 16;~~ and

(2) is not controverted by an affidavit filed by the claimant before the 11th day after the date on which the motion to abate is filed.

(e) If a claimant rejects a reasonable offer made under Subsection (b) or does not permit the contractor or independent contractor a reasonable opportunity to inspect or repair the defect pursuant to an accepted offer of settlement, the claimant:

(1) may not recover an amount in excess of:

(A) the fair market value of the contractor's last offer of settlement under Subsection (b); or

(B) the amount of a reasonable monetary settlement or purchase offer made under Subsection (n); and

(2) may recover only the amount of reasonable and necessary costs and attorney's fees as prescribed by Rule 1.04, Texas Disciplinary Rules of Professional Conduct, incurred before the offer was rejected or considered rejected.

(f) If a contractor fails to make a reasonable offer under Subsection (b), the limitations on damages provided for in Subsection (e) shall not apply.

(g) Except as provided by Subsection (e), in an action subject to this chapter the claimant may recover only the following economic damages proximately caused by a construction defect:

(1) the reasonable cost of repairs necessary to cure any construction defect;

(2) the reasonable and necessary cost for the replacement or repair of any damaged goods in the residence;

(3) reasonable and necessary engineering and consulting fees;

(4) the reasonable expenses of temporary housing reasonably necessary during the repair period;

(5) the reduction in current market value, if any, after the construction defect is repaired if the construction defect is a structural failure; and

(6) reasonable and necessary attorney's fees.

(h) A homeowner and a contractor may agree in writing to extend any time period described in this chapter.

(i) An offer of settlement made under this section that is not accepted before the 25th day after the date the offer is received by the claimant is considered rejected.

(j) An affidavit certifying rejection of a settlement offer under this section may be filed with the court or arbitration tribunal. The trier of fact shall determine the reasonableness of a final offer of settlement made under this section.

(k) A contractor who makes or provides for repairs under this section is entitled to take reasonable steps to document the repair and to have it inspected.

~~(l) If Subtitle D, Title 16, applies to the claim and the contractor's offer of repair is accepted by the claimant, the contractor, on completion of the repairs and at the contractor's expense, shall engage the third-party inspector who provided the recommendation regarding the construction defect involved in the claim to inspect the repairs and determine whether the residence, as repaired, complies with the applicable limited statutory warranty and building and performance standards adopted by the commission. The contractor is entitled to a reasonable period not to exceed 15 days to address minor cosmetic items that are necessary to fully complete the repairs. The determination of the third-party inspector of whether the repairs comply with the applicable limited statutory warranty and building and performance standards adopted by the commission establishes a rebuttable presumption on that issue. A party seeking to dispute, vacate, or overcome that presumption must establish by clear and convincing evidence that the determination is inconsistent with the applicable limited statutory warranty and building and performance standards.~~

~~(m)~~ Notwithstanding Subsections (a), (b), and (c), a contractor who receives written notice of a construction defect resulting from work performed by the contractor or an agent, employee, or subcontractor of the contractor and creating an imminent threat to the health or safety of the inhabitants of the residence shall take reasonable steps to cure the defect as soon as practicable. If the contractor fails to cure the defect in a reasonable time, the owner of the residence may have the defect cured and may recover from the contractor the reasonable cost of the repairs plus attorney's fees and costs in addition to any other damages recoverable under any law not inconsistent with the provisions of this chapter.

~~(m)~~ This section does not preclude a contractor from making a monetary settlement offer or an offer to purchase the residence.

~~(n)~~ A notice and response letter prescribed by this chapter must be sent by certified mail, return receipt requested, to the last known address of the recipient. If previously disclosed in writing that the recipient of a notice or response letter is represented by an attorney, the letter shall be sent to the recipient's attorney in accordance with Rule 21a, Texas Rules of Civil Procedure.

~~(o)~~ If the contractor provides written notice of a claim for damages arising from a construction defect to a subcontractor, the contractor retains all rights of contribution from the subcontractor if the contractor settles the claim with the claimant.

