

# SEMINAR

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## 2011 TEXAS PROPERTY OWNERS ASSOCIATION REFORM LAWS



*Presented By:*

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## 2011 TEXAS PROPERTY OWNERS ASSOCIATION REFORM LAWS

### TEXAS PROPERTY CODE §202

#### PROPERTY USE

- **RAIN BARREL RULES:** Determine the need for rules by reviewing the existing Association dedicatory instruments and geographics, *e.g.*, size of lots, setbacks, location of condominium units, etc. If there are no existing restrictions/rules, owners may have an absolute right to install any number – anywhere.

**Description:** POAs must permit owners to install and use rain-harvesting devices if they meet certain architectural requirements.

**Specifics:** POAs may, however, still:

- prohibit owners from installing a rainwater harvesting system on (1) property owned by the POA, (2) common elements, or (3) an owner's property between the front building line and the street;
  - prevent owners from installing devices that are a different color than or inconsistent with the home's color scheme;
  - prohibit devices that display language or other content that is not typically displayed as manufactured; and
  - regulate the size, type, shielding of, and materials used in the construction and/or installation of the device(s) if located on side of house or visible from the street, another lot or common area. However, the regulations cannot make it economically impossible to install the device(s) and there is reasonably sufficient area on the owner's property to install the device.
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- **SOLAR PANEL RULES:** Determine the need for rules by reviewing the existing Association dedicatory instruments and geographics, *e.g.*, size of lots, setbacks, location of condominium units, etc.

**Description:** POAs must permit owners to install solar panels with certain permissible limitations.

**Specifics:** The dedicatory instruments may still prevent an owner from installing a device that:

- as adjudicated by a court, threaten public health or safety or violate a law;
- is located on property owned or maintained by the POA;
- is located in common elements;
- is located anywhere but on the owner's roof (on home or other allowed structure) or in owner's fenced yard or patio;
- if mounted on the roof:
  - (1) extends beyond the roofline;
  - (2) has an edge that is not parallel to the roofline,
  - (3) does not conform to the slope of the roof, or
  - (4) is located in an area other than as designated by the POA, unless the alternate location desired by the owner would increase the estimated annual energy production by more than 10%;

- has a frame, support bracket or visible piping or wiring that is not a silver, bronze or black tone commonly available in the marketplace;
- is taller than the fence line;
- is installed in a manner that voids material warranties;
- is installed without prior approval by the POA or its designated architectural committee; or
- if the device would “substantially interfere with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities.” Owners can overcome this argument, however, by getting all adjoining owners' written approval.

There is an exception for the development period during which the declarant can prohibit or restrict the installation.

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- **STORM SHINGLES:** So long as they *resemble* other authorized shingles in subdivision and *match the aesthetics* of the surrounding property, Owners have an absolute right to install.

**Description:** POAs must allow owners to install shingles of certain materials made to resist wind and hail, provide heating/cooling efficiency, or generate solar energy.

**Specifics:**

- The shingles will be allowed, as long as they:
  - (1) resemble other approved shingles in the subdivision,
  - (2) are more durable or of better quality than "normal" shingles, and
  - (3) they match the aesthetics of the property surrounding the owner's property.
- Restrictions that prohibit or restrict such installation are void.

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- **FLAG RULES:** Determine the need for rules by reviewing the existing Association dedicatory instruments and geographics, *e.g.*, size of lots, setbacks, location of condominium units, etc. Unless the Association has rules that comply with the new law, it may not be able to dictate any aspect of newly permitted flags.

**Description:** POAs must permit owner to display the US, Texas, or military branch flag, with permissible Limitations.

**Specifics:** The only permissible dedicatory instrument restrictions a POA can impose and enforce regarding US, Texas, and military flag displays are:

- requirements that U.S. and Texas flags be displayed in accordance with the US/Texas flag code;
- requirement that a flagpole (freestanding or attached to a dwelling) be constructed of permanent, long-lasting materials, with an appropriate finish that is harmonious with the dwelling;

- requirement that the display comply with all applicable zoning ordinances, easements, and setback requirements;
- requirement that the flag and flagpole be maintained in good condition and any deteriorated flag or structurally unsafe flagpole be repaired, replaced, or removed;
- regulation of the size, number, and location of flagpoles displayed (except the regulation must allow a minimum of at least one flagpole per property that is not more than 20 feet in height);
- regulation of the size of a flag;
- regulation of the size, location, and intensity of any lights used to illuminate a flag;
- reasonable restrictions on noise caused by an external halyard (hoisting rope) or flagpole; and
- prohibition against owners locating flags or flagpoles on common areas or common elements.

