

**HOA COMPLIANCE WITH
STATE AND LEGAL REGULATIONS
&
HOA HOT TOPICS FOR 2023**

Presented at

North Dallas Neighborhood Alliance

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What We Will Cover

- What do HOA leaders need to know/do to stay abreast and comply with the new State regulations?
- Finances
- Short Term Rentals
- Insurance
- Enforcement
- Best Practices

KEEPING UP AND COMPLYING WITH NEW STATE REGULATIONS?

1. Keep up with legislation on the State Legislature website:

Go to the Texas Legislature Online at: <http://www.capitol.state.tx.us/>
You can type in the proposed bill or do a search to review bills.

2. Also, follow what is happening at:

CAI website: www.dfwcai.org
TCAA website: www.tcaa.org
TLAC: through local Texas CAI Chapter

3. Search Chapter 81 & 82 (condos.) or 209 of the Texas Property Code, in addition to other relevant laws.

4. Ask your attorney or property manager if you have one.

5. Check the NDNA website.

KEEPING UP AND COMPLYING WITH NEW STATE REGULATIONS?

2023 - Brief Summary of Changes - Non-Condominium POAs:

House Bill 614: amended Section 209 of the Texas Property Code by **adding Section 209.0061 - RE: Fine and Enforcement Policy**

No later than January 1, 2024 (*which means the policy must be created and filed no later than such date*), **all non-condominium** associations that have fining authority (must be in the declaration/covenants/CCRs) must have a fining policy filed with the county. If the association does not have fining authority, then such a policy is not required.

The policy must include: (1) the general categories of restrictive covenants for which fines may be levied; (2) a schedule of fines for each category of violation; and (3) information about the owners' right to a hearing in order to contest any fine.

The policy may reserve Board authority to levy a fine that varies on a case-by-case basis and must be posted on the association's website, or annually sent to each owner by hand-delivery, first class mail, or email.

KEEPING UP AND COMPLYING WITH NEW STATE REGULATIONS?

2023 - Brief Summary of Changes - Non-Condominium POAs:

House Bill 886: amended Section 209.0094 of the Texas Property Code - RE: **Additional Notices Prior to Filing A Lien**

Two specific notices must be sent to homeowners before a lien (Notice of Lien/Notice of Assessment Lien) can be filed by an association:

1. The 1st notice must be sent via first class mail to the owner's address in the association's records, **or** via email to an email address the owner has provided the association.
2. The second notice must be sent at least 30 days after the first notice. This second notice must be sent by certified mail, return receipt requested.

Additionally, an association may not file an assessment lien (Notice of Lien/Notice of Assessment Lien) before the 90th day after the date of the second notice of delinquency set forth in 2 above was sent to the owner.

KEEPING UP AND COMPLYING WITH NEW STATE REGULATIONS?

2023 - Brief Summary of Changes – All POAs:

House Bill 1193 - amended Section 202 of the Texas Property Code by adding Section 202.024 - RE: Prohibition Against Housing Discrimination By Method of Payment

An association is prohibited from enforcing any provision in its dedicatory instruments which restricts or prevents an owner from renting their home to a person based on the method of payment. Method of payment includes housing choice vouchers under Section 8, United States Housing Act of 1937, etc. Thus, an association may not prohibit rentals to **Section 8 housing recipients** and may not prohibit rentals based upon other rental assistance/subsidies.

KEEPING UP AND COMPLYING WITH NEW STATE REGULATIONS?

2023 - Brief Summary of Changes – All POAs:

House Bill 2022 - Makes various amendments to Section 27 of the Texas Property Code - RE: Residential Construction Liability

Sections 27.001, 27.002, 27.003, 27.004, 27.0042, 27.006 were amended:

Sections 27.008 and 27.009 were added

Sections 27.004(1), 27.0042(b), and 27.007(c) were repealed.

There are various provisions, but essentially such provides when a contractor is liable for defective construction.

KEEPING UP AND COMPLYING WITH NEW STATE REGULATIONS?

