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## **COMMUNITY MANAGER'S HANDBOOK**

**FOR**

## **THE 2011 LEGISLATIVE CHANGES**

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**A GUIDE FOR APPLYING THE NEW LAWS TO YOUR MANAGEMENT PRACTICE**

**Version 2.0**  
**(11/23/11)**

### **DISCLAIMER**

This Community Manager's Handbook for the 2011 Legislative Changes is made available by Holt & Young, P.C. for informational purposes only and does not constitute legal advice. It is intended to guide community association managers through the steps necessary to conform their existing management practices to the new legal requirements without being overwhelmed. It is not a comprehensive review of the new laws and for brevity reasons not all new laws are discussed in this Handbook. You should not act upon information included in this Handbook without first seeking advice from legal counsel for your specific matter. The information contained in this Handbook does not form or constitute an attorney-client relationship.

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**A GUIDE FOR APPLYING THE NEW LAWS TO YOUR MANAGEMENT PRACTICE**

The 2011 legislature made substantial changes to the law governing homeowner associations. While many of these changes relate to attorneys, collection agencies and developers, this Handbook focuses only on those changes that will directly affect the work that managers perform for homeowner associations.

The purpose of this Handbook is to guide community association managers through the steps necessary to conform their existing management practices to the new legal requirements without being overwhelmed. It is our hope that by following the steps and instructions in this Handbook the new legal requirements will be relatively simple to incorporate into your existing management practice.

Examples of form policies and letters are included as exhibits to this Handbook and are located in Appendix "A". These examples represent the most basic manner of complying with the new laws. Policies and letters may be more detailed or expansive and should be prepared or reviewed by the Association attorney prior to adoption and recording with the county records.

This Handbook also contains references to the new statutes along with the effective date of the statutes. All statutory references are to the Texas Property Code and are also contained in Appendix "B". The statutes will soon be available online at [www.holtyoung.com](http://www.holtyoung.com), where you can also view our helpful FAQ's and other information about our firm and the services we provide to homeowner associations.

Be aware that because there are many changes to the law, Association managers will likely be faced with numerous inaccurate assertions about the legislative changes from owners and attorneys that may not properly understand the changes. If an owner or attorney makes an assertion about the 2011 legislation affecting homeowner associations that is not reflected in this Handbook, contact the Association's attorney to confirm whether the assertion is accurate.

Unless otherwise noted, this Handbook applies only to Single Family Residential Subdivisions and not Condominiums. This Handbook is a general guide only.

**MAJOR CHANGES:** The 2011 Legislature made significant changes to the laws affecting Property Owners Associations in the areas of *Collections, Records* and *Meetings*.

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**I. COLLECTIONS.** Under the new laws, Associations must advise owners of the availability of payment plans in their demand letters, must approve and record a uniform Payment Plan Policy and must apply owner's payments in a particular manner.

**A. Demand Letters** (*Texas Property Code § 209.0064, effective January 1, 2012*) Before the Association can turn an owner over to its law firm for collection, the Association must meet new requirements. These requirements can be met by adding to your existing final demand letter. The Association must begin using the new demand format by January 1, 2012. In order to comply with the new requirements, simply follow these steps, starting with your existing final demand letter:

**Step One =>** Itemize each individual amount owed (the most practical way to meet this requirement is to include the most recent account statement with the notice).

**Step Two =>** State the total amount required to bring the account current.

**Step Three =>** State: "A payment plan is available to you. In order to avoid having your account turned over to an attorney or collection agent, within 30 days of this notice, you must either pay your delinquent balance in full or contact the Association to enter into an approved payment plan.

**Step Four =>** Send Certified Mail/Return Receipt Requested.

**See EXHIBIT "A" for an example of a demand letter that complies with the new laws:**

**B. Payment Plans** (§ 209.0062, *effective January 1, 2012*) Beginning January 1, 2012, Associations are now required to offer uniform payment plans to delinquent owners. A Payment Plan Policy must be adopted and approved by the Association and recorded with the County. In order to comply, the Association should follow these steps:

**Step One =>** Have the Board of Directors adopt a Payment Plan Policy, including a pre-approved plan.

**Step Two =>** Record the payment plan policy with the county clerk.

**Step Three =>** Follow the payment plan policy. **Advise the Association's attorney whether an owner has breached a payment plan when you turn the account over for collections.**

**1. Penalties and Term of Payment Plan.** The Association cannot charge late fees during the course of a payment plan, but can charge interest at the rate it is entitled to under its Governing Documents and can charge reasonable costs of administering the plan. The term of a payment plan cannot be less than 3 months or more than 18 months.

**2. Application of Payments.** (§ 209.0063, effective January 1, 2012) The Association must apply all owner payments in the following order:

- a. Delinquent assessments
- b. Current assessments
- c. Attorney's fees and expenses, or any other charge for which the Association has a lien
- d. Attorney's fees and expenses for which the Association has no lien
- e. Fines
- f. Other amounts owed to the Association (late fee, interest, collection fee)

This application of payment schedule does not have to be followed if the owner is in default of a payment plan.

If your accounting software currently applies payments in a manner different than the above schedule, then it should be changed so that payments are applied in accordance with the above schedule.

**See EXHIBIT "B" for an example of a Payment Plan Policy:**

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## **II. RECORDS.**

**Summary Point 1.** Associations are also required to maintain certain Association records for a specified period of time and must adopt and record a Record Retention Policy by January 1, 2012. (§ 209.005, effective January 1, 2012)

**Summary Point 2.** Under the new laws, Associations are now required to provide copies of the Association books and records to owners upon their request and must adopt and record a Record Production Policy by January 1, 2012. (§ 209.005, effective January 1, 2012)

**Summary Point 3.** Association Dedicatory Instruments must be recorded in order to be effective and must be available on any publicly accessible Association website, which is maintained by the Association or its manager by January 1, 2012. (§ 209.006 and § 207.006, effective January 1, 2012)

**Summary Point 4.** All Declarations may now be amended by 67% of the owners or less if provided for in the Declaration. (§ 209.0041, effective September 1, 2011)

**A. POA's ARE NOT SUBJECT TO THE TEXAS OPEN RECORDS ACT**

**B. Dedicatory Instrument** Is an instrument that contains a restriction, rule, policy or other item that the POA wishes to enforce, it includes Declarations, Bylaws, Rules and Regulations, Architectural Guidelines, and any rule or policy adopted at a Board Meeting. Contact the Association's attorney if you are unsure as to whether a document is a "Dedicatory Instrument."

**C. Record Retention** The Association must retain the following records for the required time period: (§ 209.005(m), effective January 1, 2012)

<b>RECORD</b>	<b>RETENTION PERIOD</b>
Certificate of Formation/ Articles of Incorporation, Bylaws, Declarations and all amendments to those documents.	PERMANENT
Association Tax Returns and Tax Audits	SEVEN (7) YEARS
Financial Books and Records	SEVEN (7) YEARS
Account Records of Current Owners	FIVE (5) YEARS
Contracts with a term of more than one year	FOUR (4) YEARS AFTER CONTRACT EXPIRES
Minutes of Member Meetings and Board Meetings	SEVEN (7) YEARS

**D. Policy to Record / Website** The Association must adopt and record with the County a Record Retention policy containing, at a minimum, the above requirements by January 1, 2012. In addition, if the Association or its manager maintains a website for the Association, the Associations governing documents must be available on that website. (§ 209.005 and § 207.006, effective January 1, 2012)

**See EXHIBIT "C" for an example of a Records Retention Policy:**

**E. Record Production** Associations still must allow owners to inspect the books and records of the Association, but Associations are now required to provide owners with copies of specific records upon request. Associations may charge for the cost of providing the records and

can collect payment before providing the records to the owner. In all circumstances, records must be made available within 25 business days of a proper request by an owner. (§ 209.005(a) –(h), effective January 1, 2012)

**1. Request for Records.** To make a proper request, an owner (their accountant, attorney or designated representative) must send the request by certified mail/return receipt requested to the Association’s address as listed on its most recent management certificate (as a result of this and other new provisions, its is more important than ever that the Association Management Certificate be kept current).

