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CONDOMINIUM ASSOCIATION LAWS

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PROPERTY CODE

TITLE 7. CONDOMINIUMS

CHAPTER 81. CONDOMINIUMS CREATED BEFORE ADOPTION OF UNIFORM CONDOMINIUM ACT

SUBCHAPTER A. PROVISIONS GENERALLY APPLICABLE TO CONDOMINIUMS

Sec. 81.001. SHORT TITLE. This chapter may be cited as the Condominium Act.
Acts 1983, 68th Leg., p. 3616, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.0011. APPLICABILITY.

(a) This chapter applies only to a condominium regime created before January 1, 1994. A condominium regime created on or after January 1, 1994, is governed by Chapter 82.

(b) A condominium regime created before January 1, 1994, to which this chapter applies is also governed by Chapter 82 as provided by Section 82.002.
Added by Acts 1993, 73rd Leg., ch. 244, Sec. 3, eff. Jan. 1, 1994.

Sec. 81.002. DEFINITIONS.

In this chapter:

(1) "Apartment" means an enclosed space, regardless of whether it is designed for residential or other use, that consists of one or more rooms in a building and that has a direct exit to a thoroughfare or to a common space that leads to a thoroughfare.

(2) "Building" includes each principal structure on or to be erected on real property dedicated in a declaration to a condominium regime.

(3) "Condominium" means a form of real property ownership that combines separate ownership of individual apartments or units with common ownership of other elements.

(4) "Council of owners" means all the apartment owners in a condominium project.

(5) "Declaration" means the instrument that establishes property under a condominium regime.

(6) "General common elements" means the property that is part of a condominium regime other than property that is part of or belongs to an apartment in the regime, including:

- (A) land on which the building is erected;
- (B) foundations, bearing walls and columns, roofs, halls, lobbies, stairways, and entrance, exit, and communication ways;
- (C) basements, flat roofs, yards, and gardens, except as otherwise provided;
- (D) premises for the lodging of janitors or persons in charge of the building, except as otherwise provided;

(E) compartments or installation of central services such as power, light, gas, water, refrigeration, central heat and air, reservoirs, water tanks and pumps, and swimming pools; and

(F) elevators and elevator shafts, garbage incinerators, and all other devices and installations generally existing for common use.

(7) "Limited common elements" means a portion of the common elements allocated by unanimous agreement of a council of owners for the use of one or more but less than all of the apartments, such as special corridors, stairways and elevators, sanitary services common to the apartments of a particular floor, and similar areas or facilities.

(8) "Master deed" means a deed that establishes property under a condominium regime.

(9) "Master lease" means a lease that establishes property under a condominium regime.

(10) "Project" means a plan to offer for sale or to sell real property consisting of four or more apartments, rooms, office spaces, or other units in an existing or proposed building as a condominium.

(11) "Property" means real property, whether leased or owned, the improvements on the property, and the incorporeal rights that are appurtenant to the property.

Acts 1983, 68th Leg., p. 3616, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.003. APPLICABILITY OF LOCAL ORDINANCES AND REGULATIONS.

(a) A planning or zoning commission of a county or municipality may adopt regulations governing condominium regimes that supplement this chapter.

(b) A local zoning ordinance must be construed to treat similar structures, lots, or parcels in a similar manner regardless of whether the property is a condominium or is leased.

Acts 1983, 68th Leg., p. 3617, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER B. CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS

Sec. 81.101. CREATION OF CONDOMINIUM. An owner or developer of an existing or a planned building establishes a condominium regime by recording a master deed, master lease, or declaration under Section 81.102.

Acts 1983, 68th Leg., p. 3618, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.102. CONTENTS OF DECLARATION, MASTER DEED, OR MASTER LEASE.

(a) A declaration, master deed, or master lease for a condominium must contain:

(1) the legal description of the real property dedicated to the condominium regime, depicted by a plat of the property that locates and identifies by letter each existing or proposed building;

(2) a general description of each apartment, including the square footage, location, number, and other information necessary for identification of the apartment, depicted by a plat of the floor of the building in which the apartment is located that identifies the building by letter and the floor and the apartment by number;

(3) a general description of each area not already described that is subject to individual ownership and exclusive control, such as a garage or carport, depicted by a plat that shows the area and appropriately identifies it by letter or number;

(4) a description of the general common elements that are not described under Subdivision 1;

(5) a description of the limited common elements;

(6) each apartment's fractional or percentage interest in the entire condominium regime;

(7) a provision that the declaration may only be amended at a meeting of the apartment owners at which the amendment is approved by the holders of at least 67 percent of the ownership interests in the condominium; and

(8) a provision that an amendment of the declaration may not alter or destroy a unit or a limited common element without the consent of the owners affected and the owners' first lien mortgagees.

(b) A declaration, master deed, or master lease for a condominium may contain any covenants or other matters the declarant considers appropriate.

Acts 1983, 68th Leg., p. 3618, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 9(b), eff. Oct. 2, 1984.

Sec. 81.103. PUBLIC RECORDS.

(a) Each county clerk shall maintain suitable records called "Condominium Records" in which the clerk shall record master deeds, master leases, and declarations for condominiums.

(b) A county clerk shall record plats and other instruments in a declaration without prior approval from any other authority.

(c) A document required or authorized by this chapter to be recorded must be recorded according to law in the real property records of the county in which the property to which the document relates is located.

Acts 1983, 68th Leg., p. 3618, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.104. APARTMENT OWNERSHIP.

(a) An owner of an apartment in a condominium regime owns it exclusively, and the owner may possess, convey, or encumber the apartment, or subject it to judicial acts, independently of the other apartments in the condominium regime.

(b) An individual title or interest in an apartment in a condominium regime is recordable.

(c) The entire interest in the condominium regime shall be divided among the apartments.

(d) A person may own an apartment in a condominium regime jointly or in common with others.

(e) A condominium association may not alter or destroy an apartment or a limited common element without the consent of all owners affected and the first lien mortgagees of all affected owners.

Acts 1983, 68th Leg., p. 3619, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 9(c), eff. Oct. 2, 1984.

Sec. 81.105. APARTMENT BOUNDARIES.

(a) The boundaries of an apartment in a condominium regime are the interior surfaces of the apartment's perimeter walls, floors, and ceilings, and the exterior surfaces of the apartment's balconies and terraces.

(b) Except for common elements, the portions of a building on the boundaries of an apartment in a condominium regime and the airspace within those boundaries are part of the apartment.

(c) In interpreting a legal instrument relating to an apartment or to an apartment that has been reconstructed substantially according to the original plans of the apartment, the physical boundaries of the apartment are conclusively presumed to be the proper boundaries of the apartment regardless of settling, rising, or lateral movement of the building containing the apartment and regardless of variances between boundaries shown on the plat of the building and the actual boundaries of the building.

Acts 1983, 68th Leg., p. 3619, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.106. APARTMENT DEEDS.

A deed to an apartment in a condominium regime must:

- (1) include by reference the plats in the declaration;
- (2) state the encumbrances against the apartment;
- (3) describe the apartment according to the plat; and
- (4) state the apartment's fractional or percentage interest in the

condominium regime.

Acts 1983, 68th Leg., p. 3620, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.107. INTERESTS IN COMMON ELEMENTS.

An owner of an apartment in a condominium regime shares ownership of the regime's common elements with the other apartment owners. An apartment owner may use the common elements according to their intended purposes, as expressed in the plat, declaration, or bylaws of the condominium regime, without interfering with the rights of the other apartment owners.

Acts 1983, 68th Leg., p. 3620, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.108. PARTITION OF COMMON ELEMENTS.

(a) The ownership of the general and the limited common elements of a condominium regime may not be judicially partitioned or divided while they are suitable for a condominium regime.

(b) A person may not initiate an action for partition of the limited or general common elements of a condominium regime unless the mortgages on the property are paid or the consent of the mortgagees is obtained.

(c) An agreement contrary to this section is void.

Acts 1983, 68th Leg., p. 3621, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.109. CONVEYANCE OF COMMON ELEMENTS.

An apartment in a condominium regime and the undivided interest of an apartment owner in the common elements of the regime that are attributable to the apartment may not be conveyed separately. If a conveyance of an apartment does not refer to the common elements, the undivided interest of the apartment owner in the general and the limited common elements of the regime attributable to the apartment is conveyed with the apartment.

Acts 1983, 68th Leg., p. 3622, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.110. TERMINATION OF CONDOMINIUM REGIME.

(a) By unanimous agreement, or if the declaration provides for termination by agreement of the owners, by agreement of the holders of at least 67 percent or a stated percentage in the declaration, whichever is greater, of the ownership interests in the condominium, the owners of a building in a condominium regime may terminate the regime and request the county clerk of the county in which the regime is located to merge the records of the estates that comprise the condominium regime, if any creditors in whose behalf encumbrances against the building are recorded agree to accept the undivided portions of the property owned by the debtors as security, provided no amendment may be made to a declaration to reduce the vote required for termination of the condominium regime.

(b) If a condominium regime is terminated, each apartment owner owns an undivided interest in the common property that corresponds to the undivided interest previously owned by the apartment owner in the common elements.

(c) Property that has been removed from a condominium regime may be dedicated to another condominium regime at any time.

Acts 1983, 68th Leg., p. 3621, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 157, Sec. 1, eff. May 25, 1989.

Sec. 81.111. AMENDMENT OF CONDOMINIUM DECLARATION.

After a condominium declaration is recorded with a county clerk, the declaration may not be amended except at a meeting of the apartment owners at which the amendment is approved by the holders of at least 67 percent of the ownership interests in the condominium.

Added by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 9(d), eff. Oct. 2, 1984.

Sec. 81.112. RESTRICTION RELATING TO CLUB MEMBERSHIP.

(a) A provision of a declaration, master deed, master lease, or other recorded contract that requires owners of apartments in a condominium regime to maintain a membership in a specified private club is not valid after the 10th anniversary of the date the provision is recorded or renewed unless renewed after the ninth anniversary of that date at a meeting of the apartment owners at which the renewal is approved by the holders of at least 67 percent of the ownership interests in the condominium and the text of the renewed provision is recorded in the real property records of each county in which the condominium is located.

(b) A provision described by this section may not be enacted or renewed as a bylaw by a council of owners.

Added by Acts 2003, 78th Leg., ch. 1101, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER C. CONDOMINIUM MANAGEMENT

Sec. 81.201. AUTHORITY OF COUNCIL OF OWNERS.

(a) The council of owners of a condominium regime may adopt and amend bylaws.

(b) A council of owners of a condominium regime may institute litigation on behalf of two or more apartment owners concerning a matter related to the common elements of two or more apartments. The council of owners may delegate its authority under this subsection by designating in the bylaws a person who may exercise the

authority. This subsection does not limit the right of an apartment owner to bring an action in the apartment owner's own behalf.

Acts 1983, 68th Leg., p. 3621, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.202. BYLAWS.

The bylaws of a condominium regime govern the administration of the buildings that comprise the regime.

Acts 1983, 68th Leg., p. 3621, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.203. VOTING MAJORITY.

For the purposes of this chapter, the apartment owners who own at least 51 percent of the interests in a condominium regime, as determined under the declaration, are a majority of the apartment owners.

Acts 1983, 68th Leg., p. 3621, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.204. MAINTENANCE OF CONDOMINIUM.

(a) An apartment owner in a condominium regime is responsible for the apartment owner's pro rata share of:

- (1) the expenses to administer the condominium regime and to maintain and repair the general common elements;
- (2) in proper cases, the expenses to administer the limited common elements of the buildings in the condominium regime; and
- (3) other expenses approved by the council of owners.

(b) An apartment owner in a condominium regime is not exempted from the obligation under this section to contribute toward the expenses of the condominium regime by waiving the use of the common elements or abandoning the apartment.

Acts 1983, 68th Leg., p. 3622, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.205. INSURANCE.

(a) By resolution of a majority of the council of owners or in the manner provided or required by the declaration or bylaws, the council of owners may acquire the insurance it deems appropriate for the protection of the buildings and the apartment owners.

(b) Insurance may be written in the name of the council of owners, or in the name of a person designated in the declaration or bylaws, as trustee for the apartment owners and their mortgagees. Each apartment owner and mortgagee of an apartment owner is a beneficiary of the policy, whether named as a beneficiary or not, in proportion to the interest of an apartment owner in the condominium regime as established by the declaration.

(c) The acquisition of insurance by the council of owners does not prejudice the right of an apartment owner in a condominium regime to obtain insurance for the apartment owner's own benefit.

Acts 1983, 68th Leg., p. 3622, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.206. DISPOSITION OF INSURANCE PROCEEDS.

(a) Except as provided by Subsection (b), if a building in a condominium regime is damaged by a casualty against which it is insured, the proceeds of the insurance policy shall be used to reconstruct the building. The council of owners or the bylaws of the condominium regime govern the conduct of the reconstruction.

(b) If more than two-thirds of a building in a condominium regime requires reconstruction because of a casualty against which it is insured, the council of owners may elect not to reconstruct the building. Unless the council of owners unanimously agrees otherwise, the insurance proceeds shall be paid to the individual apartment owners or their mortgagees, as their interest may appear, in proportion to the interest of an apartment owner in the condominium regime as established by the declaration. Acts 1983, 68th Leg., p. 3622, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.207. INSUFFICIENT INSURANCE.

(a) If under Section 81.206 a damaged building in a condominium regime must be reconstructed but insurance proceeds are insufficient to pay for the cost of reconstruction, the apartment owners directly affected by the damage shall pay the difference between the cost of reconstruction and the insurance proceeds, unless the bylaws provide otherwise. Each affected apartment owner shall contribute an amount for reconstruction that is proportionate to the interest of the apartment owner in the condominium regime.

(b) If one or more but less than a majority of the affected apartment owners refuse to make a payment required under this section, after a resolution by the majority of the affected apartment owners stating the circumstances of the case and the cost of the work, the majority may repair the damage at the expense of all apartment owners benefited by the reconstruction.

(c) By a unanimous resolution subsequent to the date of a casualty, the apartment owners in a condominium regime who are concerned with the application of this section may elect to modify its effects.

Acts 1983, 68th Leg., p. 3623, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.208. ASSESSMENTS DUE ON CONVEYANCE.

If an apartment owner conveys the apartment and assessments against the apartment are unpaid, the apartment owner shall pay the past due assessments out of the sale price of the apartment, or the purchaser shall pay the assessments, in preference to any other charges against the property except:

(1) assessments, liens, and charges in favor of this state or a political subdivision of this state for taxes on the apartment that are due and unpaid; or

(2) an obligation due under a validly recorded mortgage.

Acts 1983, 68th Leg., p. 3623, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.209. CONDOMINIUM RECORDS.

(a) The administrator or board of administration of a condominium regime or a person appointed by the bylaws of the regime shall keep a detailed written account of the receipts and expenditures related to the building and its administration that specifies the expenses incurred by the regime.

(b) The accounts and supporting vouchers of a condominium regime shall be made available to the apartment owners for examination on working days at convenient, established, and publicly announced hours.

(c) The books and records of a condominium regime must comply with good accounting procedures and must be audited at least once each year by an auditor who is not associated with the condominium regime.

Acts 1983, 68th Leg., p. 3625, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.210. LOANS AS ELIGIBLE INVESTMENTS.

(a) If a fiduciary or a bank, savings and loan association, trust company, life insurance company, or other lending institution is authorized to make real estate loans, a loan on an apartment in a condominium regime and the undivided interest in the common elements of the regime that is appurtenant to the apartment is an eligible investment for the fiduciary or lending institution.

(b) A lender may not consider the existence of a prior lien for taxes, assessments, or other similar charges that are not delinquent in determining whether a mortgage or deed of trust is a first lien on the security for a loan under this section.

(c) For the purposes of this section, an apartment in a condominium regime and the undivided interest in the common elements appurtenant to the apartment are a single unit independent of the other units in the regime.

(d) This section does not affect any otherwise applicable provision of law that limits mortgage investments based on a special fraction or percentage of the value of the mortgaged property.

Acts 1983, 68th Leg., p. 3625, ch. 576, Sec. 1, eff. Jan. 1, 1984.

PROPERTY CODE

TITLE 7. CONDOMINIUMS

CHAPTER 82. UNIFORM CONDOMINIUM ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 82.001. SHORT TITLE. This chapter may be cited as the Uniform Condominium Act.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.002. APPLICABILITY.

(a) This chapter applies to all commercial, industrial, residential, and other types of condominiums in this state for which the declaration is recorded on or after January 1, 1994. A condominium for which the declaration was recorded before January 1, 1994, may be governed exclusively under this chapter if either:

(1) the owners of units vote to amend the declaration, in accordance with the amendment process authorized by the declaration, to have this chapter apply and that amendment is filed for record in the condominium records in each county in which the condominium is located; or

(2) a declaration or amendment of declaration was recorded before January 1, 1994, and the declaration or amendment states that this chapter will apply in its entirety on January 1, 1994.

(b) An amendment to a declaration under Subsection (a)(1) that implements a vote of the unit owners to be governed by this chapter may not affect the rights of a declarant or impose duties on a declarant that are greater than or in addition to the declarant's duties immediately before the date of the vote or amendment.

(c) This section and the following sections apply to a condominium in this state for which the declaration was recorded before January 1, 1994: Sections 82.005, 82.006, 82.007, 82.053, 82.054, 82.102(a)(1)-(7) and (12)-(22), 82.108, 82.111, 82.113, 82.114, 82.116, 82.118, 82.157, and 82.161. The definitions prescribed by Section 82.003 apply

to a condominium in this state for which the declaration was recorded before January 1, 1994, to the extent the definitions do not conflict with the declaration. The sections listed in this subsection apply only with respect to events and circumstances occurring on or after January 1, 1994, and do not invalidate existing provisions of the declaration, bylaws, or plats or plans of a condominium for which the declaration was recorded before January 1, 1994.

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

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994. Amended by Acts 1997, 75th Leg., ch. 956, Sec. 1, eff. Jan. 1, 1998.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1323, Sec. 1, eff. September 1, 2009.

Sec. 82.003. DEFINITIONS.

(a) In this chapter:

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

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

(3) "Association" means the unit owners' association organized under Section 82.101.

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

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

(6) "Common expense liability" means the liability for common expenses allocated to each unit.

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

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

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

(10) "Declarant" means a person, or group of persons acting in concert, who:

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

(B) reserves or succeeds to any special declarant right.

(11) "Declaration" means a recorded instrument, however denominated, that creates a condominium, and any recorded amendment to that instrument.

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

(A) add real property to a condominium;

(B) create units, common elements, or limited common elements within a condominium;

(C) subdivide units or convert units into common elements; or

(D) withdraw real property from a condominium.

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

(14) "General common elements" means common elements that are not limited common elements.

(15) "Identifying number" means a symbol or address that identifies only one unit in a condominium.

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

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

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

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

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

(21) "Residential purposes" means recreational or dwelling purposes, or both.

(22) "Special declarant rights" means rights reserved for the benefit of a declarant to:

(A) complete improvements indicated on plats and plans filed with the declaration;

(B) exercise any development right;

(C) make the condominium part of a larger condominium or a planned community;

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

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

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

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

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

(b) Unless otherwise provided by the declaration or bylaws, a term defined by Subsection (a) has the same meaning if used in a declaration or bylaws.
Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.004. VARIATION BY AGREEMENT.

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

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.005. SEPARATE TITLES AND TAXATION.

(a) If there is a unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real property.

(b) If there is a unit owner other than a declarant, each unit must be separately taxed and assessed, and no separate tax or assessment may be rendered against common elements for which a declarant has not reserved development rights. Any portion of the common elements for which a declarant has reserved any development right must be separately taxed and assessed against the declarant, and the declarant alone is liable for payment of those taxes.

(c) If there is no unit owner other than a declarant, the real property constituting the condominium may be taxed and assessed in any manner provided by law.

(d) The laws relating to homestead exemptions from property taxes apply to condominium units, which are entitled to homestead exemptions in those cases in which the owner of a single family dwelling would qualify.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.006. APPLICABILITY OF LOCAL ORDINANCES, REGULATIONS, AND BUILDING CODES.

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

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.007. CONDEMNATION.

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

(b) Except as provided by Subsection (a), if part of a unit is acquired by condemnation, the award must compensate the unit owner for the reduction in value of the unit and its common element interest. On acquisition, the condemned unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified by the declaration, and the portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

(c) If part of the common elements is acquired by condemnation, the award must be paid to the association, as trustee for the unit owners, and to persons holding liens on the condemned property, as their interests may appear. The association shall divide any portion of the award not used for any restoration or repair of the remaining common elements among the unit owners in proportion to their respective common element interests before the taking, but the portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition, or in any manner the declaration provides.

(d) The court decree shall be recorded in each county in which any portion of the condominium is located.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.008. VENUE. Venue for an action to enforce a right or obligation arising under the declaration, bylaws, or rules of the association is in each county in which any part of the condominium is located.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

SUBCHAPTER B. CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS

Sec. 82.051. CREATION OF CONDOMINIUM.

(a) A condominium may be created under this chapter only by recording a declaration executed in the same manner as a deed by all persons who have an interest in the real property that will be conveyed to unit owners and by every lessor of a lease the expiration or termination of which will terminate the condominium or reduce its size. The declaration shall be recorded in each county in which any portion of the condominium is located.

(b) A declarant may not convey an interest in a unit until each holder of a mortgage on the unit immediately before conveyance has executed a consent to declaration, and the consent has been recorded, or is recorded concurrently with the conveyance, as part of the declaration or an amendment to the declaration.

(c) If a recorded declaration is not properly executed, that defect may be cured by a subsequent execution conforming to Subsection (a). After an execution defect is cured by authority of this subsection, the declaration is retroactively effective on the date it was first recorded.

(d) A county clerk shall, without prior approval from any other authority, record declarations and amendments to declarations in the real property records and record condominium plats or plans in the real property records or in books maintained for that purpose. If a county clerk maintains a book for the condominium plat records, the book shall be the same size and type as the book for recording subdivision plats.

(e) This chapter does not affect or diminish the rights of municipalities and counties to approve plats of subdivisions and enforce building codes as may be authorized or required by law.

(f) A person may not file for record or have recorded in the county clerk's office a plat, replat, or amended plat or replat of a condominium unless the plat, replat, or amended plat or replat has attached to it an original tax certificate from each taxing unit with jurisdiction of the real property indicating that no delinquent ad valorem taxes are owed on the real property. If the plat, replat, or amended plat or replat is filed after September 1 of a year, the plat, replat, or amended plat or replat must also have attached to it a tax receipt issued by the collector for each taxing unit with jurisdiction of the property indicating that the taxes imposed by the taxing unit for the current year have been paid or, if the taxes for the current year have not been calculated, a statement from the collector for the taxing unit indicating that the taxes to be imposed by that taxing unit for the current year have not been calculated. If the tax certificate for a taxing unit does not cover the preceding year, the plat, replat, or amended plat or replat must also have attached to it a tax receipt issued by the collector for the taxing unit indicating that the taxes imposed by the taxing unit for the preceding year have been paid. This subsection does not apply if a taxing unit acquired the condominium for public use through eminent domain proceedings or voluntary sale.

(g) This chapter does not permit development of a subdivision golf course, as defined by Section 212.0155(b), Local Government Code, without a plat if the plat is

otherwise required by applicable law. A municipality may require as a condition to the development of a previously platted or unplatted subdivision golf course that the subdivision golf course be platted or replatted.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 289, Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1092, Sec. 2, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87, Sec. 27.001(77), eff. September 1, 2009.

Sec. 82.052. UNIT BOUNDARIES.

Except as otherwise provided by the declaration or plat:

(1) if walls, floors, or ceilings are designated as boundaries of a unit, then all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting part of the finished surfaces are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements;

(2) if any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture is partially within and partially outside the designated boundaries of a unit, then the portion serving only that unit is a limited common element allocated solely to that unit, and the portion serving more than one unit or the common elements is a part of the general common elements;

(3) subject to Subdivision (2), the spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit; and

(4) shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.053. CONSTRUCTION AND VALIDITY OF DECLARATION AND BYLAWS.

(a) The provisions of the declaration and bylaws are severable.

(b) The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws, or rules of the association.

(c) If there is a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this chapter.

(d) Title to a unit and common elements is not made unmarketable or otherwise affected by a provision of unrecorded bylaws or by reason of an insubstantial failure of the declaration to comply with this chapter. Whether a substantial failure impairs marketability is not affected by this chapter.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.054. DESCRIPTION OF UNITS.

A description of a unit is a sufficient legal description of the unit and all rights, obligations, and interests appurtenant to the unit that were created by the declaration or bylaws if the description contains:

(1) the name of the condominium;

(2) the recording data for the declaration, including any amendments, plats, and plans;

(3) the county in which the condominium is located; and

(4) the identifying number of the unit.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.055. CONTENTS OF DECLARATION FOR ALL CONDOMINIUMS.

The declaration for a condominium must contain:

(1) the name of the condominium, which must include the word "condominium" or be followed by the words "a condominium" or a phrase that includes the word "condominium," and the name of the association;

(2) the name of each county in which any part of the condominium is located;

(3) a legally sufficient description of the real property included in the condominium;

(4) a description of the boundaries of each unit created by the declaration, including the unit's identifying number;

(5) a statement of the maximum number of units that the declarant reserves the right to create;

(6) a description of the limited common elements other than those listed in Sections 82.052(2) and (4);

(7) a description of any real property, except real property subject to development rights, that may be allocated subsequently as limited common elements, together with a statement that the property may be so allocated;

(8) an allocation to each unit of its allocated interests;

(9) any restrictions on use, occupancy, or alienation of the units;

(10) a description of and the recording data for recorded easements and licenses appurtenant to or included in the condominium or to which any portion of the condominium is or may become subject by reservation in the declaration;

(11) the method of amending the declaration;

(12) a plat or plan or the recording data of a plat or plan that has been recorded in the real property or condominium plat records;

(13) a statement of the association's obligation under Section 82.111(i) to rebuild or repair any part of the condominium after a casualty or any other disposition of the proceeds of a casualty insurance policy;

(14) a description of any development rights and other special declarant rights reserved by the declarant, together with a legally sufficient description of the real property to which each of those rights applies, and a time limit within which each of those rights must be exercised;

(15) if any development right may be exercised with respect to different parcels of real property at different times, a statement to that effect, together with:

(A) either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right, or a statement that no assurances are made in those regards; and

(B) a statement as to whether, if any development right is exercised in any portion of the real property subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real property;

(16) all matters required by this chapter to be stated in the declaration;
and

(17) any other matters the declarant considers appropriate.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.056. LEASEHOLD CONDOMINIUMS.

(a) Any lease the expiration or termination of which may terminate the condominium or reduce its size must be recorded. The lessor shall sign the declaration, and the declaration must state:

- (1) the recording data for the lease;
- (2) the date on which the lease is scheduled to expire;
- (3) a legally sufficient description of the real property subject to the lease;
- (4) any right of the unit owners to redeem the reversion and the manner in

which the unit owners may exercise that right, or a statement that the unit owners do not have that right;

(5) any right of the unit owners to remove improvements within a reasonable time after the expiration or termination of the lease, or a statement that the unit owners do not have that right; and

(6) any right of the unit owners to renew the lease and the conditions of renewal, or a statement that the unit owners do not have that right.

(b) After the declaration for a leasehold condominium is recorded, neither the lessor nor the lessor's successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of the unit owner's share of the rent and otherwise complies with all covenants that, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest is not affected by failure of any other person to pay rent or fulfill any other covenant.

(c) Acquisition of the leasehold interest of a unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired.

(d) If the expiration or termination of a lease decreases the number of units in a condominium, the allocated interests shall be reallocated as though those units had been taken by condemnation unless otherwise provided by the declaration. Reallocation shall be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.057. ALLOCATION OF COMMON ELEMENT INTERESTS, VOTES, AND COMMON EXPENSE LIABILITIES.

(a) The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit and state the formulas used to establish those allocations. These allocations may not discriminate in favor of units owned by a declarant.

