

HOAs Only – Chapter 209 Communities

New Management Certificate Requirements – SB 1588, TPC 209.004

Management certificates must now include: (1) the phone number and email address of the manager; (2) the web address where the CC&Rs are posted; (3) any resale and transfer fees; and (4) a list of any amendments to the declaration.

Any amendment must be recorded by the 30th day after the HOA has notice of any change of information. Certificates must be e-filed with the Texas Real Estate Commission (TREC) no later than the seventh day after recording.

For any period of non-compliance, an Association will not be able to recover attorney's fees incurred for collection work or accrued interest during that period of time.

Effective Date: December 1, 2021. If no changes to the management certificate are made, the certificate must be filed with TREC no later than June 1, 2022.

Architectural Review Committees and Appeals – SB 1588 TPC, 209.00505

Directors may no longer serve on architectural review committees. Spouses of directors and members of a director's household are also disqualified.

An architectural denial must: (1) be provided in writing (email is fine); (2) describe the basis for the denial; and (3) outline an owner's right to appeal to the board.

An owner has 30 days to appeal the decision, and the board has 30 days to hold the hearing. The hearing notice must be provided at least ten days before the hearing, and either side is entitled to one continuance. Audio recording is permitted, and the board may affirm or reverse the architectural reviewer's decision. HOAs with 40 or fewer lots or under declarant control are exempt.

Effective Date: September 1, 2021.

New Board Meeting Notice Deadlines and Budget Restriction – SB 1588, TPC 209.0051

Notice deadlines for posted/emailed notice of board meetings have changed. A notice that is posted/emailed must be provided at least 144 hours (six days) before a regular board meeting and at least 72 hours (three days) before a special board meeting.

The ability to amend an annual budget by less than ten percent outside of an open meeting has been eliminated.

Effective Date: September 1, 2021.

Winstead PC – 2021 Legislative Summary – Certain Bills Affecting POAs

Bids Required for \$50k+ Service Contracts – SB 1588, TPC 209.0052

Service contracts for more than \$50,000 require the solicitation of bids under a bid process established by the association.

Effective Date: September 1, 2021.

Collections Process Modifications – SB 1588, TPC 209.0064-65

The initial statutory collection notice letter must now provide an owner with 45 days to cure the delinquency rather than 30. Also, any attorney's fees incurred must be "reasonable."

HOAs that report delinquencies to a credit reporting service must first provide notice to an owner that includes a detailed report of delinquent charges owed and an opportunity for a payment plan. The notice must be sent at least 30 business days before reporting, and disputed charges may not be reported. No fee may be charged for the reporting.

Effective Date: September 1, 2021.

Violation Hearing Procedures – SB 1588, TPC 209.007

All covenant violation appeals are to the board and the option to have a committee hear the appeals has been eliminated.

At least ten days before the hearing, a packet must be sent to the owner with all information and documentation the association intends to introduce at the hearing. Failure to provide the information will afford the owner the right to an automatic 15-day postponement of the hearing. At the hearing, the association shall first present its case against the owner and then the owner may present information in response.

Effective Date: September 1, 2021.

Rental Rules – SB 1588, TPC 209.016

Section 209.016(e) specifically states that an association may obtain the name, mailing address, phone number, and email address of each person who will reside at a leased property, as well as the commencement date and term of the lease.

209.016(c), which states that, "if a copy of the lease . . . is required . . . sensitive personal information may be redacted," has been repealed.

Effective Date: September 1, 2021.

Winstead PC – 2021 Legislative Summary – Certain Bills Affecting POAs

Justice Court Jurisdiction – SB 1588, TPC 209.017

An owner may sue an HOA for a violation of Chapter 209 in any justice court for a precinct in which all or part of the subdivision is located.

Effective Date: September 1, 2021.

Eliminates Golf Cart License Plate Requirements – HB 1281, Trans. Code 551.403

Golf carts are allowed in a master planned community if the community is a residential subdivision under Chapter 209 or has in place a uniform set of restrictive covenants. No license plate is required if the posted speed limit does not exceed 35 MPH.

Effective Immediately

Security Devices and Fences – SB 1588, TPC 202.023

An association may not prevent an owner from installing security measures such as a security camera, motion detector, or perimeter fence on the owner's property. An association may prohibit the installation of a security camera in a place other than the owner's property and may also regulate the type of fencing. Condominiums and master mixed-use POAs are exempt.

Effective Date: September 1, 2021.

209.0041 Amendments are Void as to Condominiums, Commercial Property, or Apartments – HB 1659, TPC 209.0041

Under Chapter 209.0041, a declaration may be amended by a vote of at least 67% of the voting members of the HOA. An amendment is no longer effective as to: (1) a commercially zoned section of the subdivision; (2) a commercial structure; (3) an industrial structure; (4) an apartment complex; or (5) a condominium.

Effective Immediately

Condominiums Only

Records Retention and Production Policies – SB 318, TPC 82.114

Condominiums now have specific record production and retention requirements similar to those found in Chapter 209.

Requests for records must be made by certified mail, and the records must be produced in 10 days.

A board must record a records production and copying policy that prescribes the costs the association will charge for the compilation, production, and reproduction of information requested. Fees are capped at the amounts charged by government agencies under 1 Tex. Admin. Code 70.

An association composed of eight or more units shall adopt and comply with a document retention policy that requires, at a minimum, the following retention periods (1) governing documents shall be retained permanently; (2) financial books and records shall be retained for seven years; (3) account records of unit 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 contract ends; (5) minutes of meetings of owners and the board shall be retained for seven years; and (6) tax returns and audit records shall be retained for seven years.

Effective Date: September 1, 2021.

Laws Applicable to both HOAs and Condominiums

Religious Displays – SB 1588, TPC 202.018

Previously, an owner could display religious items on the entry of the dwelling and size restrictions applied. Now, religious items may be displayed anywhere on the owner's property without size restrictions.

An association may adopt/enforce a policy that limits the activity if the display threatens public health or safety, violates a law other than a law prohibiting the display of religious speech, contains language, graphics, or any display that is patently offensive for reasons other than its religious content, is installed on property owned or maintained by the property owners' association or on common property, violates a setback restriction, or is attached to a traffic control device or fire hydrant.

Effective Date: September 1, 2021.

Winstead PC – 2021 Legislative Summary – Certain Bills Affecting POAs

Swimming Pool Enclosures – SB 1588, TPC 202.022

A POA may not prevent an owner from installing, on the owner's property, a swimming pool enclosure that conforms to applicable state or local safety requirements.

A POA may enforce rules that govern the appearance of the enclosure; however, a POA cannot prohibit an enclosure that consists of black metal frames with transparent mesh panels.

Effective Date: September 1, 2021.

Resale Certificate Fees – SB 1588, TPC 207

Summary: A POA may not charge more than \$375 for a resale certificate, and \$75 for an updated resale certificate.

A POA's failure to provide a resale certificate within five business days after a second request is sent by certified mail would subject the POA to liability for up to \$5,000 in damages along with court costs and attorney's fees.

Effective Date: September 1, 2021.

Governing Documents Must be Posted on the Web – SB 1588, TPC 207.006

A POA with 60+ lots or a POA under contract with a management company must post the current versions of the POA's dedicatory instruments on a website and make them available to members.

Effective Date: September 1, 2021.

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