

82ND LEGISLATIVE UPDATE - SUMMARY

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Marc is a founding shareholder of Roberts Markel and heads the firm's Real Estate Law and Community Association Law Sections. Marc is board certified in both Residential and Commercial Real Estate Law and is a charter member, and the only Texas attorney, of the Community Associations Institute College of Community Association Lawyers. He has represented community associations for over thirty years, and has utilized his vast experience to develop our outstanding Community Association Law practice.

Marc is a recognized leader in the community association industry and dedicates his time to supporting and enhancing community associations across the State. He believes that successful communities are created through the active participation of community leaders and is therefore very active in the legislative process surrounding community associations. Marc has served as a past Chair of the Texas Legislative Action Committee, and presently serves as a member of the board of Texas Community Association Advocates. Marc has assisted with the drafting of many proposed and approved pieces of legislation. He is a frequent author, lecturer and educator on issues affecting community associations and is active in community association industry support groups such as the Community Associations Institute, where he has held numerous local and national leadership positions.

In addition to his efforts on the legislative and educational fronts, Marc is dedicated to the creation of more efficient, harmonious communities through the development of realistic, enforceable deed restrictions, well educated board members and strong community involvement and communication. He has drafted master deed restrictions for numerous large residential, mixed use and commercial developers, authored numerous articles and educational papers and has lectured extensively to bar organizations, property managers and board members. Additionally, Marc actively represents developers, builders and community associations in litigation and litigation avoidance via a thorough risk analysis program and is a certified mediator. Marc is an AV Preeminent rated attorney by the Martindale-Hubbell Legal Directory, which is the highest ranking available for both competency and ethics.

Stephanie Quade

Stephanie Quade is a shareholder and has been licensed to practice in all courts in the State of Texas, the U.S. District Court for the Southern District of Texas, and the U. S. Supreme Court. She obtained her undergraduate degree in Political Science from the University of Houston in 1993. She is a member of the State Bar of Texas, the College of the State Bar of Texas, the Houston Bar Association, the Houston Bar Association Real Estate Division, and the Community Associations Institute.

Stephanie practices in the firm's Real Estate section. Although Stephanie is primarily engaged in real estate transactions and developer and homeowner association issues, she also actively participates in the firm's real estate litigation. In conjunction with the firm's Real Estate Litigation section, Stephanie also contributes to the defense of the firm's success in the civil appeals of those cases in state appellate courts. Stephanie has been a frequent author of continuing legal education materials on real estate topics for various bar organizations and the Community Associations Institute.

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Brady Ortego is a shareholder and supervises the collection, foreclosure and deed restriction enforcement sections of the firm which handles thousands of matters for property owners' associations (condominiums, residential, and commercial) including non-judicial foreclosures, judicial foreclosures, bankruptcies, injunctive and declaratory judgment suits. Brady has extensive experience in counseling community associations and real estate development companies on corporate governance, creation and amendment of key governing documents, developer transition issues, interpretation of governing documents, enforcement of deed restrictions and/or adopted regulations, and multi-million dollar loan transactions related to community improvement.

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Robert Mitchell primarily focuses on real estate transactions, real estate litigation, developer issues, condemnation and commercial and corporate transactions, including formation, compliance, governance and structuring. Additionally, Robert has experience drafting regulatory filings under the Interstate Land Sales Full Disclosure Act. Robert represents builders and developers of residential, commercial, and/or mixed-use developments (including condominiums). Robert counsels builders and developers on all aspects of a development, including drafting of development agreements, deed restrictions, and other documents that encumber real property and are necessary for the creation and operation of a development.

DISCLAIMER

This legislative summary is not intended to be relied upon as a final analysis in resolving legal questions regarding legislations affecting property owners associations approved at the 82nd Legislative Session. The information presented herein is intended to summarize some of the newly approved community association legislation. There is no substitute for a thorough review of the new statutes in conjunction with an association's current governing documents by an experienced and competent attorney.

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I. SINGLE FAMILY AND TOWNHOME PROPERTY OWNERS ASSOCIATIONS

A. EFFECTIVE JUNE 17, 2011

1. Transfer Fees

H.B. 8 repeals Texas Property Code Section 5.017 and adds Texas Property Code Section 5.201. This statute creates a general prohibition against transfer fees; however, the statute creates exemptions applicable to most association transfer fees. This statute applies to contracts for sale after January 1, 2012. The relevant exemptions include:

(i) dues, charges, assessments, fines, and contributions paid to an Association under a declaration or other covenant, including a fee or charge payable for a change in ownership entered into the records of an association, or an estoppel letter or resale certificate.