-The owner may request inspection of the books and records OR may request that copies of specific books and records be provided to them.

-The Association is required to respond within 10 business days for both a request to inspect records and a request for copies.

-Because it may be unfeasible for an Association to make records available for inspection or to provide copies of requested records in only 10 business days, we recommend following these steps for producing Association records to owners:

**Step One =>** Was the request sent certified mail? If not, then these requirements do not apply. If yes, then:

**Step Two =>** Is the request to come review the books and records? If yes, then:

**A =>** Within 10 business days of the owner’s request, send the owner a response letter advising that the owner may come inspect the books and records and stating the days, hours and location during which the owner may come inspect the books and records. Then:

**B =>** The Association and the owner work out a mutually agreeable time for the owner to come and inspect. The owner can request copies of records at the time of inspection but must pay the cost of producing the records before the Association provides them.

**Step Three =>** Is the request for copies of specific records? If yes, then:

**A =>** If the records may be easily provided to the owner with no cost, then simply provide the records within 10 business days of the owner’s request. (electronic or hard copy format) - OR -

**B =>** If the request cannot be provided within 10 business days or if it will require charging the owner for the costs involved, then:

C => Within 10 business days of the owner's request, send the owner a response letter advising that the Association cannot make the requested documents available within 10 business days of their request but that the requested copies will be available within 15 business days of this response. Advise the owner of the estimated cost to produce the documents based on the Records Production Policy and that payment must be received by the Association before the records will be provided, then:

D => The Association must have the copies available by the 15<sup>th</sup> day of sending the owner the response letter. However, the Association can hold the records from the owner until it receives payment, and the Association may request, but cannot require, that payment be made in the form of a cashier's check or money order. The Association cannot cash payment for copies until the records are made available.

**Step Four =>** Upon receiving payment from the owner, the Association provides the records to the owner in either hard copy or electronic format, by mail or in person.

**2. Paying for Records.** The Association must adopt a schedule of the estimated cost to copy, compile and produce the requested documents, including the cost of materials, labor and overhead. However, the estimate of costs are already set by the legislature and so the Association has no discretion and must simply adopt the schedule of costs mandated by the legislature. If the actual cost to copy records is less than the estimate provided, the overcharge shall either be reimbursed to the owner within 30 days. If the cost was less the Association may charge the owner the difference and, if not paid within 30 days, charge such amount to the account for the owner's property. (§ 209.005(i), effective January 1, 2012)

**3. Policy to Record.** The Association must adopt a Records Production Policy and record it in the County Records by January 1, 2012. The primary purpose of the policy is to adopt the estimated schedule of costs for producing Association Records, already set by the legislature. The Association may also adopt a form of letter to respond to owners that make requests for records. An Association may not charge for copies if it has not filed a Records Production Policy. (§ 209.005(i), effective January 1, 2012)

**See EXHIBIT "D" for an example of a Records Production Policy, and form response letter**

**F. Recording** Associations have been required to record all of its Dedicatory Instruments with the County for years, but there was never a penalty for not doing so. The new changes now provide that dedicatory instruments are not effective unless they are recorded. (§ 202.006(b), effective January 1, 2012) **This change does apply to Condominiums.**

**1. Record Everything.** In order to ensure that all of an Association's Dedicatory Instruments are recorded with the County, follow these steps:

**Step One** => Compile all of the Association Dedicatory Instruments, including: Board Resolutions, Policy Resolutions, Rules and Regulations, Architectural Guidelines, Bylaws, Declarations, Articles of Incorporation/Certificate of Formation, and all amendments to those documents. This includes any document that reflects a Board decision that the Association desires to enforce.

**Step Two** => Determine if each instrument is recorded with the County, look for a Clerk's File stamp indicating a file number to determine if a document has been recorded.

**Step Three** => Unrecorded instruments must be recorded with the County Clerk.

**Step Four** => If you are unsure as to whether an instrument has been recorded or needs to be recorded, err on the side of caution and record it with the County, or contact the Association attorney for clarification.

**Step Five** => Generally, Dedicatory Instruments that are created for recording with the County should be prepared or reviewed by an attorney.

**Step Six** => Our office is happy to assist Associations in ensuring all Dedicatory Instruments are properly recorded with the County.

**2. Failure to Record.** If a document is not recorded then the Association cannot enforce it. (*§ 202.006(b), effective January 1, 2012*)

**G. Resale Certificates** New requirements were added for Resale Certificates, including: what they must contain, when they expire, and how the fee for preparing a Certificate can be collected. (*§ 207.003, effective January 1, 2012*) **This change does apply to Condominiums.**

**1. Before and After.** Associations can comply with these new requirements by taking its standard Resale Certificate form and following these steps:

**Step One** => Include special assessments that are approved before and due after the date the resale certificate is to be delivered; and state the purpose of the special assessment. (*§ 207.003(b)(3), effective January 1, 2012*)

**Step Two** => Include the style and cause number of all lawsuits where the Association is Plaintiff or Defendant, except for ad valorem tax lawsuits against individual owners where the Association is named "In Rem Only".

Contact the Association's current and past attorneys and insurance carriers to obtain this information and ensure it is accurate. **It is imperative that the Association have an accurate list of all pending litigation for this purpose and that the list is frequently updated to be accurate at all times.** (§ 207.003(b)(9), effective January 1, 2012)

**Step Three**=>Add a section called "Transfer Fees" and describe each fee associated with transfer of ownership, state the amount of the fee and to whom each fee is paid. (§ 207.003(b)(16), effective January 1, 2012)

**2. Procedures.** Resale certificates must be provided within 10 business days of the request by the buyer or seller, their agents and/or their title company, along with evidence of their authority to make the request. (§ 207.003(a), (a-1), effective January 1, 2012)

-The information contained in the Resale Certificate must not be more than 60 days old. The Association can require payment before preparing the Certificate, but cannot process payment until the Resale Certificate is available for delivery. (§ 207.003(c-1), effective January 1, 2012)

-The requirements related to updating Resale Certificates have not changed, except that instead of 7 days, the Association now has 7 *business* days to provide the updated Certificate. (§ 207.003(f), effective January 1, 2012)

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### **III. MEETINGS AND ELECTIONS.**

**Summary Point 1.** Under the new laws, Associations are now required to make meetings of the members and meetings of the board open to all members. (§ 209.0051(c), effective January 1, 2012)

**Summary Point 2.** Owners now have additional methods of voting in elections available to them. (§ 209.00592, effective September 1, 2011)

**Summary Point 3.** Associations must provide copies of all meeting minutes in accordance with its Records Retention Policy and its Records Production Policy and must report on decisions made in executive session. (§ 209.0051(c), effective January 1, 2012)

**A. POA's ARE NOT SUBJECT TO THE TEXAS OPEN MEETINGS ACT**

**B. Member Meetings** (§ 209.014, effective January 1, 2012) The Association must call an annual meeting each year and the owners have recourse if the Association fails to do so.

