

NEW AND AMMEDED TEXAS HOA STATUTES

Rain Barrel Rules (Texas Prop. Code 202.007d) HB3391 Effective 9/1/11

HOAs must permit owners to install and use rain-harvesting devices if they meet certain architectural requirements.

(d) This section does not:

- (1) restrict a property owners' association from regulating the requirements, including size, type, shielding, and materials, for or the location of a composting device if the restriction does not prohibit the economic installation of the device on the property owner's property where there is reasonably sufficient area to install the device;
- (2) require a property owners' association to permit a device described by Subdivision (1) to be installed in or on property:
 - (A) owned by the property owners' association;
 - (B) owned in common by the members of the property owners' association;
 - or
 - (C) in an area other than the fenced yard or patio of a property owner;
- (3) prohibit a property owners' association from regulating the installation of efficient irrigation systems, including establishing visibility limitations for aesthetic purposes;
- (4) prohibit a property owners' association from regulating the installation or use of gravel, rocks, or cacti;
- (5) restrict a property owners' association from regulating yard and landscape maintenance if the restrictions or requirements do not restrict or prohibit turf or landscaping design that promotes water conservation;
- (6) require a property owners' association to permit a rain barrel or rainwater harvesting system to be installed in or on property if:
 - (A) the property is:
 - (i) owned by the property owners' association;
 - (ii) owned in common by the members of the property owners' association; or
 - (iii) located between the front of the property owner's home and an adjoining or adjacent street; or
 - (B) the barrel or system:
 - (i) is of a color other than a color consistent with the color scheme of the property owner's home; or
 - (ii) displays any language or other content that is not typically displayed by such a barrel or system as it is manufactured; or
- (7) restrict a property owners' association from regulating the size, type, and shielding of, and the materials used in the construction of, a rain barrel, rainwater harvesting device, or other appurtenance that is located on the side of a house or at any other location that is visible from a street, another lot, or a common area if:
 - (A) the restriction does not prohibit the economic installation of the device or appurtenance on the property owner's property; and
 - (B) there is a reasonably sufficient area on the property owner's property in which to install the device or appurtenance.

Solar Panels (Texas Property Code 202.010) HB 362 Effective 6/20/11

HOAs must permit owners to install solar panels with certain permissible limitations.

Sec. 202.010. REGULATION OF SOLAR ENERGY DEVICES.

(a) In this section:

- (1) "Development period" means a period stated in a declaration during

which a declarant reserves:

- (A) a right to facilitate the development, construction, and marketing of the subdivision; and
- (B) a right to direct the size, shape, and composition of the subdivision.

(2) "Solar energy device" has the meaning assigned by Section 171.107, Tax Code.

(b) Except as otherwise provided by Subsection (d), a property owners' association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner from installing a solar energy device.

(c) A provision that violates Subsection (b) is void.

(d) A property owners' association may include or enforce a provision in a dedicatory instrument that prohibits a solar energy device that:

(1) as adjudicated by a court:

- (A) threatens the public health or safety; or
- (B) violates a law;

(2) is located on property owned or maintained by the property owners' association;

(3) is located on property owned in common by the members of the property owners' association;

(4) is located in an area on the property owner's property other than:

- (A) on the roof of the home or of another structure allowed under a dedicatory instrument; or
- (B) in a fenced yard or patio owned and maintained by the property owner;

(5) if mounted on the roof of the home:

- (A) extends higher than or beyond the roofline;
- (B) is located in an area other than an area designated by the property owners' association, unless the alternate location increases the estimated annual energy production of the device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than 10 percent above the energy production of the device if located in an area designated by the property owners' association;
- (C) does not conform to the slope of the roof and has a top edge that is not parallel to the roofline; or
- (D) has a frame, a support bracket, or visible piping or wiring that is not in a silver, bronze, or black tone commonly available in the marketplace;

(6) if located in a fenced yard or patio, is taller than the fence line;

(7) as installed, voids material warranties; or

(8) was installed without prior approval by the property owners' association or by a committee created in a dedicatory instrument for such purposes that provides decisions within a reasonable period or within a period specified in the dedicatory instrument.

(e) A property owners' association or the association's architectural review committee may not withhold approval for installation of a solar energy device if the provisions of the dedicatory instruments to the extent authorized by Subsection (d) are met or exceeded, unless the association or committee, as applicable, determines in writing that placement of the device as proposed by the property owner constitutes a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of

ordinary sensibilities. For purposes of making a determination under this subsection, the written approval of the proposed placement of the device by all property owners of adjoining property constitutes prima facie evidence that such a condition does not exist.

(f) During the development period, the declarant may prohibit or restrict a property owner from installing a solar energy device.

Storm Shingles (Texas Property Code 202.011) HB 362 Effective 6/20/11

HOAs must allow owners to install shingles of certain materials made to resist wind and hail, provide heating/ cooling efficiency, or generate solar energy.

Sec. 202.011. REGULATION OF CERTAIN ROOFING MATERIALS.

A property owners' association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner who is otherwise authorized to install shingles on the roof of the owner's property from installing shingles that:

- (1) are designed primarily to:
 - (A) be wind and hail resistant;
 - (B) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or
 - (C) provide solar generation capabilities; and
- (2) when installed:
 - (A) resemble the shingles used or otherwise authorized for use on property in the subdivision;
 - (B) are more durable than and are of equal or superior quality to the shingles described by Paragraph (A); and
 - (C) match the aesthetics of the property surrounding the owner's property.

Flags (Texas Property Code 202.011) HB 2779 Effective 6/20/11

HOAs must permit owner to display the US, Texas or military branch flag, with permissible limitations.

Sec. 202.011. FLAG DISPLAY.

(a) A property owners' association may not, except as provided in this section, adopt or enforce a dedicatory instrument provision that prohibits, restricts, or has the effect of prohibiting or restricting an owner from the display of:

- (1) the flag of the United States of America;
- (2) the flag of the State of Texas; or
- (3) an official or replica flag of any branch of the United States armed forces.

(b) A property owners' association may adopt or enforce reasonable dedicatory instrument provisions:

- (1) that require:
 - (A) the flag of the United States be displayed in accordance with 4 U.S.C. Sections 5-10;
 - (B) the flag of the State of Texas be displayed in accordance with Chapter 3100, Government Code;
 - (C) a flagpole attached to a dwelling or a freestanding flagpole be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the dwelling;
 - (D) the display of a flag, or the location and construction of the supporting flagpole, to comply with applicable zoning ordinances,

easements, and setbacks of record; and

(E) a displayed flag and the flagpole on which it is flown be maintained in good condition and that any deteriorated flag or deteriorated or structurally unsafe flagpole be repaired, replaced, or removed;

(2) that regulate the size, number, and location of flagpoles on which flags are displayed, except that the regulation may not prevent the installation or erection of at least one flagpole per property that is not more than 20 feet in height;

(3) that govern the size of a displayed flag;

(4) that regulate the size, location, and intensity of any lights used to illuminate a displayed flag;

(5) that impose reasonable restrictions to abate noise caused by an external halyard of a flagpole; or

(6) that prohibit a property owner from locating a displayed flag or flagpole on property that is:

(A) owned or maintained by the property owners' association; or

(B) owned in common by the members of the association.

