

SUMMARY OF THE 2011 HOA LAW REFORMS ENACTED BY THE TEXAS LEGISLATURE

DESCRIPTION OF CHANGE IN LAW	AFFECTED STATUTE OR CODE	BILL NO. (EFFECTIVE DATE)
Open Board of Directors Meetings - Regular and special meetings of a Subdivision HOA's Board of Directors must be open to Homeowners subject to the limited right of the Board of Directors to meet in executive session.	Texas Prop. Code - Chapter 209 - adds 209.0051	HB 2761 (1/1/2012)
Notice of Board of Directors Meetings - Homeowners must be given advance notice of all Board of Directors Meetings. Such notice may be delivered: (1) by mailing a copy of the notice to each Homeowner; or (2) by posting a copy of the notice in a conspicuous place in the community, posting a copy of the notice on the HOA's website and emailing a copy of the notice to all Homeowners who have supplied the HOA their email address.	Texas Prop. Code - Chapter 209 - adds 209.0051	HB 2761 (1/1/2012)
Open Records - Subdivision HOAs are now subject to a lite version of the Texas Open Records Act. The new Section 209.005 now prescribes what records are subject to inspection, specific guidelines for requesting and producing records, and the ability to charge the requesting Homeowner for costs associated with the production and copying of records. The new Section 209.005 also requires Subdivision HOAs to adopt and record two new policies: (1) a policy regarding the costs to be charged by the HOA to produce and copy records; and (2) a record retention policy that complies with the minimum retention requirements established by the new Section 209.005. A Homeowner who is denied access to records may now sue the HOA in JP Court to compel production of document, and the JP Court judge may award attorneys fees to the prevailing party.	Texas Prop. Code - Chapter 209 - modifies 209.005	HB 2761 (1/1/2012)
Recording of Dedicatory Instruments - Since 1999, Section 202.006 has required all HOAs to record all "Dedicatory Instruments" in the Official Public Records of the county in which all or a portion of its community is located. The statutory definition includes a HOA's Declarations, Articles of Incorporation, Bylaws, rules and any other governing document. The prior version of Section 202.006, however, did not provide for a remedy if a Dedicatory Instrument was not recorded. The modification of Section 202.006 effected by HB 1821 now makes clear that any Dedicatory Instrument that is not recorded is not enforceable and has no effect until it is recorded.	Texas Prop. Code - Chapter 209 - adds 209.0093	HB 1228 (1/1/2012)
Online Publication of Dedicatory Instruments - A Subdivision HOA's Dedicatory Instruments must now be made available on a website if: (1) the HOA has one, or (2) the HOA's manager maintains a publicly accessible website on behalf of the HOA.	Texas Prop. Code - Chapter 209 - adds 209.0064	HB 1228 (1/1/2012)



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<p>Assessment Collection (Prohibition Against Non-Judicial Foreclosures) - Subdivision HOAs are no longer allowed to use traditional non-judicial foreclosure procedures. To foreclose an Assessment Lien, Subdivision HOAs must use expedited judicial foreclosure procedures to obtain a court order before the HOA can foreclose (similar to the manner in which home equity loans are foreclosed), unless the Homeowner waives the requirement. All of the changes made by HB 1228 take effect January 1, 2012, except for the prohibition against non-judicial foreclosures, which takes effect on September 1, 2011. HB 1228 directs the Texas Supreme Court to create the new expedited judicial procedures by January 1, 2012. As a result, a Subdivision HOA will not be unable to foreclose its Assessment Lien after August 2, 2011 (the first Tuesday in August and the last opportunity to foreclose an assessment lien without an expedited judicial court order) until sometime after the Texas Supreme Court creates the new procedures and the Subdivision HOA has completed the new process for obtaining a court order allowing foreclosure under the new to be created expedited judicial foreclosure procedures.</p>	Texas Prop. Code - Chapter 209 - adds 209.0092	HB 1228 (1/1/2012)
<p>Assessment Collection (Amendment of Declaration to Add or Remove Foreclosure Authority) - Homeowners can amend a Subdivision HOA's governing documents to add or remove foreclosure authority with the affirmative approval of only 67% of the lot owners.</p>	Texas Prop. Code - Chapter 209 - adds 209.0093	HB 1228 (1/1/2012)
<p>Assessment Collection (Restricts Right to Foreclose For Unpaid Copying Charges) - A Subdivision HOA is restricted from foreclosing its assessment lien if the underlying debt consists solely of fees charged by the HOA to a Homeowner for obtaining copies of the HOA's records under the provisions of the new Section 209.005(i).</p>	Texas Prop. Code - Chapter 209 - adds 209.009(3)	HB 2761 (1/1/2012)
<p>Assessment Collection (Required Notice to Junior Lien Holders Prior to Foreclosure) - Prior to initiating foreclosure of an Assessment Lien, a Subdivision HOA must give notice of the assessment delinquency and 60-day opportunity to cure to holders of junior liens secured by recorded deeds of trust against the delinquent lot.</p>	Texas Prop. Code - Chapter 209 - adds 209.0091	HB 1228 (1/1/2012)
<p>Assessment Collection (Restricts Collection of Contingent Attorneys Fees) - Homeowners in Subdivision HOAs are not liable for collection costs or attorneys fees that are contingent on if or how much the debt collector (i.e., the HOA's management company or attorney) collects from the Homeowner. A Subdivision HOA may not assign claims for unpaid assessments to third parties, except as collateral for a loan.</p>	Texas Prop. Code - Chapter 209 - adds 209.0064	HB 1228 (1/1/2012)