-No Owner may be disqualified from voting or running in elections, regardless of whether they are current in assessments, in compliance with the restrictions, or co-owners of the same lot. There can be no limitation on an owner's right to vote in or run for election. The only qualification for participating in elections or

serving on the board is lot ownership, except that any person convicted of a felony or crime of moral turpitude is ineligible to serve on the board or is automatically removed if currently serving. (§ 209.0059 and 209.00591, effective September 1, 2011)

-Member meetings now have uniform notice requirements and the legislature has added a procedure for recounting votes of an election.

**1. Notice of Meetings.** (§ 209.0056, effective January 1, 2012) All member meetings must be noticed at least 10 days and no more than 60 days before the scheduled date of a meeting.

**2. Manner of Voting.** (§ 209.0058 and § 209.00592, effective September 1, 2011) Secret ballots are now prohibited in elections. All ballots must be signed by the Owner that casts them, unless the election is uncontested. The Association must allow voting in the following forms:

- **IN PERSON** If an owner appears in person at the meeting, his vote in person supersedes any other manner of voting for that owner (proxy, absentee and electronic).
- **BY PROXY** An owner may assign his right to vote to any person via a proxy that either instructs the proxy-holder on how to vote or allows the proxy-holder to vote in his own discretion. All proxies must be signed and dated by the Owner entitled to vote. Additional questions about proxies should be directed to the Association's attorney.
- **BY ELECTRONIC BALLOT** An owner may cast his vote electronically through email, facsimile, or posting on an internet website; so long as the identity of the owner can be confirmed and the owner is able to receive a receipt of his electronic transmission and receive a ballot. Electronic ballots may be used by posting to a website, so long as the Association provides instructions on how to participate on the website with its notice of Meeting. Website voting is not required, but is permitted.
- **BY ABSENTEE BALLOT** An owner may cast his vote through an Absentee Ballot. The Absentee Ballot must list all the proposed items to be considered as well as a space to vote for or against each proposed item. The absentee ballot also must contain instructions on how to return the ballot and must contain a disclaimer provided by the legislature, which is contained on the sample absentee ballot provided.

**See EXHIBIT "E" for an example of an absentee ballot:**

**3. Election of Directors.** (§ 209.00593, effective January 1, 2011)

-Directors are now automatically terminated upon the expiration of their term.

-No Director may hold over their term until the next election. Accordingly, annual meetings must take place every year and on time, a quorum must be present, and an election must take place to fill the Director positions.

-Members must elect the Directors; election by acclamation is prohibited unless the election is uncontested. An expired term may not be filled by appointment.

-The legislature failed to adequately address how the new election requirements would affect Associations that cannot obtain a quorum at their annual meeting. With the creation of absentee ballots, it is now possible to hold an election entirely by mail and electronic voting. These procedures can address problems arising from the inability to obtain quorum. Contact the Association's attorney if you are concerned about not being able to elect Directors due to the inability to attain quorum or any other changes.

#### **4. Appointment of Directors.** (§ 209.00593 and 209.00591(b))

-Directors may be appointed only in the event of death, resignation or disability from the Board. The remaining Directors shall appoint a Director to serve only the unexpired term of his predecessor, after which, the position shall be filled by election of the members (*effective January 1, 2012*).

-A director is automatically removed from the Board upon the Association being presented with evidence that a Director has been convicted of a felony or crime involving moral turpitude (*effective September 1, 2012*).

-If a Director is removed, only the members may choose his replacement at an election called for such purpose (*effective January 1, 2012*).

#### **5. Recount of Elections.** (§ 209.0057, *effective January 1, 2011*)

-Owners are now entitled to call for a recount of the elections of Directors.

-The requesting owner must pay up front for the cost of the recount, but if the recount results in a different result, the Association must reimburse the requesting owner. Only certain individuals are allowed to preside over a recount.

-In order to obtain a recount an owner must, within 15 days of the election, make a request for a recount in person or in writing sent by certified mail to the address on the Association's most recent management certificate.

-If an owner properly requests a recount, contact the Association's attorney to comply with the specific requirements.

**C. Board Meetings** (§ 209.0051, effective January 1, 2012) Associations are now required to provide more information to owners about Board Meetings, including: providing owners with notice of Board meetings, providing reports of executive session decisions and requiring that certain items must be discussed in open forum. Owners are still not entitled to address the Board or speak at a Board meeting unless invited to by the Board.

**1. Notice of Board Meetings.** (§ 209.0051(e), effective January 1, 2012) Associations must provide notice of its regular and special Board meetings to all owners. The Notice must contain the date, hour, place and general subject of the meeting. It must also generally list the matters planned to be discussed in executive session. The required Notice may be provided in one of three ways:

- a. Sending Notice of the meeting no later than 10 days and no sooner than 60 days prior to the date of the meeting. - OR -
- b. Posting the Notice in a conspicuous place designed to provide notice to the owners, either on Association Common Area or other property in the subdivision with permission. This notice must be posted 72 hours before the meeting time AND notice must also be emailed to all owners who have registered their email address with the Association for the purpose of receiving the Notice. - OR -
- c. Posting the Notice on an internet website maintained by the Association AND emailing it to all owners who have registered their email address with the Association for the purpose of receiving the Notice.

**See EXHIBIT "F" for an example of a Notice of Regular or Special Board Meeting:**

**2. Executive Session.** (§ 209.0051(c), effective January 1, 2012) The Association may still exclude all members from executive session to discuss certain items. Items that may be discussed in executive session include:

- a. Actions involving personnel,
- b. Pending or threatened litigation,
- c. Contract negotiations,
- d. Enforcement actions,
- e. Confidential communications with the Association attorney,
- f. Matters involving invasion of privacy of owners, and
- g. Other matters that are confidential by request of an affected party and agreement of the Board.

**3. Meetings Without Notice to Owners.** (§ 209.0051(h), effective January 1, 2012)

-The Board is permitted to meet by telephonic and electronic transmission (as long as all Directors can hear and be heard by all Directors) without providing notice to the owners.

-The Board is permitted to take action by unanimous written consent, without notice to the owners, to consider routine and administrative matters or due to an emergency or urgent necessity that requires immediate Board action.

-Any actions taken by the Board without notice to the owners must be summarized orally (including an explanation of any known, actual or estimated expenditures approved) and placed in the minutes of the next regular or special board meeting.

-The Board may not consider or vote on the following matters, unless Notice of the Board meeting has been provided to the Owners:

- a. Fines,
- b. Damage assessments,
- c. Initiation of foreclosure actions,
- d. Initiation of enforcement actions (not TRO's or threats to health/safety),
- e. Increase in assessments,
- f. Levying of a special assessment,
- g. Appeal from a denial of an ACC application, and
- h. Suspension of a right of an Owner before that Owner meets with Board.

**4. Reporting.** (§ 209.0051(c) and (h), effective January 1, 2012) Minutes of the Board meetings must be made available to owners as part of the Books and Records. Any decisions made in executive session must be orally summarized and placed in the meeting minutes, in general terms, without violating privacy or privilege requirements, including a general explanation of expenditures approved in executive session.

Here is an example of an oral summary of executive session to be placed in the minutes:

1. During executive session the Board considered and rejected a settlement offer from Tom's Landscaping, in the lawsuit for breach of contract. The Board also considered and approved filing lawsuits against two owners for violations of the restrictions. The Board discussed an owner's delinquent account and decided to approve the payment plan he proposed. The Board considered three contract proposals to repair the community pool and agreed to spend \$1,700.00 on the contract to repair the pool.

