

Holt & Young, P.C.

ATTORNEYS AT LAW
9821 KATY FREEWAY, SUITE 350
HOUSTON, TEXAS 77024
OFFICE: (713) 510-1000
FAX: (713) 510-1001

www.holtyoung.com

COMMUNITY MANAGER'S HANDBOOK

FOR

THE 2013 LEGISLATIVE CHANGES

A GUIDE FOR APPLYING THE NEW LAWS TO YOUR MANAGEMENT PRACTICE

DISCLAIMER

This Community Manager's Handbook for the 2013 Legislative Changes is made available by Holt & Young, P.C. for informational purposes only and does not constitute legal advice. It is intended to guide community association managers through the steps necessary to conform their existing management practices to the new legal requirements without being overwhelmed. It is not a comprehensive review of the new laws and for brevity reasons not all new laws are discussed in this Handbook. You should not act upon information included in this Handbook without first seeking advice from legal counsel for your specific matter. The information contained in this Handbook does not form or constitute an attorney-client relationship.

TABLE OF CONTENTS

Changes Affecting Single Family Residential Associations

Management Certificates.....1

Board Vacancies.....2

Contracts With Board Members.....3

Owners of Adjacent Lots.....5

Flags and Flagpoles.....7

Drought Resistant Landscaping
and Water Conserving Turf (Xeriscaping).....8

Changes Affecting Condominium Associations

Management Certificates.....10

Notice Requirements Before
Levying a Fine or Charge for Property Damage.....11

Right to Redeem From Third Party Purchasers.....12

Borrowing Money.....13

Insurance.....14

Exhibits

Exhibit A, Certification of Management Certificate.....16

Exhibit B, Amendment to Regulations Regarding Flags and Flagpoles.....17

Exhibit C, Xeriscaping Policy.....19

Exhibit D, Certification of Condominium Management Certificate.....21

Exhibit E, Statutory Notice Before Levying a Fine
or Charging for Property Damage.....22

Exhibit F, Condominium Resolution Regarding Insurance Deductibles.....23

CHANGES AFFECTING SINGLE FAMILY RESIDENTIAL ASSOCIATIONS

I. MANAGEMENT CERTIFICATES

New Statute

Texas Property Code §209.004(a-1) (effective September 1, 2013)

(a-1) "The county clerk of each county in which a management certificate is filed as required by this section shall record the management certificate in the real property records of the county and index the document as a "Property Owners' Association Management Certificate."

What does this mean for my Associations?

All property owners' associations must file a new management certificate with the County Real Property Records.

What do I need to know?

- The management certificates can be re-filed beginning 9/1/13 and must be on file by 1/1/14.
- It is recommended not to file management certificates until 10/1/13, to allow time for the county clerks to establish good practices with respect to the new indexing requirements.
- The county clerk will not file a document that does not have at least one original, notarized signature on it.
- This is an opportunity to update the Association management certificate with recent governing instruments or changes to those instruments, and any other information.

How do I comply?

- Prepare a new management certificate, with an updated list of all the Association's governing instruments and including any instruments that have been modified since the last management certificate was filed. Sign the certificate in the presence of a notary and have it filed with the county clerk;

-OR-

- If the Association management certificate does not need updating or require any changes, then record with the county clerk a copy of the previous management certificate under a "certification" page containing an original notarized signature. (*See Exhibit "A" for a simple example of a management certificate certification page*)
- File the new management certificate or re-file the existing management certificate with a certification on or before 1/1/14.

II. BOARD VACANCIES

New Statute

Texas Property Code § 209.00593(a) (effective September 1, 2013)

- (a) *Notwithstanding any provision in a dedicatory instrument, any board member whose term has expired must be elected by owners who are members of the property owners' association. A board member may be appointed by the board to fill a vacancy on the board. A board member appointed to fill a vacant position shall serve for the remainder of the unexpired term of the position.*

What does this mean for my Associations?

The board of directors can now appoint a member to fill any vacancy on the board, eliminating the requirement that the vacancy be created by a death, disability or resignation.

What do I need to know?

- The primary effect of this statute is that if the board has the authority to remove a director for missing consecutive meetings, then upon removal the board can now appoint a replacement director.
- A director appointed to fill a vacancy may only serve through the unexpired term of his predecessor, at which time the members must elect a director to fill that position.

How do I comply?

- When a director position becomes vacant for any reason prior to the term expiring, have the remaining directors appoint a replacement director.
- The appointment can take place:
 - (1) at the next regularly scheduled board meeting,
 - (2) at a special board meeting called for the purpose of appointing a replacement director,
 - (3) via electronic communication where all directors can hear and be heard by the other directors, OR
 - (4) by a unanimous written consent of the remaining directors.
- If the appointment takes place via electronic communication or unanimous written consent, then the action must be documented in the minutes of the next regularly held board meeting.
- The replacement director may only serve until the term of his predecessor expires. Once the term of a position expires, only the members may elect a director to fill that position.

