



LEGISLATIVE UPDATE 2015: CONDOS & OWNERS ASSOCIATIONS

An Overview of 2015 Law Changes for
Texas Condominium and Subdivision Associations

by

Bob Burton
WINSTEAD, PC
401 Congress Avenue, Suite 2100
Austin, Texas 78701
(512) 370-2869
E: rburton@winstead.com

Sharon Reuler
SHARON REULER, P.C.
5400 LBJ Freeway, Suite 1200
Dallas, Texas 75240
(972) 720-9727
E: sreuler@txlandlaw.com

Presented July 1, 2015
Texas Law Center Studio, Austin, Texas
~ a State Bar of Texas Webcast ~

LEGISLATIVE UPDATE 2015: CONDOS & OWNERS ASSOCIATIONS

An Overview of 2015 Law Changes for
Texas Condominium and Subdivision Associations

TERMINOLOGY DISCLOSURE

This article purposefully uses "subdivision" to describe a common-interest mandatory-membership development that is not condominium in ownership. For our purposes, that distinction seems useful, even if artificial. Accordingly, this article divides the universe of POAs into "condominium associations" and "subdivision associations". See Chapter G for more about terminology.

TABLE OF CONTENTS

	<u>Upper Right Page Number</u>
INTRODUCTORY MATERIAL	
DISCLAIMER _____	1
FACULTY PROFILES _____	2
ROADMAP TO WEBCAST PRESENTATION _____	6
CHAPTER A - OVERVIEW OF 2015 POA LAW CHANGES BY BILL NUMBER & SUBJECT _____	7
CHAPTER B - OVERVIEW OF THE POA OMNIBUS BILL - SENATE BILL 1168 BY WEST _____	15
CHAPTER C - OVERVIEW OF CONDO CONSTRUCTION DEFECT BILL - HOUSE BILL 1455 BY KING _____	21
CHAPTER D - TEXAS PROPERTY CODE CHAPTER 209 _____	27
SELECTED SECTIONS SHOWING 2015 CHANGES AS "REDLINES"	
CHAPTER E - HOW TO "LOCATE" BRACKETED LAWS _____	46
CHAPTER F - OVERVIEW OF SOME NEW LAWS THAT MAY INTEREST HOAS ("Sundry Bills") _____	49
CHAPTER G - RESOURCES _____	53
POAS, HOAS, CONDOS, SUBDIVISIONS, TOWNHOMES ~ WHAT'S THE DIFFERENCE? ~ A LESSON IN JARGON _____	54
INSTRUCTIONS FOR OBTAINING A TEXAS BILL ONLINE _____	55
CRIMES THAT DISQUALIFY AN HOA DIRECTOR _____	56
ANTI-HOA WEBSITES _____	57

DISCLAIMER

WHAT IT IS

- Overview of 2015 law changes that are specific to POAs
- Some practical tips for implementing the new laws
- Issue spotting of unclear or thorny aspects of new laws

WHAT IT'S NOT

- Not a review of the 2011 POA Reform Laws or the 2013 POA Law Changes
- Not everything you need to know about anything

WRITTEN MATERIALS DISCLAIMER

This article was prepared for use with a one-hour studio-produced webcast, which tends to be less formal than a live CLE course. Instead of writing a traditional CLE article, we compiled "handouts" to illustrate certain aspects of what we're discussing in front of a studio camera. The handouts are prepared for that use only. If the State Bar posts this article on its On-Line Library as if it were a traditional CLE article, we recommend that you view the webcast on the State Bar's On-Line Classroom to get the context for the written materials.

GENERAL DISCLAIMERS

Volunteers. We don't get paid for preparing or presenting webcasts and articles for the State Bar. Your registration fees go to the State Bar of Texas, not into our vacation accounts.

Do-It-Yourself. Do not - repeat - DO NOT rely on this webcast or the accompanying materials to resolve legal questions. They are no substitute for reading and analyzing the new laws. Our materials don't provide what's needed for the proper legal analysis of any issue or situation, just a starting place. Read the law, please.

Target. Our target audience is a Texas real estate attorney who sometimes has clients or matters involving POAs. We assume our audience is generally familiar with Chapter 82, 202, 207, and 209 of the Property Code, and the terminology of the POA practice.

Differences of Opinion. We practice independently and think independently. We do not agree between ourselves on everything pertaining to the POA Laws. Although we share the podium, you must not ascribe the statement or writing of one speaker to the others. To each his or her own!

Impression Over Precision. We didn't design our presentation to withstand "legal scrutiny." Our primary goal is to inform Texas lawyers about the existence of the law changes.

Not Know-It-Alls. We're not responsible for the wording of the new laws. Like you, we're trying to figure them out - what they mean and how they work (or don't work) with each other and with the existing laws. As situations and issues arise in the months and years to come, we will continue to learn new things about the 2015 law changes.

Q&A. Anticipating questions about the meaning or implementation of the new laws, we cannot guarantee replies to all questions, even if we think we have the answers, which we don't. We have questions, too! Time-permitting at the end of our webcast, we will try to respond "live" to questions receive by email from viewers during the webcast on July 1, 2015. We may give priority to requests for clarification of what we said. We may decline to respond to fact-specific questions, esoteric questions, questions that require more analysis than time permits, questions we don't understand, and questions for which we don't have answers. (*We have our pride, you know.*) If we don't get to your question during the webcast, we will try to respond by email in the days following the webcast, with the same qualifications. Please accept our advance apologies if you don't hear from us. (*Volunteerism has its limits.*)

July 2015
Bob Burton and Sharon Reuler



Robert D. Burton

Shareholder
Chair, Planned Community, Mixed-Use & Condominium Practice Group

Winstead PC
401 Congress Ave., Suite 2100
Austin, Texas 78701
512.370.2869 Direct
512.370.2850 Fax
rburton@winstead.com

Robert Burton is a shareholder in Winstead's Real Estate Development & Investments Practice Group. Bob's practice focuses on real estate, with an emphasis on the planning, development, risk management, administration, disposition, sales and marketing of single-family, townhome, condominium, commercial, and mixed-use projects, as well as timeshares and resorts. Bob also works with developers and builders to ensure compliance with secondary mortgage market (FHA, VA, FNMA, etc.) and Interstate Land Sales registration requirements. Bob also represents condominium, residential, commercial, and mixed-use property owner associations.

Education

Tulane University Law School

- J.D., 1992
- *cum laude*
- *Tulane Law Review* (Member, 1990-1991; Editor, 1991-1992)

University of North Texas

- M.S., Accounting, 1987
- B.S., Accounting, 1987

Professional Recognition & Community Involvement

- Fellow, American College of Real Estate Lawyers
- Martindale-Hubbell AV Rated (Top Rating)
- Best Lawyers™(Real Estate)
- Member, Federal Affairs Task Force, Community Associations Institute. The Federal Affairs Task Force is a national task force organized to respond and comment upon Federal legislation affecting community associations and home ownership.
- Community Associations Institute, 2010 Award of Excellence for Government & Public Affairs - Federal Affairs Task Force (award conferred based on advocacy regarding federal mortgage lending requirements for single-family product).
- Full Member, Urban Land Institute, Residential Neighborhood Council Member (Gold Flight)
- Board member, Texas Community Association Advocates (TCAA) (2010-2014). TCAA is the principal advocacy organization in Texas for legislative and regulatory matters affecting community associations and related stakeholders. Active participant in the analysis and advocacy of state legislation.
- Co-Chair (2013-2014, 2014-2015), Mixed-Use Development Council, Urban Land Institute, Austin Chapter

- Attorney Committee (Voting Member), Texas Association of Builders
- Founding Member, Committee on Common Ownership, Real Estate Probate and Trust Law section of the Texas State Bar
- Board Member, Boys and Girls Club

Admitted to Practice

- Texas, 1992

Selected Presentations and Papers

- *Mixed-Use Governance*, American College of Real Estate Attorneys, Fall Meeting, 2014.
- *Commercial Restrictions*, Advanced Real Estate Drafting Course, March 2014.
- *Using the Condominium Form of Ownership to Segregate (Plat) Land*, Advanced Real Estate Strategies, State Bar of Texas, December 2013.
- *Drafting Condominium Documents to Comply with FHA, FannieMae and VA Requirements*, Advanced Real Estate Drafting Course, March 2013.
- *Uncommon Condominiums*, Texas Land Title Association Webcast, November 2012.
- *Condominium Alternatives, Mixed and Non-Traditional Uses*, 34th Annual Advanced Real Estate Law Course, July 2012.
- *HOA Reform Laws, Select Issues: Developers and Declarants*, State Bar of Texas Webcast, April, 2012.
- *Planned Community Governance Models: Serial, Expandable, Nested and Busted*, 21st Annual Advanced Real Estate Drafting Course, March, 2010
- *MOMUPs, Lollypops, and Snowmen*, Princeton University Higher Education Real Estate Lawyers (HERELE8), October, 2009.
- *Transitioning Property Owner Association Control*, 20th Annual Advanced Real Estate Drafting Course, March, 2009.
- *Texas Condos 101*, State Bar of Texas Real Estate Section, December, 2007.

SHARON REULER

Sharon Reuler, P.C.
5400 LBJ Freeway, Suite 1200
Dallas, Texas 75240
(972) 720-9727
E: sreuler@txlandlaw.com

PRACTICING LAWYER

Sharon Reuler is a Dallas-based attorney with a statewide boutique law practice representing real estate developers in the creation and governance of owners associations for common interest developments in the great state of Texas. Her practice focuses on what clients call the "HOA documents" for planned developments, residential subdivisions, townhomes, and condominiums. Sharon's style of document drafting is considered by many to be state of the art, and is often copied. She also counsels her developer clients when they are homebuilders in subdivisions with HOAs they do not control. Prior to focusing her practice on the development side of common interest projects, Sharon represented established property owners associations - an experience which greatly influences her approach to preparing documents to create new common interest developments.

EDUCATOR

Sharon is recognized as an authority on the topic of common interest developments, having contributed to state and national continuing legal education programs since 1994 - always in a volunteer capacity. She has authored articles for the State Bar's Advanced Real Estate Law and Drafting Courses, for The University of Texas School of Law's Mortgage Lending Institute, and for ALI-ABA's course on Drafting Documents for Condominiums, Planned Communities, and New Urbanism Developments. After the Texas Legislative Sessions of 2009, 2011, and 2013 Sharon co-created (with Roy Hailey) a series of studio-produced webcasts for the State Bar. Also with Roy Hailey, she co-authored a number of CLE articles between 2002 and 2014, including "The Texas POA Primer ~ Tips for Working with Condo & Homeowner Associations," which won the Jerry Charles Saegert Award for "Best CLE Paper" presented at the State Bar's 2010 Advanced Real Estate Law Course, and garnered Sharon a "Best Speaker" award.

LEGISLATION GADFLY

Sharon has been involved with legislation pertaining to common interest communities since 1981 (even before law school) - always in a volunteer capacity. Sharon was the 1990-1993 spokesperson for the Texas Uniform Condominium Act, which became law in 1993 as Chapter 82 Texas Property Code. She was spokesperson for an ill-fated 2001 initiative known as the Texas Uniform Planned Community Act, which never got further than an interim committee hearing due to lack of support. In the mid-2000s, she participated with the National Conference of Commissioners on Uniform State Laws in updating the Common Interest Ownership Act as an observer to the Drafting Committee. Since 2005, Sharon has reported biennially on POA Bills going through the Texas Legislature, which convenes for 5 months (January - May) in odd-numbered years.

RECOGNITIONS

Among the awards she has received, Sharon is especially proud to be a 2013 recipient of the "Standing Ovation Award," given by the State Bar's Continuing Legal Education Department for extraordinary contributions to continuing legal education in Texas. She has also been honored with the Weatherbie Workhorse Award by the planning committee of the Advanced Real Estate Law Course. Sharon has been named a Texas Super Lawyer for eight straight years in Texas Monthly Magazine (2008- 2015), and in 2010 was named one of the top women lawyers in North Texas by D Magazine. Sharon is a Fellow of the American College of Real Estate Lawyers and a member of The College of the State Bar of Texas.

EDUCATION

Sharon is a product of public schools. She has three degrees from The University of Texas, the last being her law degree earned in 1987 at the ripe age of 40.

WITH GRATITUDE

This presentation would not be possible without supportive clients, the Texas Legislature's phenomenal website, Al Gore's internet, colleagues who generously share their knowledge, and Roy Hailey's inspiration.

FACULTY IN MEMORIAM

ROY D. HAILEY 1955 - 2015



Houston attorney Roy D. Hailey co-created the highly regarded biennial legislative updates for HOAs that have been sponsored by the State Bar of Texas since 2009. Roy set wheels in motion for *Legislative Update 2015: Condos & Owners Associations*, before his untimely death on February 16, 2015. The program on July 1, 2015, is inspired by Roy's enthusiasm for service to the legal profession and to the community association industry. Only weeks before he passed, ever humble Roy remarked that he had just begun to think of himself as an "educator." We long knew what he didn't - Roy was a gifted educator. His passing leaves a huge hole in the lives and hearts of people and organizations, including the State Bar's CLE program, which posthumously awarded Roy its coveted Standing Ovation award. Roy was the best of men. Much loved. Greatly missed.



Bob Burton, Sharon Reuler, Roy Hailey
April 3, 2012
State Bar of Texas Webcast
2011 HOA Reform Laws: Select Issues
Developer~Declarant Perspectives

**ROADMAP
TO
WEBCAST PRESENTATION OF JULY 1, 2015
~ Legislative Update 2015: Condos & Owners Associations ~**

This is how we chose to group the law changes for purposes of our webcast presentation.
The topical groupings somewhat correspond to the subjects in
Chapter A's *Overview of POA Bills That Became Texas Law in 2015*.

ORDER OF PROGRAM	TOPIC
1	<u>DEVELOPERS</u> Condo Construction Defect Litigation Solar Panels in New Subdivisions Electric Standby Generators Declarant Board "Development Period" Definition
2	<u>CONDOMINIUMS</u> Resale Certificate Applicability of Chapters 207 & 209
3	<u>ASSESSMENT COLLECTION</u> Power of Sale to Foreclose Nonjudicially Lienholder Rights Payment Plans Debt for Costs of Election Recount
4	<u>BOARD OF DIRECTORS</u> Board Meetings Action Outside Meetings Board Qualifications
5	<u>ELECTIONS & VOTING</u> Secret Ballots Voting Methods Notices Election Recounts Amending Declaration
6	<u>RULES, USES & VIOLATIONS</u> Violation Notices Verified Mail Electric Standby Generators Rental Restrictions Street Signs
7	<u>BRACKETED OR LIMITED</u> High-Rise Sprinklers Repurposing Golf Courses Amending around Lake Livingston 10 or Fewer Lots

CHAPTER A

OVERVIEW OF 2015 POA LAW CHANGES

- 11 BILLS LISTED BY BILL NUMBER
- 40 LAW CHANGES CATEGORIZED BY SUBJECT

OVERVIEW OF POA BILLS THAT BECAME TEXAS LAW IN 2015

~ PERTAINING TO COMMON INTEREST OWNERSHIP COMMUNITIES (aka POAs, HOAs, Condos, Townhomes, Subdivisions) ~

PART 1 LIST OF POA BILLS In Numerical Order of Bill Numbers

Bill No.	Author	Effect Date	Subject Category	Condo or SF	Statute Affected	Statewide or Bracketed	
HB 745	Bohac	6/10/15	Uses - Street Signs	SF only	Transportation Code 430.002	Statewide	
HB 939	Dale	6/19/15	Uses - Electric Standby Generators	SF & Condo	TPC Chapter 202	Statewide	
HB 1072	Thompson	9/1/15	Govern - Board Qualifications	SF only	TPC Chapter 209	Statewide	
HB 1455	King	9/1/15	Condominium - Construction Defect Litigation	Condo only	TPC Chapter 82	Statewide	
HB 2489	Leach	6/19/15	Uses - Rental Restrictions	SF only	TPC Chapter 209	Statewide	
HB 3089	Galindo	9/1/15	Condo - High Rise Sprinklers	Condo only	Health & Safety Code Chapter 766	Bracketed	
SB 862	Birdwell	9/1/15	Govern - Election (Voting)	SF only	TPC Chapter 209	Statewide	
SB 864	Birdwell	5/29/15	Govern - Election (Ballots)	SF only	TPC Chapter 209	Statewide	
SB 1168	West	9/1/15	▲ OMNIBUS BILL ▲	28 SF laws	SF only	TPC Chapters 207 & 209	Statewide
				1 land use law	SF & Condo	TPC adds Chapter 213	
				1 condo law	Condo only	TPC Chapter 82 (TUCA)	
SB 1626	Rodriguez	9/1/15	Development Period - Solar Devices	SF & Condo	TPC Chapter 202	Statewide	
SB 1852	Nichols	6/19/15	Documents - Amend	SF only	TPC Chapter 211	Bracketed	

▲ In the rest of this report, the Omnibus Bill (SB 1168 by West) is treated as 30 separate law changes, each marked with ▲ to denote that it comes from the Omnibus Bill. When we talk about "40 new laws for Texas POAs," 30 of the 40 new laws are in the Omnibus Bill.

PAGE 1 OF 7

▲ = Omnibus SB 1168 ■ SB = Senate Bill ■ HB = House Bill ■ TPC = Texas Property Code ■ SF = POA\HOA that's not condo

OVERVIEW OF POA BILLS THAT BECAME TEXAS LAW IN 2015

~ Pertaining to Common Interest Ownership Communities (aka POAs, HOAs, Condos, Townhomes, Subdivisions) ~

PART 2 THUMBNAIL DESCRIPTIONS OF POA BILLS Organized Alphabetically by Subject Category

<u># Bills</u>	<u>Subject Categories in Alpha Order</u>
6	ASSESS
5	CONDO
6	DEVELOPER/DEVELOPMENT
1	DOCUMENTS
16	GOVERN
1	LAND USE
1	OMNIBUS
3	USES
1	VIOLATIONS
40	Total # Bills & Omnibus Parts

BILL NO. AUTHOR	THUMBNAIL DESCRIPTIONS OF POA BILLS THAT BECAME LAW IN 2015 Organized Alphabetically by Subject Category	Statute/Code Affected	Effective
SB 1168 West ▲ SEC 20	ASSESS - FORECLOSE - DEBT. Chapter 209 prohibits foreclosure of debts consisting solely of certain charges, such as fines. This adds the cost of an election recount by reference to 209.0057(b-4), added by SECTION 10 of bill.	TPC 209.009 - amends (3)	9/1/15 SF only
SB 1168 West ▲ SEC 22	ASSESS - FORECLOSE - METHODS. Confirms that an HOA is not required to use the new statutory power of sale, and may choose to foreclose judicially.	TPC 209.0092 - adds (d) & (e)	9/1/15 SF only
SB 1168 West ▲ SEC 22	ASSESS - FORECLOSE - POWER OF SALE. THE BIGGEST BOLDEST LAW CHANGE OF 2015. In a dramatic turn-around, the Legislature appears to be increasing subdivision HOA foreclosure powers by providing what purports to be a statutory power of sale to foreclose nonjudicially. Until 9/1/15, HOAs have to foreclose judicially - by filing an old-fashioned, expensive, slow-moving lawsuit with consumer protections - UNLESS the declaration has magic words creating a private power of sale so the HOA can foreclose on the courthouse steps like mortgage lenders. In 2011 the Legislature and Supreme Court added a quasi-judicial procedure to nonjudicial foreclosures by HOAs. (Same procedure used by home equity lenders.) To further blur the lines between judicial and nonjudicial foreclosures by HOAs, the Omnibus Bill adds these "magic words" to 209.0092(a): <u>"A property owners' association whose dedicatory instruments grant a right of foreclosure is considered to have any power of sale required by law as a condition of using the procedure described by this subsection."</u>	TPC 209.0092 - amends (a)	9/1/15 SF only
SB 1168 West ▲ SEC 21	ASSESS - LIENHOLDERS. Chapter 209 requires HOAs to give lienholders a pre-foreclosure notice and opportunity to cure the homeowner's debt to the HOA before the HOA can foreclose its assessment lien. This tweaks some of the procedures.	TPC 209.0091 - amends (a) & (b), adds (c)	9/1/15 SF only
SB 1168 West ▲ SEC 18	ASSESS - PAYMENT PLANS. Clarifies the limited circumstances under which the HOA is not required to negotiate a payment plan with a delinquent owner.	TPC 209.0062 - amends (c)	9/1/15 SF only

PAGE 2 OF 7

▲ = Omnibus SB 1168 ■ SB = Senate Bill ■ HB = House Bill ■ TPC = Texas Property Code ■ SF = POA\HOA that's not condo

BILL NO. AUTHOR	THUMBNAIL DESCRIPTIONS OF POA BILLS THAT BECAME LAW IN 2015 Organized Alphabetically by Subject Category	Statute/Code Affected	Effective
SB 1168 West ▲ SEC 19	ASSESS - PAYMENT PLANS. The 2011 HOA Reform laws exempt small subdivisions (14 or fewer lots) from the requirement to offer payment plans to delinquent owners. This fixes another section of Chapter 209 that talks about payment plans, so that it won't apply to the exempt small subdivisions.	TPC 209.0064 - amends (b)	9/1/15 SF only
SB 1168 West ▲ SECS 2 & 3	CONDO - CHAPTER 207 APPLICABILITY. Confirms that <u>TPC Chapter 207 doesn't apply to condos</u> . TPC Chapter 207 was written in the late 1990s by the Texas Association of Realtors which wanted a resale certificate for subdivisions similar to what condos have under TUCA. By incorporating the wrong definitions, Chapter 207 left open the nonsensical possibility that condos could be subject to two separate, though similar, resale certificate requirements - under Chapter 82 and Chapter 207. This law corrects the definitions reference (from Chapter 202 to Chapter 209) and - adding suspenders to the belt - says flat out that Chapter 207 doesn't apply to condos. As a result, <u>the "public access website" provision of Chapter 207 doesn't apply to condos</u> .	TPC amends 207.001(2) & adds (b) to 207.002	9/1/15 SF only
SB 1168 West ▲ SEC 5	CONDO - CHAPTER 209 APPLICABILITY. Confirms that <u>TPC Chapter 209 doesn't apply to condos</u> , period. Echoes of <i>Duarte v Disanti</i> , 292 S.W.3d 733 (Tex. App.—Dallas 2009).	TPC 209.003 - amends (d)	9/1/15 SF only
HB 1455 King	CONDO - CONSTRUCTION DEFECT LITIGATION. Requires the condo board to be deliberative about initiating a lawsuit for construction or design defects of units or common elements. It seeks to eliminate construction defect fishing expeditions (sue first, find defect later) by requiring an engineering report and an opportunity for the builder and design professionals to cure before the HOA sues. Also, a majority of unit owners must agree with the board's decision to sue. The new law reinforces mandatory arbitration provisions, if any, in the declaration. To allow time for the required procedures, the law grants a one-year toll of the statute of limitations under certain circumstances. Why is this law needed? Because the Texas Uniform Condominium Act - enacted in 1993 - didn't anticipate a wave of opportunistic construction defect litigation in pursuit of insurance settlements. The wave is just now reaching Texas. Although aimed at the original construction of buildings less than 10 years old, the bill also covers claims of construction or design defects in improvements for which the HOA contracted. This new law doesn't affect claims by individual owners, and it doesn't pertain to other types of litigation by the HOA.	TPC adds 82.119 to TUCA (Ch 82)	9/1/15 Condo only
HB 3089 Galindo	CONDO - HIGH RISE SPRINKLERS. Requires fire protection sprinklers in residential buildings that are 75 ft or more in height, with criminal penalty for violations. Retrofitting old high-rises built with asbestos and lead paint could be cost prohibitive. Fortunately, this law is now <u>bracketed</u> to Bexar County, and applies only to non-historic high-rises in which more than half of the residents are elderly, impaired, or disabled. How many of those?	Health&Safety Code Ch 766, adds Sub B	9/1/15 Condo only
SB 1168 West ▲ SEC 1	CONDO - RESALE CERTIFICATE. Adds to contents of condominium resale certificate - disclosure of transfer-related fees and "statements of operating budget and balance sheet". Bad drafting. Sec. 82.157(a) has required the operating budget since 1993. Balance sheet should have been added to first paragraph instead of to list of statements.	TPC Ch 82 (TUCA) - amends 82.157(a)	9/1/15 Condo only
SB 1168 West ▲ SEC 13	DEVELOPER - HOA BOARD. Enacted in 2011, Section 209.00591 ensures that homeowners will elect at least one-third of the HOA directors within 10 years or by the time the project is 75% complete and sold to homeowners, if not sooner. This much needed fix clarifies that a developer's sale of vacant lots to homebuilders doesn't trigger the election requirement, which would be nonsensical in a subdivision of vacant lots. This fix still leaves the subdivision vulnerable to the conveyance of vacant lots to an intermediary, such as a broker, investor, or bank. Would be better if the 75% were based on improved lots - lots with houses - rather than the type of owner. But, this fix is better than no fix for developers who are not homebuilders but who must control aspects of the project until it's built out.	TPC 209.00591 - amends (c)	9/1/15 SF only

