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**HOMEOWNERS ASSOCIATION LAWS**

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## **CHAPTER 5. CONVEYANCES**

### **SUBCHAPTER A. GENERAL PROVISIONS**

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 5.005. Aliens**

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

#### **§ 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.

**§ 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.

**§ 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 \_\_\_ 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"/> Wiring                            |  |
| <input type="checkbox"/> Ceiling Fan(s)                       | <input type="checkbox"/> Attic Fan(s)                      | <input type="checkbox"/> Exhaust Fan(s)                  |
|   |  | <input type="checkbox"/> Wall/Window Air Conditioning    |
| <input type="checkbox"/> Central A/C                          | <input type="checkbox"/> Central Heating                   | <input type="checkbox"/> Public Sewer System             |
| <input type="checkbox"/> Plumbing System                      | <input type="checkbox"/> Septic System                     | <input type="checkbox"/> Fences                          |
| <input type="checkbox"/> Patio/Decking                        | <input type="checkbox"/> Outdoor Grill                     | <input type="checkbox"/> Spa                             |
| <input type="checkbox"/> Pool                                 | <input type="checkbox"/> Sauna                             | <input type="checkbox"/> Hot Tub                         |
|   |  | <input type="checkbox"/> Automatic Lawn Sprinkler System |
| <input type="checkbox"/> Pool Equipment                       | <input type="checkbox"/> Pool Heater                       |  |
|   |  |  |
| <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                    |



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<br>(includes wood-destroying insects) | <input type="checkbox"/> Previous Structural or Roof Repair                          |
| <input type="checkbox"/> Termite or Wood Rot Damage<br>Needing Repair          | <input type="checkbox"/> Hazardous or Toxic Waste                                    |
| <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 are 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):

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---

---

7. If the property is located in a coastal area that is seaward of the Gulf Intracoastal Waterway or within 1,000 feet of the mean high tide bordering the Gulf of Mexico, the property may be subject to the Open Beaches Act or the Dune Protection Act (Chapter 61 or 63, Natural Resources Code, respectively) and a beachfront construction certificate or dune protection permit may be required for repairs or improvements. Contact the local government with ordinance authority over construction adjacent to public beaches for more information.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Seller

The undersigned purchaser hereby acknowledges receipt of the foregoing notice.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Purchaser

(c) A seller or seller's agent shall have no duty to make a disclosure or release information related to whether a death by natural causes, suicide, or accident unrelated to the condition of the property occurred on the property or whether a previous occupant had, may have had, has, or may have AIDS, HIV related illnesses, or HIV infection.

(d) The notice shall be completed to the best of seller's belief and knowledge as of the date the notice is completed and signed by the seller. If the information required by the notice is unknown to the seller, the seller shall indicate that fact on the notice, and by that act is in compliance with this section.

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

- (1) pursuant to 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 pursuant to a power of sale under a deed of trust or a sale pursuant to 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) made 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 such a decree;
  - (9) to or from any governmental entity;
  - (10) of a new residence of not more than one dwelling unit which has not previously been occupied for residential purposes; or
  - (11) of real property where the value of any dwelling does not exceed five percent of the value of the property.
- (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.



### **§ 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.

### **§ 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.

#### **§ 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.

**§ 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.

(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).

### **§ 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.

#### **§ 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.



### **§ 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.

### **§ 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; and

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.

### **§ 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.

## SUBCHAPTER B. FORM AND CONSTRUCTION OF INSTRUMENTS

### § 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.

### § 5.022. Form

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. 20\_\_\_\_.

"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.

### § 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.

#### **§ 5.024. Encumbrances**

"Encumbrance" includes a tax, an assessment, and a lien on real property.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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 dis-

tance, 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.

#### **§ 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.

#### **§ 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.

#### **§ 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**

### **§ 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.

### **§ 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.

### **§ 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.

## **SUBCHAPTER D. EXECUTORY CONTRACT FOR CONVEYANCE**

### **§ 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.

### **§ 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.

#### **§ 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.

#### **§ 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 bold-face 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

**§ 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.

**§ 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.

**§ 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.

### **§ 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.

**§ 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.

**§ 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.

#### **§ 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.

#### **§ 5.075. Purchaser's Right to Pledge Interest in Property on Contracts Entered Into Before September 1, 2011**

(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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

### **§ 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.

### **§ 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.

### **§ 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.

#### **§ 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.

### **§ 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).

#### **§ 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.

#### **§ 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.

## **SUBCHAPTER F. REQUIREMENTS FOR CONVEYANCES OF MINERAL OR ROYALTY INTERESTS**

### **§ 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.

## **§ 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.

#### **§ 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, re-leasing, 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.

### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 5.206. Waiver Void**

A provision that purports to waive a purchaser's rights under this subchapter is void.

#### **§ 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.

## **CHAPTER 51. PROVISIONS GENERALLY APPLICABLE TO LIENS**

### **§ 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; or

(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; or

(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

### **§ 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.

### **§ 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 commissioners 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 commissioners 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.

(i) Notice served on a debtor under this section must state the name and address of the sender of the notice and contain, in addition to any other statements required under this section, 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."

### **§ 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.

### **§ 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.

### **§ 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.

### **§ 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.

### **§ 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.

#### **§ 51.005. Judicial or Nonjudicial 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

### **§ 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.

### **§ 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.

**§ 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.

**§ 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.

(1-a) "Assessment" and "assessments" have the meanings assigned by Sections 82.113(a) and 209.002, as applicable.

(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.

(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.

#### **§ 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 debtor's 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.



**CHAPTER 201. RESTRICTIVE COVENANTS APPLICABLE TO CERTAIN SUBDIVISIONS**

**§ 201.001. Application**

(a) This chapter applies to a residential real estate subdivision that is located in whole or in part:

(1) within a city that has a population of more than 100,000, or within the extraterritorial jurisdiction of such a city;

(2) in the unincorporated area of:

(A) a county having a population of 3.3 million or more; or

(B) a county having a population of 40,000 or more that is adjacent to a county having a population of 3.3 million or more; or

(3) in the incorporated area of a county having a population of 40,000 or more that is adjacent to a county having a population of 3.3 million or more.

(b) The provisions of this chapter relating to extension of the term of, renewal of, or creation of restrictions do not apply to a subdivision if, by the express terms of the instrument creating existing restrictions, some or all of the restrictions affecting the real property within the subdivision provide:

(1) for automatic extensions of the term of the restrictions for an indefinite number of successive specified periods of at least 10 years subject to a right of waiver or termination, in whole or in part, by a specified percentage of less than 50 percent plus one of the owners of real property interests in the subdivision, as set forth in the instrument creating the restrictions; or

(2) for an indefinite number of successive extensions of at least 10 years of the term of the restrictions by written and filed agreement of a specified percentage of less than 50 percent plus one of the owners of real property interests in the subdivision, as authorized by the instrument creating the restrictions.

(c) The provisions of this chapter relating to addition to or modification of existing restrictions do not apply to a subdivision if, by the express terms of the instrument creating the restrictions, the restrictions affecting the real property within the subdivision provide for addition to or modification of the restrictions by written and filed agreement of a specified percentage of less than 75 percent of the owners of real property interests in the subdivision, as set forth in the instrument creating the restrictions. A subdivision is excluded under this subsection regardless of whether a provision in the restrictions requires the consent of the developer of the subdivision or an architectural control committee for an addition to or modification of the restrictions.

(d) A residential real estate subdivision that is or was subject to this chapter at any time remains subject to this chapter regardless of a change in circumstances that removes the subdivision from

the applicability requirements of Subsection (a).

### **§ 201.002. Findings and Purpose**

(a) The legislature finds that:

(1) the pending expiration of property restrictions applicable to real estate subdivisions in municipalities and in the extraterritorial jurisdiction area of municipalities where there is no zoning creates uncertainty in living conditions and discourages investments in affected subdivisions;

(2) owners of land in affected subdivisions are reluctant or unable to provide proper maintenance, upkeep, and repairs of structures because of the pending expiration of the restrictions;

(3) financial institutions cannot or will not lend money for investments, maintenance, upkeep, or repairs in affected subdivisions;

(4) these conditions cause dilapidation of housing and other structures and cause unhealthful and unsanitary conditions in affected subdivisions, contrary to the health, safety, and welfare of the citizens; and

(5) the existence of racial covenants in subdivisions, regardless of their unenforceability, is offensive, repugnant, and harmful to members of racial or ethnic minority groups, and public policy requires that these covenants be deleted.

(b) The purpose of this chapter is to provide a procedure for extending the term of, creation of, additions to, or modification of restrictions and to provide for the removal of any restriction or other provision relating to race, religion, or national origin that is void and unenforceable under either the United States Constitution or Section 5.026.

### **§ 201.003. Definitions**

In this chapter:

(1) "Restrictions" means one or more restrictive covenants contained or incorporated by reference in a properly recorded map, plat, replat, declaration, or other instrument filed in the county real property records, map records, or deed records.

(2) "Residential real estate subdivision" or "subdivision" means:

(A) all land encompassed within one or more maps or plats of land that is divided into two or more parts if the maps or plats cover land within a city, town, or village, or within the extraterritorial jurisdiction of a city, town, or village and are recorded in the deed, map, or real property records of a county, and the land encompassed within the maps or plats is or was burdened by restrictions limiting all or at least a majority of the land area covered by the map or plat, excluding streets and public areas, to residential use only; or

(B) all land located within a city, town, or village, or within the extraterritorial jurisdiction of a city, town, or village that has been divided into two or more parts and that is or was burdened by restrictions limiting at least a majority of the land area burdened by restrictions, excluding streets and public areas, to residential use only, if the instrument or instruments creating the restrictions are recorded in the deed or real property records of a county.

(3) "Owner" means an individual, fiduciary, partnership, joint venture, corporation, association, or other entity that owns record title to real property in a subdivision, or the personal representative of an individual who owns record title to subdivision property.

(4) "Petition" means one or more instruments, however designated or entitled, by which one or more of the purposes authorized by this chapter are sought to be accomplished.

(5) "Real property records" means the applicable records of a county clerk in which conveyances of real property are recorded.

(6) "Lienholder" means an individual, corporation, financial institution, or other entity that holds a vendor's or deed of trust lien secured by land within the subdivision.

(7) "Petition committee" or "committee" means a group of three or more owners who file with the county clerk a notice as required by Section 201.005(a) and who prepare and circulate a petition as allowed under this chapter.

#### **§ 201.004. Extension, Renewal, Creation, Modification of, or Addition to, Restrictions**

(a) A petition may be filed under this chapter to extend or renew an unexpired restriction, to create a restriction, or to add to or modify an existing restriction.

(b) A petition is not effective to extend, renew, create, add to, or modify a restriction unless the petition is filed with the county clerk's office in the county where the subdivision is located before the second anniversary of the date the committee files with the county clerk the notice required by Section 201.005(a).

(c) If a petition meeting the requirements of this chapter is filed with the county clerk within the required period, the provisions of the petition extending, renewing, creating, adding to, or modifying a restriction apply to and burden all of the property in the subdivision except property excluded under Section 201.009. If a petition contains provisions extending or renewing the term of a restriction, the petition may provide for an initial extension or renewal period of not more than 10 years and additional automatic extensions of the term for not more than 10 years each. The extension, renewal, creation, or modification of, or addition to, a restriction takes effect on the later of the dates the petition is filed with the county clerk or a date specified in the petition.

#### **§ 201.005. Petition Committee**

(a) At least three owners may form a petition committee. The committee shall file written no-

tice of its formation with the county clerk of each county in which the subdivision is located.

(b) A notice filed under this chapter must contain:

(1) a statement that a petition committee has been formed for the extension of the term of, creation of, addition to, or modification of one or more restrictions;

(2) the name and residential address of each member of the committee;

(3) the name of the subdivision to which the restrictions apply and a reference to the real property records or map or plat records where the instrument or instruments that contain the restrictions sought to be extended, added to, or modified are recorded or, if the creation of a restriction is proposed, a reference to the place where the map or other document, if any, is recorded;

(4) a general statement of the matters to be included in the petition;

(5) if the creation of a restriction for a subdivision is proposed, a copy of the proposed petition creating the restriction; and

(6) if the amendment or modification of a restriction is proposed, a copy of the proposed instrument creating the amendment or modification, containing the original restriction that is affected and indicating by appropriate deletion and insertion the change to the restriction that is proposed to be amended or modified.

(c) Each member of the committee must sign and acknowledge the notice before a notary or other official authorized to take acknowledgments.

(d) The county clerk shall enter on the notice the date it is filed and record it in the real property records of the county.

(e) An individual's membership on the committee terminates if the individual ceases to own land in the subdivision. If a vacancy on the committee occurs, either because a member ceases to own land in the subdivision or because a member resigns or dies, a majority of the remaining members may appoint as a successor an individual who owns land in the subdivision and who consents to serve as a committee member. If one or more successor committee members are appointed, the surviving committee members shall file written notice of the name and address of each successor committee member with the county clerk not later than the 10th day after the date of the appointment.

(f) After August 31, 1989, only one committee in a subdivision may file to operate under this chapter at one time. Before September 1, 1989, there is no limit on the number of committees in a subdivision with power to act under this chapter at one time. If more than one committee in a subdivision files a notice after August 31, 1989, the committee that files its notice first is the committee with the power to act. A committee that does not effect a successful petition within

the time provided by this chapter is dissolved by operation of law. Except as provided by Section 201.006(c), a new committee for that subdivision may not be validly created under this chapter before the fifth anniversary of the date of dissolution of the previous committee. A petition circulated by a dissolved committee is ineffective for any of the purposes of this chapter.

### **§ 201.0051. Special Petition Approval Required for Certain Restrictions**

A right created or an obligation imposed by an existing restriction that relates to the developer of the subdivision or an architectural control committee established by the instrument creating the restriction cannot be altered unless the person who has the right or obligation signs and acknowledges the petition.

### **§ 201.006. Petition Procedure**

(a) A petition may be circulated, signed, acknowledged, and filed by or on behalf of owners at any time during the circulating committee's existence. The petition must conform to the requirements of Section 201.007.

(b) The petition may be filed not later than one year after the date on which the notice required by Section 201.005(a) is filed. The petition must be signed and acknowledged by owners who own, in the aggregate:

(1) a majority of the total number of lots in the subdivision, in order to extend, renew, or create restrictions;

(2) a majority of the total number of separately owned parcels, tracts, or building sites in the subdivision, whether or not the parcels, tracts, or building sites contain part or all of one or more platted lots or combinations of lots, in order to extend, renew, or create restrictions;

(3) a majority of the square footage within all of the lots in the subdivision, excluding any area dedicated or used exclusively for roadways or public purposes or by utilities, in order to extend, renew, or create restrictions;

(4) at least 75 percent of the total number of lots in the subdivision, in order to modify or add to existing restrictions;

(5) at least 75 percent of the total number of separately owned parcels, tracts, or building sites in the subdivision, whether or not the parcels, tracts, or building sites contain part or all of one or more platted lots or combination of lots, in order to modify or add to existing restrictions; or

(6) at least 75 percent of the square footage within all of the lots in the subdivision, excluding any area dedicated or used exclusively for roadways or public purposes or by utilities, in order to modify or add to existing restrictions.

(c) If, after August 31, 1988, a court of competent jurisdiction holds any provision of a restric-

tive covenant affecting a subdivision to which this chapter applies invalid, a petition committee authorized by this chapter may file a petition not later than one year after the date on which the judgment is rendered. For this purpose, the five-year limitation period in Section 201.005(f) does not apply.

(d) The petition is effective if signed and acknowledged by the required number of owners of any one of the classifications of property specified in Subsection (b) and is filed as provided by Subsection (f).

(e) After an owner signs a petition, the fact that the owner subsequently conveys the land in the subdivision does not affect the previous signing of the petition.

(f) The petition must be filed with the county clerk of each county in which the subdivision is located.

### **§ 201.007. Contents of Petition**

(a) A petition filed under this chapter must contain or be supplemented by one or more instruments containing:

(1) the name of the subdivision;

(2) a reference to the real property records or map or plat records where the instrument or instruments that contain any restriction sought to be extended, added to, or modified are recorded or, in the case of the creation of a restriction, a reference to the place where the map or other document identifying the subdivision is recorded;

(3) a verbatim statement of any provisions for extension of the term of, or addition to, the restriction;

(4) if a restriction is being amended or modified, the text of the proposed instrument creating the amendment or modification, together with a comparison of the original restriction that is affected indicating by appropriate deletion and insertion the change to the restriction that is proposed to be amended or modified;

(5) if a restriction is being created, the text of the proposed instrument creating the restriction;

(6) original acknowledged signatures of the required number of owners as provided by Section 201.006;

(7) alternate boxes, clearly identified in a conspicuous manner next to the place for signing the petition, that enable each record owner to mark the appropriate box to show the exercise of the owner's option of either including or excluding the owner's property from being burdened by the restrictions being extended, created, added to, or modified;

(8) a statement that owners who do not sign the petition must file suit under Section 201.010 before the 181st day after the date on which the certificate called for by Section 201.008(e) is

filed in order to challenge the procedures followed in extending, creating, adding to, or modifying a restriction; and

(9) a statement that owners who do not sign the petition may delete their property from the operation of the extended, created, added to, or modified restriction by filing a statement described in the fourth listed category in Section 201.009(b) before one year after the date on which the owner receives actual notice of the filing of the petition authorized by this chapter.

(b) If a restriction being added to, modified, or extended contains any provision relating to race, religion, or national origin that is void and unenforceable under either the United States Constitution or Section 5.026, the void and unenforceable restriction shall, by the provisions of the petition, be declared to be deleted from the restriction as if the provision had never been contained in the restriction.

(c) Each petition filed under this chapter must contain an assertion from the signing owners that they own record title to property within the subdivision, and the legal description and street address of the property of each signing owner must be shown beside or above the signature. If there is more than one record owner of a tract, each record owner must sign the petition before the property can be counted as a part of the number required by Section 201.006.

#### **§ 201.008. Notice and Certificate of Compliance**

(a) Not later than the 60th day after the date on which a petition that meets the requirements of this chapter is filed, the committee shall give notice directed to all persons who then are record owners of property in the subdivision. The notice must contain:

(1) the name of the subdivision covered by the petition;

(2) a copy of the petition;

(3) a statement that the proper number of property owners in the subdivision have signed and acknowledged the petition; and

(4) the date the petition was filed with the county clerk.

(b) Except as provided by Subsection (d), the notice required by Subsection (a) must be:

(1) published once a week for two consecutive weeks in a newspaper of general circulation in the county or counties where the subdivision is located; and

(2) sent by certified mail, return receipt requested, to each person who owned land in the subdivision as of the date the notice is given, excluding the owners of land dedicated for public use or for use by utilities.

(c) If the committee acts in good faith in determining ownership and giving notice as required

by this section, the failure to give personal notice to an owner does not affect the application of an extension, modification, or creation of, or addition to, a restriction under this chapter to the property of a person who signed the petition.

(d) Instead of the information required by Subsection (a)(2), a notice published as required by Subsection (b)(1) may contain a general description of the purpose and effect of the petition.

(e) On compliance with the notice requirements of this section, a majority of the members of the committee shall execute a certificate of compliance and file the certificate with the county clerk of each county where the subdivision is located.

(f) The county clerk of each county shall record the certificate in the real property records of the county.

### **§ 201.009. Property Within Subdivision not Affected by Petition**

(a) The procedures called for under this chapter are considered complete and regular in all respects unless challenged by a declaratory judgment suit under Section 201.010.

(b) A restriction added, modified, created, or extended under this chapter does not affect or encumber property within the subdivision that is included within one of the following categories:

(1) property exclusively dedicated for use by the public or for use by utilities;

(2) property of an owner who elected in the petition to exclude the property from the restriction;

(3) property of an owner who did not sign the petition and has not received actual notice of the filing of the petition;

(4) property of an owner who did not sign the petition and who files, before one year after the date on which the owner received actual notice of the filing of the petition, an acknowledged statement describing the owner's property by reference to the recorded map or plat of the subdivision and stating that the owner elects to have the property deleted and excluded from the operation of the extended, modified, changed, or created restriction; and

(5) property owned by a minor or a person judicially declared to be incompetent at the time the certificate is filed, unless:

(A) actual notice of the filing of the petition is given to a guardian of the minor or incompetent person, and the guardian has not filed the statement described in the fourth listed category in this subsection;

(B) a predecessor in title to the minor or incompetent person signed a petition that was filed while the property was owned by the predecessor; or



(C) the incompetent person signed a petition that was filed before the judicial declaration of the person's incompetency.