III. CONTRACTS WITH BOARD MEMBERS

New Statute

Texas Property Code § 209.0052 (effective September 1, 2013)

- (a) This section does not apply to a contract entered into by an association during the development period.
- (b) An Association may enter into an enforceable contract with a current association board member, a person related to a current association board member within the third degree by consanguinity or affinity, as determined under Chapter 573 Government Code, a company in which a current association board member has a financial interest in at least 51 percent of profits, or a company in which a person related to a current association board member within the third degree by consanguinity or affinity, as determined under Chapter 573 Government Code, has a financial interest in at least 51 percent of profits only if the following conditions are satisfied:
 - (1) The board member, relative, or company bids on the proposed contract and the association has received at least two other bids for the contract from persons not associated with the board member, relative or company, if reasonably available in the community.
 - (2) The board member:
 - (A) Is not given access to the other bids;
 - (B) Does not participate in any board discussion regarding the contract; and
 - (C) Does not vote on the award of the contract.
 - (3) The material facts regarding the relationship or interest with respect to the proposed contract are disclosed to or known by the association board and the board, in good faith and with ordinary care, authorizes the contract by an affirmative vote of the majority of the board members who do not have an interest governed by this subsection.

Texas Property Code 209.002(4-a) (effective September 1, 2013)

- (4-a) “Development Period” means a period stated in a declaration, during which a declarant reserves:
 - (A) A right to facilitate the development, construction and marketing of the subdivision; and
 - (B) A right to direct the size, shape, and composition of the subdivision.

What does this mean for my Associations?

Association contracts with directors, relatives of directors and companies of directors, are now subject to specific procedures before they can be approved.

This change does not affect prior contracts unless and until they are up for renewal.

What do I need to know?

- Is a potential contractor an Association director, a relative of a director, or a company in which a director or a relative of a director has a financial interest in at least 51% of that company’s profits? (an “**Interested Contractor**”)
- Is the Association is in the “Development Period”?

How do I comply?

- If the Association is in the “Development Period”, then the requirements of the statute do not apply.
- If a proposed contactor for the Association is an Interested Contractor, then the Association must obtain a bid from the Interested Contractor *and* a bid from at least two other contractors.
- The director who is associated with the Interested Contractor:
 - 1) cannot see or otherwise access any bids,
 - 2) cannot discuss any bids with the board, and
 - 3) cannot vote on bids.
- Make sure the entire board knows about the relationship the director has with the Interested Contractor.
- Make sure that the contract is approved by at least a majority of the directors who do not have an interest in the contract.
- Make sure the board understands that approval of the contract must be in good faith and with ordinary care.
- Make sure that approval of the contract meets any additional requirements contained in the governing instruments.

IV. OWNERS OF ADJACENT LOTS

New Statute

Texas Property Code § 209.015 (effective September 1, 2013)

- (a) In this section:
 - (1) “Adjacent lot” means:
 - (A) a lot that is contiguous to another lot that fronts on the same street;
 - (B) with respect to a corner lot, a lot that is contiguous to the corner lot by either a side property line or a back property line; or
 - (C) if permitted by the dedicatory instrument, any lot that is contiguous to another lot at the back property line.
 - (2) “Residential purpose” with respect to the use of a lot:
 - (A) means the location on the lot of any building, structure, or other improvement customarily appurtenant to a residence, as opposed to use for a business or commercial purpose; and
 - (B) includes the location on the lot of a garage, sidewalk, driveway, parking area, children’s swing or playscape, fence, septic system, swimming pool, utility line, water well and, if otherwise specifically permitted by the dedicatory instrument, the parking or storage of a recreational vehicle.
- (b) Except as provided by this section, a property owners’ association may not adopt or enforce a provision in a dedicatory instrument that prohibits or restricts the owner of a lot on which a residence is located from using for residential purposes an adjacent lot owned by the property owner.
- (c) An owner must obtain the approval of the property owners’ association or, if applicable, an architectural committee established by the association or the association’s dedicatory instruments, based on criteria prescribed by the dedicatory instruments specific to the use of a lot for residential purposes, including reasonable restrictions regarding size, location, shielding, and aesthetics of the residential purpose, before the owner begins the construction, placement, or erection of a building, structure or other improvement for the residential purpose on an adjacent lot.
- (d) An owner who elects to use an adjacent lot for residential purposes under this section shall, on the sale or transfer of the lot containing the residence:
 - (1) include the adjacent lot in the sales agreement and transfer the lot to the new owner under the same dedicatory conditions; or
 - (2) restore the adjacent lot to the original condition before the addition of the improvements allowed under this section to the extent that the lot would again be suitable for the construction of a separate residence as originally platted and provided for in the conveyance to the owner.
- (e) An owner may sell the adjacent lot separately only for the purpose of the construction of a new residence that complies with existing requirements in the dedicatory instrument unless the lot has been restored as described by Subsection (d)(2).
- (f) A provision in a dedicatory instrument that violates this section is void.