(ii) dues, charges, and assessments paid are exempt if paid to a 501(c)(3) or 501(c)(4) organization and only if the organization uses the payments to directly benefit the property by: (a) supporting or maintaining the restricted property; (b) constructing or repairing improvements to the restricted property; or (c) providing activities or infrastructure to support the quality of life, including cultural, educational charitable, recreational, environmental, and conservation activities and infrastructure, that directly benefit the restricted property.

Action Item: An initial review of any association's or community foundation's documents should be performed to determine if the fees can be collected and disbursed as set forth in the current governing documents.

2. Flag Display

H.B. 2779 adds Section 202.011 to the Texas Property Code as to an owner's right to install a flag. This provision allows the association to prohibit an owner from installing a flag on property that is owned in common by the members (essentially any part of a common element or any association reserve). A property owner's association may not adopt or enforce a dedicatory instrument that prohibits or restricts an owner from the display of: (i) US flag; (ii) Texas flag; or (iii) any branch of the US armed forces.

H.B. 2779 authorizes associations to adopt reasonable dedicatory instrument provisions regulating certain aspects of flag display, including but not limited to, size, number, location, lighting, and noise.

Action Item: An initial review should be conducted by an attorney to determine if the governing documents contain any regulations as to the display of flags, and whether or not you can comply with the setbacks or other requirements that may be established in the governing documents. This review is critical to the drafting of any dedicatory instrument provision(s) so that any conflicts between the existing governing documents and the statutory requirements can be addressed. In order to regulate the display of flags, the association must adopt a specific dedicatory instrument provision(s) regarding flag display and record the policy in the public records.

3. Display of Religious Items

H.B. 1278 adds new Section 202.0018 to the Texas Property Code relating to displaying of religious items. An association may not enforce or adopt a restriction that prohibits an owner from displaying or affixing on the entry door or door frame of a home one or more religious items the display of which is motivated by the owner's or resident's sincere religious belief.

H.B. 1278 authorizes associations to adopt a rule that prohibits the affixing of a religious item on the entry that threatens the public health and safety, violates a law, contains language graphics or any display that is patently offensive to a passerby, or is in a location other than the entry door or door frame or that extends past the outer edge of the door frame. The size of the religious display(s) may be limited to no greater than a cumulative 25 square inches. An association may remove an item displayed in violation of this provision.

Action Item: An initial review should be conducted by an attorney to determine if the governing documents contain any regulations as to the display of religious items, and whether or not you can comply with the requirements that may be established in the governing documents. This review is critical to the drafting of the rule so that any conflicts between the existing governing documents and the statutory requirements can be addressed. In order to regulate the display of religious items, the association must adopt specific rules regarding the display of religious items and record the rules in the public records.

4. Solar Panels and Roofing Materials

H.B. 362 amends Chapter 202 of the Texas Property Code as to regulation of solar energy devices (solar panels and special roofing tiles). Developers may prohibit or additionally restrict solar panels during developer period. Associations may not include or enforce a provision in a dedicatory instrument that prohibits or restricts an owner from installing a solar energy device – any such provision is void. H.B. 362 also limits enforcement of a provision in a dedicatory instrument that prohibits or restricts an owner from installing certain types of roofing shingles on the roof.

H.B. 362 authorizes associations to enforce provisions in a dedicatory instrument that regulate certain aspects of solar panels display, including but not limited to, property on which panel is installed, height above roof line, architectural approval, or location of panel (roof or yard).

An association or its architectural review committee may withhold approval for installation of a solar energy device if it is determined in writing that the placement of the device as proposed constitutes a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to person of ordinary sensibilities.

Action Item: An initial review should be conducted by an attorney to determine if the governing documents contain any regulations as to solar energy devices, and whether or not you can comply with the requirements of the new legislation with the current governing documents. This review is critical to the drafting of rules so that any conflicts between the existing governing documents and the statutory requirements can be addressed. In order to regulate the installation of solar energy devices, the association must adopt specific rules regarding such installation and record the rules in the public records.