~~(p)~~ If a contractor refuses to initiate repairs under an accepted offer made under this section, the limitations on damages provided for in this section shall not apply.

SECTION 6. Chapter 27 of the Property Code, is amended by revisions to Section 27.007 as follows:

Sec. 27.007. DISCLOSURE STATEMENT REQUIRED. (a) A written contract subject to this chapter, other than a contract between a developer of a condominium and a contractor for the construction or repair of a residence or appurtenance to a residence in a condominium, must

contain in the contract a notice printed or typed in 10-point boldface type or the computer equivalent that reads substantially similar to the following:

"This contract is subject to Chapter [27](#) of the Texas Property Code. The provisions of that chapter may affect your right to recover damages arising from a construction defect. If you have a complaint concerning a construction defect and that defect has not been corrected as may be required by law or by contract, you must provide the notice required by Chapter [27](#) of the Texas Property Code to the contractor by certified mail, return receipt requested, not later than the 60th day before the date you file suit to recover damages in a court of law or initiate arbitration. The notice must refer to Chapter [27](#) of the Texas Property Code and must describe the construction defect. If requested by the contractor, you must provide the contractor an opportunity to inspect and cure the defect as provided by Section [27.004](#) of the Texas Property Code."

(b) If a contract does not contain the notice required by this section, the claimant may recover from the contractor a civil penalty of \$500 in addition to any other remedy provided by this chapter.

~~(c) This section does not apply to a contract relating to a home required to be registered under Section 426.003.~~

SECTION 7. Chapter 53 of the Property Code, is amended by revisions to Section 53.172 as follows:

Sec. 53.172. BOND REQUIREMENTS. The bond must: (1) describe the property on which the liens are claimed; (2) refer to each lien claimed in a manner sufficient to identify it; (3) be in an amount that is double the amount of the liens referred to in the bond unless the total amount claimed in the liens exceeds \$40,000, in which case the bond must be in an amount that is the greater of 1-1/2 times the amount of the liens or the sum of \$40,000 and the amount of the liens; (4) be payable to the parties claiming the liens; (5) be executed by: (A) the party filing the bond as principal; and (B) a corporate surety authorized and admitted to do business under the law in this state and licensed by this state to execute the bond as surety, subject to Section 1,

Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (~~Article 7.19.1, Vernon's Texas Insurance Code, Chapter 53, Property Code, 53.172~~); and (6) be conditioned substantially that the principal and sureties will pay to the named obligees or to their assignees the amount that the named obligees would have been entitled to recover if their claims had been proved to be valid and enforceable liens on the property.

SECTION 8. Chapter 74 of the Property Code, is amended by revisions to Section 74.506 (e) as follows:

Section 74.506. (e) The comptroller shall prescribe forms and procedures governing this section, including forms and procedures relating to: (1) notice of presumed abandoned property; (2) delivery of reported money to a scholarship, economic development fund, or energy efficiency assistance fund; (3) filing of a claim; and (4) procedures to allow equitable opportunity for participation by each nonprofit cooperative corporation in the state. (f) During a state fiscal year the total amount of money that may be transferred by all nonprofit cooperative corporations under this section may not exceed \$2 million. No more than 20 percent of each nonprofit cooperative's funds eligible for delivery under this section shall be used for economic development. The comptroller shall adopt procedures to record the total amount of money transferred annually. (g) Nonprofit cooperative corporations may combine funds from other sources with any funds delivered under this section. In addition, such cooperatives may engage in other business and commercial activities, in their own behalf or through such subsidiaries and affiliates as deemed necessary, in order to provide and promote educational opportunities and to stimulate rural economic development. (h) In this section, a nonprofit cooperative corporation means a cooperative corporation organized under Chapters 51 and 52, Agriculture Code, the Texas Non-Profit Corporation Act (~~Article 1396 1.01 et seq., Vernon's Texas Civil Statutes, Chapter 22, Business Organizations Code~~), the Cooperative Association Act (~~Article 1396 50.01, Vernon's Texas Civil Statutes, Chapter 251, Business Organizations Code~~), and Chapter 161, Utilities Code.