(b) If units may be added to or withdrawn from the condominium, the declaration must state the formulas to be used to reallocate the allocated interests among all units included in the condominium after the addition or withdrawal.

(c) The declaration may provide:

(1) that different allocations of votes must be made to the units on particular matters specified in the declaration; and

(2) for class voting on specified issues affecting the class if necessary to protect valid interests of the class.

(d) A declarant may not use cumulative or class voting to evade any limitation imposed on declarants by this chapter. Units may not constitute a class because the units are owned by a declarant.

(e) Except for minor variations due to rounding, the sums of the undivided interests in the common elements and of the common expense liabilities allocated at any time to all the units shall each equal one if stated as fractions or 100 percent if stated as percentages. If a discrepancy exists between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

(f) The common elements are not subject to partition. Any purported conveyance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements without the unit to which that interest is allocated is void.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.058. LIMITED COMMON ELEMENTS.

(a) The limited common elements and the provisions of the declaration relating to the right to use the limited common elements may not be altered without the consent of each affected unit owner and the owner's first lien mortgagee.

(b) Except as otherwise provided by the declaration, a limited common element may be reallocated by an amendment to the declaration, executed by the unit owners between or among whose units the reallocation is made. The persons executing the amendment shall deliver it to the association, which shall record it at the expense of the reallocating unit owners.

(c) A common element not previously allocated as a limited common element may not be allocated except pursuant to the declaration made in accordance with Section 82.055(7). The allocation shall be made by amendment to the declaration.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.059. PLATS AND PLANS.

(a) Plats and plans are a part of the declaration and may be recorded as a part of the declaration or separately. Each plat or plan must be legible and contain a certification that the plat or plan contains all information required by this section.

(b) Each plat must show:

(1) the name and a survey or general schematic map of the entire condominium;

(2) the location and dimensions of all real property not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing improvements within that real property;

(3) a legally sufficient description of any real property subject to development rights, labeled to identify the rights applicable to each parcel;

(4) the extent of any encroachments by or on any portion of the condominium;

(5) to the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the condominium, and the location of any underground utility line that is actually known by the declarant at the time of filing the declaration to have been constructed outside a recorded easement;

(6) the location and dimensions of any vertical unit boundaries not shown or projected on recorded plans and the unit's identifying number;

(7) the location, with reference to established data, of any horizontal unit boundaries not shown or projected on recorded plans and the unit's identifying number;

(8) a legally sufficient description of any real property in which the unit owners will own only an estate for years, labeled as "leasehold real property";

(9) the distance between noncontiguous parcels of real property constituting the condominium;

(10) the location and dimensions of limited common elements, other than those described by Sections 82.052(2) and (4);

(11) in the case of real property not subject to development rights, all other matters required by law on land surveys; and

(12) the distance and bearings locating each building from all other buildings and from at least one boundary line of the real property constituting the condominium.

(c) A plat may also show the intended location and dimensions of a contemplated improvement to be constructed anywhere within the condominium, which must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT."

(d) To the extent not shown on the plats, plans must show:

(1) the location and dimensions of the vertical boundaries of each unit, and the unit's identifying number;

(2) the horizontal unit boundaries, with reference to established data, and the unit's identifying number; and

(3) any units, appropriately identified, in which the declarant has reserved the right to create additional units or common elements.

(e) Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside a building have the same elevation as the horizontal boundaries of the inside part and need not be depicted on the plats and plans. Interior walls and partitions within a unit need not be included in the plats or plans.

(f) On exercising any development right, the declarant shall record either new plats and plans necessary to conform to the requirements of this section or new certifications of plats and plans previously recorded if those plats and plans otherwise conform to the requirements of this section.

(g) An independent licensed surveyor or engineer shall certify at least one plat, whether contained in one or more pages, showing all perimeter land boundaries of the condominium, except for additional real property, and showing the locations on the ground of all buildings labeled "MUST BE BUILT" in relation to land boundaries. Certification of any other plat or plan required by this chapter shall be made by an independent licensed architect, surveyor, or engineer.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.060. EXERCISE OF DEVELOPMENT RIGHT.

(a) To exercise a development right, the declarant must prepare, execute, and record an amendment to the declaration and record new plats and plans for that real property. The declarant is the unit owner of any units created. The amendment to the declaration must assign an identifying number to each new unit created and, except for subdivision or conversion of units described by Subsection (b), reallocate the allocated interest among all units. The amendment must describe any limited common elements created, designating the unit to which each is allocated.

(b) Development rights may be reserved within any real property added to the condominium if the amendment adding the real property includes the information required by Section 82.055 or 82.056, as appropriate, and the plats and plans include the information required by Section 82.059(b). This provision does not extend the time limit on the exercise of development rights imposed by the declaration. Real property to be added is not part of a condominium or subject to a declaration until the declaration is amended to make the additional real property part of the condominium.

(c) Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements, or both:

(1) if the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the other units as if the unit had been taken by condemnation; and

(2) if the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.

(d) If the declaration provides that all or a portion of the real property is subject to the development right of withdrawal:

(1) if all the real property is subject to withdrawal, and the declaration does not describe separate portions of real property subject to that right, none of the real property may be withdrawn after a unit has been conveyed to a purchaser; and

(2) if a portion or portions are subject to withdrawal, no portion may be withdrawn after a unit in that portion has been conveyed to a purchaser.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.061. ALTERATIONS OF UNITS.

(a) Subject to the provisions of the declaration and other provisions of law, a unit owner:

(1) may make improvements or alterations to the owner's unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium;

(2) may not change the appearance of the common elements or the exterior appearance of a unit or any other portion of the condominium without prior written permission of the association; and

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

(b) Removal of partitions or creation of apertures under Subsection (a)(3) is not an alteration of boundaries.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.062. RELOCATION OF BOUNDARIES BETWEEN ADJOINING UNITS.

Subject to the declaration, the boundaries between adjoining units may be relocated by an amendment to the declaration on written application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the

proposed reallocations. Unless the board determines not later than the 30th day after the date the application is received that the reallocation is unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocation, is executed by the applying unit owners, and contains words of conveyance between them. At the expense of the applying unit owners, the association shall prepare and record the amendment and plats or plans necessary to show the altered boundaries between adjoining units, and the units' dimensions and identifying numbers.
Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.063. SUBDIVISION OF UNITS.

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

(b) The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit.
Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.064. EASEMENT FOR ENCROACHMENTS.

To the extent that a unit or common element encroaches on another unit or common element, a valid easement for the encroachment exists. The easement does not relieve a unit owner of liability in case of the owner's wilful misconduct nor relieve a declarant or any other person of liability for failure to adhere to the plats and plans.
Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.065. USE FOR SALES PURPOSES.

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

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.066. EASEMENT RIGHTS. Subject to the declaration, a declarant has an easement through the common elements as may be reasonably necessary for discharging the declarant's obligations or exercising special declarant rights whether arising under this chapter or reserved by the declaration.
Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.067. AMENDMENT OF DECLARATION.

(a) Except as provided by Subsection (b), a declaration, including the plats and plans, may be amended only by vote or agreement of unit owners to which at least 67 percent of the votes in the association are allocated, or any larger majority the declaration specifies. A declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use. An amendment to a declaration may be adopted:

- (1) by written ballot that states the exact wording or substance of the amendment and that specifies the date by which a ballot must be received to be counted;
- (2) at a meeting of the members of the association after written notice of the meeting has been delivered to an owner of each unit stating that a purpose of the meeting is to consider an amendment to the declaration; or
- (3) by any method permitted by the declaration.

(b) The amendment procedures of this section do not apply to amendments that may be executed by:

- (1) a declarant under Section 82.051(c), 82.059(f), or 82.060 or Subsection (f);
- (2) the association under Section 82.007, 82.056(d), 82.058(c), 82.062, or 82.063 or Subsection (f); or
- (3) certain unit owners under Section 82.058(b), 82.062, 82.063(b), or 82.068(b).

(c) An action to challenge the validity of an amendment adopted by the association under this section must be brought before the first anniversary of the date the amendment is recorded.

(d) To be effective, an amendment to the declaration must be recorded in each county in which any portion of the condominium is located.

(e) Except as permitted or required by this chapter, an amendment may not create or increase special declarant rights, increase the number of units, change the boundaries of a unit, alter or destroy a unit or limited common element, change a unit's allocated interest, or change the use restrictions on a unit unless the amendment is approved by 100 percent of the votes in the association. Except as agreed to by the declarant, an amendment may not increase or otherwise modify the obligations imposed by a declaration on a declarant, or reduce or otherwise modify the rights granted by a declaration to a declarant, including special declarant rights.

(f) If permitted by the declaration, the board or the declarant, if the declarant owns a unit that has never been occupied, may without a vote of the unit owners or approval of the association amend the declaration in any manner necessary to meet the requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the Veterans Administration.

(g) Amendments to the declaration required by this chapter to be recorded by the association must be prepared, executed, recorded, and certified by an officer of the

association designated for that purpose or, in the absence of designation, by the president of the association.

(h) An association may amend the declaration to authorize the board:

(1) to bring an action to evict a tenant of a unit owner for the tenant's violation of the declaration, bylaws, or rules of the association;

(2) to bring an action to evict a tenant of a unit owner who fails to pay the association for the cost of repairs to common elements damaged substantially by the owner's tenant; or

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

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.0675. RESTRICTION RELATING TO CLUB MEMBERSHIP.

(a) A provision of a declaration or recorded contract that requires owners of units in a condominium to maintain a membership in a specified private club is not valid after the 10th anniversary of the date the provision is recorded or renewed unless renewed after the ninth anniversary of that date in the manner provided by the declaration or recorded contract for amending the declaration or recorded contract and the text of the renewed provision is filed in the real property records of each county in which the condominium is located.

(b) A provision described by this section may not be enacted or renewed as a bylaw by the unit owners' association.

Added by Acts 2003, 78th Leg., ch. 1101, Sec. 2, eff. Sept. 1, 2003.

Sec. 82.068. TERMINATION OF CONDOMINIUM.

(a) Unless the declaration provides otherwise and except for a taking of all the units by condemnation, a condominium may be terminated only by the agreement of 100 percent of the votes in the association and each holder of a deed of trust or vendor's lien on a unit. The declaration may not allow a termination by less than 80 percent of the votes in the association if any unit is restricted exclusively to residential uses.

(b) An agreement of unit owners to terminate a condominium must be evidenced by the execution or ratification of a termination agreement by the requisite number of unit owners. If, pursuant to a termination agreement, the real property constituting the condominium is to be sold following termination, the termination agreement must set forth the terms of the sale. To be effective, a termination agreement and all ratifications of the agreement must be recorded in each county in which a portion of the condominium is located.

(c) The association, on behalf of the unit owners, may contract for the sale of real property in the condominium, but the contract is not binding on the unit owners until it is approved under Subsections (a) and (b). If the real property constituting the condominium is to be sold following termination, on termination title to that real property vests in the association as trustee for the holders of all interests in the units, and the association has all powers necessary and appropriate to effect the sale, including the power to convey the interests of nonconsenting owners. Until the sale has been concluded and the proceeds distributed, the association shall continue to exist and retains the powers it had before termination. Proceeds of the sale must be distributed to unit owners and lienholders as their interests may appear, in proportion to the respective interests of unit owners as provided by Subsection (f). Unless the termination agreement specifies differently, as long as the association holds title to the real property, each unit owner and

the owner's successors in interest have an exclusive right to occupy the portion of the real property that formerly constituted the owner's unit. During that period of occupancy a unit owner and the owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by this chapter or the declaration.

(d) If the real property constituting the condominium is not to be sold following termination, on termination title to the real property vests in the unit owners as tenants in common in proportion to their respective interests, and liens on the units shift accordingly. While the tenancy in common exists, a unit owner and the owner's successors in interest have an exclusive right to occupy the portion of the real property that formerly constituted the owner's unit.

(e) Following termination of the condominium, and after payment of or provision for the claims of the association's creditors, the assets of the association shall be distributed to unit owners in proportion to their respective interests. The proceeds of sale described by Subsection (c) and held by the association as trustee are not assets of the association.

(f) The interest of a unit owner referred to in Subsections (c), (d), and (e) is, except as provided by Subsection (g), the fair market value of the owner's unit, limited common elements, and common element interest immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved by unit owners of units to which 25 percent of the votes in the association are allocated not later than the 30th day after the date of distribution. The proportion of a unit owner's interest to that of all unit owners is determined by dividing the fair market value of the unit owner's unit and common element interest by the total fair market values of all the units and common elements.

(g) If a unit or a limited common element is destroyed to the extent that an appraisal of the fair market value before the destruction cannot be made, the interest of a unit owner is the owner's common element interest immediately before the termination.

(h) Foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium does not withdraw that portion from the condominium, unless the portion is withdrawable real property or unless the mortgage being foreclosed was recorded before the date the declaration was recorded and the mortgagee did not consent in writing to the declaration.

(i) By agreement of the same percentage of unit owners that is required to terminate the condominium, the unit owners may rescind a termination agreement and reinstate the declaration in effect immediately before the election to terminate. To be effective, the rescission agreement must be in writing, executed by the unit owners who desire to rescind, and recorded in each county in which any portion of the condominium is located.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.069. RIGHTS OF SECURED LENDERS.

The declaration may require that all or a specified number or percentage of the mortgagees or beneficiaries of deeds of trust encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but a requirement for approval may not operate to:

(1) deny or delegate control over the general administrative affairs of the association by the unit owners or the board; or

- (2) prevent the association or the board from:
- (A) commencing, intervening in, or settling any litigation or proceeding; or
 - (B) receiving and distributing insurance proceeds under Section 82.111.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.070. MEETING AT WHICH AMENDMENTS MAY BE ADOPTED.

(a) An association or a board may not meet to adopt an amendment or other change to the declaration, articles of incorporation, bylaws, or rules of the association unless the association or board has given to each unit owner a document showing the specific amendment or other change that would be made to the declaration, articles of incorporation, bylaws, or rules.

(b) The information described by Subsection (a) must be given to each unit owner after the 20th day but before the 10th day preceding the date of the meeting. The information is considered to have been given to a unit owner on the date the information is personally delivered to the unit owner, as shown by a receipt signed by the unit owner, or on the date shown by the postmark on the information after it is deposited in the United States mail with a proper address and postage paid.

Added by Acts 1997, 75th Leg., ch. 956, Sec. 2, eff. Jan. 1, 1998.

SUBCHAPTER C. CONDOMINIUM MANAGEMENT

Sec. 82.101. ORGANIZATION OF UNIT OWNERS' ASSOCIATION.

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

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.102. POWERS OF UNIT OWNERS' ASSOCIATION.

(a) Unless otherwise provided by the declaration, the association, acting through its board, may:

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

(7) adopt and amend rules regulating the use, occupancy, leasing or sale, maintenance, repair, modification, and appearance of units and common elements, to the extent the regulated actions affect common elements or other units;

(8) cause additional improvements to be made as a part of the common elements;

(9) acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, except common elements of the condominium;

(10) grant easements, leases, licenses, and concessions through or over the common elements;

(11) impose and receive payments, fees, or charges for the use, rental, or operation of the common elements and for services provided to unit owners;

(12) impose interest and late charges for late payments of assessments, returned check charges, and, if notice and an opportunity to be heard are given in accordance with Subsection (d), reasonable fines for violations of the declaration, bylaws and rules of the association;

(13) adopt and amend rules regulating the collection of delinquent assessments and the application of payments;

(14) adopt and amend rules regulating the termination of utility service to a unit, the owner of which is delinquent in the payment of an assessment that is used, in whole or in part, to pay the cost of that utility;

(15) impose reasonable charges for preparing, recording, or copying declaration amendments, resale certificates, or statements of unpaid assessments;

(16) enter a unit for bona fide emergency purposes when conditions present an imminent risk of harm or damage to the common elements, another unit, or the occupants;

(17) assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration so provides;

(18) suspend the voting privileges of or the use of certain general common elements by an owner delinquent for more than 30 days in the payment of assessments;

(19) purchase insurance and fidelity bonds it considers appropriate or necessary;

(20) exercise any other powers conferred by the declaration or bylaws;

(21) exercise any other powers that may be exercised in this state by a corporation of the same type as the association; and

(22) exercise any other powers necessary and proper for the government and operation of the association.

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

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

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

(1) describes the violation or property damage and states the amount of the proposed fine or damage charge;

(2) states that not later than the 30th day after the date of the notice, the unit owner may request a hearing before the board to contest the fine or damage charge; and

(3) allows the unit owner a reasonable time, by a specified date, to cure the violation and avoid the fine unless the unit owner was given notice and a reasonable opportunity to cure a similar violation within the preceding 12 months.

(e) The association may give a copy of the notice required by Subsection (d) to an occupant of the unit. The association must give notice of a levied fine or damage charge to the unit owner not later than the 30th day after the date of levy.

(f) Except as provided by Subsection (g), the association by resolution of the board of directors may:

(1) Borrow money; and

(2) Assign as collateral for the loan authorized by the resolution:

(A) The association's right to future income, including the right to receive assessments; and

(B) The association's lien rights.

(g) If a dedicatory instrument requires a vote of members of the association to borrow money or assign the association's right to future income or the association's lien rights, the loan or assignment must be approved as provided by the dedicatory instrument. The board may determine whether a vote for that purpose may be cast electronically, by absentee ballot, in person or by proxy at a meeting called for that purpose, or by written consent. If a lower approval threshold is not provided by the dedicatory instrument, approval requires the consent of owners holding 67% of all voting interests.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994. Amended by Acts 2013, 83rd Leg., ch. 678 (H.B. 2075), § 3, eff. Sept. 1, 2013.

Sec. 82.103. BOARD MEMBERS AND OFFICERS.

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

(b) The board may not act on behalf of the association to amend the declaration except as permitted by this chapter, to terminate the condominium, to elect members of the board, or to determine the qualifications, powers and duties, or terms of office of board members. The board may fill a vacancy in its membership for the unexpired portion of a term.

(c) Subject to Subsection (d), the declaration may provide for a period of declarant control of the association during which a declarant, or persons designated by the declarant, may appoint and remove the officers and members of the board. Regardless of the period provided by the declaration, a period of declarant control terminates not later than the 120th day after conveyance of 75 percent of the units that may be created to unit owners other than a declarant. Transfer of special declarant rights does not terminate the period of declarant control. A declarant may voluntarily surrender the right to appoint and remove officers and members of the board before termination of the period, but in that event the declarant may require, for the duration of the period that

the declarant would otherwise control, that specified actions of the association or board be approved by the declarant before they become effective.

(d) Not later than the 120th day after conveyance of 50 percent of the units that may be created to unit owners other than a declarant, not less than one-third of the members of the board must be elected by unit owners other than the declarant.

(e) Not later than the termination of a period of declarant control, the unit owners shall elect a board of at least three members who need not be unit owners. The board shall elect the officers before the 31st day after the date declarant control terminates. The persons elected shall take office on election.

(f) An officer or director of the association is not liable to the association or any unit owner for monetary damages for an act or omission occurring in the person's capacity as an officer or director unless:

(1) the officer or director breached a fiduciary duty to the association or a unit owner;

(2) the officer or director received an improper benefit; or

(3) the act or omission was in bad faith, involved intentional misconduct, or was one for which liability is expressly provided by statute.

(g) Subsection (f) does not diminish a limitation of liability provided an officer or director of the association by the declaration, bylaws, articles of incorporation of the association, or other laws.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.104. TRANSFER OF SPECIAL DECLARANT RIGHTS.

(a) Special declarant rights created or reserved under this chapter may not be transferred except by an instrument evidencing the transfer recorded in each county in which any portion of the condominium is located. The instrument is not effective unless executed by the transferee.

(b) On transfer of any special declarant right, a transferor is not relieved of an obligation or liability arising before the transfer. A transferor is not liable for an act or omission or a breach of an obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided by a mortgage instrument or deed of trust, in case of foreclosure of a mortgage, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under Bankruptcy Code or receivership proceedings, of a unit owned by a declarant or of real property in a condominium subject to development rights, a person acquiring title to all the real property being foreclosed or sold may request to succeed to all special declarant rights or only to rights reserved by the declaration to maintain models, offices, and signs. The judgment or instrument conveying title may provide for transfer of only the special declarant rights requested.

(d) On foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under Bankruptcy Code or receivership proceedings of all units and other real property in a condominium owned by a declarant:

(1) the declarant ceases to have any special declarant rights; and

(2) the period of declarant control terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

(e) The liabilities and obligations of a person who succeeds to special declarant rights are as follows:

(1) a successor to a special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this chapter or by the declaration;

(2) a successor to a special declarant right, other than a successor described by Subdivision (3) or (4), who is not an affiliate of a declarant, is subject to all obligations and liabilities imposed on the transferor by this chapter or by the declaration;

(3) a successor to only a right reserved by the declaration to maintain models, offices, and signs, who is not an affiliate of a declarant, may not exercise any other special declarant right, and is not subject to any liability or obligation as a declarant, except the obligation to provide a condominium information statement and any liability arising as a result; and

(4) a successor to all special declarant rights held by the successor's transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units under Subsection (c) may declare the person's intention in a recorded instrument to hold those rights solely for transfer to another person; thereafter, until all special declarant rights are transferred to a person acquiring title to any unit owned by the successor, or until an instrument permitting exercise of all those rights is recorded, the successor may not exercise any of those rights other than any right held by the successor's transferor to control the board as provided by Section 82.103(c) for the duration of the period of declarant control, and an attempt to exercise those rights is void; so long as a successor declarant may not exercise special declarant rights under this subdivision, the successor is not subject to any liability or obligation as a declarant other than liability for acts and omissions under Section 82.103(a).

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

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.105. TERMINATION OF CONTRACTS AND LEASES OF DECLARANT.

An association in a residential or recreational condominium may terminate, without penalty, contracts or leases between the association and a declarant or an affiliate of a declarant if:

(1) the contract is entered into by the association while controlled by the declarant;

(2) the association terminates the contract or lease before the first anniversary of the date a board elected by the unit owners takes office; and

(3) the association gives at least 90 days' notice of its intent to terminate the contract or lease to the other party.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.106. BYLAWS.

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

(1) the number of members on the board and the titles of the officers of the association;

(2) election by the board of a president, treasurer, secretary, and any other officers the bylaws specify;

(3) the qualifications, powers and duties, terms of office, and the manner of electing and removing a board member or officer and filling vacancies;

(4) the powers, if any, that the board or an officer may delegate to other persons or to a managing agent;

(5) the designation of officers who are authorized to prepare, execute, certify, and record amendments to the declaration on behalf of the association;

(6) the method of amending the bylaws; and

(7) the manner of notice of meetings of the association.

(b) Subject to the declaration, the bylaws may provide for other matters the association considers desirable, necessary, or appropriate.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.107. UPKEEP OF CONDOMINIUM.

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

(b) Except as provided by the declaration, each unit owner is responsible for the cost of maintenance, repair, and replacement of any utility installation or equipment serving only the owner's unit, without regard to whether the installation or equipment is located wholly or partially outside the designated boundaries of the unit. For purposes of this subsection, utility installations and equipment include electricity, water, sewage, gas, water heaters, heating and air conditioning equipment, and television antennas.

(c) Except as provided by the declaration, each unit owner is responsible for the cost of maintenance, repair, and replacement of windows and doors serving only the owner's unit.

(d) Unless otherwise provided by the declaration, the association may enter a unit, after giving notice to the owner and occupant of the unit, to:

(1) prevent or terminate waste of water purchased by the association as a common expense; or

(2) perform maintenance and repairs of the condominium that, if not performed, may result in increased damage by water to components of the condominium that the association maintains.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.108. MEETINGS.

(a) Meetings of the association must be held at least once each year. Unless the declaration provides otherwise, special meetings of the association may be called by the president, a majority of the board, or unit owners having at least 20 percent of the votes in the association.

(b) Meetings of the association and board must be open to unit owners, subject to the right of the board to adjourn a meeting of the board and reconvene in closed executive session to consider actions involving personnel, pending litigation, contract negotiations, enforcement actions, matters involving the invasion of privacy of individual unit owners, or matters that are to remain confidential by request of the affected parties and agreement

of the board. The general nature of any business to be considered in executive session must first be announced at the open meeting.

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

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

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

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

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

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

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

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

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

(e) Notice of a meeting of the board must be given as provided by the bylaws, or, if the bylaws do not provide for notice, notice must be given to each board member in the same manner in which notice is given to members of the board of a nonprofit corporation under Section B, Article 2.19, Texas Non-Profit Corporation Act (Article 1396-2.19, Vernon's Texas Civil Statutes).

(f) An association, on the written request of a unit owner, shall inform the unit owner of the time and place of the next regular or special meeting of the board. If the association representative to whom the request is made does not know the time and place of the meeting, the association promptly shall obtain the information and disclose it to the unit owner or inform the unit owner where the information may be obtained.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994. Amended by Acts 1997, 75th Leg., ch. 956, Sec. 3, eff. Jan. 1, 1998.

Sec. 82.109. QUORUMS.

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

(b) Unless the bylaws specify a larger percentage, a quorum is present throughout a meeting of the board if persons entitled to cast at least 50 percent of the votes on the board are present at the beginning of the meeting.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.110. VOTING AND PROXIES.

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

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

(c) Cumulative voting is not allowed.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.111. INSURANCE.

(a) Beginning not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(1) property insurance on the insurable common elements insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage, in a total amount of at least 80 percent of the replacement cost or actual cash value of the insured property as of the effective date and at each renewal date of the policy; and

(2) commercial general liability insurance, including medical payments insurance, in an amount determined by the board but not less than any amount specified by the declaration covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(b) If a building contains units having horizontal boundaries described in the declaration, the insurance maintained under Subsection (a)(1), to the extent reasonably available, must include the units, but need not include improvements and betterments installed by unit owners.

(c) If the insurance described by Subsections (a) and (b) is not reasonably available, the association shall cause notice of that fact to be delivered or mailed to all unit owners and lienholders. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance the board considers appropriate to protect the condominium, the association, or the unit owners. Insurance policies maintained under Subsection (a) may provide for commercially reasonable deductibles as the board determines appropriate or necessary. This section does not affect the right of a holder of a mortgage on a unit to require a unit owner to acquire insurance in addition to that provided by the association.

(d) Insurance policies carried under Subsection (a) must provide that:

(1) each unit owner is an insured person under the policy with respect to liability arising out of the person's ownership of an undivided interest in the common elements or membership in the association;

(2) the insurer waives its right to subrogation under the policy against a unit owner;

(3) no action or omission of a unit owner, unless within the scope of the unit owner's authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and

(4) if, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same property covered by the policy, the association's policy provides primary insurance.

(e) A claim for any loss covered by the policy under Subsection (a)(1) must be submitted by and adjusted with the association. The insurance proceeds for that loss shall be payable to an insurance trustee designated by the association for that purpose, if the designation of an insurance trustee is considered by the board to be necessary or desirable, or otherwise to the association, and not to any unit owner or lienholder.

(f) The insurance trustee or the association shall hold insurance proceeds in trust for unit owners and lienholders as their interests may appear.

Subject to Subsection (i), the proceeds paid under a policy must be disbursed first for the repair or restoration of the damaged common elements and units, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the condominium is terminated.

(g) An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for the owner's own benefit.

(h) The insurer issuing the policy may not cancel or refuse to renew it less than 30 days after written notice of the proposed cancellation or nonrenewal has been mailed to the association.

