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Disclaimer

This legislative summary is not intended to be relied upon as a final analysis in resolving legal questions regarding legislations affecting property owners' associations approved at the 87th Legislative Session. The information presented herein is intended to summarize some of the newly approved community association legislation. There is no substitute for a thorough review of the new statutes in conjunction with an association's current governing documents by an experienced and competent attorney.



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Analysis of Changes to Property Owners' Association Law During the 2021 Texas Legislative Session

I. Summary

The 2021 Texas Legislative Session brought about numerous changes to Texas Property Owners' Association Law. The changes to the law include both mandatory and permissive actions that residential subdivisions, condominium associations, and townhome communities must make to their daily operations. What follows is a summary and analysis of those changes made during the 2021 Legislative Session as well as a breakdown of both Mandatory and Recommended actions associations must make so as to be compliant with the new laws. Should you have any questions, please feel free to reach out to Manning & Meyers at Casey@HOALegal.com and we will be happy to assist you in your compliance efforts.

II. Mandatory Actions for Residential Subdivisions & Townhomes

- 1) Filing of Dedicatory Instruments in Real Property Records- Ensure that all dedicatory instruments are filed in the real property records in each county where the association is located.¹ Dedicatory instruments are each governing instrument covering the establishment, maintenance, and operation of an association. They include restrictive covenants, bylaws, rules and regulations, and any amendments thereto. ²
- 2) Adjust Your Maximum Resale Fees- Decrease the maximum fee charged for a resale certificate to \$375.00. Decrease the maximum fee charged for an updated resale certificate to \$75.00.³
- 3) Ensure all Dedicatory Instruments are on a Website Available to the Members- If you are an association that is either greater than 60 lots or managed by a management company, you must ensure that you have a website that is available to all members. Further, you must ensure that all your dedicatory instruments appear on that website.⁴
- 4) Update Your Management Certificates- You must update your management certificates to now also include: any amendments to your declaration, the telephone number and email address of the manager of the association, the website address of the association, and the amount and description of any fee charged by the association related to a property transfer within the subdivision.⁵ An update must be on file with the county clerk by **September 1, 2021**.

¹ Texas Property Code § 202.026

² Texas Property Code § 202.001 (1); Texas Property Code § 209.002 (4)

³ Texas Property Code § 207.003(c)

⁴ Texas Property Code § 207.006

⁵ Texas Property Code § 209.004(a)

- 5) File Your Management Certificate with The Texas Real Estate Commission- You must ensure that your Management Certificate and any future amendments thereto are filed with the Texas Real Estate Commission by **June 1, 2022** after they are filed with the county clerk's office.⁶
- 6) Change the Members of Your Architectural Review Committee- You must ensure that all members of your Architectural Review Committee are comprised of members who are not board members, their spouses, or members of their household.⁷
- 7) Create a Formal Denial Letter for Architectural Request Denials- You must ensure that all denials of Architectural Changes be sent via certified mail, hand delivery, or electronic mail, and include the basis for the denial, changes the owner may make, if any, as a condition for improvement, and the right of the owner to appeal the denial to the board.⁸
- 8) Appeal Hearings Before the Board of Architectural Request Denials – Every owner who requests a hearing before the board as related to the denial of their request for an architectural change, must be granted their request for a hearing. The notice and hearing procedures are similar to fining hearing procedures under Texas Property Code Section 209.007.⁹
- 9) Increase the Time Period for Notice of Regular Board Meetings- You must ensure that members are provided at least 144 hours (6 days) notice of regular board meetings if the association notices these meetings online or by posting in a conspicuous place within the community.¹⁰
- 10) Establish a Bids Process for Contracts in Excess of \$50,000- You must establish a process that requires for the solicitation of bids or proposals for contracts that will cost more than \$50,000.¹¹
- 11) Send an Owner a Certified Mail Notice & Opportunity to Cure Prior to Credit Reporting- You must send a delinquent owner a notice via certified mail and provided them an opportunity to cure the delinquency in accordance with Section 209.006 prior to reporting an owner to a credit reporting service.¹²
- 12) Increase the Cure Period to 45 days in Certified Mail Collection Notice- You must increase the time allowed by owners to cure a delinquent balance delineated within the certified