BILL NO. AUTHOR	THUMBNAIL DESCRIPTIONS OF POA BILLS THAT BECAME LAW IN 2015 Organized Alphabetically by Subject Category	Statute/Code Affected	Effective
SB 1168 West ▲ SEC 4	DEVELOPMENT PERIOD - DEFINED. Changes "and" to "or" in the definition of "development period." This is <u>THE</u> definition in Chapter 209 on which all development period exemptions are based. Don't know the significance of the switch. No testimony about it, and the bill analysis offers nothing.	TPC 209.002- amends (4-a)	9/1/15 SF only
SB 1168 West ▲ SEC 8	DEVELOPMENT PERIOD - DEFINED. Sec. 209.0051 - requiring open board meetings - doesn't apply during the development period, with some exceptions. Because Chapter 209 now has a chapter-wide definition of "development period," the definition no longer needs to be repeated in each section to which it pertains. This removes the definition, but not the carve-out protection, from 209.0051.	TPC 209.0051 - amends (b)	9/1/15 SF only
SB 1168 West ▲ SEC 15	DEVELOPMENT PERIOD - DEFINED. Sec. 209.00593 - requiring that directors be elected - doesn't apply to the declarant-appointed board during the development period. Because Chapter 209 has a chapter-wide definition of "development period," the definition is no longer needed in each section of Chapter 209 that has a carve-out for the development period. This removes the definition, but not the carve-out protection, from 209.00593.	TPC 209.00593 - amends (d)	9/1/15 SF only
SB 1168 West ▲ SEC 24	DEVELOPMENT PERIOD - DEFINED. Sec. 209.0041 - requiring a vote of owners to amend the declaration - doesn't apply to amendments during the development period. Because Chapter 209 has a chapter-wide definition of "development period," the definition is no longer needed in each section of Chapter 209 that has a carve-out for the development period. This removes the definition, but not the carve-out protection, from 209.0041.	TPC 209.0041 - repeals (a)	9/1/15 SF only
SB 1626 Rodriguez	DEVELOPMENT PERIOD - SOLAR DEVICE EXEMPTION. The 2011 HOA Reform Laws protect the rights of homeowners to install solar devices on their homes, subject to some HOA controls, <u>and</u> subject to the developer's right to restrict or prohibit solar panels during the "development period." This pro-consumer bill limits the development period exemption to developments with less than 51 units or lots. Shame on whomever added the definition of "residential unit" that doesn't cover row townhouses. (Same problem we had with the short-lived TRCCA. Pray that no future bill borrows this definition.)	TPC amends 202.010 (f)	9/1/15 SF & Condo
SB 1852 Nichols	DOCUMENTS - AMEND. TPC Chapter 211 is <u>bracketed</u> to certain locations in Texas. It provides a process for amending restrictions that lack an amendment provision. This bill does 3 things. (1) Extends the scope of Chapter 211 to a "bracket" of 3 counties with fewer than 50K people surrounding Lake Livingston - Polk, San Jacinto & Trinity. (2) Allows Chapter 211's amendment procedures to be used with restrictions that DO have amendment provisions but which require consenting owners to <u>sign</u> the amendment that is recorded. (3) Renews Sec. 211.002 (b-1) for another 4 years - until 2019.	TPC Ch 211 - amends	<u>6/19/15</u> SF only (maybe)
SB 1168 West ▲ SEC 6	DOCUMENTS - AMEND. Before 2011, some subdivisions couldn't amend their declarations because amendments had to be approved by extraordinarily high percentages of owners. Enacted in 2011, Sec. 209.0041 capped approvals at 67% of total votes allocated to owners if the declaration required more than 67%. Uncertainty arose for subdivisions created with different voting populations, such as "only patio home owners vote on amendments of patio home provisions." This tries to fix the uncertainty by limiting the 67% to property owners <u>entitled to vote on the amendment of the declaration</u> , in addition to any governmental approval required by law." Unfortunately, it doesn't clarify the use of "only" which some interpret to void all other approvals required by the declaration, such as approval of master HOA or a MUD to change provisions dealing with the HOA's relationship with those entities.	TPC 209.0041 - amends (h) & adds (h-1) and (h-2)	9/1/15 SF only
SB 1168 West ▲ SEC 8	GOVERN - BOARD MEETINGS. Confirms that the board may conduct all of its meetings by electronic or telephonic means, provided the directors can communicate with each other and provided all owners "in attendance at the meeting" can hear all the directors, except when they're in executive session. No change to notice requirements.	TPC 209.0051 - adds (c-2)	9/1/15 SF only

BILL NO. AUTHOR	THUMBNAIL DESCRIPTIONS OF POA BILLS THAT BECAME LAW IN 2015 Organized Alphabetically by Subject Category	Statute/Code Affected	Effective
SB 1168 West ▲ SEC 8	GOVERN - BOARD MEETINGS. Enacted in 2011, Subsection (h) of the Open Board Meetings section allows the board to <u>meet</u> by telephonic or electronic means, or to decide by unanimous written consents, without notifying the owners in advance, under certain circumstances. This bill substantially re-writes Subsection (h) to address " <u>taking action outside of a meeting</u> " [new concept], while eliminating Chapter 209's authorization for unanimous written consents. In place of requiring the directors to speak to and hear one another (two-way discussion which may lead to consensus), each director must have a reasonable opportunity to express his opinion (one-way) and vote. Doubles the list of actions that can't be taken outside of an open meeting. <u>Shapeshifter.</u>	TPC 209.0051 - amends (h)	9/1/15 SF only
HB 1072 Thompson	GOVERN - BOARD QUALIFICATIONS - CRIMES. The 2011 Session outlawed all obstacles to running for the board of directors of a subdivision POA so that any member could serve, except for one qualifier. Can't serve if convicted of a felony or a crime of moral turpitude. This bill puts a 20-year limit on the conviction, after which the POA member is rehabilitated and eligible to serve.	TPC Ch 209 - amends 209.00591(b)	9/1/15 SF only
SB 1168 West ▲ SEC 13	GOVERN - BOARD QUALIFICATIONS - RESIDENCY. Before 2011, most HOA bylaws had criteria for service on the board, such as being current in assessments, term limits, being unrelated to other directors. Enacted in 2011, Sec. 209.00591 voids all provisions in HOA documents that could be used to disqualify an owner from serving on the HOA board (except for criminal convictions). This bill allows HOA bylaws to require directors to be residents of the subdivision, so long as <u>all</u> directors aren't required to live in the community. Doesn't apply during the development period.	TPC 209.00591 - adds (a-1)	9/1/15 SF only
SB 1168 West ▲ SEC 15	GOVERN - ELECTION. Every subdivision with <u>100 or more lots</u> that sends election ballots to owners MUST affirmatively invite all owners to run for the board and must name all responders as candidates on the ballot. The bill has detailed procedures and methods for communicating with owners. Presumably, this doesn't apply when all voting is done at a meeting. How does this reconcile with the new 209.00592(b-1) which okays floor nominations when absentee and electronic ballots are also used?	TPC 209.00593 - adds (a-1), (a-2), (a-3)	9/1/15 SF only
SB 864 Birdwell	GOVERN - ELECTION - BALLOT. The 2011 HOA Reform Laws outlawed the much-revered secret ballot by requiring owners to sign their ballots (anti-fraud), which must then be sealed so no one can see how someone voted (to prevent retaliation). It was a 2011 trade-off in negotiating a complicated bill. Elimination of secret ballots isn't popular with homeowners who don't trust the security of signed ballots. SB 864 restores the option of secret ballots if the HOA has a system for making sure homeowners don't stuff the ballot box. See also SEC 11 of Omnibus Bill.	TPC 209.0058 amends (a), adds (d)	<u>5/29/15</u> SF only
SB 1168 West ▲ SEC 11	GOVERN - ELECTION - BALLOT. This is a major re-write of Sec. 209.0058 (titled "Ballots"), enacted in 2011, requiring that all ballots be signed - period. Homeowners didn't like giving up their sacred secret ballots. The 2015 addition of Subsection (d) restores voting by secret ballot under certain conditions - essentially requiring the HOA to guard against fraud. Otherwise, ballots must be signed by the voter. It should be as simple as one or the other - signed or secret. But, it gets complicated. The bill lists 5 types of votes requiring signed ballots if the HOA doesn't facilitate secret ballots: (1) votes outside a meeting, (2) election of directors, (3) adoption or amendment of dedicatory instruments, (4) increases in regular assessments or adoption of special assessments, and (5) removal of directors. For votes that aren't listed, ballots may be signed or secret - doesn't say if the choice belongs to the HOA or the owner. A House Floor amendment allows a board candidate to appoint someone to watch the counting of secret ballots. If all votes can be either signed or secret, what's the purpose of the 5-item list? Wish the bill didn't get into the weeds of which kinds of decisions get which kind of ballot. It may create an expectation that owners have a statutory right to vote on the itemized issues even if the declaration specifically authorizes the board to act unilaterally, such as to increase assessments without a vote of owners. See also SB 864.	TPC 209.0058 - amends (a) and adds (a- 1) & (d)	9/1/15 SF only

BILL NO. AUTHOR	THUMBNAILED DESCRIPTIONS OF POA BILLS THAT BECAME LAW IN 2015 Organized Alphabetically by Subject Category	Statute/Code Affected	Effective
SB 1168 West ▲ SEC 11	GOVERN - ELECTION - BALLOT. Because some ballots are for specific neighborhoods, this clarifies that ballots must be signed for all elections, not only for HOA-wide elections.	TPC 209.0058 - amends (c)	9/1/15 SF only
SB 1168 West ▲ SEC 16	GOVERN - ELECTION - BALLOT. Enacted in 2011, Section 209.00594 regulates the handling of signed ballots. This confirms that the person who tabulates or recounts ballots must not tell a living soul how someone votes. Also adds that the duty for secrecy doesn't prevent the release of election records under court order. Subsection (d) added on Senate Floor.	TPC 209.00594 - amends (b) & (c), adds (b- 1) & (d)	9/1/15 SF only
SB 1168 West ▲ SEC 9	GOVERN - ELECTION - NOTICE. Enacted in 2011, Section 209.0056 requires the HOA to give owners prior notice of the election or vote. This doesn't change the 10-60 day notice for votes to be cast at a meeting. What's new pertains to voting outside of a meeting - owners must be given notice at least 20 days before the last date on which ballots may be submitted.	TPC 209.0056 - amends (a) & adds (a-1)	9/1/15 SF only
SB 1168 West ▲ SEC 10	GOVERN - ELECTION - RECOUNT. Enacted in 2011, Section 209.0057 allows an owner to challenge a vote of members by demanding a recount, which must be done by an official hired by the HOA, at the expense of the owner who demands the recount. This bill adds procedures and deadlines for dealing with the recount request. Essentially, HOA must have full prepayment in hand before initiating a recount. Other changes to Section 209.0057 are clarifying fixes. Allows owner to use "verified mail" (instead of certified) to demand a recount.	TPC 209.0057 - amends 3 subsections & adds 4 subsections	9/1/15 SF only
SB 1168 West ▲ SEC 12	GOVERN - ELECTION - VOTERS. Added as a House Floor Amendment to fix one person's perceived problem, this addition to the "Right to Vote" Section of Chapter 209 doesn't make much sense without knowing the backstory. Overnight the Floor Amendment was narrowed in scope (which is great!). The peculiar provision applies only to small subdivisions (10 or less lots) for which the declaration was recorded before 2015. Essentially, a person can't vote in an HOA election unless he's subject to the HOA document governing the HOA through which the HOA exercises its authority. Huh?	TPC 209.0059 - adds (c)	9/1/15 SF only
SB 862 Birdwell	GOVERN - ELECTION - VOTING. In 2011, Chapter 209 acquired procedures for different voting methods. By adding this one sentence, bill clarifies that Chapter 209 doesn't require the HOA to offer multiple methods of voting: <u>Unless a dedicatory instrument provides otherwise, a property owners' association is not required to provide an owner with more than one voting method so long as an owner may vote by absentee ballot or proxy.</u> See also SEC. 14 of Omnibus Bill - adding subsection (a-1).	TPC 209.00592 - adds (a-1)	9/1/15 SF only
SB 1168 West ▲ SEC 14	GOVERN - ELECTION - VOTING. The voting procedures law enacted in 2011 has confounded practitioners and HOAs that sincerely want to be law-abiding. This SECTION of the Omnibus Bill provides much-needed clarification. Although Chapter 209 authorizes multiple methods of voting, the HOA is not required to offer all of the methods. As long as an owner can vote by proxy or absentee ballot, the board can use a single voting method (unless the HOA docs require more). Also, board nominations from the floor of an election meeting don't disqualify absentee ballots marked before the meeting - before all nominees were known. See also SB 862 - adding subsection (a-1).	TPC 209.00592 - amends (a), adds (a-1) & (b-1)	9/1/15 SF only
SB 1168 West ▲ SEC 4	GOVERN - NOTICES. Adds a new defined term - "verified mail" - which other sections of the Omnibus Bill use in place of "certified mail return receipt requested." The change from certified to verified seems linked to a change of measuring time from the date something is sent by the HOA instead of the date received by the owner. Only one other Texas statute defines "verified mail" - self-storage facility liens (TPC Chapter 59).	TPC 209.002 - adds (13)	9/1/15 SF only

BILL NO. AUTHOR	THUMBNAIL DESCRIPTIONS OF POA BILLS THAT BECAME LAW IN 2015 Organized Alphabetically by Subject Category	Statute/Code Affected	Effective
SB 1168 West ▲ SEC 7	GOVERN - NOTICES. Allows HOA and owner to agree on a method of giving notice (such as by email) that differs from a method required by law (such as certified mail). Doesn't provide same option for delivery methods required by the HOA documents. This law was added to the Omnibus Bill on 5/23/15 as a House Floor Amendment.	TPC adds 209.0042	9/1/15 SF only
SB 1168 West ▲ SEC 23	LAND USE - GOLF COURSE. Section 23 of the Omnibus Bill was originally filed as HB 2594, which "died." On 5/23/15 the meat of HB 2594 was tacked onto the Omnibus Bill as House Floor Amendment #4. Adds a new chapter to Property Code to provide a process for eliminating a golf course or county club restriction on land that is ripe for re-development. HB 2594 started out as a statewide bill with significant implications for owners of certain golf courses and country clubs next to residential developments. The 4/10 hearing made it clear that the bill arises from a situation in Corpus Christi. After the 4/10 hearing, the bill was narrowed (ie, "improved") to apply only in limited situations and only for 6 years.	TPC - adds Chapter 213 (for 6 years only)	9/1/15 SF & Condo
SB 1168 West	OMNIBUS BILL FOR SUBDIVISIONS (MOSTLY). This large Omnibus Bill is more like 30 separate - unrelated - bills sharing a single bill number. Each SECTION of the Omnibus Bill is listed in this report by the SECTION's topic. Topics covered by the Omnibus Bill run the gamut from HOA foreclosure to board meetings to golf courses. Many pieces deal with elections. Two provisions are developer specific. When the Omnibus Bill reached the full Senate for a floor vote on May 6, it was amended with a complete substitute containing some brand-new provisions. The Senate-approved substituted version was approved by a House Committee on May 15, 2015. When it reached the full House for a floor vote on May 23, it acquired 6 Floor Amendments, some of which were hastily written on the spot. One of the House Floor Amendments is the full text of HB 2594 regarding re-use of golf courses. The next day, the Omnibus Bill acquired 2 more House Floor Amendments before being approved by the House on May 24. The Senate concurred in the House Floor Amendments.	TPC Ch 207 & 209 - amends many sections. Also, adds Ch 213. One change to Ch 82.	9/1/15 SF & Condo
HB 939 Dale	USES - GENERATORS. Standby electric generators are popular in hurricane-prone areas. Bill protects homeowners' use of generators during power outages while allowing POAs to adopt certain requirements and restrictions to control location, appearance, and quality of installation. Some version of this bill was filed every session since 2009.	TPC Ch 202 - adds 202.019	<u>6/19/15</u> SF & Condo
HB 2489 Leach	USES - RENTAL RESTRICTIONS. Prevents subdivision HOAs from approving tenants, leases, and rental applications. The HOA can't require a copy of a tenant's credit report. If the HOA requires a copy of the lease, "sensitive personal information" (defined in the bill) MAY (not must) be redacted. This bill originally applied to both condos and subdivisions as an amendment of Chapter 202 of the Property Code. The final bill amends Chapter 209 instead, which means it doesn't apply to condos or Las Colinas.	TPC Ch 209 - adds 209.016	<u>6/19/15</u> SF only
HB 745 Bohac	USES - STREET SIGNS. A 2011 law allows POAs to put speed feedback signs on public roads within "its jurisdiction" if the POA pays for the sign and maintenance. Bill does the same for solar-powered LED stop signs. Will it prevent HOAs from negotiating with local governments for perpetual public maintenance of signs purchased and installed by the HOA?	Transport Code - amends 430.002	<u>6/10/15</u> SF only
SB 1168 West ▲ SEC 17	VIOLATIONS - NOTICE. Major change of "violation enforcement" law. Creates 2 types of violations - curable and incurable - with examples of each. Also adds concept of violations that are a "threat to public health or safety" (having nothing to do with either the "public" or damage to pets or property). Bill tried to change method of delivering the violation notice from certified mail return receipt requested to "verified mail." A House Floor Amendment restored certified mail, but not return receipt requested. Much to digest in this SECTION. Subsections (g)-(i) added on Senate Floor.	TPC 209.006 - amends (a) & (b), and adds 7 new subsections (c)-(i)	9/1/15 SF only

CHAPTER B

POA OMNIBUS BILL

SECTION-BY-SECTION OVERVIEW

OF SB 1455 [84R] BY WEST

OVERVIEW OF THE POA OMNIBUS BILL
~ Senate Bill 1168 [84R] by WEST ~ EFFECTIVE 9/1/15
EFFECTING 30 LAW CHANGES

An omnibus bill is a compilation of spot amendments packaged together under a single bill number. Although each spot amendment must relate to the caption of the bill ["relating to the operation of certain property owners' associations" - as initially filed] the many parts of an omnibus bill don't relate to each other. It's hard to review an omnibus bill because there is no "whole," only parts, each of which must be reviewed as if it were a separate bill. This report treats Senate Bill 1168 as if it were 30 separate bills - focusing on each law change.

ALPHABETICALLY BY SUBJECT CATEGORY

SB1168 SEC	SUBJECT CATEGORY	fix or NEW	PROPERTY CODE SECTION AFFECTED
20	ASSESS - Foreclose - Debt	fix	209.009 amends (3)
22	ASSESS - Foreclose - Methods	NEW	209.0092 adds (d) & (e)
22	ASSESS - Foreclose - Power of Sale	NEW	209.0092 amends (a)
21	ASSESS - Lienholders	fix	209.0091 amends (a) & (b), adds (c)
18	ASSESS - Payment Plans	fix	209.0062 amends (c)
19	ASSESS - Payment Plans	fix	209.0064 amends (b)
2 & 3	CONDO - Chapter 207 Applicability	fix	amends 207.001(2) & 207.002
5	CONDO - Chapter 209 Applicability	fix	209.003 amends (d)
1	CONDO - Resale Certificate	NEW	82.157 amends (a)
13	DEVELOPER - HOA Board	fix	209.00591 amends (c)
4	DEVELOPMENT PERIOD - Defined	NEW	209.002 amends (4-a), adds (13)
8	DEVELOPMENT PERIOD - Defined	fix	209.0051 amends (b)
15	DEVELOPMENT PERIOD - Defined	fix	209.00593 amends (d)
24	DEVELOPMENT PERIOD - Defined	fix	209.0041 repeals (a)
6	DOCUMENTS - Amend	fix	209.0041 amends (h), adds (h-1) & (h-2)
8	GOVERN - Board Meetings	fix	209.0051 adds (c-2)
8	GOVERN - Board Meetings	NEW	209.0051 amends (h)
13	GOVERN - Board Qualifications - Residence	NEW	209.00591 adds (a-1)
11	GOVERN - Election - Ballot	NEW	209.0058 amends (a), adds (a-1) & (d)
11	GOVERN - Election - Ballot	fix	209.0058 amends (c)
16	GOVERN - Election - Ballot	fix	209.00594 amends (b) & (c), adds (b-1) & (d)
15	GOVERN - Election - Candidates	NEW	209.00593 adds (a-1), (a-2) & (a-3)
9	GOVERN - Election - Notice	NEW	209.0056 amends (a), adds (a-1)
10	GOVERN - Election - Recount	fix	209.0057 amends 3 subs + adds 4 subs
12	GOVERN - Election - Voters	NEW	209.0059 adds (c)
14	GOVERN - Election - Voting	fix	209.00592 amends (a), adds (a-1) & (b-1)
4	GOVERN - Notices	NEW	209.002 adds (13)
7	GOVERN - Notices	NEW	adds 209.0042
23	LAND USE - Golf Course	NEW	adds Chapter 213 to Property Code
17	VIOLATIONS - Notice	NEW	209.006 amends (a) & (b), adds (c)-(i)

**THE 30 LAW CHANGES IN POA OMNIBUS BILL SB 1168
IN THE ORDER IN WHICH THEY APPEAR IN SB 1168 - NUMERICALLY BY BILL SECTION NUMBER**

SB1168 SEC	SUBJECT CATEGORY - THUMBNAIL DESCRIPTION	TX PROPERTY CODE SECTION AFFECTED
1	CONDO - RESALE CERTIFICATE. Adds to contents of condominium resale certificate - disclosure of transfer-related fees and "statements of operating budget and balance sheet". Bad drafting. Sec. 82.157(a) has required the operating budget since 1993. Balance sheet should have been added to first paragraph instead of to list of statements.	amends 82.157(a) NEW
2 & 3	CONDO - CHAPTER 207 APPLICABILITY. Confirms that TPC Chapter 207 doesn't apply to condos. TPC Chapter 207 was written in the late 1990s by the Texas Association of Realtors which wanted a resale certificate for subdivisions similar to what condos have under TUCA. By incorporating the wrong definitions, Chapter 207 left open the nonsensical possibility that condos could be subject to two separate, though similar, resale certificate requirements - under Chapter 82 and Chapter 207. This law corrects the definitions reference (from Chapter 202 to Chapter 209) and - adding suspenders to the belt - says flat out that Chapter 207 doesn't apply to condos. As a result, the "public access website" provision of Chapter 207 doesn't apply to condos.	amends 207.001(2) & adds (b) to 207.002
4	DEVELOPMENT PERIOD - DEFINED. Changes "and" to "or" in the definition of "development period." This is THE definition in Chapter 209 on which all development period exemptions are based. Don't know the significance of the switch. No testimony about it, and the bill analysis offers nothing.	209.002 amends (4-a)
4	GOVERN - NOTICES. Adds a new defined term - "verified mail" - which other sections of the Omnibus Bill use in place of "certified mail return receipt requested." The change from certified to verified seems linked to a change of measuring time from the date something is sent by the HOA instead of the date received by the owner. Only one other Texas statute defines "verified mail" - self-storage facility liens (TPC Chapter 59).	209.002 adds (13) NEW
5	CONDO - CHAPTER 209 APPLICABILITY. Confirms that TPC Chapter 209 doesn't apply to condos, period. Echoes of <u>Duarte v Disanti</u> , 292 S.W.3d 733 (Tex. App.—Dallas 2009).	209.003 - amends (d)
6	DOCUMENTS - AMEND. Before 2011, some subdivisions couldn't amend their declarations because amendments had to be approved by extraordinarily high percentages of owners. Enacted in 2011, Sec. 209.0041 capped approvals at 67% of total votes allocated to owners if the declaration required more than 67%. Uncertainty arose for subdivisions created with different voting populations, such as "only patio home owners vote on amendments of patio home provisions." This tries to fix the uncertainty by limiting the 67% to property owners <u>entitled to vote on the amendment of the declaration</u> , in addition to any governmental approval required by law." Unfortunately, it doesn't clarify the use of "only" which some interpret to void all other approvals required by the declaration, such as approval of master HOA or a MUD to change provisions dealing with the HOA's relationship with those entities..	209.0041 - amends (h) & adds (h-1) and (h-2)
7	GOVERN - NOTICES. Allows HOA and owner to agree on a method of giving notice (such as by email) that differs from a method required by law (such as certified mail). Doesn't provide same option for delivery methods required by the HOA documents. This law was added to the Omnibus Bill on 5/23/15 as a House Floor Amendment.	adds 209.0042 NEW
8	DEVELOPMENT PERIOD - DEFINED. Sec. 209.0051 - requiring open board meetings - doesn't apply during the development period, with some exceptions. Because Chapter 209 now has a chapter-wide definition of "development period," the definition no longer needs to be repeated in each section to which it pertains. This removes the definition, but not the carve-out protection, from 209.0051.	209.0051 - amends (b)

SB1168 SEC	SUBJECT CATEGORY - THUMBNAIL DESCRIPTION	TX PROPERTY CODE SECTION AFFECTED
	GOVERN - BOARD MEETINGS. Confirms that the board may conduct all of its meetings by electronic or telephonic means, provided the directors can communicate with each other and provided all owners "in attendance at the meeting" can hear all the directors, except when they're in executive session. No change to notice requirements.	209.0051 - adds (c-2)
8	GOVERN - BOARD MEETINGS. Enacted in 2011, Subsection (h) of the Open Board Meetings section allows the board to meet by telephonic or electronic means, or to decide by unanimous written consents, without notifying the owners in advance, under certain circumstances. This bill substantially re-writes Subsection (h) to address " taking action outside of a meeting " [new concept], while eliminating Chapter 209's authorization for unanimous written consents. In place of requiring the directors to speak to and hear one another (two-way discussion which may lead to consensus), each director must have a reasonable opportunity to express his opinion (one-way) and vote. Doubles the list of actions that can't be taken outside of an open meeting. Shapeshifter.	209.0051 - amends (h) NEW
9	GOVERN - ELECTION - NOTICE. Enacted in 2011, Section 209.0056 requires the HOA to give owners prior notice of the election or vote. This doesn't change the 10-60 day notice for votes to be cast at a meeting. What's new pertains to voting outside of a meeting - owners must be given notice at least 20 days before the last date on which ballots may be submitted.	209.0056 - amends (a) & adds (a-1) NEW
10	GOVERN - ELECTION - RECOUNT. Enacted in 2011, Section 209.0057 allows an owner to challenge a vote of members by demanding a recount, which must be done by an official hired by the HOA, at the expense of the owner who demands the recount. This bill adds procedures and deadlines for dealing with the recount request. Essentially, HOA must have full prepayment in hand before initiating a recount. Other changes to Section 209.0057 are clarifying fixes. Allows owner to use "verified mail" (instead of certified) to demand a recount.	209.0057 - amends 3 subsections & adds 4 subsections
11	GOVERN - ELECTION - BALLOT. This is a major re-write of Sec. 209.0058 (titled "Ballots"), enacted in 2011, requiring that all ballots be signed - period. Homeowners didn't like giving up their sacred secret ballots. The 2015 addition of Subsection (d) restores voting by secret ballot under certain conditions - essentially requiring the HOA to guard against fraud. Otherwise, ballots must be signed by the voter. It should be as simple as one or the other - signed or secret. But, it gets complicated. The bill lists 5 types of votes requiring signed ballots if the HOA doesn't facilitate secret ballots: (1) votes outside a meeting, (2) election of directors, (3) adoption or amendment of dedicatory instruments, (4) increases in regular assessments or adoption of special assessments, and (5) removal of directors. For votes that aren't listed, ballots may be signed or secret - doesn't say if the choice belongs to the HOA or the owner. A House Floor amendment allows a board candidate to appoint someone to watch the counting of secret ballots. If all votes can be either signed or secret, what's the purpose of the 5-item list? Wish the bill didn't get into the weeds of which kinds of decisions get which kind of ballot. It may create an expectation that owners have a statutory right to vote on the itemized issues even if the declaration specifically authorizes the board to act unilaterally, such as to increase assessments without a vote of owners. See also SB 864.	209.0058 - amends (a) and adds (a-1) & (d) NEW
	GOVERN - ELECTION - BALLOT. Because some ballots are for specific neighborhoods, this clarifies that ballots must be signed for all elections, not only for HOA-wide elections.	209.0058 - amends (c)
12	GOVERN - ELECTION - VOTERS. Added as a House Floor Amendment to fix one person's perceived problem, this addition to the "Right to Vote" Section of Chapter 209 doesn't make much sense without knowing the backstory. Overnight the Floor Amendment was narrowed in scope (which is great!). The peculiar provision applies only to small subdivisions (10 or less lots) for which the declaration was recorded before 2015. Essentially, a person can't vote in an HOA election unless he's subject to the HOA document governing the HOA through which the HOA exercises its authority. Huh?	209.0059 - adds (c) NEW

