

## LEGISLATIVE CHANGES 2012

### **Collections (All Effective 01/01/2012 and do not apply to Condos)**

#### Notice Requirements

- An owner is not liable for the cost of attorney fees until the association sends a letter by certified mail that:
  - Itemizes the amount due
  - Offers a payment plan, and
  - Gives the owner 30 days to cure the delinquency

#### Payment Plans

- Each association must adopt and file guidelines for “alternative payment schedules” (Payment Plans)
- Payment plans must be at least 3 months and no longer than 18 months
- Any persons that have defaulted on a payment plan in the last two years is not entitled to a payment plan

#### Application of Payments

- Any partial payment must be applied in this order:
  - Delinquent assessments
  - Current assessments
  - Attorney or 3rd party cost associated with assessments
  - Other attorney fees
  - Fines
  - Anything else

If owner is in default of payment plan at time of payment, priority of payment no longer applies, with the exception of fines which will be paid last.

#### Foreclosure

- Non-judicial foreclosure is prohibited
- “Expedited foreclosure” process will be established by the Texas Supreme Court
- Junior lien holders must be notified at least 60 days in advance
- Foreclosure rights may be added or removed from CC&Rs by a vote of at least 67% of the total votes
- Foreclosure and Eviction notices must now contain verbiage informing active military personnel that they may have rights that protect them from these actions. This notice must be both in English and Spanish.

#### 3<sup>rd</sup> Party Collections

- Liens must be filed by attorneys
- An association may not sell its receivables

## Property use: (All Effective 06/20/2011 and do apply to all Associations)

### Flags and Flagpoles

- An Association must allow the display of US, Texas or US military flags. They must allow 1 flag pole for the purpose of displaying the flags that is not more than 20 feet in height.
- Guidelines can be adopted that:
  - Require display of flags in accordance with Federal and the State of Texas regulations
  - Require flagpoles to be made of durable materials with a finish harmonious with the dwelling
  - Regulate placement relative to setbacks and easements
  - Require flags and flagpoles be maintained in good condition
  - Regulate size, number and location of flagpoles
  - Regulate size of flags
  - Regulate size, location and intensity of illumination
  - Impose restrictions on noise made by external halyards

### Rainwater Harvesting

- An Association may not prohibit rain barrels and rainwater harvesting systems if the barrel or system;
  - Is on the owner's property and is not between the front of the owner's home and an adjoining or adjacent street,
  - Is a color consistent with the color scheme of the home, and
  - Does not display text or content that is not typically on such equipment.
- Guidelines may regulate the size, type, material used in construction and screening of equipment that is located on the side of a house or visible from a street, another lot or common area as long as:
  - The regulations do not make the installation economically unviable, and
  - There is reasonably sufficient area on the property for the system

### Solar Panels

- Generally, Associations can not prohibit an owner from installing solar energy devices, however
  - They can require approval prior to installation
  - They can require they be installed on a roof or in fenced yards or patios
  - Guidelines can require that roof installation not extend higher than or beyond the roof lines, conform to the slope of the roof, and regulate the color of the frames, brackets, and wires (only black, silver or bronze).

#### Energy Efficient Roof Shingles

- Associations cannot prohibit shingles that are primarily designed to be wind and hail resistant,
- Provide heating and cooling efficiencies greater than traditional shingles,
- Provide solar generation capabilities AND resemble shingles used through out the community, and
- Are more durable than shingles in the community AND match the aesthetics of the community.

#### Display of Religious Items

- Associations must allow the display of one or more religious symbols on the entry to a dwelling, as long as they are a “sincere religious belief” and
  - Do not exceed 25 square inches,
  - Do not contain language or images that are offensive to a passerby,
  - Do not-violate the law or threaten public health/safety
  - Must be located on the entry door or door frame.