⁶ Texas Property Code § 209.004(b-1); Section 23(b) of SB 1588

⁷ Texas Property Code § 209.00505(c)

⁸ Texas Property Code § 209.00505(d)

⁹ Texas Property Code § 209.00505(e),(f),(g),(h),(i)

¹⁰ Texas Property Code § 209.0051(e)(2)

¹¹ Texas Property Code § 209.0052(c)

¹² Texas Property Code § 209.006(a)

mail notice sent to an owner in accordance with Section 209.0064 of the Texas Property Code. The cure period in the notice must be increased to 45 days.¹³

- 13) Stop Charging Owners for Credit Reporting- You may no longer charge a delinquent owner for reporting their balance to a credit reporting service.¹⁴
- 14) Send Owners Notice Prior to Credit Reporting- Prior to reporting a delinquent owner to a Credit Reporting Service, you must send that owner a notice and opportunity to cure the delinquency and provide them an opportunity for a hearing.¹⁵
- 15) Provide Owners Evidentiary Packets Prior to Section 209.007 Hearings Before the Board- At least 10 days prior to a hearing conducted under Section 209.007 of the Texas Property Code (e.g., fines, property damage, suspending right to use the common area, etc.), you must provide an owner an evidentiary packet which contains all documents, photographs, and communications you intend to introduce at the hearing.

III. Recommended Actions for Residential Subdivisions & Townhomes

- 1) Amend or Adopt Rules Related to Religious Displays- It is our firm's recommendation that each association should consider adopting rules related to the display of religious items within the association so as to comply with the new requirements and restrictions allowing owners and residents to display religious items.¹⁶
- 2) Update Architectural Guidelines Related to Swimming Pool Enclosures- It is our firm's recommendation that each association should consider the updating of its architectural control guidelines to allow for the installation of Swimming Pool Enclosures. The association should specifically delineate the appearance, size, and permissible colors of Swimming Pool Enclosures allowed for within the association.¹⁷
- 3) Update Architectural Guidelines Related to Security Cameras & Perimeter Fences- It is our firm's recommendation that each association should consider the updating of its architectural control guidelines governing the installation of Security Cameras and Perimeter Fences. The association should specifically delineate the appearance, size, and permissible location of Perimeter Fences and Security Cameras allowed within the association.¹⁸

¹³ Texas Property Code § 209.0064(b)(3)

¹⁴ Texas Property Code § 209.0065(c)

¹⁵ Texas Property Code § 209.006(a); Texas Property Code § 209.0065(b)

¹⁶ Texas Property Code § 202.018

¹⁷ Texas Property Code § 202.022

¹⁸ Texas Property Code § 202.023

- 4) Update or Adopt Leasing Restrictions- It is our firm's recommendation that each association should consider updating its Leasing Restrictions to require the contact and lease information to be submitted for each person who will reside at the property under a lease as well as submission of sensitive personal information which was previously restricted from being obtained from tenants.¹⁹

IV. Mandatory Actions for Condominium Associations

- 1) Filing of Dedicatory Instruments in Real Property Records- Ensure that all dedicatory instruments are filed in the real property records in each county where the association is located.²⁰ Dedicatory instruments are each governing instrument covering the establishment, maintenance, and operation of an association. They include restrictive covenants, bylaws, rules and regulations, and any amendments thereto.²¹
- 2) Adoption and Compliance with a Records Production & Copying Policy- Adopt a Records Production and Copying Policy that sets for the processes and procedures for an owner or their designated agent to request copies of records from the association.²²
- 3) Adoption and Compliance with a Document Retention Policy- An association comprised of eight units or more must adopt a Document Retention Policy. This policy sets for what documents have to be retained by the association as well as the length of time they must be retained.²³

V. Summary & Analysis of Changes

- 1) Fewer Restrictions of Religious Displays Permitted- Substantial changes were made to Section 202.018 of the Texas Property Code, which governs the display of religious items by an owner or resident within a property owners' association. These changes are applicable to owners and residents within both residential subdivisions and condominium associations and take effect on **September 1, 2021**. Previously, owners and residents could be restricted to the display of religious items to their door or door frame of their residence, and religious items could be limited to 25 square inches in size. These changes dispense with both the size limitation as well as the limitation on location.²⁴ Now, a resident or owner may display a religious item, motivated by their sincere religious belief, in any location on the resident's or owner's property. Further, such religious items may be of any size.