Religious Display (Texas Property Code 202.018) HB 1278 Effective 6/20/11

HOAs must allow an owner to display religious items on his front door or doorframe, with certain permissible limitations.

Sec. 202.018. REGULATION OF DISPLAY OF CERTAIN RELIGIOUS ITEMS.

(a) Except as otherwise provided by this section, a property owners' association may not enforce or adopt a restrictive covenant that prohibits a property owner or resident from displaying or affixing on the entry to the owner's or resident's dwelling one or more religious items the display of which is motivated by the owner's or resident's sincere religious belief.

(b) This section does not prohibit the enforcement or adoption of a covenant that, to the extent allowed by the constitution of this state and the United States, prohibits the display or affixing of a religious item on the entry to the owner's or resident's dwelling that:

(1) threatens the public health or safety;

(2) violates a law;

(3) contains language, graphics, or any display that is patently offensive to a passerby;

(4) is in a location other than the entry door or door frame or extends past the outer edge of the door frame of the owner's or resident's dwelling; or

(5) individually or in combination with each other religious item displayed or affixed on the entry door or door frame has a total size of greater than 25 square inches.

(c) Except as otherwise provided by this section, this section does not authorize an owner or resident to use a material or color for an entry door or door frame of the owner's or resident's dwelling or make an alteration to the entry door or door frame that is not authorized by the restrictive covenants governing the dwelling.

(d) A property owners' association may remove an item displayed in violation of a restrictive covenant permitted by this section.

Open Board Meetings (Texas Property Code 209-0051) HB 2761 Effective 1/1/12

Board Meetings (regular and special) must be open to owners, with some exceptions.

Sec. 209.0051. OPEN BOARD MEETINGS.

(a) This section does not apply to a property owners' association that is subject to

Chapter 551, Government Code, by application of Section 551.0015, Government Code.

(b) In this section:

(1) "Board meeting":

(A) means a deliberation between a quorum of the voting board of the property owners' association, or between a quorum of the voting board and another person, during which property owners' association business is considered and the board takes formal action; and

(B) does not include the gathering of a quorum of the board at a social function unrelated to the business of the association or the attendance by a quorum of the board at a regional, state, or national convention, ceremonial event, or press conference, if formal action is not taken and any discussion of association business is incidental to the social function, convention, ceremonial event, or press conference.

(2) "Development period" means a period stated in a declaration during which a declarant reserves:

(A) a right to facilitate the development, construction, and marketing of the subdivision; and

(B) a right to direct the size, shape, and composition of the subdivision.

(c) Regular and special board meetings must be open to owners, subject to the right of the board to adjourn a board meeting and reconvene in closed executive session to consider actions involving personnel, pending or threatened litigation, contract negotiations, enforcement actions, confidential communications with the property owners' association's attorney, matters involving the invasion of privacy of individual owners, or matters that are to remain confidential by request of the affected parties and agreement of the board. Following an executive session, any decision made in the executive session must be summarized orally and placed in the minutes, in general terms, without breaching the privacy of individual owners, violating any privilege, or disclosing information that was to remain confidential at the request of the affected parties. The oral summary must include a general explanation of expenditures approved in executive session.

(c-1) Except for a meeting held by electronic or telephonic means under Subsection (h), a board meeting must be held in a county in which all or part of the property in the subdivision is located or in a county adjacent to that county.

(d) The board shall keep a record of each regular or special board meeting in the form of written minutes of the meeting. The board shall make meeting records, including approved minutes, available to a member for inspection and copying on the member's written request to the property owners' association's managing agent at the address appearing on the most recently filed management certificate or, if there is not a managing agent, to the board.

(e) Members shall be given notice of the date, hour, place, and general subject of a regular or special board meeting, including a general description of any matter to be brought up for deliberation in executive session. The notice shall be:

(1) mailed to each property owner not later than the 10th day or earlier than the 60th day before the date of the meeting; or

(2) provided at least 72 hours before the start of the meeting by:

(A) posting the notice in a conspicuous manner reasonably designed to provide notice to property owners' association members:

(i) in a place located on the association's common property or, with the property owner's consent, on other conspicuously

located privately owned property within the subdivision; or
(ii) on any Internet website maintained by the association or other Internet media; and

(B) sending the notice by e-mail to each owner who has registered an e-mail address with the association.

(f) It is an owner's duty to keep an updated e-mail address registered with the property owners' association under Subsection (e)(2)(B).

(g) If the board recesses a regular or special board meeting to continue the following regular business day, the board is not required to post notice of the continued meeting if the recess is taken in good faith and not to circumvent this section. If a regular or special board meeting is continued to the following regular business day, and on that following day the board continues the meeting to another day, the board shall give notice of the continuation in at least one manner prescribed by Subsection (e)(2)(A) within two hours after adjourning the meeting being continued.

(h) A board may meet by any method of communication, including electronic and telephonic, without prior notice to owners under Subsection (e), if each director may hear and be heard by every other director, or the board may take action by unanimous written consent to consider routine and administrative matters or a reasonably unforeseen emergency or urgent necessity that requires immediate board action. Any action taken without notice to owners under Subsection (e) must be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes of the next regular or special board meeting. The board may not, without prior notice to owners under Subsection (e), consider or vote on:

- (1) fines;
- (2) damage assessments;
- (3) initiation of foreclosure actions;
- (4) initiation of enforcement actions, excluding temporary restraining orders or violations involving a threat to health or safety;
- (5) increases in assessments;
- (6) levying of special assessments;
- (7) appeals from a denial of architectural control approval; or
- (8) a suspension of a right of a particular owner before the owner has an opportunity to attend a board meeting to present the owner's position, including any defense, on the issue.

(i) This section applies to a meeting of a property owners' association board during the development period only if the meeting is conducted for the purpose of:

- (1) adopting or amending the governing documents, including declarations, bylaws, rules, and regulations of the association;
- (2) increasing the amount of regular assessments of the association or adopting or increasing a special assessment;
- (3) electing non-developer board members of the association or establishing a process by which those members are elected; or
- (4) changing the voting rights of members of the association.

Meeting Notice (Texas Prop. Code 209.0056) HB 2761 Effective 1/1/12

HOAs must give owners notice of an HOA-wide election or vote.

Sec. 209.0056. NOTICE OF ELECTION OR ASSOCIATION VOTE.

(a) Not later than the 10th day or earlier than the 60th day before the date of an election or vote, a property owners' association shall give written notice of the election or vote to:

- (1) each owner of property in the property owners' association, for purposes of an association-wide election or vote; or
 - (2) each owner of property in the property owners' association entitled under the dedicatory instruments to vote in a particular representative election, for purposes of a vote that involves election of representatives of the association who are vested under the dedicatory instruments of the property owners' association with the authority to elect or appoint board members of the property owners' association.
- (b) This section supersedes any contrary requirement in a dedicatory instrument.
- (c) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

Recount Procedures (Texas Prop. Code 209.0057) HB 2761 Effective 1/1/12

HOAs must conduct a recount of an election vote if requested by an owner.