SECTION 9. Chapter 111 of the Property Code, is amended by revisions to Section 111.002 as follows:

Sec. 111.002. CONSTRUCTION OF SUBTITLE. This subtitle and the Texas Trust Act Code, as amended (~~Articles 7425b-1 through 7425b-48, Vernon's Title 9, Texas Civil Statutes~~ Trust Code), shall be considered one continuous statute, and for the purposes of any statute or of any instrument creating a trust that refers to the Texas Trust Act, this subtitle shall be considered an amendment to the Texas Trust Act.

SECTION 10. Chapter 111 of the Property Code, is amended by revisions to Section 111.006 as follows:

Sec. 111.006. APPLICATION. This subtitle applies: (1) to all trusts created on or after January 1, 1984, and to all transactions relating to such trusts; and (2) to all transactions occurring on or after January 1, 1984, relating to trusts created before January 1, 1984; provided that transactions entered into before January 1, 1984, and which were subject to the Texas Trust Act Code, as amended (~~Articles 7425b-1 through 7425b-48, Vernon's Title 9, Texas Civil Statutes~~ Trust Code), and the rights, duties, and interests flowing from such transactions remain valid on and after January 1, 1984, and must be terminated, consummated, or enforced as required or permitted by this subtitle.

SECTION 11. Chapter 112 of the Property Code, is amended by revisions to Section 112.058 as follows:

Sec. 112.058. CONVERSION OF COMMUNITY TRUST TO NONPROFIT CORPORATION. (a) In this section:

(1) "Assets" means the assets of the component trust funds of a community trust.

(2) "Community trust" means a community trust as described by 26 C.F.R. Section 1.170A-9 (2008), including subsequent amendments.

(b) A community trust with court approval may transfer the assets of the trust to a nonprofit corporation and terminate the trust as provided by this section.

(c) The community trust may transfer assets of the trust to a nonprofit corporation only if the nonprofit corporation is organized under the Texas Non-Profit Corporation Act (~~Article 1396-1.01 et seq., Vernon's Texas Civil Statutes~~, Chapter 22, Business Organizations Code) and organized for the same purpose as the community trust. The charter of the nonprofit corporation must describe the purpose of the corporation and the proposed use of the assets transferred using language substantially similar to the language used in the instrument creating the community trust.

(d) To transfer the assets of and terminate a community trust under this section, the governing body of the community trust must: (1) file a petition in a probate court, county court, or district court requesting: (A) the transfer of the assets of the trust to a nonprofit corporation established for the purpose of receiving and administering the assets of the trust; and (B) the termination of the trust; (2) send by first class mail to each trust settlor and each trustee of each component trust of the community trust who can be located by the exercise of reasonable diligence a copy of the governing body's petition and a notice specifying the time and place of the court-scheduled hearing on the petition; and (3) publish once in a newspaper of general circulation in the county in which the proceeding is pending a notice that reads substantially similar to the following: TO ALL INTERESTED PERSONS: (NAME OF COMMUNITY TRUST) HAS FILED A PETITION IN (NAME OF COURT) OF (NAME OF COUNTY), TEXAS, REQUESTING PERMISSION TO CONVERT TO A NONPROFIT CORPORATION. IF PERMITTED TO CONVERT: (1) THE (NAME OF COMMUNITY TRUST) WILL BE TERMINATED; AND (2) THE ASSETS OF THE TRUST WILL BE: (A) TRANSFERRED TO A NONPROFIT CORPORATION WITH THE SAME NAME AND CREATED FOR THE SAME PURPOSE AS THE (NAME OF COMMUNITY TRUST); AND (B) HELD AND ADMINISTERED BY THE CORPORATION AS PROVIDED BY THE TEXAS NON-PROFIT CORPORATION ACT (~~ARTICLE 1396-1.01 ET SEQ., VERNON'S TEXAS CIVIL STATUTES~~ Chapter 22, Business Organizations Code).