2023 - Summary of Changes – **Vetoed by Governor:**

Senate Bill 1668 – Was passed by the Texas House and Senate but vetoed by Governor Abbott. Such has addressed:

- A fix to the front yard security fencing issue;
- A fix to the no Board member can serve on the ACC issue;
- Required condominiums to file new management certificates and to file them with TREC;
- Placing a cap on condominium resale certificate fees; and
- Requiring condominiums to have a website with all dedicatory instruments on it.

Finances

BANK FAILURES, WAR, INFLATION...

Be Aware and Be Prepared !!

Things to consider:

FDIC insures amounts up to \$250,000.00

- FDIC website: <https://www.fdic.gov/resources/deposit-insurance/>
- Corporation, Partnership, or Unincorporated Association Account:
- Deposits owned by corporations, partnerships, and unincorporated associations, including for-profit and not-for-profit organizations. The corporation, partnership, or unincorporated association must be separately organized under state law and operate primarily for some purpose other than to increase deposit insurance coverage.
- Coverage Limit: All deposits owned by a corporation, partnership, or unincorporated association at the same bank are added together and insured up to \$250,000, separately from the personal accounts of the owners or members.

Finances...

Be Aware and Be Prepared !!

Things to consider:

- The Board has a responsibility to use its best efforts to protect the Association and act in the best interest of its members, which includes properly managing the Association's money
- What bank(s) are the accounts at?
- If the Association has more than \$250,000.00 in one bank (all insured accounts taken together), talk to a financial advisor or other money management professional and discuss how to protect all Association funds
- If the Association has a large amount in its reserve account, does it make sense to spread this out over different banks or should the Association perhaps prioritize deferred maintenance projects?

Finances...

Be Aware and Be Prepared !!

Things to consider:

- Talk to your insurance agent about potential excess policies that might cover monetary losses
- Review Association finances with your management company and determine whether the Board might want to move its money to a different bank
- Create a plan of what needs to be investigated
- What calls need to be made, and to who?
- What Board decisions need to be made, and when?

Finances...

ASSESSMENT COLLECTION:

- The Board should be proactive in collecting delinquent accounts
- Do not blindly delegate collections to management company
- In light of world and economic events, remember:
 - It is easier to collect smaller amounts now than larger amounts later
 - It is more difficult to proceed with foreclosure in a bad economy
 - Build up operating and reserve accounts now to have the ability to pay bills in the future if delinquencies increase

Short Term Rentals – The *Tarr* Case

Tarr v. Timberwood Park Owners Association, Inc. – San Antonio Case – Texas Supreme Court – 5-25-18

- In this case the Association argued that a short-term rental/lease was a business use of the property and that such violated the provisions of the declaration prohibiting a business use and that such was not a residential use of the property. Ultimately, the Texas Supreme Court, in reversing the trial court held that the Declaration did not have any provisions restricting short term rentals and that it would not imply such based on the residential use provision.
- **HOWEVER**, this ***DID NOT*** mean that an Association cannot seek to limit leasing in its community.
- The court did not address an amendment which would detail specific limitations (except to state that it did not see any specific provisions in the declaration), however, it noted that the parties did not try and amend the declaration to add such provisions.

Short Term Rentals...

Angelwylde HOA, Inc. v. Fournier et al, - Texas Court of Appeals - Austin 3rd District – March 2023

- In this case, the Court of Appeals upheld the Association's right to amend the restrictions to require minimum lease terms.

Chiu v. Windermere Lakes Homeowner's Association, Inc. - Texas Court of Appeals – Houston 14th District – August 2022

- In this case, the Court of Appeals upheld the amendment of the community restrictions barring short-term rentals of owners conducted before the amendment because the amendment reinforced the existing single-family residential use restriction

JBrice Holdings, L.L.C., et al v. Wilcrest Walk Townhomes Association, Inc. - Houston Case - Texas Supreme Court - 4-22-22

- This case essentially held that the Association's restrictions did not prohibit leasing

Short Term Rentals – What to Do

- Review Declaration and determine what leasing restrictions exist, if any, and how broad or specific the language.
- Absent authority in the Declaration, leasing rules are likely not enough, therefore we recommend amending the Declaration.
- Get a feel for what your community desires to do with respect to short term rentals and leasing.
- Review City ordinances.
- Consult with your legal counsel.