(i) Except as provided by this section, any portion of the condominium for which insurance is required that is damaged or destroyed shall be promptly repaired or replaced by the association unless the condominium is terminated, repair or replacement would be illegal under any state or local health or safety statute or ordinance, or at least 80 percent of the unit owners vote to not rebuild. Each owner of a unit may vote, regardless of whether the owner's unit or limited common element has been damaged or destroyed. A vote may be cast electronically, or by written ballot if a meeting is not held for that purpose or in person or by proxy at a meeting called for that purpose. A vote to not rebuild does not increase an insurer's liability to loss payment obligations under a policy, and the vote does not cause a presumption of total loss. Except as provided by this section, the cost of repair or replacement in excess of the insurance proceeds is a common expense, and the board may levy an assessment to pay the expenses in accordance with each owner's common expense liability. If the entire condominium is not repaired or replaced, any insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium, the insurance proceeds attributable to units and limited common elements that are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were assigned, or to their mortgagees, as their interests may appear, and the remainder of the proceeds shall be distributed to all the unit owners in accordance with each owner's undivided interest in the common elements unless otherwise provided in the declaration. If the unit owners vote to not rebuild any

unit, that unit's allocated interests shall be automatically reallocated on the vote as if the unit had been condemned, and the association shall prepare, execute, and record an amendment to the declaration reflecting the reallocation. Section 82.068 governs the distribution of insurance proceeds if the condominium is terminated.

(j) If the cost to repair damage to a unit or common element covered by the association's insurance is less than the amount of the applicable insurance deductible, the party who would be responsible for the repair in the absence of insurance shall pay the cost for the repair of the unit or common element.

(k) If the association's insurance provides coverage for the loss and the cost to repair the damage to a unit or common element is more than the amount of the applicable insurance deductible, the dedicatory instruments determine payment for the cost of the association's deductible and costs incurred before insurance proceeds are available. If the dedicatory instruments are silent, the board of directors of the association by resolution shall determine the payment of those costs, or if the board does not approve a resolution, the costs are a common expense. A resolution under this subsection is considered a dedicatory instrument and must be recorded in each location in which the declaration is recorded.

(l) If damage to a unit or the common elements is due wholly or partly to an act or omission of any unit owner or a guest or invitee of the unit owner, the association may assess the deductible expense and any other expense in excess of insurance proceeds against the owner and the owners unit.

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

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994. Amended by Acts 2013, 83rd Leg., ch. 678 (H.B. 2075), § 4, eff. Sept. 1, 2013.

Sec. 82.112. ASSESSMENTS FOR COMMON EXPENSES.

(a) Until an association makes a common expense assessment, a declarant shall pay all the expenses of the condominium as the expenses accrue. After an initial assessment by an association, assessments must be made at least annually and must be based on a budget adopted at least annually by the association. The association's reserves and the unit owners' working capital contributions may not be used to pay operational expenses until the declarant control terminates.

(b) From the date of the initial assessment until declarant control terminates, or three years from a declarant's first conveyance of a unit, whichever is earlier, the declarant shall periodically pay to the association:

(1) an amount equal to all operational expenses of the association, less the operational expense portion of the assessments paid by unit owners other than declarant; or

(2) the common expense liability allocated to each unit owned by the declarant.

(c) Common expenses shall be assessed against all units conveyed, rented, or used as models or offices by the declarant and against all units owned by a declarant after termination of a declarant's control or three years from a declarant's first conveyance of a unit, whichever is earlier, in accordance with the common expense liability allocated to each unit. A past due assessment or installment of an assessment may bear interest at a lawful rate established by the association.

(d) Except as provided by the declaration and Section 82.107, a common expense for the maintenance, repair, or replacement of a limited common element shall be assessed against all the units as if it were for a general common element.

(e) If common expense liabilities are reallocated, common expense assessments and an assessment installment not yet due shall be recomputed in accordance with the reallocated common expense liabilities.

(f) A declaration may allow the accumulation of reserve funds for an unspecified period to provide for any anticipated expense of the condominium.

(g) This section does not prevent a declarant from collecting from a purchaser at closing the prorated amount of any expenses, such as insurance or taxes, that the declarant has prepaid to the association or directly to others on behalf of the unit that is being purchased.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.113. ASSOCIATION'S LIEN FOR ASSESSMENTS.

(a) An assessment levied by the association against a unit or unit owner is a personal obligation of the unit owner and is secured by a continuing lien on the unit and on rents and insurance proceeds received by the unit owner and relating to the owner's unit. In this section, "assessments" means regular and special assessments, dues, fees, charges, interest, late fees, fines, collection costs, attorney's fees, and any other amount due to the association by the unit owner or levied against the unit by the association, all of which are enforceable as assessments under this section unless the declaration provides otherwise.

(b) The association's lien for assessments has priority over any other lien except:

(1) a lien for real property taxes and other governmental assessments or charges against the unit unless otherwise provided by Section 32.05, Tax Code;

(2) a lien or encumbrance recorded before the declaration is recorded;

(3) a first vendor's lien or first deed of trust lien recorded before the date on which the assessment sought to be enforced becomes delinquent under the declaration, bylaws, or rules; and

(4) unless the declaration provides otherwise, a lien for construction of improvements to the unit or an assignment of the right to insurance proceeds on the unit if the lien or assignment is recorded or duly perfected before the date on which the assessment sought to be enforced becomes delinquent under the declaration, bylaws, or rules.

(c) The association's lien for assessments is created by recordation of the declaration, which constitutes record notice and perfection of the lien. Unless the declaration provides otherwise, no other recordation of a lien or notice of lien is required.

(d) By acquiring a unit, a unit owner grants to the association a power of sale in connection with the association's lien. By written resolution, a board may appoint, from time to time, an officer, agent, trustee, or attorney of the association to exercise the power of sale on behalf of the association. Except as provided by the declaration, an association shall exercise its power of sale pursuant to Section 51.002.

(e) The association has the right to foreclose its lien judicially or by nonjudicial foreclosure pursuant to the power of sale created by this chapter or the declaration, except that the association may not foreclose a lien for assessments consisting solely of fines. Costs of foreclosure may be added to the amount owed by the unit owner to the association. A unit owner may not petition a court to set aside a sale solely because the purchase price at the foreclosure sale was insufficient to fully satisfy the owner's debt.

(f) The association may bid for and purchase the unit at foreclosure sale as a common expense. The association may own, lease, encumber, exchange, sell, or convey a unit.

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

(h) If a unit owner defaults in the owner's monetary obligations to the association, the association may notify other lien holders of the default and the association's intent to foreclose its lien. The association shall notify any holder of a recorded lien or duly perfected mechanic's lien against a unit who has given the association a written request for notification of the unit owner's monetary default or the association's intent to foreclose its lien.

(i) This section does not prohibit the association from taking a deed in lieu of foreclosure or from filing suit to recover a money judgment for sums that may be secured by the lien.

(j) At any time before a nonjudicial foreclosure sale, a unit owner may avoid foreclosure by paying all amounts due the association.

(k) If, on January 1, 1994, a unit is the homestead of the unit owner and is subject to a declaration that does not contain a valid assessment lien against the unit, the lien provided by this section does not attach against the unit until the unit ceases to be the homestead of the person owning it on January 1, 1994.

(l) Foreclosure of a tax lien attaching against a unit under Chapter 32, Tax Code, does not discharge the association's lien for assessments under this section or under a declaration for amounts becoming due to the association after the date of foreclosure of the tax lien.

(m) If a unit owner is delinquent in payment of assessments to an association, at the request of the association a holder of a recorded lien against the unit may provide the association with information about the unit owner's debt secured by the holder's lien against the unit and other relevant information. At the request of a lien holder, the association may furnish the lien holder with information about the condominium and the unit owner's obligations to the association.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994. Amended by Acts 2013, 83rd Leg., ch. 678 (H.B. 2075), § 5, eff. Sept. 1, 2013.

Sec. 82.114. ASSOCIATION RECORDS.

(a) The association shall keep:

(1) detailed financial records that comply with generally accepted accounting principles and that are sufficiently detailed to enable the association to prepare a resale certificate under Section 82.157;

(2) the plans and specifications used to construct the condominium except for buildings originally constructed before January 1, 1994;

(3) the condominium information statement prepared under Section 82.152 and any amendments;

(4) the name and mailing address of each unit owner;

(5) voting records, proxies, and correspondence relating to amendments to the declaration; and

(6) minutes of meetings of the association and board.

(b) All financial and other records of the association shall be reasonably available at its registered office or its principal office in this state for examination by a unit owner and the owner's agents. An attorney's files and records relating to the association are not records of the association and are not subject to inspection by unit owners or production in a legal proceeding.

(c) The association shall, as a common expense, annually obtain an independent audit of the records. Copies of the audit must be made available to the unit owners. An audit required by this subsection shall be performed by a certified public accountant if required by the bylaws or a vote of the board of directors or a majority vote of the members of the association voting at a meeting of the association.

(d) A declarant shall furnish copies to the association of the information required by Subsection (a) on the date the first unit is sold.

(e) Not later than the 30th day after the date of acquiring an interest in a unit, the unit owner shall provide the association with:

(1) the unit owner's mailing address, telephone number, and driver's license number, if any;

(2) the name and address of the holder of any lien against the unit, and any loan number;

(3) the name and telephone number of any person occupying the unit other than the unit owner; and

(4) the name, address, and telephone number of any person managing the unit as agent of the unit owner.

(f) A unit owner shall notify the association not later than the 30th day after the date the owner has notice of a change in any information required by Subsection (e), and shall provide the information on request by the association from time to time.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.115. ASSOCIATION AS TRUSTEE.

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

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.116. MANAGEMENT CERTIFICATE.

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

- (1) the name of the condominium;
- (2) the name of the association;
- (3) the location of the condominium;
- (4) the recording data for the declaration;
- (5) the mailing address of the association, or the name and mailing address of the person or entity managing the association; and
- (6) other information the association considers appropriate.

(a-1) The county clerk of each county in which a management certificate is filed as required by this section shall record the management certificate in the real property records of the county and index the document as a "Condominium Association Management Certificate"

(a-2) To ensure that all management certificates are recorded and indexed as provided by Subsection (a-1), each condominium unit owners' association that recorded a management certificate under this section before September 1, 2013, shall record a new management certificate on or before January 1, 2014. This subsection expires January 1, 2015.

(b) The association shall record a management certificate not later than the 30th day after the date the association has notice of a change in any information in a recorded certificate required by Subdivisions (a)(1)-(5).

(c) The association and its officers, directors, employees, and agents are not subject to liability to any person for delay or failure to record a management certificate, unless the delay or failure is willful or caused by gross negligence.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994. Amended by Acts 2013, 83rd Leg., ch. 678 (H.B. 2075), § 6, eff. Sept. 1, 2013.

Sec. 82.117. OBLIGATIONS OF UNIT OWNERS.

Without limiting the obligations of the unit owners and except as provided by the declaration, bylaws, rules of the association, or this chapter, the unit owner:

(1) shall pay assessments, interest, and other charges properly levied by the association against the owner or the owner's unit, and shall pay regular periodic assessments without demand by the association;

(2) shall comply with the declaration, bylaws, and rules of the association, including any amendments;

(3) shall pay for damage to the condominium caused by the negligence or willful misconduct of the owner, an occupant of the owner's unit, or the owner or occupant's family, guests, employees, contractors, agents, or invitees; and

(4) is liable to the association for violations of the declaration, bylaws, or rules of the association, including any amendments, by the owner, an occupant of the owner's unit, or the owner or occupant's family, guests, employees, agents, or invitees, and for costs incurred by the association to obtain compliance, including attorney's fees whether or not suit is filed.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.118. SERVICE OF PROCESS ON UNIT OWNERS.

(a) A unit owner of a condominium located wholly or partly in a municipality with a population of more than 1.9 million may be served with process by the municipality or the municipality's agent for a judicial or administrative proceeding initiated by the municipality and directly related to the unit owner's property interest in the condominium by serving the unit owner at the unit owner's last known address, according to the records of the appraisal district in which the condominium is located, by any means permitted by Rule 21a, Texas Rules of Civil Procedure.

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1323, Sec. 2, eff. September 1, 2009.

Sec. 82.119. PROCEDURES FOR FILING SUIT OR INITIATING ARBITRATION PROCEEDINGS FOR DEFECT OR DESIGN CLAIMS FOR CERTAIN ASSOCIATIONS.

(a) This section does not apply to an association with less than eight units.

(b) In addition to any preconditions to filing suit or initiating an arbitration proceeding included in the declaration, an association, before filing suit or initiating an arbitration proceeding to resolve a claim pertaining to the construction or design of a unit or the common elements, must:

(1) obtain an inspection and a written independent third-party report from a licensed professional engineer that:

(A) identifies the specific units or common elements subject to the claim;

(B) describes the present physical condition of the units or common elements subject to the claim; and

(C) describes any modifications, maintenance, or repairs to the units or common elements performed by the unit owners or the association; and

(2) obtains approval from unit owners holding more than 50 percent of the total votes allocated under the declaration, voting in person or by proxy as provided by

Section 82.110, at a regular, annual, or special meeting called in accordance with the declaration or bylaws, as applicable.

(c) The association must provide written notice of the inspection to be conducted by the engineer to each party subject to a claim not later than the 10th day before the date the inspection occurs. The notice must:

- (1) identify the party engaged to prepare the report required by Subsection (b)(1);
- (2) identify the specific units or common elements to be inspected; and
- (3) include the date and time the inspection will occur.

(d) Each party subject to a claim may attend the inspection conducted by the engineer, either personally or through an agent.

(e) Before providing the notice of the meeting under Subsection (f), an association must:

- (1) on completion of the independent third-party report, provide the report to each unit owner and each party subject to a claim; and
- (2) allow each party subject to a claim at least 90 days after the date of completion of the report to inspect and correct any condition identified in the report.

(f) Not later than the 30th day before the date the meeting described by Subsection (b)(2) is held, the association must provide each unit owner with written notice of the date, time, and location of the meeting. The notice must also include:

- (1) a description of the nature of the claim, the relief sought, the anticipated duration of prosecuting the claim, and the likelihood of success;
- (2) a copy of the report required by Subsection (b)(1);
- (3) a copy of the contract or proposed contract between the association and the attorney selected by the board to assert or provide assistance with the claim;
- (4) a description of the attorney's fees, consultant fees, expert witness fees, and court costs, whether incurred by the association directly or for which the association may be liable as a result of prosecuting the claim;
- (5) a summary of the steps previously taken by the association to resolve the claim;
- (6) a statement that initiating a lawsuit or arbitration proceeding to resolve a claim may affect the market value, marketability, or refinancing of a unit while the claim is prosecuted; and
- (7) a description of the manner in which the association proposes to fund the cost of prosecuting the claim.

(g) The notice required by Subsection (f) must be prepared and signed by a person who is not:

- (1) the attorney who represents or will represent the association in the claim;
- (2) a member of the law firm of the attorney who represents or will represent the association in the claim; or
- (3) employed by or otherwise affiliated with the law firm of the attorney who represents or will represent the association in the claim.

(h) The period of limitations for filing a suit or initiating an arbitration proceeding for a claim described by Subsection (b) is tolled until the first anniversary of the date the procedures are initiated by the association under that subsection if the procedures are initiated during the final year of the applicable period of limitation.

Sec. 82.120. BINDING ARBITRATION FOR CERTAIN CLAIMS.

(a) A declaration may provide that a claim pertaining to the construction or design of a unit or the common elements must be resolved by binding arbitration and may provide for a process by which the claim is resolved.

(b) An amendment to the declaration that modifies or removes the arbitration requirement or the process associated with resolution of a claim may not apply retroactively to a claim regarding the construction or design of units or common elements based on an alleged act or omission that occurs before the date of the amendment.

SUBCHAPTER D. PROTECTION OF PURCHASERS

Sec. 82.151. APPLICABILITY.

(a) This subchapter applies to each unit subject to this chapter, except as provided by Subsection (b) or as modified or waived by the agreement of a purchaser of a unit in a condominium in which all units are restricted to nonresidential use.

(b) A condominium information statement or resale certificate need not be prepared or delivered in the case of:

- (1) a gratuitous disposition of a unit;
- (2) a disposition pursuant to court order;
- (3) a disposition by a government or governmental agency;
- (4) a disposition by foreclosure or deed in lieu of foreclosure; or
- (5) a disposition that may be canceled at any time, for any reason, and

without penalty.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.152. LIABILITY FOR CONDOMINIUM INFORMATION STATEMENT.

(a) Except as provided by Subsection (b), a declarant shall prepare a condominium information statement before offering to the public any interest in a unit.

(b) A declarant may transfer responsibility for preparation of all or a part of the condominium information statement to a successor declarant or to a person in the business of selling real property who intends to offer units in the condominium for the person's own account. On such transfer, the transferor shall provide the transferee with any information necessary to enable the transferee to prepare a condominium information statement.

(c) A declarant or other person in the business of selling real property who offers a unit for the person's own account to a purchaser shall provide a purchaser of a unit with a copy of the condominium information statement, as amended, before conveyance of the unit or the date of a contract of sale, whichever is earlier.

(d) The person preparing all or part of the condominium information statement is liable for any false or misleading statement or for any omission of material fact in the portion of the condominium information statement that the person prepared.

If a declarant did not prepare any part of a condominium information statement that the declarant delivers, the declarant is not liable for any false or misleading statement or any omission of material fact unless the declarant actually knew or should have known of the statement or omission.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.153. CONDOMINIUM INFORMATION STATEMENTS IN GENERAL.

- (a) A condominium information statement must contain or accurately disclose:
- (1) the name and principal address of the declarant and of the condominium;
 - (2) a general description of the condominium that includes the types of units and the maximum number of units;
 - (3) the minimum and maximum number of additional units, if any, that may be included in the condominium;
 - (4) a brief narrative description of any development rights reserved by a declarant and of any conditions relating to or limitations upon the exercise of development rights;
 - (5) copies of the declaration, articles of incorporation of the association, the bylaws, any rules of the association, and amendments to any of them, and copies of leases and contracts, other than loan documents, that are required by the declarant to be signed by purchasers at closing;
 - (6) a projected or pro forma budget for the association that complies with Subsection (b) for the first fiscal year of the association following the date of the first conveyance to a purchaser, identification of the person who prepared the budget, and a statement of the budget's assumptions concerning occupancy and inflation factors;
 - (7) a general description of each lien, lease, or encumbrance on or affecting the title to the condominium after conveyance by the declarant;
 - (8) a copy of each written warranty provided by the declarant;
 - (9) a description of any unsatisfied judgments against the association and any pending suits to which the association is a party or which are material to the land title and construction of the condominium of which a declarant has actual knowledge;
 - (10) a general description of the insurance coverage provided for the benefit of unit owners;
 - (11) current or expected fees or charges to be paid by unit owners for the use of the common elements and other facilities related to the condominium; and
 - (12) for a condominium located wholly or partly in a municipality with a population of more than 1.9 million a statement that a unit owner:
 - (A) as an alternative to personal service, may be served with process by the municipality or the municipality's agent for a judicial or administrative proceeding initiated by the municipality and directly related to the unit owner's property interest in the condominium by serving the unit owner at the unit owner's last known address, according to the records of the appraisal district in which the condominium is located, by any means permitted by Rule 21a, Texas Rules of Civil Procedure;
 - (B) shall promptly notify the appraisal district of a change in the unit owner's mailing address; and
 - (C) may not offer proof in the judicial or administrative proceeding, or in a subsequent related proceeding, that otherwise proper service by mail of the notice was not received not later than three days after the date the notice was deposited in a post office or official depository under the care and custody of the United States Postal Service.
- (b) A budget under Subsection (a)(6) must be prepared in accordance with generally accepted accounting principles and a consideration of the physical condition of the condominium and be based on assumptions that, to the best of the declarant's knowledge and belief, are reasonable. The budget must include:

(1) a statement of the amount included, or a statement that no amount is included, in the budget as a reserve; and

(2) the projected monthly common expense assessment for each type of unit.

(c) A declarant shall promptly amend the condominium information statement to reflect a material and substantial change in its contents. If the change may adversely affect a prospective purchaser who has received a condominium information statement, the declarant shall furnish a copy of the amendment to the prospective purchaser before closing.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1323, Sec. 3, eff. September 1, 2009.

Sec. 82.154. CONDOMINIUMS WITH CONVERSION BUILDINGS.

If a building contains units that may be occupied for residential use, the condominium information statement of a condominium containing any conversion building must additionally contain:

(1) a dated statement by the declarant, based on a report by an independent architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the building;

(2) a dated statement by the declarant of the expected useful life of each item reported in Subdivision (1) or a statement that no representations are made in that regard; and

(3) a list of violations of building code or other governmental regulations of which the declarant has received notice and that have not been cured, together with the estimated cost of curing those violations.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.155. CONDOMINIUM SECURITIES.

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

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.156. PURCHASER'S RIGHT TO CANCEL.

(a) If a purchaser of a unit from a unit owner other than a declarant has not received from the seller the declaration, bylaws, and association rules required by Section 82.157 before the purchaser executes a contract of sale or if the contract does not contain an underlined or bold-print provision acknowledging the purchaser's receipt of those documents and recommending that the purchaser read those documents before executing the contract, the purchaser may cancel the contract before the sixth day after the date the purchaser receives those documents. If a purchaser has not received a resale certificate before executing a contract of sale, the purchaser may cancel the contract before the sixth day after the date the purchaser receives the resale certificate or executes a waiver under Section 82.157, whichever occurs first.

(b) If a purchaser from a declarant has not received the condominium information statement before the purchaser executes a contract of sale or if a contract does not contain

an underlined or bold-print provision acknowledging the purchaser's receipt of the condominium information statement and recommending that the purchaser read the condominium information statement before executing the contract, the purchaser may cancel the contract before the sixth day after the date the purchaser receives the condominium information statement.

(c) If a purchaser elects to cancel a contract under Subsection (a) or (b), the cancellation must be by hand-delivering written notice of cancellation to the declarant or selling unit owner or by mailing notice of cancellation by certified United States mail, return receipt requested, to the offer or the offeror's agent for service of process within the five-day cancellation period. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded.

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

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.157. RESALE OF UNIT.

(a) Except as provided by Subsection (c), if a unit owner other than a declarant intends to sell a unit, before executing a contract or conveying the unit, the unit owner must furnish to the purchaser a current copy of the declaration, bylaws, any association rules, and a resale certificate that must have been prepared not earlier than three months before the date it is delivered to the purchaser. The resale certificate must be issued by the association and must contain the current operating budget of the association and statements of:

- (1) any right of first refusal or other restraint contained in the declaration that restricts the right to transfer a unit;
- (2) the amount of the periodic common expense assessment and the unpaid common expenses or special assessments currently due and payable from the selling unit owner;
- (3) other unpaid fees or amounts payable to the association by the selling unit owner;
- (4) capital expenditures, if any, approved by the association for the next 12 months;
- (5) the amount of reserves, if any, for capital expenditures and of portions of those reserves designated by the association for a specified project;
- (6) any unsatisfied judgments against the association;
- (7) the nature of any pending suits against the association;
- (8) insurance coverage provided for the benefit of unit owners;
- (9) whether the board has knowledge that any alterations or improvements to the unit or to the limited common elements assigned to that unit violate the declaration, bylaws, or association rules;
- (10) whether the board has received notice from a governmental authority concerning violations of health or building codes with respect to the unit, the limited common elements assigned to that unit, or any other portion of the condominium;
- (11) the remaining term of any leasehold estate that affects the condominium and the provisions governing an extension or renewal of the lease; and
- (12) the name, mailing address, and telephone number of the association's managing agent, if any;

(13) the association's current operating budget and balance sheet; and
(14) all fees payable to the association or an agent of the association that are associated with the transfer of ownership, including a description of each fee, to whom the fee is paid, and the amount of the fee.

(b) Not later than the 10th day after the date of receiving a written request by a unit owner, an association shall furnish to the selling unit owner or the owner's agent a resale certificate signed and dated by an officer or authorized agent of the association containing the information required by Subsection (a). A selling unit owner or the owner's agent is not liable to the purchaser for erroneous information provided by the association in the certificate. If an association does not furnish a resale certificate or any information required in the certificate within the 10-day period, the unit owner may provide the purchaser with a sworn affidavit signed by the unit owner in lieu of the certificate. An affidavit must state that the unit owner requested information from the association concerning its financial condition, as required by this section, and that the association did not timely provide a resale certificate or the information required in the certificate. If a unit owner has furnished an affidavit to a purchaser, the unit owner and the purchaser may agree in writing to waive the requirement to furnish a resale certificate. The association is not liable to a selling unit owner for delay or failure to furnish a resale certificate, and an officer or agent of the association is not liable for a delay or failure to furnish a certificate unless the officer or agent willfully refuses to furnish the certificate or is grossly negligent in not furnishing the resale certificate. Failure to provide a resale certificate does not void a deed to a purchaser.

(c) If a properly executed resale certificate incorrectly states the total of delinquent sums owed by the selling unit owner to the association, the purchaser is not liable for payment of additional delinquencies that are unpaid on the date the certificate is prepared and that exceed the total sum stated in the certificate. A unit owner or the owner's agent is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner.

(d) A resale certificate does not affect:

(1) an association's right to recover debts or claims that arise or become due after the date the certificate is prepared; or

(2) an association's lien on a unit securing payment of future assessments.

(e) A purchaser, lender, or title insurer who relies on a resale certificate is not liable for any debt or claim that is not disclosed in the certificate. An association may not deny the validity of any statement in the certificate.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.158. ESCROW OF DEPOSITS.

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

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.159. RELEASE OF LIENS. Before conveying real property to an association, a declarant shall have that real property released from all liens the foreclosure of which would deprive unit owners of any right of access to or easement of support of the owners' units, and all other liens on that real property unless the condominium information statement describes certain real property that may be conveyed subject to liens in specified amounts.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.160. CONVERSION BUILDINGS.

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

(b) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated and otherwise complies with Section 24.005, the notice also constitutes legal notice to vacate on that date for purposes of Section 24.005. A declarant may not terminate a lease in violation of its terms.

(c) Unless expressly authorized by a rental agreement, a declarant may not make substantial alterations to the interior of a leased premises for purposes of a condominium conversion.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.161. EFFECT OF VIOLATIONS ON RIGHTS OF ACTION AND ATTORNEY'S FEES.

(a) If a declarant or any other person subject to this chapter violates this chapter, the declaration, or the bylaws, any person or class of persons adversely affected by the violation has a claim for appropriate relief.

(b) The prevailing party in an action to enforce the declaration, bylaws, or rules is entitled to reasonable attorney's fees and costs of litigation from the nonprevailing party.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.162. LABELING OF PROMOTIONAL MATERIAL.

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

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.163. DECLARANT'S OBLIGATION TO COMPLETE AND RESTORE.

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

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.164. LOANS AS ELIGIBLE INVESTMENTS.

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

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

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

*** THE FOLLOWING STATUTE IS ONLY APPLICABLE TO BEXAR COUNTY***

TEXAS HEALTH AND SAFETY CODE

TITLE 9. SAFETY

SUBTITLE A. PUBLIC SAFETY

CHAPTER 766. FIRE SAFETY IN RESIDENTIAL DWELLINGS

SUBCHAPTER B. FIRE PROTECTION SPRINKLER SYSTEMS IN CERTAIN RESIDENTIAL HIGH-RISE BUILDINGS IN CERTAIN COUNTIES

Sec. 766.051. DEFINITIONS.

In this subchapter:

(1) "Fire protection sprinkler system" means an assembly of underground or overhead piping or conduits that conveys water with or without other agents to dispersal openings or devices to:

- (A) extinguish, control, or contain fire; and
- (B) provide protection from exposure to fire or the products of combustion.

(2) "Residential high-rise building" means a building used primarily for a residential purpose and that extends 75 feet or more from the ground.

Sec. 766.052. APPLICABILITY OF SUBCHAPTER.

This subchapter only applies to a residential high rise building:

(1) that is located in a county with a population of more than 1.5 million in which more than 75 percent of the population resides in a single municipality;

(2) in which at least 50 percent of the residents are elderly individuals, individuals with disability, or individuals with a mobility impairment; and

(3) that is not designated as a historically or archaeologically significant site by the Texas Historical Commission or the governing body of the county or municipality in which the building is located.

Sec. 766.053. FIRE PROTECTION SPRINKLER SYSTEMS REQUIRED; STANDARD.