What does this mean for my Associations?

An owner of adjacent lots has a right to use all of his adjacent lots for residential purposes, like constructing a fence, a play structure or a pool, parking area and other residential purposes.

This statute does not allow the owner to avoid paying one assessment for each lot owned.

What do I need to know?

- Are lots adjacent? Lots are adjacent if:
 - 1) the lots share a property line and front the same street;

-OR-

 - 2) one lot is a corner lot and the other lot shares a rear or side property line;

-OR-

 - 3) the two lots share a back property line, unless prohibited by the governing instruments.

- Is the use of the adjacent lot residential? The use will be residential if:
 - 1) the use is one that is customarily associated with a residence;

-AND-

 - 2) the use is not primarily for commercial or business purposes.

- The owner must apply for architectural approval in the same manner as all other lots.

- The owner still must comply with the deed restrictions, including building lines and setback requirements, except on the common boundary line.

- The owner must either sell all adjacent lots together – OR – must return the adjacent lot to its original condition if the lot with the primary residence is sold separately.

How do I comply?

- First review a plat or map of the lots to ensure that they are “adjacent lots”.

- Treat applications for the improvement of adjacent lots the same as all other applications for improvement with respect to location, color, materials, design, etc...

- Approve applications for improvement of adjacent lots if the improvements would otherwise be approved on any other lot.

- Building lines and setbacks typically will not apply where the adjacent lot lines border each other. Treat the adjacent lots as one big lot when approving improvements to the lots.

V. FLAGS AND FLAG POLES

New Statute

Texas Property Code § 202.012(b)(2)(A)-(B) and (c) (effective September 1, 2013) *Also applies to Condominiums

- (b) A property owners' association may adopt or enforce reasonable dedicatory instrument provisions:
- (2) that regulate the size, number and location of flagpoles on which flags are displayed, except that the regulation may not prevent the installation or erection of at least one flagpole per property that:
 - (A) is not more than 20 feet in height and, subject to applicable zoning ordinances, easements and setbacks of record, is located in the front yard of the property; or
 - (B) is attached to any portion of a residential structure owned by the property owner and not maintained by the property owners' association.
- (c) A property owner who has a front yard and who otherwise complies with any permitted property owners' association regulations may elect to install a flag pole in accordance with either Subsection (b)(2)(A) or (b)(2)(B).

What does this mean for my Associations?

Associations cannot prohibit flagpoles in front yards or attached to the owner's residence, as long as the location does not violate setbacks, zoning ordinances or easements, and the flagpole is less than 20' in height.

Owners are still obligated to apply to the architectural committee for approval before they install a flagpole to their property.

What do I need to know?

- The owner cannot attach a flagpole to property maintained by the Association.
- Identify the location of any setbacks or easements on the property.
- Identify whether a zoning ordinance prohibits the flagpole in the proposed location.
- It is not necessary but may be desirable to amend and re-file the Association's flagpole policy to comport with these changes. (*For an example of a simple amended flagpole policy see Exhibit "B".*)

How do I comply?

- An application to install a flagpole in the front yard is approved as long as the location does not violate a setback requirement, easement or zoning ordinance, and the flagpole is less than 20' in height.
- An application to install a flagpole by attaching to a structure is approved as long as the applicant owns the property to which the flagpole will be attached and the Association does not maintain the property to which the flagpole will be attached.
- Ensure the application to install or attach a flagpole complies with all the other provisions of the Association's flagpole policy.

VI. DROUGHT-RESISTANT LANDSCAPING AND WATER-CONSERVING TURF **(“XERISCAPING”)**

New Statute

Texas Property Code § 202.007(a)(4), (d)(8) and (d)(1) (effective September 1, 2013) *Also applies to Condominiums

- (a) A property owners’ association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner from
 - (4) Using draught-resistant landscaping or water-conserving natural turf.
- (d) This section does not:
 - (4) prohibit a property owners' association from regulating the installation or use of gravel, rocks, or cacti;
 - (5) restrict a property owners' association from regulating yard and landscape maintenance if the restrictions or requirements do not restrict or prohibit turf or landscaping design that promotes water conservation;
 - (8) prohibit a property owners’ association from requiring an owner to submit a detailed description or a plan for the installation of drought-resistant landscaping or water-conserving natural turf for review and approval by the property owners association to ensure, to the extent practicable, maximum aesthetic compatibility with other landscaping in the subdivision.
- (d-1) A property owners’ association may not unreasonably deny or withhold approval of a proposed installation of drought-resistant landscaping or water-conserving natural turf under Subsection (d)(8) or unreasonably determine that the proposed installation is aesthetically incompatible with other landscaping in the subdivision.