SB1168 SEC	SUBJECT CATEGORY - THUMBNAIL DESCRIPTION	TX PROPERTY CODE SECTION AFFECTED
13	GOVERN - BOARD QUALIFICATIONS - RESIDENCY. Before 2011, most HOA bylaws had criteria for service on the board, such as being current in assessments, term limits, being unrelated to other directors. Enacted in 2011, Sec. 209.00591 voids all provisions in HOA documents that could be used to disqualify an owner from serving on the HOA board (except for criminal convictions). This bill allows HOA bylaws to require directors to be residents of the subdivision, so long as all directors aren't required to live in the community. Doesn't apply during the development period.	209.00591 - adds (a-1) NEW
13	DEVELOPER - HOA BOARD. Enacted in 2011, Section 209.00591 ensures that homeowners will elect at least one-third of the HOA directors within 10 years or by the time the project is 75% complete and sold to homeowners, if not sooner. This much needed fix clarifies that a developer's sale of vacant lots to homebuilders doesn't trigger the election requirement, which would be nonsensical in a subdivision of vacant lots. This fix still leaves the subdivision vulnerable to the conveyance of vacant lots to an intermediary, such as a broker, investor, or bank. Would be better if the 75% were based on improved lots - lots with houses - rather than the type of owner. But, this fix is better than no fix for developers who are not homebuilders but who must control aspects of the project until it's built out.	209.00591 - amends (c)
14	GOVERN - ELECTION - VOTING. The voting procedures law enacted in 2011 has confounded practitioners and HOAs that sincerely want to be law-abiding. This SECTION of the Omnibus Bill provides much-needed clarification. Although Chapter 209 authorizes multiple methods of voting, the HOA is not required to offer all of the methods. As long as an owner can vote by proxy or absentee ballot, the board can use a single voting method (unless the HOA docs require more). Also, board nominations from the floor of an election meeting don't disqualify absentee ballots marked before the meeting - before all nominees were known. See also SB 862 - adding subsection (a-1).	209.00592 - amends (a), adds (a-1) & (b-1)
15	GOVERN - ELECTION. Every subdivision with <u>100 or more lots</u> that sends election ballots to owners MUST affirmatively invite all owners to run for the board and must name all responders as candidates on the ballot. The bill has detailed procedures and methods for communicating with owners. Presumably, this doesn't apply when all voting is done at a meeting. How does this reconcile with the new 209.00592(b-1) which okays floor nominations when absentee and electronic ballots are also used?	209.00593 - adds (a-1), (a-2), (a-3) NEW
	DEVELOPMENT PERIOD - DEFINED. Sec. 209.00593 - requiring that directors be elected - doesn't apply to the declarant-appointed board during the development period. Because Chapter 209 has a chapter-wide definition of "development period," the definition is no longer needed in each section of Chapter 209 that has a carve-out for the development period. This removes the definition, but not the carve-out protection, from 209.00593.	209.00593 - amends (d)
16	GOVERN - ELECTION - BALLOT. Enacted in 2011, Section 209.00594 regulates the handling of signed ballots. This confirms that the person who tabulates or recounts ballots must not tell a living soul how someone votes. Also adds that the duty for secrecy doesn't prevent the release of election records under court order. Subsection (d) added on Senate Floor.	209.00594 - amends (b) & (c), adds (b-1) & (d)
17	VIOLATIONS - NOTICE. Major change of "violation enforcement" law. Creates 2 types of violations - curable and incurable - with examples of each. Also adds concept of violations that are a "threat to public health or safety" (having nothing to do with either the "public" or damage to pets or property). Bill tried to change method of delivering the violation notice from certified mail return receipt requested to "verified mail." A House Floor Amendment restored certified mail, but not return receipt requested. Much to digest in this SECTION. Subsections (g)-(i) added on Senate Floor.	209.006 - amends (a) & (b), and adds (c)-(i) NEW
18	ASSESS - PAYMENT PLANS. Clarifies the limited circumstances under which the HOA is not required to negotiate a payment plan with a delinquent owner.	209.0062 - amends (c)

SB1168 SEC	SUBJECT CATEGORY - THUMBNAIL DESCRIPTION	TX PROPERTY CODE SECTION AFFECTED
19	ASSESS - PAYMENT PLANS. The 2011 HOA Reform laws exempt small subdivisions (14 or fewer lots) from the requirement to offer payment plans to delinquent owners. This fixes another section of Chapter 209 that talks about payment plans, so that it won't apply to the exempt small subdivisions.	209.0064 - amends (b)
20	ASSESS - FORECLOSE - DEBT. Chapter 209 prohibits foreclosure of debts consisting solely of certain charges, such as fines. This adds the cost of an election recount by reference to 209.0057(b-4), added by SECTION 10 of bill.	209.009 - amends (3)
21	ASSESS - LIENHOLDERS. Chapter 209 requires HOAs to give lienholders a pre-foreclosure notice and opportunity to cure the homeowner's debt to the HOA before the HOA can foreclose its assessment lien. This tweaks some of the procedures.	209.0091 - amends (a) & (b), adds (c)
22	ASSESS - FORECLOSE - POWER OF SALE. THE BIGGEST BOLDEST LAW CHANGE OF 2015. In a dramatic turn-around, the Legislature appears to be increasing subdivision HOA foreclosure powers by providing what purports to be a statutory power of sale to foreclose nonjudicially. Until 9/1/15, HOAs have to foreclose judicially - by filing an old-fashioned, expensive, slow-moving lawsuit with consumer protections - UNLESS the declaration has magic words creating a private power of sale so the HOA can foreclose on the courthouse steps like mortgage lenders. In 2011 the Legislature and Supreme Court added a quasi-judicial procedure to nonjudicial foreclosures by HOAs. (Same procedure used by home equity lenders.) To further blur the lines between judicial and nonjudicial foreclosures by HOAs, the Omnibus Bill adds these "magic words" to 209.0092(a): "A property owners' association whose dedicatory instruments grant a right of foreclosure is considered to have any power of sale required by law as a condition of using the procedure described by this subsection."	209.0092 - amends (a) NEW
	ASSESS - FORECLOSE - METHODS. Confirms that an HOA is not required to use the new statutory power of sale, and may choose to foreclose judicially.	209.0092 - adds (d) & (e) NEW
23	LAND USE - GOLF COURSE. Section 23 of the Omnibus Bill was originally filed as HB 2594, which "died." On 5/23/15 the meat of HB 2594 was tacked onto the Omnibus Bill as House Floor Amendment #4. Adds a new chapter to Property Code to provide a process for eliminating a golf course or county club restriction on land that is ripe for re-development. HB 2594 started out as a statewide bill with significant implications for owners of certain golf courses and country clubs next to residential developments. The 4/10 hearing made it clear that the bill arises from a situation in Corpus Christi. After the 4/10 hearing, the bill was narrowed (ie, "improved") to apply only in limited situations and only for 6 years.	Adds Chapter 213 NEW
24	DEVELOPMENT PERIOD - DEFINED. Sec. 209.0041 - requiring a vote of owners to amend the declaration - doesn't apply to amendments during the development period. Because Chapter 209 has a chapter-wide definition of "development period," the definition is no longer needed in each section of Chapter 209 that has a carve-out for the development period. This removes the definition, but not the carve-out protection, from 209.0041.	209.0041 - repeals (a)
25	APPLICABILITY. This part of the bill discusses how different sections of the bill are phased into law - which events are covered, and when. [Not analyzed here]	
26	EFFECTIVE DATE. September 1, 2015	

CHAPTER C
HIGHLIGHTS OF
CONDO CONSTRUCTION DEFECT CLAIM LAW

HB 1455 [84R] BY KING

ADDING SECTIONS 82.119 & 82.120
TO
(TEXAS) UNIFORM CONDOMINIUM ACT,
CHAPTER 82, TEXAS PROPERTY CODE

CHAPTER C
HOUSE BILL 1455 BY KING
CONDOMINIUM CONSTRUCTION DEFECT LITIGATION LAW
AMENDING THE TEXAS UNIFORM CONDOMINIUM ACT

1. 10 THINGS TO KNOW ABOUT HB 1455
2. Sections 82.119 and 82.120, Chapter 82, Texas Property Code (Texas Uniform Condominium Act)
3. TPC 82.119 Flowchart



10 THINGS TO KNOW ABOUT HB 1455

~ THE BRAND-NEW CONDO CD LITIGATION LAW ~

1. Not limited to residential condominiums. Applies to all types, such as residential, non-residential, recreational, and mixed-use condominiums.
2. Only applies to a condominium subject to the Texas Uniform Condominium Act ("TUCA"), i.e., condominiums created on or after 1/1/94 or prior to 1/1/94 IF the unit owners voted to amend the declaration to be governed by TUCA, exclusively.
3. Only applies to a claim related to the design or construction of a condominium unit or common element. Does not apply to other types of claims.
4. Not limited to the original design and construction of the unit or common element. May also apply to subsequent improvements.
5. Only applies to claims brought by a condominium association. Does not apply to claims brought by an individual unit owner.
6. Requires that the unit owners receive information about the claim and participate in the decision whether to pursue the claim. Under Section 82.102(a)(4), the condominium association, acting through a majority of its board, has the right to bring a claim affecting more than 1 unit and the common elements. Prior to HB 1455, a majority of the condominium association board had the right to bring the claim without the participation of unit owners.
7. Requires that, before pursuing a claim, the condominium association obtain an independent inspection of the condominium units or common elements subject to the claim (the "Common Area Report"). Prior to HB 1455, there was no requirement for a report on the condition of the units or common elements prior to initiating a construction defect claim. Chapter 27 of the Texas Property Code, the "Residential Construction Liability Act", requires the claimant to provide an inspection report to the contractor only if the claimant had obtained a report prior to asserting the claim.
8. Establishes a 90-day "cooling off period" during which the parties subject to the claim (the builders and contractors) have the right to inspect and correct any condition identified in the Common Area Report. The Residential Construction Liability Act only establishes a right to inspect and make an offer to repair the condition.
9. Expressly provides that a condominium declaration may include binding arbitration and a process for resolving defect claims.
10. Provides that any amendment that removes or modifies an arbitration requirement or dispute resolution process in the condominium declaration does not apply retroactively to a claim that arose prior to the amendment.

EFFECTIVE FOR A LAWSUIT OR ARBITRATION PROCEEDING FOR A CLAIM PERTAINING TO THE CONSTRUCTION OR DESIGN OF A UNIT OR THE COMMON ELEMENTS INITIATED BY A CONDOMINIUM ASSOCIATION ON OR AFTER 9/1/15.

TEXAS PROPERTY CODE
TITLE 7. CONDOMINIUMS
CHAPTER 82. UNIFORM CONDOMINIUM ACT
SUBCHAPTER D. PROTECTION OF PURCHASERS

Sec. 82.119. PROCEDURES FOR FILING SUIT OR INITIATING ARBITRATION PROCEEDINGS FOR DEFECT OR DESIGN CLAIMS FOR CERTAIN ASSOCIATIONS.

(a) This section does not apply to an association with less than eight units.

(b) In addition to any preconditions to filing suit or initiating an arbitration proceeding included in the declaration, an association, before filing suit or initiating an arbitration proceeding to resolve a claim pertaining to the construction or design of a unit or the common elements, must:

(1) obtain an inspection and a written independent third-party report from a licensed professional engineer that:

(A) identifies the specific units or common elements subject to the claim;

(B) describes the present physical condition of the units or common elements subject to the claim; and

(C) describes any modifications, maintenance, or repairs to the units or common elements performed by the unit owners or the association; and

(2) obtain approval from unit owners holding more than 50 percent of the total votes allocated under the declaration, voting in person or by proxy as provided by Section 82.110, at a regular, annual, or special meeting called in accordance with the declaration or bylaws, as applicable.

(c) The association must provide written notice of the inspection to be conducted by the engineer to each party subject to a claim not later than the 10th day before the date the inspection occurs. The notice must:

(1) identify the party engaged to prepare the report required by Subsection (b)(1);

(2) identify the specific units or common elements to be inspected; and

(3) include the date and time the inspection will occur.

(d) Each party subject to a claim may attend the inspection conducted by the engineer, either personally or through an agent.

(e) Before providing the notice of the meeting under Subsection (f), an association must:

(1) on completion of the independent third-party report, provide the report to each unit owner and each party subject to a claim; and

(2) allow each party subject to a claim at least 90 days after the date of completion of the report to inspect and correct any condition identified in the report.

(f) Not later than the 30th day before the date the meeting described by Subsection (b)(2) is held, the association must provide each unit owner with written notice of the date, time, and location of the meeting. The notice must also include:

(1) a description of the nature of the claim, the relief sought, the anticipated duration of prosecuting the claim, and the likelihood of success;

(2) a copy of the report required by Subsection (b)(1);

(3) a copy of the contract or proposed contract between the association and the attorney selected by the board to assert or provide assistance with the claim;

(4) a description of the attorney's fees, consultant fees, expert witness fees, and court costs, whether incurred by the association directly or for which the association may be liable as a result of prosecuting the claim;

(5) a summary of the steps previously taken by the association to resolve the claim;

(6) a statement that initiating a lawsuit or arbitration proceeding to resolve a claim may affect the market value, marketability, or refinancing of a unit while the claim is prosecuted; and

(7) a description of the manner in which the association proposes to fund the cost of prosecuting the claim.

(g) The notice required by Subsection (f) must be prepared and signed by a person who is not:

(1) the attorney who represents or will represent the association in the claim;

(2) a member of the law firm of the attorney who represents or will represent the association in the claim; or

(3) employed by or otherwise affiliated with the law firm of the attorney who represents or will represent the association in the claim.

(h) The period of limitations for filing a suit or initiating an arbitration proceeding for a claim described by Subsection (b) is tolled until the first anniversary of the date the procedures are initiated by the association under that subsection if the procedures are initiated during the final year of the applicable period of limitation.

Sec. 82.120. BINDING ARBITRATION FOR CERTAIN CLAIMS.

(a) A declaration may provide that a claim pertaining to the construction or design of a unit or the common elements must be resolved by binding arbitration and may provide for a process by which the claim is resolved.

(b) An amendment to the declaration that modifies or removes the arbitration requirement or the process associated with resolution of a claim may not apply retroactively to a claim regarding the construction or design of units or common elements based on an alleged act or omission that occurs before the date of the amendment.

FLOWCHART FOR HANDLING A CONDOMINIUM CONSTRUCTION DEFECT CLAIM IN TEXAS, UNDER SEC. 82.119, TEXAS UNIFORM CONDOMINIUM ACT (Chapter 82, Texas Property Code), enacted by HB 1455 (84R), effective 9/1/15.

Check the Declaration! 82.120(a)

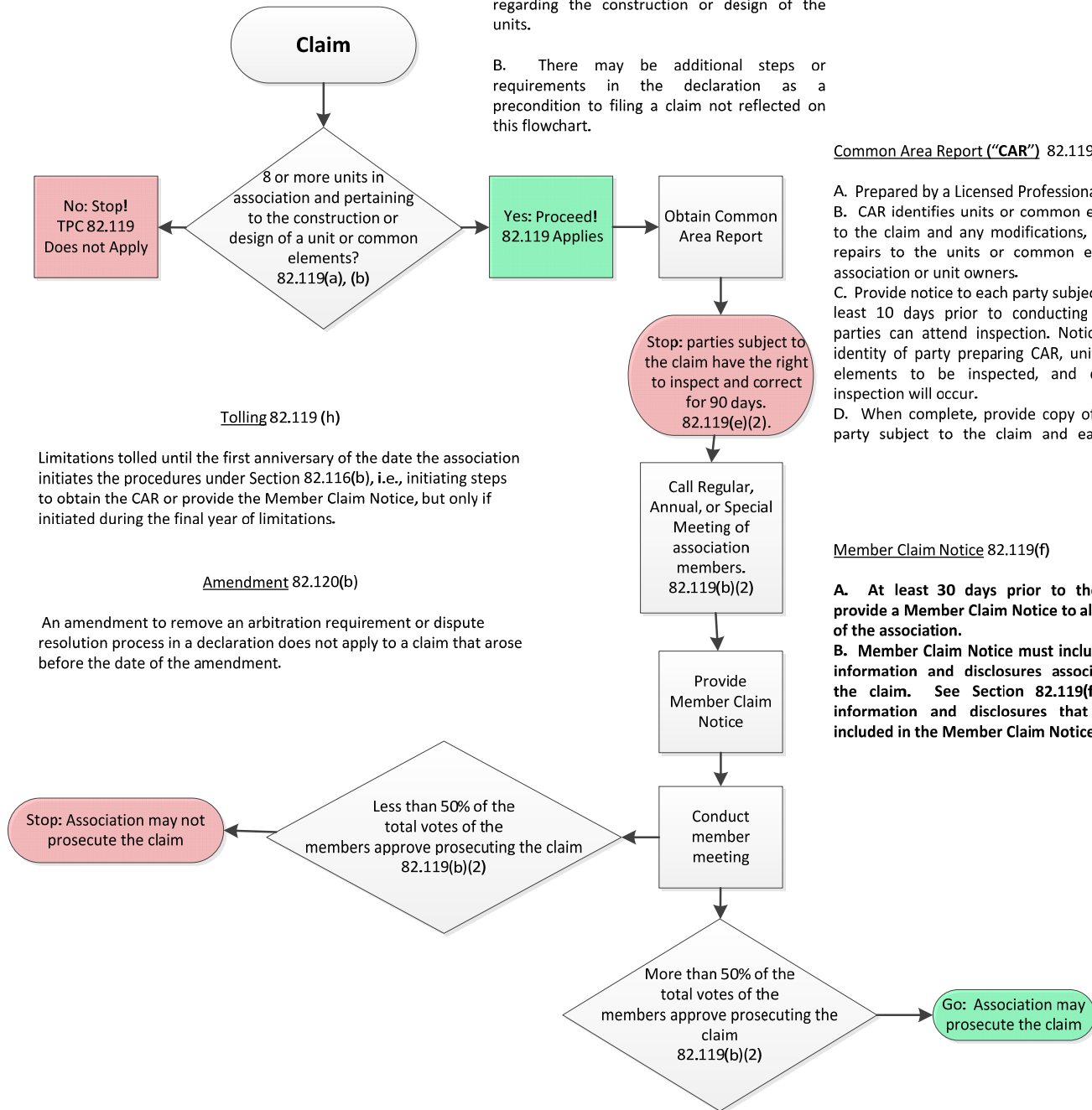
- A. The declaration may include binding arbitration and a process for resolving a claim regarding the construction or design of the units.
- B. There may be additional steps or requirements in the declaration as a precondition to filing a claim not reflected on this flowchart.

Common Area Report ("CAR") 82.119(b),(c), (d), (e)

- A. Prepared by a Licensed Professional Engineer.
- B. CAR identifies units or common elements subject to the claim and any modifications, maintenance or repairs to the units or common elements by the association or unit owners.
- C. Provide notice to each party subject to the claim at least 10 days prior to conducting the CAR; such parties can attend inspection. Notice must include identity of party preparing CAR, units and common elements to be inspected, and date and time inspection will occur.
- D. When complete, provide copy of report to each party subject to the claim and each unit owner.

Member Claim Notice 82.119(f)

- A. **At least 30 days prior to the meeting provide a Member Claim Notice to all members of the association.**
- B. **Member Claim Notice must include specific information and disclosures associated with the claim. See Section 82.119(f) for the information and disclosures that must be included in the Member Claim Notice.**



Tolling 82.119 (h)

Limitations tolled until the first anniversary of the date the association initiates the procedures under Section 82.116(b), i.e., initiating steps to obtain the CAR or provide the Member Claim Notice, but only if initiated during the final year of limitations.

Amendment 82.120(b)

An amendment to remove an arbitration requirement or dispute resolution process in a declaration does not apply to a claim that arose before the date of the amendment.

This flowchart was prepared by Bob Burton for use with *Legislative Update 2015: Condos & Owners Associations*, a webcast presentation on July 1, 2015, sponsored by the State Bar of Texas. It is intended to provide general information to select audiences about certain aspects of Texas law. Not intended to be exhaustive, to replace advice of competent legal counsel, or to address particular situations. Legal knowledge is required for the proper use and interpretation of this material.

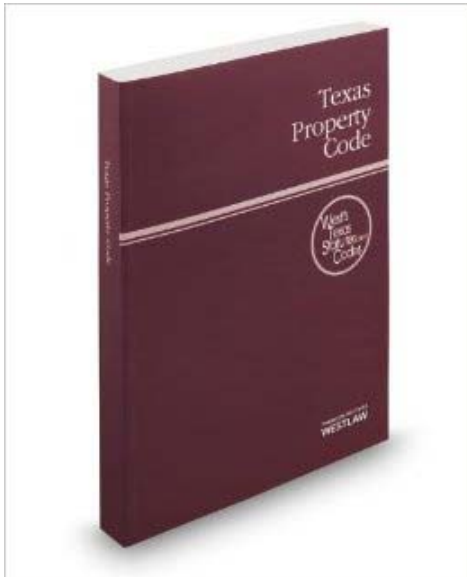
CHAPTER D

SELECTED SECTIONS OF TEXAS PROPERTY CODE CHAPTER 209 (Texas Residential Property Owners Protection Act)

SHOWING 2015 CHANGES AS "REDLINES"

SECTIONS

209.002
 209.003
 209.0041
 209.0042 [NEW]
 209.0051
 209.0056
 209.0057
 209.0058
 209.0059
 209.00591
 209.00592
 209.00593
 209.00594
 209.006
 209.0062
 209.0064
 209.009
 209.0091
 209.0092
 209.016 [NEW]



ALERT! DO NOT USE FOR LEGAL PURPOSES. This is not an official or authenticated publication of the selected sections of Chapter 209 of the Texas Property Code. Refer to West Publishing and the Session Laws for statutory authority. Forewarned.

**2015 CHANGES TO
TEXAS PROPERTY CODE CHAPTER 209
Texas Residential Property Owners Protection Act**

**SELECTED SECTIONS OF CHAPTER 209
ONLY SECTIONS WITH 2015 CHANGES BY 84TH LEGISLATURE**

TEASERS

The 84th Texas Legislature passed five bills that amend Property Code Chapter 209, with different effective dates:

House Bill 1072 by Thompson, effective 9/1/15
House Bill 2489 by Leach, effective 6/19/15
Senate Bill 862 by Birdwell, effective 9/1/15
Senate Bill 864 by Birdwell, effective 5/29/15
Senate Bill 1168 by West, effective 9/1/15

Three subsections of Chapter 209 were amended (or added) in 2015 by different bills – using different words:
209.0058(a), 209.0058(d), and 209.00592(a-1)

LEGISLATIVE UPDATE 2015: CONDOS & OWNERS ASSOCIATIONS

Presented July 1, 2015 ~ State Bar of Texas Webcast

By

Bob Burton
Winstead PC
401 Congress Ave., Suite 2100
Austin, Texas 78701
(512) 370-2869
rburton@winstead.com

Sharon Reuler
Sharon Reuler, PC
5400 LBJ Freeway, Suite 1200
Dallas, Texas 75240
(972) 720-9727
sreuler@txlandlaw.com

ALERT! DO NOT USE FOR LEGAL PURPOSES. This is not an official or authenticated publication of the selected sections of Chapter 209 of the Texas Property Code. Refer to West Publishing and the Session Laws for statutory authority. Forewarned.

**SELECTED SECTIONS OF TEXAS PROPERTY CODE CHAPTER 209
ONLY SECTIONS WITH 2015 CHANGES BY 84th LEGISLATURE**

TABLE OF CONTENTS

	Page
Sec. 209.002. DEFINITIONS _____	3
Sec. 209.003. APPLICABILITY OF CHAPTER _____	4
Sec. 209.0041. ADOPTION OR AMENDMENT OF CERTAIN DEDICATORY INSTRUMENTS _____	5
Sec. 209.0042. METHODS OF PROVIDING NOTICES TO OWNERS _____	5
Sec. 209.0051. OPEN BOARD MEETINGS _____	6
Sec. 209.0056. NOTICE OF ELECTION OR ASSOCIATION VOTE _____	8
Sec. 209.0057. RECOUNT OF VOTES _____	9
Sec. 209.0058. BALLOTS _____	10
Sec. 209.0059. RIGHT TO VOTE _____	11
Sec. 209.00591. BOARD MEMBERSHIP _____	11
Sec. 209.00592. VOTING; QUORUM _____	12
Sec. 209.00593. ELECTION OF BOARD MEMBERS _____	13
Sec. 209.00594. TABULATION OF AND ACCESS TO BALLOTS _____	14
Sec. 209.006. NOTICE REQUIRED BEFORE ENFORCEMENT ACTION _____	14
Sec. 209.0062. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN ASSESSMENTS _____	15
Sec. 209.0064. THIRD PARTY COLLECTIONS _____	16
Sec. 209.009. FORECLOSURE SALE PROHIBITED IN CERTAIN CIRCUMSTANCES _____	16
Sec. 209.0091. PREREQUISITES TO FORECLOSURE: NOTICE AND OPPORTUNITY TO CURE FOR CERTAIN OTHER LIENHOLDERS _____	17
Sec. 209.0092. JUDICIAL FORECLOSURE REQUIRED _____	17
Sec. 209.016. REGULATION OF RESIDENTIAL LEASES OR RENTAL AGREEMENTS _____	18
APPLICABILITY ENDNOTES _____	18

ALERT! DO NOT USE FOR LEGAL PURPOSES. This is not an official or authenticated publication of the selected sections of Chapter 209 of the Texas Property Code. Refer to West Publishing and the Session Laws for statutory authority. Forewarned.