(c) The county clerk shall file a statement described in the fourth listed category in Subsection (b) in the same manner as the petition and certificate. Substantial compliance by an owner with the requirements for the statement prevents the owner's property from being burdened by an extended, created, added to, or modified restriction if the statement is filed within the time required.

(d) A lienholder whose lien was established before the effective date of a petition is not bound by the petition unless the lienholder signs it and it is later filed. If such a lienholder who does not sign the filed petition later acquires title to the property in the subdivision through foreclosure, the acquisition is free of the restrictions added, modified, created, or extended by the petition. However, if any other person acquires the title to the property at a foreclosure sale, that person takes the property subject to the restriction added, modified, created, or extended by the petition, if any prior owner of the foreclosed property signed and acknowledged the petition.

(e) Notwithstanding any other provision of this chapter, property that is excluded in any manner from the operation of restrictions that are modified, added to, or created by a petition under this chapter is, unless the petition expressly provides otherwise, subject to those restrictions, if any, affecting the excluded property as the restrictions existed immediately before the effective date of the petition, and those restrictions are continued in effect to the extent originally applicable to the excluded property. After the filing of such a petition, those restrictions may be added to, modified, or extended by a specified percentage of the owners of real property interests in accordance with this chapter or the instruments evidencing the restrictions as they existed immediately before the effective date of the petition, if otherwise still applicable. Any petition filed under this chapter that creates, adds to, or modifies restrictions may provide for the subsequent addition to or extension, creation, or modification of, the resulting restrictions by a specified percentage of the owners of real property interests in the subdivision as set forth in the instruments evidencing the continued restrictions. This subsection does not abrogate, alter, affect, or impair the rights of a lienholder under Subsection (d) to not be bound by a petition adopted under this chapter when the lienholder subsequently acquires title to the excluded property through foreclosure.

#### **§ 201.010. Action and Limitations of Remedies**

(a) If an owner and the owner's predecessors in interest neither signed the petition nor filed the statement described in the fourth listed category in Section 201.009(b), the owner may file a suit for declaratory judgment in a court of competent jurisdiction:

(1) to challenge the completeness or regularity of the procedures leading to the recordation of a certificate, if the suit is filed before the 181st day after the date on which the certificate is filed with the county clerk; or

(2) to exclude the owner's property from the operation of the extended, modified, added to, or created restriction.

(b) A suit for a declaratory judgment must name as defendants the final members of the petition committee who are owners of property in the subdivision at the time of the filing of the suit. In addition, a suit for a declaratory judgment must name all other owners of property in the subdivision as defendants, either as individuals or as members of a class.

(c) An owner who files a suit for the second listed purpose in Subsection (a) is entitled to relief only if the owner pleads and establishes that the conditions of land use within the subdivision at the time the certificate was filed were incompatible with the restriction. As an alternative to excluding a specific parcel of land from the operation of the restriction, a court may alter the restriction as it applies to the parcel to better conform to the incompatible conditions.

(d) The remedies in this section are exclusive of all others in actions brought to challenge a restriction extended, modified, added to, or created under this chapter. The filing of an action for the first listed purpose in Subsection (a) does not prevent the restriction from taking effect in accordance with its terms pending a final judgment.

#### **§ 201.011. Prohibition of Claim of Lack of Mutuality**

If a petition procedure is completed under this chapter, the owners of property within the subdivision whose property is covered by the petition may not raise in any judicial proceeding the issue that the restrictions added, modified, created, or extended under this chapter are not enforceable on the grounds that the restrictions are not applicable to all of the property in the subdivision.

#### **§ 201.012. Multiple Filing; Computation of Filing Date**

For purposes of this chapter, an instrument required to be filed with the clerk of more than one county is considered filed on the date on which the last required filing is made

#### **§ 201.013. Cumulative Effect**

The procedure prescribed by this chapter for adding to, modifying, creating, or extending the term of a restriction is cumulative and not in lieu of other methods of adding to, modifying, creating, or extending a restriction.

### **CHAPTER 202. CONSTRUCTION AND ENFORCEMENT OF RESTRICTIVE COVENANTS**

#### **§ 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.

### **§ 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).

### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

## **§ 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; or

(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.

### **§ 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.

### **§ 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, the declarant may prohibit or restrict a property owner from installing a solar energy device in developments with 50 or fewer units/lots.

### **§ 202.011. Regulation of Certain Roofing Materials**

(a) 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.

### **§ 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, Govern-

ment 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).

### **§ 202.018. Regulation of Display of Certain Religious Items**

(a) Except as otherwise provided by this section, a property owners' association may not en-

force 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.

### **§ 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.

## **CHAPTER 203. ENFORCEMENT OF LAND USE RESTRICTIONS IN CERTAIN COUNTIES**

### **§ 203.001. Applicability of Chapter**

This chapter applies only to a county with a population of more than 200,000.

### **§ 203.002. Definition**

In this chapter, "restriction" means a limitation that affects the use to which real property may be put, fixes the distance at which buildings or other structures must be set back from property, street, or lot lines, affects the size of lots, or affects the size, type, or number of buildings or other structures that may be built on the property.

### **§ 203.003. County Attorney Authorized to Enforce Restrictions**

(a) The county attorney may sue in a court of competent jurisdiction to enjoin or abate violations of a restriction contained or incorporated by reference in a properly recorded plan, plat, replat, or other instrument affecting a real property subdivision located in the county, regardless of the date on which the instrument was recorded.

(b) The county attorney may not enforce a restriction relating to race or any other restriction that violates the state or federal constitution.

### **§ 203.004. Administrative Fee**

(a) A complaint filed in connection with Section 203.003 must be accompanied by an administrative fee prescribed by the county commissioners court. The amount of the fee may not exceed the administrative costs to be incurred by the county in pursuing the matter.

(b) The administrative fee shall be deposited in a special county fund. The fund may be used only to administer this chapter.

(c) The commissioners court may waive the administrative fee if the complainant files with the complaint a hardship affidavit in a form approved by the commissioners court.

### **§ 203.005. Court Costs and Attorney's Fees**

(a) The county may be awarded court costs and attorney's fees in a successful action under this chapter.

(b) If the court costs and attorney's fees awarded to the county, together with the administrative fee collected under Section 203.004, exceed the county's expenses in a successful action under this chapter, any portion of the excess that does not exceed the amount of the administrative fee collected by the county shall be refunded to the complainant.

## **CHAPTER 204. POWERS OF PROPERTY OWNERS' ASSOCIATION RELATING TO RESTRICTIVE COVENANTS IN CERTAIN SUBDIVISIONS**

### **§ 204.001. Definitions**

In this chapter:

(1) "Restrictions," "residential real estate subdivision," "subdivision," "owner," "real property records," and "lienholder" have the meanings assigned by Section 201.003.

(2) "Dedictory instrument," "petition," and "restrictive covenant" have the meanings assigned by Section 202.001.

(3) "Regular assessment" means an assessment, charge, fee, or dues that each owner of property within a subdivision is required to pay to the property owners' association on a regular basis and that are to be used by the association for the benefit of the subdivision in accordance with the original, extended, added, or modified restrictions.

(4) "Special assessment" means an assessment, charge, fee, or dues that each owner of property within a subdivision is required to pay to the property owners' association, after a vote of the membership, for the purpose of paying for the costs of capital improvements to the common areas that are incurred or will be incurred by the association during the fiscal year. A special assessment may be assessed before or after the association incurs the capital improvement costs.

### **§ 204.002. Application**

(a) This chapter applies only to a residential real estate subdivision, excluding a condominium development governed by Title 7, Property Code, that is located in whole or in part:

(1) in a county with a population of 3.3 million or more;

(2) in a county with a population of not less than 285,000 and not more than 300,000 that is adjacent to the Gulf of Mexico and that is adjacent to a county having a population of 3.3 million or more; or

(3) in a county with a population of 275,000 or more that:

(A) is adjacent to a county with a population of 3.3 million or more; and



(B) contains part of a national forest.

(b) This chapter applies to a restriction regardless of its effective date.

(c) This chapter does not apply to portions of a subdivision that are zoned for or that contain a commercial structure, an industrial structure, an apartment complex, or a condominium development governed by Title 7, Property Code. For purposes of this subsection, "apartment complex" means two or more dwellings in one or more buildings that are owned by the same owner, located on the same lot or tract, and managed by the same owner, agent, or management company.

### **§ 204.003. Application of Provisions of Restrictive Covenants in Certain Circumstances**

(a) An express designation in a document creating restrictions applicable to a residential real estate subdivision that provides for the extension of, addition to, or modification of existing restrictions by a designated number of owners of real property in the subdivision prevails over the provisions of this chapter.

(b) Notwithstanding Subsection (a), for a residential subdivision described by Subsection (c), the provisions of this chapter prevail over an express designation in a document described by Subsection (a) if:

(1) the designated number of owners of real property in the subdivision required for approval of an extension of, addition to, or modification of the document is more than 75 percent; or

(2) the designation prohibits the extension of, addition to, or modification of an existing restriction for a certain time period and that time period has not expired.

(c) Subsection (b) applies to a residential subdivision that is located in a county described by Section 204.002(a)(3) other than a gated community with private streets.

### **§ 204.004. Property Owners' Association**

(a) A property owners' association is a designated representative of the owners of property in a subdivision and may be referred to as a "homeowners association," "community association," "civic association," "civic club," "association," "committee," or similar term contained in the restrictions. The membership of the association consists of the owners of property within the subdivision.

(b) The association must be nonprofit and may be incorporated as a Texas nonprofit corporation. An unincorporated association may incorporate under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes).

(c) The association's board of directors or trustees must be elected or appointed in accordance

with the applicable provisions of the restrictions and the association's articles of incorporation or bylaws.

#### **§ 204.005. Extension of, Addition to, or Modification of Existing Restrictions**

(a) A property owners' association has authority to approve and circulate a petition relating to the extension of, addition to, or modification of existing restrictions. A property owners' association is not required to comply with Sections 201.009-201.012.

(b) A petition to extend, add to, or modify existing restrictions approved and circulated by a property owners' association is effective if:

(1) the petition is approved by the owners, excluding lienholders, contract purchasers, and the owners of mineral interests, of at least 75 percent of the real property in the subdivision or a smaller percentage required by the original dedicatory instrument; and

(2) the petition is filed as a dedicatory instrument with the county clerk of the county in which the subdivision is located.

(c) If a subdivision consisting of multiple sections, each with its own restrictions, is represented by a single property owners' association, the approval requirement may be satisfied by obtaining approval of at least 75 percent of the owners on a section-by-section basis or of the total number of properties in the property owners' association's jurisdiction.

(d) If approved, the petition is binding on all properties in the subdivision or section, as applicable.

(e) A property owners' association that circulates a petition must notify all record owners of property in the subdivision in writing of the proposed extension, addition to, or modification of the existing restrictions. Notice may be hand-delivered to residences within the subdivision or sent by regular mail to the owner's last known mailing address as reflected in the ownership records maintained by the property owners' association. The approval of multiple owners of a property may be reflected by the signature of a single co-owner.

#### **§ 204.006. Creation of Property Owners' Association**

(a) If existing restrictions applicable to a subdivision do not provide for a property owners' association and require approval of more than 60 percent of the owners to add to or modify the original dedicating instrument, a petition to add to or modify the existing restrictions for the sole purpose of creating and operating a property owners' association with mandatory membership, mandatory regular or special assessments, and equivalent voting rights for each of the owners in the subdivision is effective if:

(1) a petition committee has been formed as prescribed by Section 201.005;

(2) the petition is approved by the owners, excluding lienholders, contract purchasers, and the owners of mineral interests, of at least 60 percent of the real property in the subdivision; and

(3) the procedure employed in the circulation and approval of the petition to add to or amend the existing restrictions for the specified purpose complies with the requirements of this chapter.

(b) If the circulated petition is not approved by the required percentage of owners within one year of the creation of the petition committee, the petition is void and another petition committee may be formed.

(c) If the petition is approved, the petition is binding on all properties in the subdivision or section, as applicable.

### **§ 204.007. Effect on Lienholders**

(a) Extensions of, additions to, or modifications of restrictions under this chapter are binding on a lienholder, excluding restrictions relating to regular or special assessment increases if the assessment is not subordinated to purchase money or home improvement liens.

(b) If the assessment lien of the property owners' association is subordinate to purchase money or home improvement liens, the lienholder is not entitled to notice of the proposed dedicatory instrument and the lienholder is bound by the instrument if the instrument is approved. If the assessment lien is not subordinated, a lienholder who is not a signatory to the dedicatory instrument and whose lien was established before the effective date of the dedicatory instrument is not bound by the portion of the dedicatory instrument that increases the amount of the regular or special assessment during any period of ownership by the lienholder.

(c) A person who acquires title to the property at a foreclosure sale or by deed from a foreclosing lienholder is bound by the assessment increase.

### **§ 204.008. Method of Adoption**

An extension, addition to, or modification of restrictions proposed by a property owners' association may be adopted:

(1) by a written ballot that states the substance of the amendment and specifies the date by which a ballot must be received to be counted;

(2) at a meeting of the members represented by the property owners' association if written notice of the meeting stating the purpose of the meeting is delivered to each owner of property in the subdivision;

(3) by door-to-door circulation of a petition by the property owners' association or a person authorized by the property owners' association;

(4) by a method permitted by the existing restrictions; or

(5) by a combination of the methods described by this section.

#### **§ 204.009. Texas Nonprofit Corporations**

(a) If the property owners' association is referenced in the existing, extended, added to, or modified restrictions as a Texas nonprofit corporation, the instrument contemplates the interaction of a nonprofit corporation, its articles of incorporation, and its bylaws.

(b) The property owners' association has the powers and shall promote the purposes enumerated in the articles of incorporation and bylaws. These powers and purposes necessarily modify the express provisions of the restrictions to include the referenced powers and purposes.

#### **§ 204.010. Powers of Property Owners' Association**

(a) Unless otherwise provided by the restrictions or the association's articles of incorporation or bylaws, the property owners' association, acting through its board of directors or trustees, may:

- (1) adopt and amend bylaws;
- (2) adopt and amend budgets for revenues, expenditures, and reserves and collect regular assessments or special assessments for common expenses from property 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 on matters affecting the subdivision;
- (5) make contracts and incur liabilities relating to the operation of the subdivision and the property owners' association;
- (6) regulate the use, maintenance, repair, replacement, modification, and appearance of the subdivision;
- (7) make additional improvements to be included as a part of the common area;
- (8) grant easements, leases, licenses, and concessions through or over the common area;
- (9) impose and receive payments, fees, or charges for the use, rental, or operation of the common area and for services provided to property owners;
- (10) impose interest, late charges, and, if applicable, returned check charges for late payments of regular assessments or special assessments;
- (11) if notice and an opportunity to be heard are given, collect reimbursement of actual attor-

ney's fees and other reasonable costs incurred by the property owners' association relating to violations of the subdivision's restrictions or the property owners' association's bylaws and rules;

(12) charge costs to an owner's assessment account and collect the costs in any manner provided in the restrictions for the collection of assessments;

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

(14) impose reasonable charges for preparing, recording, or copying amendments to the restrictions, resale certificates, or statements of unpaid assessments;

(15) purchase insurance and fidelity bonds, including directors' and officers' liability insurance, that the board considers appropriate or necessary;

(16) if the restrictions allow for an annual increase in the maximum regular assessment without a vote of the membership, assess the increase annually or accumulate and assess the increase after a number of years;

(17) subject to the requirements of the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) and by majority vote of its board of directors, indemnify a director or officer of the property owners' association who was, is, or may be made a named defendant or respondent in a proceeding because the person is or was a director;

(18) if the restrictions vest the architectural control authority in the property owners' association or if the authority is vested in the property owners' association under Section 204.011:

(A) implement written architectural control guidelines for its own use or record the guidelines in the real property records of the applicable county; and

(B) modify the guidelines as the needs of the subdivision change;

(19) exercise other powers conferred by the restrictions, its articles of incorporation, or its bylaws;

(20) exercise other powers that may be exercised in this state by a corporation of the same type as the property owners' association; and

(21) exercise other powers necessary and proper for the governance and operation of the property owners' association.

(b) Powers enumerated by this section are in addition to any other powers granted to a property owners' association by this chapter or other law.

#### **§ 204.011. Architectural Control Committee**

(a) This section applies to restrictions providing for the creation and operation of an architectur-

al control committee with the power to approve or deny applications for proposed original construction or modification of a building, structure, or improvement.

(b) Unless the restrictions applicable to a residential real estate subdivision vest the architectural control committee authority in the property owners' association before either of the following events, the architectural control committee authority automatically vests in the property owners' association when:

(1) the term of the architectural control committee authority expires as prescribed by the restrictions;

(2) a residence on the last available building site is completed and sold;

(3) the person or entity designated as the architectural control committee in the restrictions assigns, in writing, authority to the property owners' association; or

(4) an assignee of the original holder abandons its authority for more than one year.

(c) If the architectural control committee authority is transferred to the property owners' association, the authority is vested in the property owners' association until:

(1) the restrictions are modified to reflect otherwise;

(2) the restrictions are terminated; or

(3) the property owners' association ceases to exist.

## **CHAPTER 205. RESTRICTIVE COVENANTS APPLICABLE TO REVISED SUBDIVISIONS IN CERTAIN COUNTIES**

### **§ 205.001. Definitions**

In this chapter:

(1) "Restrictions" and "subdivision" have the meanings assigned by Section 201.003.

(2) "Property owners' association" has the meaning assigned by Section 202.001.

### **§ 205.002. Applicability**

This chapter applies only to a county with a population of 65,000 or more.

### **§ 205.003. Restrictions Applicable to Revised Subdivisions**

(a) If all or part of a subdivision plat is revised to provide for another subdivision of land within

all or part of the earlier subdivision, the restrictions that apply to the subdivision before the revision apply to the newly created subdivision.

(b) The property owners of the newly created subdivision must comply with the petition procedures prescribed by Chapter 204 to modify the restrictions.

**§ 205.004. Amendment of Restrictions by Governing Body of Property Owners' Association**

(a) The governing body of a property owners' association may amend the restrictions for the limited purpose of complying with United States Department of Housing and Urban Development or United States Department of Veterans Affairs requirements for subdivision property to qualify for insured or guaranteed mortgage loans.

(b) An amendment adopted under this section must:

(1) indicate that the amendment is adopted under authority of this section by specifically referencing this section;

(2) be signed by a majority of the governing body; and

(3) be filed in the real property records of the county in which the subdivision is located.

**CHAPTER 206. EXTENSION OF RESTRICTIONS IMPOSING REGULAR ASSESSMENTS IN CERTAIN SUBDIVISIONS**

**§ 206.001. Definitions**

In this chapter:

(1) "Community association" means an incorporated association created to enforce restrictions.

(2) "Dedictory instrument" and "restrictive covenant" have the meanings assigned by Section 202.001.

(3) "Lienholder," "owner," "real property records," "residential real estate subdivision," and "restrictions" have the meanings assigned by Section 201.003.

(4) "Regular assessment" means an assessment, charge, fee, or dues that each owner is required to pay to the community association on a regular basis and that is to be used by the association for the benefit of the subdivision in accordance with the original, extended, added, or modified restrictions.

**§ 206.002. Applicability of Chapter**

This chapter applies only to:

(1) a residential real estate subdivision that:

(A) consists of at least 4,600 homes;

(B) is located in whole or in part in a municipality with a population of more than 1.6 million located in a county with a population of 2.8 million or more; and

(C) has restrictions the terms of which are automatically extended but has a regular assessment that is established by a separate document that permits the assessment to expire and does not provide for extension of the term of the assessment; or

(2) a residential real estate subdivision that:

(A) consists of at least 750 homes;

(B) is located in two adjacent municipalities in a county with a population of 2.8 million or more; and

(C) has use restrictions the terms of which are automatically extended but has a regular assessment that is established by two separate documents that permit the assessment to expire and do not provide for extension of the term of the assessment.

**§ 206.003. Extension of Restriction Imposing Regular Assessment**

(a) A community association may approve and submit to a vote of the owners an extension of a restriction imposing a regular assessment.

(b) The extension of a restriction imposing a regular assessment is approved if a majority of the owners in the subdivision who vote on the issue in accordance with Section 206.004 vote in favor of the extension.