What does this mean for my Associations?

An Owner can install “draught-resistant landscaping” or “water-conserving natural turf” (“Xeriscaping”) on his lot if the Owner first properly applies for and obtains the approval of the Association architectural committee, which approval cannot be unreasonably withheld.

What do I need to know?

- In order to maintain control over installation of xeriscaping, Associations should adopt and record a Xeriscaping Policy restricting the installation of artificial turf, and the use of cacti, rock, and similar items to an unacceptable degree. (*See Exhibit “C” for an example of a basic Xeriscaping Policy.*)
- The statute provides no definition of “water-conserving” or “drought resistant”.
- This statute does not entitle owners to install astro-turf or other artificial turf or plants.
- Applications may be made to add xeriscaping by itself or in connection with other improvements; be mindful of all architectural applications that may request xeriscaping improvements.

How do I comply?

- Identify the turf (grass) applied for; if it is not approvable under the Association's governing documents then you must determine if it is "water-conserving" and "natural" (not artificial/fake).
- Identify the landscaping applied for; if one or more landscaping items are not approvable under the Association's governing documents, you must determine if it is "drought-resistant".
- Use a well-known and industry-accepted botanical guide or dictionary and, if necessary, utilize landscaping experts to identify turf that is "water-conserving" and landscape items that are "drought-resistant".
- If the proposed turf is natural and water-conserving and if the landscaping item is drought resistant, then the items are approved, unless the Association reasonably determines that the proposed turf or landscaping item is aesthetically incompatible with similar landscaping in the subdivision.
- Use the Xeriscaping Policy as a guide when reviewing applications for improvements.

CHANGES AFFECTING CONDOMINIUM ASSOCIATIONS

I. MANAGEMENT CERTIFICATES

New Statute

Texas Property Code §82.116 (a-1) and (a-2) (effective September 1, 2013)

(a-1) The county clerk of each county in which a management certificate is filed as required by this section shall record the management certificate in the real property records of the county and index the document as a “Condominium Association Management Certificate”

(a-2) To ensure that all management certificates are recorded and indexed as provided by Subsection (a-1), each condominium unit owners association that recorded a management certificate under this section before September 1, 2013, shall record a new management certificate on or before January 1, 2014. This subsection expires January 1, 2015.

What does this mean for my Condominium Associations?

All condominium associations must file a new management certificate with the County Real Property Records.

What do I need to know?

- The management certificates can be re-filed beginning 9/1/13 and must be on file by 1/1/14.
- It is recommended not to file management certificates until 10/1/13, to allow time for the county clerks to establish good practices with respect to the new indexing requirements.
- The county clerk will not file a document that does not have at least one original, notarized signature on it.
- This is an opportunity to update the Association management certificate with recent governing instruments or changes to those instruments, and any other information.

How do I comply?

- Prepare a new management certificate, updated with all of the Association’s governing instruments and any changes to those instruments. Sign the certificate in the presence of a notary and have it filed with the county clerk;

-OR-

- If the management certificate does not need updating or require any changes, then record with the county clerk a copy of the previous management certificate under a “certification” page containing an original notarized signature. (*See Exhibit “D” for a simple example of a condominium management certificate certification page*)
- File the new management certificate or re-file the existing management certificate with a certification on or before 1/1/14.

II. NOTICE BEFORE LEVYING A FINE OR CHARGING FOR PROPERTY DAMAGE

New Statute

Texas Property Code § 82.102(a)(12) and (d) (effective September 1, 2013)

- (a) Unless otherwise provided by the declaration, the association, acting through its board, may:
 - (12) impose interest and late charges for late payments of assessments, returned check charges, and, if notice and an opportunity to be heard are given in accordance with Subsection (d), reasonable fines for violations of the declaration, bylaws and rules of the association;
- (d) Before an association may charge the unit owner for property damage for which the unit owner is liable or levy a fine for violation of the declaration, bylaws, or rules, the association shall give to the unit owner a written notice that:
 - (1) describes the violation or property damage and states the amount of the proposed fine or damage charge;
 - (2) states that not later than the 30th day after the date of the notice, the unit owner may request a hearing before the board to contest the fine or damage charge; and
 - (3) allows the unit owner a reasonable time, by a specified date, to cure the violation and avoid the fine unless the unit owner was given notice and a reasonable opportunity to cure a similar violation within the preceding 12 months.

What does this mean for my Condominium Associations?

Before a Condominium Association can fine an owner or charge an owner for property damage, the Association has to first give notice to the owner under Texas Property Code § 82.102(d). (*See Exhibit "E" for a basic notice that complies with § 82.102(d).*)

What do I need to know?