¹⁹ Texas Property Code § 209.016(e)

²⁰ Texas Property Code § 202.026

²¹ Texas Property Code § 202.001 (1); Texas Property Code § 82.003(a)(11-a)

²² Texas Property Code § 82.1141(h)

²³ Texas Property Code § 82.1141(l)

²⁴ Texas Property Code § 202.018(b)(5) & (b)(6)

The limitations that property owners' associations may expressly place upon the display of religious items has changed as well. The list of items a property owners' association may prohibit now includes religious items that: threaten public health or safety; violate a law other than a law prohibiting the display of religious speech, if they contain language, graphics, or any display that is patently offensive to passersby for reasons other than their religious content, if they are installed on a property (A) owned or maintained by the property owners' association or (B) owned in common by members of the property owners' association; violate any applicable building line, right-of-way, setback, or easement; or are attached to any traffic control devices, street lamps, fire hydrants, or utility signs, poles, or fixtures.²⁵

Should an owner or resident violate any of the above, and the property owners' association maintain a provision in a restrictive covenant that does not allow the owner to place the religious item in such a manner, then the religious item may no longer be removed by the association.²⁶ The association is now required to go through normal procedures set forth under Section 209.006 of the Texas Property Code seeking removal of the religious item. Furthermore, recent changes to the law remove the prohibition against a property owner or resident making architectural changes to an entry door or door frame that is not authorized by the restrictive covenants.²⁷

- 2) Fewer Restrictions of Swimming Pool Enclosures Permitted- Section 202.022 of the Texas Property Code governs the installation of a Swimming Pool Enclosure by an owner. While these changes are technically applicable to owners within both residential subdivisions as well as condominium associations, they will realistically only apply to owners within residential subdivisions. The changes related to Swimming Pool Enclosures take effect on **September 1, 2021**. Previously, there were no limits on the ability of a residential subdivision to restrict the installation of Swimming Pool Enclosures. The creation of Section 202.022 allows for an owner to install a Swimming Pool Enclosure with few limitations.

First, the law defines a "Swimming Pool Enclosure" as a fence that has each of the following features: (a) surrounds a water feature, including a swimming pool or spa; (b) consists of transparent mesh or clear panels set in metal frames; (c) is not more than six feet in height; and (d) is designed not to be climbable.²⁸

Next, the law tells us that a property owners' association may not prohibit an owner from installing a Swimming Pool Enclosure for so long as it conforms to state and local safety requirements.²⁹

²⁵ Texas Property Code § 202.018(b)

²⁶ Texas Property Code § 202.018(c)- Redacted by Section 22 of SB 1588

²⁷ Texas Property Code § 202.018(d)- Redacted by Section 22 of SB 1588

²⁸ Texas Property Code § 202.022(a)

²⁹ Texas Property Code § 202.022(b)(1)

Finally, the law tells us that a property owners' association may adopt or enforce a provision establishing limitations on the appearance of a swimming pool enclosure, including permissible colors. However, the law does not allow an association to restrict an owner from installing a Swimming Pool Enclosure that is black in color and consists of transparent mesh set in metal frames.³⁰

The law does not allow for an owner to install a Swimming Pool Enclosure without first seeking approval from the association's architectural review committee or architectural control committee. As such, care should be shown that owners installing such safety devices seek proper approval prior to the installing of a Swimming Pool Enclosure. Furthermore, the law does not allow for an owner to install a glass or metal enclosure if specifically prohibited by the dedicatory instruments of the association.

It is our firm's recommendation that each association should consider the updating of its architectural control guidelines to allow for the installation of Swimming Pool Enclosures in compliance with Section 202.022. The association should specifically delineate the appearance, size, and permissible colors of Swimming Pool Enclosures within the association. Should the association not regulate the appearance or installation of Swimming Pool enclosures, then no changes are necessary at this time.