(c) An extension approved in accordance with this section and Section 206.004 applies to all real property in the subdivision, including residential and commercial property.

(d) A document certifying that a majority of the owners voting on the issue approved the extension of the restriction must be recorded in the real property records of the county in which the subdivision is located.



## **§ 206.004. Method of Voting**

(a) An extension of a restriction that imposes a regular assessment must be voted on:

(1) by a written ballot that states the substance of the amendment extending the restriction and specifies the date by which the community association must receive a ballot for the ballot to be counted; or

(2) at a meeting of the property owners in the subdivision.

(b) The community association shall provide for mailing to each owner, as applicable:

(1) the ballot under Subsection (a)(1); or

(2) notice of the meeting under Subsection (a)(2) that states the purpose of the meeting.

(c) In conjunction with a vote by ballot or at a meeting under Subsection (a), the community association may provide for circulation of a petition in the subdivision.

(d) The vote of multiple owners of a property may be reflected by the signature or vote of one of the owners.

(e) The community association shall record a copy of the ballot or petition in the real property records in the county in which the subdivision is located prior to submission of the extension to a vote of the owners.

## **CHAPTER 207. DISCLOSURE OF INFORMATION BY PROPERTY OWNERS' ASSOCIATIONS**

### **§ 207.001. Definitions**

In this chapter:

(1) "Restrictions" has the meaning assigned by Section 201.003.

(2) "Dedictory instrument," "property owners' association," and "restrictive covenant" have the meanings assigned by Section 202.002.

(3) "Owner" means a person who owns record title to property in a subdivision or the personal representative of an individual who owns record title to property in a subdivision.

(4) "Regular assessment" and "special assessment" have the meanings assigned by Section 204.001.

(5) "Resale certificate" means a written statement issued, signed, and dated by an officer or authorized agent of a property owners' association that contains the information specified by Section 207.003(b).

(6) "Subdivision" means all land that has been divided into two or more parts and that is or was burdened by restrictions limiting at least the majority of the land area burdened by restrictions, excluding streets and public areas, to residential use only, if the instrument or instruments creating the restrictions are recorded in the deed or real property records of a county.

### **§ 207.002. Applicability**

(a) This chapter applies to a subdivision with a property owners' association that is entitled to levy regular or special assessments.

(b) This chapter does not apply to a condominium council of owners governed by Chapter 81 or a condominium unit owners' association governed by Chapter 82.

### **§ 207.003. Delivery of Subdivision Information to Owner**

(a) Not later than the 10th business day after the date a written request for subdivision information is received from an owner or the owner's agent, a purchaser of property in a subdivision or the purchaser's agent, or a title insurance company or its agent acting on behalf of the owner or purchaser and the evidence of the requestor's authority to order a resale certificate under Subsection (a-1) is received and verified, the property owners' association shall deliver to the owner or the owner's agent, the purchaser or the purchaser's agent, or the title insurance company or its agent:

(1) a current copy of the restrictions applying to the subdivision;

(2) a current copy of the bylaws and rules of the property owners' association; and

(3) a resale certificate prepared not earlier than the 60th day before the date the certificate is delivered that complies with Subsection (b).

(a-1) For a request from a purchaser of property in a subdivision or the purchaser's agent, the property owners' association may require the purchaser or purchaser's agent to provide to the association, before the association begins the process of preparing or delivers the items listed in Subsection (a), reasonable evidence that the purchaser has a contractual or other right to acquire property in the subdivision.

(b) A resale certificate under Subsection (a) must contain:

(1) a statement of any right of first refusal, other than a right of first refusal that is prohibited by statute, and any other restraint contained in the restrictions or restrictive covenants that restricts the owner's right to transfer the owner's property;

(2) the frequency and amount of any regular assessments;

(3) the amount and purpose of any special assessment that has been approved before and is due after the resale certificate is delivered;

(4) the total of all amounts due and unpaid to the property owners' association that are attributable to the owner's property;

(5) capital expenditures, if any, approved by the property owners' association for the property owners' association's current fiscal year;

(6) the amount of reserves, if any, for capital expenditures;

(7) the property owners' association's current operating budget and balance sheet;

(8) the total of any unsatisfied judgments against the property owners' association;

(9) the style and cause number of any pending lawsuit in which the property owners' association is a party, other than a lawsuit relating to unpaid ad valorem taxes of an individual member of the association;

(10) a copy of a certificate of insurance showing the property owners' association's property and liability insurance relating to the common areas and common facilities;

(11) a description of any conditions on the owner's property that the property owners' association board has actual knowledge are in violation of the restrictions applying to the subdivision or the bylaws or rules of the property owners' association;

(12) a summary or copy of notices received by the property owners' association from any governmental authority regarding health or housing code violations existing on the preparation date of the certificate relating to the owner's property or any common areas or common facilities owned or leased by the property owners' association;

(13) the amount of any administrative transfer fee charged by the property owners' association for a change of ownership of property in the subdivision;

(14) the name, mailing address, and telephone number of the property owners' association's managing agent, if any;

(15) a statement indicating whether the restrictions allow foreclosure of a property owners' association's lien on the owner's property for failure to pay assessments; and

(16) a statement of all fees associated with the transfer of ownership, including a description of each fee, to whom each fee is paid, and the amount of each fee.

(c) A property owners' association may charge a reasonable fee to assemble, copy, and deliver the information required by this section and may charge a reasonable fee to prepare and deliver

an update of a resale certificate.

(c-1) The property owners' association may require payment before beginning the process of providing a resale certificate 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 Subsection (a).

(d) The property owners' association shall deliver the information required by Subsection (a) to the person specified in the written request. A written request that does not specify the name and location to which the information is to be sent is not effective. The property owners' association may deliver the information required by Subsection (a) and any update to the resale certificate by mail, hand delivery, or alternative delivery means specified in the written request.

(e) Unless required by a dedicatory instrument, neither a property owners' association or its agent is required to inspect a property before issuing a resale certificate or an update to a resale certificate.

(f) Not later than the seventh business day after the date a written request for an update of a resale certificate delivered under Subsection (a) is received from an owner, owner's agent, or title insurance company or its agent acting on behalf of the owner, the property owners' association shall deliver to the owner, owner's agent, or title insurance company or its agent an updated resale certificate that contains the following information:

(1) if a right of first refusal or other restraint on sale is contained in the restrictions, a statement of whether the property owners' association waives the restraint on sale;

(2) the status of any unpaid special assessments, dues, or other payments attributable to the owner's property; and

(3) any changes to the information provided in the resale certificate issued under Subsection (a).

#### **§ 207.004. Owner's Remedies for Failure by Property Owners' Association to Timely Deliver Information**

(a) If a property owners' association does not timely deliver information in accordance with Section 207.003, the owner, owner's agent, or title insurance company or its agent acting on behalf of the owner may submit a second request for the information.

(b) If a property owners' association fails to deliver the information required under Section 207.003 before the seventh day after the second request for the information was mailed by certified mail, return receipt requested, or hand delivered, evidenced by receipt, the owner:

(1) may seek one or any combination of the following:

(A) a court order directing the property owners' association to furnish the required information;

(B) a judgment against the property owners' association for not more than \$ 500;

(C) a judgment against the property owners' association for court costs and attorney's fees;

(D) a judgment authorizing the owner or the owner's assignee to deduct the amounts awarded under Paragraphs (B) and (C) from any future regular or special assessments payable to the property owners' association; and

(2) may provide a buyer under contract to purchase the owner's property an affidavit that states that the owner, owner's agent, or title insurance company or its agent acting on behalf of the owner made, in accordance with this chapter, two written requests to the property owners' association for the information described in Section 207.003 and that the association did not timely provide the information.

(c) If the owner provides a buyer under contract to purchase the owner's property an affidavit in accordance with Subsection (b)(2):

(1) the buyer, lender, or title insurance company or its agent is not liable to the property owners' association for:

(A) any money that is due and unpaid to the property owners' association on the date the affidavit was prepared; and

(B) any debt to the property owners' association or claim by the property owners' association that accrued before the date the affidavit was prepared; and

(2) the property owners' association's lien to secure the amounts due the property owners' association on the owner's property on the date the affidavit was prepared shall automatically terminate.

#### **§ 207.005. Effect of Resale Certificate; Liability**

(a) A property owners' association may not deny the validity of any statement in the resale certificate. The property owners' association's lien to secure undisclosed amounts due the property owners' association on the date the resale certificate is prepared shall automatically terminate as a lien securing the undisclosed amount. A buyer, buyer's agent, owner, owner's agent, lender, and title insurance company and its agent are not liable for any debt or claim existing on the preparation date of the resale certificate that is not disclosed in the resale certificate.

(b) A resale certificate does not affect:

(1) the right of a property owners' association to recover debts or claims that arise or become

due after the date the resale certificate is prepared; or

(2) a lien on a property securing payment of future assessments held by the property owners' association.

(c) The owner's agent and the title insurance company and its agent are not liable to a buyer for any delay or failure by the property owners' association in delivering the information required by Section 207.003.

(d) Except as provided by Section 207.004, the property owners' association is not liable to an owner selling property in the subdivision for delay or failure to deliver the information required by Section 207.003. An officer or agent of the property owners' association is not liable for a delay or failure to furnish a resale certificate.

### **§ 207.006. Online Subdivision Information Required**

A property owners' association shall make dedicatory instruments relating to the association or subdivision and filed in the county deed records available on a website if the association has, or a management company on behalf of the association maintains, a publicly accessible website.

## **CHAPTER 208. AMENDMENT AND TERMINATION OF RESTRICTIVE COVENANTS IN HISTORIC NEIGHBORHOODS**

### **§ 208.001. Definitions**

In this chapter:

(1) "Owner" and "real property records" have the meanings assigned by Section 201.003.

(2) "Dedicatory instrument," "property owners' association," "petition," and "restrictive covenant" have the meanings assigned by Section 202.001.

(3) "Regular assessment" and "special assessment" have the meanings assigned by Section 204.001.

(4) "Apartment complex" has the meaning assigned by Section 204.002(c).

(5) "Historic neighborhood" means:

(A) an area incorporated as a separate municipality before 1900 and subsequently annexed into another municipality;

(B) an area described by a municipal map or subdivision plat filed in real property records of the county in which the area is located before 1900; or

(C) an area designated as a historic district or similar designation by the municipality in which the area is located, the Texas Historical Commission, or the National Register of Historic Places.

### **§ 208.002. Applicability**

(a) This chapter applies only to a historic neighborhood that is located in whole or in part in a municipality with a population of 1.6 million or more located in a county with a population of 2.8 million or more.

(b) This chapter applies to a restrictive covenant regardless of the date on which it was created.

(c) This chapter applies to property in the area of a historic neighborhood that is zoned for or that contains a commercial structure, an industrial structure, an apartment complex, or a condominium development covered by Title 7 only if the owner of the property signed a restrictive covenant that includes the property in a common scheme for preservation of historic property as described by Section 208.004.

### **§ 208.003. Historic Neighborhood Preservation Association**

(a) A historic neighborhood preservation association must:

(1) be a Texas nonprofit corporation or limited liability company organized, in part, to encourage the preservation of property in a historic neighborhood; and

(2) open its membership to all owners of property in the historic neighborhood.

(b) A historic neighborhood preservation association may be composed of only a portion of the owners of property in the historic neighborhood.

(c) A historic neighborhood preservation association may be a property owners' association or an organization that is qualified as a charitable organization under Section 501(c)(3) of the Internal Revenue Code of 1986.

(d) A statement in the articles of incorporation or association, bylaws, regulations, or operating agreement of the historic neighborhood preservation association is prima facie evidence of compliance with Subsection (a).

### **§ 208.004. Common Scheme for Preservation of Property in Historic Neighborhood**

(a) A common scheme for preservation of historic property exists in a historic neighborhood if:

(1) the restrictive covenants were created by individual dedicatory instruments signed by an owner of one or more separately owned parcels or tracts in the historic neighborhood; and

(2) the restrictive covenants authorize a historic neighborhood preservation association to en-

force the restrictive covenants.

(b) A common scheme for preservation of historic property does not include property that is not subject to restrictive covenants that authorize a historic neighborhood preservation association to enforce the restrictive covenants.

(c) Restrictive covenants included in a common scheme for preservation of historic property exist for the benefit of all owners of property subject to the common scheme for preservation as if each owner were referenced in each dedicatory instrument.

(d) Each owner of property subject to a common scheme for preservation of historic property may enforce restrictive covenants on other property included in the common scheme for preservation.

#### **§ 208.005. Amendment or Termination of Restrictive Covenants Under Common Scheme for Preservation**

(a) A restrictive covenant applicable to property that is included in a common scheme for preservation of historic property may not be amended or terminated except as provided by this section.

(b) A historic neighborhood preservation association may approve and submit to a vote of the owners of property that is included in a common scheme for preservation of historic property an amendment of the restrictive covenants or the termination of all or part of the restrictive covenants included in the common scheme for preservation of historic property.

(c) The amendment or termination of a restrictive covenant is effective and applies to each separately owned parcel or tract subject to the common scheme for preservation of historic property if the owners of at least 75 percent of the parcels or tracts who vote on the issue in accordance with Section 208.006 vote in favor of the amendment or termination of the restrictive covenant.

(d) A document certifying that 75 percent of the owners voting on the issue approved the amendment or termination of the restrictive covenant must be recorded by the historic neighborhood preservation association in the real property records of the county in which the historic neighborhood is located. The document is prima facie evidence that the requisite percentage of votes was attained and the required formalities for the action were taken.

#### **§ 208.006. Method of Voting**

(a) An amendment or termination of a restrictive covenant must be voted on:

(1) by a written ballot that states the substance of the amendment or termination of the restrictive covenant and specifies the date by which the historic neighborhood preservation association must receive a ballot for the ballot to be counted;



(2) at a meeting of the historic neighborhood preservation association;

(3) by circulation of a petition by the historic neighborhood preservation association or a person authorized by the historic neighborhood preservation association; or

(4) by any combination of methods described by this subsection.

(b) If the vote occurs at a meeting of the historic neighborhood preservation association under Subsection (a)(2), the historic neighborhood preservation association shall:

(1) before the meeting, deliver written notice of the meeting stating the purpose of the meeting to each owner of property subject to the common scheme for preservation of historic property; and

(2) provide each owner of property subject to the common scheme for preservation with the opportunity to appear and vote at the meeting.

(c) The historic neighborhood preservation association shall provide for the mailing to each owner, as applicable:

(1) the ballot under Subsection (a)(1);

(2) notice of the meeting under Subsection (a)(2); or

(3) the petition under Subsection (a)(3).

(d) The vote of multiple owners of a property may be reflected by signature or vote of one of the owners.

(e) The historic neighborhood preservation association shall record a copy of the ballot or petition, as applicable, in the real property records of the county in which the historic neighborhood is located before the vote of the owners.

### **§ 208.007. Regular and Special Assessments**

The procedure established by this chapter for the amendment of restrictive covenants may not be used to establish a regular or special assessment.

### **§ 208.008. Building Lines**

The procedure established by this chapter for the amendment of restrictive covenants may not be used to modify a building line established by a restrictive covenant, municipal map, or subdivision plat.

### **§ 208.009. Defense to Enforcement of Restrictive Covenant**

An owner may not assert as a defense to the enforcement of a restrictive covenant that is part of a common scheme for preservation of historic property that the owner or a predecessor in title signed a blank signature page or similar procedural defect if the signature page was attached to a dedicatory instrument adopted by a historic neighborhood preservation association and:

- (1) the dedicatory instrument has been recorded for more than two years; or
- (2) the restrictive covenant is referenced in the owner's title insurance policy obtained by the owner when the property was purchased.

## **CHAPTER 209. TEXAS RESIDENTIAL PROPERTY OWNERS PROTECTION ACT**

### **§ 209.001. Short Title**

This chapter may be cited as the Texas Residential Property Owners Protection Act.

### **§ 209.002. Definitions**

In this chapter:

- (1) "Assessment" means a regular assessment, special assessment, or other amount a property owner is required to pay a property owners' association under the dedicatory instrument or by law.
- (2) "Board" means the governing body of a property owners' association.
- (3) "Declaration" means an instrument filed in the real property records of a county that includes restrictive covenants governing a residential subdivision.
- (4) "Dedicatory instrument" means each governing instrument covering the establishment, maintenance, and operation of a residential subdivision. The term includes restrictions or similar instruments subjecting property to restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association, to properly adopted rules and regulations of the property owners' association, and to all lawful amendments to the covenants, bylaws, rules, or regulations.
- (4-a) "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; or
  - (B) a right to direct the size, shape, and composition of the subdivision.
- (5) "Lot" means any designated parcel of land located in a residential subdivision, including any

improvements on the designated parcel.

(6) "Owner" means a person who holds record title to property in a residential subdivision and includes the personal representative of a person who holds record title to property in a residential subdivision.

(7) "Property owners' association" or "association" means an incorporated or unincorporated association that:

(A) is designated as the representative of the owners of property in a residential subdivision;

(B) has a membership primarily consisting of the owners of the property covered by the dedicatory instrument for the residential subdivision; and

(C) manages or regulates the residential subdivision for the benefit of the owners of property in the residential subdivision.

(8) "Regular assessment" means an assessment, a charge, a fee, or dues that each owner of property within a residential subdivision is required to pay to the property owners' association on a regular basis and that is designated for use by the property owners' association for the benefit of the residential subdivision as provided by the restrictions.

(9) "Residential subdivision" or "subdivision" means a subdivision, planned unit development, townhouse regime, or similar planned development in which all land has been divided into two or more parts and is subject to restrictions that:

(A) limit a majority of the land subject to the dedicatory instruments, excluding streets, common areas, and public areas, to residential use for single-family homes, townhomes, or duplexes only;

(B) are recorded in the real property records of the county in which the residential subdivision is located; and

(C) require membership in a property owners' association that has authority to impose regular or special assessments on the property in the subdivision.

(10) "Restrictions" means one or more restrictive covenants contained or incorporated by reference in a properly recorded map, plat, replat, declaration, or other instrument filed in the real property records or map or plat records. The term includes any amendment or extension of the restrictions.

(11) "Restrictive covenant" means any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative.

(12) "Special assessment" means an assessment, a charge, a fee, or dues, other than a regular

assessment, that each owner of property located in a residential subdivision is required to pay to the property owners' association, according to procedures required by the dedicatory instruments, for:

(A) defraying, in whole or in part, the cost, whether incurred before or after the assessment, of any construction or reconstruction, unexpected repair, or replacement of a capital improvement in common areas owned by the property owners' association, including the necessary fixtures and personal property related to the common areas;

(B) maintenance and improvement of common areas owned by the property owners' association; or

(C) other purposes of the property owners' association as stated in its articles of incorporation or the dedicatory instrument for the residential subdivision.

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

### **§ 209.003. Applicability of Chapter**

(a) This chapter applies only to a residential subdivision that is subject to restrictions or provisions in a declaration that authorize the property owners' association to collect regular or special assessments on all or a majority of the property in the subdivision.

(b) This chapter applies only to a property owners' association that requires mandatory membership in the association for all or a majority of the owners of residential property within the subdivision subject to the association's dedicatory instruments.

(c) This chapter applies to a residential property owners' association regardless of whether the entity is designated as a "homeowners' association," "community association," or similar designation in the restrictions or dedicatory instrument.

(d) This chapter does not apply to a condominium as defined by Section 81.002 or 82.003..

(e) The following provisions of this chapter do not apply to a property owners' association that is a mixed-use master association that existed before January 1, 1974, and that does not have the authority under a dedicatory instrument or other governing document to impose fines:

(1) Section 209.005(c);

(2) Section 209.0056;

(3) Section 209.0057;

(4) Section 209.0058;

(5) Section 209.00592; and

(6) Section 209.0062.

#### **§ 209.004. Management Certificates**

(a) A property owners' association shall record in each county in which any portion of the residential subdivision is located a management certificate, signed and acknowledged by an officer or the managing agent of the association, stating:

(1) the name of the subdivision;

(2) the name of the association;

(3) the recording data for the subdivision;

(4) the recording data for the declaration;

(5) the name and mailing address of the association;

(6) the name and mailing address of the person managing the association or the association's designated representative; and

(7) 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 "Property Owners' Association Management Certificate."

(b) The property owners' association shall record an amended management certificate not later than the 30th day after the date the association has notice of a change in any information in the recorded certificate required by Subsection (a).

