

SUBJECT OVERVIEW OF 2011 HOA REFORM LAWS FOR TEXAS [Corrected 7/15/11]

Prepared for "New Day for Texas HOAs: Overview of 2011 Reform Legislation For Condos and Owners Associations", State Bar of Texas Webcast Presented June 30, 2011

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SUBJECT <i>(Just enough to give you a clue.)</i>	STATUTE/ CODE	condo	BILL NO./ EFFECTIVE
<i>A little knowledge is a dangerous thing.</i> This is purposefully abbreviated, and not intended to be exhaustive, to replace the advice of competent legal counsel, or to address a particular situation. Legal knowledge is required for the proper use and interpretation of this material.			
ASSESS - COLLECTIONS. Consumer protections against certain collection practices and fees. Owner not liable for fees that are contingent on if or how much the debt collector extracts from owner. Doesn't prevent "deferred billing" if HOA pays its collector regardless of outcome. HOA can't assign assessment claims, except as loan collateral.	TPC Ch 209 - adds 209.0064	x	<u>HB 1228</u> 1/1/12
ASSESS - FORECLOSE (AUTHORITY). Owners can amend HOA docs to add or remove foreclosure power with 67% approvals.	TPC Ch 209 - adds 209.0093	x	<u>HB 1228</u> 1/1/12
ASSESS - FORECLOSE (COPY CHARGE). HOA may not foreclose a debt consisting solely of fees charged for obtaining copies of HOA records under 209.005(i).	TPC Ch 209 - adds (3) to 209.009	x	<u>HB 2761</u> 1/1/12
ASSESS - FORECLOSE (COURT ORDER REQUIRED). To foreclose, HOAs must use "expedited foreclosure" procedures to obtain a court order before HOA conducts its sale, unless owner waives. Directs Texas Supreme Court to create the procedures by 1/1/12. Expected to be similar to the process used with home equity liens.	TPC Ch 209 - adds 209.0092	x	<u>HB 1228</u> 1/1/12
ASSESS - FORECLOSE (LIEN). Amends the foreclosure statute - TPC Chapter 51 (not HOA-specific) - to confirm that HOAs have contract liens under TPC 51.015 by borrowing definitions of "assessment" from TPC Chapters 82 & 209. [Not substantive law change.]	51.015 - adds (1-a) to (a), amends (b)	✓	<u>SB 101</u> 9/1/11
ASSESS - FORECLOSE (LIENHOLDERS). As a prerequisite to foreclosure, HOA must give notice & 60-day opportunity to cure to holders of junior liens secured by recorded deeds of trust against the delinquent lot.	TPC Ch 209 - adds 209.0091	x	<u>HB 1228</u> 1/1/12
ASSESS - LIEN NOTICE. Confirms that publicly recorded notices of delinquency or lien are instruments affecting title to real property. <i>(Duh! That's why they must be prepared by attorneys licensed in Texas, else unauthorized practice of law.)</i> [Not substantive law change.]	TPC Ch 209 - adds 209.0094	x	<u>HB 1228</u> 1/1/12
ASSESS - PAYMENTS (APPLICATION). Dictates order by which HOA must apply owners' payments. 6 categories - starting with delinquent and current assessments, followed by attorneys fees and fines - except when owner's payment plan is in arrears.	TPC Ch 209 - adds 209.0063	x	<u>HB 1228</u> 1/1/12
ASSESS - PAYMENT PLANS. HOA must adopt guidelines for payment plans for delinquent assessments, and must record it with county. Creates minimum procedures. Terms of 3 to 18 months. Freeze on some penalties during a payment plan. Carve-outs for small HOAs and owners who defaulted on a prior payment plan. [Note. Same provision in two bills.]	TPC Ch 209 - adds 209.0062	x	<u>HB 1228</u> <u>HB 1821</u> 1/1/12