(a) A residential high-rise building must be equipped with a complete fire protection sprinkler system that is in good working order and is in compliance with this section.

(b) The governing body of a municipality in which a residential high-rise building subject to this subchapter is located or, if the building is not located in a municipality, the commissioners court of the county in which the building is located shall adopt a standard for the installation of fire protection sprinkler systems in a residential high-rise building.

(c) The standard adopted must be in compliance with National Fire Protection Association 13: Standard for the Installation of Sprinkler Systems. Until the governing body of the municipality or commissioners court of the county, as applicable, adopts a standard as required by this subsection, the standard is the Standard for the Installation of Sprinkler Systems in of the National Fire Protection Association, as that standard existed on September 1, 2015.

Sec. 766.054. PHASE-IN COMPLIANCE FOR OWNERS OF CERTAIN RESIDENTIAL HIGH RISE BUILDINGS.

(a) This section applies only to the owner of a residential high-rise building built before September 1, 2015.

(b) Not later than September 1, 2018, an owner of a residential high-rise building shall provide notice of the owner's intent to comply with this subchapter to:

(1) if the building is located in a municipality, the appropriate code official of the municipality in which the building is located; or

(2) if the building is not located in a municipality, the county clerk of the county in which the building is located.

(c) Not later than September 1, 2021, the owner of a residential high-rise building shall install a water supply on all floors of the building in accordance with National Fire Protection Association 13: Standard for the Installation of Sprinkler Systems.

(d) Not later than September 1, 2024, the owner of a residential high-rise building shall install a fire protection sprinkler system in accordance with this subchapter on at least 50 percent of the floors of the building.

(e) Not later than September 1, 2027, the owner of a residential high-rise building shall install a fire protection sprinkler system in accordance with this subchapter on all floors of the building.

(f) Notwithstanding Subsections (b), (c), (d), and (e), an owner of multiple residential high-rise buildings built before September 1, 2015, is considered to have met the requirements of this section if a fire protection sprinkler system is installed on all floors of:

(1) at least 33 percent of the owner's residential high-rise buildings not later than September 1, 2021;

(2) at least 66 percent of the owner's residential high-rise buildings not later than September 1, 2024; and

(3) all of the owner's residential high-rise buildings not later than September 1, 2027.

(g) If a residential high-rise building is a condominium as defined by Section 81.001 or 82.003, Property Code, the apartment or unit owners of the condominium may comply with this subchapter by acting jointly through the council of owners or unit owners' association, as applicable, of the condominium.

(h) For purposes of Sections 766.055 and 766.056, a residential high-rise building is in compliance with this subchapter if the owner of the building has met the requirements of this section.

(i) This section expires September 1, 2028.

Sec. 766.055. INJUNCTION.

(a) The attorney general, the county attorney of a county in which a residential high-rise building is located or the district attorney of a county in which the building is located may bring an action in the name of the state for an injunction to enforce this subchapter against the owner or person in charge of a residential high-rise building not in compliance with this subchapter.

(b) The action must be brought in the district court of the county in which the residential high-rise building is located.

(c) The attorney general, county attorney of the county in which the residential high-rise building is located, or district attorney of the county in which the building is located, as applicable, shall give the owner or person in charge of the building notice of the time and place of a hearing for an action brought under this section not later than the 10th day before the date of the hearing.

(d) A district judge may issue a mandatory injunction against the owner or person in charge of a residential high-rise building not in compliance with this subchapter to enforce this subchapter. Violation of an injunction issued under this section constitutes contempt of court and is punishable in the manner provided for contempt.

Sec. 766.056. CRIMINAL PENALTY.

(a) A person commits an offense if the person is the owner of a residential high-rise building that is not in compliance with this subchapter.

(b) A person commits an offense if the person serves as an agent for an owner who is not a resident of this state in the care, management, supervision, control or rental of a residential high-rise building not in compliance with this subchapter.

(c) An offense under this section is punishable by a fine of not more than \$10,000.

OTHER STATUTES APPLICABLE TO BOTH CONDOMINIUMS AND HOA'S:

TEXAS FINANCE CODE

Sec. 343.103 DISCLOSURE OF MORTGAGE INFORMATION TO SURVIVING SPOUSE.

(a) In this section:

(1) "Estate" has the meaning assigned by Section 22.012, Estates Code.

(2) "Heir" has the meaning assigned by Section 22.015, Estates Code.

(3) "Mortgage servicer" and "mortgagor" have the meanings assigned by Section 51.0001, Property Code.

(b) Not later than the 30th day after a mortgage servicer of a home loan receives a request for the information from a surviving spouse of a mortgagor of the home loan, accompanied by the proof required under Subsection (c), the mortgage servicer shall provide the surviving spouse with information that the mortgagor would have received in a standard monthly statement, including

(1) the current balance information, including the due dates and the amount of any installments;

(2) whether the loan is current and any amounts that are delinquent;

(3) any loan number; and

(4) the amount of any escrow deposit for taxes and insurance purposes.

(c) a surviving spouse must prove the person's status by providing:

(1) a death certificate of the mortgagor;

(2) an affidavit of disinterested witnesses that is in the form referenced in Section 203.002, Estates Code, including language stating that the surviving spouse was married to the mortgagor at the time of the mortgagor's death; and

(3) an affidavit signed by the surviving spouse stating that the surviving spouse is currently residing in the underlying mortgaged property as the primary residence.

(d) The request from the surviving spouse must also include a notice to the mortgage servicer that states in bold-faced, capital, or underlined letters: "THIS REQUEST IS MADE PURSUANT TO TEXAS FINANCE CODE SECTION 343.103. SUBSEQUENT DISCLOSURE OF INFORMATION IS NOT IN CONFLICT WITH THE GRAHAM-LEACH-BLILEY ACT UNDER 15 U.S.C. SECTION 6802(e)(8)."

(e) A mortgage servicer that provides the information as required under this section is not liable to the estate of the mortgagor or any heir or beneficiary of the mortgagor as a result of providing this information to the surviving spouse.

PROPERTY CODE

TITLE 2. CONVEYANCES

CHAPTER 5. CONVEYANCES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 5.001. FEE SIMPLE.

(a) An estate in land that is conveyed or devised is a fee simple unless the estate is limited by express words or unless a lesser estate is conveyed or devised by construction or operation of law. Words previously necessary at common law to transfer a fee simple estate are not necessary.

(b) This section applies only to a conveyance occurring on or after February 5, 1840.

Acts 1983, 68th Leg., p. 3480, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.002. FAILING AS A CONVEYANCE.

An instrument intended as a conveyance of real property or an interest in real property that, because of this chapter, fails as a conveyance in whole or in part is enforceable to the extent permitted by law as a contract to convey the property or interest.

Acts 1983, 68th Leg., p. 3480, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.003. PARTIAL CONVEYANCE.

(a) An alienation of real property that purports to transfer a greater right or estate in the property than the person making the alienation may lawfully transfer alienates only the right or estate that the person may convey.

(b) Neither the alienation by deed or will of an estate on which a remainder depends nor the union of the estate with an inheritance by purchase or descent affects the remainder.

Acts 1983, 68th Leg., p. 3480, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.004. CONVEYANCE BY AUTHORIZED OFFICER.

(a) A conveyance of real property by an officer legally authorized to sell the property under a judgment of a court within the state passes absolute title to the property to the purchaser.

(b) This section does not affect the rights of a person who is not or who does not claim under a party to the conveyance or judgment.

Acts 1983, 68th Leg., p. 3480, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.005. ALIENS.

An alien has the same real and personal property rights as a United States citizen.

Acts 1983, 68th Leg., p. 3481, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.006. ATTORNEY'S FEES IN BREACH OF RESTRICTIVE COVENANT ACTION.

(a) In an action based on breach of a restrictive covenant pertaining to real property, the court shall allow to a prevailing party who asserted the action reasonable attorney's fees in addition to the party's costs and claim.

(b) To determine reasonable attorney's fees, the court shall consider:

- (1) the time and labor required;
- (2) the novelty and difficulty of the questions;
- (3) the expertise, reputation, and ability of the attorney; and
- (4) any other factor.

Acts 1983, 68th Leg., p. 3481, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.007. VENDOR AND PURCHASER RISK ACT.

(a) Any contract made in this state for the purchase and sale of real property shall be interpreted as including an agreement that the parties have the rights and duties prescribed by this section, unless the contract expressly provides otherwise.

(b) If, when neither the legal title nor the possession of the subject matter of the contract has been transferred, all or a material part of the property is destroyed without fault of the purchaser or is taken by eminent domain, the vendor may not enforce the contract, and the purchaser is entitled to recover any portion of the contract price paid.

(c) If, when either the legal title or the possession of the subject matter of the contract has been transferred, all or any part of the property is destroyed without fault of the vendor or is taken by eminent domain, the purchaser is not relieved from the duty to pay the contract price, nor is the purchaser entitled to recover any portion of the price already paid.

(d) This section shall be interpreted and construed to accomplish its general purpose to make uniform the law of those states that enact the Uniform Vendor and Purchaser Risk Act.

(e) This section may be cited as the Uniform Vendor and Purchaser Risk Act.

Added by Acts 1989, 71st Leg., ch. 1002, Sec. 1, eff. Sept. 1, 1989.

Sec. 5.008. SELLER'S DISCLOSURE OF PROPERTY CONDITION.

(a) A seller of residential real property comprising not more than one dwelling unit located in this state shall give to the purchaser of the property a written notice as prescribed by this section or a written notice substantially similar to the notice prescribed by this section which contains, at a minimum, all of the items in the notice prescribed by this section.

(b) The notice must be executed and must, at a minimum, read substantially similar to the following:

SELLER'S DISCLOSURE NOTICE

CONCERNING THE PROPERTY AT _____
(Street Address and City)

THIS NOTICE IS A DISCLOSURE OF SELLER'S KNOWLEDGE OF THE CONDITION OF THE PROPERTY AS OF THE DATE SIGNED BY SELLER AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE

PURCHASER MAY WISH TO OBTAIN. IT IS NOT A WARRANTY OF ANY KIND BY SELLER OR SELLER'S AGENTS.

Seller ___ is not occupying the Property.

If unoccupied, how long since Seller has occupied the Property?

1. The Property has the items checked below:
Write Yes (Y), No (N), or Unknown (U).

<input type="checkbox"/> Range	<input type="checkbox"/> Oven	<input type="checkbox"/> Microwave
<input type="checkbox"/> Dishwasher	<input type="checkbox"/> Trash Compactor	<input type="checkbox"/> Disposal
<input type="checkbox"/> Washer/Dryer	<input type="checkbox"/> Window	<input type="checkbox"/> Rain Gutters
<input type="checkbox"/> Hookups	<input type="checkbox"/> Screens	
<input type="checkbox"/> Security System	<input type="checkbox"/> Fire Detection Equipment	<input type="checkbox"/> Intercom System
	<input type="checkbox"/> Smoke Detector	
	<input type="checkbox"/> Smoke Detector - Hearing Impaired	
	<input type="checkbox"/> Carbon Monoxide Alarm	
	<input type="checkbox"/> Emergency Escape Ladder(s)	
<input type="checkbox"/> TV Antenna	<input type="checkbox"/> Cable TV	<input type="checkbox"/> Satellite Dish
<input type="checkbox"/> Ceiling Fan(s)	<input type="checkbox"/> Wiring	<input type="checkbox"/> Exhaust Fan(s)
<input type="checkbox"/> Central A/C	<input type="checkbox"/> Attic Fan(s)	<input type="checkbox"/> Wall/Window Air Conditioning
	<input type="checkbox"/> Central Heating	
<input type="checkbox"/> Plumbing System	<input type="checkbox"/> Septic System	<input type="checkbox"/> Public Sewer System
<input type="checkbox"/> Patio/Decking	<input type="checkbox"/> Outdoor Grill	<input type="checkbox"/> Fences
<input type="checkbox"/> Pool	<input type="checkbox"/> Sauna	<input type="checkbox"/> Spa
		<input type="checkbox"/> Hot Tub
<input type="checkbox"/> Pool Equipment	<input type="checkbox"/> Pool Heater	<input type="checkbox"/> Automatic Lawn Sprinkler System
<input type="checkbox"/> Fireplace(s) & Chimney (Woodburning)		<input type="checkbox"/> Fireplace(s) & Chimney (Mock)
<input type="checkbox"/> Natural Gas Lines		<input type="checkbox"/> Gas Fixtures
<input type="checkbox"/> Liquid Propane Gas:	<input type="checkbox"/> LP Community (Captive)	<input type="checkbox"/> LP on Property
Garage: <input type="checkbox"/> Attached	<input type="checkbox"/> Not Attached	<input type="checkbox"/> Carport
Garage Door Opener(s):	<input type="checkbox"/> Electronic	<input type="checkbox"/> Control(s)
Water Heater:	<input type="checkbox"/> Gas	<input type="checkbox"/> Electric
Water Supply: <input type="checkbox"/> City	<input type="checkbox"/> Well <input type="checkbox"/> MUD	<input type="checkbox"/> Co-op
Roof Type: _____	Age: _____	(approx)

Are you (Seller) aware of any of the above items that are not in working condition, that have known defects, or that are in need of repair? Yes No Unknown.
If yes, then describe. (Attach additional sheets if necessary): _____

2. Does the property have working smoke detectors installed in accordance with the smoke detector requirements of Chapter 766, Health and Safety Code?* Yes No Unknown.
If the answer to the question above is no or unknown, explain. (Attach additional sheets if necessary): _____

*Chapter 766 of the Health and Safety Code requires one-family or two-family dwellings to have working smoke detectors installed in accordance with the requirements of the building code in effect in the area in which the dwelling is located, including performance, location, and power source requirements. If you do not know the building code requirements in effect in your area, you may check unknown above or contact your local building official for more information. A buyer may require a seller to install smoke detectors for the hearing impaired if: (1) the buyer or a member of the buyer's family who will reside in the dwelling is hearing impaired; (2) the buyer gives the seller written evidence of the hearing impairment from a licensed physician; and (3) within 10 days after the effective date, the buyer makes a written request for the seller to install smoke detectors for the hearing impaired and specifies the locations for installation. The parties may agree who will bear the cost of installing the smoke detectors and which brand of smoke detectors to install.

3. Are you (Seller) aware of any known defects/malfunctions in any of the following?
Write Yes (Y) if you are aware, write No (N) if you are not aware.

- | | | |
|--|---|--|
| <input type="checkbox"/> Interior Walls | <input type="checkbox"/> Ceilings | <input type="checkbox"/> Floors |
| <input type="checkbox"/> Exterior Walls | <input type="checkbox"/> Doors | <input type="checkbox"/> Windows |
| <input type="checkbox"/> Roof | <input type="checkbox"/> Foundation/
Slab(s) | <input type="checkbox"/> Basement |
| <input type="checkbox"/> Walls/Fences | <input type="checkbox"/> Driveways | <input type="checkbox"/> Sidewalks |
| <input type="checkbox"/> Plumbing/Sewers/Septics | <input type="checkbox"/> Electrical Systems | <input type="checkbox"/> Lighting Fixtures |
| <input type="checkbox"/> Other Structural Components (Describe): _____ | | |

If the answer to any of the above is yes, explain. (Attach additional sheets if necessary): _____

4. Are you (Seller) aware of any of the following conditions?
Write Yes (Y) if you are aware, write No (N) if you are not aware.

- | | |
|--|--|
| <input type="checkbox"/> Active Termites | <input type="checkbox"/> Previous Structural |
|--|--|

- | | |
|---|--|
| (includes wood-destroying insects) | or Roof Repair |
| <input type="checkbox"/> Termite or Wood Rot Damage | <input type="checkbox"/> Hazardous or Toxic Waste |
| Needing Repair | |
| <input type="checkbox"/> Previous Termite Damage | <input type="checkbox"/> Asbestos Components |
| <input type="checkbox"/> Previous Termite Treatment | <input type="checkbox"/> Urea formaldehyde Insulation |
| <input type="checkbox"/> Previous Flooding | <input type="checkbox"/> Radon Gas |
| <input type="checkbox"/> Improper Drainage | <input type="checkbox"/> Lead Based Paint |
| <input type="checkbox"/> Water Penetration | <input type="checkbox"/> Aluminum Wiring |
| <input type="checkbox"/> Located in 100-Year Floodplain | <input type="checkbox"/> Previous Fires |
| <input type="checkbox"/> Present Flood Insurance Coverage | <input type="checkbox"/> Unplatted Easements |
| <input type="checkbox"/> Landfill, Settling, Soil Movement, Fault Lines | <input type="checkbox"/> Subsurface Structure or Pits |
| <input type="checkbox"/> Single Blockable Main Drain in Pool/Hot Tub/Spa* | <input type="checkbox"/> Previous Use of Premises for Manufacture of Methamphetamine |

If the answer to any of the above is yes, explain. (Attach additional sheets if necessary): _____

*A single blockable main drain may cause a suction entrapment hazard for an individual.

5. Are you (Seller) aware of any item, equipment, or system in or on the property that is in need of repair? Yes (if you are aware) No (if you are not aware). If yes, explain (attach additional sheets as necessary) _____

6. Are you (Seller) aware of any of the following?
Write Yes (Y) if you aware, write No (N) if you are not aware.

- Room additions, structural modifications, or other alterations or repairs made without necessary permits or not in compliance with building codes in effect at that time.
- Homeowners' Association or maintenance fees or assessments.
- Any "common area" (facilities such as pools, tennis courts, walkways, or other areas) co-owned in undivided interest with others.
- Any notices of violations of deed restrictions or governmental ordinances affecting the condition or use of the Property.
- Any lawsuits directly or indirectly affecting the Property.
- Any condition on the Property which materially affects the physical health or safety of an individual.
- Any rainwater harvesting system connected to the property's public water supply that is able to be used for indoor potable purposes.

If the answer to any of the above is yes, explain. (Attach additional sheets if necessary):

(f) The notice shall be delivered by the seller to the purchaser on or before the effective date of an executory contract binding the purchaser to purchase the property. If a contract is entered without the seller providing the notice required by this section, the purchaser may terminate the contract for any reason within seven days after receiving the notice.

(g) In this section:

(1) "Blockable main drain" means a main drain of any size and shape that a human body can sufficiently block to create a suction entrapment hazard.

(2) "Main drain" means a submerged suction outlet typically located at the bottom of a swimming pool or spa to conduct water to a recirculating pump.

Added by Acts 1993, 73rd Leg., ch. 356, Sec. 1, eff. Jan. 1, 1994.

Amended by:

Acts 2005, 79th Leg., Ch. 728, Sec. 17.001, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 448, Sec. 1, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1051, Sec. 11, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1256, Sec. 22, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87, Sec. 20.001, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1178, Sec. 1, eff. January 1, 2010.

Acts 2011, 82nd Leg., R.S., Ch. 578, Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 621, Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1311, Sec. 5, eff. September 1, 2011.

Sec. 5.009. DUTIES OF LIFE TENANT.

(a) Subject to Subsection (b), if the life tenant of a legal life estate is given the power to sell and reinvest any life tenancy property, the life tenant is subject, with respect to the sale and investment of the property, to all of the fiduciary duties of a trustee imposed by the Texas Trust Code (Subtitle B, Title 9, Property Code) or the common law of this state.

(b) A life tenant may retain, as life tenancy property, any real property originally conveyed to the life tenant without being subject to the fiduciary duties of a trustee; however, the life tenant is subject to the common law duties of a life tenant.

Acts 1993, 73rd Leg., ch. 846, Sec. 34, eff. Sept. 1, 1993. Renumbered from Property Code Sec. 5.008 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(42), eff. Sept. 1, 1995.

Sec. 5.010. NOTICE OF ADDITIONAL TAX LIABILITY.

(a) A person who is the owner of an interest in vacant land and who contracts for the transfer of that interest shall include in the contract the following bold-faced notice:

NOTICE REGARDING POSSIBLE LIABILITY FOR ADDITIONAL TAXES

If for the current ad valorem tax year the taxable value of the land that is the subject of this contract is determined by a special appraisal method that allows for appraisal of the land at less than its market value, the person to whom the land is transferred may not be allowed to qualify the land for that special appraisal in a subsequent tax year and the land may then be appraised at its full market value. In addition, the transfer of the land or a subsequent change in the use of the land may result in the imposition of an additional tax plus interest as a penalty for the transfer or the change in the use of the land. The taxable value of the land and the applicable method of

appraisal for the current tax year is public information and may be obtained from the tax appraisal district established for the county in which the land is located.

(b) This section does not apply to a contract for a transfer:

- (1) under a court order or foreclosure sale;
- (2) by a trustee in bankruptcy;
- (3) to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;
- (4) by a mortgagee or a beneficiary under a deed of trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure;
- (5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;
- (6) of only a mineral interest, leasehold interest, or security interest; or
- (7) to or from a governmental entity.

(c) The notice described by Subsection (a) is not required to be included in a contract for transfer of an interest in land if every transferee under the contract is:

- (1) a person who is a co-owner with an owner described by Subsection (a) of an undivided interest in the land; or
- (2) a spouse or a person in the lineal line of consanguinity of an owner described by Subsection (a).

(d) The notice described by Subsection (a) is not required to be given if in a separate paragraph of the contract the contract expressly provides for the payment of any additional ad valorem taxes and interest that become due as a penalty because of:

- (1) the transfer of the land; or
- (2) a subsequent change in the use of the land.

(e) If the owner fails to include in the contract the notice described by Subsection (a), the person to whom the land is transferred is entitled to recover from that owner an amount equal to the amount of any additional taxes and interest that the person is required to pay as a penalty because of:

- (1) the transfer of the land; or
- (2) a subsequent change in the use of the land that occurs before the fifth anniversary of the date of the transfer.

Added by Acts 1997, 75th Leg., ch. 174, Sec. 1, eff. Jan. 1, 1998.

Sec. 5.011. SELLER'S DISCLOSURE REGARDING POTENTIAL ANNEXATION.

(a) A person who sells an interest in real property in this state shall give to the purchaser of the property a written notice that reads substantially similar to the following:

NOTICE REGARDING POSSIBLE ANNEXATION

If the property that is the subject of this contract is located outside the limits of a municipality, the property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial

jurisdiction, contact all municipalities located in the general proximity of the property for further information.

(b) The seller shall deliver the notice to the purchaser before the date the executory contract binds the purchaser to purchase the property. The notice may be given separately, as part of the contract during negotiations, or as part of any other notice the seller delivers to the purchaser.

(c) This section does not apply to a transfer:

- (1) under a court order or foreclosure sale;
- (2) by a trustee in bankruptcy;
- (3) to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;
- (4) by a mortgagee or a beneficiary under a deed of trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure;
- (5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;
- (6) from one co-owner to another co-owner of an undivided interest in the real property;
- (7) to a spouse or a person in the lineal line of consanguinity of the seller;
- (8) to or from a governmental entity;
- (9) of only a mineral interest, leasehold interest, or security interest; or
- (10) of real property that is located wholly within a municipality's corporate boundaries.

(d) If the notice is delivered as provided by this section, the seller has no duty to provide additional information regarding the possible annexation of the property by a municipality.

(e) If an executory contract is entered into without the seller providing the notice required by this section, the purchaser may terminate the contract for any reason within the earlier of:

- (1) seven days after the date the purchaser receives the notice; or
- (2) the date the transfer occurs.

Added by Acts 1999, 76th Leg., ch. 529, Sec. 1, eff. Jan. 1, 2000.

Sec. 5.012. NOTICE OF OBLIGATIONS RELATED TO MEMBERSHIP IN PROPERTY OWNERS' ASSOCIATION.

(a) A seller of residential real property that is subject to membership in a property owners' association and that comprises not more than one dwelling unit located in this state shall give to the purchaser of the property a written notice that reads substantially similar to the following:

NOTICE OF MEMBERSHIP IN PROPERTY OWNERS' ASSOCIATION
CONCERNING THE PROPERTY AT (street address) (name of residential community)

As a purchaser of property in the residential community in which this property is located, you are obligated to be a member of a property owners' association. Restrictive covenants governing the use and occupancy of the property and all dedicatory instruments governing the establishment, maintenance, or operation of this residential

community have been or will be recorded in the Real Property Records of the county in which the property is located. Copies of the restrictive covenants and dedicatory instruments may be obtained from the county clerk.

You are obligated to pay assessments to the property owners' association. The amount of the assessments is subject to change. Your failure to pay the assessments could result in enforcement of the association's lien on and the foreclosure of your property.

Section 207.003, Property Code, entitles an owner to receive copies of any document that governs the establishment, maintenance, or operation of a subdivision, including, but not limited to, restrictions, bylaws, rules and regulations, and a resale certificate from a property owners' association. A resale certificate contains information including, but not limited to, statements specifying the amount and frequency of regular assessments and the style and cause number of lawsuits to which the property owners' association is a party, other than lawsuits relating to unpaid ad valorem taxes of an individual member of the association. These documents must be made available to you by the property owners' association or the association's agent on your request.

Date: _____

Signature of Purchaser

(a-1) The second paragraph of the notice prescribed by Subsection (a) must be in bold print and underlined.

(b) The seller shall deliver the notice to the purchaser before the date the executory contract binds the purchaser to purchase the property. The notice may be given separately, as part of the contract during negotiations, or as part of any other notice the seller delivers to the purchaser. If the notice is included as part of the executory contract or another notice, the title of the notice prescribed by this section, the references to the street address and date in the notice, and the purchaser's signature on the notice may be omitted.

(c) This section does not apply to a transfer:

- (1) under a court order or foreclosure sale;
- (2) by a trustee in bankruptcy;
- (3) to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;
- (4) by a mortgagee or a beneficiary under a deed of trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure;
- (5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;
- (6) from one co-owner to another co-owner of an undivided interest in the real property;
- (7) to a spouse or a person in the lineal line of consanguinity of the seller;
- (8) to or from a governmental entity;
- (9) of only a mineral interest, leasehold interest, or security interest; or
- (10) of a real property interest in a condominium.

(d) If an executory contract is entered into without the seller providing the notice required by this section, the purchaser may terminate the contract for any reason within the earlier of:

- (1) seven days after the date the purchaser receives the notice; or
- (2) the date the transfer occurs as provided by the executory contract.

(e) The purchaser's right to terminate the executory contract under Subsection (d) is the purchaser's exclusive remedy for the seller's failure to provide the notice required by this section.

(f) On the purchaser's request for a resale certificate from the property owners' association or the association's agent, the association or its agent shall promptly deliver a copy of the most recent resale certificate issued for the property under Chapter 207 so long as the resale certificate was prepared not earlier than the 60th day before the date the resale certificate is delivered to the purchaser and reflects any special assessments approved before and due after the resale certificate is delivered. If a resale certificate that meets the requirements of this subsection has not been issued for the property, the seller shall request the association or its agent to issue a resale certificate under Chapter 207, and the association or its agent shall promptly prepare and deliver a copy of the resale certificate to the purchaser.

(g) The purchaser shall pay the fee to the property owners' association or its agent for issuing the resale certificate unless otherwise agreed by the purchaser and seller of the property. The property owners' association may require payment before beginning the process of providing a resale certificate requested under Chapter 207 but may not process a payment for a resale certificate until the certificate is available for delivery. The association may not charge a fee if the certificate is not provided in the time prescribed by Section 207.003(a).

Added by Acts 1999, 76th Leg., ch. 1420, Sec. 1, eff. Jan. 1, 2000.

Amended by: Acts 2011, 82nd Leg., R.S., Ch. 1142, Sec. 1, eff. January 1, 2012.

Sec. 5.013. SELLER'S DISCLOSURE OF LOCATION OF CONDITIONS UNDER SURFACE OF UNIMPROVED REAL PROPERTY.

(a) A seller of unimproved real property to be used for residential purposes shall provide to the purchaser of the property a written notice disclosing the location of a transportation pipeline, including a pipeline for the transportation of natural gas, natural gas liquids, synthetic gas, liquefied petroleum gas, petroleum or a petroleum product, or a hazardous substance.

