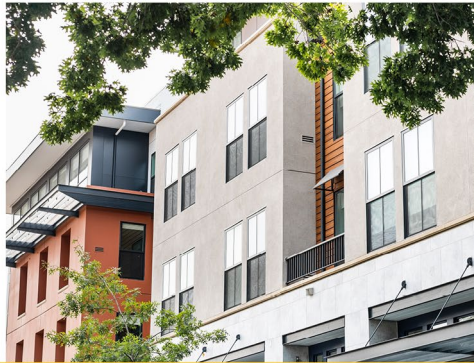




Texas Laws Governing HOAs and Condo Associations

Updates made during the 88th legislative session



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Winstead represents community associations throughout Texas, with offices in Austin, Dallas, Fort Worth, Houston, San Antonio, and The Woodlands.

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Disclaimer: This booklet is solely for use as a reference guide and does not constitute legal advice. You should always refer to <https://statutes.capitol.texas.gov/> for the current version of any code. This booklet contains only select chapters of the Texas Property Code: Chapters 82, 202, 207, and 209. The chapters apply to the operation and administration of Texas property owners' associations, although other code provisions apply in certain circumstances. Always consult legal counsel to fully protect your interests.

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Chapter 209
Texas Residential Property
Owners Protection Act
(Non-Condo)

Property Code
Title 11. Restrictive Covenants
Chapter 209. Texas Residential Property
Owners Protection Act

Sec. 209.001. Short Title.

This chapter may be cited as the Texas Residential Property Owners Protection Act.

Sec. 209.002. Definitions.

In this chapter:

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.

Board means the governing body of a property owners' association.

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

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.

Development period means a period stated in a declaration during which a declarant reserves:

a right to facilitate the development, construction, and

marketing of the subdivision; or

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

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

Management company means a person or entity established or contracted to provide management or administrative services on behalf of a property owners' association.

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.

Property owners' association or association means an incorporated or unincorporated association that:

is designated as the representative of the owners of property in a residential subdivision;

has a membership primarily consisting of the owners of the property covered by the dedicatory instrument for the residential subdivision; and

manages or regulates the residential subdivision for the benefit of the owners of property in the residential subdivision.

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.

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:

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;

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

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

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.

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

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:

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;

maintenance and improvement of common areas owned by the property owners' association; or

other purposes of the property owners' association as stated in its articles of incorporation or the dedicatory instrument for the

residential subdivision.

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 by Section 81.002 or 82.003.
- 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.

Sec. 209.004. Management Certificates.

- a. A property owners' association shall record in each county in which any portion of the residential subdivision is located a management certificate, signed and acknowledged by an officer or the managing agent of the association, stating:
 - (1) the name of the subdivision;
 - (2) the name of the association;
 - (3) the recording data for the subdivision;
 - (4) the recording data for the declaration and any amendments to the declaration;
 - (5) the name and mailing address of the association;
 - (6) the name, mailing address, telephone number, and e-mail address of the person managing the association or the association's designated representative;
 - (7) the website address of any Internet website on which the association's dedicatory instruments are available in accordance with Section 207.006;
 - (8) the amount and description of a fee or fees charged by the association relating to a property transfer in the subdivision; and
 - (9) other information the association considers appropriate.

The county clerk of each county in which a management certificate is filed as required by this section shall record the management certificate in the real property records of the county and index the document as a "Property Owners' Association Management Certificate."

- b. The property owners' association shall record an amended management certificate in each county in which any portion of the residential subdivision is located not later than the 30th day after the date the association has notice of a change in any information in the recorded certificate required by Subsection (a).

(1) Text of subsection effective on December 01, 2021

(b-1) Not later than the seventh day after the date a property owners' association files a management certificate for recording under Subsection (a) or files an amended management certificate for recording under Subsection (b), the property owners' association shall electronically file the management certificate or amended management certificate with the Texas Real Estate Commission. The Texas Real Estate Commission shall only collect the management certificate and amended management certificate for the purpose of making the data accessible to the general public through an Internet website.

- c. Except as provided under Subsections (d) and (e), the property owners' association and its officers, directors, employees, and agents are not subject to liability to any person for a delay in recording or failure to record a management certificate with a county clerk's office or electronically file the management certificate with the Texas Real Estate Commission, unless the delay or failure is wilful or caused by gross negligence.
- d. If a property owners' association fails to record a management certificate or an amended management certificate under this section, the purchaser, lender, or title insurance company or its agent in a transaction involving property in the property owners' association is not liable to the property owners' association for:

- (1) any amount due to the association on the date of a transfer to a bona fide purchaser; and
 - (2) any debt to or claim of the association that accrued before the date of a transfer to a bona fide purchaser.
- e. A lien of a property owners' association that fails to file a management certificate or an amended management certificate under this section to secure an amount due on the effective date of a transfer to a bona fide purchaser is enforceable only for an amount incurred after the effective date of sale. An owner is not liable for attorney's fees incurred by a property owners' association relating to the collection of a delinquent assessment against the owner or interest on the amount of a delinquent assessment if the attorney's fees are incurred by the association or the interest accrues during the period a management certificate is not recorded with a county clerk or electronically filed with the Texas Real Estate Commission as required by this section.
- f. For purposes of this section, "bona fide purchaser" means:
- (1) a person who pays valuable consideration without notice of outstanding rights of others and acts in good faith; or
 - (2) a third-party lender who acquires a security interest in the property under a deed of trust.

Sec. 209.0041. Adoption or Amendment of Certain Dedicatory Instruments.

- a. Repealed by Acts 2015, 84th Leg., R.S., Ch. 1183 , Sec. 24, eff. September 1, 2015.
- 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.
 - (d-1) This section does not apply to an amendment of a declaration if the amendment would affect a portion of a subdivision that is zoned for or that contains, or previously contained as specifically allowed under the declaration, a commercial structure, an industrial structure, an apartment complex, or a condominium as defined by Section 81.002 or 82.003. For purposes of this subsection, "apartment complex" means two or more dwellings in one or more buildings that are owned by the same owner, located on the same lot or tract, and managed by the same owner, agent, or management company.
- 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), 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 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) 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.

Sec. 209.005. Association Records.

- a. Except as provided by Subsection (b), this section applies to all property owners' associations and controls over other law not specifically applicable to a property owners' association.
- b. This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.
- c. Notwithstanding a provision in a dedicatory instrument, a property owners' association shall make the books and records of the

association, including financial records, open to and reasonably available for examination by an owner, or a person designated in a writing signed by the owner as the owner's agent, attorney, or certified public accountant, in accordance with this section. An owner is entitled to obtain from the association copies of information contained in the books and records.

- d. Except as provided by this subsection, an attorney's files and records relating to the property owners' association, excluding invoices requested by an owner under Section 209.008(d), are not records of the association and are not subject to inspection by the owner or production in a legal proceeding. If a document in an attorney's files and records relating to the association would be responsive to a legally authorized request to inspect or copy association documents, the document shall be produced by using the copy from the attorney's files and records if the association has not maintained a separate copy of the document. This subsection does not require production of a document that constitutes attorney work product or that is privileged as an attorney-client communication.
- e. An owner or the owner's authorized representative described by Subsection (c) must submit a written request for access or information under Subsection (c) by certified mail, with sufficient detail describing the property owners' association's books and records requested, to the mailing address of the association or authorized representative as reflected on the most current management certificate filed under Section 209.004. The request must contain an election either to inspect the books and records before obtaining copies or to have the property owners' association forward copies of the requested books and records and:
 - (1) if an inspection is requested, the association, on or before the 10th business day after the date the association receives the request, shall send written notice of dates during normal business hours that the owner may inspect the requested books and records to the extent those books and records are in the possession, custody, or control of the association; or
 - (2) if copies of identified books and records are requested, the

association shall, to the extent those books and records are in the possession, custody, or control of the association, produce the requested books and records for the requesting party on or before the 10th business day after the date the association receives the request, except as otherwise provided by this section.

- f. If the property owners' association is unable to produce the books or records requested under Subsection (e) on or before the 10th business day after the date the association receives the request, the association must provide to the requestor written notice that:
 - (1) informs the requestor that the association is unable to produce the information on or before the 10th business day after the date the association received the request; and
 - (2) states a date by which the information will be sent or made available for inspection to the requesting party that is not later than the 15th business day after the date notice under this subsection is given.
- g. If an inspection is requested or required, the inspection shall take place at a mutually agreed on time during normal business hours, and the requesting party shall identify the books and records for the property owners' association to copy and forward to the requesting party.
- h. A property owners' association may produce books and records requested under this section in hard copy, electronic, or other format reasonably available to the association.
- i. A property owners' association board must adopt a records production and copying policy that prescribes the costs the association will charge for the compilation, production, and reproduction of information requested under this section. The prescribed charges may include all reasonable costs of materials, labor, and overhead but may not exceed costs that would be applicable for an item under 1 T.A.C. Section 70.3. The policy required by this subsection must be recorded as a dedicatory instrument in accordance with Section 202.006. An association

may not charge an owner for the compilation, production, or reproduction of information requested under this section unless the policy prescribing those costs has been recorded as required by this subsection. An owner is responsible for costs related to the compilation, production, and reproduction of the requested information in the amounts prescribed by the policy adopted under this subsection. The association may require advance payment of the estimated costs of compilation, production, and reproduction of the requested information. If the estimated costs are lesser or greater than the actual costs, the association shall submit a final invoice to the owner on or before the 30th business day after the date the information is delivered. If the final invoice includes additional amounts due from the owner, the additional amounts, if not reimbursed to the association before the 30th business day after the date the invoice is sent to the owner, may be added to the owner's account as an assessment. If the estimated costs exceeded the final invoice amount, the owner is entitled to a refund, and the refund shall be issued to the owner not later than the 30th business day after the date the invoice is sent to the owner.

- j. A property owners' association must estimate costs under this section using amounts prescribed by the policy adopted under Subsection (i).
- k. Except as provided by Subsection (l) and to the extent the information is provided in the meeting minutes, the property owners' association is not required to release or allow inspection of any books or records that identify the dedicatory instrument violation history of an individual owner of an association, an owner's personal financial information, including records of payment or nonpayment of amounts due the association, an owner's contact information, other than the owner's address, or information related to an employee of the association, including personnel files. Information may be released in an aggregate or summary manner that would not identify an individual property owner.
- l. The books and records described by Subsection (k) shall be released or made available for inspection if:

- (1) the express written approval of the owner whose records are the subject of the request for inspection is provided to the property owners' association; or
 - (2) a court orders the release of the books and records or orders that the books and records be made available for inspection.
- m. A property owners' association composed of more than 14 lots shall adopt and comply with a document retention policy that includes, at a minimum, the following requirements:
- (1) certificates of formation, bylaws, restrictive covenants, and all amendments to the certificates of formation, bylaws, and covenants shall be retained permanently;
 - (2) financial books and records shall be retained for seven years;
 - (3) account records of current owners shall be retained for five years;
 - (4) contracts with a term of one year or more shall be retained for four years after the expiration of the contract term;
 - (5) minutes of meetings of the owners and the board shall be retained for seven years; and
 - (6) tax returns and audit records shall be retained for seven years.
- n. A member of a property owners' association who is denied access to or copies of association books or records to which the member is entitled under this section may file a petition with the justice of the peace of a justice precinct in which all or part of the property that is governed by the association is located requesting relief in accordance with this subsection. If the justice of the peace finds that the member is entitled to access to or copies of the records, the justice of the peace may grant one or more of the following remedies:
- (1) a judgment ordering the property owners' association to release or allow access to the books or records;

- (2) a judgment against the property owners' association for court costs and attorney's fees incurred in connection with seeking a remedy under this section; or
 - (3) a judgment authorizing the owner or the owner's assignee to deduct the amounts awarded under Subdivision (2) from any future regular or special assessments payable to the property owners' association.
- o. If the property owners' association prevails in an action under Subsection (n), the association is entitled to a judgment for court costs and attorney's fees incurred by the association in connection with the action.
 - p. On or before the 10th business day before the date a person brings an action against a property owners' association under this section, the person must send written notice to the association of the person's intent to bring the action. The notice must:
 - (1) be sent certified mail, return receipt requested, or delivered by the United States Postal Service with signature confirmation service to the mailing address of the association or authorized representative as reflected on the most current management certificate filed under Section 209.004; and
 - (2) describe with sufficient detail the books and records being requested.
 - q. For the purposes of this section, "business day" means a day other than Saturday, Sunday, or a state or federal holiday.

Sec. 209.00505. Architectural Review Authority.

- a. In this section, "architectural review authority" means the governing authority for the review and approval of improvements within a subdivision.
- b. This section:

- (1) applies only to a property owners' association that consists of more than 40 lots; and
 - (2) does not apply during a development period or during any period in which the declarant:
 - (A) appoints at least a majority of the members of the architectural review authority or otherwise controls the appointment of the architectural review authority; or
 - (B) has the right to veto or modify a decision of the architectural review authority.
- c. A person may not be appointed or elected to serve on an architectural review authority if the person is:
- (1) a current board member;
 - (2) a current board member's spouse; or
 - (3) a person residing in a current board member's household.
- d. A decision by the architectural review authority denying an application or request by an owner for the construction of improvements in the subdivision may be appealed to the board. A written notice of the denial must be provided to the owner by certified mail, hand delivery, or electronic delivery. The notice must:
- (1) describe the basis for the denial in reasonable detail and changes, if any, to the application or improvements required as a condition to approval; and
 - (2) inform the owner that the owner may request a hearing under Subsection (e) on or before the 30th day after the date the notice was mailed to the owner.
- e. The board shall hold a hearing under this section not later than the 30th day after the date the board receives the owner's request for a hearing and shall notify the owner of the date, time, and place

of the hearing not later than the 10th day before the date of the hearing. Only one hearing is required under this subsection.

- f. During a hearing, the board or the designated representative of the property owners' association and the owner or the owner's designated representative will each be provided the opportunity to discuss, verify facts, and resolve the denial of the owner's application or request for the construction of improvements, and the changes, if any, requested by the architectural review authority in the notice provided to the owner under Subsection (d).
- g. The board or the owner may request a postponement. If requested, a postponement shall be granted for a period of not more than 10 days. Additional postponements may be granted by agreement of the parties.
- h. The property owners' association or the owner may make an audio recording of the meeting.
- i. The board may affirm, modify, or reverse, in whole or in part, any decision of the architectural review authority as consistent with the subdivision's declaration.

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 meeting":
 - (1) 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) 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.

- 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.

Except for a meeting held by electronic or telephonic means under Subsection (c-2), 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.

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.
- 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 144 hours before the start of a regular board meeting and at least 72 hours before the start of a special board 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 available to association members that is maintained by the association or by a management company on behalf of the association; 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 board may take action outside of a meeting, including voting by electronic or 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. 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 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;
 - (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 or amendment of a dedicatory instrument;
 - (11) the approval of an annual budget or the approval of an amendment of an annual budget;
 - (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. 209.0052. Association Contracts.

- a. This section does not apply to a contract entered into by an association during the development period.
- b. An association may enter into an enforceable contract with a current association board member, a person related to a current association board member within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code, a company in which a current association board member has a financial interest in at least 51 percent of profits, or a company in which a person related to a current association board member within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code, has a financial interest in at least 51 percent of profits only if the following conditions are satisfied:
 - (1) the board member, relative, or company bids on the proposed contract and the association has received at least two other bids for the contract from persons not associated with the board member, relative, or company, if reasonably available in the community;
 - (2) the board member:
 - (A) is not given access to the other bids;
 - (B) does not participate in any board discussion regarding the contract; and
 - (C) does not vote on the award of the contract;
 - (3) the material facts regarding the relationship or interest with respect to the proposed contract are disclosed to or known by the association board and the board, in good faith and with ordinary care, authorizes the contract by an affirmative vote of the majority of the board members who do not have an interest governed by this subsection; and

- (4) the association board certifies that the other requirements of this subsection have been satisfied by a resolution approved by an affirmative vote of the majority of the board members who do not have an interest governed by this subsection.
- c. In addition to the other applicable requirements of this section, an association that proposes to contract for services that will cost more than \$50,000 shall solicit bids or proposals using a bid process established by the association.

Sec. 209.0055. Voting.

- a. This section applies only to a property owners' association that:
 - (1) provides maintenance, preservation, and architectural control of residential and commercial property within a defined geographic area in a county with a population of 2.8 million or more or in a county adjacent to a county with a population of 2.8 million or more; and
 - (2) is a corporation that:
 - (A) is governed by a board of trustees who may employ a general manager to execute the association's bylaws and administer the business of the corporation;
 - (B) does not require membership in the corporation by the owners of the property within the defined area; and
 - (C) was incorporated before January 1, 2006.
- b. A property owners' association described by Subsection (a) may not bar a property owner from voting in an association election solely based on the fact that:
 - (A) there is a pending enforcement action against the property owner; or

- (B) the property owner owes the association any delinquent assessments, fees, or fines.

Sec. 209.0056. Notice of Election or Association Vote.

- a. For an election or vote taken at a meeting of the owners, not later than the 10th day or earlier than the 60th day before the date of the 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.

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.

Sec. 209.0057. Recount of Votes.

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

- b. Any owner may, not later than the 15th day after the later of the date of any 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 mail 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-2) 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-3) 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-4) 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-5) 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 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 requesting the recount.

- d. On or before the 30th day after the date of receipt of 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. If the recount changes the results of the election, the 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. 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.

Text of subsection as amended by Acts 2015, 84th Leg., R.S., Ch. 249 (S.B.864), Sec. 1

- a. Except as provided by Subsection (d), 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.

Text of subsection as amended by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B.), Sec. 11

- b. Except as provided by Subsection (d), a vote cast 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.

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 election, written and signed ballots are not required for uncontested races.

Text of subsection as added by Acts 2015, 84th Leg., R.S., Ch. 249 (S.B.864), Sec. 1

- 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.

Text of subsection as added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 11

- e. 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 each 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.

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.

Notwithstanding any other provision of this chapter, a property owners' association that governs a subdivision comprised of multiple

sections may designate in an association instrument governing the administration or operation of the association a specified number of positions on the board, each of which must be elected from a designated section of the subdivision. The instrument may require each board member representing a section to reside in that section.

A person may not serve on the board of a property owners' association if the person cohabits at the same primary residence with another board member of the association. This subsection does not apply:

- (1) to an association with fewer than 10 residences; or
 - (2) during a subdivision's development period to affect the eligibility to serve on the board of:
 - (A) a person who cohabits with a developer of the subdivision regulated by the association; or
 - (B) the developer.
- 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 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.

Sec. 209.00592. Voting; Quorum.

a. Subject to Subsection (a-1), 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.

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.

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:

- (1) given by:
 - (A) e-mail;
 - (B) facsimile; or
 - (C) posting on an Internet website;
- (2) for which the identity of the property owner submitting the ballot can be confirmed; and

- (3) for which the property owner may receive a receipt of the electronic transmission and receipt of the owner's ballot.
- e. If an electronic ballot is posted on an Internet website, a notice of the posting shall be sent to each owner that contains instructions on obtaining access to the posting on the website.
- f. This section supersedes any contrary provision in a dedicatory instrument.
- g. This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

Sec. 209.00593. Election of Board Members.

- a. Notwithstanding any provision in a dedicatory instrument, any board member whose term has expired must be elected by owners who are members of the property owners' association. A board member may be appointed by the board 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.

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.

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.