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DOCUMENTS - AMEND (DECLARATION). A declaration may be amended by 67% of votes, or any lower % stated in declaration. Should help HOAs with declarations that lack amendment provisions, or which require approvals higher than 67%. May help communities of owners "fix" the problems in their declarations. Can't amend bylaws to conflict with declaration. Excludes amendments during "development period".	TPC Ch 209 - adds 209.0041	<input type="checkbox"/>	SB 472 9/1/11
DOCUMENTS - AVAILABILITY. Dedicatory instruments must be available on a publicly accessible website IF (1) the HOA has one, or (2) the HOA manager maintains one on behalf of the HOA. <i>(A baby step in the right direction - one byte at a time!)</i>	TPC Ch 207 - adds 207.006	<input type="checkbox"/>	HB 1821 1/1/12
DOCUMENTS - DEFINITIONS. Minor changes to definition of "dedicatory instrument".	TPC Ch 202 - amends (1) of 202.001	<input checked="" type="checkbox"/>	HB 1821 1/1/12
DOCUMENTS - RECORDING. A governing document (bylaws, rules, guidelines) that is not recorded with the county by 1/1/12 will not be effective. <i>Whoa!</i> Since 1999, Texas has required that all "dedicatory instruments" (defined as "governing instruments") be recorded with the county. Some HOAs don't know about the decade-old duty or mistakenly insist that the organizational docs (like bylaws and rules) aren't "dedicatory instruments" that require recording. <i>(It does defy logic.)</i> Under the higher law of "better safe than sorry," before January 1 every HOA in Texas (condo & non) should inventory its governing documents and record whatever has not been previously recorded.	TPC Ch 202 - 202.006, amends (a) and adds (b)	<input checked="" type="checkbox"/>	HB 1821 1/1/12
GOVERN - BOARD QUALIFICATIONS. When a director's term expires, he must stand for re-election. Vacancies may be filled by appointment, but only for the remainder of the term. After that, he must be elected to the board. Carve-outs for directors appointed during "development period" and for boards of some master HOAs. Authorizes board to amend bylaws to conform to this law change.	TPC Ch 209 - adds 209.00593	<input type="checkbox"/>	HB 2761 1/1/12
GOVERN - BOARD QUALIFICATIONS. Opens the path to power. Voids provisions in HOA documents that restrict owner's right to run for the board. May overturn popular restrictions, such as term limits or not allowing spouses to serve at the same time. [Note. Same provision in two bills with different effective dates and different section numbers.] [Earlier Effective Date 9/1/11 controls.]	TPC Ch209 - adds 209.00592 (a)	<input type="checkbox"/>	SB 472 9/1/11
	TPC Ch 209 - adds 209.00591, Sub (a)	<input type="checkbox"/>	HB 2761 1/1/12
GOVERN - BOARD QUALIFICATIONS. If board gets governmental evidence that a director has been convicted of certain crimes, the director is automatically removed and ineligible to serve again. <i>(Oddly, it doesn't prohibit an ex-con from running for board or serving, and doesn't require background checks on candidates. HOA version of "Don't ask, don't tell"?)</i> [Note. Same provision in two bills with different effective dates and different section numbers.] [Earlier Effective Date 9/1/11 controls.]	TPC Ch209 - adds 209.00592 (b)	<input type="checkbox"/>	SB 472 9/1/11
	TPC Ch 209 - adds 209.00591, Sub (b)	<input type="checkbox"/>	HB 2761 1/1/12

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GOVERN - DECLARANT CONTROL. <u>Developers & Builders - The camel's nose is under the tent!</u> Permits a Declaration to have a "Declarant Control Period." But, no matter what the Declaration says, when developer sells 75% of the lots, <u>one-third</u> of the board must be elected by owners (not Declarant). If Declaration doesn't state maximum number of lots to be created, homeowners get to elect <u>one-third</u> of board 10 years after Declaration recorded. Three big issues: (1) Doesn't address effect of 100% of lot sales, (2) Doesn't distinguish lot sales to builders from home sales to consumers, and (3) TBD how or whether it applies retroactively.	TPC Ch 209 - adds 209.00591, Sub (c)	x	<u>HB 2761</u> 1/1/12
GOVERN - MEETINGS (MEMBERS). HOA board must call an annual meeting of members. If the board doesn't, a committee of owners may call a special meeting (not an annual meeting) to elect directors. Lots of issues emanate from the requirements and silences in this DIY section.	TPC Ch 209 - adds 209.014	x	<u>HB 2761</u> 1/1/12
GOVERN - MEETINGS (NOTICE). Requires HOA to give owners 10 to 60 days notice of elections and votes.	TPC Ch 209 - adds 209.0056	x	<u>HB 2761</u> 1/1/12
GOVERN - OPEN MEETINGS (BOARD). Requires open board meetings <i>(hurrah!)</i> with 4+ pages of State micro-management <i>(sigh)</i> . Lots of Dos & Don'ts - too much for thumbnail summary. Must give owners notice of board meetings. Defines "board meeting." Allows for electronic & telephonic board meetings. Executive sessions are allowed under certain circumstances. Peculiar application during "development period".	TPC Ch 209 - adds 209.0051	x	<u>HB 2761</u> 1/1/12
GOVERN - OPEN RECORDS. Requires open records <i>(hurrah!)</i> with 6+ pages of State micro-management <i>(groan)</i> . Again, lots of Dos & Don'ts - too much for thumbnail summary. HOA must adopt and record <u>two</u> policies (1) one for requesting, producing, and charging for records, (2) other for records retention. Cap on copy charges. HOA can't hide records with its attorney. Owner denied access to records may sue in JP court. Loser may have to pay winners legal fees. No carve-out for declarants.	TPC Ch 209 - rewrites 209.005	x	<u>HB 2761</u> 1/1/12
GOVERN - VOTING. No secret ballots. Ballots must be signed by owners unless uncontested election or electronic balloting. <u>[Note. Same provision in two bills with different effective dates.]</u> <u>[Earlier Effective Date 9/1/11 controls.]</u>	TPC Ch 209 - adds 209.0058	x	<u>SB 472</u> <u>9/1/11</u> <u>HB 2761</u> 1/1/12