B. EFFECTIVE SEPTEMBER 1, 2011

1. Rain Barrels

H.B. 3391 amends Section 202.007 of the Texas Property Code as to rain barrels. This provision allows the association to prohibit an owner from installing a rain barrel on property that is: (i) owned by association; (ii) owned in common by members of the association; or (iii) located between the front of the home and adjoining or adjacent street.

With certain limitations, H.B. 3391 authorizes associations to regulate the size, color, graphics, type, and shielding of, and the materials used in the construction of a rain barrel, rainwater harvesting device, or other appurtenance. The statute also permits regulation in a side yard so long as the regulation does not have the effect of prohibiting the system.

Action Item: While the statute does not specifically require the association to adopt rules, an initial review should be conducted by an attorney to determine if the governing documents contain any regulations as to the installation of rain barrels, and whether or not you can comply with the setbacks or other requirements that may be established in the governing documents. This review is critical to so that any conflicts between the existing governing documents and the statutory requirements can be addressed. Rules should be adopted and recorded in the public records if the association wishes to regulate any of the permitted topics contained in the legislation.

2. Board Membership, Voting, Quorum and Balloting

S.B. 472 amends Chapter 209 of the Texas Property Code on numerous issues affecting board membership, the right to vote, absentee and electronic ballots, and tabulation and access to ballots. A provision in a dedicatory instrument restricting the owner's right to run is void. In the event that written documented evidence is presented to the board that a board member has been convicted of a felony or crime involving moral turpitude, that board member is ineligible to serve on the board, is automatically removed, and prohibited from future service on the board.

Governing documents that prohibit owners from voting in board elections for any reason, including lack of being in good standing with the association, are no longer enforceable.

Votes may be cast in person, proxy, absentee ballot, electronic ballot, or by any method of representative or delegated voting. Votes must be cast in writing and signed by the member. Secret ballots are no longer permitted. Casting a vote via email, facsimile, or posting on the association website is considered an electronic ballot and is permissible. Absentee and electronic ballots may be counted for quorum purposes only for the items appearing on the ballot. If the proposal being voted upon at the meeting is amended, the absentee or electronic ballot will not be counted on the final vote but will still count for quorum purposes.

A candidate in an association election who is the subject of an association vote, or a person related to that person within the third degree by consanguinity or affinity, may not tabulate or otherwise be given access to the ballots.

It is of note that a completely separate bill, H.B. 2761, has certain provisions that are identical to S.B.472; however, H.B.2761 has an effective date of January 1, 2012 and each bill amends or adds different sections of Chapter 209 of the Texas Property Code.

Action Item: An initial review should be conducted by an attorney to determine if the governing documents conflict with the statutory requirements on topics such as regarding nominating committees, meeting notice dates, meeting and voting processes, and voting methods. This review is critical to so that any conflicts between the existing governing documents and the statutory requirements can be addressed. Amendments to the governing documents should be adopted and recorded in the public records.

3. Amendment of Restrictions

S.B. 472 allows the amendment of restrictions by a vote of 67% of the total votes allocated to property owners in the association. If the restrictions contain a lower percentage, the percentage in the restrictions controls. However, this provision does not apply to the amendment of restrictions during the development period for a subdivision.

4. Military Notice

S.B. 101 creates Section 51.002(i) of the Texas Property Code and requires foreclosure notices to include conspicuous language regarding the special rights under federal law of those serving active military duty as members of the armed forces of the United States, the National Guard, or the Texas National Guard. It is of note that H.B. 1127 amended also Chapter 51 and in the same manner as S.B.101; however, H.B. 1127 has an effective date of January 1, 2012.

C. EFFECTIVE JANUARY 1, 2012

1. Resale Certificates

H.B. 1821 amends Section 5.012 of the Texas Property Code as to resale certificates. The most significant changes affecting the issuance of resale certificates include but are not limited to, notice that owner will be obligated to pay assessments and the amount is subject to change, failure to pay could result in enforcement of the association's lien and foreclosure, notice of the right to copies of governing documents, how the payment for the resale certificate is handled, notice of all pending litigation where the association is a party (not simply litigation against the association), penalty for untimely delivery of the resale certificate, itemization of charges, special assessments, and 60 day validity of the resale certificate.