### **Association Records (All Effective 01/01/2012 and do not apply to Condos with the exception of Filing Documents)**

#### Records Retention

- Each Association must now adopt and file a “Record Retention” policy with minimum retention standards put in place by the legislature

#### Owner Access to Records

- The legislature has placed minimum standards for response to an owner’s request for records:
  - Within 10 business days of receipt of certified request from an owner, the records inspection or production must be coordinated,
  - Association’s may require payment of an estimated, pre-set amount before copying or producing documents, which have been established by the legislation,
  - Amount charged is for the compilation, production and reproduction of records, and
  - Owner and attorney records are excluded from these standards

#### Filing Documents (Required by all Associations, Condo and Single Family)

- Although the filing of dedicatory instruments has been in place since 1999, the new law states that a dedicatory instrument has no affect until filed.
- Dedicatory instruments include any document that governs the establishment, maintenance or operation of a community.

### Website Posting

- If an association or management company on behalf of an association maintains a publically accessible website, all dedicatory instruments must be posted on the website.
- A “publically accessible website” is one where anyone with a browser can access it without a UserID and/or password

## **Elections and Voting (All Effective 09/01/2011 and do not apply to Condos)**

### Director Qualifications

- Any owner may run for the Board, including a husband and wife (or joint owners),
- An owner can not be disqualified from serving on the Board for delinquency or covenant violation matters,
- Any individual convicted of a felony or crime of moral turpitude is automatically and immediately removed from the Board.

### Voting

- All owners may vote – no owner may be disqualified from voting for any reason.
- A Director whose Term has expired must run for re-election.

### Voting Methods

- Four methods are now provided under the law.
  - In person voting at the meeting
  - By proxy to someone else attending the meeting
  - By electronic ballot
  - By absentee ballot
    - Absentee ballot must contain:
      - Each proposed action with opportunity to vote for or against
      - Ballot mailing and delivery instructions
      - Disclaimer that the ballot will not be counted if the proposal is changed at the meeting.

### Ballots

- All votes cast in an election or proposal must be in writing and signed by the owner (electronic votes are considered written and signed)
- Vote tabulators may not disclose individual votes
- A person can not tabulate votes or see votes of owners if he/she is a candidate or related to a candidate within the 3rd degree by blood or marriage.

### Recounts

- Any owner may make a written demand for a recount of a member vote within 15 days of meeting upon delivery by certified mail or in person.
- An independent person must be hired for the recount.

- The owner requesting the recount pays the cost in advance. If the result of the vote changes, the Association will reimburse the owner for the costs of the recount.
- Recount must be completed within 30 days of request AND payment.
- Decisions made by the Board during this period are valid.

## **Board Meetings (All Effective 01/01/2012 and do not apply to Condos)**

### Open Board Meetings

- All board meetings must be open to members
- Reasonable rules may be established and announced regarding the owner participation at meeting, such as
  - Open forum with limit on time, and
  - No discussion on action items not on the agenda

### Board Meeting Notice

- All owners must now be notified of Board meetings in advance, and must include the date, hour, place and general subject of board meetings, including a general description of any Executive Session matters.
  - Notice may be given in any one of the following methods:
    - Mailed to each owner 10 to 60 days in advance, or
    - Posted at least 72 hours in advance in a conspicuous place in the community AND emailed to each owner who has registered an email address for this purpose. If the Association has a website, you can post the notice on there as well.
- If you are not using the mailing option, you will need to adopt an Email Registration policy to ensure that homeowners are aware of how to register their emails so that notices are received.

### Board Meetings without Notice

- The Board may conduct a meeting without notice, as long as the following actions are not taken:
  - Increase in assessments or levying special assessments
  - Initiating foreclosure actions
  - Initiating enforcement actions (excluding TROs or health/safety concerns)
  - Appeals on denial of ACC submissions
  - Suspension of rights of an owner prior to a hearing
  - Imposing fines or damage assessments

Any action taken without notice to owners, must be orally summarized at the next announced meeting and placed into the minutes.

### Executive Session

- Executive sessions occur during regular Board meetings and are utilized to only consider:
  - Actions involving personnel
  - Pending or threatened litigation
  - Contract negotiations
  - Enforcement actions
  - Attorney-client communications
  - Private matters concerning individual owners
  - Other matters where affected parties request confidentiality
- Upon returning to regular meeting, each decision made in executive session must be orally summarized and placed in the minutes in general terms without breaching confidentiality