TEXAS PROPERTY CODE
TITLE 11. RESTRICTIVE COVENANTS
CHAPTER 209 - TEXAS RESIDENTIAL PROPERTY OWNERS PROTECTION ACT

SELECTED SECTIONS – ONLY THOSE WITH 2015 CHANGES BY 84th LEGISLATURE
Unless otherwise noted, all changes are enacted by Senate Bill 1168 [84R] and are effective 9/1/15

Sec. 209.002. DEFINITIONS. In this chapter:

(1) "Assessment" means a regular assessment, special assessment, or other amount a property owner is required to pay a property owners' association under the dedicatory instrument or by law.

(2) "Board" means the governing body of a property owners' association.

(3) "Declaration" means an instrument filed in the real property records of a county that includes restrictive covenants governing a residential subdivision.

(4) "Dedicatory instrument" means each governing instrument covering the establishment, maintenance, and operation of a residential subdivision. The term includes restrictions or similar instruments subjecting property to restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association, to properly adopted rules and regulations of the property owners' association, and to all lawful amendments to the covenants, bylaws, rules, or regulations.

(4-a) "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; ~~or~~ **and**
- (B) a right to direct the size, shape, and composition of the subdivision.

(5) "Lot" means any designated parcel of land located in a residential subdivision, including any improvements on the designated parcel.

(6) "Owner" means a person who holds record title to property in a residential subdivision and includes the personal representative of a person who holds record title to property in a residential subdivision.

(7) "Property owners' association" or "association" means an incorporated or unincorporated association that:

- (A) is designated as the representative of the owners of property in a residential subdivision;
- (B) has a membership primarily consisting of the owners of the property covered by the dedicatory instrument for the residential subdivision; and
- (C) manages or regulates the residential subdivision for the benefit of the owners of property in the residential subdivision.

(8) "Regular assessment" means an assessment, a charge, a fee, or dues that each owner of property within a residential subdivision is required to pay to the property owners' association on a regular basis and that is designated for use by the property owners' association for the benefit of the residential subdivision as provided by the restrictions.

(9) "Residential subdivision" or "subdivision" means a subdivision, planned unit development, townhouse regime, or similar planned development in which all land has been divided into two or more parts and is subject to restrictions that:

- (A) limit a majority of the land subject to the dedicatory instruments, excluding streets, common areas, and public areas, to residential use for single-family homes, townhomes, or duplexes only;

ALERT! DO NOT USE FOR LEGAL PURPOSES. This is not an official or authenticated publication of the selected sections of Chapter 209 of the Texas Property Code. Refer to West Publishing and the Session Laws for statutory authority. Forewarned.

(B) are recorded in the real property records of the county in which the residential subdivision is located; and

(C) require membership in a property owners' association that has authority to impose regular or special assessments on the property in the subdivision.

(10) "Restrictions" means one or more restrictive covenants contained or incorporated by reference in a properly recorded map, plat, replat, declaration, or other instrument filed in the real property records or map or plat records. The term includes any amendment or extension of the restrictions.

(11) "Restrictive covenant" means any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative.

(12) "Special assessment" means an assessment, a charge, a fee, or dues, other than a regular assessment, that each owner of property located in a residential subdivision is required to pay to the property owners' association, according to procedures required by the dedicatory instruments, for:

(A) defraying, in whole or in part, the cost, whether incurred before or after the assessment, of any construction or reconstruction, unexpected repair, or replacement of a capital improvement in common areas owned by the property owners' association, including the necessary fixtures and personal property related to the common areas;

(B) maintenance and improvement of common areas owned by the property owners' association;

or
(C) other purposes of the property owners' association as stated in its articles of incorporation or the dedicatory instrument for the residential subdivision.

(13) "Verified mail" means any method of mailing for which evidence of mailing is provided by the United States Postal Service or a common carrier.

Sec. 209.003. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a residential subdivision that is subject to restrictions or provisions in a declaration that authorize the property owners' association to collect regular or special assessments on all or a majority of the property in the subdivision.

(b) Except as otherwise provided by this chapter, this chapter applies only to a property owners' association that requires mandatory membership in the association for all or a majority of the owners of residential property within the subdivision subject to the association's dedicatory instruments.

(c) This chapter applies to a residential property owners' association regardless of whether the entity is designated as a "homeowners' association," "community association," or similar designation in the restrictions or dedicatory instrument.

(d) This chapter does not apply to a condominium as defined ~~[development governed]~~ by Section 81.002 or 82.003 ~~[Chapter 82]~~.

(e) The following provisions of this chapter do not apply to a property owners' association that is a mixed-use master association that existed before January 1, 1974, and that does not have the authority under a dedicatory instrument or other governing document to impose fines:

- (1) Section 209.005(c);
- (2) Section 209.0056;
- (3) Section 209.0057;
- (4) Section 209.0058;
- (5) Section 209.00592; and
- (6) Section 209.0062.

ALERT! DO NOT USE FOR LEGAL PURPOSES. This is not an official or authenticated publication of the selected sections of Chapter 209 of the Texas Property Code. Refer to West Publishing and the Session Laws for statutory authority. Forewarned.

Sec. 209.0041. ADOPTION OR AMENDMENT OF CERTAIN DEDICATORY INSTRUMENTS. (a) **REPEALED**
~~[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 Subsection (h-1) or (h-2) ~~[this subsection]~~, a declaration may be amended only by a vote of 67 percent of the total votes allocated to property owners entitled to vote on the amendment of the declaration ~~[in the property owners' association]~~, in addition to any governmental approval required by law.

(h-1) If the declaration contains a lower percentage than prescribed by Subsection (h), the percentage in the declaration controls.

(h-2) If the declaration is silent as to voting rights for an amendment, the declaration may be amended by a vote of owners owning 67 percent of the lots subject to the declaration.

(i) A bylaw may not be amended to conflict with the declaration.

Sec. 209.0042. METHODS OF PROVIDING NOTICES TO OWNERS. (a) Subject to this section, a property owners' association may adopt a method that may be used by the association to provide a notice from the association to a property owner.

(b) A property owners' association may use an alternative method of providing notice adopted under this section to provide a notice for which another method is prescribed by law only if the property owner to whom the notice is provided has affirmatively opted to allow the association to use the alternative method of providing notice to provide to the owner notices for which another method is prescribed by law.

(c) A property owners' association may not require an owner to allow the association to use an alternative method of providing notice adopted under this section to provide to the owner any notice for which another method of providing notice is prescribed by law.

ALERT! DO NOT USE FOR LEGAL PURPOSES. This is not an official or authenticated publication of the selected sections of Chapter 209 of the Texas Property Code. Refer to West Publishing and the Session Laws for statutory authority. Forewarned.

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, "board [÷]"

~~[(1) "Board]~~ meeting":

(1) [(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

(2) [(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 (c-2) [(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.

(c-2) A board meeting may be held by electronic or telephonic means provided that:

(1) each board member may hear and be heard by every other board member;

(2) except for any portion of the meeting conducted in executive session:

(A) all owners in attendance at the meeting may hear all board members; and

(B) owners are allowed to listen using any electronic or telephonic communication method used or expected to be used by a board member to participate; and

(3) the notice of the meeting includes instructions for owners to access any communication method required to be accessible under Subdivision (2)(B).

(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.

ALERT! DO NOT USE FOR LEGAL PURPOSES. This is not an official or authenticated publication of the selected sections of Chapter 209 of the Texas Property Code. Refer to West Publishing and the Session Laws for statutory authority. Forewarned.

(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) ~~Except as provided by this subsection, a~~ [A] board may ~~take action outside of a meeting~~ [meet by any method of communication], including ~~voting by~~ electronic or [and] telephonic ~~means~~, without prior notice to owners under Subsection (e), if ~~each board member is given a reasonable opportunity to express the board member's opinion to all other board members and to vote~~ [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, ~~unless done in an open meeting for which~~ [without] prior notice ~~was given~~ 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; [ø]

ALERT! DO NOT USE FOR LEGAL PURPOSES. This is not an official or authenticated publication of the selected sections of Chapter 209 of the Texas Property Code. Refer to West Publishing and the Session Laws for statutory authority. Forewarned.

(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;

(9) lending or borrowing money;

(10) the adoption of amendment of a dedicatory instrument;

(11) the approval of an annual budget or the approval of an amendment of an annual budget that increases the budget by more than 10 percent;

(12) the sale or purchase of real property;

(13) the filling of a vacancy on the board;

(14) the construction of capital improvements other than the repair, replacement, or enhancement of existing capital improvements; or

(15) the election of an officer.

(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. ¹ (a) For an election or vote taken at a meeting of the owners, not [Not] later than the 10th day or earlier than the 60th day before the date of the [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.

(a-1) For an election or vote of owners not taken at a meeting, the property owners' association shall give notice of the election or vote to all owners entitled to vote on any matter under consideration. The notice shall be given not later than the 20th day before the latest date on which a ballot may be submitted to be counted.

(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.

ALERT! DO NOT USE FOR LEGAL PURPOSES. This is not an official or authenticated publication of the selected sections of Chapter 209 of the Texas Property Code. Refer to West Publishing and the Session Laws for statutory authority. Forewarned.

Sec. 209.0057. RECOUNT OF VOTES. ² (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 later of the date of any ~~[the]~~ meeting of owners at which the election or vote was held or the date of the announcement of the results of the election or vote, require a recount of the votes. A demand for a recount must be submitted in writing either:

(1) by verified ~~[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.

(b-1) The property owners' association must estimate the costs for performance of the recount by a person qualified to tabulate votes under Subsection (c) and must send an invoice for the estimated costs to the requesting owner at the owner's last known address according to association records not later than the 20th day after the date the association receives the owner's demand for the recount.

(b-2) The owner demanding a recount under this section must pay the invoice described by Subsection (b-1) in full to the property owners' association on or before the 30th day after the date the invoice is sent to the owner.

(b-3) If the invoice described by Subsection (b-1) is not paid by the deadline prescribed by Subsection (b-2), the owner's demand for a recount is considered withdrawn and a recount is not required.

(b-4) If the estimated costs under Subsection (b-1) are lesser or greater than the actual costs, the property owners' association must send a final invoice to the owner on or before the 30th business day after the date the results of the recount are provided. If the final invoice includes additional amounts owed by the owner, any additional amounts not paid 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 exceed the final invoice amount, the owner is entitled to a refund. The refund shall be paid to the owner at the time the final invoice is sent under this subsection.

(c) Following receipt of payment under Subsection (b-2), the ~~[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 each person ~~[the persons]~~ requesting the recount.

(d) ~~On~~ ~~[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 Subsection (b-2), the recount must be completed and the property owners' association must provide each owner who requested the recount with notice of the results of the recount ~~[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 not later than the 30th day after the date the results of the recount are provided.

ALERT! DO NOT USE FOR LEGAL PURPOSES. This is not an official or authenticated publication of the selected sections of Chapter 209 of the Texas Property Code. Refer to West Publishing and the Session Laws for statutory authority. Forewarned.

~~[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. ³

*** TWO VERSIONS OF AMENDED SUBSECTION (a) OF 209.0058 ***
The first one is from SB 864, the second one is from SB 1168

Senate Bill 864 version of (a) – effective 5/29/15

(a) Except as provided by Subsection (d), any ~~[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.

Senate Bill 1168 version of (a) – effective 9/1/15

(a) Except as provided by Subsection (d), 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 if the vote is cast:

(1) outside of a meeting;

(2) in an election to fill a position on the board;

(3) on a proposed adoption or amendment of a dedicatory instrument;

(4) on a proposed increase in the amount of a regular assessment or the proposed adoption of a special assessment; or

(5) on the proposed removal of a board member.

(a-1) If a property owners' association elects to use a ballot for a vote on a matter other than a matter described by Subsection (a), the ballot must be:

(1) in writing and signed by the member; or

(2) cast by secret ballot in accordance with Subsection (d).

(b) Electronic votes cast under Section 209.00592 constitute written and signed ballots.

(c) In a property owners' association ~~[an association-wide]~~ election, written and signed ballots are not required for uncontested races.

*** TWO VERSIONS OF NEW SUBSECTION (d) OF 209.0058 ***
The first one is from SB 864, the second one is from SB 1168

Senate Bill 864 version of (d) – effective 5/29/15

(d) A property owners' association may adopt rules to allow voting by secret ballot by members of the association. The association must take measures to reasonably ensure that:

(1) a member cannot cast more votes than the member is eligible to cast in an election or vote; and

(2) the association counts every vote cast by a member that is eligible to cast a vote.

ALERT! DO NOT USE FOR LEGAL PURPOSES. This is not an official or authenticated publication of the selected sections of Chapter 209 of the Texas Property Code. Refer to West Publishing and the Session Laws for statutory authority. Forewarned.

Senate Bill 1168 version of (d) – effective 9/1/15

(d) A property owners' association may adopt rules to allow voting by secret ballot by association members. The association must take measures to reasonably ensure that:

(1) a member cannot cast more votes than the member is eligible to cast in an election or vote;

(2) the association counts every vote cast by a member that the member is eligible to cast; and

(3) in any election for the board, each candidate may name one person to observe the counting of the ballots, provided that this does not entitle any observer to see the name of the person who cast any ballot, and that any disruptive observer may be removed.

Sec. 209.0059. RIGHT TO VOTE. (a) A provision in a dedicatory instrument that would disqualify a property owner from voting in a property owners' association election of board members or on any matter concerning the rights or responsibilities of the owner is void.

(b) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

(c) In a residential development with 10 or fewer lots for which the declaration was recorded before January 1, 2015, a person may not vote in a property owners' association election unless the person is subject to a dedicatory instrument governing the association through which the association exercises its authority.

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.

(a-1) Notwithstanding any other provision of this chapter, a property owners' association's bylaws may require one or more board members to reside in the subdivision subject to the dedicatory instruments but may not require all board members to reside in that subdivision. A requirement described by this subsection is not applicable during the development period.

House Bill 1072 amending (b) only

(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 ~~was~~ has been convicted of a felony or crime involving moral turpitude not more than 20 years before the date the board is presented with the evidence, 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 or a builder in the business of constructing homes who purchased the lots from the declarant for the purpose of selling completed homes built on the lots, 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.

ALERT! DO NOT USE FOR LEGAL PURPOSES. This is not an official or authenticated publication of the selected sections of Chapter 209 of the Texas Property Code. Refer to West Publishing and the Session Laws for statutory authority. Forewarned.

Sec. 209.00592. VOTING; QUORUM. ⁴ (a) Subject to Subsection (a-1), the [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.

*** TWO VERSIONS OF NEW SUBSECTION (a-1) OF 209.00592 ***
The first one is from SB 862, the second one is from SB 1168

Senate Bill 862 version of (a-1) - effective 9/1/15:

(a-1) Unless a dedicatory instrument provides otherwise, a property owners' association is not required to provide an owner with more than one voting method so long as an owner may vote by absentee ballot or proxy.

Senate Bill 1168 version of (a-1) - effective 9/1/15:

(a-1) Except as provided by this subsection, unless a dedicatory instrument provides otherwise, a property owners' association is not required to provide an owner with more than one voting method. An owner must be allowed to vote by absentee ballot or proxy.

(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.

(b-1) For purposes of Subsection (b), a nomination taken from the floor in a board member election is not considered an amendment to the proposal for the election.

(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:

ALERT! DO NOT USE FOR LEGAL PURPOSES. This is not an official or authenticated publication of the selected sections of Chapter 209 of the Texas Property Code. Refer to West Publishing and the Session Laws for statutory authority. Forewarned.

- (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. ⁵ (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 to fill a vacancy on the board. A board member appointed to fill a vacant position shall serve for the remainder of the unexpired term of the position.

(a-1) At least 10 days before the date a property owners' association composed of more than 100 lots disseminates absentee ballots or other ballots to association members for purposes of voting in a board member election, the association must provide notice to the association members soliciting candidates interested in running for a position on the board. The notice must contain instructions for an eligible candidate to notify the association of the candidate's request to be placed on the ballot and the deadline to submit the candidate's request. The deadline may not be earlier than the 10th day after the date the association provides the notice required by this subsection.

(a-2) The notice required by Subsection (a-1) must be:

(1) mailed to each owner; or

(2) provided by:

(A) posting the notice in a conspicuous manner reasonably designed to provide notice to 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.

(a-3) An association described by Subsection (a-1) shall include on each absentee ballot or other ballot for a board member election the name of each eligible candidate from whom the association received a request to be placed on the ballot in accordance with this section.

(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).

ALERT! DO NOT USE FOR LEGAL PURPOSES. This is not an official or authenticated publication of the selected sections of Chapter 209 of the Texas Property Code. Refer to West Publishing and the Session Laws for statutory authority. Forewarned.

(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 the individual voted].~~

(b-1) A person who tabulates votes under Subsection (b) or who performs a recount under Section 209.0057(c) may not disclose to any other person how an individual voted.

(c) Notwithstanding any other provision of this chapter or any other law, only a person ~~[other than a person]~~ who tabulates votes under Subsection (b) or who performs a recount under Section 209.0057(c) ~~[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].~~⁶

(d) This section may not be construed to affect a person's obligation to comply with a court order for the release of ballots or other voting records.

Sec. 209.006. NOTICE REQUIRED BEFORE ENFORCEMENT ACTION.⁷ (a) Before a property owners' association may suspend an owner's right to use a common area, file a suit against an owner other than a suit to collect a regular or special assessment or foreclose under an association's lien, charge an owner for property damage, or levy a fine for a violation of the restrictions or bylaws or rules of the association, the association or its agent must give written notice to the owner by certified mail ~~[return receipt requested].~~

(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) except as provided by Subsection (d), inform the owner that the owner:

(A) is entitled to a reasonable period to cure the violation and avoid the fine or suspension if the violation is of a curable nature and does not pose a threat to public health or safety ~~[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 was mailed to the owner; 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. [app.] Section 501 et seq.), if the owner is serving on active military duty.

ALERT! DO NOT USE FOR LEGAL PURPOSES. This is not an official or authenticated publication of the selected sections of Chapter 209 of the Texas Property Code. Refer to West Publishing and the Session Laws for statutory authority. Forewarned.

(3) specify the date by which the owner must cure the violation if the violation is of a curable nature and does not pose a threat to public health or safety; and

(4) be sent by verified mail to the owner at the owner's last known address as shown on the association records.

(c) The date specified in the notice under Subsection (b)(3) must provide a reasonable period to cure the violation if the violation is of a curable nature and does not pose a threat to public health safety.

(d) Subsections (a) and (b) do not apply to a violation for which the owner has been previously given notice under this section and the opportunity to exercise any rights available under this section in the preceding six months.

(e) If the owner cures the violation before the expiration of the period for cure described by Subsection (c), a fine may not be assessed for the violation.

(f) For purposes of this section, a violation is considered a threat to public health or safety if the violation could materially affect the physical health or safety of an ordinary resident.

(g) For purposes of this section, a violation is considered incurable if the violation has occurred but is not a continuous action or a condition capable of being remedied by affirmative action. For purposes of this subsection, the nonrepetition of a one-time violation or other violation that is not ongoing is not considered an adequate remedy.

(h) The following are examples of acts considered incurable for purposes of this section:

(1) shooting fireworks;

(2) an act constituting a threat to health or safety;

(3) a noise violation that is not ongoing;

(4) property damage, including the removal or alteration of landscape; and

(5) holding a garage sale or other event prohibited by a dedicatory instrument.

(i) The following are examples of acts considered curable for purposes of this section:

(1) a parking violation;

(2) a maintenance violation;

(3) the failure to construct improvements or modifications in accordance with approved plans and specifications; and

(4) an ongoing noise violation such as a barking dog.

Sec. 209.0062. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN ASSESSMENTS. (a) 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.

(b) The minimum term for a payment plan offered by a property owners' association is three months.

ALERT! DO NOT USE FOR LEGAL PURPOSES. This is not an official or authenticated publication of the selected sections of Chapter 209 of the Texas Property Code. Refer to West Publishing and the Session Laws for statutory authority. Forewarned.

(c) A property owners' association ~~is~~ ~~may~~ not required to 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. The association is not required to make a payment plan available to an owner after the period for cure described by Section 209.0064(b)(3) expires. The association is not required to allow an owner to enter into a payment plan more than once in any 12-month period.

(d) A property owners' association shall file the association's guidelines under this section in the real property records of each county in which the subdivision is located.

(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 (a).

Sec. 209.0064. THIRD PARTY COLLECTIONS. ⁸ (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 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) if the association is subject to Section 209.0062 or the association's dedicatory instruments contain a requirement to offer a payment plan, 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. 209.009. FORECLOSURE SALE PROHIBITED IN CERTAIN CIRCUMSTANCES. A property owners' association may not foreclose a property owners' association's assessment lien if the debt securing the lien consists solely of:

(1) fines assessed by the association;

(2) attorney's fees incurred by the association solely associated with fines assessed by the association; or

(3) amounts added to the owner's account as an assessment under Section 209.005(i) or 209.0057(b-4).

ALERT! DO NOT USE FOR LEGAL PURPOSES. This is not an official or authenticated publication of the selected sections of Chapter 209 of the Texas Property Code. Refer to West Publishing and the Session Laws for statutory authority. Forewarned.

Sec. 209.0091. PREREQUISITES TO FORECLOSURE: NOTICE AND OPPORTUNITY TO CURE FOR CERTAIN OTHER LIENHOLDERS. ⁹ (a) A property owners' association may not file an application for an expedited court order authorizing foreclosure of the association's assessment lien as described by Section 209.0092(a) or a petition for judicial foreclosure of the association's assessment lien as described by Section 209.0092(d) [~~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 association mails [~~recipient receives~~] the notice described in Subdivision (1).

(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.

(c) Notwithstanding any other law, notice under this section may be provided to any holder of a lien of record on the property.

Sec. 209.0092. JUDICIAL FORECLOSURE REQUIRED. (a) Except as provided by Subsection (c) or (d) 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. A property owners' association whose dedicatory instruments grant a right of foreclosure is considered to have any power of sale required by law as a condition of using the procedure described by this subsection.

(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.

(d) A property owners' association authorized to use the procedure described by Subsection (a) may in its discretion elect not to use that procedure and instead foreclose the association's assessment lien under court judgment foreclosing the lien and ordering the sale, pursuant to Rules 309 and 646a, Texas Rules of Civil Procedure.

(e) This section does not affect any right an association that is not authorized to use the procedure described by Subsection (a) may have to judicially foreclose the association's assessment lien as described by Subsection (d).

ALERT! DO NOT USE FOR LEGAL PURPOSES. This is not an official or authenticated publication of the selected sections of Chapter 209 of the Texas Property Code. Refer to West Publishing and the Session Laws for statutory authority. Forewarned.

House Bill 2489 by Leach, effective 6/19/15, enacts NEW 209.016

Sec. 209.016. REGULATION OF RESIDENTIAL LEASES OR RENTAL AGREEMENTS. (a) In this section, "sensitive personal information" means an individual's:

- (1) social security number;
- (2) driver's license number;
- (3) government-issued identification number; or
- (4) account, credit card, or debit card number.

(b) A property owners' association may not adopt or enforce a provision in a dedicatory instrument that:

(1) requires a lease or rental applicant or a tenant to be submitted to and approved for tenancy by the property owners' association; or

(2) requires the following information to be submitted to a property owners' association regarding a lease or rental applicant or current tenant:

(A) a consumer or credit report; or

(B) a lease or rental application submitted by the applicant, tenant, or that person's agent to the property owner or property owner's agent when applying for tenancy.

(c) If a copy of the lease or rental agreement is required by the property owners' association, any sensitive personal information may be redacted or otherwise made unreadable or indecipherable.

(d) Except as provided by Subsection (b), nothing in this section shall be construed to prohibit the adoption or enforcement of a provision in a dedicatory instrument establishing a restriction relating to occupancy or leasing.

APPLICABILITY ENDNOTES

¹ Changes to 209.0056 only apply to an election or vote held after 9/1/15.

² Changes to 209.0057 only apply to an election or vote held after 9/1/15.

³ Changes to 209.0058 in Senate Bill 1168 only apply to an election or vote held after 9/1/15. Senate Bill 862 is effective on 9/1/15 and does not specific language regarding applicably to elections or votes held after 9/1/2015

⁴ Changes to 209.00592 in Senate Bill 1168 only apply to an election or vote held after 9/1/15. Senate Bill 862 is effective on 9/1/15 and does not specific language regarding applicably to elections or votes held after 9/1/15.

⁵ Changes to 209.00593 only apply to an election or vote held after 9/1/15.

⁶ Changes to 209.00594(c) only apply to an election or vote held after 9/1/15.

⁷ Changes to 209.006 only apply to an enforcement action take on or after 9/1/15.

⁸ Changes to 209.0064 only apply to an enforcement action take on or after 9/1/15.

⁹ Changes to 209.0091 only apply to an application or petition filed on or after 9/1/15.

CHAPTER E

BRACKET BILLS

**HOW TO FIGURE OUT WHETHER A STATEWIDE LAW
THAT IS "BRACKETED" TO A PARTICULAR LOCATION
APPLIES TO YOUR LOCATION**

HOW TO "LOCATE" BRACKETED LAWS

This article is not a treatise on statutory bracketing. Instead, it's a practical guide on how to figure out whether a bracketed statute applies to your piece of real estate. A lengthy discussion of bracketing is found in the memorandum of January 26, 2015, starting on Page 227 of the Texas Legislative Council Drafting Manual (January 2015), regarding Local and Special Bills and Laws, Notice for Local and Special Bills, and Bracket Bills.