- There is no requirement that the notice be given by certified mail; however, if management is off-site, certified mail and regular mail are recommended.
- This requirement does not exist for Condominiums that were created before January 1, 1994 and have not adopted Chapter 82 of the Texas Property Code (the "Uniform Condominium Act"). *However, the Association's governing documents may contain similar notice requirements. Consult with an attorney to determine if your Condominium Association has notice requirements.*

How do I comply?

- Before a fine or property damage charge is levied against an owner, the Association must provide the owner a notice that:
 - 1) describes the property damage or violation at issue;
 - 2) states the amount of the proposed fine or property damage charge;
 - 3) tells the owner he has 30 days to request a hearing before the board to contest the fine or damage charge; and
 - 4) gives a reasonable, specified date by which the violation must be cured in order to avoid the fine.

III. RIGHT OF REDEMPTION IN FORECLOSURE SALE TO A THIRD PARTY

New Statute

Texas Property Code 82.113(g) (effective September 1, 2013)

- (g) The owner of a unit purchased at a foreclosure sale of the association's lien for assessments may redeem the unit not later than the 90th day after the date of the foreclosure sale. If the association is the purchaser, the owner must pay to the association to redeem the unit all amounts due the association at the time of the foreclosure sale, interest from the date of foreclosure sale to the date of redemption at the rate provided by the declaration for delinquent assessments, reasonable attorney's fees and costs incurred by the association in foreclosing the lien, any assessment levied against the unit by the association after the foreclosure sale, and any reasonable cost incurred by the association as owner of the unit, including costs of maintenance and leasing. If a party other than the association is the purchaser, the redeeming owner must pay to the purchaser of the unit at the foreclosure sale an amount equal to the amount bid at the sale, interest on the bid amount computed from the date of the foreclosure sale to the date of redemption at the rate of six percent, any assessment paid by the purchaser after the date of foreclosure, and any reasonable costs incurred by the purchaser as the owner of the unit, including costs of maintenance and leasing. The redeeming owner must also pay to the association all assessments that are due as of the date of the redemption and reasonable attorney's fees and costs incurred by the association in foreclosing the lien. On redemption, the purchaser of the unit at the foreclosure sale shall execute a deed with no warranty to the redeeming unit owner. The exercise of the right of redemption is not effective against a subsequent purchaser or lender for value without notice of the redemption after the redemption period expires unless the redeeming unit owner records the deed from the purchaser of the unit at the foreclosure sale or an affidavit stating that the owner has exercised the right of redemption. A unit that has been redeemed remains subject to all lien and encumbrances on the unit before foreclosure. All rents and other income collected from the unit by the purchaser of the unit at the foreclosure sale from the date of foreclosure sale to the date of redemption belong to the purchaser of the unit at the foreclosure sale, but the rents and income shall be credited against the redemption amount. The purchaser of a unit at a sale foreclosing an association's assessment lien may not transfer ownership of the unit during the redemption period to a person other than the redeeming lot owner.

What does this mean for my Condominium Associations?

It means that when a condominium unit is sold at foreclosure and purchased by someone other than the Association (a "third party purchaser"), the unit owner now has a right to redeem the unit from the third party purchaser. Prior law already contained redemption rights for when the Association purchased a unit at foreclosure.

What do I need to know?

- A third party purchaser has to allow the unit owner to redeem the unit by the 90th day following the date of the foreclosure sale.
- To redeem a unit, the owner must pay the Association and to the third party purchaser the amounts described in the statute.
- A unit may not be transferred or sold by the third party or the Association during the redemption period, except to the redeeming unit owner.

How do I comply?

- In most cases the Association's attorney will handle both the foreclosure and any redemption efforts by the unit owner. *Follow the advise of counsel when dealing with foreclosed units during the redemption period.*

IV. BORROWING MONEY

New Statute

Texas Property Code 82.102(f) and (g) (effective September 1, 2013)

- (f) Except as provided by Subsection (g), the association by resolution of the board of directors may:
 - (1) Borrow money; and
 - (2) Assign as collateral for the loan authorized by the resolution:
 - (A) The association's right to future income, including the right to receive assessments; and
 - (B) The association's lien rights.
- (g) If a dedicatory instrument requires a vote of members of the association to borrow money or assign the association's right to future income or the association's lien rights, the loan or assignment must be approved as provided by the dedicatory instrument. The board may determine whether a vote for that purpose may be cast electronically, by absentee ballot, in person or by proxy at a meeting called for that purpose, or by written consent. If a lower approval threshold is not provided by the dedicatory instrument, approval requires the consent of owners holding 67% of all voting interests.

What does this mean for my Condominium Associations?

