

CS for EHB 1668

1 THE STATE SENATE
2 Thursday, April 1, 2004

3 Committee Substitute for
4 ENGROSSED
5 House Bill No. 1668

6 COMMITTEE SUBSTITUTE FOR ENGROSSED HOUSE BILL NO. 1668 - By: VAUGHN
7 of the House and COFFEE of the Senate.

8 [Oklahoma Real Estate Development Act - homeowners
9 associations - dispute resolution - noncompliance - repealer
10 - codification - effective date]

11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

12 SECTION 1. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 850 of Title 60, unless there is
14 created a duplication in numbering, reads as follows:

15 This act shall be known and may be cited as the "Oklahoma Real
16 Estate Development Act".

17 SECTION 2. AMENDATORY 60 O.S. 2001, Section 851, is
18 amended to read as follows:

19 Section 851. ~~The term "real~~ A. As used in the Oklahoma Real
20 Estate Development Act, unless the context otherwise requires:

21 1. "Amend" or "amendment" means change in any form, including
22 without limitation, the addition of new language or a new subject
23 not previously addressed;

24 2. "Annual assessments" means a sum charged annually to the lot
25 owners on a reasonable prorated basis, as set forth in the

1 declaration or governing documents for the payment of common expense
2 liability, including, but not limited to, the operating expenses of
3 the owners' association. Provided, the declarant may elect to
4 charge reduced annual assessments or exempt from payment of annual
5 assessment lot owners who are not owner occupants;

6 3. "Board of directors" means the body, regardless of name,
7 designated in the declaration to act on behalf of the association;

8 4. "Common areas" means:

9 a. any real estate within a real estate development which
10 is owned by the association, other than a lot, and

11 b. any other interests in real estate for the benefit of
12 lot owners which are subject to the declaration;

13 5. "Common expenses" means expenditures made by, or financial
14 liabilities of, the association, including, but not limited to,
15 general operating and reserve expenses;

16 6. "Common expense liability" means the liability for common
17 expenses allocated to each lot pursuant to the declaration or
18 governing documents;

19 7. "Declarant" means any person or group of persons acting in
20 concert who:

21 a. as part of a common promotional plan, offers to
22 dispose of the interest in a lot not previously
23 disposed of, or

1 b. succeeds to any development right or obligation;
2 8. "Declaration" means any instruments, covenants, owner
3 certificates, and other filed documents, however denominated but not
4 a plat, that create a real estate development, including any
5 amendments to those filed documents;
6 9. "Development rights" means any right or combination of
7 rights reserved by a declarant in the declaration to:
8 a. add real estate to a real estate development,
9 b. create lots or common areas, or
10 c. subdivide lots or convert lots into common areas;
11 10. "Governing documents" means the plat, declaration, deeds,
12 articles of incorporation, bylaws, rules and regulations and other
13 documents which govern the operation of the real estate development
14 or owners' association;
15 11. "Lot" means a physical portion of the real estate
16 development designated for separate ownership or occupancy, the
17 boundaries of which are described pursuant to the declaration;
18 12. "Lot owner" or "owner" means a declarant or other person
19 who owns or holds legal or equitable title to a lot, but does not
20 include a person having an interest in a lot solely as security for
21 an obligation;
22 13. "Owner occupant" means the lot owner occupying a residence
23 constructed on a lot located in a real estate development;

1 14. "Owners' association" means an association created under
2 subsection A of Section 852 of this title or Section 42-106.1 of
3 Title 11 of the Oklahoma Statutes;

4 15. "Person" means an individual, corporation, business trust,
5 estate, trust, partnership, association, joint venture, government,
6 governmental subdivision or agency, or other legal entity;

7 16. "Plat" means the instrument filed in the office of the
8 county clerk within which the real estate development is located,
9 setting forth the boundary lines for the lots, common areas,
10 easements and areas dedicated for public purposes, and as governed
11 by Section 288.1 of Title 19 of the Oklahoma Statutes;

12 17. "Real estate" means any estate or interest in, over, or
13 under land, including structures, fixtures, and other improvements
14 and interests that by custom, usage, or law pass with a conveyance
15 of land though not described in the contract of sale or instrument
16 of conveyance. Real estate includes parcels with or without upper
17 or lower boundaries, and space that may be filled with air or water;

18 18. "Real estate development" means real estate with respect to
19 which a person, by virtue of their ownership of a lot, is obligated
20 to pay for real estate taxes, insurance premiums, maintenance, or
21 improvement of other real estate described in the declaration. Real
22 estate development shall also include developments:

23 1. ~~Which~~

1 a. which consist or will consist of separately owned
2 lots, parcels or areas with either or both of the
3 following features:

4 ~~a.~~ ~~One~~

5 (1) one or more additional contiguous or
6 noncontiguous lots, parcels or areas owned in
7 common by the owners of the separately owned
8 lots, parcels or areas, ~~,~~

9 ~~b.~~ ~~Mutual~~

10 (2) mutual, common or reciprocal interests in or
11 restrictions upon, all or portions of such
12 separately owned lots, parcels or areas, or
13 both, or

14 ~~2.~~ ~~The~~

15 b. the estate in a separately or commonly owned lot,
16 parcel or area may be an estate of inheritance, estate
17 in fee, an estate for life, or an estate for years.