**MISCELLANEOUS CHANGES:** The 2011 Legislature made changes that limit restrictions against certain miscellaneous items. **The changes in A - E do apply to Condominiums.**

**A. Solar Panels** (§ 202.010, *effective immediately*) Associations must allow an Owner to install solar panels on his roof or in a fenced-in yard or patio area. The Owner must first obtain approval from the Association Architectural Control Committee and is limited on placement and other characteristics of the solar panels. Here is a checklist to determine whether an owner's solar panels are in compliance:

- \_\_\_ Did the owner apply for and receive written approval from the ACC for installation of the solar panel?
- \_\_\_ Is the solar panel located on the roof of the house or other approved structure, or in a fenced-in yard or patio?
- \_\_\_ Is the solar panel located entirely on the owner's property?
- \_\_\_ Is the solar panel no higher or wider than the roofline of the structure it is mounted on?
- \_\_\_ Is the top edge of the solar panel parallel with the roofline and does the solar panel conform to the slope of the roofline?
- \_\_\_ If located in a fenced-in yard or patio, is the solar panel lower than the fence line?
- \_\_\_ Are the solar panel frames, brackets, wires and pipes a shade of silver, bronze or black?
- \_\_\_ If the solar panel located in an area other than one designated by the Association, does it receive more than 10% production in the current location than it would in the designated area?

**If the answer to all of the questions is "Yes", then the solar panels are in compliance.**

Disputes over location of solar panels should be directed to the Association's attorney.

**B. Roof Shingles** (§ 202.011, *effective immediately*) Associations must allow owners to install certain types of roof shingles, if they meet certain requirements. Here is a checklist to determine whether an Owner's roof shingles are in compliance:

- \_\_\_ Did the owner apply for and receive written approval from the ACC for installation of the roof shingles?

\_\_\_ Are the shingles designed primarily to be wind and hail resistant?

- OR -

Do the shingles provide heating and cooling efficiencies greater than those provided by customary composite shingles?

- OR -

Do the shingles provide solar generation capabilities?

\_\_\_ Do the shingles resemble the shingles used on property in the subdivision?

\_\_\_ Are the shingles more durable than and are of equal or greater quality to the shingles used on property in the subdivision?

\_\_\_ Do the shingles match the aesthetics of the property surrounding the owner's property?

**If the answer to all of the questions is "Yes", then the roof shingles are in compliance.**

**C. Flags and Flagpoles** (§ 202.012, effective immediately) Associations must allow owners to display a United States Flag, a Texas State Flag, or a replica flag of any branch of the United States Armed Forces and must allow a flag pole for the purpose of displaying the flags. Associations are permitted to regulate flags and flag poles, but must actually adopt rules and regulations in order to do so.

-Here is a list of Rules and Regulations that an Association may adopt and enforce with regard to flag displays:

1. United States Flags must be displayed in accordance with 4 U.S.C. Sections 5-10.
2. The Texas Flag must be displayed in accordance with Chapter 3100 of the Texas Government Code.
3. A flag pole, whether attached to a dwelling or freestanding, must be constructed of permanent, long-lasting materials with a finish appropriate to the materials used in the construction of the flag pole and harmonious with the dwelling.
4. The flag display must conform to all setbacks, easements, and zoning ordinances.
5. Flags and flagpoles must be maintained in good condition; flags and poles that are deteriorating or represent an unsafe condition must be repaired, replaced or removed.
6. Flagpoles are limited to one per lot, not to exceed 20 feet in height.

7. Regulations regarding flag size.
8. Regulations regarding the size, location and intensity of lights used to illuminate a displayed flag.
9. Regulations to abate any noise caused by the external halyard of a flag pole.
10. An owner can only place a flag pole or flag on his own property and no other property.

**D. Religious Displays** (§ 202.018, *effective immediately*) Associations must allow owners to display one or more religious items on their entry door or door frame. The display must be motivated by the owner or resident's "sincere religious belief". The Association can regulate these displays but must actually adopt rules in order to regulate them. Here is a list of Rules and Regulations that the Association may enact to regulate these religious displays:

1. The religious item cannot threaten public health or safety.
2. The religious item cannot violate the law.
3. The religious item cannot contain language, graphics or other display that is patently offensive to a passerby.
4. The religious item must be located on the entry door or entry door frame and cannot extend past the outer edge of the door frame of the dwelling.
5. The maximum space allotted to a religious item or combination of religious items shall be no more than 25 square inches.
6. The Association may remove any item that does not conform with the statute.

**E. Rain Barrels** (§ 202.007, *effective September 1, 2011*) Associations must allow owners to install rain barrels or water harvesting systems on their own property. The Association can regulate rain barrels and water harvesting systems but must actually adopt rules in order to regulate them. Here are the primary rules for installation of rain barrels and water harvesting systems:

1. The barrels or system must be of a color that is consistent with the color scheme of the owner's home.
2. The barrels or system cannot be located between the front of the owner's home and an adjoining or adjacent street. (the front yard)
3. The barrels or system must not display any language or other content that is not typically included on the item when it is manufactured.

4. The Association may regulate the size, type, materials and manner of screening for barrels and systems that are visible from the street, another lot, or common area.
5. There must be sufficient area on the owner's property to install the barrels or system.
6. The Association's regulations may not prohibit the economic installation of the device on the property.

**F. Military Notice** (§ 209.006(b), effective January 1, 2012) Associations must include additional language when providing the notice required under Texas Property Code Section 209.006.

1. 209.006 is the notice that entitles owners to request a hearing before the Association Board of Directors for enforcement actions that are not related to the collection of past due assessments. Here is an example of providing a proper notice under 209.006:

“You are in violation of the deed restrictions for your Association by storing an 18-wheeler on your lawn, and you must remove the 18-wheeler immediately and never store it on your lawn again. You are entitled to a reasonable period to cure the violation and avoid a fine or suspension, and you may request a hearing before the Association Board of Directors under Section 209.007 on or before the 30<sup>th</sup> day after the date you receive this notice.” ...

2. The Association can comply with the new notice requirements by adding the following language to its 209.006 notice:

...“You may have special rights or relief related to the enforcement action under federal law, including the Service members Civil Relief Act (50 U.S.C. app. Section 501 et seq.), if the owner is serving on active military duty.”

---

**OTHER CHANGES:** The Legislature adopted many other new laws that relate to POA's but will not materially affect how managers routinely manage their communities. Here is a brief overview of some of those laws:

**A. Foreclosure** (§ 209.0092, effective January 1, 2012) Beginning January 1, 2012, all nonjudicial foreclosures must undergo a form of judicial review. This change will not affect the foreclosure process for Associations whose governing documents only allow for judicial foreclosure (“Judicial Associations”). Judicial Associations are still required to file a normal lawsuit in order to establish the right to foreclose.

Associations whose governing documents grant a “Power of Sale” to foreclose nonjudicially (“Nonjudicial Associations”) are required to apply to a court for “Expedited Foreclosure” under Rules 735 and 736 of the Texas Rules of Civil Procedure before conducting a nonjudicial foreclosure. This process involves filing an Application for Foreclosure with a court to obtain a judge’s approval to proceed with foreclosure. Once the judge approves the Application for Foreclosure, the Association may proceed with nonjudicial foreclosure in the same fashion as in the past.

The “Expedited Foreclosure” procedure is more efficient than the regular Judicial Foreclosure lawsuit procedure in many ways. In “Expedited Foreclosure”:

- a. The Clerk of the Court serves the homeowner with the Application for Foreclosure by certified mail, so a process server is not required;
- b. The homeowner has until the “Monday next after the expiration of 38 days” from the date the Application for Foreclosure is mailed to the homeowner by the court clerk to file a response with the court; and
- c. If the homeowner does not timely file a response to the Application for Foreclosure mailed by the court clerk, the Association may file a Default Motion and the court must grant the application by default order no later than 30 days after the Motion is filed.