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- **RELIGIOUS DISPLAY RULES:** Determine the need for rules by reviewing the existing Association dedicatory instruments and geographics, *e.g.*, size of lots, setbacks, location of condominium units, etc.

**Description:** POAs must allow an owner to display religious items on his front door or doorframe, with certain permissible limitations.

**Specifics:** The religious display may not:

- contain language or graphics patently offensive to a passerby;
- be larger than 25 cumulative square inches in size or
- use a material or color for an entry door that is prohibited by the governing documents.

POAs have the right to "self help" under this law, *i.e.*, they may remove an item that violates deed restrictions, provided the deed restrictions don't conflict with this statute.

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## TEXAS PROPERTY CODE §209

### **ELECTIONS, MEETINGS & DIRECTORS**

- **OPEN BOARD MEETINGS AND NOTICE TO OWNERS: *REQUIRED*** (with the exception of certain matters allowed for executive sessions and other forums). *See, Exhibit "A"*

**Description:** Board meetings (regular and special) must be open to owners, with some exceptions.

**Specifics:**

- The board has the right to adjourn an open board meeting and reconvene in a closed executive session for certain issues as follows: personnel matters; litigation; contract negotiations; enforcement actions;

confidential attorney communications; matters involving the invasion of owners' privacy; or; matters involving parties who have requested confidentiality and the board has agreed to honor that request.

- Decisions made in executive sessions must be summarized orally in general terms, including any expenditures approved, and recorded in the minutes.
- Boards must keep written minutes as record of each regular and special meeting and give owners access to approved minutes.
- Boards must give members notice of upcoming board meetings (regular and special), including the date, hour, place, and general subject of issues to be brought up in executive sessions.
- The Board's notice of meeting must be either:
  - (1) mailed to owners at least 10 days beforehand; or
  - (2) provided at least 72 hours before meeting by: (a) being posted notice in a conspicuous location, either in a common area or on a POA website; and (b) being emailed to all owners who have registered their email address to the POA.
- An owner has a duty to register and keep his email address updated with the POA.
- Allowances are made for certain recessed board meetings to be continued to the next day without notice.
- Board meeting notice is not required if:
  - (1) The board meets by telephone or electronically in any alternate manner whereby all directors may speak and be heard by all other directors or by unanimous written consent on:
    - (a) routine or administrative matters, or
    - (b) an action is necessary to address an urgent or emergency situation that requires immediate action.
- The right of a board to meet and vote without prior notice to the members does not apply to the following matters:
  - (1) fines;
  - (2) damage assessments;
  - (3) initiation of foreclosure actions or enforcement actions;
  - (4) increases in assessments;
  - (5) levying special assessments;
  - (6) appeals from denials of architectural control approval; or
  - (7) suspending rights of an owner before the owner has an opportunity to appear before the board.
- Actions taken without prior meeting notice must be summarized orally, including any actual or estimated expenditures approved, and documented in the minutes of the next regular or special noticed meeting.
- Board meetings during the development period are excluded from the open meeting requirement, but not for meetings conducted for the purposes of:
  - (1) adopting or amending the governing documents, including declarations, bylaws, rules, and regulations of the POA;
  - (2) increasing the amount of regular assessments of the POA or adopting or increasing a special assessment;



- (3) electing non-developer board members of the POA or establishing a process by which those members are elected; or
  - (4) changing the voting rights of members of the POA.
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- **MEETING NOTICE: *REQUIRED*** 10 to 60 day notice of owner meetings.

*Description:* POAs must give owners notice of a POA-wide election or vote.

*Specifics:* The notice must be given at least 10 to 60 days before meeting occurs, regardless of any provision in the declaration or bylaws to the contrary.