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).
- 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.
- 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.

(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 who tabulates votes under Subsection (b) or who performs a recount under Section 209.0057(c) may be given access to the ballots cast in the election or vote.

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.

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, levy a fine for a violation of the restrictions or bylaws or rules of the association, or report any delinquency of an owner to a credit reporting service, the association or its agent must give written notice to the owner by certified mail.

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;

(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;

(B) may request a hearing under Section 209.007 on or before the 30th day after the date 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. Section 501 et seq.), if the owner is serving on active military duty;

(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 or 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. 209.0061. Association Policy; Fines.

- a. This section does not apply to a property owners' association that is not authorized by the association's dedicatory instrument to levy a fine.
- b. A property owners' association board shall adopt an enforcement policy regarding the levying of fines by the property owners' association. The policy must include:
 - (1) general categories of restrictive covenants for which the association may assess fines;
 - (2) a schedule of fines for each category of violation; and
 - (3) information regarding hearings described by Section 209.007.
- c. The enforcement policy adopted pursuant to Subsection (b) may reserve the board's authority to levy a fine from the schedule of fines that varies on a case-by-case basis.
- d. Each property owners' association shall:
 - (1) provide a copy of the policy to an owner of each property in the subdivision by:
 - (A) posting the policy on an Internet website maintained by the property owners' association or an agent acting on behalf of the association and accessible to members of the association; or
 - (B) annually sending a copy of the policy, separately or included in routine communication from the property owners' association to property owners, by:
 - i. hand delivery to the owner;
 - ii. first class mail to the owner's last known mailing

- address; or
 - iii. e-mail to an e-mail address provided to the property owners' association by the owner; and
- (2) make the policy available on any publicly accessible Internet website maintained by the property owners' association or an agent acting on behalf of the association.

Effective January 1, 2024.

Sec. 209.0062. Alternative Payment Schedule for Certain Assessments.

- e. 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.
- f. The minimum term for a payment plan offered by a property owners' association is three months.
- g. A property owners' association is 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.
- h. 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.

- i. 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. 209.0063. Priority of Payments.

- a. Except as provided by Subsection (b), a payment received by a property owners' association from the owner shall be applied to the owner's debt in the following order of priority:
 - (1) any delinquent assessment;
 - (2) any current assessment;
 - (3) any reasonable attorney's fees or reasonable third party collection costs incurred by the association associated solely with assessments or any other charge that could provide the basis for foreclosure;
 - (4) any reasonable attorney's fees incurred by the association that are not subject to Subdivision (3);
 - (5) any reasonable fines assessed by the association; and
 - (6) any other reasonable amount owed to the association.
- b. If, at the time the property owners' association receives a payment from a property owner, the owner is in default under a payment plan entered into with the association:
 - (1) the association is not required to apply the payment in the order of priority specified by Subsection (a); and

- (2) in applying the payment, a fine assessed by the association may not be given priority over any other amount owed to the association.

Sec. 209.0064. Third Party Collections.

- a. In this section, "collection agent" means a debt collector, as defined by Section 803 of the federal Fair Debt Collection Practices Act (15 U.S.C. Section 1692a).
- b. A property owners' association may not hold an owner liable for fees of a collection agent retained by the association unless the association first provides written notice to the owner by certified mail 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 45 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. 209.0065. Credit Reporting Services.

- a. A property owners' association or the association's collection agent may not report any delinquent fines, fees, or assessments to a credit reporting service that are the subject of a pending dispute between the owner and the property owners' association.
- b. A property owners' association may report the delinquent payment history of assessments, fines, and fees of property owners within its jurisdiction to a credit reporting service only if:
 - (1) at least 30 business days before reporting to a credit reporting service, the association sends, via certified mail, hand delivery, electronic delivery, or by other delivery means acceptable between the parties, a detailed report of all delinquent charges owed; and
 - (2) a property owner has been given the opportunity to enter into a payment plan.
- c. A property owners' association may not charge a fee to an individual property owner for the reporting under Subsection (b) of the delinquent payment history of assessments, fines, and fees of property owners within the association's jurisdiction to a credit reporting service.

Sec. 209.007. Hearing Before Board; Alternative Dispute Resolution.

- a. Except as provided by Subsection (d) and only if the owner is entitled to an opportunity to cure the violation, the owner has the right to submit a written request for a hearing to discuss and verify facts and resolve the matter in issue before the board.

- b. Repealed by Acts 2021, 87th Leg., R.S., Ch. 951 (S.B. 1588), Sec. 22(2), eff. September 1, 2021.
- c. The association shall hold a hearing under this section not later than the 30th day after the date the board receives the owner's request for a hearing and shall notify the owner of the date, time, and place of the hearing not later than the 10th day before the date of the hearing. The board or the owner may request a postponement, and, if requested, a postponement shall be granted for a period of not more than 10 days. Additional postponements may be granted by agreement of the parties. The owner or the association may make an audio recording of the meeting.
- d. The notice and hearing provisions of Section 209.006 and this section do not apply if the association files a suit seeking a temporary restraining order or temporary injunctive relief or files a suit that includes foreclosure as a cause of action. If a suit is filed relating to a matter to which those sections apply, a party to the suit may file a motion to compel mediation. The notice and hearing provisions of Section 209.006 and this section do not apply to a temporary suspension of a person's right to use common areas if the temporary suspension is the result of a violation that occurred in a common area and involved a significant and immediate risk of harm to others in the subdivision. The temporary suspension is effective until the board makes a final determination on the suspension action after following the procedures prescribed by this section.
- e. An owner or property owners' association may use alternative dispute resolution services.
- f. Not later than 10 days before the association holds a hearing under this section, the association shall provide to an owner a packet containing all documents, photographs, and communications relating to the matter the association intends to introduce at the hearing.
- g. If an association does not provide a packet within the period

described by Subsection (f), an owner is entitled to an automatic 15-day postponement of the hearing.

- h. During a hearing, a member of the board or the association's designated representative shall first present the association's case against the owner. An owner or the owner's designated representative is entitled to present the owner's information and issues relevant to the appeal or dispute.

Sec. 209.008. Attorney's Fees.

- a. A property owners' association may collect reimbursement of reasonable attorney's fees and other reasonable costs incurred by the association relating to collecting amounts, including damages, due the association for enforcing restrictions or the bylaws or rules of the association only if the owner is provided a written notice that attorney's fees and costs will be charged to the owner if the delinquency or violation continues after a date certain.
- b. An owner is not liable for attorney's fees incurred by the association relating to a matter described by the notice under Section 209.006 if the attorney's fees are incurred before the conclusion of the hearing under Section 209.007 or, if the owner does not request a hearing under that section, before the date by which the owner must request a hearing. The owner's presence is not required to hold a hearing under Section 209.007.
- c. All attorney's fees, costs, and other amounts collected from an owner shall be deposited into an account maintained at a financial institution in the name of the association or its managing agent. Only members of the association's board or its managing agent or employees of its managing agent may be signatories on the account.
- d. On written request from the owner, the association shall provide copies of invoices for attorney's fees and other costs relating only to the matter for which the association seeks reimbursement of fees and costs.
- e. The notice provisions of Subsection (a) do not apply to a counterclaim of an association in a lawsuit brought against the

association by a property owner.

f. If the dedicatory instrument or restrictions of an association allow for nonjudicial foreclosure, the amount of attorney's fees that a property owners' association may include in a nonjudicial foreclosure sale for an indebtedness covered by a property owners' association's assessment lien is limited to the greater of:

(1) one-third of the amount of all actual costs and assessments, excluding attorney's fees, plus interest and court costs, if those amounts are permitted to be included by law or by the restrictive covenants governing the property; or

(2) \$2,500.

g. Subsection (f) does not prevent a property owners' association from recovering or collecting attorney's fees in excess of the amounts prescribed by Subsection (f) by other means provided by law.

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).

Sec. 209.0091. Prerequisites to Foreclosure: Notice and Opportunity to Cure for Certain Other Lienholders.

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) 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 the notice described in Subdivision (1).
- b. Notice under this section must be sent by certified mail 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).

Sec. 209.0093. Removal or Adoption of Foreclosure Authority.

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

Sec. 209.0094. Assessment Lien Filing.

- a. In this section, "assessment lien" means a lien, lien affidavit, or other lien instrument evidencing the nonpayment of assessments or other charges owed to a property owners' association.
- b. An assessment lien filed in the official public records of a county

is a legal instrument affecting title to real property.

- c. Before a property owners' association files an assessment lien, the association must provide notices of delinquency in accordance with Subsections (d) and (e).
- d. The first notice of delinquency must be provided:
 - (1) by first class mail to the property owner's last known mailing address, as reflected in records maintained by the association;
or
 - (2) by e-mail to an e-mail address the property owner has provided to the property owners' association.
- e. The second notice of delinquency must be provided by certified mail, return receipt requested, to the property owner's last known mailing address, as reflected in the records maintained by the association, not earlier than the 30th day after notice is given under Subsection (d).
- f. A property owners' association may not file an assessment lien before the 90th day after the date notice of delinquency was sent to the property owner under Subsection (e).
- g. Subsections (c), (d), and (e) do not apply to a property owners' association providing a property owner covered by the Servicemembers Civil Relief Act (50 U.S.C. Section 3901 et seq.) the protections to which the owner is entitled under the Act.

Sec. 209.010. Notice After Foreclosure Sale.

- a. A property owners' association that conducts a foreclosure sale of an owner's lot must send to the lot owner and to each lienholder of record, not later than the 30th day after the date of the foreclosure

sale, a written notice stating the date and time the sale occurred and informing the lot owner and each lienholder of record of the right of the lot owner and lienholder to redeem the property under Section 209.011.

b. The notice must be sent by certified mail, return receipt requested, to:

- (1) the lot owner's last known mailing address, as reflected in the records of the property owners' association;
- (2) the address of each holder of a lien on the property subject to foreclosure evidenced by the most recent deed of trust filed of record in the real property records of the county in which the property is located; and
- (3) the address of each transferee or assignee of a deed of trust described by Subdivision (2) who has provided notice to a property owners' association of such assignment or transfer. Notice provided by a transferee or assignee to a property owners' association shall be in writing, shall contain the mailing address of the transferee or assignee, and shall be mailed by certified mail, return receipt requested, or United States mail with signature confirmation to the property owners' association according to the mailing address of the property owners' association pursuant to the most recent management certificate filed of record pursuant to Section 209.004.

(b-1) If a recorded instrument does not include an address for the lienholder, the association does not have a duty to notify the lienholder as provided by this section.

For purposes of this section, the lot owner is deemed to have given approval for the association to notify the lienholder.

c. Not later than the 30th day after the date the association sends the notice required by Subsection (a), the association must record an affidavit in the real property records of the county in which the lot is located, stating the date on which the notice was sent and containing a legal description of the lot. Any person is entitled

to rely conclusively on the information contained in the recorded affidavit.

- d. The notice requirements of this section also apply to the sale of an owner's lot by a sheriff or constable conducted as provided by a judgment obtained by the property owners' association.

Sec. 209.011. Right of Redemption After Foreclosure.

- a. A property owners' association or other person who purchases occupied property at a sale foreclosing a property owners' association's assessment lien must commence and prosecute a forcible entry and detainer action under Chapter 24 to recover possession of the property.
- b. The owner of property in a residential subdivision or a lienholder of record may redeem the property from any purchaser at a sale foreclosing a property owners' association's assessment lien not later than the 180th day after the date the association mails written notice of the sale to the owner and the lienholder under Section 209.010. A lienholder of record may not redeem the property as provided herein before 90 days after the date the association mails written notice of the sale to the lot owner and the lienholder under Section 209.010, and only if the lot owner has not previously redeemed.
- c. A person who purchases property at a sale foreclosing a property owners' association's assessment lien may not transfer ownership of the property to a person other than a redeeming lot owner during the redemption period.
- d. To redeem property purchased by the property owners' association at the foreclosure sale, the lot owner or lienholder must pay to the association:
 - (1) all amounts due the association at the time of the foreclosure sale;
 - (2) interest from the date of the foreclosure sale to the date

of redemption on all amounts owed the association at the rate stated in the dedicatory instruments for delinquent assessments or, if no rate is stated, at an annual interest rate of 10 percent;

- (3) costs incurred by the association in foreclosing the lien and conveying the property to the lot owner, including reasonable attorney's fees;
- (4) any assessment levied against the property by the association after the date of the foreclosure sale;
- (5) any reasonable cost incurred by the association, including mortgage payments and costs of repair, maintenance, and leasing of the property; and
- (6) the purchase price paid by the association at the foreclosure sale less any amounts due the association under Subdivision (1) that were satisfied out of foreclosure sale proceeds.

e. To redeem property purchased at the foreclosure sale by a person other than the property owners' association, the lot owner or lienholder:

- (1) must pay to the association:
 - (A) all amounts due the association at the time of the foreclosure sale less the foreclosure sales price received by the association from the purchaser;
 - (B) interest from the date of the foreclosure sale through the date of redemption on all amounts owed the association at the rate stated in the dedicatory instruments for delinquent assessments or, if no rate is stated, at an annual interest rate of 10 percent;
 - (C) costs incurred by the association in foreclosing the lien and conveying the property to the redeeming lot owner, including reasonable attorney's fees;

- (D) any unpaid assessments levied against the property by the association after the date of the foreclosure sale; and
 - (E) taxable costs incurred in a proceeding brought under Subsection (a); and
- (2) must pay to the person who purchased the property at the foreclosure sale:
- (A) any assessments levied against the property by the association after the date of the foreclosure sale and paid by the purchaser;
 - (B) the purchase price paid by the purchaser at the foreclosure sale;
 - (C) the amount of the deed recording fee;
 - (D) the amount paid by the purchaser as ad valorem taxes, penalties, and interest on the property after the date of the foreclosure sale; and
 - (E) taxable costs incurred in a proceeding brought under Subsection (a).
- f. If a lot owner or lienholder redeems the property under this section, the purchaser of the property at foreclosure shall immediately execute and deliver to the redeeming party a deed transferring the property to the lot owner. If a purchaser fails to comply with this section, the lot owner or lienholder may file an action against the purchaser and may recover reasonable attorney's fees from the purchaser if the lot owner or the lienholder is the prevailing party in the action.
- g. If, before the expiration of the redemption period, the redeeming lot owner or lienholder fails to record the deed from the foreclosing purchaser or fails to record an affidavit stating that the lot owner or lienholder has redeemed the property, the lot owner's or lienholder's right of redemption as against a bona fide purchaser or lender for value expires after the redemption period.

- h. The purchaser of the property at the foreclosure sale or a person to whom the person who purchased the property at the foreclosure sale transferred the property may presume conclusively that the lot owner or a lienholder did not redeem the property unless the lot owner or a lienholder files in the real property records of the county in which the property is located:
 - (1) a deed from the purchaser of the property at the foreclosure sale; or
 - (2) an affidavit that:
 - (A) states that the property has been redeemed;
 - (B) contains a legal description of the property; and
 - (C) includes the name and mailing address of the person who redeemed the property.
- i. If the property owners' association purchases the property at foreclosure, all rent and other income collected by the association from the date of the foreclosure sale to the date of redemption shall be credited toward the amount owed the association under Subsection (d), and if there are excess proceeds, they shall be refunded to the lot owner. If a person other than the association purchases the property at foreclosure, all rent and other income collected by the purchaser from the date of the foreclosure sale to the date of redemption shall be credited toward the amount owed the purchaser under Subsection (e), and if there are excess proceeds, those proceeds shall be refunded to the lot owner.
- j. If a person other than the property owners' association is the purchaser at the foreclosure sale, before executing a deed transferring the property to the lot owner, the purchaser shall obtain an affidavit from the association or its authorized agent stating that all amounts owed the association under Subsection (e) have been paid. The association shall provide the purchaser with the affidavit not later than the 10th day after the date the association receives all amounts owed to the association under Subsection (e). Failure of a purchaser to comply with this

subsection does not affect the validity of a redemption.

- k. Property that is redeemed remains subject to all liens and encumbrances on the property before foreclosure. Any lease entered into by the purchaser of property at a sale foreclosing an assessment lien of a property owners' association is subject to the right of redemption provided by this section and the lot owner's right to reoccupy the property immediately after redemption.
- l. If a lot owner makes partial payment of amounts due the association at any time before the redemption period expires but fails to pay all amounts necessary to redeem the property before the redemption period expires, the association shall refund any partial payments to the lot owner by mailing payment to the owner's last known address as shown in the association's records not later than the 30th day after the expiration date of the redemption period.
- m. If a lot owner or lienholder sends by certified mail, return receipt requested, a written request to redeem the property on or before the last day of the redemption period, the lot owner's or lienholder's right of redemption is extended until the 10th day after the date the association and any third party foreclosure purchaser provides written notice to the redeeming party of the amounts that must be paid to redeem the property.
- n. After the redemption period and any extended redemption period provided by Subsection (m) expires without a redemption of the property, the association or third party foreclosure purchaser shall record an affidavit in the real property records of the county in which the property is located stating that the lot owner or a lienholder did not redeem the property during the redemption period or any extended redemption period.
- o. The association or the person who purchased the property at the foreclosure sale may file an affidavit in the real property records of the county in which the property is located that states the date the citation was served in a suit under Subsection (a) and contains a legal description of the property. Any person may rely conclusively on the information contained in the affidavit.

- p. The rights of a lot owner and a lienholder under this section also apply if the sale of the lot owner's property is conducted by a constable or sheriff as provided by a judgment obtained by the property owners' association.

Sec. 209.012. Restrictive Covenants Granting Easements to Certain Property Owners' Associations.

- a. A property owners' association may not amend a dedicatory instrument to grant the property owners' association an easement through or over an owner's lot without the consent of the owner.
- b. This section does not prohibit a property owners' association from adopting or enforcing a restriction in a dedicatory instrument that allows the property owners' association to access an owner's lot to remedy a violation of the dedicatory instrument.

Sec. 209.013. Authority of Association to Amend Dedicatory Instrument.

- a. A dedicatory instrument created by a developer of a residential subdivision or by a property owners' association in which the developer has a majority of the voting rights or that the developer otherwise controls under the terms of the dedicatory instrument may not be amended during the period between the time the developer loses the majority of the voting rights or other form of control of the property owners' association and the time a new board of directors of the association assumes office following the loss of the majority of the voting rights or other form of control.
- b. A provision in a dedicatory instrument that violates this section is void and unenforceable.

Sec. 209.014. Mandatory Election Required After Failure to Call Regular Meeting.

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

the members of the association.

- b. If a board of a property owners' association does not call an annual meeting of the association members, an owner may demand that a meeting of the association members be called not later than the 30th day after the date of the owner's demand. The owner's demand must be made in writing and sent by certified mail, return receipt requested, to the registered agent of the property owners' association and to the association at the address for the association according to the most recently filed management certificate. A copy of the notice must be sent to each property owner who is a member of the association.
- c. If the board does not call a meeting of the members of the property owners' association on or before the 30th day after the date of a demand under Subsection (b), three or more owners may form an election committee. The election committee shall file written notice of the committee's formation with the county clerk of each county in which the subdivision is located.
- d. A notice filed by an election committee must contain:
 - (1) a statement that an election committee has been formed to call a meeting of owners who are members of the property owners' association for the sole purpose of electing board members;
 - (2) the name and residential address of each committee member; and
 - (3) the name of the subdivision over which the property owners' association has jurisdiction under a dedicatory instrument.
- e. Each committee member must sign and acknowledge the notice before a notary or other official authorized to take acknowledgments.
- f. The county clerk shall enter on the notice the date the notice is filed and record the notice in the county's real property records.