H.B. 1821 further amends Section 207.003 of the Texas Property Code with further requirements for resale certificates, including but not limited to, inclusion a right of first refusal; the association may require the purchaser to show reasonable evidence that the purchaser has a contractual or other right to acquire property; inclusion of the purpose of any special assessment; insurance certificate showing association's property and liability insurance; notice of any deed restriction violations on the property; and the amount of any administrative transfer fee.

Action Item: An attorney should review the form of the resale certificate to be used to determine that all statutory requirements are addressed. The form of the resale certificate must be updated every 60 days as the information contained therein changes. The association's attorney should provide a complete list of all litigation by and against the association for inclusion every 60 days if the information changes. Additionally, if the association is using a third party vendor to prepare its resale certificates, those vendor contracts may need to be revised to comply with the statutory requirements as to the timing of the charge for preparation of resale certificates and to acknowledge that there will be no payment for late delivery of the resale certificate.

2. Association Records

H.B. 1821 amends Section 207.006 of the Texas Property Code, requiring associations with a public access website, to make available on the website all

recorded governing documents. The same applies if there is a public access area on the management company website.

H.B. 1821 amends Section 202.006 of the Texas Property Code which required that all dedicatory instruments be recorded in the real property records. The amendment states that a dedicatory instrument has no effect until it is recorded. It should be noted that a dedicatory instrument includes all documents that effect the operation of the association or the use of property by an owner or resident.

H.B. 2761 amends Section 209.005 of the Texas Property Code and requires associations to make books & records, including financial records, open to and reasonably available for examination by an owner or owner's designee. Owners are entitled to request an inspection and obtain copies or owners may simply request review of specified documents. The statute permits an association to limit or deny access to certain documents including attorney files and records relating to the association, violation history or personal financial information of owners, and personnel files. The statute provides a specific notice and response protocol and provides that the association may recover administrative costs from the requesting owners in accordance with Section 70.3 of the Texas Administrative Code. If the association fails to comply with this statute, owners are provided a remedy with the Justice of the Peace including recovery of attorney's fees and costs for a prevailing owner.

H.B. 2761 adopts specific retention periods for the following association records: (i) certificate of formation, bylaws, restrictive covenants, all amendments thereto; (ii) financial books and records; (iii) account records of current owners; (iv) contracts with terms one year and greater; (v) minutes of meetings of the owners and board; and (vi) tax returns and audit records.

Action Item: An initial review should be conducted by an attorney to determine if the governing documents contain any provisions as to the retention of association records, the costs of reproducing association records. This review is critical to the drafting of the policy so that any conflicts between the existing governing documents and the statutory requirements can be addressed. H.B. 2761 specifically provides that associations must adopt a policy regarding retention of association records, and must adopt a policy regarding the production and copying of association records. The policy must be recorded in the public records. The failure to do so will result in the association not being permitted to charge for any documents produced and it will not have the ability to limit access to certain documents

3. Open Board Meetings

H.B. 2761 requires regular and special meetings of the board to be open to owners. The board may adjourn into closed executive session to consider only the following: (i) actions involving personnel; (ii) pending or threatened litigation; (iii) contract negotiations; (iv) enforcement actions; (v) confidential

communications association attorney; (vi) matters involving invasion of privacy of individual owners; and/or (vii) matters that are confidential pursuant to agreement of affected parties. Decisions made in executive sessions must be summarized orally and placed in the minutes in general terms and must contain any authorization for expenditures.

Board meeting notices to members must state the date, hour, place and general subject to be discussed at a meeting, including a general description of any anticipated matter to be brought up for deliberation in executive session. The meeting notice shall be mailed to each owner not later than 10th day or earlier than 60th day before the date of the meeting. In the alternative, the notice of the meeting may be effective if at least 72 hours notice is provided by: (i) posting in conspicuous manner reasonably designed to provide notice to the members in either a common area, private property with an owner's consent, or on the association's website; and (ii) sending notice by email to each owner with a registered email address with the association. It is the owner's duty to keep an updated e-mail address registered with the association. Board members can meet and discuss material without notice but only if no formal action is taken.

Subject to certain requirements, boards may meet to consider routine and administrative matters by any method of communication, including electronic and telephonic, without notice to owners. However, the following actions may not be considered in this manner: (i) fines; (ii) damage assessments; (iii) initiation of foreclosure actions; (iv) initiation of enforcement actions, excluding temporary restraining orders, or violations involving a threat to health or safety; (v) increases in assessments; (vi) levying of special assessments; (vii) appeals from denial of architectural control approval; and (viii) suspension of right of a particular owner before the owner has an opportunity to be heard by the board.