The “Expedited Foreclosure” procedure is intended to provide additional protections to homeowners; however, it will result in a longer and more expensive non-judicial foreclosure process. In most cases, this court proceeding should take three to four months to complete.

-Junior lienholders are entitled to 60 days notice and opportunity to cure the debt before foreclosure may take place. Again, the Association’s attorney will be responsible for implementing this new requirement. (§ 209.0091, effective January 1, 2012)

## **B. Developers**

**1. Transfer Fee.** (§ 5.201, effective immediately) Developers are now prohibited from enforcing restrictions that provide for a “transfer fee” that is paid to the Developer every time a lot is sold or transferred. This type of “transfer fee” is one that provides a perpetual income stream to the Developer for doing nothing, simply because a lot is sold. This type of “transfer fee” is not the same as the transfer fee that an Association charges when a lot is sold or transferred; this Association transfer fee may still be charged. **This change does apply to Condominiums.**

**2. Declarant Control Period.** (§ 209.00591, effective January 1, 2012) After 75% of the lots in the Association are sold by the Declarant, at least one-third of the board must be elected by Owners, other than the Declarant. The Declarant Control Period may not last more than 10 years, unless the Declaration states the maximum lots to be created in the Association.

## **C. Debt Collection**

**1. Fee Arrangements.** (§ 209.0064, effective January 1, 2012) The new laws strongly discourage Associations from entering into a contingency type of fee arrangement with its debt collector, be it an attorney or other debt collection agency.

- An owner is not liable for the fees of a collection agent retained by the POA if:
  - (a) 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
  - (b) 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.

-Holt & Young, P.C.'s "deferred fee billing" program is not affected by these changes and is still a lawful fee arrangement program.

**2. Liens and Lien Notices.** (§ 209.0094, effective January 1, 2012) The new laws clarify that 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. Therefore, preparing the above-referenced documentation is engaging in the practice of law and requires a law license (Tex. Gov't Code § 83.001).

## **D. Summary of Changes Applicable to Condominiums:**

### **1. The following changes apply to Condominiums:**

- (a) The changes regarding Resale Certificates, contained in Texas Property Code § 207.003.  
*(effective January 1, 2012)*
- (b) The requirement that all Dedicatory Instruments must be recorded to be effective, contained in Texas Property Code § 202.006(b).  
*(effective January 1, 2012)*
- (c) The entitlements created by Texas Property Code §§ 202.007(d), 202.010, 202.011, 202.012 and 202.018; regarding Rain Barrels, Solar Panels, Roof Shingles, Flag Displays and Religious Items.  
*(§ 202.007(d) regarding Rain Barrels is effective September 1, 2011; all others are effective immediately).*

**APPENDIX “A”**

(Exhibits)

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**HOMEOWNERS ASSOCIATION, INC.**  
**NOTICE OF DELINQUENT ASSESSMENTS**

April 1, 2012

Dear Homeowner:

Our records indicate that you are delinquent in the payment of your 2012 annual assessment to the Homeowners Association, Inc. The amounts you owe to the Association are itemized on the attached account statement.

In order to resolve your delinquency, you must pay to the Association the total amount of \$989.50, as reflected on the account statement. This amount must be received by the Association no later than May 1, 2011.

A payment plan is available to you. In order to avoid having your account turned over to an attorney or collection agent, within 30 days of this notice, you must either pay your delinquent balance in full or contact the Association to enter into an approved payment plan. A copy of the Association's payment plan policy is enclosed herein for your convenience.

You are responsible for reimbursing the Homeowners Association, Inc. for all attorney's fees and costs incurred in collecting your delinquent balance. All attorney's fees and costs will be charged to you if you do not cure your delinquency or enter into an approved payment plan by May 1, 2011.

Very Truly Yours,

Homeowners Association, Inc.

**EXHIBIT "A"**

**HOMEOWNERS ASSOCIATION, INC.**  
**PAYMENT PLAN POLICY**

This payment plan policy was approved by the board of Directors for Homeowners Association, Inc., on the \_\_\_\_ day of \_\_\_\_\_, 2011.

- 1) All Owners are entitled to one approved Payment Plan to pay their delinquent assessments and related charges prior to being turned over to the Association's attorney or agent for collections.
- 2) All Payment Plans require a down payment and monthly payments.
- 3) Upon request, all Owners are automatically approved for a Payment Plan consisting of \_\_\_\_% down, with the balance paid off in \_\_\_\_\_ monthly installments.
- 4) Alternative Payment Plan proposals shall be submitted to and approved by the Association in writing; the Association is not obligated to approve alternative Payment Plan proposals.
- 5) A Payment Plan must include sequential monthly payments. The total of all proposed payments under the Plan must equal the current balance plus the Payment Plan administrative fees, plus the estimated accrued interest.
- 6) If an owner requests a Payment Plan that will extend into the next assessment period, the owner shall be required to pay future assessments by the due date in addition to the payments specified in the Payment Plan.
- 7) All Payment Plans must be in writing on a form provided by the Association, or a form otherwise approved by the Association.
- 8) If an owner defaults on the Payment Plan the Payment Plan is terminated. Default of a Payment Plan includes:
  - a. failing to return a signed Payment Plan form with the down payment;
  - b. missing a payment due in a calendar month (including NSF checks); or
  - c. failing to pay future assessments by the due date if the Payment Plan extends into the next assessment period.
- 9) If an owner defaults on a Payment Plan the Association is not obligated to make another Payment Plan with the owner for the next two years after the date of default.
- 10) No Payment Plan may last less than 3 months or more than 18 months.
- 11) The Association may only charge interest throughout the Payment Plan and the reasonable costs of administering the Payment Plan, while an owner is current on their Payment Plan.

**HOMEOWNERS ASSOCIATION, INC.**

**CERTIFICATION**

“I, the undersigned, being the President of Homeowners Association, Inc., hereby certify that the foregoing Resolution was adopted by at least a majority of the Association Board of Directors.”

By: \_\_\_\_\_, President

Print name: \_\_\_\_\_

**ACKNOWLEDGEMENT**

**EXHIBIT “B”**

**HOMEOWNERS ASSOCIATION, INC.**  
**RECORDS RETENTION POLICY**

This Records Retention Policy was approved by the board of Directors for Homeowners Association, Inc., on the \_\_\_\_ day of \_\_\_\_\_, 2011.

The Association shall maintain its records as follows:

<b><u>RECORD</u></b>	<b><u>RETENTION PERIOD</u></b>
Certificate of Formation/ Articles of Incorporation, Bylaws, Declarations and all amendments to those documents.	PERMANENT
Association Tax Returns and Tax Audits	SEVEN (7) YEARS
Financial Books and Records	SEVEN (7) YEARS
Account Records of Current Owners	FIVE (5) YEARS
Contracts with a term of more than one year	FOUR (4) YEARS AFTER CONTRACT EXPIRES
Minutes of Member Meetings and Board Meetings	SEVEN (7) YEARS

Records not listed above are not subject to retention. Upon expiration of the retention date, the applicable records may be destroyed.

HOMEOWNERS ASSOCIATION, INC.

**CERTIFICATION**

“I, the undersigned, being the President of Homeowners Association, Inc. , hereby certify that the foregoing Resolution was adopted by at least a majority of the Association Board of Directors.”