- g. Only one committee in a subdivision may operate under this section at one time. If more than one committee in a subdivision files a notice, the first committee that files a notice, after having complied with all other requirements of this section, is the committee with the power to act under this section. A committee that does not hold or conduct a successful election within four months after the date the notice is filed with the county clerk is dissolved by operation of law. An election held or conducted by a dissolved committee is ineffective for any purpose under this section.
- h. The election committee may call meetings of the owners who are members of the property owners' association for the sole purpose of electing board members. Notice, quorum, and voting provisions contained in the bylaws of the property owners' association apply to any meeting called by the election committee.

Sec. 209.015. Regulation of Land Use: Residential Purpose.

a. In this section:

(1) "Adjacent lot" means:

- (A) a lot that is contiguous to another lot that fronts on the same street;
- (B) with respect to a corner lot, a lot that is contiguous to the corner lot by either a side property line or a back property line; or
- (C) if permitted by the dedicatory instrument, any lot that is contiguous to another lot at the back property line.

(2) "Residential purpose" with respect to the use of a lot:

- (A) means the location on the lot of any building, structure, or other improvement customarily appurtenant to a residence, as opposed to use for a business or commercial purpose; and

- (B) includes the location on the lot of a garage, sidewalk, driveway, parking area, children's swing or playscape, fence, septic system, swimming pool, utility line, or water well and, if otherwise specifically permitted by the dedicatory instrument, the parking or storage of a recreational vehicle.
- b. Except as provided by this section, a property owners' association may not adopt or enforce a provision in a dedicatory instrument that prohibits or restricts the owner of a lot on which a residence is located from using for residential purposes an adjacent lot owned by the property owner.
- c. An owner must obtain the approval of the property owners' association or, if applicable, an architectural review authority, as defined by Section 209.00505(a), established by the association or the association's dedicatory instruments, based on criteria prescribed by the dedicatory instruments specific to the use of a lot for residential purposes, including reasonable restrictions regarding size, location, shielding, and aesthetics of the residential purpose, before the owner begins the construction, placement, or erection of a building, structure, or other improvement for the residential purpose on an adjacent lot.
- d. An owner who elects to use an adjacent lot for residential purposes under this section shall, on the sale or transfer of the lot containing the residence:
- (1) include the adjacent lot in the sales agreement and transfer the lot to the new owner under the same dedicatory conditions; or
 - (2) restore the adjacent lot to the original condition before the addition of the improvements allowed under this section to the extent that the lot would again be suitable for the construction of a separate residence as originally platted and provided for in the conveyance to the owner.
- e. An owner may sell the adjacent lot separately only for the purpose of the construction of a new residence that complies with existing requirements in the dedicatory instrument unless the lot has been

restored as described by Subsection (d)(2).

- f. A provision in a dedicatory instrument that violates this section is void.

Sec. 209.016. Regulation of Residential Leases or Rental

Agreements.

- a. Repealed by Acts 2021, 87th Leg., R.S., Ch. 951 (S.B. 1588), Sec. 22(3), eff. September 1, 2021.
- 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. Repealed by Acts 2021, 87th Leg., R.S., Ch. 951 (S.B. 1588), Sec. 22(3), eff. September 1, 2021.
- d. 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.
- e. A property owners' association may request the following information to be submitted to the association regarding a lease or rental applicant:
 - (1) contact information, including the name, mailing address,

phone number, and e-mail address of each person who will reside at a property in the subdivision under a lease; and

(2) the commencement date and term of the lease.

Chapter 207
Disclosure of Information by Property
Owners' Associations
(Non-Condos)

Property Code
Title 11. Restrictive Covenants
Chapter 207. Disclosure of Information by
Property Owners' Associations

Sec. 207.001. Definitions.

In this chapter:

Restrictions has the meaning assigned by Section 201.003.

Dedicatory instrument, "property owners' association," and "restrictive covenant" have the meanings assigned by Section 209.002.

(2-a) **Management company** has the meaning assigned by Section 209.002.

Owner means a person who owns record title to property in a subdivision or the personal representative of an individual who owns record title to property in a subdivision.

Regular assessment and **special assessment** have the meanings assigned by Section 204.001.

Resale certificate means a written statement issued, signed, and dated by an officer or authorized agent of a property owners' association that contains the information specified by Section 207.003(b).

Subdivision means all land that has been divided into two or more parts and that is or was burdened by restrictions limiting at least the majority of the land area burdened by restrictions, excluding streets and public areas, to residential use only, if the instrument or instruments creating the restrictions are recorded in the deed or real property records of a county.

Sec. 207.002. Applicability.

- a. This chapter applies to a subdivision with a property owners'

association that is entitled to levy regular or special assessments.

- b. This chapter does not apply to a condominium council of owners governed by Chapter 81 or a condominium unit owners' association governed by Chapter 82.

Sec. 207.003. Delivery of Subdivision Information to Owner.

- a. Not later than the 10th business day after the date a written request for subdivision information is received from an owner or the owner's agent, a purchaser of property in a subdivision or the purchaser's agent, or a title insurance company or its agent acting on behalf of the owner or purchaser and the evidence of the requestor's authority to order a resale certificate under Subsection (a-1) is received and verified, the property owners' association shall deliver to the owner or the owner's agent, the purchaser or the purchaser's agent, or the title insurance company or its agent:
 - (1) a current copy of the restrictions applying to the subdivision;
 - (2) a current copy of the bylaws and rules of the property owners' association; and
 - (3) a resale certificate prepared not earlier than the 60th day before the date the certificate is delivered that complies with Subsection (b).

For a request from a purchaser of property in a subdivision or the purchaser's agent, the property owners' association may require the purchaser or purchaser's agent to provide to the association, before the association begins the process of preparing or delivers the items listed in Subsection (a), reasonable evidence that the purchaser has a contractual or other right to acquire property in the subdivision.

- b. A resale certificate under Subsection (a) must contain:
 - (1) a statement of any right of first refusal, other than a right of first refusal that is prohibited by statute, and any other restraint contained in the restrictions or restrictive covenants

that restricts the owner's right to transfer the owner's property

- (2) the frequency and amount of any regular assessments;
- (3) the amount and purpose of any special assessment that has been approved before and is due after the resale certificate is delivered;
- (4) the total of all amounts due and unpaid to the property owners' association that are attributable to the owner's property;
- (5) capital expenditures, if any, approved by the property owners' association for the property owners' association's current fiscal year;
- (6) the amount of reserves, if any, for capital expenditures;
- (7) the property owners' association's current operating budget and balance sheet;
- (8) the total of any unsatisfied judgments against the property owners' association;
- (9) the style and cause number of any pending lawsuit in which the property owners' association is a party, other than a lawsuit relating to unpaid ad valorem taxes of an individual member of the association;
- (10) a copy of a certificate of insurance showing the property owners' association's property and liability insurance relating to the common areas and common facilities;
- (11) a description of any conditions on the owner's property that the property owners' association board has actual knowledge are in violation of the restrictions applying to the subdivision or the bylaws or rules of the property owners' association;
- (12) a summary or copy of notices received by the property owners' association from any governmental authority regarding health or housing code violations existing on the preparation date of

the certificate relating to the owner's property or any common areas or common facilities owned or leased by the property owners' association;

- (13) the amount of any administrative transfer fee charged by the property owners' association for a change of ownership of property in the subdivision;
- (14) the name, mailing address, and telephone number of the property owners' association's managing agent, if any;
- (15) a statement indicating whether the restrictions allow foreclosure of a property owners' association's lien on the owner's property for failure to pay assessments; and
- (16) a statement of all fees associated with the transfer of ownership, including a description of each fee, to whom each fee is paid, and the amount of each fee.

c. A property owners' association may charge a reasonable and necessary fee, not to exceed \$375, to assemble, copy, and deliver the information required by this section and may charge a reasonable and necessary fee, not to exceed \$75, to prepare and deliver an update of a resale certificate under Subsection (f).

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

d. The property owners' association shall deliver the information required by Subsection (a) or (f) to the person specified in the written request. A written request that does not specify the name and location to which the information is to be sent is not effective. The property owners' association may deliver the information required by Subsection (a) and any update to the resale certificate required by Subsection (f) by mail, hand delivery, or alternative delivery means specified in the written request.

- e. Unless required by a dedicatory instrument, neither a property owners' association or its agent is required to inspect a property before issuing a resale certificate or an update to a resale certificate.
- f. Not later than the seventh business day after the date a written request for an update of a resale certificate delivered under Subsection (a) is received from an owner, owner's agent, or title insurance company or its agent acting on behalf of the owner, the property owners' association shall deliver to the owner, owner's agent, or title insurance company or its agent an updated resale certificate that contains the following information:
 - (1) if a right of first refusal or other restraint on sale is contained in the restrictions, a statement of whether the property owners' association waives the restraint on sale;
 - (2) the status of any unpaid special assessments, dues, or other payments attributable to the owner's property; and
 - (3) any changes to the information provided in the resale certificate issued under Subsection (a).
- g. Requests for an updated resale certificate pursuant to Subsection (f) must be made within 180 days of the date a resale certificate is issued under Subsection (a). The update request may be made only by the party requesting the original resale certificate.

Sec. 207.004. Owner's Remedies for Failure by Property Owners' Association to Timely Deliver Information.

- a. If a property owners' association does not timely deliver information in accordance with Section 207.003, the owner, owner's agent, or title insurance company or its agent acting on behalf of the owner may submit a second request for the information.
- b. If a property owners' association fails to deliver the information required under Section 207.003 before the fifth business day after

the second request for the information was mailed by certified mail, return receipt requested, or hand delivered, evidenced by receipt, the owner:

- (1) may seek one or any combination of the following:
 - (A) a court order directing the property owners' association to furnish the required information;
 - (B) a judgment against the property owners' association for not more than \$5,000;
 - (C) a judgment against the property owners' association for court costs and reasonable attorney's fees; or
 - (D) a judgment authorizing the owner or the owner's assignee to deduct the amounts awarded under Paragraphs (B) and (C) from any future regular or special assessments payable to the property owners' association; and
 - (2) may provide a buyer under contract to purchase the owner's property an affidavit that states that the owner, owner's agent, or title insurance company or its agent acting on behalf of the owner made, in accordance with this chapter, two written requests to the property owners' association for the information described in Section 207.003 and that the association did not timely provide the information.
- c. If the owner provides a buyer under contract to purchase the owner's property an affidavit in accordance with Subsection (b)(2):
- (1) the buyer, lender, or title insurance company or its agent is not liable to the property owners' association for:
 - (A) any money that is due and unpaid to the property owners' association on the date the affidavit was prepared; and
 - (B) any debt to the property owners' association or claim by the property owners' association that accrued before the

date the affidavit was prepared; and

- (2) the property owners' association's lien to secure the amounts due the property owners' association on the owner's property on the date the affidavit was prepared shall automatically terminate.

Sec. 207.005. Effect of Resale Certificate; Liability.

- a. A property owners' association may not deny the validity of any statement in the resale certificate. The property owners' association's lien to secure undisclosed amounts due the property owners' association on the date the resale certificate is prepared shall automatically terminate as a lien securing the undisclosed amount. A buyer, buyer's agent, owner, owner's agent, lender, and title insurance company and its agent are not liable for any debt or claim existing on the preparation date of the resale certificate that is not disclosed in the resale certificate.
- b. A resale certificate does not affect:
 - (1) the right of a property owners' association to recover debts or claims that arise or become due after the date the resale certificate is prepared; or
 - (2) a lien on a property securing payment of future assessments held by the property owners' association.
- c. The owner's agent and the title insurance company and its agent are not liable to a buyer for any delay or failure by the property owners' association in delivering the information required by Section 207.003.
- d. Except as provided by Section 207.004, the property owners' association is not liable to an owner selling property in the subdivision for delay or failure to deliver the information required by Section 207.003. An officer or agent of the property owners' association is not liable for a delay or failure to furnish a resale certificate.

Sec. 207.006. Online Subdivision Information Required.

- a. This section applies only to:
 - (1) the property owners' association of a subdivision composed of at least 60 lots; or
 - (2) a property owners' association that has contracted with a management company.
- b. A property owners' association to which this section applies shall make the current version of the association's dedicatory instruments relating to the association or subdivision and filed in the county deed records available on an Internet website:
- c. maintained by the association or a management company on behalf of the association; and
- d. available to association members.

Chapter 202
Construction and Enforcement
of Restrictive Covenants
(Condos and Non-Condos)

Property Code
Title 11. Restrictive Covenants
Chapter 202 Construction and Enforcement of
Restrictive Covenants

Sec. 202.001. Definitions.

In this chapter:

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

restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association;

properly adopted rules and regulations of the property owners' association; or

all lawful amendments to the covenants, bylaws, instruments, rules, or regulations.

Property owners' association means an incorporated or unincorporated association owned by or whose members consist primarily of the owners of the property covered by the dedicatory instrument and through which the owners, or the board of directors or similar governing body, manage or regulate the residential subdivision, planned unit development, condominium or townhouse regime, or similar planned development.

Petition means one or more instruments, however designated or entitled, by which one or more actions relating to restrictive covenants are sought to be accomplished.

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

Front yard means a yard within a lot having a front building setback line with a setback of not less than 15 feet extending the full width of the lot between the front lot line and the front building setback line.

Sec. 202.002. Applicability of Chapter.

- a. This chapter applies to all restrictive covenants regardless of the date on which they were created.
- b. This chapter does not affect the requirements of the Community Homes for Disabled Persons Location Act (Article 1011n, Vernon’s Texas Civil Statutes).

Sec. 202.003. Construction of Restrictive Covenants.

- a. A restrictive covenant shall be liberally construed to give effect to its purposes and intent.
- b. In this subsection, “family home” is a residential home that meets the definition of and requirements applicable to a family home under the Community Homes for Disabled Persons Location Act (Article 1011n, Vernon’s Texas Civil Statutes). A dedicatory instrument or restrictive covenant may not be construed to prevent the use of property as a family home. However, any restrictive covenant that applies to property used as a family home shall be liberally construed to give effect to its purposes and intent except to the extent that the construction would restrict the use as a family home.

Sec. 202.004. Enforcement of Restrictive Covenants.

- a. An exercise of discretionary authority by a property owners’ association or other representative designated by an owner of real property concerning a restrictive covenant is presumed reasonable unless the court determines by a preponderance of the evidence that the exercise of discretionary authority was arbitrary, capricious, or discriminatory.

- b. A property owners' association or other representative designated by an owner of real property may initiate, defend, or intervene in litigation or an administrative proceeding affecting the enforcement of a restrictive covenant or the protection, preservation, or operation of the property covered by the dedicatory instrument.
- c. A court may assess civil damages for the violation of a restrictive covenant in an amount not to exceed \$200 for each day of the violation.

Sec. 202.005. Withdrawal of Signature.

- a. A signature may be withdrawn from a petition authorized to be filed in connection with terminating restrictive covenants, as provided by this section.
- b. To withdraw a signature, the signer must request that the signature be withdrawn.
- c. To be effective, a withdrawal request must:
 - (1) be in writing and be signed and acknowledged by the signer of the petition;
 - (2) be filed with the authority with whom the petition is required to be filed not later than the day before the petition filing deadline, if any; and
 - (3) be delivered in the form of a copy of the request to the circulator of the petition not later than the date the request is filed or by the effective date of this chapter, whichever is later.
- d. A withdrawal request or copy filed or delivered by mail is considered to be filed or delivered at the time of its receipt by the appropriate person.
- e. The filing of an effective withdrawal request nullifies the signature

on the petition and places the signer in the same position as if the signer had not signed the petition.

Sec. 202.006. Public Records.

- a. A property owners' association shall file all dedicatory instruments in the real property records of each county in which the property to which the dedicatory instruments relate is located.
- b. A dedicatory instrument has no effect until the instrument is filed in accordance with this section.
- c. A property owners' association may not collect a regular assessment, as defined by Section 209.002, if the dedicatory instrument authorizing the collection of the regular assessment is not filed as required by Subsection (a).

Sec. 202.007. Certain Restrictive Covenants Prohibited.

- a. A property owners' association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner from:
 - (1) implementing measures promoting solid-waste composting of vegetation, including grass clippings, leaves, or brush, or leaving grass clippings uncollected on grass;
 - (2) installing rain barrels or a rainwater harvesting system;
 - (3) implementing efficient irrigation systems, including underground drip or other drip systems; or
 - (4) using drought-resistant landscaping or water-conserving natural turf.
- b. A provision that violates Subsection (a) is void.
- c. A property owners' association may restrict the type of turf used by

a property owner in the planting of new turf to encourage or require water-conserving turf.

d. This section does not:

- (1) restrict a property owners' association from regulating the requirements, including size, type, shielding, and materials, for or the location of a composting device if the restriction does not prohibit the economic installation of the device on the property owner's property where there is reasonably sufficient area to install the device;
- (2) require a property owners' association to permit a device described by Subdivision (1) to be installed in or on property:
 - (A) owned by the property owners' association;
 - (B) owned in common by the members of the property owners' association; or
 - (C) in an area other than the fenced yard or patio of a property owner;
- (3) prohibit a property owners' association from regulating the installation of efficient irrigation systems, including establishing visibility limitations for aesthetic purposes;
- (4) prohibit a property owners' association from regulating the installation or use of gravel, rocks, or cacti;
- (5) restrict a property owners' association from regulating yard and landscape maintenance if the restrictions or requirements do not restrict or prohibit turf or landscaping design that promotes water conservation;
- (6) require a property owners' association to permit a rain barrel or rainwater harvesting system to be installed in or on property if:
 - (A) the property is:

- i. owned by the property owners' association;
 - ii. owned in common by the members of the property owners' association; or
 - iii. located between the front of the property owner's home and an adjoining or adjacent street; or
- (B) the barrel or system:
- i. is of a color other than a color consistent with the color scheme of the property owner's home; or
 - ii. displays any language or other content that is not typically displayed by such a barrel or system as it is manufactured;
- (7) restrict a property owners' association from regulating the size, type, and shielding of, and the materials used in the construction of, a rain barrel, rainwater harvesting device, or other appurtenance that is located on the side of a house or at any other location that is visible from a street, another lot, or a common area if:
- (A) the restriction does not prohibit the economic installation of the device or appurtenance on the property owner's property; and
 - (B) there is a reasonably sufficient area on the property owner's property in which to install the device or appurtenance; or
- (8) prohibit a property owners' association from requiring an owner to submit a detailed description or a plan for the installation of drought-resistant landscaping or water-conserving natural turf for review and approval by the property owners' association to ensure, to the extent practicable, maximum aesthetic compatibility with other landscaping in the subdivision.

A property owners' association may not unreasonably deny or withhold approval of a proposed installation of drought-resistant landscaping or water-conserving natural turf under Subsection (d)(8) or unreasonably determine that the proposed installation is aesthetically incompatible with other landscaping in the subdivision.

e. This section does not apply to a property owners' association that:

- (1) is located in a municipality with a population of more than 175,000 that is located in a county in which another municipality with a population of more than one million is predominantly located; and
- (2) manages or regulates a development in which at least 4,000 acres of the property is subject to a covenant, condition, or restriction designating the property for commercial use, multifamily dwellings, or open space.