EXAMPLES OF BRACKETING

A number of State laws for property owners associations do not apply statewide. They govern only specific locations. Unfortunately for us, the locations are not named. Instead, they are described in ways that can be baffling. This is best explained by example.

EXAMPLE ONE. In Property Code Chapter 82, the Texas Uniform Condominium Act - a State law - Sec. 82.118 applies only to a *"unit owner of a condominium located wholly or partly in a municipality with a population of more than 1.9 million."* That's an easy one - Houston.

EXAMPLE TWO. Chapter 204 of the Property Code - a State law - applies only to a subdivision located entirely or partly in one of three places:

- (1) in a county with a population of at least 3.3 million. [Harris]
- (2) in a county with a population between 285,000 and 300,000, adjacent to the Gulf of Mexico, and adjacent to a county with a population of at least 3.3 million. [Brazoria & Galveston]
- (3) in a county with a population of 275,000 or more that is adjacent to a county with a population of 3.3 million or more, and contains part of a national forest. [Montgomery]

EXAMPLE THREE. Chapter 211 of the Property Code applies to a subdivision in a county with a population of at least 65,000 and less than 135,000, and located wholly within the extraterritorial jurisdiction of a municipality. [23 Texas counties fit the population bracket. The ETJ of a municipality is not as easily determined.]

BRACKETING TOOLS

1. Texas Almanac or the equivalent resource about state features - lakes, forests, coasts, rivers, etcetera.
2. Texas County Map. The Texas Association of Counties maintains a website with useful county information, including maps. <https://www.county.org/texas-county-government/resources/Pages/Maps.aspx>
3. Population Counts. For this you need data based on **the most recent United States decennial census**. Do not use current estimates or projections. Limit yourself to official US Census data. In 2015, the most recent census is 2010. Thanks to Al Gore, the data can be obtained from multiple resources. My "go to" is the website of the Texas State Archives and Library Commission, which has alphabetic and numerical lists of 2010 census counts for Texas cities and counties. Enter "population" in the website's search field.

- Texas counties by population, from most populated to least populated.
<https://www.tsl.texas.gov/ref/abouttx/popcnty32010.html>
- Texas counties by name, alphabetically
<https://www.tsl.texas.gov/ref/abouttx/popcnty12010.html>
- Texas cities by population, from most populated to least populated
<https://www.tsl.texas.gov/ref/abouttx/popcity32010.html>
- Texas cities by name, alphabetically (starting with the city of Abbott, population 356)
<https://www.tsl.texas.gov/ref/abouttx/popcity12010.html>

FIGURING OUT LOCATION BRACKETS - HOMEWORK EXAMPLES									
EXAMPLE 1	EXAMPLE 2								
<p>Enacted in 2015, Senate Bill 1852 (84R) amends Property Code Section 211.002(a) to extend Chapter 211 to the bracket identified in Subsection (4).</p> <p>SECTION 1. Sections 211.002(a), (b), and (b-1), Property Code, are amended to read as follows:</p> <p>(a) This chapter applies only to a residential real estate subdivision or any unit or parcel of a subdivision:</p> <p>(1) all or part of which is located within an unincorporated area of a county if the county has a population of less than 65,000;</p> <p>(2) all of which is located within the extraterritorial jurisdiction of a municipality located in a county that has a population of at least 65,000 and less than 135,000; or</p> <p>(3) all of which is located within the extraterritorial jurisdiction of a municipality located in a county that borders Lake Buchanan and has a population of at least 18,500 and less than 19,500; <u>or</u></p> <p><u>(4) all or part of which is located within a county that borders Lake Livingston and has a population of less than 50,000.</u></p>	<p>Enacted in 2015, House Bill 3089 (84R) - high rise sprinklers - adds Subchapter B to Chapter 766 Health & Safety Code.</p> <p>Sec. 766.052. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a residential high-rise building:</p> <p>(1) <u>that is located in a county with a population of more than 1.5 million in which more than 75 percent of the population resides in a single municipality;</u></p> <p>(2) in which at least 50 percent of the residents are elderly individuals, individuals with a disability, or individuals with a mobility impairment; and</p> <p>(3) that is not designated as a historically or archaeologically significant site by the Texas Historical Commission or the governing body of the county or municipality in which the building is located.</p>								
<p>STEP 1. Identify the counties bordering Lake Livingston. Findings: 4 counties</p> <p>Polk County San Jacinto County Trinity County Walker County</p>	<p>STEP 1. Identify Texas Counties with 2010 populations of more than 1.5 million. Findings: 4 counties</p> <table> <tr> <td>Harris County</td> <td>4,092,459</td> </tr> <tr> <td>Dallas County</td> <td>2,368,139</td> </tr> <tr> <td>Tarrant County</td> <td>1,809,034</td> </tr> <tr> <td>Bexar County</td> <td>1,714,773</td> </tr> </table>	Harris County	4,092,459	Dallas County	2,368,139	Tarrant County	1,809,034	Bexar County	1,714,773
Harris County	4,092,459								
Dallas County	2,368,139								
Tarrant County	1,809,034								
Bexar County	1,714,773								
<p>STEP 2. Identify the 2010 US Census population of each county bordering Lake Livingston. Findings:</p> <table> <tr> <td>Polk County</td> <td>45,413</td> </tr> <tr> <td>San Jacinto County</td> <td>26,384</td> </tr> <tr> <td>Trinity County</td> <td>14,585</td> </tr> <tr> <td>Walker County</td> <td>67,861</td> </tr> </table>	Polk County	45,413	San Jacinto County	26,384	Trinity County	14,585	Walker County	67,861	<p>STEP 2. Identify the largest city in each county. Findings:</p> <p>Houston is the largest city in Harris County Dallas is the largest city in Dallas County Ft. Worth is the largest city in Tarrant County San Antonio is the largest city in Bexar County</p>
Polk County	45,413								
San Jacinto County	26,384								
Trinity County	14,585								
Walker County	67,861								
<p>STEP 3. Apply the findings to the statute. Findings:</p> <p>3 of the 4 counties bordering Lake Livingston have populations of less than 50,000:</p> <p>Polk County San Jacinto County Trinity County</p>	<p>STEP 3. Identify the 2010 US Census population of each largest city. Findings:</p> <table> <tr> <td>Dallas</td> <td>1,197,816</td> </tr> <tr> <td>Fort Worth</td> <td>741,206</td> </tr> <tr> <td>Houston</td> <td>2,099,451</td> </tr> <tr> <td>San Antonio</td> <td>1,327,407</td> </tr> </table>	Dallas	1,197,816	Fort Worth	741,206	Houston	2,099,451	San Antonio	1,327,407
Dallas	1,197,816								
Fort Worth	741,206								
Houston	2,099,451								
San Antonio	1,327,407								
<p>STEP 4. Make a determination. Chapter 211 of the Property Code applies to Polk, San Jacinto, and Trinity Counties, and does not apply to Walker County.</p>	<p>STEP 4. Calculate each city's percentage of the county's population.</p> <p>Dallas is 50.6% of Dallas County Fort Worth is 41% of Tarrant County Houston is 52.1% of Harris County San Antonio is 77.4% of Bexar County (BINGO!)</p>								
	<p>STEP 5. Make a determination. Section 766.052(1) applies to Bexar County, only.</p>								

CHAPTER F

"SUNDRY BILLS"

**OVERVIEW OF SOME NEW LAWS
THAT ARE NOT POA-SPECIFIC
BUT WHICH MAY INTEREST SOME POAs**

SELECT "SUNDRY BILLS" THAT BECAME TEXAS LAW IN 2015

~ MAY INTEREST SOME COMMON INTEREST OWNERSHIP COMMUNITIES
(aka POAs, HOAs, Condos, Townhomes, Subdivisions) ~

LIST OF SELECT SUNDRY BILLS IN NUMERICAL ORDER OF BILL NUMBER

Bill No.	Author	Effective Date	Subject Category
HB 1221	Lucio III	1/6/16	Sales - Disclosures
HB 1334	Clardy	1/1/16	Landlord - Eviction
HB 1665	Bonnen	9/1/15	Sales - Disclosures
HB 2063	Oliveira	9/1/15	Foreclosure - Nonjudicial - Trustees
HB 2066	Oliveira	9/1/15	Foreclosure - Nonjudicial - Rescission
HB 2207	Keffer	1/1/16	Foreclosure - Oil & Gas Leases
HB 2261	Villalba	9/1/15	Timeshares - Transfers
HB 2404	Anderson	1/1/16	Landlord - Locks
HB 2428	Wray	9/1/15	Ownership
HB 2486	Keffer	9/1/15	Occupancy - Personal Property
HB 3002	Martinez	9/1/15	Lien - Street Lights
HB 3160	Alonzo	9/1/15	Ownership
HB 3364	Schofield	1/1/16	Landlord - Eviction
SJR 17	Perry	State ballot	Roads - Private
SB 462	Huffman	9/1/15	Ownership
SB 860	Oliveira	9/1/15	Corporations - Merger & Termination
SB 1233	Taylor	5/23/15	Corporations - Distributions
SB 1313	Watson	6/19/15	Corporations - Names
SB 1367	West	1/1/16	Landlord - Duties

All these final bills ("Enrolled") may be downloaded from the Texas Legislature's website as Word files, HTML files, or PDF files. Please visit Texas Legislature Online at <http://www.capitol.state.tx.us/>

PAGE 1 OF 3

■ SB = Senate Bill ■ HB = House Bill ■ TPC = Texas Property Code

SELECT "SUNDRY BILLS" THAT BECAME TEXAS LAW IN 2015

~ MAY INTEREST SOME COMMON INTEREST OWNERSHIP COMMUNITIES
(aka POAs, HOAs, Condos, Townhomes, Subdivisions) ~

SELECT SUNDRY BILLS BY SUBJECT CATEGORY (IN ALPHA ORDER OF SUBJECT)

BILL NO. AUTHOR	SUBJECT CATEGORY OF "SUNDRY BILLS" THAT MAY INTEREST SOME POAs In alpha order of subject. Bill number cross-reference on Page 1.	Statute/ Code Affected
SB 1233 Taylor	CORPORATIONS - DISTRIBUTIONS. Bill applies to nonprofit corporations whose members are nonprofit corporations, such as a Master POA comprised of all Sub-POAs entities in the development. Allows distribution of income to entity members. Effective 5/23/15.	Bus Organs Code - Chapter 22
SB 860 Eltife	CORPORATIONS - MERGER & TERMINATION. This 43-page bill has many changes to the Business Organizations Code - some applicable to all corporations, and some apply only to business corporations or nonprofits. Although it doesn't happen often, sometimes incorporated HOAs do merge or are terminated. SCS passed S & H without further changes. Effective 9/1/15.	Bus Organs Code
SB 1313 Watson	CORPORATIONS - NAMES. DEVELOPERS often use the project name for the name of the development company, and then write a letter to the Secretary of State authorizing the HOA to use a similar name. This bill requires the letter to be notarized. Effective 6/19/15.	Bus Organs Code - amends Secs 5.053(b) & 5.102(b)
HB 2066 Oliveira	FORECLOSURE - NONJUDICIAL: RESCISSION. Creates procedures for rescinding (undoing) a nonjudicial foreclosure sale. Effective 9/1/15.	TPC Ch 51 - adds Sec 51.015
HB 2063 Oliveira	FORECLOSURE - NONJUDICIAL: TRUSTEE. Does two things. (1) Adds new requirements for recording a trustee's deed. (2) Provides a way to establish effective date of appointment of trustee or substitute trustee. Effective 9/1/15.	TPC adds 12.0012 & 51.0076
HB 2207 Keffer	FORECLOSURE - OIL & GAS LEASES. Protects severed oil and gas leases when a lien on the surface estate is foreclosed. Effective 1/1/16.	TPC adds Chapter 66
SB 1367 West	LANDLORD - DUTIES. Mixed bag of law changes re: certain landlord liability, security deposits, notifying tenant about damages, alternate methods for delivering notice, tenant's right to jury trial, security door latches. Effective 1/1/16.	TPC Chapters 24 & 92
HB 1334 Clardy	LANDLORD - EVICTION. A pro-landlord bill that adds bond requirements for the tenant who want to appeal an eviction ruling. HOAs and other purchasers at assessment lien foreclosure sales sometimes evict the resident owner or tenant. Effective 1/1/16.	TPC Chapter 24
HB 3364 Schofield	LANDLORD - EVICTION. Appeal from a final judgment of eviction in county court is available for residential tenancies, only. May be pertinent to mixed-use POAs that foreclose on non-residential units. Effective 1/1/16.	TPC Chapter 24
HB 2404 Anderson	LANDLORD - Locks. Landlord may charge the cost of re-keying to the tenant who broke the lease, if the deduction is boldly disclosed in the lease. Effective 1/1/16.	TPC Chapter 92
HB 3002 Martinez	LIEN - STREET LIGHTS. Authorizes county to foreclose lien against homes in a subdivision to pay for street lights on county road located in a subdivision. County's lien is inferior to a prior-recorded mortgage lien and cannot be foreclosed if it's the only lien attached to the property. [uses "mortgage lien" instead of "deed of trust lien".] Effective 9/1/15.	Transportation Code, amends 280.003

PAGE 2 OF 3

■ SB = Senate Bill ■ HB = House Bill ■ TPC = Texas Property Code

BILL NO. AUTHOR	SUBJECT CATEGORY OF "SUNDRY BILLS" THAT MAY INTEREST SOME POAs In alpha order of subject. Bill number cross-reference on Page 1.	Statute/ Code Affected
HB 2486 Keffer	OCCUPANCY - PERSONAL PROPERTY. Creates a process by which a resident (or former resident) can get a court order and police escort to return to a residence to retrieve certain items of personal property. Bill grants immunity to the landlord (or HOA) that allows entry onto the property for this purpose. Effective 9/1/15.	TPC adds Chapter 24A
SB 462 Huffman	OWNERSHIP. Adds the "Texas Real Property Transfer on Death Act" to the Estates Code. Allows owner to record a "transfer on death deed" designating the beneficiaries for his real property. Effective 9/1/15.	Estates Code, adds Chapter 114
HB 2428 Wray	OWNERSHIP. Texas Uniform Disclaimer of Property Interests Act. Could this be used by an HOA to disclaim ownership of common areas? Effective 9/1/15.	TPC adds Chapter 240
HB 3160 Alonzo	OWNERSHIP. When an owner dies and no one opens a probate, creditors must wait 4 years before they can open an administration of the dead person's estate. This bill eliminates the 4 year wait if necessary to prevent real property from becoming a danger to the health, safety, or welfare of the general public. Could be helpful to HOAs in certain circumstances. Effective 9/1/15.	Estates Code, amends 301.002, 301.151 & 306.002
SJR 17 Perry	ROADS - PRIVATE. Proposes to amend Texas Constitution to increase the number of rural counties that are permitted to use county crews and equipment to build or maintain private roads, and to charge for it, by increasing the maximum county size from 5,000 to 7,500. Per the 2010 census, 51 counties have 5,000 or fewer people. Another 20 counties are between 5,000 and 7,500. Filed with Secretary of State on 5/26/15. Goes on a statewide ballot in Nov '15.	TX Const. amends Article III, Sec. 52f
HB 1665 Bonnen	SALES - DISCLOSURES. Creates a new mandatory disclosure for the sale of real property - residential or commercial - "Notice of Water Level Fluctuations" - for property "adjoining" a water impoundment (aka reservoir) with a "normal" capacity of at least 5,000 acre feet. States the obvious - water levels fluctuate for various reasons. Buyer get 7 days to back-out if notice given after signing contract. Effective 9/1/15.	TPC adds 5.019
HB 1221 Lucio III	SALES - DISCLOSURES. Adds a new mandatory disclosure for the resale of residential property - location in a groundwater conservation district. Doesn't apply to new home sales. Effective 1/6/16.	TPC amends 5.008(b)
HB 2261 Villalba	TIMESHARES - TRANSFERS. Deals with the transfer or termination of timeshare interests. Effective 9/1/15.	TPC Chapter 221

CHAPTER G

GRAB BAG OF RESOURCES

**POAS, HOAS, CONDOS, SUBDIVISIONS, TOWNHOMES
~ WHAT'S THE DIFFERENCE? ~ A LESSON IN JARGON**

INSTRUCTIONS FOR OBTAINING A TEXAS BILL ONLINE

CRIMES THAT DISQUALIFY AN HOA DIRECTOR

ANTI-HOA WEBSITES

POAS, HOAS, CONDOS, SUBDIVISIONS, TOWNHOMES WHAT'S THE DIFFERENCE?

~ A LESSON IN JARGON ~



This article purposefully uses "subdivision" to describe a common interest development that is not condominium in ownership. In other words, our article divides the universe of POAs into condominium associations and subdivision associations.

TERMS THAT ARE DEFINED BY TEXAS STATUTE

POA is the acronym for **Property Owners Association**, a term that is defined (somewhat differently) in several chapters of the Texas Property Code. POA generally refers to a mandatory membership association that governs a real estate development that is subject to restrictions and an obligation for assessments. It is properly used for the associations that govern condominiums, subdivisions, and "townhome regimes." Because most of the Property Code Chapters that define the term limit the Chapter's applicability to residential contexts, "HOA" and "POA" are often used interchangeably. Each Chapter's definition of "Property Owners Association" is slightly different from the others. For example, the definition in Chapter 202 expressly includes condominium associations, whereas the definition in Chapter 209 does not.

Condominium is a form of real property ownership, not a type of building. As defined by Chapters 81 & 82 of the Texas Property Code, it combines individual (fee simple) ownership of a unit with collective (tenancy in common) ownership of common elements. The condominium form of ownership may be used for any type of real property - residential, commercial, industrial, recreational. Also, it may be used for any type of building - detached or free-standing units (such as single-family homes), vertically attached units (such as townhomes and duplexes), horizontally attached units (such a high-rises and garden apartments). Further, it may be applied to ownership of spaces that are not defined by buildings, such as platted lots, boat slips, and parking spaces. Because it's an incredibly flexible form of ownership, many properties that do not "look like" condominiums are nevertheless condominium in ownership. Property Code Chapter 81, the Texas Condominium Act, applies to condominiums created before 1994. Property Code Chapter 82, the Texas Uniform Condominium Act (TUCA), applies to condominiums created after January 1, 1994. Certain significant sections of TUCA also apply to pre-TUCA condos (created before 1994). "Condominium" also refers to the entire project or development that contains condominium units.

Subdivision has a common meaning and a statutory definition for use with the POA Laws. The common meaning is the division of land into smaller parcels using ordinary and legally recognized methods for surveying and platting land and publicly recording the results (Black's 7th Ed.). The statutory definitions of "subdivision" used with the POA Laws are found in Chapters 201, 207, and 209 of the Property Code. None of the statutory definitions of "subdivision" mention condos, which gives rise to the possibility that subdivisions and condominiums are mutually exclusive. For purposes of this article, we use "subdivision" to the exclusion of condos.

TERMS IN COMMON USAGE THAT DO NOT HAVE SPECIFIC LEGAL MEANINGS

HOA is the acronym for **Homeowners Association** (no matter how spelled or punctuated). HOA often refers generically to the governing body of any type of common interest development, with mandatory membership, that is primarily residential in use. Texas statutes use "Property Owners Association" rather than "Homeowners Association," even when referring to residential-only communities. Because HOA has no precise legal definition, it may also be used in connection with voluntary membership neighborhood associations and mandatory condominium associations. Some people mistakenly insist that HOA is meant to apply only to governing bodies of non-condominium subdivisions.

Townhouse or **Townhome** is a type of building, not a form of ownership. Generally, townhouse refers to row houses or dwellings that are attached side by side. In terms of ownership, a townhouse may be any of these: (1) an apartment in a rental complex with a single owner, (2) a fee-simple attached dwelling in a platted subdivision without restrictions, assessments, or mandatory membership in an association, (3) a "air space" condominium unit, (4) an attached dwelling on a platted lot within a condominium regime, hence also a condominium unit, or (5) an attached dwelling on a platted lot within a subdivision with a POA that is not condominium. Although townhouse is not a form of ownership that is recognized under Texas law, some people mistakenly insist that it is.



INSTRUCTIONS FOR OBTAINING A TEXAS BILL ONLINE

Go to the Texas Legislature website <http://www.capitol.state.tx.us/Home.aspx>, which has multiple ways of searching for bills - by number, text, author, affected code, and more. These instructions are for two of the frequently used searches.

If you have a bill number, and want to see the bill:

- On the Home screen, on the toolbar at the top that starts with "Home" and ends with "Calendars", select "Legislation".
- On the pull-down menu under Legislation, select "Bill Lookup."
- On the "Bill Lookup" screen, you have three fields to enter:
 - Bill Number: Enter the bill number, such as HB35 or SB 1093. The field is not case sensitive, and you may enter with or without a space before the number.
 - Legislature: DON'T RELY ON THE DEFAULT SETTING, which is likely to be the current or most recent "special" session. You want the "regular" session. Select "84(R)-2015" which stands for "84th Regular Session".
 - Information Type: Select "Text", although any option takes you to a screen with tabs at the top for all the other choices.
 - Hit "Submit".
- On the "Text" screen, select the "Enrolled Version," for which you are offered three formats - PDF, HTML, and Word.
- Use the top tabs of "Actions" or "History" for confirmation that it was enacted into law, and its effective date.

If you want to see how a particular Code (or Chapter) was changed in a Session:

- On the Home screen, select "Sections Affected" - found under "Additional Searches" in the middle column on the page.
- Using the column titled "Search by Code", you have three fields to enter:
 - Sessions: DON'T RELY ON THE DEFAULT SETTING, which is likely to be the current or most recent "special" session. You want the "regular" session. Select "84(R)-2015" which stands for "84th Regular Session".
 - Code: Select the particular Code that interests you, such as "Property Code".
 - Status: Select "Enrolled(F)" if you are interested only in bills that became law.
 - Under number of records, we find it helpful to select "View up to 1,000 records at once."
 - Hit "Search" ~ the button above the number of records.
- On the "Index to Sections Affected" page, you'll find useful links in the second and fifth columns.
 - The second column links you to the Article or Section before the law change.
 - The fifth column links you to the bill that amends that Article or Section.

Have fun exploring the Legislature's incredible website.

CRIMES THAT DISQUALIFY AN HOA DIRECTOR

Section 209.00591 of the Property Code, titled "Board Membership," addresses qualifications for serving on the board of directors of a subdivision HOA. Subsection (a) voids any restriction on an owner's right to run for the HOA's board of directors. The remaining subsections contain exceptions to that general rule.

Subsection (b) of 209.00591 disqualifies any person who has been convicted of certain crimes. Enacted in 2015, House Bill 1072 by Thompson amends Subsection (b) to put a 20 year cap on the disqualification. A person who was convicted more than 20 years ago may serve as an HOA director.



INNOCENT UNTIL PROVEN GUILTY

To be disqualified, there must have been a conviction, which is determined by the criminal justice system. The conviction must have been for either (1) a felony crime, which is determined by the Texas Penal Code, or (2) a crime of moral turpitude, which (in Texas) is determined by case law, as explained below. And, beginning 9/1/15, the conviction must have been within the last 20 years.

CRIMES OF MORAL TURPITUDE

"Crime of Moral Turpitude" is a legal term of art that has no set statutory definition. Generally, it is a crime involving dishonesty, violence against the weak, or sexual depravity. Courts make the determination, on a case-by-case basis, whether an offense is a crime of moral turpitude. The offenses listed below ~ each supposedly based on a reported opinion ~ are culled from a number of on-line resources, including CLE articles on the State Bar of Texas On-Line Library, such as "Crimes of Moral Turpitude", by Samuel E. Bassett, presented September 20, 2007, at the State Bar's Administrative Law Course.

Forewarned - Do not rely on the following lists as legal authority. Unless you know this area of the law (*we don't!*) legal research may be required to identify a crime of moral turpitude.

OFFENSES THAT HAVE BEEN JUDGED TO BE CRIMES OF MORAL TURPITUDE

Prostitution
Theft
Swindling
Making a false report to police
Misdemeanor assault by on a woman
Indecent exposure
Delivery of a simulated controlled substance
Failure to stop and render aid (sometimes)
Sexual assault of a child
Mail fraud
Tax evasion
Purchase of a child
Aggravated assault on a wife
Murder
Bank fraud
Bigamy by a lawyer (not by non-lawyer)
Public lewdness
Violation of a protective order
Possession of heroin
Running a bawdy house
Bail jumping
Receiving/concealing stolen property
Making false statements in an affidavit

OFFENSES THAT HAVE BEEN JUDGED NOT TO BE CRIMES OF MORAL TURPITUDE

Criminally negligent homicide
Felony drug possession
Delivery of marijuana or cocaine
Issuance of a bad check (unless with intent to defraud)
Misprision of a felony
Misdemeanor possession of marijuana
Juvenile delinquency
Unlawfully carrying a weapon
Dispensing narcotics
Gambling
Misdemeanor DWI
Public intoxication
Reckless conduct
Misdemeanor assault on a man
Aggravated assault
Fighting
Disrupting the peace
Criminal trespass
Criminal mischief
Use of abusive language to police officer
Driving while license suspended
Practicing medicine without a license
Being in arrears on child support

ANTI-HOA WEBSITES

Every Session we see an aggrieved homeowner asking for a law to fix something about his HOA. People have discovered that it's often easier, faster, and cheaper to change the law than to amend HOA documents, to replace the board of directors, or to reason with intractable HOA leaders. And, the fastest way to get a lawmaker's attention is with news coverage about the "bad HOA." Unfortunately, a law that fixes one person's problem with his HOA may have unintended consequences for HOAs statewide.

**BAD FACTS MAKE BAD NEWS
BAD NEWS MAKES BAD LAWS**



Our collective goal is to keep our clients away from the blame-game of media coverage and off of anti-HOA websites. Monitoring anti-HOA websites is an education in the types of issues that can be sensationalized - lessons in what not to do. Here are some to get you started.