THE PURPOSE OF THE CONVERSION IS TO ACHIEVE SAVINGS AND USE THE MONEY SAVED TO FURTHER THE PURPOSES FOR WHICH THE (NAME OF COMMUNITY TRUST) WAS CREATED. A HEARING ON THE PETITION IS SCHEDULED ON (DATE AND TIME) AT (LOCATION OF COURT).

FOR ADDITIONAL INFORMATION, YOU MAY CONTACT THE GOVERNING BODY OF THE (NAME OF COMMUNITY TRUST) AT (ADDRESS AND TELEPHONE NUMBER) OR THE COURT.

(e) The court shall schedule a hearing on the petition to be held after the 10th day after the date the notices required by Subsection (d)(2) are deposited in the mail or the date the notice required by Subsection (d)(3) is published, whichever is later. The hearing must be held at the time and place stated in the notices unless the court, for good cause, postpones the hearing. If the hearing is postponed, a notice of the rescheduled hearing date and time must be posted at the courthouse of the county in which the proceeding is pending or at the place in or near the courthouse where public notices are customarily posted.

(f) The court, on a request from the governing body of the community trust, may by order require approval from the Internal Revenue Service for an asset transfer under this section. If the court orders approval from the Internal Revenue Service, the asset transfer may occur on the date the governing body of the community trust files a notice with the court indicating that the Internal Revenue Service has approved the asset transfer. The notice required by this subsection must be filed on or before the first anniversary of the date the court's order approving the asset transfer is signed. If the notice is not filed within the period prescribed by this subsection, the court's order is dissolved.

(g) A court order transferring the assets of and terminating a community trust must provide that the duties of each trustee of each component trust fund of the community trust are terminated on the date the assets are transferred. This subsection does not affect the liability of a trustee for acts or omissions that occurred before the duties of the trustee are terminated.

Added by Acts 1999, 76th Leg., ch. 1035, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2017, 85th Leg., R.S., Ch. 62 (S.B. 617), Sec. 6, eff. September 1, 2017.

SECTION 12. Chapter 202 of the Property Code, is amended by revisions to Section 202.002 as follows:

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~~). Title 8, Chapter 123. Human Resource Code).

SECTION 13. Chapter 202 of the Property Code, is amended by revisions to Section 202.003 as follows:

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~~). Title 8, Chapter 123. Human Resource Code). 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.

SECTION 14. Chapter 204 of the Property Code, is amended by revisions to Section 204.004 as follows:

Sec. 204.004. PROPERTY OWNERS' ASSOCIATION. (a) A property owners' association is a designated representative of the owners of property in a subdivision and may be referred to as a "homeowners association," "community association," "civic association," "civic club,"

"association," "committee," or similar term contained in the restrictions. The membership of the association consists of the owners of property within the subdivision. (b) The association must be nonprofit and may be incorporated as a Texas nonprofit corporation. An unincorporated association may incorporate under the Texas Non-Profit Corporation Act (~~Article 1396-1.01 et seq., Vernon's Texas Civil Statutes~~), Chapter 22, Business Organizations Code. (c) The association's board of directors or trustees must be elected or appointed in accordance with the applicable provisions of the restrictions and the association's articles of incorporation or bylaws.

SECTION 15. Chapter 204 of the Property Code, is amended by revisions to Section 204.010 as follows:

Sec. 204.010. POWERS OF PROPERTY OWNERS' ASSOCIATION. (a) Unless otherwise provided by the restrictions or the association's articles of incorporation or bylaws, the property owners' association, acting through its board of directors or trustees, may: (1) adopt and amend bylaws; (2) adopt and amend budgets for revenues, expenditures, and reserves and collect regular assessments or special assessments for common expenses from property owners; (3) hire and terminate managing agents and other employees, agents, and independent contractors; (4) institute, defend, intervene in, settle, or compromise litigation or administrative proceedings on matters affecting the subdivision; (5) make contracts and incur liabilities relating to the operation of the subdivision and the property owners' association; (6) regulate the use, maintenance, repair, replacement, modification, and appearance of the subdivision; (7) make additional improvements to be included as a part of the common area; (8) grant easements, leases, licenses, and concessions through or over the common area; (9) impose and receive payments, fees, or charges for the use, rental, or operation of the common area and for services provided to property owners; (10) impose interest, late charges, and, if applicable, returned check charges for late payments of regular assessments or special assessments; (11) if notice and an opportunity to be heard are given, collect reimbursement of actual attorney's fees and other reasonable costs incurred by the property owners' association relating to violations of the