Sec. 202.010. Regulation of Solar Energy Devices.

a. In this section:

- (1) "Development period" means a period stated in a declaration during which a declarant reserves:
 - (A) a right to facilitate the development, construction, and marketing of the subdivision; and
 - (B) a right to direct the size, shape, and composition of the subdivision.

"Residential unit" means a structure or part of a structure intended for use as a single residence and that is:

- (A) a single-family house; or
- (B) a separate living unit in a duplex, a triplex, or a quadplex.

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

- b. Except as otherwise provided by Subsection (d), a property owners' association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner from installing a solar energy device.
- c. A provision that violates Subsection (b) is void.
- d. A property owners' association may include or enforce a provision in a dedicatory instrument that prohibits a solar energy device that:
 - (1) as adjudicated by a court:
 - (A) threatens the public health or safety; or
 - (B) violates a law;
 - (2) is located on property owned or maintained by the property owners' association;
 - (3) is located on property owned in common by the members of the property owners' association;
 - (4) is located in an area on the property owner's property other than:
 - (A) on the roof of the home or of another structure allowed under a dedicatory instrument; or
 - (B) in a fenced yard or patio owned and maintained by the property owner;
 - (5) if mounted on the roof of the home:
 - (A) extends higher than or beyond the roofline;
 - (B) is located in an area other than an area designated by

the property owners' association, unless the alternate location increases the estimated annual energy production of the device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than 10 percent above the energy production of the device if located in an area designated by the property owners' association;

- (C) does not conform to the slope of the roof and has a top edge that is not parallel to the roofline; or
 - (D) has a frame, a support bracket, or visible piping or wiring that is not in a silver, bronze, or black tone commonly available in the marketplace;
- (6) if located in a fenced yard or patio, is taller than the fence line;
- (7) as installed, voids material warranties; or
- (8) was installed without prior approval by the property owners' association or by a committee created in a dedicatory instrument for such purposes that provides decisions within a reasonable period or within a period specified in the dedicatory instrument.
- e. A property owners' association or the association's architectural review committee may not withhold approval for installation of a solar energy device if the provisions of the dedicatory instruments to the extent authorized by Subsection (d) are met or exceeded, unless the association or committee, as applicable, determines in writing that placement of the device as proposed by the property owner constitutes a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. For purposes of making a determination under this subsection, the written approval of the proposed placement of the device by all property owners of adjoining property constitutes prima facie evidence that such a condition does not exist.

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

Sec. 202.011. Regulation of Certain Roofing Materials.

- a. A property owners' association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner who is otherwise authorized to install shingles on the roof of the owner's property from installing shingles that:
 - (1) are designed primarily to:
 - (A) be wind and hail resistant;
 - (B) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or
 - (C) provide solar generation capabilities; and
 - (2) when installed:
 - (A) resemble the shingles used or otherwise authorized for use on property in the subdivision;
 - (B) are more durable than and are of equal or superior quality to the shingles described by Paragraph (A); and
 - (C) match the aesthetics of the property surrounding the owner's property.

Sec. 202.012. Flag Display.

- a. A property owners' association may not, except as provided in this section, adopt or enforce a dedicatory instrument provision that prohibits, restricts, or has the effect of prohibiting or restricting an

owner from the display of:

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

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

- (1) that require:
 - (A) the flag of the United States be displayed in accordance with 4 U.S.C. Sections 5-10;
 - (B) the flag of the State of Texas be displayed in accordance with Chapter 3100, Government Code;
 - (C) a flagpole attached to a dwelling or a freestanding flagpole be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the dwelling;
 - (D) the display of a flag, or the location and construction of the supporting flagpole, to comply with applicable zoning ordinances, easements, and setbacks of record; and
 - (E) a displayed flag and the flagpole on which it is flown be maintained in good condition and that any deteriorated flag or deteriorated or structurally unsafe flagpole be repaired, replaced, or removed;
- (2) that regulate the size, number, and location of flagpoles on which flags are displayed, except that the regulation may not prevent the installation or erection of at least one flagpole per property that:

- (A) is not more than 20 feet in height and, subject to applicable zoning ordinances, easements, and setbacks of record, is located in the front yard of the property; or
 - (B) is attached to any portion of a residential structure owned by the property owner and not maintained by the property owners' association;
- (3) that govern the size of a displayed flag;
 - (4) that regulate the size, location, and intensity of any lights used to illuminate a displayed flag;
 - (5) that impose reasonable restrictions to abate noise caused by an external halyard of a flagpole; or
 - (6) that prohibit a property owner from locating a displayed flag or flagpole on property that is:
 - (A) owned or maintained by the property owners' association;
or
 - (B) owned in common by the members of the association.
- c. A property owner who has a front yard and who otherwise complies with any permitted property owners' association regulations may elect to install a flagpole in accordance with either Subsection (b) (2)(A) or Subsection (b)(2)(B).

Sec. 202.018. Regulation of Display of Certain Religious Items.

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

- b. This section does not prohibit the enforcement or adoption of a provision in a dedicatory instrument, including a restrictive covenant, that, to the extent allowed by the constitution of this state and the United States, prohibits the display or affixing of a religious item on the owner's or resident's property or dwelling that:
- (1) threatens the public health or safety;
 - (2) violates a law other than a law prohibiting the display of religious speech;
 - (3) contains language, graphics, or any display that is patently offensive to a passerby for reasons other than its religious content;
 - (4) is installed on property:
 - (5) owned or maintained by the property owners' association; or
 - (6) owned in common by members of the property owners' association;
 - (7) violates any applicable building line, right-of-way, setback, or easement; or
 - (8) is attached to a traffic control device, street lamp, fire hydrant, or utility sign, pole, or fixture.

Sec. 202.019. Standby Electric Generators.

- a. In this section, "standby electric generator" means a device that converts mechanical energy to electrical energy and is:
- (1) powered by natural gas, liquefied petroleum gas, diesel fuel, biodiesel fuel, or hydrogen;
 - (2) fully enclosed in an integral manufacturer-supplied sound attenuating enclosure;

- (3) connected to the main electrical panel of a residence by a manual or automatic transfer switch; and
 - (4) rated for a generating capacity of not less than seven kilowatts.
- b. Except as provided by this section, a property owners' association may not adopt or enforce a dedicatory instrument provision that prohibits, restricts, or has the effect of prohibiting or restricting an owner from owning, operating, installing, or maintaining a permanently installed standby electric generator.
- c. A property owners' association may adopt or enforce any of the following dedicatory instrument provisions to regulate the operation and installation of standby electric generators:
- (1) a dedicatory instrument provision that requires a standby electric generator to be installed and maintained in compliance with:
 - (A) the manufacturer's specifications; and
 - (B) applicable governmental health, safety, electrical, and building codes;
 - (2) a dedicatory instrument provision that requires all electrical, plumbing, and fuel line connections to be installed only by licensed contractors;
 - (3) a dedicatory instrument provision that requires all electrical connections to be installed in accordance with applicable governmental health, safety, electrical, and building codes;
 - (4) a dedicatory instrument provision that requires all natural gas, diesel fuel, biodiesel fuel, or hydrogen fuel line connections to be installed in accordance with applicable governmental health, safety, electrical, and building codes;
 - (5) a dedicatory instrument provision that requires all liquefied petroleum gas fuel line connections to be installed in accordance with rules and standards promulgated and adopted

by the Railroad Commission of Texas and other applicable governmental health, safety, electrical, and building codes;

- (6) a dedicatory instrument provision that requires nonintegral standby electric generator fuel tanks to be installed and maintained to comply with applicable municipal zoning ordinances and governmental health, safety, electrical, and building codes;
- (7) a dedicatory instrument provision that requires the standby electric generator and its electrical lines and fuel lines to be maintained in good condition;
- (8) a dedicatory instrument provision that requires the repair, replacement, or removal of any deteriorated or unsafe component of a standby electric generator, including electrical or fuel lines;
- (9) a dedicatory instrument provision that requires an owner to screen a standby electric generator if the standby electric generator is:
 - (A) visible from the street faced by the dwelling;
 - (B) located in an unfenced side or rear yard of a residence and is visible either from an adjoining residence or from adjoining property owned by the property owners' association; or
 - (C) located in a side or rear yard fenced by a wrought iron or residential aluminum fence and is visible through the fence either from an adjoining residence or from adjoining property owned by the property owners' association;
- (10) a dedicatory instrument provision that sets reasonable times, consistent with the manufacturer's recommendations, for the periodic testing of a standby electric generator;
- (11) a dedicatory instrument provision that prohibits the use of a standby electric generator to generate all or substantially all

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

- (12) a dedicatory instrument provision that regulates the location of the standby electric generator; or
- (13) a dedicatory instrument provision that prohibits an owner from locating a standby electric generator on property:
 - (A) owned or maintained by the property owners' association; or
 - (B) owned in common by the property owners' association members.
- d. A dedicatory instrument provision permitted by Subsection (c), if adopted, must be reasonably applied and enforced.
- e. A dedicatory instrument provision that regulates the location of a standby electric generator is unenforceable if:
 - (1) it increases the cost of installing the standby electric generator by more than 10 percent; or
 - (2) it increases the cost of installing and connecting the electrical and fuel lines for the standby electric generator by more than 20 percent.
- f. If a dedicatory instrument requires that the installation of a standby electric generator be approved before installation, approval may not be withheld if the proposed installation meets or exceeds the dedicatory instrument provisions permitted by Subsection (c).
- g. If a dedicatory instrument provision requires an owner to submit an application for approval of improvements located exterior to a residence, this section does not negate the requirement, but the information required to be submitted as part of the application for the installation of a standby electric generator may not be greater

or more detailed than the application for any other improvement.

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

Sec. 202.020. Certain Sales of Beverages By Children.

- a. A property owners' association of a residential subdivision may not adopt or enforce a restrictive covenant that prohibits or regulates, including by requiring a permit or fee, the occasional sale of lemonade or other nonalcoholic beverages from a stand on property located in the subdivision by an individual younger than 18 years of age who has the permission of a property owner in the subdivision for the sale.
- b. A property owners' association:
 - (1) does not owe a duty of care to persons participating in a beverage sale described by Subsection (a); and
 - (2) is not liable for any injury to persons participating in a beverage sale described by Subsection (a), except for wilful or wanton acts or gross negligence of the association.

Sec. 202.021. Regulation of Firearms or Firearms Ammunition.

A property owners' association may not include or enforce a provision in a dedicatory instrument that prohibits, restricts, or has the effect of prohibiting or restricting any person who is otherwise authorized from lawfully possessing, transporting, or storing a firearm, any part of a firearm, or firearm ammunition, as well as the otherwise lawful discharge of a firearm.

Sec. 202.022. Swimming Pool Enclosures.

- a. In this section, "swimming pool enclosure" means a fence that:
 - (1) surrounds a water feature, including a swimming pool or spa;
 - (2) consists of transparent mesh or clear panels set in metal frames;
 - (3) is not more than six feet in height; and
 - (4) is designed to not be climbable.

- b. A property owners' association:
 - (1) may not adopt or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner from installing on the property owner's property a swimming pool enclosure that conforms to applicable state or local safety requirements; and
 - (2) may adopt and enforce a provision in a dedicatory instrument establishing limitations related to the appearance of a swimming pool enclosure, including limitations establishing permissible colors for a swimming pool enclosure, provided that the provision does not prohibit a swimming pool enclosure that is black in color and consists of transparent mesh set in metal frames.

Sec. 202.023. Security Measures.

- a. This section does not apply to:
 - (1) a condominium as defined by Section 81.002 or 82.003; or
 - (2) a master mixed-use property owners' association subject to Chapter 215.

- b. Except as provided by Subsection (c), a property owners' association may not adopt or enforce a restrictive covenant that prevents a property owner from building or installing security measures, including but not limited to a security camera, motion detector, or perimeter fence.
- c. This section does not prohibit a property owners' association from:
 - (1) prohibiting the installation of a security camera by a property owner in a place other than the property owner's private property; or
 - (2) regulating the type of fencing that a property owner may install.

Sec. 202.024. Discrimination Against Tenant Based on Method of Payment Prohibited.

- a. In this section, "method of payment" includes payment made in whole or in part by:
 - (1) a housing choice voucher under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f); or
 - (2) any other federal or state or local housing assistance provided to a person or to a property owner on behalf of a person, including rental vouchers, rental assistance, or rental subsidies from a nongovernmental organization
- b. A property owners' association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner from renting a dwelling to a person based on the person's method of payment.

Chapter 82
Uniform Condominium Act
(Condos Only)

Property Code
Title 7. Condominiums
Chapter 82. Uniform Condominium Act

Subchapter A. General Provisions

Sec. 82.001. Short Title.

This chapter may be cited as the Uniform Condominium Act.
Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.002. Applicability.

- a. This chapter applies to all commercial, industrial, residential, and other types of condominiums in this state for which the declaration is recorded on or after January 1, 1994. A condominium for which the declaration was recorded before January 1, 1994, may be governed exclusively under this chapter if either:
- (1) the owners of units vote to amend the declaration, in accordance with the amendment process authorized by the declaration, to have this chapter apply and that amendment is filed for record in the condominium records in each county in which the condominium is located; or
 - (2) a declaration or amendment of declaration was recorded before January 1, 1994, and the declaration or amendment states that this chapter will apply in its entirety on January 1, 1994.
- b. An amendment to a declaration under Subsection (a)(1) that implements a vote of the unit owners to be governed by this chapter may not affect the rights of a declarant or impose duties on a declarant that are greater than or in addition to the declarant's duties immediately before the date of the vote or amendment.
- c. This section and the following sections apply to a condominium in this state for which the declaration was recorded before January 1,

1994: Sections 82.005, 82.006, 82.007, 82.053, 82.054, 82.102(a)(1)-(7), (a)(12)-(21), (f), and (g), 82.108, 82.111, 82.113, 82.114, 82.116, 82.118, 82.157, and 82.161. The definitions prescribed by Section 82.003 apply to a condominium in this state for which the declaration was recorded before January 1, 1994, to the extent the definitions do not conflict with the declaration. The sections listed in this subsection apply only with respect to events and circumstances occurring on or after January 1, 1994, and do not invalidate existing provisions of the declaration, bylaws, or plats or plans of a condominium for which the declaration was recorded before January 1, 1994.

(c-1) Section 82.121 applies to a condominium for which the declaration was recorded before January 1, 1994.

- d. Chapter 81 does not apply to a condominium for which the declaration was recorded on or after January 1, 1994, and does not invalidate any amendment to the declaration, bylaws, or plats and plans of any condominium for which the declaration was recorded before January 1, 1994, if the amendment would be permitted by this chapter. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by Chapter 81. If the amendment grants to a person a right, power, or privilege permitted by this chapter, all correlative obligations, liabilities, and restrictions prescribed by this chapter also apply to that person.

Sec. 82.003. Definitions.

In this chapter:

Affiliate of a declarant means any person who controls, is controlled by, or is under common control with a declarant. A person “controls” a declarant if the person is a general partner, officer, director, or employer of the declarant; directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing more than 20 percent of the voting interests in the declarant; determines in any manner the election of a majority of the directors of the declarant; or

has contributed more than 20 percent of the capital of the declarant. A person “is controlled by” a declarant if the declarant is a general partner, officer, director, or employer of the person; directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than 20 percent of the voting interests in the person; determines in any manner the election of a majority of the directors of the person; or has contributed more than 20 percent of the capital of the person.

Allocated interests means the undivided interest in the common elements, the common expense liability, and votes in the association allocated to each unit.

Association means the unit owners’ association organized under Section 82.101.

Board means the board of directors or the body, regardless of name, designated to act on behalf of the association.

Common elements means all portions of a condominium other than the units and includes both general and limited common elements.

Common expense liability means the liability for common expenses allocated to each unit.

Common expenses means expenditures made by or financial liabilities of the association, together with any allocations to reserves.

Condominium means a form of real property with portions of the real property designated for separate ownership or occupancy, and the remainder of the real property designated for common ownership or occupancy solely by the owners of those portions. Real property is a condominium only if one or more of the common elements are directly owned in undivided interests by the unit owners. Real property is not a condominium if all of the common elements are owned by a legal entity separate from the unit owners, such as a corporation, even if the separate legal entity is owned by the unit owners.

Conversion building means a building that at any time before creation of the condominium was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

Declarant means a person, or group of persons acting in concert, who:

as part of a common promotional plan, offers to dispose of the person's interest in a unit not previously disposed of; or

reserves or succeeds to any special declarant right.

Declaration means an instrument, however denominated, that creates a condominium, and any amendment to that instrument.

Dedicatory instrument means each document governing the establishment, maintenance, or operation of a condominium regime. The term includes a declaration or similar instrument subjecting real property to:

restrictive covenants, bylaws, or similar instruments governing the administration or operation of a unit owners' association;

properly adopted rules and regulations of the unit owners' association; or

all lawful amendments to the covenants, bylaws, instruments, rules, or regulations.

Development rights means a right or combination of rights reserved by a declarant in the declaration to:

add real property to a condominium;

create units, common elements, or limited common elements within a condominium;

subdivide units or convert units into common elements; or

withdraw real property from a condominium.

Disposition means a voluntary transfer to a purchaser of any legal or equitable interest in a unit but does not include the transfer or release of a security interest.

General common elements means common elements that are not limited common elements.

Identifying number means a symbol or address that identifies only one unit in a condominium.

Leasehold condominium means a condominium in which all or a portion of the real property is subject to a lease the expiration or termination of which will terminate the condominium or reduce its size.

Limited common element means a portion of the common elements allocated by the declaration or by operation of Section 82.052 for the exclusive use of one or more but less than all of the units.

Plan means a dimensional drawing that is recordable in the real property records or the condominium plat records and that horizontally and vertically identifies or describes units and common elements that are contained in buildings.

Plat means a survey recordable in the real property records or the condominium plat records and containing the information required by Section 82.059. As used in this chapter, "plat" does not have the same meaning as "plat" in Chapter 212 or 232, Local Government Code, or other statutes dealing with municipal or county regulation of property development.

Purchaser means a person, other than a declarant, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than a leasehold interest or as security for an obligation.

Residential purposes means recreational or dwelling purposes, or both.

Special declarant rights means rights reserved for the benefit of a declarant to:

complete improvements indicated on plats and plans filed with

the declaration;

exercise any development right;

make the condominium part of a larger condominium or a planned community;

maintain sales, management, and leasing offices, signs advertising the condominium, and models;

use easements through the common elements for the purpose of making improvements within the condominium or within real property that may be added to the condominium; or

appoint or remove any officer or board member of the association during any period of declarant control.

Unit means a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described by the declaration.

Unit owner means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the condominium, but does not include a person having an interest in a unit solely as security for an obligation.

Unless otherwise provided by the declaration or bylaws, a term defined by Subsection (a) has the same meaning if used in a declaration or bylaws.

Sec. 82.004. Variation By Agreement.

- a. Except as expressly provided by this chapter, provisions of this chapter may not be varied by agreement, and rights conferred by this chapter may not be waived. A person may not act under a power of attorney or use any other device to evade the limitations or prohibitions of this chapter or the declaration.

Sec. 82.005. Separate Titles and Taxation.