Notice and open meeting requirements apply to associations during the development period for the following issues: (i) adopting or amending governing documents; (ii) increases in the amount of regular assessments or adopting or increasing a special assessment; (iii) electing non-developer board members or establishing a process by which those members are elected; or (iv) changing the voting rights of members of the association.

Action Item: An initial review should be conducted by an attorney to determine if the governing documents conflict with the statutory requirements with regard to the method of providing notice of board meetings. This review is critical so that any conflicts between the existing governing documents and the statutory requirements can be addressed. Amendments to the governing documents should be adopted and recorded in the public records.

4. Director Elections

H.B. 2761 mandates notice not later than 10 days or earlier than 60 before the date of an association-wide election or vote. Contrary provisions in any dedicatory instrument are superseded by this statute.

H.B. 2761 provides a specific protocol for recount of votes cast in an association election. The request for recount must satisfy certain notice requirements and the party requesting the recount must pay the expense of the services of a person qualified to tabulate votes. The individual performing the recount must not be a member of the association or related to the association board within the third degree of consanguinity or affinity and a current or former county judge, county elections administrator, Justice of the Peace, or counter voter registrar, or other individual that the association and party demanding recount may agree upon. The recount must occur within 30 days after the receipt of the request and the requesting party's payment of costs of recount. If the results of the recount differ from the original count and the result of the election changes, then the association shall reimburse the costs.

Action Item: An initial review should be conducted by an attorney to determine if the current protocol conflicts with the statutory requirements. This review is critical to so that any conflicts between the existing protocol and the statutory requirements can be addressed. If necessary, amendments to the governing documents should be adopted and recorded in the public records.

5. Collection of Assessments

H.B. 1228 amends Chapter 209 of the Texas Property Code affecting collection issues such as alternative assessment payment schedule, application of payments, notice requirements before turnover to attorney, the foreclosure process, and filing of lien affidavits.

Associations must provide owners with an alternative payment schedule with a minimum of 3 months. An association plan may not exceed 18 months. The only charges permitted during the course of the payment plan are interest and costs of administering the payment plan. H.B. 1228 specifically provides that associations shall adopt payment plan guidelines in the real property records of each county the subdivision is located.

H.B. 1228 changes how payments are applied to association charges. Any payment received after January 1, 2012 must be applied in the following order: (i) any delinquent assessment; (ii) any current assessment; (iii) attorney's fees or third party collection costs incurred by the association associated solely with assessments or any other charge that can be the basis of foreclosure; (iv) attorney's fees not subject to (iii) above; (v) fines; and (vi) any other amount owed to the association. In the event an owner defaults under a payment plan, the association is not required to apply payments in accordance with this schedule;

however, in no event may an association apply a payment to a fine over any other amount owed to the association. If an owner defaults on a payment plan the association is not required to offer another payment for two years.

As a condition to an owner being liable for attorney's fees and expenses incurred in a collection matter, associations must satisfy statutory notice requirements under Section 209.0064 of the Texas Property Code. Owners must be advised of the specifics of each delinquent amount, the options available to avoid turnover to the association's attorney (including payment plan options), and allowed 30 days to cure before further action is taken.

As a prerequisite to foreclosure of an association lien, certain inferior lienholders must be given the right to cure the delinquency before the 61st day after the date the lienholder receives the notice.

H.B. 1228 also creates Section 209.0092 of the Texas Property Code, effective September 1, 2011, but applicable to foreclosure sales occurring on or after January 1, 2012. Associations must first obtain a court order in an application for expedited foreclosure under the rules adopted by the Texas Supreme Court. H.B. 1228 provides that the Texas Supreme Court will adopt said rules on or before January 1, 2012. Submission of an application for expedited foreclosure is not required if the owner agrees in writing at the time the foreclosure is sought to waive the expedited process.

Assessment liens, lien affidavits, or other instruments evidencing the nonpayment of assessments or other charges owed to the association and filed in the real property records is a legal instrument and affects title to real property.

Action Item: An initial review should be conducted by an attorney to determine if the governing documents conflict with the statutory requirements. This review is critical to so that any conflicts between the existing governing documents and the statutory requirements can be addressed. The association must revise its collection policy and needs to establish the terms of payment plans it will accept and that it may not accept payment plans for those that have defaulted on a previous plan in the last 24 months. The payment plan and collection policy must be recorded. After the Texas Supreme Court issues its rules, further action will be necessary.