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GOVERN - VOTING. Recognizes multiple ways of voting. Preserves voting in person or by proxy. Specifies procedures for voting by "absentee" or "electronic" ballot. Limits use of absentee ballot. Recognizes delegate voting. [Note. Same provision in two bills with different effective dates and different section numbers.] [Earlier Effective Date 9/1/11 controls.]	TPC Ch 209 - adds 209.00593	x	SB 472 9/1/11
	TPC Ch 209 - adds 209.00592	x	HB 2761 1/1/12
GOVERN - VOTING. Protects an owner's right to vote by voiding provisions in HOA documents that disqualify owner from voting in board elections or on matters affecting his rights & responsibilities. [Note. Same provision in two bills with different effective dates.] [Earlier Effective Date 9/1/11 controls.]	TPC Ch 209 - adds 209.0059	x	SB 472 9/1/11
			HB 2761 1/1/12
GOVERN - VOTING. Owners have right to demand a recount of an HOA election within 15 days after the election, but must pay the cost of the recount.	TPC Ch 209 - adds 209.0057	x	HB 2761 1/1/12
GOVERN - VOTING. Tries to make ballots confidential by limiting access to vote tabulators & recounters. Candidates & their kin can't tabulate.	TPC Ch 209 - adds 209.00594	x	SB 472 9/1/11
SALES - CONTRACT + RESALE CERTIFICATES. Amends section of Property Code that requires home seller (including homebuilders) to put a specified notice about the HOA in the sales contract. Greatly expands the wording and style of the required contract notice to "pull in" Chapter 207's resale certificate. Oddly, new subparagraphs (f) & (g) of 5.012 address delivery and cost of resale certificates, which more properly belong in Chapter 207 of Property Code.	TPC 5.012 - amends (a) and adds (a-1), (f) & (g)	x	HB 1821 1/1/12
SALES - RESALE CERTIFICATE. Small changes <i>(with huge effects)</i> to contents of resale certificate, such as disclosures of ALL lawsuits to which HOA is a party (as plaintiff or defendant) and ALL transfer-related fees by amount and payee. HOA has more time to issue the resale certificate. Purchasers who request resale certificates must provide proof of contract. Resale certificate good for 60 days max. Gives HOA right to collect fees from home purchasers (who are not yet members of HOA). HOA can require prepayment, but can't process the payment until certificate is prepared timely and ready for delivery. The home-buying public is most affected by this issue.	TPC Ch 207 - 207.003 - amends (a), (b) & (f), and adds (a-1) and (c-1)	x	HB 1821 1/1/12

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SALES - TRANSFER FEES. HOAs & managers, administrative "transfer fees" and "resale certificate fees" are safe ("legal") under exemption #7 of this new law. Although the 350-word sentence is challenging to decipher, the legislative intent was clear. Also, transfer fees collected by tax exempt 501(c)(3)&(4) entities (often affiliated with HOAs) are safe under exemption #9 if they "directly benefit" the subdivision that pays the fees. Like its predecessor - Prop Code Sec. 5.017 - this law goes after "private" transfer fees that provide a perpetual income stream to developers who use restrictive covenants to require payment every time a lot is sold . . . and resold - for 99 years. Against public policy. Ten categories of transfer-related fees are exempt from the general prohibition. Existing private transfer fee covenants that don't fall under one of the 10 exemptions are grandfathered, but only if they comply with the many new legal requirements that will be challenging to sustain. Developers can still impose transfer fees on the very first buyers of its lots, only.	Repeals TPC Sec. 5.017, adds TPC Sec. 5.201 et seq.	✓	HB 8 6/17/11
USES - FLAGS. HOA can't stop owner from flying flags of US, Texas, or a branch of US armed forces on his lot, but may regulate <u>IF</u> HOA has or adopts specific types of permitted rules, such as regulating the size, number, and location of flagpoles.	TPC Ch 202 - adds 202.011	✓	HB 2779 6/17/11
USES - RAIN BARRELS. HOA can't stop owner from installing a rain harvesting system on his lot, but may regulate <u>IF</u> HOA has or adopts specific types of permitted rules, such as use of colors that match the color scheme of the house. [SEC. 6 of HB 3391]	TPC Ch 202 - amends 202.007(d)	✓	HB 3391 9/1/11
USES - RELIGIOUS. HOA can't stop resident from installing certain religious items on front door of unit/home, if the display is "motivated by a resident's sincere religious belief." HOA is authorized to regulate <u>IF</u> HOA has or adopts specific types of permitted "covenants", such as limiting size to 25 sq. inches. Authorizes HOA to use self-help to remove displays that violate a permitted covenant.	TPC Ch 202 - adds 202.018	✓	HB 1278 6/17/11
USES - ROOFS. Owner may install roof shingles that are wind & hail resistant, energy efficient, or solar generating, if quality and appearance are comparable to the subdivision standard. (<i>A "look-alike" law.</i>) Doesn't authorize rule-making by HOA.	TPC Ch 202 - adds 202.011	✓	HB 362 6/17/11
USES - SOLAR. HOA can't stop owner from installing a "solar energy device" on his lot/house, but may regulate <u>IF</u> HOA has or adopts specific permitted rules, and may require prior ACC approval consistent with law. Developer may prohibit installs during development period.	TPC Ch 202 - adds 202.010	✓	HB 362 6/17/11
USES - TRAFFIC. HOA may install speed feedback signs under certain circumstances. Bill borrows definition of HOA from TPC Ch 204, which is bracketed to Houston area. Does that limit its applicability?	Trans.Code, adds 430.002	✓	HB 1737 6/17/11
USES - WILDLIFE. Amends existing law that allows HOA to trap and transport surplus white tail deer.	Parks&Wild. Code - amends 43.0612	✓	SB 498 9/1/11
VIOLATIONS - NOTICE (MILITARY). Protects military by requiring statement of federal rights in certain types of notices. <u>SEC 3 of HB 1127 is specific to HOAs</u> - adds to content of HOA's required violation notice to owner.	TPC Ch 209, amends 209.006(b)	x	HB 1127 1/1/12