(b) The notice must state the information to the best of the seller's belief and knowledge as of the date the notice is completed and signed by the seller. If the information required to be disclosed is not known to the seller, the seller shall indicate that fact in the notice.

(c) The notice must be delivered by the seller on or before the effective date of an executory contract binding the purchaser to purchase the property. If a contract is entered without the seller providing the notice as required by this section, the purchaser may terminate the contract for any reason not later than the seventh day after the effective date of the contract.

(d) This section applies to any seller of unimproved real property, including a seller who is the developer of the property and who sells the property to others for resale.

(e) In this section, "hazardous substance" and "hazardous waste" have the meanings assigned by Section 361.003, Health and Safety Code.

(f) A seller is not required to give the notice if:

(1) the seller is obligated under an earnest money contract to furnish a title insurance commitment to the buyer prior to closing; and

(2) the buyer is entitled to terminate the contract if the buyer's objections to title as permitted by the contract are not cured by the seller prior to closing.

Added by Acts 1997, 75th Leg., ch. 1239, Sec. 1, eff. Sept. 1, 1997. Renumbered from Property Code Sec. 5.010 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(95), eff. Sept. 1, 2001.

Sec. 5.014. NOTICE OF OBLIGATIONS RELATED TO PUBLIC IMPROVEMENT DISTRICT.

(a) A seller of residential real property that is located in a public improvement district established under Subchapter A, Chapter 372, Local Government Code, or Chapter 382, Local Government Code, and that consists of not more than one dwelling unit located in this state shall give to the purchaser of the property a written notice that reads substantially similar to the following:

NOTICE OF OBLIGATION TO PAY PUBLIC IMPROVEMENT DISTRICT ASSESSMENT TO (municipality or county levying assessment) CONCERNING THE PROPERTY AT (street address)

As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Subchapter A, Chapter 372, Local Government Code, or Chapter 382, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment.

The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.

Date: _____

Signature of Purchaser

(b) The seller shall deliver the notice required under Subsection (a) to the purchaser before the effective date of an executory contract binding the purchaser to purchase the property. The notice may be given separately, as part of the contract during negotiations, or as part of any other notice the seller delivers to the purchaser. If the notice is included as part of the executory contract or another notice, the title of the notice prescribed by this section, the references to the street address and date in the notice, and the purchaser's signature on the notice may be omitted.

(c) This section does not apply to a transfer:

- (1) under a court order or foreclosure sale;
- (2) by a trustee in bankruptcy;
- (3) to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;
- (4) by a mortgagee or a beneficiary under a deed of trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale

under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure;

(5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;

(6) from one co-owner to another co-owner of an undivided interest in the real property;

(7) to a spouse or a person in the lineal line of consanguinity of the seller;

(8) to or from a governmental entity;

(9) of only a mineral interest, leasehold interest, or security interest; or

(10) of a real property interest in a condominium.

(d) If an executory contract is entered into without the seller providing the notice required by this section, the purchaser may terminate the contract for any reason not later than the earlier of:

(1) the seventh day after the date the purchaser receives the notice; or

(2) the date the transfer occurs as provided by the executory contract.

(e) The purchaser's right to terminate the executory contract under Subsection (d) is the purchaser's exclusive remedy for the seller's failure to provide the notice required by this section.

Added by Acts 2005, 79th Leg., Ch. 1085, Sec. 1, eff. January 1, 2006.

Amended by: Acts 2009, 81st Leg., R.S., Ch. 87, Sec. 20.002, eff. September 1, 2009.

Sec. 5.015. PROHIBITED FEES.

A person who has a right of first refusal in real property that is a condominium subject to Chapter 81 or Chapter 82 may not charge a fee for declining to exercise that right, such as a fee for providing written evidence of the declination.

Added by Acts 2005, 79th Leg., Ch. 825, Sec. 14, eff. September 1, 2005.

Renumbered from Property Code, Section 5.014 by Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 17.001(63), eff. September 1, 2007.

Sec. 5.016. CONVEYANCE OF RESIDENTIAL PROPERTY ENCUMBERED BY LIEN.

(a) A person may not convey an interest in or enter into a contract to convey an interest in residential real property that will be encumbered by a recorded lien at the time the interest is conveyed unless, on or before the seventh day before the earlier of the effective date of the conveyance or the execution of an executory contract binding the purchaser to purchase the property, an option contract, or other contract, the person provides the purchaser and each lienholder a separate written disclosure statement in at least 12-point type that:

(1) identifies the property and includes the name, address, and phone number of each lienholder;

(2) states the amount of the debt that is secured by each lien;

(3) specifies the terms of any contract or law under which the debt that is secured by the lien was incurred, including, as applicable:

(A) the rate of interest;

(B) the periodic installments required to be paid; and

(C) the account number;

(4) indicates whether the lienholder has consented to the transfer of the property to the purchaser;

(5) specifies the details of any insurance policy relating to the property, including:

- (A) the name of the insurer and insured;
- (B) the amount for which the property is insured; and
- (C) the property that is insured;

(6) states the amount of any property taxes that are due on the property;

(7) includes a statement at the top of the disclosure in a form substantially similar to the following:

WARNING: ONE OR MORE RECORDED LIENS HAVE BEEN FILED THAT MAKE A CLAIM AGAINST THIS PROPERTY AS LISTED BELOW. IF A LIEN IS NOT RELEASED AND THE PROPERTY IS CONVEYED WITHOUT THE CONSENT OF THE LIENHOLDER, IT IS POSSIBLE THE LIENHOLDER COULD DEMAND FULL PAYMENT OF THE OUTSTANDING BALANCE OF THE LIEN IMMEDIATELY. YOU MAY WISH TO CONTACT EACH LIENHOLDER FOR FURTHER INFORMATION AND DISCUSS THIS MATTER WITH AN ATTORNEY.

(b) A violation of this section does not invalidate a conveyance. Except as provided by Subsections (c) and (d), if a contract is entered into without the seller providing the notice required by this section, the purchaser may terminate the contract for any reason on or before the seventh day after the date the purchaser receives the notice in addition to other remedies provided by this section or other law.

(c) This section does not apply to a transfer:

(1) under a court order or foreclosure sale;

(2) by a trustee in bankruptcy;

(3) to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;

(4) by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the real property by a deed in lieu of foreclosure;

(5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;

(6) from one co-owner to one or more other co-owners;

(7) to a spouse or to a person or persons in the lineal line of consanguinity of one or more of the transferors;

(8) between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement agreement incidental to one of those decrees;

(9) to or from a governmental entity;

(10) where the purchaser obtains a title insurance policy insuring the transfer of title to the real property; or

(11) to a person who has purchased, conveyed, or entered into contracts to purchase or convey an interest in real property four or more times in the preceding 12 months.

(d) A violation of this section is not actionable if the person required to give notice reasonably believes and takes any necessary action to ensure that each lien for which notice was not provided will be released on or before the 30th day after the date on which title to the property is transferred.

Added by Acts 2007, 80th Leg., R.S., Ch. 1056, Sec. 1, eff. January 1, 2008.

Sec. 5.018. DISCLOSURE OF ABSENCE OF CERTAIN WARRANTIES.

(a) A seller of residential real property that is exempt from Title 16 under Section 401.005 shall give to the purchaser of the property a written notice that reads substantially similar to the following:

NOTICE OF NONAPPLICABILITY OF CERTAIN WARRANTIES AND BUILDING AND PERFORMANCE STANDARDS

The property that is subject to this contract is exempt from Title 16, Property Code, including the provisions of that title that provide statutory warranties and building and performance standards.

(b) A notice required by this section shall be delivered by the seller to the purchaser on or before the effective date of an executory contract binding the purchaser to purchase the property. If a contract is entered into without the seller providing the notice, the purchaser may terminate the contract for any reason on or before the seventh day after the date the purchaser receives the notice.

(c) This section does not apply to a transfer:

- (1) under a court order or foreclosure sale;
- (2) by a trustee in bankruptcy;
- (3) to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;
- (4) by a mortgagee or a beneficiary under a deed of trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure;
- (5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;
- (6) from one co-owner to another co-owner of an undivided interest in the real property;
- (7) to a spouse or a person in the lineal line of consanguinity of the seller;
- (8) to or from a governmental entity; or
- (9) of only a mineral interest, leasehold interest, or security interest.

Added by Acts 2007, 80th Leg., R.S., Ch. 843, Sec. 1, eff. September 1, 2007.

Renumbered from Property Code, Section 5.016 by Acts 2009, 81st Leg., R.S., Ch. 87, Sec. 27.001(76), eff. September 1, 2009.

SUBCHAPTER B. FORM AND CONSTRUCTION OF INSTRUMENTS

Sec. 5.021. INSTRUMENT OF CONVEYANCE.

A conveyance of an estate of inheritance, a freehold, or an estate for more than one year, in land and tenements, must be in writing and must be subscribed and delivered by the conveyor or by the conveyor's agent authorized in writing.
Acts 1983, 68th Leg., p. 3481, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.022. FORM.

(a) The following form or a form that is the same in substance conveys a fee simple estate in real property with a covenant of general warranty:

"The State of Texas,

"County of _____.

"Know all men by these presents, That I, _____, of the _____ (give name of city, town, or county), in the state aforesaid, for and in consideration of _____ dollars, to me in hand paid by _____, have granted, sold, and conveyed, and by these presents do grant, sell, and convey unto the said _____, of the _____ (give name of city, town, or county), in the state of _____, all that certain _____ (describe the premises). To have and to hold the above described premises, together with all and singular the rights and appurtenances thereto in any wise belonging, unto the said _____, his heirs or assigns forever. And I do hereby bind myself, my heirs, executors, and administrators to warrant and forever defend all and singular the said premises unto the said _____, his heirs, and assigns, against every person whomsoever, lawfully claiming or to claim the same, or any part thereof.

"Witness my hand, this _____ day of _____, A.D. 19__.

"Signed and delivered in the presence of _____"

(b) A covenant of warranty is not required in a conveyance.

(c) The parties to a conveyance may insert any clause or use any form not in contravention of law.

Acts 1983, 68th Leg., p. 3481, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.023. IMPLIED COVENANTS.

(a) Unless the conveyance expressly provides otherwise, the use of "grant" or "convey" in a conveyance of an estate of inheritance or fee simple implies only that the grantor and the grantor's heirs covenant to the grantee and the grantee's heirs or assigns:

(1) that prior to the execution of the conveyance the grantor has not conveyed the estate or any interest in the estate to a person other than the grantee; and

(2) that at the time of the execution of the conveyance the estate is free from encumbrances.

(b) An implied covenant under this section may be the basis for a lawsuit as if it had been expressed in the conveyance.

Acts 1983, 68th Leg., p. 3482, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.024. ENCUMBRANCES.

"Encumbrance" includes a tax, an assessment, and a lien on real property.

Acts 1983, 68th Leg., p. 3482, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.025. WOOD SHINGLE ROOF.

To the extent that a deed restriction applicable to a structure on residential property requires the use of a wood shingle roof, the restriction is void.

Acts 1983, 68th Leg., p. 3482, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.026. DISCRIMINATORY PROVISIONS.

(a) If a restriction that affects real property, or a provision in a deed that conveys real property or an interest in real property, whether express or incorporated by reference, prohibits the use by or the sale, lease, or transfer to a person because of race, color, religion, or national origin, the provision or restriction is void.

(b) A court shall dismiss a suit or part of a suit to enforce a provision that is void under this section.

Acts 1983, 68th Leg., p. 3483, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.027. CORRECTION INSTRUMENTS: GENERALLY.

(a) A correction instrument that complies with Section 5.028 or 5.029 may correct an ambiguity or error in a recorded original instrument of conveyance to transfer real property or an interest in real property, including an ambiguity or error that relates to the description of or extent of the interest conveyed.

(b) A correction instrument may not correct an ambiguity or error in a recorded original instrument of conveyance to transfer real property or an interest in real property not originally conveyed in the instrument of conveyance for purposes of a sale of real property under a power of sale under Chapter 51 unless the conveyance otherwise complies with all requirements of Chapter 51.

(c) A correction instrument is subject to Section 13.001.

Added by Acts 2011, 82nd Leg., R.S., Ch. 194, Sec. 1, eff. September 1, 2011.

Sec. 5.028. CORRECTION INSTRUMENTS: NONMATERIAL CORRECTIONS.

(a) A person who has personal knowledge of facts relevant to the correction of a recorded original instrument of conveyance may execute a correction instrument to make a nonmaterial change that results from a clerical error, including:

(1) a correction of an inaccurate or incorrect element in a legal description, such as a distance, angle, direction, bearing or chord, a lot, block, unit, building designation or section number, an appurtenant easement, a township name or number, a municipality, county, or state name, a range number or meridian, a certified survey map number, or a subdivision or condominium name; or

(2) an addition, correction, or clarification of:

(A) a party's name, including the spelling of a name, a first or middle name or initial, a suffix, an alternate name by which a party is known, or a description of an entity as a corporation, company, or other type of organization;

(B) a party's marital status;

(C) the date on which the conveyance was executed;

(D) the recording data for an instrument referenced in the correction instrument; or

(E) a fact relating to the acknowledgment or authentication.

(b) A person who executes a correction instrument under this section may execute a correction instrument that provides an acknowledgment or authentication that is required and was not included in the recorded original instrument of conveyance.

(c) A person who executes a correction instrument under this section shall disclose in the instrument the basis for the person's personal knowledge of the facts relevant to the correction of the recorded original instrument of conveyance.

(d) A person who executes a correction instrument under this section shall:

(1) record the instrument and evidence of notice as provided by Subdivision (2), if applicable, in each county in which the original instrument of conveyance being corrected is recorded; and

(2) if the correction instrument is not signed by each party to the recorded original instrument, send a copy of the correction instrument and notice by first

class mail, e-mail, or other reasonable means to each party to the original instrument of conveyance and, if applicable, a party's heirs, successors, or assigns.

Added by Acts 2011, 82nd Leg., R.S., Ch. 194, Sec. 1, eff. September 1, 2011.

Sec. 5.029. CORRECTION INSTRUMENTS: MATERIAL CORRECTIONS.

(a) In addition to nonmaterial corrections, including the corrections described by Section 5.028, the parties to the original transaction or the parties' heirs, successors, or assigns, as applicable may execute a correction instrument to make a material correction to the recorded original instrument of conveyance, including a correction to:

(1) add:

(A) a buyer's disclaimer of an interest in the real property that is the subject of the original instrument of conveyance;

(B) a mortgagee's consent or subordination to a recorded document executed by the mortgagee or an heir, successor, or assign of the mortgagee; or

(C) land to a conveyance that correctly conveys other land;

(2) remove land from a conveyance that correctly conveys other land; or

(3) accurately identify a lot or unit number or letter of property owned by the grantor that was inaccurately identified as another lot or unit number or letter of property owned by the grantor in the recorded original instrument of conveyance.

(b) A correction instrument under this section must be:

(1) executed by each party to the recorded original instrument of conveyance the correction instrument is executed to correct or, if applicable, a party's heirs, successors, or assigns; and

(2) recorded in each county in which the original instrument of conveyance that is being corrected is recorded.

Added by Acts 2011, 82nd Leg., R.S., Ch. 194, Sec. 1, eff. September 1, 2011.

Sec. 5.030. CORRECTION INSTRUMENT: EFFECT.

(a) A correction instrument that complies with Section 5.028 or 5.029 is:

(1) effective as of the effective date of the recorded original instrument of conveyance;

(2) prima facie evidence of the facts stated in the correction instrument;

(3) presumed to be true;

(4) subject to rebuttal; and

(5) notice to a subsequent buyer of the facts stated in the correction instrument.

(b) A bona fide purchaser of property that is subject to a correction instrument may rely on the instrument against any person making an adverse or inconsistent claim.

Added by Acts 2011, 82nd Leg., R.S., Ch. 194, Sec. 1, eff. September 1, 2011.

Sec. 5.031. CORRECTION INSTRUMENTS RECORDED BEFORE SEPTEMBER 1, 2011.

A correction instrument recorded before September 1, 2011, that substantially complies with Section 5.028 or 5.029 and that purports to correct a recorded original instrument of conveyance is effective to the same extent as provided by Section 5.030 unless a court of competent jurisdiction renders a final judgment determining that the correction instrument does not substantially comply with Section 5.028 or 5.029.

SUBCHAPTER C. FUTURE ESTATES

Sec. 5.041. FUTURE ESTATES.

A person may make an inter vivos conveyance of an estate of freehold or inheritance that commences in the future, in the same manner as by a will.
Acts 1983, 68th Leg., p. 3483, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.042. ABOLITION OF COMMON-LAW RULES.

(a) The common-law rules known as the rule in Shelley's case, the rule forbidding a remainder to the grantor's heirs, the doctrine of worthier title, and the doctrine or rule prohibiting an existing lien upon part of a homestead from extending to another part of the homestead not charged with the debts secured by the existing lien upon part of the homestead do not apply in this state.

(b) A deed, will, or other conveyance of property in this state that limits an interest in the property to a particular person or to a class such as the heirs, heirs of the body, issue, or next of kin of the conveyor or of a person to whom a particular interest in the same property is limited is effective according to the intent of the conveyor.

(c) Status as an heir or next of kin of a conveyor or the failure of a conveyor to describe a person in a conveyance other than as a member of a class does not affect a person's right to take or share in an interest as a conveyee.

(d) Subject to the intention of a conveyor, which controls unless limited by law, the membership of a class described in this section and the participation of a member in a property interest conveyed to the class are determined under this state's laws of descent and distribution.

(e) This section does not apply to a conveyance taking effect before January 1, 1964.

Acts 1983, 68th Leg., p. 3483, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1999, 76th Leg., ch. 1510, Sec. 5, eff. Sept. 1, 1999.

Sec. 5.043. REFORMATION OF INTERESTS VIOLATING RULE AGAINST PERPETUITIES.

(a) Within the limits of the rule against perpetuities, a court shall reform or construe an interest in real or personal property that violates the rule to effect the ascertainable general intent of the creator of the interest. A court shall liberally construe and apply this provision to validate an interest to the fullest extent consistent with the creator's intent.

(b) The court may reform or construe an interest under Subsection (a) of this section according to the doctrine of cy pres by giving effect to the general intent and specific directives of the creator within the limits of the rule against perpetuities.

(c) If an instrument that violates the rule against perpetuities may be reformed or construed under this section, a court shall enforce the provisions of the instrument that do not violate the rule and shall reform or construe under this section a provision that violates or might violate the rule.

(d) This section applies to legal and equitable interests, including noncharitable gifts and trusts, conveyed by an inter vivos instrument or a will that takes effect on or after September 1, 1969, and this section applies to an appointment made on or after that date regardless of when the power was created.

Acts 1983, 68th Leg., p. 3484, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1991, 72nd Leg., ch. 895, Sec. 16, eff. Sept. 1, 1991.

SUBCHAPTER D. EXECUTORY CONTRACT FOR CONVEYANCE

Sec. 5.061. DEFINITION.

In this subchapter, "default" means the failure to:

- (1) make a timely payment; or
- (2) comply with a term of an executory contract.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 2, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.065 and amended by Act 2001, 77th Leg., ch. 693, Sec. 1, Sept. 1, 2001.

Sec. 5.062. APPLICABILITY.

(a) This subchapter applies only to a transaction involving an executory contract for conveyance of real property used or to be used as the purchaser's residence or as the residence of a person related to the purchaser within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code. For purposes of this subchapter, and only for the purposes of this subchapter:

- (1) a lot measuring one acre or less is presumed to be residential property; and
- (2) an option to purchase real property that includes or is combined or executed concurrently with a residential lease agreement, together with the lease, is considered an executory contract for conveyance of real property.

(b) This subchapter does not apply to the following transactions under an executory contract:

- (1) the sale of state land; or
- (2) a sale of land by:
 - (A) the Veterans' Land Board;
 - (B) this state or a political subdivision of this state; or
 - (C) an instrumentality, public corporation, or other entity created

to act on behalf of this state or a political subdivision of this state, including an entity created under Chapter 303, 392, or 394, Local Government Code.

(c) This subchapter does not apply to an executory contract that provides for the delivery of a deed from the seller to the purchaser within 180 days of the date of the final execution of the executory contract.

(d) Section 5.066 and Sections 5.068-5.080 do not apply to a transaction involving an executory contract for conveyance if the purchaser of the property:

- (1) is related to the seller of the property within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code; and
- (2) has waived the applicability of those sections in a written agreement.

(e) Sections 5.066, 5.067, 5.071, 5.075, 5.081, and 5.082 do not apply to an executory contract described by Subsection (a)(2).

(f) Notwithstanding any other provision of this subchapter, only the following sections apply to an executory contract described by Subsection (a)(2) if the term of the contract is three years or less and the purchaser and seller, or the purchaser's or seller's assignee, agent, or affiliate, have not been parties to an executory contract to purchase the property covered by the executory contract for longer than three years:

- (1) Sections 5.063-5.065;

(2) Section 5.073, except for Section 5.073(a)(2); and

(3) Sections 5.083 and 5.085.

(g) Except as provided by Subsection (b), if Subsection (f) conflicts with another provision of this subchapter, Subsection (f) prevails.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.091 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Amended by: Acts 2005, 79th Leg., Ch. 978, Sec. 2, eff. September 1, 2005.

Sec. 5.0621. CONSTRUCTION WITH OTHER LAW.

(a) Except as provided by Subsection (b), the provisions of this subchapter and Chapter 92 apply to the portion of an executory contract described by Section 5.062(a)(2) that is a residential lease agreement.

(b) After a tenant exercises an option to purchase leased property under a residential lease described by Subsection (a), Chapter 92 no longer applies to the lease.

Added by Acts 2005, 79th Leg., Ch. 978, Sec. 3, eff. September 1, 2005.

Sec. 5.063. NOTICE.

(a) Notice under Section 5.064 must be in writing and must be delivered by registered or certified mail, return receipt requested. The notice must be conspicuous and printed in 14-point boldface type or 14-point uppercase typewritten letters, and must include on a separate page the statement:

NOTICE

YOU ARE NOT COMPLYING WITH THE TERMS OF THE CONTRACT TO BUY YOUR PROPERTY. UNLESS YOU TAKE THE ACTION SPECIFIED IN THIS NOTICE BY (date) THE SELLER HAS THE RIGHT TO TAKE POSSESSION OF YOUR PROPERTY.

(b) The notice must also:

(1) identify and explain the remedy the seller intends to enforce;

(2) if the purchaser has failed to make a timely payment, specify:

(A) the delinquent amount, itemized into principal and interest;

(B) any additional charges claimed, such as late charges or

attorney's fees; and

(C) the period to which the delinquency and additional charges

relate; and

(3) if the purchaser has failed to comply with a term of the contract, identify the term violated and the action required to cure the violation.

(c) Notice by mail is given when it is mailed to the purchaser's residence or place of business. The affidavit of a person knowledgeable of the facts to the effect that notice was given is prima facie evidence of notice in an action involving a subsequent bona fide purchaser for value if the purchaser is not in possession of the real property and if the stated time to avoid the forfeiture has expired. A bona fide subsequent purchaser for value who relies upon the affidavit under this subsection shall take title free and clear of the contract.

Acts 1983, 68th Leg., p. 3485, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1993, 73rd Leg., ch. 444, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 994, Sec. 2, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.062 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.064. SELLER'S REMEDIES ON DEFAULT.

A seller may enforce the remedy of rescission or of forfeiture and acceleration against a purchaser in default under an executory contract for conveyance of real property only if:

- (1) the seller notifies the purchaser of:
 - (A) the seller's intent to enforce a remedy under this section; and
 - (B) the purchaser's right to cure the default within the 30-day period described by Section 5.065;
- (2) the purchaser fails to cure the default within the 30-day period described by Section 5.065; and
- (3) Section 5.066 does not apply.

Acts 1983, 68th Leg., p. 3484, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1995, 74th Leg., ch. 994, Sec. 2, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.061 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 959, Sec. 1, eff. Sept. 1, 2003.

Sec. 5.065. RIGHT TO CURE DEFAULT.

Notwithstanding an agreement to the contrary, a purchaser in default under an executory contract for the conveyance of real property may avoid the enforcement of a remedy described by Section 5.064 by complying with the terms of the contract on or before the 30th day after the date notice is given under that section.

Acts 1983, 68th Leg., p. 3485, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1995, 74th Leg., ch. 994, Sec. 2, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.063 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 959, Sec. 2, eff. Sept. 1, 2003.

Sec. 5.066. EQUITY PROTECTION; SALE OF PROPERTY.

(a) If a purchaser defaults after the purchaser has paid 40 percent or more of the amount due or the equivalent of 48 monthly payments under the executory contract, the seller is granted the power to sell, through a trustee designated by the seller, the purchaser's interest in the property as provided by this section. The seller may not enforce the remedy of rescission or of forfeiture and acceleration.

(b) The seller shall notify a purchaser of a default under the contract and allow the purchaser at least 60 days after the date notice is given to cure the default. The notice must be provided as prescribed by Section 5.063 except that the notice must substitute the following statement:

NOTICE

YOU ARE NOT COMPLYING WITH THE TERMS OF THE CONTRACT TO BUY YOUR PROPERTY. UNLESS YOU TAKE THE ACTION SPECIFIED IN THIS NOTICE BY (date) A TRUSTEE DESIGNATED BY THE SELLER HAS THE RIGHT TO SELL YOUR PROPERTY AT A PUBLIC AUCTION.

(c) The trustee or a substitute trustee designated by the seller must post, file, and serve a notice of sale and the county clerk shall record and maintain the notice of sale as prescribed by Section 51.002. A notice of sale is not valid unless it is given after the period to cure has expired.

(d) The trustee or a substitute trustee designated by the seller must conduct the sale as prescribed by Section 51.002. The seller must:

- (1) convey to a purchaser at a sale conducted under this section fee simple title to the real property; and

(2) warrant that the property is free from any encumbrance.

(e) The remaining balance of the amount due under the executory contract is the debt for purposes of a sale under this section. If the proceeds of the sale exceed the debt amount, the seller shall disburse the excess funds to the purchaser under the executory contract. If the proceeds of the sale are insufficient to extinguish the debt amount, the seller's right to recover the resulting deficiency is subject to Sections 51.003, 51.004, and 51.005 unless a provision of the executory contract releases the purchaser under the contract from liability.

(f) The affidavit of a person knowledgeable of the facts that states that the notice was given and the sale was conducted as provided by this section is prima facie evidence of those facts. A purchaser for value who relies on an affidavit under this subsection acquires title to the property free and clear of the executory contract.

(g) If a purchaser defaults before the purchaser has paid 40 percent of the amount due or the equivalent of 48 monthly payments under the executory contract, the seller may enforce the remedy of rescission or of forfeiture and acceleration of the indebtedness if the seller complies with the notice requirements of Sections 5.063 and 5.064.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.101 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.067. PLACEMENT OF LIEN FOR UTILITY SERVICE.

Notwithstanding any terms of a contract to the contrary, the placement of a lien for the reasonable value of improvements to residential real estate for purposes of providing utility service to the property shall not constitute a default under the terms of an executory contract for the purchase of the real property.

Added by Acts 1991, 72nd Leg., ch. 743, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 994, Sec. 2, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.064 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.068. FOREIGN LANGUAGE REQUIREMENT.

If the negotiations that precede the execution of an executory contract are conducted primarily in a language other than English, the seller shall provide a copy in that language of all written documents relating to the transaction, including the contract, disclosure notices, annual accounting statements, and a notice of default required by this subchapter.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.093 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.069. SELLER'S DISCLOSURE OF PROPERTY CONDITION.

(a) Before an executory contract is signed by the purchaser, the seller shall provide the purchaser with:

(1) a survey, which was completed within the past year, or plat of a current survey of the real property;

(2) a legible copy of any document that describes an encumbrance or other claim, including a restrictive covenant or easement, that affects title to the real property; and

(3) a written notice, which must be attached to the contract, informing the purchaser of the condition of the property that must, at a minimum, be executed by the seller and purchaser and read substantially similar to the following:

WARNING

IF ANY OF THE ITEMS BELOW HAVE NOT BEEN CHECKED, YOU MAY NOT BE ABLE TO LIVE ON THE PROPERTY.