HOA Reform Coalition

Motto: Advocating Fair Treatment for Homeowners

Director: Beanie Adolph

Location: Houston, Texas

<http://hoareformcoalition.org/>

Texas Homeowners for HOA Reform

Motto: HOA Abuse Must Stop!

President: Robin Klar Lent

Location: Houston, Texas

<http://www.texashoareform.org/>

The National Homeowners Advocate Group, LLC

(fka Stop Texas HOA Foreclosures)

President: Harvella Jones

Location: Richmond, Texas

<http://stoptexashoaforeclosures.com/index.cfm>

Texas Family Council

Motto: Working to ensure the rights of Texas homeowners

Government Relations Staff: Nate Walker & Jess Heck

Location: Texas cyberspace

<http://www.txfamilycouncil.org/>

The Privatopia Papers

Prof. Evan McKenzie

Location: Chicago, Illinois

<http://privatopia.blogspot.com>

**11 POA-SPECIFIC BILLS
ENACTED BY THE 84th
TEXAS LEGISLATURE (2015)**

Bill Number	No. of Pages in Bill	Starts at Page ____ of 71
HB 745	3	1
HB 939	6	4
HB 1072	2	10
HB 1455	6	12
HB 2489	3	18
HB 3089	6	21
SB 862	2	27
SB 864	2	29
SB 1168	35	31
SB 1626	2	66
SB 1852	4	68



All these final bills ("Enrolled") may be downloaded from the Texas Legislature's website as Word files, HTML files, or PDF files. Please visit Texas Legislature Online at <http://www.capitol.state.tx.us/>

Prepared for
**2015 LEGISLATIVE UPDATE:
CONDOS & OWNERS ASSOCIATIONS**

Presented
Wednesday, July 1, 2015
at State Bar of Texas Webcast
by Bob Burton and Sharon Reuler

H.B. No. 745

1 AN ACT
2 relating to the installation of solar-powered stop signs by a
3 property owners' association.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 430.002, Transportation Code, is amended
6 to read as follows:

7 Sec. 430.002. [~~SPEED—FEEDBACK~~] SIGNS ERECTED BY
8 NEIGHBORHOOD ASSOCIATION. (a) In this section, "property owners'
9 association" means an association described by Section 204.004,
10 Property Code.

11 (b) A property owners' association may install a speed
12 feedback sign or a solar-powered light-emitting diode (LED) stop
13 sign on a road, highway, or street in the association's
14 jurisdiction if:

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

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

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

23 SECTION 2. This Act takes effect immediately if it receives
24 a vote of two-thirds of all the members elected to each house, as

H.B. No. 745

1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2015.

H.B. No. 745

President of the Senate

Speaker of the House

I certify that H.B. No. 745 was passed by the House on April 16, 2015, by the following vote: Yeas 146, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 745 was passed by the Senate on May 20, 2015, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

H.B. No. 939

1 AN ACT
2 relating to unenforceable restrictive covenants regarding standby
3 electric generators affecting residential homes.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Chapter 202, Property Code, is amended by adding
6 Section 202.019 to read as follows:

7 Sec. 202.019. STANDBY ELECTRIC GENERATORS. (a) In this
8 section, "standby electric generator" means a device that converts
9 mechanical energy to electrical energy and is:

10 (1) powered by natural gas, liquefied petroleum gas,
11 diesel fuel, biodiesel fuel, or hydrogen;

12 (2) fully enclosed in an integral
13 manufacturer-supplied sound attenuating enclosure;

14 (3) connected to the main electrical panel of a
15 residence by a manual or automatic transfer switch; and

16 (4) rated for a generating capacity of not less than
17 seven kilowatts.

18 (b) Except as provided by this section, a property owners'
19 association may not adopt or enforce a dedicatory instrument
20 provision that prohibits, restricts, or has the effect of
21 prohibiting or restricting an owner from owning, operating,
22 installing, or maintaining a permanently installed standby
23 electric generator.

24 (c) A property owners' association may adopt or enforce any

H.B. No. 939

1 of the following dedicatory instrument provisions to regulate the
2 operation and installation of standby electric generators:

3 (1) a dedicatory instrument provision that requires a
4 standby electric generator to be installed and maintained in
5 compliance with:

6 (A) the manufacturer's specifications; and

7 (B) applicable governmental health, safety,
8 electrical, and building codes;

9 (2) a dedicatory instrument provision that requires
10 all electrical, plumbing, and fuel line connections to be installed
11 only by licensed contractors;

12 (3) a dedicatory instrument provision that requires
13 all electrical connections to be installed in accordance with
14 applicable governmental health, safety, electrical, and building
15 codes;

16 (4) a dedicatory instrument provision that requires
17 all natural gas, diesel fuel, biodiesel fuel, or hydrogen fuel line
18 connections to be installed in accordance with applicable
19 governmental health, safety, electrical, and building codes;

20 (5) a dedicatory instrument provision that requires
21 all liquefied petroleum gas fuel line connections to be installed
22 in accordance with rules and standards promulgated and adopted by
23 the Railroad Commission of Texas and other applicable governmental
24 health, safety, electrical, and building codes;

25 (6) a dedicatory instrument provision that requires
26 nonintegral standby electric generator fuel tanks to be installed
27 and maintained to comply with applicable municipal zoning

H.B. No. 939

1 ordinances and governmental health, safety, electrical, and
2 building codes;

3 (7) a dedicatory instrument provision that requires
4 the standby electric generator and its electrical lines and fuel
5 lines to be maintained in good condition;

6 (8) a dedicatory instrument provision that requires
7 the repair, replacement, or removal of any deteriorated or unsafe
8 component of a standby electric generator, including electrical or
9 fuel lines;

10 (9) a dedicatory instrument provision that requires an
11 owner to screen a standby electric generator if the standby
12 electric generator is:

13 (A) visible from the street faced by the
14 dwelling;

15 (B) located in an unfenced side or rear yard of a
16 residence and is visible either from an adjoining residence or from
17 adjoining property owned by the property owners' association; or

18 (C) located in a side or rear yard fenced by a
19 wrought iron or residential aluminum fence and is visible through
20 the fence either from an adjoining residence or from adjoining
21 property owned by the property owners' association;

22 (10) a dedicatory instrument provision that sets
23 reasonable times, consistent with the manufacturer's
24 recommendations, for the periodic testing of a standby electric
25 generator;

26 (11) a dedicatory instrument provision that prohibits
27 the use of a standby electric generator to generate all or

H.B. No. 939

1 substantially all of the electrical power to a residence, except
2 when utility-generated electrical power to the residence is not
3 available or is intermittent due to causes other than nonpayment
4 for utility service to the residence;

5 (12) a dedicatory instrument provision that regulates
6 the location of the standby electric generator; or

7 (13) a dedicatory instrument provision that prohibits
8 an owner from locating a standby electric generator on property:

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

11 (B) owned in common by the property owners'
12 association members.

13 (d) A dedicatory instrument provision permitted by
14 Subsection (c), if adopted, must be reasonably applied and
15 enforced.

16 (e) A dedicatory instrument provision that regulates the
17 location of a standby electric generator is unenforceable if:

18 (1) it increases the cost of installing the standby
19 electric generator by more than 10 percent; or

20 (2) it increases the cost of installing and connecting
21 the electrical and fuel lines for the standby electric generator by
22 more than 20 percent.

23 (f) If a dedicatory instrument requires that the
24 installation of a standby electric generator be approved before
25 installation, approval may not be withheld if the proposed
26 installation meets or exceeds the dedicatory instrument provisions
27 permitted by Subsection (c).

H.B. No. 939

1 (g) If a dedicatory instrument provision requires an owner
2 to submit an application for approval of improvements located
3 exterior to a residence, this section does not negate the
4 requirement, but the information required to be submitted as part
5 of the application for the installation of a standby electric
6 generator may not be greater or more detailed than the application
7 for any other improvement.

8 (h) In a hearing, action, or proceeding to determine whether
9 a proposed or installed standby electric generator complies with
10 the requirements of a dedicatory instrument provision permitted by
11 Subsection (c), the party asserting noncompliance bears the burden
12 of proof.

13 SECTION 2. Section 202.019, Property Code, as added by this
14 Act, applies to a dedicatory instrument adopted before, on, or
15 after the effective date of this Act.

16 SECTION 3. This Act takes effect immediately if it receives
17 a vote of two-thirds of all the members elected to each house, as
18 provided by Section 39, Article III, Texas Constitution. If this
19 Act does not receive the vote necessary for immediate effect, this
20 Act takes effect September 1, 2015.

H.B. No. 939

President of the Senate

Speaker of the House

I certify that H.B. No. 939 was passed by the House on May 8, 2015, by the following vote: Yeas 139, Nays 2, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 939 on May 27, 2015, by the following vote: Yeas 140, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 939 was passed by the Senate, with amendments, on May 25, 2015, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

H.B. No. 1072

1 AN ACT
2 relating to the eligibility of certain persons to serve on the board
3 of a property owners' association.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 209.00591(b), Property Code, is amended
6 to read as follows:

7 (b) If a board is presented with written, documented
8 evidence from a database or other record maintained by a
9 governmental law enforcement authority that a board member was [~~has~~
10 ~~been~~] convicted of a felony or crime involving moral turpitude not
11 more than 20 years before the date the board is presented with the
12 evidence, the board member is immediately ineligible to serve on
13 the board of the property owners' association, automatically
14 considered removed from the board, and prohibited from future
15 service on the board.

16 SECTION 2. This Act takes effect September 1, 2015.

H.B. No. 1072

President of the Senate

Speaker of the House

I certify that H.B. No. 1072 was passed by the House on May 6, 2015, by the following vote: Yeas 144, Nays 0, 3 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1072 was passed by the Senate on May 24, 2015, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

H.B. No. 1455

1 AN ACT
2 relating to procedures required before certain condominium
3 associations file a suit or initiate an arbitration proceeding for
4 a defect or design claim.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Subchapter C, Chapter 82, Property Code, is
7 amended by adding Sections 82.119 and 82.120 to read as follows:

8 Sec. 82.119. PROCEDURES FOR FILING SUIT OR INITIATING
9 ARBITRATION PROCEEDINGS FOR DEFECT OR DESIGN CLAIMS FOR CERTAIN
10 ASSOCIATIONS. (a) This section does not apply to an association
11 with less than eight units.

12 (b) In addition to any preconditions to filing suit or
13 initiating an arbitration proceeding included in the declaration,
14 an association, before filing suit or initiating an arbitration
15 proceeding to resolve a claim pertaining to the construction or
16 design of a unit or the common elements, must:

17 (1) obtain an inspection and a written independent
18 third-party report from a licensed professional engineer that:

19 (A) identifies the specific units or common
20 elements subject to the claim;

21 (B) describes the present physical condition of
22 the units or common elements subject to the claim; and

23 (C) describes any modifications, maintenance, or
24 repairs to the units or common elements performed by the unit owners

H.B. No. 1455

1 or the association; and

2 (2) obtain approval from unit owners holding more than
3 50 percent of the total votes allocated under the declaration,
4 voting in person or by proxy as provided by Section 82.110, at a
5 regular, annual, or special meeting called in accordance with the
6 declaration or bylaws, as applicable.

7 (c) The association must provide written notice of the
8 inspection to be conducted by the engineer to each party subject to
9 a claim not later than the 10th day before the date the inspection
10 occurs. The notice must:

11 (1) identify the party engaged to prepare the report
12 required by Subsection (b)(1);

13 (2) identify the specific units or common elements to
14 be inspected; and

15 (3) include the date and time the inspection will
16 occur.

17 (d) Each party subject to a claim may attend the inspection
18 conducted by the engineer, either personally or through an agent.

19 (e) Before providing the notice of the meeting under
20 Subsection (f), an association must:

21 (1) on completion of the independent third-party
22 report, provide the report to each unit owner and each party subject
23 to a claim; and

24 (2) allow each party subject to a claim at least 90
25 days after the date of completion of the report to inspect and
26 correct any condition identified in the report.

27 (f) Not later than the 30th day before the date the meeting

H.B. No. 1455

1 described by Subsection (b)(2) is held, the association must
2 provide each unit owner with written notice of the date, time, and
3 location of the meeting. The notice must also include:

4 (1) a description of the nature of the claim, the
5 relief sought, the anticipated duration of prosecuting the claim,
6 and the likelihood of success;

7 (2) a copy of the report required by Subsection
8 (b)(1);

9 (3) a copy of the contract or proposed contract
10 between the association and the attorney selected by the board to
11 assert or provide assistance with the claim;

12 (4) a description of the attorney's fees, consultant
13 fees, expert witness fees, and court costs, whether incurred by the
14 association directly or for which the association may be liable as a
15 result of prosecuting the claim;

16 (5) a summary of the steps previously taken by the
17 association to resolve the claim;

18 (6) a statement that initiating a lawsuit or
19 arbitration proceeding to resolve a claim may affect the market
20 value, marketability, or refinancing of a unit while the claim is
21 prosecuted; and

22 (7) a description of the manner in which the
23 association proposes to fund the cost of prosecuting the claim.

24 (g) The notice required by Subsection (f) must be prepared
25 and signed by a person who is not:

26 (1) the attorney who represents or will represent the
27 association in the claim;

H.B. No. 1455

1 (2) a member of the law firm of the attorney who
2 represents or will represent the association in the claim; or

3 (3) employed by or otherwise affiliated with the law
4 firm of the attorney who represents or will represent the
5 association in the claim.

6 (h) The period of limitations for filing a suit or
7 initiating an arbitration proceeding for a claim described by
8 Subsection (b) is tolled until the first anniversary of the date the
9 procedures are initiated by the association under that subsection
10 if the procedures are initiated during the final year of the
11 applicable period of limitation.

12 Sec. 82.120. BINDING ARBITRATION FOR CERTAIN CLAIMS. (a) A
13 declaration may provide that a claim pertaining to the construction
14 or design of a unit or the common elements must be resolved by
15 binding arbitration and may provide for a process by which the claim
16 is resolved.

17 (b) An amendment to the declaration that modifies or removes
18 the arbitration requirement or the process associated with
19 resolution of a claim may not apply retroactively to a claim
20 regarding the construction or design of units or common elements
21 based on an alleged act or omission that occurred before the date of
22 the amendment.

23 SECTION 2. Section 82.119, Property Code, as added by this
24 Act, applies only to a suit filed or arbitration proceeding
25 initiated on or after the effective date of this Act. A suit filed
26 or arbitration proceeding initiated before the effective date of
27 this Act is governed by the law applicable to the claim immediately

H.B. No. 1455

1 before the effective date of this Act, and that law is continued in
2 effect for that purpose.

3 SECTION 3. This Act takes effect September 1, 2015.

H.B. No. 1455

President of the Senate

Speaker of the House

I certify that H.B. No. 1455 was passed by the House on May 8, 2015, by the following vote: Yeas 98, Nays 44, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1455 was passed by the Senate on May 26, 2015, by the following vote: Yeas 24, Nays 7.

Secretary of the Senate

APPROVED: _____

Date

Governor

H.B. No. 2489

1 AN ACT
2 relating to regulation by a property owners' association of
3 residential leases or rental agreements.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Chapter 209, Property Code, is amended by adding
6 Section 209.016 to read as follows:

7 Sec. 209.016. REGULATION OF RESIDENTIAL LEASES OR RENTAL
8 AGREEMENTS. (a) In this section, "sensitive personal information"
9 means an individual's:

10 (1) social security number;

11 (2) driver's license number;

12 (3) government-issued identification number; or

13 (4) account, credit card, or debit card number.

14 (b) A property owners' association may not adopt or enforce
15 a provision in a dedicatory instrument that:

16 (1) requires a lease or rental applicant or a tenant to
17 be submitted to and approved for tenancy by the property owners'
18 association; or

19 (2) requires the following information to be submitted
20 to a property owners' association regarding a lease or rental
21 applicant or current tenant:

22 (A) a consumer or credit report; or

23 (B) a lease or rental application submitted by
24 the applicant, tenant, or that person's agent to the property owner

H.B. No. 2489

1 or property owner's agent when applying for tenancy.

2 (c) If a copy of the lease or rental agreement is required by
3 the property owners' association, any sensitive personal
4 information may be redacted or otherwise made unreadable or
5 indecipherable.

6 (d) Except as provided by Subsection (b), nothing in this
7 section shall be construed to prohibit the adoption or enforcement
8 of a provision in a dedicatory instrument establishing a
9 restriction relating to occupancy or leasing.

10 SECTION 2. This Act takes effect immediately if it receives
11 a vote of two-thirds of all the members elected to each house, as
12 provided by Section 39, Article III, Texas Constitution. If this
13 Act does not receive the vote necessary for immediate effect, this
14 Act takes effect September 1, 2015.

H.B. No. 2489

President of the Senate

Speaker of the House

I certify that H.B. No. 2489 was passed by the House on May 8, 2015, by the following vote: Yeas 130, Nays 5, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2489 on May 29, 2015, by the following vote: Yeas 143, Nays 1, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2489 was passed by the Senate, with amendments, on May 26, 2015, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

H.B. No. 3089

1 AN ACT
2 relating to fire protection sprinkler systems in certain
3 residential high-rise buildings in certain counties; creating a
4 criminal offense.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Chapter 766, Health and Safety Code, is amended
7 by designating Sections 766.001, 766.002, 766.0021, 766.0025, and
8 766.003 as Subchapter A and adding a subchapter heading to read as
9 follows:

10 SUBCHAPTER A. SMOKE DETECTORS AND FIRE SAFETY INFORMATION

11 SECTION 2. Chapter 766, Health and Safety Code, is amended
12 by adding Subchapter B to read as follows:

13 SUBCHAPTER B. FIRE PROTECTION SPRINKLER SYSTEMS IN CERTAIN

14 RESIDENTIAL HIGH-RISE BUILDINGS IN CERTAIN COUNTIES

15 Sec. 766.051. DEFINITIONS. In this subchapter:

16 (1) "Fire protection sprinkler system" means an
17 assembly of underground or overhead piping or conduits that conveys
18 water with or without other agents to dispersal openings or devices
19 to:

20 (A) extinguish, control, or contain fire; and

21 (B) provide protection from exposure to fire or
22 the products of combustion.

23 (2) "Residential high-rise building" means a building
24 used primarily for a residential purpose and that extends 75 feet or

H.B. No. 3089

1 more from the ground.

2 Sec. 766.052. APPLICABILITY OF SUBCHAPTER. This subchapter
3 applies only to a residential high-rise building:

4 (1) that is located in a county with a population of
5 more than 1.5 million in which more than 75 percent of the
6 population resides in a single municipality;

7 (2) in which at least 50 percent of the residents are
8 elderly individuals, individuals with a disability, or individuals
9 with a mobility impairment; and

10 (3) that is not designated as a historically or
11 archaeologically significant site by the Texas Historical
12 Commission or the governing body of the county or municipality in
13 which the building is located.

14 Sec. 766.053. FIRE PROTECTION SPRINKLER SYSTEMS REQUIRED;
15 STANDARD. (a) A residential high-rise building must be equipped
16 with a complete fire protection sprinkler system that is in good
17 working order and is in compliance with this section.

18 (b) The governing body of a municipality in which a
19 residential high-rise building subject to this subchapter is
20 located or, if the building is not located in a municipality, the
21 commissioners court of the county in which the building is located
22 shall adopt a standard for the installation of fire protection
23 sprinkler systems in a residential high-rise building.

24 (c) The standard adopted must be in compliance with National
25 Fire Protection Association 13: Standard for the Installation of
26 Sprinkler Systems. Until the governing body of the municipality or
27 commissioners court of the county, as applicable, adopts a standard

H.B. No. 3089

1 as required by this section, the standard is the Standard for the
2 Installation of Sprinkler Systems of the National Fire Protection
3 Association, as that standard existed on September 1, 2015.

4 Sec. 766.054. PHASE-IN COMPLIANCE FOR OWNERS OF CERTAIN
5 RESIDENTIAL HIGH-RISE BUILDINGS. (a) This section applies only to
6 an owner of a residential high-rise building built before September
7 1, 2015.

8 (b) Not later than September 1, 2018, an owner of a
9 residential high-rise building shall provide notice of the owner's
10 intent to comply with this subchapter to:

11 (1) if the building is located in a municipality, the
12 appropriate code official of the municipality in which the building
13 is located; or

14 (2) if the building is not located in a municipality,
15 the county clerk of the county in which the building is located.

16 (c) Not later than September 1, 2021, the owner of a
17 residential high-rise building shall install a water supply on all
18 floors of the building in accordance with National Fire Protection
19 Association 13: Standard for the Installation of Sprinkler Systems.

20 (d) Not later than September 1, 2024, the owner of a
21 residential high-rise building shall install a fire protection
22 sprinkler system in accordance with this subchapter on at least 50
23 percent of the floors of the building.

24 (e) Not later than September 1, 2027, the owner of a
25 residential high-rise building shall install a fire protection
26 sprinkler system in accordance with this subchapter on all floors
27 of the building.

H.B. No. 3089

1 (f) Notwithstanding Subsections (b), (c), (d), and (e), an
2 owner of multiple residential high-rise buildings built before
3 September 1, 2015, is considered to have met the requirements of
4 this section if a fire protection sprinkler system is installed on
5 all floors of:

6 (1) at least 33 percent of the owner's residential
7 high-rise buildings not later than September 1, 2021;

8 (2) at least 66 percent of the owner's residential
9 high-rise buildings not later than September 1, 2024; and

10 (3) all of the owner's residential high-rise buildings
11 not later than September 1, 2027.

12 (g) If a residential high-rise building is a condominium as
13 defined by Section 81.002 or 82.003, Property Code, the apartment
14 or unit owners of the condominium may comply with this subchapter by
15 acting jointly through the council of owners or unit owners'
16 association, as applicable, of the condominium.

17 (h) For purposes of Sections 766.055 and 766.056, a
18 residential high-rise building is in compliance with this
19 subchapter if the owner of the building has met the requirements of
20 this section.

21 (i) This section expires September 1, 2028.

22 Sec. 766.055. INJUNCTION. (a) The attorney general, the
23 county attorney of a county in which a residential high-rise
24 building is located, or the district attorney of a county in which
25 the building is located may bring an action in the name of the state
26 for an injunction to enforce this subchapter against the owner or
27 person in charge of a residential high-rise building not in

H.B. No. 3089

1 compliance with this subchapter.

2 (b) The action must be brought in the district court of the
3 county in which the residential high-rise building is located.

4 (c) The attorney general, county attorney of the county in
5 which the residential high-rise building is located, or district
6 attorney of the county in which the building is located, as
7 applicable, shall give the owner or person in charge of the building
8 notice of the time and place of a hearing for an action brought
9 under this section not later than the 10th day before the date of
10 the hearing.

11 (d) A district judge may issue a mandatory injunction
12 against the owner or person in charge of a residential high-rise
13 building not in compliance with this subchapter to enforce this
14 subchapter. Violation of an injunction issued under this section
15 constitutes contempt of court and is punishable in the manner
16 provided for contempt.

17 Sec. 766.056. CRIMINAL PENALTY. (a) A person commits an
18 offense if the person is the owner of a residential high-rise
19 building that is not in compliance with this subchapter.

20 (b) A person commits an offense if the person serves as an
21 agent for an owner who is not a resident of this state in the care,
22 management, supervision, control, or rental of a residential
23 high-rise building not in compliance with this subchapter.

24 (c) An offense under this section is punishable by a fine of
25 not more than \$10,000.

26 SECTION 3. This Act takes effect September 1, 2015.

H.B. No. 3089

President of the Senate

Speaker of the House

I certify that H.B. No. 3089 was passed by the House on May 8, 2015, by the following vote: Yeas 100, Nays 39, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3089 was passed by the Senate on May 27, 2015, by the following vote: Yeas 28, Nays 3.

Secretary of the Senate

APPROVED: _____

Date

Governor

S.B. No. 862

1 AN ACT
2 relating to voting methods in a property owners' association
3 election or vote.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 209.00592, Property Code, is amended by
6 adding Subsection (a-1) to read as follows:

7 (a-1) Unless a dedicatory instrument provides otherwise, a
8 property owners' association is not required to provide an owner
9 with more than one voting method so long as an owner may vote by
10 absentee ballot or proxy.

11 SECTION 2. This Act takes effect September 1, 2015.

S.B. No. 862

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 862 passed the Senate on April 30, 2015, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 862 passed the House on May 19, 2015, by the following vote: Yeas 146, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

S.B. No. 864

1 AN ACT
2 relating to secret ballots in a property owners' association
3 election or vote.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 209.0058, Property Code, is amended by
6 amending Subsection (a) and adding Subsection (d) to read as
7 follows:

8 (a) Except as provided by Subsection (d), any ~~Any~~ vote
9 cast in an election or vote by a member of a property owners'
10 association must be in writing and signed by the member.

11 (d) A property owners' association may adopt rules to allow
12 voting by secret ballot by members of the association. The
13 association must take measures to reasonably ensure that:

14 (1) a member cannot cast more votes than the member is
15 eligible to cast in an election or vote; and

16 (2) the association counts every vote cast by a member
17 that is eligible to cast a vote.

18 SECTION 2. This Act takes effect immediately if it receives
19 a vote of two-thirds of all the members elected to each house, as
20 provided by Section 39, Article III, Texas Constitution. If this
21 Act does not receive the vote necessary for immediate effect, this
22 Act takes effect September 1, 2015.

S.B. No. 864

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 864 passed the Senate on April 30, 2015, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 864 passed the House on May 19, 2015, by the following vote: Yeas 146, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

S.B. No. 1168

1 association for the next 12 months;

2 (5) the amount of reserves, if any, for capital
3 expenditures and of portions of those reserves designated by the
4 association for a specified project;

5 (6) any unsatisfied judgments against the
6 association;

7 (7) the nature of any pending suits against the
8 association;

9 (8) insurance coverage provided for the benefit of
10 unit owners;

11 (9) whether the board has knowledge that any
12 alterations or improvements to the unit or to the limited common
13 elements assigned to that unit violate the declaration, bylaws, or
14 association rules;

15 (10) whether the board has received notice from a
16 governmental authority concerning violations of health or building
17 codes with respect to the unit, the limited common elements
18 assigned to that unit, or any other portion of the condominium;

19 (11) the remaining term of any leasehold estate that
20 affects the condominium and the provisions governing an extension
21 or renewal of the lease; ~~and~~

22 (12) the name, mailing address, and telephone number
23 of the association's managing agent, if any;

24 (13) the association's current operating budget and
25 balance sheet; and

26 (14) all fees payable to the association or an agent of
27 the association that are associated with the transfer of ownership,

S.B. No. 1168

1 including a description of each fee, to whom the fee is paid, and
2 the amount of the fee.

