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COMMUNITY MANAGER'S HANDBOOK

FOR

THE 2015 LEGISLATIVE CHANGES

A GUIDE FOR APPLYING THE NEW LAWS TO YOUR MANAGEMENT PRACTICE

DISCLAIMER

This Community Manager's Handbook for the 2015 Legislative Changes is made available by Holt & Young, P.C. for informational purposes only and does not constitute legal advice. It is intended to guide community association managers through the steps necessary to conform their existing management practices to the new legal requirements without being overwhelmed. It is not a comprehensive review of the new laws and for brevity reasons not all new laws are discussed in this Handbook. You should not act upon information included in this Handbook without first seeking advice from legal counsel for your specific matter. The information contained in this Handbook does not form or constitute an attorney-client relationship.

INTRODUCTION

Many of the new laws simply clarified and complimented the laws that were enacted in the 2011 and 2013 legislative sessions; they do not require substantial change to the managers existing practice. There are actually very few major changes that will substantially effect the managers existing practice. Some changes will not be discussed in this Handbook because they are generally not applicable to most management practices.

The text of the new statutes is contained below. These statutes go into effect on September 1, 2015, and do not have any retroactive effect. Therefore, they only apply to your management practice moving forward.

This Handbook has categorized the laws to help the manager determine which ones will have the most impact on their existing management practice. The first part of this Handbook contains the laws that will have a substantial impact on the existing management practice. The second part discusses the laws that have minimal to no impact on the existing management practice. The third part provides a brief description of laws affecting condominiums and developers.

The following labels are also applied to laws in this Handbook:

"NEW" indicates a completely new law and means the manager will have to integrate new procedures or policies into their existing management practice.

"CLARIFICATION" indicates a small tweak or change to existing law. Typically, these will not result in substantial changes to your existing management practice. Many of these changes can be implemented by the Association's attorney once they receive the account for collection.

"POLICY" means that the Association may wish to consider amending an existing policy or recording a new policy based on the new law.

Laws labeled **"NEW"** should be the primary focus of managers because they will impact existing management practices more than the other laws.

CHANGES THAT HAVE SUBSTANTIAL IMPACT ON EXISTING MANAGEMENT PRACTICES

1. TELEPHONIC AND ELECTRONIC BOARD MEETINGS

2. BOARD ACTION OUTSIDE OF A BOARD MEETING

3. ACTIONS THAT REQUIRE NOTICE TO MEMBERS

4. SOLICITATION OF CANDIDATES FOR ELECTION

5. MEMBER VOTING OUTSIDE OF A MEETING

1. *NEW* TELEPHONIC AND ELECTRONIC BOARD MEETINGS

§ 209.0051. Open Board Meetings.

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

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

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

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

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

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

The Bottom Line: Owners must be notified of telephonic or electronic meetings held by the Board and the notice of the meeting must instruct the Owner how they can access the telephonic or electronic meeting and listen in.

Discussion: Before this change, boards that met by telephonic and electronic communications did not have to afford owners an opportunity to listen in on the meeting. This statute requires that owners essentially be able to "attend" the telephonic or electronic meeting. The notice requirements for regular board meetings also apply to telephonic and electronic meetings. The Owners are still not allowed to listen to executive session items.

Changes to Management Practice: SUBSTANTIAL. The biggest challenge is that you have to provide a method to allow owners to join in on the call to listen. This will necessitate using a conference call service capable of providing enough lines to accommodate all owners that wish to call in and listen. If you anticipate having more owners wanting to access the call than available lines, consider an in person meeting instead. A webcast accessible to all owners is another option if directors want to meet in person but without members being physically present. This statute also means that if even just one director is calling into a meeting, with the rest of the directors being present in person, the owners must have the ability to use the same method to call and listen to the meeting as the director that is calling in.

2. *NEW* BOARD ACTION OUTSIDE OF A BOARD MEETING

§209.0051. Open Board Meetings.

(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 Bottom Line: Unanimous written consent is no longer required for written consent votes (including email). The written (email) proposal need only be approved by a majority of the board. Each director simply has to have a reasonable opportunity to vote and express their opinion.

Discussion: Before this change, actions taking in writing without a meeting, including email, had to be unanimous. Boards now can take action (vote) over email without notice to the owners. To vote on approving a payment plan, approving a contract, and many other items, an email or other written vote can be taken. Owners do not have to receive notice of these votes, but you must still orally summarize actions taken in the minutes of the next regular or special board meeting, including an explanation of any known actual or estimated expenditures that were approved.

Changes to Management Practice: SUBSTANTIAL. If you need a board decision on an issue that is not one of the 15 items (discussed in next section) that require notice, send an email to all the directors where every director can express their opinion and vote (everyone should hit "reply all"). If you get a majority of the Board to approve the proposal, and every director has had an opportunity to vote and express their opinion, then it passes. This makes it easier to take action on day to day decisions.

This statute contemplates the use of telephone votes; however, seeking a telephone vote in accordance with this statute very likely constitutes having a telephonic meeting, which requires notice to the owners. As a result, opt to use email to take action, rather than a telephone call. If a phone call is necessary, then notice a meeting and treat it like a telephonic board meeting or discuss with the Association's attorney.