6. Military Notice

H.B. 1127 amends Chapter 24, Chapter 51, and Chapter 209 of the Texas Property Code affecting special notice requirements for those in active military duty including their spouses. It is of note that S.B. 101 also amended Chapter 51 and in the same manner as H.B. 1127; however, S.B. 101 has an effective date of September 1, 2011.

Chapter 24, 51, and 209 of the Texas Property Code relate to evictions, foreclosure, and deed restriction enforcement matters, respectively. The amendments to Chapter 51 and 209 require notices to include conspicuous language regarding the special rights under federal law of those serving active military duty as members of the armed forces of the United States, the National Guard, or the Texas National Guard. Chapter 24 is amended to include the same conspicuous notice but it must be in the citation issued in the eviction proceeding in both English and Spanish.

II. CONDOMINIUM ASSOCIATIONS

A. EFFECTIVE JUNE 17, 2011

1. Transfer Fees

H.B. 8 adds Section 5.201 to the Texas Property Code as to transfer fees. This generally prohibits the charging of a transfer fee. The transfer fee is defined as a charge on the land that must be paid every time a condominium unit is bought and sold. However, this new provision exempts ten types of transfer fees from the general prohibition against such charges. Of importance to condominium associations, is the exemption that exempts charges paid to an association under a declaration, or other covenant, including a fee or charge payable for a change in ownership entered into the records of an association, or an estoppel letter, or resale certificate.

Action Item: An initial review of any association's or community foundation's documents should be performed to determine if the fees can be collected and disbursed as set forth in the current governing documents.

2. Display of Flags

H.B. 2779 adds Section 202.011 to the Texas Property Code as to an owner's right to install a flag. This provision allows a condominium association to prohibit an owner from installing a flag on property that is owned in common by the members (essentially any part of the common element in a condominium). Depending on how the governing documents for the association defines property owned in common by the members, this statute may allow the association to prohibit flag display within limited common elements.

Action Item: An initial review should be conducted by an attorney to determine if the governing documents contain any regulations as to the display of flags, and whether or not you can comply with the requirements that may be established in the governing documents. This review is critical to the drafting of the rule so that any conflicts between the existing governing documents and the statutory requirements can be addressed. In order to regulate the display of flags, the association must adopt specific rules regarding the display of flags and record the rules in the public records.

3. Display of Religious Items

H.B. 1278 adds new Section 202.0018 to the Texas Property Code relating to displaying of religious items. A condominium association may not enforce or adopt a restriction that prohibits an owner from displaying or affixing on the entry door or door frame of a home one or more religious items the display of which is motivated by the owner's or resident's sincere religious belief.

H.B. 1278 authorizes condominium associations to adopt a covenant that prohibits the affixing of a religious item on the entry that threatens the public health and safety, violates a law, contains language graphics or any display that is patently offensive to a passerby, or is in a location other than the entry door frame or that extends past the outer edge of the door frame. The size of the religious display may be limited to no greater than 25 square inches. A condominium association may remove an item displayed in violation of this provision.

Action Item: An initial review should be conducted by an attorney to determine if the condominium declaration contains any regulations as to the display of religious items, and whether or not you can comply with the requirements that may be established in the condominium declaration. This review is critical to the drafting of the policy so that any conflicts between the existing condominium declaration and the policy can be addressed. In order to regulate the display of religious items, the association must adopt a specific policy regarding the display of religious items and record the policy in the public records.

4. Solar Panels

H. B. 362 amends Chapter 202 of the Texas Property Code as to regulation of solar energy devices (solar panels and special roofing tiles). This provision permits a condominium association to prohibit an owner from installing a solar energy device on property that is owned in common by the members (essentially any part of the common element in a condominium).

Action Item: An initial review should be conducted by an attorney to determine if the governing documents contain any regulations as to solar panels, and whether or not you can comply with the requirements that may be established in the governing documents. This review is critical to the drafting of any dedicatory instrument provision(s) so that any conflicts between the existing governing documents and the statutory requirements can be addressed. In order to regulate the solar panels, the association must adopt a specific dedicatory instrument provision(s) regarding flag display and record the policy in the public records.