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Assessment Collection (Mandatory Payment Plans) - Subdivision HOAs consisting of more than 14 lots are now required to adopt guidelines for payment plans for delinquent assessments, and must record a copy of such guidelines in the Official Public Records of each county in which a portion of their community is located. Payment plans must be a minimum of 3 months, but cannot exceed 18 months. During the payment plan, the delinquent Homeowner may not be assessed monetary penalties, but may be assessed reasonable costs associated with administering the payment plan and interest.	Texas Prop. Code - Chapter 209 - adds 209.0062	HB 1228 (1/1/2012) & HB 1821 (1/1/2012)
Assessment Collection (Mandatory Priority of Payment Schedule) - HB 1228 creates a new "Priority of Payment," which dictates the order by which Subdivision HOAs must apply Homeowners' payments. Payments must now be applied first to delinquent and current assessments, then attorneys fees and then fines. HB 1228 also creates a limited exception to the priority of payment rule if the Homeowner is in default of a payment plan.	Texas Prop. Code - Chapter 209 - adds 209.0063	HB 1228 (1/1/2012)
Amendment of Governing Documents - A Subdivision HOA's Declaration may be amended by the affirmative vote of 67% of the Homeowners, or any lower % stated in the Declaration. SB 472 also makes clear that a Subdivision HOA's Bylaws cannot be amended in a manner so as to be in conflict with the Subdivision HOA's Declaration. The reduced voting requirement to amend a Declaration, however, does apply during a community's "development period."	Texas Prop. Code - Chapter 209 - adds 209.0041	SB 472 (2/1/2011)
Board of Directors (Restrictions on Ability to Appoint Director to Board) - When a Director's term expires, he or she must be re-elected by the Homeowners. A vacant director position may now only be filled by appointment by the Board of Directors if the vacancy is caused by a resignation, death, or disability. A Director who is appointed to fill a vacant position shall serve for the unexpired term of his or her predecessor.	Texas Prop. Code - Chapter 209 - adds 209.00593	HB 2761 (1/1/2012)
Board of Directors (Eligibility to be a Director) - Any provision of a Dedicatory Instrument that restricts a Homeowner's right to run for election to the Board of Directors is void.	Texas Prop. Code - Chapter 209 - adds 209.00591(a) and 209.00592(a)	HB 2761 (1/1/2012) & SB 472 (9/1/2011)



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Board of Directors (Disqualification of a Director) - If a Board of Directors is presented with evidence from a governmental law enforcement agency that a director has been convicted of a felony or crimes of moral turpitude, the Director is automatically removed from the Board of Directors and ineligible to serve again.	Texas Prop. Code - Chapter 209 - adds 209.00591(b) and 209.00592(b)	HB 2761 (1/1/2012) & SB 472 (9/1/2011)
Transition of Control of HOA - A Declaration for a Subdivision HOA may still provide for a "Declarant Control Period" but within 120 days from the conveyance of 75% of the lots to be created by the declarant to somebody other than the declarant, one-third of the Directors on the Board of Directors must be elected by the Homeowners other than the declarant. If the Declaration does not state the maximum number of lots to be created and made subject to the Declaration, then one-third of the Directors on the Board of Directors must be elected by the Homeowners other than the declarant no later than the 10th anniversary from the date the Declaration was recorded.	Texas Prop. Code - Chapter 209 - adds 209.00591(c)	HB 2761 (1/1/2012)
Annual Meetings - A Subdivision HOA's Board of Directors must call an annual meeting of Homeowners. If the Board of Directors fail to do so, new Section 209.014 now establishes procedures for Homeowners to establish a committee with the authority to call a special meeting of Homeowners (not an annual meeting) to elect Directors.	Texas Prop. Code - Chapter 209 - adds 209.014	HB 2761 (1/1/2012)
Membership Meeting Notice - A Subdivision HOA must give Homeowners no more than 60 days, nor less than 10 days, advance notice of any election or vote to be conducted by the Homeowners.	Texas Prop. Code - Chapter 209 - adds 209.0056	HB 2761 (1/1/2012)
Membership Voting (Eligibility to Vote) - Any provision in a Subdivision HOA's Dedicatory Instruments that would disqualify a Homeowner from voting in an election or vote of Homeowners is void.	Texas Prop. Code - Chapter 209 - adds 209.0059	HB 2761 (1/1/2012) & SB 472 (9/1/2011)
Membership Voting (Absentee and Electronic Voting) - Historically, Homeowners have been limited to voting by casting ballots at a meeting either in person or by proxy. New Sections 209.00592 and 209.00593 now authorize Subdivision HOAs to conduct Homeowner voting by absentee ballots and electronic ballots (in addition to casting ballots in person or by proxy at a meeting). Such statutes also establish certain procedures for conducting absentee voting by mail and electronic voting using email or the internet, and allow votes cast in absentia or electronically to count towards a quorum requirement.	Texas Prop. Code - Chapter 209 - adds 209.00592 and 209.00593	HB 2761 (1/1/2012) & SB 472 (9/1/2011)