POLICY The Association may wish to adopt a policy to incorporate these changes. An example of a sample policy for email voting can be found in Exhibit "A" to this Handbook. If you require a policy for telephonic voting, contact the Association's attorney to prepare such a policy.

3. *NEW* ACTIONS THAT REQUIRE NOTICE TO MEMBERS

§209.0051. Open Board Meetings.

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 that increases the budget by more than 10 percent,
12) The sale or purchase of real property,
13) The filling of a vacancy on the board,
14) The construction of capital improvements other than the repair, replacement, or enhancement of existing capital improvements, or
15) The election of an officer.

The Bottom Line: A board may not consider or vote on 15 different items unless done in an open meeting for which members have been provided notice. This statute adds 7 additional items to the list of 8 that was created in the 2011 legislative session. The 15 items are as follows (the new items are in bold):

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 to an annual budget that increases the budget by more than 10 percent,**
12) **The sale or purchase of real property,**
13) **The filling of a vacancy on the board,**
14) **The construction of capital improvements other than the repair, replacement, or enhancement of existing capital improvements,**
15) **The election of an officer.**

Discussion: This adds 7 more items that a board cannot take action on without holding an open board meeting and noticing the owners. There are no exceptions to the requirement that you hold a meeting and provide notice to the owners before considering or voting on the 15 items listed above.

Changes to Management Practice: SUBSTANTIAL. Managers need to learn this list of items and keep it handy. If one of these 15 items is going to be considered or voted on by the board, then it has to be at an open meeting with notice provided to the members. These items cannot be approved by written consent or a telephone call.

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4. *NEW* SOLICITATION OF CANDIDATES FOR ELECTION

§ 209.00593. Election of Board Members.

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

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

(1) mailed to each owner; or

(2) provided by:

(A) posting the notice in a conspicuous manner reasonably designed to provide notice to association members:

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

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

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

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

The Bottom Line: Associations must solicit candidates for board elections at least 10 days before it disseminates ballots to the members. Each eligible candidate that makes a request to be a candidate must be placed on the absentee ballot and/or in person ballot for the election.

Discussion: Before this change there was no requirement that Associations let owners know when and how they could run for service on their Board. Now, the statute gives specific instructions on how Associations must solicit candidates. This law only applies to Associations composed of more than 100 lots.

Changes to Management Practice: SUBSTANTIAL. An Association comprised of more than 100 lots must provide notice to the members soliciting candidates to run for the board at least 10 days before it disseminates an absentee or in-person ballot. The following steps must be taken:

1) Provide notice to all members informing them how to notify the Association to have their name listed on the ballot (give a phone/fax number, email address or address). This notice may be provided by mail **-OR-** by posting in the same manner as is used for providing notice of board meetings.

2) Over the next 10 days, all eligible candidates that submit their name to the Association must be placed on the ballot.

3) After 10 days from the date notice was provided, the ballot containing all of the candidates' names can be disseminated to the membership on all ballots used in the election.

To avoid mailing the solicitation notice:

1) Post the notice in a conspicuous manner reasonably designed to provide notice to Association members on Association common area, or other conspicuously located privately owned property in the subdivision -OR-

   Post the notice on any internet website maintained by the Association or other internet media.

-AND-

2) Send the notice by email to each owner who has registered an email address with the Association.

POLICY The Association may wish to adopt an elections policy to incorporate these changes. An example of a sample policy can be found in Exhibit "B" to this handbook.

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5. *NEW* MEMBER VOTING OUTSIDE OF A MEETING

§209.0056. Notice of Election or Association Vote.

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

The Bottom Line: If an election or vote is going to take place outside of a meeting, the Association has to give each owner notice at least 20 days before voting concludes on the matter.

Discussion: Before this change, the statute did not make a distinction between votes taken at a meeting and votes taken without a meeting. This change recognizes that some items are voted on without a meeting. For example, a proposal for the members to amend the Declaration would sometimes be accomplished with a petition or by mailing ballots to each owner to return and no meeting would be held. This statute ensures that owners receive notice of all items to be voted on even if they are not voted on at a meeting.

Changes to Management Practice: MODERATE. Most owner votes are taken at meetings. But for those that are not, make sure you provide 20 days notice to owners of any ballots being sent out or a petition being circulated, so that all owners know about the vote and have an opportunity to participate. An Association cannot create a petition and simply avoid dissenting owners, all owners have to be provided notice and be given an opportunity to cast any vote required. While the statute may not cover all possible ways of adopting a Declaration amendment, the best practice is to give all owners notice of the proposal and vote. No particular type of notice is referenced in the statute, but notice by mail, on a website, or in the manner used for notification of board meetings will likely suffice.