Sec. 209.0057. RECOUNT OF VOTES.

- (a) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.
- (b) Any owner may, not later than the 15th day after the date of the meeting at which the election was held, require a recount of the votes. A demand for a recount must be submitted in writing either:
- (1) by certified mail, return receipt requested, or by delivery by the United States Postal Service with signature confirmation service to the property owners' association's mailing address as reflected on the latest management certificate filed under Section 209.004; or
 - (2) in person to the property owners' association's managing agent as reflected on the latest management certificate filed under Section 209.004 or to the address to which absentee and proxy ballots are mailed.
- (c) The property owners' association shall, at the expense of the owner requesting the recount, retain for the purpose of performing the recount, the services of a person qualified to tabulate votes under this subsection. The association shall enter into a contract for the services of a person who:
- (1) is not a member of the association or related to a member of the association board within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code; and
 - (2) is:
 - (A) a current or former:
 - (i) county judge;
 - (ii) county elections administrator;
 - (iii) justice of the peace; or
 - (iv) county voter registrar; or
 - (B) a person agreed on by the association and the persons requesting the recount.
- (d) Any recount under Subsection (b) must be performed on or before the 30th day after the date of receipt of a request and payment for a recount in accordance with Subsections (b) and (c). If the recount changes the results of the election, the property owners' association shall reimburse the requesting owner for the cost of the recount. The property owners' association shall provide the results of the recount to each owner who requested the recount. Any action taken by the board in the period between the initial election vote tally and the completion of the recount is not affected by any recount.

No Secret Ballots (Texas Prop. Code 209.0058) HB 2761 Effective 9/1/11

Secret Ballots are prohibited.

Sec. 209.0058. BALLOTS.

- (a) Any vote cast in an election or vote by a member of a property owners' association must be in writing and signed by the member.
- (b) Electronic votes cast under Section 209.00592 constitute written and signed ballots.
- (c) In an association-wide election, written and signed ballots are not required for uncontested races.

Owner Voting Rights (Texas Prop. Code 209.0059) HB 2761 Effective 9/1/11

Owners may not be disqualified from voting for any reason.

Sec. 209.0059. RIGHT TO VOTE.

- (a) A provision in a dedicatory instrument that would disqualify a property owner from voting in a property owners' association election of board members or on any matter concerning the rights or responsibilities of the owner is void.
- (b) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

Director Qualifications (Texas Prop. Code 209.00591 & .00592) HB 2761 Effective 9/1/11

Owner director qualifications are void; all owners may run for the Board.

Developer Director Transition (Texas Prop. Code 209.00591c) HB 2761 Effective 1/1/12

Establishes time frame when non-declarant owners must be elected to the Board.

Sec. 209.00591. BOARD MEMBERSHIP.

- (a) Except as provided by this section, a provision in a dedicatory instrument that restricts a property owner's right to run for a position on the board of the property owners' association is void.
- (b) If a board is presented with written, documented evidence from a database or other record maintained by a governmental law enforcement authority that a board member has been convicted of a felony or crime involving moral turpitude, the board member is immediately ineligible to serve on the board of the property owners' association, automatically considered removed from the board, and prohibited from future service on the board.
- (c) The declaration may provide for a period of declarant control of the association during which a declarant, or persons designated by the declarant, may appoint and remove board members and the officers of the association, other than board members or officers elected by members of the property owners' association. Regardless of the period of declarant control provided by the declaration, on or before the 120th day after the date 75 percent of the lots that may be created and made subject to the declaration are conveyed to owners other than a declarant, at least one-third of the board members must be elected by owners other than the declarant. If the declaration does not include the number of lots that may be created and made subject to the declaration, at least one-third of the board members must be elected by owners other than the declarant not later than the 10th anniversary of the date the declaration was recorded.

Sec. 209.00592. VOTING; QUORUM.

- (a) The voting rights of an owner may be cast or given:
 - (1) in person or by proxy at a meeting of the property owners' association;
 - (2) by absentee ballot in accordance with this section;
 - (3) by electronic ballot in accordance with this section; or

- (4) by any method of representative or delegated voting provided by a dedicatory instrument.
- (b) An absentee or electronic ballot:
 - (1) may be counted as an owner present and voting for the purpose of establishing a quorum only for items appearing on the ballot;
 - (2) may not be counted, even if properly delivered, if the owner attends any meeting to vote in person, so that any vote cast at a meeting by a property owner supersedes any vote submitted by absentee or electronic ballot previously submitted for that proposal; and
 - (3) may not be counted on the final vote of a proposal if the motion was amended at the meeting to be different from the exact language on the absentee or electronic ballot.
- (c) A solicitation for votes by absentee ballot must include:
 - (1) an absentee ballot that contains each proposed action and provides an opportunity to vote for or against each proposed action;
 - (2) instructions for delivery of the completed absentee ballot, including the delivery location; and
 - (3) the following language: "By casting your vote via absentee ballot you will forgo the opportunity to consider and vote on any action from the floor on these proposals, if a meeting is held. This means that if there are amendments to these proposals your votes will not be counted on the final vote on these measures. If you desire to retain this ability, please attend any meeting in person. You may submit an absentee ballot and later choose to attend any meeting in person, in which case any in-person vote will prevail."
- (d) For the purposes of this section, "electronic ballot" means a ballot:
 - (1) given by:
 - (A) e-mail;
 - (B) facsimile; or
 - (C) posting on an Internet website;
 - (2) for which the identity of the property owner submitting the ballot can be confirmed; and
 - (3) for which the property owner may receive a receipt of the electronic transmission and receipt of the owner's ballot.
- (e) If an electronic ballot is posted on an Internet website, a notice of the posting shall be sent to each owner that contains instructions on obtaining access to the posting on the website.
- (f) This section supersedes any contrary provision in a dedicatory instrument.
- (g) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

Electronic & Absentee Ballots (Texas Prop Code 209.00593 & .00592 - see section above for .00592) SB 472 & HB 2761 Eff. 9/1/11

Electronic and absentee ballots votes are valid if the ballots meet certain requirements.

Director Appointment (Texas Prop. Code 209.00593) HB 2761 Effective 1/1/12

Directors may not be appointed to positions whose terms have expired.

Sec. 209.00593. ELECTION OF BOARD MEMBERS.

- (a) Notwithstanding any provision in a dedicatory instrument, any board member whose term has expired must be elected by owners who are members of the property owners' association. A board member may be appointed by the board only to fill a vacancy caused by a resignation, death, or disability. A board member

appointed to fill a vacant position shall serve the unexpired term of the predecessor board member.

(b) The board of a property owners' association may amend the bylaws of the property owners' association to provide for elections to be held as required by Subsection (a).