(c) Except as provided under Subsections (d) and (e), the property owners' association and its officers, directors, employees, and agents are not subject to liability to any person for a delay in recording or failure to record a management certificate, unless the delay or failure is wilful or caused by gross negligence.

(d) If a property owners' association fails to record a management certificate or an amended management certificate under this section, the purchaser, lender, or title insurance company or its agent in a transaction involving property in the property owners' association is not liable to the property owners' association for:

(1) any amount due to the association on the date of a transfer to a bona fide purchaser; and

(2) any debt to or claim of the association that accrued before the date of a transfer to a bona fide purchaser.

(e) A lien of a property owners' association that fails to file a management certificate or an amended management certificate under this section to secure an amount due on the effective date of a transfer to a bona fide purchaser is enforceable only for an amount incurred after the effective date of sale.

(f) For purposes of this section, "bona fide purchaser" means:

(1) a person who pays valuable consideration without notice of outstanding rights of others and acts in good faith; or

(2) a third-party lender who acquires a security interest in the property under a deed of trust.

#### **§ 209.0041. Adoption or Amendment of Certain Dedicatory Instruments**

(a) REPEALED

(b) This section applies to a residential subdivision in which property owners are subject to mandatory membership in a property owners' association.

(c) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

(d) This section does not apply to the amendment of a declaration during a development period.

(e) This section applies to a dedicatory instrument regardless of the date on which the dedicatory instrument was created.

(f) This section supersedes any contrary requirement in a dedicatory instrument.

(g) To the extent of any conflict with another provision of this title, this section prevails.

(h) Except as provided by subsection (h-1) or (h-2), a declaration may be amended only by a vote of 67 percent of the total votes allocated to property owners entitled to vote on the amendment of the declaration, in addition to any governmental approval required by law. If the declaration contains a lower percentage, the percentage in the declaration controls.

(h-1) If the Declaration contains a lower percentage than prescribed by Subsection (h), the percentage in the declaration controls.

(h-2) If the declaration is silent as to voting rights for an amendment, the declaration may be amended by a vote of owners owning 67 percent of the lots subject to the declaration.

(i) A bylaw may not be amended to conflict with the declaration.

#### **§ 209.0042. Methods of Providing Notices to Owners.**

(a) Subject to this section, a property owners' association may adopt a method that may be used by the association to provide a notice from the association to a property owner.

(b) A property owners' association may use an alternative method of providing notice adopted under this section to provide a notice for which another method is prescribed by law only if the property owner to whom the notice is provided has affirmatively opted to allow the association to use the alternative method of providing notice to provide to the owner notices for which another method is prescribed by law.

(c) A property owners' association may not require an owner to allow the association to use an alternative method of providing notice adopted under this section to provide to the owner any notice for which another method of providing notice is prescribed by law.

#### **§ 209.005. Association Records**

(a) Except as provided by Subsection (b), this section applies to all property owners' associations and controls over other law not specifically applicable to a property owners' association.

(b) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

(c) Notwithstanding a provision in a dedicatory instrument, a property owners' association shall make the books and records of the association, including financial records, open to and reasonably available for examination by an owner, or a person designated in a writing signed by the owner as the owner's agent, attorney, or certified public accountant, in accordance with this section. An owner is entitled to obtain from the association copies of information contained in the books and records.

(d) Except as provided by this subsection, an attorney's files and records relating to the property owners' association, excluding invoices requested by an owner under Section 209.008(d), are not records of the association and are not subject to inspection by the owner or production in a legal proceeding. If a document in an attorney's files and records relating to the association would be responsive to a legally authorized request to inspect or copy association documents, the document shall be produced by using the copy from the attorney's files and records if the association has not maintained a separate copy of the document. This subsection does not require production of a document that constitutes attorney work product or that is privileged as an attorney-client communication.

(e) An owner or the owner's authorized representative described by Subsection (c) must submit a written request for access or information under Subsection (c) by certified mail, with sufficient detail describing the property owners' association's books and records requested, to the mailing address of the association or authorized representative as reflected on the most current management certificate filed under Section 209.004. The request must contain an election either to inspect the books and records before obtaining copies or to have the property owners' association forward copies of the requested books and records and:

(1) if an inspection is requested, the association, on or before the 10th business day after the date the association receives the request, shall send written notice of dates during normal business hours that the owner may inspect the requested books and records to the extent those books and records are in the possession, custody, or control of the association; or

(2) if copies of identified books and records are requested, the association shall, to the extent those books and records are in the possession, custody, or control of the association, produce the requested books and records for the requesting party on or before the 10th business day after the date the association receives the request, except as otherwise provided by this section.

(f) If the property owners' association is unable to produce the books or records requested under Subsection (e) on or before the 10th business day after the date the association receives the request, the association must provide to the requestor written notice that:

(1) informs the requestor that the association is unable to produce the information on or before the 10th business day after the date the association received the request; and

(2) states a date by which the information will be sent or made available for inspection to the requesting party that is not later than the 15th business day after the date notice under this subsection is given.

(g) If an inspection is requested or required, the inspection shall take place at a mutually agreed on time during normal business hours, and the requesting party shall identify the books and records for the property owners' association to copy and forward to the requesting party.

(h) A property owners' association may produce books and records requested under this section in hard copy, electronic, or other format reasonably available to the association.

(i) A property owners' association board must adopt a records production and copying policy that prescribes the costs the association will charge for the compilation, production, and reproduction of information requested under this section. The prescribed charges may include all reasonable costs of materials, labor, and overhead but may not exceed costs that would be applicable for an item under 1 T.A.C. Section 70.3. The policy required by this subsection must be recorded as a dedicatory instrument in accordance with Section 202.006. An association may not charge an owner for the compilation, production, or reproduction of information requested under this section unless the policy prescribing those costs has been recorded as required by this subsection. An owner is responsible for costs related to the compilation, production, and reproduction of the requested information in the amounts prescribed by the policy adopted under this sub-



section. The association may require advance payment of the estimated costs of compilation, production, and reproduction of the requested information. If the estimated costs are lesser or greater than the actual costs, the association shall submit a final invoice to the owner on or before the 30th business day after the date the information is delivered. If the final invoice includes additional amounts due from the owner, the additional amounts, if not reimbursed to the association before the 30th business day after the date the invoice is sent to the owner, may be added to the owner's account as an assessment. If the estimated costs exceeded the final invoice amount, the owner is entitled to a refund, and the refund shall be issued to the owner not later than the 30th business day after the date the invoice is sent to the owner.

(j) A property owners' association must estimate costs under this section using amounts prescribed by the policy adopted under Subsection (i).

(k) Except as provided by Subsection (l) and to the extent the information is provided in the meeting minutes, the property owners' association is not required to release or allow inspection of any books or records that identify the dedicatory instrument violation history of an individual owner of an association, an owner's personal financial information, including records of payment or nonpayment of amounts due the association, an owner's contact information, other than the owner's address, or information related to an employee of the association, including personnel files. Information may be released in an aggregate or summary manner that would not identify an individual property owner.

(l) The books and records described by Subsection (k) shall be released or made available for inspection if:

(1) the express written approval of the owner whose records are the subject of the request for inspection is provided to the property owners' association; or

(2) a court orders the release of the books and records or orders that the books and records be made available for inspection.

(m) A property owners' association composed of more than 14 lots shall adopt and comply with a document retention policy that includes, at a minimum, the following requirements:

(1) certificates of formation, bylaws, restrictive covenants, and all amendments to the certificates of formation, bylaws, and covenants shall be retained permanently;

(2) financial books and records shall be retained for seven years;

(3) account records of current owners shall be retained for five years;

(4) contracts with a term of one year or more shall be retained for four years after the expiration of the contract term;

(5) minutes of meetings of the owners and the board shall be retained for seven years; and

(6) tax returns and audit records shall be retained for seven years.

(n) A member of a property owners' association who is denied access to or copies of association books or records to which the member is entitled under this section may file a petition with the justice of the peace of a justice precinct in which all or part of the property that is governed by the association is located requesting relief in accordance with this subsection. If the justice of the peace finds that the member is entitled to access to or copies of the records, the justice of the peace may grant one or more of the following remedies:

(1) a judgment ordering the property owners' association to release or allow access to the books or records;

(2) a judgment against the property owners' association for court costs and attorney's fees incurred in connection with seeking a remedy under this section; or

(3) a judgment authorizing the owner or the owner's assignee to deduct the amounts awarded under Subdivision (2) from any future regular or special assessments payable to the property owners' association.

(o) If the property owners' association prevails in an action under Subsection (n), the association is entitled to a judgment for court costs and attorney's fees incurred by the association in connection with the action.

(p) On or before the 10th business day before the date a person brings an action against a property owners' association under this section, the person must send written notice to the association of the person's intent to bring the action. The notice must:

(1) be sent certified mail, return receipt requested, or delivered by the United States Postal Service with signature confirmation service to the mailing address of the association or authorized representative as reflected on the most current management certificate filed under Section 209.004; and

(2) describe with sufficient detail the books and records being requested.

(q) For the purposes of this section, "business day" means a day other than Saturday, Sunday, or a state or federal holiday.

### **§ 209.0051. Open Board Meetings**

(a) This section does not apply to a property owners' association that is subject to Chapter 551, Government Code, by application of Section 551.0015, Government Code.

(b) In this section, "board meeting":

(1) means a deliberation between a quorum of the voting board of the property owners' association, or between a quorum of the voting board and another person, during which property owners' association business is considered and the board takes formal action; and

(2) does not include the gathering of a quorum of the board at a social function unrelated to the business of the association or the attendance by a quorum of the board at a regional, state, or national convention, ceremonial event, or press conference, if formal action is not taken and any discussion of association business is incidental to the social function, convention, ceremonial event, or press conference.

(c) Regular and special board meetings must be open to owners, subject to the right of the board to adjourn a board meeting and reconvene in closed executive session to consider actions involving personnel, pending or threatened litigation, contract negotiations, enforcement actions, confidential communications with the property owners' association's attorney, matters involving the invasion of privacy of individual owners, or matters that are to remain confidential by request of the affected parties and agreement of the board. Following an executive session, any decision made in the executive session must be summarized orally and placed in the minutes, in general terms, without breaching the privacy of individual owners, violating any privilege, or disclosing information that was to remain confidential at the request of the affected parties. The oral summary must include a general explanation of expenditures approved in executive session.

(c-1) Except for a meeting held by electronic or telephonic means under Subsection (c-2), a board meeting must be held in a county in which all or part of the property in the subdivision is located or in a county adjacent to that county.

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

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

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

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

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

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

(d) The board shall keep a record of each regular or special board meeting in the form of written minutes of the meeting. The board shall make meeting records, including approved minutes, available to a member for inspection and copying on the member's written request to the property owners' association's managing agent at the address appearing on the most recently filed management certificate or, if there is not a managing agent, to the board.

(e) Members shall be given notice of the date, hour, place, and general subject of a regular or special board meeting, including a general description of any matter to be brought up for deliberation in executive session. The notice shall be:

(1) mailed to each property owner not later than the 10th day or earlier than the 60th day before the date of the meeting; or

(2) provided at least 72 hours before the start of the meeting by:

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

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

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

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

(f) It is an owner's duty to keep an updated e-mail address registered with the property owners' association under Subsection (e)(2)(B).

(g) If the board recesses a regular or special board meeting to continue the following regular business day, the board is not required to post notice of the continued meeting if the recess is taken in good faith and not to circumvent this section. If a regular or special board meeting is continued to the following regular business day, and on that following day the board continues the meeting to another day, the board shall give notice of the continuation in at least one manner prescribed by Subsection (e)(2)(A) within two hours after adjourning the meeting being continued.

(h) Except as provided by this subsection, a board may take action outside of a meeting, including voting by electronic or telephonic means, without prior notice to owners under Subsection (e), if each board member is given a reasonable opportunity to express the board member's opinion to all other board members and to vote. Any action taken without notice to owners under Subsection (e) must be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes of the next regular or special board meeting. The board may not, unless done in an open meeting for which prior notice was given to owners under Subsection (e), consider or vote on:

(1) fines;

(2) damage assessments;

(3) initiation of foreclosure actions;

(4) initiation of enforcement actions, excluding temporary restraining orders or violations involving a threat to health or safety;

(5) increases in assessments;

(6) levying of special assessments;

(7) appeals from a denial of architectural control approval;

(8) a suspension of a right of a particular owner before the owner has an opportunity to attend a board meeting to present the owner's position, including any defense, on the issue;

(9) Lending or borrowing money;

(10) The adoption of amendment of a dedicatory instrument;

(11) The approval of an annual budget or the approval of an amendment of an annual budget that increases the budget by more than 10 percent;

(12) The sale or purchase of real property,

(13) The filling of a vacancy on the board;

(14) The construction of capital improvements other than the repair, replacement, or enhancement of existing capital improvements; or

(15) The election of an officer.

(i) This section applies to a meeting of a property owners' association board during the development period only if the meeting is conducted for the purpose of:

(1) adopting or amending the governing documents, including declarations, bylaws, rules, and regulations of the association;

(2) increasing the amount of regular assessments of the association or adopting or increasing a special assessment;

(3) electing non-developer board members of the association or establishing a process by which those members are elected; or

(4) changing the voting rights of members of the association.

## **§ 209.0052. Association Contracts**

(a) This section does not apply to a contract entered into by an association during the development period.

(b) An Association may enter into an enforceable contract with a current association board member, a person related to a current association board member within the third degree by consanguinity or affinity, as determined under Chapter 573 Government Code, a company in which a current association board member has a financial interest in at least 51 percent of profits, or a company in which a person related to a current association board member within the third degree by consanguinity or affinity, as determined under Chapter 573 Government Code, has a financial interest in at least 51 percent of profits only if the following conditions are satisfied:

(1) the board member, relative, or company bids on the proposed contract and the association has received at least two other bids for the contract from persons not associated with the board member, relative or company, if reasonably available in the community.

(2) the board member:

(A) is not given access to the other bids;

(B) does not participate in any board discussion regarding the contract; and

(C) does not vote on the award of the contract.

(3) the material facts regarding the relationship or interest with respect to the proposed contract are disclosed to or known by the association board and the board, in good faith and with ordinary care, authorizes the contract by an affirmative vote of the majority of the board members who do not have an interest governed by this subsection.

(4) the association board certifies that the other requirements of this subsection have been satisfied by a resolution approved by an affirmative vote of the majority of the board members who do not have an interest governed by this subsection.

#### **§ 209.0055. Voting**

(a) This section applies only to a property owners' association that:

(1) provides maintenance, preservation, and architectural control of residential and commercial property within a defined geographic area in a county with a population of 2.8 million or more or in a county adjacent to a county with a population of 2.8 million or more; and

(2) is a corporation that:

(A) is governed by a board of trustees who may employ a general manager to execute the association's bylaws and administer the business of the corporation;

(B) does not require membership in the corporation by the owners of the property within the defined area; and

(C) was incorporated before January 1, 2006.

(b) A property owners' association described by Subsection (a) may not bar a property owner from voting in an association election solely based on the fact that:

- (1) there is a pending enforcement action against the property owner; or
- (2) the property owner owes the association any delinquent assessments, fees, or fines.

#### **§ 209.0056. Notice of Election or Association Vote**

(a) For an election or vote taken at a meeting of the owners, not later than the 10th day or earlier than the 60th day before the date of the election or vote, a property owners' association shall give written notice of the election or vote to:

(1) each owner of property in the property owners' association, for purposes of an association-wide election or vote; or

(2) each owner of property in the property owners' association entitled under the dedicatory instruments to vote in a particular representative election, for purposes of a vote that involves election of representatives of the association who are vested under the dedicatory instruments of the property owners' association with the authority to elect or appoint board members of the property owners' association.

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

(b) This section supersedes any contrary requirement in a dedicatory instrument.

(c) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

#### **§ 209.0057. Recount of Votes**

(a) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

(b) Any owner may, not later than the 15th day after the later of the date of any meeting of owners at which the election or vote was held or the date of the announcement of the results of the election or vote, require a recount of the votes. A demand for a recount must be submitted in writing either:

- (1) by verified mail, or by delivery by the United States Postal Service with signature con-

firmation service to the property owners' association's mailing address as reflected on the latest management certificate filed under Section 209.004; or

(2) in person to the property owners' association's managing agent as reflected on the latest management certificate filed under Section 209.004 or to the address to which absentee and proxy ballots are mailed.

(b-1) The property owners' association must estimate the costs for performance of the recount by a person qualified to tabulate votes under Subsection (c) and must send an invoice for the estimated costs to the requesting owner at the owner's last known address according to association records not later than the 20th day after the date the association receives the owner's demand for the recount.

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

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

(b-4) If the estimated costs under Subsection (b-1) are lesser or greater than the actual costs, the property owners' association must send a final invoice to the owner on or before the 30th business day after the date the results of the recount are provided. If the final invoice includes additional amounts owed by the owner, any additional amounts not paid to the association before the 30th business day after the date the invoice is sent to the owner may be added to the owner's account as an assessment. If the estimated costs exceed the final invoice amount, the owner is entitled to a refund. The refund shall be paid to the owner at the time the final invoice is sent under this subsection.

(c) Following receipt of payment under Subsection (b-2), the property owners' association shall, at the expense of the owner requesting the recount, retain for the purpose of performing the recount, the services of a person qualified to tabulate votes under this subsection. The association shall enter into a contract for the services of a person who:

(1) is not a member of the association or related to a member of the association board within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code; and

(2) is:

(A) a current or former:

(i) county judge;



(ii) county elections administrator;

(iii) justice of the peace; or

(iv) county voter registrar; or

(B) a person agreed on by the association and each person requesting the recount.

(d) On or before the 30<sup>th</sup> day after the date of receipt of payment for a recount in accordance with Subsection (b-2), the recount must be completed and the property owners' association must provide each owner who requested the recount with notice of the results of the recount. If the recount changes the results of the election, the association shall reimburse the requesting owner for the cost of the recount not later than the 30<sup>th</sup> day after the date the results of the recount are provided. Any action taken by the board in the period between the initial election vote tally and the completion of the recount is not affected by any recount.

#### **§ 209.0058. Ballots**

(a) Except as provided by Subsection (d) any vote cast in an election or vote by a member of a property owners' association must be in writing and signed by the member.

(b) Electronic votes cast under Section 209.00592 constitute written and signed ballots.

(c) In a property owners' association election, written and signed ballots are not required for uncontested races.

(d) A property owners' association may adopt rules to allow voting by secret ballot by association members. The association must take measures to reasonably ensure that:

(1) a member cannot cast more votes than the member is eligible to cast in an election or vote;

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

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

#### **§ 209.0059. Right to Vote**

(a) A provision in a dedicatory instrument that would disqualify a property owner from voting in a property owners' association election of board members or on any matter concerning the rights or responsibilities of the owner is void.

(b) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

(c) In a residential development with 10 or fewer lots for which the declaration was recorded before January 1, 2015, a person may not vote in a property owners' association election unless the person is subject to a dedicatory instrument governing the association through which the association exercises its authority.

### **§ 209.00591. Board Membership**

(a) Except as provided by this section, a provision in a dedicatory instrument that restricts a property owner's right to run for a position on the board of the property owners' association is void.

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

(b) If a board is presented with written, documented evidence from a database or other record maintained by a governmental law enforcement authority that a board member was convicted of a felony or crime involving moral turpitude not more than 20 years before the date the board is presented with the evidence, the board member is immediately ineligible to serve on the board of the property owners' association, automatically considered removed from the board, and prohibited from future service on the board.

(c) 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 board members and the officers of the association, other than board members or officers elected by members of the property owners' association. Regardless of the period of declarant control provided by the declaration, on or before the 120th day after the date 75 percent of the lots that may be created and made subject to the declaration are conveyed to owners other than a declarant or a builder in the business of constructing homes who purchased the lots from the declarant for the purpose of selling completed homes built on the lots, at least one-third of the board members must be elected by owners other than the declarant. If the declaration does not include the number of lots that may be created and made subject to the declaration, at least one-third of the board members must be elected by owners other than the declarant not later than the 10th anniversary of the date the declaration was recorded.

### **§ 209.00592. Voting; Quorum**

(a) Subject to Subsection (a-1), the voting rights of an owner may be cast or given:

- (1) in person or by proxy at a meeting of the property owners' association;
- (2) by absentee ballot in accordance with this section;

(3) by electronic ballot in accordance with this section; or

(4) by any method of representative or delegated voting provided by a dedicatory instrument.