CHANGES THAT HAVE MINIMAL IMPACT ON THE EXISTING MANAGEMENT PRACTICE

1. EXPEDITED FORECLOSURE FOR ALL
2. TYPE OF FORECLOSURE IS OPTIONAL
3. LIENHOLDER NOTICES
4. PAYMENT PLANS
5. BOARD QUALIFICATIONS
6. RESIDENCY OF DIRECTORS
7. SECRET BALLOTS AND ELECTIONS
8. RECOUNT PROCEDURES
9. REQUIRED METHODS OF VOTING
10. NOTICES BY VERIFIED MAIL
11. NOTICES BY AGREEMENT
12. NOTICE AND UNCURABLE VIOLATIONS
13. LEASING RESTRICTIONS
14. ELECTRIC GENERATORS

1. *NEW* EXPEDITED FORECLOSURE FOR ALL

§ 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.

The Bottom Line: All Associations with a right to foreclose may do so using the expedited foreclosure process and utilizing a trustee sale. The Association will not have to file a regular judicial lawsuit and go through a constable sale.

Discussion: Prior to this change, an Association had to file a regular lawsuit and utilize a constable sale to foreclose, unless the Declaration expressly granted the Association a "power of sale". This change grants a "power of sale" to all Associations that have a right to foreclose. Now, as long as the Association has a right to foreclose, it may use the expedited foreclosure process, which is faster, less expensive and more favorable to the Association.

Changes to Management Practice: NONE, the Association's attorney will be able to file applications for expedited foreclosure rather than regular lawsuits. If an Association's current practice is to file a judicial lawsuit, then the Association's attorney should advise on whether to switch to expedited foreclosure before making the change.

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2. *CLARIFICATION* TYPE OF FORECLOSURE IS OPTIONAL

§209.0092. Judicial Foreclosure Required.

(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 of 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).

The Bottom Line: Expedited Foreclosure and a Trustee Sale is not mandatory. An Association can still file a regular lawsuit and utilize a constable sale if it chooses to do so.

Discussion: At least one judge in Harris County believed that all Associations were required to go through the expedited process regardless of whether a power of sale existed. The Rules for the expedited foreclosure process already made the process optional. This change merely clarifies that the statute provides the Association a choice in this regard.

Changes to Management Practice: NONE. If the Association already uses the expedited foreclosure process nothing changes. If the Association uses regular lawsuits, it may now choose to use the expedited process.

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3. *CLARIFICATION* LIENHOLDER NOTICES

§ 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.

The Bottom Line: Lienholders that are subordinate to the Association's lien must be notified of the amount owed at least 60 days before an application for expedited foreclosure or a regular lawsuit is filed with the court.

Discussion: Subordinate lienholders were already entitled to this notice, but the statute provided that the notice was to be given prior to initiating the application for expedited foreclosure or judicial lawsuit. This change clarifies that "initiating" the foreclosure process or judicial lawsuit means actually filing the application or petition.

Changes to Management Practice: NONE. The Association's attorney should send the required notice early on in their collections process before foreclosure is looming.

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4. *NEW* PAYMENT PLANS

§209.0062. Alternative Payment Schedule for Certain Assessments.

(c) 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.

The Bottom Line: An Association may, but is not required to, offer a payment plan to an owner that lasts longer than 18 months. The Association may, but is not required to, give an owner a payment plan upon expiration of the 30 day "Chapter 209" notice sent to the owner. An owner is only entitled to 1 payment plan in a 12 month period.

Discussion: Before this change, an Association could not grant an owner a payment plan that lasted longer than 18 months. This created problems for owners with substantial delinquencies requiring longer payment plans. Now, an Association has the option of granting payment plans that last longer than 18 months. In addition, the law was previously unclear as to whether an owner was entitled to a payment plan at any point in the collection process. Now it is clear, that once the owner has received their 30 day "209 notice" and it has expired, the Association is not required to grant a payment plan. However, since payment plans are a valuable collection tool, Associations should still consider granting each owner at least one payment plan in most cases at all stages of the collection process, especially once the account is with the attorney for collections.

Changes to Management Practice: MINIMAL. Just keep in mind that an Association has the option of granting payment plans longer than 18 months. Also, owners are not entitled to a payment plan at all stages of the collection process and are only entitled to 1 payment plan over a 12 month period.

POLICY Changes to this law are significant and every Association should consider amending its existing payment plan policy, particularly if an Association wishes to grant payment plans lasting longer than 18 months. Contact the Association's attorney to assist in drafting any such amendment.

5. *NEW* RESIDENCY OF DIRECTORS

§ 209.00591. Board Membership.

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

The Bottom Line: Association Bylaws are now permitted to require that some, but not all, directors actually reside in the community. This provision does not apply during the development period.

Discussion: Before this change, no provision in a dedicatory instrument could prohibit a member from serving on the board. Now, Bylaws can require that one or more, but not all directors must be residents of the community. Most Association Bylaws do not require residency as a condition of board service. Bylaws can be properly amended to include this requirement, but Associations are not required to do so and unless it is a great concern, probably should not.

Changes to Management Practice: MINIMAL. Most Associations will not be affected. If an Association amends its bylaws to require that that directors be residents, then provisions will have to be made to allow non-resident members to run for at least one position on the board. Adopting such an amendment and taking advantage of this law will likely result in complicating the election procedures, an attorney will need to prepare any such amendment. Unless your board demands it, don't bother making this change.

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6. *NEW* BOARD QUALIFICATIONS

§ 209.00591. Board Membership.