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- **RECOUNT PROCEDURES:** Owners may demand election recount by statutorily-allowed tabulators.

*Description:* POAs must conduct a recount of an election vote if requested by an owner.

*Specifics:*

- The request must be in writing by certified mail, return receipt requested, or other USPS confirmation service or in person to the POA's managing agent within 15 days after the date of the election.
- The request must be either:
  - (1) mailed to the POA's mailing address as listed on the latest management certificate; or
  - (2) delivered in person to the managing agent or the address designated for return of absentee ballots.
- Costs of the recount will be borne by the requesting owner, including the required cost to hire a qualified non-member to do the recount, unless the recount changes the results of the election.
- The recount must be conducted by
  - (1) a current or former:
    - (a) county judge;
    - (b) county elections administrator;
    - (c) justice of the peace;
    - (d) county voter registrar; or
  - (2) a person agreed on by the POA and persons requesting the recount.
- Recounts must be completed within 30 days of the owner's request. The board may continue to act in the meantime.

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- **SECRET BALLOTS NOT ALLOWED:** Ballots ***MUST*** be in writing and signed (*electronic votes are allowed*).

***Description:*** Secret ballots are prohibited.

***Specifics:***

- A member's vote in a POA-wide vote must be in writing and signed by the member, except for uncontested elections (*e.g.*, one candidate to fill one open director seat).
  - An electronic ballot is deemed to be in writing and signed.
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- **OWNER VOTING RIGHTS:** ***CANNOT*** be suspended.

***Description:*** Owners may not be disqualified from voting for any reason.

***Specifics:*** Provisions in dedicatory instruments that disqualify an owner's right to vote are void.

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- **DIRECTOR QUALIFICATIONS:** With the exception of no felons or crimes of moral turpitude, most owner director qualifications are ***VOID***.

***Description:*** Owner director qualifications are void; all owners may run for the Board.

***Specifics:***

- Provisions in a dedicatory instrument that prevent owners from running for a position on the POAs board are void.
  - An exception is present when the board is presented with written, documented evidence that a director has been convicted of a felony or crime involving "moral turpitude." Any such evidence against a sifting director results in that director immediately removed from the board and prohibited from future service.
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- **DEVELOPER DIRECTOR TRANSITION:** Existing developer board composition (developer to owner) reviewed to ensure compliance. Review control turnover provisions in form project documents to ensure compliance for new projects.

**Description:** Establishes timeframe when non-declarant owners must be elected to the Board.

**Specifics:**

- A declarant may appoint and remove board members during the declarant control period.
  - Regardless of what the declaration states, 120 days after 75% of the lots that may be created have been sold to non-declarant owners or 10 years if declaration does not include the number of lots that may be created, at least one-third of board members must be elected by the owners, not the declarant.
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- **ELECTRONIC & ABSENTEE BALLOTS:** Allowed. *See, Exhibit "B"*

**Description:** Electronic and absentee votes are valid if the ballots meet certain requirements.

**Specifics:**

- Regardless of any provision in the declaration or bylaws to the contrary, members may vote electronically or by means of absentee ballots.
  - Additional restrictions and required language are established for electronic ballots.
  - Electronic and absentee ballots count toward the quorum only on matters listed on the ballot, and do not count at all if the ballot item is modified at the meeting prior to the vote.
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- **DIRECTOR APPOINTMENT:** If term has expired, ***MAY NOT*** be appointed by Board.

**Description:** Directors may not be appointed to positions whose terms have expired.

**Specifics:**

- Directors may only be appointed to fill a vacancy created by a resignation, death or disability and only for the unexpired term.
  - This law does not apply during the development period or to a representative board.
  - POA board may amend POA bylaws to provide for elections to be held so as to be in compliance.
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- **ELECTION VOTE TABULATORS:** Candidates and their relatives are **PROHIBITED**; and access to ballots are **RESTRICTED**.

*Description:* Only election vote tabulators allowed access to ballots.