- 3) Obstacles to "Security Measures" Not Permitted: Security Cameras, Motion Detectors, & Perimeter Fences- Section 202.023 of the Texas Property Code was created and governs the installation of Security Measures by an owner within a residential subdivision or townhome. The changes related to Security Measures are specifically not applicable to either a condominium association or a mixed-use property owners' association subject to Chapter 215 of the Texas Property Code.³¹ The changes related to Swimming Pool Enclosures take effect on **September 1, 2021**. Previously, there were no restrictions on the ability of a residential subdivision to restrict the installation of Security Measures. The creation of Section 202.023 expands the ability of an owner to install specific items.

First, the law tells us that an association may not adopt or enforce a restrictive covenant that prevents a property owner from building or installing a Security Measure. While the law specifically does not define "Security Measure," it provides for us several examples. Those include: security cameras, motion detectors, and perimeter fences.³²

Next, Section 202.023 provides for a few restrictions that an association may place upon Security Measures. An association may prohibit the installation of a security camera by a property owner in a place other than the property owner's private property. Further, an association may regulate the type of fencing that a property owner may install.³³ As

³⁰ Texas Property Code § 202.022(b)(2)

³¹ Texas Property Code § 202.023(a)

³² Texas Property Code § 202.023(b)

³³ Texas Property Code § 202.023(c)

related to the installation of security cameras, we do not believe that this law poses much concern. Most security cameras are small and unobtrusive, and a substantial number of owners have already adopted video doorbells which provide for enhanced security within communities.

The provision related to the installation of perimeter fencing is concerning. While this section specifically allows for an association to regulate the type of fencing that a property owner may install, we believe that the law specifically provides for the ability of an owner to place perimeter fencing within the front of their property. It is our firm's recommendation that each association should consider updating its architectural control guidelines to allow for the installation of Security Measures in compliance with Section 202.023. The association should specifically delineate the appearance, size, and permissible location of perimeter fences within the association. Should the association not regulate the appearance or installation of perimeter fences within the community, it is conceivable that the association will be required to approve nearly any perimeter fence—even a large fence within the front of a neighbor's house—as long as the fence complies with all state and local guidelines related to the installation of such fences.

- 4) Resale Certificate Caps & Penalties- Section 207.003 of the Texas Property Code governs the requirement for a residential subdivision or townhome to provide a resale certificate to an owner upon request as well as the consequences for an association who fails to comply with such a request. The Texas Legislature amended Section 207.003 and set a maximum fee that may be charged for providing a resale certificate to an owner and increased the penalties that an owner may obtain against the association in a lawsuit should the association fail to provide a resale certificate. These changes are applicable to owners and residents within both residential subdivisions and townhomes, but do not apply to condominium associations, and take effect on **September 1, 2021**.

The maximum amount that a residential subdivision or townhome association may charge for a resale certificate is now \$375.00.³⁴ The maximum amount that they may charge for an updated resale certificate is \$75.00.³⁵

Should an association fail to provide a resale certificate to an owner, and should that owner make a second request for the information via certified mail, return receipt requested, or via hand delivery with receipt, then Section 207.003 allowed for the owner to bring a cause of action against the association. The recent changes in the law both decreased the amount of time an association has to comply with a second request for a resale certificate to five business days (down from seven business days) and increased the statutory penalties that an owner may obtain against the association to \$5,000.00 (up from \$500.00).³⁶

³⁴ Texas Property Code § 207.003(c)

³⁵ Texas Property Code § 207.003(c)

³⁶ Texas Property Code § 207.004(b)

It is our firm's recommendation that all associations ensure that they and their management companies are not charging resale certificate fees over \$375.00, or updated resale certificate fees over \$75.00. Further, if you receive a second request for a resale certificate that is delivered via certificated mail or hand delivery, we recommend that you make every effort to promptly comply with the request within five business days of the request.

- 5) Websites Must Make Dedicatory Instruments Available to Members- Section 207.006 of the Texas Property Code previously required that a residential subdivision or townhome place its dedicatory instruments online, but only if it or its management company maintained a website. The Texas Legislature has now amended this section to require most residential subdivisions and townhome communities to maintain a website that is available to its members. The requirement that all dedicatory instruments be available on the website remains.³⁷ A residential subdivision that is less than 60 lots is exempt from this requirement, unless it is managed by a management company.³⁸ This provision goes into effect on **September 1, 2021**.