(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.

The Bottom Line: A person who is convicted of a felony or a crime involving moral turpitude is automatically disqualified from service and cannot serve on the board… for 20 years from the date of conviction.

Discussion: Before this change, the convicted person could never serve on the board, now, if the conviction occurred more than 20 years ago, the person can serve.

Changes to Management Practice: NONE.

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7. *NEW* SECRET BALLOTS AND ELECTIONS

§ 209.0058. Ballots.

(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;

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

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

The Bottom Line: The Association may, but is not required to, adopt rules to allow voting by secret ballot. In addition, the Association must take measures to reasonably ensure:

(1) that no owner casts more votes than they are eligible to cast,

(2) that all votes that are cast are counted, and

(3) that each candidate for election to the board may appoint a person to observe the counting of the votes; the observer is not entitled to see the name of the person who cast any ballot and a disruptive observer may be removed.

Discussion: Before this change all member votes had to be cast via written and signed ballots. Now, the Association has the option of allowing owners to not sign their ballots so the ballots can be kept secret. Whether or not the ballots are secret, the statute requires that the Association make sure no one can cast more than the votes they are entitled to cast and must make sure that all ballots cast are counted. In addition, each candidate gets to appoint their own observer to watch the ballots being counted, they can't get close enough to see who cast the ballots though and they may be removed if they are disruptive.

Changes to Management Practice: MODERATE. An Association does not have to allow secret ballots, those are optional. An Association should continue to require written and signed ballots in order to avoid having to adopt and comply with additional rules. If the Association board insists on having secret ballots, then you should consult with the Association's attorney to adopt a policy establishing rules for secret ballots.

Most Managers have procedures in place to ensure that only one vote is cast per lot and that all votes are counted. These procedures include having numbered ballots, handing out ballots to owners as they sign in and crossing their address off of a list, and other methods. If an Association is unsure of which procedures to employ, it should consult with its attorney.

The biggest change with this statute is the ability of candidates to appoint a person to observe the counting of the votes. What these people are going to be observing is unknown, they are not entitled to see the name of the person who cast any ballot, so they cannot get too close to the counters, and they can be removed for being disruptive. If an election is anticipated to be hotly contested, then the Association should have a constable or other peace officer present to handle disruptive individuals.

POLICY If the Association wishes to use secret ballots, then rules must be adopted and recorded. Regardless, every Association should strongly consider adopting and recording a policy pertaining to the 3 items listed in the statute for which the Association has to take measures to reasonably ensure occur. Because methods may vary and due to the nature of this statute, consult with the Association's attorney to prepare these policies.

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8. *NEW* RECOUNT PROCEDURES

§209.0057. Recount of Votes.

(b) An 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 ballots and proxy ballots are mailed.

(b-1) The property owner's 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 the association records not later than the 20th day after the date the association receives the owner's demand for a recount.

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

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

(b-4) If the estimated costs under Subsection (b-1) are lesser or greater than the actual costs, the property owners' association must send a final invoice to the owner on or before the 30th business day after the 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.

(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.

The Bottom Line: The existing recount procedures have been added to, creating deadlines for certain items.

Discussion: Before this change the statute contained few timelines for the recount. Now the entire process has time constraints. The owner still must make the recount request in writing, via verified mail, on or before the 15th day following the election to be entitled to a recount.

Changes to Management Practice: MINIMAL. Recount requests are still uncommon; however, if you receive a timely request for a recount, simply follow the steps below and be mindful of the timeframes involved. Calendar the relevant dates and consult with the Association's attorney for additional guidance. Because of the initial time constraints and practical concerns, the Association should contact a qualified tabulator and obtain a quote immediately upon receiving a request for a recount.

1) Upon receipt of a recount request, the Association has 20 days to provide the requesting owner with an invoice for the estimated cost of the recount.

2) The owner has 30 days from the date the invoice is sent to pay for the recount.

3) If payment is not made, the request for a recount is considered withdrawn.

4) If payment is made, then the recount must be performed, completed and the results sent to the requesting owner within 30 days of receipt of payment.

5) After the recount, if the estimated cost is greater or lesser than the actual cost of the recount, the Association must send a final invoice to the owner. Otherwise, no final invoice is required.

6) If the final invoice is for less than the amount paid by the requesting owner, then the Association must send a refund along with the invoice.

7) If the final invoice is for more than the amount paid by the requesting owner, then the owner has 30 days to pay the Association.

8) If the owner does not pay the final invoice within 30 days, then the amount may be added to the owner's account as an assessment. However, the Association cannot foreclose its lien for amounts consisting only of these charges.

9) If the recount changes the result of the election, then the Association must refund the cost of the recount to the requesting owner within 30 days after the results of the recount have been provided.

9. *NEW* REQUIRED METHODS OF VOTING

§209.00592. Voting; Quorum.

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

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

The Bottom Line: An Association, at a minimum, has to provide owners with the ability to vote via absentee ballot or proxy. Associations do not have to provide all possible methods of voting as long as owners can vote via absentee ballot or proxy.

A nomination from the floor at an election does not constitute an amendment to the proposal to elect directors and so it does not affect the counting of absentee ballots.