18 Either common ownership of the additional contiguous or
19 noncontiguous lots, parcels or areas referred to in ~~subparagraph a.~~
20 division (1) of paragraph 1. above subparagraph a of this paragraph,
21 or the enjoyment of the mutual, common or reciprocal interests in,
22 or restrictions upon the separately owned lots, parcels or areas
23 pursuant to ~~subparagraph b.~~ division (2) of paragraph 1. above

1 subparagraph a of this paragraph, or both, may be through ownership
2 of shares of stock or membership in an owners association or
3 otherwise;

4 19. "Residential purposes" means use for dwelling purposes;

5 20. "Security interest" means an interest in real estate or
6 personal property, created by contract or conveyance, which secures
7 payment or performance of an obligation. The term includes a lien
8 created by a mortgage, deed of trust, trust deed, security deed,
9 contract for deed, land sales contract, lease intended as security,
10 assignment of lease or rents intended as security, pledge of an
11 ownership interest in an association, and any other consensual lien
12 or title retention contract intended as security for an obligation;
13 and

14 21. "Special assessments" means a sum other than annual
15 assessments assessed by an association uniformly to all lots for the
16 purpose of construction, replacement or maintenance of improvements
17 or other extraordinary expenses of the owners' association.

18 B. All provisions of the governing documents are severable.

19 C. The rule against perpetuities does not apply to defeat any
20 provision of the governing documents.

21 D. In the event of a conflict between the provisions of the
22 governing documents, the declaration prevails, except to the extent

1 the declaration is inconsistent with the Oklahoma Real Estate
2 Development Act.

3 E. All provisions of the Oklahoma Real Estate Development Act
4 shall be construed as to affect the overall purpose of the real
5 estate development plan, including the establishment and operation
6 of a valid owners' association and the protection of rights of
7 owners and their property values.

8 SECTION 3. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 852a of Title 60, unless there
10 is created a duplication in numbering, reads as follows:

11 A. Notwithstanding any governing document language to the
12 contrary, a real estate development is created by recording a
13 declaration executed in the same manner as a deed. If the governing
14 documents provide for any common area, or for the owners to bear a
15 common expense liability, or for the enforcement of covenants or
16 restrictions, an owners' association shall be created upon the
17 filing of the declaration. The filing of a declaration requiring
18 common area ownership or common expense liability or enforcement
19 shall be prima facie evidence of the creation of the owners'
20 association at the time of filing. The declaration shall be
21 recorded in every county in which any portion of the real estate
22 development is located.

1 B. In a real estate development, if the right is expressly
2 reserved in the declaration, the declarant may annex property lying
3 contiguous to the real estate development by amending the
4 declaration during the period of time so provided in the declaration
5 for such annexation.

6 C. 1. The declaration shall contain:

- 7 a. the names of the real estate development and the
8 owners' association,
- 9 b. the name of every county in which any part of the real
10 estate development is situated,
- 11 c. a legally sufficient description of the real estate
12 permitted to be included in the real estate
13 development,
- 14 d. a description of any real estate as set forth in the
15 plat that is or must become common areas,
- 16 e. a description of any development rights reserved by
17 the declarant,
- 18 f. if annexation or additional properties may be added to
19 the real estate development and owners' association at
20 a future time, a statement that the declarant has
21 reserved the right to annex or add contiguous
22 properties to the real estate development,

1 g. each pro rata allocation of common expense
2 liabilities, and
3 h. initial covenants, conditions, obligations or
4 restrictions related to the uses or occupancy of a lot
5 or other property located within the real estate
6 development.

7 2. The declaration may contain any other matters appropriate
8 for real estate development.

9 D. 1. Unless otherwise provided, the declaration may be
10 amended by a majority vote of the then record owners of lots in the
11 real estate development. The original declarant may provided in the
12 declaration that as long as the declarant owns a lot within the real
13 estate development the declarant may unilaterally amend the
14 declaration. Such unilateral declarant amendments shall be
15 consistent with the overall plan for the real estate development; or
16 designed to remedy problems within the real estate development not
17 anticipated at the time the declaration was filed, and the
18 amendments cannot significantly increase the common expense
19 liability for other lot owners. Once more than ninety percent (90%)
20 of the lots within the real estate development have been sold to
21 owner occupants, such unilateral amendments can only occur with the
22 concurrence of a majority vote of the board of directors of the
23 owners' association.

