



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 4, 1996

The Honorable Don Henderson  
Chair, Jurisprudence Committee  
Texas State Senate  
P.O. Box 12068  
Austin, Texas 78711-2068

Letter Opinion No. 96-123

Re: Whether, under Property Code section 204.010(9), a property owners' association may assess additional fees or raise existing fees for services the association performs, without following "established procedures" for assessing or raising the fees (ID# 38818)

Dear Senator Henderson:

Property Code section 204.010(a)(9) authorizes the board of directors of a property owners' association to, unless property restrictions or the association's articles of incorporation or bylaws provide otherwise, "impose and receive payments, fees, or charges for the use, rental, or operation of the common area and for services provided to property owners." You ask whether, under section 204.010(a)(9), the board of directors may assess additional fees or raise existing fees for services the association performs without following what you term "established procedures" for assessing or raising the fees. Although you do not indicate what you mean by the phrase "established procedures," we understand you to mean approval by the members of the property owners' association. We believe section 204.010(a)(9) authorizes the board of directors to impose a fee, including an additional or increased fee for the use, rental, or operation of the common area and for services provided to property owners, without seeking approval of the property owners.

We will begin by briefly summarizing pertinent portions of Property Code chapter 204, which provides the property owners' associations in certain subdivisions with power relating to restrictive covenants. Chapter 204 applies only to residential real-estate subdivisions that are not condominium developments governed by Property Code title 7 and that are located wholly or partly in a county with a population of 2.8 million or more.<sup>1</sup> Under chapter 204, a subdivision that has been unable to create a property owners' association because of existing property restrictions<sup>2</sup> may create an association if the owners of at least sixty percent of the real property in the subdivision petition to do so.<sup>3</sup> Once created, section 204.010 endows the board of a property owners' association with numerous powers, including the power to "impose and receive payments, fees, or charges for the use,

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<sup>1</sup>Prop. Code § 204.002(a).

<sup>2</sup>A restriction, for purposes of Property Code chapter 204, is "one 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." *Id.* §§ 201.003(1), 204.001(1).

<sup>3</sup>*Id.* § 204.006(a). The petition also must comply with other requirements listed in Property Code section 204.006.

rental, or operation of the common area and for services provided to property owners.”<sup>4</sup> Section 204.010 does not apply, however, to the extent that the restrictions or the property association’s articles of incorporation or bylaws provide to the contrary.<sup>5</sup> For the purposes of this opinion, we will assume that neither the relevant restrictions nor the articles of incorporation or bylaws are contrary to the property owners’ association’s statutory powers.

We understand that your request comes on behalf of Senator Jerry Patterson, who has raised some concerns about Property Code section 204.010(a)(9). In a letter to your office, Senator Patterson indicated that some property owners’ associations have used section 204.010(a)(9) “to circumvent an election by the homeowners to assess themselves for additional services.” In some instances, Senator Patterson continues, the boards of property owners’ associations have doubled the fees being assessed.

You are thus particularly concerned that section 204.010(a)(9) authorizes the board of a property owners’ association to set new payments, fees, or charges or to raise existing payments, fees, or charges without membership approval. We find nothing in subsection (a)(9) or elsewhere in the statute that requires membership approval of the payments, fees, or charges to which subsection (a)(9) applies. We conclude, therefore, that the board of a property owners’ association may impose, without membership approval, payments, fees, or charges for the use, rental, or operation of the common area and for services provided to property owners. We believe the power granted in subsection (a)(9) encompasses the authority to set additional payments, fees, or charges and to raise existing payments, fees, or charges.

Section 204.010(a)(16) bolsters our conclusion. Under subsection (a)(16), the board of a property owners’ association may increase the association’s maximum regular assessment<sup>6</sup> without a vote of the membership, but only if the restrictions allow the board to do so. By contrast, section 204.010(a)(9) makes no reference to a vote of the association’s membership.<sup>7</sup>

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<sup>4</sup>*Id.* § 204.010(a)(9).

<sup>5</sup>*See id.* § 204.010(a).

<sup>6</sup>Chapter 204 explicitly defines the term “regular assessment” as “an assessment, charge, fee, or dues that each owner of property within a subdivision” must pay to the property owners’ association “on a regular basis” and that the property owners’ association must use “for the benefit of the subdivision” consistent with the original, extended, added, or modified restrictions. *Id.* § 204.001(3). Furthermore, regular assessments cover the costs of common expenses. *See id.* § 204.010(a)(2).

<sup>7</sup>You do not ask, and we do not, therefore, consider, how a regular assessment, which the board of a property owners’ association may collect under Property Code section 204.010(a)(2) differs from a payment, fee, or charge “for the use, rental, or operation of the common area and for services provided to property owners.”

**S U M M A R Y**

Property Code section 204.010(a)(9) authorizes the board of a property owners' association that is subject to chapter 204 to impose, without membership approval, payments, fees, or charges for the use, rental, or operation of the common area and for services provided to property owners unless property restrictions or the association's articles of incorporation or bylaws provide otherwise. Subsection (a)(9) encompasses the authority to set additional payments, fees, or charges and to raise existing payments, fees, or charges.

Yours very truly,



Kimberly K. Oltrogge  
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Opinion Committee