By: \_\_\_\_\_, President

Print name: \_\_\_\_\_

**ACKNOWLEDGEMENT**

**EXHIBIT “C”**

**HOMEOWNERS ASSOCIATION, INC.**  
**RECORDS PRODUCTION POLICY**

This Records Production Policy was approved by the board of Directors for Homeowners Association, Inc., on the \_\_\_\_ day of \_\_\_\_\_, 2011.

**I. Copies of Association records will be available to all Owners upon their proper request and at their own expense. A proper request:**

- a. is sent certified mail to the Association's address as reflected in its most recent management certificate;
- b. is from an Owner, or the Owner's agent, attorney, or certified public accountant; and
- c. contains sufficient detail to identify the records being requested.

**II. Owners may request to inspect the books and records or may request copies of specific records.**

- If the owner makes a request to inspect the books and records, then the Association will respond within **10 business days** of the request, providing the dates and times the records will be made available and the location of the records. The Association and the owner shall arrange for a mutually agreeable time to conduct the inspection. The Association shall provide the owner with copies of specific documents upon the owner paying the Association the cost thereof.
- If an owner makes a request for copies of specific records, and the Association can provide the records easily or with no cost, then the Association will provide the records to the owner within 10 business days of the owner's request.
- If the owner makes a request for copies of specific records, the Association shall send a response letter advising on the date that the records will be made available (within **15 business days**) and the cost the owner must pay before the records will be provided. Upon paying the cost to provide the records, the Association shall provide the records to the owner.

**III. The Association hereby adopts the following schedule of costs:**

<u>COPIES</u>	10 cents per page, for a regular 8.5" x 11" page
	50 cents per page, for pages 11" x 17" or greater

**EXHIBIT "D"**

Actual cost, for specialty paper (color, photograph, map, etc...)

\$1.00 for each CD or audio cassette

\$3.00 for each DVD

LABOR

\$15.00 per hour for actual time to locate, compile and reproduce the records

(can only charge if request is greater than 50 pages in length, or if the records are in a remote storage facility, or two or more separate buildings that are not connected to each other)

OVERHEAD

20% of the total labor charge

(can only charge if request is greater than 50 pages in length, or if the records are in a remote storage facility, or two or more separate buildings that are not connected to each other)

MATERIALS

actual costs of labels, boxes, folders, and other supplies used in producing the records, along with postage for mailing the records

**IV. The Association hereby adopts the following form of response to Owners who request to inspect the Association's Books and Records:**

HOMEOWNERS ASSOCIATION, INC.  
RESPONSE TO REQUEST FOR ASSOCIATION RECORDS

April 11, 2012

Dear Homeowner:

On April 1, 2012, the Association received your request to inspect the books and records of the Association. The books and records of the Association are available for you to inspect on regular business days, between the hours of 9 a.m. and 5 p.m., at the office of \_\_\_\_\_(Association Manager)\_\_\_\_, \_\_\_\_\_(Address)\_\_\_\_\_.

Please contact the Association manager at \_\_\_(phone number)\_\_\_ to arrange for a mutually agreeable time for you to come and inspect the books and records. Please be advised that if you desire copies of specific records during or after the inspection, you must first pay the associated costs before the copies will be provided to you. A schedule of costs is included with this response.

Very Truly Yours,

Homeowners Association, Inc.

- V. The Association hereby adopts the following form of response to Owners who request copies of specific records:

HOMEOWNERS ASSOCIATION, INC.  
RESPONSE TO REQUEST FOR ASSOCIATION RECORDS

April 11, 2012

Dear Homeowner:

On April 1, 2012, the Association received your request for copies of specific Association records. We are unable to provide you with the requested records within 10 business days of your request. However, the requested records will be available to you no later than 15 business days after the date of this response.

In order to obtain the records you must first pay the Association the cost of providing the records to you. The estimated cost to obtain the records you requested is \$\_\_\_\_\_. Upon receiving payment, the Association will mail the requested documents to you. You may also make payment and pick up the documents in person at the office of \_\_\_\_\_(Association Manager)\_\_\_\_, \_\_\_\_ (Address)\_\_\_\_\_.

Very Truly Yours,

Homeowners Association, Inc.

- VI. If the estimated cost provided to the Owner is more or less than the actual cost of producing the documents, the Association shall, within 30 days after providing the records, submit to the owner either an invoice for additional amounts owed or a refund of the overages paid by the Owner.
- VII. Unless authorized in writing or by court order, the Association will not provide copies of any records that contain the personal information of an owner, including restriction violations, delinquent assessments, financial information, and contact information.

**HOMEOWNERS ASSOCIATION, INC.**

CERTIFICATION

“I, the undersigned, being the President of Homeowners Association, Inc. , hereby certify that the foregoing Resolution was adopted by at least a majority of the Association Board of Directors.”

By: \_\_\_\_\_, President

Print name: \_\_\_\_\_

ACKNOWLEDGEMENT



**NOTICE OF REGULAR BOARD MEETING**

Dear Homeowners:

The Board of Directors for the Homeowners Association, Inc. will hold a regular meeting on Monday, July 16, 2012, at 7:00 p.m., at the Millie B. Slater Elementary School, 14265 Old School Road, Houston, Texas 77090.

The subject of the meeting is general business of the Association, including discussion of items related to the Association budget and expenditures as well as discussion of proposed bids for the landscaping and pool repair jobs.

Items that may be discussed in executive session include: actions involving personnel, pending or threatened litigation, contract negotiations, enforcement actions, confidential communications with the Association attorney, matters involving invasion of privacy of owners, and other matters that are confidential by request of an affected party and agreement of the Board.

Very Truly Yours,

Homeowners Association, Inc.

**EXHIBIT "F"**

**APPENDIX “B”**

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## TEXAS PROPERTY CODE

### CHAPTER 5

#### Sec. 5.012. NOTICE OF OBLIGATIONS RELATED TO MEMBERSHIP IN PROPERTY OWNERS' ASSOCIATION.

(a) A seller of residential real property that is subject to membership in a property owners' association and that comprises not more than one dwelling unit located in this state shall give to the purchaser of the property a written notice that reads substantially similar to the following:

NOTICE OF MEMBERSHIP IN PROPERTY OWNERS' ASSOCIATION  
CONCERNING THE PROPERTY AT (street address) (name of residential community)

As a purchaser of property in the residential community in which this property is located, you are obligated to be a member of a property owners' association. Restrictive covenants governing the use and occupancy of the property and all dedicatory instruments governing the establishment, maintenance, or operation of this residential community have been or will be recorded in the Real Property Records of the county in which the property is located. Copies of the restrictive covenants and dedicatory instruments may be obtained from the county clerk.

You are obligated to pay assessments to the property owners' association. The amount of the assessments is subject to change. Your failure to pay the assessments could result in enforcement of the association's lien on and the foreclosure of your property.

#### 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.

## **CHAPTER 51**

### **Sec. 51.015(1-a), (b) SALE OF CERTAIN PROPERTY OWNED BY MEMBER OF MILITARY.**

(1-a) "Assessment" and "assessments" have the meanings assigned by Sections 82.113(a) and 209.002, as applicable.

(b) This section applies only to an obligation:

(1) that is secured by a mortgage, deed of trust, or other contract lien, including a lien securing payment of an assessment or assessments, as applicable, on real property or personal property that is a dwelling owned by a military servicemember;

(2) that originates before the date on which the servicemember's active duty military service commences; and

(3) for which the servicemember is still obligated.

This Act takes effect September 1, 2011.