(c) The appointment of a board member in violation of this section is void.

(d) This section does not apply to the appointment of a board member during a development period. In this subsection, "development period" means a period stated in a declaration during which a declarant reserves:

(1) a right to facilitate the development, construction, and marketing of the subdivision; and

(2) a right to direct the size, shape, and composition of the subdivision.

(e) This section does not apply to a representative board whose members or delegates are elected or appointed by representatives of a property owners' association who are elected by owner members of a property owners' association.

Election Vote Tabulators (Texas Prop. Code 209.00594) SB 472 & HB 2761 Effective 9/1/11

Only election vote tabulators allowed access to ballots.

Sec. 209.00594. TABULATION OF AND ACCESS TO BALLOTS.

(a) Notwithstanding any other provision of this chapter or any other law, a person who is a candidate in a property owners' association election or who is otherwise the subject of an association vote, or a person related to that person within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code, may not tabulate or otherwise be given access to the ballots cast in that election or vote except as provided by this section.

(b) A person other than a person described by Subsection (a) may tabulate votes in an association election or vote but may not disclose to any other person how an individual voted.

(c) Notwithstanding any other provision of this chapter or any other law, a person other than a person who tabulates votes under Subsection (b), including a person described by Subsection (a), may be given access to the ballots cast in the election or vote only as part of a recount process authorized by law.

Annual Meetings & Elections (Texas Prop. Code 209.014) HB 2761 Effective 1/1/12
HOAs must hold annual meetings or owners may themselves call an election meeting.

Sec. 209.014. MANDATORY ELECTION REQUIRED AFTER FAILURE TO CALL REGULAR MEETING.

(a) Notwithstanding any provision in a dedicatory instrument, a board of a property owners' association shall call an annual meeting of the members of the association.

(b) If a board of a property owners' association does not call an annual meeting of the association members, an owner may demand that a meeting of the association members be called not later than the 30th day after the date of the owner's demand. The owner's demand must be made in writing and sent by certified mail, return receipt requested, to the registered agent of the property owners' association and to the association at the address for the association according to the most recently filed management certificate. A copy of the notice must be sent to each property owner who is a member of the association.

(c) If the board does not call a meeting of the members of the property owners' association on or before the 30th day after the date of a demand under Subsection (b), three or more owners may form an election committee. The election committee

shall file written notice of the committee's formation with the county clerk of each county in which the subdivision is located.

(d) A notice filed by an election committee must contain:

- (1) a statement that an election committee has been formed to call a meeting of owners who are members of the property owners' association for the sole purpose of electing board members;
- (2) the name and residential address of each committee member; and
- (3) the name of the subdivision over which the property owners' association has jurisdiction under a dedicatory instrument.

(e) Each committee member must sign and acknowledge the notice before a notary or other official authorized to take acknowledgments.

(f) The county clerk shall enter on the notice the date the notice is filed and record the notice in the county's real property records.

(g) Only one committee in a subdivision may operate under this section at one time. If more than one committee in a subdivision files a notice, the first committee that files a notice, after having complied with all other requirements of this section, is the committee with the power to act under this section. A committee that does not hold or conduct a successful election within four months after the date the notice is filed with the county clerk is dissolved by operation of law. An election held or conducted by a dissolved committee is ineffective for any purpose under this section.

(h) The election committee may call meetings of the owners who are members of the property owners' association for the sole purpose of electing board members. Notice, quorum, and voting provisions contained in the bylaws of the property owners' association apply to any meeting called by the election committee.

Recording Requirement (Texas Prop. Code 202.006) HB 1821 Effective 1/1/12

Unrecorded HOA dedicatory instruments are of "no effect."

Sec. 202.006. PUBLIC RECORDS.

(a) A property owners' association shall file all dedicatory instruments in the real property records of each county in which the property to which the dedicatory instruments relate is located.

(b) A dedicatory instrument has no effect until the instrument is filed in accordance with this section.

Website Posting (Texas Prop. Code 207.006) HB 1821

An HOA's dedicatory instruments must be posted on an HOA "publicly accessible" HOA website that must include copies of all governing documents of the HOA (i.e., declaration, bylaws, rules, articles and all amendments).

Sec. 207.006. ONLINE SUBDIVISION INFORMATION REQUIRED.

A property owners' association shall make dedicatory instruments relating to the association or subdivision and filed in the county deed records available on a website if the association has, or a management company on behalf of the association maintains, a publicly accessible website.

Declaration Amendment (Texas Prop. Code 209.0041 (SB 472) Effective 9/1/11

Declarations may be amended by 67% of the Owners (or less stated in the declaration).

Sec. 209.0041. ADOPTION OR AMENDMENT OF CERTAIN DEDICATORY INSTRUMENTS.

(a) In this section, "development period" means a period stated in a declaration during which a declarant reserves:

- (1) a right to facilitate the development, construction, and marketing of the subdivision; and

- (2) a right to direct the size, shape, and composition of the subdivision.
- (b) This section applies to a residential subdivision in which property owners are subject to mandatory membership in a property owners' association.
- (c) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.
- (d) This section does not apply to the amendment of a declaration during a development period.
- (e) This section applies to a dedicatory instrument regardless of the date on which the dedicatory instrument was created.
- (f) This section supersedes any contrary requirement in a dedicatory instrument.
- (g) To the extent of any conflict with another provision of this title, this section prevails.
- (h) Except as provided by this subsection, a declaration may be amended only by a vote of 67 percent of the total votes allocated to property owners in the property owners' association, in addition to any governmental approval required by law. If the declaration contains a lower percentage, the percentage in the declaration controls.
- (i) A bylaw may not be amended to conflict with the declaration.

Open Records (Texas Prop. Code 209.005) HB 2761 Effective 1/1/12

HOAs must adopt and file an open records policy; open records procedures established.

Records Retention Policy (Texas Prop. Code 209.005m) HB 2761 Effective 1/1/12

HOAs must adopt a records retention policy; certain statutory time frames established.

Sec. 209.005. ASSOCIATION RECORDS.

- (a) Except as provided by Subsection (b), this section applies to all property owners' associations and controls over other law not specifically applicable to a property owners' association.
- (b) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.
- (c) Notwithstanding a provision in a dedicatory instrument, a property owners' association shall make the books and records of the association, including financial records, open to and reasonably available for examination by an owner, or a person designated in a writing signed by the owner as the owner's agent, attorney, or certified public accountant, in accordance with this section. An owner is entitled to obtain from the association copies of information contained in the books and records.
- (d) Except as provided by this subsection, an attorney's files and records relating to the property owners' association, excluding invoices requested by an owner under Section 209.008(d), are not records of the association and are not subject to inspection by the owner or production in a legal proceeding. If a document in an attorney's files and records relating to the association would be responsive to a legally authorized request to inspect or copy association documents, the document shall be produced by using the copy from the attorney's files and records if the association has not maintained a separate copy of the document. This subsection does not require production of a document that constitutes attorney work product or that is privileged as an attorney-client communication.
- (e) An owner or the owner's authorized representative described by Subsection (c) must submit a written request for access or information under Subsection (c) by certified mail, with sufficient detail describing the property owners' association's books and records requested, to the mailing address of the association or

authorized representative as reflected on the most current management certificate filed under Section 209.004. The request must contain an election either to inspect the books and records before obtaining copies or to have the property owners' association forward copies of the requested books and records and:

- (1) if an inspection is requested, the association, on or before the 10th business day after the date the association receives the request, shall send written notice of dates during normal business hours that the owner may inspect the requested books and records to the extent those books and records are in the possession, custody, or control of the association; or
- (2) if copies of identified books and records are requested, the association shall, to the extent those books and records are in the possession, custody, or control of the association, produce the requested books and records for the requesting party on or before the 10th business day after the date the association receives the request, except as otherwise provided by this section.