SELLER'S DISCLOSURE NOTICE

**CONCERNING THE PROPERTY AT (street address or legal description and city)
THIS DOCUMENT STATES CERTAIN APPLICABLE FACTS ABOUT THE
PROPERTY YOU ARE CONSIDERING PURCHASING.**

CHECK ALL THE ITEMS THAT ARE APPLICABLE OR TRUE:

- The property is in a recorded subdivision.
- The property has water service that provides potable water.
- The property has sewer service.
- The property has been approved by the appropriate municipal, county, or state agency for installation of a septic system.
- The property has electric service.
- The property is not in a floodplain.
- The roads to the boundaries of the property are paved and maintained by:
 - the seller;
 - the owner of the property on which the road exists;
 - the municipality;
 - the county; or
 - the state.
- No individual or entity other than the seller:
 - (1) owns the property;
 - (2) has a claim of ownership to the property; or
 - (3) has an interest in the property.
- No individual or entity has a lien filed against the property.
- There are no restrictive covenants, easements, or other title exceptions or encumbrances that prohibit construction of a house on the property.

NOTICE: SELLER ADVISES PURCHASER TO:

- (1) OBTAIN A TITLE ABSTRACT OR TITLE COMMITMENT COVERING THE PROPERTY AND HAVE THE ABSTRACT OR COMMITMENT REVIEWED BY AN ATTORNEY BEFORE SIGNING A CONTRACT OF THIS TYPE; AND**
- (2) PURCHASE AN OWNER'S POLICY OF TITLE INSURANCE COVERING THE PROPERTY.**

(Date)

(Signature of Seller)

(Date)

(Signature of Purchaser)

(b) If the property is not located in a recorded subdivision, the seller shall provide the purchaser with a separate disclosure form stating that utilities may not be available to the property until the subdivision is recorded as required by law.

(c) If the seller advertises property for sale under an executory contract, the advertisement must disclose information regarding the availability of water, sewer, and electric service.

(d) The seller's failure to provide information required by this section:

(1) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code; and

(2) entitles the purchaser to cancel and rescind the executory contract and receive a full refund of all payments made to the seller.

(e) Subsection (d) does not limit the purchaser's remedy against the seller for other false, misleading, or deceptive acts or practices actionable in a suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.094 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Text of section effective on March 01, 2012

Sec. 5.070. SELLER'S DISCLOSURE OF TAX PAYMENTS AND INSURANCE COVERAGE.

(a) Before an executory contract is signed by the purchaser, the seller shall provide the purchaser with:

(1) a tax certificate from the collector for each taxing unit that collects taxes due on the property as provided by Section 31.08, Tax Code; and

(2) a legible copy of any insurance policy, binder, or other evidence relating to the property that indicates:

(A) the name of the insurer and the insured;

(B) a description of the property insured; and

(C) the amount for which the property is insured.

(b) The seller's failure to provide information required by this section:

(1) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code; and

(2) entitles the purchaser to cancel and rescind the executory contract and receive a full refund of all payments made to the seller.

(c) Subsection (b) does not limit the purchaser's remedy against the seller for other false, misleading, or deceptive acts or practices actionable in a suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

Added by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.071. SELLER'S DISCLOSURE OF FINANCING TERMS.

Before an executory contract is signed by the purchaser, the seller shall provide to the purchaser a written statement that specifies:

(1) the purchase price of the property;

(2) the interest rate charged under the contract;

(3) the dollar amount, or an estimate of the dollar amount if the interest rate is variable, of the interest charged for the term of the contract;

(4) the total amount of principal and interest to be paid under the contract;

(5) the late charge, if any, that may be assessed under the contract; and

(6) the fact that the seller may not charge a prepayment penalty or any similar fee if the purchaser elects to pay the entire amount due under the contract before the scheduled payment date under the contract.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.095 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.072. ORAL AGREEMENTS PROHIBITED.

(a) An executory contract is not enforceable unless the contract is in writing and signed by the party to be bound or by that party's authorized representative.

(b) The rights and obligations of the parties to a contract are determined solely from the written contract, and any prior oral agreements between the parties are superseded by and merged into the contract.

(c) An executory contract may not be varied by any oral agreements or discussions that occur before or contemporaneously with the execution of the contract.

(d) The seller shall include in a separate document or in a provision of the contract a statement printed in 14-point boldfaced type or 14-point uppercase typewritten letters that reads substantially similar to the following:

THIS EXECUTORY CONTRACT REPRESENTS THE FINAL AGREEMENT BETWEEN THE SELLER AND PURCHASER AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

(Date)

(Signature of Seller)

(Date)

(Signature of Purchaser)

(e) The seller's failure to provide the notice required by this section:

(1) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code; and

(2) entitles the purchaser to cancel and rescind the executory contract and receive a full refund of all payments made to the seller.

(f) Subsection (e) does not limit the purchaser's remedy against the seller for other false, misleading, or deceptive acts or practices actionable in a suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

Added by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.073. CONTRACT TERMS, CERTAIN WAIVERS PROHIBITED.

(a) A seller may not include as a term of the executory contract a provision that:

(1) imposes an additional late-payment fee that exceeds the lesser of:

(A) eight percent of the monthly payment under the contract; or

(B) the actual administrative cost of processing the late payment;

(2) prohibits the purchaser from pledging the purchaser's interest in the property as security to obtain a loan to place improvements, including utility improvements or fire protection improvements, on the property;

(3) imposes a prepayment penalty or any similar fee if the purchaser elects to pay the entire amount due under the contract before the scheduled payment date under the contract;

(4) forfeits an option fee or other option payment paid under the contract for a late payment; or

(5) increases the purchase price, imposes a fee or charge of any type, or otherwise penalizes a purchaser leasing property with an option to buy the property for requesting repairs or exercising any other right under Chapter 92.

(b) A provision of the executory contract that purports to waive a right or exempt a party from a liability or duty under this subchapter is void.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.096 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Amended by: Acts 2005, 79th Leg., Ch. 978, Sec. 4, eff. September 1, 2005.

Sec. 5.074. PURCHASER'S RIGHT TO CANCEL CONTRACT WITHOUT CAUSE.

(a) In addition to other rights or remedies provided by law, the purchaser may cancel and rescind an executory contract for any reason by sending by telegram or certified or registered mail, return receipt requested, or by delivering in person a signed, written notice of cancellation to the seller not later than the 14th day after the date of the contract.

(b) If the purchaser cancels the contract as provided by Subsection (a), the seller shall, not later than the 10th day after the date the seller receives the purchaser's notice of cancellation:

(1) return to the purchaser the executed contract and any property exchanged or payments made by the purchaser under the contract; and

(2) cancel any security interest arising out of the contract.

(c) The seller shall include in immediate proximity to the space reserved in the executory contract for the purchaser's signature a statement printed in 14-point boldface type or 14-point uppercase typewritten letters that reads substantially similar to the following:

YOU, THE PURCHASER, MAY CANCEL THIS CONTRACT AT ANY TIME DURING THE NEXT TWO WEEKS. THE DEADLINE FOR CANCELING THE CONTRACT IS (date). THE ATTACHED NOTICE OF CANCELLATION EXPLAINS THIS RIGHT.

(d) The seller shall provide a notice of cancellation form to the purchaser at the time the purchaser signs the executory contract that is printed in 14-point boldface type or 14-point uppercase typewritten letters and that reads substantially similar to the following:

(date of contract)
NOTICE OF CANCELLATION

YOU MAY CANCEL THE EXECUTORY CONTRACT FOR ANY REASON WITHOUT ANY PENALTY OR OBLIGATION BY (date).

(1) YOU MUST SEND BY TELEGRAM OR CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, OR DELIVER IN PERSON A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE TO (Name of Seller) AT (Seller's Address) BY (date).

(2) THE SELLER SHALL, NOT LATER THAN THE 10TH DAY AFTER THE DATE THE SELLER RECEIVES YOUR CANCELLATION NOTICE:

(A) RETURN THE EXECUTED CONTRACT AND ANY PROPERTY EXCHANGED OR PAYMENTS MADE BY YOU UNDER THE CONTRACT; AND

(B) CANCEL ANY SECURITY INTEREST ARISING OUT OF THE CONTRACT.

I ACKNOWLEDGE RECEIPT OF THIS NOTICE OF CANCELLATION FORM.

(Date)

(Purchaser's Signature)

I HEREBY CANCEL THIS CONTRACT.

(Date)

(Purchaser's Signature)

(e) The seller may not request the purchaser to sign a waiver of receipt of the notice of cancellation form required by this section.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.097 by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.075. PURCHASER'S RIGHT TO PLEDGE INTEREST IN PROPERTY ON CONTRACTS ENTERED INTO BEFORE SEPTEMBER 1, 2001.

(a) On an executory contract entered into before September 1, 2001 , a purchaser may pledge the interest in the property, which accrues pursuant to Section 5.066, only to obtain a loan for improving the safety of the property or any improvements on the property.

(b) Loans that improve the safety of the property and improvements on the property include loans for:

- (1) improving or connecting a residence to water service;
- (2) improving or connecting a residence to a wastewater system;
- (3) building or improving a septic system;
- (4) structural improvements in the residence; and
- (5) improved fire protection.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.098 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.076. RECORDING REQUIREMENTS.

(a) Except as provided by Subsection (b), the seller shall record the executory contract, including the attached disclosure statement required by Section 5.069, as prescribed by Title 3 on or before the 30th day after the date the contract is executed.

(b) Section 12.002(c) does not apply to an executory contract filed for record under this section.

(c) If the executory contract is terminated for any reason, the seller shall record the instrument that terminates the contract.

(d) The county clerk shall collect the filing fee prescribed by Section 118.011, Local Government Code.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.099 and amended Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.077. ANNUAL ACCOUNTING STATEMENT.

(a) The seller shall provide the purchaser with an annual statement in January of each year for the term of the executory contract. If the seller mails the statement to the purchaser, the statement must be postmarked not later than January 31.

(b) The statement must include the following information:

(1) the amount paid under the contract;

(2) the remaining amount owed under the contract;

(3) the number of payments remaining under the contract;

(4) the amounts paid to taxing authorities on the purchaser's behalf if collected by the seller;

(5) the amounts paid to insure the property on the purchaser's behalf if collected by the seller;

(6) if the property has been damaged and the seller has received insurance proceeds, an accounting of the proceeds applied to the property; and

(7) if the seller has changed insurance coverage, a legible copy of the current policy, binder, or other evidence that satisfies the requirements of Section 5.070(a)(2).

(c) A seller who conducts less than two transactions in a 12-month period under this section who fails to comply with Subsection (a) is liable to the purchaser for:

(1) liquidated damages in the amount of \$100 for each annual statement the seller fails to provide to the purchaser within the time required by Subsection (a); and

(2) reasonable attorney's fees.

(d) A seller who conducts two or more transactions in a 12-month period under this section who fails to comply with Subsection (a) is liable to the purchaser for:

(1) liquidated damages in the amount of \$250 a day for each day after January 31 that the seller fails to provide the purchaser with the statement, but not to exceed the fair market value of the property; and

(2) reasonable attorney's fees.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.100 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Amended by: Acts 2005, 79th Leg., Ch. 978, Sec. 5, eff. September 1, 2005.

Sec. 5.078. DISPOSITION OF INSURANCE PROCEEDS.

(a) The named insured under an insurance policy, binder, or other coverage relating to property subject to an executory contract for the conveyance of real property shall inform the insurer, not later than the 10th day after the date the coverage is obtained or the contract executed, whichever is later, of:

(1) the executory contract for conveyance and the term of the contract;

and

(2) the name and address of the other party to the contract.

(b) An insurer who disburses proceeds under an insurance policy, binder, or other coverage relating to property that has been damaged shall issue the proceeds jointly to the purchaser and the seller designated in the contract.

(c) If proceeds under an insurance policy, binder, or other coverage are disbursed, the purchaser and seller shall ensure that the proceeds are used to repair, remedy, or improve the condition on the property.

(d) The failure of a seller or purchaser to comply with Subsection (c) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

(e) Subsection (d) does not limit either party's remedy for other false, misleading, or deceptive acts or practices actionable in a suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

Added by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.079. TITLE TRANSFER.

(a) The seller shall transfer recorded, legal title of the property covered by the executory contract to the purchaser not later than the 30th day after the date the seller receives the purchaser's final payment due under the contract.

(b) A seller who violates Subsection (a) is liable to the purchaser for:

(1) liquidated damages in the amount of:

(A) \$250 a day for each day the seller fails to transfer the title to the purchaser during the period that begins the 31st day and ends the 90th day after the date the seller receives the purchaser's final payment due under the contract; and

(B) \$500 a day for each day the seller fails to transfer title to the purchaser after the 90th day after the date the seller receives the purchaser's final payment due under the contract; and

(2) reasonable attorney's fees.

(c) If a person to whom a seller's property interest passes by will or intestate succession is required to obtain a court order to clarify the person's status as an heir or to clarify the status of the seller or the property before the person may convey good and indefeasible title to the property, the court in which the action is pending may waive payment of the liquidated damages and attorney's fees under Subsection (b) if the court finds that the person is pursuing the action to establish good and indefeasible title with reasonable diligence.

(d) In this section, "seller" includes a successor, assignee, personal representative, executor, or administrator of the seller.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.102 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.080. LIABILITY FOR DISCLOSURES.

For purposes of this subchapter, a disclosure required by this subchapter that is made by a seller's agent is a disclosure made by the seller.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.103 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.081. RIGHT TO CONVERT CONTRACT.

(a) A purchaser, at any time and without paying penalties or charges of any kind, is entitled to convert the purchaser's interest in property under an executory contract into recorded, legal title in accordance with this section.

(b) If the purchaser tenders to the seller an amount of money equal to the balance of the total amount owed by the purchaser to the seller under the executory contract, the seller shall transfer to the purchaser recorded, legal title of the property covered by the contract.

(c) Subject to Subsection (d), if the purchaser delivers to the seller of property covered by an executory contract a promissory note that is equal in amount to the balance of the total amount owed by the purchaser to the seller under the contract and that contains the same interest rate, due dates, and late fees as the contract:

(1) the seller shall execute a deed containing any warranties required by the contract and conveying to the purchaser recorded, legal title of the property; and

(2) the purchaser shall simultaneously execute a deed of trust that:

(A) contains the same terms as the contract regarding the purchaser's and seller's duties concerning the property;

(B) secures the purchaser's payment and performance under the promissory note and deed of trust; and

(C) conveys the property to the trustee, in trust, and confers on the trustee the power to sell the property if the purchaser defaults on the promissory note or the terms of the deed of trust.

(d) On or before the 10th day after the date the seller receives a promissory note under Subsection (c) that substantially complies with that subsection, the seller shall:

(1) deliver to the purchaser a written explanation that legally justifies why the seller refuses to convert the purchaser's interest into recorded, legal title under Subsection (c); or

(2) communicate with the purchaser to schedule a mutually agreeable day and time to execute the deed and deed of trust under Subsection (c).

(e) A seller who violates this section is liable to the purchaser in the same manner and amount as a seller who violates Section 5.079 is liable to a purchaser. This subsection does not limit or affect any other rights or remedies a purchaser has under other law.

(f) On the last date that all of the conveyances described by Subsections (b) and (c) are executed, the executory contract:

(1) is considered completed; and

(2) has no further effect.

(g) The appropriate use of forms published by the Texas Real Estate Commission for transactions described by this section constitutes compliance with this section.

Added by Acts 2005, 79th Leg., Ch. 978, Sec. 6, eff. September 1, 2005.

Sec. 5.082. REQUEST FOR BALANCE AND TRUSTEE.

(a) A purchaser under an executory contract, on written request, is entitled to receive the following information from the seller:

(1) as of the date of the request or another date specified by the purchaser, the amount owed by the purchaser under the contract; and

(2) if applicable, the name and address of the seller's desired trustee for a deed of trust to be executed under Section 5.081.

(b) On or before the 10th day after the date the seller receives from the purchaser a written request for information described by Subsection (a), the seller shall provide to the purchaser a written statement of the requested information.

(c) If the seller does not timely respond to a request made under this section, the purchaser may:

(1) determine or pay the amount owed under the contract, including determining the amount necessary for a promissory note under Section 5.081; and

(2) if applicable, select a trustee for a deed of trust under Section 5.081.

(d) For purposes of Subsection (c)(2), a purchaser must select a trustee that lives or has a place of business in the same county where the property covered by the executory contract is located.

(e) Not later than the 20th day after the date a seller receives notice of an amount determined by a purchaser under Subsection (c)(1), the seller may contest that amount by sending a written objection to the purchaser. An objection under this subsection must:

(1) be sent to the purchaser by regular and certified mail;

(2) include the amount the seller claims is the amount owed under the contract; and

(3) be based on written records kept by the seller or the seller's agent that were maintained and regularly updated for the entire term of the executory contract.

Added by Acts 2005, 79th Leg., Ch. 978, Sec. 6, eff. September 1, 2005.

Sec. 5.083. RIGHT TO CANCEL CONTRACT FOR IMPROPER PLATTING.

(a) Except as provided by Subsection (c), in addition to other rights or remedies provided by law, the purchaser may cancel and rescind an executory contract at any time if the purchaser learns that the seller has not properly subdivided or platted the property that is covered by the contract in accordance with state and local law. A purchaser canceling and rescinding a contract under this subsection must:

(1) deliver a signed, written notice of the cancellation and rescission to the seller in person; or

(2) send a signed, written notice of the cancellation and rescission to the seller by telegram or certified or registered mail, return receipt requested.

(b) If the purchaser cancels the contract as provided under Subsection (a), the seller, not later than the 10th day after the date the seller receives the notice of cancellation and rescission, shall:

(1) deliver in person or send by telegram or certified or registered mail, return receipt requested, to the purchaser a signed, written notice that the seller intends to subdivide or plat the property properly; or

(2) return to the purchaser all payments of any kind made to the seller under the contract and reimburse the purchaser for:

(A) any payments the purchaser made to a taxing authority for the property; and

(B) the value of any improvements made to the property by the purchaser.

(c) A purchaser may not exercise the purchaser's right to cancel and rescind an executory contract under this section if, on or before the 90th day after the date the purchaser receives the seller's notice under Subsection (b)(1), the seller:

(1) properly subdivides or plats the property; and

(2) delivers in person or sends by telegram or certified or registered mail, return receipt requested, to the purchaser a signed, written notice evidencing that the property has been subdivided or platted in accordance with state and local law.

(d) The seller may not terminate the purchaser's possession of the property covered by the contract being canceled and rescinded before the seller pays the purchaser any money to which the purchaser is entitled under Subsection (b).

Added by Acts 2005, 79th Leg., Ch. 978, Sec. 6, eff. September 1, 2005.

Sec. 5.084. RIGHT TO DEDUCT.

If a seller is liable to a purchaser under this subchapter, the purchaser, without taking judicial action, may deduct the amount owed to the purchaser by the seller from any amounts owed to the seller by the purchaser under the terms of an executory contract.

Added by Acts 2005, 79th Leg., Ch. 978, Sec. 6, eff. September 1, 2005.

Sec. 5.085. FEE SIMPLE TITLE REQUIRED; MAINTENANCE OF FEE SIMPLE TITLE.

(a) A potential seller may not execute an executory contract with a potential purchaser if the seller does not own the property in fee simple free from any liens or other encumbrances.

(b) Except as provided by this subsection, a seller, or the seller's heirs or assigns, must maintain fee simple title free from any liens or other encumbrances to property covered by an executory contract for the entire duration of the contract. This subsection does not apply to a lien or encumbrance placed on the property that is:

(1) placed on the property because of the conduct of the purchaser;

(2) agreed to by the purchaser as a condition of a loan obtained to place improvements on the property, including utility or fire protection improvements; or

(3) placed on the property by the seller prior to the execution of the contract in exchange for a loan used only to purchase the property if:

(A) the seller, not later than the third day before the date the contract is executed, notifies the purchaser in a separate written disclosure:

(i) of the name, address, and phone number of the lienholder or, if applicable, servicer of the loan;

(ii) of the loan number and outstanding balance of the loan;

(iii) of the monthly payments due on the loan and the due date of those payments; and

(iv) in 14-point type that, if the seller fails to make timely payments to the lienholder, the lienholder may attempt to collect the debt by foreclosing on the lien and selling the property at a foreclosure sale;

(B) the lien:

(i) is attached only to the property sold to the purchaser under the contract; and

(ii) secures indebtedness that, at no time, is or will be greater in amount than the amount of the total outstanding balance owed by the purchaser under the executory contract;

(C) the lienholder:

(i) does not prohibit the property from being encumbered by an executory contract; and

(ii) consents to verify the status of the loan on request of the purchaser and to accept payments directly from the purchaser if the seller defaults on the loan; and

(D) the following covenants are placed in the executory contract:

(i) a covenant that obligates the seller to make timely payments on the loan and to give monthly statements to the purchaser reflecting the amount paid to the lienholder, the date the lienholder receives the payment, and the information described by Paragraph (A);

(ii) a covenant that obligates the seller, not later than the third day the seller receives or has actual knowledge of a document or an event described by this subparagraph, to notify the purchaser in writing in 14-point type that the seller has been sent a notice of default, notice of acceleration, or notice of foreclosure or has been sued in connection with a lien on the property and to attach a copy of all related documents received to the written notice; and

(iii) a covenant that warrants that if the seller does not make timely payments on the loan or any other indebtedness secured by the property, the purchaser may, without notice, cure any deficiency with a lienholder directly and deduct from the total outstanding balance owed by the purchaser under the executory contract, without the necessity of judicial action, 150 percent of any amount paid to the lienholder.

(c) A violation of this section:

(1) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code; and

(2) in addition to other rights or remedies provided by law, entitles the purchaser to cancel and rescind the executory contract and receive from the seller:

(A) the return of all payments of any kind made to the seller under the contract; and

(B) reimbursement for:

(i) any payments the purchaser made to a taxing authority for the property; and

(ii) the value of any improvements made to the property by the purchaser.

(d) A seller is not liable under this section if:

(1) a lien is placed on the property by a person other than the seller; and

(2) not later than the 30th day after the date the seller receives notice of the lien, the seller takes all steps necessary to remove the lien and has the lien removed from the property.

Added by Acts 2005, 79th Leg., Ch. 978, Sec. 6, eff. September 1, 2005.

SUBCHAPTER F. REQUIREMENTS FOR CONVEYANCES OF MINERAL OR ROYALTY INTERESTS

Sec. 5.151. DISCLOSURE IN OFFER TO PURCHASE MINERAL INTEREST.

(a) A person who mails to the owner of a mineral or royalty interest an offer to purchase only the mineral or royalty interest, it being understood that for the purpose of this section the taking of an oil, gas, or mineral lease shall not be deemed a purchase of a mineral or royalty interest, and encloses an instrument of conveyance of only the mineral or royalty interest and a draft or other instrument, as defined in Section 3.104, Business &

Commerce Code, providing for payment for that interest shall include in the offer a conspicuous statement printed in a type style that is approximately the same size as 14-point type style or larger and is in substantially the following form:

BY EXECUTING AND DELIVERING THIS INSTRUMENT YOU ARE SELLING ALL OR A PORTION OF YOUR MINERAL OR ROYALTY INTEREST IN (DESCRIPTION OF PROPERTY BEING CONVEYED).

(b) A person who conveys a mineral or royalty interest as provided by Subsection (a) may bring suit against the purchaser of the interest if:

(1) the purchaser did not give the notice required by Subsection (a); and

(2) the person has given 30 days' written notice to the purchaser that a suit will be filed unless the matter is otherwise resolved.

(c) A plaintiff who prevails in a suit under Subsection (b) may recover from the initial purchaser of the mineral or royalty interest the greater of:

(1) \$100; or

(2) an amount up to the difference between the amount paid by the purchaser for the mineral or royalty interest and the fair market value of the mineral or royalty interest at the time of the sale.

(d) The prevailing party in a suit under Subsection (b) may recover:

(1) court costs; and

(2) reasonable attorney's fees.

(e) A person must bring a suit under Subsection (b) not later than the second anniversary of the date the person executed the conveyance.

(f) The remedy provided under this section shall be in addition to any other remedies existing under law, excluding rescission or other remedies that would make the conveyance of the mineral or royalty interest void or of no force and effect.

Added by Acts 1999, 76th Leg., ch. 1200, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER G. CERTAIN PRIVATE TRANSFER FEES PROHIBITED; PRESERVATION OF PRIVATE REAL PROPERTY RIGHTS

Sec. 5.201. DEFINITIONS.

In this subchapter:

(1) "Encumbered property" means all property, including the property of a subsequent purchaser, subject to the same private transfer fee obligation.

(2) "Lender" means a lending institution, including a bank, trust company, banking association, savings and loan association, mortgage company, investment bank, credit union, life insurance company, and governmental agency, that customarily provides financing or an affiliate of a lending institution.

(3) "Payee" means a person who claims the right to receive or collect a private transfer fee payable under a private transfer fee obligation and who may or may not have a pecuniary interest in the obligation.

(4) "Private transfer fee" means an amount of money, regardless of the method of determining the amount, that is payable on the transfer of an interest in real property or payable for a right to make or accept a transfer.

(5) "Private transfer fee obligation" means an obligation to pay a private transfer fee created under:

(A) a declaration or other covenant recorded in the real property records in the county in which the property subject to the private transfer fee obligation is located;

(B) a contractual agreement or promise; or

(C) an unrecorded contractual agreement or promise.

(6) "Subsequent owner" means a person who acquires real property by transfer from a person other than the person who is the seller of the property on the date the private transfer fee obligation is created.

(7) "Subsequent purchaser" means a person who purchases real property from a person other than the person who is the seller on the date the private transfer fee obligation is created. The term includes a lender who provides a mortgage loan to a subsequent purchaser to purchase the property.

(8) "Transfer" means the sale, gift, conveyance, assignment, inheritance, or other transfer of an ownership interest in real property.

Added by Acts 2011, 82nd Leg., R.S., Ch. 211, Sec. 1, eff. June 17, 2011.

Sec. 5.202. CERTAIN PRIVATE TRANSFER FEE OBLIGATIONS VOID.

(a) Except as provided by this subchapter, a private transfer fee obligation created on or after the effective date of this subchapter is not binding or enforceable against a subsequent owner or subsequent purchaser of an interest in real property and is void.

