

TEXAS PROPERTY CODE CHAPTER 201:
Creating, Extending, Renewing, Adding to, or Modifying Restrictions

Application

- A residential real estate subdivision located:
 - 1) w/ in the city limits or ETJ of cities with a pop. of more than 100,000 [in the Houston Area: Houston and Pasadena];
 - 2) in the unincorporated area of:
 - a) a county with a pop. of 2.4MM or more [i.e., Harris County]; or
 - b) a county with a pop. of 30,000 or more adj. to a county with a population of 2.4MM or more [all counties adj. to Harris County]; or
 - 3) in the incorporated area of a county having a pop. of 30,000 or more that is a adj. to a county with a pop. of 2.4MM or more.
- Ch. 201 does not apply to extensions/creations where Restrictions:
 - a) are automatically extended for 10 + year terms and may be waived/terminated by less than 50% + 1 of the owners; or
 - b) provide for an indefinite number of extensions for 10+ year terms by written and filed agreement of less than 50% + 1 of the owners.
- Ch. 201 does not apply to modifications where Restrictions may be modified by less than 75% of the owners.

Starting Over

- If the circulated petition is not signed and acknowledged by the required percentage of owners within one year of recording notice of the petition committee's formation, the petition is void and another petition committee may be formed (§ 201.006(b)) [but Note: § 201.004(b) indicates a 2 year deadline].

Effect of Petition

- If signed by the required %, the petition binds all the Subdivision except:
 - a) **Opt-Out** – owners which formally opt-out¹;
 - b) **No Notice** – owners w/o actual notice of the petition process;
 - c) **Public Property** – property exclusively dedicated for use by the public or for uses by utilities;
 - d) **Minors/Incompetents** – property owned by minors or incompetents; and
 - e) **Lienholder** – property owned by lienholders which did not sign the petition (§ 201.009).
- Lienholders and 3rd parties acquiring their property interest after the date the petition is filed (as to consenting property owners) and after the 1-year anniversary date (as to non-consenting but non-objecting property owners) are bound.
- The contents of the petition take effect on the later of the dates the petition is filed or a date specified by the petition.
- Notice Requirement – certificate of compliance w/ notice requirements must be filed of record (§ 201.008).

REQ. SIGNATURES NOT ACHIEVED

Petition Committee

- 1) The process begins with the formation of a 3 person petition committee and written notice is filed of record (§ 201.005(a)).
- 2) A petition is then circulated for approval by the owners.

Petition Approval

- To extend or create Restrictions, **50%** of the owners must sign. To modify Restrictions, **75%** of the owners must sign (NOTE: Owners need not *approve* to count toward %, only sign).
- Signatures must be acknowledged (i.e., notarized).
- The required percentage may be obtained by counting any one of these criteria:
 - a) Lots;
 - b) Separately owned parcels; or
 - c) Square footage of lots (excluding roads and public areas) (§ 201.006(a) and (b)).
- If the petition proposes to alter a right granted in the Restrictions to either the developer of the Subdivision or ACC representative (or their successors or assigns), that party must consent.

REQ. SIGNATURES ACHIEVED

Petition Contents

- The petition sets forth:
 - a) extension of existing Restrictions;
 - b) modifications of the existing Restrictions; or the proposed new Restrictions (§§ 201.005, 201.007).
 - c)

Notice to Owners

- Notice and a copy of the petition must be sent to all owners by certified mail within 60 days after the petition is filed.
- Additional notice is required by newspaper publication once a week for 2 consecutive weeks.
- The Petition Committee should keep all Return Receipts indefinitely.

¹ An owner may “opt-out” of the Restrictions by:

- a) **Petition** – Signing the petition and affirmatively electing to exclude their property. The petition is required to include an “opt-out” blank to check; or
- b) **Lawsuit** – Suit challenging the petition process filed w/ in 6 months after the filing of the petition; or
- c) **Opt-Out Statement** – Filing a statement affirmatively electing to be excluded from the Restrictions in the real property records within 1 year after actual notice. Evidence of receipt by all owners of the certified mail notice to each owner is critical (§§ 201.009-010).



CHAPTER 201 DEFINITIONS

Restrictions: 1 or more restrictive covenants contained or incorporated by reference in a properly recorded map, plat, replat, declaration, or other instrument filed in the county real property records, map records, or deed records.

Residential real estate subdivision or subdivision: all land within 1 or more maps or plats of land that is divided into 2 or more parts if the maps or plats cover land within a city, town, or village, or within the ETJ of a city, town, or village and are recorded in the deed, map, or real property records of a county, and the land within the maps or plats is or was burdened by restrictions limiting all or at least a majority of the land area covered by the map or plat, excluding streets and public areas, to residential use only; **or** all land located within a city, town, or village, or within the ETJ of a city, town, or village that has been divided into 2 or more parts and that is or was burdened by restrictions limiting at least a 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.

Owner: an individual, fiduciary, partnership, joint venture, corporation, association, or other entity that owns record title to real property in a subdivision, **or** the personal rep. of an individual who owns record title to subdivision property.

Petition: 1 or more instruments, however designated or entitled, by which 1 or more of the purposes authorized by Ch. 201 are sought to be accomplished.

Real property records: the applicable records of a county clerk in which conveyances of real property are recorded.

Lienholder: an individual, corporation, financial institution, or other entity that holds a vendor's or deed of trust lien secured by land within the subdivision.

Petition committee or committee: a group of 3 or more owners who file with the county clerk a notice as required by Section 201.005(a) and who prepare and circulate a petition as allowed under Ch. 201.