(f) If the property owners' association is unable to produce the books or records requested under Subsection (e) on or before the 10th business day after the date the association receives the request, the association must provide to the requestor written notice that:

- (1) informs the requestor that the association is unable to produce the information on or before the 10th business day after the date the association received the request; and
- (2) states a date by which the information will be sent or made available for inspection to the requesting party that is not later than the 15th business day after the date notice under this subsection is given.

(g) If an inspection is requested or required, the inspection shall take place at a mutually agreed on time during normal business hours, and the requesting party shall identify the books and records for the property owners' association to copy and forward to the requesting party.

(h) A property owners' association may produce books and records requested under this section in hard copy, electronic, or other format reasonably available to the association.

(i) A property owners' association board must adopt a records production and copying policy that prescribes the costs the association will charge for the compilation, production, and reproduction of information requested under this section. The prescribed charges may include all reasonable costs of materials, labor, and overhead but may not exceed costs that would be applicable for an item under 1 T.A.C. Section 70.3. The policy required by this subsection must be recorded as a dedicatory instrument in accordance with Section 202.006. An association may not charge an owner for the compilation, production, or reproduction of information requested under this section unless the policy prescribing those costs has been recorded as required by this subsection. An owner is responsible for costs related to the compilation, production, and reproduction of the requested information in the amounts prescribed by the policy adopted under this subsection. The association may require advance payment of the estimated costs of compilation, production, and reproduction of the requested information. If the estimated costs are lesser or greater than the actual costs, the association shall submit a final invoice to the owner on or before the 30th business day after the date the information is delivered. If the final invoice includes additional amounts due from the owner, the additional amounts, if not reimbursed to the association before the 30th business day after the date the invoice is sent to the owner, may be added to the owner's account as an assessment. If the estimated costs exceeded the final invoice

amount, the owner is entitled to a refund, and the refund shall be issued to the owner not later than the 30th business day after the date the invoice is sent to the owner.

(j) A property owners' association must estimate costs under this section using amounts prescribed by the policy adopted under Subsection (i).

(k) Except as provided by Subsection (l) and to the extent the information is provided in the meeting minutes, the property owners' association is not required to release or allow inspection of any books or records that identify the dedicatory instrument violation history of an individual owner of an association, an owner's personal financial information, including records of payment or nonpayment of amounts due the association, an owner's contact information, other than the owner's address, or information related to an employee of the association, including personnel files. Information may be released in an aggregate or summary manner that would not identify an individual property owner.

(l) The books and records described by Subsection (k) shall be released or made available for inspection if:

(1) the express written approval of the owner whose records are the subject of the request for inspection is provided to the property owners' association; or

(2) a court orders the release of the books and records or orders that the books and records be made available for inspection.

(m) A property owners' association composed of more than 14 lots shall adopt and comply with a document retention policy that includes, at a minimum, the following requirements:

(1) certificates of formation, bylaws, restrictive covenants, and all amendments to the certificates of formation, bylaws, and covenants shall be retained permanently;

(2) financial books and records shall be retained for seven years;

(3) account records of current owners shall be retained for five years;

(4) contracts with a term of one year or more shall be retained for four years after the expiration of the contract term;

(5) minutes of meetings of the owners and the board shall be retained for seven years; and

(6) tax returns and audit records shall be retained for seven years.

(n) A member of a property owners' association who is denied access to or copies of association books or records to which the member is entitled under this section may file a petition with the justice of the peace of a justice precinct in which all or part of the property that is governed by the association is located requesting relief in accordance with this subsection. If the justice of the peace finds that the member is entitled to access to or copies of the records, the justice of the peace may grant one or more of the following remedies:

(1) a judgment ordering the property owners' association to release or allow access to the books or records;

(2) a judgment against the property owners' association for court costs and attorney's fees incurred in connection with seeking a remedy under this section; or

(3) a judgment authorizing the owner or the owner's assignee to deduct the amounts awarded under Subdivision (2) from any future regular or special assessments payable to the property owners' association.

(o) If the property owners' association prevails in an action under Subsection (n), the association is entitled to a judgment for court costs and attorney's fees incurred by the association in connection with the action.

(p) On or before the 10th business day before the date a person brings an action against a property owners' association under this section, the person must send written notice to the association of the person's intent to bring the action. The notice must:

- (1) be sent certified mail, return receipt requested, or delivered by the United States Postal Service with signature confirmation service to the mailing address of the association or authorized representative as reflected on the most current management certificate filed under Section 209.004; and
- (2) describe with sufficient detail the books and records being requested.

(q) For the purposes of this section, "business day" means a day other than Saturday, Sunday, or a state or federal holiday.

Military Notice (Texas Prop. Code 209.006b) HB 1127 Effective 1/1/12
Mandatory inclusion of military notice established.

Section 209.006(b), Property Code, is amended to read as follows:

(b) The notice must:

- (1) describe the violation or property damage that is the basis for the suspension action, charge, or fine and state any amount due the association from the owner; and
- (2) inform the owner that the owner:
 - (A) is entitled to a reasonable period to cure the violation and avoid the fine or suspension unless the owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six months;
 - (B) may request a hearing under Section 209.007 on or before the 30th day after the date the owner receives the notice; and
 - (C) may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. app. Section 501 et seq.), if the owner is serving on active military duty.

Payment Plan Guidelines (Texas Prop. Code 209.0062) HB 1228 & HB 1821 Effective 1/1/12

Payment plans required and guidelines are mandated.

Sec. 209.0062. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN ASSESSMENTS.

- (a) A property owners' association shall file the association's alternative payment schedule guidelines adopted under this section in the real property records of each county in which the subdivision is located.
- (b) A property owners' association composed of more than 14 lots shall adopt reasonable guidelines to establish an alternative payment schedule by which an owner may make partial payments to the property owners' association for delinquent regular or special assessments or any other amount owed to the association without accruing additional monetary penalties. For purposes of this section, monetary penalties do not include reasonable costs associated with administering the payment plan or interest.
- (c) The minimum term for a payment plan offered by a property owners' association is three months.
- (d) A property owners' association may not allow a payment plan for any amount that extends more than 18 months from the date of the owner's request for a payment plan. The association is not required to enter into a payment plan with an

owner who failed to honor the terms of a previous payment plan during the two years following the owner's default under the previous payment plan.