Discussion: Before this change, this statute was not clear about which voting methods, if any, the Association was required to provide to owners; now it is clear that either absentee ballots or proxies are the only required voting methods.

Before this change, some people were unsure as to whether the nomination of a candidate from the floor constituted an amendment to the proposal which would make absentee ballots countable towards quorum only. Now, it is clear that a nomination from the floor does not amend or change the proposal and does not affect the counting of absentee ballot votes.

Changes to Management Practice: MINIMAL. Virtually all Associations already provide voting by proxy and many provide proxy and absentee ballots. As long as your Association is already providing one of these voting methods, you do not need to change anything in your management practice. However, keep in mind that under corporation law, the members are entitled to utilize proxies, whether the Association provides them or not. In addition, the governing documents may require the allowance of other methods of voting and if so, those other methods must also be provided.

10. *NEW* NOTICES BY VERIFIED MAIL

§209.002. Definitions.

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

The Bottom Line: Certified Mail/Return Receipt Requested is no longer required when sending notices to owners; it has been replaced with "Verified Mail" in almost all instances. Verified mail is any method of mailing for which evidence of mailing is provided. This means that the Association has to be able to prove the mail was sent. The USPS already provides verified mail and it is less expensive than certified mail/return receipt requested.

Discussion: Before this change, the Association was required to send certain notices to owners via certified mail/return receipt requested and wait to see if a signed "green card" would be returned to it, proving that the owner received the notice. Verified mail has now replaced certified mail/return receipt requested, making it clearer that the Association merely has to have mailed the notice to the owner, whether the owner signs for it or not is no longer an issue.

Changes to Management Practice: MINIMAL. Instead of sending notices via certified mail/return receipt requested, you may send notices via verified mail. However, you may continue to send notices via certified mail/return receipt requested as it meets the requirements of verified mail. Also, keep in mind that some governing documents may require that certified mail/return receipt requested be used to provide notices, if so, then certified mail/return receipt requested must still be used.

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11. *NEW* NOTICES BY AGREEMENT

§ 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.

<u>The Bottom Line:</u> The Association and the Owner can, but do not have to, agree on other methods of providing notices besides those required by statute.

<u>Discussion:</u> Before this change, the Association was required to send certain notices to owners via certified mail/return receipt requested (now typically "verified mail"). Additionally, there was required statutory notices for board meetings, member meetings, etc. Now, owners and Associations can agree to other notice requirements. For example, rather than provide a notice required by Chapter 209 via verified mail, the Owner and Association can agree that the notice will be provided via another method (like email, regular mail or carrier pigeon). If the Association's governing documents require a particular kind if notice, then the Association and Owner cannot agree to an alternative method.

<u>Changes to Management Practice:</u> MINIMAL. Since this is optional, the Association can continue to send notices as it always has done. There may be some situations, like an owner that lives out of the country, where this statute may be helpful. Regardless, there is no need to change anything here.

If the Association desires to utilize this statute for providing notices of board meetings and member meetings, then that is fine as long as the agreement is documented. However, it is not recommended to use alternative methods of notice for notice requirements related to enforcement and collection matters; owners may disagree on the scope of their permission regarding the alternative notice and courts will be wary to recognize alternative forms of notice in an application for foreclosure or a suit to enforce the deed restrictions. If an Association still feels a need to utilize alternative notices, the Association attorney should prepare or review the agreement being utilized.

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12. *NEW* NOTICE AND UNCURABLE VIOLATIONS

§ 209.006. Notice Required by 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, or levy a fine for a violation of the restrictions, bylaws or rules of the association, 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 Service Members 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 address as shown on the association's 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 and 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 the 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 uncurable 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 uncurable 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.

The Bottom Line: **The Association still has to send the notice required by 209.006, but now it does not have to allow a reasonable period of time for the owner to cure certain violations categorized as "uncurable" or posing a threat to public health or safety.**

The owner has 30 days from the date the notice was mailed to request a hearing before the board of directors.

Discussion: Before this change, the statute required that the Association give the owner a reasonable period of time to cure a violation. Now, the Association does not have to provide any period of time to cure "uncurable" violations or violations posing a threat to public health or safety. A violation is considered a "threat to public health or safety" if it could materially affect the physical health or safety of an ordinary resident.

An "uncurable" violation is one that has occurred but is not a continuous action or a condition capable of being remedied by affirmative action. Examples of an uncurable violation include: shooting fireworks, noise violations that are not ongoing, property damage including removal or alteration of landscaping, and holding a garage sale or other event prohibited by the Associations governing documents.

Before this change the owner had 30 days from receipt of the notice to request a hearing, now the owner has 30 days from the date the notice was mailed. This is the one notice that is still required to be sent via "certified mail", although there is no return receipt requirement.

Changes to Management Practice: MINIMAL. If the violation is "uncurable" or a "threat to public health or safety", then you do not have to give the owner a time period to cure the violation to avoid a fine or suspension. The fine or suspension can be applied immediately with no time to cure, telling the owner to immediately cease the violation.