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

(b) An absentee or electronic ballot:

(1) may be counted as an owner present and voting for the purpose of establishing a quorum only for items appearing on the ballot;

(2) may not be counted, even if properly delivered, if the owner attends any meeting to vote in person, so that any vote cast at a meeting by a property owner supersedes any vote submitted by absentee or electronic ballot previously submitted for that proposal; and

(3) may not be counted on the final vote of a proposal if the motion was amended at the meeting to be different from the exact language on the absentee or electronic ballot.

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

(c) A solicitation for votes by absentee ballot must include:

(1) an absentee ballot that contains each proposed action and provides an opportunity to vote for or against each proposed action;

(2) instructions for delivery of the completed absentee ballot, including the delivery location; and

(3) the following language: "By casting your vote via absentee ballot you will forgo the opportunity to consider and vote on any action from the floor on these proposals, if a meeting is held. This means that if there are amendments to these proposals your votes will not be counted on the final vote on these measures. If you desire to retain this ability, please attend any meeting in person. You may submit an absentee ballot and later choose to attend any meeting in person, in which case any in-person vote will prevail."

(d) For the purposes of this section, "electronic ballot" means a ballot:

(1) given by:

(A) e-mail;

(B) facsimile; or

(C) posting on an Internet website;

(2) for which the identity of the property owner submitting the ballot can be confirmed; and

(3) for which the property owner may receive a receipt of the electronic transmission and receipt of the owner's ballot.

(e) If an electronic ballot is posted on an Internet website, a notice of the posting shall be sent to each owner that contains instructions on obtaining access to the posting on the website.

(f) This section supersedes any contrary provision in a dedicatory instrument.

(g) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

### **§ 209.00593. Election of Board Members**

(a) Notwithstanding any provision in a dedicatory instrument, any board member whose term has expired must be elected by owners who are members of the property owners' association. A board member may be appointed by the board to fill a vacancy on the board. A board member appointed to fill a vacant position shall serve for the remainder of the position.

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

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

(1) mailed to each owner; or

(2) provided by:

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

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

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

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

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

(b) The board of a property owners' association may amend the bylaws of the property owners' association to provide for elections to be held as required by Subsection (a).

(c) The appointment of a board member in violation of this section is void.

(d) This section does not apply to the appointment of a board member during a development period.

(e) This section does not apply to a representative board whose members or delegates are elected or appointed by representatives of a property owners' association who are elected by owner members of a property owners' association.

#### **§ 209.00594. Tabulation of and Access to Ballots**

(a) Notwithstanding any other provision of this chapter or any other law, a person who is a candidate in a property owners' association election or who is otherwise the subject of an association vote, or a person related to that person within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code, may not tabulate or otherwise be given access to the ballots cast in that election or vote except as provided by this section.

(b) A person other than a person described by Subsection (a) may tabulate votes in an association election or vote.

(b-1) A person who tabulates votes under Subsection (b) or who performs a recount under Section 209.0057(c) may not disclose to any other person how an individual voted.

(c) Notwithstanding any other provision of this chapter or any other law, only a person who tabulates votes under Subsection (b) or who performs a recount under Section 209.0057(c), may be given access to the ballots cast in the election or vote.

(d) This section may not be construed to affect a person's obligation to comply with a court order for the release of ballots or other voting records.

#### **§ 209.006. Notice Required Before Enforcement Action**

(a) Before a property owners' association may suspend an owner's right to use a common area, file a suit against an owner other than a suit to collect a regular or special assessment or foreclose

under an association's lien, charge an owner for property damage, or levy a fine for a violation of the restrictions or bylaws or rules of the association, the association or its agent must give written notice to the owner by certified mail.

(b) The notice must:

(1) describe the violation or property damage that is the basis for the suspension action, charge, or fine and state any amount due the association from the owner;

(2) except as provided by Subsection (d), inform the owner that the owner:

(A) is entitled to a reasonable period to cure the violation and avoid the fine or suspension if the violation is of a curable nature and does not pose a threat to public health or safety;

(B) may request a hearing under Section 209.007 on or before the 30th day after the date the notice was mailed to the owner; and

(C) may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. App. Section 501 et seq.), if the owner is serving on active military duty;

(3) specify the date by which the owner must cure the violation if the violation is of a curable nature and does not pose a threat to public health or safety; and

(4) be sent by verified mail to the owner at the owner's last known address as shown on the association records.

(c) The date specified in the notice under Subsection (b)(3) must provide a reasonable period to cure the violation if the violation is of a curable nature and does not pose a threat to public health safety.

(d) Subsections (a) and (b) do not apply to a violation for which the owner has been previously given notice under this section and the opportunity to exercise any rights available under this section in the preceding six months.

(f) If the owner cures the violation before the expiration of the period for cure described by Subsection (c), a fine may not be assessed for the violation.

(f) For purposes of this section, a violation is considered a threat to public health or safety if the violation could materially affect the physical health or safety of an ordinary resident.

(g) For purposes of this section, a violation is considered incurable if the violation has occurred but is not a continuous action or a condition capable of being remedied by affirmative action. For purposes of this subsection, the nonrepetition of a one-time violation or other violation that is not ongoing is not considered an adequate remedy.

(h) The following are examples of acts considered incurable for purposes of this section:

- (1) shooting fireworks;
- (2) an act constituting a threat to health or safety;
- (3) a noise violation that is not ongoing;
- (4) property damage, including the removal or alteration of landscape; and
- (5) holding a garage sale or other event prohibited by a dedicatory instrument.

(i) The following are examples of acts considered curable for purposes of this section:

- (1) a parking violation;
- (2) a maintenance violation;
- (3) the failure to construct improvements or modifications in accordance with approved plans and specifications; and
- (4) an ongoing noise violation such as a barking dog.

#### **§ 209.0062. Alternative Payment Schedule for Certain Assessments**

(a) A property owners' association composed of more than 14 lots shall adopt reasonable guidelines to establish an alternative payment schedule by which an owner may make partial payments to the property owners' association for delinquent regular or special assessments or any other amount owed to the association without accruing additional monetary penalties. For purposes of this section, monetary penalties do not include reasonable costs associated with administering the payment plan or interest.

(b) The minimum term for a payment plan offered by a property owner's association is three months.

(c) A property owners' association is not required to allow a payment plan for any amount that extends more than 18 months from the date of the owner's request for a payment plan. The association is not required to enter into a payment plan with an owner who failed to honor the terms of a previous payment plan during the two years following the owner's default under the previous payment plan. The association is not required to make a payment plan available to an owner after the period for cure described by Section 209.0064(b)(3) expires. The association is not required to allow an owner to enter into a payment plan more than once in any 12-month period.

(d) A property owners' association shall file the association's guidelines under this section in

the real property records of each county in which the subdivision is located.

(e) A property owners' association's failure to file as required by this section the association's guidelines in the real property records of each county in which the subdivision is located does not prohibit a property owner from receiving an alternative payment schedule by which the owner may make partial payments to the property owners' association for delinquent regular or special assessments or any other amount owed to the association without accruing additional monetary penalties, as defined by Subsection (a).

### **§ 209.0063. Priority of Payments**

(a) Except as provided by Subsection (b), a payment received by a property owners' association from the owner shall be applied to the owner's debt in the following order of priority:

(1) any delinquent assessment;

(2) any current assessment;

(3) any attorney's fees or third party collection costs incurred by the association associated solely with assessments or any other charge that could provide the basis for foreclosure;

(4) any attorney's fees incurred by the association that are not subject to Subdivision (3);

(5) any fines assessed by the association; and

(6) any other amount owed to the association.

(b) If, at the time the property owners' association receives a payment from a property owner, the owner is in default under a payment plan entered into with the association:

(1) the association is not required to apply the payment in the order of priority specified by Subsection (a); and

(2) in applying the payment, a fine assessed by the association may not be given priority over any other amount owed to the association.

### **§ 209.0064. Third Party Collections**

(a) In this section, "collection agent" means a debt collector, as defined by Section 803 of the federal Fair Debt Collection Practices Act (15 U.S.C. Section 1692a).

(b) A property owners' association may not hold an owner liable for fees of a collection agent retained by the property owners' association unless the association first provides written notice to the owner by certified mail, that:



(1) specifies each delinquent amount and the total amount of the payment required to make the account current;

(2) if the association is subject to Section 209.0062 or the association's dedicatory instruments contain a requirement to offer a payment plan, describes the options the owner has to avoid having the account turned over to a collection agent, including information regarding availability of a payment plan through the association; and

(3) provides a period of at least 30 days for the owner to cure the delinquency before further collection action is taken.

(c) An owner is not liable for fees of a collection agent retained by the property owners' association if:

(1) the obligation for payment by the association to the association's collection agent for fees or costs associated with a collection action is in any way dependent or contingent on amounts recovered; or

(2) the payment agreement between the association and the association's collection agent does not require payment by the association of all fees to a collection agent for the action undertaken by the collection agent.

(d) The agreement between the property owners' association and the association's collection agent may not prohibit the owner from contacting the association board or the association's managing agent regarding the owner's delinquency.

(e) A property owners' association may not sell or otherwise transfer any interest in the association's accounts receivables for a purpose other than as collateral for a loan.

### **§ 209.007. Hearing Before Board; Alternative Dispute Resolution**

(a) If the owner is entitled to an opportunity to cure the violation, the owner has the right to submit a written request for a hearing to discuss and verify facts and resolve the matter in issue before a committee appointed by the board of the property owners' association or before the board if the board does not appoint a committee.

(b) If a hearing is to be held before a committee, the notice prescribed by Section 209.006 must state that the owner has the right to appeal the committee's decision to the board by written notice to the board.

(c) The association shall hold a hearing under this section not later than the 30th day after the date the board receives the owner's request for a hearing and shall notify the owner of the date, time, and place of the hearing not later than the 10th day before the date of the hearing. The board or the owner may request a postponement, and, if requested, a postponement shall be

granted for a period of not more than 10 days. Additional postponements may be granted by agreement of the parties. The owner or the association may make an audio recording of the meeting.

(d) The notice and hearing provisions of Section 209.006 and this section do not apply if the association files a suit seeking a temporary restraining order or temporary injunctive relief or files a suit that includes foreclosure as a cause of action. If a suit is filed relating to a matter to which those sections apply, a party to the suit may file a motion to compel mediation. The notice and hearing provisions of Section 209.006 and this section do not apply to a temporary suspension of a person's right to use common areas if the temporary suspension is the result of a violation that occurred in a common area and involved a significant and immediate risk of harm to others in the subdivision. The temporary suspension is effective until the board makes a final determination on the suspension action after following the procedures prescribed by this section.

(e) An owner or property owners' association may use alternative dispute resolution services.

#### **§ 209.008. Attorney's Fees**

(a) A property owners' association may collect reimbursement of reasonable attorney's fees and other reasonable costs incurred by the association relating to collecting amounts, including damages, due the association for enforcing restrictions or the bylaws or rules of the association only if the owner is provided a written notice that attorney's fees and costs will be charged to the owner if the delinquency or violation continues after a date certain.

(b) An owner is not liable for attorney's fees incurred by the association relating to a matter described by the notice under Section 209.006 if the attorney's fees are incurred before the conclusion of the hearing under Section 209.007 or, if the owner does not request a hearing under that section, before the date by which the owner must request a hearing. The owner's presence is not required to hold a hearing under Section 209.007.

(c) All attorney's fees, costs, and other amounts collected from an owner shall be deposited into an account maintained at a financial institution in the name of the association or its managing agent. Only members of the association's board or its managing agent or employees of its managing agent may be signatories on the account.

(d) On written request from the owner, the association shall provide copies of invoices for attorney's fees and other costs relating only to the matter for which the association seeks reimbursement of fees and costs.

(e) The notice provisions of Subsection (a) do not apply to a counterclaim of an association in a lawsuit brought against the association by a property owner.

(f) If the dedicatory instrument or restrictions of an association allow for nonjudicial foreclosure, the amount of attorney's fees that a property owners' association may include in a nonjudicial foreclosure sale for an indebtedness covered by a property owners' association's assessment

lien is limited to the greater of:

(1) one-third of the amount of all actual costs and assessments, excluding attorney's fees, plus interest and court costs, if those amounts are permitted to be included by law or by the restrictive covenants governing the property; or

(2) \$ 2,500.

(g) Subsection (f) does not prevent a property owners' association from recovering or collecting attorney's fees in excess of the amounts prescribed by Subsection (f) by other means provided by law.

### **§ 209.009. Foreclosure Sale Prohibited in Certain Circumstances**

A property owners' association may not foreclose a property owners' association's assessment lien if the debt securing the lien consists solely of:

(1) fines assessed by the association;

(2) attorney's fees incurred by the association solely associated with fines assessed by the association; or

(3) amounts added to the owner's account as an assessment under Section 209.005(i) or 209.0057(b-4).

### **§ 209.0091. Prerequisites to Foreclosure: Notice and Opportunity to Cure for Certain Other Lienholders**

(a) A property owners' association may not file an application for an expedited court order authorizing foreclosure of the association's assessment lien as described by Section 209.0092(a) or a petition for judicial foreclosure of the association's assessment lien as described by Section 209.0092(d) unless the association has:

(1) provided written notice of the total amount of the delinquency giving rise to the foreclosure to any other holder of a lien of record on the property whose lien is inferior or subordinate to the association's lien and is evidenced by a deed of trust; and

(2) provided the recipient of the notice an opportunity to cure the delinquency before the 61st day after the date the association mails the notice described in Subdivision (1).

(b) Notice under this section must be sent by certified mail, to the address for the lienholder shown in the deed records relating to the property that is subject to the property owners' association assessment lien.

(c) Notwithstanding any other law, notice under this section may be provided to any holder of a lien of record on the property.

#### **§ 209.0092. Judicial Foreclosure Required**

(a) Except as provided by Subsection (c) or (d) and subject to Section 209.009, a property owners' association may not foreclose a property owners' association assessment lien unless the association first obtains a court order in an application for expedited foreclosure under the rules adopted by the supreme court under Subsection (b). A property owners' association may use the procedure described by this subsection to foreclose any lien described by the association's dedicatory instruments. A property owners' association whose dedicatory instruments grant a right of foreclosure is considered to have any power of sale required by law as a condition of using the procedure described by this subsection.

(b) The supreme court, as an exercise of the court's authority under Section 74.024, Government Code, shall adopt rules establishing expedited foreclosure proceedings for use by a property owners' association in foreclosing an assessment lien of the association. The rules adopted under this subsection must be substantially similar to the rules adopted by the supreme court under Section 50(r), Article XVI, Texas Constitution.

(c) Expedited foreclosure is not required under this section if the owner of the property that is subject to foreclosure agrees in writing at the time the foreclosure is sought to waive expedited foreclosure under this section. A waiver under this subsection may not be required as a condition of the transfer of title to real property.

(d) A property owners' association authorized to use the procedure described by Subsection (a) may in its discretion elect not to use that procedure and instead foreclose the association's assessment lien under court judgment foreclosing the lien and ordering the sale, pursuant to Rules 309 and 646a, Texas Rules of Civil Procedure.

(e) This section does not affect any right an association that is not authorized to use the procedure described by Subsection (a) may have to judicially foreclose the association's assessment lien as described by Subsection (d).

#### **§ 209.0093. Removal or Adoption of Foreclosure Authority**

A provision granting a right to foreclose a lien on real property for unpaid amounts due to a property owners' association may be removed from a dedicatory instrument or adopted in a dedicatory instrument by a vote of at least 67 percent of the total votes allocated to property owners in the property owners' association. Owners holding at least 10 percent of all voting interests in the property owners' association may petition the association and require a special meeting to be called for the purposes of taking a vote for the purposes of this section.

#### **§ 209.0094. Assessment Lien Filing**

A lien, lien affidavit, or other instrument evidencing the nonpayment of assessments or other charges owed to a property owners' association and filed in the official public records of a county is a legal instrument affecting title to real property.

#### **§ 209.010. Notice After Foreclosure Sale**

(a) A property owners' association that conducts a foreclosure sale of an owner's lot must send to the lot owner not later than the 30th day after the date of the foreclosure sale a written notice stating the date and time the sale occurred and informing the lot owner of the owner's right to redeem the property under Section 209.011.

(b) The notice must be sent by certified mail, return receipt requested, to the lot owner's last known mailing address, as reflected in the records of the property owners' association.

(c) Not later than the 30th day after the date the association sends the notice required by Subsection (a), the association must record an affidavit in the real property records of the county in which the lot is located, stating the date on which the notice was sent and containing a legal description of the lot. Any person is entitled to rely conclusively on the information contained in the recorded affidavit.

(d) The notice requirements of this section also apply to the sale of an owner's lot by a sheriff or constable conducted as provided by a judgment obtained by the property owners' association.

#### **§ 209.011. Right of Redemption After Foreclosure**

(a) A property owners' association or other person who purchases occupied property at a sale foreclosing a property owners' association's assessment lien must commence and prosecute a forcible entry and detainer action under Chapter 24 to recover possession of the property.

(b) The owner of property in a residential subdivision may redeem the property from any purchaser at a sale foreclosing a property owners' association's assessment lien not later than the 180th day after the date the association mails written notice of the sale to the owner under Section 209.010.

(c) A person who purchases property at a sale foreclosing a property owners' association's assessment lien may not transfer ownership of the property to a person other than a redeeming lot owner during the redemption period.

(d) To redeem property purchased by the property owners' association at the foreclosure sale, the lot owner must pay to the association:

(1) all amounts due the association at the time of the foreclosure sale;

(2) interest from the date of the foreclosure sale to the date of redemption on all amounts owed the association at the rate stated in the dedicatory instruments for delinquent assessments

or, if no rate is stated, at an annual interest rate of 10 percent;

(3) costs incurred by the association in foreclosing the lien and conveying the property to the redeeming lot owner, including reasonable attorney's fees;

(4) any assessment levied against the property by the association after the date of the foreclosure sale;

(5) any reasonable cost incurred by the association, including mortgage payments and costs of repair, maintenance, and leasing of the property; and

(6) the purchase price paid by the association at the foreclosure sale less any amounts due the association under Subdivision (1) that were satisfied out of foreclosure sale proceeds.

(e) To redeem property purchased at the foreclosure sale by a person other than the property owners' association, the lot owner:

(1) must pay to the association:

(A) all amounts due the association at the time of the foreclosure sale less the foreclosure sales price received by the association from the purchaser;

(B) interest from the date of the foreclosure sale through the date of redemption on all amounts owed the association at the rate stated in the dedicatory instruments for delinquent assessments or, if no rate is stated, at an annual interest rate of 10 percent;

(C) costs incurred by the association in foreclosing the lien and conveying the property to the redeeming lot owner, including reasonable attorney's fees;

(D) any unpaid assessments levied against the property by the association after the date of the foreclosure sale; and

(E) taxable costs incurred in a proceeding brought under Subsection (a); and

(2) must pay to the person who purchased the property at the foreclosure sale:

(A) any assessments levied against the property by the association after the date of the foreclosure sale and paid by the purchaser;

(B) the purchase price paid by the purchaser at the foreclosure sale;

(C) the amount of the deed recording fee;

(D) the amount paid by the purchaser as ad valorem taxes, penalties, and interest on the property after the date of the foreclosure sale; and

(E) taxable costs incurred in a proceeding brought under Subsection (a).

(f) If a lot owner redeems the property under this section, the purchaser of the property at foreclosure shall immediately execute and deliver to the owner a deed transferring the property to the redeeming lot owner. If a purchaser fails to comply with this section, the lot owner may file a cause of action against the purchaser and may recover reasonable attorney's fees from the purchaser if the lot owner is the prevailing party in the action.

(g) If, before the expiration of the redemption period, the redeeming lot owner fails to record the deed from the foreclosing purchaser or fails to record an affidavit stating that the lot owner has redeemed the property, the lot owner's right of redemption as against a bona fide purchaser or lender for value expires after the redemption period.

(h) The purchaser of the property at the foreclosure sale or a person to whom the person who purchased the property at the foreclosure sale transferred the property may presume conclusively that the lot owner did not redeem the property unless the lot owner files in the real property records of the county in which the property is located:

(1) a deed from the purchaser of the property at the foreclosure sale; or

(2) an affidavit that:

(A) states that the lot owner has redeemed the property; and

(B) contains a legal description of the property.

