

## TEXAS PROPERTY CODE CHAPTER 209 Modifying Existing Restrictions in Certain Subdivisions

### Application

- A residential subdivision
  - Subject to restrictions or a declaration that authorize a Property Owners' Association ("POA") to collect regular or special assessments;
  - Where mandatory membership in the POA is required for all or a majority of the residential property owners in the subdivision;
  - Regardless of the title or name of the POA;
  - And which is not a condominium development;
  - And which is not located in the Woodlands or Las Colinas.
- Chapter 209 only applies to modifications and not extensions of restrictive covenants.  
Tex. Prop. Code § 209.003 (Vernon 2011).

### Vote Required

- If Chapter 209 applies to the subdivision, a vote is required for any modification of the dedicatory instruments, unless the modification takes place during the "development period." (§ 209.0041(h) & (d)).
- Any vote to modify is required to have 67% approval of the total number of votes allocated to the POA, unless the declaration requires a lesser percentage, in which case the lower percentage controls. (§ 209.0041(h)).
  - Chapter 209 controls, and regardless of the requirements in any dedicatory instruments, the percentage required for approval may never be more than 67%. (§ 209.0041).

### Voting Rights

- All property owners have the right to vote, despite language to the contrary in the dedicatory instruments. (§ 209.0059).
- A POA may not restrict a property owner's right to vote solely because there is a pending enforcement action against the property owner, or because the property owner is delinquent on assessments, fees or fines. (§ 209.005).

### Any Other Method

- Look to Declaration or Bylaws for representative or delegated voting procedure and follow.

### In Person or By Proxy

- Provide notice of meeting and specific items upon which vote will be held to owners.
- Include a ballot and proxy form to all owners in advance of meeting.
- Owners who intend to vote by proxy must designate their proxy via proxy form.
- Hold the meeting of the POA and conduct vote.
- Must have 67% approval of total votes outstanding in the POA to amend dedicatory instruments. (§ 209.0041(h)).
  - 67% of those present will not suffice, if all votes are not represented at the meeting, either in person, by proxy, absentee ballot, or electronic ballot.
- If property owner attends a meeting to vote, but previously delivered an electronic or absentee ballot, the previously delivered electronic or absentee ballot may not be counted, and his vote at the meeting will control. (§ 209.00593 (b)).

### Voting Procedure

- A vote for modification of the dedicatory instruments may be held either:
  - in person or by proxy at a meeting of the property owners' association;
  - by absentee ballot;
  - by **electronic ballot**; or
  - by any method of representative or delegated voting provided by a dedicatory instrument
- All votes must be in writing and signed by the owner. (§ 209.0058 (a)).
  - Electronic votes will be deemed signed and in writing. (§ 209.0058 (b)).

### Absentee Ballot

- An absentee ballot may be counted as an owner present and voting at a meeting for purposes of a quorum only as to those items appearing on the ballot. (§209.00593 (b)).
- If the owner who submitted an absentee ballot attends a meeting to vote, his absentee ballot may not be counted. (§209.00593 (b)).
- The absentee ballot may not be counted if at the meeting the vote is upon language that is not exactly the same as that appearing on the ballot.
- Solicitation for absentee ballots must include:
  - an absentee ballot that contains each proposed action and provides an opportunity to vote for or against each proposed action
  - instructions for delivery of the completed absentee ballot, including the delivery location; and
  - 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."

### Electronic Ballot

- An electronic ballot may be given by:
  - E-mail;
  - Facsimile; or
  - Posting on a website.
- Any method of electronic vote must identify the property owner submitting the ballot and allow the property owner to receive a receipt and copy of the ballot submitted. (§ 209.00593 (d)).
- An electronic ballot may be counted as an owner present and voting at a meeting for purposes of a quorum only as to those items appearing on the ballot. (§209.00593 (b)).
- If the owner who submitted an electronic ballot attends a meeting to vote, his electronic ballot may not be counted. (§209.00593 (b)).
- The electronic ballot may not be counted if at the meeting the vote is upon language that is not exactly the same as that appearing on the ballot.

### Posting on website

- May be used as the sole method of voting or to substitute for a property owner's vote at a meeting of the POA.
- The POA may set up a website upon which the ballots are posted and through which owners may cast their electronic ballots, or save/print the ballot and submit them by other acceptable means.
- If a POA posts ballots on a website, it must send notice to the owners with instructions on obtaining access to the posted ballot.  
§ 209.00593.

### E-mail

- May be used as the sole method of voting or to substitute for a property owner's vote at a meeting of the POA.
- If the POA intends to use email as the sole method for voting:
  - The POA should email a ballot with options to vote for or against each of the proposed modifications to all of the owners.
  - The owners should send responsive emails that clearly identify themselves, and that include a copy of the ballot with their votes for each item clearly identified
  - The POA should also provide each owner who submits an email ballot an email confirmation confirming the receipt of the owner's vote, and offer to provide the owner with a copy of the ballot he submitted.  
§ 209.00593.

### Facsimile

- May be used as the sole method of voting or to substitute for a property owner's vote at a meeting of the POA.
- The POA should provide a copy of the ballot to the owners and a facsimile number at which owners may submit their votes.
- Owners should fax a copy of their votes to the designated number and keep the fax confirmation and original copy of their ballot submitted.  
§ 209.090593

**TEXAS PROPERTY CODE CHAPTER 209**  
*Modifying Existing Restrictions in Certain Subdivisions*

**CHAPTER 209 DEFINITIONS**

**Assessment:** 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:** the governing body of a property owners' association.

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

**Dedicatory instrument:** 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.

\*\*\*H.B. 1821 (effective 1/1/2012) Changing § 202.001 Definition:

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

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

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

**Owner:** 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 ("POA"):** an incorporated or unincorporated association that:

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

**Regular assessment:** 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:** a subdivision, planned unit development, townhouse regime, or similar planned development in which all land has been divided into two or more parts and is subject to restrictions that:

- (A) limit a majority of the land subject to the dedicatory instruments, excluding streets, common areas, and public areas, to residential use for single-family homes, townhomes, or duplexes only;
- (B) are recorded in the real property records of the county in which the residential subdivision is located; and
- (C) require membership in a property owners' association that has authority to impose regular or special assessments on the property in the subdivision.

**Restrictions:** 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:** any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative.

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

- (A) defraying, in whole or in part, the cost, whether incurred before or after the assessment, of any construction or reconstruction, unexpected repair, or replacement of a capital improvement in common areas owned by the property owners' association, including the necessary fixtures and personal property related to the common areas;
- (B) maintenance and improvement of common areas owned by the property owners' association; or
- (C) other purposes of the property owners' association as stated in its articles of incorporation or the dedicatory instrument for the residential subdivision.