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STATE SENATOR

February 18, 2001

RQ-0358-JC

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FEB 28 2001

OPEN RECORDS DIVISION

The Honorable John Cornyn  
Office of the Attorney General of Texas  
P.O. Box 12548  
Austin, Texas 78711-2548

RE: Request for Attorney General's Opinion Regarding the Effectiveness of a Property Owner's Filed Statement of Exclusion from Changed Restrictions under the Texas Property Code.

Dear General Cornyn:

A property owner in Harris County purchased property in a new subdivision in 1979 which had deed restrictions without mandatory dues deductions. In 1998, the subdivision's residents formed a civic association which had circulated a petition creating, modifying and extending the deed restrictions for the subdivision which included a mandatory dues assessment for the first time. The property owner attempted to exclude his property from the changed deed restrictions by filing an acknowledged statement pursuant to Section 201.009(b)(4) and Section 201.007(a)(9) of the Texas Property Code and the civic association has declined to acknowledge the exclusion based on Section 204.005(a) of the Property Code. Tex. Prop. Code Ann. § 201.009; § 201.007; and § 204.005 (West 1995). Based on the previous facts, a dispute has arisen between the property owner and the civic association as to the effectiveness of the property owner's exclusion action and the interplay of Chapters 201 and 204 of the Texas Property Code.

In 1995, the 74th Legislature amended the Property Code to add Chapter 204 which defines property owners' associations and states the powers that such organizations can exercise. One of the powers the Legislature gave property owners' associations, through Chapter 204 of the Property Code, was the ability to change existing restrictions. Section 204.005 of the Texas Property Code provides that:

(a) a property owners' association has authority to approve and circulate a petition relating to the extension of, addition to, or modification of existing restrictions. A property owners' association is not required to comply with Sections 201.009-201.012.

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The civic association, based on Section 204.005(a), believes that it does not have to acknowledge any statement that is filed by a property owner pursuant to Section 201.009(b)(4) of the Property Code that would exclude the homeowner from the changed restrictions. Section 201.009(b)(4) states, in pertinent part, that:

(b) a restriction added, modified, created or extended under this chapter does not affect or encumber property within the subdivision that is included within one of the following categories:

(4) property of an owner who did not sign the petition and who files, before one year after the date on which the owner received actual notice of the filing of the petition, an acknowledged statement ... stating that the owner elects to have the property deleted and excluded from the operation of the extended, modified, changed, or created restriction.

The property owner argues that Section 204.005(a) of the Property Code only applies to property owners' associations and does not prevent property owners themselves from using the provisions of Section 201.009(b)(4) to exclude their property from any changed restrictions.

In addition, the property owner also points to Section 201.007(a)(9) of the Property Code which property owners' associations are not exempted from under Section 204.005(a) and which requires a petition to change restrictions to include a statement that explains the rights of property owners who desire to be excluded from changed restrictions. Section 201.007 states, in pertinent part, that:

(a) a petition filed under this chapter must contain or be supplemented by one or more instruments containing:

(9) a statement that owners who did not sign the petition may delete their property from the operation of the extended, created, added to, or modified restriction by filing a statement described in the fourth listed category in Section 201.009(b) before one year after the date on which the owner receives actual notice of the filing of the petition authorized by this chapter.

Based on the foregoing, I respectfully submit the following question for your opinion:

**Does an acknowledged statement filed by a property owner pursuant to Sections 201.009 (b)(4) and 201.007(a)(9) of the Texas Property Code exclude that property owner's property from changed restrictions instituted by a property owners' association even though property owners' associations are not required to comply with Section 201.009 based on 204.005(a) of the Property Code?**

Your prompt opinion on this issue would be greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Adams". The signature is written in a cursive style with a large initial "M".

JEB:te