*Specifics:*

- A person who is running for election or is the subject of a vote (and that person's close relatives) cannot have access to ballots for that election or vote.
  - Only the vote tabulators (or those allowed to recount under §209.0057) can have access to ballots.
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- **ANNUAL MEETINGS & ELECTIONS:** Annual meetings are **REQUIRED**; otherwise, owners have right to call election meeting.

*Description:* POAs must hold annual meetings or owners may themselves call an election meeting.

*Specifics:*

- The board must call an annual meeting of the members.
  - If the board fails to call an annual meeting, an owner may demand an election meeting and, if the board again fails to call the meeting, three or more owners may form an election committee and, subject to certain procedural requirements, cause an election meeting to be held.
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### **ASSOCIATION RECORDS AND DOCUMENTS**

- **RECORDING REQUIREMENT:** All Association dedicatory instruments **MUST** be filed of record; otherwise, the instruments are of no effect.

*Description:* Unrecorded POA dedicatory instruments are of "no effect."

*Specifics:* POAs must record in the county real property records (where property is located) all "dedicatory instruments" (e.g., all governing documents – declaration, bylaws, articles, rules, etc.) or they are unenforceable.

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- **WEBSITE POSTING:** If Association or its management company has a publicly accessible website, all dedicatory instruments *MUST* be posted (or filed) thereon.

**Description:** A POA's dedicatory instruments must be posted on a POA "publicly accessible" website, if one is maintained by the POA.

**Specifics:** If a POA or its management company maintains a "publicly accessible" POA website, that website must include copies of all governing documents of the POA (e.g., declaration, bylaws, rules, articles and all amendments to same).

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- **DECLARATION AMENDMENT:** Only 67% owner approval required, regardless of higher percentage requirement in declaration.

**Description:** Declarations may be amended by 67% of the Owners (or less stated in the declaration).

**Specifics:** Regardless of language in the declaration to the contrary, all declaration amendments may be passed by 67% of the total votes allocated to owners, unless the declaration itself states a lower percentage, in which case the lower percentage controls.

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- **OPEN RECORDS:** Open records policy *MUST* be adopted and filed of record (including records production, review and copying), otherwise no charges are allowed; there are JP court remedies for owners who are denied access to records. *See, Exhibits "C" and "D"*

**Description:** POAs must adopt and file open records policy; open records procedures established.

**Specifics:**

- Owners (or their agents designated in writing) may have access to POA records, but they must submit written requests to the POA or its representative by certified mail to the mailing address of the POA or authorized representative as listed in the current management certificate.
- The request must identify the records requested and indicate whether the requesting owner wants to inspect the records or have the POA forward copies.
- The POA then has 10 business days from receipt of the request to, as appropriate to:
  - (1) provide written notice of dates on which records may be inspected, or
  - (2) provide the requested copies, or
  - (3) provide the owner written notice that it is unable to produce the records within the 10-day period and provide a date, within an additional 15 business days, by which the records will be sent or made available to the owner for inspection.
- General exceptions are made for attorney's files.
- Inspection must take place at mutually agreed time during normal business hours.

- Records can be produced in hard copy, electronic or other format reasonably available.
- POAs must adopt and record rules regarding production and copying of POA records, including a fee schedule for copy charges; otherwise the owner is not responsible for the costs.
- These costs cannot exceed those listed under the Texas Administrative Code's charges for providing copies of public information (1 TAC Section 70.3).
- POAs may require the owner to pay in advance.
- If estimated costs are lesser or greater than the actual costs, the POA shall submit a final invoice to owner before the 30<sup>th</sup> business day after information is delivered.
- If the final invoice includes additional amounts due not reimbursed to POA before 30<sup>th</sup> business day after date invoice sent to owner, the amounts may be added to the owner's account as an assessment.
- If estimated costs exceed the final invoice amount, the owner is entitled to a refund that shall be issued not later than the 30<sup>th</sup> business day after the date the invoice is sent to the owner.
- POAs may keep certain records confidential and decline to make them available (e.g., violation histories of owners, owners' personal financial information, owners' contact information other than address, and POA personnel files) unless the owner gives written approval or a court orders the POA to release the information.
- Owners denied access to records are given JP court remedies, after certified demand; prevailing party is entitled to attorneys' fees.