B. EFFECTIVE SEPTEMBER 1, 2011

1. Rain Barrels

H.B. 3391 amends Section 202.007 of the Texas Property Code as to rain barrels. This provision allows the association to prohibit an owner from installing a rain barrel or rain harvesting system on property that is owned in common by the members (essentially any part of the common element in a condominium). Unless an owner of the condominium owns dirt in any area, where rainwater can be collected.

2. Change of Address

H.B. 364 amends Chapter 82 of the Texas Property Code and applies to condominiums regardless of the year built. The new legislation requires that a condominium information statement advises the owner that later than the 90th day after the date a unit owner changes their address, the owner must provide written notice of the owner's new address to the appraisal district.

Action Item: An initial review should be conducted by an attorney to determine if the current condominium information statement complies with the statutory requirements if the association. The condominium information statement should be amended if the association is still under developer control.

3. Eminent Domain and Municipal Takings

H.B. 364 amends Section 2206.001 of the Government Code which allows the "taking" of private property through the use of eminent domain for economic development purposes if the economic development is a secondary purpose resulting from the elimination of urban blight.

H.B. 364 amends Chapter 214 of the Local Government Code to allow a municipality to "take" a condominium through the use of eminent domain for economic development purposes so long as a secondary purpose is for the elimination of urban blight if the condominium property presents certain uninhabitable, unsafe, and unsanitary conditions for at least one year after the date on which notice of the condition is attempted to be provided to the property owner.

4. Military Notice

S.B. 101 creates Section 51.002(i) of the Texas Property Code and requires foreclosure notices to include conspicuous language regarding the special rights under federal law of those serving active military duty as members of the armed forces of the United States, the National Guard, or the Texas National Guard. It is of note that H.B. 1127 also amended Chapter 51 and in the same manner as S.B.101; however, H.B. 1127 has an effective date of January 1, 2012.

C. EFFECTIVE JANUARY 1, 2012

1. Resale Certificates

H.B. 1821 amends Section 5.012 of the Texas Property Code as to resale certificates. The most significant changes affecting the issuance of resale certificates include but are not limited to, notice that owner will be obligated to pay assessments and the amount is subject to change, failure to pay could result in enforcement of the association's lien and foreclosure, notice of the right to copies of governing documents, how the payment for the resale certificate is handled, notice of all pending litigation where the association is a party (not simply litigation against the association), penalty for untimely delivery of the resale certificate, itemization of charges, special assessments, and 60 day validity of the resale certificate.

H.B. 1821 further amends Section 207.003 of the Texas Property Code with further requirements for resale certificates, including but not limited to, inclusion a right of first refusal; the association may require the purchaser to show reasonable evidence that the purchaser has a contractual or other right to acquire property; inclusion of the purpose of any special assessment; insurance certificate showing association's property and liability insurance; notice of any deed restriction violations on the property; and the amount of any administrative transfer fee.

Action Item: An attorney should review the form of the resale certificate to be used to determine that all statutory requirements are addressed. The form of the resale certificate must be updated every 60 days as the information contained therein changes. The association's attorney should provide a complete list of all litigation by and against the association for inclusion every 60 days if the information changes. Additionally, if the association is using a third party vendor to prepare its resale certificates, those vendor contracts may need to be revised to comply with the statutory requirements as to the timing of the charge for preparation of resale certificates and to address no payment for late delivery of the resale certificate.

2. Association Records

H.B. 1821 amends Section 207.006 of the Texas Property Code, requiring associations with a public access website, to make available on the website all recorded governing documents. The same applies if there is a public access area on the management company website.

H.B. 1821 amends Section 202.006 of the Texas Property Code which required that all dedicatory instruments be recorded in the real property records. The amendment states that a dedicatory instrument has no effect until it is recorded. It should be noted that a dedicatory instrument includes all documents that effect the operation of the association or the use of property by an owner or resident.

3. Military Notice

H.B. 1127 amends Chapter 24 and Chapter 51 of the Texas Property Code affecting special citation and notice requirements for those in active military duty including their spouses. It is of note that S.B.101 also amended Chapter 51 and in the same manner as H.B. 1127; however, S.B.101 has an effective date of September 1, 2011.

Chapter 24 and 51 of the Texas Property Code relate to evictions and foreclosure matters, respectively. The amendment to Chapter 51 requires notices to include conspicuous language regarding the special rights under federal law of those serving active military duty as members of the armed forces of the United States, the National Guard, or the Texas National Guard. Chapter 24 is amended to include the same conspicuous notice but it must be in the citation issued in both English and Spanish.