- a. If there is a unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real property.
- b. If there is a unit owner other than a declarant, each unit must be separately taxed and assessed, and no separate tax or assessment may be rendered against common elements for which a declarant has not reserved development rights. Any portion of the common elements for which a declarant has reserved any development right must be separately taxed and assessed against the declarant, and the declarant alone is liable for payment of those taxes.
- c. If there is no unit owner other than a declarant, the real property constituting the condominium may be taxed and assessed in any manner provided by law.
- d. The laws relating to homestead exemptions from property taxes apply to condominium units, which are entitled to homestead exemptions in those cases in which the owner of a single family dwelling would qualify.

Sec. 82.006. Applicability of Local Ordinances, Regulations, and Building Codes.

- a. A zoning, subdivision, building code, or other real property use law, ordinance, or regulation may not prohibit the condominium form of ownership or impose any requirement on a condominium that it would not impose on a physically identical development under a different form of ownership. Otherwise, this chapter does not invalidate or modify any provision of any zoning, subdivision, building code, or other real property use law, ordinance, or regulation.

Sec. 82.007. Condemnation.

- a. If a unit is acquired by condemnation, or if part of a unit is acquired by condemnation leaving the unit owner with a remnant that may

not practically or lawfully be used for any purpose permitted by the declaration, the condemnation award must compensate the unit owner for the unit and its common element interest, whether or not any common element interest is acquired. On acquisition, unless the decree provides otherwise, the condemned unit's entire allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. A remnant of a unit remaining after part of a unit is taken under this subsection is a common element.

- b. Except as provided by Subsection (a), if part of a unit is acquired by condemnation, the award must compensate the unit owner for the reduction in value of the unit and its common element interest. On acquisition, the condemned unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified by the declaration, and the portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.
- c. If part of the common elements is acquired by condemnation, the award must be paid to the association, as trustee for the unit owners, and to persons holding liens on the condemned property, as their interests may appear. The association shall divide any portion of the award not used for any restoration or repair of the remaining common elements among the unit owners in proportion to their respective common element interests before the taking, but the portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition, or in any manner the declaration provides.
- d. The court decree shall be recorded in each county in which any portion of the condominium is located.

Sec. 82.008. Venue.

- a. Venue for an action to enforce a right or obligation arising under the declaration, bylaws, or rules of the association is in each county in which any part of the condominium is located.

**Subchapter B. Creation, Alteration, and
Termination of Condominiums**

Sec. 82.051. Creation of Condominium.

- a. A condominium may be created under this chapter only by recording a declaration executed in the same manner as a deed by all persons who have an interest in the real property that will be conveyed to unit owners and by every lessor of a lease the expiration or termination of which will terminate the condominium or reduce its size. The declaration shall be recorded in each county in which any portion of the condominium is located.
- b. A declarant may not convey an interest in a unit until each holder of a mortgage on the unit immediately before conveyance has executed a consent to declaration, and the consent has been recorded, or is recorded concurrently with the conveyance, as part of the declaration or an amendment to the declaration.
- c. If a recorded declaration is not properly executed, that defect may be cured by a subsequent execution conforming to Subsection (a). After an execution defect is cured by authority of this subsection, the declaration is retroactively effective on the date it was first recorded.
- d. A county clerk shall, without prior approval from any other authority, record declarations and amendments to declarations in the real property records and record condominium plats or plans in the real property records or in books maintained for that purpose. If a county clerk maintains a book for the condominium plat records, the book shall be the same size and type as the book for recording subdivision plats.

- e. This chapter does not affect or diminish the rights of municipalities and counties to approve plats of subdivisions and enforce building codes as may be authorized or required by law.
- f. A person may not file for record or have recorded in the county clerk's office a plat, replat, or amended plat or replat of a condominium unless the plat, replat, or amended plat or replat has attached to it an original tax certificate from each taxing unit with jurisdiction of the real property indicating that no delinquent ad valorem taxes are owed on the real property. If the plat, replat, or amended plat or replat is filed after September 1 of a year, the plat, replat, or amended plat or replat must also have attached to it a tax receipt issued by the collector for each taxing unit with jurisdiction of the property indicating that the taxes imposed by the taxing unit for the current year have been paid or, if the taxes for the current year have not been calculated, a statement from the collector for the taxing unit indicating that the taxes to be imposed by that taxing unit for the current year have not been calculated. If the tax certificate for a taxing unit does not cover the preceding year, the plat, replat, or amended plat or replat must also have attached to it a tax receipt issued by the collector for the taxing unit indicating that the taxes imposed by the taxing unit for the preceding year have been paid. This subsection does not apply if a taxing unit acquired the condominium for public use through eminent domain proceedings or voluntary sale.
- g. This chapter does not permit development of a subdivision golf course, as defined by Section 212.0155(b), Local Government Code, without a plat if the plat is otherwise required by applicable law. A municipality may require as a condition to the development of a previously platted or unplatted subdivision golf course that the subdivision golf course be platted or replatted.

Sec. 82.052. Unit Boundaries.

- a. Except as otherwise provided by the declaration or plat:
 - (1) if walls, floors, or ceilings are designated as boundaries of a unit, then all lath, furring, wallboard, plasterboard, plaster,

paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting part of the finished surfaces are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements;

- (2) if any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture is partially within and partially outside the designated boundaries of a unit, then the portion serving only that unit is a limited common element allocated solely to that unit, and the portion serving more than one unit or the common elements is a part of the general common elements;
- (3) subject to Subdivision (2), the spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit; and
- (4) shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

Sec. 82.053. Construction and Validity of Declaration and Bylaws.

- a. The provisions of the declaration and bylaws are severable.
- b. The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws, or rules of the association.
- c. If there is a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this chapter.
- d. Title to a unit and common elements is not made unmarketable or otherwise affected by a provision of unrecorded bylaws or by reason of an insubstantial failure of the declaration to comply with this chapter. Whether a substantial failure impairs marketability is not affected by this chapter.

Sec. 82.054. Description of Units.

- a. A description of a unit is a sufficient legal description of the unit and all rights, obligations, and interests appurtenant to the unit that were created by the declaration or bylaws if the description contains:
- (1) the name of the condominium;
 - (2) the recording data for the declaration, including any amendments, plats, and plans;
 - (3) the county in which the condominium is located; and
 - (4) the identifying number of the unit.

Sec. 82.055. Contents of Declaration for all Condominiums.

- a. The declaration for a condominium must contain:
- (1) the name of the condominium, which must include the word "condominium" or be followed by the words "a condominium" or a phrase that includes the word "condominium," and the name of the association;
 - (2) the name of each county in which any part of the condominium is located;
 - (3) a legally sufficient description of the real property included in the condominium;
 - (4) a description of the boundaries of each unit created by the declaration, including the unit's identifying number;
 - (5) a statement of the maximum number of units that the declarant reserves the right to create;
 - (6) a description of the limited common elements other than those listed in Sections 82.052(2) and (4);

- (7) a description of any real property, except real property subject to development rights, that may be allocated subsequently as limited common elements, together with a statement that the property may be so allocated;
- (8) an allocation to each unit of its allocated interests;
- (9) any restrictions on use, occupancy, or alienation of the units;
- (10) a description of and the recording data for recorded easements and licenses appurtenant to or included in the condominium or to which any portion of the condominium is or may become subject by reservation in the declaration;
- (11) the method of amending the declaration;
- (12) a plat or plan or the recording data of a plat or plan that has been recorded in the real property or condominium plat records;
- (13) a statement of the association's obligation under Section 82.111(i) to rebuild or repair any part of the condominium after a casualty or any other disposition of the proceeds of a casualty insurance policy;
- (14) a description of any development rights and other special declarant rights reserved by the declarant, together with a legally sufficient description of the real property to which each of those rights applies, and a time limit within which each of those rights must be exercised;
- (15) if any development right may be exercised with respect to different parcels of real property at different times, a statement to that effect, together with:
 - (A) either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right, or a statement that no assurances are made in those regards; and

- (B) a statement as to whether, if any development right is exercised in any portion of the real property subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real property;
- (16) all matters required by this chapter to be stated in the declaration; and
- (17) any other matters the declarant considers appropriate.

Sec. 82.056. Leasehold Condominiums.

- a. Any lease the expiration or termination of which may terminate the condominium or reduce its size must be recorded. The lessor shall sign the declaration, and the declaration must state:
 - (1) the recording data for the lease;
 - (2) the date on which the lease is scheduled to expire;
 - (3) a legally sufficient description of the real property subject to the lease;
 - (4) any right of the unit owners to redeem the reversion and the manner in which the unit owners may exercise that right, or a statement that the unit owners do not have that right;
 - (5) any right of the unit owners to remove improvements within a reasonable time after the expiration or termination of the lease, or a statement that the unit owners do not have that right; and
 - (6) any right of the unit owners to renew the lease and the conditions of renewal, or a statement that the unit owners do not have that right.
- b. After the declaration for a leasehold condominium is recorded, neither the lessor nor the lessor's successor in interest may terminate the leasehold interest of a unit owner who makes timely

payment of the unit owner's share of the rent and otherwise complies with all covenants that, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest is not affected by failure of any other person to pay rent or fulfill any other covenant.

- c. Acquisition of the leasehold interest of a unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired.
- d. If the expiration or termination of a lease decreases the number of units in a condominium, the allocated interests shall be reallocated as though those units had been taken by condemnation unless otherwise provided by the declaration. Reallocation shall be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

Sec. 82.057. Allocation of Common Element Interests, Votes, and Common Expense Liabilities.

- a. The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit and state the formulas used to establish those allocations. These allocations may not discriminate in favor of units owned by a declarant.
- b. If units may be added to or withdrawn from the condominium, the declaration must state the formulas to be used to reallocate the allocated interests among all units included in the condominium after the addition or withdrawal.
- c. The declaration may provide:
 - (1) that different allocations of votes must be made to the units on particular matters specified in the declaration; and

- (2) for class voting on specified issues affecting the class if necessary to protect valid interests of the class.
- d. A declarant may not use cumulative or class voting to evade any limitation imposed on declarants by this chapter. Units may not constitute a class because the units are owned by a declarant.
- e. Except for minor variations due to rounding, the sums of the undivided interests in the common elements and of the common expense liabilities allocated at any time to all the units shall each equal one if stated as fractions or 100 percent if stated as percentages. If a discrepancy exists between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.
- f. The common elements are not subject to partition. Any purported conveyance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements without the unit to which that interest is allocated is void.

Sec. 82.058. Limited Common Elements.

- a. The limited common elements and the provisions of the declaration relating to the right to use the limited common elements may not be altered without the consent of each affected unit owner and the owner's first lien mortgagee.
- b. Except as otherwise provided by the declaration, a limited common element may be reallocated by an amendment to the declaration, executed by the unit owners between or among whose units the reallocation is made. The persons executing the amendment shall deliver it to the association, which shall record it at the expense of the reallocating unit owners.
- c. A common element not previously allocated as a limited common element may not be allocated except pursuant to the declaration made in accordance with Section 82.055(7). The allocation shall be made by amendment to the declaration.

Sec. 82.059. Plats and Plans.

- a. Plats and plans are a part of the declaration and may be recorded as a part of the declaration or separately. Each plat or plan must be legible and contain a certification that the plat or plan contains all information required by this section.
- b. Each plat must show:
 - (1) the name and a survey or general schematic map of the entire condominium;
 - (2) the location and dimensions of all real property not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing improvements within that real property;
 - (3) a legally sufficient description of any real property subject to development rights, labeled to identify the rights applicable to each parcel;
 - (4) the extent of any encroachments by or on any portion of the condominium;
 - (5) to the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the condominium, and the location of any underground utility line that is actually known by the declarant at the time of filing the declaration to have been constructed outside a recorded easement;
 - (6) the location and dimensions of any vertical unit boundaries not shown or projected on recorded plans and the unit's identifying number;
 - (7) the location of horizontal unit boundaries, if any, with reference to established data, unless described in the declaration or shown or projected on recorded plans, and the unit's identifying number;

- (8) a legally sufficient description of any real property in which the unit owners will own only an estate for years, labeled as "leasehold real property";
 - (9) the distance between noncontiguous parcels of real property constituting the condominium;
 - (10) the location and dimensions of limited common elements, other than those described by Sections 82.052(2) and (4);
 - (11) in the case of real property not subject to development rights, all other matters required by law on land surveys; and
 - (12) the distance and bearings locating each building from all other buildings and from at least one boundary line of the real property constituting the condominium.
- c. A plat may also show the intended location and dimensions of a contemplated improvement to be constructed anywhere within the condominium, which must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT."
- d. To the extent not shown on the plats, plans must show:
- (1) the location and dimensions of the vertical boundaries of each unit, and the unit's identifying number;
 - (2) the horizontal unit boundaries, if any, with reference to established data, unless described in the declaration, and the unit's identifying number; and
 - (3) any units, appropriately identified, in which the declarant has reserved the right to create additional units or common elements.
- e. Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside a building have the same elevation as the horizontal boundaries of the inside part and need not be depicted on the plats and plans. Interior walls and partitions within a unit need not be included in the plats or plans.

- f. On exercising any development right, the declarant shall record either new plats and plans necessary to conform to the requirements of this section or new certifications of plats and plans previously recorded if those plats and plans otherwise conform to the requirements of this section.
- g. An independent licensed surveyor or engineer shall certify at least one plat, whether contained in one or more pages, showing all perimeter land boundaries of the condominium, except for additional real property, and showing the locations on the ground of all buildings labeled "MUST BE BUILT" in relation to land boundaries. Certification of any other plat or plan required by this chapter shall be made by an independent licensed architect, surveyor, or engineer.

Sec. 82.060. Exercise of Development Right.

- a. To exercise a development right, the declarant must prepare, execute, and record an amendment to the declaration and record new plats and plans for that real property. The declarant is the unit owner of any units created. The amendment to the declaration must assign an identifying number to each new unit created and, except for subdivision or conversion of units described by Subsection (b), reallocate the allocated interest among all units. The amendment must describe any limited common elements created, designating the unit to which each is allocated.
- b. Development rights may be reserved within any real property added to the condominium if the amendment adding the real property includes the information required by Section 82.055 or 82.056, as appropriate, and the plats and plans include the information required by Section 82.059(b). This provision does not extend the time limit on the exercise of development rights imposed by the declaration. Real property to be added is not part of a condominium or subject to a declaration until the declaration is amended to make the additional real property part of the condominium.
- c. Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common

elements, or both:

- (1) if the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the other units as if the unit had been taken by condemnation; and
 - (2) if the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.
- d. If the declaration provides that all or a portion of the real property is subject to the development right of withdrawal:
- (1) if all the real property is subject to withdrawal, and the declaration does not describe separate portions of real property subject to that right, none of the real property may be withdrawn after a unit has been conveyed to a purchaser; and
 - (2) if a portion or portions are subject to withdrawal, no portion may be withdrawn after a unit in that portion has been conveyed to a purchaser.

Sec. 82.061. Alterations of Units.

- a. Subject to the provisions of the declaration and other provisions of law, a unit owner:
- (1) may make improvements or alterations to the owner's unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium;
 - (2) may not change the appearance of the common elements or the exterior appearance of a unit or any other portion of the condominium without prior written permission of the association; and

- (3) after acquiring an adjoining unit or an adjoining part of an adjoining unit, with the prior written approval of the association, may remove, alter, and create apertures in an intervening partition, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium.
- b. Removal of partitions or creation of apertures under Subsection (a) (3) is not an alteration of boundaries.

Sec. 82.062. Relocation of Boundaries Between Adjoining Units.

- a. Subject to the declaration, the boundaries between adjoining units may be relocated by an amendment to the declaration on written application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the board determines not later than the 30th day after the date the application is received that the reallocation is unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocation, is executed by the applying unit owners, and contains words of conveyance between them. At the expense of the applying unit owners, the association shall prepare and record the amendment and plats or plans necessary to show the altered boundaries between adjoining units, and the units' dimensions and identifying numbers.

Sec. 82.063. Subdivision of Units.

- a. If the declaration expressly permits, a unit may be subdivided into two or more units. Subject to the declaration, on written application of a unit owner to subdivide a unit and after payment by the unit owner of the cost of preparing and recording amendments and plats, the association shall prepare, execute, and record an amendment to the declaration, including the plats and plans, subdividing the unit.

- b. The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit.

Sec. 82.064. Easement for Encroachments.

- a. To the extent that a unit or common element encroaches on another unit or common element, a valid easement for the encroachment exists. The easement does not relieve a unit owner of liability in case of the owner's willful misconduct nor relieve a declarant or any other person of liability for failure to adhere to the plats and plans.

Sec. 82.065. Use for Sales Purposes.

- a. The declaration may permit a declarant to maintain sales, leasing, or management offices and models in units or on common elements in the condominium if the declaration specifies the rights of a declarant with regard to the number, size, location, and relocation of the offices and models. If the declaration fails to expressly permit an office or model, a declarant may maintain no more than one unit as a model and no more than one unit as an office for sales, leasing, and management purposes at any one time. A sales, leasing, or management office or model not designated as a unit by the declaration is a common element and is subject to the exclusive use of a declarant until the declarant ceases to be a unit owner or until the declarant no longer uses the office or model for such purposes, whichever occurs earlier. A declarant may modify the exterior of a sales, leasing, or management office to conform to the aesthetic exterior plan of the condominium. A declarant who ceases to be a unit owner ceases to have any rights with regard to an office or model unless it is removed within a reasonable time from the condominium in accordance with a right to remove reserved in the declaration. Subject to limitations in the declaration, a declarant may maintain signs on the common elements that advertise the condominium for sale or lease. This section is subject to local ordinances and other state law.

Sec. 82.066. Easement Rights.

- a. Subject to the declaration, a declarant has an easement through the common elements as may be reasonably necessary for discharging the declarant's obligations or exercising special declarant rights whether arising under this chapter or reserved by the declaration.

Sec. 82.067. Amendment of Declaration.

- a. Except as provided by Subsection (b), a declaration, including the plats and plans, may be amended only by vote or agreement of unit owners to which at least 67 percent of the votes in the association are allocated, or any larger majority the declaration specifies. A declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use. An amendment to a declaration may be adopted:
 - (1) by written ballot that states the exact wording or substance of the amendment and that specifies the date by which a ballot must be received to be counted;
 - (2) at a meeting of the members of the association after written notice of the meeting has been delivered to an owner of each unit stating that a purpose of the meeting is to consider an amendment to the declaration; or
 - (3) by any method permitted by the declaration.
- b. The amendment procedures of this section do not apply to amendments that may be executed by:
 - (1) a declarant under Section 82.051(c), 82.059(f), or 82.060 or Subsection (f);
 - (2) the association under Section 82.007, 82.056(d), 82.058(c), 82.062, or 82.063 or Subsection (f); or
 - (3) certain unit owners under Section 82.058(b), 82.062, 82.063(b), or 82.068(b).

