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- (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 HOAs 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).