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- **RECORDS RETENTION:** Associations consisting of 15 lots or more **MUST** adopt and file of record a policy regarding retention of records. *See, Exhibit "E"*

**Description:** POAs must adopt a records retention policy; certain statutory time frames established.

**Specifics:** POAs with more than 14 lots must adopt a records retention policy that includes, at minimum, the following categories and retention periods:

- Financial records (7 years);
  - Account records of current owners (5 years);
  - Contracts for terms of at least one year or more (4 years after expiration of contract);
  - Minutes of owner meetings and board meetings (7 years);
  - Tax returns and audits (7 years); and
  - Governing documents (permanently).
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- If at the time an owner submits a payment, he/she is in default under a payment plan, the POA does not have to follow the above-described application schedule. However, fines cannot be given priority over any other amount owed under any circumstances.
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- **THIRD PARTY COLLECTIONS:** 30-day notice, via certified mail, prior to turnover **REQUIRED**; owner is not liable for fees under contingency agreements.

*Description:* Required notice to owner prior to turning delinquent accounts over to a third party collection agent and certain contingency fee arrangements made unenforceable against an owner.

*Specifics:*

- Before turning an owner's account over to a debt collector (attorney or other collection agent), the POA must provide 30-day notice of the delinquency via certified mail return receipt requested and advise the owner of payment plan alternatives to avoid collection efforts.
  - Owners not responsible for fees under contingency fee arrangements between the POA and its attorney or collection agent. The POA's collections contract with its attorney or other collection agent must require payment (the collection contract may not be contingent, and must hold the POA responsible for paying costs incurred under the contract).
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- **COPY CHARGE FORECLOSURE:** Foreclosure of debt consisting solely of fees charged for obtaining copies of Association records **PROHIBITED**.

*Description:* No POA foreclosure for copy charges related to books and records.

*Specifics:* Amounts added to an owners account as an assessment for POA books and records copies under §209.005(i) cannot be foreclosed on by the POA if the owners debt consists solely of these charges.

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- **JUNIOR LIENHOLDER NOTICE:** **REQUIRED** 60-day notice, via certified mail, and opportunity to cure.

*Description:* Prior notice of POA foreclosure must be sent to junior lienholders.

*Specifics:* POAs must notify inferior/subordinate lien holders evidenced by a deed of trust of the debt owed and give them an opportunity *to cure* before the *61<sup>st</sup> day after notice* received *before* proceeding *with* foreclosure.

## ASSESSMENTS, COLLECTIONS, LIENS, FORECLOSURE & VIOLATIONS

- **MILITARY NOTICE: *REQUIRED*** for certain enforcement actions.

*Description:* Mandatory inclusion of military notice established.

*Specifics:* All §209.006 notices must include a provision notifying owners that they may have special rights or relief if they are in active military duty.

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- **PAYMENT PLAN GUIDELINES:** Associations consisting of 15 lots or more ***MUST*** adopt and file of record payment plan guidelines. *See Exhibits "F" and "G"*

*Description:* Payment plans required and guidelines are mandated.

*Specifics:*

- POAs with more than 14 lots must offer payment plans for a minimum of 3 months and can (at the POA's discretion) allow payment plans up to a maximum of 18 months.
  - POAs must adopt and record reasonable payment plan guidelines/rules. Owners making payments pursuant to an approved payment plan must not be charged "monetary penalties." However, the POA may charge reasonable administration costs and interest.
  - POAs aren't required to offer a payment plan if an owner has defaulted on a payment plan in the last 2 years.
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- **APPLICATION OF PAYMENTS:** Owner payments ***MUST*** be applied in accordance with statutory applications.

*Description:* Mandatory application of payments schedule established.

*Specifics:*

- POAs must apply owners' payments in the following order:
  - (1) delinquent assessments;
  - (2) current assessments;
  - (3) attorney fees or third party collection costs incurred by the POA associated with assessments and any other charge that could provide the basis for foreclosure;
  - (4) other attorney fees;
  - (5) fines;
  - (6) other amounts.





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- **JUDICIAL FORECLOSURE:** Court order in an application for expedited foreclosure is **REQUIRED**.

*Description:* Non-judicial POA foreclosures prohibited.