(i) If the property owners' association purchases the property at foreclosure, all rent and other income collected by the association from the date of the foreclosure sale to the date of redemption shall be credited toward the amount owed the association under Subsection (d), and if there are excess proceeds, they shall be refunded to the lot owner. If a person other than the association purchases the property at foreclosure, all rent and other income collected by the purchaser from the date of the foreclosure sale to the date of redemption shall be credited toward the amount owed the purchaser under Subsection (e), and if there are excess proceeds, those proceeds shall be refunded to the lot owner.

(j) If a person other than the property owners' association is the purchaser at the foreclosure sale, before executing a deed transferring the property to the redeeming lot owner, the purchaser shall obtain an affidavit from the association or its authorized agent stating that all amounts owed the association under Subsection (e) have been paid. The association shall provide the purchaser with the affidavit not later than the 10th day after the date the association receives all amounts owed to the association under Subsection (e). Failure of a purchaser to comply with this subsection does not affect the validity of a redemption by a redeeming lot owner.

(k) Property that is redeemed remains subject to all liens and encumbrances on the property before foreclosure. Any lease entered into by the purchaser of property at a sale foreclosing an assessment lien of a property owners' association is subject to the right of redemption provided by

this section and the lot owner's right to reoccupy the property immediately after the redemption.

(l) If a lot owner makes partial payment of amounts due the association at any time before the redemption period expires but fails to pay all amounts necessary to redeem the property before the redemption period expires, the association shall refund any partial payments to the lot owner by mailing payment to the owner's last known address as shown in the association's records not later than the 30th day after the expiration date of the redemption period.

(m) If a lot owner sends by certified mail, return receipt requested, a written request to redeem the property on or before the last day of the redemption period, the lot owner's right of redemption is extended until the 10th day after the date the association and any third party foreclosure purchaser provides written notice to the lot owner of the amounts that must be paid to redeem the property.

(n) After the redemption period and any extended redemption period provided by Subsection (m) expires, the association or third party foreclosure purchaser shall record an affidavit in the real property records of the county in which the property is located stating that the lot owner did not redeem the property during the redemption period or any extended redemption period.

(o) The association or the person who purchased the property at the foreclosure sale may file an affidavit in the real property records of the county in which the property is located that states the date the citation was served in a suit under Subsection (a) and contains a legal description of the property. Any person may rely conclusively on the information contained in the affidavit.

(p) The rights of a lot owner under this section also apply if the sale of the lot owner's property is conducted by a constable or sheriff as provided by a judgment obtained by the property owners' association.

#### **§ 209.012. Restrictive Covenants Granting Easements to Certain Property Owners' Associations**

(a) A property owners' association may not amend a dedicatory instrument to grant the property owners' association an easement through or over an owner's lot without the consent of the owner.

(b) This section does not prohibit a property owners' association from adopting or enforcing a restriction in a dedicatory instrument that allows the property owners' association to access an owner's lot to remedy a violation of the dedicatory instrument.

#### **§ 209.013. Authority of Association to Amend Dedicatory Instrument**

(a) A dedicatory instrument created by a developer of a residential subdivision or by a property owners' association in which the developer has a majority of the voting rights or that the developer otherwise controls under the terms of the dedicatory instrument may not be amended during the period between the time the developer loses the majority of the voting rights or other form of



control of the property owners' association and the time a new board or directors of the association assumes office following the loss of the majority of the voting rights or other form of control.

(b) A provision in a dedicatory instrument that violates this section is void and unenforceable.

#### **§ 209.014. Mandatory Election Required After Failure to Call Regular Meeting**

(a) Notwithstanding any provision in a dedicatory instrument, a board of a property owners' association shall call an annual meeting of the members of the association.

(b) If a board of a property owners' association does not call an annual meeting of the association members, an owner may demand that a meeting of the association members be called not later than the 30th day after the date of the owner's demand. The owner's demand must be made in writing and sent by certified mail, return receipt requested, to the registered agent of the property owners' association and to the association at the address for the association according to the most recently filed management certificate. A copy of the notice must be sent to each property owner who is a member of the association.

(c) If the board does not call a meeting of the members of the property owners' association on or before the 30th day after the date of a demand under Subsection (b), three or more owners may form an election committee. The election committee shall file written notice of the committee's formation with the county clerk of each county in which the subdivision is located.

(d) A notice filed by an election committee must contain:

(1) a statement that an election committee has been formed to call a meeting of owners who are members of the property owners' association for the sole purpose of electing board members;

(2) the name and residential address of each committee member; and

(3) the name of the subdivision over which the property owners' association has jurisdiction under a dedicatory instrument.

(e) Each committee member must sign and acknowledge the notice before a notary or other official authorized to take acknowledgments.

(g) The county clerk shall enter on the notice the date the notice is filed and record the notice in the county's real property records.

(g) Only one committee in a subdivision may operate under this section at one time. If more than one committee in a subdivision files a notice, the first committee that files a notice, after having complied with all other requirements of this section, is the committee with the power to act under this section. A committee that does not hold or conduct a successful election within four months after the date the notice is filed with the county clerk is dissolved by operation of

law. An election held or conducted by a dissolved committee is ineffective for any purpose under this section.

(h) The election committee may call meetings of the owners who are members of the property owners' association for the sole purpose of electing board members. Notice, quorum, and voting provisions contained in the bylaws of the property owners' association apply to any meeting called by the election committee.

#### **§ 209.015. Regulation of Land Use: Residential Purpose**

(a) In this section:

(1) “Adjacent lot” means:.

(A) a lot that is contiguous to another lot that fronts on the same street;

(B) with respect to a corner lot, a lot that is contiguous to the corner lot by either a side property line or a back property line; or

(C) if permitted by the dedicatory instrument, any lot that is contiguous to another lot at the back property line.

(2) “Residential purpose” with respect to the use of a lot:

(A) means the location on the lot of any building, structure, or other improvement customarily appurtenant to a residence, as opposed to use for a business or commercial purpose; and

(B) includes the location on the lot of a garage, sidewalk, driveway, parking area, children’s swing or playscape, fence, septic system, swimming pool, utility line, water well and, if otherwise specifically permitted by the dedicatory instrument, the parking or storage of a recreational vehicle.

(b) Except as provided by this section, a property owners’ association may not adopt or enforce a provision in a dedicatory instrument that prohibits or restricts the owner of a lot on which a residence is located from using for residential purposes an adjacent lot owned by the property owner.

(c) An owner must obtain the approval of the property owners’ association or, if applicable, an architectural committee established by the association or the association’s dedicatory instruments, based on criteria prescribed by the dedicatory instruments specific to the use of a lot for residential purposes, including reasonable restrictions regarding size, location, shielding, and aesthetics of the residential purpose, before the owner begins the construction, placement, or erection of a building, structure or other improvement for the residential purpose on an adjacent lot.

(d) An owner who elects to use an adjacent lot for residential purposes under this section shall, on the sale or transfer of the lot containing the residence:

(1) include the adjacent lot in the sales agreement and transfer the lot to the new owner under the same dedicatory conditions; or

(2) restore the adjacent lot to the original condition before the addition of the improvements allowed under this section to the extent that the lot would again be suitable for the construction of a separate residence as originally platted and provided for in the conveyance to the owner.

(e) An owner may sell the adjacent lot separately only for the purpose of the construction of a new residence that complies with existing requirements in the dedicatory instrument unless the lot has been restored as described by Subsection (d)(2).

(f) A provision in a dedicatory instrument that violates this section is void.

**§ 209.016. Regulation of Residential Leases or Rental Agreements.**

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

(1) social security number;

(2) driver's license number;

(3) government-issued identification number; or

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

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

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

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

(A) a consumer or credit report; or

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

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

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

## **CHAPTER 210. EXTENSION OR MODIFICATION OF RESIDENTIAL RESTRICTIVE COVENANTS**

### **§ 210.001. Definitions**

In this chapter:

- (1) "Dedicatory instrument" has the meaning assigned by Section 202.001.
- (2) "Owner" has the meaning assigned by Section 201.003.
- (3) "Property owners' association" has the meaning assigned by Section 202.001.
- (4) "Residential real estate subdivision" or "subdivision" has the meaning assigned by Section 201.003.
- (5) "Restrictions" has the meaning assigned by Section 201.003.

### **§ 210.002. Applicability of Chapter**

This chapter applies to a residential real estate subdivision that is located in a county with a population of:

- (1) more than 200,000 and less than 220,000; or
- (2) more than 45,000 and less than 80,000 that is adjacent to a county with a population of more than 200,000 and less than 220,000.

### **§ 210.003. Findings and Purpose**

(a) The legislature finds that:

- (1) the pending expiration of and the inability of owners to extend or modify property restrictions applicable to certain real estate subdivisions in this state creates uncertainty in living conditions and discourages investments in those subdivisions;
- (2) owners of land in affected subdivisions are reluctant or unable to provide proper maintenance.

nance, upkeep, and repairs of structures because of the pending expiration of restrictions;

(3) financial institutions cannot or will not lend money for investments, maintenance, upkeep, or repairs in affected subdivisions;

(4) these conditions cause dilapidation of housing and other structures and cause unhealthful and unsanitary conditions in affected subdivisions, contrary to the health, safety, and welfare of the public; and

(5) the existence of race-related covenants in restrictions, regardless of their unenforceability, is offensive, repugnant, and harmful to members of racial or ethnic minority groups and public policy requires that those covenants be removed.

(b) The purpose of this chapter is to provide a procedure for extending or modifying residential restrictions and to provide for the removal of any restriction or other provision relating to race, religion, or national origin that is void and unenforceable under either the United States Constitution or Section 5.026.

#### **§ 210.004. Extension or Modification of Restrictions**

(a) In addition to any procedures provided in a subdivision's restrictions, a property owners' association, or a petition committee comprised of at least three owners, may circulate a petition proposing to extend or modify existing restrictions.

(b) An extension or modification of existing restrictions that is approved by the owners becomes effective when the resolution required by Section 210.008 is filed as a dedicatory instrument with the county clerk of each county in which the subdivision is located.

(c) An extension or modification of existing restrictions that is approved by the owners under this chapter is binding on all properties in the subdivision.

#### **§ 210.005. Petition Procedure**

(a) The property owners' association or petition committee shall deliver to each record owner of property in the subdivision a petition describing the exact terms of the proposed extension or modification of the existing restrictions.

(b) The petition must state the date by which a response must be received in order to be counted.

(c) The petition may allow each owner to indicate approval or disapproval of:

(1) the entire proposal; or

(2) specific provisions of the proposal.

(d) Separate signature pages may be delivered if the proposed extension or modification is stat-

ed fully or referenced on each signature page. A reference may be made by the following or substantially similar wording: "We the undersigned owners of property in the \_\_\_\_\_ Subdivision indicate by our signatures on this document our approval or disapproval of the proposal(s) circulated by \_\_\_\_\_ on or about [date] to [extend or modify] our restrictive covenants. We acknowledge that we have fully reviewed the proposal(s)."

(e) The petition must be sent by certified mail, return receipt requested, to each owner's mailing address as reflected in the appraisal records maintained by the appraisal district in which the owner's property is located.

(f) The signature of an owner on the petition conclusively establishes that the owner received the petition.

#### **§ 210.006. Vote on Proposal**

(a) If the petition allows owners to indicate only approval or disapproval of the entire proposal, the proposal is adopted if owners of at least 66 percent of the real property in the subdivision vote in favor of the proposal. If the petition allows owners to indicate approval or disapproval of specific provisions of the proposal, a provision is adopted if owners of at least 66 percent of the real property in the subdivision vote in favor of the provision.

(b) The property owners' association or petition committee shall exclude votes by lienholders, contract purchasers, and owners of mineral interests.

(c) Except as provided by this subsection, the approval or disapproval of multiple owners of a property may be reflected by the signatures of a majority of the co-owners. The approval or disapproval of owners who are married may be reflected by the signature of one of those owners.

(d) An owner is considered to have cast a vote if the owner signs the petition indicating approval or disapproval of the proposal or one or more specific provisions of the proposal.

(e) The property owners' association or petition committee may only count a vote if the association or committee receives the vote before the deadline stated in the petition.

#### **§ 210.007. Subdivision Consisting of Multiple Sections**

If a subdivision consisting of multiple sections, each with its own restrictions, is represented by a single property owners' association, a proposal or specific provision of a proposal is adopted if owners of at least 66 percent of the total number of properties in the subdivision vote in favor of the proposal or provision.

#### **§ 210.008. Resolution Certifying Results of Vote**

(a) The property owners' association or petition committee shall certify the results of a vote un-

der this chapter by a written resolution specifying the number of votes for and against the proposal, or for and against each provision of the proposal, and shall also certify that the petition was delivered to each record owner of property in the subdivision as required by Section 210.005.

(b) The association or committee shall attach to the resolution a statement of the exact terms of the proposed extension or modification of the existing restrictions.

(c) The association or committee shall make the resolution, petition, and signature pages available to any owner on request.

### **§ 210.009. Additional Procedures**

The procedures provided by this chapter are in addition to any procedures provided in a subdivision's restrictions for the extension or modification of existing restrictions. The property owners' association or petition committee may propose the extension or modification of restrictions either in accordance with the procedures provided by the subdivision's restrictions or the procedures provided by this chapter.

## **CHAPTER 211. AMENDMENT AND ENFORCEMENT OF RESTRICTIONS IN CERTAIN SUBDIVISIONS**

### **§ 211.001. Definitions**

In this chapter:

(1) "Dedictory instrument" means each governing instrument covering the establishment, maintenance, and operation of a residential subdivision or any similar planned development. The term includes a declaration or similar instrument subjecting real property to restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association, to properly adopted rules and regulations of the property owners' association, or to all lawful amendments to the covenants, bylaws, instruments, rules, or regulations.

(2) "Lienholder," "owner," "real property records," and "restrictions" have the meanings assigned by Section 201.003.

(3) "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 or similar planned development.

(4) "Residential real estate subdivision" or "subdivision" means all land encompassed within one or more maps or plats of land that is divided into two or more parts if:

(A) the maps or plats cover land all or part of which is not located within a municipality and:

(i) for a county with a population of less than 65,000, is not located within the extraterritorial jurisdiction of a municipality; or

(ii) for a county with a population of at least 65,000 and less than 135,000, is located wholly within the extraterritorial jurisdiction of a municipality;

(B) the land encompassed within the maps or plats is or was burdened by restrictions limiting all or at least a majority of the land area covered by the map or plat, excluding streets and public areas, to residential use only; and

(C) all instruments creating the restrictions are recorded in the deed or real property records of a county.

### **§ 211.002. Applicability of Chapter**

(a) This chapter applies only to a residential real estate subdivision or any unit or parcel of a subdivision:

(1) all or part of which is located within an unincorporated area of a county if the county has a population of less than 65,000;

(2) all of which is located within the extraterritorial jurisdiction of a municipality located in a county that has a population of at least 65,000 and less than 135,000;

(3) all of which is located within the extraterritorial jurisdiction of a municipality located in a county that borders Lake Buchanan and has a population of at least 18,500 and less than 19,500; or

(4) all or part of which is located within a county that borders Lake Livingston and has a population of less than 50,000.

(b) This chapter applies only to restrictions that affect title to real property within a residential real estate subdivision or any units or parcels of the subdivision and that, by the express terms of the instrument creating the restrictions:

(1) are not subject to a procedure by which the restrictions may be amended;

(2) may not be amended without the unanimous consent of:

(A) all property owners in the subdivision; or

(B) all property owners in any unit or parcel of the subdivision; or

(3) may not be amended without a written instrument that is:



(A) signed by a majority or more than a majority of the owners of the lots in the subdivision;  
and

(B) filed in the real property records of each county in which all or part of the subdivision is located.

(b-1) In addition to restrictions and units or parcels of a subdivision that are subject to this chapter under Subsection (b), this chapter applies to restrictions that affect real property within a residential real estate subdivision or any units or parcels of the subdivision and that, by the express terms of the instrument creating the restrictions, provide that amendments of the restrictions are not operative or effective until a specified date or the expiration of a specified period. An amendment under this chapter of a restriction described by this subsection is effective as provided by this chapter regardless of whether the date specified in the restrictions has occurred or the period prescribed by the restrictions has expired. This subsection expires on September 1, 2019.

(c) This chapter applies to a restriction regardless of the date on which it was created.

(d) An amendment of a restriction under this chapter is effective on the filing of an instrument reflecting the amendment in the real property records of each county in which all or part of the subdivision is located after the approval of the owners in accordance with the amendment procedure adopted under Section 211.004.

### **§ 211.003. Findings and Purpose**

(a) The legislature finds that:

(1) owners of land in certain real estate subdivisions are unable to govern the subdivisions by democratic principles of self-government;

(2) requiring unanimous consent to amend or modify restrictions in affected subdivisions or units or parcels of the subdivisions is impractical and unworkable to bring needed change and improvement;

(3) the inability of owners to amend or modify property restrictions in certain real estate subdivisions in which no zoning regulations apply creates uncertainty in living conditions and discourages investments in those subdivisions;

(4) owners of land in affected subdivisions are reluctant or unable to provide proper maintenance, upkeep, and repairs of structures because of the inability to amend or modify the restrictions in response to changing circumstances;

(5) financial institutions are reluctant to or will not lend money for investments, maintenance, upkeep, or repairs in affected subdivisions;

(6) these conditions will cause dilapidation of housing and other structures and cause unhealthful and unsanitary conditions in affected subdivisions, contrary to the health, safety, and welfare of the public; and

(7) the existence of race-related covenants in restrictions, regardless of their unenforceability, is offensive, repugnant, and harmful to members of racial or ethnic minority groups and public policy requires that those covenants be removed.

(b) The purpose of this chapter is to provide a procedure for creating, modifying, or adding to residential restrictions and to provide for the removal of any restriction or other provision relating to race, religion, or national origin that is void and unenforceable under either the United States Constitution or Section 5.026.

#### **§ 211.004. Creation or Modification of Procedure to Amend Restrictions**

(a) A property owners' association by a two-thirds vote of the association's governing body may submit a procedure for amending restrictions to a vote of the property owners in the subdivision or in the unit or parcel of the subdivision governed by restrictions.

(b) An amendment procedure submitted to a vote under Subsection (a) binds all property owners in the subdivision or the unit or parcel of the subdivision to which the procedure applies if more than two-thirds of the voting property owners vote in favor of the procedure.

(c) Not later than the 30th day before the date a ballot for a vote under this section must be received to be counted, the property owners' association shall mail to each affected property owner a notice that includes:

- (1) the exact wording of the amendment procedure; and
- (2) the date by which a property owner's ballot must be received to be counted.

(d) The property owners' association shall pay all costs of:

- (1) printing and mailing the required notices and ballots; and
- (2) canvassing, tabulating, and certifying the vote.

(e) A property owner may not cast more than one vote, regardless of the number of lots the person owns. If more than one person owns an interest in a lot, the owners may cast only one vote for that lot. A person may not vote if the person has an interest in a lot only by virtue of being a lienholder.

(f) A ballot cast under this section is secret and may not be counted unless it is placed inside an unmarked envelope that is placed inside another envelope that bears the signature and printed name of the property owner casting the enclosed ballot.

(h) The presiding officer of the property owners' association shall appoint an election canvassing committee and a committee chairperson to canvass and count the votes and determine the outcome.

(h) If the amendment procedure receives the number of votes required under Subsection (b), the election canvassing committee chairperson shall certify the result to the presiding officer of the property owners' association. The presiding officer shall file in the real property records of each county in which all or part of the subdivision is located an instrument that indicates that the procedure was adopted.

(i) If the amendment procedure is not adopted, the property owners' association may not submit the same amendment procedure to a vote under this section on or before the first anniversary of the date the previous votes on the procedure were certified.

### **§ 211.005. Effect of Adopting Amendment Procedure**

After the effective date of the adoption of the amendment procedure under this chapter, any proposed amendment to the restrictions described by Section 211.002(b) applicable to the subdivision or unit or parcel of the subdivision, as applicable, must be submitted for approval to the owners under the amendment procedure.

## **CHAPTER 212. EXTENSION OF RESTRICTIONS BY MAJORITY VOTE IN CERTAIN SUBDIVISIONS**

### **§ 212.001. Definitions**

In this chapter, "lienholder," "owner," "restrictions," and "residential real estate subdivision" or "subdivision" have the meanings assigned by Section 201.003.