Should an association be greater than 60 lots or be maintained by a management company and currently maintains a website, it must ensure that the website is available to all members and that the current versions of all dedicatory instruments appear on the website. The law does not require older versions of dedicatory instruments to be made available on an association website.

Should an association be greater than 60 lots or be maintained by a management company, and does not currently maintain a website, it must work promptly to create a website in which the current versions of all dedicatory instruments appear. If you are having difficulty with this requirement, we recommend that you reach out to your management company so as to comply with this requirement by **September 1, 2021**. If you are not managed by a management company, please reach out to our firm at Casey@HOALegal.com, and we can assist you with compliance.

- 6) New Requirements for Management Certificates: Contents & Filing- Section 209.004 of the Texas Property Code previously required the filing of a management certificate for each association in the real property records for each county in which that association was located. Additionally, the Code included a list of items that must be included within a management certificate and ramifications for an association if it failed to record a management certificate. In the 2021 Legislative Session, the Texas Legislature amended Section 209.004 to expand the list of items that must be included in a management certificate, substantially increased the ramifications for failure to record a management certificate, and provided for a second location that each management certificate must be

³⁷ Texas Property Code § 207.006(b)

³⁸ Texas Property Code § 207.006(a)

filed. This provision is applicable to all residential subdivision and townhomes, irrespective of their size.

In addition to the list of items that must now be included within a management certificate as found at Section 202.004(b) of the Texas Property Code, each association must now include the following: any amendments to its declaration, the telephone number and email address of the manager of the association, the website address of the association, and the amount and description of any fee charged by the association related to a property transfer within the subdivision.³⁹ An updated management certificate must be filed within the county clerk's office by **September 1, 2021**.

The law creates an additional requirement that each association file its Management Certificate and any future amendments thereto with the Texas Real Estate Commission after filing with the county clerk's office. Should the information on a Management Certificate change, then an association must prepare and file an updated management certificate. That updated management certificate must be filed with both the county clerk's office and the Texas Real Estate Commission. Each association must file its updated Management Certificates with the Texas Real Estate Commission no later than **June 1, 2022**.⁴⁰

Lastly, the law increases the ramifications faced by an association should it fail to comply with the filing requirements as set forth above. In addition to all current consequences which remain in place, the law now expressly states that an owner is not liable for attorney's fees or interest relating to the collection of a delinquent assessments if those fees were incurred or accrued during a period of time during which a management certificate was not properly on file with the county clerk or the Texas Real Estate Commission.⁴¹

It is our firm's recommendation that each association promptly prepare and file an updated management certificate and have it on file by **September 1, 2021**. If you need assistance with the preparation or filing of a management certificate, you may contact our office at Casey@HOALegal.com.

- 7) Creation of Law Related to Architectural Review Authority- Section 209.00505 of the Texas Property Code was created and governs the Architectural Review Authority for a residential subdivision or townhome. Most associations currently refer to these authorities as "Architectural Review Committees" or "Architectural Control Committees." The Texas Legislature provides a common name for these in calling them "Architectural Review Authorities" (hereinafter "ARAs"). The law specifically defines Architectural

³⁹ Texas Property Code § 209.004(a)

⁴⁰ Texas Property Code § 209.004(b-1); Section 23(b) of SB 1588

⁴¹ Texas Property Code § 209.004(e)

Review Authority as “the governing authority for the review or approval of improvements within a subdivision.”⁴²

The changes related to Architectural Review Authorities are not applicable to condominium associations. The changes also do not apply if a property owners association is less than 39 lots and do not apply during the developmental period or any period during which the declarant appoints a majority of the members of the ARA or has the right to veto or modify a decision of the ARA.⁴³ The changes related to Architectural Review Authorities take effect on **September 1, 2021**.

Next, the law tells us who may not serve on the ARA. A member of the ARA may not be a current board member, a board member’s spouse, or a person residing in a board member’s household.⁴⁴ We anticipate that this provision will cause a number of difficulties for our clients. While this law does not go into effect until **September 1, 2021**, we highly recommend you ensure that all members of your ARA are comprised of members who are not board members, their spouses, or members of their households. This may be a difficult undertaking, so we recommend you begin the search for members who are qualified and willing to serve on the ARA as soon as possible.