(e) A property owners' association's failure to file as required by this section the association's guidelines in the real property records of each county in which the subdivision is located does not prohibit a property owner from receiving an alternative payment schedule by which the owner may make partial payments to the property owners' association for delinquent regular or special assessments or any other amount owed to the association without accruing additional monetary penalties, as defined by Subsection (b).

Application of Payments (Texas Prop. Code 209.0063) HB 1228 Effective 1/1/12
Mandatory application of payments schedule. States HOA must apply owners' payments in the following order: delinquent assessments, current assessments, attorney fees or third party collection costs, other attorney fees, fines, other amounts.

Sec. 209.0063. PRIORITY OF PAYMENTS.

(a) Except as provided by Subsection (b), a payment received by a property owners' association from the owner shall be applied to the owner's debt in the following order of priority:

- (1) any delinquent assessment;
- (2) any current assessment;
- (3) any attorney's fees or third party collection costs incurred by the association associated solely with assessments or any other charge that could provide the basis for foreclosure;
- (4) any attorney's fees incurred by the association that are not subject to Subdivision (3);
- (5) any fines assessed by the association; and
- (6) any other amount owed to the association.

(b) If, at the time the property owners' association receives a payment from a property owner, the owner is in default under a payment plan entered into with the association:

- (1) the association is not required to apply the payment in the order of priority specified by Subsection (a); and
- (2) in applying the payment, a fine assessed by the association may not be given priority over any other amount owed to the association.

Third Party Collections (Texas Prop. Code 209.0064) HB 1228 Effective 1/1/12
Required notice to owner prior to turning delinquent accounts over to a third party collection agent and certain contingency fee arrangements made unenforceable against an owner.

Sec. 209.0064. THIRD PARTY COLLECTIONS.

(a) In this section, "collection agent" means a debt collector, as defined by Section 803 of the federal Fair Debt Collection Practices Act (15 U.S.C. Section 1692a).

(b) A property owners' association may not hold an owner liable for fees of a collection agent retained by the property owners' association unless the association first provides written notice to the owner by certified mail, return receipt requested, that:

- (1) specifies each delinquent amount and the total amount of the payment required to make the account current;
- (2) describes the options the owner has to avoid having the account turned over to a collection agent, including information regarding availability of a payment plan through the association; and
- (3) provides a period of at least 30 days for the owner to cure the delinquency before further collection action is taken.

(c) An owner is not liable for fees of a collection agent retained by the property owners' association if:

- (1) the obligation for payment by the association to the association's collection agent for fees or costs associated with a collection action is in any way dependent or contingent on amounts recovered; or
- (2) the payment agreement between the association and the association's collection agent does not require payment by the association of all fees to a collection agent for the action undertaken by the collection agent.

(d) The agreement between the property owners' association and the association's collection agent may not prohibit the owner from contacting the association board or the association's managing agent regarding the owner's delinquency.

(e) A property owners' association may not sell or otherwise transfer any interest in the association's accounts receivables for a purpose other than as collateral for a loan.

Copy Charge Foreclosure (Texas Prop. Code 209.009) HB 2761 Effective 1/1/12

No HOA foreclosure for copy charges related to books and records.

Sec. 209.009. FORECLOSURE SALE PROHIBITED IN CERTAIN CIRCUMSTANCES.

A property owners' association may not foreclose a property owners' association's assessment lien if the debt securing the lien consists solely of:

- (1) fines assessed by the association;
- (2) attorney's fees incurred by the association solely associated with fines assessed by the association; or
- (3) amounts added to the owner's account as an assessment under Section 209.005(i).

Junior Lienholder Notice (Texas Prop. Code 209.0091) HB 1228 Effective 1/1/12

Prior notice of foreclosure must be sent to junior lienholders.

Sec. 209.0091. PREREQUISITES TO FORECLOSURE: NOTICE AND OPPORTUNITY TO CURE FOR CERTAIN OTHER LIENHOLDERS.

(a) A property owners' association may not foreclose a property owners' association assessment lien on real property by giving notice of sale under Section 51.002 or commencing a judicial foreclosure action unless the association has:

- (1) provided written notice of the total amount of the delinquency giving rise to the foreclosure to any other holder of a lien of record on the property whose lien is inferior or subordinate to the association's lien and is evidenced by a deed of trust; and
- (2) provided the recipient of the notice an opportunity to cure the delinquency before the 61st day after the date the recipient receives the notice.

(b) Notice under this section must be sent by certified mail, return receipt requested, to the address for the lienholder shown in the deed records relating to the property that is subject to the property owners' association assessment lien.

Judicial Foreclosure (Texas Prop. Code 209.0092) HB 1228 Effective 1/1/12

Non-judicial HOA foreclosures prohibited.

Sec. 209.0092. JUDICIAL FORECLOSURE REQUIRED.

(a) Except as provided by Subsection (c) and subject to Section 209.009, a property owners' association may not foreclose a property owners' association assessment lien unless the association first obtains a court order in an application

for expedited foreclosure under the rules adopted by the supreme court under Subsection (b). A property owners' association may use the procedure described by this subsection to foreclose any lien described by the association's dedicatory instruments.

(b) The supreme court, as an exercise of the court's authority under Section 74.024, Government Code, shall adopt rules establishing expedited foreclosure proceedings for use by a property owners' association in foreclosing an assessment lien of the association. The rules adopted under this subsection must be substantially similar to the rules adopted by the supreme court under Section 50(r), Article XVI, Texas Constitution.

(c) Expedited foreclosure is not required under this section if the owner of the property that is subject to foreclosure agrees in writing at the time the foreclosure is sought to waive expedited foreclosure under this section. A waiver under this subsection may not be required as a condition of the transfer of title to real property.

Foreclosure Amendment (Texas Prop. Code 209.0093) HB 1228 Effective 1/1/12

Foreclosure provisions can be added or removed by owners from declaration.

Sec. 209.0093. REMOVAL OR ADOPTION OF FORECLOSURE AUTHORITY.

A provision granting a right to foreclose a lien on real property for unpaid amounts due to a property owners' association may be removed from a dedicatory instrument or adopted in a dedicatory instrument by a vote of at least 67 percent of the total votes allocated to property owners in the property owners' association. Owners holding at least 10 percent of all voting interests in the property owners' association may petition the association and require a special meeting to be called for the purposes of taking a vote for the purposes of this section.

Lien Notices (Texas Prop. Code 209.0094) HB 1228 Effective 1/1/12

Confirms prior law that HOA lien notices and similar instruments affect title to property.

Sec. 209.0094. ASSESSMENT LIEN FILING.

A lien, lien affidavit, or other instrument evidencing the nonpayment of assessments or other charges owed to a property owners' association and filed in the official public records of a county is a legal instrument affecting title to real property.