(b) For purposes of this subchapter, the following payments are not considered private transfer fee obligations:

(1) consideration paid by a purchaser to a seller for an interest in real property transferred, including, as applicable, a mineral interest transferred, including additional consideration paid to a seller for the property's appreciation, development, or sale after the interest in the property has been transferred to the purchaser, if the additional consideration is paid only once and that payment does not bind successors in interest to the property to any private transfer fee obligation;

(2) a commission paid to a licensed real estate broker under a written agreement between a seller or purchaser and the broker, including an additional commission for the property's appreciation, development, or sale after the interest in property is transferred to the purchaser;

(3) interest, a fee, a charge, or another type of payment to a lender under a loan secured by a mortgage on the property, including:

(A) a fee payable for the lender's consent to an assumption of the loan or transfer of the property subject to the mortgage;

(B) a fee or charge payable for an estoppel letter or certificate;

(C) a shared appreciation interest or profit participation; or

(D) other consideration payable in connection with the loan;

(4) rent, reimbursement, a fee, a charge, or another type of payment to a lessor under a lease, including a fee for consent to an assignment, sublease, encumbrance, or transfer of a lease;

(5) consideration paid to the holder of an option to purchase an interest in property, or to the holder of a right of first refusal or first offer to purchase an interest in property, for waiving, releasing, or not exercising the option or right when the property is transferred to another person;

(6) a fee payable to or imposed by a governmental entity in connection with recording the transfer of the property;

(7) dues, a fee, a charge, an assessment, a fine, a contribution, or another type of payment under a declaration or other covenant or under law, including a fee or charge payable for a change of ownership entered in the records of an association to

which this subdivision applies or an estoppel letter or resale certificate issued under Section 207.003 by an association to which this subdivision applies or the person identified under Section 209.004(a)(6), provided that no portion of the fee or charge is required to be passed through to a third party designated or identifiable in the declaration or other covenant or law or in a document referenced in the declaration or other covenant or law, unless paid to:

(A) an association as defined by Section 82.003 or 221.002 or the person or entity managing the association as provided by Section 82.116(a)(5) or 221.032(b)(11), as applicable;

(B) a property owners' association as defined by Section 202.001 or 209.002 or the person or entity described by Section 209.004(a)(6); or

(C) a property owners' association as defined by Section 202.001 that does not require an owner of property governed by the association to be a member of the association or the person or entity described by Section 209.004(a)(6);

(8) dues, a fee, a charge, an assessment, a fine, a contribution, or another type of payment for the transfer of a club membership related to the property;

(9) dues, a fee, a charge, an assessment, a fine, a contribution, or another type of payment paid to an organization exempt from federal taxation under Section 501(c)(3) or 501(c)(4), Internal Revenue Code of 1986, only if the organization uses the payments to directly benefit the encumbered property by:

(A) supporting or maintaining only the encumbered property;

(B) constructing or repairing improvements only to the encumbered property; or

(C) providing activities or infrastructure to support quality of life, including cultural, educational, charitable, recreational, environmental, and conservation activities and infrastructure, that directly benefit the encumbered property; or

(10) a fee payable to or imposed by the Veterans' Land Board for consent to an assumption or transfer of a contract of sale and purchase.

(c) The benefit described by Subsection (b)(9)(C) may collaterally benefit a community composed of:

(1) property that is adjacent to the encumbered property; or

(2) property a boundary of which is not more than 1,000 yards from a boundary of the encumbered property.

(d) Notwithstanding Subsection (c), an organization may provide a direct benefit under Subsection (b)(9) if:

(1) the organization provides to the general public activities or infrastructure described by Subsection (b)(9)(C);

(2) the provision of activities or infrastructure substantially benefits the encumbered property; and

(3) the governing body of the organization:

(A) is controlled by owners of the encumbered property; and

(B) approves payments for activities or infrastructure at least annually.

(e) An organization may provide activities and infrastructure described by Subsection (b)(9)(C) to another organization exempt from federal taxation under Section 501(c)(3) or 501(c)(4), Internal Revenue Code of 1986, at no charge for de minimis usage without violating the requirements of this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 211, Sec. 1, eff. June 17, 2011.

Sec. 5.203. NOTICE REQUIREMENTS FOR CONTINUATION OF EXISTING PRIVATE TRANSFER FEE OBLIGATIONS.

(a) A person who receives a private transfer fee under a private transfer fee obligation created before the effective date of this subchapter must, on or before January 31, 2012, file for record a "Notice of Private Transfer Fee Obligation" as provided by this section in the real property records of each county in which the property is located.

(b) Multiple payees of a single private transfer fee under a private transfer fee obligation must designate one payee as the payee of record for the fee.

(c) A notice under Subsection (a) must:

- (1) be printed in at least 14-point boldface type;
- (2) state the amount of the private transfer fee and the method of determination, if applicable;
- (3) state the date or any circumstance under which the private transfer fee obligation expires, if any;
- (4) state the purpose for which the money from the private transfer fee obligation will be used;
- (5) notwithstanding Subsection (b), state the name of each payee and each payee's contact information;
- (6) state the name and address of the payee of record to whom the payment of the fee must be sent;
- (7) include the acknowledged signature of each payee or authorized representative of each payee; and
- (8) state the legal description of the property subject to the private transfer fee obligation.

(d) A person required to file a notice under this section shall:

- (1) refile the notice described by this section not earlier than the 30th day before the third anniversary of the original filing date described by Subsection (a) and within a similar 30-day period every third year thereafter; and
- (2) amend the notice to reflect any change in the name or address of any payee included in the notice not later than the 30th day after the date the change occurs.

(e) A person who amends a notice under Subsection (d)(2) must include:

- (1) the recording information of the original notice filed as required by this section; and
- (2) the legal description of the property subject to the private transfer fee obligation.

(f) If a person required to file a notice under this section fails to comply with this section:

- (1) payment of the private transfer fee may not be a requirement for the conveyance of an interest in the property to a purchaser;
- (2) the property is not subject to further obligation under the private transfer fee obligation; and
- (3) the private transfer fee obligation is void.

Added by Acts 2011, 82nd Leg., R.S., Ch. 211, Sec. 1, eff. June 17, 2011.

Sec. 5.204. ADDITIONAL COMPLIANCE REQUIREMENT: TIMELY ACCEPTANCE OF FEES PAID UNDER EXISTING PRIVATE TRANSFER FEE OBLIGATIONS.

(a) The payee of record on the date a private transfer fee is paid under a private transfer fee obligation subject to Section 5.203 must accept the payment on or before the 30th day after the date the payment is tendered to the payee.

(b) If the payee of record fails to comply with Subsection (a):

(1) the payment must be returned to the remitter;

(2) payment of the private transfer fee may not be a requirement for the conveyance of an interest in the property to a purchaser; and

(3) the property is not subject to further obligation under the private transfer fee obligation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 211, Sec. 1, eff. June 17, 2011.

Sec. 5.205. DISCLOSURE OF EXISTING TRANSFER FEE OBLIGATION REQUIRED IN CONTRACT FOR SALE.

A seller of real property that may be subject to a private transfer fee obligation shall provide written notice to a potential purchaser stating that the obligation may be governed by this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 211, Sec. 1, eff. June 17, 2011.

Sec. 5.206. WAIVER VOID.

A provision that purports to waive a purchaser's rights under this subchapter is void.

Added by Acts 2011, 82nd Leg., R.S., Ch. 211, Sec. 1, eff. June 17, 2011.

Sec. 5.207. INJUNCTIVE OR DECLARATORY RELIEF; PROVIDING PENALTIES.

(a) The attorney general may institute an action for injunctive or declaratory relief to restrain a violation of this subchapter.

(b) In addition to instituting an action for injunctive or declaratory relief under Subsection (a), the attorney general may institute an action for civil penalties against a payee for a violation of this chapter. Except as provided by Subsection (c), a civil penalty assessed under this section may not exceed an amount equal to two times the amount of the private transfer fee charged or collected by the payee in violation of this subchapter.

(c) If the court in which an action under Subsection (b) is pending finds that a payee violated this subchapter with a frequency that constitutes a pattern or practice, the court may assess a civil penalty not to exceed \$250,000.

(d) The comptroller shall deposit to the credit of the general revenue fund all money collected under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 211, Sec. 1, eff. June 17, 2011.

PROPERTY CODE

TITLE 5. EXEMPT PROPERTY AND LIENS

SUBTITLE B. LIENS

CHAPTER 51. PROVISIONS GENERALLY APPLICABLE TO LIENS

Sec. 51.0001. DEFINITIONS.

In this chapter:

(1) "Book entry system" means a national book entry system for registering a beneficial interest in a security instrument that acts as a nominee for the grantee, beneficiary, owner, or holder of the security instrument and its successors and assigns.

(2) "Debtor's last known address" means:

(A) for a debt secured by the debtor's residence, the debtor's residence address unless the debtor provided the mortgage servicer a written change of address before the date the mortgage servicer mailed a notice required by Section 51.002;

(B) for a debt other than a debt described by Paragraph (A), the debtor's last known address as shown by the records of the mortgage servicer of the security instrument unless the debtor provided the current mortgage servicer a written change of address before the date the mortgage servicer mailed a notice required by Section 51.002.

(3) "Mortgage servicer" means the last person to whom a mortgagor has been instructed by the current mortgagee to send payments for the debt secured by a security instrument. A mortgagee may be the mortgage servicer.

(4) "Mortgagee" means:

(A) the grantee, beneficiary, owner, or holder of a security instrument;

(B) a book entry system;

(C) if the security interest has been assigned of record, the last person to whom the security interest has been assigned of record.

(5) "Mortgagor" means the grantor of a security instrument.

(6) "Security instrument" means a deed of trust, mortgage, or other contract lien on an interest in real property.

(7) "Substitute trustee" means a person appointed by the current mortgagee or mortgage servicer under the terms of the security instrument to exercise the power of sale.

(8) "Trustee" means a person or persons authorized to exercise the power of sale under the terms of a security instrument in accordance with Section 51.0074.

Added by Acts 2003, 78th Leg., ch. 554, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 903, Sec. 1, eff. June 15, 2007.

Sec. 51.001. EFFECT ON OTHER LIENS.

Except as provided by Chapter 59, this subtitle does not affect:

(1) the right to create a lien by special contract or agreement; or

(2) a lien that is not treated in this subtitle, including a lien arising under common law, in equity, or under another statute of this state.

Acts 1983, 68th Leg., p. 3525, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 51.002. SALE OF REAL PROPERTY UNDER CONTRACT LIEN.

(a) A sale of real property under a power of sale conferred by a deed of trust or other contract lien must be a public sale at auction held between 10 a.m. and 4 p.m. of the first Tuesday of a month. Except as provided by Subsection (h), the sale must take place at the county courthouse in the county in which the land is located, or if the property is located in more than one county, the sale may be made at the courthouse in any county in which the property is located. The commissioner's court shall designate the area at the courthouse where the sales are to take place and shall record the designation in the real property records of the county. The sale must occur in the designated area. If no area is designated by the commissioner's court, the notice of sale must designate the area where the sale covered by that notice is to take place, and the sale must occur in that area.

(b) Except as provided by Subsection (b-1), notice of the sale, which must include a statement of the earliest time at which the sale will begin, must be given at least 21 days before the date of the sale by:

(1) posting at the courthouse door of each county in which the property is located a written notice designating the county in which the property will be sold;

(2) filing in the office of the county clerk of each county in which the property is located a copy of the notice posted under Subdivision (1); and

(3) serving written notice of the sale by certified mail on each debtor who, according to the records of the mortgage servicer of the debt, is obligated to pay the debt.

(b-1) If the courthouse or county clerk's office is closed because of inclement weather, natural disaster, or other act of God, a notice required to be posted at the courthouse under Subsection (b)(1) or filed with the county clerk under Subsection (b)(2) may be posted or filed, as appropriate, up to 48 hours after the courthouse or county clerk's office reopens for business, as applicable.

(c) The sale must begin at the time stated in the notice of sale or not later than three hours after that time.

(d) Notwithstanding any agreement to the contrary, the mortgage servicer of the debt shall serve a debtor in default under a deed of trust or other contract lien on real property used as the debtor's residence with written notice by certified mail stating that the debtor is in default under the deed of trust or other contract lien and giving the debtor at least 20 days to cure the default before notice of sale can be given under Subsection (b). The entire calendar day on which the notice required by this subsection is given, regardless of the time of day at which the notice is given, is included in computing the 20-day notice period required by this subsection, and the entire calendar day on which notice of sale is given under Subsection (b) is excluded in computing the 20-day notice period.

(e) Service of a notice under this section by certified mail is complete when the notice is deposited in the United States mail, postage prepaid and addressed to the debtor at the debtor's last known address. The affidavit of a person knowledgeable of the facts to the effect that service was completed is prima facie evidence of service.

(f) Each county clerk shall keep all notices filed under Subdivision (2) of Subsection (b) in a convenient file that is available to the public for examination during normal business hours. The clerk may dispose of the notices after the date of sale specified in the notice has passed. The clerk shall receive a fee of \$2 for each notice filed.

(g) The entire calendar day on which the notice of sale is given, regardless of the time of day at which the notice is given, is included in computing the 21-day notice

period required by Subsection (b), and the entire calendar day of the foreclosure sale is excluded.

(h) For the purposes of Subsection (a), the commissioners court of a county may designate an area other than an area at the courthouse where sales under this section will take place that is in a public place within a reasonable proximity of the county courthouse and in a location as accessible to the public as the courthouse door. The commissioners court shall record that designation in the real property records of the county. A sale may not be held at an area designated under this subsection before the 90th day after the date the designation is recorded. The posting of the notice required by Subsection (b)(1) of a sale designated under this subsection to take place at an area other than an area of the courthouse remains at the courthouse door of the appropriate county.

Text of subsection as added by Acts 2011, 82nd Leg., R.S., Ch. 592, Sec. 1

(i) Notice served under Subsection (b)(3) or (d) must state the name and address of the sender of the notice and contain a statement that is conspicuous, printed in boldface or underlined type, and substantially similar to the following: "Assert and protect your rights as a member of the armed forces of the United States. If you are or your spouse is serving on active military duty, including active military duty as a member of the Texas National Guard or the National Guard of another state or as a member of a reserve component of the armed forces of the United States, please send written notice of the active duty military service to the sender of this notice immediately."

Text of subsection as added by Acts 2011, 82nd Leg., R.S., Ch. 252, Sec. 2

(i) {"*i*" *intentionally repeated*} A notice served on a debtor under this section must contain, in addition to any other statements required under this section, language substantially similar to the following:

"Assert and protect your rights as a member of the armed forces of the United States. If you are or your spouse is serving on active military duty, including active military duty as a member of the Texas National Guard or the National Guard of another state or as a member of a reserve component of the armed forces of the United States, please send written notice of the active duty military service to the sender of this notice immediately."

Acts 1983, 68th Leg., p. 3525, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 3(b), eff. Oct. 2, 1984; Acts 1987, 70th Leg., ch. 540, Sec. 1, eff. Jan. 1, 1988; Acts 1993, 73rd Leg., ch. 48, Sec. 5, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 554, Sec. 2, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 533, Sec. 1, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 555, Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 903, Sec. 2, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 252, Sec. 2, eff. January 1, 2012.

Acts 2011, 82nd Leg., R.S., Ch. 592, Sec. 1, eff. September 1, 2011.

Sec. 51.0021. NOTICE OF CHANGE OF ADDRESS REQUIRED.

A debtor shall inform the mortgage servicer of the debt in a reasonable manner of any change of address of the debtor for purposes of providing notice to the debtor under Section 51.002.

Added by Acts 2003, 78th Leg., ch. 554, Sec. 1, eff. Jan. 1, 2004.

Sec. 51.0022. FORECLOSURE DATA COLLECTION.

(a) In this section, "department" means the Texas Department of Housing and Community Affairs.

(b) A person filing a notice of sale of residential property under Section 51.002(b) must submit to the county clerk a completed form that provides the zip code for the property.

(c) On completion of a sale of real property, the trustee or sheriff shall submit to the county clerk a completed form that contains information on whether the property is residential and the zip code of the property.

(d) Not later than the 30th day after the date of receipt of a form under this section, the county clerk shall transmit the form to the department.

(e) The board of the department shall prescribe the forms required under this section. The forms may only request information on whether the property is residential and the zip code of the property.

(f) The department shall report the information received under this section quarterly to the legislature in a format established by the board of the department by rule. Added by Acts 2011, 82nd Leg., R.S., Ch. 1341, Sec. 28, eff. June 17, 2011.

Sec. 51.0025. ADMINISTRATION OF FORECLOSURE BY MORTGAGE SERVICER.

A mortgage servicer may administer the foreclosure of property under Section 51.002 on behalf of a mortgagee if:

(1) the mortgage servicer and the mortgagee have entered into an agreement granting the current mortgage servicer authority to service the mortgage; and

(2) the notices required under Section 51.002(b) disclose that the mortgage servicer is representing the mortgagee under a servicing agreement with the mortgagee and the name of the mortgagee and:

(A) the address of the mortgagee; or

(B) the address of the mortgage servicer, if there is an agreement granting a mortgage servicer the authority to service the mortgage.

Added by Acts 2003, 78th Leg., ch. 554, Sec. 1, eff. Jan. 1, 2004.

Amended by: Acts 2005, 79th Leg., Ch. 555, Sec. 2, eff. September 1, 2005.

Sec. 51.003. DEFICIENCY JUDGMENT.

(a) If the price at which real property is sold at a foreclosure sale under Section 51.002 is less than the unpaid balance of the indebtedness secured by the real property, resulting in a deficiency, any action brought to recover the deficiency must be brought within two years of the foreclosure sale and is governed by this section.

(b) Any person against whom such a recovery is sought by motion may request that the court in which the action is pending determine the fair market value of the real property as of the date of the foreclosure sale. The fair market value shall be determined by the finder of fact after the introduction by the parties of competent evidence of the value. Competent evidence of value may include, but is not limited to, the following: (1) expert opinion testimony; (2) comparable sales; (3) anticipated marketing time and holding costs; (4) cost of sale; and (5) the necessity and amount of any discount to be applied to the future sales price or the cash flow generated by the property to arrive at a current fair market value.

(c) If the court determines that the fair market value is greater than the sale price of the real property at the foreclosure sale, the persons against whom recovery of the

deficiency is sought are entitled to an offset against the deficiency in the amount by which the fair market value, less the amount of any claim, indebtedness, or obligation of any kind that is secured by a lien or encumbrance on the real property that was not extinguished by the foreclosure, exceeds the sale price. If no party requests the determination of fair market value or if such a request is made and no competent evidence of fair market value is introduced, the sale price at the foreclosure sale shall be used to compute the deficiency.

(d) Any money received by a lender from a private mortgage guaranty insurer shall be credited to the account of the borrower prior to the lender bringing an action at law for any deficiency owed by the borrower. Notwithstanding the foregoing, the credit required by this subsection shall not apply to the exercise by a private mortgage guaranty insurer of its subrogation rights against a borrower or other person liable for any deficiency.

Added by Acts 1991, 72nd Leg., ch. 12, Sec. 1, eff. April 1, 1991.

Sec. 51.004. JUDICIAL FORECLOSURE--DEFICIENCY.

(a) This section applies if:

(1) real property subject to a deed of trust or other contract lien is sold at a foreclosure sale under a court judgment foreclosing the lien and ordering the sale; and

(2) the price at which the real property is sold is less than the unpaid balance of the indebtedness secured by the real property, resulting in a deficiency.

(b) Any person obligated on the indebtedness, including a guarantor, may bring an action in the district court in the county in which the real property is located for a determination of the fair market value of the real property as of the date of the foreclosure sale. The suit must be brought not later than the 90th day after the date of the foreclosure sale unless the suit is brought by a guarantor who did not receive actual notice of the sale before the date of sale, in which case the suit must be brought by the guarantor not later than the 90th day after the date the guarantor received actual notice of the sale. The fair market value shall be determined by the finder of fact after the introduction by the parties of competent evidence of the value. Competent evidence of value may include:

(1) expert opinion testimony;

(2) comparable sales;

(3) anticipated marketing time and holding costs;

(4) cost of sale; and

(5) the necessity and amount of any discount to be applied to the future sales price or the cash flow generated by the property to arrive at a fair market value as of the date of the foreclosure sale.

(c) If the finder of fact determines that the fair market value is greater than the sale price of the real property at the foreclosure sale, the persons obligated on the indebtedness, including guarantors, are entitled to an offset against the deficiency in the amount by which the fair market value, less the amount of any claim, indebtedness, or obligation of any kind that is secured by a lien or encumbrance on the real property that was not extinguished by the foreclosure, exceeds the sale price. If no competent evidence of fair market value is introduced, the sale price at the foreclosure sale shall be used to compute the deficiency.

(d) Any money received by a lender from a private mortgage guaranty insurer shall be credited to the account of the borrower before the lender brings an action at law for any deficiency owed by the borrower. However, the credit required by this subsection

does not apply to the exercise by a private mortgage guaranty insurer of its subrogation rights against a borrower or other person liable for any deficiency.

Added by Acts 1991, 72nd Leg., ch. 361, Sec. 1, eff. June 5, 1991.

Sec. 51.005. JUDICIAL OR NONJUDICIAL FORECLOSURE AFTER JUDGMENT AGAINST GUARANTOR--DEFICIENCY.

(a) This section applies if:

(1) the holder of a debt obtains a court judgment against a guarantor of the debt;

(2) real property subject to a deed of trust or other contract lien securing the guaranteed debt is sold at a foreclosure sale under Section 51.002 or under a court judgment foreclosing the lien and ordering the sale;

(3) the price at which the real property is sold is less than the unpaid balance of the indebtedness secured by the real property, resulting in a deficiency; and

(4) a motion or suit to determine the fair market value of the real property as of the date of the foreclosure sale has not been filed under Section 51.003 or 51.004.

(b) The guarantor may bring an action in the district court in the county in which the real property is located for a determination of the fair market value of the real property as of the date of the foreclosure sale. The suit must be brought not later than the 90th day after the date of the foreclosure sale or the date the guarantor receives actual notice of the foreclosure sale, whichever is later.

The fair market value shall be determined by the finder of fact after the introduction by the parties of competent evidence of the value. Competent evidence of value may include:

(1) expert opinion testimony;

(2) comparable sales;

(3) anticipated marketing time and holding costs;

(4) cost of sale; and

(5) the necessity and amount of any discount to be applied to the future sales price or the cash flow generated by the property to arrive at a fair market value as of the date of the foreclosure sale.

(c) If the finder of fact determines that the fair market value is greater than the sale price of the real property at the foreclosure sale, the persons obligated on the indebtedness, including guarantors, are entitled to an offset against the deficiency in the amount by which the fair market value, less the amount of any claim, indebtedness, or obligation of any kind that is secured by a lien or encumbrance on the real property that was not extinguished by the foreclosure, exceeds the sale price. If no competent evidence of fair market value is introduced, the sale price at the foreclosure sale shall be used to compute the deficiency.

(d) Any money received by a lender from a private mortgage guaranty insurer shall be credited to the account of the borrower before the lender brings an action at law for any deficiency owed by the borrower. However, the credit required by this subsection does not apply to the exercise by a private mortgage guaranty insurer of its subrogation rights against a borrower or other person liable for any deficiency.

Added by Acts 1991, 72nd Leg., ch. 361, Sec. 1, eff. June 5, 1991.

Sec. 51.006. DEED-OF-TRUST FORECLOSURE AFTER DEED IN LIEU OF FORECLOSURE.

(a) This section applies to a holder of a debt under a deed of trust who accepts from the debtor a deed conveying real property subject to the deed of trust in satisfaction of the debt.

(b) The holder of a debt may void a deed conveying real property in satisfaction of the debt before the fourth anniversary of the date the deed is executed and foreclosed under the original deed of trust if:

(1) the debtor fails to disclose to the holder of the debt a lien or other encumbrance on the property before executing the deed conveying the property to the holder of the debt in satisfaction of the debt; and

(2) the holder of the debt has no personal knowledge of the undisclosed lien or encumbrance on the property.

(c) A third party may conclusively rely upon the affidavit of the holder of a debt stating that the holder has voided the deed as provided in this section.

(d) If the holder elects to void a deed in lieu of foreclosure as provided in this section, the priority of its deed of trust shall not be affected or impaired by the execution of the deed in lieu of foreclosure.

(e) If a holder accepts a deed in lieu of foreclosure, the holder may foreclose its deed of trust as provided in said deed of trust without electing to void the deed. The priority of such deed of trust shall not be affected or impaired by the deed in lieu of foreclosure.

Added by Acts 1995, 74th Leg., ch. 1020, Sec. 1, eff. Aug. 28, 1995.

Sec. 51.007. TRUSTEE UNDER DEED OF TRUST, CONTRACT LIEN OR SECURITY INSTRUMENT.

(a) The trustee named in a suit or proceeding may plead in the answer that the trustee is not a necessary party by a verified denial stating the basis for the trustee's reasonable belief that the trustee was named as a party solely in the capacity as a trustee under a deed of trust, contract lien, or security instrument.

(b) Within 30 days after the filing of the trustee's verified denial, a verified response is due from all parties to the suit or proceeding setting forth all matters, whether in law or fact, that rebut the trustee's verified denial.

(c) If a party has no objection or fails to file a timely verified response to the trustee's verified denial, the trustee shall be dismissed from the suit or proceeding without prejudice.

(d) If a respondent files a timely verified response to the trustee's verified denial, the matter shall be set for hearing. The court shall dismiss the trustee from the suit or proceeding without prejudice if the court determines that the trustee is not a necessary party.

(e) A dismissal of the trustee pursuant to Subsections (c) and (d) shall not prejudice a party's right to seek injunctive relief to prevent the trustee from proceeding with a foreclosure sale.

(f) A trustee shall not be liable for any good faith error resulting from reliance on any information in law or fact provided by the mortgagor or mortgagee or their respective attorney, agent, or representative or other third party.

Added by Acts 1999, 76th Leg., ch. 1304, Sec. 1, eff. Sept. 1, 1999.

Sec. 51.0074. DUTIES OF TRUSTEE.

(a) One or more persons may be authorized to exercise the power of sale under a security instrument.

(b) A trustee may not be:

(1) assigned a duty under a security instrument other than to exercise the power of sale in accordance with the terms of the security instrument; or

(2) held to the obligations of a fiduciary of the mortgagor or mortgagee.

Added by Acts 2007, 80th Leg., R.S., Ch. 903, Sec. 3, eff. June 15, 2007.

Sec. 51.0075. AUTHORITY OF TRUSTEE OR SUBSTITUTE TRUSTEE.

(a) A trustee or substitute trustee may set reasonable conditions for conducting the public sale if the conditions are announced before bidding is opened for the first sale of the day held by the trustee or substitute trustee.

(b) A trustee or substitute trustee is not a debt collector.

(c) Notwithstanding any agreement to the contrary, a mortgagee may appoint or may authorize a mortgage servicer to appoint a substitute trustee or substitute trustees to succeed to all title, powers, and duties of the original trustee. A mortgagee or mortgage servicer may make an appointment or authorization under this subsection by power of attorney, corporate resolution, or other written instrument.

(d) A mortgage servicer may authorize an attorney to appoint a substitute trustee or substitute trustees on behalf of a mortgagee under Subsection (c).

(e) The name and a street address for a trustee or substitute trustees shall be disclosed on the notice required by Section 51.002(b).

(f) The purchase price in a sale held by a trustee or substitute trustee under this section is due and payable without delay on acceptance of the bid or within such reasonable time as may be agreed upon by the purchaser and the trustee or substitute trustee if the purchaser makes such request for additional time to deliver the purchase price. The trustee or substitute trustee shall disburse the proceeds of the sale as provided by law.

Added by Acts 2003, 78th Leg., ch. 554, Sec. 1, eff. Jan. 1, 2004.

Amended by: Acts 2005, 79th Leg., Ch. 1231, Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 903, Sec. 4, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 323, Sec. 1, eff. September 1, 2009.

Sec. 51.008. CERTAIN LIENS ON REAL PROPERTY.

(a) A lien on real property created under this code or another law of this state in favor of a governmental entity must be recorded as provided by Chapters 11 and 12 in the real property records of the county in which the property or a portion of the property is located unless:

(1) the lien is imposed as a result of failure to pay:

(A) ad valorem taxes; or

(B) a penalty or interest owed in connection with those taxes; or

(2) the law establishing the lien expressly states that recording the lien is

not required.

(b) Any notice of the lien required by law must contain a legal description of the property.

(c) This section does not apply to:

(1) a lien created under Section 89.083, Natural Resources Code;

(2) a state tax lien under Chapter 113, Tax Code; or

(3) a lien established under Chapter 61 or 213, Labor Code.
Added by Acts 2001, 77th Leg., ch. 827, Sec. 1, eff. Sept. 1, 2001.

Sec. 51.009. FORECLOSED PROPERTY SOLD "AS IS".

A purchaser at a sale of real property under Section 51.002:

- (1) acquires the foreclosed property "as is" without any expressed or implied warranties, except as to warranties of title, and at the purchaser's own risk; and
- (2) is not a consumer.

Added by Acts 2003, 78th Leg., ch. 554, Sec. 1, eff. Jan. 1, 2004.

Sec. 51.015. SALE OF CERTAIN PROPERTY OWNED BY MEMBER OF THE MILITARY.