### **§ 212.002. Applicability of Chapter**

This chapter applies only to a residential real estate subdivision that:

(1) is located wholly or partly in a municipality with a population of more than two million located in a county with a population of 3.3 million or more; and

(2) is subject to restrictions the terms of which:

(A) provide that the restrictions expire;

(B) permit the restrictions to be extended after the initial restriction period expires if a majority of the owners of lots in the subdivision, by a written instrument that is acknowledged and filed for record, signify consent to the extension of the restrictions for a further period the maximum length of which is specified by the restrictions; and

(C) do not expressly provide for or expressly prohibit successive extensions of the restrictions after the expiration of the initial extension period.

### **§ 212.003. Procedure for Successive Extensions**

(a) Restrictions may be extended under this chapter by the written consent of the owners of a majority of the lots in the subdivision, without respect to the number of lots owned by a particular owner.

(b) Consent for the purposes of this section may be reflected by an owner's signature on a petition or written ballot.

(c) Petitions, written ballots, or both may be distributed to the owners of lots in the subdivision by any method, including one or both of the following methods:

(1) by door-to-door circulation; or

(2) at a meeting of the owners of lots in the subdivision called for the purpose of voting on the proposed extension.

(d) The required signatures must be obtained during the same extension period. The petitions, written ballots, or both, as applicable, must be filed for record in the county in which the subdivision is located before the earlier of:

(1) the first anniversary of the date on which the first signature is obtained; or

(2) the expiration of the extension period during which the signatures are collected.

(e) Restrictions may be extended under this chapter only once during each unexpired extension period.

### **§ 212.004. Effect of Owner Signature**

(a) The vote of multiple owners of a lot may be reflected by the signature of one of the owners.

(b) After an owner signs a petition or ballot under Section 212.003 or 212.007, the owner's subsequent conveyance of the owner's interest in a lot or unplatted real property in the subdivision does not affect the validity of the signature for the purposes of that section.

### **§ 212.005. Property Owners' Association Not Required.**

Restrictions may be extended under this chapter without the creation of or action by a property owners' association, homeowners association, community association, civic club, or similar organization.

### **§ 212.006. Effective Date of Extension; Length of Extension Period**

(a) An extension of restrictions under this chapter takes effect on the date the petitions, written ballots, or both, as applicable, sufficient to reflect the consent required by Section 212.003 are filed and recorded in the real property records of the county in which the subdivision is located.

(b) Subject to Section 212.007, an extension of restrictions under this chapter is for a period equal to the original term of the restrictions or a shorter period agreed to by the owners of a majority of the lots in the subdivision in the petitions, written ballots, or both, as applicable, signed under Section 212.003.

### **§ 212.007. Termination of Restrictions**

(a) Restrictions extended under this chapter may be terminated before their expiration date if:

(1) the consent of the owners of a majority of the lots in the subdivision to the termination of the restrictions on a specified date is obtained in the same manner as consent to the extension of restrictions is obtained under this chapter; and

(2) the petitions, written ballots, or both, as applicable, sufficient to reflect the required consent to termination are filed for record in the real property records of the county in which the subdivision is located before the earlier of:

(A) the first anniversary of the date on which the first signature consenting to termination is obtained; or

(B) a date specified under Subsection (b)(2).

(b) Petitions, written ballots, or both, as applicable, used to extend restrictions under this section may provide that:

(1) the restrictions may be terminated only on one or more termination dates specified in the petitions, written ballots, or both, as applicable, used to extend the restrictions; or

(2) the petitions, written ballots, or both, as applicable, sufficient to reflect the required consent to termination must be filed for record before a time specified in the petitions, written ballots, or both, as applicable.

### **§ 212.008. Applicability of Extended Restrictions**

(a) An extension of restrictions under this chapter is binding on all lots and all unplatted real property in the subdivision, without regard to whether the owner or owners of any individual lot or unplatted real property signify consent to extend the restrictions. Any statute authorizing a property owner to opt out of the applicability of restrictions to the owner's property does not apply to restrictions extended under this chapter.

(b) An extension of restrictions under this chapter is binding on a lienholder or a person who acquires title to property at a foreclosure sale or by deed from a foreclosing lienholder.

### **§ 212.009. Unconstitutional Restrictions Not Extended**

If a provision in restrictions extended under this chapter is void and unenforceable under the United States Constitution, the restrictions are considered as if the void and unenforceable provision was never contained in the restrictions.

### **§ 212.010. Use of Original Extension Procedure; Procedures Cumulative**

(a) In addition to the procedure provided by this chapter for the extension of restrictions, the procedure provided by the original restrictions for the initial extension of the restrictions, including the requirement that a specified percentage of a specified class approve the extension, may be used for successive extensions of the original restrictions, provided that the approval obtained includes the approval of the owners of not less than a majority of the lots in the subdivision.

(b) An extension of the restrictions as described by Subsection (a) is for a period equal to the original term of the restrictions or a shorter period agreed to by the owners of a majority of the lots in the subdivision.

(c) The procedure provided by this chapter for the extension or termination of restrictions is cumulative of and not in lieu of any other method by which restrictions of a subdivision to which this chapter applies may be added to, modified, created, extended, or terminated.

### **§ 212.011. Construction of Chapter and Extended Restrictions**

(a) This chapter and any petition or ballot made or action taken in connection with an attempt to comply with this chapter shall be liberally construed to effectuate the intent of this chapter and the petition, ballot, or action.

(b) A deed restriction that is extended under this chapter shall be liberally construed to give effect to the restriction's purposes and intent.

## **CHAPTER 213. MODIFICATION OR TERMINATION OF RESTRICTIONS IN CERTAIN REAL ESTATE DEVELOPMENTS BY PROPERTY OWNERS' ASSOCIATION OR PROPERTY OWNER PETITION.**

### **§ 213.001. Definitions**

In this chapter:

(1) "Amenity property" means real property the use of which is restricted by a dedicatory instrument to use as a golf course or country club.

(2) "Council of owners" has the meaning assigned by Section 81.002 as it relates to an existing condominium in a development.

(3) "Dedicator instrument" means a governing instrument that:

(A) restricts amenity property to use as amenity property;

(B) designates real property in the development, other than amenity property, as a beneficiary of a restriction described by Paragraph (A); and

(C) addresses the establishment, maintenance, and operation of amenity property.

(4) "Development" means:

(A) amenity property; and

(B) all real property designated as beneficiary property in the dedicatory instrument.

(5) "Owner" means a person, or the person's personal representative, who holds record title to:

(A) a lot or parcel of real property in a development; or

(B) a unit or apartment of a condominium in the development.

(6) "Petition circulator" means a person authorized to circulate a petition under Section 213.005.

(7) "Property owners' association" means an incorporated or unincorporated association that:

(A) is designated as the representative of the owners of lots or parcels of real property in a development;

(B) has a membership primarily consisting of those owners; and

(C) manages or regulates all or part of the development for the benefit of those owners.

(8) "Restrictions" means one or more restrictive covenants contained or incorporated by reference in a properly recorded map, plat, replat, declaration, or other instrument filed in the real property records or map or plat records. The term includes any amendment or extension of the restrictions.

(9) "Restrictive covenant" means any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative.

(10) "Unit owners' association" means an association of unit owners organized under Section

82.101 for a condominium in a development.

### **§ 213.002. Findings and Purpose**

(a) The legislature finds that:

(1) a restriction on the use of an amenity property may create uncertainty if the owners of an amenity property are reluctant or unable to properly maintain or operate the amenity property;

(2) such uncertainty may discourage investment and negatively impact property values in the development;

(3) investors may be reluctant to or will not invest funds to revitalize an amenity property burdened with a restriction on its use;

(4) financial institutions may be reluctant to or will not provide financing to revitalize an amenity property burdened with a restriction on its use; and

(5) establishing a procedural option to allow for the modification or termination of the restriction would alleviate the uncertainty and encourage revitalization of the amenity property.

(b) The purpose of this chapter is to provide a procedural option for the modification or termination of a restriction on the use of an amenity property.

### **§ 213.003. Modification and Termination by Petition**

(a) Except as provided by Subsection (b), a restriction on the use of an amenity property may be modified or terminated by petition in accordance with this chapter.

(b) This chapter does not apply if:

(1) a dedicatory instrument includes a procedure to modify or terminate a restriction on the use of an amenity property on approval of the owners of less than 75 percent of, as applicable, the lots or parcels of land and units or apartments of condominiums in the development; or

(2) a restriction on the use of an amenity property may be modified or terminated under the procedures of Chapter 81, 82, 201, or 209.

### **§ 213.004. Prerequisites for Circulation**

A petition may not be circulated under this chapter unless:

(1) for a continuous period of at least 36 months, the amenity property has not been in operation; and



(2) if zoning regulations apply to the amenity property, the owner of the amenity property has received all required zoning approvals for any proposed redevelopment of the amenity property.

### **§ 213.005. Petition Circulator**

A petition authorized by Section 213.003 may be circulated by:

- (1) an owner;
- (2) a property owners' association that owns and manages the amenity property; or
- (3) a unit owners' association or council of owners that owns and manages the amenity property.

### **§ 213.006. Contents of Petition**

(a) The petition must include all relevant information about the proposed modification or termination, including:

- (1) the name of the development, if any;
- (2) the name of the amenity property, if any;
- (3) the recording information of the restriction to be modified or terminated;
- (4) the text of the restriction subject to modification or termination;
- (5) the text of the restriction as modified or terminated; and
- (6) a comparison of the original language of the restriction and the restriction as modified or terminated, showing any insertion and deletion of language or punctuation.

(b) The petition must state:

- (1) reasonable times and dates the petition circulator will be available at a location in the development to receive a signed statement required by Section 213.008;
- (2) a mailing address, e-mail address, and facsimile number to which a signed statement may be delivered; and
- (3) the date by which a signed statement must be received to be counted.

### **§ 213.007. Circulation Procedure**

(a) A petition circulator shall deliver a copy of the petition to:

(1) all owners of:

(A) each lot or parcel of real property in the development; and

(B) each unit or apartment of each condominium, if any, in the development; and

(2) each property owners' association, unit owners' association, and council of owners in the development.

(b) The petition circulator may deliver a copy of the petition in any reasonable manner, including:

(1) by regular mail or certified mail, return receipt requested, to the last known address of the owners or entities described by Subsections (a)(1) and (2);

(2) personal delivery to the owners or entities described by Subsections (a)(1) and (2); or

(3) at a regular meeting of a property owners' association, unit owners' association, or council of owners.

(c) If the petition circulator acts in good faith in determining ownership and delivering copies of the petition as required by this section, an owner's lack of receipt of a copy of the petition does not affect the application of a modification or termination of a restriction under this chapter to the amenity property.

### **§ 213.008. Vote on Proposal**

(a) The modification or termination of the restriction is adopted if the owners of at least 75 percent of the total number, as applicable, of the lots or parcels of land and the units or apartments of condominiums in the development, including the owner of the amenity property, vote in favor of the modification or termination of the restriction.

(b) An owner may cast a vote only by delivering to the petition circulator in accordance with Section 213.009 a signed statement that includes:

(1) the owner's name, the legal description or street address of the owner's property, and the owner's mailing address;

(2) a statement that the owner holds record title to the property;

(3) if more than one person owns an interest in the property, the name and mailing address of each co-owner; and

(4) a statement indicating whether the owner is in favor of or against the modification or

termination proposed by the petition.

(c) An owner may vote only in favor of or against the modification or termination as proposed in the petition.

(d) If more than one person owns an interest in a lot or parcel of land or a unit or apartment of a condominium, the owners may cast only one vote for that lot, parcel, unit, or apartment. Except as otherwise provided by this subsection, the vote of multiple owners in favor of or against the modification or termination may be reflected by the signatures of a majority of the co-owners who return a signed statement. The vote of owners who are married may be reflected by the signature of only one of those owners.

(e) A person whose only property interest in a lot or parcel of land or unit or apartment of a condominium is that of a contract purchaser, lienholder, or mineral interest holder may not cast a vote for that property under this chapter.

(f) A vote may be counted only if the vote is received before the deadline stated in the petition as required by Section 213.006(b).

(g) The signed statement of an owner conclusively establishes that:

- (1) the petition was received by the owner in accordance with Section 213.007; and
- (2) the statement accurately reflects the vote of the owner.

#### **§ 213.009. Delivery of Signed Statement**

(a) The petition circulator must accept a signed statement described by Section 213.008 that is delivered:

- (1) in person under Section 213.006(b) or otherwise;
- (2) by first class mail to an address stated in the petition;
- (3) by e-mail to an address stated in the petition; or
- (4) by facsimile to a facsimile number stated in the petition.

(b) This section supersedes any contrary provision in a dedicatory instrument.

#### **§ 213.010. Certification of Results by Recorded Affidavit**

(a) The petition circulator shall certify the result of the votes by filing an affidavit with the county clerk of the county in which the restriction modified or terminated is recorded.

(b) The affidavit required by Subsection (a) must state:

- (1) the name of the development, if any;
- (2) the name of the amenity property, if any;
- (3) the recording information of the restriction that was modified or terminated;
- (4) the text of the restriction before modification or termination;
- (5) the text of the restriction as modified or terminated;
- (6) the number of votes in favor of and against the proposed modification or termination;
- (7) the name and address of the petition circulator; and

(8) the name, address, and telephone number of the person maintaining the documents in accordance with Section 213.013.

(c) The petition circulator must affirm in the affidavit that the petition was delivered in accordance with Section 213.007.

#### **§ 213.011. Notice**

(a) The recording of the affidavit required by Section 213.010 constitutes notice that the restriction is modified or terminated.

(b) Notwithstanding Subsection (a), the petition circulator must deliver to each person who resides within 200 feet of the boundary of the amenity property a copy of the affidavit. The affidavit may be delivered by regular mail, by certified mail, return receipt requested, or by personal delivery.

#### **§ 213.012. Effective Date of Modification or Termination**

The modification or termination of the restriction takes effect on the later of:

- (1) the date the affidavit required by Section 213.010 is filed with the county clerk; or
- (2) the date, if any, specified as the effective date in the petition.

#### **§ 213.013. Documentation Available**

At least one year after the date the affidavit is filed with the county clerk, the petition circulator shall make available for inspection and copying the original petition, the signed statements described by Section 213.008, and the affidavit required by Section 213.010.

### **§ 213.014. Expiration**

This chapter expires September 1, 2021.

## **CHAPTER 215. MASTER MIXED-USE PROPERTY OWNERS' ASSOCIATIONS**

### **§ 215.001. Definitions**

In this chapter:

- (1) "Appraised value" means the property value determined by the appraisal district that establishes property values for taxing entities levying taxes on property in a mixed-use development.
- (2) "Property owners' association" or "association" means, unless otherwise indicated, a master mixed-use property owners' association.
- (3) "Dedictory instrument" has the meaning assigned by Section 209.002.
- (4) "Self-help" means the process by which a property owners' association takes remedial action with regard to property governed by the association.

### **§ 215.002. Applicability of Chapter**

- (a) This chapter applies to a property owners' association that:
  - (1) includes:
    - (A) commercial properties, including hotel and retail properties, that constitute at least 35 percent of the total appraised property value of the mixed-use development governed by the association;
    - (B) single-family attached and detached properties that constitute at least 25 percent of the total appraised property value of the mixed-use development governed by the association; and
    - (C) multifamily properties that constitute at least 10 percent of the total appraised property value of the mixed-use development governed by the association;
  - (2) governs at least 6,000 acres of deed-restricted property;
  - (3) has at least 10 incorporated residential or commercial property owners' associations that are members of and subject to the dedicatory instruments of the master mixed-use property owners' association;

(4) has at least 3,400 platted and developed single-family residential properties and at least 400 separately platted commercial properties, including office, industrial, hotel, and retail properties, which together constitute at least 30 million square feet of building area available for rental; and

(5) participates in the maintenance of public space, including parks, medians, and lakefronts, owned by local, including county, or state governmental entities.

(b) This chapter applies to property that is:

(1) governed by a property owners' association described by Subsection (a);

(2) located in a master mixed-use development; and

(3) subject to a provision, including a restriction, in a declaration that:

(A) requires mandatory membership in the association; and

(B) authorizes the association to collect a regular or special assessment on all or a majority of the property in the development.

(c) Except as otherwise provided by this chapter, this chapter applies only to a master mixed-use property owners' association and not to the independent property owners' associations that are members of the master mixed-use property owners' association.

### **§ 215.003. Applicability of Chapter 209**

Sections 209.007, 209.008, 209.011, and 209.012 apply only to single-family residential properties governed by a property owners' association subject to this chapter.

### **§ 215.004. Conflicts of Law**

Notwithstanding any other provision of law, the provisions of this chapter prevail over a conflicting or inconsistent provision of law relating to independent property owners' associations.

### **§ 215.005. Board Powers**

In addition to any other powers provided by applicable law and this chapter, and unless otherwise provided by the dedicatory instruments of the property owners' association, the association, acting through its board of directors, may:

(1) adopt and amend bylaws;

(2) adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from property owners;

- (3) adopt reasonable rules;
- (4) hire and terminate managing agents and other agents, employees, and independent contractors;
- (5) institute, defend, intervene in, settle, or compromise litigation or administrative proceedings on matters affecting a property governed by the association;
- (6) make contracts and incur liabilities relating to the operation of the association;
- (7) regulate the use, maintenance, repair, replacement, modification, and appearance of the property governed by the association;
- (8) make improvements to be included as a part of the common area;
- (9) acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property;
- (10) purchase an investment property that is not part of the common area;
- (11) grant easements, leases, licenses, and concessions through or over the common elements;
- (12) impose and receive payments, fees, or charges for the use, rental, or operation of the common area and for services provided to property owners;
- (13) impose interest, late charges, and, if applicable, returned check charges for late payments of regular assessments or special assessments;
- (14) charge costs to an owner's assessment account and collect the costs in any manner provided in the restrictions for the collection of assessments;
- (15) adopt and amend rules regulating the collection of delinquent assessments;
- (16) impose reasonable charges for preparing, recording, or copying amendments to resale certificates or statements of unpaid assessments;
- (17) purchase insurance and fidelity bonds, including directors' and officers' liability insurance, that the board considers appropriate or necessary;
- (18) subject to the requirements of the provisions described by Section 1.008(d), Business Organizations Code, and by majority vote of the board, indemnify a director or officer of the association who was, is, or may be made a named defendant or respondent in a proceeding because the person is or was a director or officer;

(19) if the restrictions vest the architectural control authority in the association:

(A) implement written architectural control guidelines for its own use, or record the guidelines in the real property records of the applicable county; and

(B) modify the guidelines as the needs of the development change;

(20) exercise self-help with regard to property governed by the association;

(21) exercise other powers conferred by the dedicatory instruments;

(22) exercise other powers necessary and proper for the governance and operation of the association; and

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

**§ 215.006. Annual Meeting of Association Members; Notice of Annual or Special Meeting**

(a) An annual meeting of members of a property owners' association must be conducted in accordance with the association's dedicatory instruments.

(b) Unless otherwise provided by a dedicatory instrument, an annual meeting of the property owners' association members is open to association members and must be held in a county in which all or part of the property governed by the association is located or in a county adjacent to that county.

(c) Unless otherwise provided by a dedicatory instrument, the board shall give members notice of the date, time, place, and subject of an annual or special meeting of the members. The notice must be delivered to each member not later than the 10th day and not earlier than the 60th day before the date of the meeting.

(d) A notice under Subsection (c) must be posted in a conspicuous manner reasonably designed to provide notice to association members:

(1) in a place located outside the corporate offices of the association that is accessible by the general membership during normal business hours; or

(2) on any Internet website maintained by the association.

(e) Unless otherwise provided by a dedicatory instrument, any number of the members may attend the meeting by use of videoconferencing or a similar telecommunication method for purposes of establishing full participation in the meeting.



## **§ 215.007. Board Meetings**

(a) A meeting of the board of directors of a property owners' association must be conducted in accordance with the association's dedicatory instruments.

(b) Unless otherwise provided by a dedicatory instrument, elected directors who represent the commercial and residential membership attend and conduct the business of the property owners' association at a meeting under this section.

(c) In this section, a board meeting has the meaning assigned by a dedicatory instrument. Notwithstanding this subsection, the term does not include the gathering of a quorum of the board at any other venue, including at a social function unrelated to the business of the association, or the attendance by a quorum of the board at a regional, state, or national convention, workshop, ceremonial event, or press conference, if formal action is not taken and any discussion of association business is incidental to the social function, convention, workshop, ceremonial event, or press conference.