1 2. No action to challenge the validity of an amendment adopted
2 by the declarant or lot owners pursuant to this section may be
3 brought more than one (1) year after the amendment is recorded.

4 3. Every amendment to the declaration shall be recorded in
5 every county in which any portion of the real estate development is
6 located and is effective only upon recordation.

7 4. Amendments to the declaration shall be prepared, executed,
8 recorded in the office of the county clerk where the real estate
9 development is located, and certified on behalf of the association
10 by the president and secretary or other appropriate officers of the
11 association. The certification shall include a statement that the
12 required percentage of votes of lot owners approving the amendments
13 was obtained. The original signatures of the lot owners approving
14 the amendments shall be retained in the business records of the
15 association, and made available for inspection and copying by any
16 lot owner, or the lot owner's designated legal, or other
17 representatives on reasonable advance notice. Amendments adopted
18 pursuant to the amendment rights of the declarant shall be prepared,
19 executed and recorded by the declarant.

20 E. 1. Any development right created or reserved under the
21 Oklahoma Real Estate Development Act or within the governing
22 documents may be transferred from the declarant to another person

1 only by a recorded instrument, other than a deed providing for the
2 transfer of the development right.

3 SECTION 4. AMENDATORY 60 O.S. 2001, Section 854, is
4 amended to read as follows:

5 Section 854. ~~Membership of said owners~~ A. 1. After creating
6 the owners' association by the filing of a declaration, the
7 declarant may organize an owners' association shall consist of
8 ~~recorded owners of separately owned lots in the real estate~~
9 ~~development. Membership is transferred upon legal transfer of title~~
10 ~~to the separately owned lots. The owners association may also~~
11 ~~enforce the covenant and restrictions of the real estate development~~
12 ~~when specified by the covenants and restrictions~~ as a nonprofit
13 corporation, trust or other business entity. The membership of the
14 association at all times consists exclusively of all lot owners.

15 2. The owners of more than fifty percent (50%) of the lots
16 within any existing or future real estate development may further
17 organize an owners' association into a nonprofit corporation or
18 other business entity at any time.

19 B. An owners' association may exercise the following powers:

20 1. Adopt and amend budgets for revenues, expenditures,
21 and reserves and collect both annual and special
22 assessments;

- 1 2. Impose charges for late payment of assessments,
2 including interest charges of up to eighteen percent
3 (18%) per annum and, after notice and an opportunity
4 to be heard, levy reasonable fines for violations of
5 the governing documents;
- 6 3. Exercise any other powers conferred by the governing
7 documents;
- 8 4. Exercise all other powers that may be exercised in
9 this state by legal entities of the same type as the
10 association; and
- 11 5. Exercise any other powers necessary and proper for the
12 governance and operation of the association.

13 C. Bylaws may be adopted for an owners' association in any
14 manner provided by the laws of this state. Bylaws may be recorded
15 in the office of the county clerk in which the real estate
16 development is located. If adopted, the bylaws of the owners'
17 association shall include:

- 18 1. The number of members of the board of directors and the
19 titles of the officers of the owners' association;
- 20 2. Election by the board of directors of a president, vice
21 president, treasurer, secretary and any other officers of the
22 owners' association the bylaws specify;

1 3. The qualifications, powers and duties, terms of office, and
2 manner of electing and removing members and officers of the board of
3 directors and filling vacancies; and

4 4. Amendment of the bylaws by a majority vote of the board of
5 directors.

6 D. Except as provided in the governing documents or limited by
7 Oklahoma law, the board of directors may act in all instances on
8 behalf of the association. In the performance of their duties,
9 officers and members of the board of directors appointed by the
10 declarant shall exercise the degree of care and loyalty required of
11 a trustee. Officers and members of the board of directors not
12 appointed by the declarant shall exercise the degree of care and
13 loyalty required of an officer or director of a corporation
14 organized under the Oklahoma General Corporation Act and in a
15 fiduciary capacity with regard to the funds and assets of the
16 association, including maintenance of common areas and improvements.

17 E. The declaration may provide for a period of declarant
18 control of the association, during which a declarant, or persons
19 designated by the declarant, may appoint and remove the officers and
20 members of the board of directors. Further, as long as the
21 declarant owns one lot within the real estate development, the
22 declarant shall have the unilateral right to approve plans for all

1 initial construction of owner-occupied residences on lots within the
2 real estate development.