- c. An action to challenge the validity of an amendment adopted by the association under this section must be brought before the first anniversary of the date the amendment is recorded.
- d. To be effective, an amendment to the declaration must be recorded in each county in which any portion of the condominium is located.
- e. Except as permitted or required by this chapter, an amendment may not create or increase special declarant rights, increase the number of units, change the boundaries of a unit, alter or destroy a unit or limited common element, change a unit's allocated interest, or change the use restrictions on a unit unless the amendment is approved by 100 percent of the votes in the association. Except as agreed to by the declarant, an amendment may not increase or otherwise modify the obligations imposed by a declaration on a declarant, or reduce or otherwise modify the rights granted by a declaration to a declarant, including special declarant rights.
- f. If permitted by the declaration, the board or the declarant, if the declarant owns a unit that has never been occupied, may without a vote of the unit owners or approval of the association amend the declaration in any manner necessary to meet the requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the Veterans Administration.
- g. Amendments to the declaration required by this chapter to be recorded by the association must be prepared, executed, recorded, and certified by an officer of the association designated for that purpose or, in the absence of designation, by the president of the association.
- h. An association may amend the declaration to authorize the board:
 - (1) to bring an action to evict a tenant of a unit owner for the tenant's violation of the declaration, bylaws, or rules of the association;
 - (2) to bring an action to evict a tenant of a unit owner who fails to pay the association for the cost of repairs to common elements

- damaged substantially by the owner's tenant; or
- (3) to collect rents from a tenant of a unit owner who is at least 60 days' delinquent in the payment of any amount due to the association.

Sec. 82.0675. Restriction Relating to Club Membership.

- a. A provision of a declaration or recorded contract that requires owners of units in a condominium to maintain a membership in a specified private club is not valid after the 10th anniversary of the date the provision is recorded or renewed unless renewed after the ninth anniversary of that date in the manner provided by the declaration or recorded contract for amending the declaration or recorded contract and the text of the renewed provision is filed in the real property records of each county in which the condominium is located.
- b. A provision described by this section may not be enacted or renewed as a bylaw by the unit owners' association.

Sec. 82.068. Termination of Condominium.

- a. Unless the declaration provides otherwise and except for a taking of all the units by condemnation, a condominium may be terminated only by the agreement of 100 percent of the votes in the association and each holder of a deed of trust or vendor's lien on a unit. The declaration may not allow a termination by less than 80 percent of the votes in the association if any unit is restricted exclusively to residential uses.
- b. An agreement of unit owners to terminate a condominium must be evidenced by the execution or ratification of a termination agreement by the requisite number of unit owners. If, pursuant to a termination agreement, the real property constituting the condominium is to be sold following termination, the termination agreement must set forth the terms of the sale. To be effective, a termination agreement and all ratifications of the agreement must

be recorded in each county in which a portion of the condominium is located.

- c. The association, on behalf of the unit owners, may contract for the sale of real property in the condominium, but the contract is not binding on the unit owners until it is approved under Subsections (a) and (b). If the real property constituting the condominium is to be sold following termination, on termination title to that real property vests in the association as trustee for the holders of all interests in the units, and the association has all powers necessary and appropriate to effect the sale, including the power to convey the interests of nonconsenting owners. Until the sale has been concluded and the proceeds distributed, the association shall continue to exist and retains the powers it had before termination. Proceeds of the sale must be distributed to unit owners and lienholders as their interests may appear, in proportion to the respective interests of unit owners as provided by Subsection (f). Unless the termination agreement specifies differently, as long as the association holds title to the real property, each unit owner and the owner's successors in interest have an exclusive right to occupy the portion of the real property that formerly constituted the owner's unit. During that period of occupancy a unit owner and the owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by this chapter or the declaration.
- d. If the real property constituting the condominium is not to be sold following termination, on termination title to the real property vests in the unit owners as tenants in common in proportion to their respective interests, and liens on the units shift accordingly. While the tenancy in common exists, a unit owner and the owner's successors in interest have an exclusive right to occupy the portion of the real property that formerly constituted the owner's unit.
- e. Following termination of the condominium, and after payment of or provision for the claims of the association's creditors, the assets of the association shall be distributed to unit owners in proportion to their respective interests. The proceeds of sale described by Subsection (c) and held by the association as trustee are not assets of the association.

- f. The interest of a unit owner referred to in Subsections (c), (d), and (e) is, except as provided by Subsection (g), the fair market value of the owner's unit, limited common elements, and common element interest immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved by unit owners of units to which 25 percent of the votes in the association are allocated not later than the 30th day after the date of distribution. The proportion of a unit owner's interest to that of all unit owners is determined by dividing the fair market value of the unit owner's unit and common element interest by the total fair market values of all the units and common elements.
- g. If a unit or a limited common element is destroyed to the extent that an appraisal of the fair market value before the destruction cannot be made, the interest of a unit owner is the owner's common element interest immediately before the termination.
- h. Foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium does not withdraw that portion from the condominium, unless the portion is withdrawable real property or unless the mortgage being foreclosed was recorded before the date the declaration was recorded and the mortgagee did not consent in writing to the declaration.
- i. By agreement of the same percentage of unit owners that is required to terminate the condominium, the unit owners may rescind a termination agreement and reinstate the declaration in effect immediately before the election to terminate. To be effective, the rescission agreement must be in writing, executed by the unit owners who desire to rescind, and recorded in each county in which any portion of the condominium is located.

Sec. 82.069. Rights of Secured Lenders.

- a. The declaration may require that all or a specified number or percentage of the mortgagees or beneficiaries of deeds of trust encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but a requirement for approval may not operate to:
 - (1) deny or delegate control over the general administrative affairs of the association by the unit owners or the board; or
 - (2) prevent the association or the board from:
 - (A) commencing, intervening in, or settling any litigation or proceeding; or
 - (B) receiving and distributing insurance proceeds under Section 82.111.

Sec. 82.070. Meeting at Which Amendments May Be Adopted.

- a. An association or a board may not meet to adopt an amendment or other change to the declaration, articles of incorporation, bylaws, or rules of the association unless the association or board has given to each unit owner a document showing the specific amendment or other change that would be made to the declaration, articles of incorporation, bylaws, or rules.
- b. The information described by Subsection (a) must be given to each unit owner after the 20th day but before the 10th day preceding the date of the meeting. The information is considered to have been given to a unit owner on the date the information is personally delivered to the unit owner, as shown by a receipt signed by the unit owner, or on the date shown by the postmark on the information after it is deposited in the United States mail with a proper address and postage paid.

Subchapter C. Condominium Management

Sec. 82.101. Organization of Unit Owners' Association.

- a. A unit owners' association must be organized as a profit or nonprofit corporation. The declarant may not convey a unit until the secretary of state has issued a certificate of incorporation under Article 3.03, Texas Business Corporation Act, or Article 3.03, Texas Non-Profit Corporation Act (Article 1396-3.03, Vernon's Texas Civil Statutes). The membership of the association at all times consists exclusively of all the unit owners or, following termination of the condominium, all former unit owners entitled to distribution of proceeds, or the owners' heirs, successors, or assigns.

Sec. 82.102. Powers of Unit Owners' Association.

- a. Unless otherwise provided by the declaration, the association, acting through its board, may:
 - (1) adopt and amend bylaws;
 - (2) adopt and amend budgets for revenues, expenditures, and reserves, and collect assessments for common expenses from unit owners;
 - (3) hire and terminate managing agents and other employees, agents, and independent contractors;
 - (4) institute, defend, intervene in, settle, or compromise litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium;
 - (5) make contracts and incur liabilities relating to the operation of the condominium;
 - (6) regulate the use, maintenance, repair, replacement, modification, and appearance of the condominium;

- (7) adopt and amend rules regulating the use, occupancy, leasing or sale, maintenance, repair, modification, and appearance of units and common elements, to the extent the regulated actions affect common elements or other units;
- (8) cause additional improvements to be made as a part of the common elements;
- (9) acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, except common elements of the condominium;
- (10) grant easements, leases, licenses, and concessions through or over the common elements;
- (11) impose and receive payments, fees, or charges for the use, rental, or operation of the common elements and for services provided to unit owners;
- (12) impose interest and late charges for late payments of assessments, returned check charges, and, if notice and an opportunity to be heard are given in accordance with Subsection (d), reasonable fines for violations of the declaration, bylaws, and rules of the association;
- (13) adopt and amend rules regulating the collection of delinquent assessments and the application of payments;
- (14) adopt and amend rules regulating the termination of utility service to a unit, the owner of which is delinquent in the payment of an assessment that is used, in whole or in part, to pay the cost of that utility;
- (15) impose reasonable charges for preparing, recording, or copying declaration amendments, resale certificates, or statements of unpaid assessments;
- (16) enter a unit for bona fide emergency purposes when conditions present an imminent risk of harm or damage to the common

elements, another unit, or the occupants;

- (17) suspend the voting privileges of or the use of certain general common elements by an owner delinquent for more than 30 days in the payment of assessments;
- (18) purchase insurance and fidelity bonds it considers appropriate or necessary;
- (19) exercise any other powers conferred by the declaration or bylaws;
- (20) exercise any other powers that may be exercised in this state by a corporation of the same type as the association; and
- (21) exercise any other powers necessary and proper for the government and operation of the association.

b. The declaration may not impose limitations on the power of the association to deal with the declarant that are more restrictive than the limitations imposed on the power of the association to deal with other persons.

c. To be enforceable, a bylaw or rule of the association must not be arbitrary or capricious.

d. Before an association may charge the unit owner for property damage for which the unit owner is liable or levy a fine for violation of the declaration, bylaws, or rules, the association shall give to the unit owner a written notice that:

- (1) describes the violation or property damage and states the amount of the proposed fine or damage charge;
- (2) states that not later than the 30th day after the date of the notice, the unit owner may request a hearing before the board to contest the fine or damage charge; and
- (3) allows the unit owner a reasonable time, by a specified date,

to cure the violation and avoid the fine unless the unit owner was given notice and a reasonable opportunity to cure a similar violation within the preceding 12 months.

- e. The association may give a copy of the notice required by Subsection (d) to an occupant of the unit. The association must give notice of a levied fine or damage charge to the unit owner not later than the 30th day after the date of levy.
- f. Except as provided by Subsection (g), the association by resolution of the board of directors may:
 - (1) borrow money; and
 - (2) assign as collateral for the loan authorized by the resolution:
 - (A) the association's right to future income, including the right to receive assessments; and
 - (B) the association's lien rights.
- g. If a dedicatory instrument requires a vote of members of the association to borrow money or assign the association's right to future income or the association's lien rights, the loan or assignment must be approved as provided by the dedicatory instrument. The board may determine whether a vote for that purpose may be cast electronically, by absentee ballot, in person or by proxy at a meeting called for that purpose, or by written consent. If a lower approval threshold is not provided by the dedicatory instrument, approval requires the consent of owners holding 67 percent of all voting interests.

Sec. 82.103. Board Members and Officers.

- a. Except as provided by the declaration, bylaws, or this chapter, the board shall act in all instances on behalf of the association if in the good-faith judgment of the board the action is reasonable. Each officer or member of the board is liable as a fiduciary of the unit owners for the officer's or member's acts or omissions. All acts of

the association must be by and through the board unless otherwise provided by the declaration or bylaws or by law.

- b. The board may not act on behalf of the association to amend the declaration except as permitted by this chapter, to terminate the condominium, to elect members of the board, or to determine the qualifications, powers and duties, or terms of office of board members. The board may fill a vacancy in its membership for the unexpired portion of a term.
- c. Subject to Subsection (d), 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 the officers and members of the board. Regardless of the period provided by the declaration, a period of declarant control terminates not later than the 120th day after conveyance of 75 percent of the units that may be created to unit owners other than a declarant. Transfer of special declarant rights does not terminate the period of declarant control. A declarant may voluntarily surrender the right to appoint and remove officers and members of the board before termination of the period, but in that event the declarant may require, for the duration of the period that the declarant would otherwise control, that specified actions of the association or board be approved by the declarant before they become effective.
- d. Not later than the 120th day after conveyance of 50 percent of the units that may be created to unit owners other than a declarant, not less than one-third of the members of the board must be elected by unit owners other than the declarant.
- e. Not later than the termination of a period of declarant control, the unit owners shall elect a board of at least three members who need not be unit owners. The board shall elect the officers before the 31st day after the date declarant control terminates. The persons elected shall take office on election.
- f. An officer or director of the association is not liable to the

association or any unit owner for monetary damages for an act or omission occurring in the person's capacity as an officer or director unless:

- (1) the officer or director breached a fiduciary duty to the association or a unit owner;
 - (2) the officer or director received an improper benefit; or
 - (3) the act or omission was in bad faith, involved intentional misconduct, or was one for which liability is expressly provided by statute.
- g. Subsection (f) does not diminish a limitation of liability provided an officer or director of the association by the declaration, bylaws, articles of incorporation of the association, or other laws.

Sec. 82.104. Transfer of Special Declarant Rights.

- a. Special declarant rights created or reserved under this chapter may not be transferred except by an instrument evidencing the transfer recorded in each county in which any portion of the condominium is located. The instrument is not effective unless executed by the transferee.
- b. On transfer of any special declarant right, a transferor is not relieved of an obligation or liability arising before the transfer. A transferor is not liable for an act or omission or a breach of an obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.
- c. Unless otherwise provided by a mortgage instrument or deed of trust, in case of foreclosure of a mortgage, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under Bankruptcy Code or receivership proceedings, of a unit owned by a declarant or of real property in a condominium subject to development rights, a person acquiring title to all the real property being foreclosed or sold may request to succeed to all special declarant rights or only to rights reserved by the declaration to maintain models, offices,

and signs. The judgment or instrument conveying title may provide for transfer of only the special declarant rights requested.

- d. On foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under Bankruptcy Code or receivership proceedings of all units and other real property in a condominium owned by a declarant:
 - (1) the declarant ceases to have any special declarant rights; and
 - (2) the period of declarant control terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.
- e. The liabilities and obligations of a person who succeeds to special declarant rights are as follows:
 - (1) a successor to a special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this chapter or by the declaration;
 - (2) a successor to a special declarant right, other than a successor described by Subdivision (3) or (4), who is not an affiliate of a declarant, is subject to all obligations and liabilities imposed on the transferor by this chapter or by the declaration;
 - (3) a successor to only a right reserved by the declaration to maintain models, offices, and signs, who is not an affiliate of a declarant, may not exercise any other special declarant right, and is not subject to any liability or obligation as a declarant, except the obligation to provide a condominium information statement and any liability arising as a result; and
 - (4) a successor to all special declarant rights held by the successor's transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units under Subsection (c) may declare the person's intention in a recorded instrument to hold those rights solely for transfer

to another person; thereafter, until all special declarant rights are transferred to a person acquiring title to any unit owned by the successor, or until an instrument permitting exercise of all those rights is recorded, the successor may not exercise any of those rights other than any right held by the successor's transferor to control the board as provided by Section 82.103(c) for the duration of the period of declarant control, and an attempt to exercise those rights is void; so long as a successor declarant may not exercise special declarant rights under this subdivision, the successor is not subject to any liability or obligation as a declarant other than liability for acts and omissions under Section 82.103(a).

- f. This section does not subject a successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this chapter or the declaration.

Sec. 82.105. Termination of Contracts and Leases of Declarant.

- a. An association in a residential or recreational condominium may terminate, without penalty, contracts or leases between the association and a declarant or an affiliate of a declarant if:
 - (1) the contract is entered into by the association while controlled by the declarant;
 - (2) the association terminates the contract or lease before the first anniversary of the date a board elected by the unit owners takes office; and
 - (3) the association gives at least 90 days' notice of its intent to terminate the contract or lease to the other party.

Sec. 82.106. Bylaws.

- a. The administration and operation of the condominium are governed by the bylaws, which must provide for:

- (1) the number of members on the board and the titles of the officers of the association;
 - (2) election by the board of a president, treasurer, secretary, and any other officers the bylaws specify;
 - (3) the qualifications, powers and duties, terms of office, and the manner of electing and removing a board member or officer and filling vacancies;
 - (4) the powers, if any, that the board or an officer may delegate to other persons or to a managing agent;
 - (5) the designation of officers who are authorized to prepare, execute, certify, and record amendments to the declaration on behalf of the association;
 - (6) the method of amending the bylaws; and
 - (7) the manner of notice of meetings of the association.
- b. Subject to the declaration, the bylaws may provide for other matters the association considers desirable, necessary, or appropriate.

Sec. 82.107. Upkeep of Condominium.

- a. Except as provided by the declaration or Subsections (b) and (c), the association is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair, and replacement of the owner's unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through the owner's unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair of the damage.

- b. Except as provided by the declaration, each unit owner is responsible for the cost of maintenance, repair, and replacement of any utility installation or equipment serving only the owner's unit, without regard to whether the installation or equipment is located wholly or partially outside the designated boundaries of the unit. For purposes of this subsection, utility installations and equipment include electricity, water, sewage, gas, water heaters, heating and air conditioning equipment, and television antennas.
- c. Except as provided by the declaration, each unit owner is responsible for the cost of maintenance, repair, and replacement of windows and doors serving only the owner's unit.
- d. Unless otherwise provided by the declaration, the association may enter a unit, after giving notice to the owner and occupant of the unit, to:
 - (1) prevent or terminate waste of water purchased by the association as a common expense; or
 - (2) perform maintenance and repairs of the condominium that, if not performed, may result in increased damage by water to components of the condominium that the association maintains.

Sec. 82.108. Meetings.

- a. Meetings of the association must be held at least once each year. Unless the declaration provides otherwise, special meetings of the association may be called by the president, a majority of the board, or unit owners having at least 20 percent of the votes in the association.
- b. Meetings of the association and board must be open to unit owners, subject to the right of the board to adjourn a meeting of the board and reconvene in closed executive session to consider actions involving personnel, pending litigation, contract negotiations, enforcement actions, matters involving the invasion of privacy of individual unit owners, or matters that are to remain confidential

by request of the affected parties and agreement of the board. The general nature of any business to be considered in executive session must first be announced at the open meeting.

c. Unless the declaration, bylaws, or articles of incorporation of the association provide otherwise:

(1) a meeting of the board may be held by any method of communication, including electronic and telephonic, if:

(A) notice of the meeting has been given in accordance with Subsection (e);

(B) each director may hear and be heard by every other director; and

(C) the meeting does not involve voting on a fine, damage assessment, appeal from a denial of architectural control approval, or suspension of a right of a particular association member before the member has an opportunity to attend a board meeting to present the member's position, including any defense, on the issue; and

(2) the board may act by unanimous written consent of all the directors, without a meeting, if:

(A) the board action does not involve voting on a fine, damage assessment, appeal from a denial of architectural control approval, or suspension of a right of a particular association member before the member has an opportunity to attend a board meeting to present the member's position, including any defense, on the issue; and

(B) a record of the board action is filed with the minutes of board meetings.

d. Notice of a meeting of the association must be given as provided by

the bylaws, or, if the bylaws do not provide for notice, notice must be given to each unit owner in the same manner in which notice is given to members of a nonprofit corporation under Section A, Article 2.11, Texas Non-Profit Corporation Act (Article 1396-2.11, Vernon's Texas Civil Statutes).

- e. Notice of a meeting of the board must be given as provided by the bylaws, or, if the bylaws do not provide for notice, notice must be given to each board member in the same manner in which notice is given to members of the board of a nonprofit corporation under Section B, Article 2.19, Texas Non-Profit Corporation Act (Article 1396-2.19, Vernon's Texas Civil Statutes).
- f. An association, on the written request of a unit owner, shall inform the unit owner of the time and place of the next regular or special meeting of the board. If the association representative to whom the request is made does not know the time and place of the meeting, the association promptly shall obtain the information and disclose it to the unit owner or inform the unit owner where the information may be obtained.

Sec. 82.109. Quorums.

- a. Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast at least 20 percent of the votes that may be cast for election of the board are present in person or by proxy at the beginning of the meeting. The bylaws may not reduce the standard for a quorum to less than 10 percent.
- b. Unless the bylaws specify a larger percentage, a quorum is present throughout a meeting of the board if persons entitled to cast at least 50 percent of the votes on the board are present at the beginning of the meeting.