Transfer Fees (Texas Prop. Code Chap. 5, subchap. G) HB 8 Effective 6/17/11

Certain types of transfer fees are prohibited with general exceptions for most HOA transfer fees. Chapter 5, Property Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. CERTAIN PRIVATE TRANSFER FEES PROHIBITED; PRESERVATION OF PRIVATE REAL PROPERTY RIGHTS

Sec. 5.201. DEFINITIONS. In this subchapter:

- (1) "Encumbered property" means all property, including the property of a subsequent purchaser, subject to the same private transfer fee obligation.
- (2) "Lender" means a lending institution, including a bank, trust company, banking association, savings and loan association, mortgage company, investment bank, credit union, life insurance company, and governmental agency, that customarily provides financing or an affiliate of a lending institution.
- (3) "Payee" means a person who claims the right to receive or collect a private transfer fee payable under a private transfer fee obligation and who may or may not have a pecuniary interest in the obligation.
- (4) "Private transfer fee" means an amount of money, regardless of the method of

determining the amount, that is payable on the transfer of an interest in real property or payable for a right to make or accept a transfer.

(5) "Private transfer fee obligation" means an obligation to pay a private transfer fee created under:

(A) a declaration or other covenant recorded in the real property records in the county in which the property subject to the private transfer fee obligation is located;

(B) a contractual agreement or promise; or

(C) an unrecorded contractual agreement or promise.

(6) "Subsequent owner" means a person who acquires real property by transfer from a person other than the person who is the seller of the property on the date the private transfer fee obligation is created.

(7) "Subsequent purchaser" means a person who purchases real property from a person other than the person who is the seller on the date the private transfer fee obligation is created. The term includes a lender who provides a mortgage loan to a subsequent purchaser to purchase the property.

(8) "Transfer" means the sale, gift, conveyance, assignment, inheritance, or other transfer of an ownership interest in real property.

Sec. 5.202. CERTAIN PRIVATE TRANSFER FEE OBLIGATIONS VOID.

(a) Except as provided by this subchapter, a private transfer fee obligation created on or after the effective date of this subchapter is not binding or enforceable against a subsequent owner or subsequent purchaser of an interest in real property and is void.

(b) For purposes of this subchapter, the following payments are not considered private transfer fee obligations:

(1) consideration paid by a purchaser to a seller for an interest in real property transferred, including, as applicable, a mineral interest transferred, including additional consideration paid to a seller for the property's appreciation, development, or sale after the interest in the property has been transferred to the purchaser, if the additional consideration is paid only once and that payment does not bind successors in interest to the property to any private transfer fee obligation;

(2) a commission paid to a licensed real estate broker under a written agreement between a seller or purchaser and the broker, including an additional commission for the property's appreciation, development, or sale after the interest in property is transferred to the purchaser;

(3) interest, a fee, a charge, or another type of payment to a lender under a loan secured by a mortgage on the property, including:

(A) a fee payable for the lender's consent to an assumption of the loan or transfer of the property subject to the mortgage;

(B) a fee or charge payable for an estoppel letter or certificate;

(C) a shared appreciation interest or profit participation; or

(D) other consideration payable in connection with the loan;

(4) rent, reimbursement, a fee, a charge, or another type of payment to a lessor under a lease, including a fee for consent to an assignment, sublease, encumbrance, or transfer of a lease;

(5) consideration paid to the holder of an option to purchase an interest in property, or to the holder of a right of first refusal or first offer to purchase an interest in property, for waiving, releasing, or not exercising the option or right when the property is transferred to another person;

(6) a fee payable to or imposed by a governmental entity in connection with recording the transfer of the property;

(7) dues, a fee, a charge, an assessment, a fine, a contribution, or another type of payment under a declaration or other covenant or under law, including a fee or charge payable for a change of ownership entered in the records of an association to which this subdivision applies or an estoppel letter or resale certificate issued under Section 207.003 by an association to which this subdivision applies or the person identified under Section 209.004(a)(6), provided that no portion of the fee or charge is required to be passed through to a third party designated or identifiable in the declaration or other covenant or law or in a document referenced in the declaration or other covenant or law, unless paid to:

(A) an association as defined by Section 82.003 or 221.002 or the person or entity managing the association as provided by Section 82.116(a)(5) or 221.032(b)(11), as applicable;

(B) a property owners' association as defined by Section 202.001 or 209.002 or the person or entity described by Section 209.004(a)(6); or

(C) a property owners' association as defined by Section 202.001 that does not require an owner of property governed by the association to be a member of the association or the person or entity described by Section 209.004(a)(6);

(8) dues, a fee, a charge, an assessment, a fine, a contribution, or another type of payment for the transfer of a club membership related to the property;

(9) dues, a fee, a charge, an assessment, a fine, a contribution, or another type of payment paid to an organization exempt from federal taxation under Section 501(c)(3) or 501(c)(4), Internal Revenue Code of 1986, only if the organization uses the payments to directly benefit the encumbered property by:

(A) supporting or maintaining only the encumbered property;

(B) constructing or repairing improvements only to the encumbered property; or

(C) providing activities or infrastructure to support quality of life, including cultural, educational, charitable, recreational, environmental, and conservation activities and infrastructure, that directly benefit the encumbered property; or

(10) a fee payable to or imposed by the Veterans' Land Board for consent to an assumption or transfer of a contract of sale and purchase.

(c) The benefit described by Subsection (b)(9)(C) may collaterally benefit a community composed of:

(1) property that is adjacent to the encumbered property; or

(2) property a boundary of which is not more than 1,000 yards from a boundary of the encumbered property.

(d) Notwithstanding Subsection (c), an organization may provide a direct benefit under Subsection (b)(9) if:

(1) the organization provides to the general public activities or infrastructure described by Subsection (b)(9)(C);

(2) the provision of activities or infrastructure substantially benefits the encumbered property; and

(3) the governing body of the organization:

(A) is controlled by owners of the encumbered property; and

(B) approves payments for activities or infrastructure at least annually.

(e) An organization may provide activities and infrastructure described by Subsection (b)(9)(C) to another organization exempt from federal taxation under Section 501(c)(3) or 501(c)(4), Internal Revenue Code of 1986, at no charge for de minimis usage without violating the requirements of this section.

Sec. 5.203. NOTICE REQUIREMENTS FOR CONTINUATION OF EXISTING PRIVATE TRANSFER FEE OBLIGATIONS.

(a) A person who receives a private transfer fee under a private transfer fee obligation created before the effective date of this subchapter must, on or before January 31, 2012, file for record a "Notice of Private Transfer Fee Obligation" as provided by this section in the real property records of each county in which the property is located.

(b) Multiple payees of a single private transfer fee under a private transfer fee obligation must designate one payee as the payee of record for the fee.

(c) A notice under Subsection (a) must:

- (1) be printed in at least 14-point boldface type;
- (2) state the amount of the private transfer fee and the method of determination, if applicable;
- (3) state the date or any circumstance under which the private transfer fee obligation expires, if any;
- (4) state the purpose for which the money from the private transfer fee obligation will be used;
- (5) notwithstanding Subsection (b), state the name of each payee and each payee's contact information;
- (6) state the name and address of the payee of record to whom the payment of the fee must be sent;
- (7) include the acknowledged signature of each payee or authorized representative of each payee; and
- (8) state the legal description of the property subject to the private transfer fee obligation.