3 F. Except for approval of initial construction as set forth
4 herein, declarant control of the owners' association terminates no
5 later than the earlier of:

6 1. Sixty (60) days after conveyance of ninety percent (90%) of
7 the lots within the real estate development to owner occupants;

8 2. The date specified in the declaration; or

9 3. The date the declarant records an instrument transferring
10 all rights to control activities of the owners' association to the
11 lot owners.

12 G. The declarant shall not turn over control of the owners'
13 association to the lot owners, until the following have occurred:

14 1. The declarant delivers the signed originals or duplicate
15 copies of the original governing documents, including any amendments
16 thereto, the books and records of the owners' association, including
17 resolutions and minutes, the bank statements and financial records
18 of the owners' association, including an accounting for funds
19 received and expenditures made utilizing assessments obtained from
20 the lot owners, and any unexpected funds collected from the lot
21 owners for maintenance of the common areas or operation of the
22 owners' association;

1 2. The common areas and improvements, if any, are deeded to the
2 owners' association free and clear of any outstanding claims,
3 including real property taxes; and

4 3. The declarant furnishes to the lot owners thirty (30) days'
5 advance written notice of the intent of the declarant to transfer
6 control of the owners' association and responsibility for
7 maintenance of the common areas and improvements to the lot owners,
8 including notice of the date, time and location of a meeting. At
9 the meeting, the declarant will transfer the documents, records,
10 funds and deed(s) as set forth herein and at expense of the
11 declarant for orderly transition of control of the owners'
12 association from the declarant to the lot owners.

13 H. 1. Not later than sixty (60) days after conveyance of fifty
14 percent (50%) of the lots to owner occupants, the declarant shall
15 appoint one owner occupant to the board of directors.

16 2. No later than the termination of any period of declarant
17 control, the lot owners shall elect a board of directors of at least
18 three members, at least a majority of whom must be lot owners. The
19 board of directors shall appoint the officers. The members and
20 officers of the board of directors shall take office upon election.

21 3. Any provision of the governing document notwithstanding, a
22 quorum is present throughout any meeting of the association if
23 persons entitled to cast twenty percent (20%) of the votes that may

1 be cast for election of the board of directors are present in person
2 or by proxy at the beginning of the meeting.

3 4. Any provision of the governing documents notwithstanding, a
4 quorum is deemed present throughout any meeting of the board of
5 directors if persons entitled to cast fifty percent (50%) of the
6 votes on that board are present at the beginning of the meeting.

7 5. Except as otherwise provided within this section, each lot
8 shall have one vote in association matters, which may be subject to
9 a good standing provision. The declaration may provide for the
10 declarant to have more than one vote per lot, until such time as
11 declarant transfers control of the owners' association over to the
12 lot owners as set forth in subsection G of this section.

13 SECTION 5. AMENDATORY 60 O.S. 2001, Section 855, is
14 amended to read as follows:

15 Section 855. ~~The powers granted the owners association under~~
16 ~~this act~~ A. The Oklahoma Real Estate Development Act shall apply
17 only to owners associations all real estate developments created
18 subsequent to after the effective date of this act. The Oklahoma
19 Real Estate Development Act and any amendments thereto shall be a
20 part of the charter or certificate of incorporation of every owners'
21 association existing on the effective date of this act, except so
22 far as the same are inapplicable and inappropriate to the objects of
23 the owners' association. The provisions of this section shall not

1 affect or impair as to any owners' association any rights protected
2 or guaranteed by the Constitution of this state or the United
3 States.

4 B. The requirements of the Oklahoma Real Estate Development Act
5 shall not apply to nonresidential or commercial real estate
6 developments.

7 SECTION 6. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 856a of Title 60, unless there
9 is created a duplication in numbering, reads as follows:

10 A. Any person owning property in a real estate development or
11 the owners' association created under the Oklahoma Real Estate
12 Development Act shall be entitled to bring an action against any
13 other person to enforce any of the restrictions and covenants or
14 obligations under any governing document of the real estate
15 development. In any action to enforce any restriction and covenant
16 or obligation of any governing document pursuant to the provisions
17 of this section, the prevailing party shall be entitled to recover
18 reasonable attorney fees to be determined by the court, which shall
19 be taxed as costs in the action.

20 B. The association has a statutory lien on a lot for any
21 assessment levied against that lot or fines imposed against its lot
22 owner. Recording of the declaration that provides for a common
23 expense liability constitutes record notice and perfection of the

1 lien to lot owners taking title subsequent to the filing of the
2 declaration. The owners' association lien may be foreclosed in any
3 manner provided by law for the foreclosure of mortgages or deeds of
4 trust, with or without power of sale.

5 SECTION 7. REPEALER 60 O.S. 2001, Section 852, is hereby
6 repealed.

7 SECTION 8. This act shall become effective November 1, 2004.

8 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-30-04 - DO
9 PASS, As Amended.