Sec. 82.110. Voting and Proxies.

- a. If only one of the multiple owners of a unit is present at a meeting

of the association, that person may cast the vote or votes allocated to that unit. If more than one of the multiple owners is present, the vote or votes allocated to that unit may be cast only in accordance with the owners' unanimous agreement unless the declaration provides otherwise. Multiple owners are in unanimous agreement if one of the multiple owners casts the votes allocated to a unit and none of the other owners makes prompt protest to the person presiding over the meeting.

- b. Votes allocated to a unit may be cast under a written proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a proxy duly executed by the unit owner. A unit owner may not revoke a proxy given under this section except by giving actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or if it purports to be revocable without notice. A proxy terminates one year after its date unless it specifies a shorter or longer time.
- c. Cumulative voting is not allowed.

Sec. 82.111. Insurance.

- a. Beginning not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:
 - (1) property insurance on the insurable common elements insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage, in a total amount of at least 80 percent of the replacement cost or actual cash value of the insured property as of the effective date and at each renewal date of the policy; and
 - (2) commercial general liability insurance, including medical payments insurance, in an amount determined by the board but not less than any amount specified by the declaration covering all occurrences commonly insured against for death, bodily

injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

- b. If a building contains units having horizontal boundaries described in the declaration, the insurance maintained under Subsection (a) (1), to the extent reasonably available, must include the units, but need not include improvements and betterments installed by unit owners.
- c. If the insurance described by Subsections (a) and (b) is not reasonably available, the association shall cause notice of that fact to be delivered or mailed to all unit owners and lienholders. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance the board considers appropriate to protect the condominium, the association, or the unit owners. Insurance policies maintained under Subsection (a) may provide for commercially reasonable deductibles as the board determines appropriate or necessary. This section does not affect the right of a holder of a mortgage on a unit to require a unit owner to acquire insurance in addition to that provided by the association.
- d. Insurance policies carried under Subsection (a) must provide that:
 - (1) each unit owner is an insured person under the policy with respect to liability arising out of the person's ownership of an undivided interest in the common elements or membership in the association;
 - (2) the insurer waives its right to subrogation under the policy against a unit owner;
 - (3) no action or omission of a unit owner, unless within the scope of the unit owner's authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and
 - (4) if, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same property covered by the policy, the association's policy provides primary insurance.

- e. A claim for any loss covered by the policy under Subsection (a) (1) must be submitted by and adjusted with the association. The insurance proceeds for that loss shall be payable to an insurance trustee designated by the association for that purpose, if the designation of an insurance trustee is considered by the board to be necessary or desirable, or otherwise to the association, and not to any unit owner or lienholder.
- f. The insurance trustee or the association shall hold insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to Subsection (i), the proceeds paid under a policy must be disbursed first for the repair or restoration of the damaged common elements and units, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the condominium is terminated.
- g. An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for the owner's own benefit.
- h. The insurer issuing the policy may not cancel or refuse to renew it less than 30 days after written notice of the proposed cancellation or nonrenewal has been mailed to the association.
- i. Except as provided by this section, any portion of the condominium for which insurance is required that is damaged or destroyed shall be promptly repaired or replaced by the association unless the condominium is terminated, repair or replacement would be illegal under any state or local health or safety statute or ordinance, or at least 80 percent of the unit owners vote to not rebuild. Each owner of a unit may vote, regardless of whether the owner's unit or limited common element has been damaged or destroyed. A vote may be cast electronically or by written ballot if a meeting is not held for that purpose or in person or by proxy at a meeting called for that purpose. A vote to not rebuild does not increase an insurer's liability to loss payment obligation under a policy, and the vote does not cause a presumption of total loss. Except as provided by this section, the cost of repair or replacement in excess of the

insurance proceeds is a common expense, and the board may levy an assessment to pay the expenses in accordance with each owner's common expense liability. If the entire condominium is not repaired or replaced, any insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium, the insurance proceeds attributable to units and limited common elements that are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were assigned, or to their mortgagees, as their interests may appear, and the remainder of the proceeds shall be distributed to all the unit owners in accordance with each owner's undivided interest in the common elements unless otherwise provided in the declaration. If the unit owners vote to not rebuild any unit, that unit's allocated interests shall be automatically reallocated on the vote as if the unit had been condemned, and the association shall prepare, execute, and record an amendment to the declaration reflecting the reallocation. Section 82.068 governs the distribution of insurance proceeds if the condominium is terminated.

- j. If the cost to repair damage to a unit or common element covered by the association's insurance is less than the amount of the applicable insurance deductible, the party who would be responsible for the repair in the absence of insurance shall pay the cost for the repair of the unit or common element.
- k. If the association's insurance provides coverage for the loss and the cost to repair the damage to a unit or common element is more than the amount of the applicable insurance deductible, the dedicatory instruments determine payment for the cost of the association's deductible and costs incurred before insurance proceeds are available. If the dedicatory instruments are silent, the board of directors of the association by resolution shall determine the payment of those costs, or if the board does not approve a resolution, the costs are a common expense. A resolution under this subsection is considered a dedicatory instrument and must be recorded in each location in which the declaration is recorded.
- l. If damage to a unit or the common elements is due wholly or partly

to an act or omission of any unit owner or a guest or invitee of the unit owner, the association may assess the deductible expense and any other expense in excess of insurance proceeds against the owner and the owner's unit.

- m. The provisions of this section may be varied or waived if all the units in a condominium are restricted to nonresidential use.

Sec. 82.112. Assessments for Common Expenses.

- a. Until an association makes a common expense assessment, a declarant shall pay all the expenses of the condominium as the expenses accrue. After an initial assessment by an association, assessments must be made at least annually and must be based on a budget adopted at least annually by the association. The association's reserves and the unit owners' working capital contributions may not be used to pay operational expenses until the declarant control terminates.
- b. From the date of the initial assessment until declarant control terminates, or three years from a declarant's first conveyance of a unit, whichever is earlier, the declarant shall periodically pay to the association:
 - (1) an amount equal to all operational expenses of the association, less the operational expense portion of the assessments paid by unit owners other than declarant; or
 - (2) the common expense liability allocated to each unit owned by the declarant.
- c. Common expenses shall be assessed against all units conveyed, rented, or used as models or offices by the declarant and against all units owned by a declarant after termination of a declarant's control or three years from a declarant's first conveyance of a unit, whichever is earlier, in accordance with the common expense liability allocated to each unit. A past due assessment or installment of an assessment may bear interest at a lawful rate established by the association.

- d. Except as provided by the declaration and Section 82.107, a common expense for the maintenance, repair, or replacement of a limited common element shall be assessed against all the units as if it were for a general common element.
- e. If common expense liabilities are reallocated, common expense assessments and an assessment installment not yet due shall be recomputed in accordance with the reallocated common expense liabilities.
- f. A declaration may allow the accumulation of reserve funds for an unspecified period to provide for any anticipated expense of the condominium.
- g. This section does not prevent a declarant from collecting from a purchaser at closing the prorated amount of any expenses, such as insurance or taxes, that the declarant has prepaid to the association or directly to others on behalf of the unit that is being purchased.

Sec. 82.113. Association's Lien for Assessments.

- a. An assessment levied by the association against a unit or unit owner is a personal obligation of the unit owner and is secured by a continuing lien on the unit and on rents and insurance proceeds received by the unit owner and relating to the owner's unit. In this section, "assessments" means regular and special assessments, dues, fees, charges, interest, late fees, fines, collection costs, attorney's fees, and any other amount due to the association by the unit owner or levied against the unit by the association, all of which are enforceable as assessments under this section unless the declaration provides otherwise.
- b. The association's lien for assessments has priority over any other lien except:
 - (1) a lien for real property taxes and other governmental assessments or charges against the unit unless otherwise provided by Section 32.05, Tax Code;

- (2) a lien or encumbrance recorded before the declaration is recorded;
 - (3) a first vendor's lien or first deed of trust lien recorded before the date on which the assessment sought to be enforced becomes delinquent under the declaration, bylaws, or rules; and
 - (4) unless the declaration provides otherwise, a lien for construction of improvements to the unit or an assignment of the right to insurance proceeds on the unit if the lien or assignment is recorded or duly perfected before the date on which the assessment sought to be enforced becomes delinquent under the declaration, bylaws, or rules.
- c. The association's lien for assessments is created by recordation of the declaration, which constitutes record notice and perfection of the lien. Unless the declaration provides otherwise, no other recordation of a lien or notice of lien is required.
 - d. By acquiring a unit, a unit owner grants to the association a power of sale in connection with the association's lien. By written resolution, a board may appoint, from time to time, an officer, agent, trustee, or attorney of the association to exercise the power of sale on behalf of the association. Except as provided by the declaration, an association shall exercise its power of sale pursuant to Section 51.002.
 - e. The association has the right to foreclose its lien judicially or by nonjudicial foreclosure pursuant to the power of sale created by this chapter or the declaration, except that the association may not foreclose a lien for assessments consisting solely of fines. Costs of foreclosure may be added to the amount owed by the unit owner to the association. A unit owner may not petition a court to set aside a sale solely because the purchase price at the foreclosure sale was insufficient to fully satisfy the owner's debt.
 - f. The association may bid for and purchase the unit at foreclosure sale as a common expense. The association may own, lease, encumber, exchange, sell, or convey a unit.

g. The owner of a unit purchased at a foreclosure sale of the association's lien for assessments may redeem the unit not later than the 90th day after the date of the foreclosure sale. If the association is the purchaser, the owner must pay to the association to redeem the unit all amounts due the association at the time of the foreclosure sale, interest from the date of foreclosure sale to the date of redemption at the rate provided by the declaration for delinquent assessments, reasonable attorney's fees and costs incurred by the association in foreclosing the lien, any assessment levied against the unit by the association after the foreclosure sale, and any reasonable cost incurred by the association as owner of the unit, including costs of maintenance and leasing. If a party other than the association is the purchaser, the redeeming owner must pay to the purchaser of the unit at the foreclosure sale an amount equal to the amount bid at the sale, interest on the bid amount computed from the date of the foreclosure sale to the date of redemption at the rate of six percent, any assessment paid by the purchaser after the date of foreclosure, and any reasonable costs incurred by the purchaser as the owner of the unit, including costs of maintenance and leasing. The redeeming owner must also pay to the association all assessments that are due as of the date of the redemption and reasonable attorney's fees and costs incurred by the association in foreclosing the lien. On redemption, the purchaser of the unit at the foreclosure sale shall execute a deed with no warranty to the redeeming unit owner. The exercise of the right of redemption is not effective against a subsequent purchaser or lender for value without notice of the redemption after the redemption period expires unless the redeeming unit owner records the deed from the purchaser of the unit at the foreclosure sale or an affidavit stating that the owner has exercised the right of redemption. A unit that has been redeemed remains subject to all liens and encumbrances on the unit before foreclosure. All rents and other income collected from the unit by the purchaser of the unit at the foreclosure sale from the date of foreclosure sale to the date of redemption belong to the purchaser of the unit at the foreclosure sale, but the rents and income shall be credited against the redemption amount. The purchaser of a unit at a sale foreclosing an association's assessment lien may not transfer ownership of the unit during the redemption period to a person other than a redeeming owner.

- h. If a unit owner defaults in the owner's monetary obligations to the association, the association may notify other lien holders of the default and the association's intent to foreclose its lien. The association shall notify any holder of a recorded lien or duly perfected mechanic's lien against a unit who has given the association a written request for notification of the unit owner's monetary default or the association's intent to foreclose its lien.
- i. This section does not prohibit the association from taking a deed in lieu of foreclosure or from filing suit to recover a money judgment for sums that may be secured by the lien.
- j. At any time before a nonjudicial foreclosure sale, a unit owner may avoid foreclosure by paying all amounts due the association.
- k. If, on January 1, 1994, a unit is the homestead of the unit owner and is subject to a declaration that does not contain a valid assessment lien against the unit, the lien provided by this section does not attach against the unit until the unit ceases to be the homestead of the person owning it on January 1, 1994.
- l. Foreclosure of a tax lien attaching against a unit under Chapter 32, Tax Code, does not discharge the association's lien for assessments under this section or under a declaration for amounts becoming due to the association after the date of foreclosure of the tax lien.
- m. If a unit owner is delinquent in payment of assessments to an association, at the request of the association a holder of a recorded lien against the unit may provide the association with information about the unit owner's debt secured by the holder's lien against the unit and other relevant information. At the request of a lien holder, the association may furnish the lien holder with information about the condominium and the unit owner's obligations to the association.

Sec. 82.114. Association Records.

- a. The association shall keep:

- (1) detailed financial records that comply with generally accepted accounting principles and that are sufficiently detailed to enable the association to prepare a resale certificate under Section 82.157;
 - (2) the plans and specifications used to construct the condominium except for buildings originally constructed before January 1, 1994;
 - (3) the condominium information statement prepared under Section 82.152 and any amendments;
 - (4) the name and mailing address of each unit owner;
 - (5) voting records, proxies, and correspondence relating to amendments to the declaration; and
 - (6) minutes of meetings of the association and board.
- b. All financial and other records of the association shall be reasonably available at its registered office or its principal office in this state for examination and production in accordance with Section 82.1141.
- c. The association shall, as a common expense, annually obtain an independent audit of the records. Copies of the audit must be made available to the unit owners. An audit required by this subsection shall be performed by a certified public accountant if required by the bylaws or a vote of the board of directors or a majority vote of the members of the association voting at a meeting of the association.
- d. A declarant shall furnish copies to the association of the information required by Subsection (a) on the date the first unit is sold.
- e. Not later than the 30th day after the date of acquiring an interest in a unit, the unit owner shall provide the association with:
- (1) the unit owner's mailing address, telephone number, and driver's license number, if any;

- (2) the name and address of the holder of any lien against the unit, and any loan number;
 - (3) the name and telephone number of any person occupying the unit other than the unit owner; and
 - (4) the name, address, and telephone number of any person managing the unit as agent of the unit owner.
- f. A unit owner shall notify the association not later than the 30th day after the date the owner has notice of a change in any information required by Subsection (e), and shall provide the information on request by the association from time to time.

Sec. 82.1141. Access to Association Records.

- a. This section applies to all associations governed by this chapter and controls over other law not specifically applicable to an association.
- b. Notwithstanding a provision in a dedicatory instrument, an association shall make the books and records of the association, including financial records, open to and reasonably available for examination by a unit owner, or a person designated in a writing signed by the unit owner as the unit owner's agent, attorney, or certified public accountant, in accordance with this section. A unit owner is entitled to obtain from the association copies of information contained in the books and records.
- c. Except as provided by this subsection, an attorney's files and records relating to the association, excluding invoices requested by a unit owner for attorney's fees and other costs relating only to a matter for which the association seeks reimbursement of fees and costs from the unit owner, are not records of the association and are not subject to inspection by the unit owner or production in a legal proceeding. If a document in an attorney's files and records relating to the association would be responsive to a legally authorized request to inspect or copy association documents, the document shall be produced by using the copy from the attorney's

files and records if the association has not maintained a separate copy of the document. This subsection does not require production of a document that constitutes attorney work product or that is privileged as an attorney-client communication.

- d. A unit owner or the unit owner's authorized representative described by Subsection (b) must submit a written request for access or information under Subsection (b) by certified mail, with sufficient detail describing the association's books and records requested, to the mailing address of the association or authorized representative as reflected on the most current management certificate filed under Section 82.116. The request must contain an election either to inspect the books and records before obtaining copies or to have the association forward copies of the requested books and records and:
 - (1) if an inspection is requested, the association, on or before the 10th business day after the date the association receives the request, shall send written notice of dates during normal business hours that the unit owner may inspect the requested books and records to the extent those books and records are in the possession, custody, or control of the association; or
 - (2) if copies of identified books and records are requested, the association shall, to the extent those books and records are in the possession, custody, or control of the association, produce the requested books and records for the requesting party on or before the 10th business day after the date the association receives the request, except as otherwise provided by this section.
- e. If the association is unable to produce the books or records requested under Subsection (d) on or before the 10th business day after the date the association receives the request, the association must provide to the requestor written notice that:
 - (1) informs the requestor that the association is unable to produce the information on or before the 10th business day after the date the association received the request; and

(1) states a date by which the information will be sent or made available for inspection to the requesting party that is not later than the 15th business day after the date notice under this subsection is given.

- f. If an inspection is requested or required, the inspection shall take place at a mutually agreed on time during normal business hours, and the requesting party shall identify the books and records for the association to copy and forward to the requesting party.
- g. An association may produce books and records requested under this section in hard copy, electronic, or other format reasonably available to the association.
- h. An association board must adopt a records production and copying policy that prescribes the costs the association will charge for the compilation, production, and reproduction of information requested under this section. The prescribed charges may include all reasonable costs of materials, labor, and overhead but may not exceed costs that would be applicable for an item under 1 T.A.C. Section 70.3 for an item produced by the association and may not exceed actual costs for an item produced by a third party. The policy required by this subsection must be recorded as a dedicatory instrument in accordance with Section 202.006. An association may not charge a unit owner for the compilation, production, or reproduction of information requested under this section unless the policy prescribing those costs has been recorded as required by this subsection. A unit owner is responsible for costs related to the compilation, production, and reproduction of the requested information in the amounts prescribed by the policy adopted under this subsection. The association may require advance payment of the estimated costs of compilation, production, and reproduction of the requested information. If the estimated costs are lesser or greater than the actual costs, the association shall submit a final invoice to the unit owner on or before the 30th business day after the date the information is delivered. If the final invoice includes additional amounts due from the unit owner, the additional amounts, if not reimbursed to the association before the 30th business day after the date the invoice is sent to the unit owner, may be added to the unit owner's account as an assessment. If the estimated costs exceeded

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

- i. An association must estimate costs under this section using amounts prescribed by the policy adopted under Subsection (h).
- j. Except as provided by Subsection (k) and to the extent the information is provided in the meeting minutes, the association is not required to release or allow inspection of any books or records that identify the dedicatory instrument violation history of an individual unit owner of an association, a unit owner's personal financial information, including records of payment or nonpayment of amounts due the association, a unit owner's contact information, a unit owner's address, or information related to an employee of the association, including personnel files. Information may be released in an aggregate or summary manner that would not identify an individual unit owner.
- k. The books and records described by Subsection (j) shall be released or made available for inspection if:
 - (1) the express written approval of the unit owner whose records are the subject of the request for inspection is provided to the association; or
 - (2) a court orders the release of the books and records or orders that the books and records be made available for inspection.
- l. In addition to retaining records as necessary for compliance with Section 82.114, an association composed of eight or more units shall adopt and comply with a document retention policy that includes, at a minimum, the following requirements:
 - (1) certificates of formation, bylaws, dedicatory instruments, and all amendments to the certificates of formation, bylaws, and dedicatory instruments shall be retained permanently;
 - (2) financial books and records shall be retained for seven years;

- (3) account records of current unit owners shall be retained for five years;
 - (4) contracts with a term of one year or more shall be retained for four years after the expiration of the contract term;
 - (5) minutes of meetings of the unit owners and the board shall be retained for seven years; and
 - (6) tax returns and audit records shall be retained for seven years.
- m. A member of an association who is denied access to or copies of association books or records to which the member is entitled under this section may file a petition with the justice of the peace of a justice precinct in which all or part of the condominium is located requesting relief in accordance with this subsection. If the justice of the peace finds that the member is entitled to access to or copies of the records, the justice of the peace may grant one or more of the following remedies:
- (1) a judgment ordering the association to release or allow access to the books or records; or
 - (2) a judgment against the association for court costs and attorney's fees incurred in connection with seeking a remedy under this section.
- n. If the association prevails in an action under Subsection (m), the association is entitled to a judgment for court costs and attorney's fees incurred by the association in connection with the action.
- o. On or before the 10th business day before the date a person brings an action against an association under this section, the person must send written notice to the association of the person's intent to bring the action. The notice must:
- (1) be sent certified mail, return receipt requested, or delivered by the United States Postal Service with signature confirmation service to the mailing address of the association or authorized

representative as reflected on the most current management certificate filed under Section 82.116; and

(2) describe with sufficient detail the books and records being requested.