*Specifics:*

- POAs pursuing foreclosure must go through an expedited judicial foreclosure process and receive a court order granting the POA the right to foreclose
  - Any other foreclosure method allowed by the POA's documents is prohibited unless an owner specifically agrees to it in writing.
  - Supreme Court of Texas has until 01-01-2012 to adopt rules, which will hopefully answer some of the currently unanswered questions.
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- **FORECLOSURE AMENDMENT:** 67% of owners can amend dedicatory instrument to adopt or remove foreclosure provisions.

*Description:* Foreclosure provisions can be added or removed by owners from declaration.

*Specifics:* Members can vote to add or remove foreclosure provisions in the governing documents by a vote of 67% of all votes, To trigger a meeting for a vote on the issue, owners representing at least 10% of all voting interests may request the POA hold a special meeting.

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- **LIEN NOTICES:** Prepared by attorneys. *See, Exhibit "H"*

*Description:* Confirms prior law that POA lien notices and similar instruments affect title to property.

*Specifics:* Existing law requiring attorneys to draft any instrument that affects title to real property applies to a POA's lien, notice of claim of lien, or similar document.

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## TEXAS PROPERTY CODE §207

### HOME SALES & RESALES

- **TRANSFER FEES:** Review existing transfer fees to determine limited need for statutorily required filing. And, attorney sample restrictions reviewed to ensure compliance with new "effective date" prohibitions.

**Description:** Certain types of transfer fees are prohibited with general exceptions for most POA transfer fees.

**Specifics:**

- This new law targets "private" transfer fees that provide a perpetual income stream to developers who use restrictive covenants to require payment every time a lot is sold (or resold) and makes them void.
  - Existing transfer fees are grandfathered, but made subject to strict reporting and notice requirements.
  - There are, however, 10 categories of exemptions two of which generally apply to the POA industry.
  - Subsection (7) exempts dues, fees, charges, assessments, contributions, or other types of payment under a declaration or other covenant or under law, including resale certificates, provided they are not paid to third parties other than the POA or a POA's managing agent stated in the POA's management certificate.
  - Subsection (9) exempts dues, fees, charges, assessments, fines or other types of payments made to an organization exempt from federal taxation under Section 501(c)(3) or 501(c)(4) Internal Revenue Code but only if the organization uses the payments to directly benefit the encumbered property by:
    - (1) supporting or maintaining only the encumbered property;
    - (2) constructing or repairing improvements only to the encumbered property; or
    - (3) 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.
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- **RESALE CERTIFICATES:** New time frames, production procedures and required information, including Association lawsuits (except tax suits) and transfer fee disclosure.

**Description:** New requirements and time frames for resale certificates are established.

**Specifics:**

- Either the purchaser, seller or their agent or a title company may request a resale certificate.
- The purchaser pays for the resale certificate fee unless otherwise agreed by the purchase and seller.
- POAs may require payment before beginning the process to issue a resale certificate but may not process payment until the certificate is available for delivery.
- In addition to the other laundry list of required inclusions, there are new requirements regarding:
  - (1) the purpose of special assessments,
  - (2) disclosure of all lawsuits the POA is a party, except ad valorem tax suits against a member of the POA, and

(3) statement of all fees, including description, amount and to whom paid.

- A resale certificate may be requested by an owner, prospective purchaser, the agent of either, or the title company. A resale certificate must have been prepared no more than 60 days before the date of delivery. (An owner will have to request a new one if a sale falls through and more than 60 days elapse.)
- If the party requesting the information is a purchaser or purchaser's agent, the POA may require him to provide the POA with reasonable evidence that the purchaser has entered into a contract to purchase property in the subdivision or otherwise has a right to acquire property in the subdivision.
- POAs may require payment before beginning the process to issue a resale certificate but may not process payment until the certificate is available for delivery.

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**ABC HOMEOWNERS ASSOCIATION, INC.**

**NOTICE OF REGULAR BOARD MEETING**

[Date]

Dear Homeowner:

The Board of Directors for the ABC Homeowners Association, Inc. will hold a regular meeting on \_\_\_\_\_, \_\_\_\_\_, 2012, at \_\_\_\_\_ p.m. at \_\_\_\_\_.