Further, the law provides that all denials of architectural changes be sent to owners via certified mail, hand delivery, or electronic mail. Denial notices must include the basis for the denial, changes the owner may make, if any, as a condition for approval, and the right of the owner to appeal the denial to the board within 30 days of the mailing or delivery of the notice.⁴⁵ The law does not include a time period in which this denial must be sent to the owner.

Lastly, Section 209.00505 provides for hearing procedures before the board for ARA denials and timelines associated with these procedures. These procedures and timelines are very similar to those found under Section 209.007 of the Texas Property Code as related to hearings for fines. Every owner’s request for a hearing before the board as related to the denial of the owner’s request for an architectural change must be granted. Both the owner and the association may be represented by designated representatives at the hearing. The purpose of the hearing is to discuss the request, verify facts, and resolve the denial of the owner’s application or request for the construction of improvements, and the changes, if any, requested by the ARA in the notice provided to the owner under TPC 209.00505(d). The hearing must be held within 30 days of the owner’s request. The association must tell the owner of the date, time, and place of the hearing at least 10 days prior to the hearing; however, either the board or the owner may request a 10-day postponement. Upon agreement, the parties may mutually decide upon

⁴² Texas Property Code § 209.00505(a)

⁴³ Texas Property Code § 209.00505(b)

⁴⁴ Texas Property Code § 209.00505(c)

⁴⁵ Texas Property Code § 209.00505(d)

later postponement. Either the owner or the association may record the meeting. At the conclusion of the meeting, the board may affirm, modify, or reverse, in whole or in part, any decision of the ARA based on the decision's consistency with the subdivision's declaration.⁴⁶

- 8) Changes Related to Notices of Regular Board Meetings- Section 209.0051 of the Texas Property Code governs the required notices that associations must provide to members prior to meetings of the board of directors. Additionally, this section includes a list of items upon which an association may not vote without first providing notice to members. This section was amended in the 2021 Legislative Session to expand those notice requirements and slightly alter the list of items upon which a board of directors may not vote without first giving notice to members. The requirements under this section go into effect on **September 1, 2021**.

An association must now provide at least 144 hours (6 days) notice of regular board meetings if the association notices these meetings online or by posting in a conspicuous place within the community.⁴⁷ If an association notices these meetings via mail or the meeting is a special meeting of the directors, then the notice requirements do not change.

Lastly, the board may not, unless done in an open meeting of which prior notice was given to owners, consider or vote upon the approval of an annual budget or an amendment to an annual budget.⁴⁸

- 9) Additional Process Requirements for Certain Association Contracts- Section 209.0052 of the Texas Property Code was established in 2013 and previously only related to contracts with board members or their relatives. In the 2021 Legislative Session, the Texas Legislature amended Section 209.0052 and created a specific provision which is applicable to contracts in excess of \$50,000. This provision is applicable to all residential subdivisions and townhomes, irrespective of their size (does not apply to condominiums) and does not take effect until **September 1, 2021**.

In addition to other requirements of this section, if an association proposes to contract for services that will cost more than \$50,000, it must solicit bids or proposals using a bid process established by the association.⁴⁹ This provision does not require that an association solicit bids for contractual agreements already in effect. Section 209.0052(c) is only applicable to contractual agreements after the effective date of the statute.⁵⁰ If an association may enter into a contractual agreement for services in excess of \$50,000,

⁴⁶ Texas Property Code § 209.00505(e),(f),(g),(h),(i)

⁴⁷ Texas Property Code § 209.0051(e)(2)

⁴⁸ Texas Property Code § 209.0051(h)(11)

⁴⁹ Texas Property Code § 209.0052(c)

⁵⁰ Section 24 of SB 1588

it is our firm's recommendation that it establish a bid solicitation and proposal process in compliance with this section.

- 10) Additional Requirements Related to Credit Reporting- The 2021 Legislative Session saw several changes related to the ability of a property owners' association to report a delinquent owner's balance to a credit reporting agency.