(d) A person required to file a notice under this section shall:

- (1) refile the notice described by this section not earlier than the 30th day before the third anniversary of the original filing date described by Subsection (a) and within a similar 30-day period every third year thereafter; and
- (2) amend the notice to reflect any change in the name or address of any payee included in the notice not later than the 30th day after the date the change occurs.

(e) A person who amends a notice under Subsection (d)(2) must include:

- (1) the recording information of the original notice filed as required by this section; and
- (2) the legal description of the property subject to the private transfer fee obligation.

(f) If a person required to file a notice under this section fails to comply with this section:

- (1) payment of the private transfer fee may not be a requirement for the conveyance of an interest in the property to a purchaser;
- (2) the property is not subject to further obligation under the private transfer fee obligation; and
- (3) the private transfer fee obligation is void.

Sec. 5.204. ADDITIONAL COMPLIANCE REQUIREMENT: TIMELY ACCEPTANCE OF FEES PAID UNDER EXISTING PRIVATE TRANSFER FEE OBLIGATIONS.

(a) The payee of record on the date a private transfer fee is paid under a private

transfer fee obligation subject to Section 5.203 must accept the payment on or before the 30th day after the date the payment is tendered to the payee.

(b) If the payee of record fails to comply with Subsection (a):

- (1) the payment must be returned to the remitter;
- (2) payment of the private transfer fee may not be a requirement for the conveyance of an interest in the property to a purchaser; and
- (3) the property is not subject to further obligation under the private transfer fee obligation.

Sec. 5.205. DISCLOSURE OF EXISTING TRANSFER FEE OBLIGATION REQUIRED IN CONTRACT FOR SALE.

A seller of real property that may be subject to a private transfer fee obligation shall provide written notice to a potential purchaser stating that the obligation may be governed by this subchapter.

Sec. 5.206. WAIVER VOID.

A provision that purports to waive a purchaser's rights under this subchapter is void.

Sec. 5.207. INJUNCTIVE OR DECLARATORY RELIEF; PROVIDING PENALTIES.

- (a) The attorney general may institute an action for injunctive or declaratory relief to restrain a violation of this subchapter.
- (b) In addition to instituting an action for injunctive or declaratory relief under Subsection (a), the attorney general may institute an action for civil penalties against a payee for a violation of this chapter. Except as provided by Subsection (c), a civil penalty assessed under this section may not exceed an amount equal to two times the amount of the private transfer fee charged or collected by the payee in violation of this subchapter.
- (c) If the court in which an action under Subsection (b) is pending finds that a payee violated this subchapter with a frequency that constitutes a pattern or practice, the court may assess a civil penalty not to exceed \$250,000.
- (d) The comptroller shall deposit to the credit of the general revenue fund all money collected under this section.

Resale Certificates (Texas Prop. Code 207.003) HB 1821 Effective 1/1/12

New requirements and time frames for resale certificates are established.

Section 207.003, Property Code, is amended by amending Subsections (a), (b), and (f) and adding Subsections (a-1) and (c-1) to read as follows:

(a) Not later than the 10th business day after the date a written request for subdivision information is received from an owner or the owner's agent, a purchaser of property in a subdivision or the purchaser's agent, or a title insurance company or its agent acting on behalf of the owner or purchaser and the evidence of the requestor's authority to order a resale certificate under Subsection (a-1) is received and verified, the property owners' association shall deliver to the owner or the owner's agent, the purchaser or the purchaser's agent, or the title insurance company or its agent:

- (1) a current copy of the restrictions applying to the subdivision;
- (2) a current copy of the bylaws and rules of the property owners' association; and
- (3) a resale certificate prepared not earlier than the 60th day before the date the certificate is delivered that complies with Subsection (b).

(a-1) For a request from a purchaser of property in a subdivision or the purchaser's agent, the property owners' association may require the purchaser or purchaser's agent to provide to the association, before the association begins the process of preparing or delivers the items listed in Subsection (a), reasonable

evidence that the purchaser has a contractual or other right to acquire property in the subdivision.

(b) A resale certificate under Subsection (a) must contain:

- (1) a statement of any right of first refusal, other than a right of first refusal that is prohibited by statute, and any other restraint contained in the restrictions or restrictive covenants that restricts the owner's right to transfer the owner's property;
- (2) the frequency and amount of any regular assessments;
- (3) the amount and purpose of any special assessment that has been approved before and is due after the resale certificate is delivered ;
- (4) the total of all amounts due and unpaid to the property owners' association that are attributable to the owner's property;
- (5) capital expenditures, if any, approved by the property owners' association for the property owners' association's current fiscal year;
- (6) the amount of reserves, if any, for capital expenditures;
- (7) the property owners' association's current operating budget and balance sheet;
- (8) the total of any unsatisfied judgments against the property owners' association;
- (9) the style and cause number of any pending lawsuit in which the property owners' association is a party, other than a lawsuit relating to unpaid ad valorem taxes of an individual member of the association;
- (10) a copy of a certificate of insurance showing the property owners' association's property and liability insurance relating to the common areas and common facilities;
- (11) a description of any conditions on the owner's property that the property owners' association board has actual knowledge are in violation of the restrictions applying to the subdivision or the bylaws or rules of the property owners' association;
- (12) a summary or copy of notices received by the property owners' association from any governmental authority regarding health or housing code violations existing on the preparation date of the certificate relating to the owner's property or any common areas or common facilities owned or leased by the property owners' association;
- (13) the amount of any administrative transfer fee charged by the property owners' association for a change of ownership of property in the subdivision;
- (14) the name, mailing address, and telephone number of the property owners' association's managing agent, if any;
- (15) a statement indicating whether the restrictions allow foreclosure of a property owners' association's lien on the owner's property for failure to pay assessments; and
- (16) a statement of all fees associated with the transfer of ownership, including a description of each fee, to whom each fee is paid, and the amount of each fee.

(c-1) The property owners' association may require payment before beginning the process of providing a resale certificate but may not process a payment for a resale certificate until the certificate is available for delivery. The association may not charge a fee if the certificate is not provided in the time prescribed by Subsection(a).

(f) Not later than the seventh business day after the date a written request for an update of a resale certificate delivered under Subsection (a) is received from an owner, owner's agent, or title insurance company or its agent acting on behalf of

the owner, the property owners' association shall deliver to the owner, owner's agent, or title insurance company or its agent an updated resale certificate that contains the following information:

- (1) if a right of first refusal or other restraint on sale is contained in the restrictions, a statement of whether the property owners' association waives the restraint on sale;
- (2) the status of any unpaid special assessments, dues, or other payments attributable to the owner's property; and
- (3) any changes to the information provided in the resale certificate issued under Subsection (a).