(a) In this section:

(1) "Active duty military service" means:

(A) service as a member of the armed forces of the United States;

and

(B) with respect to a member of the Texas National Guard or the National Guard of another state or a member of a reserve component of the armed forces of the United States, active duty under an order of the president of the United States.

(2) "Dwelling" means a residential structure or manufactured home that contains one to four family housing units.

(3) "Military servicemember" means:

(A) a member of the armed forces of the United States;

(B) a member of the Texas National Guard or the National Guard of another state serving on active duty under an order of the president of the United States; or

(C) a member of a reserve component of the armed forces of the United States who is on active duty under an order of the president of the United States.

(4) "Person" has the meaning assigned by Section 311.005, Government Code.

(1-a) "Assessment" and "assessments" have the meanings assigned by Sections 82.113(a) and 209.002, as applicable.

(b) This section applies only to an obligation:

(1) that is secured by a mortgage, deed of trust, or other contract lien, including a lien securing payment of an assessment or assessments, as applicable, on real property or personal property that is a dwelling owned by a military servicemember;

(2) that originates before the date on which the servicemember's active duty military service commences; and

(3) for which the servicemember is still obligated.

(c) In an action filed during a military servicemember's period of active duty military service or during the nine months after the date on which that service period concludes to foreclose a lien or otherwise enforce an obligation described by Subsection (b), the court may after a hearing and on the court's own motion, and shall on the application by a servicemember whose ability to comply with the obligations of the contract secured by the lien is materially affected by the servicemember's military service:

(1) stay the proceedings for a period of time as justice and equity require; or

(2) adjust the obligations of the contract secured by the lien to preserve the interests of all parties.

(d) A sale, foreclosure, or seizure of property under a mortgage, deed of trust, or other contract lien described by Subsection (b) may not be conducted during the military servicemember's period of active duty military service or during the nine months after the date on which that service period concludes unless the sale, foreclosure, or seizure is conducted under:

- (1) a court order issued before the sale, foreclosure, or seizure; or
- (2) an agreement that complies with Subsection (e).

(e) A military servicemember may waive the servicemember's rights under this section only as provided by this subsection. The waiver must be:

- (1) in writing in at least 12-point type;
- (2) executed as an instrument separate from the obligation to which the waiver applies; and
- (3) made under a written agreement:
 - (A) executed during or after the servicemember's period of active duty military service; and

(B) specifying the legal instrument to which the waiver applies and, if the servicemember is not a party to the instrument, the servicemember concerned.

(f) A person commits an offense if the person knowingly makes or causes to be made a sale, foreclosure, or seizure of property that is prohibited by Subsection (d). An offense under this subsection is a Class A misdemeanor.

(g) On application to a court, a dependent of a military servicemember is entitled to the protections of this section if the dependent's ability to comply with an obligation that is secured by a mortgage, deed of trust, or other contract lien on real property or personal property that is a dwelling is materially affected by the servicemember's military service.

(h) A court that issues a stay or takes any other action under this section regarding the enforcement of an obligation that is subject to this section may grant a similar stay or take similar action with respect to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily subject to the obligation.

(i) If a judgment or decree is vacated or set aside wholly or partly under this section, the court may also set aside or vacate, as applicable, the judgment or decree with respect to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily subject to the obligation that is subject to the judgment or decree.

(j) This section does not prevent a waiver in writing by a surety, guarantor, endorser, accommodation maker, comaker, or other person, whether primarily or secondarily liable on an obligation, of the protections provided under Subsections (h) and (i). A waiver described by this subsection is effective only if it is executed as an instrument separate from the obligation with respect to which it applies. If a waiver under this subsection is executed by an individual who after the execution of the waiver enters active duty military service, or by a dependent of an individual who after the execution of the waiver enters active duty military service, the waiver is not valid after the beginning of the period of the active duty military service unless the waiver was executed by the individual or dependent during the applicable period described by 50 U.S.C. App. Section 516, as that section existed on January 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 992, Sec. 1, eff. June 19, 2009.

Amended by: Acts 2011, 82nd Leg., R.S., Ch. 592, Sec. 2, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 592, Sec. 3, eff. September 1, 2011.

Sec. 51.016. RESCISSION OF NONJUDICIAL FORECLOSURE SALES.

(a) This section applies only to a nonjudicial foreclosure sale of residential real property conducted under Section 51.002. In this subsection, "residential real property" means:

(1) a single family home, duplex, triplex, or quadraplex; or

(2) a unit in a multiunit residential structure in which title to an individual unit is transferred to the owner of the unit under a condominium or cooperative system.

(b) Not later than the 15th calendar day after the date of a foreclosure sale, a mortgagee, trustee, or substitute trustee may rescind the sale under this section if:

(1) the statutory requirements for the sale were not satisfied;

(2) the default leading to the sale was cured before the sale;

(3) a receivership or dependent probate administration involving the property was pending at the time of sale;

(4) a condition specified in the conditions of sale prescribed by the trustee or substitute trustee before the sale and made available in writing to prospective bidders at the sale was not met;

(5) the mortgagee or mortgage servicer and the debtor agreed before the sale to cancel the sale based on an enforceable written agreement by the debtor to cure the default; or

(6) at the time of the sale, a court-ordered or automatic stay of the sale imposed in a bankruptcy case filed by a person with an interest in the property was in effect.

(c) On or before the 15th calendar day after the date of the sale, the party rescinding the sale shall:

(1) serve a written notice of rescission that describes the reason for the rescission and includes recording information for any affected trustee's or substitute trustee's deed that was recorded on:

(A) the purchaser, if the mortgagee is not the purchaser; and

(B) each debtor who, according to the records of the mortgage servicer of the debt, is obligated to pay the debt; and

(2) file each notice for recording in the real property records of the county in which all or a part of the property is located.

(d) A notice required by Subsection (c) must be served by certified mail. Service of the notice is complete when the notice is deposited in the United States mail, postage prepaid and addressed to the purchaser or debtor, as applicable, at the purchaser's or debtors last known address, as applicable. The affidavit of a person knowledgeable of the facts to the effect that service was completed is prima facie evidence of service.

(e) Not later than the fifth calendar day after the date a foreclosure sale is rescinded under this section, the mortgagee shall return to the purchaser by certified mail, electronic or wire transfer, or courier service with delivery tracking the amount of the bid paid by the purchaser for the property at the sale. The debtor shall return to the trustee the amount of any excess proceeds received by the debtor from the sale. The return of the bid amount is considered made on the date:

(1) the bid amount is deposited postage prepaid in the United States mail or with the courier service addressed to the purchaser at the purchaser's last known address; or

(2) the electronic or wire transfer is ordered.

(f) The rescinding mortgagee, trustee, or substitute trustee shall cause to be filed for recording in the real property records of the county where the notice required under Subsection (c) was recorded an affidavit stating the date the bid amount was returned together with the certified mail, electronic or wire transfer, or courier service delivery tracking information.

(g) An affidavit executed and filed in accordance with Subsection (f) is prima facie evidence of the return of the bid amount and of the authority of the maker of the affidavit. A bona fide purchaser, lender, or other person acquiring an interest in the property or an insurer of title is entitled to rely conclusively on the record of the filed affidavit and notice, and any subsequent purchaser in good faith and for value is entitled to bona fide purchaser protection.

(h) The rescission of a foreclosure sale under this section restores the mortgagee and the debtor to their respective title, rights, and obligations under any instrument relating to the foreclosed property that existed immediately prior to the sale.

(i) A rescission of a foreclosure sale under this section is void as to a creditor or to a subsequent purchaser for a valuable consideration without notice unless notice of the rescission has been acknowledged, sworn to, or proved and filed for recording as required by law. A rescission of a foreclosure sale under this section evidenced by an unrecorded instrument is binding on a party to the instrument, on the party's heirs, and on a subsequent purchaser who does not pay a valuable consideration or who has notice of the instrument.

(j) No action challenging the effectiveness of a rescission under this section may be commenced unless the action is filed on or before the 30th calendar day after the date the notices of rescission required by Subsection (c) are filed for recording. A lis pendens notice based on the rescission not recorded within that period has no effect. This subsection does not affect the limitations period for an action claiming damages resulting from the rescission.

(k) If the foreclosure sale is rescinded under this section for a reason listed in Subsection (b), other than a stay described by Subsection (b)(6), the court in a civil action filed by the purchaser challenging the effectiveness of the rescission or claiming damages resulting from the rescission may only award as damages to the purchaser the amount of the bid paid for the property by the purchaser at the sale that has not been refunded to the purchaser, plus interest on that amount at the rate of 10 percent per year. Notwithstanding any other law, the court may not order specific performance of the sale as a remedy for the purchaser. Interest awarded under this subsection ceases to accrue on the fourth day after the date the mortgagee deposits the amount of the damages awarded in the United States mail or with a courier for delivery to the purchaser.

(l) If a foreclosure sale is rescinded under this section for a reason provided by Subsection (b)(6), the court in a civil action filed by the purchaser challenging the effectiveness of the rescission or claiming damages resulting from the rescission may only award as damages to the purchaser the amount of the bid paid for the property by the purchaser at the sale that has not been refunded to the purchaser.

(m) Nothing in this section prohibits the rescission of a sale by agreement of the affected parties on other terms or a suit to rescind a sale not rescinded under this section.

PROPERTY CODE

TITLE 11. RESTRICTIVE COVENANTS

CHAPTER 202. CONSTRUCTION AND ENFORCEMENT OF RESTRICTIVE COVENANTS

Sec. 202.001. DEFINITIONS.

In this chapter:

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

(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.

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

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

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

Added by Acts 1987, 70th Leg., ch. 712, Sec. 1, eff. June 18, 1987.

Amended by: Acts 2011, 82nd Leg., R.S., Ch. 1142, Sec. 2, eff. January 1, 2012.

Sec. 202.002. APPLICABILITY OF CHAPTER.

(a) This chapter applies to all restrictive covenants regardless of the date on which they were created.

(b) This chapter does not affect the requirements of the Community Homes for Disabled Persons Location Act (Article 1011n, Vernon's Texas Civil Statutes).

Added by Acts 1987, 70th Leg., ch. 712, Sec. 1, eff. June 18, 1987.

Sec. 202.003. CONSTRUCTION OF RESTRICTIVE COVENANTS.

(a) A restrictive covenant shall be liberally construed to give effect to its purposes and intent.

(b) In this subsection, "family home" is a residential home that meets the definition of and requirements applicable to a family home under the Community Homes for Disabled Persons Location Act (Article 1011n, Vernon's Texas Civil Statutes). A

dedicatory instrument or restrictive covenant may not be construed to prevent the use of property as a family home. However, any restrictive covenant that applies to property used as a family home shall be liberally construed to give effect to its purposes and intent except to the extent that the construction would restrict the use as a family home.

Added by Acts 1987, 70th Leg., ch. 712, Sec. 1, eff. June 18, 1987.

Sec. 202.004. ENFORCEMENT OF RESTRICTIVE COVENANTS.

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

(b) A property owners' association or other representative designated by an owner of real property may initiate, defend, or intervene in litigation or an administrative proceeding affecting the enforcement of a restrictive covenant or the protection, preservation, or operation of the property covered by the dedicatory instrument.

(c) A court may assess civil damages for the violation of a restrictive covenant in an amount not to exceed \$200 for each day of the violation.

Added by Acts 1987, 70th Leg., ch. 712, Sec. 1, eff. June 18, 1987.

Sec. 202.005. WITHDRAWAL OF SIGNATURE.

(a) A signature may be withdrawn from a petition authorized to be filed in connection with terminating restrictive covenants, as provided by this section.

(b) To withdraw a signature, the signer must request that the signature be withdrawn.

(c) To be effective, a withdrawal request must:

(1) be in writing and be signed and acknowledged by the signer of the petition;

(2) be filed with the authority with whom the petition is required to be filed not later than the day before the petition filing deadline, if any; and

(3) be delivered in the form of a copy of the request to the circulator of the petition not later than the date the request is filed or by the effective date of this chapter, whichever is later.

(d) A withdrawal request or copy filed or delivered by mail is considered to be filed or delivered at the time of its receipt by the appropriate person.

(e) The filing of an effective withdrawal request nullifies the signature on the petition and places the signer in the same position as if the signer had not signed the petition.

Added by Acts 1987, 70th Leg., ch. 712, Sec. 1, eff. June 18, 1987.

Sec. 202.006. PUBLIC RECORDS.

(a) A property owners' association shall file all dedicatory instruments in the real property records of each county in which the property to which the dedicatory instruments relate is located.

(b) A dedicatory instrument has no effect until the instrument is filed in accordance with this section.

Added by Acts 1999, 76th Leg., ch. 1420, Sec. 2, eff. Sept. 1, 1999.

Amended by: Acts 2011, 82nd Leg., R.S., Ch. 1142, Sec. 3, eff. January 1, 2012.

Sec. 202.007. CERTAIN RESTRICTIVE COVENANTS PROHIBITED.

(a) A property owners' association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner from:

(1) implementing measures promoting solid-waste composting of vegetation, including grass clippings, leaves, or brush, or leaving grass clippings uncollected on grass;

(2) installing rain barrels or a rainwater harvesting system; or

(3) implementing efficient irrigation systems, including underground drip or other drip systems.

(4) using draught-resistant landscaping or water-conserving natural turf.

(b) A provision that violates Subsection (a) is void.

(c) A property owners' association may restrict the type of turf used by a property owner in the planting of new turf to encourage or require water-conserving turf.

(d) This section does not:

(1) restrict a property owners' association from regulating the requirements, including size, type, shielding, and materials, for or the location of a composting device if the restriction does not prohibit the economic installation of the device on the property owner's property where there is reasonably sufficient area to install the device;

(2) require a property owners' association to permit a device described by Subdivision (1) to be installed in or on property:

(A) owned by the property owners' association;

(B) owned in common by the members of the property owners' association; or

(C) in an area other than the fenced yard or patio of a property owner;

(3) prohibit a property owners' association from regulating the installation of efficient irrigation systems, including establishing visibility limitations for aesthetic purposes;

(4) prohibit a property owners' association from regulating the installation or use of gravel, rocks, or cacti;

(5) restrict a property owners' association from regulating yard and landscape maintenance if the restrictions or requirements do not restrict or prohibit turf or landscaping design that promotes water conservation;

(6) require a property owners' association to permit a rain barrel or rainwater harvesting system to be installed in or on property if:

(A) the property is:

(i) owned by the property owners' association;

(ii) owned in common by the members of the property owners' association; or

(iii) located between the front of the property owner's home and an adjoining or adjacent street; or

(B) the barrel or system:

(i) is of a color other than a color consistent with the color scheme of the property owner's home; or

(ii) displays any language or other content that is not typically displayed by such a barrel or system as it is manufactured; or

(7) restrict a property owners' association from regulating the size, type, and shielding of, and the materials used in the construction of, a rain barrel, rainwater

harvesting device, or other appurtenance that is located on the side of a house or at any other location that is visible from a street, another lot, or a common area if:

(A) the restriction does not prohibit the economic installation of the device or appurtenance on the property owner's property; and

(B) there is a reasonably sufficient area on the property owner's property in which to install the device or appurtenance.

(8) prohibit a property owners' association from requiring an owner to submit a detailed description or a plan for the installation of drought-resistant landscaping or water-conserving natural turf for review and approval by the property owners association to ensure, to the extent practicable, maximum aesthetic compatibility with other landscaping in the subdivision.

(d-1) A property owners' association may not unreasonably deny or withhold approval of a proposed installation of drought-resistant landscaping or water-conserving natural turf under Subsection (d)(8) or unreasonably determine that the proposed installation is aesthetically incompatible with other landscaping in the subdivision.

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

(1) is located in a municipality with a population of more than 175,000 that is located in a county in which another municipality with a population of more than one million is predominantly located; and

(2) manages or regulates a development in which at least 4,000 acres of the property is subject to a covenant, condition, or restriction designating the property for commercial use, multifamily dwellings, or open space.

Added by Acts 2003, 78th Leg., ch. 1024, Sec. 1, eff. Sept. 1, 2003.

Amended by: Acts 2011, 82nd Leg., R.S., Ch. 1311, Sec. 6, eff. September 1, 2011; Acts 2013, 83rd Leg., Ch. 736 (S.B. 198), § 1, eff. Sept. 1, 2013.

Sec. 202.009. REGULATION OF DISPLAY OF POLITICAL SIGNS.

(a) Except as otherwise provided by this section, a property owners' association may not enforce or adopt a restrictive covenant that prohibits a property owner from displaying on the owner's property one or more signs advertising a political candidate or ballot item for an election:

(1) on or after the 90th day before the date of the election to which the sign relates; or

(2) before the 10th day after that election date.

(b) This section does not prohibit the enforcement or adoption of a covenant that:

(1) requires a sign to be ground-mounted; or

(2) limits a property owner to displaying only one sign for each candidate or ballot item.

(c) This section does not prohibit the enforcement or adoption of a covenant that prohibits a sign that:

(1) contains roofing material, siding, paving materials, flora, one or more balloons or lights, or any other similar building, landscaping, or nonstandard decorative component;

(2) is attached in any way to plant material, a traffic control device, a light, a trailer, a vehicle, or any other existing structure or object;

(3) includes the painting of architectural surfaces;

(4) threatens the public health or safety;

- (5) is larger than four feet by six feet;
- (6) violates a law;
- (7) contains language, graphics, or any display that would be offensive to the ordinary person; or
- (8) is accompanied by music or other sounds or by streamers or is otherwise distracting to motorists.

(d) A property owners' association may remove a sign displayed in violation of a restrictive covenant permitted by this section.

Added by Acts 2005, 79th Leg., Ch. 1010, Sec. 1, eff. June 18, 2005.

Sec. 202.010. REGULATION OF SOLAR ENERGY DEVICES.

(a) In this section:

(1) "Development period" means a period stated in a declaration during which a declarant reserves:

(A) a right to facilitate the development, construction, and marketing of the subdivision; and

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

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

(A) a single family house; or

(B) a separate living unit in a duplex, a triplex, or a quadplex

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

(b) Except as otherwise provided by Subsection (d), a property owners' association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner from installing a solar energy device.

(c) A provision that violates Subsection (b) is void.

(d) A property owners' association may include or enforce a provision in a dedicatory instrument that prohibits a solar energy device that:

(1) as adjudicated by a court:

(A) threatens the public health or safety; or

(B) violates a law;

(2) is located on property owned or maintained by the property owners' association;

(3) is located on property owned in common by the members of the property owners' association;

(4) is located in an area on the property owner's property other than:

(A) on the roof of the home or of another structure allowed under a dedicatory instrument; or

(B) in a fenced yard or patio owned and maintained by the property owner;

(5) if mounted on the roof of the home:

(A) extends higher than or beyond the roofline;

(B) is located in an area other than an area designated by the property owners' association, unless the alternate location increases the estimated annual

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

(C) does not conform to the slope of the roof and has a top edge that is not parallel to the roofline; or

(D) has a frame, a support bracket, or visible piping or wiring that is not in a silver, bronze, or black tone commonly available in the marketplace;

(6) if located in a fenced yard or patio, is taller than the fence line;

(7) as installed, voids material warranties; or

(8) was installed without prior approval by the property owners' association or by a committee created in a dedicatory instrument for such purposes that provides decisions within a reasonable period or within a period specified in the dedicatory instrument.

(e) A property owners' association or the association's architectural review committee may not withhold approval for installation of a solar energy device if the provisions of the dedicatory instruments to the extent authorized by Subsection (d) are met or exceeded, unless the association or committee, as applicable, determines in writing that placement of the device as proposed by the property owner constitutes a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. For purposes of making a determination under this subsection, the written approval of the proposed placement of the device by all property owners of adjoining property constitutes prima facie evidence that such a condition does not exist.

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

Added by Acts 2011, 82nd Leg., R.S., Ch. 939, Sec. 1, eff. June 17, 2011.

Text of section as added by Acts 2011, 82nd Leg., R.S., Ch. 939, Sec. 1

For text of section as added by Acts 2011, 82nd Leg., R.S., Ch. 1028, Sec. 1, see other Sec. 202.011.

Sec. 202.011. REGULATION OF CERTAIN ROOFING MATERIALS.

A property owners' association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner who is otherwise authorized to install shingles on the roof of the owner's property from installing shingles that:

(1) are designed primarily to:

(A) be wind and hail resistant;

(B) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or

(C) provide solar generation capabilities; and

(2) when installed:

(A) resemble the shingles used or otherwise authorized for use on property in the subdivision;

(B) are more durable than and are of equal or superior quality to the shingles described by Paragraph (A); and

(C) match the aesthetics of the property surrounding the owner's property.

Added by Acts 2011, 82nd Leg., R.S., Ch. 939, Sec. 1, eff. June 17, 2011.
Text of section as added by Acts 2011, 82nd Leg., R.S., Ch. 1028, Sec. 1
For text of section as added by Acts 2011, 82nd Leg., R.S., Ch. 939, Sec. 1, see other
Sec. 202.011.

Sec. 202.012. FLAG DISPLAY.

(a) A property owners' association may not, except as provided in this section, adopt or enforce a dedicatory instrument provision that prohibits, restricts, or has the effect of prohibiting or restricting an owner from the display of:

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

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

(1) that require:

(A) the flag of the United States be displayed in accordance with 4 U.S.C. Sections 5-10;

(B) the flag of the State of Texas be displayed in accordance with Chapter 3100, Government Code;

(C) a flagpole attached to a dwelling or a freestanding flagpole be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the dwelling;

(D) the display of a flag, or the location and construction of the supporting flagpole, to comply with applicable zoning ordinances, easements, and setbacks of record; and

(E) a displayed flag and the flagpole on which it is flown be maintained in good condition and that any deteriorated flag or deteriorated or structurally unsafe flagpole be repaired, replaced, or removed;

(2) that regulate the size, number and location of flagpoles on which flags are displayed, except that the regulation may not prevent the installation or erection of at least one flagpole per property that:

(A) is not more than 20 feet in height and, subject to applicable zoning ordinances, easements and setbacks of record, is located in the front yard of the property; or

(B) is attached to any portion of a residential structure owned by the property owner and not maintained by the property owners' association.

(3) that govern the size of a displayed flag;

(4) that regulate the size, location, and intensity of any lights used to illuminate a displayed flag;

(5) that impose reasonable restrictions to abate noise caused by an external halyard of a flagpole; or

(6) that prohibit a property owner from locating a displayed flag or flagpole on property that is:

(A) owned or maintained by the property owners' association; or

(B) owned in common by the members of the association.

(c) A property owner who has a front yard and who otherwise complies with any permitted property owners' association regulations may elect to install a flag pole in accordance with either Subsection (b)(2)(A) or (b)(2)(B).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1028, Sec. 1, eff. June 17, 2011. Amended by Acts 2013, 83rd Leg., Ch. 1389, (H.B. 680), § 2 eff. June 14, 2013.

Sec. 202.018. REGULATION OF DISPLAY OF CERTAIN RELIGIOUS ITEMS.

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

(b) This section does not prohibit the enforcement or adoption of a covenant that, to the extent allowed by the constitution of this state and the United States, prohibits the display or affixing of a religious item on the entry to the owner's or resident's dwelling that:

- (1) threatens the public health or safety;
- (2) violates a law;
- (3) contains language, graphics, or any display that is patently offensive to a passerby;
- (4) is in a location other than the entry door or door frame or extends past the outer edge of the door frame of the owner's or resident's dwelling; or
- (5) individually or in combination with each other religious item displayed or affixed on the entry door or door frame has a total size of greater than 25 square inches.

(c) Except as otherwise provided by this section, this section does not authorize an owner or resident to use a material or color for an entry door or door frame of the owner's or resident's dwelling or make an alteration to the entry door or door frame that is not authorized by the restrictive covenants governing the dwelling.

(d) A property owners' association may remove an item displayed in violation of a restrictive covenant permitted by this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 263, Sec. 1, eff. June 17, 2011.

Sec. 202.019. STANDBY ELECTRIC GENERATORS.

(a) In this section, "standby electric generator" means a device that converts mechanical energy to electrical energy and is:

- (1) powered by natural gas, liquefied petroleum gas, diesel fuel, biodiesel fuel, or hydrogen;
- (2) fully enclosed in an integral manufacturer-supplied sound attenuating enclosure;
- (3) connected to the main electrical panel of a residence by a manual or automatic transfer switch; and
- (4) rated for a generating capacity of not less than seven kilowatts.

(b) Except as provided by this section, a property owners' association may not adopt or enforce a dedicatory instrument provision that prohibits, restricts, or has the effect of prohibiting or restricting an owner from owning, operating, installing, or maintaining a permanently installed standby electric generator.

(c) A property owners' association may adopt or enforce any of the following dedicatory instrument provisions to regulate the operation and installation of standby electric generators:

(1) a dedicatory instrument provision that requires a standby electric generator to be installed and maintained in compliance with:

(A) the manufacturer's specifications; and

(B) applicable governmental health, safety, electrical, and building codes;

(2) a dedicatory instrument provision that requires all electrical, plumbing, and fuel line connections to be installed only by licensed contractors;

(3) a dedicatory instrument provision that requires all electrical connections to be installed in accordance with applicable governmental health, safety, electrical, and building codes;

(4) a dedicatory instrument provision that requires all natural gas, diesel fuel, biodiesel fuel, or hydrogen fuel line connections to be installed in accordance with applicable governmental health, safety, electrical, and building codes;

(5) a dedicatory instrument provision that requires all liquefied petroleum gas fuel line connections to be installed in accordance with rules and standards promulgated and adopted by the Railroad Commission of Texas and other applicable governmental health, safety, electrical, and building codes;

(6) a dedicatory instrument provision that requires nonintegral standby electric generator fuel tanks to be installed and maintained to comply with applicable municipal zoning ordinances and governmental health, safety, electrical, and building codes;

(7) a dedicatory instrument provision that requires the standby electric generator and its electrical lines and fuel lines to be maintained in good condition;

(8) a dedicatory instrument provision that requires the repair, replacement, or removal of any deteriorated or unsafe component of a standby electric generator, including electrical or fuel lines;

(9) a dedicatory instrument provision that requires an owner to screen a standby electric generator if the standby electric generator is:

(A) visible from the street faced by the dwelling;

(B) located in an unfenced side or rear yard of a residence and is visible either from an adjoining residence or from adjoining property owned by the property owners' association; or

(C) located in a side or rear yard fenced by a wrought iron or residential aluminum fence and is visible through the fence either from an adjoining residence or from adjoining property owned by the property owners' association;

(10) a dedicatory instrument provision that sets reasonable times, consistent with the manufacturer's recommendations, for the periodic testing of a standby electric generator;

(11) a dedicatory instrument provision that prohibits the use of a standby electric generator to generate all or substantially all of the electrical power to a residence, except when utility-generated electrical power to the residence is not available or is intermittent due to causes other than nonpayment for utility service to the residence;

(12) a dedicatory instrument provision that regulates the location of the standby electric generator; or

(13) a dedicatory instrument provision that prohibits an owner from locating a standby electric generator on property:

(A) owned or maintained by the property owners' association; or

(B) owned in common by the property owners' association members.

(d) A dedicatory instrument provision permitted by Subsection (c), if adopted, must be reasonably applied and enforced.

(e) A dedicatory instrument provision that regulates the location of a standby electric generator is unenforceable if:

(1) it increases the cost of installing the standby electric generator by more than 10 percent; or

(2) it increases the cost of installing and connecting the electrical and fuel lines for the standby electric generator by more than 20 percent.

(f) If a dedicatory instrument requires that the installation of a standby electric generator be approved before installation, approval may not be withheld if the proposed installation meets or exceeds the dedicatory instrument provisions permitted by Subsection (c).

(g) If a dedicatory instrument provision requires an owner to submit an application for approval of improvements located exterior to a residence, this section does not negate the requirement, but the information required to be submitted as part of the application for the installation of a standby electric generator may not be greater or more detailed than the application for any other improvement.

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