Prior to reporting any delinquency of an owner to a credit reporting service, an owner must be sent a notice via certified mail and provided an opportunity to cure the delinquency in accordance with Texas Property Code Section 209.006.⁵¹ This is the same type of notice that must be sent by the association prior to suspending an owner's right to use a common area, filing suit against an owner (other than a suit seeking delinquent assessments), or levying a fine against an owner. This letter must describe the violation, state any amount due the association, inform the owner of the owner's right to cure the matter, specify a date by which the matter must be cured, provide for the ability of the owner to obtain a hearing before the board, and notify the owner of the owner's right to relief under the Servicemembers' Civil Relief Act. If the owner cures the delinquency during the notice period, then the association may not report the delinquency to the credit reporting service.

In addition to the changes above, the Texas Legislature also created Section 209.0065 of the Texas Property Code, entitled "Credit Reporting Services." This section places a number of additional requirements on the reporting of a delinquency to a credit reporting service. Most importantly, it expressly states that a property owners' association may not charge a fee for the reporting of the delinquency to the credit reporting service.

Section 209.0065(a) states that a property owners' association or its collection agent may not report any delinquent fines, fees, or assessments to a credit reporting service that are the subject of a pending dispute between the owner and the property owners' association.⁵²

Additionally, prior to a property owners' association reporting the delinquent payment history of a property owner to a credit reporting service, the association must comply with certain notice requirements. The notice must be sent at least 30 business days prior to reporting to a credit reporting service and must be sent via certified mail, hand delivery, electronic delivery, or by other delivery means acceptable between the parties. The notice must include a detailed report of all delinquent charges owed. The owner must be given the opportunity to enter into a payment plan, though this requirement need not be contained in the notice.

Lastly, Section 209.0065(c) makes clear that a property owners' association may not charge a fee to an individual owner for the reporting of a delinquent payment history of

⁵¹ Texas Property Code § 209.006(a)

⁵² Texas Property Code § 206.0065(a)

assessments, fines, and fees of property owners within the association's jurisdiction to a credit reporting service.⁵³

Section 209.0065 is only applicable to fines, fees, or assessments that become due after the effective date of this law (**September 1, 2021**). A fine, fee, or assessment that becomes due before the effective date of the law is governed by the law in effect immediately before the effective date of the law, and that law is continued in effect for that purpose.⁵⁴

Due to the multiple and varied requirements as created by the Texas Legislature related to Credit Reporting Services, and the inability of associations to charge owners for this reporting, it is our firm's recommendation that associations no longer consider the use of credit reporting services for their collection efforts. Should an association wish to continue using credits reporting services, care should be shown to create a proper written notice that specifically and strictly complies with the requirements of both Section 209.0065(b) and Section 209.006(a) of the Texas Property Code. If you would like our firm's assistance in drafting a compliant notice, you may reach out to us at Casey@HOALegal.com.

- 11) Additional Notice Required by Texas Property Code Section 209.0064 (Certified Mail Delinquency Notice)- Section 209.0064 of the Texas Property Code governs the requirement to send an owner a notice via certified mail prior to holding that owner liable for fees of a collection agent. That notice must specify each delinquent amount, specify the total amount owing, lay out options available to an owner, including a payment plan, and provide for a 30-day period before further collection action may be taken.

The 2021 Texas Legislature amended Section 209.0064 to and increased the 30-day cure period to 45 days.⁵⁵ It is our firm's recommendation that each association ensure that their Certified Mail Delinquency Notices include a 45-day period to cure prior to that owner being sent to collections. These changes are in addition to other requirements for changes to this notice as related to credit reporting services.

- 12) Additional Requirements for Hearings under Texas Property Code Section 209.007- Section 209.007 of the Texas Property Code governs the hearing options that an owner is required to be provided prior to the association taking certain actions against an owner, such as suspending an owner's right to use a common area, filing suit against an owner, levying a fine against an owner, or charging an owner for property damage. This section was amended in the 2021 Legislative Session and now includes both evidentiary requirements and hearing procedures.