The subject of the meeting is general business of the Association, including discussion of items related to the Association budget and expenditures as well as discussion of proposed bids for the landscaping and pool repair jobs.

Items that may be discussed in executive session include: actions involving personnel, pending or threatened litigation, contract negotiations, enforcement actions, confidential communications with the Association attorney, matters involving invasion of privacy of owners, and other matters that are confidential by request of an affected party and agreement of the Board.

Very truly yours,

ABC HOMEOWNERS ASSOCIATION, INC..



**ABSENTEE BALLOT FOR THE MEETING OF THE MEMBERS OF  
ABC HOMEOWNERS ASSOCIATION, INC.**

I (We), \_\_\_\_\_, Owner(s) of  
\_\_\_\_\_, in the ABC subdivision, hereby submit this Absentee Ballot for  
the meeting of the Members of ABC Homeowners Association, Inc. to be held at  
\_\_\_\_\_, on \_\_\_\_\_, 2012, at  
\_\_\_\_\_ p.m.:

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date (required to be valid)*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date (required to be valid)*

**I (WE) HEREBY VOTE IN THE FOLLOWING MANNER:**

*(Place a check in either the "For" or "Against" box)*

**1) Approve Bylaw Amendment:**

☐ For

☐ Against

**2) Approve Special Assessment:**

☐ For

☐ Against

**3) Vote for Board of Directors:**

*(Choose only three (3) candidates)*

☐ [Candidate]

☐ [Candidate]

☐ [Candidate]

☐ [Candidate]

☐ [Candidate]

Write Ins:

☐ \_\_\_\_\_

☐ \_\_\_\_\_

☐ \_\_\_\_\_

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.

**ABC HOMEOWNERS ASSOCIATION, INC.**

**RESPONSE TO REQUEST FOR ASSOCIATION RECORDS**

[Date]

Dear Homeowner:

On \_\_\_\_\_, 20\_\_, the Association received your request to inspect the books and records of the Association. The books and records of the Association are available for you to inspect on regular business days, between the hours of 9 a.m. and 5 p.m., at the office of \_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_, Texas.

Please contact the \_\_\_\_\_ at (\_\_\_\_) \_\_\_\_-\_\_\_\_ to arrange for a mutually agreeable time for you to come and inspect the books and records. Please be advised that if you desire copies of specific records during or after the inspection, you must first pay the associated costs before the copies will be provided to you. A schedule of costs is included with this response.

Very truly yours,

ABC HOMEOWNERS ASSOCIATION, INC.

**ABC HOMEOWNERS ASSOCIATION, INC.**

**RESPONSE TO REQUEST FOR ASSOCIATION RECORDS**

[Date]

Dear Homeowner:

On \_\_\_\_\_, 20 \_\_, the Association received your request for copies of specific Association records. We are unable to provide you with the requested records within 10 business days of your request. However, the requested records will be available to you no later than 15 business days after the date of this response.

In order to obtain the records you must first pay the Association the cost of providing the records to you. The estimated cost to obtain the records you requested is \$\_\_\_\_\_. Upon receiving payment, the Association will mail the requested documents to you. You may also make payment and pick up the documents in person on regular business days, between the hours of 9 a.m. and 5 p.m., at the office of \_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_, Texas.

Very truly yours,

ABC HOMEOWNERS ASSOCIATION, INC.

## **RECORDS RETENTION SCHEDULE**

### **I. CORPORATE "LEGAL" DOCUMENTS & RECORDS**

The following records are to be retained permanently:

- Articles of Incorporation / Certificate of Formation
- Bylaws
- Restrictive Covenants / Declaration
- Amendments to the Articles of Incorporation / Certificate of Formation
- Amendments to the Bylaws
- Amendments to the Restrictive Covenants / Certificate of Formation
- Deeds for Association Property
- Annexation Records
- Plats
- Management Certificates

### **II. CORPORATE FINANCIAL RECORDS**

The following Financial Records and Reports shall be kept for seven (7) years:

- Check Register
- Trail Balance
- Prepaid/Accounts Receivable
- Income Statements
- Detailed General Ledger
- Accounts Payable
- Bank Statements/Bank Reconciliations / Cancelled Checks
- Approved Annual Budget
- Annual Assessment Roll and sample of a typical assessment statement
- Year End Audits / Tax Returns

### **III. MINUTES OR MEETINGS**

The following records are to be retained for seven (7) years:

- Approved Minutes of Board Meetings
- Approved Minutes and Records of ACC Meetings
- Approved Minutes of Committee Meetings
- Approved Minutes of Annual and Special Meetings of Members

### **IV. ACCOUNT RECORDS OF CURRENT OWNERS:**

Account records shall be kept for five (5) years.

### **V. CONTRACTS:**

Contracts with a term of more than one (1) year are to be retained for four (4) years after contract expires.



PAYMENT PLAN POLICY OF  
ABC HOMEOWNERS ASSOCIATION, INC.

1. Owners are entitled to one approved payment plan to pay their annual assessments.
2. All payment plans require a down payment and monthly payments.
3. Upon request, all Owners are automatically approved for a payment plan consisting of twenty percent (20%) down, with the balance paid off in equal monthly installments.
4. If an owner defaults on the payment plan, the payment plan is automatically terminated and the Association is not obligated to make another payment plan with the owner for the next two years.
5. Alternative payment plan proposals must be submitted to and approved by the Association. The Association is not obligated to approve alternative payment plan proposals. No payment plan may be shorter than 3 months or longer than 18 months.
6. The Association cannot charge late fees during the course of a payment plan, but can charge interest at the rate it is entitled to under its Governing Documents, if any, and can charge reasonable costs of administering the payment plan.



**SAMPLE PAYMENT PLAN LANGUAGE FOR  
NOTICE OF DELINQUENT ASSESSMENT**

A payment plan is available to you. In order to avoid having your account turned over to an attorney or collection agent, within 30 days of this notice, you must either pay your delinquent balance in full or contact the Association to enter into an approved payment plan. A copy of the Association's payment plan policy is enclosed herein for your convenience.

You are responsible for reimbursing the Association for all attorney's fees and costs incurred in collecting your delinquent balance. All attorney's fees and costs will be charged to you if you do not cure your delinquency or enter into an approved payment plan by \_\_\_\_\_, 20\_\_.

## NOTICE OF ASSESSMENT LIEN

STATE OF TEXAS           §  
                                     §  
COUNTY OF MONTGOMERY §

KNOW ALL BY THESE PRESENTS:

THAT the undersigned, ABC Homeowners Association, Inc., a Texas non-profit corporation, acting herein pursuant to the authority granted to it by the Declaration of Covenants, Conditions and , Restrictions, Affirmative Obligations and Conditions for ABC Subdivision ("Restrictions"), which have been filed in the Real Property Records of Montgomery County, Texas, under Clerk's File No. \_\_\_\_\_, for the purpose of giving notice of its lien on the real property and improvements thereon, if any, hereinafter described on the oath of its duly authorized agent, makes this affidavit and says as follows:

**Property Description:** The real property charged with such lien is described as follows:  
Property address: [Insert physical address]  
Legal description: [Duplicate from Deed]  
Account number: [Insert, if applicable]

**Owner of Record:**  
Owner of Record: [Insert name(s) as appears on Deed]

**Amount of Claim:** Records of ABC Homeowners Association, Inc. show that assessments, interest or other charges are currently due and owing in at least the amount shown below. Additional assessments, interest, attorney fees, costs or other charges will accrue in accordance with said Restrictions. Inquiries regarding the amount due and owing should be made to ABC Homeowners Association, Inc.

Amount of Claim: \$ \_\_\_\_\_

EXECUTED on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Signature: \_\_\_\_\_  
By: [Insert name]  
Title: President of ABC Homeowners  
Association, Inc.

STATE OF TEXAS           §  
                                     §  
COUNTY OF MONTGOMERY §

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, President of ABC Homeowners Association, Inc., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN UNDER my hand and seal of office on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Signature: \_\_\_\_\_  
By: [Insert name]  
Title: Notary Public – State of Texas  
My commission expires: \_\_\_\_\_

Return to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_