(d) Unless otherwise provided by a dedicatory instrument, the board shall keep a record of each regular, emergency, or special board meeting in the form of written minutes or an audio recording of the meeting. A record of a meeting must state the subject of each motion or inquiry, regardless of whether the board takes action on the motion or inquiry, and indicate each vote, order, decision, or other action taken by the board. The board shall make meeting records, including approved minutes, available to a member for inspection and copying, at the member's expense, during the normal business hours of the association on the member's written request to the board or the board's representative. The board shall approve the minutes of a board meeting not later than the next regular board meeting.

(e) Unless otherwise provided by a dedicatory instrument, before the board calls an executive session, the board shall convene in a regular or special board meeting for which notice has been given as provided by this section. During that board meeting, the presiding board member may call an executive session by announcing that an executive session will be held to deliberate a matter described by Subsection (f) and identifying the specific subdivision of Subsection (f) under which the executive session will be held. A vote or other action item may not be taken in executive session. An executive session is not subject to the requirements of Subsection (d).

(f) Unless otherwise provided by a dedicatory instrument, a property owners' association board may meet in executive session to deliberate:

(1) anticipated or pending litigation, settlement offers, or interpretations of the law with the association's legal counsel;

(2) complaints or charges against or issues regarding a board member or an agent, employee, contractor, or other representative of the association;

(3) all financial matters concerning a specific property owner;

(4) a payment plan for an association member who has a financial obligation to the association;

(5) a foreclosure of a lien;

(6) an enforcement action against an association member, including for nonpayment of amounts due;

(7) the purchase, exchange, lease, or value of real property, if the board determines in good faith that deliberation in an open board meeting may have a detrimental effect on the association;

(8) business and financial issues relating to the negotiation of a contract, if the board determines in good faith that deliberation in an open board meeting may have a detrimental effect on the position of the association;

(9) matters involving the invasion of privacy of an individual owner;

(10) an employee matter; and

(11) any other matter the board considers necessary or reasonable to further assist the association's operation.

#### **§ 215.008. Voting**

(a) The number of votes to which an individual or corporation who is a member of a property owners' association is entitled is determined by the dedicatory instruments of the association.

(b) Each corporation or individual who is a member of the property owners' association may vote by proxy as provided for nonprofit corporations under Sections 22.160(b) and (c), Business Organizations Code.

(c) Notwithstanding any provision of the certificate of formation or bylaws to the contrary, a member vote on any matter may be conducted by mail, by facsimile transmission, by e-mail, or by any combination of those methods.

#### **§ 215.009. Restrictive Covenants**

(a) A property owners' association may enforce its restrictive covenants as follows:

(1) by exercising discretionary authority relating to a restrictive covenant unless a court has determined by a preponderance of the evidence that the exercise of discretionary authority was arbitrary, capricious, or discriminatory; and

(2) by initiating, defending, or intervening in litigation or an administrative proceeding affecting the enforcement of a restrictive covenant or the protection, preservation, or operation of property subject to the association's dedicatory instruments.

(b) If the association prevails in an action to enforce restrictive covenants, the association may recover reasonable attorney's fees and costs incurred.

(c) An association may use self-help to enforce its restrictive covenants against a residential or commercial property owner as necessary to prevent immediate harm to a person or property, or as otherwise reasonable. If a property owner commits a subsequent repeat violation of the restrictive covenants within 12 months of the initial violation, the association is not required to provide the property owner with advance notice before the association implements self-help.

(d) For purposes of Subsection (c), an advance, annual notice of maintenance requirements is considered notice to the extent notice is required.

#### **§ 215.010. Attorney's Fees in Breach of Restrictive Covenant Action**

In an action based on breach of a restrictive covenant, the prevailing party is entitled to reasonable attorney's fees, costs, and actual damages.

#### **§ 215.011. Common Areas**

A property owners' association may adopt reasonable rules regulating common areas.

#### **§ 215.012. Resale Certificates**

A property owners' association shall provide resale certificates only for residential properties and in the manner provided by Section 207.003.

#### **§ 215.013. Management Certificate**

(a) A property owners' association shall record in each county in which any portion of the development governed by the association is located a management certificate, signed and acknowledged by an officer of the association, stating:

- (1) the name of the development;
- (2) the name of the association;
- (3) the recording data for the declaration and all supplementary declarations;
- (4) the applicability of any supplementary declarations to residential communities;

(5) the name and mailing address of the association; and

(6) other information the association considers appropriate.

(b) A property owners' association shall record an amended management certificate not later than the 30th day after the date the association has notice of a change in information in the recorded certificate required by Subsection (a).

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

#### **§ 215.014. Priority of Payments**

Unless otherwise provided in writing by the property owner at the time payment is made, a payment received by a property owners' association from the owner shall be applied to the owner's debt in the following order of priority:

(1) any delinquent assessment;

(2) any current assessment;

(3) any attorney's fees incurred by the association associated solely with assessments or any other charge that could provide the basis for foreclosure;

(4) any fines assessed by the association;

(5) any attorney's fees incurred by the association that are not subject to Subdivision (3); and

(6) any other amount owed to the association.

#### **§ 215.015. Foreclosure**

A property owners' association may not foreclose an association assessment lien unless the association first obtains a court order of sale.

### **TEXAS PARKS AND WILDLIFE CODE**

#### **§ 43.0612. Parks and Wildlife Code**

(a) In this section:

(1) "Property owners' association" has the meaning assigned by Section 202.001, Property Code.

(2) "Qualified individual" means an individual who has a wildlife management plan approved by the department.

(b) The department may issue to a qualified individual, a political subdivision, or a property owners' association a permit authorizing the trapping and transporting of surplus white-tailed deer found on the property owned by the qualified individual or within the boundaries of the political subdivision or the geographic area in which property subject to the property owners' association is located.

(c) Not later than the 30th day before the date of the first planned trapping and transporting of white-tailed deer, a qualified individual, a political subdivision, or a property owners' association shall file with the department an application showing that an overpopulation of white-tailed deer exists on the property owned by the qualified individual or within the boundaries of the political subdivision or the geographic area in which property subject to the property owners' association is located. If the department issues a permit to a requesting qualified individual, political subdivision, or property owners' association, the permit shall contain specific instructions detailing the location to which the trapped white-tailed deer are to be transported or transplanted.

(d) After receipt of an application, the department may issue to the qualified individual, political subdivision, or property owners' association a permit specifying:

- (1) the location to which trapped white-tailed deer must be transported; and
- (2) the purpose for which the trapped deer are to be used.

(e) The department may deny a qualified individual, a political subdivision, or a property owners' association a permit if no suitable destination for the trapped white-tailed deer exists.

(f) A qualified individual, a political subdivision, or a property owners' association trapping and transporting white-tailed deer under this section must make reasonable efforts to ensure:

- (1) safe and humane handling of trapped white-tailed deer; and
- (2) minimization of human health and safety hazards in every phase of the trapping and transporting of white-tailed deer.

(g) A permit issued under this section may authorize a qualified individual, a political subdivision, or a property owners' association to trap and transport white-tailed deer only between October 1 of a year and March 31 of the following year, unless white-tailed deer found on the property owned by the qualified individual or within the boundaries of the political subdivision or the geographic area in which property subject to the property owners' association is located pose a threat to human health or safety, in which case the provision of Subsection (e) does not apply and a permit may authorize the qualified individual, political subdivision, or property owners' association to trap and transport white-tailed deer at any time of the year.

(h) A permit issued under this section does not entitle a person to take, trap, or possess white-tailed deer found on any privately owned land without the landowner's written permission, unless the permit holder is the landowner.

(i) The state is not liable for and may not incur any expense for the trapping and transporting of white-tailed deer under a permit issued under this section.

(j) The department may not charge a fee for a white-tailed deer trapping and transporting permit issued under this section.

(k) The commission may adopt rules necessary for the implementation of this chapter, including rules which enhance the opportunity to relocate overpopulation of urban deer and relating to required notification, record-keeping, permit conditions, and the disposition of trapped white-tailed deer. The commission shall adopt rules for determining the circumstances under which a qualified individual, political subdivision, or property owners' association may obtain a permit issued under this section.

## **TEXAS TRANSPORTATION CODE**

### **§ 430.002. Signs Erected by Neighborhood Association**

(a) In this section, "property owners' association" means an association described by Section 204.004, Property Code.

(b) A property owners' association may install a speed feedback sign or a solar-powered light-emitting diode (LED) stop sign on a road, highway, or street in the association's jurisdiction if:

(1) the association receives the consent of the governing body of the political subdivision that maintains the road, highway, or street for the placement of the sign; and

(2) the association pays for the installation of the sign.

(c) A property owners' association that installs a sign under this section is responsible for the maintenance of the sign.

## **TEXAS FINANCE CODE**

### **§ 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 30<sup>th</sup> 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.

## **TEXAS RULES OF CIVIL PROCEDURE**

### **RULE 735. Foreclosures Requiring a Court Order**

#### **735.1. Liens Affected**

Rule 736 provides the procedure for obtaining a court order, when required, to allow foreclosure of a lien containing a power of sale in the security instrument, dedicatory instrument, or declaration creating the lien, including a lien securing any of the following:

- (a) a home equity, reverse mortgage, or home equity line of credit under article XVI, sections 50(a)(6), 50(k), and 50(t) of the Texas Constitution;
- (b) a tax lien transfer or property tax loan under sections 32.06 and 32.065 of the Tax Code; or
- (c) a property owners' association assessment under section 209.0092 of the Property Code.

### **735.2. Other Statutory and Contractual Foreclosure**

A Rule 736 order does not alter any foreclosure requirement or duty imposed under applicable law or the terms of the loan agreement, contract, or lien sought to be foreclosed. The only issue to be determined in a Rule 736 proceeding is whether a party may obtain an order under Rule 736 to proceed with foreclosure under applicable law and the terms of the loan agreement, contract or lien sought to be foreclosed.

### **735.3. Judicial Foreclosure Unaffected**

A Rule 736 order is not a substitute for a judgment for judicial foreclosure, but any loan agreement, contract, or lien that may be foreclosed using Rule 736 procedures may also be foreclosed by judgment in an action for judicial foreclosure.

## **RULE 736. Expedited Order Proceeding**

### **736.1. Application**

- (a) *Where Filed.* An application for an expedited order allowing foreclosure of a lien listed in Rule 735 to proceed must be filed in a county where all or part of the real property encumbered by the loan agreement, contract, or lien sought to be foreclosed is located or in a probate court with jurisdiction over proceedings involving the property.
- (b) *Style.* An application must be styled "In re: Order for Foreclosure Concerning [state: property's mailing address] under Tex. R. Civ. P. 736."
- (c) *When Filed.* An application may not be filed until the opportunity to cure has expired under applicable law and the loan agreement, contract, or lien sought to be foreclosed.
- (d) *Contents.* The application must:

(1) Identify by name and last known address each of the following parties:

- (A) "Petitioner" - any person legally authorized to prosecute the foreclosure;



(B) “Respondent” – according to the records of the holder or servicer of the loan agreement, contract, or lien sought to be foreclosed.

(i) for a home equity loan, reverse mortgage, or home equity line of credit, each person obligated to pay the loan agreement, contract, or lien sought to be foreclosed and each mortgagor, if any, of the loan agreement, contract, or lien sought to be foreclosed;

(ii) for a tax lien transfer or property tax loan, each person obligated to pay the loan agreement, contract, or lien sought to be foreclosed, each mortgagor, if any, of the loan agreement, contract, or lien sought to be foreclosed, each owner of the property, and the holder or any recorded preexisting first lien secured by the property;

(iii) for a property owners’ association assessment, each person obligated to pay the loan agreement, contract or lien sought to be foreclosed who has a current ownership interest in the property;

(2) Identify the property encumbered by the loan agreement, contract, or lien sought to be foreclosed by its commonly known street address and legal description.

(3) Describe or state:

(A) the type of lien listed in Rule 735 sought to be foreclosed and its constitutional or statutory reference;

(B) the authority of the party seeking foreclosure, whether as the servicer, beneficiary, lender, investor, property owners’ association, or other person with authority to prosecute the foreclosure;

(C) each person obligated to pay the loan agreement, contract, or lien sought to be foreclosed;

(D) each mortgagor, if any, of the loan agreement, contract, or lien sought to be foreclosed who is not a maker or assumer of the underlying debt;

(E) as of a date that is not more than sixty days prior to the date the application is filed:

(i) if the default is monetary, the number of unpaid scheduled payments,

(ii) if the default is monetary, the amount required to cure the default,

(iii) if the default is non-monetary, the facts creating the default, and

- (iv) if applicable, the total amount required to pay off the loan agreement, contract, or lien;
  - (F) that the requisite notice or notices to cure the default has or have been mailed to each person as required under applicable law and the loan agreement, contract, or lien sought to be foreclosed and that the opportunity to cure has expired; and
  - (G) that before the application was filed, any other action required under applicable law and the loan agreement, contract, or lien sought to be foreclosed was performed.
- (4) For a tax lien transfer or property tax loan, state all allegations required to be contained in the application in accordance with section 32.06(c-1)(1) of the Tax Code.
- (5) Conspicuously state:
  - (A) that legal action is not being sought against the occupant of the property unless the occupant is also named as a respondent in the application; and
  - (B) that if the petitioner obtains a court order, the petitioner will proceed with a foreclosure of the property in accordance with applicable law and the terms of the loan agreement, contract, or lien sought to be foreclosed.
- (6) Include an affidavit of material facts in accordance with Rule 166a(f) signed by petitioner or the servicer describing the basis for foreclosure and, depending on the type of lien sought to be foreclosed, attach a legible copy of:
  - (A) the note, original recorded lien, or pertinent part of a property owners' association declaration or dedicatory instrument establishing the lien, and current assignment of the lien, if assigned;
  - (B) each notice required to be mailed to any person under applicable law and the loan agreement, contract, or lien sought to be foreclosed before the application was filed and proof of mailing of each notice; and
  - (C) for a tax lien transfer or property tax loan:
    - (i) the property owner's sworn document required under section 32.06(a-1) of the Tax Code; and
    - (ii) the taxing authority's certified statement attesting to the transfer of the lien, required under section 32.06(b) of the Tax Code.

## **736.2. Costs**

All filing, citation, mailing, service, and other court costs and fees are costs of court and must be paid by petitioner at the time of filing an application with the clerk of the court.

### **736.3. Citation**

(a) *Issuance.*

(1) When the application is filed, the clerk must issue a separate citation for each respondent named in the application and one additional citation for the occupant of the property sought to be foreclosed.

(2) Each citation that is directed to a respondent must state that any response to the application is due the first Monday after the expiration of 38 days from the date the citation was placed in the custody of the U.S. Postal Service in accordance with the clerk's standard mailing procedures and state the date that the citation was placed in the custody of the U.S. Postal Service by the clerk.

(b) *Service and Return.*

(1) The clerk of the court must serve each citation, with a copy of the application attached, by both first class mail and certified mail. A citation directed to a respondent must be mailed to the respondent's last known address that is stated in the application. A citation directed to the occupant of the property sought to be foreclosed must be mailed to Occupant of [state: property's mailing address] at the address of the property sought to be foreclosed that is stated in the application.

(2) Concurrently with service, the clerk must complete a return of service in accordance with Rule 107, except that the return of service need not contain a return receipt. For a citation mailed by the clerk in accordance with (b)(1), the date of service is the date and time the citation was placed in the custody of the U.S. Postal Service in a properly addressed, postage prepaid envelope in accordance with the clerk's standard mailing procedures.

(3) The clerk shall only charge one fee per respondent or occupant served under this rule.

### **736.4. Discovery**

No discovery is permitted in a Rule 736 proceeding.

### **736.5. Response**

(a) *Generally.* A respondent may file a response contesting the application.

(b) *Due Date.* Any response to the application is due the first Monday after the expiration of 38 days from the date the citation was placed in the custody of the U.S. Postal Service in accordance

with the clerk's standard mailing procedures, as stated on the citation.

(c) *Form.* A response must be signed in accordance with Rule 57 and may be in the form of a general denial under Rule 92, except that a respondent must affirmatively plead:

- (1) why the respondent believes a respondent did not sign a loan agreement document, if applicable, that is specifically identified by the respondent;
- (2) why the respondent is not obligated for payment of the lien;
- (3) why the number of months of alleged default or the reinstatement or pay off amounts are materially incorrect;
- (4) why any document attached to the application is not a true and correct copy of the original; or
- (5) proof of payment in accordance with Rule 95.

(d) *Other Claims.* A response may not state an independent claim for relief. The court must, without a hearing, strike and dismiss any counterclaim, cross claim, third party claim, intervention, or cause of action filed by any person in a Rule 736 proceeding.

#### **736.6. Hearing Required When Response Filed**

The court must not conduct a hearing under this rule unless a response is filed. If a response is filed, the court must hold a hearing after reasonable notice to the parties. The hearing on the application must not be held earlier than 20 days or later than 30 days after a request for a hearing is made by any party. At the hearing, the petitioner has the burden to prove by affidavits on file or evidence presented the grounds for granting the order sought in the application.

#### **736.7. Default When No Response Filed**

(a) If no response to the application is filed by the due date, the petitioner must file a motion and proposed order to obtain a default order. For the purposes of obtaining a default order, all facts alleged in the application and supported by the affidavit of material facts constitute prima facie evidence of the truth of the matters alleged.

(b) The court must grant the application by default order no later than 30 days after a motion is filed under (a) if the application complies with the requirements of Rule 736.1 and was properly served in accordance with Rule 736.3. The petitioner need not appear in court to obtain a default order.

(c) The return of service must be on file with the clerk of the court for at least 10 days before the court may grant the application by default.

### **736.8. Order**

(a) The court must issue an order granting the application if the petitioner establishes the basis for the foreclosure. Otherwise, the court must deny the application.

(b) An order granting the application must describe:

(1) the material facts establishing the basis for foreclosure;

(2) the property to be foreclosed by commonly known mailing address and legal description;

(3) the name and last known address of each respondent subject to the order; and

(4) the recording or indexing information of each lien to be foreclosed.

(c) An order granting or denying the application is not subject to a motion for rehearing, new trial, bill of review, or appeal. Any challenge to a Rule 736 order must be made in a suit filed in a separate, independent, original proceeding in a court of competent jurisdiction.

### **736.9. Effect of the Order**

An order is without prejudice and has no res judicata, collateral estoppel, estoppel by judgment, or other effect in any other judicial proceeding. After an order is obtained, a person may proceed with the foreclosure process under applicable law and the terms of the lien sought to be foreclosed.

### **736.10. Bankruptcy**

If a respondent provides proof to the clerk of the court that respondent filed bankruptcy before an order is signed, the proceeding under this rule must be abated so long as the automatic stay is effective.

### **736.11. Automatic Stay and Dismissal if Independent Suit Filed**

(a) A proceeding or order under this rule is automatically stayed if a respondent files a separate, original proceeding in a court of competent jurisdiction that puts in issue any matter related to the origination, servicing, or enforcement of the loan agreement, contract, or lien sought to be foreclosed prior to 5:00 p.m. on the Monday before the scheduled foreclosure sale.

(b) Respondent must give prompt notice of the filing of the suit to petitioner or petitioner's attorney and the foreclosure trustee or substitute trustee by any reasonable means necessary to stop the scheduled foreclosure sale.

(c) Within ten days of filing suit, the respondent must file a motion and proposed order to dismiss or vacate with the clerk of the court in which the application was filed giving notice that

respondent has filed an original proceeding contesting the right to foreclose in a court of competent jurisdiction. If no order has been signed, the court must dismiss a pending proceeding. If an order has been signed, the court must vacate the Rule 736 order.

(d) If the automatic stay under this rule is in effect, any foreclosure sale of the property is void. Within 10 business days of notice that the foreclosure sale was void, the trustee or substitute trustee must return to the buyer of the foreclosed property the purchase price paid by the buyer.

(e) The court may enforce the Rule 736 process under chapters 9 and 10 of the Civil Practices and Remedies Code.

#### **736.12. Attachment of Order to Trustee's Deed**

A conformed copy of the order must be attached to the trustee or substitute trustee's foreclosure deed.

#### **736.13. Promulgated Forms**

The Supreme Court of Texas may promulgate forms that conform to this rule.