## **CHAPTER 202**

### **Sec. 202.001. DEDICATORY INSTRUMENT.**

(1) "Dedicatory instrument" means each document governing the establishment, maintenance, or operation of a residential subdivision, planned unit development, condominium or townhouse regime, or any similar planned development. The term includes a declaration or similar instrument subjecting real property to:

- (A) restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association;
- (B) properly adopted rules and regulations of the property owners' association; or
- (C) all lawful amendments to the covenants, bylaws, instruments, rules, or regulations.

### **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.

### **Sec. 202.007(d). (REGARDING RAIN WATER BARRELS AND HARVESTING)**

(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 Subdvn (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.

**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.

**Sec. 202.011. REGULATION OF CERTAIN ROOFING MATERIALS.**

(a) 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.

**Sec. 202.012. 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.

**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.

## **CHAPTER 207**

### **Sec. 207.003. DELIVERY OF SUBDIVISION INFORMATION TO OWNER.**

(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 [ø] 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).

**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.

## **CHAPTER 209**

### **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.

### **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.

**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.

**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.

**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.

**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.

**Sec. 209.0059. RIGHT TO VOTE.**

(a) A provision in a dedicatory instrument that would disqualify a property owner from voting in an 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.

**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.

**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.

**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.

**Sec. 209.006(b). NOTICE REQUIRED BEFORE ENFORCEMENT ACTION.**

(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.

**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).

**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.

**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.

**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.

**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.

**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.

**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.

**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.

## **TEXAS PARKS AND WILDLIFE CODE**

### **Sec. 43.0612, Parks and Wildlife Code.**

(a) In this section:

(1) "Property owners' association" has the meaning assigned by Section 202.001, Property Code.

(2) "Qualified individual" means an individual who has a wildlife management plan approved by the department.

(b) The department may issue to a qualified individual, a political subdivision, or a property owners' association a permit authorizing the trapping and transporting of surplus white-tailed deer found on the property owned by the qualified individual or within the boundaries of the political subdivision or the geographic area in which property subject to the property owners' association is located.

(c) Not later than the 30th day before the date of the first planned trapping and transporting of white-tailed deer, a qualified individual, a political subdivision, or a property owners' association shall file with the department an application showing that an overpopulation of white-tailed deer exists on the property owned by the qualified individual or within the boundaries of the political subdivision or the geographic area in which property subject to the property owners' association is located. If the department issues a permit to a requesting qualified individual, political subdivision, or property owners' association, the permit shall contain specific instructions detailing the location to which the trapped white-tailed deer are to be transported or transplanted.

(d) After receipt of an application, the department may issue to the qualified individual, political subdivision, or property owners' association a permit specifying:

(1) the location to which trapped white-tailed deer must be transported; and

(2) the purpose for which the trapped deer are to be used.

(e) The department may deny a qualified individual, a political subdivision, or a property owners' association a permit if no suitable destination for the trapped white-tailed deer exists.

(f) A qualified individual, a political subdivision, or a property owners' association trapping and transporting white-tailed deer under this section must make reasonable efforts to ensure:

(1) safe and humane handling of trapped white-tailed deer; and

(2) minimization of human health and safety hazards in every phase of the trapping and transporting of white-tailed deer.

(g) A permit issued under this section may authorize a qualified individual, a political subdivision, or a property owners' association to trap and transport white-tailed deer only between October 1 of a year and March 31 of the following year, unless white-tailed deer found on the property owned by the qualified individual or within the boundaries of the political subdivision or the geographic area in which property subject to the property owners' association is located pose a threat to human health or safety, in which case the provision of Subsection (e) does not apply and a permit may authorize the qualified individual, political subdivision, or property owners' association to trap and transport white-tailed deer at any time of the year.

(h) A permit issued under this section does not entitle a person to take, trap, or possess white-tailed deer found on any privately owned land without the landowner's written permission, unless the permit holder is the landowner.

(k) The commission may adopt rules necessary for the implementation of this chapter, including rules which enhance the opportunity to relocate overpopulation of urban deer and relating to required notification, record-keeping, permit conditions, and the disposition of trapped white-tailed deer. The commission shall adopt rules for determining the circumstances under which a qualified individual, political subdivision, or property owners' association may obtain a permit issued under this section.

**TEXAS TRANSPORTATION CODE**

**Sec. 430.002. SPEED FEEDBACK SIGNS ERECTED BY NEIGHBORHOOD ASSOCIATION.**

(a) In this section, "property owners' association" means an association described by Section 204.004, Property Code.

(b) A property owners' association may install a speed feedback sign on a road, highway, or street in the association's jurisdiction if:

(1) the association receives the consent of the governing body of the political subdivision that maintains the road, highway, or street for the placement of the sign; and

(2) the association pays for the installation of the sign.

(c) A property owners' association that installs a speed feedback sign under this section is responsible for the maintenance of the sign.

## **TEXAS RULES OF CIVIL PROCEDURE**

*(These are the preliminary Rules adopted by the Texas Supreme Court for Expedited Foreclosure)*

### **RULE 735. Foreclosures Requiring a Court Order**

(a) Liens Requiring a Court Order. A party seeking to foreclose a lien for:

- (1) a home equity, reverse mortgage, or home equity line of credit under article XVI, sections 50(a)(6), 50(k), and 50(t) of the Texas Constitution;
- (2) a transferred or property tax loan under sections 32.06 and 32.065 of the Tax Code; or
- (3) a property owners' association assessment lien under section 209.0092 of the Property Code

may obtain a judgment for judicial foreclosure or an expedited order under Rule 736 from a district court in a county where all or part of the real property encumbered by the lien sought to be foreclosed is located or from a court with equivalent jurisdiction.

(b) Other Statutory and Contractual Foreclosure Provisions Unchanged.

- (1) Obtaining an expedited order under Rule 736 does not change any foreclosure requirement or duty imposed under applicable law or the terms of the loan agreement, contract, or lien sought to be foreclosed.
- (2) The only issue to be determined in a Rule 736 proceeding is whether a party may obtain an order under Rule 736 to proceed with foreclosure under applicable law and the terms of the loan agreement, contract, or lien sought to be foreclosed.

### **RULE 736. Expedited Order Proceeding**

#### **736.1. Application**

(a) A party seeking an expedited order allowing the foreclosure of a lien listed in Rule 735 to proceed must file an application styled "In re: Order for Foreclosure Concerning [state: property's mailing address]" under Tex. R. Civ. Proc. 736" that identifies each person described in subparagraph (b)(1). An application may not be filed until the opportunity to cure under applicable law and the loan agreement, contract, or lien sought to be foreclosed has expired.

(b) The application shall:

- (1) Identify by name and last known address each of the following parties:

- (A) "Petitioner" - any person legally authorized to prosecute the foreclosure;
- (B) "Respondent"- according to the records of the servicer of the lien sought to be foreclosed:
  - (i) each person who breached an obligation secured by the lien;
  - (ii) each mortgagor, if any, of the lien sought to be foreclosed; and
  - (iii) for a transferred or property tax lien or contract, each owner of the property and the holder of any recorded preexisting first lien secured by the property.
- (2) Identify the property encumbered by the lien sought to be foreclosed by its commonly known street address and legal description.
- (3) Describe or state:
  - (A) the type of lien listed in Rule 735 sought to be foreclosed and its constitutional or statutory reference;
  - (B) the authority of the party seeking foreclosure;
  - (C) each person obligated to pay the lien sought to be foreclosed;
  - (D) each mortgagor, if any, of the lien sought to be foreclosed who is not a maker or assumer of the underlying debt;
  - (E) as of a date that is not more than sixty days prior the date the application is filed:
    - (i) the number of months the obligation secured by the lien sought to be foreclosed is in default,
    - (ii) the amount required to cure the default, and
    - (iii) the amount required to pay off the lien;
  - (F) that the requisite notice or notices to cure the default has or have been mailed to each person as required under applicable law and the loan agreement, contract, or lien sought to be foreclosed and that the opportunity to cure has expired; and
  - (G) that before the application was filed, any other action required under applicable law and the loan agreement, contract, or lien sought to be foreclosed was performed.
- (4) For a transferred or property tax lien or contract, state all allegations required to be contained in the application in accordance with section 32.06(c-1)(1) of the Tax Code.