III. ASSOCIATIONS WITHIN THE DEVELOPMENT PERIOD

A. CHANGES EFFECTIVE JUNE 17, 2011

1. Solar Panels

H.B. 362 amends Chapter 202 of the Texas Property Code as to regulation of solar energy devices (solar panels and special roofing tiles). Developers may prohibit solar panels during the development period or further limit the use of some products. The statute defines development period as a period stated in a declaration during which a declarant reserves (i) a right to facilitate the development, construction, and marketing of the subdivision; and (ii) a right to direct the size, shape, and composition of the subdivision.

Development Period is defined in H.B. 362 as a period stated in the declaration during which a declarant reserves the right to facilitate the development, construction, and marketing of the subdivision, and a right to direct the size, shape, and composition of the subdivision.

Action Item: An initial review should be conducted by an attorney to determine if the restrictive covenants contain any regulations as to solar energy devices, and whether or not the subdivision is within the development period as defined by H.B. 362. This review is critical to determine whether or not the developer can prohibit solar panels. If the development period has expired, a policy will be necessary if the association chooses to regulate solar panels. Additional attorney review should be conducted so that any conflicts between the existing restrictive covenants and the statutory requirements can be addressed. In order to regulate the installation of solar energy devices, the association must adopt a specific policy regarding such installation and record the policy in the public records.

B. EFFECTIVE SEPTEMBER 1, 2011

1. Amendment of Restrictions

S.B. 472 allows the amendment of restrictions by a vote of 67% of the total votes allocated to property owners in the association. If the restrictions contain a lower percentage, the percentage in the restrictions controls. However, this provision does not apply to the amendment of restrictions during a development period.

Development Period is defined in S.B. 472 as a period stated in the declaration during which a declarant reserves the right to facilitate the development, construction, and marketing of the subdivision, and a right to direct the size, shape, and composition of the subdivision.

C. EFFECTIVE JANUARY 1, 2012

1. Open Board Meetings

H.B. 2761 requires regular and special meetings of the board to be open to owners. This section applies to board meetings during the development period only if the meeting is conducted for the purpose of (i) adopting or amending governing documents, (ii) increases in the amount of regular assessments or adopting or increasing a special assessment, (iii) electing non-developer board members or establishing a process by which those members are elected, or (iv) changing the voting rights of members of the association.

Development Period: as applicable to Open Board Meetings, Development Period is defined in H.B. 2761 as a period stated in the declaration during which a declarant reserves the right to facilitate the development, construction, and marketing of the subdivision, and a right to direct the size, shape, and composition of the subdivision.

Board meetings that must be open to all members during the development period must be noticed by stating the date, hour, place and general subject of the regular or special board meeting, including general description of any matter to be brought up for deliberation in executive session. The meeting notice shall be mailed to each owner not later than 10th day or earlier than 60th day before the date of the meeting. In the alternative, the notice of the meeting may be effectuated with at least 72 hours notice by: (i) posting in conspicuous manner reasonably designed to provide notice to the members in either a common area, private property with an owner's consent, or on the association's website; and (ii) sending notice by email to each owner with a registered email address with the association. It is the owner's duty to keep an updated e-mail address registered with the association.

Action Item: An initial review should be conducted by an attorney to determine if the current protocol for the developer conflicts with the statutory requirements

with regard to the method of providing notice of board meetings relating to the topics subject to mandatory notice. This review is critical to so that any conflicts between the existing protocol and the statutory requirements can be addressed.

2. Board Membership

H.B. 2761 creates a deadline by which a portion of the board must be seated by owners. Regardless of the period of declarant control provided by the declaration, on or before the 120th day after the date 75% of the lots that may be created and made subject to the declaration are conveyed to owners other than the declarant, at least one-third of the board members must be elected by owners other than the declarant. Furthermore, in the event the declaration does not include the number of lots that may be created and subject to the declaration, at least one-third of the board must be elected by owners other than the declarant not later than the 10th anniversary of the date the declaration was recorded.

Action Item: An initial review should be conducted by an attorney to determine if the declaration specifically states the number of lots that may be created and subject to the declaration. This review is critical to determine whether or not the board is properly seated as required by H.B. 2761.