The owner still has 30 days from the mailing of the notice to request a hearing, but the fine may be levied and/or the lawsuit filed immediately for violations that are uncurable or a threat to public health or safety. This statute gives the Association the authority to require that uncurable violations be cured immediately. You may continue to send notices as you have in the past and make no changes. Send these notices via certified mail (return receipt requested is not required) and you will satisfy the conflicting notice requirements set forth in the statute.

POLICY If the Association has an existing fine policy or deed restriction enforcement policy, then it may wish to consider amending the policy to incorporate these changes.

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13. *NEW* LEASING RESTRICTIONS

§ 209.016. Regulation of Residential Leases or Rental Agreements.

(a) In this section, "sensitive personal information" means an individual's:

(1) social security number;

(2) driver's license number;

(3) government-issued identification number; or

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

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

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

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

(A) a consumer or credit report; or

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

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

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

The Bottom Line: An Association cannot require an owner to submit a tenant for approval or require that the owner provide the Association with a rental application or a consumer credit report. If the Association requires a copy of the lease agreement, the agreement may be redacted to remove certain sensitive information.

Discussion: Before this change, some Association documents required an owner to provide the Association with various information about a potential tenant. Now, while an Associations documents may require a copy of a lease agreement, the Association is not entitled to the following information:

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

Changes to Management Practice: MINIMAL. While some HOA documents restrict certain aspects of leasing, most do not give the Association the right to approve or disapprove of a tenant. If one of your Associations currently requires the submittal of certain information about a tenant, the information is now limited to the lease agreement itself and that certain items can be redacted.

This statute does not prohibit restrictions on leasing and occupancy, however, just the discretion of the board to deny a tenant. The governing documents may still prohibit certain aspects of leasing, this statute primarily focuses on protecting the private information of the tenant.

14. *NEW* ELECTRIC GENERATORS

§ 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.

The Bottom Line: Owners are allowed to have standby electric generators at their property. The Association can regulate the location, appearance and other aspects of the generators.

Discussion: This law is similar to the laws allowing solar panels, rain barrels and flag poles. The Association can adopt and enforce regulations listed in the statute.

Changes to Management Practice: MINIMAL. If an Association receives an application for the installation of a generator, the primary concern will be the location and appearance of the generator. If what the owner proposes is objectionable, then review the regulations to see if the Association has the authority to deny the proposal. Seek advice from the Association's attorney regarding what the Association can and cannot regulate.

POLICY The Association may wish to adopt a policy for electric generators, as many have for solar panels, rain barrels, flags, and other items. An example of such a policy is contained in Exhibit "C".

CHANGES IMPACTING CONDOMINIUMS

The changes made to Condominium law are briefly summarized below, but they do not affect the daily management practice and so the manager should not be focused on these changes. The biggest change relates to Construction Defect Litigation, and that will involve attorneys. If your Condominium Association is considering pursuing a lawsuit involving construction defect, contact the Association attorney to discuss the specific procedures involved.

Section 207.001(2) and 207.002(b)

-These clarify that Chapter 207 of the Texas Property Code, primarily relating to resale certificates, does not apply to Condominiums. Chapter 82 to the Texas Property Code already has resale certificate requirements for Condominiums. This also clarifies that the requirement to have Association documents on any publically accessible website maintained by the Association does not apply to Condominiums.

Section 209.003(d)

-This statute clarifies that Chapter 209 of the Texas Property Code does not apply to Condominiums, something that most lawyers already accepted. This simply means that Chapter 209 notices and other Chapter 209 requirements do not apply to Condominiums. However, Condominiums do have their own required notices pursuant to Chapters 81 and 82 of the Texas Property Code.

Section 82.157(a)

-This statute adds to the required contents of a Condominium Resale Certificate, to require the disclosure of transfer-related fees and a balance sheet. A form for Condominium Resale Certificates can be found on the Texas Real Estate Commission website and you should be able to follow it to make sure you comply with the requirements of this statute.

Section 82.119

-This statute creates requirements and procedures related to construction defect litigation. The Association attorney will need to be involved in the process of pursuing construction defects in Condominiums to ensure compliance with these requirements and procedures.

CHANGES IMPACTING DEVELOPERS

The changes that impact developers are briefly summarized below, some corrections were made that are not changes and will not be noted. None of the changes affect the daily management practice and so the manager should not be focused on these changes. If a developer ask for guidance regarding the new laws that are applicable to developers or you have an owner complaining about a developer violating one of the new laws, contact the Association's attorney for advice.

Section 209.00591(c)

-There is a requirement that one-third of the board be elected by owners who are not the developer upon the sale of 75% of the lots to homeowners or under certain conditions within 10 years after the filing of the declaration. This statute was changed to clarify that the selling of lots to homebuilders is not considered the sale to a "homeowner" and is not included in the 75% threshold.

Section 202.002(4-1)

-Changes the definition of "Development Period" by changing an "and" to an "or", but does not seem to have any significant meaning.

Section 202.010(f)

-This change limits the right of the developers to prohibit solar panels during the development period. Now, the developers may only prohibit solar panels on developments with less than 51 units/lots, although this authority only applies during the development period.

COMMUNITY ASSOCIATION, INC.