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

Sec. 82.115. Association As Trustee.

A third person dealing with an association in the association's capacity as a trustee may assume without inquiry the existence of trust powers and their proper exercise by the association. A third person who lacks actual knowledge that an association is exceeding or improperly exercising its powers is fully protected in dealing with the association as if the association possessed and properly exercised the powers it purports to exercise. A third person is not bound to ensure the proper application of trust assets paid or delivered to an association in its capacity as trustee.

Sec. 82.116. Management Certificate.

a. An association shall record in each county in which any portion of the condominium is located a certificate, signed and acknowledged by an officer of the association, stating:

(1) the name of the condominium;

(2) the name of the association;

(3) the location of the condominium;

(4) the recording data for the declaration;

(5) the mailing address of the association, or the name and mailing address of the person or entity managing the association; and

(6) other information the association considers appropriate.

- (a-1) The county clerk of each county in which a management certificate is filed as required by this section shall record the management certificate in the real property records of the county and index the document as a "Condominium Association Management Certificate."
- b. The association shall record a management certificate not later than the 30th day after the date the association has notice of a change in any information in a recorded certificate required by Subdivisions (a)(1)-(5).
- c. The association and its officers, directors, employees, and agents are not subject to liability to any person for delay or failure to record a management certificate, unless the delay or failure is wilful or caused by gross negligence.

Sec. 82.117. Obligations of Unit Owners.

- a. Without limiting the obligations of the unit owners and except as provided by the declaration, bylaws, rules of the association, or this chapter, the unit owner:
 - (1) shall pay assessments, interest, and other charges properly levied by the association against the owner or the owner's unit, and shall pay regular periodic assessments without demand by the association;
 - (2) shall comply with the declaration, bylaws, and rules of the association, including any amendments;
 - (3) shall pay for damage to the condominium caused by the negligence or wilful misconduct of the owner, an occupant of the owner's unit, or the owner or occupant's family, guests, employees, contractors, agents, or invitees; and
 - (4) is liable to the association for violations of the declaration, bylaws, or rules of the association, including any amendments, by the owner, an occupant of the owner's unit, or the owner or occupant's family, guests, employees, agents, or invitees,

and for costs incurred by the association to obtain compliance, including attorney's fees whether or not suit is filed.

Sec. 82.118. Service of Process on Unit Owners in Certain Municipalities; Change of Address Required.

- a. A unit owner of a condominium located wholly or partly in a municipality with a population of more than 1.9 million may be served with process by the municipality or the municipality's agent for a judicial or administrative proceeding initiated by the municipality and directly related to the unit owner's property interest in the condominium by serving the unit owner at the unit owner's last known address, according to the records of the appraisal district in which the condominium is located, by any means permitted by Rule 21a, Texas Rules of Civil Procedure.
- b. Notwithstanding Subsection (a), a unit owner may not offer proof in the judicial or administrative proceeding, or in a subsequent related proceeding, that otherwise proper service by mail of the notice was not received not later than three days after the date the notice was deposited in a post office or official depository under the care and custody of the United States Postal Service.
- c. Not later than the 90th day after the date a unit owner changes the unit owner's mailing address, the owner must provide written notice of the owner's new address to the appraisal district in which the condominium is located.

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 occurred before the date of the amendment.

Sec. 82.121. Possession of Firearm or Firearm Ammunition on Condominium Property.

- a. Unless possession of a firearm or firearm ammunition on condominium property is prohibited by state or federal law, a condominium unit owner, or a tenant or guest of a condominium unit owner, or a guest of a tenant of a condominium unit owner may not be prohibited from lawfully possessing, carrying,

transporting, or storing a firearm, any part of a firearm, or firearm ammunition:

- (1) in the condominium unit owner's unit;
 - (2) in a vehicle located in a parking area provided for the residents or guests of the condominium property; or
 - (3) in other common element locations as necessary to:
 - (A) enter or exit the condominium property;
 - (B) enter or exit the condominium unit owner's unit; or
 - (C) enter or exit a vehicle on the condominium property or located in a parking area provided for residents or guests of the condominium property.
- b. This section applies notwithstanding any provision of a dedicatory instrument to the contrary and regardless of the date of the provision's adoption.

Subchapter D. Protection of Purchasers

Sec. 82.151. Applicability.

- a. This subchapter applies to each unit subject to this chapter, except as provided by Subsection (b) or as modified or waived by the agreement of a purchaser of a unit in a condominium in which all units are restricted to nonresidential use.
- b. A condominium information statement or resale certificate need not be prepared or delivered in the case of:
 - (1) a gratuitous disposition of a unit;
 - (2) a disposition pursuant to court order;
 - (3) a disposition by a government or governmental agency;

- (4) a disposition by foreclosure or deed in lieu of foreclosure; or
- (5) a disposition that may be canceled at any time, for any reason, and without penalty.

Sec. 82.152. Liability for Condominium Information Statement.

- a. Except as provided by Subsection (b), a declarant shall prepare a condominium information statement before offering to the public any interest in a unit.
- b. A declarant may transfer responsibility for preparation of all or a part of the condominium information statement to a successor declarant or to a person in the business of selling real property who intends to offer units in the condominium for the person's own account. On such transfer, the transferor shall provide the transferee with any information necessary to enable the transferee to prepare a condominium information statement.
- c. A declarant or other person in the business of selling real property who offers a unit for the person's own account to a purchaser shall provide a purchaser of a unit with a copy of the condominium information statement, as amended, before conveyance of the unit or the date of a contract of sale, whichever is earlier.
- d. The person preparing all or part of the condominium information statement is liable for any false or misleading statement or for any omission of material fact in the portion of the condominium information statement that the person prepared. If a declarant did not prepare any part of a condominium information statement that the declarant delivers, the declarant is not liable for any false or misleading statement or any omission of material fact unless the declarant actually knew or should have known of the statement or omission.

Sec. 82.153. Condominium Information Statements in General.

- a. A condominium information statement must contain or accurately disclose:
- (1) the name and principal address of the declarant and of the condominium;
 - (2) a general description of the condominium that includes the types of units and the maximum number of units;
 - (3) the minimum and maximum number of additional units, if any, that may be included in the condominium;
 - (4) a brief narrative description of any development rights reserved by a declarant and of any conditions relating to or limitations upon the exercise of development rights;
 - (5) copies of the declaration, articles of incorporation of the association, the bylaws, any rules of the association, and amendments to any of them, and copies of leases and contracts, other than loan documents, that are required by the declarant to be signed by purchasers at closing;
 - (6) a projected or pro forma budget for the association that complies with Subsection (b) for the first fiscal year of the association following the date of the first conveyance to a purchaser, identification of the person who prepared the budget, and a statement of the budget's assumptions concerning occupancy and inflation factors;
 - (7) a general description of each lien, lease, or encumbrance on or affecting the title to the condominium after conveyance by the declarant;
 - (8) a copy of each written warranty provided by the declarant;
 - (9) a description of any unsatisfied judgments against the association and any pending suits to which the association is a

party or which are material to the land title and construction of the condominium of which a declarant has actual knowledge;

(10) a general description of the insurance coverage provided for the benefit of unit owners;

(11) current or expected fees or charges to be paid by unit owners for the use of the common elements and other facilities related to the condominium; and

(12) for a condominium located wholly or partly in a municipality with a population of more than 1.9 million a statement that a unit owner:

(A) as an alternative to personal service, may be served with process by the municipality or the municipality's agent for a judicial or administrative proceeding initiated by the municipality and directly related to the unit owner's property interest in the condominium by serving the unit owner at the unit owner's last known address, according to the records of the appraisal district in which the condominium is located, by any means permitted by Rule 21a, Texas Rules of Civil Procedure;

(B) shall notify the appraisal district in writing of a change in the unit owner's mailing address not later than the 90th day after the date the unit owner changes the address; and

(C) may not offer proof in the judicial or administrative proceeding, or in a subsequent related proceeding, that otherwise proper service by mail of the notice was not received not later than three days after the date the notice was deposited in a post office or official depository under the care and custody of the United States Postal Service.

b. A budget under Subsection (a)(6) must be prepared in accordance with generally accepted accounting principles and a consideration of the physical condition of the condominium and be based on assumptions that, to the best of the declarant's knowledge and

belief, are reasonable. The budget must include:

- (1) a statement of the amount included, or a statement that no amount is included, in the budget as a reserve; and
 - (2) the projected monthly common expense assessment for each type of unit.
- c. A declarant shall promptly amend the condominium information statement to reflect a material and substantial change in its contents. If the change may adversely affect a prospective purchaser who has received a condominium information statement, the declarant shall furnish a copy of the amendment to the prospective purchaser before closing.

Sec. 82.154. Condominiums with Conversion Buildings.

- a. If a building contains units that may be occupied for residential use, the condominium information statement of a condominium containing any conversion building must additionally contain:
- (1) a dated statement by the declarant, based on a report by an independent architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the building;
 - (2) a dated statement by the declarant of the expected useful life of each item reported in Subdivision (1) or a statement that no representations are made in that regard; and
 - (3) a list of violations of building code or other governmental regulations of which the declarant has received notice and that have not been cured, together with the estimated cost of curing those violations.

Sec. 82.155. Condominium Securities.

- a. A declarant satisfies all requirements relating to preparation of a condominium information statement if an interest in the condominium is currently registered with the Securities and Exchange Commission of the United States and if the declarant delivers to the purchaser a copy of the public offering statement filed with the commission.

Sec. 82.156. Purchaser's Right to Cancel.

- a. If a purchaser of a unit from a unit owner other than a declarant has not received from the seller the declaration, bylaws, and association rules required by Section 82.157 before the purchaser executes a contract of sale or if the contract does not contain an underlined or bold-print provision acknowledging the purchaser's receipt of those documents and recommending that the purchaser read those documents before executing the contract, the purchaser may cancel the contract before the sixth day after the date the purchaser receives those documents. If a purchaser has not received a resale certificate before executing a contract of sale, the purchaser may cancel the contract before the sixth day after the date the purchaser receives the resale certificate or executes a waiver under Section 82.157, whichever occurs first.
- b. If a purchaser from a declarant has not received the condominium information statement before the purchaser executes a contract of sale or if a contract does not contain an underlined or bold-print provision acknowledging the purchaser's receipt of the condominium information statement and recommending that the purchaser read the condominium information statement before executing the contract, the purchaser may cancel the contract before the sixth day after the date the purchaser receives the condominium information statement.
- c. If a purchaser elects to cancel a contract under Subsection (a) or (b), the cancellation must be by hand-delivering written notice of cancellation to the declarant or selling unit owner or by mailing notice of cancellation by certified United States mail, return receipt requested, to the offeror or the offeror's agent for service

of process within the five-day cancellation period. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded.

- d. A selling unit owner may not require a purchaser to close until the purchaser is given the declaration, bylaws, and any association rules. A declarant may not require a purchaser to close until a condominium information statement has been furnished to the purchaser.

Sec. 82.157. Resale of Unit.

- a. Except as provided by Subsection (c), if a unit owner other than a declarant intends to sell a unit, before executing a contract or conveying the unit, the unit owner must furnish to the purchaser a current copy of the declaration, bylaws, any association rules, and a resale certificate that must have been prepared not earlier than three months before the date it is delivered to the purchaser. The resale certificate must be issued by the association and must contain the current operating budget of the association and statements of:
 - (1) any right of first refusal or other restraint contained in the declaration that restricts the right to transfer a unit;
 - (2) the amount of the periodic common expense assessment and the unpaid common expenses or special assessments currently due and payable from the selling unit owner;
 - (3) other unpaid fees or amounts payable to the association by the selling unit owner;
 - (4) capital expenditures, if any, approved by the association for the next 12 months;
 - (5) the amount of reserves, if any, for capital expenditures and of portions of those reserves designated by the association for a specified project;

- (6) any unsatisfied judgments against the association;
 - (7) the nature of any pending suits against the association;
 - (8) insurance coverage provided for the benefit of unit owners;
 - (9) whether the board has knowledge that any alterations or improvements to the unit or to the limited common elements assigned to that unit violate the declaration, bylaws, or association rules;
 - (10) whether the board has received notice from a governmental authority concerning violations of health or building codes with respect to the unit, the limited common elements assigned to that unit, or any other portion of the condominium;
 - (11) the remaining term of any leasehold estate that affects the condominium and the provisions governing an extension or renewal of the lease;
 - (12) the name, mailing address, and telephone number of the association's managing agent, if any;
 - (13) the association's current operating budget and balance sheet; and
 - (14) all fees payable to the association or an agent of the association that are associated with the transfer of ownership, including a description of each fee, to whom the fee is paid, and the amount of the fee.
- b. Not later than the 10th day after the date of receiving a written request by a unit owner, an association shall furnish to the selling unit owner or the owner's agent a resale certificate signed and dated by an officer or authorized agent of the association containing the information required by Subsection (a). A selling unit owner or the owner's agent is not liable to the purchaser for erroneous information provided by the association in the certificate. If an association does not furnish a resale certificate or

any information required in the certificate within the 10-day period, the unit owner may provide the purchaser with a sworn affidavit signed by the unit owner in lieu of the certificate. An affidavit must state that the unit owner requested information from the association concerning its financial condition, as required by this section, and that the association did not timely provide a resale certificate or the information required in the certificate. If a unit owner has furnished an affidavit to a purchaser, the unit owner and the purchaser may agree in writing to waive the requirement to furnish a resale certificate. The association is not liable to a selling unit owner for delay or failure to furnish a resale certificate, and an officer or agent of the association is not liable for a delay or failure to furnish a certificate unless the officer or agent wilfully refuses to furnish the certificate or is grossly negligent in not furnishing the resale certificate. Failure to provide a resale certificate does not void a deed to a purchaser.

- c. If a properly executed resale certificate incorrectly states the total of delinquent sums owed by the selling unit owner to the association, the purchaser is not liable for payment of additional delinquencies that are unpaid on the date the certificate is prepared and that exceed the total sum stated in the certificate. A unit owner or the owner's agent is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner.
- d. A resale certificate does not affect:
 - (1) an association's right to recover debts or claims that arise or become due after the date the certificate is prepared; or
 - (2) an association's lien on a unit securing payment of future assessments.
- e. A purchaser, lender, or title insurer who relies on a resale certificate is not liable for any debt or claim that is not disclosed in the certificate. An association may not deny the validity of any statement in the certificate.

Sec. 82.158. Escrow of Deposits.

A deposit made in connection with the purchase or reservation of a unit from a declarant shall be placed in escrow and held in this state in an account designated for that purpose by a real estate broker, an attorney, a title insurance company licensed in this state, an independent bonded escrow company, or an institution whose accounts are insured by a governmental agency or instrumentality until delivered to the declarant at closing, delivered to the declarant because of the purchaser's default under a contract to purchase the unit, or refunded to the purchaser. Escrow deposits may be placed in interest-bearing accounts, and the interest is payable as may be agreed in writing between the declarant and the purchaser.

Sec. 82.159. Release of Liens.

Before conveying real property to an association, a declarant shall have that real property released from all liens the foreclosure of which would deprive unit owners of any right of access to or easement of support of the owners' units, and all other liens on that real property unless the condominium information statement describes certain real property that may be conveyed subject to liens in specified amounts.

Sec. 82.160. Conversion Buildings.

- a. A declarant of a condominium containing a conversion building shall give each residential tenant or subtenant in possession of a portion of a conversion building notice of the conversion at least 60 days before the date the declarant will require the tenant or subtenant in possession to vacate. The notice must state generally the rights of tenants and subtenants under this section and shall be hand-delivered to the unit or mailed by certified United States mail, return receipt requested, to the tenant or subtenant at the address of the unit or any other mailing address provided by the tenant or subtenant. The declarant may not require a tenant or subtenant to vacate on less than 60 days' notice, except for nonpayment of rent, waste, or conduct that violates the rental agreement or is illegal, and the terms of a tenancy may not be altered during that period.

Failure of a declarant to give notice as required by this section is a defense to an action for possession.

- b. If a notice of conversion specifies a date by which a unit or proposed unit must be vacated and otherwise complies with Section 24.005, the notice also constitutes legal notice to vacate on that date for purposes of Section 24.005. A declarant may not terminate a lease in violation of its terms.
- c. Unless expressly authorized by a rental agreement, a declarant may not make substantial alterations to the interior of a leased premises for purposes of a condominium conversion.

Sec. 82.161. Effect of Violations on Rights of Action and Attorney's Fees.

- a. If a declarant or any other person subject to this chapter violates this chapter, the declaration, or the bylaws, any person or class of persons adversely affected by the violation has a claim for appropriate relief.
- b. The prevailing party in an action to enforce the declaration, bylaws, or rules is entitled to reasonable attorney's fees and costs of litigation from the nonprevailing party.

Sec. 82.162. Labeling of Promotional Material.

If any improvement contemplated in a condominium is labeled "NEED NOT BE BUILT" on a plat or plan or is to be located within a portion of a condominium with respect to which the declarant has reserved a development right, no promotional material that describes or depicts the improvement may be displayed or delivered to prospective purchasers unless the description or depiction of the improvement is conspicuously labeled or identified as "NEED NOT BE BUILT."

Sec. 82.163. Declarant's Obligation to Complete and Restore.

The declarant shall complete all improvements labeled "MUST BE BUILT" on plats or plans. The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium affected by the exercise of rights reserved pursuant to or created under this chapter.

Sec. 82.164. Loans as Eligible Investments.

- a. A loan on a condominium unit and the undivided interest in the common elements is an eligible investment for a bank, savings and loan association, trust company, life insurance company, or other lending institution that is authorized to make real property loans, and for an administrator, guardian, executor, trustee, individual, partnership, corporation, or other fiduciary that is authorized to make real property loans. In determining eligibility, the existence of a prior lien for taxes, assessments, or other similar charges not yet delinquent may not be considered in determining whether a mortgage or deed of trust on the security is a first lien. This section does not change any provision of law that would otherwise be applicable that limits mortgage investments based on a special fraction or percentage of the value of the mortgaged property.

- b. An association's lien for assessments does not make a condominium unit ineligible for loans for which the unit would otherwise qualify.

Why Winstead

Our team of attorneys, paralegals and legal staff possess decades of combined experience unmatched in association representation in Texas. Winstead is readily able to advise on all aspects of homeowners association law for any type of community and condominium project in all phases of the association's existence from creation, through transition, and even to termination. The wealth of knowledge and capabilities of Winstead's homeowners association practice sets it apart, making it a leader in the industry and a trusted resource for developers, owners and management companies throughout Texas.

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