Insurance

(Protecting the Association, Owners and Board)

Review the Association's documents and see what insurance it requires the Association to obtain and maintain.

- Directors and Officers Insurance
- Casualty and Liability Insurance
- Fidelity/E & O Insurance
- Customary insurance for certain areas
 - Is your development on a flood plain? If so, the Association might be required or strongly encouraged to obtain flood insurance.
 - Some Association documents require, or gives the Association an option to require, members to obtain and maintain certain insurance.

Insurance...

Best Practice – Duty to Notify:

- When the Board is aware of any potential issues that it believes MIGHT be covered under insurance, the Board should as soon as possible contact the Association's insurance agent and direct that the agent place any applicable carrier on notice of a claim or potential claim. The policy requires insureds to take such action.
- The Board does not want to have its insurance company deny a potential claim due to the Board not timely notifying the insurance company.

Be Aware of State Statutes:

- If Condominium – Texas Property Code, Section 82.111 (Retroactive)

Enforcing Governing Legal Documents

Remember - Record Dedicatory Instruments

➤ Texas Property Code, Sec. 202.006. PUBLIC RECORDS.

All dedicatory instruments must be recorded. A dedicatory instrument has no effect until the instrument is filed/recorded.
Applies to all POAs.

➤ Once recorded: The Board must uniformly enforce the Association's governing legal documents the same way against all members/tenants.

The Board cannot arbitrarily enforce its documents, nor can it adopt unreasonable rules, regulations or policies.

➤ Seek the assistance of your property manager (if one is utilized) and/or legal counsel.

Due Process - Fines

Things to Remember:

- **Authority to Fine**. The Association may or may not be able to fine members for violations. The authority for non-condominiums to fine for violations and assess late charges for delinquent assessments ***must be in*** the Declaration or provided by State law.
- **Due Process**: After a warning letter(s), before proceeding with certain enforcement action, such as fining, members must be given notice, an opportunity to cure, and an opportunity to be heard before the Board.
- **Non-Condos**: Texas Property Code, Section 209.006 - Determine if the violation is curable (209.006(i) or uncurable (209.006(g) & (h).
- **Condos**: Texas Property Code, 82.102(a)(12) & (d)

Misc. Best Practices Tidbits - Do's and Don'ts

Documentation:

Drafting, Filing and Contracts – *Seek Legal Help*

- **Drafting**: The person drafting the document may not have any legal training.
- **Filing** – The person filing a document with a court or the county records, may or may not have done such correctly. Legal filings are important and likely deal with issues that affect people's lives and property.
- **Contracts** - When an Association enters into a contract, often times you have to anticipate certain events, such as early termination or a default. Consider seeking legal assistance to review the contract BEFORE it is signed!

Robert M. “Bob” Blend

- **Bob** obtained his business degree by earning a double major in Marketing specializing in Advertising and Selling and Sales Management at Bowling Green State University, in Bowling Green, Ohio. In college, Bob was inducted into the Beta Gamma Sigma which recognizes outstanding achievement by collegians in the School of Business.
- **Bob** obtained his law degree from Wake Forest University School of Law in Winston-Salem, North Carolina. He has been a member of the Community Associations Institute, since 1990 and was a member of the former POA Sub-Committee of the State Bar of Texas Real Estate’s Section which dealt exclusively with issues relating to property owner’s associations. Bob has actively participated with the legislation process dealing with property owners associations and he has given numerous speeches, served as an instructor and participated in round table legal discussions concerning property owners associations, and has also held positions in the Dallas-Ft. Worth Chapter of the *Community Associations Institute*, including serving on the Board of Directors from 2007 through 2012 and serving as President-Elect of the Chapter in 2011 and President of the Chapter in 2012.
- **Bob** has also been honored by being selected as a Fellow of the Texas and Dallas Bar Foundations and has received the highest rating, a Pre-Eminent “AV” rating, from the Martindale-Hubbell legal directory, one of the oldest legal directories in the country.

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