- (5) Conspicuously state that if the petitioner obtains a court order, the petitioner will proceed with a foreclosure of the property in accordance with applicable law and the terms of the lien sought to be foreclosed.
- (6) Include an affidavit of material facts in accordance with Rule 166a(f) signed by petitioner or the servicer of the petitioner establishing the basis for foreclosure and, depending on the type of lien sought to be foreclosed, attach a legible copy of:
  - (A) the note, original recorded lien or pertinent part of a property owners' association declaration establishing the lien, and current assignment of the lien, if assigned;
  - (B) each notice required to be mailed to any person under applicable law and the loan agreement, contract, or lien sought to be foreclosed before the application was filed and proof of mailing of each notice; and
  - (C) for a transferred or property tax lien or contract, the sworn document and certified statement attesting to the transfer of the lien.

#### **736.2. Costs**

All filing, citation, mailing, service, and other court costs and fees shall be costs of court and paid by petitioner at the time of filing an application with the clerk of the court.

#### **736.3 Citation**

- (a) Issuance.
  - (1) When the application is filed, the clerk shall issue a separate citation for each respondent named in the application and one additional citation for the occupant of the property sought to be foreclosed.
  - (2) Each citation that is directed to a respondent shall state that any response to the application is due the first Monday after the expiration of 38 days from the date the citation was placed in the custody of the U.S. Postal Service in accordance with the clerk's standard mailing procedures and shall clearly state the date that the citation was placed in the custody of the U.S. Postal Service by the clerk.
- (b) Service and Return.
  - (1) The clerk of the court shall serve each citation, with a copy of the application attached, by both first class mail and certified mail. A citation directed to a respondent must be mailed to the respondent's last known address that is stated in the application. A citation directed to the occupant of the property sought to be

foreclosed must be mailed to Occupant of [state: property's mailing address] at the address of the property sought to be foreclosed that is stated in the application. For a citation mailed by the clerk in accordance with this subparagraph, the date of service is the date and time the citation was placed in the custody of the U.S. Postal Service in a properly addressed, postage prepaid envelope in accordance with the clerk's standard mailing procedures.

- (2) The clerk shall complete a return of service in accordance with Rule 107, except that, if service by certified mail is unsuccessful, the return of service need not contain a return receipt.
- (3) The clerk shall only charge one fee per respondent or occupant served under this rule.

#### **736.4. Discovery**

No discovery is permitted in a Rule 736 proceeding.

#### **736.5. Response**

(a) Generally. A respondent may file a response contesting the application.

(b) Due Date. Any response to the application is due the first Monday after the expiration of 38 days from the date the citation was placed in the custody of the U.S. Postal Service in accordance with the clerk's standard mailing procedures, as stated on the citation.

(c) Form. A response shall be signed in accordance with Rule 57 and may be in the form of a general denial under Rule 92, except that a respondent must affirmatively plead:

- (1) why the respondent believes a respondent did not sign a loan agreement document that is specifically identified by the respondent;
- (2) why the respondent is not obligated for payment of the lien;
- (3) why the number of months of alleged default or the reinstatement or pay off amounts are materially incorrect;
- (4) why any document attached to the application is not a true and correct copy of the original; or
- (5) proof of payment in accordance with Rule 95.

(d) Other Claims. A response may not state an independent claim for relief. The court shall, without a hearing, strike and dismiss any counterclaim, cross claim, third party claim, intervention, or cause of action filed by any person in a Rule 736 proceeding.

### **736.6 Hearing Required When Response Filed**

The court shall not conduct a hearing under this rule unless a response is filed. If a response is filed, the court must hold a hearing after reasonable notice to the parties. The hearing on the application must not be held earlier than 20 days or later than 30 days after a request for a hearing is made by any party. At the hearing, the petitioner shall have the burden to prove by affidavits on file or evidence presented the grounds for granting the order sought in the application.

### **736.7. Default When No Response Filed**

(a) If no response to the application is filed by the due date, the petitioner must file a motion and proposed order to obtain a default order. For the purposes of the motion, all facts alleged in the application and supported by the affidavit of material facts shall constitute prima facie evidence of the truth of the matters alleged.

(b) The court shall grant the application by default order no later than 30 days after a motion is filed under subparagraph (a) if the application complies with the requirements of Rule 736.1 and was properly served in accordance with Rule 736.4.

(c) The return of service must be on file with the clerk of the court for at least 10 days before the court may grant the application by default.

### **736.8 Order**

(a) The court shall issue an order granting the application if the petitioner establishes the basis for the foreclosure. Otherwise, the court shall deny the application.

(b) An order granting the application shall describe:

- (1) the material facts establishing the basis for foreclosure;
- (2) the property to be foreclosed by commonly known mailing address and legal description;
- (3) the name and last known address of each respondent subject to the order; and
- (4) the recording or indexing information of each lien to be foreclosed.

(c) An order granting or denying the application is not subject to a motion for rehearing, new trial, bill of review, or appeal. Any challenge to a Rule 736 order must be made in a suit filed in a separate, independent, original proceeding in a court of competent jurisdiction.

### **736.9. Effect of the Order**

An order is without prejudice and has no res judicata, collateral estoppel, estoppel by judgment, or other effect in any other judicial proceeding. After an order is obtained, a person

may proceed with the foreclosure process under applicable law and the terms of the lien sought to be foreclosed.

#### **736.10. Bankruptcy**

If a respondent provides proof to the clerk of the court that respondent filed bankruptcy before an order is signed, the proceeding under this rule shall be dismissed.

#### **736.11. Automatic Stay and Dismissal if Independent Suit Filed**

(a) A proceeding or order under this rule is automatically stayed if a respondent files a separate, original proceeding in a court of competent jurisdiction that puts in issue any matter related to the origination, servicing, or enforcement of the loan agreement, contract, or lien sought to be foreclosed prior to 5:00 p.m. on the Monday before the scheduled foreclosure sale.

(b) Respondent must give prompt notice of the filing of the suit to petitioner or petitioner's attorney and the foreclosure trustee or substitute trustee by any reasonable means necessary to stop the scheduled foreclosure sale.

(c) Within ten days of filing suit, the respondent shall file a motion and proposed order to dismiss or vacate with the clerk of the court in which the application was filed giving notice that respondent has filed an original proceeding contesting the right to foreclose in a court of competent jurisdiction. If no order has been signed, the court shall dismiss a pending proceeding. If an order has been signed, the court shall vacate the Rule 736 order.

(d) If the automatic stay under this rule is in effect, any foreclosure sale of the property is void. Within 10 business days of notice that the foreclosure sale was void, the trustee or substitute trustee shall return to the buyer of the foreclosed property the purchase price paid by the buyer.

(e) The court may enforce the Rule 736 process under chapters 9 and 10 of the Civil Practices and Remedies Code.

#### **736.12. Attachment of Order to Trustee's Deed**

A conformed copy of the order must be attached to the trustee or substitute trustee's foreclosure deed.

#### **736.13. Promulgated Forms**

The Supreme Court of Texas may promulgate forms that conform to this rule.