Condominium Associations are now authorized to use future income (including assessments) and lien rights as collateral for a loan; even if the governing documents do not authorize the use of those items as collateral.

What do I need to know?

- Identify whether the governing documents require a vote of the members to authorize borrowing money or using future income or lien rights as collateral.
- If member approval is not required, then a majority of the board can approve the loan and use future income and lien rights as collateral.

How do I comply?

- If the governing documents require owner approval to borrow money, use future income as collateral, or use lien rights as collateral, then you must do the following:
 - 1) Identify the percentage vote required by the governing documents in order to approve the loan or use of collateral.
 - 2) Use 67% approval, unless the governing documents contain a lower percentage.
 - 3) Have the board determine which method(s) of voting will be used to obtain the required approval; the board can use one or more of the following voting methods: in person or by proxy at a meeting, by electronic vote, absentee ballot, and/or written consent.
 - 4) Ensure compliance with any additional requirements established by the governing instruments.

V. INSURANCE

New Statute

Texas Property Code 82.111(c) and (i)-(m) (effective September 1, 2013)

(c) If the insurance described by Subsections (a) and (b) is not reasonably available, the association shall cause notice of that fact to be delivered or mailed to all unit owners and lienholders. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance the board considers appropriate to protect the condominium, the association, or the unit owners. Insurance policies maintained under Subsection (a) may provide for commercially reasonable deductibles as the board determines appropriate or necessary. This section does not affect the right of a holder of a mortgage on a unit to require a unit owner to acquire insurance in addition to that provided by the association.

(i) Except as provided by this section, any portion of the condominium for which insurance is required that is damaged or destroyed shall be promptly repaired or replaced by the association unless the condominium is terminated, repair or replacement would be illegal under any state or local health or safety statute or ordinance, or at least 80 percent of the unit owners vote to not rebuild. Each owner of a unit may vote, regardless of whether the owner's unit or limited common element has been damaged or destroyed. A vote may be cast electronically, or by written ballot if a meeting is not held for that purpose or in person or by proxy at a meeting called for that purpose. A vote to not rebuild does not increase an insurer's liability to loss payment obligations under a policy, and the vote does not cause a presumption of total loss. Except as provided by this section, the cost of repair or replacement in excess of the insurance proceeds is a common expense, and the board may levy an assessment to pay the expenses in accordance with each owner's common expense liability. If the entire condominium is not repaired or replaced, any insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium, the insurance proceeds attributable to units and limited common elements that are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were assigned, or to their mortgagees, as their interests may appear, and the remainder of the proceeds shall be distributed to all the unit owners in accordance with each owner's undivided interest in the common elements unless otherwise provided in the declaration. If the unit owners vote to not rebuild any unit, that unit's allocated interests shall be automatically reallocated on the vote as if the unit had been condemned, and the association shall prepare, execute, and record an amendment to the declaration reflecting the reallocation. Section 82.068 governs the distribution of insurance proceeds if the condominium is terminated.

(j) If the cost to repair damage to a unit or common element covered by the association's insurance is less than the amount of the applicable insurance deductible, the party who would be responsible for the repair in the absence of insurance shall pay the cost for the repair of the unit or common element.

(k) If the association's insurance provides coverage for the loss and the cost to repair the damage to a unit or common element is more than the amount of the applicable insurance deductible, the dedicatory instruments determine payment for the cost of the association's deductible and costs incurred before insurance proceeds are available. If the dedicatory instruments are silent, the board of directors of the association by resolution shall determine the payment of those costs, or if the board does not approve a resolution, the costs are a common expense. A resolution under this subsection is considered a dedicatory instrument and must be recorded in each location in which the declaration is recorded.

(l) If damage to a unit or the common elements is due wholly or partly to an act or omission of any unit owner or a guest or invitee of the unit owner, the association may assess the deductible expense and any other expense in excess of insurance proceeds against the owner and the owners unit.

(m) The provisions of this section may be varied or waived if all the units in a condominium are restricted to nonresidential use.

What does this mean for my Condominium Associations?

There are many procedures and requirements when dealing with complete or partial losses covered by a Condominium Association's insurance policy. The changes made to this statute are subtle and whether they apply will depend on the circumstances involved.

What do I need to know?

- In the event of a loss covered by insurance, the board can hold a vote of the unit owners to determine if the property will be rebuilt and determine the method of voting that will be allowed.
- A complete or partial loss covered by insurance must typically be rebuilt unless 80% of the unit owners vote not to rebuild.
- The unit owners may cast their vote to rebuild at a meeting in person or by proxy, by electronic ballot, absentee ballot, or in writing.
- Determine the amount of the deductible, the cost to repair or rebuild, and the party who would normally be responsible for the repair under the governing documents.
- If the cost to repair is less than the association's deductible, then the repair cost is paid by the party that is normally responsible for maintenance of the item being repaired.
- If the cost to repair is more than the association's deductible, then the deductible and any costs incurred before insurance proceeds are available, will be a common expense of the unit owners; unless the governing documents or board resolution provide otherwise.
- Adopt a resolution regarding payment of the insurance deductible and any costs incurred before insurance proceeds are available, in the event the cost to rebuild is more than the association's deductible; unless the governing documents already provide who is responsible. (*an example of a simple insurance deductible policy to use when the governing documents do not provide who is responsible is attached hereto as Exhibit "F"*).