⁵³ Texas Property Code § 209.0065(c)

⁵⁴ Section 25 of SB 1588

⁵⁵ Texas Property Code § 209.0064(b)(3)

First, the law removes a board's right to appoint a committee to hear a dispute. All such disputes must be heard directly by the directors of the association.⁵⁶

Next, an evidentiary requirement has been added to the hearing process. At least 10 days prior to a hearing, the association must provide to an owner a packet that contains all documents, photographs, and communications relating to the matter that the association intends to introduce at the hearing.⁵⁷ If the association fails to provide the packet 10 or more days before the meeting, the owner is entitled to an automatic 15-day postponement of the hearing.⁵⁸

Lastly, Section 209.007 has been amended to provide for hearing procedures. Both the board and the owner may be represented by a "designated representative" at the hearing. The association must first present the association's case against the owner. The owner or their designated representative is then entitled to present the owner's response and any issues relevant to the appeal or dispute.

The requirements under this section go into effect on **September 1, 2021**.

13) Permissible Regulation of Residential Leases & Rental Restrictions- Section 209.016 of the Texas Property Code governs the regulation of residential leases within property owners' associations. This section was recently amended and now expressly allows for an association to request the following information to be submitted to the association regarding each lease or rental applicant: Contact information (including name, mailing address, phone number, and email address) for each person who will reside at a property; the commencement date of the lease; and the terms of the lease.⁵⁹ This is the first instance where the law expressly allows for a residential subdivision or townhome to require that owners submit information related to tenants who occupy their properties.

Further, the prohibition on the collection of "sensitive personal information" has been repealed. "Sensitive Personal Information" included tenants': Social Security Numbers; driver license numbers; government-issued ID numbers; and account, credit, or debit card numbers.⁶⁰

Unfortunately, no other changes to the law were made, including to the prohibition on requesting a copy of a tenant's credit report or a copy of the lease or rental application. The allowances under this section go into effect on **September 1, 2021**.

⁵⁶ Texas Property Code § 209.007(a); TPC 209.007(b)- Redacted by Section 22 of SB 1588

⁵⁷ Texas Property Code § 209.007(f)

⁵⁸ Texas Property Code § 209.007(g)

⁵⁹ Texas Property Code § 209.016(e)

⁶⁰ Texas Property Code § 209.016(a)&(c)- Redacted by Section 22 of SB 1588

14) Justice Court Jurisdiction Over Violations- In addition to the changes above, the Texas Legislature created Section 209.017 of the Texas Property Code, entitled “Justice Court Jurisdiction.” This section allows for an owner within a property owners’ association to file suit against the association in the justice court for the precinct where all or part of the association is located for violation of the Texas Residential Property Owners Protection Act, codified at Section 209 of the Texas Property Code.⁶¹ This section is only applicable to actions brought against an association on or after **September 1, 2021**.⁶²

15) Condominium Associations Must Adopt a Records Production and Copying Policy- In 2011, the Texas Legislative Session created Section 209.005 of the Texas Property Code which required residential subdivisions to adopt a Records Production and Copying Policy. That same requirement now applies to condominium associations through the creation of Section 82.1141 of the Texas Property Code. Each condominium association, irrespective of size, must adopt a Records Production and Copying Policy.⁶³ This policy sets for the processes and procedures by which a unit owner or their designated representative may request inspection or copying of documents from the condominium Association. Condominium associations will be allowed to require pre-payment for the cost of compilation and copying of these records, not to exceed the costs as outlined under Rule 70.3 of the Texas Administrative Code. Section 82.1141 also sets for remedies for an owner should a condominium association fail to comply with a duly tendered records request. A Records Production and Copying Policy is a dedicatory instrument that must be filed in the real property records of the county in which the condominium association is located. The document must be filed by **September 1, 2021**.

16) Condominium Associations Must Adopt a Document Retention Policy- Section 209.005 of the Texas Property Code, adopted in 2011, also required residential subdivisions to adopt a Document Retention Policy. That same requirement now applies to condominium associations through the creation of Section 82.1141 of the Texas Property Code.⁶⁴ Each condominium association over eight units in size, must adopt a Document Retention Policy. This policy sets for specific documents that must be kept by condominium associations and for how long those documents must be kept. A Document Retention Policy is a dedicatory instrument that must be filed in the real property records of the county in which the condominium association is located. The document must be filed by **September 1, 2021**.

⁶¹ Texas Property Code § 209.017

⁶² Section 26 of SB 1588

⁶³ Texas Property Code § 82.1141(h)

⁶⁴ Texas Property Code § 82.1141(l)