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Membership Voting (Requirement of Signature on Ballot) - Voting by secret ballots is no longer permitted. All ballots must now be signed by Homeowners, unless it is an uncontested election or is an electronic ballot.	Texas Prop. Code - Chapter 209 - adds 209.0058	HB 2761 (1/1/2012) & SB 472 (9/1/2011)
Membership Voting (Election Recount) - New Section 209.0057 authorizes Homeowners to demand a recount of votes from an election if done so in writing and within 15 days from the date of the meeting at which the election was held. New Section 209.0057 also creates procedures for recounting the votes and who may perform the recount.	Texas Prop. Code - Chapter 209 - adds 209.0057	HB 2761 (1/1/2012)
Membership Voting (Tabulation and Confidentiality of Votes) - New Section 209.00594 restricts candidates for election to the Board of Directors in a Subdivision HOA and their family members from tabulating or otherwise being given access to the ballots cast in the election, except that such persons may be given access to the ballots cast in an election as part of a recount process. In addition, new Section 209.00594 also prohibits any person who does tabulate the votes cast in an election or other vote from disclosing to any other person how any individual voted.	Texas Prop. Code - Chapter 209 - adds 209.00594	SB 472 (9/1/2011)
Resale Certificates - Subdivision HOAs are required to disclose additional information on Resale Certificates, including all lawsuits to which the HOA is a party and all transfer-related fees by amount and payee. The new law also extends the time to produce a Resale Certificate and gives the HOA the right to collect the costs of producing the Resale Certificate from the home buyer.	Texas Prop. Code - Chapter 207 - modifies 207.003	HB 1821 (1/1/2012)
Transfer Fees - The enforceability of transfer fees embedded in a HOA's governing documents are now significantly restricted. "Transfer fees" and "resale certificate fees" paid to HOAs or property managers, however, are still enforceable.	Texas Prop. Code - Chapter 5 - repeals 5.017 and adds 5.201, et seq.	HB 8 (6/17/2011)
Restrictive Covenants (Flags) - Restrictive covenants that would prohibit a Homeowner from flying the flags of the United States, Texas or a branch of the United States military is void. A HOA may, however, adopt and/or enforce provisions in its Dedicatory Instruments that regulate the size, number, and/or location of flags, flag poles and lights used to illuminate flags.	Texas Prop. Code - Chapter 202 - adds 202.011	HB 2779 (6/20/2011)
Restrictive Covenants (Rain Barrels) - A HOA cannot restrict Homeowners from installing a rain barrel or rain harvesting systems on their lots, but a HOA can adopt and/or enforce provisions in its Dedicatory Instruments that regulate the location and color of rain barrels or rain harvesting system.	Texas Prop. Code - Chapter 202 - modifies 202.007(d)	HB 3391 (9/1/2011)

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Restrictive Covenants (Religious Displays) - A HOA cannot enforce or adopt a restrictive covenant that prohibits a Homeowner or resident from displaying or affixing certain religious items to the front door of their homes so long as the display is "motivated by a resident's sincere religious belief." A HOA may, however, adopt and/or enforce provisions in its Dedicatory Instruments that restrict the location of the religious display to the front entry door or door frame and that restricts the size of the religious display to no more than 25 square inches.	Texas Prop. Code - Chapter 202 - adds 202.018	HB 1278 (6/20/2011)
Restrictive Covenants (Roof Shingles) - A HOA cannot enforce or adopt a restrictive covenant that restricts Homeowners from installing roof shingles designed to be wind and hail resistant, provide heating or cooling efficiencies, or provide solar generation capabilities so long as the shingles are of similar appearance and the same or better quality to authorized shingles.	Texas Prop. Code - Chapter 202 - adds 202.011	HB 362 (6/20/2011)
Restrictive Covenants (Solar Panels) - A HOA cannot enforce or adopt a restrictive covenant that restricts Homeowners from installing a solar energy panel on the roof of their home or in a fenced backyard so long as the installation conforms to the requirements specified in new Section 202.010.	Texas Prop. Code - Chapter 202 - adds 202.010	HB 362 (6/20/2011)
Notice of Restrictive Covenant Violation - Notices required under Section 209.006 now must include an advisory concerning special rights or relief from enforcement of a restrictive covenant afforded to a property owner under the federal Servicemembers Civil Relief Act if he or she is serving on active military duty.	Texas Prop. Code - Chapter 209 - modifies 209.006	HB 1127 (1/1/2012)