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~ BRACKETED ~ BRACKETED ~ HOA-SPECIFIC LAWS THAT ARE "BRACKETED" (NOT STATE-WIDE IN APPLICABILITY) ~ BRACKETED ~ BRACKETED ~			
BRACKET CREEP. This huge omnibus bill updates population brackets in existing law to conform to the 2010 federal census. SECS 109 - 111 of HB 2702 make changes to the applicability of Property Code Chapters 201, 204, and 210. [BRACKETED]	TPC - Chs 201, 204 & 210	x	HB 2702 9/1/11
CONDO - HOUSTON ONLY. [Bracketed for Houston] Requires specific disclosures by condo developers and unit owners. City of Houston may use eminent domain on blighted condo if construction stops one year. <i>(By amending Chapter 82, this applies to condos only.)</i> [BRACKETED]	TPC Ch 82 & Local Govt Code Ch 214	✓	HB 364 9/1/11
DOCUMENTS - AMEND (APPLICABILITY OF CHAPTER 211). Redefines "subdivision" & changes the applicability bracket of Chapter 211. [BRACKETED]	TPC Ch 211 -amends 211.001 & 211.002	x	HB 232 6/17/11
DOCUMENTS - AMEND + RENEW. [Bracketed for Houston] If Restrictions authorize only one extension of term, creates process by which owners of a majority of lots may approve successive extensions, so Restrictions don't expire. [BRACKETED]	TPC - adds Chapter 212	x	HB 1071 6/17/11
GOVERN - MIXED USE. Dramatic new law for a particular mixed-use development (Las Colinas) to override some governance requirements that apply to other HOAs. [BRACKETED]	TPC - adds Ch. 215	x	HB 2869 9/1/11
GOVERN - APPLICABILITY CARVE-OUT. Exempts a particular mixed-use development (Las Colinas) from Sec. 209.0062 [Payment Plans]. [BRACKETED]	TPC Ch 209 - add (e) to 209.003	x	HB 1228 HB 1821 1/1/12
GOVERN - APPLICABILITY CARVE-OUT. Exempts a particular mixed-use development (Las Colinas) from Secs. 209.0058 [Ballots] and 209.00593 [Voting]. [BRACKETED]	TPC Ch 209 - add (e) to 209.003	x	SB 472 9/1/11
GOVERN - APPLICABILITY CARVE-OUT. Exempts a particular mixed-use development (Las Colinas) from 5 sections of TPC Chapter 209: 209.005(c) [Open Records], 209.0056 [Election Notices], 209.0057 [Recounts], 209.0058 [Ballots], and 209.00592 [Voting]. [BRACKETED]	TPC Ch 209 - add (e) to 209.003	x	HB 2761 1/1/12
LAND USE - GOLF COURSES. Expands the bracket of a law that protects homeowners abutting land that was initially used for a golf course or country club within the residential subdivision (think of homes sold with "a view of the 9th hole"), when someone wants to replat and redevelop that "open space." Originally bracketed to Houston area, then extended to Ft. Worth, now extends further. [BRACKETED]	Local Govt Code - amends 212.0155	✓	SB 1789 6/17/11