How do I comply?

- *Because of the many variables that can affect this topic, consult with the Association attorney to ensure compliance with this statute and other applicable law when the Association experiences a complete or partial loss covered by insurance.*

**CERTIFICATION OF PROPERTY OWNERS'
ASSOCIATION MANAGEMENT CERTIFICATE**

STATE OF TEXAS §
 COUNTY OF _____ §

I, the undersigned, pursuant to §209.004 of the Texas Property Code, do hereby certify, as follows:

I am the managing agent for _____ Homeowners Association, Inc., a Texas non-profit corporation and Property Owners' Association. A true and correct copy of the Association's Management Certificate is attached hereto.

IN WITNESS WHEREOF, I have subscribed my name on this ____ day of _____, 2013.

By: _____

Managing Agent for _____ Homeowners Association, Inc.

Print Name: _____

STATE OF TEXAS §
 COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, managing agent for the _____ Homeowners Association, Inc., and known by me to be the person whose name is subscribed to the foregoing document and being by me first duly sworn, declared that he/she is the person who signed the foregoing document in his/her representative capacity and that the statements contained therein are true and correct.

Given under my hand and seal of office this ____ day of _____, 2013.

 Notary Public, State of Texas

After recording return to:

AMENDMENT TO REGULATIONS REGARDING FLAGS AND FLAGPOLES

STATE OF TEXAS §
 §
COUNTY OF _____ §

WHEREAS, the Regulations Regarding Flags and Flagpoles for the _____ Association, Inc., is recorded in the Real Property Records of _____, County, Texas, under Clerk’s File No. _____ (the “Flag Regulations”); and

WHEREAS, the Association desires to amend its Flag Regulations to comport with the changes made to Texas Property Code § 202.012;

NOW, THEREFORE, in accordance with the foregoing and as evidenced by the certification hereto, the Association’s Flag Regulations are hereby amended to add the following:

- 1) An owner may install one flagpole, not more than 20 feet in height, in the front yard of his property, if the location of the flag pole does not violate any applicable zoning ordinances, easements and setbacks of record.
- 2) An owner may install a flagpole by attaching it to a structure, so long as the structure is owned by the owner and not maintained by the Association.
- 3) The flagpole shall comply with the other provisions of the Association flagpole policy, including the requirement that the owner apply for and obtain the written permission of the Association architectural committee before installing any flagpole.

CERTIFICATION

“I, the undersigned, being a Director of the _____ Association, Inc., hereby certify that the foregoing amendment was adopted by at least a majority of the Association Board of Directors, at a duly held meeting at which a quorum of directors was present.”

IN WITNESS WHEREOF, I have subscribed my name on this ___ day of _____, 2013.

EXHIBIT “B”

By: _____

Director of: _____ Homeowners Association, Inc.

Print Name: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, a Director for the _____ Homeowners Association, Inc., and known by me to be the person whose name is subscribed to the foregoing document and being by me first duly sworn, declared that he/she is the person who signed the foregoing document in his/her representative capacity and that the statements contained therein are true and correct.

Given under my hand and seal of office this ____ day of _____, 2013.

Notary Public, State of Texas

After recording return to:

EXHIBIT "B"

_____ASSOCIATION, INC.
**REGULATIONS REGARDING THE INSTALLATION OF
DRAUGHT-RESISTANT LANDSCAPING AND WATER-CONSERVING TURF**

STATE OF TEXAS §
 §
COUNTY OF _____ §

WHEREAS, _____ Association, Inc., a Texas nonprofit corporation, is the governing entity for the following described real property:

--INSERT PROPERTY DESCRIPTION FOR SUBDIVISION HERE--

WHEREAS, due to recent statutory changes to § 202.007 of the Texas Property Code, the Association desires to enact regulations regarding the installation of draught-resistant landscaping and water-conserving turf (“Xeriscaping”), to advise owners as to what items the Board considers aesthetically incompatible with landscaping in the subdivision and will be prohibited;

NOW, THEREFORE, pursuant to the foregoing and as evidenced by the Certification hereto, the Association hereby adopts the following regulations:

- I. The following items deemed aesthetically incompatible with the landscaping in the subdivision and will not be approved:
 - A) Astro-turf and any other artificial turf (all turf must be natural and living);
 - B) Artificial plants, trees, shrubs, bushes and other artificial landscaping (all landscaping must be natural and alive);
 - C) Areas of rock, gravel, stone, or similar ground cover that comprise a significant portion of the front yard that is visible from public view, as determined in the sole discretion of the Association;
 - D) Cacti and similar plants that constitute the primary landscaping feature on the lot; and
 - E) Species of plant or turf that are dangerous, toxic or invasive to humans, animals or indigenous plant life.