subdivision's restrictions or the property owners' association's bylaws and rules; (12) charge costs to an owner's assessment account and collect the costs in any manner provided in the restrictions for the collection of assessments; (13) adopt and amend rules regulating the collection of delinquent assessments and the application of payments; (14) impose reasonable charges for preparing, recording, or copying amendments to the restrictions, resale certificates, or statements of unpaid assessments; (15) purchase insurance and fidelity bonds, including directors' and officers' liability insurance, that the board considers appropriate or necessary; (16) if the restrictions allow for an annual increase in the maximum regular assessment without a vote of the membership, assess the increase annually or accumulate and assess the increase after a number of years; (17) subject to the requirements of the Texas Non-Profit Corporation Act (~~Article 1396-1.01 et seq., Vernon's Texas Civil Statutes~~ Chapter 22, Business Organizations Code) and by majority vote of its board of directors, indemnify a director or officer of the property owners' association who was, is, or may be made a named defendant or respondent in a proceeding because the person is or was a director; (18) if the restrictions vest the architectural control authority in the property owners' association or if the authority is vested in the property owners' association under Section 204.011: (A) implement written architectural control guidelines for its own use or record the guidelines in the real property records of the applicable county; and (B) modify the guidelines as the needs of the subdivision change; (19) exercise other powers conferred by the restrictions, its articles of incorporation, or its bylaws; (20) exercise other powers that may be exercised in this state by a corporation of the same type as the property owners' association; and (21) exercise other powers necessary and proper for the governance and operation of the property owners' association. (b) Powers enumerated by this section are in addition to any other powers granted to a property owners' association by this chapter or other law.

SECTION 16. Chapter 222 of the Property Code, is amended by revisions to Section 222.013 as follows:

Sec. 222.013. EXEMPT FROM SECURITIES ACT. The filing of a registration under this chapter exempts the sale of a membership interest or membership right in a membership camping resort subject to this chapter from registration under The Securities Act (~~Article 581-1 et seq., Vernon's Texas Civil Statutes~~). Title 12, Chapter 4005, The Government Code.

SECTION 17. Chapter 221 of the Property Code, is amended by revisions to Section 221.025 as follows:

Sec. 221.025. EFFECT OF REGISTRATION ON OTHER LAWS: EXEMPTION FROM CERTAIN LAWS.

[Text of subsection effective until January 1, 2022]

(a) A developer's compliance with this chapter exempts the developer's offer and disposition of timeshare interests subject to this chapter from securities and dealer registration under The Securities Act (~~Article 581-1 et seq., Vernon's Texas Civil Statutes~~) Title 12, Government Code).

(b) A timeshare plan created as a condominium regime before January 1, 1994, that complies with this chapter is exempt from the requirements of Section 81.112 relating to club membership. (c) A timeshare plan subject to Chapter 82 that complies with this chapter is exempt from the requirements of: (1) Section 82.0675 relating to club membership; and (2) Sections 82.103(c)-(e) relating to declarant control. (c-1) The exemption provided by Subsection (c)(2) applies to a timeshare plan created before September 1, 2013, and to the project instrument governing the timeshare property subject to the timeshare plan only if the developer and the association agree to the application of the exemption in writing and the project instrument is amended to provide for the application of the exemption. If the conditions provided by this subsection are not satisfied, a timeshare plan created before September 1, 2013, and the timeshare property subject to the timeshare plan are governed by any developer control

provisions provided in the project instrument, notwithstanding any other law. (d) A developer's compliance with this chapter as to any timeshare plan exempts any company, as defined by Chapter 181, Finance Code (Texas Trust Company Act), that holds title to the timeshare interests in the timeshare plan from compliance with the Texas Trust Company Act as to the company's activities relating to the holding of that title.