3 SECTION 2. Section 207.001(2), Property Code, is amended to
4 read as follows:

5 (2) "Dedictory instrument," "property owners'
6 association," and "restrictive covenant" have the meanings
7 assigned by Section 209.002 [~~202.001~~].

8 SECTION 3. Section 207.002, Property Code, is amended to
9 read as follows:

10 Sec. 207.002. APPLICABILITY. (a) This chapter applies to
11 a subdivision with a property owners' association that is entitled
12 to levy regular or special assessments.

13 (b) This chapter does not apply to a condominium council of
14 owners governed by Chapter 81 or a condominium unit owners'
15 association governed by Chapter 82.

16 SECTION 4. Section 209.002, Property Code, is amended by
17 amending Subdivision (4-a) and adding Subdivision (13) to read as
18 follows:

19 (4-a) "Development period" means a period stated in a
20 declaration during which a declarant reserves:

21 (A) a right to facilitate the development,
22 construction, and marketing of the subdivision; or [~~and~~]

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

25 (13) "Verified mail" means any method of mailing for
26 which evidence of mailing is provided by the United States Postal
27 Service or a common carrier.

S.B. No. 1168

1 SECTION 5. Section 209.003(d), Property Code, is amended to
2 read as follows:

3 (d) This chapter does not apply to a condominium as defined
4 ~~[development governed]~~ by Section 81.002 or 82.003 ~~[Chapter 82]~~.

5 SECTION 6. Section 209.0041, Property Code, is amended by
6 amending Subsection (h) and adding Subsections (h-1) and (h-2) to
7 read as follows:

8 (h) Except as provided by Subsection (h-1) or (h-2) ~~[this~~
9 ~~subsection]~~, a declaration may be amended only by a vote of 67
10 percent of the total votes allocated to property owners entitled to
11 vote on the amendment of the declaration ~~[in the property owners'~~
12 ~~association]~~, in addition to any governmental approval required by
13 law.

14 (h-1) If the declaration contains a lower percentage than
15 prescribed by Subsection (h), the percentage in the declaration
16 controls.

17 (h-2) If the declaration is silent as to voting rights for
18 an amendment, the declaration may be amended by a vote of owners
19 owning 67 percent of the lots subject to the declaration.

20 SECTION 7. Chapter 209, Property Code, is amended by adding
21 Section 209.0042 to read as follows:

22 Sec. 209.0042. METHODS OF PROVIDING NOTICES TO OWNERS.

23 (a) Subject to this section, a property owners' association may
24 adopt a method that may be used by the association to provide a
25 notice from the association to a property owner.

26 (b) A property owners' association may use an alternative
27 method of providing notice adopted under this section to provide a

S.B. No. 1168

1 notice for which another method is prescribed by law only if the
2 property owner to whom the notice is provided has affirmatively
3 opted to allow the association to use the alternative method of
4 providing notice to provide to the owner notices for which another
5 method is prescribed by law.

6 (c) A property owners' association may not require an owner
7 to allow the association to use an alternative method of providing
8 notice adopted under this section to provide to the owner any notice
9 for which another method of providing notice is prescribed by law.

10 SECTION 8. Section 209.0051, Property Code, is amended by
11 amending Subsections (b), (c-1), and (h) and adding Subsection
12 (c-2) to read as follows:

13 (b) In this section, "board[+

14 [~~1~~—"Board] meeting":

15 (1) [~~A~~] means a deliberation between a quorum of the
16 voting board of the property owners' association, or between a
17 quorum of the voting board and another person, during which
18 property owners' association business is considered and the board
19 takes formal action; and

20 (2) [~~B~~] does not include the gathering of a quorum
21 of the board at a social function unrelated to the business of the
22 association or the attendance by a quorum of the board at a
23 regional, state, or national convention, ceremonial event, or press
24 conference, if formal action is not taken and any discussion of
25 association business is incidental to the social function,
26 convention, ceremonial event, or press conference.

27 [~~2~~—"Development period" means a period stated in a

S.B. No. 1168

1 ~~declaration during which a declarant reserves:~~

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

4 ~~[(B) a right to direct the size, shape, and~~
5 ~~composition of the subdivision.]~~

6 (c-1) Except for a meeting held by electronic or telephonic
7 means under Subsection (c-2) ~~[(h)]~~, a board meeting must be held in
8 a county in which all or part of the property in the subdivision is
9 located or in a county adjacent to that county.

10 (c-2) A board meeting may be held by electronic or
11 telephonic means provided that:

12 (1) each board member may hear and be heard by every
13 other board member;

14 (2) except for any portion of the meeting conducted in
15 executive session:

16 (A) all owners in attendance at the meeting may
17 hear all board members; and

18 (B) owners are allowed to listen using any
19 electronic or telephonic communication method used or expected to
20 be used by a board member to participate; and

21 (3) the notice of the meeting includes instructions
22 for owners to access any communication method required to be
23 accessible under Subdivision (2)(B).

24 (h) Except as provided by this subsection, a [A] board may
25 take action outside of a meeting ~~[meet by any method of~~
26 ~~communication]~~, including voting by electronic or ~~[and]~~ telephonic
27 means, without prior notice to owners under Subsection (e), if each

S.B. No. 1168

1 board member is given a reasonable opportunity to express the board
2 member's opinion to all other board members and to vote [~~director~~
3 ~~may hear and be heard by every other director, or the board may take~~
4 ~~action by unanimous written consent to consider routine and~~
5 ~~administrative matters or a reasonably unforeseen emergency or~~
6 ~~urgent necessity that requires immediate board action~~]. Any action
7 taken without notice to owners under Subsection (e) must be
8 summarized orally, including an explanation of any known actual or
9 estimated expenditures approved at the meeting, and documented in
10 the minutes of the next regular or special board meeting. The board
11 may not, unless done in an open meeting for which [~~without~~] prior
12 notice was given to owners under Subsection (e), consider or vote
13 on:

- 14 (1) fines;
- 15 (2) damage assessments;
- 16 (3) initiation of foreclosure actions;
- 17 (4) initiation of enforcement actions, excluding
18 temporary restraining orders or violations involving a threat to
19 health or safety;
- 20 (5) increases in assessments;
- 21 (6) levying of special assessments;
- 22 (7) appeals from a denial of architectural control
23 approval; [~~or~~]
- 24 (8) a suspension of a right of a particular owner
25 before the owner has an opportunity to attend a board meeting to
26 present the owner's position, including any defense, on the issue;
- 27 (9) lending or borrowing money;

S.B. No. 1168

1 (10) the adoption or amendment of a dedicatory
2 instrument;

3 (11) the approval of an annual budget or the approval
4 of an amendment of an annual budget that increases the budget by
5 more than 10 percent;

6 (12) the sale or purchase of real property;

7 (13) the filling of a vacancy on the board;

8 (14) the construction of capital improvements other
9 than the repair, replacement, or enhancement of existing capital
10 improvements; or

11 (15) the election of an officer.

12 SECTION 9. Section 209.0056, Property Code, is amended by
13 amending Subsection (a) and adding Subsection (a-1) to read as
14 follows:

15 (a) For an election or vote taken at a meeting of the owners,
16 not [~~Not~~] later than the 10th day or earlier than the 60th day
17 before the date of the [~~an~~] election or vote, a property owners'
18 association shall give written notice of the election or vote to:

19 (1) each owner of property in the property owners'
20 association, for purposes of an association-wide election or vote;
21 or

22 (2) each owner of property in the property owners'
23 association entitled under the dedicatory instruments to vote in a
24 particular representative election, for purposes of a vote that
25 involves election of representatives of the association who are
26 vested under the dedicatory instruments of the property owners'
27 association with the authority to elect or appoint board members of

S.B. No. 1168

1 the property owners' association.

2 (a-1) For an election or vote of owners not taken at a
3 meeting, the property owners' association shall give notice of the
4 election or vote to all owners entitled to vote on any matter under
5 consideration. The notice shall be given not later than the 20th
6 day before the latest date on which a ballot may be submitted to be
7 counted.

8 SECTION 10. Section 209.0057, Property Code, is amended by
9 amending Subsections (b), (c), and (d) and adding Subsections
10 (b-1), (b-2), (b-3), and (b-4) to read as follows:

11 (b) Any owner may, not later than the 15th day after the
12 later of the date of any ~~the~~ meeting of owners at which the
13 election or vote was held or the date of the announcement of the
14 results of the election or vote, require a recount of the votes. A
15 demand for a recount must be submitted in writing either:

16 (1) by verified ~~certified~~ mail~~[, return receipt~~
17 ~~requested,~~ or by delivery by the United States Postal Service with
18 signature confirmation service to the property owners'
19 association's mailing address as reflected on the latest management
20 certificate filed under Section 209.004; or

21 (2) in person to the property owners' association's
22 managing agent as reflected on the latest management certificate
23 filed under Section 209.004 or to the address to which absentee and
24 proxy ballots are mailed.

25 (b-1) The property owners' association must estimate the
26 costs for performance of the recount by a person qualified to
27 tabulate votes under Subsection (c) and must send an invoice for the

S.B. No. 1168

1 estimated costs to the requesting owner at the owner's last known
2 address according to association records not later than the 20th
3 day after the date the association receives the owner's demand for
4 the recount.

5 (b-2) The owner demanding a recount under this section must
6 pay the invoice described by Subsection (b-1) in full to the
7 property owners' association on or before the 30th day after the
8 date the invoice is sent to the owner.

9 (b-3) If the invoice described by Subsection (b-1) is not
10 paid by the deadline prescribed by Subsection (b-2), the owner's
11 demand for a recount is considered withdrawn and a recount is not
12 required.

13 (b-4) If the estimated costs under Subsection (b-1) are
14 lesser or greater than the actual costs, the property owners'
15 association must send a final invoice to the owner on or before the
16 30th business day after the date the results of the recount are
17 provided. If the final invoice includes additional amounts owed by
18 the owner, any additional amounts not paid to the association
19 before the 30th business day after the date the invoice is sent to
20 the owner may be added to the owner's account as an assessment. If
21 the estimated costs exceed the final invoice amount, the owner is
22 entitled to a refund. The refund shall be paid to the owner at the
23 time the final invoice is sent under this subsection.

24 (c) Following receipt of payment under Subsection (b-2),
25 the [The] property owners' association shall, at the expense of the
26 owner requesting the recount, retain for the purpose of performing
27 the recount[7] the services of a person qualified to tabulate votes

S.B. No. 1168

1 under this subsection. The association shall enter into a contract
2 for the services of a person who:

3 (1) is not a member of the association or related to a
4 member of the association board within the third degree by
5 consanguinity or affinity, as determined under Chapter 573,
6 Government Code; and

7 (2) is:

8 (A) a current or former:

9 (i) county judge;

10 (ii) county elections administrator;

11 (iii) justice of the peace; or

12 (iv) county voter registrar; or

13 (B) a person agreed on by the association and
14 each person [~~the persons~~] requesting the recount.

15 (d) On [~~Any recount under Subsection (b) must be performed~~
16 ~~on~~] or before the 30th day after the date of receipt of [~~a request~~
17 ~~and~~] payment for a recount in accordance with Subsection (b-2), the
18 recount must be completed and the property owners' association must
19 provide each owner who requested the recount with notice of the
20 results of the recount [~~Subsections (b) and (c)~~]. If the recount
21 changes the results of the election, the [~~property owners'~~]
22 association shall reimburse the requesting owner for the cost of
23 the recount not later than the 30th day after the date the results
24 of the recount are provided. [~~The property owners' association~~
25 ~~shall provide the results of the recount to each owner who requested~~
26 ~~the recount.~~] Any action taken by the board in the period between
27 the initial election vote tally and the completion of the recount is

S.B. No. 1168

1 not affected by any recount.

2 SECTION 11. Section 209.0058, Property Code, is amended by
3 amending Subsections (a) and (c) and adding Subsections (a-1) and
4 (d) to read as follows:

5 (a) Except as provided by Subsection (d), a [Any] vote cast
6 [in an election or vote] by a member of a property owners'
7 association must be in writing and signed by the member if the vote
8 is cast:

9 (1) outside of a meeting;

10 (2) in an election to fill a position on the board;

11 (3) on a proposed adoption or amendment of a
12 dedicatory instrument;

13 (4) on a proposed increase in the amount of a regular
14 assessment or the proposed adoption of a special assessment; or

15 (5) on the proposed removal of a board member.

16 (a-1) If a property owners' association elects to use a
17 ballot for a vote on a matter other than a matter described by
18 Subsection (a), the ballot must be:

19 (1) in writing and signed by the member; or

20 (2) cast by secret ballot in accordance with
21 Subsection (d).

22 (c) In a property owners' association [an association-wide]
23 election, written and signed ballots are not required for
24 uncontested races.

25 (d) A property owners' association may adopt rules to allow
26 voting by secret ballot by association members. The association
27 must take measures to reasonably ensure that:

S.B. No. 1168

1 (1) a member cannot cast more votes than the member is
2 eligible to cast in an election or vote;

3 (2) the association counts each vote cast by a member
4 that the member is eligible to cast; and

5 (3) in any election for the board, each candidate may
6 name one person to observe the counting of the ballots, provided
7 that this does not entitle any observer to see the name of the
8 person who cast any ballot, and that any disruptive observer may be
9 removed.

10 SECTION 12. Section 209.0059, Property Code, is amended by
11 adding Subsection (c) to read as follows:

12 (c) In a residential development with 10 or fewer lots for
13 which the declaration was recorded before January 1, 2015, a person
14 may not vote in a property owners' association election unless the
15 person is subject to a dedicatory instrument governing the
16 association through which the association exercises its authority.

17 SECTION 13. Section 209.00591, Property Code, is amended by
18 adding Subsection (a-1) and amending Subsection (c) to read as
19 follows:

20 (a-1) Notwithstanding any other provision of this chapter,
21 a property owners' association's bylaws may require one or more
22 board members to reside in the subdivision subject to the
23 dedicatory instruments but may not require all board members to
24 reside in that subdivision. A requirement described by this
25 subsection is not applicable during the development period.

26 (c) The declaration may provide for a period of declarant
27 control of the association during which a declarant, or persons

S.B. No. 1168

1 designated by the declarant, may appoint and remove board members
2 and the officers of the association, other than board members or
3 officers elected by members of the property owners'
4 association. Regardless of the period of declarant control
5 provided by the declaration, on or before the 120th day after the
6 date 75 percent of the lots that may be created and made subject to
7 the declaration are conveyed to owners other than a declarant or a
8 builder in the business of constructing homes who purchased the
9 lots from the declarant for the purpose of selling completed homes
10 built on the lots, at least one-third of the board members must be
11 elected by owners other than the declarant. If the declaration
12 does not include the number of lots that may be created and made
13 subject to the declaration, at least one-third of the board members
14 must be elected by owners other than the declarant not later than
15 the 10th anniversary of the date the declaration was recorded.

16 SECTION 14. Section 209.00592, Property Code, is amended by
17 amending Subsection (a) and adding Subsections (a-1) and (b-1) to
18 read as follows:

19 (a) Subject to Subsection (a-1), the ~~The~~ voting rights of
20 an owner may be cast or given:

21 (1) in person or by proxy at a meeting of the property
22 owners' association;

23 (2) by absentee ballot in accordance with this
24 section;

25 (3) by electronic ballot in accordance with this
26 section; or

27 (4) by any method of representative or delegated

S.B. No. 1168

1 voting provided by a dedicatory instrument.

2 (a-1) Except as provided by this subsection, unless a
3 dedicatory instrument provides otherwise, a property owners'
4 association is not required to provide an owner with more than one
5 voting method. An owner must be allowed to vote by absentee ballot
6 or proxy.

7 (b-1) For purposes of Subsection (b), a nomination taken
8 from the floor in a board member election is not considered an
9 amendment to the proposal for the election.

10 SECTION 15. Section 209.00593, Property Code, is amended by
11 adding Subsections (a-1), (a-2), and (a-3) and amending Subsection
12 (d) to read as follows:

13 (a-1) At least 10 days before the date a property owners'
14 association composed of more than 100 lots disseminates absentee
15 ballots or other ballots to association members for purposes of
16 voting in a board member election, the association must provide
17 notice to the association members soliciting candidates interested
18 in running for a position on the board. The notice must contain
19 instructions for an eligible candidate to notify the association of
20 the candidate's request to be placed on the ballot and the deadline
21 to submit the candidate's request. The deadline may not be earlier
22 than the 10th day after the date the association provides the notice
23 required by this subsection.

24 (a-2) The notice required by Subsection (a-1) must be:

25 (1) mailed to each owner; or

26 (2) provided by:

27 (A) posting the notice in a conspicuous manner

S.B. No. 1168

1 reasonably designed to provide notice to association members:

2 (i) in a place located on the association's
3 common property or, with the property owner's consent, on other
4 conspicuously located privately owned property within the
5 subdivision; or

6 (ii) on any Internet website maintained by
7 the association or other Internet media; and

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

10 (a-3) An association described by Subsection (a-1) shall
11 include on each absentee ballot or other ballot for a board member
12 election the name of each eligible candidate from whom the
13 association received a request to be placed on the ballot in
14 accordance with this section.

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

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

21 ~~[(2) a right to direct the size, shape, and~~
22 ~~composition of the subdivision.]~~

23 SECTION 16. Section 209.00594, Property Code, is amended by
24 amending Subsections (b) and (c) and adding Subsections (b-1) and
25 (d) to read as follows:

26 (b) A person other than a person described by Subsection (a)
27 may tabulate votes in an association election or vote ~~[but may not~~

S.B. No. 1168

1 ~~disclose to any other person how an individual voted].~~

2 (b-1) A person who tabulates votes under Subsection (b) or
3 who performs a recount under Section 209.0057(c) may not disclose
4 to any other person how an individual voted.

5 (c) Notwithstanding any other provision of this chapter or
6 any other law, only a person [~~other than a person~~] who tabulates
7 votes under Subsection (b) or who performs a recount under Section
8 209.0057(c) [~~, including a person described by Subsection (a),~~] may
9 be given access to the ballots cast in the election or vote [~~only as~~
10 ~~part of a recount process authorized by law~~].

11 (d) This section may not be construed to affect a person's
12 obligation to comply with a court order for the release of ballots
13 or other voting records.

14 SECTION 17. Section 209.006, Property Code, is amended to
15 read as follows:

16 Sec. 209.006. NOTICE REQUIRED BEFORE ENFORCEMENT ACTION.

17 (a) Before a property owners' association may suspend an owner's
18 right to use a common area, file a suit against an owner other than a
19 suit to collect a regular or special assessment or foreclose under
20 an association's lien, charge an owner for property damage, or levy
21 a fine for a violation of the restrictions or bylaws or rules of the
22 association, the association or its agent must give written notice
23 to the owner by certified mail [~~, return receipt requested~~].

24 (b) The notice must:

25 (1) describe the violation or property damage that is
26 the basis for the suspension action, charge, or fine and state any
27 amount due the association from the owner; [~~and~~]

S.B. No. 1168

1 (2) except as provided by Subsection (d), inform the
2 owner that the owner:

3 (A) is entitled to a reasonable period to cure
4 the violation and avoid the fine or suspension if the violation is
5 of a curable nature and does not pose a threat to public health or
6 safety [~~unless the owner was given notice and a reasonable~~
7 ~~opportunity to cure a similar violation within the preceding six~~
8 ~~months~~];

9 (B) may request a hearing under Section 209.007
10 on or before the 30th day after the date [~~the owner receives~~] the
11 notice was mailed to the owner; and

12 (C) may have special rights or relief related to
13 the enforcement action under federal law, including the
14 Servicemembers Civil Relief Act (50 U.S.C. App. [~~app-~~] Section 501
15 et seq.), if the owner is serving on active military duty;

16 (3) specify the date by which the owner must cure the
17 violation if the violation is of a curable nature and does not pose
18 a threat to public health or safety; and

19 (4) be sent by verified mail to the owner at the
20 owner's last known address as shown on the association records.

21 (c) The date specified in the notice under Subsection (b)(3)
22 must provide a reasonable period to cure the violation if the
23 violation is of a curable nature and does not pose a threat to
24 public health or safety.

25 (d) Subsections (a) and (b) do not apply to a violation for
26 which the owner has been previously given notice under this section
27 and the opportunity to exercise any rights available under this

S.B. No. 1168

1 section in the preceding six months.

2 (e) If the owner cures the violation before the expiration
3 of the period for cure described by Subsection (c), a fine may not
4 be assessed for the violation.

5 (f) For purposes of this section, a violation is considered
6 a threat to public health or safety if the violation could
7 materially affect the physical health or safety of an ordinary
8 resident.

9 (g) For purposes of this section, a violation is considered
10 uncurable if the violation has occurred but is not a continuous
11 action or a condition capable of being remedied by affirmative
12 action. For purposes of this subsection, the nonrepetition of a
13 one-time violation or other violation that is not ongoing is not
14 considered an adequate remedy.

15 (h) The following are examples of acts considered uncurable
16 for purposes of this section:

17 (1) shooting fireworks;

18 (2) an act constituting a threat to health or safety;

19 (3) a noise violation that is not ongoing;

20 (4) property damage, including the removal or
21 alteration of landscape; and

22 (5) holding a garage sale or other event prohibited by
23 a dedicatory instrument.

24 (i) The following are examples of acts considered curable
25 for purposes of this section:

26 (1) a parking violation;

27 (2) a maintenance violation;

S.B. No. 1168

1 (3) the failure to construct improvements or
2 modifications in accordance with approved plans and
3 specifications; and

4 (4) an ongoing noise violation such as a barking dog.

5 SECTION 18. Section 209.0062(c), Property Code, is amended
6 to read as follows:

7 (c) A property owners' association ~~is~~ ~~[may]~~ not required to
8 allow a payment plan for any amount that extends more than 18 months
9 from the date of the owner's request for a payment plan. The
10 association is not required to enter into a payment plan with an
11 owner who failed to honor the terms of a previous payment plan
12 during the two years following the owner's default under the
13 previous payment plan. The association is not required to make a
14 payment plan available to an owner after the period for cure
15 described by Section 209.0064(b)(3) expires. The association is
16 not required to allow an owner to enter into a payment plan more
17 than once in any 12-month period.

18 SECTION 19. Section 209.0064(b), Property Code, is amended
19 to read as follows:

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

25 (1) specifies each delinquent amount and the total
26 amount of the payment required to make the account current;

27 (2) if the association is subject to Section 209.0062

S.B. No. 1168

1 or the association's dedicatory instruments contain a requirement
2 to offer a payment plan, describes the options the owner has to
3 avoid having the account turned over to a collection agent,
4 including information regarding availability of a payment plan
5 through the association; and

6 (3) provides a period of at least 30 days for the owner
7 to cure the delinquency before further collection action is taken.

8 SECTION 20. Section 209.009, Property Code, is amended to
9 read as follows:

10 Sec. 209.009. FORECLOSURE SALE PROHIBITED IN CERTAIN
11 CIRCUMSTANCES. A property owners' association may not foreclose a
12 property owners' association's assessment lien if the debt securing
13 the lien consists solely of:

14 (1) fines assessed by the association;

15 (2) attorney's fees incurred by the association solely
16 associated with fines assessed by the association; or

17 (3) amounts added to the owner's account as an
18 assessment under Section 209.005(i) or 209.0057(b-4).

19 SECTION 21. Section 209.0091, Property Code, is amended to
20 read as follows:

21 Sec. 209.0091. PREREQUISITES TO FORECLOSURE: NOTICE AND
22 OPPORTUNITY TO CURE FOR CERTAIN OTHER LIENHOLDERS. (a) A property
23 owners' association may not file an application for an expedited
24 court order authorizing foreclosure of the association's
25 assessment lien as described by Section 209.0092(a) or a petition
26 for judicial foreclosure of the association's assessment lien as
27 described by Section 209.0092(d) [~~foreclose a property owners'~~

S.B. No. 1168

1 ~~association assessment lien on real property by giving notice of~~
2 ~~sale under Section 51.002 or commencing a judicial foreclosure~~
3 ~~action~~] unless the association has:

4 (1) provided written notice of the total amount of the
5 delinquency giving rise to the foreclosure to any other holder of a
6 lien of record on the property whose lien is inferior or subordinate
7 to the association's lien and is evidenced by a deed of trust; and

8 (2) provided the recipient of the notice an
9 opportunity to cure the delinquency before the 61st day after the
10 date the association mails [~~recipient receives~~] the notice
11 described in Subdivision (1).

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

16 (c) Notwithstanding any other law, notice under this
17 section may be provided to any holder of a lien of record on the
18 property.

19 SECTION 22. Section 209.0092, Property Code, is amended by
20 amending Subsection (a) and adding Subsections (d) and (e) to read
21 as follows:

22 (a) Except as provided by Subsection (c) or (d) and subject
23 to Section 209.009, a property owners' association may not
24 foreclose a property owners' association assessment lien unless the
25 association first obtains a court order in an application for
26 expedited foreclosure under the rules adopted by the supreme court
27 under Subsection (b). A property owners' association may use the

S.B. No. 1168

1 procedure described by this subsection to foreclose any lien
2 described by the association's dedicatory instruments. A property
3 owners' association whose dedicatory instruments grant a right of
4 foreclosure is considered to have any power of sale required by law
5 as a condition of using the procedure described by this subsection.

6 (d) A property owners' association authorized to use the
7 procedure described by Subsection (a) may in its discretion elect
8 not to use that procedure and instead foreclose the association's
9 assessment lien under court judgment foreclosing the lien and
10 ordering the sale, pursuant to Rules 309 and 646a, Texas Rules of
11 Civil Procedure.