- II. The Association shall have the sole discretion as to what constitutes the meaning of “draught-resistant”, “water-conserving”, “artificial” and all other terms used in this policy that are not otherwise defined by applicable law or the Association’s dedicatory instruments.

- III. No modification or installation of landscaping governed by this policy shall be made until the owner has first applied for and obtained the written approval of the Association.
- IV. The Board of Directors may not unreasonably withhold approval of items regulated by this policy.

CERTIFICATION

“I, the undersigned, being a Director of the _____ Association, Inc., hereby certify that the foregoing amendment was adopted by at least a majority of the Association Board of Directors, at a duly held meeting at which a quorum of directors was present.”

IN WITNESS WHEREOF, I have subscribed my name on this ___ day of _____, 2013.

By: _____

Director of: _____ Homeowners Association, Inc.

Print Name: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, a Director for the _____ Homeowners Association, Inc., and known by me to be the person whose name is subscribed to the foregoing document and being by me first duly sworn, declared that he/she is the person who signed the foregoing document in his/her representative capacity and that the statements contained therein are true and correct.

Given under my hand and seal of office this ___ day of _____, 2013.

Notary Public, State of Texas

After recording return to:

EXHIBIT “C”

STATUTORY NOTICE PRIOR TO LEVYING A FINE

Dear Owner:

You have been previously advised that you are in violation of the dedicatory instruments for the _____ Condominium Association by (describe the violation in detail here). In order to avoid a fine in the amount of \$_____, you must cure the violation by (insert date here).

You have 30 days from the date of this notice to request a hearing with the Association Board of Directors to contest the proposed fine. You will not be given another opportunity for a hearing or to avoid the proposed fine if you commit the same or a similar violation within the next 12 months.

All requests for a hearing should be made in writing to the following address:

_____.

Very Truly Yours,

Condominium Association.

STATUTORY NOTICE PRIOR TO CHARGING OWNER FOR PROPERTY DAMAGE

Dear Owner:

You have been previously advised that you are responsible for reimbursing the _____ Condominium Association for property damage in the amount of \$_____. More specifically, you are responsible for property damage as follows: (describe the property damage in detail here).

You have 30 days from the date of this notice to request a hearing with the Association Board of Directors to contest the property damage charge.

All requests for a hearing should be made in writing to the following address:

_____.

Very Truly Yours,

Condominium Association.

EXHIBIT "E"

CONDOMINIUM ASSOCIATION, INC.
RESOLUTION REGARDING INSURANCE DEDUCTIBLES

STATE OF TEXAS §
 §
COUNTY OF _____ §

WHEREAS, _____ Condominium Association, Inc., a Texas nonprofit corporation, is the governing entity for the following described Condominium regime:

--INSERT PROPERTY DESCRIPTION FOR CONDOMINIUM HERE--

WHEREAS, pursuant to Texas Property Code § 82.111(k), the Association Board of Directors desires to adopt a resolution to assign responsibility for payment of the Association’s insurance deductible and costs incurred before insurance funds are available;

NOW, THEREFORE, pursuant to the foregoing and as evidenced by the Certification hereto, the Association hereby adopts the following resolution:

In the event of a loss covered by an insurance policy of the Association:

If the cost to repair is more than the Association’s deductible, then the deductible and any costs incurred before insurance proceeds are available, will be the expense of:

(Choose One):

_____ All the unit owners in common

_____ Only the owners of the units that are being repaired or rebuilt under the insurance.

CERTIFICATION

“I, the undersigned, being a Director of the _____ Condominium Association, Inc., hereby certify that the foregoing amendment was adopted by at least a majority of the Association Board of Directors, at a duly held meeting at which a quorum of directors was present.”

IN WITNESS WHEREOF, I have subscribed my name on this ___ day of _____, 2013.

EXHIBIT “F”

By: _____

Director of: _____ Condominium Association, Inc.

Print Name: _____

STATE OF TEXAS §

§

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, a Director for the _____ Condominium Association, Inc., and known by me to be the person whose name is subscribed to the foregoing document and being by me first duly sworn, declared that he/she is the person who signed the foregoing document in his/her representative capacity and that the statements contained therein are true and correct.

Given under my hand and seal of office this ____ day of _____, 2013.

Notary Public, State of Texas

After recording return to:

EXHIBIT "F"