POLICY REGARDING BOARD ACTIONS VIA EMAIL

STATE OF TEXAS §
§
COUNTY OF HARRIS §

WHEREAS, Community Association, Inc. (the “Association”) is the governing entity for ABC Community, an addition in Harris County, Texas, according to the maps or plats thereof recorded in the Map Records of Harris County, Texas, under Clerk’s File No. Y123456, along with any amendments, supplements or replats thereto (collectively referred to as the “Subdivision”); and

WHEREAS, Section 209.0051(h) of the Texas Property Code was recently amended to allow the Board of Directors to take action outside of a meeting including voting by electronic means without notice to the members; and

WHEREAS, pursuant to Section 209.0051(h), the Association desires to enact uniform procedures to ensure that for electronic voting, each Director has a reasonable opportunity to express his or her opinion to all other board members and to cast his or her vote; and

WHEREAS, this Dedicatory Instrument represents Restrictive Covenants as those terms are defined by Texas Property Code §202.001, et. seq, and the Association shall have and may exercise discretionary authority with respect to these Restrictive Covenants;

NOW, THEREFORE, in accordance with the foregoing and as evidenced by the Certification hereto, the Board of Directors hereby adopts the following:

1) Upon election to the Board of Directors, each Director shall register his or her current email address with the Association’s managing agent and/or the Association’s President, and shall update the email address as it changes.

2) When a matter arises for a vote of the Board of Directors, for which email voting is permitted, the managing agent and/or the Association’s President shall send an email to the registered email address of each Director. The email will state the proposal being voted on and request that each Director send a reply email to all Directors (for example, by utilizing the “Reply All” feature) casting his or her vote on the proposal.

3) Each Director shall be entitled to reply to all other Directors and express his or her opinion on the proposal before casting his or her vote.

4) A proposal shall be considered approved upon the following occurrences:

    a. All Directors reply to all other Directors with their vote and the majority of the Directors vote to approve the proposal, or

b. At least a majority of the Directors vote to approve the proposal, and any Directors that have not responded have had 72 hours to respond by voicing their opinion or casting their vote via email; unless the person sending the proposal has reason to believe the email was not delivered or received.

5) For clarification, the Association has determined that 72 hours provides each Director with a reasonable opportunity to express an opinion and cast a vote.

6) In the event a Director anticipates he or she will not have email access for a period of time lasting more than 72 hours, then that Director shall notify the Association's managing agent or the Association's President of the same. The Director shall indicate his or her desire to abstain from all votes for the duration of his or her absence or shall provide another method by which the Association may contact him (phone, fax, etc…) to obtain his or her vote and learn his or her opinion on the subject matter at hand.

CERTIFICATION

"I, the undersigned, being the President of the Community Association, Inc., hereby certify that the foregoing Resolution was adopted by at least a majority of the Community Association, Inc.'s Board of Directors."

By:_____, President

Print name:_____

ACKNOWLEDGEMENT

STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared _____, President of the Community Association, Inc., and known by me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that he is the person who signed the foregoing document in his representative capacity and that the statements contained therein are true and correct.

Given under my hand and seal of office this the _____ day of _____, 2015.

_____
Notary Public, State of Texas

COMMUNITY ASSOCIATION, INC. POLICY REGARDING

SOLICITATION OF CANDIDATES FOR ELECTION TO THE BOARD OF DIRECTORS

STATE OF TEXAS §
§
COUNTY OF HARRIS §

WHEREAS, Community Association, Inc. (the “Association”) is the governing entity for ABC Community, an addition in Harris County, Texas, according to the maps or plats thereof recorded in the Map Records of Harris County, Texas, under Clerk’s File No. Y123456, along with any amendments, supplements or replats thereto (collectively referred to as the “Subdivision”); and

WHEREAS, Section 209.00593 of the Texas Property Code was recently amended to include Subsections (a-1)-(a-3), requiring the Association to solicit its members to be candidates for election to the Board of Directors; and

WHEREAS, the Association desires to establish uniform procedures for complying with the statute; and

WHEREAS, this Dedicatory Instrument represents Restrictive Covenants as those terms are defined by Texas Property Code §202.001, et. seq, and the Association shall have and may exercise discretionary authority with respect to these Restrictive Covenants;

NOW, THEREFORE, pursuant to the foregoing and as evidenced by the Certification hereto, the Association hereby adopts the following:

1) At least 10 days before any absentee or other ballot is disseminated to the membership, the Association shall provide notice to each member (the “Notice”). The Notice shall state:

    a. that the member may submit his name to be placed on the ballot for election to the board of directors;

    b. the number of positions available on the board that will be filled at the upcoming election;

    c. the phone number, fax number, email address and/or physical address at which the member may notify the Association that he or she wishes to have his or her name placed on the ballot for the election; and

    d. any other information necessary to inform the members how to have their name listed on the ballot for the election.

2) During the 10 day notice period, any member that has submitted his or her name in the manner prescribed in the Notice shall be placed on the ballot for the upcoming election.

3) No absentee ballot, other ballot, or proxy that displays the names of candidates running for election may be provided to the membership until the 10 day notice period has expired.