12 (e) This section does not affect any right an association
13 that is not authorized to use the procedure described by Subsection
14 (a) may have to judicially foreclose the association's assessment
15 lien as described by Subsection (d).

16 SECTION 23. Title 11, Property Code, is amended by adding
17 Chapter 213 to read as follows:

18 CHAPTER 213. MODIFICATION OR TERMINATION OF RESTRICTIONS IN
19 CERTAIN REAL ESTATE DEVELOPMENTS BY PROPERTY OWNERS' ASSOCIATION OR
20 PROPERTY OWNER PETITION

21 Sec. 213.001. DEFINITIONS. In this chapter:

22 (1) "Amenity property" means real property the use of
23 which is restricted by a dedicatory instrument to use as a golf
24 course or country club.

25 (2) "Council of owners" has the meaning assigned by
26 Section 81.002 as it relates to an existing condominium in a
27 development.

S.B. No. 1168

1 (3) "Dedictory instrument" means a governing
2 instrument that:

3 (A) restricts amenity property to use as amenity
4 property;

5 (B) designates real property in the development,
6 other than amenity property, as a beneficiary of a restriction
7 described by Paragraph (A); and

8 (C) addresses the establishment, maintenance,
9 and operation of amenity property.

10 (4) "Development" means:

11 (A) amenity property; and

12 (B) all real property designated as beneficiary
13 property in the dedicatory instrument.

14 (5) "Owner" means a person, or the person's personal
15 representative, who holds record title to:

16 (A) a lot or parcel of real property in a
17 development; or

18 (B) a unit or apartment of a condominium in the
19 development.

20 (6) "Petition circulator" means a person authorized to
21 circulate a petition under Section 213.005.

22 (7) "Property owners' association" means an
23 incorporated or unincorporated association that:

24 (A) is designated as the representative of the
25 owners of lots or parcels of real property in a development;

26 (B) has a membership primarily consisting of
27 those owners; and

S.B. No. 1168

1 (C) manages or regulates all or part of the
2 development for the benefit of those owners.

3 (8) "Restrictions" means one or more restrictive
4 covenants contained or incorporated by reference in a properly
5 recorded map, plat, replat, declaration, or other instrument filed
6 in the real property records or map or plat records. The term
7 includes any amendment or extension of the restrictions.

8 (9) "Restrictive covenant" means any covenant,
9 condition, or restriction contained in a dedicatory instrument,
10 whether mandatory, prohibitive, permissive, or administrative.

11 (10) "Unit owners' association" means an association
12 of unit owners organized under Section 82.101 for a condominium in a
13 development.

14 Sec. 213.002. FINDINGS AND PURPOSE. (a) The legislature
15 finds that:

16 (1) a restriction on the use of an amenity property may
17 create uncertainty if the owners of an amenity property are
18 reluctant or unable to properly maintain or operate the amenity
19 property;

20 (2) such uncertainty may discourage investment and
21 negatively impact property values in the development;

22 (3) investors may be reluctant to or will not invest
23 funds to revitalize an amenity property burdened with a restriction
24 on its use;

25 (4) financial institutions may be reluctant to or will
26 not provide financing to revitalize an amenity property burdened
27 with a restriction on its use; and

S.B. No. 1168

1 (5) establishing a procedural option to allow for the
2 modification or termination of the restriction would alleviate the
3 uncertainty and encourage revitalization of the amenity property.

4 (b) The purpose of this chapter is to provide a procedural
5 option for the modification or termination of a restriction on the
6 use of an amenity property.

7 Sec. 213.003. MODIFICATION OR TERMINATION BY PETITION.

8 (a) Except as provided by Subsection (b), a restriction on the use
9 of an amenity property may be modified or terminated by petition in
10 accordance with this chapter.

11 (b) This chapter does not apply if:

12 (1) a dedicatory instrument includes a procedure to
13 modify or terminate a restriction on the use of an amenity property
14 on approval of the owners of less than 75 percent of, as applicable,
15 the lots or parcels of land and units or apartments of condominiums
16 in the development; or

17 (2) a restriction on the use of an amenity property may
18 be modified or terminated under the procedures of Chapter 81, 82,
19 201, or 209.

20 Sec. 213.004. PREREQUISITES FOR CIRCULATION. A petition
21 may not be circulated under this chapter unless:

22 (1) for a continuous period of at least 36 months, the
23 amenity property has not been in operation; and

24 (2) if zoning regulations apply to the amenity
25 property, the owner of the amenity property has received all
26 required zoning approvals for any proposed redevelopment of the
27 amenity property.

S.B. No. 1168

1 Sec. 213.005. PETITION CIRCULATOR. A petition authorized
2 by Section 213.003 may be circulated by:

3 (1) an owner;

4 (2) a property owners' association that owns and
5 manages the amenity property; or

6 (3) a unit owners' association or council of owners
7 that owns and manages the amenity property.

8 Sec. 213.006. CONTENTS OF PETITION. (a) The petition must
9 include all relevant information about the proposed modification or
10 termination, including:

11 (1) the name of the development, if any;

12 (2) the name of the amenity property, if any;

13 (3) the recording information of the restriction to be
14 modified or terminated;

15 (4) the text of the restriction subject to
16 modification or termination;

17 (5) the text of the restriction as modified or
18 terminated; and

19 (6) a comparison of the original language of the
20 restriction and the restriction as modified or terminated, showing
21 any insertion and deletion of language or punctuation.

22 (b) The petition must state:

23 (1) reasonable times and dates the petition circulator
24 will be available at a location in the development to receive a
25 signed statement required by Section 213.008;

26 (2) a mailing address, e-mail address, and facsimile
27 number to which a signed statement may be delivered; and

S.B. No. 1168

1 (3) the date by which a signed statement must be
2 received to be counted.

3 Sec. 213.007. CIRCULATION PROCEDURE. (a) A petition
4 circulator shall deliver a copy of the petition to:

5 (1) all owners of:

6 (A) each lot or parcel of real property in the
7 development; and

8 (B) each unit or apartment of each condominium,
9 if any, in the development; and

10 (2) each property owners' association, unit owners'
11 association, and council of owners in the development.

12 (b) The petition circulator may deliver a copy of the
13 petition in any reasonable manner, including:

14 (1) by regular mail or certified mail, return receipt
15 requested, to the last known address of the owners or entities
16 described by Subsections (a)(1) and (2);

17 (2) personal delivery to the owners or entities
18 described by Subsections (a)(1) and (2); or

19 (3) at a regular meeting of a property owners'
20 association, unit owners' association, or council of owners.

21 (c) If the petition circulator acts in good faith in
22 determining ownership and delivering copies of the petition as
23 required by this section, an owner's lack of receipt of a copy of
24 the petition does not affect the application of a modification or
25 termination of a restriction under this chapter to the amenity
26 property.

27 Sec. 213.008. VOTE ON PROPOSAL. (a) The modification or

S.B. No. 1168

1 termination of the restriction is adopted if the owners of at least
2 75 percent of the total number, as applicable, of the lots or
3 parcels of land and the units or apartments of condominiums in the
4 development, including the owner of the amenity property, vote in
5 favor of the modification or termination of the restriction.

6 (b) An owner may cast a vote only by delivering to the
7 petition circulator in accordance with Section 213.009 a signed
8 statement that includes:

9 (1) the owner's name, the legal description or street
10 address of the owner's property, and the owner's mailing address;

11 (2) a statement that the owner holds record title to
12 the property;

13 (3) if more than one person owns an interest in the
14 property, the name and mailing address of each co-owner; and

15 (4) a statement indicating whether the owner is in
16 favor of or against the modification or termination proposed by the
17 petition.

18 (c) An owner may vote only in favor of or against the
19 modification or termination as proposed in the petition.

20 (d) If more than one person owns an interest in a lot or
21 parcel of land or a unit or apartment of a condominium, the owners
22 may cast only one vote for that lot, parcel, unit, or apartment.

23 Except as otherwise provided by this subsection, the vote of
24 multiple owners in favor of or against the modification or
25 termination may be reflected by the signatures of a majority of the
26 co-owners who return a signed statement. The vote of owners who are
27 married may be reflected by the signature of only one of those

S.B. No. 1168

1 owners.

2 (e) A person whose only property interest in a lot or parcel
3 of land or unit or apartment of a condominium is that of a contract
4 purchaser, lienholder, or mineral interest holder may not cast a
5 vote for that property under this chapter.

6 (f) A vote may be counted only if the vote is received before
7 the deadline stated in the petition as required by Section
8 213.006(b).

9 (g) The signed statement of an owner conclusively
10 establishes that:

11 (1) the petition was received by the owner in
12 accordance with Section 213.007; and

13 (2) the statement accurately reflects the vote of the
14 owner.

15 Sec. 213.009. DELIVERY OF SIGNED STATEMENT. (a) The
16 petition circulator must accept a signed statement described by
17 Section 213.008 that is delivered:

18 (1) in person under Section 213.006(b) or otherwise;

19 (2) by first class mail to an address stated in the
20 petition;

21 (3) by e-mail to an address stated in the petition; or

22 (4) by facsimile to a facsimile number stated in the
23 petition.

24 (b) This section supersedes any contrary provision in a
25 dedicatory instrument.

26 Sec. 213.010. CERTIFICATION OF RESULTS BY RECORDED
27 AFFIDAVIT. (a) The petition circulator shall certify the result

S.B. No. 1168

1 of the votes by filing an affidavit with the county clerk of the
2 county in which the restriction modified or terminated is recorded.

3 (b) The affidavit required by Subsection (a) must state:

4 (1) the name of the development, if any;

5 (2) the name of the amenity property, if any;

6 (3) the recording information of the restriction that
7 was modified or terminated;

8 (4) the text of the restriction before modification or
9 termination;

10 (5) the text of the restriction as modified or
11 terminated;

12 (6) the number of votes in favor of and against the
13 proposed modification or termination;

14 (7) the name and address of the petition circulator;

15 and

16 (8) the name, address, and telephone number of the
17 person maintaining the documents in accordance with Section
18 213.013.

19 (c) The petition circulator must affirm in the affidavit
20 that the petition was delivered in accordance with Section 213.007.

21 Sec. 213.011. NOTICE. (a) The recording of the affidavit
22 required by Section 213.010 constitutes notice that the restriction
23 is modified or terminated.

24 (b) Notwithstanding Subsection (a), the petition circulator
25 must deliver to each person who resides within 200 feet of the
26 boundary of the amenity property a copy of the affidavit. The
27 affidavit may be delivered by regular mail, by certified mail,

S.B. No. 1168

1 return receipt requested, or by personal delivery.

2 Sec. 213.012. EFFECTIVE DATE OF MODIFICATION OR
3 TERMINATION. The modification or termination of the restriction
4 takes effect on the later of:

5 (1) the date the affidavit required by Section 213.010
6 is filed with the county clerk; or

7 (2) the date, if any, specified as the effective date
8 in the petition.

9 Sec. 213.013. DOCUMENTATION AVAILABLE. At least one year
10 after the date the affidavit is filed with the county clerk, the
11 petition circulator shall make available for inspection and copying
12 the original petition, the signed statements described by Section
13 213.008, and the affidavit required by Section 213.010.

14 Sec. 213.014. EXPIRATION. This chapter expires September
15 1, 2021.

16 SECTION 24. Section 209.0041(a), Property Code, is
17 repealed.

18 SECTION 25. (a) Section 82.157(a), Property Code, as
19 amended by this Act, applies only to a resale certificate issued on
20 or after the effective date of this Act. A resale certificate
21 issued before the effective date of this Act is governed by the law
22 as it existed immediately before the effective date of this Act, and
23 that law is continued in effect for that purpose.

24 (b) The changes in law made by this Act to Chapter 207,
25 Property Code, apply only to a request for subdivision information
26 made on or after the effective date of this Act and any resale
27 certificate delivered in response to that request. A request for

S.B. No. 1168

1 subdivision information made before the effective date of this Act,
2 any resale certificate delivered in response to that request, and
3 any request for an update of that resale certificate are governed by
4 the law as it existed immediately before that date, and that law is
5 continued in effect for that purpose.

6 (c) Sections 209.0041, 209.0056, 209.0057, 209.0058,
7 209.00592, 209.00593, and 209.00594(c), Property Code, as amended
8 by this Act, apply only to an election or vote held on or after the
9 effective date of this Act. An election or vote held before the
10 effective date of this Act is governed by the law as it existed
11 immediately before that date, and that law is continued in effect
12 for that purpose.

13 (d) Section 209.006, Property Code, as amended by this Act,
14 applies only to an enforcement action taken on or after the
15 effective date of this Act. An enforcement action taken before the
16 effective date of this Act is governed by the law as it existed
17 immediately before that date, and that law is continued in effect
18 for that purpose.

19 (e) Section 209.0064, Property Code, as amended by this Act,
20 applies only to a collection action taken on or after the effective
21 date of this Act. A collection action taken before the effective
22 date of this Act is governed by the law as it existed immediately
23 before that date, and that law is continued in effect for that
24 purpose.

25 (f) Section 209.0091, Property Code, as amended by this Act,
26 applies only to an application or petition filed on or after the
27 effective date of this Act. An application or petition filed before

S.B. No. 1168

1 the effective date of this Act is governed by the law as it existed
2 immediately before that date, and that law is continued in effect
3 for that purpose.

4 SECTION 26. Chapter 213, Property Code, as added by this
5 Act, does not apply to a petition circulated before the effective
6 date of this Act.

7 SECTION 27. This Act takes effect September 1, 2015.

S.B. No. 1168

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1168 passed the Senate on May 6, 2015, by the following vote: Yeas 27, Nays 4; and that the Senate concurred in House amendments on May 28, 2015, by the following vote: Yeas 26, Nays 5.

Secretary of the Senate

I hereby certify that S.B. No. 1168 passed the House, with amendments, on May 24, 2015, by the following vote: Yeas 142, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

S.B. No. 1626

1 AN ACT
2 relating to the regulation by a developer of the installation of
3 solar energy devices in a residential subdivision.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 202.010(a), Property Code, is amended by
6 adding Subdivision (1-a) to read as follows:

7 (1-a) "Residential unit" means a structure or part of
8 a structure intended for use as a single residence and that is:

9 (A) a single-family house; or

10 (B) a separate living unit in a duplex, a
11 triplex, or a quadplex.

12 SECTION 2. Section 202.010(f), Property Code, is amended to
13 read as follows:

14 (f) During the development period for a development with
15 fewer than 51 planned residential units, the declarant may prohibit
16 or restrict a property owner from installing a solar energy device.

17 SECTION 3. This Act takes effect September 1, 2015.

S.B. No. 1626

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1626 passed the Senate on April 27, 2015, by the following vote: Yeas 28, Nays 2.

Secretary of the Senate

I hereby certify that S.B. No. 1626 passed the House on May 12, 2015, by the following vote: Yeas 136, Nays 8, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

S.B. No. 1852

1 AN ACT
2 relating to the adoption of an amendment procedure for restrictive
3 covenants affecting real property in certain residential
4 subdivisions.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Sections 211.002(a), (b), and (b-1), Property
7 Code, are amended to read as follows:

8 (a) This chapter applies only to a residential real estate
9 subdivision or any unit or parcel of a subdivision:

10 (1) all or part of which is located within an
11 unincorporated area of a county if the county has a population of
12 less than 65,000;

13 (2) all of which is located within the
14 extraterritorial jurisdiction of a municipality located in a county
15 that has a population of at least 65,000 and less than 135,000; ~~or~~

16 (3) all of which is located within the
17 extraterritorial jurisdiction of a municipality located in a county
18 that borders Lake Buchanan and has a population of at least 18,500
19 and less than 19,500; or

20 (4) all or part of which is located within a county
21 that borders Lake Livingston and has a population of less than
22 50,000.

23 (b) This chapter applies only to restrictions that affect
24 real property within a residential real estate subdivision or any

S.B. No. 1852

1 units or parcels of the subdivision and that, by the express terms
2 of the instrument creating the restrictions:

3 (1) are not subject to a procedure by which the
4 restrictions may be amended; [~~or~~]

5 (2) may not be amended without the unanimous consent
6 of:

7 (A) all property owners in the subdivision; or

8 (B) all property owners in any unit or parcel of
9 the subdivision; or

10 (3) may not be amended without a written instrument
11 that is:

12 (A) signed by a majority or more than a majority
13 of the owners of the lots in the subdivision; and

14 (B) filed in the real property records of each
15 county in which all or part of the subdivision is located.

16 (b-1) In addition to restrictions and units or parcels of a
17 subdivision that are subject to this chapter under Subsection (b),
18 this chapter applies to restrictions that affect real property
19 within a residential real estate subdivision or any units or
20 parcels of the subdivision and that, by the express terms of the
21 instrument creating the restrictions, provide that amendments to
22 the restrictions are not operative or effective until a specified
23 date or the expiration of a specified period. An amendment under
24 this chapter of a restriction described by this subsection is
25 effective as provided by this chapter, regardless of whether the
26 date specified in the restrictions has occurred or the period
27 prescribed by the restrictions has expired. This subsection

S.B. No. 1852

1 expires September 1, 2019 [2015].

2 SECTION 2. This Act takes effect immediately if it receives
3 a vote of two-thirds of all the members elected to each house, as
4 provided by Section 39, Article III, Texas Constitution. If this
5 Act does not receive the vote necessary for immediate effect, this
6 Act takes effect September 1, 2015.

S.B. No. 1852

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1852 passed the Senate on April 22, 2015, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1852 passed the House on May 27, 2015, by the following vote: Yeas 141, Nays 3, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor



**LEGISLATIVE UPDATE 2015:
CONDOS & OWNERS ASSOCIATIONS**

An Overview of 2015 Law Changes for
Texas Condominium and Subdivision Associations

by

Bob Burton
Winstead PC
401 Congress Avenue, Suite 2100
Austin, Texas 78701
(512) 370-2869
rburton@winstead.com

Sharon Reuler
SHARON REULER, P.C.
5400 LBJ Freeway, Suite 1200
Dallas, Texas 75240
(972) 720-9727
sreuler@txlandlaw.com

July 1, 2015
State Bar of Texas Webcast

Prepared for use with Legislative Update 2015: Condos & Owners Associations, July 1, 2015.



Prepared for use with Legislative Update 2015: Condos & Owners Associations, July 1, 2015

AGENDA

- PART ONE – DEVELOPERS
- PART TWO – CONDOS
- PART THREE – ASSESSMENTS
- PART FOUR – BOARDS
- PART FIVE – VOTING
- PART SIX – RULES
- PART SEVEN - BRACKETING

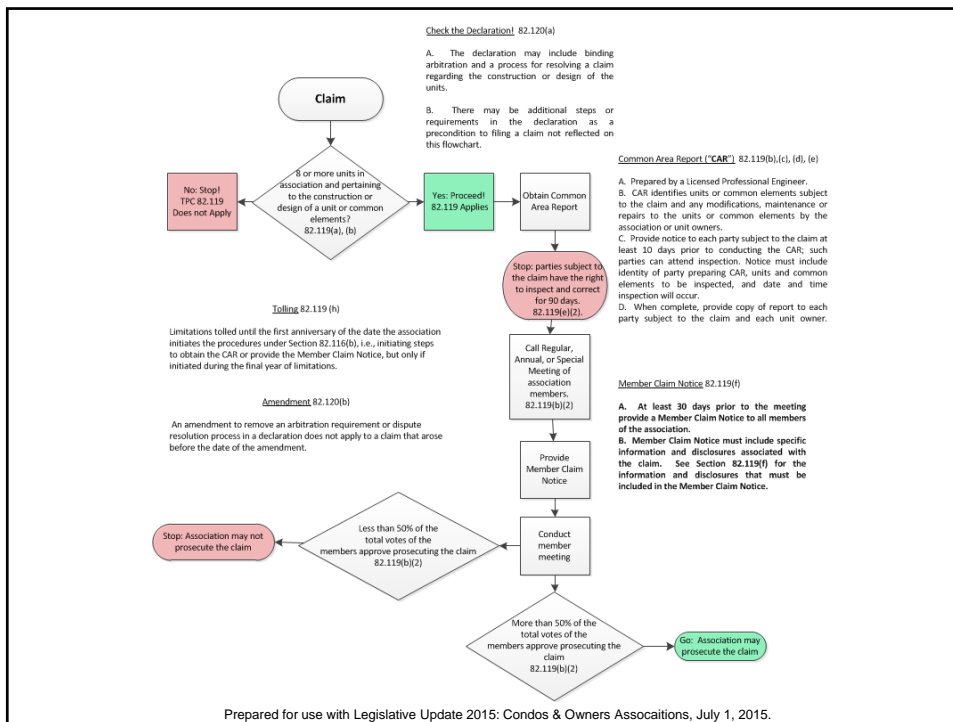
Prepared for use with Legislative Update 2015: Condos & Owners Associations, July 1, 2015.



PART ONE – DEVELOPERS

- CONDOS: Construction Defect Litigation—HB 1455
- CONDOS AND SUBDIVISIONS - Solar: Solar exemption removed for developers of projects with more than 50 lots or units.
- SUBDIVISIONS - HOA Board Participation: Don't count the sale of vacant lots to homebuilders for purposes of calculating the 75% conveyance trigger for non-developer board participation.
- SUBDIVISIONS – Development Period: Definition cleanup.
- CONDOS AND SUBDIVISIONS – Standby Electric Generators.

Prepared for use with Legislative Update 2015: Condos & Owners Associations, July 1, 2015.



PART TWO – CONDOS

- **Condominium Resale Certificate:** The resale certificate must now include the current balance sheet and any ownership transfer fees payable to the association or manager.
- **Chapters 207 and 209:** Expressly do not apply to condominiums; Condos cannot "opt-in" to 209; Confirms that the condominium association does not have to post all its governing documents on a publically accessible website.



PART THREE – ASSESSMENTS

- Power of Sale: Power of Sale- if the dedicatory instruments grant a right to foreclosure, there is now a statutory power of sale.
- Payment Plans: Removed the 18 month maximum term for payment plans; requires the owner to request a payment plan before the period to cure the delinquency expires; limits the requirement to offer a payment plan to once every 12 months.
- Lienholders: The time a subordinate lienholder has the right to cure the delinquency is measured from the date the association mails the notice; the association may send a notice of delinquency to superior lienholders.
- Recount: Additional amounts payable by an owner associated with a requested vote recount may be added to assessments chargeable to the owner.

Prepared for use with Legislative Update 2015: Condos & Owners Associations, July 1, 2015.



PART FOUR – BOARD

- Board Meetings - With Notice to Owners: New standards for holding a board meeting electronically and by telephone.
- Board Meetings – Without Notice to Owners: Board members must be provided the opportunity to “express the board member’s opinion to all other board members”; new items added which cannot be voted on without notice to the owners.
- Board Qualifications: No longer disqualified from serving on the board if the conviction for a felony or crime of moral turpitude is more than 20 years old.

Prepared for use with Legislative Update 2015: Condos & Owners Associations, July 1, 2015.



PART FIVE – VOTING

- Voting Methods: Unless provided otherwise in the dedicatory instruments, the association is not required to provide owners with more than one voting method so long as the owner is permitted to vote by absentee ballot or proxy; if an owner vote is taken outside a meeting, notice must be provided to each owner at least 20 days prior to the date the ballot must be submitted.
- Absentee Ballots: A nomination from the floor at a board member election does not invalidate absentee or electronic ballots.
- Secret Ballots: If the association adopts requirements to ensure the counting of ballots, secret (unsigned) ballots may be accepted.

Prepared for use with Legislative Update 2015: Condos & Owners Associations, July 1, 2015.



PART FIVE – VOTING (CONT.)

- Notices and Candidates: The association (consisting of more than 100 lots) must now affirmatively solicit nominations for the board and include any owner who desires to run for election on the ballot; alternative methods of providing notice, even if required by law, may be used if the owner consents to the method; a dedicatory instrument may require that board members be residents of the subdivision provided that all directors are not required to be residents.
- Recounts: Notice requesting a recount is sent to the association by “verified mail”; no recount if owner does not pre-pay estimated costs within 30 days after association sends invoice.

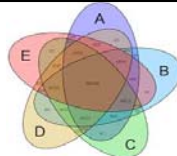
Prepared for use with Legislative Update 2015: Condos & Owners Associations, July 1, 2015.



PART SIX – RULES

- Types of Violations and Notices: Must provide notice, but need only provide a reasonable opportunity to cure if the violation is “curable” or does not “pose a threat to public health or safety”; includes examples of “uncurable” and “curable” violations.
- Verified Mail: “Verified mail” is required for the mailing of violation notices in one section, but certified mail (with the elimination of the requirement for return receipt requested) is required in another section; seems clear that the dates for purposes of the time to request a board hearing and to cure the violation will be measured from the date the notice was mailed as opposed to received by the owner.
- Rental Restrictions: An association may not adopt or enforce a rule that requires that a lease, rental application, or credit report be submitted to and approved by the association; if a lease is provided to the association, “sensitive personal information” may be redacted.
- Street Signs: An association may install a solar powered light emitting diode stop sign on a public street within the community with the consent of the applicable municipal authority; the association is required to pay for the installation and maintenance.

Prepared for use with Legislative Update 2015: Condos & Owners Associations, July 1, 2015.



PART SEVEN – BRACKETING

- High-Rise Sprinklers: Bexar County; requires fire protection sprinklers in residential buildings that are more than 75 feet in height, with criminal penalty violations; only applies to non-historic high-rises in which more than half the residents are elderly, impaired or disabled.
- Golf Course Redevelopment: Creates a new Chapter 213 to the Texas Property Code; provides a process for eliminating a golf course or country club restriction on land to permit redevelopment; Chapter terminates on September 1, 2021.
- Lake Livingston: Expands the Chapter 211 bracket to 3 counties surrounding Lake Livingston—Polk, San Jacinto, and Trinity; provides a process for amending restrictions where the restrictions require that the owners sign the amendment.
- Under 10 Lots: Prevents a person from voting in an association election unless the person is subject to a dedicatory instrument governing the association through which the association exercises its authority; only applies where the declaration was recorded prior to January 1, 2015.

Prepared for use with Legislative Update 2015: Condos & Owners Associations, July 1, 2015.



Prepared for use with Legislative Update 2015: Condos & Owners Associations, July 1, 2015.