4) Notice may be given by regular mail to each member at the address listed in the Association records, being the address of the Property within the Subdivision, or another address provided to the Association by the Owner in writing.

-OR-

a) Notice may be given by posting the notice in a conspicuous manner reasonably designed to provide notice to Association members on Association common area, or other conspicuously located privately owned property in the subdivision; OR on any internet website maintained by the Association or other internet media,

AND

(b) Sending the notice by email to each owner who has registered an email address with the Association.

5) A Member who does not timely submit his name in accordance with the notice is not entitled to have his or her name listed on the ballot; however, that member may still utilize proxies and, if required by the Association’s Governing Documents, nominate himself from the floor at any meeting held to accommodate the election.

CERTIFICATION

“I, the undersigned, being the President of the Community Association, Inc., hereby certify that the foregoing Resolution was adopted by at least a majority of the Community Association, Inc.’s Board of Directors.”

By:_____, President
Print name:_____

ACKNOWLEDGEMENT

STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared _____, President of the Community Association, Inc., and known by me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that he is the person who signed the foregoing document in his representative capacity and that the statements contained therein are true and correct.

Given under my hand and seal of office this the _____ day of _____, 2015.

_____
Notary Public, State of Texas

COMMUNITY ASSOCIATION, INC.

REGULATION OF STANDBY ELECTRIC GENERATORS

STATE OF TEXAS §
§
COUNTY OF HARRIS §

WHEREAS, Community Association, Inc. (the “Association”) is the governing entity for ABC Community, an addition in Harris County, Texas, according to the maps or plats thereof recorded in the Map Records of Harris County, Texas, under Clerk’s File No. Y123456, along with any amendments, supplements, replats thereto (collectively referred to as the “Subdivision”); and

WHEREAS, Chapter 202 of the Texas Property Code was recently amended to add Section 202.019, which requires the Association to allow standby electric generators and authorizes the Association to regulate such items; and

WHEREAS, the Board of Directors of the Association desires to regulate standby electric generators by establishing regulations and guidelines relating to such items in compliance with Chapter 202 of the Texas Property Code and pursuant to the authority granted to the Board of Directors by the provisions of the Declaration; and

WHEREAS, this Dedicatory Instrument consist of Restrictive Covenants as defined by Texas Property Code §202.001, et. seq, and the Association shall may exercise discretionary authority with respect to these Restrictive Covenants; and

WHEREAS, to the extent the regulations contained herein conflict with any previously existing Rules, Regulations or Architectural Guidelines of Community Association, Inc., the regulations contained herein control;

NOW, THEREFORE, pursuant to the foregoing and as evidenced by the Certification hereto, the Association hereby adopts the following regulations:

Standby Electric Generators (SEG) are permitted to the extent required by § 202.019 of the Texas Property Code, subject to the following regulations, which shall be reasonably applied and enforced:

1) **The owner shall first apply to and receive written approval from the Association prior to installation of any SEG permitted by 202.019 that will be located outside of the main residential structure on the Property, in the same manner as all other submissions for approval or improvements to property.**

2) **The SEG must be installed and maintained in compliance with manufacture’s specifications and applicable governmental health, safety, electrical and building codes.**

3) **All electrical, plumbing, and fuel line connections for the SEG shall be installed only by licensed contractors and all electrical connections must installed in accordance with applicable governmental health, safety, electrical and building codes.**

4) **All natural gas, diesel fuel, biodiesel fuel, or hydrogen fuel line connections for the SEG shall be installed in accordance with applicable governmental health, safety, electrical and building codes.**

5) **All liquid petroleum gas fuel line connections shall 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) **All nonintegral standby electric generator fuel tanks for the SEG shall be installed and maintained to comply with applicable municipal zoning ordinances and governmental health, safety, electrical, and building codes.**

7) **The SEG, its electrical and fuel lines shall all be maintained in good condition.**

8) **If a component of an SEG, including electrical or fuel lines, is deteriorated or unsafe then that component shall be repaired, replaced or removed as appropriate.**

9) **The SEG shall be screened in accordance with plans submitted to and approved by the Association, if it 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) **The SEG shall be periodically tested in accordance with the manufacturer recommendations.**

11) **The SEG shall not be used to generate all or substantially all of the electrical power to the 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) **The SEG shall be located in a location submitted to and approved by the Association.**

13) **The SEG shall not be located on property owned or maintained by the property owners association or owned in common by the property owners association.**

14) **The location required by the Association for a SEG may not increase the cost of installing the SEG by more than 10% or increase the cost of installing and connecting the electrical and fuel lines for the SEG by more than 20%.**

CERTIFICATION

“I, the undersigned, being the President of the Community Association, Inc., hereby certify that the foregoing Resolution was adopted by at least a majority of the Community Association, Inc.’s Board of Directors.”

By:_____, President

Print name:_____

ACKNOWLEDGEMENT

STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared _____, President of the Community Association, Inc., and known by me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that he is the person who signed the foregoing document in his representative capacity and that the statements contained therein are true and correct.

Given under my hand and seal of office this the _____ day of _____, 2015.

_____
Notary Public, State of Texas